

March 30, 2020

## INDUSTRY-WIDE BULLETIN 20-04

### RE: Updates to Guidance Regarding MED Response to COVID-19

Dear Marijuana Industry Stakeholders:

The Marijuana Enforcement Division is providing the below updates regarding the Governor's Executive Orders, related public health orders, and the [Division's emergency rules](#), each of which respond to COVID-19. The below updates are intended to both amend and clarify previously issued guidance. Any previous guidance in [Industry-Wide Bulletin 20-03](#) to the contrary is superseded by the guidance contained here.

#### **Critical Business Designation**

On March 25, 2020, Governor Polis issued [Executive Order D 2020-017, "Ordering Coloradans to Stay at Home Due to the Presence of COVID-19 in the State"](#) and the Colorado Department of Public Health and Environment (CDPHE) issued [Amended Public Health Order 20-24, "Implementing Stay at Home Order Requirements."](#)

Medical and Retail Marijuana Stores:

- **Medical and Retail Marijuana Stores are considered "Critical Businesses" that may continue operations pursuant to Social Distancing Requirements and the Colorado Marijuana Rules.**<sup>1</sup> See below for additional information regarding permitted and prohibited transactions.

Other Regulated Marijuana Businesses:

- **Regulated Marijuana Businesses (e.g. those engaged in the cultivation, manufacturing, testing, or transportation of Regulated Marijuana) are considered Critical Businesses and/or are authorized to engage in "Necessary Activities" subject to Social Distancing Requirements**<sup>2</sup>

Pursuant to the Amended Public Health Order, Regulated Marijuana Businesses must comply with (a) the guidance and directives for maintaining a clean and safe work environment issued by CDPHE and any applicable local health department; and (b) Social Distancing Requirements and all public health orders currently in effect. In addition to any violation of the Colorado

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<sup>1</sup> The Amended Public Health Order defines "Critical Retail" to include "*Marijuana dispensary (only for the sale of medical marijuana or curbside delivery pursuant to Executive Order 2020 011).* Executive Order D 2020 011 suspended section 44-10-601(7), C.R.S., "*to facilitate pick up by consumers twenty-one (21) years of age and older in a manner consistent with social-distancing guidelines,*" as directed by CDPHE.

<sup>2</sup> The Amended Public Health Order also defines "Necessary Activities" to include "*performing work providing essential products and services for a Critical Business...*" and "Minimum Basic Operations" to include "*minimum necessary activities to (1) maintain the value of the business's inventory, ensure security.*" Further, the Amended Public Health Order includes "*transportation and infrastructure necessary to support Critical Businesses,*" as critical infrastructure. Lastly, the Amended Public Health Order defines "*any manufacturing necessary to support a Critical Business,*" as "Critical Manufacturing."

Marijuana Rules, failure to comply with an executive order or a public health order may be the basis for fine, suspension or revocation of a Regulated Marijuana Business license.

### **Medical and Retail Marijuana Stores - Permitted Transactions**

Medical Marijuana Stores and Retail Marijuana Stores may conduct transactions in the manner outlined below. Any previous guidance in [Industry-Wide Bulletin 20-03](#) to the contrary is superseded by the guidance below.

#### **Transactions *Inside the Licensed Premises*<sup>3</sup>:**

- Patients and consumers may order, purchase, and pick up Regulated Marijuana on the Licensed Premises. Licensees are no longer prohibited from allowing Retail customers on the Licensed Premises, but are required to implement Social Distancing Requirements pursuant to state and local orders.
  - Please note that Licensees can still modify their Licensed Premises, such as by extending the Restricted Access Area to the lobby or waiting area, without prior application or approval to the Division as provided in the emergency rules and explained in Industry-Wide Bulletin 20-03.
- Permitted methods of payment include cash, check, debit or credit cards, including electronic payments.

#### **Transactions *Outside the Licensed Premises* (previously referred to as “Curbside”)<sup>4</sup>:**

- Patients and consumers may only pick-up and purchase pre-ordered Regulated Marijuana outside the Licensed Premises (*Licensees may not accept orders outside the Licensed Premises*).
- Permitted methods of payment include check, debit or credit cards (*Licensees may not conduct cash transactions outside the Licensed Premises*).
- Licensees providing pick-up and purchase services outside the Licensed Premises shall provide patients and consumers clear instructions including, but not limited to:
  - Instructions for online and telephone orders and payment;
  - A clear description of the designated location for pick-up;
  - Information regarding how a patient or consumer will be notified when an order is ready for pick-up and/or payment; and
  - Any other information a patient or consumer reasonably needs to know in order to utilize pick-up and payment services in a compliant and efficient manner.
- Licensees should also consider implementation of additional security measures in connection with transactions outside the originally designated Licensed Premises, including but not limited to installation of security cameras, employment of security personnel, and addition of security lighting.

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<sup>3</sup> For purposes of this Industry-Wide Bulletin 20-04, “**inside the Licensed Premises**” means the Licensed Premises designated by the Medical Marijuana Store or Retail Marijuana Store pursuant to the Store’s premises diagram last submitted to the Marijuana Enforcement Division.

<sup>4</sup> For purposes of this Industry-Wide Bulletin 20-04, “**outside the Licensed Premises**” means a location immediately adjacent to the Licensed Premises that is under the control of the Licensee and under surveillance.

## **Medical and Retail Marijuana Stores - Prohibited Conduct**

The following conduct is prohibited. Any previous guidance in [Industry-Wide Bulletin 20-03](#) to the contrary is superseded by the guidance below.

- **Cash Payment Outside the Licensed Premises:** Licensees cannot accept cash payments outside the Restricted Access Area of the Licensed Premises. This is a change from the prior Industry-Wide Bulletin 20-03, which permitted cash payments outside the Licensed Premises. Credit/debit transactions are still permitted.
- **Accepting Orders Outside the Licensed Premises:** Licensees cannot accept orders outside the Restricted Access Area of the Licensed Premises. This is a change from the prior Industry-Wide Bulletin 20-03, which permitted orders outside the Licensed Premises.
- **Transactions on Public Property:** Licensees cannot provide pick-up and purchase services on any public property, such as a public street or sidewalk.
- **Transferring Unpackaged or Unlabeled Regulated Marijuana to Patients or Consumers:** Licensees shall ensure all Regulated Marijuana is packaged and labeled in accordance with the Colorado Marijuana Rules prior to leaving the Restricted Access Area of the Licensed Premises.
- **Obstruction of Traffic:** Licensees cannot provide pick-up and purchase services outside of the Licensed Premises in a manner that obstructs vehicle or pedestrian traffic or creates any other risk to public safety.
- **Violation of Applicable State and Local Laws:** Licensees shall not violate any criminal statutes or ordinances or any local ordinance or rules, including those which prohibit conduct that would otherwise be permitted by the emergency rules and this Industry-Wide Bulletin 20-04.

## **Regulated Marijuana Delivery**

Medical Marijuana Stores with a valid delivery permit may deliver Medical Marijuana to patients pursuant to the [Colorado Marijuana Rules, 1 CCR 212-3](#). **The Marijuana Enforcement Division is currently accepting [applications](#) for Medical Marijuana Store delivery permits.** Prior to the issuance of a delivery permit, the applicant must establish the local jurisdiction in which the Medical Marijuana Store is located allows delivery. Further, delivery of Regulated Marijuana is subject to local licensing/approval and any applicable local laws. For additional information, please see Rule 3-615, 1 CCR 212-3.

**Pursuant to [House Bill 19-1234](#), the issuance of delivery permits for the delivery of Retail Marijuana is not permitted until January 2, 2021.** Beginning January 2, 2021, Retail Marijuana Stores, Retail Marijuana Transporters, and Medical Marijuana Transporters may apply for a delivery permit.

## **Social Distancing Considerations**

CDPHE's Public Health Order requires "Critical Businesses" such as Medical and Retail Marijuana Stores to implement "Social Distancing Requirements." The Public Health Order defines these requirements as "*individuals shall maintain at least a six-foot distance from other individuals, wash hands with soap and water for at least twenty seconds as frequently as*

*possible or using hand sanitizer, cover coughs or sneezes (into the sleeve or elbow, not hands), regularly clean high-touch surfaces, and not shake hands.”*

To maximize Social Distancing and limit interactions inside the Licensed Premises for the safety of employees, patients and consumers, Medical and Retail Marijuana Stores are strongly encouraged to direct their patients and consumers to telephone and online options for placing orders and making payment. When any portion of a transaction occurs inside the Licensed Premises (pick-up, payment, product selection, etc.), Licensees are required to ensure Social Distancing between patients, consumers, and employees which may include, but is not limited to the following:

- Limit the number of people inside the Licensed Premises at any one-time (including employees) such that all people are at least six feet apart at all times.
- Limit the amount of time a patient or consumer can remain on the Licensed Premises.
- Utilize additional portions of the Licensed Premises, including the lobby, to provide additional space to facilitate Social Distancing between employees and patients/consumers and between individual employees.
- Consider modifications to the Licensed Premises to provide additional space or create barriers (e.g. installing “sneeze guards”) to facilitate Social Distancing between employees and patients/consumers and between individual employees.<sup>5</sup>
- Use online or web-based applications for virtual lines (waitlists).
- Require advanced appointment scheduling for patients and consumers to pick-up orders.
- Instruct patients and consumers to arrive only after receiving notification that their order is ready for pick-up.
- Encourage or require patients and consumers to complete their payments over the telephone or online prior to arrival.
- Limit the formation of lines outside the Licensed Premises to the greatest extent possible. **If preventing the formation of lines entirely is not feasible, the Licensee shall:**
  - Assign staff to monitor and manage queuing;
  - Limit the total number of walk-up patrons allowed to wait outside of the Licensed Premises (for example, allow no more than 10 patrons to wait outside of the Licensed Premises);
  - Ensure patients and consumers outside the Licensed Premises are standing at least six (6) feet apart; and
  - Ensure patients and consumers outside of the Licensed Premises are not blocking pedestrian traffic or the entry/exit to any neighboring businesses.

Regulated Marijuana Businesses are required to comply with state and local guidance and directives for maintaining a clean and safe work environment and all executive orders and public health orders currently in effect. See [CDPHE's guidance and related information about COVID-19](#).

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<sup>5</sup> Regulated Marijuana Businesses may make temporary modifications to its Licensed Premises to effectuate Social Distancing. These temporary modifications are exempt from state “modification of premises” application, fee, and approval requirements. See Emergency Rule 2-260(A)(1), 1 CCR 212-3.

**Industry Bulletin and Rules Subject to Further Modification**

The Division will monitor (a) any Executive Orders or public health orders that modify, limit, or prevent activities consistent with this Industry-Wide Bulletin 20-04 and the emergency rules; and (b) the effectiveness of the emergency rules to evaluate the extent to which any of the emergency rules should be amended or repealed and to evaluate any necessity for enforcement action.

**Licensees must ensure any measures taken pursuant to the emergency rules or the guidance provided in this Industry Bulletin demonstrate prudent behavior and a shared commitment to protecting the health and safety of their employees, patients, consumers, the surrounding community, and the general public. The State Licensing Authority has the authority to sanction a Licensee, and any agent or employee of a Licensee, for any violation of the Colorado Marijuana Code, the Colorado Marijuana Rules, any Executive Order or Public Health Order, or any other state or local terms, conditions, or provisions. Sanctions may include, but are not limited to fine, suspension, and revocation. The Division is closely monitoring Licensee activity for purposes of evaluating needs for any such enforcement action, and is prepared to initiate immediate enforcement action as required to protect public health and safety.**

The Division may amend this Industry-Wide Bulletin and will continue to provide updates and issue guidance in response to stakeholder inquiries.

Sincerely,

The Marijuana Enforcement Division