

February 2020

Impacts of Legalization of Recreational Marijuana



Introduction

In November 2018, the people of Michigan approved Proposal 1 to legalize recreational marijuana. This allows Michigan residents over 21 years of age to purchase, use, and carry up to 2.5 ounces of marijuana. They can also have up to 10 ounces and/or 12 plants in their homes (if not visible from the outside). The ballot language requires the State of Michigan to establish regulations for licenses; and allows local governments to opt-out of allowing commercial sales by adopting a local ordinance, and restricting marijuana businesses through zoning changes. The passage of the ballot issue by 55.9% shows support for expanding legalization of marijuana in Michigan. Michigan legalized medical marijuana in 2008. Medical marijuana is now legal in 33 states and recreational marijuana in 11 states and Washington DC.

However, it remains illegal to:

- Drive under the influence
- Smoke in public
- Possess marijuana at K-12 schools, federal lands (including parks), or sell marijuana without a state license

While it took eight years for the State to develop a licensing system for medical marijuana (Public Acts 281, 282, and 283 of 2016), emergency rules for recreational marijuana were established in July 2019. These created 12 different categories of licenses needed to participate in the industry. The first licenses were issued in December, 2019 for legal commercial sales, but about 80% of municipalities have opted out, at least for now.

There remain a number of challenges related to managing the impact of legal adult use marijuana for local communities, public safety, employers, financial institutions, and public health, including:

- Marijuana - both medical and recreational- is still illegal under federal law and possession can be prosecuted.
- Businesses are cash only because federal law makes it difficult for banks to support marijuana businesses.
- Facing labor shortages, employers have to decide how to address drug testing and use tolerance while maintaining safety in the workplace.
- Some communities are welcoming marijuana businesses largely to encourage economic development.
- There is no accurate test for impairment caused by use of marijuana products.
- Access and use of marijuana by youth, pregnant/breastfeeding women, and those with mental illness pose serious health risks.

In May 2016, the MAC Board approved the medical marijuana recommendations of the MAC Public Health Task Force. Several of these recommendations are applicable to addressing the challenges of recreational marijuana. Most significant is:

- Encouraging the federal government to consider reclassification of marijuana from Schedule I (illegal) to a Schedule II drug.

This would enable more research, especially at federally funded institutions, on the impact of marijuana related to health and safety; open access to the banking industry; and support development of more consistent employment and labor guidelines.

This paper highlights some of the major challenges and offers recommendations related to managing the impact of legalization of recreational marijuana. Membership on the MAC Public Health Task Force on Recreational Marijuana represents MAC member organizations including local and county governments, public health departments, employers, labor organizations, and healthcare providers.

Once approved, the recommendations will be included in the MAC Policy Platform and provide the basis for public information, education and advocacy with opinion leaders, elected officials, and the media. We will also work with other stakeholders, including local governments, law enforcement, and employers, to implement strategies to minimize the negative impacts on communities, workplace productivity, and safety.

Policy Recommendations

- **Reclassify marijuana at the Federal level to a Schedule II drug under the Controlled Substances Act.**
- **Allow the marijuana industry to access mainstream banking, financial, and employment services. Pass the federal Secure and Fair Enforcement (SAFE) Banking Act.**
- **Support research and testing for implications of marijuana use for personal and community health, brain development, drug interactions, environmental impacts including air/water quality and waste management, quality of product, and to develop a practical and functional test to measure impairment. Encourage pilot testing and speed to market.**
- **Place limits on THC potency as a harm reduction strategy (example: Dutch placed limit at 15%).**

- **Take every action possible to prevent the availability of and exposure to marijuana to youth under 21 years of age (rules, fines, penalties, legal action).**
- **Recommend review/updating of human resources/employment policies to meet employer needs and clearly communicate enforceable standards to employees.**
- **Train law enforcement and others in oversight roles to define behavior and actions based on standards of field sobriety for identifying impairment/reasonable suspicion of intoxication. Train on use of new technology when developed.**
- **Change terminology of “recreational” to adult-use.**
- **Support/promote a public information and education campaign focused particularly on youth, health concerns, and driving (what is legal under Michigan law; responsible use, similar to smoking, seatbelts, drinking and driving, etc.).**
- **Adhere to strict, standardized and clearly marked labeling rules regarding content, potency, etc. and recommend safety packaging and warning labels to prevent access by children, pregnant women/breastfeeding mothers (legislation pending), accidental overdose, etc.**
- **Ensure that state and local regulations and statutes, including zoning ordinances and building codes, are clearly stated and enforced as they relate to growing, processing, selling, and using marijuana products (number and location, noxious odors, environmental concerns, waste management, etc.)**
- **The state Marijuana Regulatory Agency should consider establishment of an Advisory Council with representation from local governments, health care, substance use disorder and mental health agencies, law enforcement, etc. to coordinate strategy, direction, messaging, etc.**

Recreational Marijuana Impacts: Public Health

Challenge:

The legalization of recreational marijuana creates challenges for public health as a result of the variety of products, potency, lack of accurate testing and labeling, and lack of information about the different impacts on individuals, young people, pregnant women, mentally ill, etc.

Discussion:

Since legalization of medical marijuana in Michigan, it has been used by patients to treat chronic pain, seizures and nausea related to specific illnesses. Some of the products, in the form of edibles and oils containing CBD, have fewer psychoactive or addictive effects than THC - but can still be potent and interact with medications. Products containing THC are not as safe and exposure to high levels can cause anxiety, agitation, paranoia and psychosis. As a result, there has been an increase in hospitalizations for accidental overdoses, taxing the emergency room system.

While there is growing public support for marijuana across the country, it remains illegal under federal law, resulting in limited research. We do know that potency in commonly cultivated plants has increased by at least three times over the last twenty years. Products from dispensaries range from 17 – 23% THC but some products available to recreational users may contain up to 75%.

Much of the data about the impact of marijuana on public health comes from states like Colorado where recreational marijuana was legalized in 2012. Information from the Rocky Mountain High Intensity Drug Trafficking Area in Colorado found that between 2013 and 2018:

- Traffic deaths where drivers tested positive for marijuana increased by 109%, compared to 31% for all traffic deaths
- Adult marijuana use increased by 94% - making it 4th in the nation
- The number of emergency room visits related to marijuana increased by 54% (from 2013-2017)
- Marijuana-related hospitalizations increased by 101% (from 2013-2017)
- College-age marijuana use increased by 18% (although youth marijuana decreased by 14%) - both are higher than the national average
- 64% of jurisdictions have banned medical and recreational marijuana businesses
- Poison control and hospitals reported increases in youth ingestion

The limited research into the effects of marijuana has focused on three main areas: the impact on youth, effects on pregnant women, and driving under the influence.

Concern #1: Educating on the impact of drugged driving

The 25-34 age group has the highest rate of drinking and drugged driving. Like alcohol, marijuana impacts different people in different ways, but unlike alcohol, there is no commonly accepted limit or test for impairment. Without this, the best way to keep people safe is to educate on dangers of using and driving, and make clear different potencies through effective labeling. We must press for the development of an effective breathalyzer or blood test to measure impairment as soon as possible.

Many previous campaigns have not been as successful as desired because policy recommendations and messaging are difficult where: marijuana is not considered a “harmful drug” by many people; the impact of marijuana on adults can depend on biology, potency, tolerance, and method of use – smoking, vaping, ingesting, etc.; and the lack of data about the negative impacts minimizes the impact of messages.

Suggestions:

- All marijuana products should indicate strength of product as required by LARA rules.
- Limit THC potency in products to a level approved by public health and medical professionals.
- Educate the public on medication interaction risks of smoking/ingesting marijuana with THC/CBD while taking antidepressants and cholesterol medication.
- Educate the public on impacts when combined with alcohol.

Concern #2: Need to educate youth and pregnant/nursing women about the specific risks of marijuana

Users of marijuana before the age of 18 are 4-7 times more likely to develop an emotional/mental disorder. Early use and family history are the biggest predictors of addiction, impaired learning, and psychological disorders including schizophrenia. These in turn can affect professional and social growth, decision-making and motivation. In Colorado, marijuana use was involved in 63% of school suspensions, 73% of law enforcement referrals, and 58% of expulsions. As it is illegal for individuals under 21 to obtain and use marijuana, younger users will be obtaining it illegally, often without protective labeling, making it even more dangerous.

Using marijuana during pregnancy can lead to low birth weight, developmental problems, and can be linked to abuse of other substances. A national survey found that approximately 7% of pregnant women use marijuana – including for morning sickness. THC can remain in breast milk for up to six days and babies can suffer from hyperactivity and poor cognitive function.

Suggestions:

- Keep messages simple and clearly focused on most vulnerable groups.

- Engage community leaders and concerned adults in messaging to youth (including public safety, parents, healthcare professionals, etc.).
- Develop school-based initiatives and provide necessary resources to support them.
- Build on successful campaigns for other products, e.g., alcohol, smoking, seatbelts, etc.

Concern #3:

More funding is needed for research and education

A Michigan Prevention Association study found that for every \$1 collected in marijuana taxes, there were \$10 in social costs, including employer costs and vehicle accidents. MAC has previously recommended changing Marijuana from a Schedule 1 to a Schedule 2 drug. This would allow research into health impacts, testing, and prevention; and further the development of policies and programs that can effectively manage the impact on public health.

For example, research in Scandinavian countries found that drug use in teens increased mental health issues by 500%, and imaging studies of this population showed a loss of grey matter in the brain.

A National Academy of Sciences clinical study in 2017 found that there was virtually no conditional improvement as a result of marijuana use except for pain reduction, and this was no better than ibuprofen.

The State of Michigan provided funding from medical marijuana revenues to counties. Some have developed effective campaigns focusing on the impact of marijuana on pregnancy, being under the influence while driving, and need for safe storage.

More recently, marijuana has been connected with vaping. While there is not enough direct evidence about whether it is the concentration of THC, the mechanism of vaping, contaminated product, or other factors, vaping is known to have led to 42 deaths and more than 2,100 cases of illness across the country affecting individuals aged 15-65. There needs to be more research into vaping as it has been considered a “safer” alternative to smoking.

Suggestions:

- Develop a sustainable funding model for effective development and evaluation of research and education.
- Ensure that revenues from the sale of marijuana are distributed to schools for education and treatment of youth.
- Include research into the impact of vaping on health of individuals as well as public health in general.
- Educate healthcare professionals on drug interactions related to marijuana use (CBD and THC).

Concern #4:

Need for healthcare providers' professional input on the consequences and side effects of marijuana

As partners with public health and experts on the health impacts of drugs, medical professionals play an important role in addressing increased marijuana use. They can provide advice and support to individuals using marijuana by inquiring about drug use at regular appointments (now that it is legal); and prescribing safe, alternative treatments for nausea, anxiety/depression, and pain.

Suggestions

- Include pharmacists and healthcare providers in development of campaign messages.
- Encourage healthcare providers to make routine inquiry regarding marijuana use and provide education, support, and counseling as needed, similar to alcohol or smoking.

Sources:

Monique Stanton, CEO, CARE of Southeast Michigan, presentation to MAC Public Health Task Force, November 7, 2019

Prevention Association White Paper on the *Impact of Commercialized Marijuana on Youth and Communities*, November 1, 2019

Office of Surgeon General *Advisory on Marijuana Use and the Developing Brain*, August 29, 2019

Crain's Detroit Business, *Healthcare industry braces for fallout from increased marijuana use*, November 10, 2019

Recreational Marijuana Impacts: Employers

Challenge:

The legalization of marijuana (medical or recreational) does not require an employer to permit use in the workplace nor increase an employee's right to do so. However, the rapid pace of legalization in many states and a number of legal decisions related to marijuana in the workplace pose challenges for employers and their human resources departments. There are four main concerns related to the impact of marijuana for employers:

- On-the-job safety, productivity and liability
- Hiring and testing policies and practices
- Changing legal environment
- Ability to recruit

Discussion:

Marijuana is a Schedule 1 controlled substance under DEA and the Federal Controlled Substance Act of 1970, making it illegal under federal law – regardless of whether states allow it for medical or recreational uses. The rapid rate of legalization of both medical and recreational marijuana by states, in addition to laws by certain cities related to worker protections, has created a complex and uncertain environment for employers.

From an HR perspective, legalization of marijuana poses several complex questions. One of the most important is how to protect an employer against legal actions for a drug that remains illegal under federal law, but legal for adult use in many states.

Most employers use pre-employment drug testing, and about half use random or scheduled drug tests for illegal drugs, including marijuana. However, as marijuana enjoys more public support and legalization has led to more marijuana use, employers have to decide how they will address this within their organizations.

In New York City, the council voted to ban marijuana testing for job applicants - except for public safety workers. Marijuana use is particularly high in the construction and restaurant industries, both of which are experiencing a labor shortage.

Concern #1:

How to differentiate between presence of marijuana and impairment

Depending on the type of test used, the presence of marijuana can be detected for up to sixty days following use. Employers can enforce rules about drug use in the workplace during work hours but they have little control over what workers do during time off. For many employers, the greater concern is whether an employee is impaired and unable to perform his/her work.

At this time, there is no accurate test for impairment – partly because marijuana affects people differently, and there has been limited research into the impact of this Schedule 1 drug. Yet, an employer's main priority is to ensure that employees do not come to work impaired, increasing liability, jeopardizing safety, and putting costly equipment at risk. To protect the company, employers must ensure that all employees have a clear understanding of testing practices and what will be allowed.

Suggestions:

- Have written policies on drug use and enforce these consistently.
- Provide training for managers to detect marijuana use on the job site.
- Develop a common definition of impairment (similar to that for alcohol) in coordination with industry groups and medical and public health professionals
- Encourage and support research into development of an accurate test for impairment
- Ensure that drug policies are compliant with state and federal rules. (Employees may be protected under Americans with Disability Act if they are under the supervision of a licensed health care professional.)
- Align drug policies with the 1988 Drug Free Workplace Act to provide some legal protection (but this will depend on state laws regarding reasonable accommodations - especially for employees using medical marijuana).

Concern #2:

Finding enough workers in a strong economy

From a hiring perspective, the strong national economy makes it difficult to fill positions. Legalization can make finding candidates who can pass a drug test even more difficult. However, eliminating drug testing can lead to decreased productivity, increased liability, and safety concerns. For some industry sectors including healthcare, public safety, utilities, and transportation, drug testing is and will remain mandatory, but for others such as hospitality, employers have needed to be more flexible.

By increasing the size of their applicant pool, employers who have strict restrictions for drug use may have more choices. This could mean hiring people who may not have all the skills needed for a position but are drug free and can be trained. In Colorado, some companies are hiring from other states to increase their pool of applicants. Other employers have decided to eliminate the pre-employment test for marijuana for workers in non-safety related positions. Some private sector employers - especially those experiencing labor shortages – are deciding not to test for



certain drugs except in the case of an accident or reasonable suspicion of impairment, while others are maintaining a zero tolerance policy. These include federal contractors or employers receiving federal funds, such as utilities or local governments.

Suggestions:

- Consider limiting pre-employment tests for marijuana to positions related to safety and limit on the job testing to “reasonable suspicion” and following accidents.
- Educate employees on company policies related to marijuana use and make clear that drug use in the workplace will not be tolerated.
- Adopt “second chance” policies where employees in non-safety positions who test positive for marijuana at the workplace receive treatment, counseling, or behavioral health assessment rather than being fired.

Sources:

Dinsmore presentation at SWCCC, January 8, 2019, *Marijuana in the workplace*

Bridge Magazine, October 9, 2018, *Pot in the Workplace*

Crain's Detroit Business, November 7, 2018, *Marijuana legalization – what it means for employers*

HR Magazine, Fall 2019, *The Cannabis Conundrum*

Recreational Marijuana Impacts: Local Government/Law Enforcement

Challenge:

The legalization of adult-use marijuana will have significant impacts on local governments, law enforcement, and public services and safety. Decisions are being made community by community, by elected leadership or citizen referendum, on whether to opt in or out of the commercial aspects of adult use marijuana. The state has licensed numerous aspects of commercial marijuana activity, including, growing, processing, testing, transporting and selling of the product. However, state law only distributes marijuana tax revenues to those local governments that have retail locations. There is little research on marijuana's impact on public safety and no definitive test for impairment.

Discussion:

A ten percent tax is placed on all adult-use marijuana sales. Thirty-five percent of the revenue is deposited into the School Aid Fund and an equal amount to the State Transportation Fund. The final 30 percent is split evenly between counties and municipalities that have marijuana retail locations within their jurisdictions.

While only select communities will deal with the impacts of producing and selling marijuana, all communities will likely be impacted by the new law. Growing a limited amount of marijuana in a private residence is now allowed anywhere in the state. While purchasing adult use marijuana will be limited to certain locations, the consumption can occur anywhere. Public consumption, as well as consumption while driving remains illegal. This means more nuanced issues for law enforcement and our legal system. Underage use remains a problem and may become even more pronounced given the now-legal use for adults. While revenues will be distributed to select communities, it appears that costs will be incurred in one form or another by all.

Concern #1:

How to integrate siting and zoning of marijuana facilities

Issues related to siting marijuana facilities are very different from other planning and zoning decisions made by local governments. Generally, zoning laws regulate rather than prohibit. They are focused on where and not whether an activity should take place. With marijuana, local governments are allowed to determine if it will be part of their community's commerce and to what extent. This can make the decision process of approving site plans much different from any other activity in the community.

Communities that choose to allow marijuana facilities would be well served to be selective in the awarding of site locations. As the demand for retail locations exceeds the limited supply of sites, locals need to take full advantage of the situation to the benefit of their community.

Suggestions:

- Create licensing standards and evaluate business proposals based on maximizing community benefit.
- Maximize enhancement of property; use of existing vacant buildings.
- Design buildings for reuse by other industries.
- Create modest exterior designs that do not draw undue or negative attention.

Concern #2:**How to manage excessive odors from growing marijuana**

One of the challenges with the cultivation of marijuana is that the plants emit strong odors as they mature. Even in rural areas the odors can be a nuisance to neighboring properties. If the plants are cultivated in the open air, only distance will mitigate the smell. If they are cultivated in a building, then the nuisance can be controlled with proper air filtration techniques.

Homegrown marijuana creates its own set of problems for which all communities need to be prepared. Unlike licensed operations, which can only occur in communities that specifically authorize operations, home growing can now legally occur in any home. This makes the challenge of dealing with nuisance odors much more problematic.

Suggestions:

- All licensed operations need to have approved site plans that should include systems to reduce noxious odors.
- All communities should review their ordinances related to odor nuisances to be prepared to deal with citizen / neighborhood complaints.

Concern #3:**Dealing with criminal activity related to marijuana facilities**

Marijuana growing, processing and retail operations may be prime targets for crime. Plants could be stolen and quickly sold for cash. Retail operations carry products that can quickly be sold on the street, and because of current banking laws, this industry generally functions in a cash-only environment.

Commercial operations will be required to be in secure locations, with full surveillance systems, including security guards. On the other hand, home growers will not be required to have these protections and may be particularly susceptible to break-ins.

Suggestion:

- Local police departments will need to be aware of and prepared to deal with increased criminal activity related to marijuana.

Concern #4:**Increase in impaired driving and how to identify impairment while under the influence of marijuana**

Identifying impaired driving caused by the use of alcohol or marijuana begin in the same manner: observation of operating a motor vehicle in an erratic manner, followed by observable evidence (odor, inability to perform mental/physical dexterity tests, etc.).

At this point the science of proof diverges. For alcohol, a breathalyzer test can be administered at the scene of the traffic stop. Impairment is confirmed if the test indicates the presence of alcohol over a certain level (BAC above .08). This may be further confirmed by a blood test. Citizens, and especially the driving public, have been educated on responsible use of alcohol in order to avoid legal consequences.

The impacts of marijuana use are much more complicated to quantify. At this point in time, there is no reliable “breathalyzer” equivalent device or blood test for detecting marijuana impairment. Because marijuana was illegal, any testing was focused on detecting the presence of the drug for criminal purposes. Now that it is legal, a test for impairment is needed. However, creating a scientific standard that delineates impairment is difficult, because the body processes marijuana differently than alcohol, it stays in the system longer, and impact varies from person to person. Some states have set specific THC levels to indicate impairment that may not be defensible in court. More research is clearly needed.

Suggestions:

- Invest in additional training of law enforcement and develop consistent standards to recognize and document individuals who are driving while impaired by the use of marijuana.
- Invest in research and development to develop a scientifically valid test for impairment.

Concern #5: How marijuana use in social settings will impact public safety

Marijuana use has one characteristic that can help control its impact on our roadways. Alcohol consumption in our society often takes place in social situations. Much of the consumption takes place at sporting events, gatherings, bars, and restaurants. In each of these situations, consumption is generally monitored based on the need for those involved to get home safely. Designated drivers, ride sharing, and other strategies have become commonplace.

To this point in time, marijuana use does not take place in many public settings, as public consumption can have legal consequences. Until THC levels and impairment standards are better understood, there is a valid test in place, and we have better educated consumers, caution should be used in promoting gathering places where people come together to use marijuana followed by a drive to return home.

Suggestion:

- Avoid legalizing and promoting social establishments that provide opportunities for people to consume marijuana products, followed by likely operation of a motor vehicle.

Sources:

City of Hazel Park, City Manager Ed Klobucher, presentation to MAC Public Health Task Force

Clinton Township Police Department, Police Chief Fred Posavetz, presentation to MAC Public Health Task Force

Recreational Marijuana Impacts: Federal Considerations

Challenge:

Now that marijuana use is legal in many states, having marijuana listed as a Schedule 1 drug at the federal level creates significant issues. Scientific research on the impact of marijuana on physical and mental health has been limited due to federal laws. Limitations on medical studies have also impacted law enforcement and workplace issues. Business operations are hampered due to restrictions on banking and other financial transactions.

Discussion:

Understanding the true impact of marijuana – whether positive or negative – is not well documented because it remains an illegal controlled substance under federal law. Research into what constitutes impairment, and the long-term impacts of marijuana use at various consumption levels would benefit both users and the medical community.

One of the reasons for legalizing marijuana was to end the black market and bring this underground economy into the light. However, federal laws and their impact on the banking industry, financial institutions, and employment services continue to be a roadblock. Currently, it is extremely difficult for those in the marijuana industry to use standard business tools such as a bank account and ancillary financial services. Federal banking regulators essentially presume that money from marijuana has illegal ties and any bank that wants to handle these transactions must show otherwise.

Concern #1:

Federal impact on medical issues, healthcare and public safety

When marijuana was considered illegal in Michigan, any evidence of use was enough to trigger legal consequences. Now that it is legal, science must establish at what point a person's consumption of a legal substance has impacted him/her to the point of impairment. When are they creating a danger to themselves and others?

The medical community also needs to address issues of overuse and the interaction of marijuana with prescription medications. Health consequences and levels of impairment are especially problematic given that marijuana metabolizes in the body in a very different manner than alcohol.

Suggestions:

- Allow access to federal funding for research into the medical benefits and dangers of marijuana use, potential interactions with prescription medications, and levels of impairment.
- Better document the impacts of marijuana, both short and long-term, on the human body.

Concern #2:

Federal impact on marijuana business operations

Operating a marijuana business without access to banking services presents significant obstacles. All property, buildings and equipment must be purchased on a cash basis. Title insurance is not readily available. All sales of product are on a cash-only basis – no checks, credit or debit cards may be used. Employer payroll taxes paid to the state and federal government must be hand-delivered in cash to the nearest government office. Employees are paid in cash. Employees are further disadvantaged because financial institutions do not recognize this income for the purpose of offering home mortgages or vehicle loans.

Operating on a cash basis creates potential for crime, making marijuana operations a prime target for robberies. An all-cash business also makes auditing extremely difficult and leads to questions involving money laundering activities.

A few financial institutions are exploring opportunities to offer typical business services to the marijuana industry. Working with federal regulators, they are putting significant resources into place to monitor the business and its related accounts for any suspicious monetary activity. State rules governing the strict monitoring of inventory, sales and tracking of licensed marijuana purveyors would be enhanced if transactions flowed through financial institutions with strict auditing and monitoring systems of their own. To minimize the criminal activity associated with marijuana, we need to break down the barriers to accessing standard financial services offered to any other business in our community.

Suggestions:

- Encourage Congress to pass the Secure and Fair Enforcement (SAFE) Banking Act.
- Allow the marijuana industry access to the mainstream banking system, with appropriate internal banking processes and safeguards in place to identify any illegal activity.

Sources:

Shelly Edgerton, Founder/President, SE Strategies LLC, and Former Director, LARA (Michigan Department of Licensing and Regulatory Affairs)

Kathryn Pothier-Hilt, First Vice President and Senior Relationship Manager, Commercial Banking, Flagstar Bank

Note: This MAC Policy Paper was approved by a majority vote of its Board of Directors, but does not necessarily reflect the opinions of all members or member organizations, which may disagree or hold differing positions on certain points.

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