

**Missouri Section for Medical Marijuana
Facility License & Compliance Section**

Guidance Document 3 (Business entity structure changes; Reciprocity; Elective lab testing; Drive-thru window)

Do changes in business entity structures constitute a Change in Ownership?

For purposes of calculating a 10% ownership change please refer to “Guidance Document 2, Ownership changes of less than 10%, subparagraph 2,” which states in part that, “the percentage of change calculation should be done, as the rule states, for any changes to ownership. Both economic and voting interests were considered initially in determining compliance with Article XIV, so both economic and voting interests will be relevant again in determining whether a 10% change in ownership has occurred.”

If the percentage of individual economic or voting interests does not change, then for purposes of the 10% ownership calculation, there has been no change in ownership. Therefore, converting a business entity to a new entity or new corporate structure without changing the ownership interests of the individuals involved would not result in an ownership change for the 10% calculation. Similarly, replacing an individual owner with a trust of which that individual is the sole beneficiary would also not result in an ownership change for the 10% calculation. If however, the change in business structures or move to a trust in any way introduces or removes an individual or changes their percent of ownership, the facility must include that change in an ownership change calculation per department guidance.

Reciprocity in MO for non-resident MM patients

All of the authority in Article XIV regarding an individual’s purchase and possession of medical marijuana and the Department’s authority over and responsibilities to those individuals is written in terms of Qualifying Patients. A Dispensary, by definition, is also only licensed to sell medical marijuana to two types of individuals: Qualifying Patients and their caregivers. Article XIV defines Qualifying Patient as “a Missouri resident diagnosed with at least one qualifying medical condition.” While the Department has some authority to waive or vary from its rules for good cause, we cannot waive a constitutional requirement. Therefore, we do not believe we have the authority to establish reciprocity in MO for non-resident licensed patients.

We are certainly aware of the policy arguments for reciprocity and take no position on whether such a policy should be implemented in MO through legislative action.

Performing elective testing in licensed testing facilities

Licensed medical marijuana testing facilities are authorized to acquire, test, certify, and transport marijuana. Just as with all other licensed medical marijuana facilities, the Department has the responsibility to ensure that all licensed activities are, at the very least, conducted in a way that protects public safety. The Department has issued rules that include mandated testing for medical marijuana, with detailed parameters, and also allowed for voluntary testing, with fewer parameters. Testing of medical marijuana is a core licensed activity for testing facilities that a facility would not be authorized to perform absent licensure per Article XIV and the program’s rules. So whether a particular test is

addressed by Department rules at this time or not, testing facilities should assume any testing of medical marijuana will fall under the oversight of DHSS.

Revisions to the testing facility rule are in progress. The Department is developing provisions that we hope will give better guidance to our licensed facilities on this issue. At the very least, we expect to require that any results of medical marijuana testing performed by licensed testing facilities be recorded in the statewide track and trace system.

Drive-thru windows in licensed dispensary facilities

Drive-thru windows are not prohibited by Article XIV or the program rules, and the Department supports this option for better patient access. Revisions to the dispensary facility rule are being considered to better align them with this option. For instance, MoCann's proposed revision to clarify that a drive-thru window is not an additional access point is helpful. We are also looking at clarifying that the drive-thru patient will need to be counted in the patient/staff ratio currently specified for limited access areas. We are also interested in suggestions on what additional security measures would be necessary for drive-thru sales, if any. Pending these rule revisions, we will be open to dispensaries proposing drive-thru facility designs, and any dispensary considering this option that did not initially propose that design should contact its licensing specialist to determine whether an application for a material change to physical design will be necessary.