

Effective 12/3/2018

Part 3
Medical Cannabis Pharmacy License

26-61a-301 Medical cannabis pharmacy -- License -- Eligibility.

- (1) A person may not operate as a medical cannabis pharmacy without a license that the department issues under this part.
- (2)
 - (a)
 - (i) Subject to Subsections (4) and (5) and to Section 26-61a-305, the department shall issue a license to operate a medical cannabis pharmacy in accordance with Title 63G, Chapter 6a, Utah Procurement Code.
 - (ii) The department may not issue a license to operate a medical cannabis pharmacy to an applicant who is not eligible for a license under this section.
 - (b) An applicant is eligible for a license under this section if the applicant submits to the department:
 - (i) subject to Subsection (2)(c), a proposed name and address where the applicant will operate the medical cannabis pharmacy;
 - (ii) the name and address of an individual who:
 - (A) for a publicly traded company, has a financial or voting interest of 2% or greater in the proposed medical cannabis pharmacy;
 - (B) for a privately held company, a financial or voting interest in the proposed medical cannabis pharmacy; or
 - (C) has the power to direct or cause the management or control of a proposed medical cannabis pharmacy;
 - (iii) a statement that the applicant will obtain and maintain a performance bond that a surety authorized to transact surety business in the state issues in an amount of at least \$100,000 for each application that the applicant submits to the department;
 - (iv) an operating plan that:
 - (A) complies with Section 26-61a-304;
 - (B) includes operating procedures to comply with the operating requirements for a medical cannabis pharmacy described in this chapter and with a relevant municipal or county law that is consistent with Section 26-61a-507; and
 - (C) the department approves;
 - (v) an application fee in an amount that, subject to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504; and
 - (vi) a description of any investigation or adverse action taken by any licensing jurisdiction, government agency, law enforcement agency, or court in any state for any violation or detrimental conduct in relation to any of the applicant's cannabis-related operations or businesses.
 - (c)
 - (i) A person may not locate a medical cannabis pharmacy:
 - (A) within 200 feet of a community location; or
 - (B) in or within 600 feet of a district that the relevant municipality or county has zoned as primarily residential.
 - (ii) The proximity requirements described in Subsection (2)(c)(i) shall be measured from the nearest entrance to the medical cannabis pharmacy establishment by following the shortest

route of ordinary pedestrian travel to the property boundary of the community location or residential area.

- (iii) The department may grant a waiver to reduce the proximity requirements in Subsection (2)(c)(i) by up to 20% if the department determines that it is not reasonably feasible for the applicant to site the proposed medical cannabis pharmacy without the waiver.
- (iv) An applicant for a license under this section shall provide evidence of compliance with the proximity requirements described in Subsection (2)(c)(i).
- (d) The department may not issue a license to an eligible applicant that the department has selected to receive a license until the selected eligible applicant obtains the performance bond described in Subsection (2)(b)(iii).
- (e) If the department receives more than one application for a medical cannabis pharmacy within the same city or town, the department shall consult with the local land use authority before approving any of the applications pertaining to that city or town.
- (3) If the department selects an applicant for a medical cannabis pharmacy license under this section, the department shall:
 - (a) charge the applicant an initial license fee in an amount that, subject to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504;
 - (b) notify the Department of Public Safety of the license approval and the names of each individual described in Subsection (2)(b)(ii); and
 - (c) charge the licensee a fee in an amount that, subject to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504, for any change in location, ownership, or company structure.
- (4) The department may not issue a license to operate a medical cannabis pharmacy to an applicant if an individual described in Subsection (2)(b)(ii):
 - (a) has been convicted under state or federal law of:
 - (i) a felony; or
 - (ii) after December 3, 2018, a misdemeanor for drug distribution;
 - (b) is younger than 21 years old; or
 - (c) after September 23, 2019, until January 1, 2023, is actively serving as a legislator.
- (5)
 - (a) If an applicant for a medical cannabis pharmacy license under this section holds a license under Title 4, Chapter 41, Hemp and Cannabinoid Act, the department may not give preference to the applicant based on the applicant's status as a holder of the license.
 - (b) If an applicant for a medical cannabis pharmacy license under this section holds a license to operate a cannabis cultivation facility under Title 4, Chapter 41a, Cannabis Production Establishments, the department:
 - (i) shall consult with the Department of Agriculture and Food regarding the applicant; and
 - (ii) may give consideration to the applicant based on the applicant's status as a holder of a license to operate a cannabis cultivation facility if:
 - (A) the applicant demonstrates that a decrease in costs to patients is more likely to result from the applicant's vertical integration than from a more competitive marketplace; and
 - (B) the department finds multiple other factors, in addition to the existing license, that support granting the new license.
- (6)
 - (a) The department may revoke a license under this part:
 - (i) if the medical cannabis pharmacy does not begin operations within one year after the day on which the department issues the initial license;

- (ii) after the third the same violation of this chapter in any of the licensee's licensed cannabis production establishments or medical cannabis pharmacies;
 - (iii) if an individual described in Subsection (2)(b)(ii) is convicted, while the license is active, under state or federal law of:
 - (A) a felony; or
 - (B) after December 3, 2018, a misdemeanor for drug distribution;
 - (iv) if the licensee fails to provide the information described in Subsection (2)(b)(vi) at the time of application, or fails to supplement the information described in Subsection (2)(b)(vi) with any investigation or adverse action that occurs after the submission of the application within 14 calendar days after the licensee receives notice of the investigation or adverse action; or
 - (v) if the medical cannabis pharmacy demonstrates a willful or reckless disregard for the requirements of this chapter or the rules the department makes in accordance with this chapter.
- (b) The department shall rescind a notice of an intent to issue a license under this part to an applicant or revoke a license issued under this part if the associated medical cannabis pharmacy does not begin operation on or before June 1, 2021.
- (7)
- (a) A person who receives a medical cannabis pharmacy license under this chapter, if the municipality or county where the licensed medical cannabis pharmacy will be located requires a local land use permit, shall submit to the department a copy of the licensee's approved application for the land use permit within 120 days after the day on which the department issues the license.
 - (b) If a licensee fails to submit to the department a copy the licensee's approved land use permit application in accordance with Subsection (7)(a), the department may revoke the licensee's license.
- (8) The department shall deposit the proceeds of a fee imposed by this section into the Qualified Patient Enterprise Fund.
- (9) The department shall begin accepting applications under this part on or before March 1, 2020.
- (10)
- (a) The department's authority to issue a license under this section is plenary and is not subject to review.
 - (b) Notwithstanding Subsection (2), the decision of the department to award a license to an applicant is not subject to:
 - (i) Title 63G, Chapter 6a, Part 16, Protests; or
 - (ii) Title 63G, Chapter 6a, Part 17, Procurement Appeals Board.

Amended by Chapter 350, 2021 General Session

26-61a-302 Medical cannabis pharmacy owners and directors -- Criminal background checks.

- (1) Each applicant to whom the department issues a notice of intent to award a license to operate as a medical cannabis pharmacy shall submit, before the department may award the license, from each individual who has a financial or voting interest of 2% or greater in the applicant or who has the power to direct or cause the management or control of the applicant:
- (a) a fingerprint card in a form acceptable to the Department of Public Safety;
 - (b) a signed waiver in accordance with Subsection 53-10-108(4) acknowledging the registration of the individual's fingerprints in the Federal Bureau of Investigation Next Generation Identification System's Rap Back Service; and

- (c) consent to a fingerprint background check by:
 - (i) the Bureau of Criminal Identification; and
 - (ii) the Federal Bureau of Investigation.
- (2) The Bureau of Criminal Identification shall:
 - (a) check the fingerprints the applicant submits under Subsection (1) against the applicable state, regional, and national criminal records databases, including the Federal Bureau of Investigation Next Generation Identification System;
 - (b) report the results of the background check to the department;
 - (c) maintain a separate file of fingerprints that applicants submit under Subsection (1) for search by future submissions to the local and regional criminal records databases, including latent prints;
 - (d) request that the fingerprints be retained in the Federal Bureau of Investigation Next Generation Identification System's Rap Back Service for search by future submissions to national criminal records databases, including the Next Generation Identification System and latent prints; and
 - (e) establish a privacy risk mitigation strategy to ensure that the department only receives notifications for an individual with whom the department maintains an authorizing relationship.
- (3) The department shall:
 - (a) assess an individual who submits fingerprints under Subsection (1) a fee in an amount that the department sets in accordance with Section 63J-1-504 for the services that the Bureau of Criminal Identification or another authorized agency provides under this section; and
 - (b) remit the fee described in Subsection (3)(a) to the Bureau of Criminal Identification.

Amended by Chapter 5, 2019 Special Session 1

Superseded 7/1/2021

26-61a-303 Renewal.

- (1) The department shall renew a license under this part every year if, at the time of renewal:
 - (a) the licensee meets the requirements of Section 26-61a-301;
 - (b) the licensee pays the department a license renewal fee in an amount that, subject to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504; and
 - (c) if the medical cannabis pharmacy changes the operating plan described in Section 26-61a-304 that the department approved under Subsection 26-61a-301(2)(b)(iv), the department approves the new operating plan.
- (2)
 - (a) If a licensed medical cannabis pharmacy abandons the medical cannabis pharmacy's license, the department shall publish notice of an available license:
 - (i) in a newspaper of general circulation for the geographic area in which the medical cannabis pharmacy license is available; or
 - (ii) on the Utah Public Notice Website established in Section 63A-12-201.
 - (b) The department may establish criteria, in collaboration with the Division of Occupational and Professional Licensing and the Board of Pharmacy and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to identify the medical cannabis pharmacy actions that constitute abandonment of a medical cannabis pharmacy license.

Amended by Chapter 84, 2021 General Session

Effective 7/1/2021

26-61a-303 Renewal.

- (1) The department shall renew a license under this part every year if, at the time of renewal:
 - (a) the licensee meets the requirements of Section 26-61a-301;
 - (b) the licensee pays the department a license renewal fee in an amount that, subject to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504; and
 - (c) if the medical cannabis pharmacy changes the operating plan described in Section 26-61a-304 that the department approved under Subsection 26-61a-301(2)(b)(iv), the department approves the new operating plan.
- (2)
 - (a) If a licensed medical cannabis pharmacy abandons the medical cannabis pharmacy's license, the department shall publish notice of an available license:
 - (i) in a newspaper of general circulation for the geographic area in which the medical cannabis pharmacy license is available; or
 - (ii) on the Utah Public Notice Website established in Section 63A-16-601.
 - (b) The department may establish criteria, in collaboration with the Division of Occupational and Professional Licensing and the Board of Pharmacy and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to identify the medical cannabis pharmacy actions that constitute abandonment of a medical cannabis pharmacy license.

Amended by Chapter 84, 2021 General Session
Amended by Chapter 345, 2021 General Session

26-61a-304 Operating plan.

A person applying for a medical cannabis pharmacy license shall submit to the department a proposed operation plan for the medical cannabis pharmacy that complies with this section and that includes:

- (1) a description of the physical characteristics of the proposed facility, including a floor plan and an architectural elevation;
- (2) a description of the credentials and experience of:
 - (a) each officer, director, or owner of the proposed medical cannabis pharmacy; and
 - (b) any highly skilled or experienced prospective employee;
- (3) the medical cannabis pharmacy's employee training standards;
- (4) a security plan;
- (5) a description of the medical cannabis pharmacy's inventory control system, including a plan to make the inventory control system compatible with the state electronic verification system;
- (6) storage protocols, both short- and long-term, to ensure that cannabis is stored in a manner that is sanitary and preserves the integrity of the cannabis; and
- (7) a description of the proposed medical cannabis pharmacy's strategic plan for opening the medical cannabis pharmacy, including gauging appropriate timing based on:
 - (a) the supply of medical cannabis and medical cannabis products, in consultation with the Department of Agriculture and Food; and
 - (b) the quantity and condition of the population of medical cannabis cardholders, in consultation with the department.

Amended by Chapter 5, 2019 Special Session 1

26-61a-305 Maximum number of licenses -- Home delivery medical cannabis pharmacies.

- (1)

- (a) Except as provided in Subsections (1)(b) or (d), if a sufficient number of applicants apply, the department shall issue up to 15 medical cannabis pharmacy licenses in accordance with this section.
 - (b) If an insufficient number of qualified applicants apply for the available number of medical cannabis pharmacy licenses, the department shall issue a medical cannabis pharmacy license to each qualified applicant.
 - (c) The department may issue the licenses described in Subsection (1)(a) in accordance with this Subsection (1)(c).
 - (i) Using one procurement process, the department may issue eight licenses to an initial group of medical cannabis pharmacies and six licenses to a second group of medical cannabis pharmacies.
 - (ii) If the department issues licenses in two phases in accordance with Subsection (1)(c)(i), the department shall:
 - (A) divide the state into no less than four geographic regions;
 - (B) issue at least one license in each geographic region during each phase of issuing licenses; and
 - (C) complete the process of issuing medical cannabis pharmacy licenses no later than July 1, 2020.
 - (iii) In issuing a 15th license under Subsection (1), the department shall ensure that the license recipient will locate the medical cannabis pharmacy within Dagget, Duchesne, Uintah, Carbon, Sevier, Emery, Grand, or San Juan County.
 - (d)
 - (i) The department may issue licenses to operate a medical cannabis pharmacy in addition to the licenses described in Subsection (1)(a) if the department determines, in consultation with the Department of Agriculture and Food and after an annual or more frequent analysis of the current and anticipated market for medical cannabis, that each additional license is necessary to provide an adequate supply, quality, or variety of medical cannabis to medical cannabis cardholders.
 - (ii) The department shall:
 - (A) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to establish criteria and processes for the consultation, analysis, and application for a license described in Subsection (1)(d)(i);
 - (B) before November 30, 2020, report on the rules described in Subsection (1)(d)(ii)(A) to the Executive Appropriations Committee of the Legislature; and
 - (C) report to the Executive Appropriations Committee of the Legislature before each time the department issues an additional license under Subsection (1)(d)(i) regarding the results of the consultation and analysis described in Subsection (1)(d)(i) and the application of the criteria described in Subsection (1)(d)(ii)(A) to the intended licensee.
- (2)
- (a) If there are more qualified applicants than there are available licenses for medical cannabis pharmacies, the department shall:
 - (i) evaluate each applicant and award the license to the applicant that best demonstrates:
 - (A) experience with establishing and successfully operating a business that involves complying with a regulatory environment, tracking inventory, and training, evaluating, and monitoring employees;
 - (B) an operating plan that will best ensure the safety and security of patrons and the community;
 - (C) positive connections to the local community;

- (D) the suitability of the proposed location and the location's accessibility for qualifying patients;
 - (E) the extent to which the applicant can increase efficiency and reduce the cost of medical cannabis for patients; and
 - (F) a strategic plan described in Subsection 26-61a-304(7) that has a comparatively high likelihood of success; and
- (ii) ensure a geographic dispersal among licensees that is sufficient to reasonably maximize access to the largest number of medical cannabis cardholders.
- (b) In making the evaluation described in Subsection (2)(a), the department may give increased consideration to applicants who indicate a willingness to:
 - (i) operate as a home delivery medical cannabis pharmacy that accepts electronic medical cannabis orders that the state central patient portal facilitates; and
 - (ii) accept payments through:
 - (A) a payment provider that the Division of Finance approves, in consultation with the state treasurer, in accordance with Section 26-61a-603; or
 - (B) a financial institution in accordance with Subsection 26-61a-603(4).
- (3) The department may conduct a face-to-face interview with an applicant for a license that the department evaluates under Subsection (2).
- (4)
 - (a) The department may designate a medical cannabis pharmacy as a home delivery medical cannabis pharmacy if the department determines that the medical cannabis pharmacy's operating plan demonstrates the functional and technical ability to:
 - (i) safely conduct transactions for medical cannabis shipments;
 - (ii) accept electronic medical cannabis orders that the state central patient portal facilitates; and
 - (iii) accept payments through:
 - (A) a payment provider that the Division of Finance approves, in consultation with the state treasurer, in accordance with Section 26-61a-603; or
 - (B) a financial institution in accordance with Subsection 26-61a-603(4).
 - (b) An applicant seeking a designation as a home delivery medical cannabis pharmacy shall identify in the applicant's operating plan any information relevant to the department's evaluation described in Subsection (4)(a), including:
 - (i) the name and contact information of the payment provider;
 - (ii) the nature of the relationship between the prospective licensee and the payment provider;
 - (iii) the processes of the following to safely and reliably conduct transactions for medical cannabis shipments:
 - (A) the prospective licensee; and
 - (B) the electronic payment provider or the financial institution described in Subsection (4)(a)(iii); and
 - (iv) the ability of the licensee to comply with the department's rules regarding the secure transportation and delivery of medical cannabis or medical cannabis product to a medical cannabis cardholder.
 - (c) Notwithstanding any county or municipal ordinance, a medical cannabis pharmacy that the department designates as a home delivery medical cannabis pharmacy may deliver medical cannabis shipments in accordance with this chapter.

Amended by Chapter 350, 2021 General Session