



Office of Cannabis Policy

Maine Department of Administrative and Financial Services

2023 Government Evaluation Act Report

*Submitted to:
Veterans and Legal Affairs Committee
of the Maine State Legislature*

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Executive Summary

The Office of Cannabis Policy (OCP) was established within the Department of Administrative and Financial Services (DAFS) on February 4, 2019. Since its founding, OCP has been solely responsible for registration, licensing, compliance, and general oversight for both the Maine Medical Use of Cannabis Program (MMCP) and the Adult Use Cannabis Program (AUCP).

The establishment of OCP—occurring one month after Governor Mills was sworn into office—brought with it two simultaneous and critical projects. The first was to finally implement the *Cannabis Legalization Act* and stand up a new regulatory framework for the cultivation, manufacture, testing, and sale of adult use cannabis. The Office proceeded systematically through the rollout of the AUCP, completing major substantive rulemaking, hiring dozens of staff to administer the licensing and compliance functions of the Office, and ultimately launching adult use cannabis sales in October of 2020.

OCP's second project was to take on and modernize the administration of the MMCP. The program had previously been housed within the Department of Health and Human Services (DHHS), where it suffered under-regulation and, as the market expanded in the second half of the 2010s, insufficient staffing. As such, OCP worked diligently in its early years to draft rules, digitize historic program records, make electronic forms available, reduce application and renewal processing times, and launch new compliance efforts for Maine's longstanding medical cannabis program.

Now in 2023, OCP has grown to be an office of nearly 50 staff members across five divisions: Licensing; Compliance; Media and Stakeholder Relations; Policy; and Data Analytics. The AUCP has become a well-regulated statewide program comprised of 87 cultivation facilities, 64 manufacturing facilities, 132 retail stores, and four certified testing facilities. The MMCP is now comprised of 1,886 registered caregivers, 55 dispensaries, 870 medical providers, and over 106,000 patient certifications.

This program evaluation report provides more background on OCP as an Agency, including its priorities and goals from establishment to now, as well as program delivery and fiscal information. It details the substantive differences between the two programs OCP administers and recommends policy solutions to ensure consistent, predictable regulation for participants across both programs. With cannabis being one of the most rapidly changing areas of public policy in the United States, this report also identifies several issues that OCP and program participants face both within the state of Maine and at the federal level. Such issues include but are not limited to banking policy, oversupply, tax policy, stigma, and issues related to the legislative environment.

Introduction

Maine statute provides for a system of periodic review of agencies and independent agencies of State Government in order to evaluate their efficacy and performance. The Office of Cannabis Policy (OCP), a division within the Department of Administrative and Financial Services (DAFS), receives support from the General Fund and is, therefore, subject to the provisions of the State Government Evaluation Act, Title 3, chapter 35. As a newly created Agency, OCP has not yet been added to 3 M.R.S. § 959's scheduling guideline for review of agencies; however, the legislative committee of jurisdiction for cannabis matters, the Joint Standing Committee on Veterans and Legal Affairs, requested a Government Evaluation Act Report during the First Special Session of the 131st Legislature.

Pursuant to [3 M.R.S. § 960](#), the Department of Administrative and Financial Services requests that the Veterans and Legal Affairs Committee place this division in the scheduling guideline outlined in 3 M.R.S. § 959.

Agency Background

The Department of Administrative and Financial Services (DAFS) is a large and wide-reaching department consisting of 10 divisions and approximately 1,200 positions. DAFS' work intersects with five committees of jurisdiction, plus significant interaction with the Joint Standing Committee on Appropriations and Financial Affairs.

The Office of Cannabis Policy (OCP) was established within DAFS on February 4, 2019, and reports to the Joint Standing Committee on Veterans and Legal Affairs. Since its founding, OCP has been the sole Agency responsible for registration, licensure, compliance, and general oversight of both the Maine Medical Use of Cannabis Program (MMCP)¹ and the Adult Use Cannabis Program (AUCP). For the state's longstanding medical cannabis program, OCP registers and regulates the authorized activities of registered caregivers, dispensaries, and their employees so that Maine patients and visiting patients have access to cannabis. Through the AUCP, OCP licenses cultivators, manufacturers, testing facilities, and retail stores to ensure that adult residents and visitors to Maine, who choose to consume cannabis, have access to Maine grown, Maine made, Maine tested products with clear and accurate labeling.

Statutory Authority & Overview

The Office of Cannabis Policy's responsibilities for the *Maine Medical Use of Cannabis Act* are described in 22 M.R.S. § 2422-A, which state that the Department shall administer and enforce Title 22, chapter 558-C and the rules adopted pursuant to chapter 558-C. The rulemaking provisions of Title 22, chapter 558-C state that the Department may adopt major substantive rules necessary to administer and enforce the *Maine Medical Use of Cannabis Act* or amend rules previously adopted. Effective July 1, 2021, the Department's rulemaking authority for the Maine Medical Use of Cannabis Program (MMCP) was changed from "routine technical" to "major substantive". Effective April 23, 2022, the Legislature enacted an emergency bill to require further legislative scrutiny of those major substantive rules and an additional requirement that the Legislature must affirmatively approve any major substantive rules regarding the MMCP. This is in contrast to the regular major substantive legislative review requirements of the *Maine Administrative Procedures Act*, Title 5, ch. 375 that mandate legislative review of any rule submitted during the legislative acceptance period but allow such rules to go into effect if the Legislature declines to act on timely submitted major substantive rules.²

The Office of Cannabis Policy's responsibilities for the *Cannabis Legalization Act* (CLA) are described in 28-B M.R.S., §104 sub-§§ 1-3, which state the Department shall implement, administer, and enforce the CLA and the rules adopted pursuant to the CLA. The statute further provides that the Department has the sole authority to grant or deny applications for the licensure of cannabis establishments under the CLA and has the sole authority to impose on a licensee any penalty authorized under the CLA, or the rules adopted pursuant to the CLA. Furthermore, statute provides that the Department shall adopt all rules necessary to implement, administer and enforce the CLA. The Department's rulemaking authority for the Adult Use Cannabis Program (AUCP) is primarily designated as major substantive, however, rules regarding mandatory testing and certification of cannabis testing facilities are designated as routine technical.

¹ The State of Maine first legalized medical cannabis by referendum in 1999. In 2009, Maine voters again took up the topic of medical cannabis, this time creating a system for the legal distribution of medical cannabis that was not included in the 1999 initiative. As a result, the Maine Medical Use of Cannabis Program (MMCP) was established within the Department of Health and Human Services (DHHS) in 2010, with the first of Maine's medical cannabis dispensaries opening in 2011.

² See P.L. 2021, ch. 387, (Law without Signature, July 1, 2021) and P.L. 2021, ch. 652 (Law without Signature, April 23, 2022).

Agency Management & Organization

The Office of Cannabis Policy is headed by a Director, who has direct oversight of an Executive Assistant, a Deputy Director of Operations, and a Deputy Director of Strategic Initiatives. Each of these positions is funded by the General Fund. Both Deputy Directors have direct reports in the following divisions:

- **Licensing:** Assists program participants and municipalities with the registration and licensing processes during the initial application period and at the time of renewal.
- **Compliance:** Conducts inspections and provides technical assistance to program participants and municipalities.
- **Media and Stakeholder Relations:** Handles the Office’s internal and external communications as well as stakeholder engagement efforts.
- **Policy:** Leads the Office’s legislative and rulemaking efforts.
- **Data Analytics:** Collects and processes cannabis-related data to support transparency and decision making.

Funding for these positions come from the Adult Use Cannabis Regulatory Coordination Fund, the Medical Use of Cannabis Fund, and the General Fund.³

An organizational structure flow chart indicating oversight, position numbers, and job classifications is attached as Appendix A.

Constituencies & Stakeholders

The Office of Cannabis Policy (OCP) serves a broad constituency, whose diverse membership and priorities are often at odds with one another. Medical and adult use program participants, consumers⁴, patients⁵, municipalities, law enforcement, public health advocates, and members of the press and public take considerable interest in the information OCP disseminates. The office of the Governor, legislators, and other State agencies also regularly turn to OCP for data and analyses to shape the opinions and guide decision making. OCP relies on its commitment to prioritizing the public’s health, safety, and well-being when it finds itself at the epicenter of policy debates among and within these constituency groups.

Agency Goals & Objectives

The main priority of the Office of Cannabis Policy (OCP) is to ensure the health and safety of all Mainers by effectively and responsibly licensing and regulating cannabis establishments. Developing a good faith partnership between the State of Maine and stakeholders is critical to establishing rules and policies that provide interested patients and consumers with access to a regulated industry while diminishing an unregulated, untested illicit market. OCP is also charged with ensuring that public health and public safety are prioritized in the administration of both cannabis programs.

³ See 28-B M.R.S. § 1102, “...The fund is administered and used by the Commissioner for the purposes of adopting rules under this chapter and for the purposes of implementing, administering and enforcing this chapter. The Commissioner may expend money in the fund to enter into contracts with consultants and employ staff, as determined necessary by the Commissioner, conduct meetings with stakeholders and conduct any other activities related to the implementation, administration and enforcement of this chapter.” and 22 M.R.S. § 2430, “The fund may be used for expenses of the department to administer this chapter or for research in accordance with subsection 5, as allocated by the Legislature.”

⁴ Consumers are persons over the age of 21 who purchase adult use cannabis and/or adult use cannabis products.

⁵ Qualifying patients are persons who have been a resident of the state for at least 30 days and who possesses a valid written certification regarding medical use of cannabis in accordance with section 2423-B. Visiting qualifying patients - means a patient who is authorized for the medical use of cannabis in this state in accordance with 22 MRS §2423-D and who is not a resident of the state or who has been a resident of the state fewer than 30 days.

OCP's goal is to facilitate the ongoing success of Maine's regulated cannabis economy through licensing and product testing; encouraging safe and responsible cannabis use; and eliminating the unregulated, untested, and illicit markets by supporting a competitive, efficient, and data-driven cannabis economy that is prepared to be a leader in an impending national market.

Beginning in 2019, the newly formed Office undertook two simultaneous and critical projects on behalf of the Administration. First was to finally implement the *Cannabis Legalization Act*, which was passed by voters in 2016, and stand up a new regulatory framework for the cultivation, manufacture, testing, and sale of adult use cannabis. The second task was to update the medical cannabis program by making available online applications, reducing application processing times, and amending the statutes and rules governing the program to better reflect the technology and business models of Maine's 21st century cannabis economy.

Assisted by rulemaking consultants Freedman & Koski, the Office successfully completed the major substantive rulemaking necessary to launch the Adult Use Cannabis Program (AUCP) during the spring of 2019, achieving legislative approval for those rules in the First Regular Session of the 129th Legislature.⁶ The Office then proceeded systematically through the rollout of the AUCP, building out and making available online individual identification card and cannabis establishment application forms; drafting and adopting routine technical rules for the certification of cannabis testing facilities by the Department of Health and Human Services (DHHS), Maine Center for Disease Control (CDC), Cannabis Testing Facility Certification Program; working hand-in-glove with the CDC to ensure adequate testing capacity for mandatory testing of adult use cannabis; contracting with and building out a comprehensive cannabis inventory tracking system and training industry participants to use that system; and launching adult use cannabis sales in the midst of the global COVID-19 pandemic, all while hiring the necessary staff to administer the licensing and compliance functions of the Office.

Parallel to these efforts to launch the AUCP, the Office began a multi-year endeavor to modernize the administration of Maine's Medical Use of Cannabis Program (MMCP) to better regulate a program that had long since outgrown its original legislative design. The MMCP had evolved from a program comprised of a few hundred caregivers individually serving several thousand patients to a sprawling network of thousands of caregivers conducting arm's length transactions with over 100,000 patients. As OCP was forming in 2019, there was also legislative progress being made to address some conflicts of law created during the 128th Legislature's attempt to revise the *Maine Medical Use of Cannabis Act*, including clarification of the inventory tracking provisions of that law regarding registrants' obligation to pay all fees associated with the use of the State's inventory tracking system; addressing the certification requirements for visiting qualifying patients in light of the removal of qualifying condition requirements for adult patients in the medical program; and clarification of the municipal authorization and approval requirements for medical cannabis businesses.

While the Office's policy team was drafting rules to implement the operation of newly authorized medical cannabis manufacturing facilities, the licensing team was digitizing thousands of historical application materials that had been submitted on paper forms to DHHS, the Office's predecessor for oversight of the MMCP. Simultaneously, the licensing team worked to make available electronic application forms and hire staff to reduce application processing times for thousands of registered caregivers and assistants. OCP's compliance team also grew from a team of two contracted field investigators to a team of in-house

⁶ In January 2019, DAFS issued RFP #201901014 to solicit bids to provide rulemaking consultation services to implement through rulemaking the Cannabis Legalization Act, 28-B MRS, ch. 1, in response to PL 2017, ch. 409, and to update the rules governing the medical cannabis program pursuant to 22 MRS, ch. 558-C., in response to PL 2017, ch. 452. Freedman & Koski, Inc. was the successful bidder in that process and was awarded the contract in Spring 2019. Copies of that RFP, the successful bid, and the scoring sheet for that process are available at: <https://www.maine.gov/dafs/bbm/procurementservices/vendors/rfps/rfp-archives>. Accessed September 18, 2023.

field investigators overseen by a Director of Compliance, with the goal of developing a culture of compliance and technical assistance first, enforcement only when necessary, among OCP staff and the regulated community.⁷

Despite the unprecedented impacts of the COVID-19 pandemic, OCP has worked diligently since its establishment to improve customer service, efficiency, and compliance. Through 2023, processing times of caregiver and assistant applications have continued to decrease with the use of electronic applications, reduced manual data input, increased staffing, and legislative changes produced through a collaboration between the Office and medical cannabis registrants that allow for the issuance of a single registry identification card to be utilized with multiple employers.⁸ OCP has received positive feedback from program participants regarding online forms and applications being more user friendly, faster, and easier to complete.

The licensing division is now also able to provide increased review of applications before final approval is given. This more focused review sets participants up for future success by making them aware of compliance requirements and ensuring they meet all the requirements before initial registration, licensure, or renewal occurs. Such requirements might include pesticide applicator licenses, certified scales for trade, proper licenses for food manufacturing and sales, and compliance with Maine sales tax requirements. Municipal approvals, when required, are another important element to a cannabis business' compliance. By working with applicants in advance of active licensure and registration they are much more likely to be in compliance and better informed to help ensure continued compliance.

Efforts to increase program compliance also include inspections. Prior to the formation of OCP, all inspections were the result of complaints. If a participant did not receive a complaint, they were likely never inspected. Routine compliance inspections of cannabis businesses began in early 2020 and were well received by most program participants who had many questions about statutes and rules. Program participants had a general desire to be fully compliant but were unsure of the expectations. Because the goal of inspections is to assist willing participants with becoming and remaining compliant, technical assistance is most frequently provided, with suspensions or revocations reserved for only the most egregious or repeat violators. OCP even received calls from some caregivers proactively asking for an inspection after hearing from other caregivers who found the inspections very informative and helpful. During the COVID-19 pandemic, when onsite inspections were reduced dramatically, field investigators continued efforts to support participants by using video conferencing, electronic records reviews, and virtual technical assistance until onsite inspections could resume.

OCP has demonstrated tremendous flexibility and ingenuity in its first few years of existence. Despite the substantial impact of the pandemic, OCP continued its commitment to communicating clearly with the public and stakeholders through remote rulemaking hearings and training opportunities for program participants, a quick pivot to the use of technology for meetings, and the rollout of in-person community conversations as soon as pandemic conditions would allow. Now almost five years after the Office was created, Maine's regulated cannabis economy continues to grow, amid an ever-changing legal environment caused by annual amendments to Maine's cannabis laws and a series of federal lawsuits

⁷ Records indicate that as early as 2014, the Department of Health and Human Services had a contract with the Maine Sheriff's Association (MSA) to provide compliance support to the medical cannabis program. OCP inherited this existing contract from DHHS' Division of Licensing and Regulatory Services when OCP assumed regulatory oversight of the medical cannabis program in early 2019. Since that time, OCP has continued to contract with MSA, first to provide support to OCP's fledgling compliance team, and more recently, to conduct compliance checks regarding sales of medical cannabis to nonpatients. More information regarding these historical contracts can be found at: <https://www.maine.gov/dafs/bbm/procurementservices/vendors/rfps/rfp-archives>. Accessed September 18, 2023.

⁸ P.L. 2021, ch. 662 (law without signature, effective April 26, 2022).

challenging residency restrictions on the ownership of Maine’s adult use and medical cannabis businesses.⁹

Notably, OCP underwent its first leadership change in December 2022. In addition to working towards ongoing Agency goals and objectives, five new priorities were implemented at that time to shift OCP’s operations from a focus on standing up the Office and the new adult use cannabis market to a period of maintenance and improvement of existing regulatory structures.

1. A Commitment to Transparency

In its roles as administrator, regulator, and policy advocate, OCP must be transparent across the state, among interested stakeholders, at every level of government, and with individuals inside and outside of the cannabis industry. This commitment focuses on a broad, bipartisan, bicameral engagement to build trust with key stakeholders, including the Legislature. The conversations and information must include the reality of the complicated circumstances of regulated cannabis markets operating in the shadow of federal prohibition, as well as the values and priorities of program participants establishing hardy businesses within the existing State regulatory framework, despite the barriers created by the federal cannabis policy environment. OCP values broad and inclusive conversations and engagement from all interested parties across the state. Ensuring that a diverse set of individuals see OCP as a potential partner to advance strong policy ideas is essential for the success of both the Agency and the programs.

Transparency is driven by data and analysis. Often in cannabis policy spaces, an information vacuum is filled with anecdotes, assumptions, stigma, misinformation, and disinformation. Maine is no exception. Data and analysis allow OCP to provide information to the public and interested parties, while ensuring all Mainers have access to the most up-to-date knowledge about the State’s cannabis programs.

OCP has taken steps to improve stakeholder engagement and communication, and it is essential for OCP to expand upon this front. Using surveys with sound methodologies, hosting community events, participating in and coordinating municipal and facility tours, hosting symposia and panel discussions, issuing detailed guidance documents, and providing forums for the public to participate in conversations serve as key avenues for greater communication. Through these efforts, OCP has received a plethora of feedback from program participants and stakeholders. One stakeholder shared, “I don’t think I have ever had a comment for OCP that was not personally responded to...I really appreciate that you folks do that!” Regarding one of OCP’s recent workgroups, a program participant said, “It reaffirmed my perception of the people at OCP as folks that are giving due effort to pull towards solutions that support us, the operators.”

While OCP has, since its founding, worked diligently to communicate clearly and directly with the public, stakeholders, and program participants, it has improved those efforts over the past two years by ensuring public facing communications are accessible, understandable, and comprehensive in answering the questions the public has. Included in these efforts are the development and publication of compliance checklists for medical cannabis program registrants,¹⁰ providing advanced notice to industry participants about forthcoming policy updates,¹¹ and diversifying the ways OCP communicates with its stakeholders by providing opportunities for in-person, remote, and written participation in educational opportunities and policy discussions.¹²

⁹ See *Ne. Patients Grp. v. Me. Dep’t of Admin. & Fin. Servs.*, 554 F. Supp. 3d 177 (D. Me. 2021) and *United Cannabis Patients v. Me. Dep’t of Admin. & Fin. Servs.*, 535 F. Supp. 3d 46 (D. Me. 2021).

¹⁰ [Criteria for Registered Caregiver Inspections](#); [Criteria for Registered Dispensary Inspections](#)

¹¹ [Guidance for the Implementation of Increased Potency Per Package of Edible Cannabis Products](#), September 21, 2023; [Advance Notice of Mandatory Pesticides Testing Required After June 12, 2023](#), May 12, 2023

¹² [Cannabis Conversation on Testing & Contaminants](#), September 19, 2023; [Cannabis Conversation on Sustainability](#), July 18, 2023; [Metre User Workgroup and Metre User Calls](#)

Starting in the summer of 2022, OCP began a roadshow that brings several senior staff members to communities across the state. These efforts are county-centered and involve a community listening event, a meeting with municipal officials, and tours of cannabis businesses. Thus far, OCP has traveled to nine counties, toured 20 businesses, engaged 61 municipalities, met with nearly 120 municipal government employees, and had around 250 members of the public attend community events. That commitment to accessibility and transparency has been reflected in many of the comments received in the community listening tour post-event surveys, reinforcing the importance of those efforts, and showing the Office that it is important to continue them in the future. When asked what elements of the event they liked most, one respondent wrote, “Open, honest dialogue with [the Director] and an attitude of collaboration.” When asked if there was anything else they would like OCP to know, another respondent shared, “As an adult use business owner I appreciate you hosting these events and hope to see a lot more of them.”

In addition, the new Director has made it a priority to meet people where they operate, traveling to all corners of Maine to meet licensees, tour their facilities, engage in productive dialogue, attend and participate in municipal meetings, and speak at conferences and board meetings of interested stakeholder groups. This type of community outreach is critical to building and maintaining trust, while providing accessibility to OCP. The Office is proud of the efforts to work within communities and to make OCP senior staff available to the public and key stakeholder groups.

Beyond these traditional stakeholder engagement efforts, OCP staff have also engaged with undergraduate and graduate students at public and private colleges and universities across the state. Senior staff at OCP have guest lectured in undergraduate drug policy courses, cannabis law classes, and seminars for medical students engaged in internships and residencies at local hospitals. Additionally, OCP has hosted a number of law student and undergraduate interns and externs to provide hands-on experiential learning to students interested in public service.

In the years to come, OCP will build upon its commitment to transparency by increasing the breadth of topics addressed in the program-specific “frequently asked questions” section of its website, continuing to make public communications more accessible through increased readability and visual aids, and making publicly available more data and information related to program compliance and performance.

2. Improve Safety in the Medical Cannabis Program

Maine’s Medical Use of Cannabis Program (MMCP) has evolved dramatically over the nearly quarter century since voters approved it. It has transformed from a small caregiver program in which individuals produced limited amounts of cannabis for a small number of designated patients into a largely commercialized program. At the same time medical cannabis programs across the United States have grown in number and size. In Maine, this evolution has accelerated since 2018, when advocates and program participants worked to reform the MMCP statute to allow for more commercialization within the program in order to improve patient access to medical cannabis.¹³ That law ushered in substantive, fundamental changes to the medical cannabis program in Maine and at the time represented compromises agreed to by the regulated community and public health and safety advocates, such as:

- Permitting registered caregivers to serve an unlimited number of patients, hire an unlimited number of assistants (employees), organize as a business entity, and operate caregiver retail stores;
- Creating a registration type for medical cannabis manufacturing and inherently hazardous substance extraction facilities;
- Permitting unlimited wholesale transactions between registered caregivers and dispensaries; and

¹³ *An Act To Amend Maine's Medical Marijuana Law*, P.L. 2017, ch. 452, (Governor’s Veto overridden, July 9, 2018).

- Doing away with a requirement that patients have a debilitating medical condition in order to qualify for a patient certification card.

That seismic shift in the activities authorized under the medical cannabis statute was paired with additional regulatory authority granted to state and municipal governments, to wit: the law required medical cannabis inventory tracking and gave explicit authority to municipalities to regulate all medical cannabis businesses and require local approval and authorization for registrants siting their cannabis businesses in host communities.

There is now an urgent need to refocus efforts to make Maine a leader in medical cannabis access, quality, and safety. Over time, Maine's statutes and the legislative design of the medical program have not kept up with a rapidly evolving industry and the ways that patients access and ingest their medicine. In the process, medical cannabis patients—some of Maine's most vulnerable residents—have been put at risk.

OCP is committed to working to overcome the misinformation and disinformation to make sure that Maine's medical cannabis is free of harmful contaminants, and that patients can know what they are putting into their bodies. Many of Maine's medical cannabis patients likely believe that their product is tracked, traced, and tested because Maine's adult use cannabis products are, as are medical cannabis products in every other state that has an approved program. However, Maine's medical cannabis is not tracked, traced, or tested. In fact, the national medical cannabis patients' rights organization, Americans for Safe Access, [recently downgraded](#) the score and ranking of Maine's medical cannabis program for its lack of safety.¹⁴ Another recent [report](#) from Americans for Safe Access explicitly called out Maine for failing to implement safety measures, such as inventory tracking and mandatory testing, and putting patients at risk.¹⁵

The lack of mandatory medical cannabis testing means that yeast, mold, pesticides, mycotoxins, heavy metals, and other contaminants lie hidden in the medicine that the most medically vulnerable Mainers depend on.

In November, OCP released a [report](#) that highlighted the extent to which Maine's medical cannabis supply chain contains contaminants that would make products ineligible for sale in the State's adult use program and in most medical cannabis programs in other states.¹⁶ The results highlight the need for comprehensive reforms to protect Maine's medical cannabis patients and to update the State's medical cannabis program to include nearly universal standards of safety.

Some of the findings of the report included that upon audit testing by OCP of 120 samples from the medical cannabis program, 50 samples, or 42%, contained at least one contaminant that would have failed testing according to the mandatory testing standards set for Maine's adult use program. Some samples failed testing for more than one contaminant, and some failed testing for multiple contaminants within a given analyte category. Overall, OCP identified 30 failures for yeast and mold, 26 failures for pesticides, four failures for heavy metals, and one failure for filth and foreign materials. In addition to this data, the report contains information about the health impacts of cannabis contaminants, the requirements for

¹⁴ ASA 2022 State of the States Report: An Analysis of Medical Cannabis Access in the United States. (2023, February 2). <https://www.safeaccessnow.org/sos22>

¹⁵ Regulating Patient Health: An Analysis of Disparities in State Cannabis Testing Programs. (2023, July 11). https://american-safe-access.s3.amazonaws.com/whatsinyourcannabis/Regulating_Patient_Health.pdf

¹⁶ Harmful Contaminants in Maine's Medical Cannabis Program. (2023, Fall). <https://www.maine.gov/dafs/ocp/sites/maine.gov.dafs.ocp/files/inline-files/OCP%20Fall%202023%20Medical%20Testing%20Report.pdf>

certified cannabis testing facilities (CTFs) to operate and become licensed in Maine, and the policy challenges in Maine’s medical cannabis program.

OCP has a renewed commitment to producing top-quality research reports like this one, and prior reports on caregiver exits from the industry, market oversaturation, and general market conditions. In house and through external vendors, OCP is proud to be a source of data, analysis, and information. OCP should be regarded as a leading voice in the State to bring facts to the most important and pressing cannabis policy questions.

3. Preparing Maine for Federal Legalization

It is only a matter of time until the federal government takes the steps to legalize cannabis for medical and/or adult use. Across the country, states are woefully unprepared for the shock to the systems such a policy change will mean. While federal legalization will bring numerous benefits to cannabis markets, licensees, and the manner in which states regulate cannabis, it will create significant challenges as well.

OCP has an obligation to prepare the State for the impact of federal legalization and what it will mean for the State’s cannabis policy, regulatory programs, and program participants. Preparing for federal legalization requires an understanding of policy options that the State can take based on potential benefits or harms that federal legalization may mean for the State. For example, after federal legalization, interstate commerce and potentially limited opportunities for cannabis imports and exports will become realities. It is almost certain that federal legalization will usher in an additional excise tax levied by the U.S. government. In addition, like with alcohol or agricultural products, there will likely be federal standards for licensure, inventory accountability, consumer safety testing, pesticide use, and security, as exclusively state-run programs transition to ones of shared regulatory authority. Each will have consequential market impacts that should be studied and understood.

In its role, OCP will engage with the cannabis industry and advocacy communities to understand their concerns and potential challenges in the wake of federal legalization. The industry and Office must be ready to be nimble as potential federal guidelines and guardrails take effect. Regulations and regulatory approaches will likely change because of federal policy, and the key to preparation is continuous awareness of the content of congressional proposals around the issue. As an administrator, regulator, and policy advocate, OCP intends to build a roadmap and gameplan to respond to federal government action on small and large scales, to ready the State and the industry for these potential policy impacts. The Office’s commitment to effective and responsible regulation of Maine’s cannabis programs provides a clear-eyed, proactive approach to anticipating and addressing the inevitable market impacts of federal legalization.

4. Data-driven Program Evaluation

The Office uses data to look inward to understand what it does well and where and how it needs to improve. Agency evaluation—like the one involved in this report—is essential for good government and good governance. Legislative oversight of agency performance is just one aspect of evaluation of an institution. OCP is committed to regular self-assessment as a complement to legislative oversight. Data are key drivers of modern government program evaluation and OCP will rely on internal and external data sources to make continuous improvements to its operations. As part of this effort, the Office will evaluate existing gaps in technology, staffing, and systems necessary for advanced data analysis.

OCP has produced data-driven reports on topics such as contaminants in Maine’s medical cannabis program, caregiver exits from the industry, market oversaturation, and general market conditions. These reports have been important contributions to the broader cannabis policy conversations in the state of

Maine as policy debates in the community and before the Legislature can shift away from anecdotes and conjecture and instead expect and rely on data to guide knowledge around specific issues. Over the past two years, OCP has worked hard to produce real data and careful analysis, through these reports, to guide future conversations. Beyond those specific reports, OCP has recently redesigned and strengthened the manner in which annual reports are organized and produced. In those reports, additional data analytics were added in order to understand how the medical and adult use programs operated in the prior calendar year. In addition, OCP has been adding more data to the Agency's open data dashboard, available publicly on its website. Those data provide significant value for stakeholders, researchers, and other interested parties about the dynamics of the industry, compliance, and enforcement in Maine.

Ultimately, cannabis policy faces numerous challenges in the state of Maine. Rapidly changing industry dynamics, frequent changes to the laws governing both cannabis programs, outdated statutes and rules, and the potential for future federal legalization will continue to cause issues for businesses and regulators alike. The availability of data and analyses to guide and inform the conversation and help understand the strength or weakness of policy proposals is essential.

5. Engage in Regulatory Lookback

Since January 2023, OCP has been engaging in regulatory lookback. Regulatory lookback is a practice by which an agency assesses its own existing rules to see whether there is waste, duplication, excessive burden, lack of necessity, inefficiency, and/or ineffectiveness. That analysis has happened internally by engaging with all OCP employees, as well as externally by engaging with program participants and other interested stakeholders.

Some internal policy changes can be achieved without rulemaking, and OCP regularly provides interested stakeholders with additional guidance regarding the Office's interpretation of regulatory provisions and new legislation. These guidance memos are retained for reference on OCP's website. Examples include:

- [10/30/23](#): Updated Guidance for Measuring Mature Plant Canopy
- [6/8/23](#): Guidance Regarding Infused Plant Material
- [5/11/23](#): Guidance for Packaging Single-Serve Adult Use Cannabis Drinks
- [3/20/23](#): Guidance for Retaining Transport Manifests and Other Business Records
- [2/27/23](#): Guidance Regarding Changes to Plant Weighing, Waste Recording, and Storage Bin Tagging Requirements
- [2/24/23](#): Criteria for Registered Caregiver Inspections

Other changes require revisions to existing regulations, and OCP has used the period after the First Regular and Special Sessions of the 131st Legislature to engage in rulemaking that implements regulatory lookback efforts and recent legislative changes. For example, regarding the adult use program, rulemaking seeks to update the definitions, fees, and other administrative requirements necessary to implement statutory changes made to the *Cannabis Legalization Act*, 28-B MRS, including:¹⁷

- Changes to the authorized activity of tier 1, tier 2, and nursery cultivation facilities and products manufacturing facilities allowing for the sales of cannabis and cannabis products to consumers by delivery (except that nursery cultivation facilities may sell only immature cannabis plants, seedlings, cannabis seeds and agricultural or gardening supplies relating to the cultivation of cannabis);

¹⁷ See generally, *An Act to Clarify State Policy Regarding Cannabis Paraphernalia in the Maine Medical Use of Cannabis Act and the Cannabis Legalization Act*, PL 2023, ch. 6 (Emergency, signed March 15, 2023); *An Act to Provide Equitable Tax Treatment to State-licensed Cannabis Businesses*, PL 2023, ch. 444; *An Act to Clarify the Requirements for Off-Premises Sales by Cannabis Store Licensees*, PL 2023, ch. 408; and *An Act to Amend the Adult Use Cannabis Laws*, PL 2023, ch. 396.

- Permitting the delivery of cannabis and cannabis products by authorized licensees to consumers at hotels or other private businesses, provided that the delivering licensee has obtained written consent from the owner or other authorized agent of the business to conduct such deliveries;
- Permitting the return of cannabis or cannabis products from licensee to the licensee that transferred the cannabis or cannabis products to the returning licensee and provides for the testing of such returned cannabis or cannabis products;
- Permitting the use of vehicle wraps by licensees;
- Increasing the per package limit for edible cannabis products from 100 mg per package to 200 mg per package and increasing the possession limit for cannabis concentrates from 5 grams to 10 grams;
- Creation of new definitions for the terms “permitted premises for a specified event,” “specified event,” and “specified event permit”;
- Amendments to the application requirements for the issuance of a permit for cannabis stores to conduct sales at specified events;
- Amendments to the limitations and conditions for cannabis stores to conduct sales at events – including repealing the prohibition on the sale of “smokable” cannabis or cannabis products at specified event;
- Establishment of criteria for suspension/revocation of permit to conduct sales at an event;
- Established criteria for DAFS’s approval or denial of a permit application for cannabis stores to conduct sales at a specified event to allow denial of such applications for “good cause”; and
- Amendments to the requirements that the Department issue guidance to cannabis stores.

Rulemaking in the medical program is major substantive, requiring legislative review and approval. Proposed medical rulemaking strikes provisions no longer supported by the enabling statute, 22 MRS, ch. 558-C, the *Maine Medical Use of Cannabis Act*, and includes amendments to Section 10 of that rule to implement the requirements legislation enacted in the First Regular and Special Sessions of the 131st Legislature, specifically PL 2023, ch. 6 (Emergency, signed March 15, 2023) and PL 2023, ch. 365. The amendments to section 10 include:¹⁸

- Compliance requirements applicable to registry identification cardholders and registrants, including the implementation of a two-tiered system for assessment of fines for violations of program requirements, and
- Revision of the notice requirements applicable to the State when it identifies violations of program requirements by a registrant or a registrant’s employee or other agent.

The goal of these efforts is to improve OCP’s operations, streamline regulations, ensure policy is effective and sensible, and to provide opportunities for stakeholders to have input in how and for what purposes policy is implemented. While OCP is well positioned to engage in and propose these changes, it cannot do so alone. Robust collaboration between OCP, the cannabis industry, and the Legislature is necessary to address real-world challenges posed by statutory inconsistencies and changes. Moving forward, OCP will continue its commitment to continuous program improvement by ensuring that regulations issued by the Office are sufficient to protect public health and safety without being overburdensome to program participants.

¹⁸ See generally, *An Act to Clarify State Policy Regarding Cannabis Paraphernalia in the Maine Medical Use of Cannabis Act and the Cannabis Legalization Act*, PL 2023, ch. 6 (Emergency, signed March 15, 2023); *An Act to Maintain Legislative Oversight of the Maine Medical Use of Cannabis Program by Requiring Major Substantive Rulemaking*, PL 2023, ch. 96; and *An Act to Sustain the Medical Use of Cannabis Program*, PL 2023, ch. 365.

Filing Efficiencies and Information Privacy

Upon its establishment in 2019, OCP inherited from the Department of Health and Human Services (DHHS) the administration of Maine's Medical Use of Cannabis Program (MMCP). When the program was originally founded there was one dispensary located in each of the state's eight public health districts and 575 registered caregivers each caring for five or fewer patients across the state. By the time OCP assumed responsibility for the program there were more than 2,500 registered caregivers in the program and more than 65,000 qualifying patients certified across the state.

When DAFS assumed responsibility for the program in early 2019, the newly formed Office of Marijuana Policy (now OCP) set to work assessing the program, its staffing, and operations and began developing plans to digitize past records, standardize and match the application requirements to the statutory registration requirements, prepare to bring the medical program application process online, and increase staffing to support the volume of participants in the program at that time. Two and a half years after the Office assumed oversight of that program, all historical paper records had been digitized, caregiver applications were made available online, paper applications for dispensaries were made available following the end of the cap on dispensary registration certificates, and OCP's licensing and compliance staff were cross trained to support both the medical and adult use cannabis programs. The shift to online caregiver registration certificates dramatically improved application processing times, and when PL 2021, ch. 662 went into effect in April 2022, the application process was further streamlined by removing the requirement that individuals serving as assistants for multiple registrants obtain a registry identification card associated with each registrant served. Even as those application materials are available for online filing, OCP continues to make available paper applications for individuals wishing to complete those forms manually.

As OCP worked to establish the Adult Use Cannabis Program (AUCP), first through rulemaking, then through the development of application materials, it prioritized efficiency by making online application materials available from day one. The Office also engaged in a staggered rollout of license applications to manage the processing of new adult use cannabis establishment licenses in a manner that ensured that upon market launch, sufficient cannabis flower and trim from cultivation facilities was available to cannabis products manufacturing facilities and stores for processing by the former and sale to consumers by the latter. Similarly, OCP ensured that two licensed and certified cannabis testing facilities were available to licensees to ensure all cannabis and cannabis products available to consumers on the first day of retail sales would be tested for harmful contaminants. Throughout the process of building and launching the program, the Office provided clear and direct information to prospective opt-in municipalities and program participants and explained the rationale for the deliberate, progressive rollout. It is because of this intentional, methodical rollout that the program was able to launch despite the globally disruptive COVID-19 pandemic.

The privacy of personal information, as well as the trade secrets of program participants, has been an ongoing priority for the Office as it establishes and updates program requirements and application forms. OCP is responsible for the collection, use, and maintenance of several sensitive data sets related to the ownership of cannabis businesses and their operations. While those are specified below, it is critical to understand that OCP does not, and has not since its inception, been responsible for the collection or storage of information regarding qualifying patients. **OCP does not receive, aggregate, or maintain any personally identifiable information or personal healthcare information regarding any of the 106,000 qualifying patients** certified to obtain medical cannabis through the Maine Medical Use of Cannabis Program (MMCP).

As a part of the application and renewal process, OCP reviews criminal history records information, both from the State and Federal criminal history registries, and also receives sensitive information from

program participants related to their tax obligations, physical plant, security measures and policies, cultivation and manufacturing equipment and techniques, business management and ownership structure, testing methods and standard operating procedures, and the cannabis inventory produced and maintained by those program participants.¹⁹ The confidentiality of these records, as well as adult use inventory tracking and mandatory testing records, is dictated by several different statutory provisions.^{20 21}

Nearly all of this information is received by and stored by the Office in electronic format and is maintained in accordance with MaineIT electronic data storage policies, and, as applicable for federal criminal history information, in accordance with FBI criminal history record use policies. Indeed, an independent audit of OCP's use of criminal history data, conducted by the FBI in the Spring of 2023, found no deficiencies with the Agency's criminal history record review and use policies.

OCP takes its responsibility to protect the sensitive information entrusted to it very seriously. A regular part of the regulatory review activities described above includes regular discussions with Operations Team staff to ensure that OCP is collecting only that information that is required for the Agency to carry out its regulatory duties, and that program participants are not required to disclose to the Department more than is necessary for those purposes. In fact, over the past two years, OCP, in collaboration with program participants through the legislative and rulemaking processes, has been able to consolidate the plans of record required from adult use licensees from three plans into one universal "facility" plan, and worked to reduce redundancy for medical program employees by supporting a change to the program law so that assistants, officers, and directors of medical program registrants need only acquire one registry identification card to demonstrate proof of authorized conduct to work with or for any registrant.

Coordinated Efforts with Other State Agencies

The Office of Cannabis Policy (OCP) coordinates closely with other state agencies on a variety of issues. Interagency and intergovernmental coordination and communication is essential for effective governance. Cannabis is often viewed, from the outside, as a narrow issue that affects a small community within a given jurisdiction. In reality, cannabis policy touches on dozens of areas of public policy including agriculture, finance and banking, tax, transportation, public health, public safety, environmental protection/sustainability, land use, and more.

The Director is a member of the State of Maine DEI Community of Practice, which works to improve state government as a desirable workplace, promote equitable treatment and workplace respect, improve diversity in the workforce, and advance community well-being. This program works at the Agency level, the Department level, and state government-wide to advance and achieve such goals.

¹⁹ A complete list of application and renewal materials required to be submitted to OCP by medical cannabis program registrants and registry identification cardholders is available at: <https://www.maine.gov/dafs/ocp/medical-use/applications-forms>. A complete list of application and renewal materials required to be submitted to OCP by Adult Use Cannabis Program participants and individual identification cardholders is available at: <https://www.maine.gov/dafs/ocp/adult-use/applications-forms>.

²⁰ Adult Use Cannabis Program licensees are required, pursuant to 28-B MRS § 105 and the rules governing the program, to submit daily inventory tracking information for cannabis plants, adult use cannabis, and adult use cannabis products from immature plant to the point of retail sale, disposal or destruction. Additionally, adult use cannabis testing facilities are required, pursuant to 28-B MRS § 603, to submit to the Department mandatory test results for all adult use cannabis and cannabis products tested by the testing facility.

²¹ Criminal history record information is designated confidential pursuant to Title 16, ch. 7 and 28 C.F.R. §§ 16.32 and 16.33; tax information is confidential pursuant to 36 MRS § 191; Caregiver and registry identification cardholder information is designated confidential pursuant to 22 MRS § 2425-A(12); the home address, telephone number and e-mail address of adult use applicants is designated confidential pursuant to 28-B MRS § 114; and the confidentiality of adult use business records like inventory tracking records and mandatory testing information is designated confidential pursuant to 28-B MRS § 511. Despite these confidentiality provisions, OCP receives dozens of Freedom of Access requests annually for records that contain both confidential and public information, which require substantial staff time and Agency resources to respond to, to the extent authorized by law.

The Deputy Director of Operations and the Director of Compliance are members of the Law Enforcement Workgroup which consists of representatives from the Maine Chiefs of Police Association, Maine Sheriffs Association, Maine State Police, Bureau of Highway Safety, and prosecutors. This group meets regularly to identify needs of law enforcement related to cannabis crime investigation, impaired driving, and highway safety. Initiatives have resulted in training specific to the investigation of cannabis-related crimes and efforts to standardize data collection. Future trainings are planned for law enforcement and prosecutors that will focus on detection and prosecution of cannabis impaired drivers.

Coordination with local, state, and federal law enforcement agencies is an important part of OCP's work. The Office of Cannabis Policy is not a law enforcement agency and does not seek the statutory or regulatory authority to operate as one, which is consistent with the Legislature's intentions for the Agency. However, that does not diminish one important reality: illicit cannabis operations in Maine present a real threat to legal, regulated, and compliant cannabis businesses. Those operations are threats regardless of the race, ethnicity, or national origin of the operators. Compliant businesses should be protected from law enforcement intervention, and illicit businesses should be dealt with via appropriate law enforcement agencies. In order for that regulatory-law enforcement ecosystem to function, OCP plays an important role working with law enforcement agencies at all levels to ensure that investigations do not improperly target legal businesses or their operators and do target illicit operations. OCP has worked with municipal police departments, county sheriff's offices, county district attorneys, Maine State Police, the Maine Drug Enforcement Agency (MDEA), the State's Office of Attorney General, the US DEA, US Border Patrol, and the Office of the United States Attorney to protect, to every extent possible, Maine's compliant businesses.

The Deputy Director of Strategic Initiatives and Director of Media & Stakeholder Relations are members of the Department of Health and Human Services (DHHS), Maine CDC Cannabis Workgroup which exists to prevent the initiation of non-medical cannabis use by individuals under the age of 21 and to raise awareness of the dangers of misuse across the lifespan. Identified objectives include but are not limited to the advancement and promotion of best practices, relationship building, and resource sharing. OCP provides additional staff support to this effort. The Office also works closely with staff from Maine CDC's Cannabis Testing Facility Certification Program to ensure the integrity and efficacy of Maine's licensed and certified cannabis testing facilities.

OCP also has consistent communications with the Department of Agriculture, Conservation and Forestry (DACF) concerning the regulation of the cultivation, manufacture and testing of cannabis and cannabis products at cultivation facilities, products manufacturing facilities and testing facilities, as well as the use of pesticides, fungicides, and herbicides in cultivation. OCP also works with DACF to ensure that cannabis program participants obtain required DACF licensing and certifications.²² Additionally, DACF has provided expert advice regarding edible cannabis product safety that informs ongoing policy changes and recommendations by OCP regarding edible cannabis product manufacturing and mandatory testing requirements.

Maine Department of Environmental Protection (DEP) under the Solid Waste Management Rules regulates waste generated by cannabis cultivation, product manufacturing, testing facilities, and stores that generate waste including waste with cannabis components. DEP has also collaborated with the Office

²² Home Food Processing License is required to produce shelf stable (non-potentially hazardous) foods such as, but not limited to, cookies, brownies, gummies, candies, jams & jellies, pickles etc. in a home kitchen to be sold from the home or wholesale. Commercial Food Processing License is required to process, or otherwise prepare and package food products for human consumption in a commercial kitchen. Retail Food Establishment License is required to sell prepackaged foods, tinctures, other goods for consumption, and foods prepared on site for sale to the consumer and intended for off-premise consumption. Beverage Plant License is required to assemble, process, manufacture, bottle or convert into form any non-alcoholic beverage for distribution or sale. Pesticide Applicators License is required for cultivators planning to use any pesticides.

to identify opportunities to promote sustainability and reuse in the cannabis industry, resulting in changes to program rules that permit the use of reusable product and exit packaging, near universal compliance by program participants with Maine’s bottle deposit laws, and recommendations regarding the composting of cannabis waste. OCP and DEP have also engaged in joint technical assistance regarding waste disposal issues.

Sales tax data for both cannabis programs is maintained by Maine Revenue Services (MRS) and is publicly available on the [MRS, Office of Tax Policy website](#) based on information as filed by tax filers. Additionally, OCP has worked with its sister Agency for the past few years to increase tax compliance among program participants. Before evidence of a sales tax certificate became a mandatory part of the caregiver application and renewal process in 2022, fewer than 50% of medical program participants had obtained sales tax certificates from MRS and were collecting and remitting sales tax as required.

OCP consults with the Department of Labor on workplace, employment, or other labor matters involved in the regulation of adult use cannabis and adult use cannabis products and the Department of Public Safety on any issues involving public safety or law enforcement matters involved in the regulation of cannabis.

Other recent collaborations have included the Governor’s Office of Policy Innovation and the Future, the Department of Economic and Community Development, Office of the State Treasurer, the Department of Transportation, and the Maine Emergency Management Agency. Other agencies frequently consult with OCP when expertise on cannabis issues is needed. Furthermore, OCP hosts organized internal, issue-based symposia so that staff can be better informed about issues critical within the cannabis policy space, and the Office has invited staff from other divisions and agencies of government to participate when there is overlap between a given issue and their policy jurisdiction.

Specific conversations about medical registrants are often restricted due to the confidentiality provisions in the *Maine Medical Use of Cannabis Act*. OCP is unable to disclose the names of individuals or other identifying information to other state agencies when attempting to verify registration statuses or address Agency-specific regulatory issues involving medical program participants.

Program Delivery

Rescue Agency Public Benefit, LLC

In 2021, OCP engaged in a competitive bidding process that resulted in an initial two-year contract with Rescue Agency Public Benefit, LLC (Rescue), a behavior-change marketing company. Rescue was tasked with designing and implementing an extensive media campaign to educate and raise public awareness about health and safety concerns regarding cannabis use, particularly among individuals under the age of 21. This initiative led to the creation of two distinct campaigns.

The first campaign, named [Unclouded](#), focused on teenagers aged 13 to 17 who were either at risk of trying cannabis or were early experimenters. The primary objective of the campaign was to delay initiation or prevent their use of cannabis. The messaging strategy centered on promoting accessible content to help teens understand the risks associated with underage cannabis use. The second campaign, known as [Let’s Talk Cannabis](#), targeted young adults aged 18 to 25 who use cannabis as a coping mechanism. The campaign aimed to prevent the escalation of their cannabis use with a messaging strategy that offered the necessary information for these young adults to reflect on their cannabis usage.

Both campaigns featured active and static creative content distributed across various social media platforms, including TikTok, Meta, and Snapchat, along with gaming apps, streaming audio platforms like Pandora and Spotify, YouTube, streaming TV services and even movie theaters. These ads generated

millions of impressions and engagements across the target audiences while also driving traffic to the respective campaign websites.

Although the evaluation of the two campaigns by Rescue is still ongoing, both campaigns did surpass all the quantitative goals designed to measure message awareness. Specifically, the teen campaigns, *Frozen* and *Your Amazing Brain*, generated over 35 million impressions, 6.8 million video completions, and over 93,000 clicks. The young adult campaign, *Stress Loop*, generated an additional 17 million impressions, 4.4 million exploratory engagements, and 45,000 clicks. *Stress Loop* also won the [2023 Silver Muse Award](#) in the category of Public Service & Activism.

Maine Sheriffs' Association

Since 2021, OCP and the Maine Sheriffs' Association (MSA) have had a contract to augment OCP's compliance and enforcement efforts related to Maine's Medical Use of Cannabis Program with the MSA conducting compliance checks at the request of OCP.

The MSA has a long history of assisting OCP, and its predecessor DHHS, in the investigation of complaints of non-compliance in the medical cannabis program. When OCP was initially formed and still hiring and training compliance staff, MSA filled a critical void in resource availability. As the compliance function within OCP has matured, the need to outsource the work has reduced significantly.

Under a current contract, MSA uses off duty law enforcement and former law enforcement officers to perform compliance tests of medical cannabis retail establishments to ensure sales are made only to qualified patients. The program tests compliance by having an individual who is not a patient enter a medical cannabis storefront and attempt to purchase medical cannabis. If asked, the individual acknowledges to the worker that they are not a patient and they do not have a medical certification card. They do not claim to have any physical ailment and offer that they thought cannabis was legal now. The interaction is video and audio recorded. The program was modeled after similar work MSA performs related to compliance testing of liquor sales to minors. The program was launched to address numerous, ongoing concerns and complaints received from caregivers, dispensaries, and concerned citizens regarding medical cannabis stores selling cannabis and cannabis products to non-patients. The medical cannabis program exists to provide for the needs of qualified medical patients and sales to non-patients are specifically prohibited.

Dirigo Safety, LLC

In 2023, OCP and Dirigo Safety, LLC (Dirigo) contracted for the development and execution of training programs focused on increasing awareness and education on cannabis laws and rules to State of Maine law enforcement officers to ensure law enforcement officers have the knowledge of the legal use of cannabis both in the medical use and adult use programs to prevent misunderstandings when officers face cannabis in the field. The trainings educate law enforcement officers of the statutes and basic rules and regulations of cannabis in Maine. It allows law enforcement officers to be better trained in the investigating and handling of cannabis complaints in their communities.

Dirigo worked closely with OCP Compliance leaders to research and develop a lesson plan. OCP Compliance staff assist Dirigo instructors with teaching classes, serving as subject matter experts and building cooperative partnerships with law enforcement.

Advocates for Human Potential, Inc.

In 2021, OCP partnered with Advocates for Human Potential, Inc. (AHP). Since then, AHP has administered two scientifically rigorous population-representative surveys of cannabis use among Maine residents to provide the first empirically determined demand assessments across sources including adult use stores, medical stores, caregivers without a store, home grow, illicit, and gifting. AHP leveraged this

data to provide OCP with individualized insights into 1) the prevalence of illicit cannabis use relative to other states; 2) the role of adult use stores (by zip code) in increasing access to adult use cannabis relative to illicit cannabis; and 3) used predictive modeling to establish initial evidence that consumers who sourced cannabis from adult use stores showed lower risks of negative public health outcomes (driving under the influence of cannabis and cannabis use disorder) relative to those who sourced from illicit sources. [The report](#) developed from this survey can be found on OCP's website.²³

The data collection and analysis conducted by AHP has provided significant value to OCP as the State continues to understand the dynamics of cannabis in Maine and the real-life impact on Mainers from Kittery to Fort Kent. Continuity in the data collected and analyzed are imperative to the success of the project. Furthermore, AHP's insights into the national landscape, informed by their consultation with a number of state regulatory programs, has repeatedly allowed OCP to not only proactively address emerging market challenges, but also seek data to support future decision making.

AHP has also assisted OCP in its annual strategic planning process and provided support in developing public education materials, planning stakeholder engagement events, and delivering on a variety of other ad hoc requests made by OCP.

Metrc, LLC

After engaging in the Request for Proposals process, a contract was signed between the Office of Cannabis Policy and Metrc, LLC.²⁴ The original contract, which has since been amended to accommodate subsequent legislative mandates, was for a Commercial Off the Shelf (COTS) system hosted Software as a Service (SaaS) application that supports the identification, tracking, and tracing of medical and adult use cannabis in all its forms for the purposes of inventory, enforcement, investigation, and diversion prevention. This off-the-shelf inventory tracking technology is a critical tool for cannabis regulators across the country and was established in the *Cannabis Legalization Act* as one of the cornerstones of Maine's adult use cannabis regulatory structure.

The 130th Maine Legislature, Second Regular Session passed *An Act to Allow the State's Adult Use Marijuana Tracking System to Track Plants and Products by Group*, P.L. 2021, ch. 628 (LD 1817). This is also known as "batch tracking." Batch tracking allows adult use cultivation facilities to track, as one group, cannabis plants that are at the same stage of growth and the same varietal and/or transplanted in the same specific area (grow room) at the same time. The shift toward batch tracking was a significant change not covered under the State's contract with Metrc, and therefore a contract amendment was required to implement the change from individual plant to batch tracking. OCP initiated amendment negotiations with Metrc immediately following the passage of P.L. 2021, ch. 628 (LD 1817). On March 31, 2023, OCP finalized an agreement with Metrc regarding the implementation of batch tracking.

Notably, the Flexible Standardized Batch Tracking (FSBT) system did not increase licensees' monthly user fees or product tag costs, nor did it create inherent advantages for larger operators over smaller operators. These were critical goals of OCP throughout the duration of the contract amendment negotiations. Much of the public debate around batch tracking centered on industry's interest in saving the

²³ Maine OCP Cannabis Markets & Associated Outcomes - Survey Findings and Implications. (2022, Spring).

<https://www.maine.gov/dafs/ocp/sites/maine.gov.dafs.ocp/files/inline-files/Maine%20OCP%20AHP%20Report%2006-22.pdf>

²⁴ A contract for seed-to-sale tracking software as a service was initially awarded to BioTrackTHC in May 2019 in response to RFP #201903049. That contract was subsequently terminated by mutual agreement of the parties in December 2019, and the contract was awarded to the runner-up in the procurement process, Metrc, LLC. See OCP Press Release, May 2, 2019, "BioTrackTHC Selected as State of Maine's Partner to Provide Marijuana Track and Trace Services", available at: <https://www.maine.gov/dafs/ocp/news-events/news/biotrackthc-selected-state-maines-partner-provide-marijuana-track-and-trace>. See also OCP Press Release, December 27, 2019, "OCP Finalizing New Track and Trace Contract with Metrc for Maine's Medical and Adult Use Marijuana Programs", available at: <https://www.maine.gov/dafs/ocp/news-events/news/ocp-finalizing-new-track-and-trace-contract-metrc-maines-medical-and-adult-use>. Accessed September 14, 2023.

labor costs incurred with individual plant tagging, and the ultimate solution provides for that. The amended contract also provides for enhanced availability and responsiveness of Metrc’s customer service team to operators. In addition, Metrc provided licensees with virtual and in-person trainings on the new FSBT system, and licensees were able to order batch tags starting two weeks in advance of the system going live on September 5, 2023. As of the date of this report, there has been a slow uptake of FSBT with only 10% of adult use cultivators currently using batch tags.

This five-year contract is set to expire on February 4, 2026.²⁵

Fiscal Accountability

The Office of Cannabis Policy (OCP) works diligently to maintain fiscal accountability; consistently considering how best to spend Maine taxpayer dollars to ensure the health and safety of all Mainers while effectively and responsibly regulating the State’s cannabis economy. These efforts are complicated amidst the ongoing period of growth for Maine’s cannabis economy, necessitating increased staffing to respond not only to the challenges attending this economic growth, but also the steady stream of legislative changes resulting in frequent updates to internal and public rules and policies.

Because this is the first GEA review of Maine’s cannabis regulatory programs, OCP is providing comprehensive financial summary information for the programs under the Office’s jurisdiction even prior to its creation. The key dates and corresponding administering agencies are as follows:

- **2010 – 2019:** Medical cannabis program administered by DHHS through Maine CDC
- **2019 – 2021:** Medical and adult use cannabis programs administered by DAFS through the Office of Marijuana Policy (OMP)
- **2021 – 2023:** OMP renamed to the “Office of Cannabis Policy (OCP)”, continues administering the medical and adult use cannabis programs

A detailed financial summary is provided on the next page.

²⁵ In 2024, the Office will begin developing a Request for Proposals (RFP), including a clear definition/scope of the project, the evaluation criteria and relative scoring weights. The RFP will be submitted to the State Procurement Review Committee for review prior to release. The Committee will review the appropriateness of scope and evaluation criteria. Upon approval by the Committee, the RFP will be advertised for a minimum of three consecutive days in the Kennebec Journal, allowing a minimum of fifteen calendar days from the final day of advertising to the proposal opening date. The Division of Procurement Services will accept proposals. After proposal due date, the Office will review all proposals based on the criteria established within the original RFP. The Office will document the scoring, substantive information that supports the scoring, and make the award decision, which is subject to approval of the Contract Review Committee. The Division of Procurement Services ensures that all purchases are made in an atmosphere of open competition.

Upon award, the successful bidder may require time to develop a seed-to-sale tracking system that satisfies Maine’s statutory requirements, including batch tracking. Because FSBT is not the norm among the cannabis industry and therefore the vendors that support the industry, to avoid a lapse in seed-to-sale tracking, it is possible that the Office will award a contract to the successful RFP bidder and begin working with that entity to develop a seed-to-sale tracking system while concluding its current contract (with possible extension) with Metrc.

**Office of Cannabis Policy
Financial Summary 2013-2023**

	2013	2014	2015	2016	2017	2018
Z118 Medical Use of Marijuana Fund - DHHS						
General Fund	0	0	0	0	0	0
Other Special Revenue	278,321.00	672,859.00	727,675.00	1,013,971.00	1,025,801.00	1,126,267.00
Total Appropriations/Allocations	278,321.00	672,859.00	727,675.00	1,013,971.00	1,025,801.00	1,126,267.00
Positions	Unable to view within BFMS per DHHS Budgets					5.000
Personal Services	119,245	144,238	162,467	132,915	302,264	543,159
All Other	65,714	84,407	198,840	309,885	275,231	378,874
Capital	-	-	-	-	-	-
Total Expenditures	184,960	228,645	361,306	442,800	577,495	922,034
Z263 - Adult Use Cannabis Public Health & Safety & Municipal Opt-In Fund						
General Fund	0	0	0	0	0	0
Other Special Revenue	358,416.00	358,416.00	358,416.00	410,439.00	3,712,000.00	
Total Appropriations/Allocations	358,416.00	358,416.00	358,416.00	410,439.00	3,712,000.00	
Positions	0.000	0.000	0.000	0.000	0.000	
Personal Services	-	-	-	-	-	
All Other	-	-	703	62,113	979,791	
Capital	-	-	-	-	-	
Total Expenditures	-	-	703	62,113	979,791	
Z264 - Adult Use Marijuana/Cannabis Regulatory Coordination Fund						
General Fund	1,437,147.00	1,763,276.00	2,189,043.00	2,440,820.00	2,747,636.00	
Other Special Revenue	828,017.00	838,448.00	853,802.00	904,980.00	1,088,230.00	
Total Appropriations/Allocations	2,265,164.00	2,601,724.00	3,042,845.00	3,345,800.00	3,835,866.00	
Positions	35.000	35.000	35.000	27.000	29.000	
Personal Services	194,463	1,402,891	2,075,544	2,401,566	2,457,091	
All Other	190,898	685,260	318,589	559,072	531,909	
Capital	-	-	-	-	-	
Total Expenditures	385,361	2,088,151	2,394,133	2,960,638	2,989,000	
Z265 - Medical Use of Marijuana/Cannabis Fund						
General Fund	0	0	0	0	0	0
Other Special Revenue	1,759,734.00	1,961,544.00	1,685,460.00	3,001,700.00	3,053,861.00	
Total Appropriations/Allocations	1,759,734.00	1,961,544.00	1,685,460.00	3,001,700.00	3,053,861.00	
Positions	8.000	8.000	8.000	20.000	20.000	
Personal Services	379,448	512,206	575,685	834,058	1,228,577	
All Other	800,268	947,799	806,812	928,964	903,950	
Capital	-	-	-	-	-	
Total Expenditures	1,179,716	1,460,006	1,382,497	1,763,023	2,132,527	

OCP's budget for FY 2024 and 2025 is as follows:

General Fund – 010-Z264

BFY	Object Class	Fund	Approp	Total
2024	1-Personnel	010	Z26401	2,680,952.00
2024	2-All Other	010	Z26401	20,331.00
BFY	Object Class	Fund	Approp	Total
2025	1-Personnel	010	Z26401	2,790,127.00
2025	2-All Other	010	Z26401	20,331.00

Public Health & Safety Fund – Z26301

BFY	Object Class	Fund	Approp	Total
2024	2-All Other	014	Z26301	3,905,994.00
BFY	Object Class	Fund	Approp	Total
2025	2-All Other	014	Z26301	4,133,857.00

Adult Use Program – Z26401

BFY	Object Class	Fund	Approp	Total
2024	1-Personnel	014	Z26401	325,179.00
2024	2-All Other	014	Z26401	631,000.00
BFY	Object Class	Fund	Approp	Total
2025	1-Personnel	014	Z26401	341,888.00
2025	2-All Other	014	Z26401	632,000.00

Medical Program – Z26501

BFY	Object Class	Fund	Approp	Total
2024	1-Personnel	014	Z26501	1,699,469.00
2024	2-All Other	014	Z26501	1,343,383.00
BFY	Object Class	Fund	Approp	Total
2025	1-Personnel	014	Z26501	1,753,051.00
2025	2-All Other	014	Z26501	1,344,383.00

Federal Laws & Regulations Comparison

Cannabis policy operates in a unique environment with regard to its relationship to federal laws and regulations. Cannabis remains a Schedule I substance under the *Comprehensive Drug Abuse Prevention and Control Act of 1970* (Pub. L. 91-513; amending 21 USC ch. 13) of which Title II is known as the “Controlled Substances Act.” According to the *Controlled Substances Act*, the production, manufacture, processing, and sale of cannabis is illegal in all circumstances in the United States with the exception of narrow, federal government-approved research.

This law, its amendments, and associated regulations—as well as its extension to the federal criminal code—renders the medical and adult use programs in Maine and all other states to be explicit violations of federal law. As medical and adult use cannabis programs in the states increased in number and scope, the United States government recognized an enforcement dilemma, even in the absence of federal legalization. It became impossible for the federal government to block all the states from implementing their cannabis reform laws, and thus, beginning in 2009 and extending through much of the next decade, the United States Department of Justice began issuing formal memoranda that provided guidelines by which states could and could not implement medical and adult use cannabis laws. (See the following footnote for a list of each memorandum.²⁶)

²⁶ United States Office of the Attorney General Memoranda:

- [David W. Ogden, Deputy Attorney General, Memorandum for Selected United States Attorneys: Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana](#) (Oct. 19, 2009)
- [James M. Cole, Deputy Attorney General, Memorandum for United States Attorneys: Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use](#) (June 29, 2011)

With one exception, these memoranda instructed United States Attorneys (federal prosecutors) to de-prioritize the prosecution of state-level cannabis crimes in states that reformed their cannabis laws, set up and administered a regulatory system, and involved participants who abided by state laws and rules. In some of the later memoranda there were specific guardrails put in place that states needed to follow in order for federal non-enforcement to be ensured. These guardrails included, but were not limited to, a limit on interstate commerce, cannabis operations involving the trafficking of firearms, and sales to minors.

The latter memorandum (“Sessions Memo”) issued in January 2018 by then-Attorney General of the United States Jeff Sessions, effectively sought to revoke the non-enforcement policy that stood through much of the Obama Administration and most of the first year of the Trump Administration. That memorandum, however, had no practical effect. United States Attorneys across the country exercised the same enforcement discretion (a policy of non-enforcement of the *Controlled Substances Act* under those specific circumstances in cannabis-reform states) after the Sessions Memo as they did prior to the issuance of the Sessions Memo. This continued enforcement discretion policy, which continued through the conclusion of the Trump Administration and has been maintained throughout the Biden Administration (despite no new memorandum on the matter being issued), has ensured that states like Maine have been able to maintain the operations of their medical and adult use cannabis programs without fear of federal reprisals against state officials or compliant licensees within those states.

In addition, beginning in December 2014 the United States Congress attached a provision to appropriations legislation that barred the U.S. Department of Justice from using funds to enforce the *Controlled Substances Act* in states that reformed their cannabis laws for medical purposes. At that time, the appropriations rider was known as the Rohrabacher-Farr Amendment after its sponsors Rep. Dana Rohrabacher (R-Calif.) and Rep. Sam Farr (D-Calif.). That provision has been included and updated to reflect new medical cannabis states in every appropriations package passed by the U.S. Congress since 2014. While efforts within Congress to expand that legislation to include formally adult use states and their programs have failed, the effect within the Department of Justice across the Obama, Trump, and Biden Administrations has been to extend those protections to adult use states and programs.

Emerging Issues

Cannabis is one of the most rapidly changing areas of public policy in the United States. Because of its unique position as a federally illicit substance even as states have sought to reform their laws, cannabis policy is also quite complex. As a result, numerous issues emerge that affect state level policies related to the plant and the products produced from it. In many ways, the policy landscape is constantly shifting, and new issues emerge within states, across states, and at the federal level. This section of the report will discuss four categories of emerging issues: those related to federal policy, those related to internal program administration, new ideas, and those related to the legislative environment.

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- [James M. Cole, Deputy Attorney General, Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement](#) (Aug. 29, 2013)
 - [James M. Cole, Deputy Attorney General, Memorandum for All United States Attorneys: Guidance Regarding Marijuana Related Financial Crimes](#) (Feb. 14, 2014)
 - [Monty Wilkinson, Director of the Executive Office for U.S. Attorneys, Policy Statement Regarding Marijuana Issues in Indian Country](#) (Oct. 28, 2014)
 - [Jefferson Sessions, Attorney General, Memorandum for All United States Attorneys: Marijuana Enforcement](#) (Jan. 4, 2018)

Issues Related to Federal Policy

Despite dramatic changes in federal elected officials' views related to cannabis policy (particularly over the past decade), Congress and the Executive Branch have failed to advance dramatic, formal cannabis reform. Other than legislation related to the conduct of research and the aforementioned budget rider restricting the Department of Justice's enforcement of the *Controlled Substances Act* against state-legal medical cannabis programs, the status quo of cannabis prohibition has held strong.

Congressional Reform Proposals

While federal cannabis policy reform has not advanced, there have been notable legislative efforts. The U.S. House of Representatives twice passed the *Secure and Fair Enforcement Act*, commonly called the *SAFE Banking Act*, in March 2019 and March 2021. This bill, which has also been repropounded in the 118th Congress, seeks to improve cannabis businesses' access to financial services and to treat cannabis businesses like other businesses in the context of banking. When SAFE Banking passed the U.S. House in 2019 and 2021 it did so with broad bipartisan support. Each time, however, the legislation died in the U.S. Senate.

Additionally, the U.S. House of Representatives twice passed the *Marijuana Opportunity Reinvestment and Expungement Act*, commonly called the *MORE Act*, in July 2019 and May 2021. The *MORE Act* was comprehensive legislation that would legalize cannabis federally, set up a federal regulatory structure for cannabis, create a federal tax, reinvest revenue into communities harmed by the War on Drugs, and provide pathways for the expungement of past cannabis offenses federally (and financially support state efforts to do the same). This legislation served as the first time a chamber of the United States Congress voted to legalize cannabis. Each time it passed, the legislation—like the *SAFE Banking Act*—died in the U.S. Senate.

Cannabis Rescheduling

In October 2022, President Biden initiated a petition with the Attorney General and the Secretary of Health and Human Services to reschedule cannabis, within the administrative authority granted to the Executive Branch under the *Controlled Substances Act*. Four previous rescheduling petitions between the 1970s and 2010s failed to shift cannabis from a Schedule I substance. However, this petition serves as the first in which a president both initiated the effort and made clear to his political appointees charged with conducting the statutorily required analyses that his preference was for rescheduling to happen.

In August 2023, the Department of Health and Human Services (HHS) notified the US DEA that they are recommending that cannabis be moved from Schedule I to Schedule III. As of the writing of this report, US DEA and the US Attorney General have not moved forward on the scheduling petition. The Office of Cannabis Policy believes that petition will be acted on prior to the 2024 presidential election. The Office has no reason to believe that US DEA will disagree with the recommendation from HHS, given that coordination between the agencies has been widely reported. The decision, ultimately made by the Attorney General, could have significant impacts on state-level cannabis programs, but that impact is not certain. Thus, it is important to evaluate those potential changes in the correct context.

Under the *Controlled Substances Act*, there are five schedules in which controlled substances are listed. If cannabis is moved from Schedule I to one of the other schedules—II, III, IV, or V—it will have no impact on the regulations surrounding Maine's adult use or medical cannabis programs. The movement among the schedules impacts the conduct of research and the ability of private businesses and other research facilities to have products approved as pharmaceuticals under the Food and Drug Administration procedures. If cannabis is shifted to Schedule III, as HHS has recommended, cannabis businesses will see federal tax relief via access to federal

business tax deductions and credits. However, if cannabis is removed from the schedules entirely—a process known as “descheduling”—cannabis would effectively be legalized federally and the manner in which the product is regulated by the U.S. government would be dependent on the regulations the U.S. Department of Justice promulgates as part of the descheduling decision. Despite the legal capacity for cannabis descheduling to happen, it is unlikely in general and especially in light of HHS’s recommendation to US DEA.

Banking Policy

Another area of policy that rests largely in the hands of federal policymakers involves banking and access to capital. As noted above, Congress failed to pass the *SAFE Banking Act* on multiple occasions, and that failure to act creates significant challenges for the cannabis industry. In some states, there are no financial institutions that are willing to work with regulated cannabis businesses. In others, like Maine, where access to financial institutions exists, that access comes with significant fees simply to have access to standard business checking accounts. Those additional fees drive up the costs to cannabis businesses.

It is important to note that those additional fees arise because federal bank and credit union examiners and auditors at the state and federal levels require banks that work with the cannabis industry to put in stricter, more rigorous, more onerous, and more costly procedures in order for those bank examiners to be satisfied. Many banks and credit unions opt not to work with the cannabis industry entirely because of concerns about federal illegality, the added regulatory demands of banking a federally illegal substance, and the perceived risks associated with banking the industry. In conversations with executives at financial institutions, OCP learned that a lack of a track and trace system in the medical program leaves banks and credit unions without sufficient information about medical cannabis businesses’ practices, increasing the risks to the financial institutions. This result leaves the medical cannabis industry with more obstacles to banking. Inventory tracking is a key aspect of a business practice that allows banks to be confident that a business is not engaging in activities that violate the law and expose financial institutions to legal and/or regulatory consequences. It also reflects why financial institutions and their trade associations have previously opposed legislative proposals that would remove inventory tracking from the Adult Use Cannabis Program in Maine.

In addition, in a state like Maine, there are also regional differences in access to financial services. In OCP’s community-based stakeholder engagement, OCP heard from numerous cannabis licensees in places like Washington County who said that the Maine-based financial institutions who are willing to work with the cannabis industry do not service that area, leaving those businesses unable to establish banking relationships at all, leaving them as cash-only operators. OCP has heard some reports that because of challenges in accessing banking within the state of Maine, some licensees are seeking accounts at out-of-state institutions. In these situations, the proceeds from Maine’s regulated cannabis programs are transferred out of state. It is unclear, at this point, whether and to what extent those practices are happening, but it does concern OCP that such efforts could run afoul of the non-enforcement stance of federal government agencies.

That lack of access to banking has real impacts on the cannabis industry. Limited access to banking comes with high fees that drive up costs, adding to the challenge of the legal, regulated medical and adult use industries competing with the illicit market. Those with no access to banking face security risks, and that lack of electronic accounting makes regulation and tax collection more difficult.

Cannabis businesses also have limited access to the traditional avenues of capital that other businesses have. Small Business Administration loans, traditional business loans from banks,

lines of credit, etc. are largely or entirely unavailable to the cannabis industry. This creates profound biases in the likelihood of business owners or potential business owners to succeed in this industry. Larger companies, individuals who are already wealthy, and entrepreneurs who have extensive social and business networks that afford them access to private capital all have a leg up on everyone else. This creates deep lasting, and systematic biases in success that frequently disadvantages new entrepreneurs, young entrepreneurs, entrepreneurs of color, and women entrepreneurs. These are traditionally disadvantaged groups, particularly in American commerce, who face additional barriers to entry and success in the cannabis industry, in part, because of that lack of access to banking and capital.

Some states have sought to use state resources to set up institutions that cannabis businesses can access. Many of those programs have been riddled with challenges. Maine has also seen legislative proposals seeking to provide similar relief. Ultimately, however, banking policy is largely federal in nature, and thus reform must come from federal policymakers. The February 2014 guidance issued by the U.S. Department of Treasury's Financial Crimes Enforcement Network sought to provide a roadmap to establish broad buy in from the financial services sector in their willingness to work with the cannabis industry.²⁷ However, the vast majority of banks, including the nation's largest financial institutions, found the FinCEN guidance to be lacking in their own risk analyses of working with the cannabis industry. Recognizing that banking issues can only be fully resolved through federal action, OCP has provided information to Congress and through the Cannabis Regulators Association (CANNRA) describing the regulatory perspective on this issue that affects and hurts Maine's regulated cannabis businesses.

It remains the opinion of OCP that federal cannabis reform (in piecemeal fashion) and ultimately full-scale federal legalization will happen in time. Because of the pace of state-level reform, changes in public opinion and in the voting records of elected legislators, federal legalization seems a question of "when" and not "if." However, the Office offers no predictions on the timing of such reform.

Cannabis Regulators Association (CANNRA)

As noted above, cannabis policy operates in a unique space between state legality and federal illegality. In order to engage with regulators in other states where cannabis is legal, OCP is a member of the Cannabis Regulators Association (CANNRA), a nonpartisan association of government officials involved in cannabis regulation. Through CANNRA, OCP is able to ask questions, share best practices, and discuss challenges with other jurisdictions regulating cannabis. CANNRA also serves as a resource for public officials at the state and federal levels looking to understand the myriad of issues surrounding cannabis legalization. The Association provides briefings and taps members to participate in legislative hearings and policy workgroups as needed, bringing the knowledge states have from operating regulated cannabis programs to the federal level.

Issues Related to the Internal Administration of Programs

The internal administration of Maine's medical and adult use cannabis programs has also faced a variety of issues over the past few years. Overcoming these challenges requires a multi-faceted approach to ensuring that the administration of the program allows the industry to survive and thrive and to combat illicit operations by providing patients and consumers a more attractive, regulated alternative.

Inventory Tracking

²⁷ [Department of Treasury Financial Crimes Enforcement Network, Bank Secrecy Act Expectations Regarding Marijuana-Related Businesses](#) (Feb. 14, 2014).

Over the past few years, there have been efforts to undermine the State’s inventory tracking system in the Adult Use Cannabis Program and continued efforts to keep the medical cannabis program from utilizing a seed-to-sale tracking system. Seed-to-sale tracking systems are essential for regulators to ensure that cannabis remains within the regulated system (preventing diversion) and that no unregulated cannabis enters the regulated supply chain (preventing inversion). This system is particularly important, given that legal cannabis is not allowed to cross state lines under the non-enforcement compromises that the Department of Justice continues to adhere to.

Many of Maine’s regulated businesses value the benefits afforded by utilization of the inventory tracking system: being able to remain successful, have access to banking, insurance, and other professional services, and be competitive. On the latter point, inventory tracking helps level the playing field for cannabis businesses. Without an effective and robust inventory tracking system, there is no insight into whether businesses are being compliant, whether product is being diverted within the state or outside of the state, if illicit product is inverting into the regulated market, or if some products are being produced outside of the regulated system. This means that compliant businesses are put at a disadvantage by businesses who use the lack of inventory oversight to cut corners and evade the law.

A growing number of medical program participants and individuals who have recently exited the medical program recognize that part of the weaknesses and volatility in that program stem from the lack of an inventory tracking system. In OCP’s survey of former caregivers (see [Caregiver Exodus Report](#)), one respondent shared, “A regulation requiring tracking that would protect against the illicit cannabis entering the market would have helped retain price points and limiting the amount [of] people undercutting our business as well as selling product that is potentially not safe or clean for medical consumers.” Another respondent said, “The program needs to be overhauled and regulated. Tracking and testing would have eliminated 85% of the cannabis out there at a minimum and my medical business would have continued to thrive selling directly to stores.”

Despite the protestations of a vocal minority of program participants, a large portion of adult use program participants also see value in their business having an inventory tracking system. Unfortunately, these proponents are often unwilling to state their position publicly due to concerns of intimidation and harassment from those with opposing views.

At the same time, frequent changes to policy and technology, particularly the inventory tracking system, make regulators’ jobs significantly more difficult and injects destabilizing uncertainty into the industry. It makes it challenging for industry and OCP to plan for and anticipate future policy environments, often while working simultaneously to implement recent policy changes. This type of environment can put the State’s ability to maintain a closed-loop system, ensure accountability and compliance within the system, and to prevent diversion and inversion at risk. With inventory tracking quite likely to be a requirement upon federal legalization, continued efforts to differentiate and/or dismantle the system could also leave Maine businesses at a disadvantage when the time comes for those businesses to enter the national market.

While OCP has a contract with Metrc for its adult use seed-to-sale tracking software for approximately two more years, the Office has heard concerns from licensees about short-term challenges with the software and difficulties with customer service. As such, *An Act To Allow the State’s Adult Use Cannabis Tracking System To Track Plants and Products by Group*, PL 2021, ch. 628 tasked OCP with gathering and synthesizing direct user feedback about Metrc from members of the adult use cannabis industry. To accomplish this task, OCP convened the [Metrc User Workgroup](#) to solicit feedback across several meetings with the goal of assisting OCP in

determining what changes and updates were needed in Metrc to help streamline the system for Maine users. As a result of the Workgroup and its final report, the Office has been working with Metrc to make improvements to the system and has set up quarterly Metrc User Calls with adult use program participants to continue to collect and address concerns.

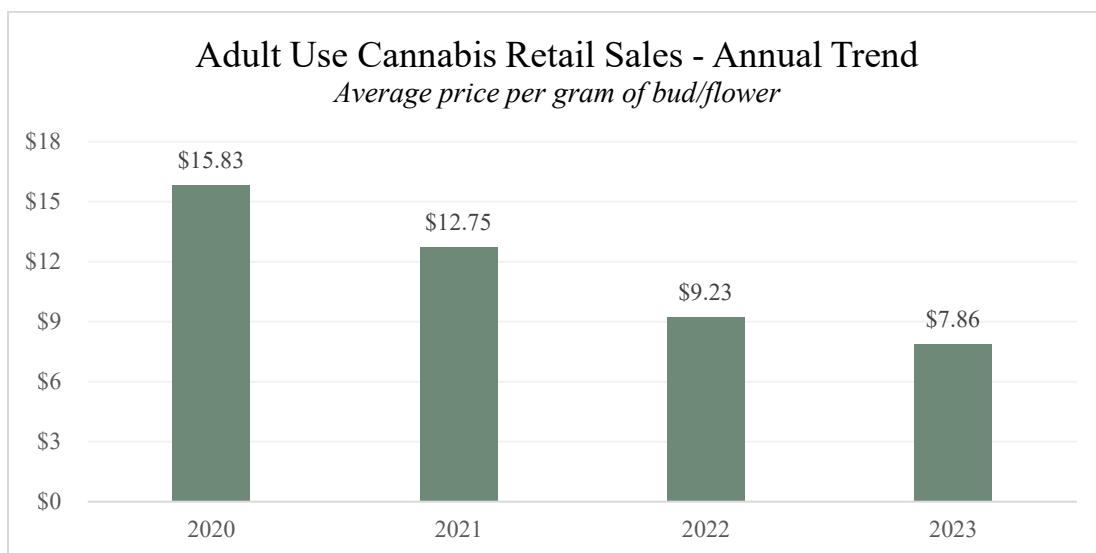
As discussed, like with any State contract, OCP will, toward the conclusion of the current contract, release an RFP to solicit bids for the best inventory tracking system to meet the needs of the State of Maine. Because of the importance of inventory tracking for the success of regulation and the competitiveness of the regulated market, the priority is to ensure the selection of an inventory system that will position Maine to be a leader in the cannabis industry.

Oversupply of Regulated Cannabis

Cannabis has become Maine’s largest agricultural product over the past few years. With that growth and the success within the industry, an additional problem has arisen: overproduction. Overproduction is not a phenomenon unique to Maine’s cannabis programs. Oregon, Colorado, Oklahoma, and other states have encountered this challenge as well, and the effects are quite damaging. The production of cannabis that far exceeds demand first leads to a precipitous price drop. In the early days of price declines, there are benefits. For instance, the legal, regulated market can compete with and outcompete the illicit market and consumers transition to the legal market because prices are similar or cheaper.

As prices continue to drop, it puts a profound strain on businesses. Prices that are too high keep customers away; prices that are too low make it impossible for businesses to pay their bills. The result is an inability for businesses to be successful. Many businesses close; some operators become desperate and begin diverting product to illicit and/or out-of-state markets. The latter behavior is much more easily accessible in a market that lacks an effective inventory tracking system. Inventory piles up. People who invested their livelihoods in businesses lose those assets, especially as federal bankruptcy protections do not apply to a business that is federally illegal.

OCP knows that price drops have already happened in Maine, with the following graph displaying the annual decline in the average price per gram of adult use bud/flower since program launch. While similar data for the price of medical bud/flower is unavailable due to the absence of an inventory tracking system, the Office is aware of price decreases in the medical cannabis market through anecdotes and other data.



In the 131st Legislature, OCP made the Committee on Veterans and Legal Affairs aware of this problem. The Office was supportive of legislative efforts²⁸ which would have instituted temporary inventory controls and limits on the opening of new cannabis cultivation facilities in the state. When introducing LD 1391, the bill sponsor shared, “When the adult use cannabis law went into effect in 2019, there was no set limit on the number of cultivation licenses. In theory the free market was the model. But we have learned over the years that because this product is unable to be sold across state lines this lack of limitation has put a burden on the system, costing our small business thousands of dollars and in some cases might lead to them closing their businesses. In addition, the overabundance of product could potentially lead to diversion.”²⁹

It was the prerogative of the Committee to vote down the two bills proposing inventory control measures, however, the problems OCP identified in these committee hearings have not gone away. A [2022 report](#) that OCP commissioned found that the ratio of supply to demand in the adult use market was 2:1 and the ratio in the medical program was 6:1. Oversupply is a serious threat to many of Maine’s legal, regulated operators. Price crashes and market declines happen quickly, and OCP has data, such as failures to renew business licenses in the medical and adult use programs; failure to renew caregiver registrations³⁰; and reports from operators that they are operating at decreasing margins, suggesting that those economic forces have begun acting on Maine’s regulated cannabis programs.

Residency Requirements

This report noted in the previous section that federal policy has broad, diffuse impacts on Maine cannabis policy. However, federal officials have also had specific impacts on the administration of programs within the state, as well. Federal executive and judicial branch decisions have impacted the structure and function of the medical and adult use programs.

An August 2022 decision by the First Circuit Court of Appeals, struck down Maine’s requirement that participants in the State’s medical cannabis program be Maine residents.³¹ Recognizing this precedent, the Office of Cannabis Policy stopped enforcing residency requirements for both the medical and adult use cannabis programs in the state. Although those operating within Maine’s cannabis programs while residing outside the state have the potential to create compliance challenges, it is essential for OCP to comply with the ruling of the federal appeals court at this time. It is important to note that the broader issue of the relationship between state residency requirements in cannabis programs and the U.S. Constitution’s dormant Commerce Clause is not quite settled law.

In 2022, there was a challenge to residency requirements in Missouri’s medical cannabis program. In that case, similar to the Maine case, a federal district judge in the Western District of Missouri ruled that residency requirements were improper.³² The Eighth Circuit Court of Appeals has yet to hear an appeal of that case. In 2023, a federal judge in the Western District of Washington ruled that the residency requirements in that state’s cannabis program did not violate the U.S. Constitution, upholding that state’s rule.³³ The Ninth Circuit Court of Appeals has yet to

²⁸ LD 1391, [An Act to Limit Cannabis Cultivation Licenses to Protect the Cannabis Market](#) and LD 1585, [An Act to Amend Maine's Cannabis Laws to Protect Small and Medium-sized Cultivators](#).

²⁹ Testimony of Senator Teresa Pierce, Public Hearing on LD 1391, April 10, 2023, available at: <http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=170716>.

³⁰ [Caregiver Exodus: Market Conditions and the Impact on Maine’s Medical Use of Cannabis Program, Spring 2023](#)

³¹ [Northeast Patients Group, et al v. United Cannabis Patients and Caregivers of Maine](#), No. 21-1719 (1st Cir. 2022)

³² [Toigo v. Dep’t of Health and Senior Servs.](#), 549 F.Supp. 3d 985

³³ [Brinkmeyer v. Wash. State Liquor and Cannabis Bd.](#), 3:20-cv-05661, (W.D. Wash.)

hear an appeal in that case. In 2023, a similar federal lawsuit in New York was settled with New York choosing not to enforce residency requirements in that state. Ultimately, federal courts are divided on the constitutionality of cannabis program residency requirements, and an appeal to the United States Supreme Court is unlikely to be granted on this issue at this time.³⁴ In the interim, OCP will continue to comply with the ruling of the First Circuit Court of Appeals.

Background Checks

Maine, along with several other states that have reformed their cannabis laws and implemented regulatory and licensing programs, relies on the Federal Bureau of Investigation (FBI) to conduct background checks on Adult Use Cannabis Program (AUCP) participants. Medical cannabis program participants are subject only to a search of Maine conviction data maintained by the State Bureau of Identification. This search is not supported by fingerprint comparison. The inability to require a fingerprint-based federal background check, coupled with the removal of the residency requirement for Maine medical cannabis program participants in late 2022, makes the medical program vulnerable to individuals operating in the regulated space who might not be universally qualified. It may even encourage these types of individuals to actively try and establish operations in Maine. Without residency requirements, operators could have disqualifying criminal convictions in non-Maine jurisdictions that a Maine-only background check would not identify. At the same time, even Maine residents can have disqualifying criminal convictions from out-of-state that cannot be identified through in-state background checks.

In order for OCP to continue to ensure compliance with State statutes and rules and to issue licenses to businesses, it is essential for the FBI to provide those background checks to OCP. The FBI has allowed Maine and other states to use this service, even while the Bureau has notified state regulatory agencies that they require more scrutiny in the way individual business owners are classified. To ensure OCP's ability to continue licensing operators, the Office is in the process of proposing a legislative change to that effect. OCP anticipates this statutory change will be sufficient to meet the Bureau's needs; however, given that cannabis policy and law is ever-changing, the Office and the State need to be prepared for future changes that the Bureau may require.

Hemp-derived Synthetic Cannabinoids

Another challenge facing Maine's regulated cannabis industries and regulated cannabis markets across the country is the regulation of hemp-derived cannabinoids following harvest of the hemp plant. While the 2018 Farm Bill paved the way for the legal cultivation of hemp, defined as "the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a total delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis"³⁵, it did not, and the FDA has not subsequently, addressed the issue, or legal status, of hemp-derived cannabinoids or synthetic or artificial cannabinoids made from hemp.

For cannabis businesses and regulators in Maine and across the country, the dearth of federal regulation, guidance, or clarity regarding the legal status of these hemp-derived cannabinoids is not only a threat to the economic prospects of the businesses operating in state-regulated cannabis markets, but also to public health. That is because manufacturers of hemp-derived synthetic cannabinoids are manufacturing intoxicating cannabinoids like delta-8 and delta-9 THC without

³⁴ The U.S. Supreme Court has shown a lack of interest in granting certiorari to cases involving state-level cannabis programs. The last major case that the Supreme Court heard was nearly 20 years ago in *Gonzales v. Raich* (2005) which upheld Congress's authority to criminalize cannabis homegrows, even if the products of those homegrows remained as intrastate commerce.

³⁵ 7 C.F.R. 900.1.

oversight from any state or federal regulatory agency and without regard to any of the public health and safety measures required in regulated cannabis markets. Hemp-derived synthetic cannabinoids, and the manufacturers who produce them, are not subject to the tracking, testing, and child-resistant packaging requirements of regulated, adult use cannabis in Maine and other states with regulated cannabis markets, nor are those selling these intoxicating products subject to the same marketing and advertising restrictions that prohibit the marketing of these products to children. The result of the lack of regulation is that hemp-derived cannabis products and synthetic cannabinoid products are available at a wide array of locations like grocery stores, gas stations, and mini-marts, and minors have significant access to unregulated, potentially contaminated, intoxicating products derived from cannabis plants.

The general lack of federal intervention regarding synthetic cannabinoids, paired with the federal Food and Drug Administration (FDA)'s reactive approach to prohibiting packaging that appeals to children or violates candy companies' trademarks, and the continued lack of clarity regarding the legal status of these synthetic cannabinoids puts children and consumers at risk for serious adverse health events and legally compliant cannabis businesses at a distinct economic disadvantage.³⁶³⁷ These issues are further complicated by provisions in Maine law designating synthetic cannabinoids as Schedule Z drugs under the *Maine Criminal Code*.³⁸ To overcome these challenges, the Office has begun to work with its partners at the Department of Health and Human Services and the Department of Agriculture, Conservation and Forestry to develop a unified approach to State oversight of the manufacture and sale of synthetic cannabinoids in Maine.

Federal Legalization

As noted earlier in this report, OCP sees federal legalization as an eventuality. OCP continues to study legislative proposals and policy conversations in the Federal Executive Branch and in Congress to gain an understanding of what federal cannabis policy may look like.

Federal legalization will likely usher in new regulatory requirements for states in order to be compliant. The implementation of the Affordable Care Act (ACA) and the Health Insurance Portability and Accountability Act (HIPAA) are among models OCP is looking at for potential roadmaps. Both ACA and HIPAA were large-scale federal statutory and regulatory reforms that required both private operators and state governments to make significant changes to the way in which they operate, the rules they employ, and the way they interface with each other. Federal cannabis legalization will also usher in a massive policy change that will have significant shocks to markets, regulations, enforcement, compliance, licensing, taxes, and reporting requirements.

OCP's intention is not to make formal changes to policy in advance of federal legalization happening, as incorrect predictions about changes would result in excessive burdens for both industry and the Agency. Instead, OCP is preparing a gameplan that provides policy proposals based on potential elements of federal reform. At the same time, the Office sees its role to be, in part, educational. To that end, the Office will work closely with industry, partners in state government, local and tribal governments, nonprofits, and other interested stakeholders to help

³⁶ FDA News Release: *FDA Issues Warning Letters to Companies Illegally Selling CBD and Delta-8 THC Products* Violations Include Marketing Unapproved New Drugs, Misbranding, Adding Delta-8 THC to Food Products, available at: <https://www.fda.gov/news-events/press-announcements/fda-issues-warning-letters-companies-illegally-selling-cbd-and-delta-8-thc-products>. Accessed September 13, 2023.

³⁷ FDA Consumer Update: 5 Things to Know about Delta-8 Tetrahydrocannabinol – Delta-8 THC, available at: <https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc>. Accessed September 13, 2023. "Delta-8 THC products have not been evaluated or approved by the FDA for safe use and may be marketed in ways that put the public health at risk."

³⁸ 17-A MRS § 1102(4)(G). *See also*, Title 17-A Me. Rev. Stat., ch. 45.

them understand how federal policy changes may affect their interests and operations. For example, because of the high costs of energy, the weather and climate that shorten growing seasons, and other factors specific to Maine, federal legalization could usher in market conditions in which it is much cheaper for Maine to import cannabis from other states than it is to produce it in state. If that scenario were to play out it could have disruptive effects for the State's cannabis cultivators, including vertically integrated businesses, and as a result is an issue that must be studied and understood.

The Office's commitment to planning for federal legalization reflects OCP's commitment to seeing its work with industry and other stakeholders as a partnership and the environment in which we operate to be a shared one.

New Ideas in Cannabis Policy

Because of the rapidly changing nature of cannabis policy and law in the United States, new policy ideas emerge all the time. Few of them are unique to Maine as many states face similar issues and stakeholders across states often advocate for similar reforms. OCP's membership in CANNRA (as mentioned in the previous section) helps OCP understand the nature of some of the new and emerging policy issues as they arise across the country. There are too many emerging issues to list and detail in this report. Instead, this section will highlight some of the major issues that have emerged in the past few legislative sessions and ones that OCP anticipates will continue to be a major focus of the Legislature, industry, and other stakeholders.

Cannabis Tourism

Some states such as Colorado, Nevada, and California have taken significant steps in connecting tourism with the cannabis industry and developing innovative ways in which visitors to those states can take advantage of the cannabis market. Efforts to engage issues related to cannabis tourism can have some policy needs, but ultimately the bulk of those efforts must involve private market actors making private market decisions.

Onsite Consumption

The Maine Legislature has already seen bills focused on allowing onsite consumption or cannabis consumption lounges—the equivalent of a bar in which cannabis products are consumed. In the First Session of the 131st Legislature those bills were carried over, in large part because the proposals failed to address the myriad public health and public safety challenges that need to be accounted for in such a reform. Several states have sought to pass similar legislation with limited success and/or with limited business interest upon passage.

Cannabis Tax Policy

Cannabis tax policy is one area that requires ongoing legislative attention. Once again, because of the evolving nature of cannabis markets, tax policy can become outdated, well-intentioned policy can become a hindrance to achieving goals, and businesses can become overly burdened in the process. Maine has done well, over the years, in addressing some policy concerns that exist because of state-level policies and/or because of the federal government's continued prohibition of cannabis. However, tax policy still faces numerous issues as well as opportunities to make improvements that will be beneficial for industry and consumers alike.

Tax policy in cannabis impacts a variety of policy goals. One of the central goals of legalization is for the legal, regulated market to compete with and ultimately outcompete illicit, unregulated markets.

Some tax changes for Maine’s medical and adult use cannabis programs have sought to bring about greater market competitiveness. For example, recent legislation extended adult use program participants the ability to take business expense deductions on their Maine tax returns like any other legal business. These deductions were also previously made available to Maine’s medical cannabis program participants.

However, one glaring, additional tax policy challenge exists for excise tax in the adult use cannabis industry. Under current tax law, when cannabis is transferred from a cultivation facility to another facility, it incurs an excise tax of \$338 per pound of wholesale, dry weight cannabis flower. At the time of passage, this amounted to approximately 10 percent of the wholesale price of cannabis. It was the intention of the Legislature at the time for the effective tax on adult use cannabis to be approximately 20 percent—10 percent coming from adult use cannabis sales tax and 10 percent from the excise tax.

Over time, the wholesale price of cannabis has dropped significantly—a phenomenon that happens as any cannabis market matures. Overproduction of cannabis, which has been documented in other areas of this report, has also driven down the wholesale price of cannabis. The result is that the effective rate of the cannabis excise tax is no longer 10 percent; instead, estimates are that it ranges from 30 to 40 percent of the wholesale prices. This situation drives up the operating costs for businesses and has become burdensome for adult use cannabis businesses.

In the First Session of the 131st Legislature, OCP and Maine Revenue Services (MRS) collaborated with the sponsor on LD 1392, *An Act to Change How the Adult Use Cannabis Excise Tax Is Calculated* that sought to reform excise tax. This bill was designed using the most up-to-date data from OCP on the wholesale price of cannabis and consumers’ willingness to pay. This bill would have reduced the excise tax by 1/3 in each of the first two years, while increasing the cannabis sales tax by 2.5 percent in each of those years. The goal of this legislation was to provide a revenue neutral legislative proposal so as to avoid the legislation becoming hung up on the Appropriations Table. Data from a [2022 report](#) commissioned by OCP found that adult use consumers from 11 zip codes across the state were willing to pay an average of \$10.32/gram. This demonstrates that the total increase in sales tax proposed would be well within the upper limit of what Maine adult use cannabis consumers were willing to pay, even if not a penny of the excise tax savings were passed onto the consumer (a conservative estimate of pricing).

Unfortunately, a vocal minority of business owners and legislative advocates opposed that legislation, leaving the industry without any excise tax reform at all. Opponents refused to acknowledge the need for a revenue-neutral solution to ensure passage—a refusal that ultimately defeated the proposal. OCP heard from dozens of business owners in the weeks following the defeat of LD 1392 who expressed 1) their dismay at the bill not passing, 2) the continued costs that the current excise tax policy would put upon their business, and/or 3) their firm belief that consumers would easily absorb two additional 2.5 percent increases in the sales tax.

Interstate Compacts

In the 131st Legislature, a bill was proposed that would require the Governor to work with other states to enter into compacts with other states that have reformed their cannabis laws to engage in interstate cannabis commerce. Ultimately that bill was defeated for a variety of reasons, and OCP takes no position on such legislation. It is important to note, however, that the non-enforcement policy that the Department of Justice continues to abide by in effect, prohibits cannabis from crossing state lines. In addition, Maine is the only state that shares a common border with only

one other state and New Hampshire has not yet legalized cannabis for adult use.³⁹ Thus, in addition to the federal challenges surrounding interstate commerce, transport (by land) from another state into Maine or from Maine to another state would require cannabis to enter a state where adult use cannabis is prohibited on its way to its destination.

Despite the logistical challenges surrounding interstate compacts for cannabis commerce, the issue is not going away. OCP anticipates that future Legislatures will see additional bills to the same effect. Additionally, several other states have seen interstate compact proposals before their legislatures. Since 2019, Oregon, Washington, and California have authorized interstate cannabis compacts. Those states may test the waters with the federal government to see if those state efforts are quashed or if the Department of Justice extends its permissive approach to state-level cannabis policy to interstate compacts. If those states seek to begin interstate commerce and are successful, OCP expects a groundswell of support for Maine to follow suit will commence, notwithstanding the challenge New Hampshire's cannabis policy will present. If those states move forward with such efforts and the federal government shuts them down, it will likely dissuade Maine stakeholders from pursuing such policy.

Emerging and Continuing Issues in the Cannabis Policy Space

Because this review is the first of its kind for the Office of Cannabis Policy (OCP), this section will be devoted to emerging and continuing issues in the cannabis policy space. Some of the issues noted here can be resolved through legislative efforts, statutory changes, or interbranch cooperation to ensure Maine's cannabis laws reflect Maine's modern cannabis economy and the increasingly likely reality of interstate commerce of cannabis. Others would require federal intervention. Still others are social or community-based in nature. Regardless of the potential source(s) or resolution, it is critical to highlight the issues as they exist.

Stigma

An omnipresent problem in the cannabis space involves stigma. There exist views of segments of the population, elected officials, and business owners/leaders that are steeped in Drug War era hyperbole and rhetoric, rather than reality. The reality is that cannabis reform is a popular, widespread aspect of American public policy in Maine and elsewhere around the country. While illicit and gray-market operators still exist in the United States, the vast majority of cannabis entrepreneurs are legal actors participating within a regulated system who run successful businesses that employ tens of thousands of Americans. Those businesses contribute private market revenue, boost communities, expand economic development, and grow the tax base. Other than the products they produce and the status of federal law, these business owners are like any other entrepreneurs in the state of Maine.

Unfortunately, holdover ideas and conceptions of who cannabis business owners are, what they look like, what they do, and how they operate remain. Skepticism abounds about cannabis businesses, cannabis patients, and cannabis consumers. Baseless fears about what a legal, regulated cannabis business opening in a town or city drives towns to respond to policy proposals with fear rather than facts. OCP, in concert with regulated and compliant business owners and advocates, is committed to breaking the stigma around these issues. It starts with the language used, avoiding jokes and puns when discussing issues related to cannabis. Cannabis businesses are here to stay, but outdated stigma around this industry should not.

³⁹ Efforts to use air or sea routes for deliver cannabis from Maine and/or to Maine would present additional federal legal challenges because of the jurisdictions of the Federal Aviation Administration, the United States Coast Guard, and the Federal Maritime Commission.

Common Misunderstandings of Policy and the Policy Environment

As important as language is in combatting the stigma that negatively impacts cannabis reform and the cannabis industry, so, too, is language and rhetoric within policy conversations. Over the past several years, policy issues have arisen before legislative committees in which policy conversations and testimony are based on anecdote, assumption, misunderstandings, and misinformation.

OCP is committed to bringing facts, data, experience, and analysis to cannabis policy conversations. An important responsibility of the Office is to simultaneously provide the Administration's perspective and guidance on a specific policy proposal and correct and update the record because of false or incomplete information that has been espoused. Many of these issues are complex, overlap, and require time to describe the layers. But, typically, the Office is given just three minutes to achieve all of that. The Department of Administrative and Financial Services is officially requesting that OCP receive additional time before the committee of jurisdiction in these situations to convey this relevant information, in a similar courtesy extended to other subject matter experts when testifying on legally and technically complex matters.

A lack of data and analysis has dominated the conversation on a variety of issues during recent legislative sessions, including why caregivers were exiting the medical market, the impact of mandatory product testing on price, the causes and extent of oversupply of cannabis, and the impact of a seed-to-sale tracking system on price. In addition, basic concepts were misrepresented or misunderstood.

As examples:

- The manner in which the seed-to-sale tracking system functioned was described by individuals who have never used it and have not had access to it, providing information second or third hand at best, and muddying peoples', including legislators', understanding of it.
- The term "regulatory capture" is frequently used incorrectly. Regulatory capture happens when businesses being regulated by an agency begin exerting outsized influence on that agency. In one hearing in 2023, a stakeholder suggested that the cannabis industry "needs to be regulated by regular farmers and industry stakeholders"—the precise definition of regulatory capture. In another hearing, lobbyists and industry participants suggested that medical cannabis research funds should be distributed by a board composed of industry participants and not experts on the areas of research being funded—another example of regulatory capture, one that could corrupt the conduct of research.
- In several other settings, advocates claimed unsubstantiated reasons for caregivers exiting Maine's medical program. These views were, at best, based on anecdotes. Claims of overregulation, overenforcement, and distrust of OCP were cited as reasons for a failing medical cannabis program. However, OCP has different information, based on a survey asking former caregivers (caregivers who exited the program in the past year) why they left. OCP received responses from 117 individuals; 58% of respondents noted overproduction/oversupply as a major reason for exiting the system, while 48% note energy costs. In essence: too much cannabis was being produced for too few medical patients, and it became too expensive to operate. A sizeable percentage of respondents noted it was difficult to compete with medical operators running illicit operations, with one respondent noting, "Since there is no tracking, it's easy to do illegal sales and that's not what we got into this industry to do...Be transparent and stop back-alley transactions."

A significant area of common misunderstandings affecting legislative debate and policy conversations involved cannabis testing. Public conversations in Maine about mandatory testing have been deeply contentious, have included disinformation about cannabis product testing and its accuracy, and have lacked reliable, rigorous, and sound data on contamination in Maine's medical cannabis supply chain. During the First Session of the 131st Legislature, product testing became a point of contention among a minority of members of the industry, and as a result, the Joint Committee on Veterans and Legal Affairs organized a special hearing to discuss the issue. The Committee invited individuals from the State's certified cannabis testing facilities and a handpicked group of industry participants who generally hailed from the same, small trade association. Despite this issue being directly relevant to programs that OCP administers and an area where CDC provides certification, subject matter experts from OCP and CDC were not called upon at the hearing to provide information or correct misinformation provided by others at the hearing.

OCP has significant evidence that testing in the adult use program has been successful at reducing levels of contamination in the supply chain, improving adult use business operations, and protecting consumers from harmful contaminants. OCP also produced a report in November 2023 detailing that recent audit testing conducted by OCP on 120 samples from the medical cannabis program found that 50 samples, or 42%, contained at least one contaminant that would have failed testing according to the mandatory testing standards set for Maine's Adult Use Cannabis Program. The information and findings in this report aim to help reset discussions around medical cannabis testing, bringing data and science to the core of this discussion with a primary goal of protecting patients. Cannabis policy is everchanging, so it is paramount that there are open, accessible channels to new information as it becomes available and that there is equal opportunity to participate in public debate and discourse on policy.

Part and parcel to this is an environment that is free of fear. Everyone, and especially leadership, involved in the public discourse process must make this a top priority. OCP has heard from dozens of program participants and other stakeholders who have faced in person and online harassment and intimidation over their views and testimony before relevant legislative committees. Some have testified in the past but no longer feel comfortable or safe doing so. People have reported explicit and implicit threats to their personal and families' physical safety and welfare. Businesses and business owners receive online and in-person harassment and boycotts because they disagree with certain industry participants or stakeholders while expressing their views publicly. OCP staff has also experienced intimidation, harassment, and threatening behavior. OCP and other intimidated stakeholders have reported incidents to Capitol Police and local law enforcement agencies.

There was an extremely high volume of cannabis related bills in the first Regular and Special Sessions of the 131st Legislature. A notable portion of them were concept drafts with no text available until the public hearing. This creates confusion and uncertainty for interested parties. It also makes it difficult for pertinent, relevant, and accurate information to be available and presented by OCP, stakeholders, and other interested parties at the outset of the discussion. Absent clear direction, the public discourse before the Committee can veer away from serious policy discussion and lean more toward the anecdotal and misinformed. Ultimately, it is the joint role and responsibility of OCP and the Joint Committee on Veterans and Legal Affairs to elevate information that is based on expertise, data, analysis, and reality, in an environment that is welcoming and respectful and free of fear.

Reports Required by the Legislature

- By February 15th of each year, OCP must submit a report to the joint standing committee of the Legislature having jurisdiction over adult use cannabis matters. OCP's AUCP reporting requirements are contained within 28-B M.R.S. § 113.⁴⁰
- As of February 15th of each year, OCP must submit a report to the joint standing committee of the Legislature having jurisdiction over medical cannabis matters. OCP's MMCP reporting requirements are contained within 22 M.R.S. § 2425-A(13)(B).⁴¹
 - Previously this report was due on April 1st of each year, which allowed the Office ample time to collect and analyze data from the previous calendar year to inform the report upon completing the annual report for the adult use program. It will be a tight turnaround to have just six weeks from the end of the calendar year to collect and analyze data and compile annual reports for two programs by February 15th. The Department of Administrative and Financial Services recommends moving the due date of both annual reports back to April 1st of each year, or change the period reported on to coincide with the fiscal year.

Conclusion

As the Office of Cannabis Policy (OCP) approaches its fifth anniversary, the Office is shifting priorities and goals now that the initial critical projects established upon its creation in February 2019 are completed.

With the Adult Use Cannabis Program (AUCP) successfully up and running, OCP is now able to focus on making sure the program is safe for all consumers over the age of 21 and that the rules and regulations are not overly burdensome for program participants. The Office can also focus on deliberate, focused, and educated discussions with municipalities about Maine's regulated cannabis programs and how to opt in, which in turn will assist with reducing cannabis deserts throughout the state and continue to chip away at the illicit market.

Now that the day-to-day administration of Maine's Medical Use of Cannabis Program (MMCP) has been modernized, OCP will prioritize improving product safety for patients, engaging with stakeholders, and collecting data to inform program evaluation. Specific priorities include:

- A Commitment to Transparency
- Improving & Ensuring Safety in the Medical Cannabis Program
- Preparing Maine for Federal Legalization
- Data-driven Program Evaluation
- Engaging in Regulatory Lookback

Coordinated efforts with other state agencies will continue to be important for OCP to achieve its goals and objectives moving forward. Cannabis policy touches on dozens of areas of public policy including agriculture, finance and banking, tax, transportation, public health, public safety, environmental protection/sustainability, land use, and more, making these divisions and agencies of government important partners for OCP.

Cannabis policy is still relatively new and rapidly evolving at both the state and federal levels. This leads to many unique and emergent issues. For example, despite dramatic changes in federal elected officials' views related to cannabis policy over the past 10 years, the status quo of cannabis prohibition has held

⁴⁰ A copy of the statutory requirements is attached to this report as Appendix B.

⁴¹ A copy of the statutory reporting requirements is included in Appendix C.

strong. This lack of action at the federal level has kept cannabis a Schedule I substance, leading to congressional reform and cannabis rescheduling proposals that state regulatory agencies like OCP must monitor for potential impacts. It has also made access to banking a challenge for program participants operating in state-regulated cannabis programs.

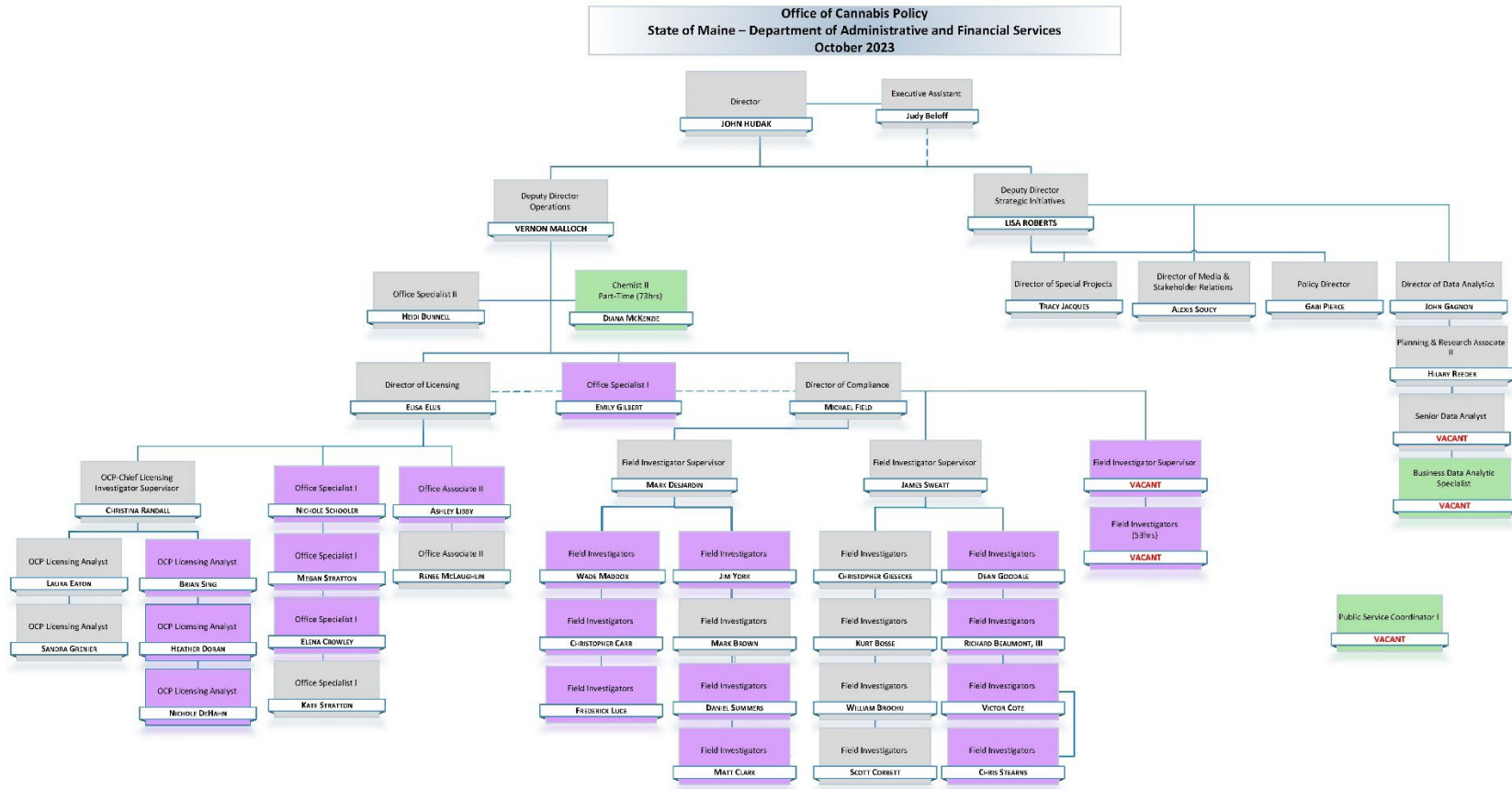
The internal administration of Maine's medical and adult use cannabis programs has also faced a variety of issues over the past few years. As detailed throughout this report, those issues are related to inventory tracking, oversupply, residency requirements, background checks, hemp-derived synthetic cannabinoids, and federal legalization. Overcoming these challenges requires a multi-faceted approach to ensuring that the administration of these programs allows the industry to survive and thrive and to combatting illicit operations by providing patients and consumers a more attractive, regulated, safe alternative.

Because of the rapidly changing nature of cannabis policy and law in the United States, new policy ideas emerge all the time. Few of them are unique to Maine as many states face similar issues and stakeholders across states often advocate for similar reforms. While there were too many emerging issues to list and detail in this report, the Office highlighted some of the major issues that have emerged in the past few legislative sessions and ones that OCP anticipates will continue to be a major focus of the Legislature, industry, and other stakeholders. They include cannabis tourism, interstate compacts, onsite consumption, tax policy, and the legalization and regulation of other substances.

OCP has numerous achievements to celebrate from its first five years of existence. The Office stood up a brand-new regulatory framework for Maine's Adult Use Cannabis Program which involved completing major substantive rulemaking, hiring staff, and ultimately launching adult use sales during the global COVID-19 pandemic. Simultaneously, OCP took on and modernized the administration of Maine's longstanding medical cannabis program, working diligently to draft rules, digitize historic program records, make electronic forms available, reduce application and renewal processing times, and launch new compliance efforts. Now an office of nearly 50 staff members across five divisions, OCP is at a place where it can shift operations from a focus on standing up a new office and program to a period of maintenance and improvement of existing regulatory structures with consideration to emerging policy issues amid potential federal changes.

Cannabis policy faces numerous challenges in the state of Maine. Rapidly changing industry dynamics, frequent changes to the laws governing both cannabis programs, outdated statutes, and the potential for future federal legalization will continue to cause issues for businesses and regulators alike. The availability of data and analyses to guide and inform the conversation and help understand the strength or weakness of policy proposals is essential. It is the joint role and responsibility of OCP and the Joint Committee on Veterans and Legal Affairs to elevate information that is based on expertise, data, analysis, and reality, and express and accept views about key issues in an environment that is welcoming and respectful and free of fear. The cannabis industry in Maine is large and diverse; continued discussion and learning by the public, the industry, stakeholders, legislators, and the Administration is vital to ensuring a surviving, thriving, safe, and transparent cannabis market in Maine.

Appendix A – Agency Management & Organization



Appendix B – AUCP Report Requirements

In accordance with 28-B MRS § 113(1), the Department shall submit to the joint standing committee of the Legislature having jurisdiction over adult use cannabis matters, an annual report that contains, at a minimum:

- The number of applications for each type of license submitted to the department including, if applicable, the number of applications for license renewals, and the number of each type of license conditionally approved by the Department;
- The total number of each type of active license issued by the Department following local authorization of a conditionally approved licensee;
- The total square footage of plant canopy approved by the Department for active cultivation facilities, the percentage of active cultivation facility licenses by cultivation tier and, if applicable, the number of approved increases in the maximum plant canopy allowed under a tier 4 cultivation facility;
- The total amount of application fees and license fees collected, and the total amount of the excise and sales tax revenue collected on the sale of adult use cannabis and adult use cannabis products;
- An overview of current adult use cannabis-related staffing at the Department and the cost to the Department to regulate the adult use cannabis industry in the state during the prior fiscal year and cost projections for the upcoming fiscal year;
- The total reported volume and value of adult use cannabis cultivated and sold by all cultivation facilities, when available;
- The total reported volume and value of adult use cannabis and adult use cannabis products sold by all cannabis stores, when available;
- The number of inspections of the licensed premises of licensees performed by the Department and the results of those inspections, including, but not limited to, the number of inspections resulting in license violations and the percentage of all licensees inspected;
- The number of license violations committed by licensees and a breakdown of those violations into specific categories based on the type of violation and the outcome of the violation, including, but not limited to, the total amount of monetary penalties imposed and collected by the Department and the percentage of total license violations resulting in the imposition of a monetary penalty, license suspension or license revocation;
- Public health and safety data collected, received, or analyzed by the Department; and
- Recommendations, including any suggested legislation, to address any issues with the regulation of the adult use cannabis industry in the state encountered by the Department.

Appendix C – MMCP Report Requirements

In accordance with 22 MRS § 2430-N, the Department of Administrative and Financial Services (DAFS) shall submit an annual report that does not disclose any identifying information about cardholders or medical providers, but that does contain, at a minimum:

- The number of applications and renewals filed for registry identification cards and registration certificates;
- The number of qualifying patients and registered caregivers approved in each county;
- The number of registry identification cards suspended or revoked;
- The number of medical providers providing written certifications for qualifying patients;
- The number of registered dispensaries, manufacturing facilities and cannabis testing facilities approved in each county;
- The number of officers, directors, and assistants of registered caregivers, registered dispensaries, manufacturing facilities and cannabis testing facilities;
- The revenue and expenses of the Medical Use of Cannabis Fund established in section 2430; and
- The sales tax revenue from the sale of cannabis for medical use deposited into the General Fund for the current and prior fiscal years.