

Overview: Chapters 254/255 of 2023, the Cannabis Reform Act (CRA) requires the Maryland Cannabis Administration (“MCA” or “Administration”) to submit an interim report to the General Assembly on the ability of micro dispensary licensees to safely and securely dispense cannabis. The Administration is seeking to award eight micro dispensary licenses in the initial round of licensure, employing a regional distribution, with the State divided into four regions, and two licenses in each region. Emergency regulations promulgated by the MCA presently restrict the operations of micro dispensaries to the region in which they have been awarded. While at the time of this report, no micro dispensary licenses have been issued, the MCA has used the experience from the current delivery program to medical patients, and delivery license categories in other states as the basis for this report.

The report investigates the existing legal framework for cannabis delivery, transportation requirements, secure storage, sales controls, various business models, the state’s current delivery landscape, and additional factors. It also introduces important considerations surrounding the safe storage and security of cannabis delivery in Maryland, emphasizing the state’s ongoing efforts to establish a regulatory framework that ensures the safe and secure distribution of cannabis products.

Introduction:

A micro dispensary license is a license issued in accordance with § 36–401(c)(2), Alcoholic Beverages and Cannabis Article, Annotated Code of Maryland. A micro dispensary license authorizes the holder to operate a service that sells and delivers cannabis or cannabis products without a physical storefront, provided that the business employs not more than 10 employees.

The CRA limits cannabis delivery to licensed micro dispensaries effective July 1, 2024. To align its emergency regulations with the General Assembly’s statutory intent, the MCA’s regulations prohibit a standard dispensary licensee from operating a delivery service unless the standard licensee: (1) has a qualifying partnership with a micro dispensary licensee under the Alcoholic Beverages and Cannabis Article, §1-323, Annotated Code of Maryland, to conduct delivery services on behalf of the standard dispensary; or (2) otherwise partners or contracts with a micro dispensary licensee to conduct delivery services for the standard dispensary.

Of additional note, the MCA intends to promulgate permanent rules to be effective on or before July 1, 2024. In this rulemaking process, the MCA will aim to adopt more comprehensive regulations governing micro dispensaries and delivery operations to ensure safe and secure dispensing of cannabis, while simultaneously addressing any challenges raised in this report.

1. Current Framework:

In the United States, at least 15 jurisdictions that have legalized adult-use cannabis expressly allow dispensaries or third-party delivery companies to deliver cannabis and cannabis products to adult consumers. Maryland’s current legal framework allows standard dispensaries to deliver medical cannabis to qualifying patients and caregivers, but not adult consumers. Likewise, third-party delivery companies were previously able to register with the Maryland Medical Cannabis Commission to deliver cannabis and cannabis products to patients and consumers. This practice was authorized under medical cannabis laws and regulations beginning in 2018. However, effective July 1, 2024, standard dispensaries and registered delivery companies may no longer deliver to patients or caregivers. Rather, standard dispensaries will be limited to partnering or contracting with micro dispensaries to continue to offer these services.

The section below highlights the current practices for delivery that have been used successfully for more than 5 years in the State. Any delivery must be made using an enclosed vehicle that:

- Maintains secure storage;
- Does not allow cannabis or cannabis products to be visible from outside of the vehicle;
- Has a current license or registration number from the Administration;
- Is operated by an agent or agents registered with the Administration;
- Is insured as required by law; and
- Does not display any sign or illustration related to cannabis, cannabis products, or cannabis license.

The Administration may inspect vehicles being used for the purposes of delivery for compliance with these provisions. The existing rules also limit delivery to a private home or residence of the patient or caregiver, or a medical facility in which the patient is receiving in-patient treatment.

As part of this report, the MCA pulled data from the State’s seed-to-sale tracking system (“METRC”) to get a sample of delivery operations since adult-use sales began. From July 1, 2023, to October 10, 2023, a total of 10,131 deliveries were completed as logged within METRC, indicating substantial demand for cannabis delivery services. Again, at present *only* registered medical cannabis patients and caregivers may receive cannabis deliveries in the State.

Business Models Presently Contemplated in the Emergency Regulations:

The emergency regulations adopted by the MCA in July implement lessons learned from the medical cannabis delivery program and allow micro dispensary licenses to adopt one of two potential business models for their operations.

Micro Dispensary Responsible for Own Storage:

- The CRA prohibits a micro dispensary from having a physical storefront and limits the business to a maximum of 10 employees.
- Under this model, a micro dispensary would obtain wholesale products from a licensed grower or processor, and sell and deliver these products to consumers, patients, and caregivers.
- The micro dispensary is responsible for storage of products and therefore must maintain a secure storage facility that adheres to State-mandated security requirements. Eventually, a business may be able to secure storage space through a state-sponsored or private “incubator license;” however, incubator licenses will not be awarded until the second licensing round, scheduled for May 2024 or later.

Partnership with Standard Dispensary for Delivery Services:

- A micro dispensary may choose to partner with one or more standard dispensaries and provide delivery services to patients, caregivers, and consumers of the standard dispensary. This partnership could take various forms, such as qualifying partnerships or contractual agreements.
- Under this model, a micro dispensary would serve exclusively as a delivery service, rather than a retail outlet. As such, the micro dispensary could focus on growing clientele and service recognition and leverage the existing business of the standard dispensary.

- This model may be necessary in the near term, given the current statutory sunset on the ability for *any* other cannabis licensee or registrant to conduct delivery services after June 30, 2024.

Of additional note, a micro dispensary licensee could choose to operate a hybrid model, using both frameworks simultaneously, providing they used fewer than 10 employees in the business operations.

Safety and Security Provisions Presently Contemplated:

Under current law, the MCA has already adopted the following operational and safety provisions. Absent additional revisions in the permanent rulemaking process, the following safety and security regulations would be in effect:

Regional Delivery:

- A micro dispensary may only deliver in the region in which they were awarded a license.
- The MCA divided the State into four regions, as shown in *Appendix A*. Each region will be awarded two micro dispensaries in the first round of licensure.
- Regional limitations aim to enhance the security and regulation of cannabis transportation and ensure access to delivery services statewide. By restricting deliveries to a specific region, regulatory authorities can more effectively monitor and manage the transportation process.

Secure Vehicle Compartments:

- Delivery vehicles must contain secure compartments that are not accessible or visible from outside the vehicle, or accessible while the vehicle is in transit. This includes the installation of secure compartments designed explicitly for the storage and transportation of cannabis products. These compartments are required to be locked and secured storage containers that are anchored to the vehicle.

Ongoing Driver Training:

- Drivers and micro delivery agents, like all other cannabis agents, have a statutory and regulatory requirement to complete an annual responsible vendor training program.
- Training requirements are designed to educate drivers on the importance of maintaining security, compliance with regulations, and responsible handling of cannabis products during transport. Drivers will be informed about the specific security measures and requirements to ensure they are fully capable of safeguarding the products in their care.

Maintaining a Delivery Manifest:

- All cannabis delivery agents must maintain a comprehensive delivery manifest for each delivery route. This manifest serves as a crucial tool in promoting safety, regulatory compliance, and transparency throughout the transportation process. The delivery manifest must include:
 - A detailed list of all cannabis products to be transported, including product names, quantities, and associated identification numbers.
 - Contact information for the originating dispensary, grower, or processor.
 - The name, registrant number, and contact information of the delivery agent.

Product Limits and Recordkeeping Requirements

- Delivery agents may not transport cannabis or cannabis products not on the manifest, or an amount of product more than \$5,000 in value.
- In addition to the delivery manifest, all products transferred, sold, and dispensed must be accurately recorded in METRC.

Required Verification of Identity

- Prior to delivery, and at the point of delivery, an agent must confirm the identity and eligibility of a caregiver or patient to receive the cannabis or cannabis product.
- Delivery agents may only accept valid, government-issued photo ID (such as driver's license or passport) to confirm identity and eligibility.

Product Greenwaste, Adverse Event Reporting

- Health and safety provisions pertaining to green wasting and the reporting of adverse events maintained throughout the State's cannabis program additionally apply to micro dispensary licensees.
- Micro dispensaries are responsible for green wasting, or disposing of, any returned or deficient products. An accurate log of any green waste must be maintained by the licensee.
- Any adverse event reported to a micro dispensary must be reported to the MCA within 24 hours. MCA is responsible for investigating the report to determine whether any additional steps are required (such as quarantine or product recall).

Limit on Delivery Agents

- The CRA limits micro dispensaries to 10 or fewer agents.
- Due to the limits on number of licenses (10) and employees per licensee (10), a total of 100 or fewer delivery agents may be in operation statewide. The small number of potential businesses and agents will make the new operations easier for MCA to oversee in the short term.
- The small number of businesses/agents may also limit access to delivery for many patients, caregivers, and consumers in need of such services.

Collaboration with Law Enforcement

- State and local law enforcement have access to the database where MCA registers and tracks all cannabis agents.
- Law enforcement may confirm, in real time, whether an individual is an active delivery agent (e.g., during a traffic stop).

In-Vehicle Product Storage

- Cannabis and cannabis products being transported for delivery must be stored in one or more locked and secure storage containers that are not accessible while in transit.

Routine Inspections

- Micro delivery licenses, like all other licenses in the State, are subject to regular announced and unannounced compliance inspections. The MCA enforcement staff will check for compliance with all of the above statutory and regulatory provisions during an inspection.

2. Lessons from Massachusetts

In 2017, Massachusetts established a separate licensing category for delivery businesses. This category was - and remains through 2023 - exclusively available to qualifying social equity businesses. In light of the parallels to the micro dispensary model adopted by the General Assembly, the Massachusetts delivery license offers valuable insights into cannabis delivery. It should also serve as a cautionary tale of the potential adverse effects of burdensome safety and security requirements on the ability of small, equity businesses to operate and succeed in the cannabis industry.

The below section provides additional considerations for developing and strengthening the micro delivery license framework based on lessons learned in Massachusetts.

- *Marijuana Courier:* Massachusetts established a Marijuana Courier license, which is similar to a micro dispensary that delivers on behalf of one or more standard dispensaries. Many Marijuana Courier businesses have struggled to become operational, or to turn a profit, due to the state's strict safety and security regulations, including requiring every delivery vehicle to be operated by at least two delivery agents.
- *Marijuana Delivery Operator:* A license that allows a business to purchase, store, sell, and deliver finished marijuana products directly to patients and consumers. Massachusetts imposes specific requirements on these businesses, such as the operation of a warehouse for storage. In MCA's emergency regulations, a micro dispensary is permitted, but not required to, have a secure storage facility.
- *Social Equity Focus:* Delivery licenses are limited to social equity applicants, which promotes equity and inclusion in the industry. The initial exclusivity period for social equity delivery businesses was three years; however, the Massachusetts Cannabis Control Commission recently voted to extend this exclusivity period indefinitely. Under the CRA, the micro dispensary category is limited to social equity applicants in all licensing rounds.
- *Business Location Requirements:* In Massachusetts, the business location for both Marijuana Couriers and Delivery Operators is specified as the place where vehicles are housed, delivery orders are received, and vehicles are dispatched daily. This location is vital for the back-office operations of a delivery license, which includes receiving orders, dispatching vehicles, and monitoring deliveries through GPS and reporting requirements.
- *Consumer Orders and Delivery Limits:* Delivery licensees are allowed to deliver only one individual order per consumer during each delivery. Multiple deliveries to the same consumer at the same residence on a calendar day are prohibited, regardless of the order's quantity. The only limit presently considered in Maryland's program is the requirement that all products in the vehicle be associated with the manifest and that the product value not exceed \$5,000 in the vehicle at a given time.
- *Overly Burdensome Regulations:* Until December 2023, at least two Marijuana Establishment Agents were required to be present in any vehicle undertaking delivery services. These regulations have proven to be costly to the delivery licensees, by doubling labor costs for the delivery businesses. They were modified at the Cannabis Control Commission Meeting on December 14th, removing the two-agent requirement for deliveries in Massachusetts.

Massachusetts regulations also establish lighting, ventilation, temperature, humidity, space, and equipment requirements. Furthermore, they include provisions for separate storage areas to accommodate products that are outdated, damaged, deteriorated, mislabeled, or contaminated. Given the importance of social equity considerations in the micro-license categories, and the specific opportunities that micro-dispensaries present for social equity businesses, the State should be mindful of avoiding an overly burdensome regulatory regime as these businesses are beginning operations.

3. Additional Considerations for Strengthening the Safety and Security of Cannabis Delivery

Ensuring the safe and secure delivery of cannabis products in Maryland is of paramount importance. To achieve this, a comprehensive set of security requirements is proposed to maintain the integrity of the cannabis supply chain, minimize the risk of diversion, and guarantee the responsible delivery of cannabis products to consumers.

The following are additional considerations for the General Assembly to implement in statute, or for the MCA to employ during permanent rulemaking include:

- **Additional security measures:** As discussed above, until recently, Massachusetts required at least two agents to be present in a delivery vehicle at all times. Such a requirement will likely harm micro dispensaries, without demonstrably increasing safety or security. This may also present a challenge for operators, given the limit of 10 employees or less.

However, additional measures may be employed, including:

- GPS tracking on delivery vehicles or other real-time product delivery updates; and
- Dash or body cameras to record delivery services:
 - Note: standard dispensaries are required to maintain security footage within their facilities, and these video recording requirements on micro dispensaries would be consistent with the State's existing best practices.
- **Strengthening Storage Requirements:** The emergency rule does not establish strict storage requirements for micro dispensaries when products are not in active transport. If micro dispensaries are storing products overnight, they should likely be subject to the same or similar storage requirements as other licensees.
- **Secure Storage of Delivery Vehicles:** In addition to product and vehicle tracking and ensuring secure storage of the products themselves, additional considerations could be given to the storage of delivery vehicles when not in use. There may be value in the micro dispensaries adhering to minimum storage standards when delivery vehicles are not in use.

One of the MCA's primary considerations with the emergency rules was to be consistent with the legislature's intent that micro dispensaries do not operate a physical storefront, or otherwise encourage loitering around common delivery spots. There may be increased safety and security risks associated with permitting deliveries to public places, such as restaurants, bars, and parks. Under current regulations delivery is limited to private residences and medical facilities.

Allowing delivery to public places could also unintentionally authorize the “Ice Cream Truck” model, where products on the delivery vehicle are not pre-ordered, and the business can dispense any product, at any point in time, or location, in the State. This model of dispensing raises additional safety and security concerns, as well as heightens the risk of unlawful sales to minors.

Conclusion:

As Maryland progresses toward cannabis delivery for both adult consumers and medical patients, it is essential to evaluate the framework that will govern this industry. Establishing safe storage and security requirements for micro dispensaries while also limiting redundant or burdensome regulatory oversight that may limit the ability of these businesses to compete should be the top priorities. Drawing insights from 5-years of successful delivery sales in the State’s medical program, and Massachusetts’ adult-use courier and delivery license categories, Maryland can ensure the responsible and secure delivery of cannabis products to patients and consumers is a viable business model. This approach aligns with the goals of promoting social equity and inclusion in the cannabis industry while safeguarding public health and safety. Accordingly, the MCA recommends supplementing the existing regulatory framework with certain cost-effective safety and security measures, such as GPS tracking on vehicles, while avoiding unnecessary burdens such as the “two-driver rule” that will prevent small businesses from getting off the ground in Maryland.