State Regulator Panel Responses to Questions from Task Force Members

May 31, 2022, Dual Use of Cannabis Task Force Meeting

(1:39:36) Randy Gonce, HICIA: I've heard a lot about the importance of having agencies work together, and some of them say it was easier once they folded it together, different agencies coming under one, and what would be your recommendations to start off with one agency that oversees all of the programs that have the authority, so they don't have to liaise between three different departments, with that said, I did hear from California previously last year, this was a recommendation from their department. They said through their woes, they suggest having one agency oversee the entire program, can make rules, and make those fast decisions. So, hearing from each individual to get their input would be important given that we have the DOH but we have others involved as well.

Would it be feasible to have one stand-alone agency oversee the industry?

Colorado

In Colorado, we have multiple agencies with a distinct role in cannabis regulation/program administration. For example, the Department of Revenue's Marijuana Enforcement Division oversees the licensing and regulation of the legal marijuana industry, while other agencies handle other aspects of cannabis legalization [e.g. The Colorado Department of Public Health and Environment oversees the Medical Marijuana Registry and the regulation of Industrial Hemp Product manufacturing and storage; the Colorado Department of Public Safety and local jurisdictions have a role in enforcing against illicit market operations; the Colorado Department of Agriculture registers and regulates hemp cultivation operations].

While we cannot suggest one approach is the best approach, it's important to consider any needs for a central point of coordination if multiple agencies have distinct roles in cannabis regulation. In Colorado, the Governor's Office has appointed a special advisor who supports coordination between state agencies and facilitates a monthly "Cannabis Cabinet" meeting where Executive Directors and staff of all affected agencies come together to discuss pressing issues and hot topics. State agencies also have designated staff who support coordination between agencies and the Governor's Office.

Michigan

Michigan has always taken a single agency approach. I think it has been beneficial to have an agency focused on this specific policy and regulatory area as it is nuanced, complex, and evolves very quickly. Our agency recognizes the need to have partners across other areas of state government as well. We established and maintained great relationships with our Bureau of Fire Services, Department of Agriculture and Rural Development, State Police, and Department of Environment, Great Lakes and Energy. We rely on some external expertise to complement our internal limitations in certain key areas. It is extremely helpful to have executive support to ensure the cooperation and collaboration from other agencies when needed.

Nevada

In Nevada in 2014, the medical marijuana program was all housed under the Division of Health. Industry oversight included all public health and compliance inspections, compliance audits, licensing, and administration. Specialized staff was hired for each regulatory component of the program. The only regulatory aspect handled outside the Division of Health was the collection of taxes, which was done by the Nevada Department of Taxation. In 2017, when adult-use was legalized, the medical marijuana program moved to the Department of Taxation and all regulatory oversight was handled by the Department of Taxation. In 2019, Assembly Bill 533 was passed forming the Nevada Cannabis Compliance Board (CCB) on July 1, 2020. The CCB is a stand-alone agency responsible for the regulatory oversight of the cannabis industry. The collection of taxes remained under the Department of Taxation.

A single stand-alone agency has proven successful for Nevada in the evolution of the cannabis industry. It has created synergies between the different aspects regulatory requirements which has allowed for better communication, efficiencies, and effectiveness.

Washington

It depends on the scope and responsibility, as I am not sure you could if you incorporate all issues such as employee safety, labor laws, taxation, etc. If the intent is for the manufacturing and sales of cannabis, it could be feasible to have one stand-alone agency, if the infrastructure was established early to ensure the appropriate level of expertise was present in the agency.

Areas of expertise I would recommend considering are the following:

- Agriculture oversight for growing products, pesticides, and potential recalls
- Ecology for environmental oversight
- Food safety oversight for consumer protection and potential recalls and package and labeling requirements
- Lab certification processes, and potentially a reference lab
- Inspection and compliance of retail businesses
- Public health and prevention for education, youth access prevention, consumer awareness
- Medical vs adult use cannabis dosing and potency
- Chemistry, for synthetic product manufacturing (including potential bio-synthetics common in pharmaceuticals.)
- Tax collection and distribution

(1:40:48) Isaac Choy, DOTax: What are the total costs for each of the programs? What are the indirect and direct costs (do not need the social costs)? Just pure numbers. Are there any reports that can be accessed with this information and any revenue figures that would be fine? Also, if the panel could share any compliance work programs they could share?

What are the total costs for each of the programs including indirect and direct costs? What is the amount of revenue brought in? Are there any reports with this information and are there any compliance work programs that can be shared?

Colorado

The Division is updating records associated with the new fiscal year and will follow up with additional information in response to this question. Here are Colorado's monthly tax revenue reports dating back to 2014: https://sbg.colorado.gov/marijuana-enforcement

Michigan

Our agency publishes all our data online monthly at: https://www.michigan.gov/cra/resources/cannabis-regulatory-agency-licensing-reports/marijuana-regulatory-agency-statistical-report

The reports include market data as well as agency operational information.

Washington

WSLCB annual report (Financial information starts on page 23): https://lcb.wa.gov/sites/default/files/publications/2021-annual-report-draft6.pdf

Department of Revenue information: https://dor.wa.gov/sites/default/files/2022-03/MarijuanaMedicalenDorsement.pdf

[Attachment 1 – WSLCB report from 2018, detailing cannabis information.]

(1:42:12) Wendy Gibson Viviani, Patient Advocate: Dominique was talking about the compilation of the regulatory group and how they only first included law enforcement and others, but they expanded it to include scientists and others and I was wondering how big of a group this became because there are so many stakeholders, how can we keep it to a manageable number of people who are a part of this?

How big was the group that Dominique was referencing and how is it managed given its size?

Colorado

I believe this is referring to MED's staff - we currently have 120 staff at the MED. As noted, the make-up of the MED's staff has evolved over time to include data analysts, policy advisors, legal assistants, compliance investigators, criminal investigators, licensing specialists, financial investigators, and others. These teams represent separate units with distinct responsibilities. However, these units coordinate with one another as needed to support overall operations. These units/sections are generally structured as follows: (a) Licensing; (b) Field Investigations; (c) Policy; (d) Testing and Data Analysis; and (e) Administration (administration consists of the Division's Senior Director, Deputy Senior Director, a Chief of Licensing, Chief of Investigations, and Administrator), plus Communications which include one in-house specialist and one specialist who sits in the Executive Director's Office, but 100% supports the MED. Each section is managed by one or more supervisors (depending on the size and duties of each section), who report to a member of the Administration/Leadership team. The type and number of staff/sections within our division are based on statutory requirements the agency must fulfill and this has changed over time based on legislative developments.

(1:43:06) Nikos Leverenz, HHHRC, Patient Advocate: I would like to ask the panel to provide input on ways Hawaii could facilitate the access to medical cannabis for patients who might not be able to afford retail prices? Is there a way that we could set up a structure where we would incentivize dispensaries, or growers, or somebody to provide quality tested products to people in need for no cost? Let's think about tax implications as well, and how can we make that work because, one of the more remarkable things that I encountered in the medical landscape back in California, in the early aughts when people were getting raided is that, if you didn't have money and you were in need, they would provide flower or even edibles to people in need, and there was a barter system. I'm not saying we should do that, but at the heart of medical cannabis is compassion and allowing people to access needed medication.

Will the panel please provide input about how to facilitate access to medical cannabis for those who cannot afford retail prices?

Colorado

In Colorado, medical marijuana is subject to a different tax structure than adult use/retail marijuana (only subject to general 2.9% sales tax), which intends to help keep prices on medical marijuana lower than in the adult use market.

Note the Colorado Marijuana Code also provides that "*...a medical marijuana store may sell below cost or donate to a patient who has been designated indigent by the state health agency or who is in hospice care: (a) Medical marijuana; or (b) No more than six immature plants…; or (c) Medical marijuana products to patients.*" See 44-10-501(9)(a)-(c), C.R.S.

Michigan

Our state does not have a state directed program to provide medical cannabis to patients. The state does not set prices and has provided information on how programs may function in this way within the regulatory boundaries. Michigan also has allowances for patients to grow at home (up to 12 plants, 2.5 ounces) or designate a caregiver to grow on their behalf.

Nevada

In Nevada, holders of medical marijuana patient registrations (from Nevada or any other state or government) are exempt from the 10% retail marijuana tax. Patients can grow 12 plants at home. Possession limits are 2.5 ounces for medical patients vs. 1 ounce for non-patient consumers.

Washington

WA has been challenged with medical cannabis access.

WA state is challenge with this issue. When I-502 was passed in 2011, there was an unregulated medical cannabis market. In 2015 the unregulated medical market was collapsed into the recreational market. The intent was to increase the volume of licenses to accommodate medical patients. In WA the state Department of Health oversees the medical cannabis program, but all product is sold through adult use retail stores. Patients have complained there

is not adequate product in the retail stores, the budtenders in the store do not understand product enough to provide adequate information to patients, and the price is too high due to the 37% excise tax. WA does provide a sales tax exemption for patients, about 10% tax. Patients have often complained that other medication is not taxed and continue to question why medical cannabis is taxed at the 37% excise tax for medication their doctor has authorized. We do allow for retailers to give product to medical patients, but it is not required, and most will not provide medical cannabis to patients. Those who do are challenged with advertising restrictions and find it difficult to get the word out to patients.

Legislative directed study – Home delivery of medical cannabis report: https://lcb.wa.gov/sites/default/files/publications/Legislative%20Reports/WSLCB-Delivery%20Report%20Final.pdf

(1:44:57) Barett Otani, County of Hawaii: Seeking data, since it is being pioneered from Seattle in the vision zero initiative? I'm just trying to make the correlation between this and traffic fatalities if there are any increases directly related to this, and how it is impacting their vision zero policy?

Will the panel provide data from the vision zero initiative and is there data showing increases in traffic fatalities due to cannabis use? How is cannabis use impacting the vision zero policy?

Colorado

Here is the latest Impaired Driving Report:
https://drive.google.com/file/d/1khYL9scsZjoIt7eFC04vKVlqzYK6xmGj/view

We would be glad to put you in touch with our representatives at the Department of Transportation who handle this initiative.

Washington

Below are some links to the WA State Traffic Safety Commission information. The WA State Liquor and Cannabis Board does not keep data on traffic information. A couple of items to keep in mind, baseline data on cannabis impaired driving was not tracked until after legalization occurred, and poly-drug use is higher than other impaired driving statistics.

2022: https://wtsc.wa.gov/washington-traffic-deaths-reach-20-year-high/

2020: http://wtsc.wa.gov//wp-content/uploads/dlm_uploads/2020/08/FFY2020WashingtonAnnualReport12.17.20.pdf

2019: https://targetzero.com/

2018: https://wtsc.wa.gov/new-cannabis-and-alcohol-traffic-safety-culture-study-reveals-washington-drivers-intervene-to-prevent-driving-under-the-influence/

(1:45:46) Terilynne Gorman, County of Maui: The presenters all seem to indicate that when they implemented a new dual-use program that there was harm done to the medical cannabis program to some degree. I would like to ask what they would recommend to minimize the harm to medical cannabis patients? And now that they've been through it, how would they protect the medical cannabis patients, so they are not harmed by this transition?

What would the panel recommend to Hawaii to minimize the harm to medical cannabis patients during the transition to a dual-use system?

Colorado

In Colorado, the tax rate is significantly lower for medical patients (2.9% compared to up to 40-50% for retail customers) and the possession limit is higher for medical patients. This helps to maintain the integrity of the medical market for patients.

The Division also monitors inventory tracking system data for purposes of identifying supply and demand-related issues and this informs our approval or denial of requests for cultivation licensees to increase their permitted plant counts/inventory amounts.

- I would point you to our brand-new data dashboard, which is updated quarterly: https://public.tableau.com/app/profile/cu.business.research.division/viz/ColoradoMEDDashboard/Overview

HB22-1216 addressed the ability for certain marijuana licensees to change the designation of their inventory from retail/adult-use to medical. https://leg.colorado.gov/bills/hb21-1216

Michigan

I would not characterize the market evolution in our state as harm to the medical program. Businesses have inevitably devoted energy and investment to the larger adult-use market; however, that has also caused a significant decrease in medical prices as well. We are turning our policy energy toward removing arbitrary barriers between the markets to improve patient access and lower costs through a singular regulatory system for the supply chain while continuing to exempt medical patients from the excise tax.

Nevada

Some things that helped in Nevada were:

- Reducing the cost for patients to register or renew their patient registration
- Making the patient registration process easier
- Understanding patient needs
- Allowing for medical grade cannabis product. No limits on the milligrams of THC in edibles, extracts, oil, tinctures, or other similar products. Adult-use has limits on the milligrams that can be in a package.

Washington

Incentivize the continuance of medical cannabis production (possibly tax or license fee reduction)

- Ensure patients have access to information about product, not just product alone
- Understand the needs of patients – the retail market seems to cater to higher THC product, but patients may not be looking for high THC product as they are managing conditions, not necessarily consuming for recreational purposes.
- Reduce taxation of medical cannabis for patients
- In WA one significant issue has been a resistance of patients to engage in the state cannabis patient registry.

(1:46:30) Ellen Ching, County of Kauai: There has been a lot of talk about the lack of data or the lack of kinds of data, my question is two-fold: 1) do we have the data that we need before going into a dual-use system, and 2) I believe last months meeting presentation by Gillian Schauer talked about the lack of national, for states that have medical marijuana and dual-use marijuana that there really isn't enough data to look at best practices or best policies, so I would like to know what data is missing?

Do we have the data needed to support transitioning to a dual-use system? Gillian Schauer discussed the lack of state data to look at best practices or best policies, what data is missing?

Colorado

We're unclear on the type of data this question refers to. However, the MED and partner states often speak about the importance of identifying areas in which states have an interest in tracking the impacts of legalization initiatives - in other words, identifying baseline data states want to look to for purposes of tracking impacts of legalization efforts. Every two years, Colorado issues an "Impacts of Marijuana Legalization" report, which may help inform the stakeholder who submitted this question. https://dcj.colorado.gov/news-article/colorado-division-of-criminal-justice-publishes-report-on-impacts-of-marijuana

The MED also issues reports on an annual basis, which can be found here. https://sbg.colorado.gov/med/resources-and-reports

Michigan

Baseline data on key concerns like youth use, traffic safety, etc. are beneficial to have in advance, which may already be gathered through other means.

Washington

The necessity of baseline data is primarily for assessment of program success and impacts. It is not necessarily needed to the transition but could help inform state policy direction. It is important to recognize differences in available data, for example poison control calls could increase. This could be due to an increase in accidental exposures, or it could be due to callers feeling more comfortable disclosing the substance used, since it is no longer illegal. Data point that would have been nice to have:

- Impaired driving, specific to cannabis
- Youth access, specific to cannabis
- Crimes associated with cannabis consumption, versus drugs overall
- Poison control data
- Other health related data, including emergency room visits due to cannabis consumption
- Any compliance related data from previous programs
- Consumer interests and needs, medical vs adult use recreational

(1:47:47) Wendy Gibson Viviani, Patient Advocate: It is pretty clear what some of the harmful effects on patients might be, but I am not clear on how adult-use legalization might be helpful to patients because of the scheduling. Most of the patient's problems are because of the schedule I classification and over-regulation but adult-use might bring some potentially helpful effects for the patients like no longer being drug tested at work and losing your job or did it help to open up research, or banking or any of those other things that the schedule I drug classification has caused problems?

The majority of the patient's problems are due to the classification of cannabis as a schedule I drug. What are some of the potential benefits adult-use legalization might have for medical patients (e.g., no longer being drug tested at work, or losing your job, did it open up research, or banking)?

Colorado

Our agency takes a neutral position on legalization and cannot comment on benefits between the two markets, beyond (from a regulatory perspective) that we are fulfilling the will of Colorado voters and are responsible for ensuring public health and safety and compliance in the regulated market via a tracked, taxed, and tested marijuana market.

The State Constitution (which serves as the basis of Colorado's cannabis framework) provides that the framework reflected in the Constitution does not require employers to accommodate the medical use of marijuana in any workplace. See Art. XVIII, Section 14 of the State Constitution. https://leg.colorado.gov/colorado-constitution

Additionally, the Colorado Department of Public Health and the Environment, see: https://cdphe.colorado.gov/prevention-and-wellness/marijuana/marijuana-research, and the Institute of Cannabis Research (which is part of the Colorado State University Pueblo), support cannabis research initiatives. https://www.csupueblo.edu/institute-of-cannabis-research/

Michigan

Adult-use legalization did not provide any additional employment protections for patients. The law still allows employers to terminate employees for failing to adhere to drug testing standards. Legalization did have the impact of reducing retail costs in the medical market.

Nevada

- The legalization of adult use did not result in additional employment protection for patients
- Banking continues to be a challenge

Washington

- Banking continues to be an issue federally, as does some research with federal funding. That said, WA does have a research license available, providing specific opportunities for those wanting to research versus sell cannabis.
- Ease of access if there are more retail outlets available

(1:49:15) Randy Gonce, HICIA: When current medical licenses transitioned to a recreational market, what challenges were presented to those licensees?

What challenges would be presented if there was a mandate to implement a vertical or horizontal model when transitioning to the recreational market?

Colorado

In Colorado - licensees can be licensed as retail only, medical only or both. There is still a robust medical industry in Colorado. Medical businesses did not have to transition to retail businesses unless they chose to (and met all the licensing requirements to hold a retail business license). In 2013 when the retail marijuana businesses were first being licensed, there was a requirement that any new retail business already held a medical license since these businesses were familiar to the MED.

Also, following the approval of Amendment 64 in the state constitution, the Governor established the Amendment 64 Implementation Task Force to coordinate and propose a regulatory framework, with a focus on promoting health and safety and directing the task force to identify legal, policy, and procedural issues and to make recommendations for legislative, regulatory, and executive actions for efficient implementation of a cannabis framework. You can find the A64 Task Force Report here: https://drive.google.com/file/d/1VKB53eQA84mn4Lc8CZ9HhL9R8Ux5BwNp/view

While we cannot comment on challenges which may be presented between a "vertical or horizontal'' model, when Colorado's framework was first established, vertical integration was required for medical marijuana businesses, such that a specific percentage of inventory from a medical marijuana store must be sourced from a vertically integrated, commonly owned, medical marijuana cultivation. Through legislative initiatives, the state has since eliminated these vertical integration requirements. See HB18-1381: https://leg.colorado.gov/bills/hb18-1381. A summary of the legislation is also reflected here: https://drive.google.com/file/d/1t1FkLIgncihIAKBrOKLaCY2gt5PonkUj/view

Michigan

The only challenge in Michigan was related to municipal control. Many local governments did not allow for adult-use quickly or did not necessarily allow existing medical licensees to transition.

Nevada

Supply chain and inventory management was a challenge leading up to the launch of the adult-use on July 1, 2017. The sales volume licensees experienced during medical-only years was only a fraction of predicted adult-use sales. Matching the supply to the demand took some time to figure out for cultivators and producers. Cultivators had to increase their canopies and producers had to increase production to supply enough to meet the demand.

In Nevada, vertical models are allowed and haven't resulted in many challenges. From a regulatory perspective, a vertical model poses fewer challenges because an agency must deal with fewer licensed entities, groups, or locations.

Washington

In WA we had various estimates on the number of medical dispensaries, up to 1100 was one number I heard, and when SB 5052 was implemented, a little over 200 licenses were added to the recreational market for retail sales to accommodate patient needs. Many people have shared they would like to be in the cannabis industry, and that was removed with the consolidation of the medical market and recreational market.

WA is based on the three-tier alcohol model, without a full distribution tier, and recreational sales may not be vertically integrated. Patients have expressed concerns about trust in the recreational system, in part due to previously having a relationship with the grower, who they trusted.

(1:50:30) Garret Halydier, Esq.: Can the panelists provide data on how the prices of cannabis changed pre and post legalization? What were the wholesale or retail prices in the medical dispensaries and then after legalization through now, how are the wholesale and retail prices of cannabis overall changed?

Colorado

Our Average Market Rate data only goes back to 2014, when retail marijuana became legal. We don't have data prior to 2014 to compare to medical only sales.
https://tax.colorado.gov/average-market-rate

Michigan

We only track retail flower prices when we benchmark data. At the time of legalization, adult-use prices were 93% higher than medical prices. 2.5 years later adult-use prices are 12% higher. In the first year after legalization medical prices dropped 1% while adult-use prices dropped 32%. In the 2.5 years since legalization medical prices have dropped 56% and adult-use prices have dropped 75%.

Nevada

The Nevada Medical Marijuana Program under the Division of Health did not collect data on medical marijuana retail or wholesale pricing.

In 2017 when adult-use was legalized, the Department of Taxation started determining the fair market value at wholesale of adult-use cannabis. Fair Market Value is defined as the value established by the Nevada Department of Taxation based on the price that a buyer would pay to a seller in an arm's length transaction for cannabis in the wholesale market. The fair market values at wholesale are calculated based on cannabis cultivator transactions recorded by the CCB's seed-to-sale tracking system.

Nevada Cannabis statistics and reports can be found here:
https://tax.nv.gov/Publications/Cannabis_Statistics_and_Reports/

Washington

Information for WA can be found in a recent report [Attachment 2], and some pricing information is located on page 24 of the University of Waterloo report [Attachment 3].

(1:51:03) Terilynne Gorman, County of Maui: How have the panelist managed the illicit market after legalization?

Colorado

Illicit market operations are the joint responsibility of local, state and federal law enforcement. Generally, the MED engages in illicit market-related investigations to verify whether there is a nexus to the legal market. MED established a special investigations unit specifically focused on coordinating with law enforcement investigations in these situations.

Other initiatives in Colorado include but are not limited to the passage of HB17-1220, https://leg.colorado.gov/bills/hb17-1220, which placed caps on the number of plants that can be possessed or grown on a residential property, and HB17-1221, https://leg.colorado.gov/bills/hb17-1221, which established a grant program to fund local government enforcement efforts.

Additional information regarding the enforcement grant program can be found here: https://cdola.colorado.gov/funding-programs/marijuana-enforcement-grant

Michigan

Funding is provided to a dedicated state police enforcement unit (splitting time between tobacco tax enforcement and cannabis). It has been very challenging to get prosecutors to follow up with charges after investigations. The penalties for illicit activities are minimal. The CRA has been trying to coordinate with agencies to fund special prosecutors but has not been successful. The biggest success has been quickly establishing a well-regulated market where prices are competitive with unregulated sources so consumers have that option.

Nevada

The CCB has an enforcement division of eight POST-certified officers. POST officers investigate illicit market complaints and assist local, state, and federal law enforcement. Additionally, the CCB established quarterly meetings with state and local law enforcement to help in understanding the scope of and combatting the illicit market in Nevada.

Washington

Local law enforcement are the primary agencies responsible for illicit market activity. Local law enforcement will reach out to the WA State Liquor and Cannabis Board periodically for assistance with illicit operations if activity is associated with licensed locations, regulatory expertise, or if commissioned officer resource assistance is needed.

(1:51:29) Wendy Gibson Viviani, Patient Advocate: Have hemp farmers been included in the programs in their state?

Colorado

The Colorado Department of Agriculture is responsible for hemp farmers in Colorado. You can find more information about the CDA's hemp program here: https://ag.colorado.gov/plants/hemp

In addition, we are currently jointly facilitating two work groups with marijuana and hemp farmers: Cross-Pollination, https://sbg.colorado.gov/med/1301-Work-Groups and the 205 Task Force, https://sbg.colorado.gov/med/205-Task-Force.

Michigan

Hemp farming is regulated by the Michigan Department of Agriculture and Rural Development. The authority over hemp processing and hemp-derived products has recently been transferred to the CRA from MDARD.

Nevada

Hemp faming has always been under the oversight of the Nevada Department of Agriculture. https://agri.nv.gov/Plant/Seed_Certification/Industrial_Hemp/Hemp_Home/

Washington

WA State Department of Agriculture oversees the WA State Hemp Program. https://agr.wa.gov/departments/agricultural-products/hemp