



February 1, 2016

Eric Sheehan, J.D.
The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Bureau of Health Care Safety and Quality
Medical Use of Marijuana Program
99 Chauncy Street
11th Floor
Boston, MA 02111

RE: Request for Information

Dear Mr. Sheehan:

Please find the attached responses and application pages related to the Request for Information sent to Commonwealth Alternative Care on January 21, 2016.

If you have any questions, wish to discuss, or need further information, please do not hesitate to contact me at [REDACTED]

Best regards,



Commonwealth Alternative Care

MA Dept. of Public Health
99 Chauncy Street
Boston, MA 02111

FEB 1 - 2016

RECEIVED

Department Of Public Health, Medical Use of Marijuana Program
Request for Information, Responses to DPH letter dated January 21, 2016

Question 1

The applicant resubmitted responses to Questions D.20, E.28, E.30, E. 33, and E.40 but did not do so using the application form. Although the content of these responses has been determined compliant, the applicant must submit the responses using the page on the application form for that particular question, and include an initialed attestation at the bottom of the page. The applicant need not resubmit the entire application and may submit only the page for the particular question that needs to be submitted.

Response

[Please find the attached updated application pages: D.20, E.28, E.30, E.33, and E.40.]

Question 2

The response to the Department's question regarding [REDACTED] roles with Registered Marijuana Dispensaries (RMDs) or applicants does not clearly identify each RMD or applicant as requested by the Department. Instead, it states, "[REDACTED] has represented, amongst other clients, Patriot Care Corp, an RMD applicant holding a provisional certificate from DPH." [REDACTED] has a role with any other RMD or proposes to have a role with any RMD or applicant other than Commonwealth Alternative Care, including a consulting or contracted role, please identify the RMD or applicant and Mr. Delaney's role with each one, so that it may be reviewed for compliance with 105 CMR 725.100(A)(2).

Response

[REDACTED] is the principal of [REDACTED] consulting firm providing advocacy and government affairs services to Massachusetts businesses and non-profit clients. In his capacity as principal at DPG, [REDACTED] currently represents, Patriot Care Corp., an RMD applicant holding a provisional certificate from DPH. The Delaney Policy Group also provides consulting for NS AJO Holdings, Inc., a non-profit entity applying for a RMD permit in Massachusetts.

[REDACTED] has no controlling interest in Patriot Care Corp., does not serve as an officer, director or executive in Patriot Care Corp. or any Patriot Care Corp. affiliate, and has no ownership interest in any entity with which Patriot Care Corp. is doing business.

[REDACTED] has no controlling interest in NS AJO Holdings, Inc., does not serve as an officer, director or executive in NS AJO Holdings, Inc. or any NS AJO Holdings, Inc. affiliate, and has no ownership interest in any entity with which NS AJO Holdings, Inc. is doing business.

CAC will ensure compliance with 105 CMR 725.100(A)(2) by mandating that its board members and executives, including [REDACTED] certify in writing that they will agree not to serve as board members or executives of any other non-profit applicant. It will furthermore require that any CAC board member or executive working with other applicants as consultants or otherwise, disclose their role at CAC and include as a written provision of any agreement that both parties are aware of 725.100(A)(2) and that no party intends to violate that section.]

Please see next page

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Question 3:

The materials submitted in response to the Department's letter dated October 23, 2015, did not include any information regarding the management services company, Alternative Care Resource Group, LLC, and its experience in providing services to non-profit organizations or medical use of marijuana organizations. Please submit such information to the Department.

Response:

[Alternative Care Resource Group (ACRG) is a management company created for the sole purpose of bringing best practices in medical marijuana operations, product innovation, cultivation, strategy, and technology to Commonwealth Alternative Care - so it can better serve it's patients.

ACRG is managed by [REDACTED] who brings medical marijuana managerial, operations and financial experience since 2013. [REDACTED] experience spans from a Financial Consultant role at LivWell in Colorado, Chief Financial Officer role at LivFree Holdings, LLC and now President of that same organization. In addition, [REDACTED] expertise has helped marijuana growing businesses create and operate large-scale facilities in Illinois and Nevada with their new medical marijuana programs. [REDACTED] is best known for his contributions at LivWell, engineering and growing this company to be one of the largest medical and recreational marijuana cultivation and processing facilities in the world. Leveraging his work now at LivFree holdings, [REDACTED] will bring assistance with licensing, business infrastructure, operations and funding to Alternative Care Resource Group.

ACRG's mission and model is to bring unsurpassed medical marijuana managerial, cultivation, security, and operations to Commonwealth Alternative Care through partnering with the most prestigious medical marijuana organizations in the country. These partners include LivFree Holdings LLC of Colorado for cultivation and operations excellence, The Windmill Group of Washington, DC for security excellence and Nuciforo Law Group, LLC of Boston for non-profit compliance and guidance. ACRG also partners with leading companies, executives and consultants in the fields of staffing & recruitment, budgeting & forecasting, financial planning, business development & strategy, lobbying, public & political relations, real estate procurement & management, technology & innovation, architecture, interior design & building construction, product research & development, marketing, education, and community outreach.]

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Question 4:

Please provide an explanation of how the percentage amount of the production fee is determined and calculated on weekly basis, as described in Exhibit B, paragraph 2 to the Management Agreement.

Response:

[The Company will determine and calculate the production fee after the close of business on each Saturday. As set forth in Exhibit B Paragraph 1 and 5, in no case shall a production fee payable by the Company to Manager for any weekly period exceed the Company's available surplus cash, or in any other manner unreasonably jeopardize the Company's ability to fulfill its non-profit mission.

As required by §725.004, the Company will maintain a "Real-Time Inventory" system, in which the Company will use a single electronic system to reflect all handling of and transactions relating to each individual marijuana plant. This systems will allow the Company to track each plant from seed through final sale of finished products. The Company intends to utilize the Viridian Sciences' SAP-based Enterprise Resource Planning platform to provide such real-time inventory, including the tracking and managing of patient sales transactions. The Company will assure that the system is customized to comply with Massachusetts law and regulation, including §725.105(G)(5) (seed-to-sale tracking), §725.105 (A)(13) (operational procedures relative to product pricing), and §725.105(I)(5) (keeping of sales records to indicate quantity, form, and cost of marijuana and MIPs dispensed to patients).

Using the system described above, the Company will calculate gross revenue, including revenue associated with each patient transaction and all allowable §725.105(N)(7) revenue (e.g. vaporizers, etc.). Thereafter, the Company will multiply the patient transaction revenue figure by .20, the product of which will be the maximum production fee payable to the Manager.

Illustrated steps are as follows, and executed systematically, in order:

- The Company will calculate EBITDA by subtracting from gross revenue all operating expenses (e.g. staff salaries, staff benefits, management re-imbursement and fee, insurance, G&A, etc.).
- The Company will calculate surplus cash before accrued taxes by subtracting from EBITDA interest payable on debt, if any, and depreciation.
- The Company will calculate surplus cash by subtracting from surplus cash before accrued taxes the Company's estimated accrued taxes.
- Pursuant to Exhibit B Paragraph 1 and 5 of the Management Agreement, and with the advice of its CFO, the Company will establish a surplus cash reserve designed to support the Company's ongoing operation and non-profit mission.

Thereafter, the Company will calculate the production fee by subtracting the surplus cash reserve figure from surplus cash. Thus, the Company will pay a production fee in an amount equal to surplus cash less the reserve, but not to exceed 20% of patient sales.]

Response continued on next page

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Question 4: *Response continued from previous page*

The template provided below is provided for informational purposes only, using plug numbers, and solely for the purpose of demonstrating to DPH the methodology described above.

REVENUE

Patient transaction revenue:	95
\$725.105(N)(7) revenue (vaporizers, facilitation products):	5
Gross revenue:	100

OPERATING EXPENSES

Staff salary	(30)
Staff benefits	(6)
Management Expense	(12)
Vehicle (2)	
Utility (2)	
Insurance	(4)
Charitable expense	(1)
Real estate tax NNN	(2)
IP Royalty	(0)
Other G&A	(1)
Total Operating Expenses	(60)
EBITDA	40

OTHER EXPENSES

Interest payable on debt	(10)
Depreciation	(5)
Surplus cash before accrued taxes	25
Estimated accrued taxes	(18)
Surplus cash	7
Surplus cash reserve	(2)
Production fee	5

The Company intends that this calculation be fully compliant with the May 15, 2015 Non-Profit Guidance ("NPG"), and mindful of the prohibitions on revenue sharing contained in section 6 of the NPG. The applicable provisions of the Management Agreement were prepared by the Company with the assistance of counsel and an accountant, and have been reviewed and approved in writing by independent counsel at the direction of DPH. The Company prepared the Management Agreement with the intent to comply with DPH regulations and the NPG, and with the benefit of informal written guidance by DPH Counsel by letter dated Monday, September 21, 2015 (copy attached). Should DPH direct the Company to modify or adjust compensation as set forth in the Management Agreement, whether associated with the production fee or otherwise, the Company will do so in good faith, and as part of its continuing effort to comply with DPH regulation and the NPG.]

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Question 5:

Please identify the mechanisms in place for the applicant to safeguard compliance with the Guidance for Registered Marijuana Dispensaries for Non-Profit Compliance in the event that ongoing payments to a third party exceeds fair market value and are no longer commercially unreasonable¹, but the the parties are unable to reach agreement pursuant to Exhibit B, paragraph 5 to the Management Agreement. In your response please identify specific provisions in the documents submitted (e.g. independent appraisals, applicable terminations clause).

Response:

As described below, the Management Agreement contains at least four mechanisms to safeguard compliance with the Guidance of Registered Marijuana Dispensaries for Non-Profit Compliance ("NPG").

Mechanism #1: Termination Clause and Binding Arbitration. The Management Agreement provides the Company with ample power to terminate. In Section 4(b), the Management Agreement provides that the Company may terminate its agreement with the Manager if the Manager has, by its gross negligence, failed to perform its contractual obligations. Thereafter, if the Company within its sole discretion determines that the Manager has failed to cure within 90 days, the Company may take the matter to binding arbitration, on an expedited basis as allowed under the JAMS expedited procedure. Section 4(b) provides as follows:

Company may terminate this Agreement only in the case of gross negligence by Manager. Company shall give written notice to Manager of such alleged gross negligence, including a detailed description thereof, after receipt of which Manager shall have no less than 90 days to cure the alleged gross negligence. If, in the Company's discretion, Manager has failed to cure its alleged gross negligence by the end of the 90-day cure period, then Manager may choose to submit to binding arbitration in Boston, Massachusetts before one arbitrator, to be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those rules. The Parties shall equally share the costs of arbitration. In the event of the Company terminating Manager, the Company shall pay Manager for any portion of the Services that have been performed prior to the termination.

This is strong language, and it favors the Company. It allows the Company to take action against the Manager, should the Manager take "unreasonable" compensation or otherwise place the Company outside the compliance requirements of the NPG.

Response continued on next page

¹ In responding to Question 5, the Company assumes that DPH made a typographical error in line 3 of the question. Therefore, the Company responds to Question 5 with the assumption that DPH intended the word "unreasonable" to appear as "reasonable."

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Question 5 Response continued:

Mechanism #2: Direct Supervision. As set forth in Section 6 of the Management Agreement, the Company CEO is the direct supervisor of the Manager's work. As described in Exhibit A, the Manager has an obligation, subject to the Company's supervision, to "develop back-office bookkeeping and payments policies that ensure compliance, foster efficiency and inform management decision-making" and to "assist in developing sound and reasonable cash flow projections in order to support management decision-making and to ensure the long-term financial sustainability of the Company and its non-profit mission." During the negotiation that led to the Management Agreement, the Company insisted on these provisions as a mechanism to assure that payments made or expected to the Manager be consistent with the Company's NPG compliance obligations, and subject to Company supervision.

Mechanism #3: "No Impairment" Provision. As set forth in Section 11 of the Management Agreement, the Manager has a contractual obligation to provide an "immediate remedy" if it does anything (e.g. receives "commercially unreasonable" compensation, causes the Company to violate provisions of the NPG, etc.) that would jeopardize the Company's certificate. Section 11 of the MA provides as follows:

No Impairment. Manager agrees that it will not take any action, or fail to take any action, that would impair, threaten or jeopardize any license, certificate, permit, authorization or other permission issued by any municipality or state agency. Manager further agrees that if any one or more of its Assistants take any action, or fail to take any action, that would impair, threaten or jeopardize any license, certificate, permit, authorization or other permission issued by any municipality or state agency, Manager will provide an immediate remedy.

Language such as this is typically found in commercial lending documents such as security agreements or pledges of collateral. In the Management Agreement, the "no impairment" language prevents the Manager from doing anything that could jeopardize the Company's certificate or other assets, or cause it to suffer any adverse licensing action. See Whitcomb v. Reed-Prentice Co., 262 Mass. 348, 358 (1928)(defendant's "impairment" of company assets and goodwill is basis for recovery at law).

Response continued on next page

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Question 5 Response continued:

Mechanism #4: Massachusetts Law requires Manager to Exercise Good Faith in Meeting Contractual Obligations. Section 13(a) of the Management Agreement provides that "all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to principles of conflicts of law."

Massachusetts law has implied a covenant of good faith and fair dealing in interpreting contracts. Anthony's Pier Four, Inc. v. HBC Assocs., 411 Mass. 451, 473 (1991). This covenant imposes upon the Manager an obligation to refrain from taking or demanding unreasonable compensation. This implied covenant concerns the manner of performance of the parties to a contract, including compensation payable thereunder. Ayash v. Dana-Farber Cancer Inst., 443 Mass. 367, 385 (2005). The implied covenant exists so that the objectives of the contract may be realized, even where the express terms of the agreement are not as precise as they might have been. Crellin Technologies, Inc. v. Equipmentlease Corp., 18 F.3d 1, 10 (1st Cir. 1994)(applying Massachusetts law). The concept of good faith and fair dealing in any one context is shaped by the nature of the contractual relationship from which the implied covenant derives. Uno Restaurants, Inc. v. Boston Kenmore Realty Corp., 441 Mass. 376, 385 (2004).

Therefore, the Management Agreement, by its terms and as construed under Massachusetts law, provides the Company with ample power to prevent the Manager from gaining unjust enrichment. The Management Agreement allows the Company to supervise the Manager and terminate the Manager if necessary. The Management Agreement allows the Company to adjust the Manager's compensation, and specifically prohibits the Manager from taking compensation such that would "impair" the Company's assets or licensure, or cause the Company to fall into non-compliance with the NPG.]

Please see next page

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Question 6:

The applicant submitted two versions of a revised response to Q.36. In its first version, (corresponding to item 10 in the October 23, 2015 letter from the Department), the applicant states, "The program budget and number of awarded patients will grow as CAC grows. CAC's discount program aims to assist as many patients as possible." Pursuant to 105 CMR 725.100(A)(6), an "RMD must have a program to provide reduced cost or free marijuana to patients with documented verified financial hardship." The Regulations, 105 CMR 725.000, et seq., do not authorize dispensaries to create limits or caps on compliance with 105 CMR 725.100(A)(6) where patients otherwise meet the definition of Verified Financial Hardship as set forth in 105 CMR 725.100 (A)(6). When resubmitting the response, please only submit one revised response to Question E.36 that incorporates the issues highlighted in this item and item 7 below.

Response:

[CAC's medical marijuana discount program will be available to patients qualifying for MA or federal means-based program. The discount program will allow CAC to support low-income patients with a documented verified financial hardship. CAC will offer patient discounts based on a sliding scale from 10-50% off, depending on a patient's level below 300% of the Federal Poverty Guidelines. In addition, CAC will offer a free gram per week for those with greater financial hardship, as qualified by receiving MassHealth, Supplemental Security Income, or where the patient's individual income does not exceed 300% of the federal poverty level (adjusted for family size). Additional weight/ discounts will be offered to veterans, the terminally ill, and senior citizens. Federal or state issued income-based documentation will be accepted as a form of income verification, as will evidence of a patient being a recipient of MassHealth or Supplemental Security Income. On a case-by-case basis, CAC may offer discretionary discounts to patients in need.

Participation allows patients access to all forms of medical marijuana and does not limit them to a restricted selection of discounted product. Viridian's POS system is utilized to track the program including discount amounts and expiration dates. CAC will allow all patients meeting the verified financial hardship status definition at 105 CMR 725.004 to participate in its free or reduced cost medical marijuana program.]

Please see next page

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Question 7:

In its second version of the revised response to Question E.36, (corresponding to item 11 in the October 23, 2015 letter from the Department), the applicant states, "Documentation of income under 300% of the federal poverty level shall constitute financial qualification." 105 CMR 725.004 defines "Verified Financial Hardship" to mean "that an individual is a *recipient of MassHealth, or Supplemental Security Income* (emphasis added), or the individual's income does not exceed 300% of the federal poverty level, adjusted for family size." Applicant must resubmit a completed response to Question E.36 that complies with the definition of Verified Financial Hardship, including eligibility also based on MassHealth or Supplemental Security Income. When resubmitting the response, please only submit one revised response to Question E.36 that incorporates the issues highlighted in this item and item 6 above.

Response:

[Please find the attached updated application page E.36.]

20. Describe the experience, and length of experience, of the Corporation's individual/entity responsible for marijuana for medical use cultivation operations and individual/entity responsible for the RMD security plan and security operations with providing services for marijuana for medical purposes.

CAC's management partner Alternative Care Resource Group LLC (ACRG) intends to subcontract cultivation management and operations services to LivFree Holdings, LLC. LivFree's team carries the experience of establishing and scaling one of the largest medical marijuana operations in the country - LivWell in Denver, CO. LivFree brings 17 years of combined operational experience, along with proven operating procedures, policy manuals and training manuals. The LivFree team has successfully built and operated several large-scale cultivation facilities, producing pharmaceutical-grade medical marijuana products.

The LivFree team was responsible for engineering and expanding Colorado's LivWell facility from 30,000 sq. ft. to 130,000 sq. ft. that it operates today. At this facility, LivFree distributes to its 13 dispensaries and conducts wholesaling to affiliate dispensaries. LivFree operators were successful in developing and implementing next generation cultivation and processing systems and procedures to meet LivWell's distribution needs - as well as drive its growth and ability to consistently produce the highest quality medical marijuana products possible.

Leveraging 17 years of combined experience in the industry, LivFree has been operating since June of 2014, providing services for marijuana for medical purposes. LivFree will bring this unsurpassed experience along with modern commercial agricultural best practices and high quality products.

ACRG has contracted security operations for CAC to The Winmill Group, LLC ("TWG") of Washington, DC. TWG brings 40 years of combined security experience: 30 years in military, 25 years in law enforcement, 14 years in homeland security, and 3 years in medical marijuana in 4 other states. TWG is a nationally-recognized expert on establishing best practices for security, including anti-diversion, risk management, employee safety training, local community outreach, and collaborative partnerships with law enforcement. TWG currently supports 10 medical marijuana projects in Nevada, Illinois, and Colorado. TWG's Massachusetts engagements have included support for 4 other RMDs, described below.

TWG has no voting rights or operational control within CAC. Neither TWG nor any of its principals or employees serve as a director, officer, executive or member of CAC. Similarly, TWG has no voting rights or operational control within any other RMD applicant or certificate holder. Neither TWG nor any of its principals or employees serve as a director, officer, executive or member of any other RMD applicant or certificate holder.

Experience with the following MA entities:

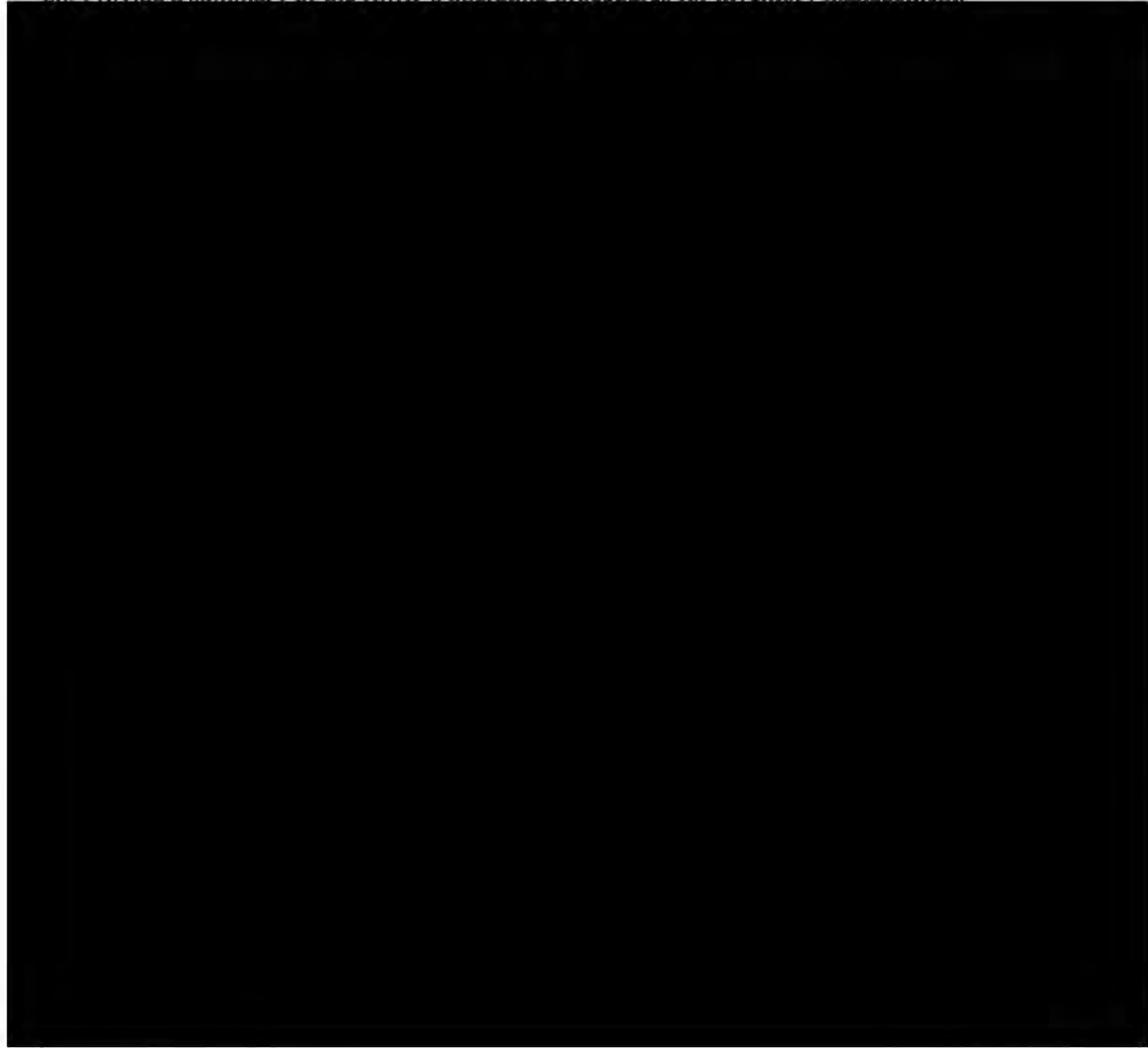
2014- 2015

- Medical Marijuana of Massachusetts Inc. & Ermont Inc. - During provisional certificate period, TWG provided security planning, risk assessment, security system procurement

2015

- Commonwealth Alternative Care, Ermont Inc, Mission Massachusetts & Green Harbor Dispensary Inc - Application support

28. Provide a summary of the RMD's operating procedures for inventory management.



Information on this page has been reviewed by the applicant and provided by the applicant, is accurate and complete, as indicated by the initials of the authorized signatory here

30. Provide a summary of the RMD's operating procedures for maintaining confidentiality of registered qualifying patients, personal caregivers, and dispensary agents, as required by law.

CAC will establish provisions to ensure confidentiality and prevent the disclosure of information about legally qualified patients, designated primary caregivers, and dispensary agents pursuant to 105 CMR 725.200. CAC will diligently safeguard the confidentiality of patients' information related to the medical use of marijuana. Employees will keep all patient information in the strictest confidence, and employees will not use, retain, disseminate, or disclose this information, except as may be necessary to perform the duties required of an employee of CAC. The patient coordinator will be responsible for patient records management and security. All patient records will be handled in a manner similar to protected medical records. Measures for addressing and reporting any loss or unauthorized alteration of records related to medical marijuana are detailed.

As provided in 105 CMR 725.200(D), information held by CAC about registered qualifying patients, personal caregivers, & dispensary agents will remain confidential and shall not be disclosed without the written consent of the individual to whom the information applies, or as required under law or pursuant to an order from a court of competent jurisdiction. However, the Department may access this information to carry out official duties. Any computerized inventory control system, Electronic Verification System, or point-of-sale system will offer acceptable levels of data protection similar to federal HIPAA rules.

33. Provide a summary of the RMD's operating procedures for record keeping.

A record retention policy will be established for: the application; operating procedures; inventory records; QC sample archive data; personnel records; training, staffing plans; dispensing; waste disposal records; compliance and audit reports; security records; and other business records to comply with 105 CMR 725.200. Data will be collected and securely stored off-site using Viridian Sciences SAP based ERP software integrating seed-to-sale tracking, POS systems, accounting and record keeping. All written records will be maintained on-site or archived electronically (following FDA's guidance for Electronic Records, 21 CFR part 11). All information will be available to the Department at all times.

Information held by CAC about registered qualifying patients, personal caregivers, and dispensary agents is confidential and shall not be disclosed without the written consent of the individual to whom the information applies, or as required under law or pursuant to an order from a court of competent jurisdiction, provided however, the Department may access this information to carry out official duties.

All patient records will be handled like protected medical records. No employee shall disclose patient information to any person other than another CAC employee. CAC's patient coordinator is responsible for patient records management and security. CAC will use system data protection similar to HIPAA rules for inventory control, Electronic Verification, and POS.

36. Provide a summary of the RMD's policies and procedures for the provision of marijuana for medical use to registered qualifying patients with verified financial hardship without charge or at less than the

CAC's medical marijuana discount program will be available to patients qualifying for MA or federal means-based program. The discount program will allow CAC to support low-income patients with a documented verified financial hardship. CAC will offer patient discounts based on a sliding scale from 10-50% off, depending on a patient's level below 300% of the Federal Poverty Guidelines. In addition, CAC will offer a free gram per week for those with greater financial hardship, as qualified by receiving MassHealth, Supplemental Security Income, or where the patient's individual income does not exceed 300% of the federal poverty level (adjusted for family size). Additional weight/discounts will be offered to veterans, the terminally ill, and senior citizens. Federal or state issued income-based documentation will be accepted as a form of income verification, as will evidence of a patient being a recipient of MassHealth or Supplemental Security Income. On a case-by-case basis, CAC may offer discretionary discounts to patients in need.

Participation allows patients access to all forms of medical marijuana and does not limit them to a restricted selection of discounted product. Viridian's POS system is utilized to track the program including discount amounts and expiration dates. CAC will allow all patients meeting the verified financial hardship status definition at 105 CMR 725.004 to participate in its free or reduced cost medical marijuana program.

38. Will the Corporation provide worker's compensation coverage to the RMD's Dispensary Agents?

Yes ☒ No ☐

39. Will the Corporation obtain professional and commercial insurance coverage?

Yes ☒ No ☐

40. Describe the Corporation's plan to obtain liability insurance or place in escrow the required amount to be expended for coverage of liabilities.

CAC will obtain liability insurance in compliance with 725 CMR 105 (Q)(1). Originated by insurance broker FBInsure, the policy will provide coverage limits of \$1 million dollars per occurrence, \$2 million dollars aggregate, and will carry a \$5,000 deductible. The policy will provide coverage for general liability, product liability, and professional/D&O. The underwriter selected to provide coverage will be A.M.Best rated A- or better.

As guided by FBInsure and counsel, CAC will review and adjust such coverages from time to time to meet the needs of the organization and to assure regulatory compliance.

Question 4 attachment: Copy of DPH Counsel Letter

From: Registered Marijuana Dispensary Application (DPH) <RMDApplication@massmail.state.ma.us>
Date: Mon, Sep 21, 2015 at 3:50 PM
Subject: RE: Questions Regarding DPH's Non-Profit Guidance: Medical Marijuana Program
[REDACTED]

Please find answers to your questions below.

Sincerely,
The Medical Use of Marijuana Program

From: [REDACTED] **Sent:** Monday, July 27, 2015 5:28 PM
To: Doyle, Kay (DPH); katharine.doyle@state.ma.us; Registered Marijuana Dispensary Application (DPH)
Cc: Daly-Dixon, Phyllistine **Subject:** Questions Regarding DPH's Non-Profit Guidance: Medical Marijuana Program

Kay-

I hope all is well, and that you are enjoying your summer. I have attached a letter including several questions pertaining to DPH's recent guidance for RMDs regarding non-profit compliance. The text of that letter appears in the email below:

Dear Ms. Doyle:

I represent five non-profit corporations that have applied, or will soon apply, for up to three RMD certificates. These non-profit applicants anticipate contracting with one or more for-profit management companies.

These management relationships will be of critical importance to RMDs for several reasons: (i) to attract the capital required to build and operate consistent with DPH regulation; (ii) to source the wide spectrum of expertise required to design, finance, construct, grow, process and dispense; (iii) to acquire, lease and manage real estate to accommodate the proposed use; and (iv) to provide day-to-day operational and management capacity for a fast-growing, patient-focused dispensary.

Each of these non-profit applicants endeavor to pay fair market value compensation to a management company, while also assuring that the compensation structure will pass muster with DPH. Thus, I would respectfully request that DPH respond to the following questions:

- 1) Would DPH allow an RMD to compensate a management company on a cost-plus-25% basis? 20%? 15%? The "cost-plus" structure is a standard basis for government contracting for everything from healthcare to munitions, and the question arises whether DPH would allow that same structure.

RMDs may utilize cost plus contracts with management companies, as long as RMD demonstrates that (i) the arrangement is in the best interests of the nonprofit corporation, and (ii) the terms are commercially reasonable and consistent with fair market value for the supplies, equipment or services being provided. RMDs should be prepared to verify compliance with independent valuations of the supplies, equipment or services being provided and an opinion from an independent accountant or attorney regarding compliance with the Department's Regulations and Guidance for Registered Marijuana Dispensaries Regarding Non-Profit Compliance (<http://www.mass.gov/eohhs/docs/dph/quality/medical-marijuana/applications/non-profit-compliance-guidance.pdf>).

- 2) Would DPH allow an RMD to pay a lender an interest rate of 25%? 20%? 15%? Such rates exceed prevailing commercial costs of capital, but reflect a risk adjustment necessary to attract investment given the uncertain nature of the sector (i.e. federal prohibition, possible change of law, physician reluctance, limited collateral, etc.).

RMDs are required to comply with Massachusetts laws regarding lending.

- 3) Would DPH allow a "percentage of gross" payment structure to a management company? If so, would DPH allow 30%? 20%? Some other figure? If DPH were to characterize such a structure as a prohibited revenue share, would DPH allow such a "percentage of gross" payment structure if the RMD demonstrates that the percentage reflects fair value for the services?

RMDs may utilize a contingent payment structure as long as RMD demonstrates that (i) the arrangement is in the best interests of the nonprofit corporation, and (ii) the terms are commercially reasonable and consistent with fair market value for the supplies, equipment or services being provided. RMDs should be prepared to verify compliance with independent valuations of the supplies, equipment or services being provided and an opinion from an independent accountant or attorney regarding compliance with the Department's Regulations and Guidance for Registered Marijuana Dispensaries Regarding Non-Profit Compliance (<http://www.mass.gov/eohhs/docs/dph/quality/medical-marijuana/applications/non-profit-compliance-guidance.pdf>).

Thank you for your prompt attention to these questions. Please call me should you wish to discuss the matter. I look forward to hearing from you.

Very truly yours,

Andrea F. Nuciforo Jr., Esq.
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One International Place, Suite 1400
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