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**To:** Medical Cannabis Policy Advisory Board

**From:** Trevor Eckhoff, policy analyst, Utah Department of Health and Human Services (DHHS), Center for Medical Cannabis

**Subject: Medical cannabis processor delivery**

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## Introduction

The board should consider the following questions about medical cannabis processor delivery:

1. Should lawmakers amend UDAF's statute to allow a medical cannabis processor to deliver a medical cannabis product directly from their processing facility to a patient?
2. If so, what requirements should apply?

## Background

Medical cannabis products can be delivered to a patient's home or caregiver facility by a medical cannabis pharmacy that is approved to operate as a "home delivery medical cannabis pharmacy" by the Utah Department of Agriculture and Food (UDAF). Products may be delivered by either pharmacy staff or through a licensed medical cannabis courier.

During the 2023 legislative session, the first substitute of House Bill (HB) 72 sought to allow a cannabis processing facility to deliver medical cannabis products to patients, so long as the processor entered into an agreement with a medical cannabis pharmacy and met certain conditions. This section of the bill was ultimately removed, but the question of expanding delivery services remained. At its June 12, 2023 meeting, the legislature's Medical Cannabis Governance Structure

Working Group expressed interest in hearing from the Medical Cannabis Policy Advisory Board on this issue.

## Analysis

Delivery is a small, but growing portion of medical cannabis orders. Seven pharmacies offer delivery services. Three offer delivery through a courier, while the other 4 have their employees deliver to patients. There are 3 ways to purchase and receive a medical cannabis product: in-store, via online order pickup, or via delivery. According to data from the Utah Inventory Control System, ~14% of orders placed in 2023 are delivery orders, while roughly 80% of orders are in-store visits, and the remaining orders are pickup.

During the 2023 legislative session, [HB 72 Sub 1](#) included a provision allowing a home delivery medical cannabis pharmacy to enter into an agreement with a cannabis processing facility to deliver medical cannabis orders to a patient's address directly from the processing facility. This provision required that to meet medical cannabis pharmacy requirements, a processing facility must have a licensed pharmacy medical provider (PMP) to verify orders and ensure compliance with a patient's recommendation from their recommending medical provider, an existing requirement of all medical cannabis pharmacies. In a [second amendment to HB 72](#), a pharmacy could enter into a delivery agreement with only 1 processor. In the end, neither of these provisions passed, as they were removed from the final version of HB 72 Sub 3.

## Examples of other states' delivery laws

The majority of adult-use and medical cannabis states that allow for delivery require that all cannabis products depart a dispensary/pharmacy for delivery. There are no medical cannabis-only states that have approved processor delivery in the form described above. However, there are a few states with expanded delivery

options. Below are examples of 4 states with adult-use and medical cannabis programs that have taken unique approaches to their delivery programs.

- **Massachusetts** approved a form of processor delivery in May 2021. Processors with a “Marijuana Delivery Operator license” may hire a vendor to directly deliver its products to a consumer in the medical or adult-use markets. There is nothing in the law that explicitly prohibits a processor from pursuing a delivery operator license themselves. However, this program is a social equity pilot, and does not apply to all processors in the state. Additionally, a licensed Medical Marijuana Treatment Center may cultivate, process, and deliver cannabis products.
- **Connecticut** allows approved dispensaries and micro-cultivators to deliver cannabis. A micro-cultivator is defined as a growing operation with an initial size of 2,000 to 10,000 square feet of grow space. The micro-cultivator can be approved for up to 25,000 square feet.
- **California** allows both retail and delivery-only dispensaries, as well as “microbusinesses,” to deliver cannabis. A microbusiness is defined as a vertically-integrated cannabis business in which at least 3 of the 4 activities take place in 1 facility: cultivation with up to 10,000 square feet, use of non-volatile solvents, mechanical extraction or infusion in manufacturing, distribution, and sales through an in-person dispensary or an online dispensary that offers delivery.
- **Arizona** requires that all delivered medical cannabis products must be ordered and delivered from a designated retail dispensary. Recreational cannabis cannot be delivered.

States that have expanded medical cannabis delivery options often justify it by stating the decision is intended to improve patient access and choice. Allowing expanded delivery options outside of dispensaries/pharmacies may increase the geographic areas that can utilize delivery services, decrease the amount of time that it takes for patients to receive medical cannabis deliveries, and create broader access to various cannabis products. More types of delivery-eligible licensees would

presumably bring more delivery options to the market, increasing competition and most likely reducing prices for consumers. Of the few states that have expanded delivery, it is too early or there is too little data to make definitive statements about the effects on their respective cannabis markets.

The vast majority of states have not approved any form of processor delivery. Those against the idea cite disruption and reorientation of cannabis programs away from dispensaries as the only legal avenue of obtaining cannabis. Advocates have also argued that because pharmacies have high operating costs, they are incentivized to oversee their business in a more meticulous and consumer-focused manner.

## Patient impact

Processor delivery would greatly expand delivery options for patients. Should each of Utah's 15 processors be allowed and decide to operate a statewide delivery program, patients would have over twice as many options when compared to existing delivery access from home delivery pharmacies. More delivery options could provide multiple advantages to patients. However, any expansion of delivery will likely reduce the number of patients visiting a pharmacy's physical location as more opt for delivery. A potentially valuable loss in patient/pharmacist interaction could occur. Below are 4 considerations of how processor delivery could affect patients.

- 1. Greater product variety and access.** Processors manufacture and distribute numerous kinds of medical cannabis products. With different dosage forms, cannabinoid content, and terpene content, there are many products that can cause different outcomes for patients. There are patients who report existing delivery pharmacies do not carry the products they prefer. If processors offer delivery services, a patient could receive their preferred product directly, bypassing the need to rely on and seek out pharmacies carrying their preferred product.

2. **Lower patient cost.** If processors join the delivery market, there will be more licensees competing for patient orders. It stands to reason that a broader pool of delivery options will lower prices across the delivery market.
3. **Faster delivery.** In some cases, a patient will not have to wait as long to receive a medical cannabis delivery because the distance between a processing facility and a patient's home could be shorter than the distance from a pharmacy.
4. **Reduced emphasis on pharmacy experiences.** Pharmacists and pharmacies are a unique component of the Utah medical cannabis program compared to other medical cannabis states. All medical cannabis pharmacies must have a pharmacy medical provider (PMP) onsite for consultation during business hours and be reachable by phone for questions. The PMP must be supervised by a pharmacist in charge (PIC) who is responsible for maintaining the pharmacy's inventory, ensuring orders are in line with medical provider recommendations, conforming to laws and regulations, and providing broad oversight of the locations' activities. Pharmacy advocates argue that pharmacies were originally designed to be the conduit between patients and their medical cannabis journey. Presumably, processor delivery would shift some patients that currently visit pharmacies to receiving their order by delivery. This would reduce the number of individuals interacting face-to-face with pharmacists and fellow patients at a pharmacy location. While a patient may always call a pharmacy and speak to a PMP, there is a loss of face-to-face interaction which some argue is meaningful in a growing program with evolving therapeutic applications. Should processors become eligible to deliver, they would likely be held to the same standard as pharmacies and be required to have a PMP onsite to verify each order, provide contact information for their PMP, and other regulatory requirements.

It is worth noting that DHHS conducted a [market survey](#) in 2022 with over 9,000 responses. In the survey, 68% of patients stated that they were happy with their current access to medical cannabis pharmacies and medical cannabis home

delivery services. In contrast, 18% of patients expressed dissatisfaction with access to medical cannabis pharmacies and home delivery services.

## Industry impact

Processor delivery has the potential to fundamentally change how patients order and receive medical cannabis products. If more patients utilize processor delivery services, physical pharmacies would lose some demand. Below are 5 considerations of how processor delivery could affect the industry.

- 1. More processors with a delivery business model.** With 15 existing processors, there could be 15 new delivery operations. Cannabis delivery is a considerable investment for a cannabis retailer, as it requires licensing, state conducted background checks, fleet acquisition and maintenance, additional packaging, and other costs. However, the potential dividends from a delivery operation could incentivize processors, particularly independent ones, to shift towards the delivery model. Additionally, there is no limit for processor licenses in the state. Hypothetically, operators not currently in the Utah medical cannabis market could enter by securing a processor license and selling directly to patients, shifting the market from pharmacy visits to direct-to-consumer delivery. A way to limit this expansion is to only allow a single pharmacy to have a delivery agreement with 1 processor, effectively capping new delivery operations to 15, the existing number of pharmacies today. Without this, a pharmacy could theoretically make agreements with an unlimited number of processors and shift their focus away from managing their retail location.
- 2. Processor agreements with pharmacies.** If processors deliver under an agreement with a pharmacy, what would the law require agreements to look like? Would delivering processors be held to the same or heightened standards as home delivery pharmacies and medical cannabis couriers? Would the law require that the pharmacy oversee the operation and be liable for violations the processor committed during the delivery process? How independent would processors have to be? Would pharmacies set the final

price of products sold under a processor agreement, or would processors set their own final prices? Would the law allow processors to receive orders on a website independent of a pharmacy's website?

- 3. Processor ownership may change.** Even if 1 pharmacy can have only 1 relationship with 1 processor, out-of-state operators may come to Utah and invest substantial funds in attracting agreements with independent, non vertically-integrated pharmacies that would assist developing delivery-focused operations. Independent processors like Boojum, Wasatch Extraction, Life Elevated, and Pure Plan may struggle to remain independent in this type of market. This could lead to company buyouts or liquidation, possibly reducing the number of brands on the market. A strategy for mitigating this concern is to cap the number of processor licenses in Utah. However, this does not guarantee that consolidation won't occur in the long run.
- 4. Pharmacies will face new challenges.** Delivery is a convenient, and for some patients, a necessary way of receiving medical cannabis products. While 4 out of 5 patients visit pharmacies in-person to make purchases today, delivery-engaged processors would likely attract some patients away from making visits to in-person pharmacies. Many see Utah's medical cannabis program as designed and built around the in-person pharmacy experience, which could possibly suffer from processor delivery. Advocates of in-person services argue that face-to-face interaction has higher medical value. In addition, both conventional and home delivery pharmacies must comply with strict requirements. In-person pharmacies have high operating costs due to the costly nature of serving patients in-person. The margin between production cost and shelf price may allow processors to offer their products at lower prices than in-person pharmacies. With decreases in revenue, some pharmacies may limit business hours, reduce their workforce, or limit product inventory to manage operating costs.
- 5. Medical cannabis brands would be introduced to new areas, or concentrate on the Wasatch Front.** Pharmacies choose what processor products they wish to sell. Products that are not carried or delivered by

certain pharmacies may not be available in certain areas. Processor delivery would allow a processor to deliver across the state, reaching new markets previously served by an existing pharmacy or pharmacies. However, it is likely that processors will center their delivery efforts across the Wasatch Front, where the majority of patients live. Processors may have a significant advantage over pharmacies that are unable to move from one county or region to another due to their fixed physical location approved by the state.

## Options

Allowing processor delivery requires a statutory change. The board may recommend (1) that processor delivery be approved, with certain stipulations; or (2) or that it continue to not be allowed. The Board should consider the following questions:

1. Should lawmakers amend UDAF's statute to allow a medical cannabis processor to deliver a medical cannabis product directly from their processing facility to a patient?
2. If so, what requirements should apply?
  - a. Should a processor be required to have an agreement with a pharmacy? Should agreements be limited between 1 pharmacy and 1 processor?
  - b. Can a vertically integrated operator have an additional agreement with a processor not part of its business?