

**August 11, 2020**

[Notice](#) is given that the Cannabis Control Commission (Commission) is seeking public comment. As part of its latest regulatory review process, former Commissioner Kay Doyle considered proposed areas of regulatory change and drafted this proposal on dismantling the vertical integration of Medical Marijuana Treatment Centers (MTCs). In response to a public records request, and given the public interest in this issue, the Commission is seeking comment on the proposal which would allow vertically integrated MTCs subject to licensing caps under G.L. c. 94G, § 16, to apply for certain endorsements, including cultivation, marijuana product manufacturing, or retail endorsements, which are not available under its existing regulatory scheme. The Commission does not explicitly or implicitly endorse the proposal or represent that it complies with § 16. It notes that the proposal is not integrated in the draft regulations currently out for public comment. The Commission will take the public comment it receives under advisement.



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## Memorandum

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**To:** Pauline Nguyen  
**Cc:** Regs Group 2  
**From:** Kay Doyle  
**Date:** 4/30/20  
**Subject:** Addressing Vertical Integration in the Medical Use of Marijuana Program  
(Attorney-Client Communication—Privileged Material)

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**Issue:** The Medical Use of Marijuana Program has required vertically-integrated licensing since its inception in 2013. In 2017, legislators attempted to remove vertical integration as a statutory requirement, but kept a statutory cap of 3 medical marijuana treatment center licenses per entity that made dismantling vertical integration with a straightforward licensing scheme difficult. Should the Commission wait for the statutory cap to be addressed by the Legislature or implement a regulatory licensing scheme that allows de-integration while respecting the statutory licensing cap?

### Relevant Statutory Provisions:

G.L. c.94G, § 16.

No licensee shall be granted more than 3 marijuana retailer licenses, **3 medical marijuana treatment center licenses**, 3 marijuana product manufacturer licenses or 3 marijuana cultivator licenses; provided, however, that a licensee may hold 3 marijuana retailer licenses, 3 medical marijuana treatment center licenses, 3 marijuana product manufacturer licenses and 3 marijuana cultivator licenses.

G.L. c.94G, § 1.

“Medical marijuana treatment center”, the premises approved under a medical use marijuana license.

G.L. c.94G, § 7.

The commission shall promulgate rules and regulations for the implementation of this chapter under the procedures of chapter 30A. The commission shall set application fees for medical marijuana treatment centers so as to defray the administrative costs of the medical marijuana program and ensure the medical marijuana program is revenue neutral. No regulation of the commission regarding the medical use of marijuana shall be more restrictive than any rule or regulation promulgated by the department of public health pursuant to chapter 369 of the acts of 2012 and in effect on July 1, 2017.



**Helpful Resources/Examples from Other Jurisdictions:** Yes. A review of integration policies around the nation reveals:

- only 12 states require vertical integration of their medical use of marijuana markets (AZ, CO, DE, FL, HI, MA, MN, NH, NJ, NM, NY, VT);
- 17 states allow, but do not require vertical integration of their medical use of marijuana markets;
- 2 states prohibit vertical integration of their medical use of marijuana markets (LA, WA)
- A few states have rules deemed too unclear or undeveloped to determine one way or the other regarding their policies on vertical integration
- Only CO and MA appear to have a mandatory vertical integration of the medical marketplace while allowing a non-integrated adult marketplace.

See Attachment A for additional details.

**Recommendation:**

*Option #1:* The Commission may choose to wait for the Legislature to eliminate the awkward statutory cap on medical marijuana treatment center prior to dismantling vertical integration. If the Legislature eliminated or modified the statutory cap, the medical licensing scheme could be easily converted into a direct parallel of the adult licensing scheme, where applicable. As there is no guarantee of when or if the Legislature will act, however, the delay could be significant and exacerbated by the COVID-19 pandemic. As the high costs associated with a vertically integrated business create a high barrier to entry and are likely a significant contributing factor to the lack of diversity in the leadership of medical marijuana treatment centers, a delay in addressing the issue contributes to continuing inequity in the marijuana industry.

*Option #2:* The Commission may choose to proceed with a regulatory solution that respects the statutory cap of 3 medical marijuana treatment centers, but stratifies the authorization of different parts of the operations into endorsements. Under such a solution, an operator would have a base medical marijuana treatment center license for a nominal fee, but would separately request a cultivation endorsement, marijuana product manufacturing endorsement or a retail endorsement for fees parallel to the adult fee for a similar license. Similar to the cap on licenses, endorsements would also be capped at 3 of each endorsement type per entity. The concept of license endorsement is already utilized in other industries,<sup>1</sup> as well as the adult use regulations (delivery endorsement for microbusinesses). The dismantling of vertical integration will promote patient access as a number of existing medical marijuana treatment centers have

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<sup>1</sup> Endorsement schemes as a prerequisite for additional licensing have been used in state and federal regulatory schemes (e.g. 601 CMR 14.07 (language endorsements required for teachers and administrators); 322 CMR 7.06 (fishing); 995 CMR 4.14 (ocean vessel pilot licensing); 46 CFR 10.235 (merchant mariner licensing); 42 CFR 403.813 (medicare prescription drug program sponsor status)).



discussed abandoning the medical side of their operations, on the grounds that the returns associated with an MTC are not adequate to justify the high costs associated with the vertically integrated license structure.

Regs Group 2 recommended Option #2, with the following changes, at a minimum to the medical regulations. Regs Group 2 also voted to review vertical integration with Licensing and Compliance to evaluate administrative impacts, technology impacts and determine whether a future implementation date, such as January 1, 2022, makes sense rather than the effective date of the regulations, to allow the Commission team time for implementation and to manage expectations on timing.

In addition to these changes, to 935 CMR 502 should be reviewed for parallel changes and 935 CMR 501 and 502 should be evaluated for any further changes necessary to carry out the endorsement scheme:

935 CMR 501

*.002 add the following definitions:*

Craft Marijuana Cooperative Endorsement - means an endorsement to cultivate by an MTC comprised of residents of the Commonwealth and organized as a limited liability company, limited liability partnership, or cooperative corporation under the laws of the Commonwealth. A cooperative is licensed to cultivate, obtain, Manufacture, Process, package, brand and Transfer Medical-use Marijuana or Marijuana Products to MTCs or Marijuana Establishments, but not to Consumers.

Cultivation Endorsement means a cultivation registration issued to an MTC to cultivate, process and package Medical-use Marijuana, and to transfer Medical-use Marijuana to other MTCs or Marijuana Establishments, but not to consumers.

Microbusiness Endorsement means an MTC that can conduct the activities authorized for a Tier 1 Marijuana Cultivator or Marijuana Product Manufacturer or both, in compliance with the operating procedures for each license and, if in receipt of a Delivery Endorsement issued by the Commission, may deliver Medical-use Marijuana or Marijuana Products produced at the licensed location directly to Consumers in compliance with established regulatory requirements for retail sale as it relates to delivery. An MTC with a Microbusiness Endorsement engaged in product manufacturing may purchase no more than 2,000 pounds of Marijuana per year from other Marijuana Establishments for the purpose of Marijuana Product manufacturing by the Licensee.

Commented [DK(1)]: Needs work

Commented [DK(2)]: The language of the original reg is a bit weird, so this is even weirder

Product Manufacturing Endorsement means a MTC licensed to obtain, Manufacture, Process and package Medical-use Marijuana or Marijuana Products and to Transfer these products to other Marijuana Establishments or MTCs, but not to Consumers.



Research Facility Endorsement means an entity licensed by the Commission to engage in research projects regarding Medical-use cannabis or marijuana, including research regarding marijuana products or marijuana accessories.

Retail Endorsement means an MTC licensed to purchase and transport Medical-use Cannabis or Marijuana Product to or from MTCs and to sell to Consumers. A Retail Endorsement does not authorize offering Medical-use Marijuana or Marijuana Products for the purposes of on-site social consumption on the Premises of an MTC.

.002 amend the following definitions as follows:

Delivery-Only Licensee means an entity that is authorized to deliver directly to ~~Consumers from a Marijuana Retailer or~~ Registered Qualifying Patients or Caregivers from an MTC and does not provide a retail location accessible to the public.

~~Existing Licensee Transporter<sup>2</sup> means an entity that is otherwise licensed by the Commission and also licensed to purchase, obtain, and possess Marijuana or Marijuana Products solely for the purpose of transporting, temporary storage, sale and distribution on behalf of other Marijuana Establishments or MTCs to other MTCs or Marijuana Establishments, but not to Consumers.~~

Marijuana Transporter means an entity, not otherwise licensed by the Commission, that is licensed to possess Cannabis or Marijuana Products solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments or MTCs, but not to Consumers. ~~Marijuana Transporters may be an Existing Licensee Transporter or Third-Party Transporter.~~

Medical Marijuana Treatment Center (MTC) formerly known as a Registered Marijuana Dispensary (RMD), means an entity licensed under 935 CMR 501.101: *Application Requirements for Medical Marijuana Treatment Centers*, that acquires, cultivates, possesses, Processes (including development of related products such as Edible Marijuana or Marijuana Products, MIPs, Tinctures, aerosols, oils, or ointments), transports, sells, distributes, delivers, dispenses, or ~~researches or administers~~ Marijuana, products containing Cannabis or Marijuana, related supplies, or educational materials to Registered Qualifying Patients or their Personal Caregivers for medical use. Unless otherwise specified, MTC refers to the site(s) of dispensing, cultivation, and preparation of Cannabis or Marijuana for medical use.

<sup>2</sup> Please see other recommended change from Regs Group 2 re: consolidating Transporter license into one license type.



Amend 935 CMR 501.005 by deleting the table concerning Medical Marijuana Treatment Centers, amending the introductory text and inserting the following table:

(2) A Medical Marijuana Treatment Center license applicant or licensee shall identify at least one endorsement type for each license. Each of the individuals and entities identified below is subject to the following nonrefundable fees. ~~Each of the entities identified below is subject~~

**Commented [KD3]:** This appears to be a typographical error in the official version and should be fixed while we're in this section.

Endorsement Types	Application Fees (Indoor/Outdoor)	Annual Endorsement Fee (Indoor/Outdoor)
Cultivation Endorsement (Indoor or Outdoor)		
Tier 1: up to 5,000 square feet	\$200 (I)/\$100 (O)	\$1,250 (I)/\$625 (O)
Tier 2: 5,001 to 10,000 sq. ft.	\$400 (I)/\$200 (O)	\$2,500 (I)/\$1,250 (O)
Tier 3: 10,001 to 20,000 sq. ft.	\$600 (I)/\$300 (O)	\$5,000 (I)/\$2,500 (O)
Tier 4: 20,001 to 30,000 sq. ft.	\$2000 (I)/\$1500 (O)	\$20,000 (I)/\$10,000 (O)
Tier 5: 30,001 to 40,000 sq. ft.	\$2000 (I)/\$1500 (O)	\$22,500 (I)/\$11,250 (O)
Tier 6: 40,001 to 50,000 sq. ft.	\$2000 (I)/\$1500 (O)	\$25,000 (I)/\$17,500 (O)
Tier 7: 50,001 to 60,000 sq. ft.	\$2000 (I)/\$1500 (O)	\$30,000 (I)/\$15,000 (O)
Tier 8: 60,001 to 70,000 sq. ft.	\$2000 (I)/\$1500 (O)	\$35,000 (I)/\$17,500 (O)
Tier 9: 70,001 to 80,000 sq. ft.	\$2000 (I)/\$1500 (O)	\$40,000 (I)/\$20,000 (O)
Tier 10: 80,001 to 90,000 sq. ft.	\$2000 (I)/\$1500 (O)	\$45,000 (I)/\$22,500 (O)
	\$2000 (I)/\$1500 (O)	\$50,000 (I)/\$25,000 (O)
Craft Marijuana Cooperative Endorsement	Total fees for its Canopy. If more than six locations, add \$200 (I)/\$100(O) per additional location.	Total fees for its Canopy. If more than six locations, add \$1,250(I)/\$625(O) per additional location.
Product Manufacturing Endorsement	\$1500	\$10,000
Microbusiness Endorsement	\$1000	50% of all applicable license fees
Independent Testing Laboratory	\$1500	\$10,000
Retail Endorsement	\$1500	\$10,000
Transporter Endorsement	\$1000	\$5,000
Delivery Endorsement	\$500	\$5,000
Research Facility Endorsement	\$300	\$1,000

**Commented [KD4]:** At the moment, I have not inserted a charge for the basic Medical Marijuana Treatment Center license and instead attribute all fees to the nature of the endorsements that go with it.



935 CMR 501.050

Amend as follows:

(2) Cultivation Endorsement~~Operations~~

- (a) An MTC may perform cultivation operations only at the address approved to do so in a cultivation endorsement by the Commission. Cultivation operations licensed prior to [insert date] may continue without a cultivation endorsement until the MTC's renewal, after which no cultivation operations may continue without a cultivation endorsement. At the ~~cultivation~~-location or locations, as applicable, identified in the cultivation endorsement, MTCs may cultivate, Process, and package Medical-use Marijuana, to transport Medical-use Marijuana to MTCs and to Transfer Marijuana to other MTCs or Marijuana Establishments, but not to patients.

(3) Product Manufacturing Operations.

- (a) An MTC may perform manufacturing operations only at the address approved to do so in a product manufacturing endorsement by the Commission. Product manufacturing operations licensed prior to [insert date] may continue without a product manufacturing endorsement until the MTC's renewal, after which no product manufacturing operations may continue without a product manufacturing endorsement. At the Processing location, MTCs may obtain, Manufacture, Process and package Medical-use Marijuana Products, to transport Medical-use Marijuana Products to MTCs and to Transfer Medical-use Marijuana Products to other MTCs, but not to patients.

(4) Dispensing Operations.

- (a) An MTC may perform dispensing operations only at the address approved to do so in a retailer endorsement by the Commission. Retail operations licensed prior to [insert date] may continue without a retail until the MTC's renewal, after which no retail may continue without a retail endorsement. At the dispensing location, the MTC may purchase and transport Marijuana Products from MTCs and transport, sell or otherwise transfer Marijuana Products to MTCs and to Registered Qualifying Patients.



Amend 501.101 (Application Requirements) as follows:

(1)(a)9.f. Insert a section either at the top (like adult use) or at the bottom (to avoid renumbering the rest) that states:

The type(s) of MTC Endorsements to be located at the proposed address

Amend (2) to specifically identify the effective date of the 2019 Amendments:

(2) Application Requirements for MTC Applicants that Submit an Application of Intent Prior to the Effective Date of these Regulations November , 2019.

Commented [KD5]: Insert effective date

Add a new section that provides parallel additional specific requirements to those in the adult regulations:

(3) Additional Specific Requirements. Applicants submitting their applications after \_\_\_\_ shall submit additional specific information for the endorsement type they apply for:

Commented [KD6]: In light of the length of time it took to implement the delivery regulations, the Commission may wish to identify a date in the future other than the effective date of the regulations for the end of vertical integration, to allow the staff and MassCIP the opportunity to make whatever adjustments would be needed.

a. Additional Requirements for MTC with Cultivation Endorsements. In addition to the requirements set forth in 935 CMR 500.101(1)(c), applicants for a license to operate an MTC with a Cultivation Endorsement ~~Marijuana Establishment for cultivation~~ shall also provide as part of the Management and Operation Profile packet an operational plan for the cultivation of Marijuana, including a detailed summary of the policies and procedures for cultivation, consistent with state and local law, including but not limited to, 935 CMR 500.120(11) and the Commission's *[name of consolidated Energy & Environmental Guidance]* ~~Guidance on Integrated Pest Management~~ in effect of the date of these regulations and as subsequently amended.

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b. Additional Requirements for MTC with a Craft Marijuana Cooperatives Endorsement. In addition to the requirements set forth in 935 CMR 500.101(1)(c), applicants for a license to operate an MTC with a ~~Marijuana Establishment as a~~ Craft Marijuana Cooperative Endorsement shall provide:

- i. As part of the Application of Intent:
  1. Evidence of residency within the Commonwealth for a period of 12 consecutive months prior to the date of application;
  2. Evidence of the cooperative's organization as a limited liability



company or limited liability partnership, or a cooperative corporation under the laws of the Commonwealth;

3. Evidence that one Member has filed a Schedule F (Form 1040), Profit or Loss from Farming, within the past five years; and
  4. Evidence that the cooperative is organized to operate consistently with the Seven Cooperative Principles established by the International Cooperative Alliance in 1995.
- ii. As part of the Management and Operations Profile:
1. The plan required of Cultivators pursuant to 935 CMR 5010.101(1)(d)(1); ~~and~~
  2. The plan(s) and documentation required of Marijuana Product Manufacturers pursuant to 935 CMR 5010.101(1)(d)(3), as applicable; ~~and~~.
  - ~~2.3~~ Energy plan.

(c) Additional Requirements for MTC with ~~Marijuana~~ Product Manufacturing ~~ers~~ Endorsement. In addition to the requirements set forth in 935 CMR 500.101(1)(c), applicants for a license to operate an MTC with ~~Marijuana~~ Establishment for a Product Manufacturing Endorsement shall also provide, as part of the Management and Operation Profile packet:

1. A description of the types, forms and shapes, colors, and flavors of Marijuana Products that the ~~Marijuana Establishment~~ MTC intends to produce;
2. The methods of production;
3. A safety plan for the Manufacture and production of Marijuana Products, including, but not limited to, sanitary practices in compliance with 105 CMR 590.000: *State sanitary code chapter X: Minimum sanitation standards for food establishments.*
4. A sample of any unique identifying mark that will appear on any product produced by the applicant as a branding device; and
5. A detailed description of the ~~Marijuana Establishment~~ MTC's proposed plan for obtaining Marijuana from a licensed MTC or Marijuana

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Establishment(s).

(d) Additional Requirements for an MTC with a Microbusinesses Endorsement. In addition to the requirements set forth in 935 CMR 500.101(1)(c), applicants for a license to operate a Marijuana Establishment as a Microbusiness shall also provide:

1. As part of the Application of Intent, evidence of residency within the Commonwealth for a period of 12 consecutive months prior to the date of application;

2. As part of the Management and Operations Profile, the same plans required of an MTC with a Marijuana Cultivation Endorsement pursuant to 935 CMR 500.101(3)(a), a Marijuana Product Manufacturing Endorsement pursuant to 935 CMR 500.101(3)(c), and in the case of a Delivery Endorsement, Retailers pursuant to 935 CMR 500.101(3)(e) to the extent that these requirements implicate retail sales involving delivery.

(e) Additional Requirements for MTC with a Retailers Endorsement. In addition to the requirements set forth in 935 CMR 500.101(1)(c), applicants for a license to operate an MTC with a Marijuana Establishment for Retail endorsement shall also provide, as part of the Management and Operation Profile packet, a detailed description of the MTC's Marijuana Establishment's proposed plan for obtaining Marijuana Products from a licensed MTC or Marijuana Establishment(s).

I recommend that existing MTCs be permitted to wait until renewal to determine which endorsements they wish to renew and if those endorsements are consistent with their existing operations, the renewal process be kept simple and the form designed so as to simply identify which operations would be ongoing by the selection of endorsements. The Commission may not need to amend the regulatory language to effect this concept and may instead be able to do it via messaging and a modification to the renewal guidance, but if the Commission does wish to address the transition in the regulations, one possibility is to amend 935 CMR 501.103 as follows:

(1) Expiration and Renewal of Licensure. The MTC's License, as applicable, shall expire one year after the date of issuance of the provisional License and annually thereafter, and may be renewed as follows unless an action has been taken based on the grounds set forth in 935 CMR 501.450: *Medical Marijuana Treatment Center Registration or License: Grounds for Suspension, Revocation, and Denial of Renewal Applicants*.

(a) No later than 60 calendar days prior to the expiration date, an MTC shall submit a completed renewal application to the Commission in a form and manner determined by the Commission, as well as the required License fee.

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Commented [KD7]: I'm not sure what this language is trying to say in the original regs, so we may need to talk this through so that I can translate it to the medical regs

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(i) Licensees who received their Certificate of Licensure prior to the effective date of these regulations may select the type of endorsements that align with their licensed operations at the time of renewal.

(a) (ii) Licensees that wish to add additional endorsements that do not align with their licensed operations at the time of renewal, shall apply for the additional endorsements by submitting the additional information required for the additional endorsements pursuant to 935 CMR 501.101(3) in a time and manner determined by the Commission.

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Commented [KD8]: An alternative possibility to consider is doing it via a (new) Change of Operations application, where the MTC identifies how its operations would change when adding the additional endorsements.

935 CMR 501.105(8)(j) should be deleted as it is now redundant to (8)(a):

~~(j) An MTC may acquire Marijuana from or distribute Marijuana to another MTC or Marijuana Establishment in accordance with 935 CMR 502.105(8)(b) and subject to the following:~~

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Commented [KD9]: You may choose to insert reserved here to preserve the current numbering of the subsections.

- ~~1. A documented emergency occurs such as loss of crop, vandalism, or theft, or other circumstance as approved by the Commission; or~~
- ~~2. The distribution and acquisition of Marijuana, except MIPs, to and from all other MTCs does not exceed, cumulatively, 45% of the MTC's total annual inventory of Marijuana as measured by weight; except that such requirement shall not apply to CMOs; and~~
- ~~3. The distribution and acquisition of MIPs to and from all other MTCs does not exceed, cumulatively, 45% of the MTC's total annual inventory of MIPs as measured by its dry weight equivalent to Marijuana; except that such requirement shall not apply to CMOs;~~

#### Guidances Affected:

Licensing  
Guidance on Renewal (should it be expanded to address MTC renewal?)



**ATTACHMENT A**

**STATE BY STATE RESEARCH**

	<b>Medical</b>
<b>AK</b>	Allowed
<b>AZ</b>	Required
<b>CA</b>	Allowed
<b>CO</b>	Required
<b>CT</b>	Allowed
<b>DC</b>	Allowed
<b>DE</b>	Required
<b>FL</b>	Required
<b>HI</b>	Required
<b>IA</b>	Allowed
<b>IL</b>	Allowed
<b>LA</b>	Prohibited
<b>ME</b>	Unclear
<b>MD</b>	Allowed
<b>MA</b>	Required
<b>MI</b>	Allowed
<b>MN</b>	Required
<b>MT</b>	Allowed
<b>ND</b>	Allowed
<b>NH</b>	Required
<b>NJ</b>	Required
<b>NM</b>	Required
<b>NV</b>	Allowed
<b>NY</b>	Required
<b>OH</b>	Allowed
<b>OK</b>	Allowed
<b>OR</b>	Allowed
<b>PA</b>	Allowed
<b>RI</b>	Allowed
<b>UT</b>	Allowed
<b>VT</b>	Required
<b>WA</b>	Prohibited

12 states require (AZ, CO, DE, FL, HI, MA, MN, NH, NJ, NM, NY, VT)

17 allow (AK, CA, CT, DC, IA, IL, MD, MI, MT, ND, NV, OH, OK, OR, PA, RI, UT)

2 prohibit (LA, WA)

(a few states have rules deemed too unclear to determine one way or the other)

Only Colorado and Massachusetts appear to have a mandatory vertical integration of the medical marketplace while allowing a non-integrated adult marketplace.

