

Guidance for Registered Marijuana Dispensaries Regarding Non-Profit Compliance

Updated January 2018

The 2018 nonprofit compliance guidance below. This document was issued originally by the Department of Public Health (DPH). As part of the transfer of the medical-use of marijuana program on or before December 31, 2018, the Commission adopted this document. Questions with regards to this document may be directed to CannabisCommission@Mass.gov.

The purpose of this guidance is to inform you of updated policies related to Registered Marijuana Dispensaries (“RMD”) that operate as a non-profit corporation. While the law was recently amended to allow RMDs to convert to a for-profit corporation, if an RMD incorporates as a non-profit entity and/or chooses to remain a non-profit it is required to incorporate pursuant to M.G.L. c. 180 and to maintain the corporation in good standing with the Secretary of the Commonwealth. Therefore, the RMD must operate on a non-profit basis for the benefit of registered qualifying patients and must ensure that revenue of the RMD is used solely in furtherance of its non-profit purpose.

This document offers guidance for compliance with the non-profit requirements as they relate to the following transactions an RMD may engage in:

1. Management Companies, Third Party Transactions
2. Related Party Transactions
3. Real Estate
4. Compensation for Employees
5. Board of Directors: Conflicts of Interest and Compensation
6. Revenue Sharing

RMDs must use the following guidance to help determine their compliance with being a non-profit corporation when engaging in any of the following business transactions:

1. Management Companies, Third Party Transactions

Management companies and third party vendors may be used to provide supplies, equipment and services to an RMD. Such contracts should compensate for the fair market value of the supplies, equipment and services. Any loans secured by an RMD should be executed with commercially reasonable terms and in full compliance with Massachusetts law, including laws regarding usury. If required by the Program, an RMD must be prepared to provide an independent legal opinion that the proposed contracts comply with this Guidance.



2. Related Party Transactions

Examples of related party transactions include, but are not limited to, those between:

- an entity and its principal owners, management, or members of their immediate families;
- parties with which the entity may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests; or
- other parties that can significantly influence the management or operating policies of the transacting parties or that have an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

RMDs engaged in related parties transactions must be able to demonstrate that the transactions involve compensation for the fair market value for any property, services, supplies or equipment being provided through the transaction, or that loans are executed with commercially reasonable terms and in full compliance with Massachusetts law, including but not limited to laws regarding usury. If required by the Program, an RMD must be prepared to provide an independent legal opinion that its transactions comply with this Guidance.

3. Real Estate

Payment for real estate purchased or leased by a RMD should reflect fair market value for the property in question, particularly if a related party transaction is involved. If required by the Program, an RMD must be prepared to provide an appraisal of the property's purchase or rental value by a Massachusetts licensed real estate appraiser specializing in commercial property to demonstrate compliance with this Guidance.

4. Compensation for Employees

Compensation for employees should be commercially reasonable for the medical use of marijuana market or a comparable industry. Compensation for the operation of the medical use of marijuana industry must be balanced against an appearance of diverting revenue in conflict with this Guidance. If required by the Program, an RMD must be prepared to provide an analysis of employee compensation by an independent compensation consultant to demonstrate compliance with this Guidance.

5. Board of Directors: Conflicts of Interest and Compensation

A Board of Directors holds a fiduciary responsibility toward its RMD. A Board member has a duty of loyalty owed by a Board member to act in good faith and in a manner that he or she reasonably believes is in the best interest of the organization. Where a Board member is also an employee of the RMD or otherwise a related party, conflicts of interest may arise that

compromise the ability of the Board to make unbiased decisions. The RMD should evaluate the independence of its Board and ensure that conflicts of interest do not undermine the Board's ability to serve its purpose effectively.

Compensating independent members of a Board of Directors (in other words, those who are not otherwise employees of the RMD) is unusual for non-profit corporations in Massachusetts. Individuals with a personal financial interest in a non-profit organization may be less likely to question the decisions of the organization's management who also determine their compensation or fees, or give unbiased consideration to changes in management or activities.

Choosing not to compensate independent directors is more consistent with the non-profit purpose of operating an RMD for the benefit of registered qualifying patients, including providing separate discounted pricing plans for patients who can demonstrate financial hardship. If an RMD determines it needs to compensate members of its Board of Directors, it should be prepared to demonstrate to the Program that the decision to do so is compliant with this Guidance.

6. Revenue Sharing

Sharing of revenue is not consistent with the non-profit objective of using revenue solely in furtherance of the RMD's non-profit purpose as required by this Guidance.