



December 10, 2021

## WHAT YOU NEED TO KNOW ABOUT THC Caps

### PRO POINTS

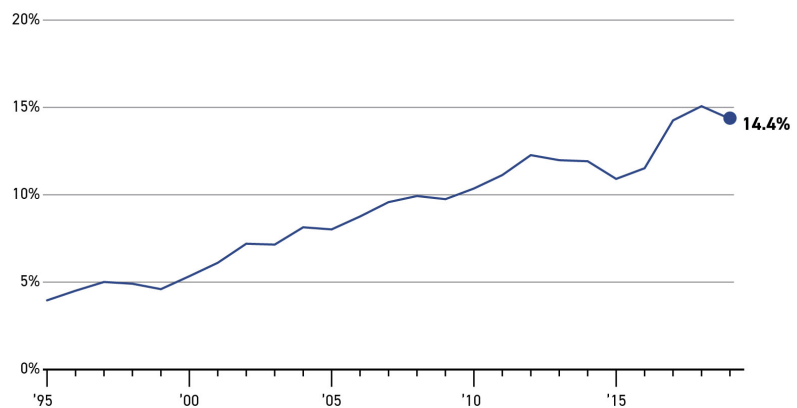
- **Debates over THC potency caps are emerging in states with mature cannabis programs like Colorado and Washington.**
- **Some liberal advocates have embraced the cause, signaling the changing partisan contours of the cannabis debate.**
- **Regulating high-potency cannabis concentrates presents logistical hurdles for regulators, who are hampered by a lack of research.**
- **Legislatures in states with legal marijuana markets are slated to consider bills to cap THC potency when sessions start up in January.**

### HOW WE GOT HERE

When U.S. states first started legalizing recreational marijuana, there was hardly a mention of THC potency caps. Vermont became the first state to pass adult-use legalization in 2020 with potency caps for both flower and cannabis concentrates. However, many medical cannabis programs restrict THC access — particularly in more conservative states. Texas, for example, caps the amount of THC in medical cannabis at 1 percent.

#### Marijuana seized by the DEA has increased in potency over past 25 years

AVERAGE THC POTENCY, MARIJUANA SEIZED BY DEA



Source: National Institute on Drug Abuse, DEA, University of Mississippi

Now, Colorado is leading the way on an effort to restrict high-potency cannabis concentrates in adult-use states. A proposal to cap THC limits earlier this year drew fierce opposition from the cannabis industry, though compromise legislation made it across the finish line. The bill restricted the amount of cannabis concentrates that minors enrolled in the medical marijuana program can purchase. It also dedicated funding to research the effects of high-potency products and required marijuana regulators to come up with a recommended serving size for concentrates.

While Colorado's bill does not cap potency outright, the debate surrounding the bill illustrates the logistical challenges of such regulations amid concerns over the increase in THC potency found in marijuana over the past few decades. In an effort to dissuade overconsumption of high-potency concentrates, Colorado regulators decided on



a visual representation of a serving size that is larger than a grain of sand but smaller than half a grain of rice. But even the visual representation doesn't take into account the volume and consistency of the product, highlighting the difficulties facing policymakers on this issue. Creating a measuring device or single-serving packaging for such tiny servings presents obvious impracticalities.

## WHAT'S NEXT

Other states with mature marijuana markets like Washington and Massachusetts are considering bills to restrict THC potency, although they're certain to generate industry pushback. In Colorado, a powerful coalition of liberal advocates and Democratic lawmakers who are otherwise pro-cannabis got the potency bill over the finish line.

### States restrict THC potency differently across medical marijuana laws

Several states limit THC potency in medical marijuana products or use these types of limits in setting guidelines on what patients are able to purchase. Some of these types of restrictions include:



**Washington** defines THC limits for certain "high THC compliant products." Only medical users may purchase these products.



**Michigan** limits THC content or concentration for individual serving sizes and entire containers of infused products.



**New Mexico** uses THC content to determine the number of "patient units" in a manufactured product, and limits the total number of patient units that can be bought at a certain time.



Patients in **North Dakota** are permitted to buy a maximum 4,000 milligrams of THC, by concentration or amount, over a 30-day period.

### Medical CBD laws

Also known as "limited access" laws, these laws set limits on THC in conjunction with other requirements, such as CBD content. They are generally more strict than other medical marijuana laws in the types of products allowed and the qualifying conditions.



**Texas** allows patients to use low-THC cannabis for treatment. The THC cap on this product was raised to 1 percent in 2021.



**North Carolina** allows patients to use hemp extract for treatment. It must contain less than 0.9 percent THC and more than 5 percent CBD by weight.

Sources: Washington State Legislature, Michigan Marijuana Regulatory Agency, New Mexico Department of Health, North Dakota State Legislature, Texas State Law Library, North Carolina General Assembly

While Vermont's legalization bill caps flower potency at 30 percent THC and cannabis concentrates at 60 percent, the Vermont Medical Society recently urged state officials to go a step further and cap the amount of THC in cannabis at 15 percent.

Meanwhile, in states with restrictive medical marijuana programs, the trend is towards raising potency limits rather than restricting it.



## POWER PLAYERS

- **Smart Approaches to Marijuana:** The advocacy group leading the push against the liberalization of cannabis laws is also working to reform existing legal marijuana programs with an eye towards public health. SAM advocates for banning cannabis concentrate sales altogether and capping all cannabis products at 15 percent THC.
- **NORML:** The pro-legalization advocacy group is pushing back against bills to restrict THC potency in the legal marijuana market. They say these limits are arbitrary, not supported by science, and that high potency products like hash have long existed in the illicit market.
- **Colorado House Speaker Alec Garnett:** The top House Democrat sponsored the legislation aimed at reducing the harms of cannabis concentrates in Colorado. Garnett expressed particular concern about anecdotes of high-potency concentrate products making it into the hands of teenagers.
- **Dawn Reinfeld, co-founder of Blue Rising Together:** Reinfeld's group helped lead the charge to advocate for Colorado's concentrates regulation bill. Blue Rising is a Democratic-aligned group that was founded to push for gun control legislation. Its entrance into the cannabis policy world shows how the issue of pot potency has become one that even liberal groups embrace.
- **Washington state Rep. Lauren Davis:** The Democratic state lawmaker introduced a bill to cap concentrates at 30 percent THC. While Davis' bill got stuck in committee this year, she's expected to introduce it again next year.