

## NEW YORK STATE CANNABIS ADVERTISING REGULATIONS

The New York Office of Cannabis Management has published its final rules regarding advertising by licensed cannabis distributors. The rules place significant restrictions on cannabis advertising, which may prevent cannabis advertising on local broadcast stations.

To begin with, federal law still restricts stations from accepting cannabis advertising from licensed distributors in the state of New York. Since federal drug laws remain in place, stations may place their federal broadcast license at risk by accepting cannabis advertisements, even though the ads are being purchased by a legal cannabis distributor in New York. Each station must make its own decision, and we urge stations to consult with counsel before accepting cannabis advertisements.

At some point in time, we are hoping to change federal law. If federal law changes, then the New York State Cannabis advertising laws will take effect.

The new regulations apply directly to licensed cannabis distributors in New Your State. If they fail to follow the ad rules, they may risk losing their license. The regulations do not apply directly to stations. Although, as noted above, running advertisements that violate either state or federal law may create risks for your license.

- These regulations are complicated and apply to all types of advertising. A complete description and FAQ's of the regulations can be found here: <https://cannabis.ny.gov/part-129-guidance#:~:text=Part%20129%20governs%20how%20cannabis,Audience%20composition>
- Text of NY State marketing and advertising regulations (Part 129) can be found here: <https://cannabis.ny.gov/system/files/documents/2025/12/part-128-part-129.pdf>

The advertising regulations most relevant to broadcasters are summarized below

### **Audience Composition Requirement (applies to broadcasting and digital services)**

**The audience must consist of a proportion of individuals aged 21 and older that is equal to or greater than the proportion of New York State's population aged 21 and older.**

*(Note: At NYSBA's urging, this is a dramatic change from the initial regulations requiring that 90% of the audience be 21 years of age or older. Under the new standard, 75.9% of the program's audience must be 21 years of age or older. This is similar to the standards we use for alcohol. Note however, this percentage may change annually based on population data)*

This proportion must be based on the most recent data from the U.S. Census Bureau’s Annual Estimates of the Resident Population. The U.S. Census Bureau publishes state population estimates annually, including single year estimates by age.

Licensees are responsible for maintaining records and documentation that support compliance with all advertising and marketing requirements..

The U.S. Census Bureau publishes state population estimates annually, including single-year estimates by age. These data can be used to calculate what proportion of New York’s population is aged 21 and older. See table below for an example using 2023 U.S. Census data. The calculation below is based specifically on data from the Annual Estimates of the Resident Population by Single Year of Age and Sex for New York: April 1, 2020 to July 1, 2023 (SC-EST2023-SYASEX-36).

**Based on this data, at least 75.9% of the audience for certain forms of advertising or advertisements must be age 21 or older.**

**This percentage may change.** Data are updated annually, and licensees are responsible for using the most recent available data. Licensees must also maintain records and documentation proving that their advertising, advertisements, and marketing meet these established requirements.

<b>NYS Residents</b>	<b>Population Estimate</b>	<b>Proportion of Total Population</b>
Age under 21	4,708,268	24.1%
Age 21 and older	14,862,948	75.9%
Total	19,571,216	100%

Some examples of such evidence are:

- A description of the age verification methods of an establishment that only allows entrance to individuals who are at least 21 years of age;
- Audience composition data provided by a media purchasing agency or ad agency to verify the demographic information of an audience; and
- Age analytics for the media unit purchased or considered.

Examples of insufficient evidence include:

- Anecdotal Statements: Claims such as “most of our customers are over twenty-one years old” without supporting data.
- Use of General Population Statistics: Citing overall state demographics without proving that the audience of specific advertising or advertisements meets the audience composition proportion requirement.
- Assume Results without Evidence: Using information about audience composition for a television channel at 11:00 A.M. and assuming the audience composition will be the same on that channel at 9:00 P.M. without data or documentation to support that assumption.

### **Audio Only Labeling Requirements**

- If the advertisement contains only auditory elements (e.g., a radio spot or podcast ad), it must include the following information:
- Required Warning Statement: “***For persons 21 and older. Keep away from children and pets. If cannabis is accidentally consumed, contact the Poison Center.***”
- Read Aloud Requirement:
- The required warning must be read aloud during the advertisement.
- It must be read at the same volume and pace, and in the same language, as the rest of the advertisement.

*Note: Advertisements containing only auditory elements are not required to read aloud a rotating warning or NYS HOPEline information.*

### **Video and Audio/Visual Labeling Requirements**

If an advertisement contains only visual elements (e.g., a magazine ad or a static social media post) or includes both auditory and visual elements (e.g., a TV commercial or Instagram reel), it must include the following information, displayed in specific ways:

License Information: **Licensees must accurately and legibly include their name and license number in all advertisements**, unless the format is specifically exempt by the Office. Note: This requirement does not apply to brand representatives or cannabis merchandise. However, if using a brand representative, licensees must provide a license number upon request.

**Required Warning Statement:** *The advertisement must include the following warning: “For use only by persons 21 years of age and older. Keep out of reach of children and pets. If*

*someone accidentally consumes cannabis, contact the Poison Center. Consume responsibly.”*

**Rotating Warning Statement:** All advertisements (except audio-only ads, brand representatives, and cannabis merchandise, unless otherwise exempt from the Office) must include one of the following rotating warnings:

- “Cannabis can be addictive.”
- “Cannabis can impair concentration and coordination. Do not operate a vehicle or machinery under the influence of cannabis.”
- “There may be health risks associated with consumption of this product.”
- “Cannabis is not recommended for use by persons who are pregnant or nursing.”
- Any other warnings as authorized by the Office

IMPORTANT: Licensees cannot use the same rotating warning in all of their advertisements. The rotating warnings can be rotated in any manner the licensee chooses but must be used in a way that results in the warnings being distributed evenly among the advertisements. It is acceptable to rotate warnings so that each warning appears on roughly the same number of advertisements in a year. It is also acceptable if a licensee rotates warnings so that each warning is seen by roughly the same number of people in a year. Other manners of rotation may also be acceptable, provided they ensure the warnings are rotated.

**HOPEline Information:** All applicable advertisements (excluding brand representatives and cannabis merchandise, unless otherwise exempt from the Office) must include New York State HOPEline information, or other future iteration of New York State’s gambling and substance use disorder resource helpline:

- Phone number: “1-877-8-HOPENY” or “1-877-846-7369”
- Text: “HOPENY” or “467369”
- Website: “<https://oasas.ny.gov/hopeline>” or a QR code which linking directly to the website
- This information must be clearly presented as a substance use disorder resource.
- Example of acceptable language: “Concerned about your cannabis use? Contact the New York State HOPELine by texting “HopeNY”, calling 1-877-8-HOPENY, or visiting [oasas.ny.gov/HOPELine](https://oasas.ny.gov/HOPELine).”

**Display & Presentation Requirements:** The required information must be displayed in a conspicuous manner on the advertisement or, for ads with both auditory and visual elements, it can be either displayed or clearly read aloud.

When the information is printed:

- Must be clearly visible and placed conspicuously on the face of the ad
- Must be in the same language as the rest of the advertisement
- Must be in Times New Roman, Calibri, Arial, or Helvetica
- Must use a minimum of 6-point font, clearly legible and contrasting from the background
- Must not be obscured or hidden from view

**Consumer warning information** (i.e., the required warning statement and the rotating warning) must be printed in a bright yellow text box (#FFFF00) to stand out from the rest of the advertisement.

- A similar bright yellow shade may be used, but it must appear visually consistent with #FFFF00.
- Shades of yellow with saturation values below or above 75% will not be acceptable.
- A border may be used to help distinguish the yellow box. There are no restrictions on the color or weight of this border. If the yellow is not clearly visible against the background, a border must be used.
- The licensee's name, license number, and HOPEline information are not required to be in the yellow box, even if printed on the ad.

When the information is read aloud:

- Must be read at the same volume and pace as the rest of the advertisement
- Must be in the same language as the rest of the advertisement