COLORADO
Department of Revenue
Marijuana Enforcement Division

December 9, 2021

INDUSTRY-WIDE BULLETIN: 21-11 RE: New Statutory and Rule Requirements Effective Jan. 1, 2022 (HB21-1317 Regulating Marijuana Concentrates)

Dear Stakeholders,

The Marijuana Enforcement Division (MED) is issuing this Industry Bulletin to inform stakeholders of updates regarding new statutory and rule requirements that take effect on January 1, 2022.

New Inventory Tracking System Requirements

HB21-1317 requires Medical Marijuana Stores to immediately record each sale to a patient in the Inventory Tracking System (Metrc®). Further, HB21-1317 requires the Inventory Tracking System to:

- Have the ability to determine the amount of medical marijuana a patient has purchased in a given day in real-time by searching a patient registration number;
- Continuously monitor the entry of patient data to identify discrepancies with daily authorized quantity limits and THC potency authorizations;
- Access and retrieve real-time sales data based on patient identification number; and
- Respond with an error message if a sale to a patient or caregiver will exceed the patient's daily authorized quantity limit for that day or THC limit.

To comply with implementation mandates under HB21-1317, the MED is coordinating with Metrc on several updates to the Inventory Tracking System. This bulletin covers the following related updates to the System. Additional information and documentation will be coming from Metrc in the next several weeks.

To implement requirements for the continuous monitoring of patient data entries to identify discrepancies with daily authorized quantity limits and THC potency authorizations, at the time of sale, the Inventory Tracking System will compare the reported quantity being sold and the reported THC potency of the marijuana being sold to the patient authorizations documented in the system. **In order to accomplish this, licensees must enter THC potency for items in one of two ways:**

1. Licensees can associate a THC content or THC Percentage to an item in the Inventory Tracking System. When the item that has the THC potency associated with it is assigned to a package, the THC potency will be used at the point of sale to ensure it is an amount equal to or less than the patient's maximum THC authorization.
2. Alternatively, if a licensee does not associate a THC potency to an item in the Inventory Tracking System and that item is being sold to a patient, the system will prompt the user to enter the THC potency of the item at the time of sale to identify any potential discrepancy with the patient's maximum THC authorization.

The MED and Metrc are committed to exploring initiatives that can support efficiencies with mandatory reporting, including evaluating how testing data can be associated with the item descriptions as a potential long-term solution. In the interim, licensees will be able to use one of the two options described above.

Licensees may **edit** existing items to include THC potency information. If a licensee wishes to add the THC potency to an item, and that potency is generally represented as a range or is otherwise dynamic and specific to the actual batch, the licensee may:

- Choose to enter the ***highest number of the potential range*** as the THC potency for the marijuana item description. For example, if the potency range for flower of that strain is 20-25%, the licensee can update the item description with a THC percentage of 25%. This would ensure that a patient with an authorization that may be in conflict with this potency amount is flagged when the sale is entered.

In addition to the above-noted requirements regarding THC content and percent descriptions, licensees must enter a unit weight in order for the system to evaluate compliance with daily quantity authorizations. This applies to items that are reported in the Inventory Tracking System by unit (each) and not weight (mg or g). For example, if a Concentrate is reported by unit, the licensee must update their existing item descriptions to indicate what weight each individual unit represents. This information is needed when a sale of one "each" Concentrate is reported so that the system can effectively compare the weight of that "each" to the patient's daily authorized sales limit amount. By January 1, 2022, the unit weight for all Concentrates reported by unit, Infused Edible and Infused Non-Edible products sold to a patient, must have a unit weight associated with it.

The MED and Metrc will be providing additional updates in the coming weeks on changes to functionality, as well as reporting requirements in the Inventory Tracking System.

Tangible Educational Resource

HB21-1317 required the Department of Revenue, Marijuana Enforcement Division's State Licensing Authority to create a "tangible educational resource". When any Medical or Retail Marijuana Store completes a sale of concentrate, the licensee must provide the patient or consumer with the tangible educational resource created by the State Licensing Authority.

Licensees can locate a printable version of the educational resource on the Division's website - Statutorily Required Resources Webpage. The resource can be printed on one sheet of 8.5 x 11 paper, printed double-sided (front and back) with a single fold to create a pamphlet. It may also be printed single-sided and provided as a two-page handout provided the licensee takes appropriate measures to ensure they are providing the entirety of the educational resource. The resource was developed in black and white print in order to limit printing costs.

The following provides answers to common questions regarding the educational resource:

What does "provide" mean as it relates to the store's responsibility at the point of sale? Do they have to physically hand a copy to the customer or can they offer the customer to take from an available stack?

- **Response**: While statutes and Rules do not define the term "provide", the Division's goal is to allow businesses to meet this requirement with minimal disruption. The Division's monitoring and enforcement efforts will focus on reasonable measures licensees take to comply with the requirement, including the following: handing the patient or customer a copy of the tangible educational resource; attaching the tangible educational resource to exit packaging; or providing a stack of the tangible educational resources at the point of

sale and directing purchasers of concentrate to the resource. The Division understands there may be circumstances in which a patient or consumer refuses or discards the resource. In such cases, the Division will consider evidence of reasonable efforts to comply with the requirement (for example, via video surveillance, on-site inspections, and licensee documentation of measures to comply).

Please note that licensees cannot comply with this requirement by including only a link or a QR code that accesses the tangible educational resource in only an electronic format. Licensees may offer the resource in an electronic format as a supplemental measure, but not as a substitute for providing the resource in hard copy.

Does the resource need to be printed on 8.5 x 11 size paper or can the content be re-printed in different formats or in a smaller paper size?

- **Response**: Yes, the tangible educational resource should either be printed front and back on a single sheet of 8.5 x 11 paper with a single fold to create the pamphlet or may be printed on two sheets of 8.5 x 11 paper to be a 2-page resource. This is the only format of the tangible educational resource that is presently available. The Division welcomes feedback from licensees which could inform additional printing options that could be made available in the future.

Advertising Regulated Marijuana Concentrates

HB21-1317 required the State Licensing Authority to establish requirements that any advertising or marketing specific to concentrate include a notice regarding the potential risks of marijuana concentrate overconsumption. Under amended Rule 3-705, this notice will be determined by the Division. Effective January 1, 2022, licensees advertising concentrate are required to include the four warning statements reflected in the tangible educational resource (see the warning statements under "Risks and Precautions") in any concentrate advertisement. This information will also be published on the Division's website - Statutorily Required Resources Webpage.

Uniform Certification Form

HB21-1317 required the State Licensing Authority to create a "Uniform Certification Form." The final version of this form is accessible on the Division's website - Statutorily Required Resources Webpage available as both a print-only version and fillable PDF version. Medical Marijuana Stores cannot transfer more than the statutory daily sales limits to a Medical Marijuana patient unless the Store is presented with the Uniform Certification completed by the patient's recommending physician. Please note this form does not replace physician certification requirements established under Section 25-1.5-106, C.R.S. For additional information regarding the Medical Marijuana Registry, please visit the CDPHE's Medical Marijuana Registry Webpage.

The following provides answers to common questions regarding the uniform certification:

Are existing medical extended plant count (EPC) patients required to provide the Uniform Certification Form after January 1, 2022 or will the Uniform Certification only be required for all patients who receive an EPC recommendation from a doctor after January 1, 2022? Will stores be able to sell an amount above the statutory limit beyond January 1, 2022 if a Uniform Certification is not present?

- **Response:** Statutes enacted by HB21-1317 require the Uniform Certification be provided by *any* patient purchasing more than the statutory daily sales limit of two or eight grams of Medical Marijuana Concentrate beginning January 1, 2022. The statute does not provide the State Licensing Authority or the Division any discretion regarding this effective date. Beginning January 1, 2022, any patient seeking to purchase over the

statutory daily sales limits of two or eight grams of Medical Marijuana Concentrate must have a Uniform Certification Form completed by his or her recommending physician and must have registered the Medical Marijuana Store as his or her primary store. Existing EPC waivers cannot be used to purchase more than the statutory daily sales limit of Medical Marijuana Concentrate after January 1, 2022.

The Division is seeking the assistance of Medical Marijuana Stores to inform patients of this change. We encourage Medical Marijuana Stores serving extended ounce patients to advise these patients of the new Uniform Certification requirement that is effective January 1, 2022.

Patients holding a valid registry identification card and physician recommendation for more than two ounces of Medical Marijuana flower or a sales exemption for more than 20,000 milligrams of Medical Marijuana Product issued before January 1, 2022, can purchase more than two ounces/20,000 milligrams, as identified in their physician recommendation/certification, between January 1, 2022, and their registry identification card renewal date. Once a patient renews their registry identification card, which will then show an expiration date in calendar year 2023, the patient must also have a Uniform Certification to purchase over the statutory daily sales limit of Medical Marijuana flower or 20,000 milligrams of Medical Marijuana Product.

Existing Rules for Medical Marijuana Stores selling a combination of any of the three categories of Medical Marijuana to a patient remain unchanged. A Medical Marijuana Store shall not sell, individually or in any combination, more than the following quantities of Medical Marijuana Flower, Medical Marijuana Concentrate, and Medical Marijuana Product to the same patient in a single day:

- Two ounces of flower; or
- Eight grams of concentrate (under 18 or 21+ patients)/2 grams of concentrate (18-20 year-old patients); or
- Products containing a combined total of 20,000 milligrams of active THC.

If a patient over the age of 21 purchases 1-ounce of Medical Marijuana flower, they are limited to no more than 4 grams of concentrate or 10,000 mg of Medical Marijuana Product. Please see Industry Bulletin 20-02 for additional details and calculations for combined sales scenarios.

In addition, the existing rules still apply if a patient with a valid physician recommendation purchases more than the statutory limit of Medical Marijuana Flower, Medical Marijuana Concentrate, or Medical Marijuana Product. The patient cannot purchase any other category of Medical Marijuana during that same business day if they purchase the maximum daily sales limit of any category of Medical Marijuana.

Additional Resources

- 2021 Legislation Summary
- MED Compliance Resources - Industry Bulletins & Compliance Tips
- MED Rules Webpage

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