



Office of the Inspector General
Finance and Administration Cabinet

REPORT OF INVESTIGATION

FILE ID NUMBER: 2025-OIG-002

AGENCY: Office of Medical Cannabis
Cabinet for Health and Family Services

BASIS FOR INVESTIGATION: Request for Review from Office of Medical Cannabis

INVESTIGATOR: Barbara Dickens

INITIATED: May 6, 2025

DATE OF REPORT: May 7, 2026

I. BASIS FOR INVESTIGATION

The Office of Inspector General (OIG) within the Finance and Administration Cabinet (Finance) is responsible under KRS 42.0147 for conducting various investigations within the executive branch. This office initiated an investigation in response to a request from the Office of Medical Cannabis (“OMC”) on May 6, 2025 to conduct an independent review of OMC’s licensing processes and procedures. As OMC stated, its request came after the Auditor of Public Accounts issued a press release on April 17, 2025, indicating she was launching an investigation into OMC. That press release stated the Auditor’s office had continued to receive complaints about the lottery process and was looking into the “business license application and award processes.” That same day, the Auditor sent a letter to OMC that it was conducting a “preliminary assessment” of the licensing application process.

As part of its independent review, this office reviewed numerous reports, system data, processes, videos, and legislative testimony regarding this matter. Additionally, the office conducted multiple in-person and virtual interviews between May 14, 2025 and May 28, 2025 of personnel who have oversight of and are directly involved with the licensing process. Because the Auditor made no specific allegations in her press release, this office determined that reviewing all 4,998¹

¹ There were 5,002 applications submitted during both license application availability periods. The second application period was for safety compliance facility licenses only, and OMC received four of those applications, which are not a part of this independent review.

applications would not yield valuable information about the process. Therefore, the office reviewed the circumstances leading up to and through the cannabis business license lotteries and the applications of all companies that were randomly selected for a license.

II. EXECUTIVE SUMMARY

Under KRS Chapter 218B, the Office of Medical Cannabis is responsible for implementing and administering the Kentucky Medical Cannabis Program. This first round of licenses was just that, an initial round, as it was assumed that as the program grew, other licenses would be issued in the future.²

After independently reviewing the program, the licensure process it created in regulation, and the relevant regulations and statutes, this office found that OMC created an effective program that was fully transparent and fair to all licensure applicants. The program issued regulations in a fully transparent manner that went through public comment and OMC responses, and those regulations became effective after full review by multiple legislative committees. The program established a licensure application process that included fully reviewing applications for consistency, uniformly flagging of any issues with applications, and providing applicants the opportunity to correct any deficiencies in time to be eligible for the random lottery drawing created by regulation.³ The Office of Medical Cannabis was provided an opportunity to review and comment on this report, and its response is attached.

III. BACKGROUND

On June 14, 2022, Governor Andy Beshear issued Executive Order 2022-338, creating the Team Kentucky Medical Cannabis Advisory Committee to provide a forum for Kentuckians to weigh in on the critical issue of access to medical cannabis.⁴ The Advisory Committee was a diverse group of 17 individuals from all over the Commonwealth with experience in key subjects affected by this issue.⁵ The Advisory Committee hosted four town hall forums to hear from Kentuckians about their views on medical cannabis. These forums, which were recorded and posted on YouTube, occurred on the following dates: the Eastern Kentucky Town Hall in Pikeville on July 6, 2022;⁶ the Northern Kentucky Town Hall in Highland Heights on July 14, 2022;⁷ the Central Kentucky Town Hall in Frankfort on July 19, 2022;⁸ and the Western Kentucky Town Hall in Hopkinsville

² Interview of Scotty McFarlan, May 28, 2025, p. 97.

³ McFarlan Interview, p. 99; 915 KAR 1:010; 915 KAR 1:020.

⁴ [Kymedcanky.gov/About/TKYMCAdvisoryCommittee.aspx](https://kymedcanky.gov/About/TKYMCAdvisoryCommittee.aspx)

⁵ Id.

⁶ Eastern Kentucky Medical Cannabis Advisory Committee Town Hall, <https://www.youtube.com/watch?v=2yKbh8Sq-qg>, July 6, 2022.

⁷ Northern Kentucky Medical Cannabis Advisory Committee Town Hall, <https://www.youtube.com/watch?v=snZbSmaelus&t=139s>, July 14, 2022.

⁸ Central Kentucky Medical Cannabis Advisory Town Hall, https://www.youtube.com/watch?v=_5cMbaO75nU&t=43s, July 19, 2022.

on July 28, 2022.⁹ Citizens were encouraged to attend and speak publicly in these meetings about their view of medical cannabis.

On August 11, 2022, the Advisory Committee met with the Governor in a live-streamed meeting to present what it heard from the public in the Town Hall forums and via written comments on this key issue for the Commonwealth.¹⁰ The live-stream was and still is posted on the Medical Cannabis Advisory Committee YouTube Channel. The Advisory Committee reported that it heard from 70 of the 150 individuals attending one of the Town Hall forums, and all were supportive of medical cannabis. The Advisory Committee also reported receiving 3313 written comments, 98.5% of which supported medical cannabis for Kentuckians. Forty-eight (48) comments were submitted in opposition to medical cannabis, and the Kentucky Narcotics Officers Association voiced opposition. The Advisory Committee heard from pharmacists and physicians, but most comments came from individuals either suffering from serious medical conditions or related to individuals suffering from serious medical conditions. The Advisory Committee highlighted stories of individuals who need medical cannabis as an alternative to opioids when managing pain, anxiety and other conditions.¹¹ The Advisory Committee also released a report summarizing its activities.¹²

Following the Governor's actions and the Team Kentucky Medical Cannabis Advisory Committee's work, on March 31, 2023, Governor Beshear signed Senate Bill 47 into law, officially establishing a medical cannabis program in the Commonwealth. This bill created a new chapter of the Kentucky Revised Statutes and created a program to ensure that:

- Patients have access to medical providers and treatment for qualifying conditions;
- Medical products are contaminant-free and labeled accurately to inform patients and caregivers;
- Cannabis is kept away from children and those who are not legally allowed to possess and consume it; and
- Cannabis businesses operate safely and responsibly.

The bill gave the Cabinet for Health and Family Services responsibility for the implementation, operation, oversight and regulation of the medical cannabis program.¹³ On October 5, 2023, Governor Beshear issued Executive Order 2023-600, creating a workgroup to study cannabis industry policy and make recommendations to the Kentucky Medical Cannabis Program (“the Program”) and other state agencies on emerging best practices.¹⁴ Prior to drafting regulations, program staff considered the recommendations of the Workgroup, the statutory framework of KRS Chapter 218B, information received in the four Town Hall meetings, the structure of other states' programs, and litigation in other states.¹⁵

⁹ Western Kentucky Medical Cannabis Advisory Town Hall, https://www.youtube.com/watch?v=WfhqT8cC_9k&t=260s, July 25, 2022.

¹⁰ Medical Cannabis Advisory Committee, <https://www.youtube.com/watch?v=FPRJu018cSs>, August 11, 2022.

¹¹ Medical Cannabis Advisory Committee YouTube Live Stream August 11, 2022.

¹² Team Kentucky Medical Cannabis Advisory Committee Summary Report, Sept. 30, 2022, available at <https://kymedcan.ky.gov/About/Documents/TKYMC%20Advisory%20Committee,%20Summary%20of%20Activities.pdf>.

¹³ 23 RS SB 47, Section 3 (1).

¹⁴ kymedcan.ky.gov/About/Team-Kentucky-Medical-Cannabis-Workgroup.aspx

¹⁵ McFarlan Interview, p. 16-18.

The Program filed 10 regulations on January 4, 2024, which, among other things, stated the various requirements for each of the license types established by KRS 218B.080. On March 14, 2024, the Program filed five more regulations to set the requirements for how patients could obtain the different types of medical cannabis registry cards established by KRS 218B.055.

On April 17, 2024, Governor Beshear signed House Bill 829 into law. This legislation established OMC within the Cabinet for Health and Family Services to implement the Program. In addition to furthering the regulation review process started by the Program, the Office developed the application process and the application requirements based on the statutes and a review of other states' application processes, seeking to incorporate best practices as required by KRS 218B.140(6). Once the online application was developed in the licensing system, OMC published a detailed Business Licensing Application Guide and created and published a series of six videos to inform interested parties of the necessary information to be included in an application and how business license applications must be submitted. OMC also posted on its website frequently asked questions with answers to them, including specific questions related to medical cannabis businesses and the random lottery process for licenses.¹⁶

On April 18, 2024, OMC filed two regulations establishing initial and renewal application procedures for cannabis business licenses¹⁷ and procedures for the issuance, renewal, suspension, and revocation of cannabis business licenses.¹⁸ Each filed regulation went through the full legislative review process under KRS Chapter 13A, including an opportunity for public comment on each regulation. OMC responded to each public comment it received For 915 KAR 1:010E, six individuals spoke at the hearing or submitted written comments, including OMC staff. Thirteen individuals spoke at the public hearing for 915 KAR 1:010 or submitted written comments, including OMC staff. For 915 KAR 1:020E, four individuals spoke at the public hearing or submitted written comments, including OMC staff. For 915 KAR 1:020, three individuals spoke at the public hearing or submitted comments, including OMC staff. The amendments to 915 KAR 1:010 were clerical in nature.¹⁹ The amendments to 915 KAR 1:020 also included clerical changes but added two new provisions: a provision allowing an applicant selected via the lottery process to change its business location if a local government prohibited the business and an operational requirement for licensed businesses to control odors.²⁰

The 915 KAR Chapter 1 administrative regulations were brought before two (2) separate legislative committees for review and approval. Representatives for the Cabinet for Health and Family Services appeared or were present before those legislative committees on a total of six (6) occasions. Each committee, on each occurrence, approved all regulations before them.

- The regulations appeared before the Administrative Regulation Review Subcommittee on the following dates:
 - August 13, 2024 (915 KAR 1:010E and 1:020E)
 - October 15, 2024 (915 KAR 1:010 and 1:020)

¹⁶ [youtube.com/@KYMedicalCannabis](https://www.youtube.com/@KYMedicalCannabis)

¹⁷ 915 KAR 1:010

¹⁸ 915 KAR 1:020

¹⁹ 915 KAR 1:020 Amended After Comments, Filed with LRC Sept. 9, 2024.

²⁰ 915 KAR 1:020 Amended After Comments, Filed with LRC Sept. 9, 2024.

- The regulations appeared before the Interim Joint Committee on Health Services on the following dates:
 - September 25, 2024 (915 KAR 1:010E and 1:020E)
 - November 18, 2024 (915 KAR 1:010 and 1:020)

All applications were reviewed multiple times by trained staff according to the review process, developed in accordance with the regulatory and statutory requirements.²¹ Qualified applicants were those who submitted all required documentation and met the legal requirements for a particular type of license rather than selecting a subset of qualified applicants based on the merits of the application.²²

The awarding of business licenses for all types except safety compliance facility licenses²³ was completed through a random lottery of all qualified applicants, administered by the Kentucky Lottery Corporation. OMC entered into an agreement with the Lottery Corporation to conduct each lottery.²⁴

Three lotteries were held following standard security and anonymity requirements used by the Lottery Corporation, with the first being for Cultivators I, II and III and Processors on October 28, 2024, the second being Dispensaries Regions 3-11 on November 25, 2024, and the last being Dispensaries Regions 1 and 2 on December 16, 2024. All three lotteries were broadcast live on YouTube, during which broadcasts the steps being taken to award the licenses were described in view of the camera as it was occurring. The recordings of those live drawings remain posted on the Kentucky Office of Medical Cannabis YouTube Channel.²⁵ Businesses awarded licenses from the random lottery draws were announced live at the time of each random draw.

IV. APPLICABLE LAW AND POLICY

As previously noted, numerous applicable statutes, administrative regulations and OMC policies were created to implement the program. Many of these cover the operations of a medical cannabis business once it is licensed. However, the OIG’s review focuses only on the applicants, their applications, and the licensees selected via the lottery process.

A. State Statutes and CHFS Regulations

KRS 218B.080 (1) prohibits any person from cultivating, processing, producing, possessing, testing, transferring, transporting or selling medical cannabis or otherwise operating a cannabis business without first obtaining a license to do so.²⁶ It defines the license types and basic restrictions around obtaining licenses. The initial and renewal application licensing regulation, 915 KAR 1:010, set the detailed requirements for businesses to be eligible for a license. An applicant

²¹ Interview of Nick Therrell, May 27, 2025, p. 10.

²² McFarlan Interview, p. 18-20; Interview of Kristin Bohnert, May 14, 2025, p. 47.

²³ 915 KAR 1:020, Sec. 3(6).

²⁴ *Memorandum of Understanding for Draw Services Relating to the Selection of Eligible Cannabis Business Licensees*, effective Apr. 17, 2024.

²⁵ <https://www.youtube.com/@KYMedicalCannabis>.

²⁶ KRS 218B.080 (1).

must apply for a separate license for each location where it intends to operate a cannabis business.²⁷ For the initial license application availability period, an applicant could apply for only one license type: cultivator, processor, producer, dispensary, or safety compliance facility.²⁸

However, within that one license type, the applicant was permitted to submit multiple applications if: 1) each application contains a separate and distinct physical address for the business activities; 2) each application has its own unique capital sufficient for its operations;²⁹ 3) within the cultivator category, only one application per tier is submitted; and 4) within the dispensary category, only one application per medicinal cannabis region is submitted.³⁰

KRS 218B.130 allows local governments to place additional restrictions relating to the location of cannabis businesses. Local governments have the authority to prohibit cannabis businesses within the territory of that local government or submit such prohibition to the voters in that territory.³¹ If permitted in the territory, the local government could also restrict a cannabis business in terms of time, place and manner.³² Because local governments may restrict the areas, if a restriction is imposed, an applicant or a provisional license holder is able to change the location to another permissible location.³³ In that event, a provisional license holder would have up to 120 calendar days from the date of issuance to request approval of a change of location to an allowable county or city.³⁴ If approved, a new license would be issued with that new location. The request for a change in location requires the new physical address with GPS coordinates, documentation indicating the applicant has authority to use the location for a cannabis business, and confirmation the new physical address is not located within 1,000 feet of an existing elementary school or daycare. This guidance was posted on the OMC website.

KRS 218B.085 requires applicants to use a uniform application form to apply for a license but the law sets only minimal requirements for the application: proposed name; proposed physical address with GPS coordinates; identifying information for the principal officer and board member of the business; any instances where the board member or principal officer has been convicted, fined, censured or had a license suspended or revoked; and any other information required by the cabinet.³⁵

²⁷ 915 KAR 1:010, Sec. 3(4); KRS 218B.080 (4)(a).

²⁸ 915 KAR 1:010, Sec. 3(4).

²⁹ See kymedcan.ky.gov/businesses/Pages/default.aspx for the chart “Confirmation of Sufficient Capital; *See also*, *Memorandum Guidance re Documentation of Sufficient Capital*, July 11, 2024.

³⁰ 915 KAR 1:010, Sec. 3(4). KRS 218B.080(4)(b) also allows a medical cannabis producer to engage in both cultivation and processing if the producer does not operate more than one cultivation and one processing facility per license. No producer licenses were issued in the license application awards in the Fall of 2024. Therefore, the producer licenses are not a part of this office’s review.

³¹ KRS 218B.130 (2)(a).

³² KRS 218B.130 (2)(b).

³³ Kentucky Medical Cannabis Program Memorandum, *Guidance re Provisional Licenses, Change of Location Requests, and Lottery Selection for Dispensary Licenses*, June 28, 2024.

³⁴ McFarlan Interview, p. 54-57.

³⁵ KRS 218B.085.

The detailed requirements of the application were established by regulation.³⁶ 915 KAR 1:010 defines the fees for the types of businesses (cultivator, processor, producer, dispensary or safety compliance facility), the limits on what entities may hold the licenses, what information must be submitted in the application, and an applicant's right to cure deficiencies in the application. With regard to the identity of the applicant, each application must include:

- 1) the legal name of the business and business type, the doing business as (DBA) name, the federal tax identification number, confirmation it is registered in good standing with the Kentucky Secretary of State;
- 2) the business formation documents such as the articles of incorporation, articles of organization, or by laws.; and
- 3) the name, address, date of birth and curriculum vitae for each principal officer and board member of the proposed cannabis business.³⁷

To identify any related entities, the application requires:

- 1) disclosure of individual or business entity with an ownership interest of at least ten (10) percent equity or similar interest in the proposed cannabis business and each identified individual's or entity's ownership percentage;
- 2) disclosure of any parent company or parent individual that has an ownership interest in the proposed cannabis business and each identified individual or entity's ownership percentage;
- 3) a document showing the organizational structure;
- 4) the name and address of any individual or entity providing financial support to the proposed cannabis business that are not involved in the day-to-day operations beyond financial support; and
- 5) the name and address of any physician or advanced practice registered nurse that has an ownership or investment interest in or compensation agreement with the proposed cannabis business.

Regarding the order of review of applications, the Cabinet was required to prioritize the review of applications submitted by an individual or entity that was an existing Kentucky hemp business in good standing with the Kentucky Department of Agriculture if they meet all the requirements set forth in the state law and regulations.³⁸

Per regulation, all applicants complying with the application requirements in KRS Chapter 218B and 915 KAR 1:010 shall be eligible to receive the license requested, and a lottery will be used if the number of eligible applications received exceeds the number of licenses to be issued.³⁹ Additionally, the Cabinet may deny an application for any legal reason so long as that reason is not arbitrary; that includes failing to submit the materials required, falsifying information, failing to locate in an area not prohibited by the locality, or having principal officers who do not meet restrictions for a principal officer or board member.⁴⁰

³⁶ 915 KAR 1:010, Sec. 3. Note, this regulation also covers application renewals, which is not a part of this office's review.

³⁷ 915 KAR 1:010, Section 3 (5) (a), (c) and (e)

³⁸ KRS 218B.090(1)(c).

³⁹ 915 KAR 1:020, Section 3 (6) and (7).

⁴⁰ KRS 218B.090 (2). 915 KAR 1:010, Section 1 (3)(b).

Further, the Cabinet is authorized to use a lottery vendor should it choose to not conduct the lottery internally.⁴¹ The Cabinet must approve a license holder’s sale or transfer of its license if the proposed transferee meets all the requirements to be awarded a license.⁴² The regulations also cover operation requirements upon receipt of a license, but those requirements are not at issue in this review.

B. Office of Medical Cannabis Policy and Procedure

On April 18, 2024, OMC issued a Memorandum stating that the application portal would be available for applicants to submit applications online beginning July 1, 2024 until August 31, 2024.⁴³ OMC had created the application, which was available in an online portal, and allowed applicants to submit information and supporting documents via the online portal, the link to which was posted at kymedcan.ky.gov. The website contained a separate tab, “How to Apply,” which had clear, simple steps for how to submit applications.⁴⁴ In relevant part, the April 18, 2024 Memorandum stated:

4. Applicants for initial cannabis business licenses who comply with all application requirements contained in KRS Chapter 218 B and 915 KAR 1:010E, and whose applications are deemed complete by the Program, shall be eligible to receive the licensed requested. Written notice will be provided via email to applicants who submitted timely complete applications with information regarding use of the lottery, if needed, and issuance of licenses.

5. The categories and number of cannabis business licenses available for issuance following the close of the application period, subject to the requirements of 915 KAR 1:010E and 915 KAR 1:020E, are as follows:

Tier I Cultivator	10
Tier II Cultivator	4
Tier III Cultivator	2
Processor	10
Dispensary	48
Safety Compliance Facility	No initial limitation

Please note that the Kentucky Medical Cannabis Program will not be issuing licenses for the Tier IV Cultivator category or the Producer category at this time.

Please also note that the issuance of Dispensary licenses is subject to the geographic restriction contained in 915 KAR 1:020E, Section 3 (2) and (3), including that dispensary licenses shall be issued within designated medicinal cannabis regions. Specifically, “[t]he cabinet shall issue at least four (4) dispensary licenses per

⁴¹ 915 KAR 1:020, Section 3 (8).

⁴² KRS 218B.080(6).

⁴³ Kentucky Medical Cannabis Program Memorandum, *Notice of initial cannabis business license application*, Apr.18, 2024.

⁴⁴ [Kymedcan.ky.gov/businesses/Pages/How-To-Apply.aspx](http://kymedcan.ky.gov/businesses/Pages/How-To-Apply.aspx)

medicinal cannabis region. For regions containing an urban-county government or consolidated local government, the cabinet shall issue at least six (6) dispensary licenses, two (2) of which shall be issued to eligible cannabis businesses that physically locate their dispensary in the counties with an urban-county government or a consolidated local government. For all counties without an urban-county government or a consolidated local government, there shall be no more than one (1) dispensary per county.” 915 KAR 1:020E, Section 3(3).⁴⁵

OMC created an internal policy and procedure to set forth the process for how reviewers would review applications.⁴⁶ Although the policy was not posted publicly, the Kentucky Medical Cannabis Program Business Licensing Application Guide, which was posted, informed applicants what information was necessary to be included in each application.⁴⁷ A checklist used by the reviewers, the Business Licensing Application Review Checklist, was substantially similar to that which is contained on pages 73-74 of the Guide. Additionally, information relevant to this policy was posted on the Cannabis Business Questions FAQs on the OMC website.⁴⁸ This policy was revised twice and the revision number 3, effective May 9, 2024, was used for the actual review of applications.⁴⁹ The policy covers all steps in reviewing the applications, including the below direction that is relevant to this investigation:

- Part II – Step #1 – Review General Information. Review that the general information is correct and verify entity registration with the Secretary of State.⁵⁰
- Part II – Step #3 – Confirm Street Address is Accurate and Meets Regulatory Requirements. Check against the Zoning Tool to compare location to the site of any elementary school, secondary school or daycare center.⁵¹
- Part II – Step #4 – Review business mailing address. The applicant is asked whether it has an existing lease or deed for the site and location for conducting the cannabis business activities, or whether it is entering into a Contingent Agreement to lease or purchase the property. An application would be deemed incomplete without one of those being answered in the affirmative.⁵²
- Part II – Step #6 – Review individuals and Entities of Interest. Reviewers were instructed to review all individuals and entities that have at least 10% equity or similar interest in the applicant. Reviewers also reviewed any principal officers, board members or financial sources without any financial interest. Reviewers were directed to “[b]e prepared for a scenario where an owner or parent company is listed on multiple applications for licenses in more than one cannabis business type.”⁵³

⁴⁵ Kentucky Medical Cannabis Program Memorandum, “Notice of initial cannabis business license application,” Apr. 18, 2024.

⁴⁶ CHFS OMC Policy, *Completing the Application Review Checklist*, Original Apr. 1, 2024.

⁴⁷ <https://kymedcan.ky.gov/businesses/Documents/2024-04-3%20Business%20Licensing%20Application%20Guide%20v.1.1.pdf>

⁴⁸ <https://kymedcan.ky.gov/FAQs/Pages/General-Questions.aspx>

⁴⁹ CHFS OMC Policy *Completing the Application Review Checklist*, Revision 3, Effective May 9, 2024; Bohnert Interview, p. 25, 59-60.

⁵⁰ CHFS OMC Policy, *Completing the Application Review Checklist*, May 9, 2024, p. 7.

⁵¹ Id. p. 8.

⁵² Id. p. 9

⁵³ Id. p. 12.

- Part II – Step #7 – Review Parent Company. If the applicant checked that it had a parent company with ownership or control in the applicant’s cannabis business, the reviewer confirmed that the applicant divulged all information required about the parent company, including but not limited to legal entity name, relationship to the applicant, physical and business addresses, FEIN, and ownership percentage.⁵⁴
- Part II – Step #8 – Review Attestations. The reviewers had to confirm the applicant had answered all attestations generally confirming the application information was accurate.

The next part of the Policy instructs reviewers on how to properly review the submitted documentation supporting the application and what the Office considered to be acceptable documentation. Applicants were required to submit documentation in several areas, including the areas listed below that are relevant to this investigation:

- Part III – Step #1 – Reviewing principal officers and board members. Resumes or curriculum vitae were acceptable documentation.⁵⁵
- Part III – Step #4 – Reviewing Business Entity Formation Documents. Acceptable documents included Articles of Incorporation, Articles of Organization or Corporate Bylaws.⁵⁶
- Part III – Step #6 – Existing Deed or Contingent Agreement. Applicants were required to submit an existing lease or a deed or a contingent agreement for the sale or lease of the property if later awarded a license. To be acceptable, a lease had to have an expiration date that was after the date an initial license would expire and permit the operation of a cannabis business.⁵⁷
- Part III – Step #7 - Management Service Agreement, if applicable. The Policy explained that a Management Service Agreement was a contract between the applicant and a third party wherein the third party would provide management, consulting or other services to the cannabis business for a fee.⁵⁸
- Part III – Step #8 – Review Ownership, Organizational Structure. The applicant was required to submit a visual diagram or chart showing the ownership structure of the proposed cannabis business, including any parent, affiliate, and subsidiary companies.⁵⁹
- Part III – Step #13 - Review documentation of sufficient capital. Applicants could submit bank statements showing the amount on deposit or a letter of credit from a financial institution that was dated within 30 days of the application and meeting the required level of capital based on the type of license sought.⁶⁰ The accounts documented must be in the same name as the applicant.

The policy and the application review covered other important requirements that were not reviewed in this investigation, such as the Site Plan, Summary Plan of Operation, and Timeline to Become Operational, because they were not relevant to the scope of this investigation.⁶¹

⁵⁴ Id. p. 14.

⁵⁵ CHFS OMC Policy, *Completing the Application Review Checklist*, p. 19-21.

⁵⁶ Id. p. 25-28.

⁵⁷ Id. p. 31-33.

⁵⁸ Id. p. 34-35.

⁵⁹ Id. p. 40-41.

⁶⁰ Id. p. 50-51; Kentucky Medical Cannabis Program Memorandum, *Guidance re Documentation of Sufficient Capital*, July 11, 2024., Business Licensing Application Guide, p.8, Jul. 15, 2024.

⁶¹ CHFS OMC Policy, *Completing the Application Review Checklist*.

By statute, an applicant had to be notified of receipt of its application within 15 days of submission, and notified whether that application was approved or denied within 45 days after a completed application is received.⁶² To ensure a thorough review before the statutory deadline, every application first had two levels of individual review and then were reviewed again within document batches of approved or deficient applications. The process for the Return for Correction batch documents was set forth by OMC in an internal Memorandum on July 1, 2024.⁶³ Information about correcting deficiencies is also included in the Cannabis Business FAQs on the OMC website.⁶⁴ The batch review process ensured quality control and consistent treatment of deficiencies, including citations, deficiency language and determinations made, among all applicants.

After a completed first level review, the second level review findings resulted in a preliminary recommendation for approval or curing for each application within a license category, internally referred to as the "Recommend Curing" batch or "Recommend Approval" batch.⁶⁵ If the application was determined to be complete at both first level Program Coordinator review and then a second level review by more experienced reviewers,⁶⁶ it was placed in the Recommend Approval batch documents created by the Director of Licensure and Access or the Branch Manager. If the application was determined to be incomplete, the application was placed into the Recommend Curing batch documents created by the Director of Licensure and Access or the Branch Manager. Applicants had ten (10) days to cure any deficiencies and resubmit.⁶⁷

Regardless of whether it was placed in the Recommend Approval batch or a Recommend Curing batch, the applications were reviewed by OMC leadership. The batches were reviewed by the Director of Enforcement and Compliance, the Assistant Director of Enforcement and Compliance, and the director of Licensure and Access, in addition to other OMC staff. Once a resubmittal determination was finalized, the Director of License and Access or the Assistant Director of Licensure and Access notified the applicant whether its application was approved to the next step or denied.⁶⁸

Information regarding the manner in which the lotteries would be used was explained in Guidance issued by OMC and posted on its website.⁶⁹ OMC issued another internal memorandum on August 1, 2024, in the middle of the initial licensure application period, explaining the process for handling resubmittal applications and making determinations and for assigning numerical identifiers for

⁶² KRS 218B.090 (1)(a) and (b); *See also*, CHFS OMC Policy, *Completing the Application Review Checklist*

⁶³ Kentucky Medical Cannabis Program Memorandum, *Procedure for Creation of Return for Correction Batch*, Jul. 1, 2024.

⁶⁴ <https://kymedcan.ky.gov/FAQs/Pages/General-Questions.aspx>

⁶⁵ Kentucky Medical Cannabis Program Memorandum, *Procedure for Creation of Return for Correction Batch*, paragraph 1.

⁶⁶ McFarlan Interview, p. 81.

⁶⁷ 915 KAR 1:010, Sec.3(7).

⁶⁸ Kentucky Medical Cannabis Program Memorandum, *Procedure for Creation of Return for Correction Batch*, paragraph 2.

⁶⁹ Kentucky Medical Cannabis Program Memorandum, *Guidance re Provisional Licenses, Change of Location Requests, and Lottery Selection for Dispensary Licenses*, Jun. 28, 2024.

lottery drawings.⁷⁰ Once received, the resubmittal applications were reviewed by the Director of Enforcement, the Assistant Director of Enforcement or the Director of Licensure and Access to determine if the identified deficiencies had been corrected. Upon that determination, the Director of Licensure or Access then notified the applicant that the application was either approved for the random lottery or denied.⁷¹

OMC was required to notify any applicant whose application was denied in writing and to inform the applicant of its right to file a written request for an administrative hearing within thirty (30) calendar days.⁷²

Once the number of approved applications exceeded the number of licenses to be awarded, thereby necessitating a lottery selection process, an electronic file was created listing each eligible applicant by 1) name of proposed cannabis business, 2) county location, and 3) unique numerical identifier.⁷³ OMC Executive Director to the CHFS and CHFS General Counsel could designate individuals responsible for de-identification of the license lottery draw files. For the 2024 initial license draws, the OMC Deputy Executive Director and the OMC Executive Administrative Secretary worked with the CHFS Deputy General Counsel to properly de-identify each license lottery file.⁷⁴

C. Relevant Litigation

Kentucky was the 38th state in the United States to legalize medical cannabis and license cannabis businesses to cultivate, process and dispense it.⁷⁵ As a result, OMC had the benefit of considering best practices to apply and issues to avoid from other states' experiences. Some states' experiences showed certain licensing structures possibly violated federal law and yielded litigation that hindered or completely stopped the progress of awarding licenses and having a functioning program.

The litigation underscored that using a merit-based standard rather than a completed application standard to approve or deny applications was a significant risk to implementing a medical cannabis program. Alabama legalized medical cannabis in May, 2021. Licenses were initially issued in December 2023, but a judge revoked those licenses after applicants not issued licenses sued claiming the merit-based review of applications was improper as indicated by scoring inconsistencies. Numerous lawsuits have stalled the program, and Alabama's program director stated availability by the end of 2025 is a best case scenario.⁷⁶ Many components of the cannabis license application submittals are highly technical, such as the architectural drawings, corporate structure, or capital funding, making it difficult to have consistent review of the quality of those submissions compared to simply determining completeness of applications.

⁷⁰ Kentucky Medical Cannabis Program Memorandum, *Procedure for Resubmittal Determinations and Assigning Unique Numerical Identifiers for Lottery Drawings*, Aug. 1, 2024.

⁷¹ *Id.* paragraph 1.

⁷² KRS 218B.090(4).

⁷³ Kentucky Medical Cannabis Program Memorandum, *Procedure for Resubmittal Determinations and Assigning Unique Numerical Identifiers for Lottery Drawings*, paragraph 2.

⁷⁴ *Id.*

⁷⁵ McFarlan Interview, p. 12.

⁷⁶ Rocha, Alander, "When will Alabama get medical cannabis? Officials, producers see reasons for hope," Alabama Reflector, Jul. 7, 2025.

Including an in-state preference in the licensing process has also presented a significant risk of delay due to litigation. States that incorporated an in-state preference for applicants were challenged that such protectionist measures violate Article 1, Section 8, Clause 3 of the U.S. Constitution, the dormant Commerce Clause. Although the decisions in those cases have varied, there is no question legal challenges delayed implementation in those states.⁷⁷ As recently as August 2025, a federal appeals court rejected preferences for in-state applicants as unconstitutional.⁷⁸

Other states' programs have faced litigation on other grounds, such as legal challenges to "social equity licensing."⁷⁹ However, the Kentucky General Assembly did not institute social equity licensing, so it is not at issue here.⁸⁰

V. FINDINGS

1. Determination of the Initial Industry Size in Kentucky

OMC's mission is to ensure Kentuckians suffering from serious medical conditions have safe and affordable access to medical cannabis.⁸¹ To achieve that goal, OMC created a fair, transparent and legally sound licensure process for medical cannabis businesses involved in cultivation, processing, dispensing and safety testing of product. The statutes created a broad framework, within which OMC was tasked with creating the forms and specific requirements to apply for the licenses.⁸² To further define the requirements, OMC reviewed the best practices of other states to determine how the process would work and what documentation applicants would be required to submit.⁸³

To increase opportunity to become involved in the industry, OMC's regulation prohibited the ability of an entity to apply for multiple license *types*, known in the industry as a vertical integration prohibition.⁸⁴ Further, the definition of an applicant included the parent company to avoid a parent company having a license in one category and a subsidiary having licenses in another category.⁸⁵ However, an applicant was permitted to submit multiple applications within a license type so long as each application had a separate and distinct physical address where the business planned to operate; each application contained documentation of sufficient capital in accordance with the regulation and did not use the same capital for more than one application; it submitted only one application per cultivation tier if submitting cultivator applications; and it did not submit more than one application per region for dispensary applications.⁸⁶ Given the possibility of litigation that other states' programs experienced, these requirements were the best way to ensure more

⁷⁷ McFarlan Interview, p. 17; See e.g., Northeast Patients Group v. United Cannabis Patients & Caregivers of Maine, 45 F.4th 542 (1st Cir. 2022); Variscite NY Four, LLC v. New York State Cannabis Control Board, No. 24-384-cv (2d Cir. 2025).

⁷⁸ Variscite, p. 45.

⁷⁹ McFarlan Interview, p. 45.

⁸⁰ *Id.*, p. 48.

⁸¹ *Id.*, p. 21; kymedcan.ky.gov/about

⁸² *Id.*, p24.

⁸³ *Id.*, p. 24, 26.

⁸⁴ 915 KAR 1:010, Sec. 3 (4). *Note*, the interviewee referred to this as 915 KAR 1:020.

⁸⁵ McFarlan Interview, p.33-34

⁸⁶ 915 KAR 1:010, Sec. 3 (4) (a-b).

businesses were able to seek licenses in this first round of issuance and become operational without challenge.

Applicants were required to disclose any individual or business entity with an ownership interest of ten percent (10%) equity or similar interest in the proposed cannabis business and each identified individual or entity's ownership percentage as well as any parent company or parent individual with an ownership interest in the proposed cannabis business and their ownership percentage.⁸⁷ To evaluate compliance, specific disclosures regarding ownership interests were required by applicants. Failure to disclose ownership interest as required subjected the applicant or license holder to penalties, including possible license revocation.⁸⁸ Change in ownership from the ownership listed in the initial license application requires approval from OMC.⁸⁹ In all cases, the applicants had to be separate and distinct legal entities.⁹⁰

Based on the broader national industry where these businesses often are operated pursuant to a management services agreement, the applicant was required to submit any such agreement with its application.⁹¹ It was possible that one manager would operate multiple cannabis businesses through management services agreements.⁹² OMC summarily denied applications where multiple applicants identified the same parent company and used the same proposed locations, in their submitted applications.⁹³

Determining the proper number of licenses to issue is important in order to meet the need while avoiding oversupply. This determination involves a multi-factor analysis.⁹⁴ OMC applied a rational approach to estimating the potential patient population to determine the number of licenses to be issued in the first round of the random lottery.⁹⁵ It considered the number of Kentuckians suffering from the statutory qualifying conditions. It analyzed publicly available information from other states to see how they calculated the number of licenses, which is directly affected by how a state defines a qualifying condition.⁹⁶ Kentucky's statutory definition is restrictive compared to other states.⁹⁷ Having a broad definition could create oversupply, thereby increasing the risk of diversion, and OMC was mindful of the Kentucky legislature's concern about potential diversion. Kentucky limited qualifying conditions and amounts a patient and/or caregiver could possess, which results in less product in the market.⁹⁸

The statute established the size of area for the cultivation tiers.⁹⁹ Tier 1 Cultivator licenses would be those cultivators with 2500 square feet of canopy, Tier 2 Cultivators would be those with up to 10,000 square feet of canopy and Tier 3 Cultivators would be those up to 25,000 square feet of

⁸⁷ 915 KAR 1:010, Sec. 3(5).

⁸⁸ 915 KAR 1:020, Sec. 12.

⁸⁹ 915 KAR 1:020, Sec.8.

⁹⁰ Therrell Interview, p. 31; McFarlan Interview, p. 35.

⁹¹ 915 KAR 1:010, Sec. 3 (5)(t); McFarlan Interview, p. 111.

⁹² McFarlan Interview, p. 109.

⁹³ *Id.*, p. 119, 122.

⁹⁴ *Id.*, p. 96.

⁹⁵ *Id.*, p. 93-94. KY CHFS MCP Market Sizing Analysis, Jul. 31, 2023, Rev. Aug. 30, 2023.

⁹⁶ *Id.*

⁹⁷ *See* KRS 218B.010 (26).

⁹⁸ McFarlan Interview, p. 92. *See* KRS 218B.010, KRS 218B.025, and KRS 218B.035.

⁹⁹ KRS 218B.080(2); McFarlan Interview, p. 95.

canopy.¹⁰⁰ It decided it would create but not issue licenses for Tier 4 cultivators, which are those up to 50,000 square feet of canopy, to encourage the smaller cannabis businesses to apply.¹⁰¹

After OMC determined the size and number of cultivator licenses it would issue, it had to determine how many processors would be needed for this supply and how many dispensaries would be needed to handle the sales to qualified patients.¹⁰² OMC analyzed how other states offering medical cannabis licenses evaluated the businesses needed, and then considered Kentucky's population, the number of patients with qualifying conditions, and the cannabis supply and demand to determine the number of licenses to be awarded in this first round. The process that OMC used and the outcome supported the goal of the program to get sufficient access to the estimated population of qualified patients while also trying to minimize oversupply.

Finally, it was important to determine how many dispensaries would be needed to adequately serve cannabis patients. OMC collaborated with the Kentucky Transportation Cabinet and the Commonwealth Office of Technology using drive-time analysis to determine regions based on the ability to reach a dispensary location after driving only one hour.¹⁰³ OMC also studied the Kentucky Area Development District map¹⁰⁴ and the Local Workforce Development Areas.¹⁰⁵ The map with identifying information for each region, based on spatial analysis performed by the Kentucky Division of Geographic Information, was posted on the OMC website in June 2024.¹⁰⁶ Considering the goal of access for Kentuckians who need medical cannabis, OMC's determination of industry size for Kentucky was soundly based.

2. Determination of the Information Required by Applicants for a Complete Application

The application was broken down into three main sections – business information, applicant information, and legal information. OMC created Application Intake Review Checklists to describe the detail needed for each of these sections.¹⁰⁷

Once it had determined what information needed to be included in the application and the types of documentation to be submitted in support of that application, OMC created a detailed training tool¹⁰⁸ for reviewers to ensure the application met all the requirements.¹⁰⁹ A similar two-page checklist of information necessary for the application was included within a very detailed application guide posted on the OMC website. The information required for a completed application was consistent with what has been required in other states to obtain a medical cannabis license.

¹⁰⁰ KRS 218B.080(2).

¹⁰¹ McFarlan Interview., p. 95.

¹⁰² Id., p. 96.

¹⁰³ McFarlan Interview, p. 49.

¹⁰⁴ Kentucky Department of Local Government, Kentucky Council of Area Development Districts, [https://dlg.ky.gov/DLG%20Documents/Area%20Development%20District%20\(ADD\)%20Map%20\(05.2024\).pdf](https://dlg.ky.gov/DLG%20Documents/Area%20Development%20District%20(ADD)%20Map%20(05.2024).pdf)

¹⁰⁵ Kentucky Workforce Innovation Board, Local Workforce Development Areas, https://kwib.ky.gov/Local-Boards/Documents/Local_WI_Areas_Map.pdf

¹⁰⁶ Medical Cannabis Dispensary Licensing Regions, kymedcan.ky.gov/businesses/Pages/default.aspx.

¹⁰⁷ Bohnert Interview, p. 62.

¹⁰⁸ Business Licensing Application Review Checklist, v.1, Jun. 28, 2024.

¹⁰⁹ Id., p. 39-41.

The application does not contain a Kentucky resident preference for businesses because that requirement has been challenged in other states and delayed those states' implementation.¹¹⁰ Given the challenges in other states, this office finds that OMC's approach was the best approach to achieve its goals.

3. Implementation of Application Review

OMC received 5,002 total applications in this initial phase of licensure¹¹¹ clearly demonstrating that there was an open, fair process for businesses to participate. Additionally, because the first random lottery drawing was planned in October for cultivators and processors, once the number of applications rose dramatically in the last four days of the license application period on August 31, 2024, OMC shifted all reviews to cultivator and processor applications.¹¹² OMC increased the number of reviewers to approximately 60 full-time staff to ensure all applications were given a full and fair review in a consistent manner by the previously established date for awarding licenses through a random lottery draw in October, 2024.¹¹³

Each morning, the Assistant Director of Licensure and Access assigned every unreviewed submitted application to a first-level reviewer and all reviewed applications to second-level reviewer.¹¹⁴ Applications from Kentucky hemp businesses in good standing received priority review and were assigned first each day.¹¹⁵ OMC obtained good standing lists from the Department of Agriculture on July 1, July 15, July 30, August 15, and August 31 to verify against applications submitted by Kentucky hemp businesses.¹¹⁶ Each reviewer submitted findings at the end of each day.¹¹⁷ Each application was tracked by number, name and status each day.

Reviewers issued some "summary denials" based on applicants submitting more than one application in a cultivator tier or multiple times in the same dispensary region.¹¹⁸ One application within a cultivation tier was reviewed in accordance with the requirements; all others within that cultivation tier were summarily denied. Those denials were based on clear violations of the regulations and could not be corrected in the same way other deficiencies could be corrected, such as the same applicant and same proposed location on multiple applications, same applicant submitting multiple dispensary applications in the same region, and failure to pay the application fee, to name a few.¹¹⁹

The employees reviewing applications initially were Program Coordinators within the Licensing Branch, and as the number of applications climbed, also included program investigators and other employees within the Enforcement and Compliance Division and other state employees, all of

¹¹⁰ See FN 83 and 84; McFarlan Interview, p. 117.

¹¹¹ McFarlan Interview, p. 43.

¹¹² *Id.*, p. 81. *See* Bohnert Interview, p. 87.

¹¹³ Interview of Nick Therrell, p. 14-15.

¹¹⁴ Bohnert Interview, p. 25.

¹¹⁵ *Id.*, p. 24.

¹¹⁶ McFarlan Interview, p.44.

¹¹⁷ Bohnert Interview, p. 78.

¹¹⁸ McFarlan Interview, p. 119.















¹¹⁹ *Id.*; *See* 915 KAR 1:010, Sec. 3(4) (a-d).

whom were trained with the same training tools.¹²⁰ All employees were trained May 10, 14 and 21, 2024, then from May 22 until June 30, 2024, the Team Members were trained by creating and processing test applications.¹²¹ Therefore, these Team Members serving in the Program Coordinators roles, responsible for the first line review, were able to practice review in the system for approximately six weeks using an offline training mode, the “sandbox,” in the licensing program.¹²²

Each component of the application was explained in the Training Guide. Program Coordinators were trained to make note of individuals associated with multiple applications and businesses.¹²³ The 2024 Training Guide stated: “We need to be prepared for the same individual(s) to submit multiple applications under several different entities. This is allowed but should be taken note of and a list made at the end of the day and given to executive staff.”¹²⁴ Regarding the location the business, the applicant had to submit a deed for the property or had to have a lease that permitted the operation of a cannabis business covering the license term. The lessor had to expressly permit that or, at a minimum, state the purpose as any lawful business.¹²⁵

The Training Guide illustrated when multiple applications were or were not permissible.¹²⁶ Further, this graphic was posted on the website:¹²⁷

Application Permissions and Restrictions

	Cultivator License		Dispensary License		All Licenses	
 Not permitted	Application #1  Cultivator Tier I Address 1	Application #2  Cultivator Tier I Address 2	Application #1  Dispensary Region 2 Address 1	Application #2  Dispensary Region 2 Address 2	Application #1  Processor Address 1	Application #2  Dispensary Address 2
 Permitted	Application #1  Cultivator Tier I Address 1	Application #2  Cultivator Tier II Address 2	Application #1  Dispensary Region 2 Address 1	Application #2  Dispensary Region 9 Address 2	Application #1  Safety compliance facility Address 1	Application #2  Safety compliance facility Address 2

¹²⁰ Bohnert Interview p. 33, 39-40; Reviewing a Business Application, 2024 Training,” May 17, 2024 (referred to as “2024 Training Guide”).

¹²¹ Kentucky Office of Medical Cannabis Staff Memorandum, *Application Period Training and Overview*, May 13, 2024; Bohnert Interview, p. 34.

¹²² McFarlan Interview, p. 100.

¹²³ Bohnert Interview, p. 42.

¹²⁴ 2024 Training Guide, p. 12.

¹²⁵ McFarlan Interview, p. 63-64.

¹²⁶ See also 2024 Training Guide, p 4.

¹²⁷ <https://kymedcan.ky.gov/businesses/Pages/How-To-Apply.aspx>; 2024 Training Guide, p. 32.

The training materials further reminded the reviewers:

- Each application must meet the separate and individual capital requirements. This will be very important when multiple entities associated with the same individual(s) submit multiple applications. We need to make sure they are not using the same funds to satisfy capital requirements on multiple applications.
- Applicants *can* apply for multiple licenses within the same license type. If they do this, they must have distinct physical addresses for each application and of course separate capital requirements.
- Make note of individuals associated with multiple applications and businesses.
- Multiple entities *may* use the same address; this is not disqualifying. This will be most often seen with contingent agreements.¹²⁸

Each day, the first level reviewer sent an email with the Preliminary Assessment of deficient or complete for all applications he or she reviewed that day to the Executive Administrative Secretary and Director of Education and Outreach, copying the Executive Director, Deputy Executive Director, Director of Licensure and Access and Branch Manager of the Division of License and Access in a standard table format, specifying what application items, if any, needed curing to make the application complete.¹²⁹

Further, because the applications initially came in slowly, so employees were able to fully discuss what they were receiving, determine responses and ensure consistent review.¹³⁰ Consistent with the Training Guide, under Step 3, anyone needing further guidance concerning a requirement could either raise that to a supervisor or bring it up in daily meetings held to consider issues.¹³¹ The Director of Licensure and Access, the Assistant Director of Licensure and Access and the Deputy Executive Director met with all employees reviewing applications daily and discussed issues they saw in the applications.¹³² The daily meetings included all staff reviewing applications and making recommendations to the second-line reviewers. First-line reviewers would discuss the results of the applications they had worked on that day.¹³³ These meetings included roughly 50-60 people.¹³⁴ These daily meetings provided another control to ensure applications were handled and deficiencies were addressed consistently and fairly among the applicants.

Employees were also trained how to respond to deficiencies in the application or the accompanying documents, and OMC created a standard response for all possible deficiencies to ensure consistent communication with applicants on what needed to be addressed to cure an application.¹³⁵ This

¹²⁸ 2024 Training Guide, p.33.

¹²⁹ Therrell Interview, p. 25; Business Licensing Application Intake Checklist, “Program Coordinators and Application Review Support Staff - Step #4;” 2024 Training Guide, p. 5.

¹³⁰ Bohnert Interview, p. 57-61; *See* McFarlan Interview, p. -72; Therrell Interview, p. 18; “Business Licensing Application Review Checklist.”

¹³¹ Bohnert Interview, p. 57-61; 2024 Training Guide, p.5.

¹³² Business Licensing Application Intake Checklist, “Program Coordinators and Application Review Support Staff - Step #4;”

¹³³ Bohnert Interview, p. 61-62.

¹³⁴ *Id.*, p. 62.

¹³⁵ McFarlan Interview, p. 66-67; Bohnert Interview, p. 64-65; Therrell Interview, p. 27; *Return for Correction Tags*, Version 5.0, 8/30/2024

Standard List of Deficiencies was updated as new situations arose and was re-distributed to staff to further ensure consistent responses back to applicants.¹³⁶

If applications were missing information, the application was deficient and, using the Standard Deficiency List, was recommended as a deficient application with the reason for that deficiency to the second-line reviewers. If the application contained all the required information, but some of that information did not meet the requirements of the regulations, it was similarly recommended as a deficient application to the second-line reviewers. For example, regarding the location the business, the applicant had to submit a deed for the property or had to have a lease, covering the license term, that permitted the operation of a cannabis business. The lessor had to expressly permit that or, at a minimum, state the purpose as any lawful business.¹³⁷

Every application then went through a second-line review.¹³⁸ The second-line review was a full review of the application by more experienced reviewers.¹³⁹ Then the applications were batched according to type of license sought, and for dispensaries, within each region.¹⁴⁰ The Director of the Division of Licensure and Access or the Assistant Director then created a draft Return for Correction batch document that contained the post-second-line review staff recommendations.¹⁴¹ The applications were either put into a batch marked “Recommend Approval” or “Recommend Curing” for an additional review by the Deputy Executive Director. The primary purposes for batch document review was quality control and consistency, including the citations, the statement of the identified deficiency, and the determination made. Upon approval, those decisions were entered into the licensing portal specific to each application and, if corrections were needed, returned for correction to the applicant, which then had 10 days to resubmit with corrected deficiencies.¹⁴²

Upon return by an applicant after addressing deficiencies, an application received an initial resubmittal review to determine if the previously noted deficiencies were corrected, and then they were reviewed and the reason(s) for the application denial were confirmed by the Deputy Executive Director.¹⁴³

During the application review process, applicants that had specific questions about deficiencies emailed the Licensing Director with a specific subject line and got their question answered to move

¹³⁶ Bohnert Interview, p. 72.

¹³⁷ McFarlan Interview, p. 63-64.

¹³⁸ Bohnert Interview, p. 89; Business Licensing Application Review Checklist, “Executive Leadership and Second Line Review.”

¹³⁹ McFarlan Interview, p. 88. *See also* Business Licensing Application Review Checklist, “Executive Leadership and Second Line Review.”

¹⁴⁰ McFarlan Interview, p. 80; Business Licensing Application Review Checklist, “Executive Leadership and Second Line Review – Step #3”.

¹⁴¹ Bohnert Interview, p. 90-94.

¹⁴² 15 KAR 1:010, Sec. 3(7); <https://kymedcan.ky.gov/businesses/Pages/How-To-Apply.aspx>; Bohnert Interview, p. 19.

¹⁴³ Kentucky Medical Cannabis Program Memorandum, *Procedure for Creation of Return for Correction Batch Document*, Eff. Jul. 1, 2024; Bohnert Interview, p. 98; McFarlan Interview, p.89

forward with their corrections.¹⁴⁴ Additionally, OMC posted Technical Advisories on its website during the application period to provide additional guidance to applicants.¹⁴⁵

Use of an online system ensured applications were not lost or not processed, allowed the office to create notifications from the system with standard language, captured both the answers submitted in the online form and the supporting documentation in one location, and provided the opportunity for both the staff and the applicant to see the status of any application.¹⁴⁶ The system contains a history of all actions taken with regard to an application.¹⁴⁷ Applicants not selected via the lottery drawing for a license in the initial round still have access to their submitted applications and supporting documentation in the system.

Finally, all reviewers had to submit a conflict-of-interest form to disclose any potential conflicts of interest.¹⁴⁸ There were no conflicts reported that were found to have affected the fair review of applications.

As OMC implemented it, the review process was thorough. Processor and Cultivator applications that were returned for correction were reviewed at least four times (i.e. first line, second line, batch, and resubmission), and dispensary applications were reviewed at least six times. The applications of Kentucky hemp businesses in good standing with the Department of Agriculture were given priority review. The criteria applied for the review process were consistently applied among all applications and in line with statutes, regulations and OMC policies. OMC communications to the applicants were consistent and timely to ensure all applicants had equal opportunity to be eligible for the random lottery drawing. There is no indication that any staff reviewing the applications had any bias for or against any applicant. The reviews were also thoroughly documented in memoranda containing recommendations that were added to the licensing system.

4. Use of the Lottery Corporation and Process for Drawing

Section 3 of 915 KAR 1:020 permitted the Cabinet to award licenses by random lottery and to contract with a third-party vendor to conduct the lottery. The Office determined a seasoned lottery corporation in the Commonwealth would be the best entity to run the lottery.¹⁴⁹ The Office entered into a MOU with the Kentucky Lottery Corporation defining each party's role in the random lottery drawings. The lottery developed the process following its standard process for how it runs the regular lottery.¹⁵⁰

Applications that had been deemed complete were assigned a unique identifier for the lottery drawing.¹⁵¹ This .csv file contained a minimum of identifying information and was kept strictly

¹⁴⁴ McFarlan., p. 106-107.

¹⁴⁵ Id., p. 107-108,128.

¹⁴⁶ Id., p. 99-101.

¹⁴⁷ Therrell Interview, p. 23-25.

¹⁴⁸ Bohnert Interview, p. 73.

¹⁴⁹ McFarlan Interview, p. 123.

¹⁵⁰ Id. p. 124.

¹⁵¹ Bohnert Interview, p. 99; Kentucky Medical Cannabis Program Memorandum, *Procedure for Resubmittal Determinations and Assigning Unique Numerical Identifiers for Lottery Drawings*, Para.2, Eff. Aug. 1, 2024.

confidential.¹⁵² Only the Deputy Executive Director, the Branch Manager of Licensing and Access, and the Director of Education had access to this list.¹⁵³ That list, known as the Identified List, was created by the Branch Manager, provided to the Deputy Executive Director, then provided to CHFS Office of Legal Services Deputy Executive Director, along with Chain of Custody documentation, to create a new number without name.¹⁵⁴ The OMC Deputy Executive Director and the OMC Executive Administrative Secretary worked with the CHFS Deputy General Counsel to redact identifying information for the Lottery Corporation, leaving only the number.¹⁵⁵ This De-Identified List was provided to the Head of Security to the Lottery Corporation with a Chain of Custody document.¹⁵⁶ The Chain of Custody documents were acknowledged by the individuals involved in passing or receiving the lists.

The Office had to address the order of selection if the lottery drew out more than one dispensary number in a county within one of the regions or more than two numbers in Jefferson or Fayette County. Per the guidance, the Office determined that the lottery draw order, which was random and therefore fair, would be the order. The first one drawn for that region would be the one issued a license for that region. Any other ones drawn were given an opportunity to find a new location in the region within 120 days.¹⁵⁷

The Lottery Corporation set parameters on its drawing machines for how many numbers would be pulled for each license type.¹⁵⁸ The lottery machines that randomly pulled the numbers are in a secured, limited access location and not connected to the Internet.¹⁵⁹ Two machines could have possibly been used--one designated as odd and the other designated as even--and the machine used was selected by a roll of the dice at the time of the drawing.¹⁶⁰ These processes were live streamed and explained while they occurred. As the numbers were randomly drawn, the Deputy Executive Director of the CHFS Office of Legal Services and the OMC Deputy Executive Director matched those numbers drawn for each license lottery to the unredacted "Identified List" to re-identify the entities randomly selected to be issued licenses.¹⁶¹ The machine also issued a printout of the actual numbers drawn. CHFS Office of Legal Services Deputy Executive Director matched that machine printout to the Reidentified List to verify the accuracy of the numbers drawn.¹⁶² The OMC Deputy Executive Director then provided the identified results for each drawing to the OMC Executive Director. The identities of individuals or entities were read on the live-streamed random lottery drawing by Governor Beshear. There were no anomalies in the actual drawings.¹⁶³

¹⁵² Id.

¹⁵³ Bohnert Interview, p. 99-100.

¹⁵⁴ Id., p. 100; Interview of Blake Vogt, May 27, 2025, p.6.

¹⁵⁵ Vogt Interview, p. 7-8.

¹⁵⁶ Id.; Bohnert Interview, p. 105; McFarlan Interview, p. 125.

¹⁵⁷ Kentucky Medical Cannabis Program Memorandum, *Guidance re Provisional Licenses, Change of Location Requests, and Lottery Selection for Dispensary Licenses*, Part I, Jun. 28, 2024; See also OMC Technical Advisory 2025-003, Amendment 1, *Guidance for Dispensary licenses Required to Change Location*, Feb. 17, 2025; McFarlan Interview, pp. 57-61.

¹⁵⁸ Vogt Interview, p. 7.

¹⁵⁹ Id., p. 8.

¹⁶⁰ Id.

¹⁶¹ Id., p. 9.

¹⁶² Id., p. 10-11.

¹⁶³ Id., p. 13.

VI. CONCLUSIONS AND RECOMMENDATIONS

The FAC OIG's review of the process to become eligible for the lottery concludes that the process was thorough, fair, and fully transparent and reasonably assured the goal to get medical cannabis to Kentuckians who need it safely and expeditiously. To be eligible an applicant had to have a complete application that included all the information and supporting documentation required by statute or regulation. Before determining they were complete, and therefore eligible, for the random lottery drawing, processor and cultivator applications were reviewed at least four times by individuals applying the same criteria and using the same process for each application.¹⁶⁴ Once deemed complete, every entity applying for a license had the same possibility of being selected as the others deemed complete in that drawing.

Kentucky hemp businesses in good standing were afforded priority review of their applications and had the same ability to be selected as any other applicant. The FAC OIG reviewed the full applications of every entity or individual issued a license via the random lottery drawing and found all applications to be complete, with no anomalies or irregularities.

Using a lottery drawing is a fair process, placing everyone on equal footing because it is entirely random. The lottery was conducted by an independent entity with a long history of operating fair and effective lotteries, using standard operating procedures for the industry to ensure it was a random selection. The entire lottery process was performed live, recorded and posted publicly. The FAC OIG reviewed the entire lottery process, including the identification of the eligible applicants, the deidentification to ensure the information used for the lottery was anonymous, and the reidentification to ensure the correct applicants were being awarded the licenses. The FAC OIG found no anomalies or irregularities.

The ability of an entity to operate its business through a manager that held a management agreement was required to be disclosed,¹⁶⁵ but is not prohibited by state statute. One manager or a group of managers are not prohibited from managing multiple businesses that are owned by separate and distinct owners. There is no prohibition from managers managing different types of medical cannabis businesses. Such an occurrence is not considered vertical integration because the owners are separate and distinct.

An example of a business that managed several cannabis businesses through management services agreements is Dark Horse Cannabis.¹⁶⁶ However, in all cases, Dark Horse held individual management service agreements for each business entity, and all such entities were distinct legal entities with separate owners, locations, and capital.¹⁶⁷

OIG recommends that OMC formally debrief the process it used for review and award of provisional licenses from the first round of medical cannabis licenses and make any necessary improvements prior to a second round. Further OIG recommends review of applicable policies

¹⁶⁴ As stated previously, safety compliance facility licenses were not subject to limitation during the initial licensing process in 2024 and therefore, no random drawing was necessary.

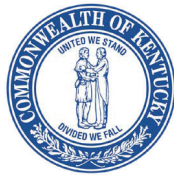
¹⁶⁵ 915 KAR 1:010, Sec. 3(5)(t).

¹⁶⁶ McFarlan Interview, p. 120.

¹⁶⁷ Id., p. 121.

and procedures and updating those if necessary. Formal policies and procedures should be posted to its website.

OIG also recommends that leadership participate in forums or associations organized for the benefit of government operation of medical cannabis programs to ensure it is learning from peers who lead similar programs in order to ensure best practices in Kentucky's program.



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RE: Office of Medical Cannabis Review and Comment on 2025-OIG-002 Cabinet for Health and Family Services, Office of Medical Cannabis Final Draft Report of Investigation

Ms. Dickens:

Thank you for the opportunity to review and comment on the final draft of the investigation report prepared by the Office of Inspector General of the Finance and Administration Cabinet related to the medical cannabis business application and licensing process (*i.e.*, 2025-OIG-002). Below are the comments prepared by the Office of Medical Cannabis (OMC) for your review and consideration. Thank you for accepting the OMC's request for an independent review of this process and we appreciate all the work that went into preparing the report.

OMC Comments

1. Regarding footnote 1 on page 1, during the first initial cannabis business license application availability period from July 1, 2024 – August 31, 2024, the Office received 4,998 applications for cannabis business licenses. During the second initial application availability period from November 1, 2024 – November 30, 2024, which was for safety compliance facility licenses only, the Office received four applications. These additional applications brought the total number of initial cannabis business license applications submitted to the OMC to 5,002.
2. Regarding the fourth paragraph on page 3, KRS 218B.080 established the types of licenses available for issuance to cannabis businesses. The administrative regulations contained in 915 KAR Chapter 1 compile the various requirements for each license type to operate in

Kentucky and remain in good standing. Similarly, KRS 218B.055 established the types of medical cannabis cards available for issuance in Kentucky (e.g., in-state registered qualified patient, designated caregiver, and visiting qualified patient), and 915 KAR Chapter 2 compiles the various requirements for individuals to obtain medical cannabis cards in Kentucky and remain in good standing.

3. Regarding the first paragraph on page 4, the OMC developed the business license application regulation, 915 KAR 1:010, by first starting with the application requirements contained in statute (KRS 218B.085) and then reviewing the application process of several other states with an eye toward incorporating best practices as required by KRS 218B.140(6). The OMC also published an extensive Business Licensing Application Guide on its website (kymedcan.ky.gov) that contained comprehensive guidance on OMC's license structure and application process.
4. Regarding the second and third paragraphs on page 4, 915 KAR 1:010 established initial application and renewal application procedures for cannabis business licenses. 915 KAR 1:020 established procedures for the issuance, renewal, suspension, and revocation of cannabis business licenses. For 915 KAR 1:010E, a total of six individuals spoke at the public hearing or submitted written comments, including OMC staff. For 915 KAR 1:010, a total of 13 individuals spoke at the public hearing or submitted written comments, including OMC staff. For 915 KAR 1:020E, a total of four individuals spoke at the public hearing or submitted written comments, including OMC staff. For 915 KAR 1:020, a total of three individuals spoke at the public hearing or submitted written comments, including OMC staff. As stated in the report, OMC responded to each comment submitted.
5. Regarding the second full paragraph on page 5, for all license types except safety compliance facility licenses, the issuance of cannabis business licenses was completed through a random license lottery process, administered by the Kentucky Lottery Corporation. Safety compliance facility licenses were not subject to a cap during the initial 2024 licensing process, and thus a license lottery was not needed for that license type. *See* 915 KAR 1:020, Section 3(6) (“If the number of eligible applications does not exceed the maximum number of licenses available within a cannabis business category following the close of an initial license application period, the cabinet shall provide written notice to the eligible applicants that a license shall be issued to them upon timely payment of the applicable license fee”).
6. Regarding the second full paragraph on page 7, House Bill 829, signed into law on April 17, 2024, amended KRS 218B.090(1) to include the following requirement: “When reviewing and considering cannabis business applications, [the cabinet shall] prioritize the review of applications submitted by an individual or entity who is an existing Kentucky

hemp business in good standing with the Kentucky Department of Agriculture, if they meet the application requirements set forth in this chapter and administrative regulations promulgated by the cabinet thereunder.”

7. Regarding the first full paragraph on page 8, applicants for cannabis business licenses submit their applications and supporting documents through the OMC’s business licensing application portal, and the OMC’s website provides a link to this application portal.
8. Regarding the first full paragraph on page 9, while not identical, the Business Licensing Application Checklist included in the publicly available Business Licensing Application Guide is similar to the Business Licensing Application Review Checklist used by OMC staff.
9. Regarding the first full paragraph on page 11, the “batch” documents were compiled using the applicable second line review determinations. Each application included within a respective batch document was marked either “Recommend Approval” or “Recommend Curing.” The primary purposes of the batch document review conducted by the OMC were quality control and consistency, including among citations, identified deficiency language, and determinations made.
10. Regarding the third full paragraph on page 11, due to the large number of applications returned for correction to applicants by the OMC, the Director of Enforcement and Compliance, the Assistant Director of Enforcement and Compliance, and the Director of Licensure and Access were involved in the resubmittal determination process as were additional OMC staff. Once a resubmittal determination was finalized, the Director of Licensure and Access or the Assistant Director of Licensure and Access notified the applicant whether its application was approved to the next step of the process or denied.
11. Regarding the second paragraph on page 12, as allowed by the Internal Memorandum effective August 1, 2024, both the OMC Executive Director and CHFS General Counsel could designate individuals to accomplish deidentification of the license lottery draw files. For the 2024 licensing process, OMC Deputy Executive Director Scotty McFarlan and OMC Executive Administrative Secretary Malaya Rivers worked with CHFS Deputy General Counsel Blake Vogt to ensure proper deidentification of each license lottery file.
12. Regarding the third paragraph on page 13, the language of 915 KAR 1:010, Section 3(4)(c) provides that “[f]or the four (4) cannabis cultivator tiers, an applicant shall only submit one (1) application per cultivation tier ...” Accordingly, an applicant is prohibited from submitting multiple applications within the same cultivator tier. Further, if submitting multiple applications within a license type, “[e]ach application shall contain documentation

of sufficient capital in accordance with subsection (5)(q) of this section and the applicant shall not use the same capital for more than one (1) application.” Finally, 915 KAR 1:010, Section 3(5) required applicants to disclose any individual or business entity with an ownership interest of at least ten (10) percent equity or similar interest in the proposed cannabis business and each identified individual or entity's ownership percentage as well as any parent company or parent individual that has an ownership interest in the proposed cannabis business and their ownership percentage. One of the best practices gleaned from other states is the critical importance of the regulatory agency having a clear understanding of the ownership structure behind cannabis businesses. For that reason, the OMC’s business license application requires extensive ownership disclosures, and 915 KAR 1:020, Section 8 requires OMC approval for any change in ownership of a licensee from the ownership listed in the initial license application. As noted in the training materials, common ownership of applicants or licensees is not prohibited under KRS Chapter 218B or 915 KAR Chapter 1 with the exception of safety compliance facility licensees (*see* 915 KAR 1:060, Section 6). However, failure to disclose the existence of parent companies or parent individuals is a violation of the disclosure requirements set by law and expose the violator to possible penalties and sanctions as provided in 915 KAR 1:020, Section 12, up to and including license revocation.

13. Regarding the last paragraph on page 13, OMC denied applications where multiple applicants identified the same parent company and used the same proposed locations for their respective application submissions.
14. Regarding the second full paragraph on page 14, KRS 218B.080(2) established the cultivator tier licenses, and KRS 218B.105 established the square foot limitations for each cultivator tier. For market sizing purposes, OMC attempted to determine the total square footage necessary to supply the Kentucky Medical Cannabis Program in its early stages, and from there determined how many cultivator licenses to issue in the first licensing round in 2024.
15. Regarding the second full paragraph on page 15, again, while not identical, the Business Licensing Application Checklist included in the publicly available Business Licensing Application Guide is similar to the Business Licensing Application Review Checklist used by OMC staff.
16. Regarding the second paragraph on page 16, the language of 915 KAR 1:010, Section 3(4)(c) provides that “[f]or the four (4) cannabis cultivator tiers, an applicant shall only submit one (1) application per cultivation tier ...” Accordingly, an applicant is prohibited from submitting multiple applications within the same cultivator tier. For example, if an applicant submitted three applications for a tier 1 cultivator license, those three applications

would be flagged by reviewers during the review process for that reason and any additional deficiencies. Once OMC confirmed the regulatory violation at the conclusion of the review process, two of those applications would receive a summary denial, meaning the denial is based – at least in part – on a clear violation of the regulatory rules that cannot be cured, and one application would not receive a summary denial because the applicant was permitted to submit one application in that cultivator tier. Please note that one application is still subject to denial by OMC for other reasons (e.g., incomplete). Other examples of summary denials include failure to pay the application fee, same applicant applying across multiple license types, same applicant and same proposed location on multiple applications, multiple applications with the same parent company and proposed location, and same applicant submitting multiple dispensary applications within the same region. OMC also denied applications for failure to resubmit within the deadline established in 915 KAR 1:010, Section 3(7) (“The applicant shall have ten (10) calendar days from the date of the deficiency notification to cure the identified deficiencies and provide any missing information or documentation to the cabinet in the manner prescribed by the cabinet. If the applicant fails to cure any deficiency within ten (10) calendar days from the date of the deficiency notification, the cabinet shall reject the application as incomplete.”)

17. Regarding the third paragraph on page 16, program investigators and other staff within the OMC’s Division of Enforcement and Compliance assisted with application reviews in addition to other state employees. OMC is grateful to each state employee who assisted with the lengthy and difficult task of application reviews and processing.
18. Regarding the third full paragraph on page 18, again, the “batch” documents were compiled using the applicable second line review determinations. Each application included within a respective batch document was marked either “Recommend Approval” or “Recommend Curing.” The primary purposes of the batch document review conducted by the OMC were quality control and consistency, including among citations, identified deficiency language, and determinations made.
19. Regarding the first full paragraph on page 19, the OMC Deputy Executive Director reviewed and confirmed the reason(s) for application denials.
20. Regarding the third full paragraph on page 19, applicants still have access to their submitted applications and documentation by logging into their accounts with the OMC’s application portal.
21. Regarding the fifth full paragraph on page 19, processor and cultivator applications that were returned for correction were reviewed at least four (4) times (i.e., first line, second line, batch, and resubmission).

22. Regarding the first paragraph on page 20, 915 KAR 1:020, Section 3 established the use of a lottery to issue cannabis business licenses, if needed, and permitted the OMC to consult or contract with a third-party lottery operator or other public agencies with relevant expertise in conducting lotteries.
23. Regarding the second paragraph on page 20, for the 2024 licensing process, OMC Deputy Executive Director Scotty McFarlan and OMC Executive Administrative Secretary Malaya Rivers worked with CHFS Deputy General Counsel Blake Vogt to ensure proper deidentification of each license lottery file.
24. Regarding the third paragraph on page 20, on June 28, 2024, the OMC published its *Guidance re Provisional Licenses, Change of Location Requests, and Lottery Selection for Dispensary Licenses*. On February 17, 2025, the OMC published Technical Advisory 2025-003, Amendment 1 (*Guidance for Dispensary Licensees Required to Change Location*). Both of these documents are still available for viewing on the OMC website.
25. Regarding the fourth paragraph on page 20, the Deputy Executive Director of the CHFS Office of Legal Services and the OMC Deputy Executive Director matched the numbers drawn for each license lottery to the applicable unredacted “Identified List” to re-identify the entities randomly selected. The OMC Deputy Executive Director then provided the identified results for each drawing to the OMC Executive Director.
26. Regarding the first full paragraph on page 21, again, processor and cultivator applications that were returned for correction were reviewed at least four (4) times (i.e., first line, second line, batch, and resubmission), and safety compliance facility licenses were not subject to limitation during the 2024 initial licensing process and thus no random drawing was needed for that license type.
27. Regarding the fourth full paragraph on page 21, the requirement for applicants and licensees to disclose documentation of any existing management service agreements is contained in 915 KAR 1:010, Section 3(5)(t). KRS Chapter 218B does not prohibit cannabis businesses from entering into management service agreements.

OMC Responses to OIG Recommendations

1. **Recommendation No. 1 (page 22): “OIG recommends that OMC formally debrief the process it used for review and award of provisional licenses from the first round of medical cannabis licenses and make any necessary improvements prior to a second round. Further OIG recommends review of applicable policies and procedures and**

updating those if necessary. Formal policies and procedures should be posted to its website.”

Regarding OIG Recommendation No. 1 on page 22, OMC agrees with the OIG’s recommendation to review applicable policies and procedures prior to opening up additional cannabis business licensing availability periods and update those policies and procedures to include identified improvements grounded in lessons learned from the initial licensing process. As its application and licensing policies and procedures are updated in the coming months, OMC will make those updated materials available on its website.

- 2. OIG Recommendation No. 2 (page 22): “OIG also recommends that leadership participate in forums or associations organized for the benefit of government operation of medical cannabis programs to ensure it is learning from peers who lead similar programs in order to ensure best practices in Kentucky’s program.”**

Regarding OIG Recommendation No. 2 on page 22, OMC has been a member of the Cannabis Regulators Association (CANNRA) since June 2023. CANNRA is a nonpartisan association of government agencies that regulate cannabis and cannabinoids, with a mission to convene, educate, and support government jurisdictions responsible for implementing cannabis and cannabinoid policies and regulations. One of the critical benefits of CANNRA membership is that it allows government agencies across the country to share best practices and ask questions to a large group of engaged public servants with specific expertise in this very complicated area of the law. OMC intends to continue its membership in CANNRA going forward, as well as continuing to work with state agencies, boards, and associations to ensure the Kentucky Medical Cannabis Program develops, follows, and maintains best practices.

Again, the OMC appreciates the opportunity to review and comment on the report. Please let us know if you have any additional questions. Thank you.

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