

Missouri Section for Medical Marijuana Regulation
Facility License & Compliance Section
Guidance Document 4 (Convertible debt and Economic Interest)

Convertible Debt

The Department will permit facilities to raise capital with convertible debt. Doing so would not require pre-approval of the agreement. The terms of these agreements would be between the parties, however, the Department will review any existing agreements as part of the minimum standards verification process or, if made after the verification process, as part of normal compliance activities. We would review these (and any other) agreements for indications of control, ownership, or management to determine whether the agreement places that facility in substantially common control, ownership, or management with other facilities.

In order to honor the requirement that certain changes not be made without prior approval from the Department, we would expect to see in the agreement that parties understand we would need to approve a conversion before it occurs if it would cause a change in ownership of 10% or more since the facility's ownership was last approved. In addition, agreements should include reasonable contingencies in the event the Department does not approve the conversion. Contingencies that would clearly leave the facility in financial distress if the conversion is not approved are not likely to be deemed reasonable. As always, it would be advisable to screen potential partnerships ahead of time for any issues that would put the facility's license at risk, such as owners with disqualifying felony offenses or changes that would shift the ownership percentages such that the Missouri owners are no longer in the majority.

Economic Interests

Economic interest in a facility is defined in 19 CSR 30-95.010(10) as "rights to either the capital or profit interests therein, or a combination thereof; or, in the case of a corporation, rights to some portion of all classes of outstanding stock of the corporation." The term profit, as used in this definition, is a general and undefined term. The program interprets this word in its plain and ordinary meaning, which is that profit equals a valuable return or financial gain. The simplest way to describe what we will be looking for to determine whether a person or entity has an economic interest in a facility is whether they are entitled to financial gain tied to the income of a facility. A set bill for services does not indicate an economic interest in the facility. Compensation based on the facility's revenue, income, earnings, etc. does indicate an economic interest in the facility. This is particularly relevant for branding or licensing agreements.

Questions have arisen at times regarding the reasons for the Department's interpretation of economic interest. First and foremost, this is the simplest interpretation that does not require applying another system of meaning that was not identified in the rule. However, and perhaps more important, this interpretation aligns with the values of Article XIV. Consider a situation where 80% of the Missouri facilities separately agree to pay one out of state company 80% of their gross revenues in exchange for use of some combination of brands. Of course this would not be a common agreement, but if economic interest does not cover rights to percentages of revenue, then a facility could agree to transfer percentages of any amounts to anyone. Allowing

such an arrangement would run contrary to two of Article XIV's values: 1) that Missouri medical marijuana facilities be majority owned by Missouri residents and 2) that only a certain number of facilities be under substantially common ownership.

We are aware other states allow for such agreements to varying extents. With a different law than what we have, we would be performing a different analysis on this issue. That said, as always, we are open to suggestions on rule changes. Any suggestions for rule changes that would allow for revenue-sharing in a manner that does not subvert the ownership values of Article XIV will be considered. We encourage anyone with suggestions to submit them as soon as possible so that they can be considered in the next round of rule revisions.

A final note on economic interests. The Department does not consider employee incentive programs to be an economic interest in the facility as long as the incentive is based on the employee's performance and not the income of the facility. For example, incentive compensation based on trim rate, patient feedback, or even commission on sales of wholesale product would not indicate an economic interest in the facility.