

MEMORANDUM

Medical Cannabis Policy Advisory Board

BOARD AGENDA: 2/20/24

ITEM: 6

Released: February 13, 2024
To: Medical Cannabis Policy Advisory Board
From: Trevor Eckhoff, policy analyst, Utah Department of Health and Human Services (DHHS), Center for Medical Cannabis
Subject: **Felony disqualifications in the Utah medical cannabis industry.**

Introduction

The board may consider the following options for recommending to remove or amend the current felony conviction disqualification in place for cannabis operators and production agents:

1. Retain the convicted felon disqualification requirement for a cannabis production establishment agent applicant (status quo).
2. Amend the convicted felon disqualification requirement for a cannabis production establishment agent applicant to a conviction in the past 10 years, as it is for pharmacy and courier agents.
3. Consider additional action regarding felony disqualifications for other statutorily authorized positions in medical cannabis statute, such as:
 - a. Lowering the felony disqualification time window to a time less than 10 years.
 - b. Limiting disqualification to specific felonies.
 - c. Amending the convicted felon disqualification requirement for operators.

Background

Utah Code section 4-41a-301(8), 4-41a-201(7), and 4-41a-1001(4) prohibit the Utah Department of Agriculture and Food (UDAF) from issuing a cannabis production establishment agent card or an operator license for a cannabis production establishment or medical cannabis pharmacy if the applicant has been convicted of (1) a felony, or (2) a misdemeanor for drug distribution after December 3, 2018. A

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“cannabis production establishment agent” is defined as a person who works in a cannabis cultivation facility, a cannabis processing facility, or an independent cannabis testing laboratory.

In 2022, the law changed to allow individuals with federal or state felony convictions over 10 years old to register and work as pharmacy agents and courier agents.

Some industry members have expressed that the current laws are unfair and would like to see consistency in registration requirements for all cannabis industry positions. Advocates argue that disqualification based on conviction of any felony may be unnecessary, particularly for employers seeking to give individuals with criminal records an employment opportunity.

Analysis

History of felony conviction disqualifications

The original Utah medical cannabis bill prohibited hiring anyone with any felony conviction to work as a production, pharmacy, or courier agent. In 2022, [S.B. 190](#) changed the law to allow people with a past felony conviction to work as a pharmacy or courier agent if the felony occurred 10 years ago or longer. Today, a prospective pharmacy or courier agent cannot be licensed if the applicant has been convicted of a felony within 10 years of their application submission date.

DHHS and UDAF regulators clarified that they do not believe S.B. 190 intentionally left out production agents. Excluding production agents in the bill was likely unintentional.

Felony conviction disqualification laws in other states

The majority of medical cannabis-only states have laws that require specific amounts of time to pass before an individual with a felony conviction can work in the cannabis industry. A minority of states disqualify an individual with any felony conviction, regardless of when they received the conviction. All 16 medical cannabis-only states have some felony disqualification criteria.

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- 9 states require a minimum amount of time since a conviction. Utah and 3 other states' respective statutes have a 10-year prohibition on felonies, while 5 state statutes set their prohibition at 5 years.
- 5 states do not allow anyone with a specific conviction—most commonly controlled substance and violent convictions—to work in the cannabis industry.
- New Hampshire and North Dakota do not allow anyone with any felony convictions to work in their cannabis industries.
- 3 of 16 medical-only states have specific laws that disqualify individuals from working in the medical cannabis industry if they have been convicted of specific crimes.
 - Utah statute does not allow anyone with a felony conviction to work as an operator or production agent. No applicant can be convicted of a misdemeanor for drug distribution after December 3, 2018
 - Arkansas statute prohibits operators with felony convictions but allows production agents with felony convictions if the felony was not related to state or federal controlled substance laws.
 - Hawaii statute prohibits operators, production, and retail staff from a list of specific crimes and conviction on a class A or B felony. The Hawaii Department of Health may also consider the background history of any applicant and deny licensure based on the risk posed to the health and safety of the public and patients.

This data shows that compared to other states, the Utah statute is not uniquely restrictive. See the table in the appendix for more information.

Options

Should the board want to make a recommendation on whether to lift restrictions on felony disqualifications for cannabis production establishment agent cards, it may consider the following options:

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1. Retain the convicted felon disqualification requirement for a cannabis production establishment agent applicant (status quo).
2. Amend the convicted felon disqualification requirement for a cannabis production establishment agent applicant to a conviction in the past 10 years, as it is for pharmacy agents.
3. Consider additional action regarding felony disqualifications for other statutorily authorized positions in medical cannabis statute, such as:
 - a. Lowering the felony disqualification time window for a medical cannabis research licensee, pharmacy agent, or medical cannabis courier agent to a time less than 10 years.
 - b. Limiting disqualification to specific felonies.
 - c. Amend the convicted felon disqualification requirement for operators.

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Appendix: Felony conviction disqualification laws in medical cannabis-only states

State	Felony disqualifications?	Disqualification criteria	Operators	Production	Retail
Alabama	Yes	Pending charge or conviction within the past 5 years for a controlled substance-related felony or a controlled substance-related misdemeanor.	Yes	Yes	Yes
Arkansas	Yes	For operators, any felony. For production, felony conviction of a state or federal controlled-substance law or offenses determined by regulators.	Yes	Yes	None identified
Florida	Yes	Must pass a level 2 screen which prohibits many felonies and misdemeanors.	Yes	Yes	Yes
Georgia	Yes	Convicted of a drug-related felony or nondrug-related felony within the past 10 years and has been released for at least five years. Must submit to weekly drug tests.	Yes	Yes	Yes
Hawaii	Yes	Conviction related to use, possession, or distribution of drugs or intoxicating compounds, violent crime, crime involving a firearm, crime involving theft or fraud, or the Department of Health believes an applicants' history poses a threat to health and safety.	Yes	Yes	Yes
Iowa	Yes	A violation under federal or state law of a felony which has as an element of the possession, use, or distribution of a controlled substance, as defined in 21 U.S.C. §802(6).	Yes	Yes	Yes

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State	Felony disqualifications?	Disqualification criteria	Operators	Production	Retail
Kentucky	Yes	A felony offense that would classify the person as a violent offender under state law or a felony violation of a state or federal controlled substance law. Any sentence, probation, or supervised release must be over 5 years old. Exception: an offense that medical cannabis law would've likely prevented a conviction, but the conduct either occurred prior to state medical cannabis law coming into effect or was prosecuted by an authority other than the state.	Yes	Yes	Yes
Louisiana	Yes	Conviction of a felony within the past 10 years or of a drug-related misdemeanor conviction within the past 2 years.	Yes	Yes	Yes
Mississippi	Yes	Conviction of a crime of violence or a state or federal felony conviction involving controlled substances within the past 5 years. The offender must not have committed another similar offense since the conviction. Exception: an offense that medical cannabis law would've likely prevented but the conduct occurred prior to the state medical cannabis law coming into effect.	Yes	Yes	Yes
New Hampshire	Yes	For all positions, cannot be a convicted felon.	Yes	Yes	Yes
North Dakota	Yes	For all positions, cannot be a convicted felon or be convicted of a drug-related misdemeanor within the past 5 years.	Yes	Yes	Yes
Oklahoma	Yes	Nonviolent felony conviction in the past 2 years or any other felony conviction in the past 5 years.	Yes	Yes	Yes

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State	Felony disqualifications?	Disqualification criteria	Operators	Production	Retail
Pennsylvania	Yes	Convicted of a felony relating to the manufacture, delivery or possession with intent to manufacture or deliver a controlled substance within the past 10 years or 1 year has passed since the individual's release from imprisonment for the felony conviction, whichever is later.	Yes	Yes	Yes
South Dakota	Yes	A violent crime that was classified as a felony.	Yes	Yes	Yes
Utah	Yes	For operators and production, any felony or, after December 3, 2018, a misdemeanor for drug distribution. For retail, conviction of a federal or state felony in the past 10 years or, after December 3, 2018, a misdemeanor for drug distribution..	Yes	Yes	Yes
West Virginia	Yes	Convicted of a felony or misdemeanor criminal offense relating to the sale or possession of illegal drugs, narcotics, or controlled substances.	Yes	Yes	Yes