

Medical Marijuana Dispensary Licensing Report



June 2018

I. Introduction

On September 8, 2016, the Ohio General Assembly established the Ohio Medical Marijuana Control Program (MMCP) through House Bill 523 (131st General Assembly). The General Assembly set a two-year timeframe from the bill's effective date for patients with a qualifying condition and doctor's recommendation to be able to purchase specific forms of medical marijuana. As one of three state agencies charged with the implementation of the MMCP, the State of Ohio Board of Pharmacy (Board) is responsible for the oversight of the patient and caregiver registry, retail dispensaries as well as authorized forms and methods of medical marijuana.

The retail dispensary application process is consistent with regulations set forth in both the Ohio Revised Code and the Ohio Administrative Code. Overall, the Board developed a process of evaluating and awarding provisional licenses that is fair, unbiased, and prioritizes the health and safety of the public.

This report provides an overview of the following:

- The development and release of the Request for Applications (RFA) to operate medical marijuana dispensaries;
- The dispensary license application scoring process;
- The review of applicant minimum licensing requirements, which resulted in requests for clarification from applicants to obtain all pertinent information; and
- The ranking of applicants and findings of fact, allowing the Board to make an informed decision regarding the award of provisional medical marijuana dispensary licenses.

II. Dispensary Key Concepts

The following provides an overview of some key concepts necessary to understand the dispensary licensure process.

Provisional Licenses and Certificates of Operation

Those selected as part of the dispensary license RFA process will be awarded provisional licenses. Provisional licensees are authorized to begin the process of establishing a dispensary in accordance with the representations in their applications and the rules adopted by the Board. Per rule, all provisional license holders have a maximum of six months to demonstrate compliance with the dispensary operational requirements to obtain a certificate of operation. Compliance will be determined through an inspection by a Board Medical Marijuana Compliance Agent. Once a dispensary is awarded a certificate of operation, it can begin selling medical marijuana to Ohio patients and caregivers in accordance with Ohio laws and rules.

Number of Provisional Dispensary Licenses

The MMCP's intent has always been to start a small program with a framework that affords the flexibility to grow in line with demonstrated patient demand and patient need for access. Some estimates report that Ohio could ultimately have a medical marijuana patient population that approaches 200,000; however, a patient population of that size is not reasonably anticipated in



year one, or even in year two, of operation. By rule, the Board is limited to issuing up to 60 dispensary licenses across the state, but will have the authority to increase the number of licenses after September 8, 2018.

Per the program rules, the Board will consider, on at least a biennial basis, whether enough medical marijuana dispensaries exist, considering the state population, the number of patients seeking to use medical marijuana, and the geographic distribution of dispensary sites.

Establishing Dispensary Districts

In creating dispensary districts, the Board examined geographic diversity and patient access, as required by law, resulting in the initial 60 provisional dispensary licenses being assigned in 31 dispensary districts across the state. The Board considered the following criteria in establishing Ohio's dispensary districts:

- Established rules and regulations in other state medical marijuana programs;
- Patient populations;
- Consultation with regulators in other states;
- Ohio's population;
- Existing compliance resources for the Board; and
- Access to major roadways.

Economically Disadvantaged Groups (EDGs)

As set forth in Section 3796.10 of the Revised Code, the Board is required to issue not less than 15% of retail dispensary licenses to entities that are owned and controlled by United States citizens who are residents of this state and are members of one of the following economically disadvantaged groups: Blacks or African Americans, American Indians, Hispanics or Latinos, and Asians. "Owned and controlled" means that at least 51% of the business, including corporate stock if a corporation, is owned by persons who belong to one or more of the groups set forth in this division, and that those owners have control over the management and day-to-day operations of the business and an interest in the capital, assets, and profits and losses of the business proportionate to their percentage of ownership.

Prospective Associated Key Employees (PAKEs)

A PAKE includes any and all natural persons who are owners, officers, board members of a dispensary applicant; persons who have a financial interest in a dispensary applicant; and/or persons who exercise substantial control over a dispensary applicant. Exercising control includes the power to influence management and operational decision-making. For purposes of the application an individual is a "prospective associated key employee" irrespective of that individual's ownership interest.

III. Development and Release of Request for Application (RFA)

Development of the Application and Evaluation Criteria

To develop a fair and unbiased RFA process, the Board selected a consulting firm, North Highland, through a competitive bid process conducted by the Ohio Department of Administrative Services. North Highland was selected for its procurement experience, particularly with medical marijuana RFAs or the equivalent thereof in other states. Members from North Highland worked collaboratively with Board staff to develop a model application and evaluation criteria. The application sought the relevant information needed for determining an applicant's qualifications, proposed medical marijuana dispensary business operations, viability, and compliance with the applicable laws and rules.

The application included two categories of questions.

One category was designed to establish an applicant's adherence to minimum license requirements. This category required applicants to answer questions and submit documents to demonstrate that they complied with several requirements, such as:

- PAKEs who did not plead guilty to or were not convicted of a disqualifying offense;
- A proposed dispensary location at least 500 feet from a prohibited location;
- Tax laws;
- Minimum capital requirements; and
- Proper zoning approval.

Failure to meet minimum license requirements including those in this category prohibits an applicant from being awarded a provisional license.

The second category included scorable questions in the following topic areas to identify the most qualified applicants to be awarded a license in each district:

- Business plan (26% of total evaluation score). This included questions on the applicant's business startup plan, employee qualifications, business history and experience.
- Operations plan (52% of total evaluation score). This included questions on dispensary oversight, security and surveillance, receiving, storage, dispensing, inventory management, diversion prevention of product, sanitation, safety and recordkeeping.
- Patient Care Plan (22% of total evaluation score). This included questions on staff education and training, updates and continuing education, patient care, dispensary operating hours and patient information.

Online Application Development

In-house IT staff developed the online application using the questions and required documentation from the model application.

To create an account, applicants provided basic demographic and contact information. Once an account was created, applicants progressed through a series of questions, attestations, Yes/No answers, and informational responses. Overall, there were over 100 minimum license requirement



elements and 23 scorable questions on the application. Applicants could submit multiple applications using a single account. All location-specific information was required in each application submitted.

When creating an account, auto-generated complex passwords were provided to applicants. To protect account and application information, account passwords were unable to be changed or updated. If a password was lost or forgotten, applicants could request a new password. The new auto-generated password was emailed from the application website to the email address associated with the account. No Board staff had access to applicant passwords.

Questions and Answers, Webinar, FAQs

The Model Dispensary Application was posted 45 days prior to the application submission period. Also prior to the application submission period, two question and answer (Q&A) periods were provided for potential applicants to identify areas where clarity was needed. Answers were drafted by members of the project team. Where applicable, links to supporting documents, regulations, or other information was provided.

Questions and answers were then posted to the MMCP website. A total of 387 questions were responded to across the two periods. As a result of the feedback received through the Q&A periods, the Board made updates to the model application, forms associated with the application, and also made changes to the online application.

In addition, on October 3, 2017, a recorded webinar and frequently asked questions (FAQ) document explaining the online application process and answering questions was posted on the MMCP Dispensary webpage.

Links to the Q&A responses, the webinar and the FAQs are published on the MMCP website (<https://medicalmarijuana.ohio.gov/dispensaries>)

Application Submission Period

The online dispensary application submission period opened on November 3, 2017 and ended on November 17, 2017. During this time, applicants were able to submit an online dispensary application that was hosted on the MMCP public site, www.medicalmarijuana.ohio.gov.

The submission period was extended from its originally published closing 2:00 p.m. ET until 6:00 p.m. ET on Friday, November 17, 2017 for two reasons. First, due to a technical issue, the dispensary application page was not available the afternoon of November 14, for approximately 15 minutes. Second, while monitoring traffic to the application page during the final hours of the submission period, the Board became aware of slower than typical server response times. It was later determined that a high volume of traffic, including those completing applications and uploading of documents in the final hours, contributed significantly to the burden on the server.

At the conclusion of the application submission period, 369 applicants submitted completed documents and paid the \$5,000 application fee.

Application Amendment Period

In the days following the closure of the application period, the Board learned there were claims that some applicants were unable to complete their applications due to the difficulty of uploading documents and that others that had submitted their applications had been forced to leave off documents to make the deadline, both believed to be attributed to overwhelming server traffic. The Board also observed that many applicants had entered the business address of the company (often out of state) in the place where they were supposed to list the address of the proposed dispensary.

To rectify these issues, Board leadership concluded that an amendment period would be permitted. Applicants that had started an application and declared a district and county were granted access to their applications from December 18, 2018 at 8:00 a.m. ET until December 20, 2018 at 8:00 a.m. ET. Applicants could amend application responses, including the address of the proposed dispensary location, but could not edit the county and district fields. Those that already submitted application fees, were not required to remit additional fees and applicants that were satisfied with their existing submission were not required to take any action.

Following the application amendment period, the Board received seven new completed applications, bringing the total number of applications to 376.

Application Clarification Period

Beginning in March 2018, the Board, in accordance with rule 3796:6-2-04 of the Ohio Administrative Code, requested additional information and documentation necessary to review applications for minimum dispensary requirements and statutory disqualifiers.

The additional documents and information requested by the Board were used to determine whether an applicant was barred by statute or administrative regulation from receiving a provisional dispensary license. No applicant's score was increased or decreased as a result of providing the additional information required by the notice.

Integrity of Application Responses

While the project team implemented quality assurance steps throughout the dispensary application process, additional validation efforts were undertaken as a result of the public audit findings by the Auditor of State in an effort to learn from Department of Commerce's experiences. An independent assessment was completed by Gartner Consulting to confirm the integrity of various elements of the dispensary application process. The reviewed area and results include the following:

1. Confirmation that responses submitted by applicants is associated with the correct application;
2. Reasonable confidence that applicant responses have not been modified since being submitted by applicants;
3. Reasonable confidence that evaluator scores have not been modified since being submitted by evaluators; and
4. Confirmation that scoring reports represent applicant actual scores.

IV. Application Scoring Process

All 376 applications were reviewed and scored by Board evaluators. There were 23 scorable questions evaluated, leading to a maximum of 230 points to be awarded for an application. The viable applicant threshold was set at 60% or 138 points.

To assign each score, scorable question responses were evaluated using a standard 0-10 evaluation scoring system as illustrated in the table below.

Table 1. Scoring Criteria

Score	Description
10	Applicant response substantially exceeds all requirements as stated in the question and associated statutes and rules; very strong supporting evidence with relevant examples where applicable; demonstrated approach shows additional value clearly linked to delivering desired MMCP outcomes.
8	Applicant response meets all requirements and, in some areas, exceeds requirements as stated in the question and associated statutes and rules; strong supporting evidence with examples where applicable; demonstrated approach shows some additional value that support desired MMCP outcomes.
6	Applicant response meets all requirements as stated in the question and associated statutes and rules; supported by evidence and examples relevant to the response. Limited additional value demonstrated.
4	Applicant response meets most, but not all requirements as stated in the question and associated statutes and rules; supported by some limited evidence or examples that may be somewhat applicable to the response; no additional value demonstrated.
2	Applicant response meets a limited number of requirements as stated in the question and associated statutes and rules; very limited evidence or examples to support statements, or with limited relevance.
0	Applicant response does not meet requirements as stated in the question and associated statutes and rules; no evidence or examples to support statements.

Selection and Training of Evaluators

To ensure a neutral, impartial and informed evaluation process was undertaken, the Board recruited individuals with experience in a number of fields relevant to the various application sections and/or background with regulatory, compliance, and enforcement concepts similar to those found in the authorizing medical marijuana regulations, including: law enforcement, finance, construction, and traditional pharmacy-related matters.

All evaluators involved in the dispensary licensing process were employed by the Board. Each evaluator fell into one of the following three categories: existing Board employee; employed through an exchange agreement with a state agency; or onboarded as an intermittent employee. All intermittent employees underwent a drug test and were required to submit fingerprints for a criminal background check.

To provide for consistent and standardized scoring of all applications, all evaluators received formal training, an evaluation session schedule, and access to supporting materials. This ensured each

evaluation team had a shared understanding of the standardized scoring criteria and evaluation expectations, prior to evaluating the first application.

The evaluators were grouped into four team as follows: Business Plan (“BP”); Operations Plan (Compliance and Enforcement) (“OPS (C&E)”); Operations Plan (Patient Care) (“OPS (PC)”); and Patient Care Plan (“PCP”). Each team had responsibility for between five and seven questions as illustrated in Table 2.

Table 2. Scorable Question by Evaluation Team

Section of the Application	Section Reference	Question Reference	Evaluation Team
Business Plan	C-2	C-2.1	BP
	C-3	C-3.1	BP
		C-3.2	BP
	C-4	C-4.1	BP
	C-5	C-5.5	BP
C-6	C-6.9	BP	
Operations Plan	D-2	D-2.2	OPS (C&E)
	D-3	D-3.3	OPS (C&E)
	D-4	D-4.4	OPS (C&E)
	D-5	D-5.5	OPS (PC)
	D-6	D-6.8	OPS (PC)
		D-6.9	OPS (PC)
	D-7	D-7.1	OPS (C&E)
	D-8	D-8.1	OPS (PC)
	D-9	D-9.2	OPS (C&E)
	D-10	D-10.1	OPS (PC)
D-10.2		OPS (PC)	
D-10.3		BP	
Patient Care Plan	E-1	E-1.1	PCP
		E-1.2	PCP
	E-2	E-2.1	PCP
		E-2.2	PCP
	E-3	E-3.1	PCP

Conflicts of Interest

To avoid conflicts of interest, evaluators were required to sign a Non-Disclosure and Conflict of Interest Agreement. To minimize evaluator exposure to applicants’ identifiable information, all scoreable questions containing identifiable information were assigned to the Business Plan evaluation team. Applicants were instructed not to include identifiable information in other

sections of the application. If a previously unforeseen conflict arose, the evaluator recused themselves from scoring a particular application.

Evaluation Sessions

Scoring was completed electronically with team members assembled in an evaluation team room. During evaluation scoring sessions, a unique and anonymous username and password provided evaluator access to applications with only the ability to enter a score for assigned questions. Individual responses were not discussed among evaluators. Moderators were present at all evaluation sessions to answer questions, monitor discussion, and ensure compliance with all established procedures.

To minimize any error in the input of scores, each individual evaluator entered their own score. All scores entered for each individual question were then averaged. An applicant's final score is the sum of the averages for each individual question. As part of its assessment, Gartner Consulting completed a statistical analysis confirming the consistency of the scores.

Integrity of Evaluator Scores

Insofar as scoring integrity is concerned, Gartner Consulting discovered no anomalies to suggest that scores were modified after being submitted by evaluators. Further, more than 97% of scores are within two standard deviations of mean. Notably, a process is generally considered statistically sound when approximately 95% of all values (in this case scores) fall within two standard deviations. The security assessment concluded that the process by which scoring reports are generated is transparent and supported up by the source data. Likewise, the process to aggregate each application's final score is transparent and backed up by the intermediate average scores. The process is sound and repeatable.

VI. Minimum License Requirements Review

In addition to scoring a 60% in the scorable evaluation across the whole application, applicants must also meet minimum requirements to be licensed as a medical marijuana dispensary. While all 376 applications were assessed for compliance with minimum license requirements, full vetting was reserved for the highest scoring applicants. The review of minimum licensing requirements was structured in the following stages:

Stage 1 – Initial Checks

During Stage 1, initial checks were carried out to ensure that applicants provided all requested forms with the required information and that all "Yes/No" attestation questions were responded to as directed in the application. During this phase, information necessary to fully assess applicants' minimum qualifications was identified.

Stage 2 – Pre-Provisional Allocation

Stage 2 review went into a further level of detail to determine what information was necessary to assess minimum license requirements before requesting additional information from applicants. This included taking inventory of all background check results received. Following stage 2, the



Board commenced with the Application Clarification Period that is outlined in Section III of this report.

For applicants claiming EDG status, this analysis also included declared ethnicity, Ohio residency confirmation, as well as confirmation of ownership and control for PAKEs identified as part of the requisite 51% ownership and control.

Stage 3 – Final Provisional Allocation

During Stage 3, responses to requests for additional information issued at the end of Stage 2 were processed by Board. Requests for additional information did not impact any applicant's score. To efficiently allocate finite state resources, checks for the following disqualifying events were reserved for the highest scoring applicants in each dispensary district:

- **500 Foot Rule Violation** – Location less than 500 feet of any of the following prohibited facility:
 - Daycare centers
 - Schools
 - Churches
 - Public parks
 - Public playgrounds
 - Public libraries
 - Community addiction services providers as defined under section 5119.01 of the Ohio Revised Code
- **Disqualifying Criminal Offense** - A conviction of or plea of guilty to any of a pre-determined list of offenses pursuant to R.C. 3796.04(B)(2) and Ohio Adm. Code 3791:1-1-01(A)(15).
- **Non-compliance with Tax Law** – Applicant in non-compliance with the applicable tax laws of Ohio or its political subdivisions, or not in compliance with the applicable tax laws of any jurisdiction where the applicant has operated and conducted business within the last three years.
- **Prohibition by Local Jurisdiction** – Applicant who intends to operate a dispensary on a site within a jurisdiction where there is a known moratorium, either as stipulated in the applicant's zoning form, or communicated to the Board by a zoning authority.

V. Allocation of Provisional Licenses

Tabulating Final Scores

All scoring activities by the evaluation teams concluded on March 15, 2018. Reports were generated with the average of the evaluators' scores for each individual question, which were then added to create an aggregate total score for each applicant. As described in Section IV, the maximum score available for an Applicant was 230 and any applicant scoring at or above 60%



(138 points) was identified as viable. Of all the applicants, 329 out of the 376 (87.5%) of the applications were found to be viable based on the scoring threshold.

Allocation Principles & Maximum Awardable Provisional Licenses

There were two districts (NW-2 and SW-3) that did not receive any applications in this initial dispensary application process. In another district (NW-1), no applications that met the minimum viable applicant threshold were submitted. Consequently, the Board has a maximum of 56 licenses to allocate.

As part of the allocation process, Board staff adhered to statute, rule, and previously announced principles regarding license awards, including the following:

- Applicants (including PAKEs) can be awarded up to a maximum of 5 licenses;
- The Board may award an applicant's provisional license in any of the dispensary districts in which it applied if the applicant submitted more than five viable applications;
- No more than 66% (2/3) of licenses for any district will be awarded to a single applicant; and
- A minimum of 15% (9 licenses - based on the determination a maximum of 56 licenses can be awarded) are able to be allocated to viable applicants who are from economically disadvantaged groups (EDGs).

To undertake allocation, a ranked list of viable applicants was created for each dispensary district, based on evaluation score. Using the allocation principles stated above, a list of potential awardees was identified in each district. This list was used to assist with the prioritization of final vetting of those applicants potentially situated for provisional license allocation, during which the Stage 3 review described in Section IV occurred. Further scrutiny of application locations revealed scenarios where multiple applicants were proposing the same physical dispensary address. In those situations, only the highest scoring applicant should be considered as only one license may be awarded at a specific location. Locations found to be in violation of the 500 foot rule, a statutory disqualification, removes those applications from the allocation process.

Allocation for Economically Disadvantaged Groups (EDGs)

To ensure the 15% (i.e. 9 provisional licenses) requirement is met for EDG provisional licenses, as required by Ohio law, a ranked list of viable EDG applicants was created. Eligibility for each applicant claiming EDG status was checked through evidence of ownership and control, confirmation of individual EDG status and confirmation of Ohio residency.

Five EDG applicants earned scores that allowed for a provisional license award irrespective of EDG status. To award the remaining four EDG licenses, the Board vetted for minimum license requirements the next highest scoring EDG applicants, that otherwise would not have received a license. The highest scoring EDG applicants that also meet minimum license requirements should be awarded a license that would otherwise be awarded to a non-EDG applicant in the districts where those four EDG applications were submitted.



For placement of three of the remaining four EDG applicants, following this process has no impact on the number of licenses issued to non-EDG applicants. In those three instances, the EDG will receive a license in a district where an entity has either already been awarded five total provisional licenses or awarded 66% of all provisional licenses in that district.

For the remaining EDG applicant, the Board should displace the lowest scoring otherwise successful applicant in the district where the highest scoring, non-successful EDG applicant had applied.