



## STATE OF COLORADO

August 24, 2017

The Honorable Jefferson B. Sessions III  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

Dear Mr. Attorney General,

Thank you for your letter of July 24, 2017 regarding marijuana legalization in Colorado. We appreciate the opportunity to work with you on this important issue.

The State of Colorado has worked diligently to implement the will of our citizens and build a comprehensive regulatory and enforcement system that prioritizes public safety and public health. When abuses and unintended consequences materialize, the state has acted quickly to address any resulting harms. While our system has proven to be effective, we are constantly evaluating and seeking to strengthen our approach to regulation and enforcement.

We believe the objectives underlying our regulatory and enforcement system are aligned with the federal government's desire to control the production and sale of marijuana and to protect public safety and public health. We are committed to working with you to strengthen our system and are prepared to continue engaging in collaborative enforcement efforts.

Below, we address the public safety and public health issues raised in your letter, and explore how states and the federal government can continue working together to advance our shared goals. We look forward to continuing to work with you on these important issues.

### **Diversion of marijuana outside Colorado**

Preventing diversion is among the state's top priorities. Colorado has implemented strong inventory control and enforcement mechanisms to prevent diversion from marijuana businesses, including a state-of-the-art seed-to-sale tracking system that has become a model for other states; caps on cultivation facilities' production capacity; 24-hour video surveillance in all businesses; and criminal penalties for distribution and possession of more than one ounce of marijuana (except to a registered medical marijuana patient). The Colorado Department of Revenue and its Marijuana Enforcement Division have a number of strong oversight and enforcement tools to ensure marijuana businesses comply with these and other laws governing business operations.

Based on intelligence received from federal, state, and local law enforcement agencies, however, it is clear that the primary source of out-of-state diversion is abusive residential marijuana cultivation

activities that take place under the guise of lawful medical marijuana production. The state has executed several strategies to combat criminal personal cultivation activities in Colorado.

First, state and local law enforcement agencies—often in conjunction with the Drug Enforcement Administration—execute enforcement actions to dismantle criminal enterprises that violate state and federal law by distributing marijuana on the black market. Earlier this year, federal, state, and local authorities executed the largest marijuana-related enforcement action since legalization, indicting 74 people for violating state drug laws. Second, the state enacted laws that will provide law enforcement with bright-line tools to help identify and eliminate illegal cultivation activities. Specifically, the state enacted criminal penalties for individuals growing more than 12 marijuana plants on a residential property; provided \$6 million in funding to enhance local law enforcement’s ability to take enforcement action against individuals engaged in black market activity; and banned marijuana growing cooperatives. The state is also taking disciplinary action against physicians who recommend high plant counts to patients without a showing of medical necessity. Finally, in the coming year, we will pursue additional resources to help law enforcement eradicate abusive personal cultivation practices and out-of-state diversion.

### **Preventing marijuana use by minors**

We also share your concerns regarding the effect of marijuana legalization on youth. Keeping marijuana out of the hands of Colorado’s children is of the utmost importance to us.

Multiple data sources indicate that youth marijuana use in Colorado has remained stable following legalization. The *Healthy Kids Colorado Survey*, one of the most robust youth behavior surveys in the country with approximately 15,000 participants, found no statistically significant change in youth marijuana use rates following legalization and shows Colorado’s youth use rates in line with the national average. A December 2016 analysis of the *Monitoring the Future* survey published in the *Journal of the American Medical Association Pediatrics* found no increase in marijuana usage among adolescents in eighth, 10th, and 12th grades following legalization. Furthermore, the *National Survey on Drug Use and Health* (NSDUH) shows no statistically significant change in marijuana use among Colorado’s youth since 2007-08. In fact, the most recent NSDUH report indicates that between 2013-14 and 2015-16—the period in which adult-use marijuana businesses opened their doors—youth marijuana use declined by 12 percent.

While these studies are encouraging, we remain committed to preventing and reducing youth marijuana use in Colorado. To date, we have appropriated more than \$22 million in marijuana tax revenue to our marijuana public education campaigns. Among other things, these campaigns encourage youth to consider how marijuana use may prevent them from achieving the goals they are currently pursuing (e.g. making a sports team or getting into college); and empower parents, teachers, and other trusted adults to talk to youth about the risks of marijuana use. We have also used marijuana tax revenue to fund a host of programs aimed at addressing issues associated with youth drug use, including dropout prevention, after-school programs, youth mentoring, bullying prevention, and additional behavioral health professionals in schools.

Finally, strong regulatory provisions governing marijuana businesses help prevent youth use, including age verification requirements at a business’s point of entry and point of sale; frequent underage compliance checks; and prohibitions on advertising, packaging, and products that appeal to children.

Reducing marijuana use among our youth will remain a top priority for the state, and we welcome opportunities to work with you to enhance our efforts.

### **Motor vehicle crash fatalities**

Immediately following legalization of adult-use marijuana, Colorado enacted new laws giving state and local law enforcement additional tools to prosecute individuals driving under the influence of marijuana. For instance, if a driver's blood contains five or more nanograms of tetrahydrocannabinol (THC) per milliliter of whole blood, law enforcement may infer that the driver is under the influence of marijuana. We have also significantly increased the number of law enforcement officers trained to detect drug-impaired driving. Following legalization, the state trained approximately 5,000 peace officers on marijuana-related laws, including driving under the influence of drugs; increased by 68 percent the number of trained Drug Recognition Experts (DRE) in the state (there are now 227 active DREs in Colorado); and trained 1,155 peace officers in Advanced Roadside Impaired Driving Enforcement. The state has also appropriated \$2.3 million to the Colorado Department of Transportation's (CDOT) impaired driving education campaigns, which convey the criminal penalties and dangers associated with driving under the influence of marijuana.

In the first six months of 2017, the number of drivers the Colorado State Patrol considered impaired by marijuana dropped 21 percent compared to the first six months of 2016. While this is an encouraging finding, we will continue our efforts to educate the public on drug-impaired driving and actively police it on our roadways. In the coming year, we will fund CDOT's impaired driving education campaigns and pursue additional resources to support our enforcement efforts.

Furthermore, we continue to look for ways to measure our progress and use technology to enhance public safety. Unfortunately, not all of the tools available to us are suited to the challenges we face. By way of example, we are familiar with the 2016 Rocky Mountain High Intensity Drug Trafficking Area (RMHIDTA) findings regarding increased marijuana-related traffic fatalities that are cited in your letter. We consider RMHIDTA data, among other sources, when evaluating the effectiveness of our enforcement efforts. However, these findings were not included in RMHIDTA's most recent publication in March 2017, and RMHIDTA has noted that data collection gaps rendered pre-2012 data incomplete. We would, therefore, welcome the opportunity to work together to collect additional data we can utilize to enhance efforts to make our roads safer.

Similar challenges hinder our efforts to detect marijuana impairment. With current reporting to the Fatality Analysis Monitoring System, a subject might have a positive test result when either active THC—which produces marijuana's psychoactive effect—or one of its inactive metabolites are present in the subject's blood. Unlike active THC, inactive metabolites are detectable in blood for a significant period of time after consumption, meaning an individual may test positive for THC weeks after consuming marijuana. CDOT is working closely with coroners to improve reporting mechanisms so that levels of active THC are consistently reported. However, at this time, a positive test does not necessarily indicate impairment. We would welcome the opportunity to work with you to develop more reliable detection technology to enhance our public safety and enforcement efforts.

### **Emergency department visits and exposures**

We take seriously the trends cited in your letter regarding increased marijuana-related emergency department visits and exposures (measured in calls to the Rocky Mountain Poison and Drug Center), and have executed several strategies to address them. Our most recent data shows these trends reversing.

Analysis by the Colorado Department of Public Health and Environment found that marijuana-related emergency department visits fell from 1,309 per 100,000 in 2014 to 704 per 100,000 in 2015 (the most recent year reported), a 27 percent decrease. Marijuana exposure calls declined from a peak of 229 in 2015 to 201 in 2016, a 12 percent decrease. We will continue to monitor these trends closely and adjust our efforts as needed.

State health officials attribute the initial increase in emergency department visits and exposures to a few primary factors, including a greater willingness, post legalization, among health professionals to inquire about marijuana use and among individuals to report it; unsafe consumption of edible marijuana products; and accidental ingestion of marijuana.

By identifying these factors, we have been able to respond in a targeted manner to educate and protect the public. The state's marijuana public education campaigns disseminate information about the health risks of marijuana use; educate consumers on the parameters of safe marijuana use and storage; and advise consumers to seek medical help immediately if they experience a bad reaction to marijuana.

The state has also enacted numerous regulations to prevent unsafe consumption and accidental ingestion of marijuana. To protect against unsafe consumption, we have limited the THC content of edible marijuana products and required on-package labeling that conveys the THC content of each product. To prevent accidental ingestions, we have required that edible marijuana products and their packaging bear a universal symbol (a red triangle containing the letters THC and an exclamation point) indicating that the product contains marijuana.

In addition to these requirements, the state has enacted regulations that are intended to protect children from accidentally consuming marijuana products. Specifically, manufacturers may not infuse marijuana into pre-manufactured products, such as gummy bears; edible marijuana products may not take the shape of fruits, humans, or animals; and edible marijuana packaging may not display the words "candy" or "candies." Finally, all edible marijuana product packaging must be childproof and resealable.

We will continue to monitor all marijuana-related public health metrics so we can identify problems when they arise and respond efficiently and effectively.

### **Continued collaboration between the states and the federal government**

Marijuana enforcement has historically been a partnership between federal, state, and local law enforcement. The State of Colorado shares the federal government's desire to establish strong controls around the production and sale of marijuana in the interest of protecting public safety, public health, and other law enforcement interests. We stand ready to work with our federal partners to strengthen our regulatory system and continue our collaborative enforcement efforts.

We hope that continued collaboration between the states and the federal government will bolster state regulatory efforts to address public safety and public health concerns, and facilitate effective deployment of limited enforcement resources to address the most significant threats. Ultimately, we believe this will be the most effective approach to advancing our shared interests.

We are eager to continue our cooperative relationship with the federal government in all aspects of our regulatory system. For example, our ability to make the marijuana industry safer and more accountable can be strengthened by improved access to the federal banking system for marijuana

businesses. Additionally, we can better protect public safety and public health if we align and strengthen our data collection systems to quickly identify emerging abuses and unintended consequences.

In conclusion, we take seriously our duty to create a robust marijuana regulatory and enforcement system. Colorado's system has become a model for other states and nations. Our agencies have consulted with countless jurisdictions around the world as they work to construct a comprehensive and effective regulatory framework. We stand ready to work with our federal partners to fortify what we have built. We are confident that if we work together, we can maintain a responsible regulatory and enforcement model that protects public safety, public health, and other law enforcement interests.

Sincerely,

Handwritten signatures of John W. Hickenlooper and Cynthia H. Coffman. The signature of John W. Hickenlooper is in black ink, and the signature of Cynthia H. Coffman is in blue ink.

John W. Hickenlooper  
Governor

Cynthia H. Coffman  
Attorney General