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**To:** Medical Cannabis Policy Advisory Board

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**Subject:** **Medical cannabis processor advertising and targeted marketing**

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## Introduction

The board may consider the following questions as it pertains to considering making a recommendation regarding medical cannabis processor advertising and targeted marketing:

1. What are the concerns and benefits of processor advertising and targeted marketing?
2. Should a processor be able to advertise in public (through billboards and in print media) or only engage in targeted marketing?
3. If using both public advertising and targeted marketing, should a processor be held to the same standard as pharmacies that engage in advertising, as listed on pages 2 and 3?
4. If using only targeted marketing, should processors be able to promote:
  - a. shipments of products to pharmacies?
  - b. specific products at pharmacies?
  - c. prices, coupons, and discounts?
  - d. health-related claims and potential benefits of specific products?
5. What standards should be met by processors' marketing platforms, materials, and content?
  - a. Should online access to a processor's targeted marketing require a verification of a medical cannabis card, or just an age restriction?

## Background

The board's interest in considering processor advertising and targeted marketing as an agenda item arose during a board meeting discussion regarding medical cannabis processor delivery on October 17, 2023. The board voted against allowing processors to deliver directly to patients but unanimously voted to [recommend statute changes](#) allowing medical cannabis processors to engage in advertising and targeted marketing. However, it did not vote on further details at that time. The purpose of this memo is to guide the board in possibly adding further details to its original recommendation. This memorandum incorporates input from all 14 medical cannabis processor licensees in the state.

## Analysis

### Advertising and targeted marketing

**Advertising.** Advertising is information provided in any medium to the general public. [UCA 4-41a-403\(1\)](#) states that, "a cannabis production establishment may not advertise to the general public in any medium."

While processors are prohibited from advertising, medical cannabis pharmacies are allowed under [4-41a-1104 \(2\)\(c\)](#) to engage in advertising to the public in any medium as long as the information advertised is limited to the following:

- the pharmacy's name and logo;
- the location and hours of operation of the medical cannabis pharmacy;
- a service available at the medical cannabis pharmacy;
- personnel affiliated with the medical cannabis pharmacy;
- whether the medical cannabis pharmacy is licensed as a home delivery medical cannabis pharmacy;
- best practices that the medical cannabis pharmacy upholds; and

- educational material related to the medical use of cannabis, as defined by the department.

A medical cannabis pharmacy is prohibited from including a medical cannabis product, a medical cannabis product device, or a medical cannabis brand in their public advertising. See [UCA 4-41a-109\(1\)](#).

**Targeted marketing.** A processor cannot engage in targeted marketing but a medical cannabis pharmacy can. Targeted marketing is much more limited in scope than advertising. Targeted marketing is limited to the following:

- electronic communication to an individual over 21 years old who has requested to receive promotional information from a company;
- an in-person marketing event that is held inside a medical cannabis pharmacy; and
- other marketing material that is physically available or digitally displayed in a medical cannabis pharmacy.
- [UCA 26B-4-201\(55\)](#) has a definition that only applies to a medical cannabis pharmacy.

## Concerns about advertising and targeted marketing

A few vertically integrated processors (those with cultivation and pharmacy licenses) reported concerns with changing the statute to give all processors the ability to advertise and engage in targeted marketing of their products. Their concerns include the following:

- Targeted marketing appears to facilitate industry access to patients rather than patient access to medicine. The program will appear more recreational rather than medical.
- Advertising and marketing minimizes the role of a pharmacist, the medically-trained professional who consults with and recommends products to patients at the medical cannabis pharmacy.

- Pharmacists should stock products that patients request or need, rather than making the patient search for the right products and their availability via advertising and targeted marketing.
- Processors will heavily market their best-selling products and attract patients away from products that may be a better treatment option. There are concerns that pharmacies and processors will collude and push deals or discounts that would entice patients to be “deal-seeking” rather than “medicine-seeking.”
- Processors could make inaccurate or unverifiable claims about their products that could mislead patients and over-promise desirable outcomes. Processors typically do not have medically-trained professionals on staff who can review literature and distinguish research of scientific rigor from other research.
- Processors who had concerns recommended the board consider the following questions:
  - Can processors be trusted to make claims about their products in targeted marketing? Is there a conflict of interest that could undermine patients?
  - Should a processor be able to engage in targeted marketing of a product as a treatment for a specific qualifying condition or symptom of qualifying condition? If yes, should they be prepared to cite supporting research? Who will decide if research is legitimate?
  - Should a processor be able to engage in targeted marketing of a product for a non-qualifying condition? For example, advertising a CBG-containing product for sleep issues, although a sleep disorder is not a qualifying condition?
  - Should there be a disclaimer stating that even if the product is intended for use by someone with a specific qualifying condition, its efficacy cannot be verified?

## Benefits of advertising and targeted marketing

The majority of processors, both vertically-integrated and independent, supported a proposal to allow processors to engage in advertising and targeted marketing under similar standards that now apply to pharmacies. Here some of the benefits of this proposal:

- Allowing processors to do targeted marketing will make it easier for patients to discover where a medical cannabis product they depend on can be found.
  - In some cases, patients unable to get this information from a pharmacy have had to contact a processor that carries a product they depend on to find out about new shipments.
  - Processors are frustrated they are unable to communicate to patients about which pharmacies carry their products and when new shipments are delivered to pharmacies.
  - There are numerous anecdotal reports of patients reaching out to processors directly to obtain this information. Processor targeted marketing would allow patients to consent to receiving this information directly from a processor.
- Pharmacies are allowed to market specific products to patients. For the sake of fairness and competition, processors should be allowed to do this as well. Processors can't rely on pharmacists to explain their products' intended use(s), and want the ability to do so in their own words.
- Supportive processors unanimously endorsed being able to engage in targeted marketing of their products, both on their website and in pharmacy shipment notifications via email and text.
  - To support this position, a processor mentioned a recent request from UDAF to manufacture more low-dose products. This processor manufactures lower-dose products but cannot market them and inform patients where to purchase them.
  - There was a majority consensus that processors should be able to advertise products on social media. However, some emphasized the

need to set standards for social media marketing in order to avoid recreational-looking content. A potential for restricting access is making the social media page or profile private, requiring a request to view or join.

- Processors in favor of allowing claims about products stated that certain products are designed and formulated with the intention of being used for certain conditions and that literature supporting a specific product efficacy in treating a specific medical condition can be provided upon request. The statute should not prevent processors from marketing this information to patients seeking products. These processors saw this as a benefit to patients searching for more information about how medical cannabis products could benefit them in more explicit terms.

## What have other states done?

Adult-use and medical-only states have laws that allow for but regulate the ability for processors to advertise and market to targeted audiences. Of the 14 medical-only states, 10 allow for some form of processor advertising or targeted marketing. 4 medical states, including Utah, prohibit processors from engaging in any patient or public-facing advertising and targeted marketing. Here are some considerations:

- Some states prohibit advertising in any media, including billboards, television, radio, handbills, mass electronic communication, and unsolicited internet pop-up advertising. Others allow for advertising if the majority of the audience is reasonably expected to be above a certain age threshold.
- At least 4 medical-only states require a departmental approval process for any advertising/marketing materials.
- Some states prohibit any health-related claims or product descriptions that promote medical advice, while others allow descriptions with limitations, such as not being able to reference specific medical conditions.

- At least 3 states explicitly require all advertising/marketing materials to comply with [21 CFR 202.1](#), a federal law governing prescription drug advertising. This law regulates what descriptions a pharmaceutical company may detail in the advertising of any drug.
- At least 4 states require that any digital targeted marketing, such as an email list, must have a clearly accessible and easy opt-out feature.

## Considerations

Processors differed on what standards should be set if processor advertising and targeted marketing were allowed. Here are a few considerations:

1. **What forms of advertising should be acceptable, if at all?** Some processors expressed interests in billboards, print media, and in-person marketing events like at pharmacies and conventions. Advertising on TV, radio, and on third party websites was more controversial. A few processors felt that these platforms would discredit the program by making it look recreational, and be ineffective, as it communicates to the general public rather than specifically to patients.
2. **Should access to targeted marketing be limited?** Medical cannabis pharmacies are required to age-gate their websites by asking if an accessing individual is at least 21 years of age. The majority of processors believed their websites should be held to the same standard and use an age-gate as the only barrier to entry. When asked about the use of Utah ID, the identity verification system for the state of Utah and the electronic verification system (EVS), which verifies if someone is a cardholder, nearly all were concerned that implementing Utah ID and EVS across multiple platforms could be logistically challenging and lead to system errors when a patient is trying to access a processor website.

3. **Should processors be allowed to mention pricing and discounts?** A few processors believed that processor targeted marketing materials should not contain medical cannabis pharmacy pricing or discounts. Here are 2 factors that some processors feel should be considered:
  - a. There was concern that pharmacies and processors would collaborate on pricing and both would heavily market certain products based on pricing.
  - b. Maybe processor marketing should be educational in nature, and pricing isn't inherently educational, but a commercial factor. Most processors did support being able to advertise an agreed-upon price or discount with a pharmacy. 2 processors supported being able to list an MSRP or suggested retail price.
  
4. **What kind of claims about products should be allowed?** While the majority of processors supported the ability to educate patients about their products, there were differing opinions on what kind of information should be allowed by law. A general explanation of a product's cannabinoid profile, terpenes, and potential effects was a popular idea, as processors can be very intentional about how they formulate their products.

The majority of processors emphasized a need to communicate the purpose behind a specific product. However, there was a majority consensus that processors shouldn't take excessive liberties with making claims about their products, such as its ability to improve quality of life or a specific condition. Most processors agreed that the law should require a disclaimer regarding medical claims. One processor wanted to ensure that a disclaimer would only be required in marketing materials, not on a product label.

[R383-1](#) and [R383-7](#) address the requirements for pharmacies making medical claims. Should the board support the existing language, it could vote to approve adding processors to this definition. The existing rules are outlined below:



**R383-7-18(4)**

(4) Targeted marketing may not include:

- (a) unsubstantiated health claims and other claims that are not supported by substantial evidence or substantial clinical data;
- (b) claims that cannabis cures any medical condition; and
- (c) content that has a recreational disposition

**R383-1-2(29)**

(29) "Substantial evidence" or "substantial clinical data" means evidence that two or more clinical studies support. The clinical studies shall meet the following criteria:

- (a) were conducted under a study approved by an IRB;
- (b) were conducted or approved by the federal government;
- (c) are cited by the Department in educational materials posted on its website; or
- (d) are of reasonable scientific rigor as determined by the Department

## Options

Should the board want to approve a recommendation regarding processor advertising and targeted marketing, here are possible options:

1. **Allow processor advertising and targeted marketing.**
2. **Allow processor targeted marketing, but not advertising.**
3. **Prohibit processor advertising and targeted marketing (status quo).**

If yes to (2):

- A. **Processor targeted marketing content requirements:**
  - a. **Shipments to pharmacies?**

- b. Specific products at pharmacies?
  - c. Prices and discounts?
  - d. Claims and potential benefits?
    - i. Must cite academic literature; OR
    - ii. Must comply with existing targeted marketing rule, R383-7-18?
- B. Online card verification requirement or age restriction?