

Professional Perspective

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# The Impact of Covid-19 on the Cannabis Industry

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Covid-19 and efforts to contain it have led to significant downturns for several industries. The cannabis industry, however, has experienced more of a roller coaster ride than a freefall. There have been ups and downs and rapid shifts in environment, all while the underlying structure (the economy) is teetering on the verge of collapse. In spite of Covid-19, or perhaps because of it, the cannabis industry is thriving, and will continue to do so as long as demand remains strong and operators adhere to the rules and regulations designed to keep consumers and employees safe.

This article will detail the impact of Covid-19's "essential business" designation on the cannabis regulatory landscape and how these regulatory changes are likely to shape the industry moving forward. In addition to the shift in the regulatory landscape, this article will explore how Covid-19 has transformed consumer demand. The demographic of the traditional cannabis consumer is expanding and Covid-19 is causing significant shifts in how consumers are spending, what they are buying, and when. This article is the second in a series about current trends in the cannabis industry. The [first article](#) explored raising private capital in the cannabis industry.

## 'Essential Business' Designation

Perhaps the biggest peak for the cannabis industry was the near-immediate designation of regulated cannabis operations as "essential" services. While many retail businesses and service providers were shuttered at the outset of Covid-19, with limited exceptions, regulated cannabis businesses across the supply chain were allowed to continue operating in nearly every state where cannabis is legal for adult or medical use.

One significant exception was the temporary shutdown of adult-use dispensaries in Massachusetts. Medical dispensaries were considered essential by Massachusetts Governor Charlie Baker and allowed to remain open. Following a failed lobbying campaign to keep adult-use dispensaries open and a subsequent lawsuit brought by a group of recreational cannabis companies to overturn this decision, Governor Baker ultimately issued an order as part of a phased reopening that permitted adult-use dispensaries to resume sales in a curbside format on May 25, 2020.

Another similar and significant exception to the trend of designating both adult-use and medical dispensaries as essential occurred in Denver. On March 23, 2020, Mayor Michael Hancock announced that liquor stores and adult-use cannabis retail stores would be included in a citywide closing of non-essential businesses. After several hours of crowds rushing to stock up on alcohol and cannabis, prompting safety concerns as crowds swarmed liquor stores and cannabis retail outlets, the mayor reversed course and [exempted](#) liquor stores and adult-use retailers from the citywide closure of nonessential businesses.

From a regulatory perspective, the ramifications were immediate. Almost overnight, state and local governments were forced to modify or suspend existing rules and regulations to allow cannabis cultivators, processors, and retailers to continue to operate and provide safe access for both medicinal and recreational cannabis users.

The essential business designation also highlighted some of the frustrating paradoxes of state legal cannabis markets operating in a framework of federal illegality. The cannabis industry is a key economic player, with sales in the billions of dollars a year. According to a [2020 study](#) of the state legal cannabis market, sales reached \$12.2 billion in the U.S. in 2019, and are projected to reach \$31.1 billion in 2024. Despite being a significant contributor of state and local tax revenue and employment, the cannabis industry lacks access to basic banking and financial services, including payment processing, government loan programs and other financial tools available to almost every other industry.

The essential classification also highlights another paradox: continued convictions and imprisonment for cannabis-related offenses when cannabis has been deemed essential and personal cannabis possession is no longer a crime in the majority of states. Consequently, criminal justice reform is becoming a key component of state legalization measures and legislative actions.

Moreover, compliance, already a core component of any successful cannabis operation due to the industry's highly regulated nature, is now increasingly heightened as a result of Covid-19. Compliance teams have had to revamp their

standard operating procedures and implement a multitude of safety measures to reduce the potential for spread of the virus.

Covid-19 has brought about notable changes in consumer behavior. Before cannabis settled into its essential business status, cannabis sales [surged](#) due to initial fears of dispensary closures and concern supply would disappear, much in the same vein as hand sanitizer, toilet paper, and canned goods.

As sales began to even out and consumers stopped stockpiling, consumer purchasing trends, both subtle and obvious, began to emerge. These changes in consumer behavior are discussed in greater detail below.

## Covid-19's Impact on Existing Regulations

Once cannabis was deemed essential, state and local governments were forced to modify existing rules so that cannabis businesses could continue to operate and safely meet consumer demand. States with regulated markets impose stringent rules on every aspect of the supply chain, including on the purchasing activities of the end-user consumer. For the most part, these rules make sense—a strong regulatory framework is required for the legal cannabis market to succeed, thrive, and ultimately outpace the illicit market. However, as the cannabis industry matures, it has become clear that some rules are unnecessarily burdensome, unclear, inflexible, and simply not commercially reasonable.

In the absence of a global pandemic, eventually these unreasonable constraints would likely have eroded or disappeared altogether. Thanks to Covid-19, regulatory changes in every legal state and adult-use cannabis regulatory framework across the country occurred almost overnight. Through a variety of measures, including government orders, emergency directives, the granting of variances and requests for relief from certain requirements under “disaster relief” provisions of cannabis regulations, prohibitions on certain activities were lifted and common-sense solutions were instituted. Within the first days of the pandemic shutdown, states and local governments instituted emergency measures, including:

**Curbside Pick-Up.** This modification permits, or in some cases requires, sales to occur outside of the indoor dispensary by allowing for products to be brought out to customers waiting outside or in a lobby area.

**Drive-Up Orders.** This is similar to drive-through ordering at restaurants. Drive-in or drive-through services in which cannabis goods are sold to individuals within a vehicle are forbidden under a number of state laws, mainly due to concerns that people would consume while driving. The allowance for such modifications is an implicit acknowledgment by regulators that purchasing cannabis goods from a drive-up window is not any different than purchasing from a retail store and getting into a vehicle.

**Social Distancing Guidance.** Guidance was issued on how to socially distance in dispensaries and other cannabis facilities.

**Expanded Ordering Options.** Some states which had previously prohibited online or telephonic ordering changed their regulations to permit these ordering options.

**Expanded Options for Home Delivery.** Delivery is not permitted in all jurisdictions and, even where allowed, it can be subject to stringent regulations. A number of municipalities ban all delivery activities within their jurisdiction. Valid community concerns of ‘weed dealers’ driving around the neighborhood making ‘drops’ are typically at the root of these restrictions.

The realities of Covid-19 are causing a shift in thinking. Communities are beginning to realize that, in addition to reducing risk of exposure to coronavirus, allowing delivery means an additional source of local tax revenue without having dispensaries on every corner.

**Expedited Medical ID Cards.** Prior to Covid-19, it could take several weeks to obtain a medical card. This presented a real issue in places like Massachusetts where adult-use facilities were shut down for a period.

**Increases in Daily Purchase Limits.** Many jurisdictions, seeking to avoid bulk sales that are used to facilitate illegal out-of-state operations, have strict limits on how much product can be purchased at one time. These limits were increased in some areas to make it easier to avoid unnecessary trips outside the house.

**Telemedicine Allowed.** In several states, such as Colorado and Massachusetts, regulators suspended the requirement for in-person medical appointments to certify qualifying patients and instead permitted telemedicine appointments.

Looking back at the language of those emergency proclamations, it is clear the regulatory leniency was intended to be temporary and would revert when things returned to “normal.” Since it is abundantly clear “normal” will mean something entirely different than it did pre-pandemic, it is likely these temporary rule changes will, one way or another, become permanent.

## Covid-19 Spurs Regulatory Flexibility

Regulators are also grappling with how to enforce regulatory obligations while working from home. No longer willing or able to travel around the state making drop-in or “surprise” inspections, remote inspections are becoming the norm. In place of on-site inspections, cannabis operators must fill out and return questionnaires and submit documentation via email that, under normal circumstances, would be reviewed by a compliance officer during an on-site visit.

The inability to observe first-hand what is happening inside the cannabis facility and address issues on the spot is a challenge for both operators and regulators. Face-to-face meetings are a crucial opportunity for operators to develop relationships with regulators and work through compliance issues without incurring fines or otherwise blemishing an operator's compliance record. While remote inspections will no doubt dissipate as the country gains control over the coronavirus epidemic, it is likely some form of remote inspection will remain in place.

Regulatory flexibility may come in other forms as well. For instance, most states provide an avenue for cannabis operators to seek a variance from an existing rule provided certain criteria are met. Variance requests are not easily granted. A requesting party must typically demonstrate granting the request is in the public interest, would not impose an undue burden on regulators, and is not statutorily prohibited.

In the wake of the economic fallout wrought by the virus, regulators would be remiss if they failed to consider the economic impact of their decisions. Without sacrificing public safety, regulators may be more willing to acknowledge unreasonable rules and work constructively with otherwise compliant operators to find solutions that are outside the boundaries of current regulations. The collaborative manner in which regulators have worked with cannabis licensees over the past six months supports this trend. There is less suspicion and more of a willingness to work together to keep businesses open.

## Effect on Cannabis Consumer Behavior

According to a recent report prepared by the cannabis and hemp data analytics firm [New Frontier Data](#), one “unanticipated effect of the Covid-19 pandemic has been the growth acceleration of legal cannabis markets (and erosion of the illicit markets) in those states which have activated both medical and adult-use sales.”

The initial boom in sales at the outset of the pandemic can be largely attributed to bulk buying, but the data show sales remain strong in most states. According to a recent industry [white paper](#) on the state of the cannabis industry in 2020, jointly published by Vangst, Leaflink, and Flowhub, consumer sales are up 40% more on average than in 2019.

Like every other industry, Covid-19 is causing significant shifts in how consumers are spending, what they are buying, and when. Consumers are looking to cannabis to serve a variety of purposes, with relaxation, wellness, and fun often at the top of the list. People are using cannabis to cope with stress, anxiety, sleepless nights, and pre-existing health conditions that may be exacerbated during these uncertain times. Consumers are also using cannabis simply to relax, elevate mood, or find some humor and entertainment while stuck at home for the foreseeable future.

We are also seeing notable changes in shopping habits. Consumer preference for online shopping and home delivery are obvious adaptations to reduce risk of exposure to the virus. According to cannabis data analytics provider [Headset](#), recent in-store sales are also shifting. Prior to Covid-19, spikes in sales typically occurred on weekday afternoons and evenings as people commuted home. Fridays and weekends were also busy shopping hours. Dispensaries are now seeing more weekday shopping, with purchase times moving to early hours of the day and earlier in the week. Consumers are also buying more in single purchases, both in-store and online.

There is much speculation and conflicting industry reports on how and whether Covid-19 is impacting product category purchasing decisions. Nonetheless, analysts agree smokable flower sales have remained a consistent high seller. Job losses, pay cuts and the generally bleak economic outlook may also be contributing to cost-conscious choices such as flower as opposed to more pricey manufactured products like edibles, vaporizers, and topicals. While manufactured products did not experience a “Covid bump,” according to the aforementioned white paper, there is considerable data that sales in these categories are increasing exponentially.

Anecdotally, there is a sense among industry watchers that consumers, particularly females, quarantining in close quarters with family may be inclined to consume in more discreet forms that do not leave behind lingering odors or require escaping to the outdoors. Hence, cannabis beverages, gummies, chocolates, and tinctures are an attractive option for this demographic.

In addition to changes in consumer behavior, there has been at least one notable and unfortunate marketing innovation: the appearance of claims by several CBD companies that their products could prevent, treat, or cure Covid-19. The Food and Drug Administration and the Federal Trade Commission issued a number of warning letters informing about a dozen companies that making such medical claims about their CBD products violates the Federal Food, Drug, and Cosmetic Act as well as FTC's prohibitions on false or misleading advertising.

No matter the trend, there is one data point we can all agree on: Covid-19 has dramatically altered the cannabis landscape. States will not "unlegalize" cannabis nor are they likely to revert to the more restrictive pre-Covid-19 rules and regulations. And consumer behavior, like everything else related to Covid-19, will never be the same.