

How the US states have learned from each other to create more comprehensive medical cannabis policies.



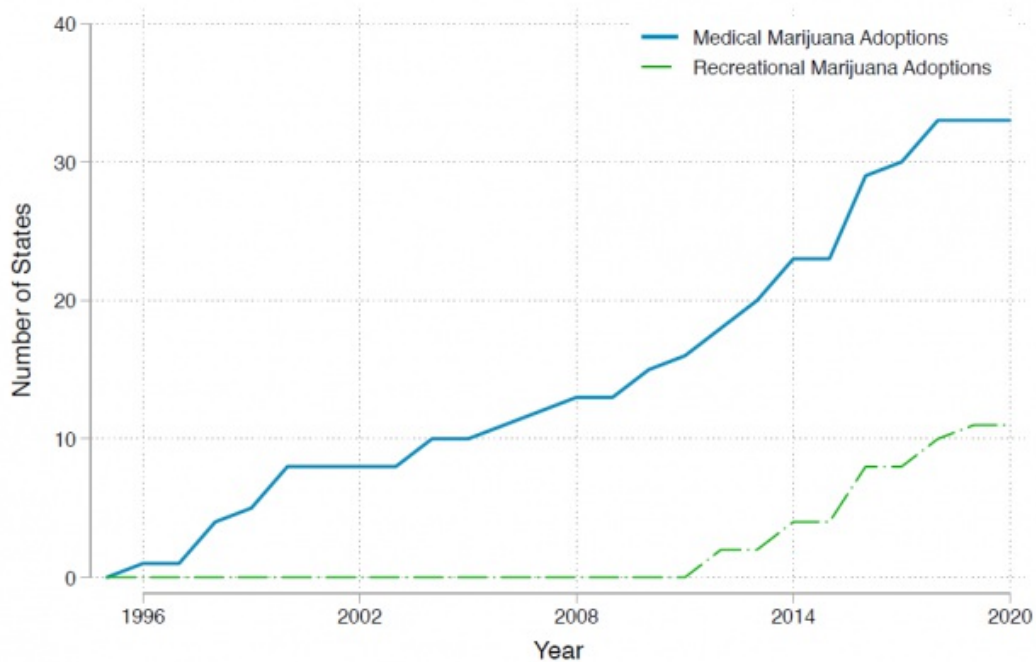
Medical cannabis was first legalized in California in 1996 – since then, 32 more states have done the same, and 11 have made the drug legal for recreational use. [A. Lee Hannah](#) and [Daniel J. Mallinson](#) take a close look at how the US states have learned from each other on how to regulate cannabis in the face of a continuing federal ban. They write that the states have moved on from their initially vague laws, enacting measures which exert much closer control over the production and distribution of cannabis.

When California became the first state to pass a medical cannabis initiative in 1996, Democratic Senator Diane Feinstein [argued](#) that Proposition 215, which made the medicinal use of the drug legal, was so poorly written that “you’ll be able to drive a truckload of marijuana [sic] through the holes in it.” Her depiction of California’s law, and other early adopters’ laws, is not wholly inaccurate. However, medical cannabis policies have become increasingly complex and institutionalized, as we describe in our recent [work](#).

In previous posts, we [discussed](#) how cannabis policies were [adopted](#) by the US states – especially in light of federal prohibition. We also addressed the [challenge of rolling back](#) state cannabis liberalization. In our latest work, we set out to learn about *what* has been passed. We find that state cannabis policies and regulations have become increasingly complex over time. The earliest adopting states wrote vague laws that essentially greenlit cannabis for medical use – providing patients an affirmative defense from state cannabis prosecution and allowing them the opportunity to grow or purchase a personal supply of cannabis – but created little structure beyond that. They did so out of fear from federal threats of prosecution for state workers engaged in implementing cannabis programs. So, states simply turned a blind eye to use for medical purposes. Recent laws, however, not only enable, but directly regulate and legitimize an industry that remains expressly prohibited by federal law. It is one thing to turn a blind eye to the violation of federal law, it is quite another to build up an intricate infrastructure to support it. So, what happened?

States operated in legally perilous territory where cannabis was concerned during the Clinton and Bush Administrations. When President Obama’s Department of Justice (DOJ) issued the [Ogden Memo](#), stating that federal prosecutors “should not focus federal resources in your states on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of cannabis” – DOJ inadvertently [encouraged states](#) to develop more robust programs to remain legally compliant. This was amplified by the Cole Memos in 2011 and 2013 that encouraged well-regulated state cannabis programs. [According to Cole](#), “We were saying to the states, ‘You guys have to become serious about your regulatory enforcement here.’ Recognizing that it hadn’t been done very well in the past, we were basically admonishing them.” Since then, states have been learning from one another, both in terms of the policy details and the politics of medical cannabis.

Figure 1 – Timeline of medical and recreational cannabis adoptions



NOTE: Graphic includes the number of states that have adopted comprehensive medical and recreational cannabis policies from <https://www.ncsl.org/research/health/state-marijuana-laws.aspx>. States with legal cannabidiol (CBD) are not included.

Learning about policy

States have converged on policy solutions by developing more regulated systems that centralize the harvesting, processing, and supplying of cannabis. These developments led to a “[medicalization](#)” process, where state regulators were forced, by federal cannabis prohibition, to act like the Food and Drug Administration in regulating the industry. These changes further [legitimize](#) the use of cannabis as a medicine. States now exert [more control](#) over distribution of the product, including developing testing and product safety protocols and even shaping business models by allowing for or prohibiting [vertical integration](#) of cannabis production and sale. Further, states [limit](#) or [restrict](#) home growing, both as a sign of increasing medicalization and to [appease commercial producers](#). Further, states send [delegations](#) to other states to [sample products](#) and observe programs in other states [firsthand](#) and early adopters like Colorado [export their expertise](#).

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Early studies of policy innovation argued that an innovation gains legitimacy as it spreads and becomes “[something states ought to have](#).” While many lament the federal government’s inaction on cannabis policy, it does feel like we have reached a critical mass. Currently, 66 US senators represent states with comprehensive medical cannabis laws at various stages of implementation, and 22 of those US senators also represent states with recreational cannabis programs. Political and policy [experience with medical cannabis](#) has helped advocates advance recreational cannabis in 11 states, though the political dynamics are notably different. As pressure increases from [changing public opinion](#), as well as the host of [practical problems](#) arising from the mismatch of federal prohibition and state legalization, not to mention calls for criminal justice reform in the wake of George Floyd’s killing, attention continues to turn to the [federal government](#) for some form of action. With questions of who will hold control of Congress and the White House, what such action looks like is unlikely to be determined until after the 2020 election.

- This article is based on the paper, “[Policy and Political Learning: The Development of Medical Marijuana Policies in the States](#)” in *Publius: The Journal of Federalism*.

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Note: This article gives the views of the author, and not the position of USAPP – American Politics and Policy, nor the London School of Economics.

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