

The Ultimate Guide to SB23-290, Colorado’s Natural Medicine Regulation and Legalization Bill

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Colorado voters approved Proposition 122, the Natural Medicine Health Act (NMHA), in the 2022 general election. On May 2, 2023, the Colorado Legislature passed SB23-290, the formal implementation bill for Proposition 122. During the 2023 legislative session, the Colorado Legislature worked hard to honor the intention of Proposition 122 as it built out a full policy framework. The bill was signed into law on May 23, 2023. SB23-290 will replace Proposition 122 and go into effect on July 1, 2023. The following is an overview of SB23-290 and NMHA’s key components.

Personal Use and Cultivation of Natural Medicines

The Personal Use section of Proposition 122 was a hallmark of the NMHA. The personal use provisions of the NMHA broadly decriminalized several types of natural medicine, namely psilocybin, psilocin, ibogaine, dimethyltryptamine (DMT), and mescaline (excluding peyote¹).

Personal use is defined as “the consumption of natural medicine or natural medicine product; or the amount of natural medicine or natural medicine product a person may lawfully possess, cultivate, or manufacture that is necessary to share with another person who is twenty-one years of age or older within the context of counseling, spiritual guidance, beneficial community-based use and healing, supported use, or related services.”²

While there is still criminal conduct around the possession, use, and sharing of natural medicine in certain contexts (see Crimes outlined below), SB23-290 decriminalized:

- Personal use of natural medicine, including the consumption, use, cultivation, and manufacture of natural medicine and natural medicine product³
- Sharing of natural medicine for personal use without remuneration provided it is not part of a business promotion or commercial activity⁴

¹ The use of Peyote for in religious ceremonies of a bona fide religious organization has been exempted from Colorado’s Controlled Substance Act since 1992. C.R.S. 18-18-418 (3)

² C.R.S. 18-18-434 (12)(d)

³ C.R.S. 18-18-434 (5)(a)

⁴ C.R.S. 18-18-434 (5)(a)

- Sharing natural medicine concurrently with bona fide harm reduction or support services where remuneration is exchanged for the bona fide services, provided there is no advertising and proper disclosures were made⁵
- Ceremonial use of natural medicine⁶

Individuals using and sharing natural medicine outside of the regulatory framework will be permitted to test products provided they meet certain disclosure requirements.⁷

Additionally, a police officer is not allowed to arrest nor is the district attorney allowed to prosecute a person for conduct allowed under the NMHA.⁸

Natural Medicine Regulatory Framework

Proposition 122 created the “Regulated Natural Medicine Access Program” and while SB23-290 does not use the same terminology, the bill creates the necessary regulatory framework to oversee a regulated market of natural medicine and natural medicine products in the state of Colorado. Specifically, SB23-290 tasks two state regulatory departments—the Department of Regulatory Agencies and the Department of Revenue—with rulemaking around regulated natural medicine, natural medicine products, and natural medicine services. SB23-290 also ensures that there is funding for the regulatory program.

Natural Medicine Advisory Board⁹

Proposition 122 created the Natural Medicine Advisory Board within the state Department of Regulatory Agencies, and SB23-290 incorporated these provisions. Specifically, the Board is tasked with making recommendations to the Department of Regulatory Agencies and the Department of Revenue regarding the implementation of the NMHA’s regulatory framework. The initial Board was appointed by the Governor in January 2023 and confirmed by the Senate shortly after.

The Board consists of fifteen members with varying degrees of expertise, including in the areas of:¹⁰

- Natural medicine therapy, medicine and research
- Mycology and natural medicine cultivation
- Licensee qualifications (formally Permitted Organizations)
- Emergency medical services and first responders
- Mental and behavioral health care
- Health insurance and policy
- Public health

⁵ C.R.S. 18-18-434 (12)(III)(d)

⁶ C.R.S. 12-170-108 (4)

⁷ C.R.S. 18-18-434 (5)(b)

⁸ C.R.S. 18-18-434 (5)(d)

⁹ C.R.S. 12-170-106

¹⁰ C.R.S. 12-170-106 (2)

- Drug policy
- Harm reduction
- Religious use of natural medicines
- Issues confronting veterans
- Traditional tribal or Indigenous use of natural medicine
- Levels and disparities of access to health care services among different communities
- Past criminal justice reform efforts in Colorado

The Executive director of the Department of Revenue sits on the Board as a non-voting member. Seven of the Board’s members will serve a term of two years and eight members will serve a term of four years. Board members may serve up to two consecutive terms on the Board and are subject to removal for misconduct, incompetence, neglect of duty, or unprofessional conduct.¹¹

After the initial term of the Board is up, the Governor must appoint new members but does not need the Senate to confirm the new members. Future Board members will serve a term of four years.¹²

Department of Regulatory Agencies

The Department of Regulatory Agencies (DORA) is responsible for regulating facilitators and the practice of facilitation at healing centers.

The bill defines a “facilitator” as a person twenty-one or over who “has the necessary qualifications, training, experience, and knowledge . . . to perform and supervise natural medicine services for a participant[.]”¹³ Facilitators will be licensed by DORA and the qualifications necessary to be a facilitator will be decided through the rulemaking process after the Natural Medicine Advisory Board makes its first formal recommendations. DORA will review facilitator license applications starting on or before December 31, 2024.¹⁴ Facilitators may only have an interest in five natural medicine business licenses at a time.¹⁵

While DORA will more clearly define the practice of facilitation through the rulemaking process, facilitators will be responsible for providing “natural medicine services” to participants at healing centers. “Natural medicine services” include a preparation session, an administration session where a participant ingests and feels the effects of natural medicine under the supervision of a facilitator while on-site at a healing center, and an integration session.¹⁶ Per SB23-290, DORA will create the parameters of these services regarding potential applications for telehealth and timeliness between sessions. Additionally, DORA will create rules around consent and physical

¹¹ C.R.S. 12-170-106 (3)-(4)

¹² C.R.S. 12-170-106 (4)(b)

¹³ C.R.S. 12-170-104 (6)

¹⁴ C.R.S. 12-170-105 (1)(b)

¹⁵ C.R.S. 12-170-105 (1)(a)(II)(I)

¹⁶ C.R.S. 12-170-104 (14)

touch between facilitators and participants, dosage limits, group administration sessions, and necessary disclosure to give to participants prior to engaging in natural medicine services.¹⁷

DORA is also responsible for investigating claims made against facilitators and disciplining bad actors by suspending or revoking licenses. Since facilitators will be a regulated and licensed profession, a corresponding crime was created that covers the practice of facilitation without a license, holding oneself out to be as a “facilitator” without a license, or failing to display the facilitation license like other regulated professions.¹⁸ There is an exception to this new crime for “bona fide religious, culturally traditional, or spiritual ceremony” if there are proper disclosures and the ceremony is not associated with commercial, business, or for-profit activity.¹⁹

Additionally, there is a new prohibition on exploiting cultural sensitivities with advertising.²⁰

DORA is authorized to take disciplinary action and utilize enforcement should there be proof that a licensee violated established grounds for discipline. Some of the violations include breaking statute or rule, being convicted of a felony, lying on an application, failing to meet professional standards, excessively using alcohol or controlled substances, false advertising, and failing to display a license correctly.²¹

DORA’s additional rulemaking responsibilities include guidelines for record-keeping and safeguarding confidentiality, creating equitable access to the regulated program, and collecting and publicly publishing data on the program’s implementation and administration in coordination with the licensing authority.²² They will also define parameters for a facilitator to provide and supervise natural medicine services at a different premises than a licensed healing center, like a healthcare facility or private residence.²³

Tribal and Indigenous Working Group

In C.R.S. 12-170-107, SB23-290 created a Tribal and Indigenous Working Group within DORA. The working group is tasked with “engaging and creating a dialogue to identify issues related to the commercialization” of natural medicine products and services. Specifically, the working group will explore how to avoid misappropriation and exploitation of tribal and Indigenous communities, cultures, and religions; conservation issues with natural medicine sourcing and cultivation; how to avoid the excessive commercialization of natural medicine products and services; and to advise the Natural Medicine Advisory Board, DORA, and DOR regarding best practices in building trust with these communities.

¹⁷ C.R.S. 12-170-105 (1)(a)

¹⁸ C.R.S. 12-170-108 (2)

¹⁹ C.R.S. 12-170-108 (4)

²⁰ C.R.S. 12-170-105 (1)(a)(II)(K)

²¹ C.R.S. 12-170-109 (1)

²² C.R.S. 12-170-105 (1)(j)

²³ C.R.S. (1)(a)(II)(J)

Department of Revenue

SB23-290 created the Natural Medicine Division, which will be housed in the Department of Revenue (DOR) and tasked with enforcing the new Colorado Natural Medicine Code.²⁴ Under the new Code, DOR is responsible for regulating the cultivation, manufacture, testing, storage, distribution, transportation, transfer, and dispensation of regulated natural medicine and regulated natural medicine products. The new Natural Medicine Division will be responsible for licensing each stage of the supply chain.²⁵

Proposition 122 created a general healing center license. SB23-290 opted to break each category of the supply chain into a separate license and the Natural Medicine Division will be responsible for licensing healing centers, cultivation facilities, manufacturing facilities, and testing laboratories.²⁶

Initially, DOR will work to regulate natural medicine and natural medicine product that includes psilocybin and psilocin. The Natural Medicine Advisory Board shall prioritize the consideration of expanding the list of approved natural medicines to ibogaine and may do so at any time. Dimethyltryptamine (DMT) and mescaline (excluding peyote) can be added to the regulated program after 2026.²⁷ Notably, synthetics and synthetic analogs are completely excluded from the definition of natural medicine under the regulated program.²⁸ This includes synthetics derived from natural sources.

Additionally, DOR is responsible for rulemaking around the proper regulation and control of the natural medicine supply chain and must consult the Natural Medicine Advisory Board when considering and promulgating rules.

DOR must make rules regarding:²⁹

- Licensee oversight requirements
- Schedule for application, licensing, and renewal fees
- Qualification and eligibility requirements for licensure, including environmental, social, and governance criteria
- Limits on the financial interest any one licensee can hold in a natural medicine business and the limit cannot exceed five licenses
- Security and transportation requirements including transportation limits and manifests
- Record-keeping
- Preventing transfer and diversion to those under twenty-one
- Advertising standards, including a prohibition on the misappropriation and exploitation of tribal and Indigenous communities, cultures, and religions
- Co-location of healing centers with another healing center or a healthcare facility

²⁴ C.R.S. 24-1-117 (XII)

²⁵ C.R.S. 44-50-201 (1)

²⁶ C.R.S. 44-50-202 (1)(a)

²⁷ C.R.S. 44-50-103 (13)(b)

²⁸ C.R.S. 44-50-103 (13)(c)

²⁹ C.R.S. 44-50-203 (1)

DOR may make rules regarding:³⁰

- Establishing new licenses
- Privileges and restrictions of licenses
- Co-locations permits
- Different standards for different types of natural medicine and natural medicine products
- Packaging and labeling requirements
- Health and safety standards and regulations
- Sanitary requirements
- Waste disposal and destruction requirements
- Inventory tracking
- Storage and transportation requirements
- A schedule for penalties and fees for rule violations
- Law enforcement guidance
- The prohibition of misrepresentation and unfair practices

In addition to rulemaking, DOR is responsible for conducting licensee investigations, fingerprint-based background checks and disciplinary hearings; developing the forms, licenses, and identification cards necessary for licensees; and working with DORA to prepare a public report on the regulated program's implementation and administration.³¹ DOR is also responsible for developing and promoting public education campaigns around the use of natural medicine and natural medicine products and collecting information on adverse events, consumer protection claims, and other behavioral health reporting from its licensees.³²

Colorado Department of Public Health and Environment

DOR will work with the Colorado Department of Public Health and Environment (CDPHE) to promulgate rules regarding testing standards and qualifications for regulated natural medicine and natural medicine product.³³ Additionally, the two departments must establish procedures around laboratory certification criteria, testing procedures and frequency, and conflicts of interest permissions and prohibitions for licensees.³⁴

Localities

SB23-290 did not amend the NMHA when it comes to localities. Local jurisdictions may only regulate the time, place, and manner of healing centers and cannot prohibit a facilitator from offering natural medicine services within the jurisdiction. Additionally, localities are prohibited from adopting ordinances and regulations that are unreasonable or create a conflict with the NMHA.³⁵

³⁰ C.R.S. 44-50-203 (2)

³¹ C.R.S. 44-50-202 (1)(g)

³² C.R.S. 44-50-202 (7)

³³ C.R.S. 25-1.5-120 (1)

³⁴ C.R.S. 25-1.5-120 (2)

³⁵C.R.S. 44-50-903 & 12-170-115

Protections

SB23-290 codified many protections around the use of natural medicine and the provision of natural medicine services, including:

- Organ transplant eligibility³⁶
- Health insurance coverage³⁷
- Use while on probation and parole³⁸
- Child-rearing³⁹
- Public assistance (unless federal law provides otherwise)⁴⁰
- Confidentiality for those who engage in regulated natural medicine services⁴¹
- Manufacture and sale of paraphernalia⁴²

Occupational Protections

Furthermore, professionals in the state holding an occupational license, registration, or certification will not be subject to professional discipline or loss of their license, registration, or certification solely for providing natural medicine or natural medicine services, giving advice about the use of natural medicine, or engaging in the personal use of natural medicine. However, this provision does not protect those who engage in conduct around natural medicine that violates the scope of their practice or other professional standards.⁴³

280E

SB23-290 authorizes state tax deductions that are eligible to be claimed as a federal income tax deductions but are disallowed by Section 280E in federal tax code because natural medicine is a federal controlled substance.⁴⁴

Record Sealing

SB23-290 allows those convicted of offenses that would no longer be a crime under the bill to seal their criminal records at no cost.⁴⁵

Crimes

While SB23-290 formally decriminalized natural medicine for personal use and set up a regulatory framework for adults twenty-one and over to access natural medicine, it also clarified what conduct remains criminal under Colorado state law.⁴⁶

³⁶ C.R.S. 25-56-104.5

³⁷ C.R.S. 10-16-162

³⁸ C.R.S. 17-2-201

³⁹ C.R.S. 19-3-103

⁴⁰ C.R.S. 24-76.5-104

⁴¹ C.R.S. 12-170-105. (1)(a)(II)(H)

⁴² C.R.S. 18-18-430.5 (1)(c)

⁴³ C.R.S. 12-170-113 (2)

⁴⁴ C.R.S. 39-22-394 (3)(m.5)

⁴⁵ C.R.S. 24-72-706

⁴⁶ C.R.S. 18-18-434

On the regulated side, it is strictly prohibited for licensees to knowingly transfer natural medicine or natural medicine product to a person under twenty-one years of age. Additionally, it is forbidden to adulterate, alter, or attempt to adulterate or alter a sample of natural medicine or natural medicine product to circumvent testing requirements⁴⁷ and a crime to practice facilitation of natural medicine services without a license or to hold yourself out as a facilitator without a license.⁴⁸ There is an exception to this new offense for religious, traditional, or spiritual ceremonies not associated with a business, commercial or for-profit activity.

On the personal use side, it is unlawful for persons under twenty-one to possess or consume natural medicine and violations of the law will result in a petty offense.⁴⁹ Additionally, one may not cultivate natural medicine in an area on private property that exceeds a space of 12x12 feet unless their locality so provides and a violation results in a petty offense and \$1000 fine.⁵⁰ It is also prohibited and a petty offense to cultivate natural medicine outside of an enclosed locked space.⁵¹ Living plants that are possessed, displayed, cultivated, purchased, or sold for ornamental purposes only are exempt from all offenses related to natural medicine.⁵² Under SB23-290, it is now a level 2 drug felony to manufacture natural medicine products using an “inherently hazardous substance” or to knowingly allow someone to use one’s property for such.⁵³

It is also prohibited to “openly and publicly” display or consume natural medicine.⁵⁴ Under C.R.S. § 18-18-102(20.3), “openly” means the conduct is observable to the public or a substantial number of the public, and “publicly” means the conduct took place somewhere a substantial number of the public has access to without restriction (e.g. streets, highways, transportation facilities, parks, common areas of buildings, etc.). Any conduct that takes place on private residential property by an occupant and their guests is not considered “open and public.”

The following remain crimes and are not protected under Colorado law:

- Sharing ibogaine⁵⁵
- Dispensing, selling, distributing, or possessing with the intent to dispense, sell, or distribute natural medicine or natural medicine product to someone under twenty-one years of age⁵⁶

⁴⁷ C.R.S. 44-50-501

⁴⁸ C.R.S. 12-20-407 (1)(a)(X)

⁴⁹ C.R.S. 18-18-434 (1)

⁵⁰ C.R.S. 18-18-434 (3)(a)

⁵¹ C.R.S. 18-18-434 (3)(b)(I)

⁵² C.R.S. 18-18-434 (11)

⁵³ C.R.S. 18-18-434 (4)

⁵⁴ C.R.S. 18-18-434 (2)

⁵⁵ C.R.S. 18-18-434 (5)(c)(V)

⁵⁶ C.R.S. 18-18-434 (5)(c)(I)

- Dispensing, selling, distributing, or possessing with the intent to dispense, sell, or distribute natural medicine or natural medicine product for remuneration or for any commercial or business purpose⁵⁷
- Manufacturing, cultivating, possessing, consuming, using, dispensing, or distributing natural medicine or natural medicine product, or possessing with intent to manufacture, cultivate, possess, consume, use, dispense, or distribute natural medicine product for a purpose other than personal use⁵⁸
- Dispensing, selling or distributing natural medicine or natural medicine product, or possessing with intent to dispense, sell, or distribute natural medicine product as part of a business promotion or other commercial activity⁵⁹
- Driving under the influence of natural medicine or natural medicine product, or otherwise operating a vehicle, aircraft, boat, machine, or other device under the influence of natural medicine or natural medicine product⁶⁰

Remuneration Exception for Certain Services

Certain services may receive remuneration for those services defined under personal use. An exception is made on remuneration “for bona fide harm reduction services or bona fide support services used concurrently with the sharing of natural medicine or natural medicine product, provided that there is no advertisement related to the sharing of natural medicine, natural medicine product, or the services provided, and provided that the individual providing the services informs an individual engaging in the services that the individual is not a licensed facilitator”.⁶¹

If you have questions about the bill, please [contact Vicente LLP’s Psychedelics & Emerging Therapies team](#).

⁵⁷ C.R.S. 18-18-434 (5)(c)(II)

⁵⁸ C.R.S. 18-18-434 (5)(c)(III)

⁵⁹ C.R.S. 18-18-434 (5)(c)(IV)

⁶⁰ C.R.S. 18-18-434 (8)

⁶¹ C.R.S. 18-18-434 (12)(d)