

Released: January 10, 2023

To: Medical Cannabis Policy Advisory Board

From: Trevor Eckhoff, policy analyst, Utah Department of Health and Human Services (DHHS), Center for Medical Cannabis

Subject: Cap on medical cannabis processor licenses (Updated)

Introduction

The board may consider the following options for recommending a statutory change about limiting the number of medical cannabis processor licenses in Utah:

1. Cap the number of medical cannabis processor licenses that the Utah Department of Agriculture and Food (UDAF) may issue.
2. Set a program growth metric that triggers the opening of an additional processor license application.
3. Continue to allow an unlimited number of medical cannabis processor licenses (status quo).

Background

[Utah Code 4-41a-201](#) allows applicants to submit a cannabis production establishment license application to UDAF. A cannabis production establishment license application may be for a cultivation facility, processing facility, or independent cannabis testing laboratory. Utah Code sections [4-41a-205](#) and [4-41a-1005](#) allow UDAF to issue up to 8 cannabis cultivation facility licenses and 15 medical cannabis pharmacy licenses. UDAF may issue up to 15 cannabis cultivation facility licenses after conducting a market analysis and consulting with DHHS. Likewise, UDAF may issue more medical cannabis pharmacy licenses after conducting a market analysis and consulting with DHHS. Cannabis processing facilities are currently the only cannabis facility that do not have any form of a license cap stated in statute. There are 15 licensed cannabis processing facilities in the state today.

Analysis

Concerns about the market with no processor license cap

There are concerns that if caps are not placed on the number of processor licenses issued, there may be an influx of out-of-state cannabis businesses that will apply for and obtain processor licenses in Utah. Out-of-state businesses are often multi-state organizations (MSOs) that have greater access to capital than Utah-based businesses. The high levels of capital available to MSOs makes it easier for them to enter the Utah cannabis market and saturate the market with their products. Concerns about MSOs entering the market increased after the board's recent action to recommend that the statute be amended to allow processors to advertise and engage in targeted marketing.

Processor caps in other states

Of the 16 medical cannabis-only states, 8 have explicit processor license caps and 7 don't have any cap. Arkansas, Mississippi, Oklahoma, South Dakota, and Utah are the only states that have no medical cannabis processor caps. Texas and Florida don't have explicit caps in statute but informally have caps in practice. Kentucky legalized medical cannabis in 2023 but their program is slated for launch in 2025 and [appears that it won't have any license caps](#).

The **Appendix** lists cultivator, processor, and dispensary caps in other medical cannabis states, including the ratio of each licensee to one another.

Arguments for a cannabis processor license cap

1. **Cannabis product supply is not an issue.** With 15 cannabis processors in the state today, some argue that product supply appears to be reasonably strong. The [DHHS 2022 medical cannabis market analysis survey](#) reported that 61% of patients agreed that medical cannabis pharmacies in Utah consistently have the products they need, with 27% disagreeing. The majority of patients taking the survey were from urban areas. Some patients living in

rural areas report that access to cannabis product supply is an issue. In addition, some licensees claim there's an oversupply of cannabis that's not being utilized. This inventory has produced an imbalanced supply and demand.

2. **More processors could bring lower quality, inexpensive products to market.** Some claim that those seeking to enter the Utah medical cannabis market may plan to undercut existing prices by manufacturing products at the lowest cost possible. Existing processors may not be able to compete with these prices and be compelled to close down. Capping processor licenses may be a tacit way of promoting high product quality standards, as there is limited competition. More research would be needed to determine if this claim has materialized in other medical cannabis-only states.
3. **The existing processors that Utah patients depend on could falter.** Current Utah-based processors have invested in their operations to serve the state's medical cannabis patients. The cannabis market is a challenging economic landscape where capital can be exceedingly difficult to acquire. Some express concern that allowing more processors and their capital pools to enter the market may put existing processors and their product supply at risk by being priced out of the market and replaced. If this occurs, existing medical cannabis brands and products that Utah patients use to treat their medical conditions may no longer be manufactured. On the opposite side of the spectrum, new processors may also not have sufficient plans to raise capital and maintain solvency to cover their operating expenses.

Arguments against a cannabis processor license cap

1. **Capping processor licenses considerably increases the value of the licenses.** Capping any cannabis license type immediately increases the value of the license holder, as it eliminates new competition unless the licensee is bought by a different business. Medical cannabis cultivation and pharmacy licenses are a highly coveted and lucrative item in the Utah medical cannabis market because of the limitations on their amount. Some argue this is a

self-interested attempt at drastically increasing the value of existing processors. If a time window is established for a cap to come into effect, there could be a significant number of businesses that submit an application to join the program before it's too late.

2. **The market should develop naturally.** Utah is known for its commitment to free market principles. A cap on cannabis license types artificially influences market development. Some brands and products won't ever become available to patients if there is a cap on the number of processors.
3. **More processors could lower prices and increase product diversity.** More processor licenses means more brands and competition, which likely leads to lower retail prices, greater product diversity, and more creativity and innovation. Some argue that the businesses with the most in-demand and competitively priced products will triumph—whether they are a part of the state medical cannabis market today or in the future.

Tying license issuances to program growth

Rather than an outright cap, the board may consider recommending a licensing structure that makes the issuance of new processor licenses dependent on program growth metrics, such as increasing consumption rates or patient count. For example, Georgia allows its program to issue 1 additional dispensary license for every 10,000 total net patients that join the program after the first 25,000.

Options

Should the board want to make a recommendation on whether state statute should be amended to cap the number of medical cannabis processor licenses, it may consider the following options:

1. Cap the number of medical cannabis processor licenses that UDAF may issue.

2. Set a program growth metric that triggers the opening of an additional processor license application.
3. Continue to allow an unlimited number of medical cannabis processor licenses (status quo).

Appendix: Cultivator, processor, and dispensary license caps in medical cannabis-only states

State	Cultivator license cap	Processor license cap	Dispensary license cap	License ratio	Notes
Alabama	12	4	4	3:1:1	Each dispensary license allows for 3 dispensary locations, meaning that up to 12 dispensary locations are allowed.
Arkansas	8	Unlimited	40	1:unlimited:5	
Florida	Limited in practice	Limited in practice	Unlimited	1:1:unlimited	Cultivators, processors, and dispensaries are all vertically integrated. Vertically integrated businesses, known as "medical marijuana treatment centers," can operate an unlimited number of dispensaries. There is no cap on cultivators and processors.

State	Cultivator license cap	Processor license cap	Dispensary license cap	License ratio	Notes
Georgia	6	6	10	6:6:10	Cultivation and processing operations are defined as 1 license type. Independent neighborhood pharmacies are allowed to apply for and obtain licenses to dispense cannabis. They are not subject to the dispensary license cap.
Hawaii	3	3	8	3:3:8	Cultivation and processing operations are defined as 1 license type.
Iowa	2	2	5	2:2:5	Cultivation and processing operations are defined as 1 license type.
Louisiana	2	2	10	1:1:5	Cultivation and processing operations are defined as 1 license type.

State	Cultivator license cap	Processor license cap	Dispensary license cap	License ratio	Notes
Mississippi	Unlimited	Unlimited	Unlimited	-	No cultivator, processor, or dispensary license cap.
New Hampshire	4	4	-	1:1:-	There are 7 dispensaries for the states' 4 vertically integrated companies. There is a dispensary cap in practice, but not in law. Governor is seeking a dispensary cap of 15.
North Dakota	2	2	8	1:1:4	Cultivation and processing operations are defined as 1 license type.
Oklahoma	Unlimited	Unlimited	Unlimited	-	No cultivator, processor, or dispensary license cap.
South Dakota	Unlimited	Unlimited	Unlimited	-	No cultivator, processor or dispensary license caps at the state level but local governments can place these caps within their jurisdictions.

State	Cultivator license cap	Processor license cap	Dispensary license cap	License ratio	Notes
Texas	Limited in practice	Limited in practice	Limited in practice	-	No cultivator, processor or dispensary license caps. Not currently accepting license applications for cultivators, processors, or dispensaries.
Utah	8	Unlimited	15	8:unlimited:15	
West Virginia	10	10	100	1:1:10	Each licensed cultivator may have up to 2 cultivation locations, for a total of up to 20 cultivation locations.