

>> SB 1598 Medical  
Marijuana Remote  
Dispensing Report

# Acknowledgments

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# Executive summary

Senate Bill 1598, passed during the 2015 legislative session, directed the Oregon Health Authority (OHA) to study methods by which medical marijuana dispensaries may remotely dispense usable marijuana and marijuana items in areas of Oregon where registered medical marijuana patients do not have access to a medical marijuana dispensary.

OHA requested that the Advisory Committee on Medical Marijuana (ACMM) recommend possible methods by which medical marijuana dispensaries could dispense medical marijuana items and products to medical marijuana patients who do not have access to a dispensary. The Oregon Medical Marijuana Program (OMMP), which is part of OHA's Public Health Division, examined the geographic distribution of patients, growers and dispensaries across the state, especially in counties that have opted out of allowing the operation of medical marijuana dispensaries. The program also examined the types of marijuana items and products that card holders obtain from medical marijuana dispensaries.

The report found that a significant number of patients live in 13 Oregon counties that have either no access or limited access to a dispensary. Patients in these opt-out counties tend to purchase marijuana items that could be considered more therapeutic in form than other marijuana items. Medical marijuana dispensaries that were grandfathered into opt-out counties sell proportionally more tinctures and capsules to patients and caregivers compared to medical marijuana dispensaries in areas that do not prohibit such dispensaries.

To effectively address access issues for patients residing in opt-out counties the advisory committee recommends that legislation be created to allow for medical marijuana delivery services into opt-out areas. Legislation allowing for medical marijuana deliveries also should consider related issues such as possession limits and public safety, that would be involved in such delivery services.

# Introduction

In 1998 voters in Oregon passed Oregon Ballot Measure 67, allowing for the limited cultivation, possession and use of marijuana for medical purposes. The successful ballot measure became known as the Oregon Medical Marijuana Act (“the Act”) and was codified into Oregon Revised Statutes.<sup>1</sup>

The Oregon Medical Marijuana Program (OMMP), housed within the Public Health Division of the Oregon Health Authority, administers the Act by overseeing the registration and regulation of medical marijuana patients, designated caregivers, growers, grow sites, dispensaries and medical marijuana processing sites.

However, OMMP did not regulate medical marijuana facilities until 2013. House Bill 3460, effective August 14, 2013, directed OHA to establish a registration system for medical marijuana facilities. House Bill 3400, passed during the 2015 legislative session, provided for robust regulation of medical marijuana following the passage of Oregon Ballot Measure 91, which legalized the recreational use of marijuana in Oregon in 2014. House Bill 3400 provided a local option for cities and counties to prohibit certain marijuana facilities within their jurisdictions. Local governments could prohibit the establishment of medical marijuana dispensaries in two possible ways. A city or county’s governing body could pass an ordinance prohibiting the establishment of a dispensary if at least 55 percent of the county voted in opposition to Measure 91.<sup>2</sup> A city or county also could adopt an ordinance prohibiting dispensaries by referring such an ordinance to the city’s or county’s voters.<sup>3</sup>

Senate Bill 1598, passed during the 2016 legislative session, directed OHA to “study methods by which medical marijuana dispensaries may dispense usable marijuana, immature marijuana plants, seeds, medical cannabinoid products, cannabinoid concentrates and cannabinoid extracts remotely in areas of this state where individuals who hold a registry identification card issued under ORS 475B.415 do not have access to a medical marijuana dispensary.”<sup>4</sup> SB 1598 also required a report on that study, including possible recommendations for legislation.

The Oregon Medical Marijuana Program undertook such a study. It examined the geographic distribution of patients, growers and dispensaries in counties

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<sup>1</sup> *ORS 475B.400 to 475B.525 (2015)*

<sup>2</sup> *Oregon Laws 2015, Chapter 614, Section 133*

<sup>3</sup> *Oregon Laws 2015, Chapter 614, Section 134*

<sup>4</sup> *Oregon Laws 2016, Chapter 23, Section 31*

that have prohibited the establishment of medical marijuana dispensaries. The program also requested that the Advisory Committee on Medical Marijuana (ACMM) recommend to the OMMP possible methods by which medical marijuana dispensaries could dispense medical marijuana items and products to medical marijuana patients who do not have access to a dispensary.<sup>5</sup> Additionally, the program examined the types of marijuana items and products obtained by card holders from medical marijuana dispensaries.

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<sup>5</sup> Pursuant to ORS 475B.520, ACMM consists of 11 members appointed by the Director of the Oregon Health Authority who are knowledgeable about marijuana or who are registrants with the OMMP and who are advocates for the medical use of marijuana. The committee advises the Director on the administrative aspects of the Medical Marijuana Act.

# Patient access to marijuana in counties that prohibit medical dispensaries

As of December 2016 approximately 5,730 medical marijuana patients reside in 13 counties that have prohibited the establishment of medical marijuana dispensaries [Figure 1]. These patients represent about 8.4 percent of the 68,032 total patients registered with OMMP.<sup>6</sup> Despite these patients residing in medical “opt out” counties, it is likely that they still have some significant access to medical marijuana. Many of these patients grow for themselves or designate growers to grow for them. Under Oregon law, local jurisdictions may not prohibit medical marijuana grow sites that comply with state law and OHA rules.<sup>7</sup>

Approximately 3,729 growers are growing medical marijuana at 3,009 registered grow sites in these 13 counties [Figure 2]. This represents about 10 percent and 11 percent of registered medical marijuana growers and grow sites, respectively.

Some patients in medical opt-out counties still have access to a dispensary. Ordinances that prohibit dispensaries in local jurisdictions do not apply to medical marijuana dispensaries that were registered with OHA on or before the date that the local ordinance was adopted.<sup>8</sup> At the time of this report 14 medical dispensaries are operating in six of these counties. However, patients may still have difficulty accessing these dispensaries due their sparse distribution and geographic location. The other seven opt-out counties have no medical dispensaries for patients to access. [Figure 1]

This study did not include patients who live in cities that have prohibited the establishment of medical marijuana dispensaries but are located within counties where they are not prohibited. Medical marijuana is more accessible for them than for patients who live in unincorporated areas of counties that have opted out because the patient may travel shorter distances to another city that has not opted out or to an unincorporated area of the county that has not opted out.

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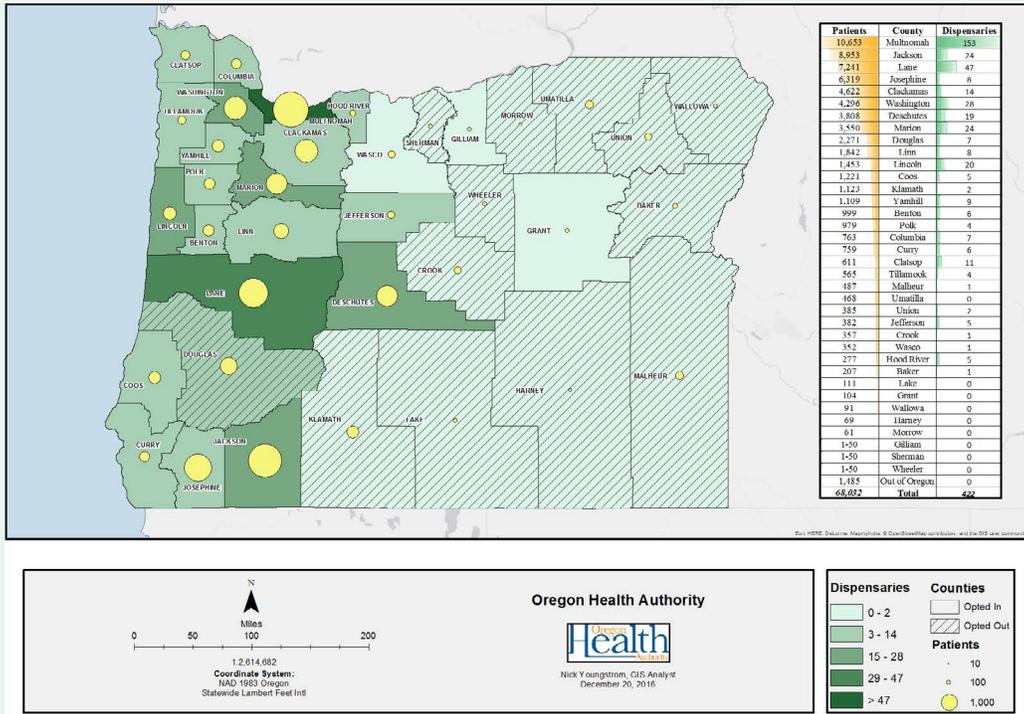
<sup>6</sup> OMMP October 2016 Statistical Snapshot. Retrieved from: <https://public.health.oregon.gov/DiseasesConditions/ChronicDisease/MedicalMarijuanaProgram/Pages/data.aspx>

<sup>7</sup> ORS 475B.800

<sup>8</sup> ORS 475B.800(6) (2015)

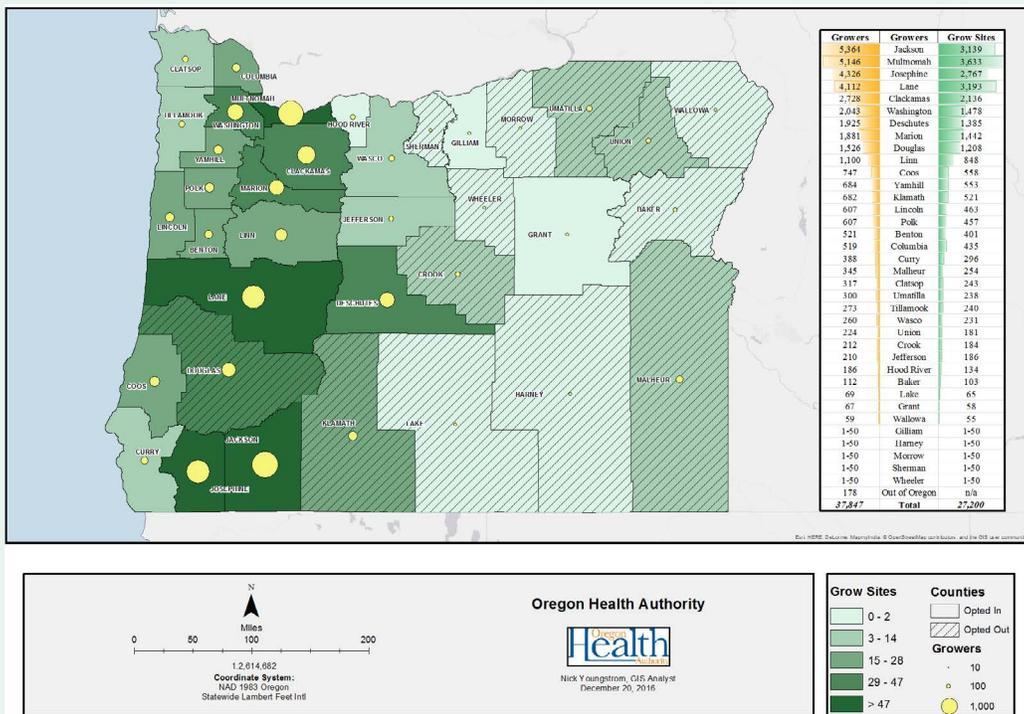
**Figure 1**

Patients and dispensaries in counties that opted out of medical dispensaries



**Figure 2**

Growers and grow sites in counties that opted out of medical dispensaries



# Observed product preferences at medical dispensaries in opt-out counties

Although opt-out counties do contain growers and grow sites, patients may still have difficulty accessing particular products that suit their therapeutic needs. This study examined the types of products patients obtain in opt-out counties and statewide. This information could provide insight into the needs of patients in the opt-out counties. The 14 dispensaries operating in opt-out counties make up 3.5 percent of all Oregon dispensaries.<sup>9</sup> Figure 3 illustrates how the mix of products sold in opt-out counties differs from the overall product mix in the state.

This chart shows that although dispensaries in opt-out counties make up only 3.5 percent of Oregon's dispensaries, they account for 19.1 percent of statewide cannabinoid capsule sales. Similarly, they account for 9.1 percent of Oregon's sales of cannabinoid tinctures. This demonstrates that proportionally, patients in opt-out counties are obtaining these two product types from dispensaries more often than patients in counties that allow medical dispensaries.

Patients in opt-out counties also appear to favor extracts in liquid form; they buy 6 percent of the product's total statewide sales, about twice the amount one would expect based on their market share. On the other hand, sales of solid extracts, liquid concentrates, transdermal patches, immature plants, and marijuana seeds all are around 3 percent of state totals, which is what we would expect when looking at proportional market share.

Some products appear to be less popular in these opt-out dispensaries. Their sales of cannabinoid topicals, usable marijuana, and edible solids each makes up only around 2 percent of statewide sales; sales of solid concentrates and liquid edibles are both less than 1 percent of statewide sales; and there are no reported sales of suppositories or non-categorized cannabinoid products in these opt-out counties [Table 1].

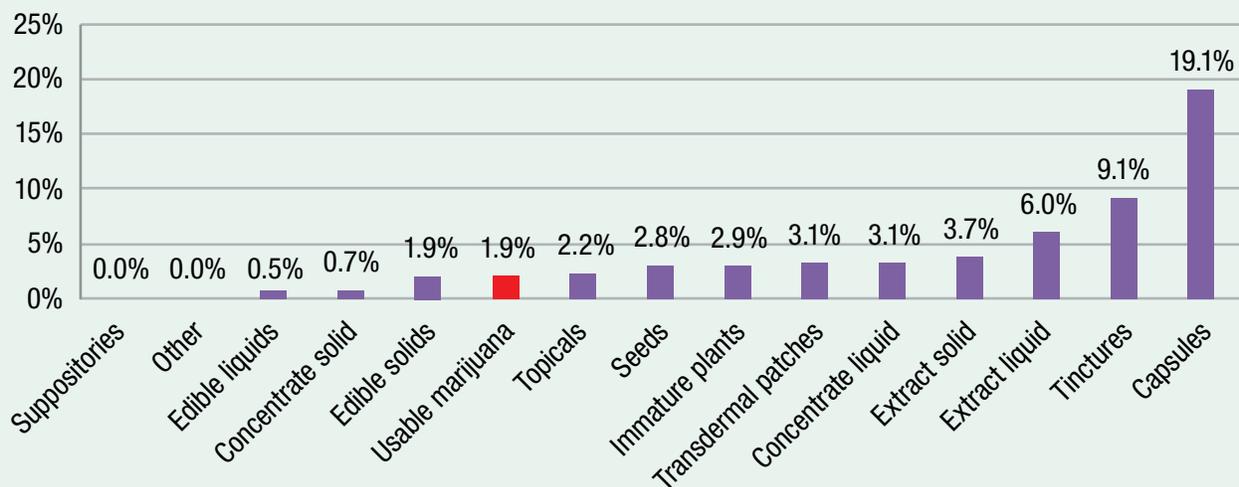
There does appear to be a preference for processed products over usable marijuana in these opt-out regions, when compared with statewide sales.

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<sup>9</sup> *After the 2016 election, thirteen Oregon counties have upheld or declined to vote on their initial decision to opt-out of the medical marijuana dispensary program, yet dispensaries do operate in six of those counties (Baker, Crook, Douglas, Klamath, Malheur, and Union). This is because even cities within opt-out counties are able to allow marijuana activity in their borders. For a list of cities and counties which have prohibited or limited marijuana facilities, see: <https://public.health.oregon.gov/DiseasesConditions/ChronicDisease/MedicalMarijuanaProgram/Documents/ommp-opt-out-list.pdf>*

**Figure 3**

Product types sold in opt-out counties (as a % of product-types sold statewide)



**Table 1**

Dispensary sales of marijuana items, statewide and in opt-out counties

Marijuana item category	Statewide sales	Sales in opt-out counties	Proportion of items that were sold in opt-out counties
Suppositories	106	-	0.0%
Other	2,359	-	0.0%
Edible liquides	4,015	20	0.5%
Concentrate solid	42,986	317	0.7%
Edible solids	226,856	4,379	1.9%
Usable marijuana	1,937,546	37,577	1.9%
Topicals	9,189	200	2.2%
Seeds	743	21	2.8%
Immature plants	11,409	327	2.9%
Transdermal patches	993	31	3.1%
Concentrate liquide	23,190	724	3.1%
Extract solid	81,428	2,981	3.7%
Extract liquid	63,523	3,816	6.0%
Tinctures	5,121	467	9.1%
Capsules	8,084	1,543	19.1%
<b>Dispensaries (total)</b>	<b>395</b>	<b>14</b>	<b>3.5%</b>
<b>Dispensaries (in analysis)</b>	<b>312</b>	<b>10</b>	<b>3.2%</b>

Although sales of usable marijuana in opt-out counties are proportionally lower than expected (compared to sales of usable marijuana statewide) they still make up the majority of total sales in those opt-out counties.<sup>10</sup>

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<sup>10</sup> Usable marijuana is reported in the number of grams sold, and all other products are reported in the number of units sold. These units of measurement are the direct result of the reporting requirements described in OAR 333-008-1248

# Recommended method of remote dispensing to medical marijuana patients

OMMP asked the advisory committee to suggest methods by which medical marijuana dispensaries may dispense marijuana and marijuana products to card holding patients who do not have access to a dispensary. The committee members agreed that the most effective and practical way to provide these patients with access to medical marijuana products would be through a delivery service provided by medical marijuana dispensaries. The medical marijuana dispensary would be allowed to deliver only to patients and caregivers who hold a valid registry identification card. OHA or any other agency responsible for the registration or licensure of these dispensaries would register and regulate the entities providing the delivery services to ensure compliance with Oregon's cannabis laws and to ensure public health and safety.

Such a delivery system would need to consider the current state of the law and make necessary changes to exempt delivery services from criminal liability. Under current law, marijuana retailers licensed under the Oregon Liquor Control Commission (OLCC) are permitted to deliver marijuana items to residences in Oregon, but only to locations within the city or unincorporated area of the county in which the retailer is licensed. For example, a retailer in Eugene cannot deliver to a residence in unincorporated Douglas County.<sup>11</sup>

Thus, any medical marijuana dispensary delivery service would need to be permitted to make deliveries from the jurisdiction in which the dispensary is registered to a jurisdiction in which it is not registered or into a jurisdiction that does not allow dispensaries. Deliverers would need to be able to possess a reasonable amount of marijuana items to make delivery worthwhile and efficient, and so that deliveries could be made to multiple patients within one trip. The delivery service would need to ensure that a single delivery order from a patient or caregiver did not exceed the patient's or caregiver's possession limit. Finally and importantly, any delivery service will have to have to account for security and safety issues inherent in transporting marijuana items and cash. At a minimum, the deliverer would need to pass a criminal background check and possess a valid and clear driver's license.

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<sup>11</sup> ORS 475B.160 and OAR 845-025-2880



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