

Cap on medical cannabis processor licenses

Medical Cannabis Policy Advisory Board, 1/16/2024

Trevor Eckhoff, policy analyst – DHHS Center for Medical Cannabis

1. Background
2. Concerns about the market with no processor license cap
3. Processor caps in other states
4. Arguments for a cannabis processor license cap
5. Arguments against a cannabis processor license cap
6. Tying license issuances to program growth
7. Recommendation options

Presentation outline

Background

- The medical cannabis program has 3 primary licensees: cultivation, processing, and pharmacy.
- Cannabis cultivation facility and medical cannabis pharmacy licenses are respectively subject to “soft” limits.
- Cannabis processing facilities are the only licensee that don’t have any form of a license cap stated in statute.
- Some have concerns about continuing to have no cap on this license type.

Concerns about the market with no processor license cap

- Out-of-state businesses may eventually **take over** the Utah market and push existing processors out of business.
- Multi-state organizations (MSOs) with access to capital could be the largest group seeking to join the state medical cannabis market.
- Locally-owned processors fear they **can't survive** if MSOs gain a substantial foothold over the Utah medical cannabis market.
- Having 1 license type remain unlimited may cause an **imbalance in supply and demand**.

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 and their program is slated for launch in 2025. It appears that it won't have any license caps.

Refer to the appendix in the memorandum for more information.

Arguments for a cannabis processor license cap

1. Cannabis product supply is not an issue.

- a. In the DHHS 2022 market survey, the majority of patients indicated pharmacies consistently have the products they need.
- b. 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.

- a. Some claim that those seeking to enter the Utah medical cannabis market may plan to undercut existing prices by manufacturing low quality products at a lower price.
- b. Existing processors may not be able to compete with these prices.

3. The existing processors that Utah patients depend on could falter.

- a. 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.
- b. Alternatively, 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 existing licenses.**
 - a. Capping any cannabis license type immediately increases the value of the license holder and reduces competition.
 - b. Some argue this is a self-interested attempt at drastically increasing the value of existing processor licenses.
- 2. The market should develop naturally.**
 - a. Utah is known for its commitment to free market principles.
 - b. 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 processor licenses could lower prices and increase product diversity.**
 - a. More processor licenses means more brands and competition, which likely leads to lower retail prices, greater product diversity, and more creativity and innovation.
 - b. Some argue that the businesses with the most in-demand and competitively priced products will triumph.

Tying license issuances to program growth

- Rather than an outright cap, there could be a licensing structure that makes the issuance of new processor licenses dependent on program growth metrics.
- 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.

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).

Recommendation options