

Vaping Bans and the Impact on Legalized Marijuana

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Stories about illnesses and deaths tied to vaping and governmental action in response are dominating local and national news. Over a thousand have become sick and dozens have died around the country, reportedly as a result of vaping. Most vaped THC, the ingredient in marijuana that makes people “high.” Not surprisingly, states are cracking down on the practice of vaping, particularly as it relates to vaping products seemingly targeted at children. Governors in Michigan, Rhode Island, New York and Washington State have banned the sale of flavored vape products. Massachusetts announced a four-month ban on the sale of all vapor products, including legal marijuana products sold in the state. Lawsuits have challenged state action and in the case of Massachusetts, a Superior Court judge allowed the governor’s four-month ban to stand so long as the state addresses specific legal requirements spelled out by the judge.

In Ohio, Governor Mike DeWine initially announced his desire to ban flavored vapor products by executive order. He concluded that he did not have the authority, since vaping is permitted by state law. Governor DeWine still supports the flavored vape ban, and State Rep. Tom Patton introduced legislation to ban flavored e-cigarettes and to require that vape products be sold behind a counter.

All of this has raised questions about Ohio’s medical marijuana program. Smoking medical marijuana is specifically banned under Ohio law. But vaporization is an allowable method to ingest the product, with vaporizing dried flower the most popular. When oils become more available as the processing program matures, it can be expected that vape oils will grow in popularity and usage.

So on the one hand, state lawmakers in Ohio permitted vaping medical marijuana as an acceptable alternative to smoking it. But on the other, the explosion of e-cigarette usage among teens and illnesses and deaths tied to vaping has Ohio, like other states and the federal government, exploring vaping bans.

The Ohio Department of Health has reported that nearly all of the approximately three-dozen confirmed cases of illness linked to vaping in Ohio involved illegal cannabis products, although nicotine products were also used in many cases. Very importantly, none of the cases have been linked to product sold at a licensed dispensary under the Ohio medical marijuana program. Indeed, as of last month, only a single reported case of a death caused by vaping has been linked to a legal cannabis product. A middle aged Oregon resident died from lung disease tied to vaping cannabis oil purchased from one or possibly two legalized marijuana dispensaries in Oregon.

Dr. Amy Acton, Director of the Ohio Department of Health, has advised Ohioans to stop vaping. The Centers for Disease Control and Prevention has issued the same advice. Vaping remains legal under the Ohio medical marijuana program and Dr. Acton has acknowledged that some patients cannot take medical marijuana in other forms such as edibles. Dr. Acton has urged patients to seek medical

advice about the continued use of vaping to ingest medical marijuana. Three licensed Ohio processors have together decided to disclose ingredients on their product labels

All of this means that in Ohio, flavored e-cigarettes may be on their way out if Governor DeWine has his way. Vaping remains a legal method to ingest medical marijuana and there has been no report of anyone becoming ill from vaping product purchased at a licensed dispensary in Ohio. But the increasing number of illnesses and deaths tied to vaping is impossible to ignore and will no doubt subject vaping to even more scrutiny. This is an evolving issue that will continue to demand the attention of regulators, licensed producers and patients.

For more information on this topic, contact a member of Benesch's [Cannabis Industry Group](#).

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