



December 31, 2018

The Honorable Thomas V. Mike Miller, Jr.
President of the Senate
H-107 State House
Annapolis, MD 21401-1991

The Honorable Michael E. Busch
Speaker of the House
H-101 State House
Annapolis, MD 21401-1991

**RE: House Bill 2, Chapter 598 of the Acts of 2018, Section 12
2018 Legislative Report on Medical Cannabis Advertising and Marketing Regulations**

Dear President Miller and Speaker Busch:

Pursuant to Section 12 of House Bill 2/Chapter 598 of the Acts of 2018, the Natalie M. LaPrade Medical Cannabis Commission (the "Commission") respectfully submits this report to the Maryland General Assembly on potential rules regulating the marketing and advertising of medical cannabis and medical cannabis products. Specifically, the Natalie M. LaPrade Medical Cannabis Commission Reform Act (the "Act") requires:

That, on or before January 1, 2019, the Natalie M. LaPrade Medical Cannabis Commission shall report to the General Assembly, in accordance with § 2-1246 of the State Government Article, on potential rules and regulations governing marketing and advertising practices of entities licensed and certified by the Commission.

The Commission appreciates your partnership and commitment to providing a safe, effective, and successful medical cannabis program for Maryland patients, providers, and businesses. If you have questions about this report, please contact Will Tilburg, JD, MPH, Director, Policy and Government Relations, at (410) 487-8069 or william.tilburg@maryland.gov.

Sincerely,

Joy A. Strand, MHA
Executive Director

cc: The Honorable Larry Hogan, Governor, State of Maryland
Brian Lopez, Chair, Maryland Medical Cannabis Commission
William C. Tilburg, Director, Policy and Government Relations, Maryland Medical Cannabis Commission
Sarah Albert, Mandated Reports Specialist, Department of Legislative Services

Legislative Report on Medical Cannabis Advertising and Marketing Regulations

Submitted by the Natalie M. LaPrade Medical Cannabis Commission

December 2018



I. Introduction

House Bill 2/Chapter 598 of the Acts of 2018, Section 12, requires the Natalie M. LaPrade Medical Cannabis Commission (the “Commission”) to submit a report to the Maryland General Assembly (the “General Assembly”) on potential rules and regulations governing the advertising and marketing of medical cannabis in the State. In 2013, the General Assembly established the Commission to oversee the State’s medical cannabis program and regulate the entities licensed to operate medical cannabis businesses. Health-General Article, §13-3301 *et seq.*, which authorizes the Commission to regulate the medical cannabis program does not include specific restrictions on cannabis advertising and marketing. Likewise, the Commission regulations promulgated in 2015, and codified in Code of Maryland Regulations (COMAR), Title 10, Subtitle 62, do not restrict cannabis advertising or marketing by certifying providers or licensed medical cannabis businesses.

In order to prepare a report on potential regulations governing the advertising and marketing of medical cannabis, the Commission took the following steps: (1) reviewed current Maryland law to identify any restrictions on advertising and marketing that would apply to certifying providers or licensed medical cannabis businesses, (2) evaluated laws and regulations governing cannabis marketing in other states, (3) developed draft proposals to regulate cannabis advertising and marketing by certifying providers and licensed medical cannabis businesses in Maryland, and (4) accepted written and oral public comment on proposed regulations governing advertising and marketing. This report summarizes the Commission’s findings and the proposed regulations developed pursuant to the legislative mandate. Specifically, Section II reviews current advertising and marketing restrictions on certifying providers and medical cannabis businesses; Section III evaluates cannabis advertising and marketing restrictions in other states with medical cannabis programs; Section IV reviews advertising and marketing bills considered by the General Assembly during the 2018 legislative session; and Section V summarizes the steps taken by the Commission since HB 2 became effective on May 15, 2018.

II. Current Law

Maryland has not adopted cannabis-specific advertising and marketing restrictions; however, certifying providers and licensed medical cannabis businesses are subject to current statutory and regulatory provisions governing the content, time, place, and manner of medical cannabis advertising, marketing, and promotion.

Oversight of Certifying Providers

The Health Occupations Article and the Maryland health occupations boards (which include the boards that oversee certified medical cannabis providers – the Maryland Board of Physicians, Maryland Board of Nursing, State Board of Dental Examiners, and State Board of Podiatric Medical Examiners.) restrict advertising and soliciting among all licensed health care providers in the State. For example, the Maryland Board of Physicians allows licensed physicians to advertise or promote their medical services, but these advertisements may not “mislead or deceive” patients,

include claims that are “likely to create false or unjustified expectations of favorable results” (e.g., “schedule an appointment and receive a medical cannabis certification”), or make any statement that cannot be verified for truthfulness by the Board. These restrictions also apply to any agent, partnership, organization, or professional association the physician may belong to, including their employer. The licensing board for each of the other certifying provider groups have adopted similar restrictions governing advertising, marketing, and promotion of professional services.

Consumer Protection Act

The Commercial Law Article, §§ 13-101 to 13-501 (the “Consumer Protection Act”) prohibits false or misleading advertising, including unsubstantiated medical or therapeutic claims. The legal standard, established in *T-Up, Inc. v. Consumer Protection Div.*, 145 Md.App. 27 (2002), requires any medical or therapeutic claim to be substantiated by at least two adequate, well-controlled-double-blinded clinical studies. Medical cannabis businesses are subject to this legal standard and may only advertise or market medical claims if the claim is supported by multiple clinical studies.

The Consumer Protection Division at the Office of the Attorney General is responsible for enforcing the Consumer Protection Act and investigating consumer complaints. The division may attempt to reconcile the matter, issue a cease and desist order, or file a civil action in court. Any individual or entity who violates the Consumer Protection Act is subject to a fine of up to \$1,000 for the first violation, and up to \$5,000 for each subsequent violation. In addition, any individual who violates the Consumer Protection Act may be found guilty of a criminal misdemeanor, and subject to a fine of up to \$1,000, imprisonment for up to one year, or both.

The Bureau of Enforcement and Compliance (BEC) at the Commission is responsible for enforcing the Commission’s regulations and otherwise ensuring licensees comply with Maryland law. BEC investigators monitor licensee advertising and marketing practices and educate licensees on the legal standard for making medical or therapeutic claims. Any advertisement making unsubstantiated medical or therapeutic claims will be referred to the Consumer Protection Division for review.

Additional State and Local Advertising/Marketing Restrictions

A number of other Maryland laws governing advertising and marketing practices apply to certifying providers and medical cannabis businesses. Transportation Article §§ 8-701 to 8-752 prohibits outdoor advertising within a state highway right-of-way or on state property. This provision applies to road-side signs and similar advertising displays. Criminal Law Article §11-205 prohibits indecent or obscene advertising, including nude, partially nude, or sexually explicit advertising and marketing.

County and municipal ordinances and zoning regulations establish additional restrictions on outdoor advertisements on public property, and frequently limit the size and quantity of external signs. For instance, Baltimore County restricts advertising and signs on government property, rights-of-way, and within certain distances of schools and residential areas. County zoning ordinances also restrict the location and usage of illuminated signs.

State and local agencies are authorized to enforce these existing requirements, and may remove illegal medical cannabis advertisements, issue civil or criminal penalties, and/or suspend or revoke

a violator's license or permit. The State Highway Administration at the Maryland Department of Transportation and state and local law enforcement officials may remove and issue civil citations for illegal placement of signs on state property or a state right-of-way. Likewise, county and municipal officials may remove and issue citations for signs or advertisements violating local ordinances.

III. Laws in Other States

The Commission, in consultation with the Network for Public Health Law and the University of Maryland Francis King Carey School of Law conducted a survey of the advertising and marketing restrictions in 30 states and the District of Columbia that have implemented medical cannabis programs as of July 1, 2018 (See Appendix A for the research materials). Of these jurisdictions, at least twenty-seven (27) have cannabis-specific advertising and marketing restrictions, and four (4) states – Hawaii, Louisiana, Montana, and Vermont – implemented a total ban on cannabis-related advertising. In addition, at least seven (7) states implemented bans on specific types of advertising, such as radio, television, print publication and billboards, while permitting other types of advertising and marketing practices (Delaware, Florida, Michigan, Minnesota, New Hampshire, North Dakota, and Ohio). Maryland is among the four (4) states that have not adopted any laws or regulations governing cannabis advertising and marketing.

Cannabis remains a Schedule I drug under the federal Controlled Substances Act (CSA), meaning it is illegal to manufacture, distribute, possess, or use cannabis. Due to the federal prohibition, and concerns surrounding the promotion of youth use and illicit use, states generally restrict cannabis advertising and marketing more than other medical products. The types of advertising and marketing restrictions fall into three broad categories: (1) medium restrictions, (2) content restrictions, and (3) physical restrictions. Medium restrictions refer to laws and regulations governing the type of media where cannabis products and businesses may be advertised or marketed. Content restrictions are limitations on the substance or subject of the advertising (e.g. cartoon images, a cannabis leaf, or references to recreational use). Physical restrictions govern the location, size, and other physical characteristics of the advertisement. A brief summary of the medium, content, and physical restrictions adopted in other jurisdictions is included in Table 1 below.

Table 1. Jurisdictions with Advertising Restrictions

Jurisdiction	Citation	Restrictions
Alaska	Alaska Admin. Code tit. 3, § 306.360	Restrictions on the content and number of signs; proximity of advertising to schools and other youth-related facilities; websites must include verification that individuals are 21 years or older; at least 70% of advertising audience must be 21 years or older; requires warning labels.
Arkansas	006.02.7-17 Ark. Code R. § 17.1	Cultivation facilities may not advertise to the public; dispensaries may advertise to the public, but audience may not be more than 30% under the age of 18, ads must meet content restrictions (e.g. no cartoons) and include mandatory warnings.
California	Cal. Bus. & Prof. Code § 26150-26156 (2016)	May only advertise through media demonstrated to reach 71.6% or more of the audience who is 18 years or older; may not advertise near schools or on public property.
Colorado	Colo. Code Regs. § 212-2	May only advertise through media demonstrated to reach 70% or more of the audience who is 18 years or older; ads must include warnings and may not be near schools.
Connecticut	Conn. Agencies Regs. § 21a-408-66(b)	State must approve all ads; restrictions on time, place, and manner of advertising; no false or misleading ads; no ads near schools or other youth facilities.
Delaware	Del. Code Ann. 16 § 4919A (2016)	No print or broadcast advertising is permitted; dispensaries may host websites and have on-site signs.
District of Columbia	D.C. Mun. Regs. 22, § 5801 (2011).	Location, size, and content of signs restricted; no false or misleading statements.
Florida	Fla. Stat. 381.986(h) (2017).	Advertising may not be visible to members of the public from any street, sidewalk, park, or other public place; may advertise on-line if approved by the health department.
Hawaii	Haw. Code R. § 11-850-93 (2015)	No print, broadcast, or electronic advertising is permitted.
Illinois	Ill. Admin. Code tit. 68, § 1290.455	No advertising near schools or other youth-facilities, or on public property.
Louisiana	7 LA ADC Pt XLIX, § 2907	Businesses may not advertise through any public medium, including but not limited to newspapers, television, radio, internet, or any other means designated to market its products to the general public.
Maine	7-5 M.R.S § 417 (2018)	State licensing authority directed to adopt rules to prohibit certain types of advertising, including those likely to reach individuals under 21 years of age.

Massachusetts	935 Mass. Code Regs. 500.000	May only advertise through media demonstrated to reach 85% or more of the audience who is 21 years or older; may not advertise near schools or on public property.
Michigan	MI ADC R 333E-1.2018	Advertising may not be visible to the public from any street, sidewalk, park, or other public place.
Minnesota	MN ADC 4770.0800	Advertising limited to on-site signs, a business website, and informational materials provided to patients.
Montana	Mont. Code Ann. § 50-46-341	Advertising is not permitted in any media, including electronic media.
Nevada	Nev Tax Com Emer. Reg July 2017; Nev. Rev. Stat. S 453A	May not advertise in any publication, or on radio, television, or any other medium if 30% or more of the audience is reasonably expected to be persons who are less than 21 years of age.
New Hampshire	NH ADC He-C 402.23	Advertising is prohibited except for certain on-site signs and a business website.
New Jersey	N.J. Admin. Code 8:64-12.1 (2011)	Dispensary signs must be restricted to black and white text and a certain size.
New York	N.Y. Comp. Codes R & Regs. tit. 10 1004.16 (2018)	Review and approval required by the health department prior to dissemination of any advertising. Restrictions on advertising content and location and warning statements required.
North Dakota	N.D. Admin. Code 33-44-01-23 (2018)	Medical cannabis businesses may advertise on signs and host a website. Advertising content is restricted to name, logo, contact information and cannabis strain information.
Ohio	Ohio Admin. Code 3796 (2017)	Businesses may not advertise on radio, television, billboards, or any public property.
Oregon	Or. Admin. R. 333-008-2070	Advertising may not make false or misleading claims, target children or youth, and must comply with warning statement requirements.
Pennsylvania	28 Pa. Code 1141.50	Advertising must comply with federal prescription drug regulations.
Vermont	VT ADC 17-2-3:6	May not advertise through any means including electronic means or social media
Washington	Wash. Rev. Code S 69.50.369; Wash. Admin. Code S 314-55-155	Outdoor advertising is restricted to signs near the retail location. Advertising may not target children or youth, be near youth facilities, or make false or misleading claims.
West Virginia	W. Va. C.S.R. §64-109-24	Advertising must comply with federal prescription drug regulations.

IV. 2018 General Assembly

During the 2018 legislative session, the General Assembly considered two bills governing cannabis advertising. House Bill 1348/Senate Bill 1078 proposed significant content and physical restrictions on cannabis advertising and marketing and would have required all medical cannabis

businesses and certifying providers to receive Commission approval before dissemination of the advertisement. HB 1348/SB 1078 were modeled after regulations adopted in Connecticut and New York, each of which have significantly more restricted programs with fewer licensees, providers, and patients than the Maryland program. HB 1348 received an unfavorable report from the House Health and Government Operations Committee (18-0) and the identical crossfiled bill, SB 1078, did not receive a vote in the Senate Finance Committee. House Bill 1366 proposed a ban on any advertising of a Schedule I controlled dangerous substance. Since cannabis remains a Schedule I controlled dangerous substance, medical cannabis businesses and certifying providers would have been prohibited from advertising, marketing or promoting their products or services. The bill received an unfavorable report (11-7) from the House Judiciary Committee.

V. Steps Taken by the Commission

Pursuant to Section 12 of House Bill 2/Chapter 598 of the Acts of 2018, the Commission researched and evaluated potential regulations governing the advertising and marketing of medical cannabis. As previously mentioned, at least 27 of the 31 states with medical cannabis and/or adult use cannabis programs as of July 1, 2018, have laws and regulations restricting cannabis advertising and marketing. Maryland is among the four (4) states without cannabis-specific advertising and marketing restrictions.

On April 16, 2018, the Commission's Policy Committee held an open meeting where public comment was solicited on "information the Commission should consider in addressing medical cannabis advertising and marketing." Students from the University of Maryland School of Law presented research to the Policy Committee on advertising and marketing laws and regulations in other states and answered committee member questions on the topic. In addition, at least 10 members of the public, including patients, medical cannabis businesses, and certifying providers, testified on potential rules and regulations governing advertising.

Based on the research conducted by the University of Maryland School of Law and Commission staff, and public comment, the Commission developed proposed regulations governing advertising and marketing of medical cannabis products and services. The proposal allowed (1) certifying providers to advertise their ability to certify patients for medical cannabis, and (2) medical cannabis growers, processors, and dispensaries to advertise on radio and television or in print *if* "at least 85 percent of the audience is reasonably expected to be 18 years or older based on reliable audience composition data." On May 24, 2018, the Policy Committee heard public comment on the advertising proposal. Since a quorum of commissioners was not established at the meeting, the Policy Committee was unable to consider the advertising proposal. As a result, the Policy Committee held another open meeting to consider the advertising proposal on June 25, 2018. Written and oral public comment was again solicited at the meeting. The Office of the Attorney General testified on the Consumer Protection Act, and the evidentiary support needed to make a medical or therapeutic claim. Committee members expressed concern that the proposal allowed cannabis products and services to be advertised across media commonly viewed by children, including radio, television and print media. The Policy Committee noted that cannabis use remains illegal for 99.2% of Marylanders, and therefore that advertising and marketing may need to be further restricted to protect non-patients, particularly young children, from accessing cannabis advertisements.

Following the June 25 meeting, members of the Policy Committee worked closely with Commission staff to refine the proposal. On September 25, 2018, a revised proposal was considered by the Policy Committee. The revised proposal placed a prohibition on radio, television, and billboard ads, age restrictions on website and social media ads, and restricted print ads to publications where at least 85 percent of the audience is 18 years or older. In addition, the proposal prohibited advertisements on public property and required any cannabis advertising to include certain warnings. The Policy Committee voted unanimously to approve the proposed advertising regulations.

On September 27, 2018, the Commission solicited oral comment on the advertising proposal recommended by the Policy Committee. In addition, the Commission permitted written comment to be submitted on or before October 5, 2018. The proposal received more than 200 written submissions, the vast majority of which were from patients concerned that the proposal would prohibit social media advertising. Medical cannabis businesses and certifying providers also submitted comments expressing concerns that the proposal was too restrictive, and that the bans on radio, television, and billboard advertising would more appropriately be amended to content (e.g. no targeting children, using cartoon characters) and physical restrictions (e.g. 500 feet or more from a school or playground). Copies of the written submissions and a summary of the most common issues were shared with the Commissioners.

The Commission again introduced the advertising proposal at its open meeting held on December 6, 2018. Based on written and oral comment, Commissioners considered amendments to (1) clarify that the proposal does not prohibit social media advertising, (2) permit certifying providers to advertise consistent with the Health Occupations Article and the regulations promulgated by their licensing boards, and (3) regulate advertising by third-party vendors (e.g. secure medical cannabis transport companies). After deliberation, the Commission voted unanimously to approve the proposal with the three above-described amendments.

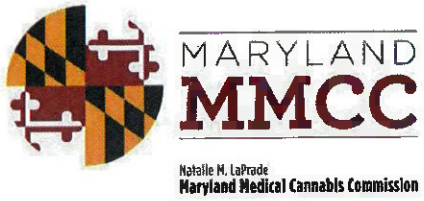
A copy of the proposed regulations approved by the Commission are attached to this report (See Appendix B). The Commission must now submit a copy of the draft regulations to the Joint Committee on Administrative, Legislative, and Executive Review (AELR) for consideration. AELR does not review regulatory proposals immediately before and during the beginning of the legislative session, so any regulatory proposals are put on “hold” during this period. This year, the hold period for submitting regulatory proposal to AELR extends from December 10, 2018 to February 11, 2019. The Commission will submit the proposed regulation to AELR after the hold period ends. Once submitted to AELR, the Commission must submit the proposal to the Division of State Documents for publication in the Maryland Register as a draft regulation. A 30-day comment period is required before the Commission may consider whether to move forward with a final regulation.

Table 2. Timeline of Events

Date	Action
May 15, 2018	House Bill 2 is signed by Governor Hogan. Section 12 of the Act required the Commission to submit a report on potential rules and regulations governing cannabis advertising and marketing.
April 16, 2018	Commission’s Policy Committee solicits public comment on information related to potential regulations governing cannabis advertising and marketing.
May 25, 2018	Commission’s Policy Committee solicits public comment on proposal regulating advertising by medical cannabis businesses and certifying providers.
June 24, 2018	Commission’s Policy Committee solicits public comment on advertising proposal.
September 25, 2018	Commission’s Policy Committee votes unanimously to approve advertising proposal.
September 27, 2018	Commission solicits public comment on advertising proposal approved by the Policy Committee.
December 6, 2018	Commission votes unanimously to approve proposal to regulate cannabis advertising and marketing.

VI. Conclusion

Section 12 of House Bill 2/Chapter 598 of the Acts of 2018 requires the Commission to submit a report on potential regulations governing cannabis advertising and marketing. In response, the Commission researched and evaluated the advertising laws and regulations in other states with medical cannabis and adult use cannabis programs. The research demonstrated that at least 27 out of 31 states, including the District of Columbia, restrict cannabis advertising and marketing. Of these, four states – Hawaii, Louisiana, Montana, and Vermont, ban all cannabis-related advertising and marketing. An additional seven (7) states ban specific types of advertising, such as radio, television, billboards, or print. Based on this research, the Commission developed a proposal regulating cannabis advertising that is consistent with the vast majority of other jurisdictions and seeks to strike a balance between (1) allowing businesses to advertise their products and services and (2) protecting Marylanders, particularly young children, from being exposed to advertising for a product that is illegal at federal level and illegal for 99.2% of residents at the state level. The Commission solicited public comment on the proposal at four separate meetings, and modified the proposal based on the comments received from medical cannabis businesses, certifying providers, the Office of the Attorney General, and other interested persons. On December 6, 2018, the Commission voted unanimously to approve a regulatory proposal that would regulate advertising and marketing by medical cannabis businesses and certifying providers. The proposal will be submitted to AELR and the Division of State Documents for publication in the *Maryland Register* in February 2019, as required by law. Following a 30-day public comment the Commission may withdraw the draft regulations, amend the draft regulations, or submit the draft regulations for publication in the *Maryland Register* as a final regulation.



Appendix A

(See Next Page)



MEDICAL CANNABIS

Environmental Scan

Medical Cannabis Advertising

This Environmental Scan analyzes the statutory and regulatory provisions related to advertising restrictions in the 30 states and the District of Columbia that have passed medical cannabis legislation. Nine states do not restrict cannabis advertisements; two states, Hawaii and Montana, prohibit all cannabis advertisements. This scan is broken up into broad categories of restrictions contained within the statutory or regulatory authority of the remaining 19 states and the District of Columbia, as they contain one or more of the following restrictions or requirements on cannabis advertisements.

1. Medium Restrictions

a. Radio/Television

Out of the 19 states and the District of Columbia that legalized medical cannabis, seven restrict television and radio advertisements. Five states limit these forms of advertisements to stations that reach primarily adults, with each state setting the percentage adult audience required. For example, California (71.6%), Nevada (70%), Colorado (70%), and Massachusetts (85%) require the designated percentage of the audience to be at least 21. Similarly, Arkansas prohibits radio or television advertisements unless the licensee has reliable evidence that at least 70% of the audience is reasonably expected to be at least 18. Ohio is the only jurisdiction that allows some advertising but prohibits all radio or television advertisements for cannabis. Pennsylvania requires cannabis advertisements to meet the federal regulations governing prescription drug advertising and marketing found in 21 C.F.R. 202.1(l)(1), which requires radio or television advertisements to include information relating to major side effects and contraindications of the drug.

b. Print

Seven states restrict print advertising. Five states restrict print advertisements to publications with a primarily adult audience. California (71.6%), Nevada (70%), Colorado (30%), and Massachusetts (85%) require the listed percentage of the audience to be at least 21. Arkansas prohibits print advertisements unless at least 70% of the audience is reasonably expected to be 18 years of age or older. Delaware explicitly prohibits print

advertisements for cannabis. Washington requires print advertising for cannabis to state that cannabis products may be lawfully purchased or possessed only by individuals 21 years of age or older.

c. Internet

Six states restrict internet advertisements. Four of those states prohibit advertising to minors via the internet in some capacity. Colorado (70%) and Massachusetts (85%) require a percentage of the audience to be at least 21. Arkansas requires at least 70% of the audience to be at least 18 for internet advertisements. Florida, whose regulations on internet advertising for medical cannabis are the most comprehensive compared to the other states, prohibits content that specifically targets individuals under the age of 18. Ohio explicitly prohibits internet advertisements for medical cannabis. California requires internet advertisements to display the license number of the licensee.

2. **Content Restrictions**

a. Children/Content Associated with Children

Out of the 19 states and the District of Columbia that legalized medical cannabis and have some advertising restrictions, more than half (14) restrict advertisements targeting children or content associated with children. While defining these restrictions is relatively consistent between the states, some jurisdictions have enhanced the definitions to include specifics such as cartoon characters and toys and to include catch all provisions prohibiting “any depiction otherwise attractive to a minor” (including Oregon, Ohio, Massachusetts, Alaska, Arkansas, and Colorado).

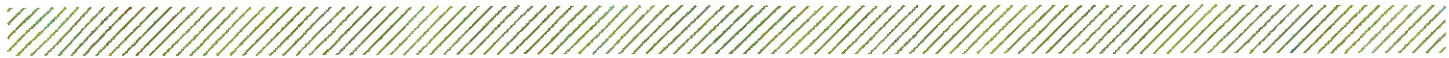
b. Statements Promoting Recreational Use/Non-Debilitating Medical Conditions

Five states and the District of Columbia prohibit advertisements from encouraging or promoting recreational use of cannabis or use for a non-debilitating medical condition. Two states, Florida and New York, prohibit advertisements that promote recreational use of cannabis. Ohio similarly prohibits advertisements from encouraging use of medical cannabis for a condition other than a qualifying medical condition. Connecticut prohibits both advertisements encouraging recreational use and advertisements encouraging use for a condition other than a qualifying medical condition. Arkansas has adopted slightly different language by prohibiting advertisements that encourage cannabis “for use as an intoxicant.” The District of Columbia also utilizes alternative language by prohibiting advertisements that encourage use or purchase of medical cannabis “without a registration card.”

c. Validity of Statements

Thirteen states and the District of Columbia restrict the content of statements within advertisements to insure all advertisements are accurate and valid. These states prohibit advertising statements that are “false”, “misleading”, and/or “deceptive.” California goes further by defining what can create a misleading impression, such as ambiguity, omission or inference, or by the addition of irrelevant, scientific, or technical matters.

d. Safety/Efficacy Claims



Five states prohibit statements on the safety and efficacy of medical cannabis in advertising. Three states, New York, Ohio, and Connecticut, prohibit advertisements containing claims related to the safety or efficacy of medical cannabis unless supported by substantial scientific evidence. The District of Columbia similarly prohibits statements as to health benefits. Colorado also prohibits establishments from engaging in advertising asserting its products are safe “because they are regulated by the State Licensing Authority.”

e. Curative/Therapeutic Claims

Six states prohibit the use of curative or therapeutic claims in medical cannabis advertising, Alaska, Ohio, California, Massachusetts, Pennsylvania, and Oregon. California defines curative or therapeutic specifically as claims suggesting a relationship between medical cannabis consumption and purported health benefits. Additionally, Oregon and Massachusetts only allow for such claims if supported by substantial evidence or clinical data, including well-designed studies with significant scientific agreement among experts.

f. Gifts/Prizes/Other Inducements

Seven states prohibit advertisements offering gifts, prizes, or other inducements relating to cannabis sales. Three states, Nevada, California and Colorado, prohibit advertisements offering “free” or “donated” medical cannabis. Additionally, Colorado, along with four other states, New York, Connecticut, Alaska, and Arkansas, prohibits advertising and marketing through promotional items including prizes; inducements; and coupons to certified patients, caregivers, or practitioners.

g. Product Warnings

Required warnings are laws that require advertisements to contain one or more of the following warnings: possible mental or impairment effects of consumption of cannabis, intoxicating or addictive effects of cannabis, health risks associated with consumption of cannabis, and to keep out of the reach of minors (set at 18 or 21 depending on the state). These regulations only pertain to product warnings in advertisements and not product warnings on labels or otherwise required to be provided at time of sale.

Eight states require product warnings in advertisements. Model statutory language is typically split into two parts: first, a clause requiring the advertisement to contain certain language regarding use of cannabis; and second, specific warning statements. For example, in Arkansas and Oregon department regulations require: first, “Advertising and marketing for medical cannabis shall include the following statements . . .” and second, the following four specific warning statements:

1. Cannabis is for use by qualified patients only. Keep out of reach of children.
2. Cannabis use during pregnancy or breastfeeding poses potential harms.
3. Cannabis is not approved by the FDA to treat, cure, or prevent any disease.
4. Do not operate a vehicle or machinery under the influence of cannabis.

Nevada and Washington regulations are slightly different, requiring advertisements to contain only words or phrases stating that cannabis may only be purchased, possessed, or used by adults over the minimum sales age, and to keep out of reach of children. Those states do not require any of the health warnings other states impose.



3. Bias

a. Steering Toward/Away from Entities

Three states prohibit advertisements containing statements showing bias toward or against specific entities or providers. Both New York and Colorado prohibit statements within advertisements that have the “purpose or effect of steering or influencing patient or caregiver choice with regard” to the selection of a physician or certifying provider. Massachusetts similarly prohibits advertising that includes false or misleading statements concerning other licensees.

b. Steering Toward/Away from Products

Five states prohibit advertisements containing statements showing bias toward or against specific medical cannabis products or brands. Connecticut prohibits advertisements that have “the purpose or effect of steering or influencing patient or caregiver choice with regard to the selection” of a cannabis product. New York contains slightly different language, prohibiting advertisements that represent one cannabis brand as “better, more effective or useful” than other treatment options, including other brands, unless supported by substantial scientific or clinical experience. Additionally, Connecticut and New York further prohibit statements that falsely disparage competitors’ products; Colorado, Ohio, and Massachusetts impose that same limitation.

4. Physical Restrictions

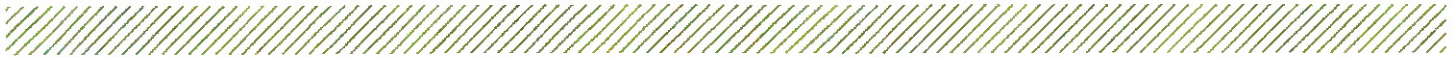
Twelve states and the District of Columbia regulate advertising in the physical space. Physical restrictions are typically restrictions on the proximity to schools, on public property or public transit, visibility by the general public, and the size of the sign. While not all jurisdictions restrict all of these aspects, a majority, eleven (11), restrict at least the visibility of signs to the general public. Model regulatory language is restrictive, with elements relating to each of the factors described below.

a. Signs within Close Proximity to Schools

Eight states restrict placement of any signs within 1,000 feet of the perimeter of a school or child-centered facility. Only one state, Ohio, restricts the distance to 500 feet. By administrative regulation, Nevada’s Department of Taxation will not approve any alternative treatment centers that dispense medical marijuana within 1,000 feet of a school. Combined with restrictions on outdoor signage, Nevada imposes a de facto ban any advertisement within the proximity of a school. Some states, such as Washington, Alaska, and Ohio, expand the term “facilities” to include playgrounds, public parks, library, and game arcades.

b. Signs on Public Property/Transportation

Seven states prohibit sign placement on public property and public transit. Model regulatory language typically separates public property and public transit, although most states prohibit advertisements on both public property and public transit vehicles, if they restrict on one. Nevada only prohibits advertisements on public property in terms of schools, public parks, and libraries. All states prohibit advertisements on shelters used for public transportation and only three states prohibit advertisements on privately owned transit vehicles.



c. Signs Visible to General Public

Ten states and the District of Columbia regulate signs visible to or by the general public. These are predominantly signs that are on the exterior of buildings visible to the general public. Six states explicitly prohibit signs visible to the general public from a public right of way, such as a street, sidewalk, park, or other public place. Five states, and the District of Columbia, prohibit signs placed on the exterior of the building, regardless of their visibility by the general public.

d. Size/Other Features

Seven states and the District of Columbia restrict the physical characteristics of signage for medical cannabis advertisements. More than half of those jurisdictions (5) regulate the permitted size of signage: Alaska (<4,800 sq. inches), Arkansas (<36 sq. feet), Connecticut (<16”x18”), Ohio (<288 sq. inches), and Washington (<1,600 sq. inches). Five jurisdictions prohibit signs from being illuminated or neon, including the District of Columbia, Connecticut, New Jersey, Massachusetts, and Ohio. New Jersey differs by restricting signage to black text on a white background.

5. Requiring Commission Approval

Six states require licensed entities to submit to all advertisements to the department or board regulating the medical cannabis program. While some states delegate enforcement power to the board to review advertisements *post hoc*, only Connecticut, Florida, New York, North Dakota, Ohio, and Pennsylvania require approval of all advertisements before release to the public.

This document was developed by Tessa Devereaux and Hansi Wei, student attorneys, under the supervision of Kathleen Hoke, Professor and Director of the Network for Public Health Law – Eastern Region Office at the University of Maryland Carey School of Law. The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation. The Network provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.



MEDICAL CANNABIS
Fact Sheet

Medical Cannabis Advertising

30 states and the District of Columbia have passed medical cannabis legislation.

19 states and the District of Columbia have laws on advertisements for medical cannabis.

9 states have no restrictions on medical cannabis advertising.

2 states have prohibit all medical cannabis advertising.

6 states require Commission approval of medical cannabis advertisements before release to the public.

Medium Restrictions - restricting or prohibiting advertisements in print, radio or television, or the internet.

- 7 states restrict advertisements in print or radio and television.
- 6 states restrict advertisements on the internet.

Content Restrictions - restricting, prohibiting, or requiring content within the advertisements.

- 13 states and the District of Columbia prohibit advertisements that depict children or use images, symbols, or other content associated with children.
- 13 states and the District of Columbia equate the validity of statements - prohibiting false, misleading, or untrue statements; and requiring data to support claims made.
- 7 states require mandatory warning statements in advertisements for medical cannabis.
- 6 states prohibit curative or therapeutic effects of medical cannabis; some permit with substantial clinical data in support of such statements.
- 4 states and the District of Columbia restrict safety and efficacy claims.
- 7 states prohibit advertising gifts, prizes, or other inducements containing marijuana.

Physical Restrictions - restricting or prohibiting placement or location of physical signs.

- 12 states and the District of Columbia prohibit or restrict signs from being visible to the general public.
- 7 states prohibit signs in physical proximity to the perimeter of a school.
- 7 states prohibit signs on public property.
- 7 states prohibit signs on public transit vehicles or shelters for public transit.
- 8 states restrict the physical dimensions of signs on the exterior of buildings.

Bias - restricting advertisements that state a bias for or against a competitor or a competitor's product.

- 3 states prohibit steering to or away from a dispensary or provider.
- 5 states prohibit steering to or away from a specific marijuana product.

SUPPORTERS

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This document was developed by Tessa Devereaux, JD Candidate '19, and Hansi Wei, JD Candidate '19, at the University of Maryland Francis King Carey School of Law, with direction and assistance from Kathleen Hoke, JD, Director of the Network for Public Health Law - Eastern Region. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.



Appendix B

(See Next Page)

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 62 NATALIE M. LAPRADE MEDICAL CANNABIS
COMMISSION

10.62.36 Advertising

.01 Advertising Restrictions.

A. No grower, processor, dispensary, independent testing laboratory, or third-party vendor authorized by the Commission may place or maintain, or cause to be placed or maintained, an advertisement for medical cannabis, medical cannabis products, or medical cannabis-related services on:

- (1) Radio, television, or a billboard;*
- (2) A print publication, unless at least 85 percent of the audience is reasonably expected to be 18 years of age or older, as determined by reliable and current audience composition data;*
- (3) Public property;*
- (4) A handbill, leaflet, or flyer directly handed, deposited, fastened, or otherwise distributed on:
 - (a) Public property; or*
 - (b) Private property without the consent of the owner; or**
- (5) Any website, mobile application, social media, or other electronic communication that fails to employ a neutral age-screening mechanism that the user is at least 18 years of age, including an age-gate, age-screen, or age-verification mechanism.*

B. Certifying Provider.

- (1) A certifying provider may advertise the certifying provider's ability to certify a qualifying patient to receive medical cannabis.*
- (2) An advertisement by a certifying provider shall comply with COMAR 10.32.01.13(b).*

C. An advertisement for a grower, processor, dispensary, independent testing laboratory, certifying provider, or third-party vendor may not make any statement that is false or misleading in any material way or is otherwise a violation of Commercial Law Article, §§ 13-301–13-320, Annotated Code of Maryland.

D. All advertising for medical cannabis or medical cannabis products shall include:

- (1) A statement that the product is for use only by a qualifying patient;*
- (2) A warning that there may be health risks associated with consumption of the medical cannabis or medical cannabis product; and*
- (3) Any other warnings required by the commission.*