

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

Guidance Document 2 (Ownership Changes of Less than 10%; Transfer of Licenses; Multiple licenses award at one location)

Ownership changes of less than 10%

We have received indications from licensees that there are differences of opinion on what constitutes a 10% change in ownership. The following represents the Department's interpretation of the requirement in 19 CSR 30-95.040(4)(C)2 that all facilities must seek and obtain approval before making "any changes to ten percent (10%) or more of the ownership interests of the facility."

- 1) The ownership of a licensee was first described, with attestations regarding the truth of those descriptions, as part of the licensee's application. This is what the Department relied on in order to determine whether a potential licensee would comply with the MO majority ownership requirement, among other things. Therefore, the ownership expressed in the application is what matters for beginning the 10% change calculation, as the primary purpose of the 10% cutoff is to designate a point at which the licensee should come to the Department for verification that changes made do not affect the licensee's eligibility for licensure. The Department will not accept arguments that the only changes relevant to calculating the percent change are changes made after an entity was licensed.
- 2) 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. Also, the calculation of changes in ownership should not be done solely for changes resulting from adding new owners. In other words, if the changes are only made within existing owners as interests shift between them, the calculation should be done, and it should also be done if the changes are made because new owners are brought in.
- 3) The percentage of change calculation is made in order to determine what percent of the ownership of the facility has changed. In other words, the Department will be looking for what percent of the whole has changed hands between individuals and not whether any given individual's ownership has changed by more than 10%. If the amount of economic interest change is different than the amount of voting interest change, the Department will expect to see an application for change if either the change in economic interest or the change in voting interest is greater than 10%.

Example 1

As an example of what could occur without prior approval, and how these changes can be communicated to the Department, consider the below hypothetical situation, which illustrates changes made to ownership between the time it was described in a facility's application and the time the facility was licensed. The relevant change in ownership in this scenario is 4%.

Owner Name	% of Economic Interest at time of approved Application for licensure	% of Voting Interest at time of approved Application for licensure	Ownership Category	New % of Economic Interest in Licensee	New % of Voting Interest in Licensee	Change to the Economic Interests of the Facility	Change to the Voting Interests of the Facility	Date of Ownership Change
Joe Smith	38.00	38.00	Existing Owner - Non Resident	37.00	37.00	-1.00	-1.00	8/2/2019
Brenda Baker	20.00	20.00	Existing Owner - Resident	21.00	21.00	1.00	1.00	8/15/2019
John Henry	20.00	20.00	Existing Owner - Resident	22.00	22.00	2.00	2.00	8/17/2019
Susan Thomas	22.00	22.00	Existing Owner - Resident	19.00	19.00	-3.00	-3.00	10/5/2019
Cindy Brown	0.00	0.00	New Owner - Non Resident	1.00	1.00	1.00	1.00	1/1/2020
Total	100.00	100.00		100.00	100.00	4.00	4.00	

Example 2

As an example of what should not occur without prior approval, consider the alternative hypothetical situation, which also illustrates changes made to ownership between application and licensure but to an extent the Department would view as greater than 10%. The relevant change in ownership in this scenario is the change to voting interest, which is 17.50%.

Owner Name	% of Economic Interest at time of approved Application for licensure	% of Voting Interest at time of approved Application for Licensure	Ownership Category	New % of Economic Interest in Licensee	New % of Voting Interest in Licensee	% Difference in Economic Interest	% Difference in Voting Interest	Date of Ownership Change
Joe Smith	49.5	49.5	Existing Owner - Non Resident	49	44	-0.50	-5.50	8/2/2019
Brenda Baker	8.5	8.5	Existing Owner - Resident	8	13	-0.50	4.50	8/15/2019
John Henry	30	30	Existing Owner - Resident	25	18	-5.00	-12.00	8/17/2019
Susan Thomas	12	12	Existing Owner - Resident	15	20	3.00	8.00	10/5/2019
Cindy Brown	0	0	New Owner - Non Resident	3	5	3.00	5.00	12/10/2020
Total	100	100		100	100	6.00	17.50	
			Sum of MO Resident Ownership (This scenario would not meet the rule for MO majority ownership.)	48	51			

If a contemplated change in ownership would result in a cumulative change greater than 10% from what was represented in the application, the licensee should submit an application for change. Once that application has been approved, the facility is effectively reset to 0% change in ownership and should begin a new calculation from that point onward to determine if any additional changes would necessitate submitting a new application for change.

As always, if you have questions about what does or doesn't comply with the regulations, please reach out to your licensing specialist.

Transfers of Licenses

The Department continues to hear of entities discussing their intent to sell licenses to other entities as soon as such an application can be made. By rule, each licensee must be operating within a year of receiving its license. Furthermore, upon renewal, a licensee must be able to show how it has made a good faith effort to follow through on the assurances it made in its application. Perhaps most

importantly, a large part of the application scoring system was focused on the leadership teams of the applicants, as well as the unique business models proposed by those individuals. Therefore, licensees should not expect the Department to look favorably on a request to transfer a license if it is clear the licensee has never been invested in or capable of implementing its proposals. In short, if a licensee is already aware at this point in implementation that they will not be able to fulfill the proposals on which they were scored, the licensee should seriously consider surrendering its license. To persist in seeking a transfer of license under those circumstances is likely just delaying a revocation of license while conditionally denied applicants are anxiously waiting for their opportunity to step in.

Finally, any individuals considering entering into agreements designed to transfer a license as soon as the rules allow should study this guidance and proceed cautiously in order to avoid making investment in arrangements that may never be approved.

Multiple licenses award at one location

In cases where an entity was awarded multiple licenses at the same location for the same proposed business venture, the Department will expect that licensee to surrender the excess licenses unless the licensee can explain how the original proposal requires the extra licenses. There are certainly valid reasons why an entity would have submitted multiple applications for one planned facility, and that was never prohibited. However, applications were scored based on particular proposals, and one proposal can only be implemented one time. While this issue will certainly be raised during the minimum standards verification process, the Department encourages licensees with excess licenses as described here to either reach out to the Department to arrange for surrender or to explain why the multiple licenses are necessary to implement the original proposal.