

Medical Marijuana FAQ

GENERAL QUESTIONS

Q: Why do the rules have so many requirements?

A: The Legislature included many requirements for dispensaries, and the Department is implementing them in a way that addresses three major public policy concerns. Please see the statutes, rules and information contained on the Medical Marijuana Updates Page on the Department of Health website.

The first is patient safety. State law and rules for dispensaries are intended to provide a place for a qualified patient to obtain safe medical marijuana products from secure facilities.

The second is product safety. This includes testing products to determine contents and potency in order to make sure a patient gets consistent product with known quantities of active ingredients. Testing also screens for contaminants and impurities to prevent introducing things that could make a person sick, which is especially important because the qualifying patient already has a debilitating medical condition that may compromise the patient's immune system.

The third is public safety. Marijuana is still a schedule 1 controlled substance for which any use or possession is illegal under federal law. State law and rules reflect an attempt to comply with guidelines the U.S. Department of Justice has issued in regard to state programs that allow use of marijuana. The guidelines require a state to have a "robust regulatory scheme" including efforts to prevent diversion of marijuana outside its dispensary programs and misuse of marijuana, particularly by minors. If the State cannot show that it has a robust regulatory scheme, consistent with DOJ guidelines, the entire State program would be at risk.

Q. How were the administrative rules drafted?

A: The administrative rules were drafted by Department of Health staff with legal counsel provided by the Department of the Attorney General. It took many hours of dedicated staff time and effort to tediously translate the statute into interim rules that represented the intent of the legislation to ensure a safe product. The interim rules were exempted from the public hearing process as outlined in section 329D-27, Hawaii Revised Statutes.

Q: How many dispensary licenses will be issued?

A: Up to 8 licenses may be issued initially. The actual number of licenses issued will depend on whether qualified applicants apply.

APPLICATIONS

Q: How do I apply to open a dispensary?

A: The requirements for applicants are found in chapter 11-850, Hawaii Administrative Rules (HAR). Generally, applicants for a dispensary license must fill out an application form and submit supporting documentation and a non-refundable application fee of \$5,000.

An application form for the initial licenses will be made available on the DOH website on January 11, 2016. Applications may be submitted online only, beginning on January 12, until January 29, 2016. All applications must be submitted electronically through the DOH website.

Payment of the application fee must be made by physical cashier's check or money order and must be received no later than 4:30 p.m. on January 29, 2016. Payment will be considered timely if it is delivered in person, or sent by U.S. Postal Service and postmarked by that time.

Q: How much does it cost to apply to open a dispensary?

A: The non-refundable application fee is \$5,000.

Q: How much money do I need to qualify as a dispensary applicant?

A: An application has to indicate that the applicants have resources in the amount of \$1,000,000, plus a minimum of \$100,000 for each retail dispensing location the applicant would like to operate. A dispensary licensee may operate up to two retail dispensing locations. If an applicant intends to operate two retail dispensing locations, the total money an applicant must have in reserve at the time of application \$1,200,000.

Q: Once the application has been filed and has documented the financial resources required by law, can the entity then proceed to expend those funds at its own risk on the dispensary project in anticipation of receiving a permit?

A: The DOH may verify the information provided in an application after it is submitted. If the funds available at the time of verification do not meet the minimum requirements, your application will be rejected.

Q: What is the definition of "Department of commerce and consumer affairs business registration number and suffix of the applying entity" found in section 329D-3(b)(2)(c), HRS?

A: Please contact the Department of Commerce and Consumer Affairs for information on how to obtain that number.

Q: Can I apply for more than one dispensary license?

A: Yes, but you can only be issued one license. If you apply and qualify for more than one license you will have to choose the county in which you wish to operate a dispensary.

Q: Given the limited page response per Criterion Section and the need to include such things as standard operating procedures and other supporting documents, will we be allowed to attach appendices to support our responses?

A: Yes. Applicants should limit their narrative answers to the page limits indicated, but in addition may include supporting documentation as appendices to the response, labeled clearly and uploaded as part of the response.

Q: Can I submit letters of support for my application, for example from community members and professionals?

A: You may submit information or documentation that you consider relevant in support of the representations you make in your application, but all materials in support of your application have to be submitted at the time you apply, and may not be submitted separately. Anything not received with your application will not be considered as part of your application. Information or documentation that is not specifically requested may or may not be considered in determining your qualification as an applicant. Letters of support may also be subject to public disclosure.

Q: As the rules state that the application will include fingerprints from officers, directors, certain shareholders, employees, and "members", we wanted to confirm if the DOH will require fingerprints and certain specific authorization for background checks of all members. If the entity is set up as a Manager Managed LLC where certain members have no control whatsoever (and own a nominal share of the company, i.e. 1%), are all these members required to submit fingerprints and sign specific authorizations in the application. If so, what format will be required for members who do not reside in Hawaii?

A: Please refer to the statute, section 329D-12, HRS, for the requirements for who is subject to the requirement for background checks including fingerprints. You should contact a private attorney for legal advice on how to comply.

Q: As the application will require the applicant to submit a summary of financial statements in businesses currently and previously owned, is this required for the individual applicant only? or the managers of the entity as well? Will this information become public information and be published?

A: The information is required for both the individual and the managers or other principals of the entity. Any information that is provided to the State and maintained as a record by the State is subject to disclosure in accordance with chapter 92F, HRS, the Uniform Information Practices Act, which also provides exceptions from disclosure for certain types of information.

Q: Why is subcontracting limited to a single dispensary?

A: Subcontractors are subject to the same standards as applicants. Applicants are restricted to one license. Therefore, a subcontractor can only work with one licensee.

Q: Will a deferred acceptance of guilty (DAG) or deferred acceptance of no contest (DANC) plea on my criminal record disqualify me from being an owner or employee of a dispensary?

A: Until you provide proof that you have no disqualifying criminal background, you are considered not qualified. You are advised to consult your attorney on the legal effect of a DAG or DANC.

Q: What specific attachments will be required and/or allowed if any?

A: You may attach any supporting documents that support the information or representations you make in response to each criteria. The rules set out some of the documents that can be submitted in support of certain requirements. All information you provide or representations you make, including any attachments, will become conditions of a license if you are awarded a license.

Q: Will there be any bonus points awarded for ownership and/or management by Veterans, women, Native Hawaiians or other minorities, or for any other reason?

A: No. The selection criteria are all set out in section 11-850-21, HAR.

Q: Will there be a period for public review before a dispensary license is awarded?

A: No. Please see section 11-850-21 for the selection process. It does not include public review prior to the award of a license.

Q: The rules provide that a review panel comprised of members designated by the department who have relevant expertise shall evaluate the applications and award points for each merit criterion. Will the department make public the names of the panel members?

A: Yes, it is the department's intention to make public the names of the panel members.

The department's original intention was to release the names of the panel members after the dispensary licenses were awarded. The reason for this was to ensure that the integrity of the review process is preserved and to prevent the panel members from being subject to inappropriate outside pressures.

In light of the extraordinary public interest in the names of the panel members, however, the department has decided that the names will be released prior to the issuance of the dispensary licenses.

All dispensary license applications were submitted by January 29, 2016. Currently, department staff are reviewing each application to verify that the application and supporting documentation is complete, that the information submitted is true and valid, and that it meets the requirements of section 329D-3, Hawaii Revised Statutes.

Once that step is complete, the applications that meet the 329D-3 requirements will proceed to the pool of applications that will receive further review and selection based on merit. The applicants that do not meet those requirements, and that therefore will not be reviewed for merit and selection, will be notified in writing.

The department will assemble the merit selection panel members after the verification of applications has been completed. Once the panel has been finalized, the names of the panel members will be released.

OPERATIONS

Q: Can a dispensary grow marijuana outdoors or in a greenhouse?

A: No, the law requires dispensary facilities to be enclosed indoor facilities, and that the interior not be visible from outside.

Q: Would a structure be acceptable if it has a concrete floor, with rigid steel sides that enclose the space entirely with all entry points secured, and an opaque polymer roof that does not open to the outside, protecting the entire interior space from weather and pests?

A: A structure like that described may satisfy the requirements, as long as the structure is secure and the interior is not visible from the outside.

Q: Why do the rules require a dispensary to register with NED in addition to having a dispensary license from DOH, prior to obtaining stock of marijuana or manufactured marijuana products?

A: Section 329D-25, HRS, requires that the DOH coordinate with other state agencies to ensure compliance with other applicable state laws. Section 329-33, HRS, requires that an applicant to manufacture, dispense, prescribe, or distribute Schedule 1 controlled substances listed in 329-14, HRS, has to register with the Department of Public Safety (Narcotics Enforcement Division). Tetrahydrocannabinols are listed as Schedule 1 controlled substances in section 329-14, HRS.

Q: Who can work in a dispensary?

A: Adults 21 years of age or older without a disqualifying criminal history may be authorized to work at a dispensary.

Q: Who can own a dispensary?

A: Adults 21 years of age or older without a disqualifying criminal history who meet the other legal requirements of chapter 329D, HRS, and who are qualified by the department for a license may own a dispensary.

Q: Who can go inside a dispensary?

A: A dispensary includes both production centers and retail dispensing locations. Only authorized persons may enter the facilities, including licensees, employees, and other persons who may be authorized by the DOH, subject to a criminal background check.

In addition, qualifying patients and primary caregivers may enter retail dispensing locations; they cannot enter a production center.

Q: Can a dispensary sell baked goods that contain marijuana?

A: No. A dispensary can sell marijuana or manufactured marijuana products that are limited to capsules, lozenges, oil or oil extract, tinctures, ointments, skin lotions, or pills.

Although section 329D-10, HRS, appears to allow the department to authorize other products which might include edible marijuana-infused products, the definition in section 329D-2, HRS, limits the products to only those listed. Patients may, of course, make whatever other items they like, using the products they purchase.

Q: We would like more clarification on “lozenge.” The rules state that not a hard candy, but wouldn’t this be a form of an edible?

A: The statute and rules clearly allow for a dispensary to manufacture lozenges. The rules prohibit any product designed or marketed to appeal to a child.

Q: Why can’t dispensaries sell joints or bongs?

A: The restriction on the sale of pre-made marijuana cigarettes and paraphernalia used to smoke or inhale marijuana products is consistent with the DOH's policy against smoking generally. DOH supports anti-smoking and anti-vaping through dedicated programs to protect the public health.

Q: Can dispensaries advertise?

A: No. A dispensary cannot advertise, but can maintain a website with contact information and the location of its retail dispensing locations, as well as the same information about the products it sells that is found on the labels of the products. All other advertising is prohibited.

Q: Is there a local laboratory that can meet the requirements for testing marijuana before it is sold?

A: No laboratory has been certified yet to test marijuana or manufactured marijuana products in the State. The rules allow for a laboratory to enter the local market under a provisional certification, if it is already certified in another jurisdiction.

Q: Can a dispensary transport medical marijuana between islands?

A: No, a dispensary may not transport medical marijuana between islands. Federal law prohibits transport of Schedule 1 substances such as medical marijuana through federal jurisdictions including airspace and over water.

Q: Security guards are not mentioned or mandated in the Department's rules. Why aren't security guards specifically mentioned/required as part of the rules to assist in employee/patient safety and the security of facilities and merchandise?

A: The dispensary rules implement the priorities of chapter 329D, HRS, which sets out a number of specific requirements for security, including fencing, cameras, locks, and other devices or protocols to ensure security of the facilities.

Q: The rules don't mention the use of hydrocarbon (butane) in manufacturing. Am I correct to assume that it will be allowed, as long as all permits/fire code requirements are met?

A: Act 241 (HB 321) enacted a new provision in section 329-129, that prohibits a qualifying patient or primary caregiver from using butane to extract tetrahydrocannabinol from marijuana plants. The law is silent as to dispensaries using butane to produce manufactured marijuana products.

Q: Does section 11-850-33(d), HAR, prohibit the sale by dispensaries of products that are intended for vaporization?

A: Yes. DOH supports anti-smoking and anti-vaping through dedicated programs to protect the public health and does not support smoking or vaping of marijuana or manufactured marijuana products.

Q: Is the wholesale of cannabis or cannabis products between two independent production centers allowed? For example, may I wholesale cannabis flowers to another license holder on the same island?

A: No.

Q: What is the difference between marijuana dispensaries and the marijuana registry?

A: The two are separate programs overseen by different offices within the department, and have independent functions.

The medical marijuana dispensary licensing program regulates the industry that will grow and sell medical marijuana to qualifying patients and primary caregivers. They issue a license to a business to operate a dispensary.

The medical marijuana registry program administers the registration process and issues 329 Registration Cards to individuals who qualify because of a debilitating medical condition.

Q: How is the state protecting children from getting marijuana?

A: The restrictions on smoking and advertising are intended in part to deter the marijuana and manufactured marijuana products from reaching or appealing to children. A dispensary is also prohibited from producing products that would appeal to children. In addition, no children are allowed into a dispensary facility, and a dispensary facility may not be located within 750 ft. of a playground, public housing project or complex, or school.

Q: How can I obtain medical marijuana if there is no dispensary on my island?

A: A qualifying patient or primary caregiver can still grow an adequate supply for the qualifying patient's personal use.

Q: Is possessing medical marijuana a crime?

A: Yes. Under state law, limited use and possession of medical marijuana is authorized by chapters 329 and 329D, Hawaii Revised Statutes (HRS), for qualified patients and primary caregivers who are in strict compliance with state law. The law does not provide a defense or protection from prosecution for anyone who is not in strict compliance with state law. In addition, any use or possession of marijuana is always a crime under federal law.