

Missouri Section for Medical Marijuana Regulation
Facility License & Compliance
Guidance Document 13
Ownership Transactions and Agreements

Guidance Document 4 discussed transactions and agreements for medical marijuana licensees related to convertible debt. The Department explained the importance of ensuring that such agreements are drafted in compliance with ownership change approval processes. Recently, we have received questions about potential transactions and agreements that seek to use ownership interests or the license itself as collateral for a loan.

In short, this is not permitted. Regulations require that a licensee seek and obtain approval before making any changes to ten percent or more of the ownership interests of the facility, either economic or voting, per the last Department approved ownership record on file. Similarly, both regulations and Article XIV require that a licensee seek and obtain approval before it may “assign, sell, give, lease, sublicense, or otherwise transfer” a license.

DHSS cannot waive the requirements of Article XIV and does not intend to vary from 19 CSR 30-95.040(4)(C)2 regarding prior approval of ownership changes. In both instances, the Department uses these processes to verify, among other things, that new ownership is compliant with constitutional minimum standards for licensure. Specifically, the Department has a responsibility to ensure licensees are in compliance with restrictions regarding substantial common control, ownership, and management, and with the mandate that no owner have a disqualifying felony offense. Per Article XIV, there is no exception to this last requirement for individuals who have a very small ownership interest in a license.

In light of this, licensees should carefully consider the implications of any agreements regarding changes to ownership interests, particularly agreements that could result in an automatic change of ownership interest equal to or greater than the 10% threshold. For example, a licensee may not pledge their equity interest as collateral on a loan as doing so could result in automatic transfer of ownership upon default. Automatic transfer of some portion of ownership equal to or greater than 10% from last approved ownership would be a violation of rule. In fact, executed agreements that would trigger a future automatic change of ownership equal to or exceeding the 10% threshold would be a current violation of the rule requiring pre-approval of such change. Discovery that such an agreement exists or is being drafted would likely trigger an investigation to determine whether the licensee’s commitments to future actions place the licensee in violation of the rules and law requiring approval before transferring the license or changing ownership. It is important to note that agreements must not only recognize there may be regulatory requirements that apply but also actually be structured to comply with those requirements.

It is also important to note that constitutional standards for licensure apply at all times and not just the moment in time when the Department reviews the licensee’s ownership for compliance with the law. As such, any transfer or change in ownership that establishes ownership that is not compliant with the substantial common control or disqualifying felony offense requirements, even for a short period of time, would place the license in violation.

As with any violation of rule, entering into agreements that use ownership interests or the medical marijuana license as collateral may result in notices of violation. Resolution of such violations would

necessarily require changing ownership or agreements to be in line with regulations, and the licensee would not be in compliance until the issue was resolved. Failure to resolve the violation may result in delay of pending processes, such as certain applications or inspections, corrective action plans, suspension, and ultimately, revocation.

While many of you are aware of these issues and have discussed them with us over the years, we understand some may not have considered or realized the implications of the laws and regulations related to ownership changes. We encourage any licensee with questions, especially those who may already have entered into agreements inconsistent with this guidance, to reach out to their License Specialist to discuss. For licensees who find themselves out of compliance but desire to chart a path back into compliance, the department would like to collaborate to reach that shared goal.