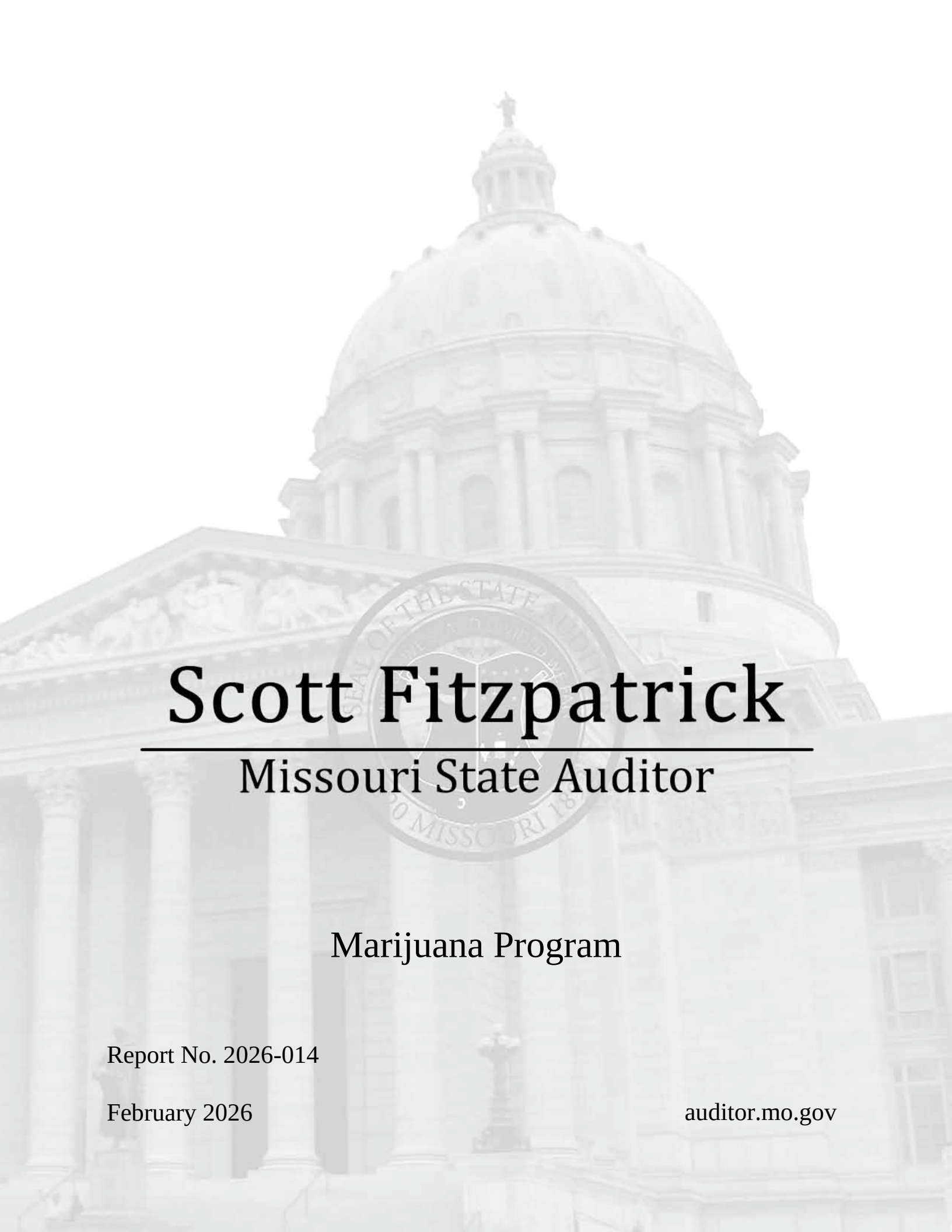

Scott Fitzpatrick

Missouri State Auditor

Marijuana Program

Report No. 2026-014

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CITIZENS SUMMARY

Findings in the audit of the Marijuana Program

License Application and Evaluation Process Did Not Ensure Consistency or Transparency

The Division of Cannabis Regulation (DCR) approved an application scoring process with significant design flaws. Application scorers evaluating the applications for Wise Health Solutions (WHS) were instructed to not document notes to support their scoring decisions, and did not consistently apply redaction rules, which undermined the "blind scoring" goals of the process. In addition, the DCR did not design the application process in a way that would facilitate review by the DCR.

In a review of 67 license applications, 21 of the 45 scorers (47 percent) made at least 1 scoring assessment contradicting the DCR's own minimum evaluation criteria, and failed to provide any supporting annotations to help explain the discrepancies. The DCR allowed applicants to create their own unique identifier (UA) to be used on uploaded supporting documents during the scoring process, which allowed applicants to base their UA on the company's name, potentially disclosing the identity of the applicant to the scorers. During a review of 67 facility license applications, the audit found 12 applications (18 percent) included UAs that were reasonably indicative of the applicant's business name, such that graders or reviewers familiar with the applicant could potentially deduce the applicant's identity. While only 15 percent of the overall population of applications (348 of 2,257) received licenses, applicants with identifying UAs benefited from the lack of anonymity, with 83 percent (10 of the 12 applications reviewed) being granted licenses.

The DCR did not adequately monitor WHS to ensure controls intended to detect inconsistencies during the scoring process were implemented. During a review of 67 applications (32 approved for a license and 35 denied), the audit noted instances in which the redaction rules were not applied consistently between graders, identical or substantially similar responses to the same question received different scores from the same grader, responses that met the minimum criteria were not assigned positive scores, responses that did not meet the minimum criteria received a score higher than 0, and evaluation criteria was applied incorrectly, without the grader justifying the reason with logs or notes.

The perceived and actual deficiencies in the application scoring process documented in the audit were a contributing factor to the state being subject to significant legal challenges and costs. A total of 849 Administrative Hearing Commission appeals from the 1,909 applications that were denied (44 percent of denied applications) were filed against the DCR. From 2020 through 2023, the DCR incurred over $12.5 million in costs associated with litigation and administrative appeals based on the 2019 licensing process, and awarded 68 additional licenses to settle applicant appeals.

Business Change Requests Not Processed Timely and Lack Appropriate Benchmark	The DCR has not processed business change requests timely and does not adequately track the progress of the requests. State regulation requires the DCR to approve or deny applications for transfers of licenses to a different entity with the same ownership within 60 days of receiving a "complete" application. Changes of the licensee's facility or warehouse location require resolution within 90 days of receiving a "complete" application, and change requests for any changes that would result in an overall change in ownership interests of 50 percent or more from the last approved ownership of the licensee require resolution within 150 days of receiving a "complete" application. Based on DCR data for all change requests submitted through November 2, 2023, the DCR took an average of 165 days to approve or deny business ownership change requests from submission to final action, and 70 days for location change requests. For 45 of the 307 such requests submitted during this timeframe (15 percent), the DCR took over a year to provide a final decision. Untimely change approvals can result in licensees experiencing uncertainty, delayed business decisions, and negative impacts to their operations.
Market Oversight Procedures are Inadequate	While DCR has improved its processes throughout the audit period, many licensees were allowed to operate without ongoing inspections from the DCR, and when the DCR did perform inspections, passing grades were sometimes given without the licensee proving compliance. In addition, the DCR performed minimal inventory inspections to ensure cannabis was not being diverted into the black market. The DCR has also not established regulations to ensure confidentiality of adult-use customer information, and does not monitor for cannabis purchases in excess of the constitutional limits. Dispensaries retain confidential information from customers without obtaining consent from the customer to retain this information. The statewide track and trace system, (Metrc) does not currently have the capability to identify purchases over the legal transaction quantity limits in real time. As a result, marijuana customers are able to purchase more cannabis than what is allowed by the Constitution, and there is an increased risk of diversion and a public safety concern.
Marijuana Revenues Have Not Been Distributed in Accordance with the Constitution	Significant balances of marijuana taxes and fees exist in both the Veteran Health and Care Fund, and the Veterans, Health, and Community Reinvestment Fund, rather than being distributed as required by the Missouri Constitution. A significant balance has accumulated in these funds in fiscal years 2024 and 2025, with the combined ending cash balances at fiscal year-end totaling $82.4 million and $89.2 million, respectively. Article XIV, Section 2 of the Missouri Constitution requires equal transfers of marijuana taxes and fees to the Missouri Veterans Commission (MVC), the Department of Health and Senior Services (DHSS) for drug programs, and the public defender system. Both the MVC and the public defender system have communicated the need for additional resources, but the full amount of the funds available have not been appropriated in the approved budgets.
Microbusiness Licensing Process Resulted in Approvals to Noncompliant Applicants	DCR officials approved microbusiness licenses that were not compliant with constitutional requirements and state regulation. The review of microbusiness applications identified approved licenses that were too close to churches, prohibited by the Missouri Constitution, and in an area prohibited by local ordinance.

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SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

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Office of Administration
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Veterans Commission
and
Trish Vincent, Director
Department of Revenue
Jefferson City, Missouri

We have audited certain aspects of the Department of Health and Senior Services, Division of Cannabis Regulation's (DCR) administration of Missouri's Marijuana Program. During the 5 years ending June 30, 2023, 366 licensed facilities were approved to operate, and approximately $1.23 billion in retail marijuana sales generated approximately $46.8 million in sales tax revenues, which is of significant interest to the public. The objectives of our audit were to:

1. Review the licensing process for cultivation, manufacturing, dispensary, testing, and microbusiness entities.

2. Evaluate whether the DCR has effectively prevented monopolistic practices and undue concentration of licenses.

3. Evaluate the accessibility of medical marijuana products for qualifying patients.

4. Evaluate the DCR's and licensees' compliance with certain legal provisions.

5. Examine the effectiveness of the DCR's measures in preventing diversion of marijuana products to the illicit market.

6. Review and assess the collection and reporting of data related to program operations and data management.

7. Determine if funds generated from marijuana sales have been used for their dedicated legal purposes.

8. Determine if the DCR conducts regular evaluations and uses the findings for continuous improvement.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

For the areas audited, we identified (1) deficiencies with the licensing process for cultivation, manufacturing, dispensary, testing, and microbusiness entities, (2) no significant monopolistic practices or undue concentration of licenses, (3) no significant deficiencies with the accessibility of medical marijuana products for qualifying patients, (4) noncompliance with certain legal provisions, (5) deficiencies with the effectiveness of the DCR's measures in preventing diversion of marijuana products to the illicit market, (6) deficiencies with the collection and reporting of data related to program operations and data management, (7) noncompliance with legal provisions on fund uses, and (8) no significant deficiencies in management practices and procedures for continuous improvement. The accompanying Management Advisory Report presents our findings arising from our audit of the Marijuana Program.

Scott Fitzpatrick
State Auditor

Marijuana Program Introduction

Background

In the November 6, 2018, general election, Missouri voters approved Missouri Amendment 2, which amended the Missouri Constitution to add a new Article XIV (currently numbered Article XIV, Section 1). In summary, Article XIV, Section 1 does the following: (1) creates a framework to tax retail sales of medical marijuana (this includes marijuana flower and marijuana-infused products; e.g., concentrate, resin, vape cartridges, dermal patches, edibles, and other such edible and non-edible products); (2) provides for patient access to, and home cultivation of, medical marijuana for individuals with certain qualifying medical conditions; and (3) defines the responsibilities of the Department of Health and Senior Services (DHSS) related to (a) establishing standards for product quality, (b) licensing and regulating facilities engaged in the sale, manufacture, cultivation, and transport of medical marijuana, and (c) protecting patients and licensed facilities from criminal penalties arising from medical marijuana use and business activities. The DHSS created the Section for Medical Marijuana Regulation (SMMR) under the DHSS' Division of Regulation and Licensure to carry out the DHSS' constitutional mandate as laid out in Article XIV, Section 1. The SMMR was subsequently renamed the Division of Cannabis Regulation (DCR). We refer to this section/division as the DCR throughout the remainder of this report, regardless of when the activity occurred.

The following table summarizes the DCR's deadlines outlined in Amendment 2.

DCR Amendment 2 Timelines

Timeframe	Constitutional Provision in Article XIV, Section 1
Within 180 days of December 6, 2018	Application forms and instructions for medical marijuana cultivation facilities, marijuana testing facilities, medical marijuana dispensary facilities, and medical marijuana-infused products manufacturing facilities are publicly available.
Within 240 days after December 6, 2018	Begin accepting applications for medical marijuana cultivation, dispensary, and infused-product manufacturing facilities.
Within 150 days after receiving a complete application	Approve or deny a facility license.
Within 180 days of December 6, 2018	Application forms and instructions for qualifying patient, qualifying patient cultivation, and primary caregiver identification cards are publicly available.
Within 210 days of December 6, 2018	Begin accepting applications for such identification cards.
Within 30 days of application receipt	Approve or deny Patient and Caregiver identification card applications.

License categories and limits on the licenses issued

Article XIV, Section 1 established 6 license categories: dispensary facility, cultivator facility, manufacturing facility, testing facility, seed-to-sale tracking system certifications, and transportation of marijuana. For the first 4 categories, Article XIV, Section 1 required the DHSS to issue a minimum number of licenses for each facility type as follows:

- Twenty-four dispensary licenses in each of Missouri's 8 congressional districts, or a total of 192.
- One infused product manufacturing facility license for every 70,000 Missouri inhabitants as of the 2010 census, which equates to a total of 86 product manufacturing facility licenses.
- One cultivation facility license for every 100,000 Missouri inhabitants as of the 2010 census, which equates to a total of 60 cultivation facility licenses.
- Two testing facility licenses.

After Article XIV, Section 1 went into effect, the DCR published regulations establishing license caps for each facility type equivalent to the minimum allowed by the section. In an Administrative Hearing Commission (AHC) hearing,[1] DCR officers stated the DCR chose to issue the minimum number of cultivation, dispensary, and manufacturing licenses and 10 testing facility licenses to strike a balance between ensuring adequate patient access, and maintaining regulatory efficiency, safety, and product quality, including ensuring an even distribution of testing facilities throughout the state. Division personnel also stated this decision was based on constitutional authority, cost and personnel considerations, precedent from other states, and an analysis showing the minimum number of licenses would be more than sufficient to meet demand. The DCR did not limit the number of available transportation facility and seed-to-sale tracking system certifications.

License application process

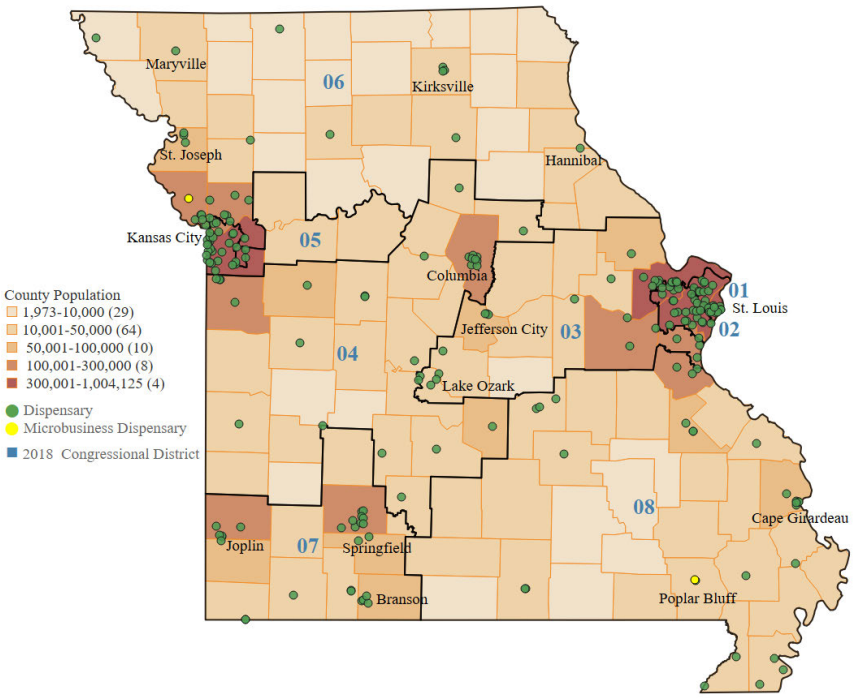
Applicants were awarded dispensary, manufacturing, cultivation, and testing facility licenses based on the results of a blind scoring process that numerically scored each facility application against all other applications within the same facility type. The DCR decided to contract with a third-party vendor to complete this application scoring process due to (1) adverse results of similar processes in other states in which the states' marijuana regulatory agencies completed the application scoring process themselves, and (2) staffing concerns and the ability to meet constitutional deadlines. After a

[1] AHC hearing transcripts from Case Numbers 20-0213 and 20-0215, Heya Kirksville Cultivation LLC and Heya Excello Cultivation LLC (Petitioners), vs. Department of Health and Senior Services (Respondent), November 12, 2020, pp. 16-20.

competitive bidding process, the DCR awarded the license application scoring contract to Wise Health Solutions (WHS). In total, 2,257 applications were submitted for the 348 licenses granted (15 percent) across the 4 facility types during the facility application period open from August 3 to 19, 2019. Of the 348 licenses granted, 192 were dispensary licenses, 86 were manufacturing licenses, 60 were cultivation licenses, and 10 were testing facility licenses. At the conclusion of the application scoring and licensing process, hundreds of applicants filed appeals challenging their denied license applications, citing concerns related to inconsistent scoring, conflicts of interest within WHS, the DCR's authority to limit licenses, and other issues.

Figure 1 shows a heat map of Missouri counties, by population, with the location of dispensary licenses, as of June 4, 2025.

Figure 1: Map of dispensary licenses



Source: Prepared by the State Auditor's Office (SAO) using information provided by the DCR.

In 2019, license applicants that were denied licenses by the DCR, could appeal the decision by filing a complaint with the Missouri Administrative Hearing Commission (AHC). The applicant was required to file a complaint or petition for review with the AHC within 30 days of receiving the notice of denial. This was the first level of appeal for all facility license denials. Following the exhaustion of remedies at the AHC, the applicant could take the case to court if the AHC's decision was not in the applicant's favor.

Medical sales taxes	Article XIV, Section 1 requires a 4 percent sales tax on the retail price of medical marijuana purchased at licensed Missouri dispensaries. After the Department of Revenue (DOR) retains no more than 2 percent of the tax collected, proceeds from this tax are deposited into the Missouri Veteran Health and Care Fund in the state treasury. Fees collected under Article XIV, Section 1, such as for facility licensure, patient identification (ID) cards, and other purposes are also deposited into the fund. The Budget and Planning (B&P) section within the Office of Administration collaborates with the DCR to determine actual fund collections. The B&P section uses fee projections provided by the DCR, along with retail sales tax projections from its staff economist, to forecast revenues for the upcoming budget year. Typically, the amount recommended in the Governor's supplemental budget for the current fiscal year incorporates any available fund balances. From this fund, an amount necessary for the DCR to carry out program activities necessary to fulfill its constitutional mandate is first appropriated to the DCR. A portion of the remainder of the fund is then appropriated to be transferred to the Missouri Veterans Commission (MVC) "for health and care services for military veterans." This includes, but is not necessarily limited to, "maintenance and capital improvements" for the state's Veterans Homes; support for the state Veterans Service Officers program, which assists veterans in navigating available U.S. Department of Veterans Affairs (VA) and state veterans' benefits; and "healthcare services, mental health services, drug rehabilitation services, housing assistance, job training, tuition assistance, and housing assistance to prevent homelessness."
Adult-use cannabis passed by voters	In the November 8, 2022, general election, Missouri voters approved Missouri Amendment 3, which amended the Missouri Constitution to renumber the existing portion of Article XIV to Article XIV, Section 1 and changed provisions regarding the licensing process, who can prescribe medical marijuana, and other various changes; and to add Article XIV, Section 2. In summary, Article XIV, Section 2 does the following: (1) creates a framework to tax retail sales of adult-use recreational marijuana (including marijuana flower and marijuana-infused products), (2) provides for consumer access and home cultivation, and (3) defines DCR's responsibilities in (a) establishing product quality standards for recreational marijuana, (b) licensing and regulating facilities engaged in the sale, manufacture, cultivation, and transport of marijuana, and (c) protecting consumers from criminal penalties arising from recreational marijuana use and business activities. After passage of Amendment 3, the SMMR was reorganized into the DCR.
Adult-use licenses	Article XIV, Section 2 allows for medical licenses to be converted to comprehensive licenses, with the DCR's approval, which then allows these converted licensees to serve patients and adult-use customers.

Additionally, Article XIV, Section 2 establishes two new categories of licenses: (1) microbusiness dispensaries, which operate similarly to the preexisting dispensary facility type, and (2) microbusiness wholesalers, which can cultivate marijuana, manufacture marijuana-infused products, or both. Microbusinesses licenses, known more commonly as "social equity" licenses, are reserved for facility license applicants that are majority owned by individuals who each meet at least one of the following qualifications:

- Net worth of less than $250,000 and an income less than 250 percent of the applicable federal poverty level in at least 3 of the previous 10 calendar years prior to application.

- Hold a valid service-connected VA disability card.

- Have been arrested for, prosecuted for, or convicted of a nonviolent marijuana offense that does not involve operating a motor vehicle under the influence of marijuana or providing marijuana to a minor; or have been a parent, guardian, or spouse to whom these conditions are applicable.

- Reside in a zip code or census tract where (1) 30 percent or more of the population lives below the federal poverty level, (2) the unemployment rate is 50 percent higher than the statewide average unemployment rate, or (3) the historic incarceration rate for marijuana offenses is 50 percent higher than the statewide rate.

- Graduated from a school district that was not accredited or have lived in a zip code containing such a district for 3 of the previous 5 years prior to application.

Article XIV, Section 2.4(13) requires the DCR to award at least 4 microbusiness wholesale and 2 microbusiness dispensary licenses per congressional district (a total of 32 and 16, respectively) in 3 rounds at date-based intervals, totaling at least 144 microbusiness licenses (96 wholesalers and 48 dispensaries). The licenses are to be selected using a random lottery drawing. The DCR awarded the first round of licenses by October 4, 2023, as required. The second round was awarded on July 24, 2024, and as of August 1, 2025, the DCR had not yet awarded the third round. The DCR revoked 9 licenses after issuing the first round of licenses and 25 after issuing the second round. One license in each round was revoked due to the owner having a disqualifying felony offense, and all other revocations were due to insufficient evidence that the facility would be owned and operated by an eligible individual. The DCR will award at least 82 licenses in the third round.

Adult-use sales taxes

Article XIV, Section 2 establishes a 6 percent sales tax on the retail price of adult-use recreational marijuana purchased at licensed Missouri dispensaries. After the DOR retains no more than 2 percent of the tax collected, proceeds from this tax are deposited into the Veterans, Health, and Community Reinvestment Fund in the state treasury. Fees collected from license applications under Article XIV, Section 2 are also deposited into the fund. From this fund, an amount necessary for the DCR to carry out program activities necessary to fulfill its constitutional mandate is first appropriated to the DCR. Second, an amount necessary to carry out expungements of convictions of certain minor marijuana-related offenses is appropriated to various government entities to process the expungements. The remainder of the fund balance is to be split equally among the following 3 entities:

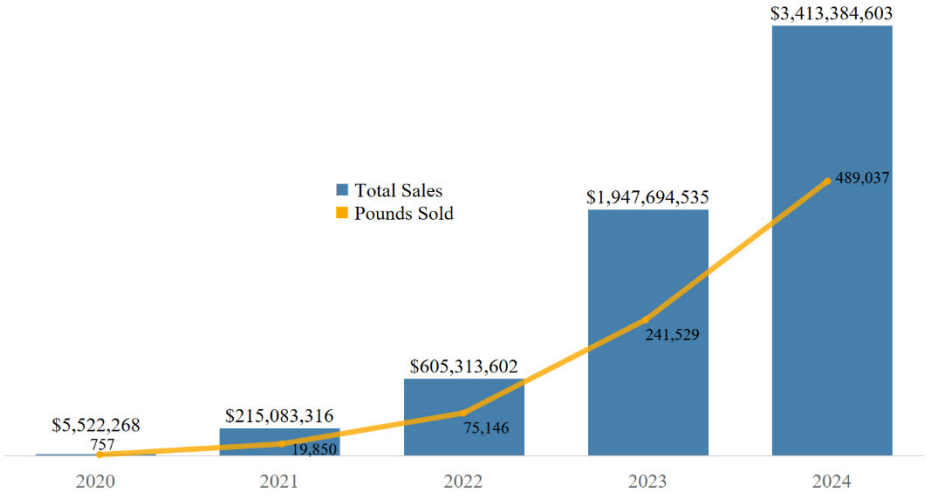
- The MVC for purposes of providing "health care and other services for military veterans and their dependent families."
- The DHSS to provide grants to "agencies and not-for-profit organizations, whether government or community-based, to increase access to evidence-based low-barrier drug addiction treatment, prioritizing medically proven treatment and overdose prevention and reversal methods and public or private treatment options with an emphasis on reintegrating recipients into their local communities, to support overdose prevention education, and to support job placement, housing, and counseling for those with substance abuse disorders."
- The Missouri public defender system "for legal assistance for low-income Missourians."

For all entities and purposes that receive funding from both medical and adult-use recreational marijuana sales taxes and fees, Article XIV stipulates that money from those taxes and fees represent additional funding and cannot be used to replace existing funding.

Cannabis sales exceed $3 billion in just over 3 years

Since medical marijuana sales began in October 2020, Missouri medical and recreational marijuana sales reached $3.4 billion in calendar year 2024. Figure 2 illustrates the annual sales from 2020 to 2024, reflecting the industry's rapid expansion.

Figure 2: Annual cannabis sales, in pounds sold and dollars, calendar year 2020 through 2024



Source: Prepared by the SAO using information provided by the DCR.

Scope and Methodology

The scope of this audit includes, but is not necessarily limited to activity for the 5 years ended June 30, 2023.

Our methodology included reviewing written policies and procedures, financial records, and other pertinent documents; gathering information regarding licensing, market oversight, legal cases, revenues and disbursements, procurement, and user access through interviewing various current personnel of the offices audited, as well as certain external parties; and performing sample testing using haphazard, judgmental, and random selection, as appropriate. We also sought access to and used the statewide track and trace system, Marijuana Enforcement Tracking Reporting & Compliance (Metrc),[2] to generate data regarding the licensees, sales reports, inventories, product transfers, testing, packaging requests, administrative holds, etc.

We obtained an understanding of internal controls that are significant to the audit objectives and planned and performed procedures to assess internal controls to the extent necessary to address our audit objectives. We also obtained an understanding of legal provisions that are significant within the context of the audit objectives, and we assessed the risk that illegal acts, including fraud, and violations of applicable contract or other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting instances of noncompliance significant to those provisions.

Additionally, we performed the following procedures to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives:

- We performed a detailed review of the medical licensing process for 67 of the 2,257 total applications submitted. Of the 67 applications reviewed, 42 were chosen randomly and 25 were judgmentally selected. Of the 67 applications selected, 35 were denied and 32 were approved for a license. The sample included 16 cultivation applications, 6 testing facility applications, 13 manufacturing applications, and 32 dispensary applications. We assessed application responses for all questions to review compliance with the DCR's criteria and reviewed the grading for reasonableness and consistency when considering the other applications reviewed.

[2] Metrc is an integrated system that allows for real-time tracking and tracing of marijuana plants and products and is further explained at <https://www.metrc.com/faq/missouri-faq/>, accessed January 26, 2026. We refer to "seed-to-sale tracking systems" throughout this report, which are third-party software vendors certified by the DCR for licensed facilities to interface between the facility and Metrc, such as point-of-sale (POS) systems at dispensaries.

- For the 32 reviewed applications that were awarded a license, we reviewed the application to ensure the owners met the requirements outlined in the state regulations regarding ownership of the business.

- We reviewed applications for microbusiness licensing to assess eligibility of applications with DCR-established criteria. Out of 48 applications drawn via lottery (the lottery occurred prior to eligibility determinations) by the DCR, we reviewed 36 applications; 18 were selected haphazardly and 18 were selected randomly, with 18 being dispensary licenses and 18 being wholesale licenses. Of the 36 applications selected for review, 32 were approved and 4 were denied.

- We assessed the DCR's oversight of WHS's administration of the evaluation process to ensure the process was administered in a transparent and consistent manner, and that internal controls in the grading process were in place and implemented effectively. This also included a review of WHS graders' notes and hearing testimonials of DCR and WHS officials on the grading process for the applications selected for review.

- To verify the accuracy of the DCR's list of legal cases we tested 8 appeal cases against the AHC data. The 8 cases were selected randomly out of 849 appeals regarding the medical licensing process that were filed between 2020 and 2021, and we confirmed which licenses were granted as a result of such appeals with the AHC.

- We reviewed geographic distribution of medical, comprehensive, and first round microbusiness dispensaries across the state and by congressional district. We also compared licenses issued to the total population and the number of patients to assess the concentration of the licensees in each county.

- We reviewed location changes submitted by licensees. Out of 390 applications for location changes submitted from 2020 through 2023, we selected 43 applications, to review for compliance with state regulations, including compliance with the schematics/blueprints of the new location, attestation of compliance signed by the licensee, proof of zoning compliance, proof of undue burden, and compliance with the ownership agreement. Of these 43 applications, 30 were selected haphazardly and 13 were selected randomly. Also, we reviewed the timeliness of the DCR's processing for all location changes.

- We reviewed ownership change requests submitted by licensees. Of the 438 change requests submitted from 2020 through 2023, we selected 41 applications to review for compliance with state eligibility regulations. Of these 41 applications, 29 were selected haphazardly and 12 were

selected randomly. Also, we reviewed the timeliness of the DCR's processing for all ownership changes.

- We reviewed processing time for all 414,501 packaging approval applications submitted from September 2023 through January 2025. Of these, 373,611 applications were approved, and 40,890 applications were denied. The initial deadline for such packaging approvals was in May 2024, with a significant number of packaging applications being received in a short timeframe, creating significant backlogs. However, the DCR processed these applications in the timeframe required by state regulation.

- We reviewed the DCR's responses to complaints received from citizens and businesses. Of the 330 complaints received by the DCR from 2019 through 2023, we judgmentally selected 8 cases to assess the DCR's responses to the complaints.

- We compared aspects of the state's facility licensing, patient qualification, and personal cultivation permitting processes to those of other states to assess the reasonableness of Missouri's process.

- We reviewed all of the administrative product holds as of June 2024. There were 37 administrative holds covering 58,325 products, including 322 harvests, 1,422 packages, and 56,581 plants. We assessed the timeframes and actions taken by the DCR to resolve such cases timely. For review purposes, products from the same licensee placed on hold on the same day were considered a single item.

- We reviewed all inspections conducted by the DCR from 2019 through 2024 and compared them with active licensees allowed to operate each year. There were 2,005 inspections performed. Additionally, we randomly selected 53 of the 910 inspections performed from 2019 through September 2023 for detailed testing of the procedures used by the DCR and follow-up actions taken.

- We reviewed 30 medical card applications. Of the 554,667 applications received from 2020 through 2023, we randomly selected 30 to assess the DCR's compliance with the timeframes in state regulations.

- We assessed the DCR's procedures for monitoring market supply. We interviewed and made written inquiries to DCR personnel regarding procedures for monitoring the supply and demand for marijuana products in the market to determine if there is sufficient market oversight to reduce possible shortages of marijuana products.

- We observed the DCR's inspection procedures during 9 judgmentally selected inspections. We also inquired of facility management in 4 of the 9 selected facilities to understand how the DCR performs inspections and other compliance reviews.

- We reviewed patient and adult user purchases for compliance with purchase limits established in state regulations. For medical users, we reviewed sales reports from Metrc for May 2022 and July 2022 for a random sample of 10 of the 190 dispensaries operational during those periods. From each month, we judgmentally selected the 5 patients or caregivers with the highest-dollar purchases and examined their individual transactions. For adult-use users, we reviewed sales reports from Metrc for May 2023 and June 2023 for a random sample of 10 of the 210[3] dispensaries operational during those periods. From each month, we judgmentally selected the 5 adult users with the highest-dollar purchases and examined their individual transactions.

- We reviewed product transfers, including testing of products, for compliance with state regulation. As part of this test, we reviewed 55 of the 99,488 product transfers made between 2020 and 2024; 54 were selected randomly and 1 was selected haphazardly.

- We surveyed licensees to understand their perspectives on the DCR's monitoring and oversight functions. We sent surveys to all 414 licensees as of May 21, 2024, and received 108 responses.

- During our survey of licensees, we asked the dispensaries a series of questions regarding data collection from patients and adult-use customers. Of the 108 licensees that responded to our surveys, 45 were dispensaries. During our observation of DCR's site inspections, we judgmentally selected and interviewed management from 2 of the 5 dispensaries observed regarding data collection from patients and adult-use customers.

- We compiled and analyzed budget, revenue, and disbursement information for fiscal years 2019 through 2024. We also reviewed budget data provided from the DCR in budget requests for fiscal years 2022 and 2023.

- We compared sales information in Metrc to the sales tax returns submitted by the dispensaries to the DOR. From the 141 active Missouri

[3] The DHSS initially limited the number of available dispensary facility licenses at 192. However, since April 2021, several initially unsuccessful applicants have won dispensary licenses on appeal.

sales tax IDs that are affiliated with licensed dispensary facilities and are on file with DOR as of February 2024, we randomly selected 36 facilities to assesses the accuracy of reported sales. For these selected facilities, we reviewed 2 months per calendar year from 2021 to 2023, reviewing sales tax data for March and July 2021, February and August 2022, and April and November 2023.

- We reviewed the procurement process for the application scoring vendor and the statewide track and trace system contract, to assess whether the vendors were properly procured and the proposals contained accurate information.

- We analyzed 10 years of direct funding to the MVC from the General Revenue Fund, including 6 years prior to marijuana funding and 4 years with marijuana funding, to determine if marijuana funds were used to replace existing funding sources for the MVC. In addition, we analyzed financial information and activities for which program funds were disbursed for the period fiscal year 2019 through fiscal year 2024 to determine if funds generated from marijuana activity have been used for their dedicated legal purposes.

- We reviewed the DCR Risk Assessment, Strategy and Communication Plans for fiscal year 2019 through fiscal year 2024 to assess whether the program is striving towards continuous improvement.

To perform test work, we selected non-statistical samples, primarily through random selection, of medical licensing applications, microbusiness applications, legal cases, inspections performed by the DCR, medical card applications, product transfers, and sales taxes submitted by dispensaries. We also selected non-statistical samples, primarily through haphazard and judgmental selection, of location change applications, ownership change requests, complaints received by the DCR, and site inspections performed by the DCR. We reviewed for purchase limit violations for customers, and reviewed dispensary management practices. The sample items were not necessarily representative of the population; therefore, it would not be appropriate to project the test results to the population from which test items were selected.

We used statistical sampling for the comparison of sales in Metrc to the sales reported on the sales tax returns submitted to the DOR. We believed this sample was representative of the population and would be appropriate to project the results from the sample to the population from which test items were selected.

1. License Application and Evaluation Process Did Not Ensure Consistency or Transparency

The Department of Health and Senior Services' Division of Cannabis Regulation (DCR) license application and evaluation process used for dispensary, cultivator, manufacturing, and testing facilities did not ensure consistency or transparency in the awarding of licenses. License scoring and evaluation decisions were inconsistent and insufficiently documented, creating significant uncertainty in the results. This uncertainty was a contributing factor in a significant number of license applicants filing lawsuits and resulted in significant legal cost to the state.

In 2019, the state established a competitive licensing process for businesses that wanted to engage in the dispensing, cultivating, manufacturing, and testing of medical marijuana in the state. In an attempt to ensure a level of independence in the scoring, the DCR contracted with a third-party vendor, Wise Health Solutions (WHS), to conduct the grading and evaluation of applications. WHS developed a Grader Training Manual that included various procedures and controls designed to ensure fairness and consistency in the scoring process. The DCR reviewed and approved this training manual prior to WHS grading the applications. According to DCR officials, the training manual reflected the DCR's expectations for how WHS should conduct and oversee the scoring process. Additionally, the DCR developed an Application Scorer Guide that provided WHS with the DCR's scoring guidelines for each application question.

Based on a review of the applications and related scores, we identified significant deficiencies in how the scoring process was designed and how the DCR monitored WHS's implementation of the scoring process.

1.1 Significant flaws in application scoring design

The DCR approved an application scoring process with significant design flaws. Application scorers evaluating the applications for WHS were instructed to not document notes to support their scoring decisions, and did not consistently apply redaction rules, which undermined the "blind scoring" goals of the process. In addition, the DCR did not design the application process in a way that would facilitate review by the DCR.

Documentation of grading decisions was not consistently maintained

The WHS Grader Training Manual provided contradictory guidance on the subject of graders taking notes to support the scores they assigned to specific applications. The training manual included specific guidance to not document grading decisions and encouraged graders to take "limited" notes to outline the rationale behind score values (e.g., what constituted a 0, 4, 7, or 10). Such notes would have been the only written records to substantiate scoring decisions, outside of email communications.

The training manual explicitly provided guidance to graders to avoid documenting too much. For example, the training manual provided the following guidance: [4]

- "Adhere to this axiom: Say it and forget it, write it and regret it."
- "Notes are not required (and not advised) unless you feel you must explain an outlier or a redaction."
- "Remember, anything that you as a Grader include in the scoring notes becomes part of the public record associated with the state's licensing process. What you write will be discoverable, should any of the applicants challenge the state's decisions in court. Don't write anything that you don't want everybody to read."

DCR officials did not indicate why they approved a training manual that encouraged graders to take limited notes. However, based on the wording in the training manual, graders were encouraged to take limited notes to reduce the records available in the event of lawsuits.

As a result of this guidance, few graders maintained grader's notes, and none retained a complete personalized scoring rubric. In our review of 67 license applications, 21 of the 45 scorers (47 percent) made at least 1 scoring assessment contradicting the DCR's own minimum evaluation criteria, and failed to provide any supporting annotations to help explain the discrepancies. This lack of documentation made it impossible to verify whether scoring decisions that were inconsistent with expectations resulted from grading errors, or were due to biases or other factors. Additionally, the lack of graders' notes brings into question the effectiveness of any internal review of graders' scores performed by WHS management for consistency and adherence to DCR-established minimum standards (see section 1.2 for concerns involving lack of review by WHS management). This lack of documentation resulted in less transparency and accountability in the scoring decisions made by WHS graders.

Applicants were allowed to circumvent the blind scoring process

The DCR allowed applicants to create their own unique identifier to be used on uploaded supporting documents during the scoring process, which allowed applicants to base that identifier on the company's name, potentially disclosing the identity of the applicant to the scorers.

The system used to upload and track applications, Complia, did not have the capability to assign each application's Unique Application Identifier number (UA) to all uploaded supporting documents of each application. Rather than

[4] Wise Health Solutions Grader Training Manual V3, dated 11/13/2019, p. 13.

requiring random or nonidentifiable UAs, DCR instructed applicants to create their own, formatted as four letters followed by four digits. These UAs were then included on application materials provided to graders.

During our review of 67 facility license applications, we found that 12 applications (18 percent) included UAs that, in our judgement, were reasonably indicative of the applicant's business name, such that graders or reviewers familiar with the applicant could potentially deduce the applicant's identity. In one case, the UA matched the business name exactly, with the numeric part of the business name prefixed by three zeros. Despite this, these applications were not penalized for violating redaction rules. Instead, while only 15 percent of the overall population of applications (348 of 2,257) received licenses, applicants with identifying UAs benefited from the lack of anonymity, with 83 percent (10 of the 12 applications reviewed) being granted licenses.

Figure 3 shows the UA and the entity name for the 12 applicants in our sample whose entity name was similar to the UA.

Figure 3: Similar Unique Identifier and Entity Name

UA	Entity Name
NGHC2609	New Growth Horizon, LLC
CCMD0003	Columbia Care MO LLC
OZRX3800	Ozarx Botanicals I, LLC
BBMO0003	BBMO 3, LLC
NIRV0003	Nirvana Bliss III, LLC
VGSL5511	VG S. Lindbergh LLC
AGGE3031	Agri-Genesis LLC
ARCH1811	Archimedes Medical Holdings, LLC
AYEH2001	Heya St. Ann Cultivation II LLC
AYEH2003	Heya Excello Cultivation LLC
3MOCA8444	MoCanna Health LLC
EKGL4633	EKG Life Science Solutions, LLC

Source: DCR license applications reviewed.

The UA was displayed at the top of every page of applicant-provided documentation, so this information was readily available to the WHS graders as they evaluated each applicant's response.

Rule 19 CSR 30-95.025(4)(C)2.B.[5] states, "Applications will be scored without reference to the identities of the facilities or of individuals named in an application." In addition, according to the DCR, one of the primary reasons

[5] Rule 19 CSR 30-95.025(4)(C)2.B. was rescinded via emergency rescission effective February 3, 2023, but was in effect at the time of the scoring.

for outsourcing the application evaluation process was to ensure independence in that process. Further, according to the WHS Final Work Plan,[6] "Applicants' identifying information shall not be disclosed to graders. All such information will be redacted or anonymized, and application materials will be assigned a numeric identifier for purposes of scoring." This control was put in place to facilitate the state's specified goal of a blind and impartial scoring process. However, there was no verification mechanism to ensure that UAs complied with anonymity standards and the applicant-established UAs were not anonymized prior to scoring.

DCR officials did not indicate why they allowed applicants to create their own UA. The DCR likely did not assess the risks of allowing applicants to create their own application identifier numbers.

Allowing identifiers that are traceable to applicants increases the risk of bias or perceived favoritism. Moreover, because these UAs were not treated as redaction violations, applicants that disclosed their identities through UAs faced no consequences, while others were penalized for redaction errors elsewhere in the application.

Scoring response and grading information was not maintained in a manner to allow for DCR oversight or analysis

Application response information was not maintained in a manner that allowed responses to be evaluated across applications, hindering the DCR's ability to adequately assess the consistency and fairness of the grading process. We requested data of all application responses and scores as part of our test work. However, DCR officials indicated application responses were not available in a database format, but were only available on a per-application basis, in PDF format.

For example, the application for dispensaries consisted of 68 general questions, and an additional 8 unique questions for only dispensaries. To review the responses to all application questions for one applicant, we were required to review between 18 and 150 individual PDF files, depending on the applicant, without the ability to compare responses across applications.

DCR officials indicated they did not design the application process in a manner that allowed for secondary reviews/audits because they wanted to be independent of the scoring process.

Requiring such data to be maintained electronically so that it could be reviewed and compared across applications would have allowed the DCR and WHS to more easily monitor application scoring for consistency.

[6] The WHS Final Work Plan outlines the expected work to be done by WHS to execute the medical marijuana facility license application scoring contract. The plan was agreed upon by the DHSS and WHS prior to the evaluation process.

Additionally, ensuring any process is clearly documented is essential to providing clarity and transparency. This deficiency resulted in reduced transparency of the scoring process.

1.2 The DCR did not ensure controls to detect inconsistencies in the grading process were implemented by the contractor

The DCR did not adequately monitor WHS to ensure controls intended to detect inconsistencies during the scoring process were implemented. The WHS Grader Training Manual required WHS management to perform random reviews of scores, review for statistical anomalies, and review a portion of each grader's questions when the grader assigned a score of 0. However, WHS management approved and transmitted scores to the DCR without following these established controls during the scoring process. Further, the DCR relied on these scores without ensuring WHS adhered to the guidelines issued by the DCR designed to ensure consistency during the scoring process.

No evidence random reviews of 10 percent of the scores were reviewed by WHS management

The WHS Grader Training Manual required WHS management to conduct random reviews of 10 percent of each grader's scoring assignments to detect potential inconsistencies and, if necessary, re-score any impacted questions. However, the DCR could not provide any documentation demonstrating these random reviews were performed, or that the DCR ensured they were performed. In addition, a WHS executive testified in a license appeal hearing[7] that she believed any suggestions to a grader to rescore application responses, even if the grader's score was inconsistent or illogical, would be undue influence. This testimony contradicts WHS's role described in the training manual, which permitted WHS management to intervene in cases when anomalies were detected.

High-level reviews by WHS were unsupported

WHS management reported to the DCR they conducted high-level statistical reviews to identify large-scale anomalies across scorers. However, no additional documentation was provided to the DCR to show the results of these analyses, what these analyses consisted of, how they were conducted, or what thresholds were used to flag anomalies. It is also unclear how such statistical reviews were possible considering the manner in which application responses and grading data were maintained (see section 1.1).

Reviews of scores receiving 0 points were not performed

The WHS Grader Training Manual required graders to report to WHS management the first ten scores of "0" they assigned, along with reasons explaining the score of "0" for any essay-related questions, and all scores of "0" given for failure to redact information that was required by rule to be redacted. However, the DCR provided such documentation for only 27 of the

[7] Administrative Hearing Commission (AHC) Hearing Case Numbers 20-213 and 20-215, Heya Kirksville Cultivation LLC (Petitioners) vs. Department of Health and Senior Services (Respondent), November 12, 2020, pp. 197-198 of hearing transcript.

45 (60 percent) total scorers. For the remaining 18 scorers, no documentation was available to confirm the required "0" reviews took place.

DCR officials stated WHS was not required by law to perform these reviews because the requirement was in the work plan and not in the Missouri Constitution. DCR officials further stated the absence of documentation does not necessarily mean the reviews did not occur, and that variances in graders was normal and not a concern. DCR officials also reemphasized how the DCR wanted to be independent of the scoring process.

While the DCR does not feel these procedures were required because they are not included in the Constitution, the procedures were included in agreed-upon work plans with a contractor. The approved procedures were designed and intended to identify scoring inconsistencies and anomalies, consistent with the purpose of outsourcing of the application scoring process. By not implementing these procedures, various scoring inconsistencies were allowed to occur without correction. Improved oversight by the DCR to ensure these controls were put in place would have helped reduce inconsistencies and improved confidence in the scoring process.

1.3 Significant scoring inconsistencies identified

Our review of a sample of applications identified significant scoring inconsistencies. During our review of 67 applications (32 approved for a license and 35 denied), we noted instances in which the redaction rules were not applied consistently between graders, identical or substantially similar responses to the same question received different scores from the same grader, responses that met the minimum criteria were not assigned positive scores, responses that did not meet the minimum criteria received a score higher than 0, and evaluation criteria was applied incorrectly, without the grader justifying the reason with logs or notes.[8]

Redaction rules were inconsistently applied

Application responses containing non-redacted identifying information were not always scored in accordance with state regulations and established scoring guidance. During our review of 67 facility applications, we identified 32 responses from 18 applicants (27 percent of applications reviewed of which 8 were denied and 10 were approved) that contained personal or facility-identifying information, such as names (including only a first name or only a last name), business names, or other prohibited details.

For example, question 64 asks applicants to "[d]escribe the experience, including the number of years, each principal officer or manager has in a legal cannabis market." In our review of responses to this question, we noted the

[8] We did not question an inconsistency between the score and the expected score based on the DHSS-issued guidance when graders documented the reason for inconsistency in their logs or notes because graders were given discretion in the scoring based on their experience.

same insufficiently redacted excerpt on 3 separate application responses for the same applicant, but these responses received the highest possible score of 10, rather than a 0 score. All 3 of these applications won a facility license. Figure 4 shows the application responses reviewed that improperly included the business name in violation of redaction rules.

Figure 4: Unredacted information received highest score

UA	License Type	Response	Score Award
AAAA1111	DIS	Under A.P.'s leadership, Justice Grown has successfully operated under heavy regulation	10
AAAA2222	MAN	Under A.P.'s leadership, Justice Grown has successfully operated under heavy regulation	10
SSSS1111	CUL	Under A.P.'s leadership, Justice Grown has successfully operated under heavy regulation	10

DCR guidance requires these unredacted responses receive a score of 0. However, these responses were still evaluated and assigned positive scores. Conversely, our testing also identified multiple instances in which the redaction rules issued by the DCR were followed by WHS graders and applicants were penalized for violating the redaction rules by receiving the score of a 0 on the specific question.

Inconsistent redaction rule implementation may have made a difference in license awards

Our review of the 10 approved applications in our sample with redaction errors determined 6 applications fell below the lowest score that received a license when their scores were adjusted to reflect the redaction rules (see gray highlighted applicants in Figure 5).

To determine the significance these redaction failures had on the scores for the 10 approved applications with redaction failures that were awarded positive points, we rescored their applications assuming violations of the DCR redaction guidelines resulted in a 0 score on the specific question. We took the updated scores and compared the updated scores to the lowest score that received a license of that facility type (e.g. cultivator, dispensary, manufacturer). See Figure 5.

Figure 5: Comparing Updated Scores to the Lowest Score to Win a License

UA	Facility Type	Actual Score	Updated Score	Lowest Score Within Facility Type to Receive License
BLAC0777	Cultivator	1,529.00	1,370.16[1]	1479.41
NGHC2609	Cultivator	1,491.91	1,482.14	1479.41
SSSS1111	Cultivator	1,491.59	1,307.02[1]	1479.41
XXXX1111	Cultivator	1,491.80	1,475.84[1]	1479.41
AAAA1111	Dispensary	1,508.59	1,321.19[1]	1487.43[2]
CCMD0003	Dispensary	1,472.64	1,449.84[1]	1472.64[2]
OZRX3800	Dispensary	1,523.40	1,516.56	1479.30[2]
AAAA2222	Manufacturer	1,607.78	1,423.21[1]	1526.16
EKGL4633	Lab	1,675.75	1,668.91	1436.10
SARA0616	Lab	1,539.67	1,532.83	1436.10

[1] Updated score is lower than the lowest-scoring applicant that received a license within that facility type.
[2] These scores do not agree because licenses were awarded to the 24 highest-scoring applicants in each congressional district, and these 3 applicants were located in different districts.

Source: Prepared by the State Auditor's Office (SAO) using information provided by the DCR.

According to the DCR, one of the primary controls put in place to promote the integrity of the application process was the blind scoring process, which was designed so that WHS graders did not know the identity of applicant(s) while they were scoring the applications. Additionally, 19 CSR 30-95.025(4)(C)2.B. states:

> Applications will be scored without reference to the identities of the facilities or of individuals named in an application. Written responses to evaluation criteria questions should not refer to facility business names, either legal or fictitious, and should refer to all individuals by title and initials only. If it is necessary to refer to facility business names or to any individuals in order to properly answer evaluation criteria questions, the facility business names and any names, addresses, or social security number of individuals must be redacted from the evaluation criteria question response.

DCR guidance further clarified that "[a]ll names of individuals contained in Evaluation Criteria Question responses, whether an applicant, reference, or other person, must either be redacted or referred to by initials," or the question would receive a score of 0.

Conflicting redaction guidance provided to graders

WHS management communicated contradictory instructions to graders, resulting in a lack of clarity and consistency in how redaction rules were interpreted and enforced. Internal WHS correspondence instructed graders that first names need not be redacted if they were "common" or not "easily individually identifiable" and that names of references provided did not need

to be redacted. This guidance directly contradicted DCR's guidance that all names must be redacted, not only those of "key persons." Furthermore, WHS management testified in a facility license appeal[9] hearing before the Administrative Hearing Commission (AHC) that management chose not to interfere with the scoring process or initiate a large-scale re-scoring, even when redaction violations were apparent.

Penalizing some applicants for violating the redaction rules while not penalizing other applicants for the same issue results in an inconsistent scoring process. Additionally, allowing the WHS grader to know identifying information about the application brings into question the integrity of the blind scoring process.

Identical or substantially similar responses received different scores

WHS graders assigned different scores to identical or nearly identical responses, which is inconsistent with WHS Grader Training Manual guidance. Our review identified 59 instances involving 14 of the 67 applications reviewed (21 percent) in which two applicants submitted identical, nearly identical, or substantially similar responses, and the grader[10] for the given question assigned different scores. These discrepancies include the following:

- 31 instances of two applicants submitting responses that were 100 percent identical.
- 10 instances of two applicants submitting responses that differed only by non-substantive or non-key words.
- 18 instances of two applicants submitting responses that were so substantially alike so as to reasonably elicit the same scoring assignment from an informed person.

For example, UAs EMMA1204 and PJPJ0702 each submitted the following response to the question which asked, "How will the business source non-marijuana products and equipment necessary for the business?":

> Applicant will source non-marijuana products and equipment necessary for the business with a desire and commitment to source all products and equipment from local Missouri businesses, if

[9] AHC Hearing Case Numbers 20-213 and 20-215, Heya Kirksville Cultivation LLC (Petitioners), vs. Department of Health and Senior Services (Respondent), November 12, 2020, p. 27 of hearing transcript; and AHC Hearing Case Number 20-0883, Missouri Delta Cannabis Company, LLC (Petitioner), vs. Department of Health and Senior Services (Respondent), May 3, 2021, pp. 66-68 of hearing transcript.

[10] There was 1 grader for a particular question across all applications in an effort to improve consistency.

> possible. For facility equipment, Applicant will establish relationships with local equipment manufacturers to determine if such Missouri businesses are able to satisfy Applicant's equipment needs. If Missouri businesses are unable to provide suitable equipment for Applicant's business needs, Applicant will work with such Missouri businesses to determine if there are alternative equipment offerings that could provide substantially similar operational performance as the equipment that Applicant wishes to acquire. Additionally, Applicant will work with Missouri businesses to determine if they are able to manufacture such equipment from specifications developed by Applicant.
>
> If local Missouri businesses are unable to provide suitable equipment, Applicant will seek necessary equipment from out-of-state equipment providers with which Applicant's principal officers and managers have existing relationships. As discussed further in this Application, Applicant's principal officers and managers have several years of experience operating marijuana facilities and have existing relationships with vendors providing non-marijuana products and equipment. In the event that Applicant is unable to obtain necessary equipment [from] (sic) Missouri state and local businesses, Applicant will contract with these out-of-state vendors to fulfill equipment needs.
>
> Any required office supplies and related overhead products necessary for the operation of Applicant's business will be procured from Missouri businesses, with a preference toward acquiring such products and supplies from local small businesses near Applicant's facility.

Even though the responses submitted were identical, the WHS grader scored EMMA1204's response as a 4 while scoring PJPJ0702's response as a 7. The same WHS grader scored both responses, and the grader did not leave notes explaining the scoring discrepancy. EMMA1204 did not win a license, but PJPJ0702 did.

The WHS Grader Training Manual and the DCR Application Scorer Guide each established a clear expectation that "the same answer should always receive the same score."[11] Scoring identical or nearly identical responses differently creates inconsistency in the application process and brings the integrity of the scoring process into question.

[11] WHS Grader Training Manual, p. 8; DHSS Application Scorer Guide, p. 2.

Responses meeting the minimum criteria were not always assigned positive scores

Our review of applications determined not all responses meeting the minimum criteria were assigned positive scores, as is outlined in DCR guidance. Our review of 67 applications identified 38 applications (57 percent) in which at least one response that met the minimum criteria of the evaluation question was assigned a score of 0. These score assignments were not supported by graders' notes or any explanatory documentation.

According to the Application Scorer Guide and the WHS work plan, graders were required to evaluate responses using their own expertise in alignment with DCR-issued guidelines. These included:

- 6 instances across 5 applications involved Yes/No or No/Yes questions, for which either "yes" or "no" was the desirable answer and would score a 10, while the undesirable answer would score a 0.[12]

- 2 instances across 2 applications involved satisfactory/unsatisfactory questions. If the response met the minimum expectations of the question, it would score a 10. If it did not meet the bare minimum expectations, it would score a 0.[13] This included questions that required narrative responses and questions that required the provision of documentation or other information.[14]

- 56 instances across 35 applications involved narrative responses that were to be scored on a scaled basis (0, 4, 7, or 10 points), depending on how well the response met the expectations. Responses that met the minimum criteria for a given question were expected to receive a score greater than 0.[15]

For example, Question 26 asked, "Will anyone in ownership or management have, or are you retaining a contractor or consultant with, work experience in pharmacology?" This was a Yes/No question in which "Yes" was desirable, and asked the applicant to "list all [owners or managers] and describe." Facility identification (ID) XXXX1111 checked "Yes" and provided the following description:

> Our CEO's company owns and sits on the Board of CT Pharma, a cutting-edge leader in medical cannabis pharmacological research.

[12] WHS Final Work Plan - Missouri Marijuana Business Application Scoring, p. 8.

[13] WHS Final Work Plan - Missouri Marijuana Business Application Scoring, pp. 7-8.

[14] For some yes/no and satisfactory/unsatisfactory questions, an undesirable/unsatisfactory answer could still score a 10 if the applicant provided an explanation for the undesirable answer that the scorer deemed adequate.

[15] WHS Final Work Plan - Missouri Marijuana Business Application Scoring, p. 7.

> Our Missouri management team includes two of CT Pharma's top executives, T.S. and R.F., who bring a wealth of pharma experience. Both have been decades of experience working in FDA regulated industries, including the manufacture of pharmaceutical ingredients. Further, prior to his experience in OTC pharmaceuticals, R.F. served as the Microbiology Manager at Wyeth Vaccines, responsible for overseeing the manufacture of parenteral vaccines. From 1998 to 2002, he was the Quality Supervisor at Alexion Pharmaceuticals where he was responsible for microbiology and analytical testing of biological drug products.
>
> R.F. and T.S., who lead CT Pharma, are currently engaged in several ongoing pharmacological research projects in conjunction with Yale University's (which T.S. attended) School of Medicine.
>
> Our current research through this partnership is exploring advanced medical marijuana formulations for patients suffering from PTSD, opioid addiction, and cachexia, among other conditions. The protocol for the Yale/CT Pharma human clinical trial for pain, opioid replacement and PTSD, has been approved by the FDA. Fast track for CT Pharma formulation commercialization includes orphan drug designation, emergency designation and other basis for accelerated consideration by the FDA.
>
> We previously also received approvals from the Connecticut Department of Consumer Protection and Yale, to begin animal model research to understand the efficacy of cannabis based medicines to treat cachexia. Currently the research is being conducted with Dr. T.H. at Yale. Building on the relationship, CT Pharma and Dr. T.H. have initiated a second research project exploring the role of cannabis in patients with end stage heart failure. In our opinion, this is a cutting edge area for cannabis based medicines.

This response, which lists two managers and a consultant who have pharmacology experience and describes their experience in detail, was scored a 0. The grader did not record notes indicating why this answer was insufficient and deserved a score of 0.

Although graders were allowed to exercise discretion based on their subject matter expertise, this discretion was to be applied within the framework of the guidance provided by the DCR.

Another instance involves Question 47 (for all facilities), which asked applicants to submit a marketing plan that included the target market, method of delivery, and costs, and contained less than 1,000 words. Of the 16 cultivation facility applications reviewed, we noted 10 that submitted a

marketing plan that, to an informed person, would meet the bare minimum expectations of the question, but were assigned 0s. One of these marketing plans contained a clear identification of the target customers; very detailed explanations of multiple, apparently effective, methods of delivery; and a cost estimate with justification. It contained 928 words.

Another instance involved Question 41 (for all facilities), which required applicants to submit a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis. Of 32 dispensary applications reviewed, 5 submitted SWOT analyses that, to an informed person, would meet at least the bare minimum expectations of the question, but were assigned 0s. None of these scoring assignments were supported by grader notes.

The training manual had a control in place designed to detect this type of inconsistency. The training manual required graders to report to WHS management the first 10 scores of "0" they assigned, excluding those justified by redaction or other pre-approved reasons, along with written explanations. There was no documentation to support this review occurred in 40 percent of the instances tested during the audit (see section 1.2 for more information).

Scoring responses with 0 points that meet the minimum criteria creates inconsistency in the scoring process and could result in less qualified applicants receiving a license.

Responses that did not meet the minimum criteria were not always awarded a 0 score

Our review of applications noted instances in which a response did not meet the minimum criteria for the question but received positive points, rather than the 0 the response it should have received as outlined in the DCR's Application Scorer Guide. In our review of 67 facility license applications, we identified 18 instances involving 12 applications (18 percent) for which positive points were assigned to responses that did not meet the minimum criteria.

Blank responses received points

For example, 1 manufacturing facility applicant submitted blank answer sheets for Questions 26 and 27, but received a score of 7 for its response to Question 26, and a score of 4 for its response to Question 27.

Question 17 required all facility applicants to indicate whether they obtained or planned to obtain business interruption insurance for the facility and to submit proof. One dispensary applicant indicated it planned to obtain business interruption insurance but submitted documentation that was not related to business interruption insurance. However, the applicant received a score of 10 for this response.

According to the WHS Application Scorer Guide and WHS work plan, only responses that met the minimum expectations were eligible to receive a

positive score. The guidance also emphasized that all scores should be supported by objective justification, including grader notes, when needed.

Allowing responses that did not meet the minimum criteria to receive positive scores creates inconsistency in the evaluation results and could result in applicants being inappropriately advantaged, and raises concerns regarding the reliability and objectivity of the license evaluation process.

Evaluation criteria for testing facilities was applied incorrectly

Our review of testing facility applications noted instances in which criteria for testing facility qualifications was not applied in accordance with established guidance. Specifically, Question 1, which was for testing facilities only, read, "Describe your experience testing marijuana, food, or drugs for toxins and/or potency." Based on our review of the grader's notes, the grader assigned to this question misinterpreted state regulations and the question's evaluation criteria in the Application Scorer Guide, and instead applied an educational attainment requirement.

We reviewed 6 testing facility applications. Question 1, which was for testing facilities only, required a narrative response and was to be scored based on the quality and relevance of the content. However, based on the grader's notes for these responses, the grader awarded a score of 0 to the 4 applicants that did not indicate if their facility director held a college degree, and awarded a 10 to the 2 applicants that did indicate this, despite no such requirement being outlined in any established criteria or guidance.

The grader's notes cite 19 CSR 30-95.070(B) and 19 CSR 30-95.0404(B) as justification. However, these appear to be incorrect or misapplied references. Rule 19 CSR 30-95.070(2)(B) requires testing facilities to comply with the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) 17025 standards for laboratory personnel, which require laboratories to maintain and document requirements for education, experience, and competency for each of the lab's activities or functions, but does not mandate lab directors hold a specific academic degree. Similarly, ISO/IEC 17025:2017, Section 6.2 (Personnel) requires laboratories to define the competence requirements for their roles and document any applicable education or training, but does not specify that directors must hold particular degrees. Misapplying criteria could disadvantage certain applicants.

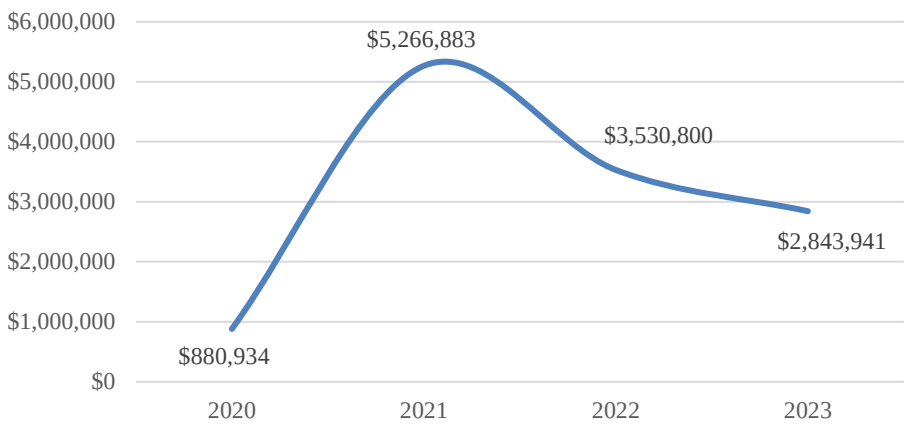
Application scoring deficiencies resulted in significant legal challenges and costs

The perceived and actual deficiencies in the application scoring process documented in our audit were a contributing factor to the state being subject to significant legal challenges and costs. A total of 849 AHC appeals from the 1,909 applications that were denied (44 percent of denied applications) were filed against the DCR. A significant portion of these applicants believed their applications were not scored fairly or in accordance with established rules. As a result of these numerous legal challenges, the DCR outsourced legal

services to defend the department. From 2020 through 2023, the DCR incurred over $12.5 million in costs associated with litigation and administrative appeals based on the 2019 licensing process. These costs represent not only a significant financial burden on the state, but also diverted time, staff resources, and attention away from other regulatory responsibilities.

Figure 6 charts the legal expenses incurred by the DCR from 2020 through 2023.

Figure 6: Legal expenses incurred by the DCR, fiscal year 2020 to 2023



Source: Prepared by the SAO using information provided by the DCR.

In total, as a result of appeals, 68 additional licenses (19.5 percent) were awarded in addition to the 348 original licenses granted via the medical licensing process. The addition of these licenses created disparities in market entry timing, potentially disadvantaging certain businesses and introducing inconsistency into the regulated market landscape.

Monitoring of third party service providers is discussed and required in *Standards for Internal Control in the Federal Government*, also known as the Green Book, which provides guidance on internal controls for the federal government.[16] The Green Book states management is to communicate to a third party providing services,[17] among other things, the objectives of the entity and its role (Paragraph 5.05). Management is also responsible for holding the third party accountable for its assigned internal control responsibilities (Paragraph 5.05). Management retains responsibility for monitoring the effectiveness of controls, such as the use of evaluations to

[16] The standards documented in the Green Book are not required for state governments, but are widely considered accepted guidance to strengthen a government's internal control framework.
[17] The Green Book refers to third party service providers as "service organizations."

obtain reasonable assurance of the operating effectiveness of service organization controls (Paragraph 16.08).

Conclusion

The DCR was given an enormous task by the voters to oversee the marijuana process, including issuing marijuana licenses in a consistent and transparent manner. While the DCR was able to meet the stringent deadlines passed by the voters, its management and oversight of the application process allowed serious inconsistencies to pervasively occur.

While the DCR's stated goal of maintaining grading integrity is emphasized in the WHS work plan, training manual, and AHC hearing transcripts, the DCR did not effectively monitor or document whether WHS met these expectations as suggested by internal control guidance. Instead, the DCR delegated oversight responsibility entirely to WHS, while minimizing its own involvement in the grading process in an effort to preserve scoring independence. However, the absence of documentation, inconsistent grader compliance, and conflicting interpretations of WHS's oversight responsibility ultimately undermined the reliability of the scoring process. These deficiencies resulted in significant cost to the state in the form of legal expenses.

Recommendations

The DCR:

1.1 Ensure adequate documentation for future application evaluation processes is maintained, take steps to ensure the integrity of future blind scoring processes is maintained, and allow for agency oversight of significant agency operations and decisions.

1.2 Perform adequate oversight of vendors in the future to ensure agreed-upon controls are implemented as the vendor completes the project.

1.3 Ensure future application processes are carried out in a consistent and transparent manner.

Auditee's Response

The DHSS generally disagreed with our recommendations. The DHSS's full response is included at Appendix A.

Auditor's Comment

The DHSS's response contains various instances of derogatory and inflammatory language meant to discount the report's findings. For example, the DHSS response states auditors have "cherry-picked" the sample of applications and have ignored information provided. The agency also indicates various information in the report is inaccurate, but has not provided appropriate documentation to support its position for these statements, despite auditor's repeated attempts to obtain such information from the agency. This is indicative of the uncooperative conduct we encountered from agency personnel throughout the audit.

Describing the audit sample of license applications as "cherry-picked" implies the auditors were biased in their selections process and that the deficiencies noted are not representative of the population. As the Scope and Methodology section of the report states, 42 of the 67 applications reviewed were selected randomly. The other 25 were selected judgmentally. In this case, the judgmental selection was used to choose applications that had been appealed or applications for which inconsistencies had been alleged. This targeted selection approach is an acceptable method of selecting test items according to *Government Auditing Standards* and results are not intended to be projected to the population from which the test items were selected, which is explained in the Scope and Methodology section of the report. In addition, a comprehensive review of application responses was not an option for this audit because the DCR did not maintain application documentation in a way that allowed for such review. See section 1.1.

The agency response suggests that because the AHC has adjudicated individual appeals in the agency's favor, any audit conclusion that conflicts with an AHC ruling is invalid. The SAO's scope and objectives are entirely different than that of the AHC. As was explained repeatedly to agency management, the SAO's audit objectives are focused on the effectiveness and efficiency of the agency's processes, while AHC appeals are more narrow and are concerned with whether the appellant is due any legal relief. As an example, the agency's response attempts to discredit the audit report by criticizing the report's reference to the Heya Kirksville Cultivation LLC vs. Department of Health and Senior Services case, stating that the case had been vacated and had "no legal effect." However, the decision of the Heya case was not referenced in the report, but rather, testimony regarding DCR's processes from the case was used as audit evidence. While the agency response repeatedly references successful AHC rulings, it does not dispute the fact that 68 additional licenses were awarded as a result of agency settlement with applicants.

For many recommendations, the agency response includes tangentially related, or completely insignificant, information. For example, the agency response claims that "Justice Grown" does not need to be redacted, because the official name of the entity was "JG Missouri." On the issue of applicants selecting their own, easily indefinable identifiers, the agency response indicates Complia could not assign a UA to all uploaded documents. That information is included in this audit report and does not explain why the agency allowed applicants to choose their own easily identifiable UA, rather than assigning them random, anonymous, identifiers.

After meeting with the agency to discuss the draft report, auditors considered all new information provided by the agency at that time, and made any changes to the draft report that were necessary based on this new information. However, despite the agency being provided a copy of these changes, the

agency chose to include in its formal response certain disagreements with the draft version of the report before the changes were made. For example, for section 1.1, the agency chose to include the Complia system and its capabilities in its response and asserts the audit report is inaccurate concerning this system. However, the final report does not include the information the agency is alleging is false.

2. Business Change Requests Not Processed Timely and Lack Appropriate Benchmark

The DCR has not processed business change requests timely and does not adequately track the progress of the requests. Untimely change approvals can result in licensees experiencing uncertainty, delayed business decisions, and negative impacts to their operations. Additionally, DCR personnel do not communicate to the applicants when their request is complete.

State regulation[18] requires the DCR to approve or deny applications for transfers of licenses to a different entity with the same ownership within 60 days of receiving a "complete" application. Similarly, applications for any changes that would result in an individual becoming an owner of the licensed entity who was not previously an owner, and changes of the licensee's facility or warehouse location require resolution within 90 days of receiving a "complete" application, and change requests for any changes that would result in an overall change in ownership interests of 50 percent or more from the last approved ownership of the licensee require resolution within 150 days of receiving a "complete" application. However, DCR does not maintain a centralized record of when the applications were "complete" to help ensure the timelines were met (which would start the 60, 90, or 150 day timeframe for the DCR to approve the request). Further, the DCR does not notify the applicant when the application is considered "complete," making it impossible for the applicant to monitor the DCR for compliance with relevant timelines.

Based on DCR data for all change requests submitted through November 2, 2023, the DCR took an average of 165 days to approve or deny business ownership change requests from submission to final action, and 70 days for location change requests. For 45 of the 307 such requests submitted during this timeframe (15 percent), the DCR took over a year to provide a final decision.

Officials stated the "complete" date of an application is tracked as part of each application file, but did not specify why they do not maintain a record of the "complete" date in a central log or other similar record to allow for oversight of timeline compliance. DCR officials also indicated they do not

[18] 19 CSR 100-1.100(2). The previous rule regarding change requests, 19 CSR 30-95.040, was changed in February 2023, and lacked specific timeliness requirements.

communicate when the request is complete because there is no rule requiring the DCR to do so.

Facility survey suggests frustration with timeliness and the need for clarification of guidance

We surveyed facilities that had submitted ownership change applications on their satisfaction with the process. A significant portion of the respondents (43 of 65 respondents, or 66 percent) expressed dissatisfaction with the timeliness of the process. In addition, for the statement that "guidance was clear," 21 of 65 respondents disagreed with the statement, and 25 remained neutral to the statement.

In addition to being required by state regulation, timely processing of business ownership change requests is necessary to help reduce disruptions in the state's marijuana market and supplies, and will improve relationships between state regulators and licensed facilities. Maintaining accurate information on compliance with applicable regulations is necessary to achieve these goals. Tracking the "complete" date of an application is necessary to allow the DCR to monitor compliance with state regulation, and notifying applicants of the "complete" date would provide applicants with clarity in the process.

Recommendation

The DCR modify internal systems to track the "complete" date of license ownership change applications, and monitor compliance with the 60-day requirement established in state regulation. The DCR should also consider formally communicating the "complete" status to the licensees to allow them to monitor the DCR's compliance with the required time limit.

Auditee's Response

The DHSS generally disagreed with our recommendations. The DHSS's full response is included at Appendix A.

Auditor's Comment

The DHSS's response states the SAO has "ignored" documentary evidence related to business change requests. This is inaccurate. The SAO has considered all evidence presented by the agency, and in the case of this finding, made revisions to the draft report when new evidence was presented by the agency. Information provided to us throughout all stages of an audit is compared and weighed against other existing evidence and changes are made to the draft report, as needed. New information was not "ignored" related to this finding. Rather, the agency has not provided appropriate documentation to support its position, despite comments to the contrary in its formal response to the audit findings. In this instance, the concern is that the agency does not have centralized documentation of compliance with required timelines. The agency provided information that timeline compliance was tracked temporarily at the application level, but not that such compliance was tracked in such a manner that it could be verified after the fact.

The agency response takes issue with the report's conclusion that the agency has not processed business change requests timely. The report acknowledges that timeliness requirements for this type of business change changed over

the audit period. The audit's conclusion is based on agency data that showed many of these change applications were approved, on average, 165 days after submission. Many of these applications were submitted before the specific rules requirements were formalized. The audit does not conclude that those applications are out of compliance, but rather that they were generally not processed timely. The audit also documents the difficulty auditors had in assessing compliance with rules timelines due to the agency's records not containing adequate information to assess such compliance.

The agency's response is also critical of the SAO for not sharing survey questions sent to licensees, as well as responses we received from licensees. The survey was conducted to obtain unbiased feedback from licensees with a promise of anonymity, so sharing this level of detail with the agency was not consistent with the goal of the survey. This was communicated to DHSS officials during the audit.

3. Market Oversight Procedures are Inadequate

Improvements are needed in the DCR's procedures for oversight and monitoring of licensed marijuana facilities, as well as the overall marijuana market. While DCR has improved its processes throughout the audit period, many licensees were allowed to operate without ongoing inspections from the DCR, and when the DCR did perform inspections, passing grades were sometimes given without the licensee proving compliance. In addition, the DCR performed minimal inventory inspections to ensure cannabis was not being diverted into the black market. The DCR has also not established regulations to ensure confidentiality of adult-use customer information, and does not monitor for cannabis purchases in excess of the constitutional limits.

3.1 Licensee inspections infrequent, incomplete, and results not communicated

After initial commencement inspections were completed to allow licensees to begin operations, the DCR did not complete all subsequent annual inspections as required by state regulation. When inspections were performed, the DCR allowed licensees to pass the inspection without verifying compliance with state requirements. In addition, the DCR does not always formally communicate the results of inspections to the licensees.

Ongoing facility inspections are a critical component of ensuring compliance with marijuana regulations in Missouri. According to state regulations, the DCR is responsible for conducting these inspections, which help ensure product quality, public health, and overall integrity of the state's marijuana program.

Annual inspections not completed as required by state regulations

The DCR did not inspect each licensee annually, as required by state regulation, during our audit period. We compared the list of annual inspections the DCR performed during our audit period to the number of licensees in Figure 7.

Figure 7: Percentage of licensees without an annual inspection by year, excluding commencement and inventory inspections

Calendar Year	Number of licensees that became operational the year before, and were operational for the current year	Number of annual inspections performed by the DCR	Percentage of licensees that did not receive an annual inspection
2021	43	5	88%
2022	308	327*	0%
2023	357	8	98%

* Some of the facilities received more than 1 inspection throughout the year.

Source: Prepared by the SAO using information provided by the DCR.

Through January 2023, state regulation required the DCR to inspect each facility at least annually.[19] During these annual inspections, DCR employees reviewed licensee compliance with regulatory requirements for operations, facility environment, inventory control, facility security, signage and advertising, packaging and labeling, and waste and disposal procedures. The DCR also investigates whether licensees have made material changes to the structure of their facility or significant operational changes that would require the licensee to file a formal business change request, such as the addition of a new production line or cultivation space.

DCR officials stated they could not meet the annual inspection requirement due to a limited number of DCR compliance officers. As a result, in early 2023 the DCR began hiring and training additional compliance officers and the DCR revised the related state regulation and inspection protocols. The state regulation was modified effective February 3, 2023, to remove the requirement for licensees to be inspected annually.

Inspecting facilities is a control used to ensure the facilities are complying with all state requirements and to identify and correct issues that could pose a threat to public health and safety. Adequate inspection procedures provide the DCR with assurance the licensees are adhering to the state requirements and maintaining public health and safety.

Processes changed and more compliance staff hired

DCR officials removed the state regulation requirement for annual inspections in February 2023. The DCR updated its inspection procedures in September 2024 to perform quarterly inspections of licensees. Therefore, while DCR procedures call for quarterly inspections of all facilities, there is no corresponding state rule or law that requires the completion of these inspections. The DCR also increased the number of compliance officers on

[19] 19 CSR 30-95.040(5)(A)1, effective from December 31, 2019, through February 3, 2023.

staff from 12 in November 2022 to 35 in September 2024, which greatly increased the amount of inspections the DCR was able to perform. For example, during calendar year 2024, the DCR performed 978 inspections. This was a significant increase in the rate of inspections performed by the DCR, which only conducted 1,027 total inspections during the 4 years ended December 31, 2023.

Corrective action documentation not retained

DCR personnel approved licensees to operate without ensuring the licensees' operations were compliant with state regulations. DCR personnel could not provide documentation to show that licensees that had deficiencies on their inspections subsequently corrected the deficiencies. As a result, the DCR is unaware if these licensees continue to operate out of compliance with state regulations.

We selected 53 annual inspections performed by DCR personnel to determine the extent of the inspections performed. We noted that for 10 of 53 inspections (19 percent), the DCR could not provide documentation verifying licensee compliance or correction of findings.

For example, during a dispensary inspection, DCR personnel identified the facility lacked a physical barrier between the sales floor and the area behind the sales counter, and noted the violation in the inspection report. However, DCR personnel did not request documentation demonstrating this deficiency was corrected, and approved the dispensary to operate based on the dispensary stating it had corrected the deficiency. Additionally, the inspection workbook was incomplete, indicating an incomplete inspection, even though the DCR supervisor requested DCR personnel to complete the workbook.

In another example, during a testing facility inspection, DCR personnel identified the waste disposal procedures and the instrument training logs were missing. DCR personnel approved the testing facility to operate and provided the licensee with a grace period to provide the procedures and logs. However, the DCR could not provide us with the procedures and logs when requested.

DCR officials indicated that while the documentation to show the licensees were in compliance with state regulations was unavailable, DCR staff verified the corrective actions at the time of the inspection. However, DCR personnel's inability to provide the required documentation suggests DCR personnel did not follow up with the licensee to obtain it.

Allowing licensees to pass inspection without ensuring compliance with state regulations undermines the inspection process and increases the risk of licensees not being in compliance with state regulations in the future, and ultimately results in a threat to public safety.

Timely follow-up not performed

Our review of annual inspections determined the DCR was not providing licensees an inspection follow-up report by email within 2 business days as required by the DCR's annual inspection procedures that went into effect March 8, 2022. During our review of 16 annual inspections performed after this date, we noted that the DCR did not send a follow-up email within 2 business days for 8 inspections (50 percent) and did not send a follow-up email at all for 3 inspections (19 percent). The late follow-up emails were sent anywhere from 3 to 12 business days from the inspection date.

Subsequently, DCR officials removed the requirement for providing the follow-up report within a certain timeframe from its inspection procedures.

Providing the results of the inspections to the licensees allows them to take corrective actions as needed and provides a record for the DCR in case additional actions are needed to bring the licensee into compliance. Reestablishing an expected measure of timeliness for inspection follow-up communication would help ensure licensees are provided timely feedback on any issues identified, and would also provide the DCR criteria with which to evaluate the performance of compliance officers.

3.2 Inventory inspections have been limited

DCR employees did not perform reviews of product inventory until February 2022, allowing licensees to operate for years without ensuring their products were accounted for in Metrc and not being diverted to illicit gray and black markets.

Inventory inspections are different from the annual inspections mentioned in section 3.1, which do not include specific inventory procedures. Inventory inspections involve a DCR employee comparing the amount of product on hand to the inventory records, including Metrc, for a selection of product, while the annual inspections do not involve tracing product on hand to inventory records. We reviewed the list of all inventory inspections conducted by the DCR for calendar years 2020 through 2024, to determine the number of inspections performed each year compared to the number of license holders in each year. The results are in Figure 8.

Figure 8: Percentage of licensees without an inventory inspection by year

Calendar Year	Number of operational licensees	Number of inventory inspections performed by the DCR	Percentage of licensees that did not receive an inventory inspection
2020	43	0	100%
2021	308	0	100%*
2022	357	2	99%
2023	376	44	88%
2024	379	60	84%

Source: Prepared by the SAO using information provided by the DCR.

The DCR did not prioritize performing inventory inspections until 2023, after many licensees had already been operating for 2 to 3 years. While licensee personnel indicated they perform internal inventory counts daily, weekly, and monthly, and report any issues to a DCR compliance officer, this control alone is not sufficient to prevent or detect inventory issues because licensees are unlikely to self-report intentional inventory violations.

DCR officials indicated they could not complete sufficient and timely inventory inspections due to allocating resources to other types of inspections for both routine checks and investigations. Officials also stated that even if an inspection has a specific focus, staff still pay attention to other problems they might see. So, if they had clearly noticed an inventory issue during a different type of inspection, they would have taken action. However, it is unclear how inventory discrepancies would be identified without specific inventory inspections and verifications.

State regulation[20] requires the use of detailed inventory control systems at every level of the state's marijuana program, including production, manufacturing, and sales. Comprehensive inventory inspections are necessary to ensure compliance with these requirements, and to ensure product is accounted for and not being diverted into illicit gray and black markets, or otherwise processed improperly.

3.3 State regulations do not ensure confidentiality of adult-use user data

Dispensaries retain confidential information from customers without obtaining consent from the customer to retain this information. On average, there were 2,994,658 monthly retail sales transactions across all licensed dispensaries during fiscal year 2025.

Dispensaries retain adult user information, primarily for loyalty programs or to track purchases for customer service reasons. In a survey we conducted with the licensees, 38 of 45 respondent dispensaries stated they retain adult user personal information. The majority of responding dispensaries retained information such as first and last name, Social Security number/driver's license number, contact information, mailing address, date of birth, products purchased history, and medical ID card number (if applicable).

While state regulations[21] require dispensaries to obtain appropriate identification from all users to confirm the customer is old enough to purchase cannabis, regulations do not require data be retained from customers. In addition, state regulations do not address the retention and security of user information for adult-use customers.

[20] 19 CSR 100-1.130(1).
[21] 19 CSR 100-1.180(2)(D)2.C.

Due to the potentially sensitive nature of being a marijuana customer, the retention of personal customer information without consent is significant to certain users with privacy concerns. Additional guidance from the DCR on this topic would be in the best interests of the state's marijuana users and would provide clarification to licensees about what is expected as it relates to the retention and security of personal information and personally identifiable information that could increase the risk of customers being exposed to identity theft.

State regulation implies the need to retain personal information

State regulation[22] requires dispensaries to report to the department any instances of consumers attempting to make multiple purchases in 1 day that the licensee knows, or reasonably should know, would likely result in the consumer exceeding the 3-ounce possession limit. While the existing regulation does not clearly state what is required of licensees to comply with this rule, it implies the licensee must track individual consumer purchases to ensure purchase limits are not exceeded, which would require licensees to retain personal information of customers. Modification of this regulation is needed to clarify there is not an expectation of retention of personal customer information by the licensee.

3.4 Controls to ensure product purchase limits need improvement

Metrc does not currently have the capability to identify purchases over the legal transaction quantity limits in real time. As a result, marijuana customers are able to purchase more cannabis than what is allowed by the Constitution, and there is an increased risk of diversion and a public safety concern.

We reviewed all sales transactions processed at 10 randomly selected dispensaries in 2 randomly selected months, May and June 2023. Among these transactions, we found 1 dispensary sold more than 3 ounces of marijuana-equivalent product[23] in a single transaction once in May 2023 and once in June 2023. Metrc did not detect these transactions; rather, the DCR only became aware of these transactions after we questioned the DCR about them.

The DCR has not established a process to systematically detect or prevent dispensaries from selling more than the legally allowable quantity of marijuana to individual consumers at the time of purchase. Metrc currently lacks automated functionality to flag or prevent over-limit transactions. Beyond requesting dispensaries to self-report if they sold too much to a customer, the DCR has not developed a supplemental oversight mechanism to monitor transaction limits proactively. Without a mechanism in place to detect such noncompliant transactions there is an increased risk of product diversion or misappropriation. DCR officials stated Metrc did not originally

[22] 19 CSR 100-1.180(2)(C)1.

[23] Marijuana-equivalent products include edibles and other products that contain THC.

offer the ability to track transactions that exceeded defined limits, but they have requested this feature to be added when the contract is renewed.

State regulation[24] limits dispensaries from selling, delivering, or distributing more than 3 ounces of dried, unprocessed marijuana, or its equivalent, to a consumer in a single transaction.

Overall Conclusion

A strong oversight environment is necessary to ensure compliance with applicable requirements by licensees, ensure all licensees are operating in a fair business environment, and help ensure marijuana products are not diverted to the illicit market. In addition, a strong oversight environment discourages unethical or illegal behavior by increasing the likelihood of detection, and builds public and licensee trust by demonstrating licensees are held to consistent standards. While the DCR has made improvements to its monitoring and inspection procedures during our audit process, the agency can continue to improve its processes. Clarifying licensee expectations for personal data from adult-use marijuana customers will help ensure customers are protected, and also ensure all licensees are operating under the same set of expectations.

Recommendations

The DCR:

3.1 Continue to develop internal processes to ensure inspections are completed on schedule, and ensure any identified noncompliance is communicated and addressed on a timely basis.

3.2 Continue to prioritize inventory inspections, and take the steps necessary to ensure inventory inspections are completed regularly for all appropriate licensees.

3.3 Develop rules to ensure dispensaries are obtaining consent from adult-use customers prior to collecting and maintaining personal information, and consider clarifying state rules to clarify that retention of personal information is not required to comply with transaction limits.

3.4 Integrate real-time transaction analysis capabilities into Metrc, and require dispensaries to implement internal controls that automatically prevent over-limit transactions. Additionally, the DCR should review historical Metrc data for patterns of over-limit sales transactions and follow up with appropriate enforcement actions.

[24] 19 CSR 100-1.180(2)(C)1.

Auditee's Response

The DHSS generally disagreed with our recommendations. The DHSS's full response is included at Appendix A.

Auditor's Comment

The agency's response to section 3.1 states the finding is based on a "misapplication" of the rule requiring annual inspections. The rule in question states clearly the requirement that facilities be inspected annually. However, based on DCR's interpretation, the inspection period would exceed 12 months from the initial commencement inspection, which does not align with the language of the rule. The DCR provided no objection to the way this rule was applied during our meeting to discuss the draft audit report, and provided no evidence to support the potential impact of its interpretation in the official audit response. This rule was modified by the agency to remove this annual inspection requirement, so the agency's interpretation and application of this rule is not applicable to current or ongoing inspections.

The agency's response to section 3.1 takes exception to the report's conclusion that licensees were allowed to begin or continue operations without documentation showing the licensee corrected inspection findings of noncompliance. The agency insists confirmation of corrective action was obtained. However, our audit found inconsistent documentation of such evidence, so it is unclear how the DCR can be assured its inspections were complete and the licensees were compliant with all requirements.

Further, the agency takes exception to the report's conclusion that physical inventories have been insufficient or are necessary to ensure Metrc data is accurate and to ensure product has not been diverted to illicit markets. It remains unclear how the DCR can have any reliance on its seed-to-sale system without adequate physical inventories to verify the existence of the product in the system.

4. Marijuana Revenues Have Not Been Distributed in Accordance with the Constitution

Significant balances of marijuana taxes and fees exist in both the Veteran Health and Care Fund, and the Veterans, Health, and Community Reinvestment Fund, rather than being distributed as required by the Missouri Constitution. Portions of these taxes and fees have been distributed to the entities required by the Constitution, including to the DCR, the Missouri Veterans Commission (MVC), and the public defender system; however, a significant balance has accumulated in these funds in fiscal years 2024 and 2025, with the combined ending cash balances at fiscal year-end totaling $82.4 million and $89.2 million, respectively. See financial information for these 2 funds at Appendix C.

Article XIV, Section 1 of the Missouri Constitution stipulates medical marijuana taxes, after administrative costs of the Department of Revenue (DOR) and DCR, shall be transferred to the MVC for the health and care services for military veterans, including for the maintenance of Missouri's veterans homes, and other services approved by the commission.

In addition, Article XIV, Section 2 of the Missouri Constitution stipulates adult-use marijuana taxes, after administrative costs of the DOR and the DHSS, shall be distributed equally to:

- The MVC for purposes of providing "health care and other services for military veterans and their dependent families;"
- The DHSS to provide grants to "agencies and not-for-profit organizations, whether government or community-based, to increase access to evidence-based low-barrier drug addiction treatment, prioritizing medically proven treatment and overdose prevention and reversal methods and public or private treatment options with an emphasis on reintegrating recipients into their local communities, to support overdose prevention education, and to support job placement, housing, and counseling for those with substance abuse disorders;" and
- The Missouri public defender system "for legal assistance for low-income Missourians. . ."

While portions of marijuana tax revenue have been transferred to the MVC, the DHSS, and the Missouri public defender system as specified by the Missouri Constitution, approximately $89 million in marijuana tax revenues intended for the various programs are being maintained in the state treasury in a fund not accessible to these entities.

Based on discussions with MVC officials as well as budget process documents, both the MVC and the public defender system have communicated the need for additional resources, but the full amount of the funds available have not been appropriated in the approved budgets.

The revenue from marijuana taxes and fees is deposited into the Veteran Health and Care Fund, and the Veterans, Health, and Community Reinvestment Fund. These funds retain any interest earned on investments and shall not revert to the General Revenue Fund. These funds are restricted for the purposes laid out in Article XIV, Sections 1 and 2 of the Constitution. By not ensuring this money is appropriated as required, the Office of Administration (OA) and the General Assembly are withholding needed resources for the MVC and Missouri veterans, for DHSS treatment programs for drug addiction, and for Missouri's public defender system, which is constitutionally required to provide legal representation to Missourians accused of crimes who cannot afford to hire their own attorney.

Public defender system transfer for fiscal year 2025 not in compliance with Constitutional requirement

Article XIV, Section 2 of the Missouri Constitution requires equal transfers of marijuana taxes and fees to the MVC, the DHSS for drug programs, and the public defender system. For fiscal year 2025, transfers were made to the MVC and the DHSS for $20,780,603 each. However, the appropriation and

transfer to the Public Defender System totaled $9,98,619 in fiscal year 2025, which is approximately $11.7 million less than required by the Constitution. In public comments, legislators acknowledged these funds are designated for the public defender system; however, with the funds remaining in the Veterans, Health, and Community Reinvestment Fund they are not available for use by the public defender system to provide legal services to low-income Missourians.

Conclusion

Missouri voters passed both medical and adult-use marijuana programs with the requirement that the proceeds of these programs would provide needed resources for veterans, the public defender system, and addiction programs. In addition, the Missouri Constitution contains clear language for how these funds are to be distributed. Ensuring these programs have timely access to the funding legally dedicated to them is necessary.

Recommendation

The OA and Missouri General Assembly evaluate the manner in which revenues in the Veteran Health and Care Fund, and the Veterans, Health, and Community Reinvestment Fund are distributed, and ensure the funding is distributed in accordance with the Missouri Constitution to ensure the programs these funds are dedicated for have timely access to the funding.

Auditee's Response

The OA partially agreed with our recommendation. The OA's full response is included at Appendix B.

Auditor's Comment

The OA's response makes reference to being allowed to "correct factual inaccuracies," which implies that such corrections were necessary after the OA's review of the draft audit report. No factual inaccuracies were identified by the OA for this finding, and it is unclear what that statement in OA's response is related to.

5. Microbusiness Licensing Process Resulted in Approvals to Noncompliant Applicants

DCR officials approved microbusiness licenses that were not compliant with constitutional requirements and state regulation. Our review of microbusiness applications identified approved licenses that were too close to churches, prohibited by the Missouri Constitution, and in an area prohibited by local ordinance.

In July 2023, the state began accepting applications for the first round of microbusiness licenses. The microbusiness program is intended to expand participation in the marijuana industry for individuals and businesses from historically disadvantaged communities. According to the Constitution,[25] at least 16 microbusiness dispensary licenses and at least 32 microbusiness wholesaler licenses, totaling at least 48 microbusiness licenses, were to be

[25] Article XIV, Section 2.4(13).

issued during the first round license issuing process, and a total of 144 micro business licenses were to be awarded after 3 rounds of issuing.

In accordance with the Constitution, the DCR used a lottery system to select applicants for further eligibility reviews conducted by the DCR. The first 2 dispensary applications and the first 4 wholesaler applications in each congressional district selected through the lottery process underwent an initial eligibility review based on the content provided in the application. If a selected applicant was deemed ineligible based on this initial review, the next-highest drawn application would be reviewed. After the initial eligibility reviews, the DCR awarded the licenses and then began a more comprehensive verification of eligibility criteria before the licensees were allowed to operate. This included reviewing location compliance, zoning requirements, and documentation standards. We tested a random sample of 32 applicants that were awarded a license after the initial eligibility review and 4 applicants that were denied a license after the initial eligibility review.

5.1 Licenses awarded to facilities not in compliance with distance requirements

DCR officials gave final license approval to a microbusiness wholesale facility applicant whose proposed location did not comply with the setback provisions outlined in Article XIV, Section 2.5(4) or 19 CSR 100-1.100(1)(C), and incorrectly verified another applicant's compliance with these provisions whose license was later revoked for an unrelated reason. These provisions require marijuana facilities to be located at least 1,000 feet from schools, churches, or daycares, unless a smaller setback is permitted by the local government.

The first instance involved a facility that was approved for a license and given final approval to begin operations despite being 174 feet from a church, according to the constitutionally prescribed measurement method. DCR staff reviewed Google Maps to review for setback compliance but did not detect the church across the street from the facility. We verified the existence of the church and the distance from the facility using a local church directory, the county assessor's Geographic Information System (GIS) tool, and Google Maps' direct measurement tool. The second instance involved another facility for which the DCR verified compliance with local setback rules despite not actually meeting the local setback requirement of 300 feet from a church. Google Maps walking directions suggested the facility was 400 feet from a church; however, when measured according to the correct demarcation points, the distance was approximately 250 feet. This facility's approved license was later revoked for unrelated reasons.

According DCR officials, personnel relied on Google Search and Google Maps walking directions to verify proximity between facility locations and sensitive institutions. However, this method does not use the demarcation points prescribed by Article XIV, Section 2.5(4) of the Missouri Constitution, which requires measuring from the property line of the school, church, or

daycare to the nearest exterior wall of the facility. In addition, applicants were required by state regulation[26] to attest their proposed locations complied with these standards or provide documentation of local government ordinances that replaced the state requirement.

Approving licenses without ensuring compliance with constitutional or local requirements allows marijuana facilities to operate near vulnerable populations, such as children and the elderly. This can also lead to public mistrust, legal liabilities, or future enforcement actions while possibly putting compliant applicants at a disadvantage.

5.2 DCR did not ensure adequate review of local zoning compliance

DCR officials approved a microbusiness wholesale facility applicant whose proposed location did not comply with local zoning regulations prohibiting marijuana-infused product manufacturing in A-1 (agricultural) zones.

The licensee's blueprints indicated intent to cultivate marijuana (permitted with a conditional use permit) and manufacture infused products (prohibited in A-1 zones). Despite this, the facility was found compliant by the DCR during the licensing review.

According to DCR staff, personnel reviewed a zoning map and statements attesting compliance with local zoning regulations provided by the applicant.[27] However, DCR staff did not verify whether marijuana manufacturing activity was allowable under local zoning laws.

Approving licenses without ensuring applicants are in compliance with local zoning laws puts licensed facilities and the state at risk of legal challenges or local enforcement actions, and could place compliant applicants at a disadvantage.

Recommendations

The DCR:

5.1 Revise procedures to ensure measurements are conducted using accurate GIS tools and in accordance with demarcation points defined in Article XIV, Section 2.5(4) of the Missouri Constitution.

5.2 Improve procedures to verify licensee compliance with local zoning regulations.

Auditee's Response

The DHSS partially agreed with our recommendations. The DHSS's full response is included at Appendix A.

[26] 19 CSR 100-1.060(3)(H)1.

[27] 19 CSR 100-1.060(3)(H) requires applicants to attest and provide evidence that their facility location complies with local zoning regulations.

Auditor's Comment

The agency's response confirms the examples in the report of licensees that were not in compliance with setback requirements and local zoning requirements, but asserts procedures are adequate because the issues were identified and addressed. However, the report establishes that the DHSS initially approved applicants who were not in compliance with constitutional setback requirements and with local zoning requirements, clearly demonstrating needed improvements in DHSS's procedures.

6. DCR Product Data Was Not Used by DOR for Marijuana Tax Audits

The DCR and the DOR have not coordinated to allow the DOR to use the DCR's Metrc data to conduct tax audits of marijuana dispensary revenues. Dispensaries are required to maintain all marijuana sales information in Metrc, and are required to maintain and report marijuana inventories to the DCR on an ongoing basis. As such, Metrc sales data provides a credible source for marijuana sales, and would be an important source of information in the DOR's marijuana tax audit efforts.

DOR collects a 4 percent medical marijuana retail sales tax and a 6 percent adult-use marijuana retail sales tax from dispensary licensees, as well as any local marijuana taxes, as required under Article XIV of the Missouri Constitution. In addition, Article XIV, Sections 1.4(3) and 2.6(3) require dispensaries to keep records of all sales that include the type and amount of marijuana involved, itemizations, taxes, and total sale amounts; and make these available for review by the DOR upon request. From the commencement of medical marijuana sales in October 2020 through the fiscal year ended June 30, 2023, the state collected $46,793,797 in medical and adult-use marijuana retail sales taxes.

Reconciliation of DCR data to marijuana sales tax reports identified potential under reporting of sales

An analysis of DOR and Metrc data identified an estimated $852,000 in under reported sales. We performed an analysis of marijuana sales reports from the DOR and Metrc data to determine if any significant discrepancies could be identified. We compared monthly Metrc sales reports from a sample of 36 facilities for 2 months per calendar year from 2021 to 2023, reviewing sales tax data for March and July 2021, February and August 2022, and April and November 2023. The 36 facilities were selected randomly out of 141 active Missouri sales tax ID numbers affiliated with dispensaries. Our review identified relatively minor discrepancies for medical sales in calendar years 2021 and 2022. For adult-use sales, our analysis identified sales reported to the DOR were less than what was reported in Metrc.

The estimated taxes due for 2023 totaled $55,782,000, which was based on approximately $929,700,000 total sales for the adult-use marijuana for 2023. In our sample, the difference between sales reported to the DOR and sales reported in Metrc for 2023 was $34,551 out of $2,261,901 reviewed. Projected to the entire population, this difference would be approximately $852,000. While we did not perform a reconciliation to identify the potential reasons for this variance, this result provides evidence of the potential significance of using Metrc data for this purpose.

Previously issued audit found marijuana tax audits were not being conducted

A previous audit of the DOR's administration of sales, use, and marijuana taxes[28] by the SAO determined the DOR had not performed any audits of marijuana taxes as of January 2025. In the agency's response to the audit the DOR stated it was finalizing procedures for audits of marijuana tax returns and that such audits would begin in the next few months.

While DOR officials stated they were in the process of finalizing procedures for marijuana tax return audits, officials also stated they lacked familiarity with Metrc and related data. Failure to verify tax filings using available sales data increases the risk of tax underreporting and revenue loss.

Recommendation

The DCR coordinate with the DOR to ensure Metrc reports are available as a cross-verification tool in marijuana tax compliance reviews, and DOR auditors have access to Metrc data and are trained on system functionality to ensure its effective use in DOR's audit processes.

Auditee's Response

The DHSS generally agreed with our recommendations. The DHSS's full response is included at Appendix A.

Auditor's Comment

The agency's response to this finding is inconsistent and contradictory. At one point in the response, the agency states it has provided the information to the DOR as suggested and will continue to do so, seemingly agreeing with the recommendation. At another point the response asserts this finding is "false," and claims the DHSS has always provided the DOR with Metrc data. As stated in the report, initial discussions with the DOR determined personnel were not familiar with the Metrc system or the data it contains and were not using DCR data. Further, the DHSS made no mention of any disagreement with this finding after reviewing the draft report and acknowledged it had recently begun working with the DOR to provide some level of sales data for use in DOR audits. Consistent with the majority of the agency's responses, the agency's claim of the finding being "false" appears to be for the purpose of attempting to discredit the audit.

[28] Report No. 2025-013, *Department of Revenue - Sales, Use, and Marijuana Taxes*, issued in March 2025, can be found at <https://auditor.mo.gov/AuditReport/CitzSummary?id=1027>.

Missouri Department of Health and Senior Services
P.O. Box 570, Jefferson City, MO 65102-0570 | Phone: 573-751-6400 | FAX: 573-751-6010
Relay Missouri: Dial 711 to access services for those with hearing or speech impairments

Sarah Willson
Director

Mike Kehoe
Governor

January 7, 2026

Scott Fitzpatrick
Missouri State Auditor
Missouri State Auditor's Office
PO Box 869
Jefferson City, MO 65102

Dear Mr. Fitzpatrick,

The Department of Health and Senior Services (DHSS) acknowledges the recommendations in the Missouri State Auditor's report on Missouri's Marijuana Program and appreciates that the Auditor plays an important role in reviewing the use of public funds and the efficiency and effectiveness of Missouri government. We agree with some of the recommendations in the report, and appropriate modifications to program processes have been or will be made. Unfortunately, the Auditor's report, in many other instances, is deeply flawed due to its reliance on incomplete or misinterpreted information.

In the following pages, DHSS will present a comprehensive rebuttal to the claims of the State Auditor's Office (SAO). For each section of the SAO's report, DHSS will present 1) a high-level summary or summaries of key information, 2) in most cases, a list of factual errors provided to the SAO after DHSS received the SAO's initial draft report that have not been addressed in the final report, and 3) additional responses covering information that was communicated to the SAO during the audit process. At the end of this document, DHSS will respond to the SAO's recommendations. While DHSS offers many details in this response on a range of topics, three issues are of critical significance.

License Application and Evaluation Process

The SAO's claim that the initial licensing process lacked consistency and transparency is not accurate and contradicts the outcomes of years of review by expert, unbiased tribunals.

- Legal Adjudication: The Administrative Hearing Commission (AHC) is the neutral and competent factfinder designated by the Missouri Constitution for review of DHSS's cannabis licensure decisions. The AHC has nearly unlimited access to relevant arguments and evidence via a rigorous process that allows opposing parties to discover and present any information they believe to be important for the issues they raise. In medical marijuana application appeals, the AHC has repeatedly found the application scoring system processes and results to be consistent and fair. These are the very same processes and results the SAO has attempted to review, and the SAO's arguments and conclusions mirror arguments raised and rejected in those cases.
- Invalid Precedents: To support its positions on application review processes, the SAO has chosen to rely on a vacated case with no legal effect while ignoring approximately 60 valid decisions that uphold DHSS's processes but do not support the SAO's positions.
- Expert Validation: Independent, expert analysis presented under oath confirmed that the medical marijuana scoring system reached reliability rates exceeding 95% across all licensing applications,

- contrary to the SAO's claims based on its inexpert review of a non-representative and cherry-picked set of applications.

Business Change Requests

Findings regarding the timeliness and tracking of business change requests are not substantiated and conflict with documentation provided to the SAO. The SAO's decision to not acknowledge DHSS's centralized tracking of application processing or correct its misrepresentation of rules results in a report that does not reflect actual performance.

Market Oversight Procedures

The SAO's claim that DHSS's market oversight is "inadequate" is not accurate and stems from a lack of regulatory expertise as well as an easily corrected misinterpretation of regulations.

- Inspection Standards: When alleging licensees operated for years without proper oversight, the SAO refuses to account for physical inspections that were not labeled "Annual Inspections," remote video footage monitoring, seed-to-sale data analysis, and other oversight mechanisms.
- Inventory Control: The SAO is inappropriately fixated on physical inspections as the primary mechanism for detecting and preventing diversion of marijuana product. Seed-to-sale data analysis is the gold standard for detecting inversion and diversion throughout states with a regulated marijuana market.

DHSS welcomes constructive input on how to better administer its programs. However, the SAO has not understood basic concepts of the medical marijuana facility licensing system required by rule and law, has reached inaccurate and unsupported conclusions about DHSS's oversight of licensed cannabis facilities, and has ignored numerous attempts by DHSS to clarify the SAO's understanding, even to the point of ignoring documentary evidence showing that purported facts in the SAO's report are false. Because the SAO is determined to make findings that substitute speculative inferences for established facts, the findings are neither helpful nor constructive.

Report Section: General Introduction, Scope and Methodology

The SAO's methodology for this audit is fundamentally flawed in several ways, which unfortunately undermines many of its conclusions to the point of unreliability.

Unrepresentative Sampling: There are issues with representative samples throughout the report. For example, the SAO claims it performed a "detailed review of the medical licensing process" by randomly choosing 42 applications and "judgmentally" choosing 25 applications for analysis, which comes to a total of 67 applications out of the entire set of 2,257. This is an unrepresentative sample, and more than a third of the small sample was cherry-picked rather than selected at random. Data-based conclusions are generally unreliable when based on unrepresentative samples.

-

Disregard for Expert Adjudication: In its review of the initial medical marijuana licensing system, the SAO has failed to appropriately consider the more extensive, more expert, and more unbiased review by the AHC of the very same processes. In doing so, the SAO has reached unsupportable conclusions directly in conflict with AHC results, irresponsibly renewing allegations long resolved in DHSS's favor.

-

Critical Lack of Regulatory Expertise: The SAO has failed to obtain the proper expertise to legitimately review DHSS' performance in cannabis regulation. For instance, the SAO's findings on market oversight, which claim that DHSS allowed licensees to operate without mitigating inversion or diversion of cannabis product to the illicit market, are not aligned with documented facts. These conclusions demonstrate the SAO's lack of expertise in proven best practices for cannabis regulation. The truth is that regulating cannabis is different than regulating many other businesses as physical, onsite inspections are not the only method of inspections and, in the case of inventory control, not the most effective method of inspection. Prioritizing physical inspections for inventory control indicates

a lack of understanding of core cannabis regulation practices – most importantly, the practice of utilizing a statewide track and trace system for seed-to-sale tracking to detect inversion and diversion of cannabis. DHSS has offered detailed explanations to the SAO on this point, based on DHSS's relevant expertise, and suggested the SAO compare to other state regulatory programs to confirm DHSS's expertise. The SAO's insistence on applying its uninformed perspective to this area has resulted in prejudicial errors that threaten to undermine the public's trust in a thoroughly well-regulated cannabis program.

- Lack of Transparency: Several statements and conclusions included in this report are based on undisclosed and unverified data. For example, the SAO conducted a survey of some number of regulated licensees and based certain conclusions on the results of that survey. However, the SAO refused to disclose to DHSS the data it received from the survey, even in aggregated form, and in fact refused to even disclose the survey itself to DHSS. This is in stark contrast to the methodology utilized for the rest of the audit process, during which the SAO submitted questions, DHSS submitted responses, and all information and draft conclusions flowing from those questions and responses were disclosed to DHSS to seek clarification or ensure understanding. Failure to disclose the survey and survey results means no party has reviewed that information for clarification or to correct the SAO's understanding. This lack of transparency is particularly concerning considering the SAO's many misunderstandings and analytical errors throughout the audit process leading up to and including in this final report.
- Failure to Correct Factual Errors: Finally, as noted throughout this response, DHSS identified errors in the SAO's draft final report prior to its issuance, even simple factual errors, and the SAO has refused to consider the great majority of the identified errors, with no explanation or justification for ignoring them. For example, the SAO claims DHSS does not have centralized tracking of business change requests that includes designation of "complete" status. DHSS noted that claim and provided a screenshot of its centralized tracking sheet, expecting the SAO would correct that error or ask for additional information. The SAO has done neither and this factual error remains in the final report as support for a finding. The SAO's refusal to continue pursuing accurate understanding of the subject matter it was tasked with reviewing resulted in an unreliable final report, which has the potential to unnecessarily damage the perceived legitimacy of both DHSS and the Auditor.

Finding 1. License Application and Evaluation Process Did Not Ensure Consistency or Transparency

The SAO report claims DHSS's initial license application evaluation processes did not ensure consistency or transparency. These findings are not accurate. These claims are inaccurate and directly contradicted by five years of litigation, expert testimony, and AHC outcomes. The SAO's assertions throughout this section of its report reflect a misunderstanding of basic concepts in the licensing scheme mandated by Article XIV of the Missouri Constitution. The SAO's conclusions rely on speculative interpretations, limited review of small or cherry-picked samples, and assumptions disproven in hundreds of appeals.

Key Issues Identified

- Incorrect Assertions of Inconsistency and Lack of Transparency
  The SAO concluded that DHSS's application evaluation process lacked consistency and transparency. However, extensive litigation before the AHC demonstrated the opposite. A qualified, neutral tribunal repeatedly found the scoring system and its outcomes to be consistent across the applicant pool.
- Misleading Characterization of Scoring Deficiencies
  The SAO's claim that the scoring process was poorly designed and inadequately monitored is based on a limited review of only 67 applications – 25 of which were not randomly selected. This narrow sample does not support broad conclusions about systemic deficiencies.
- Selective and Inaccurate Use of AHC Decisions
  Although DHSS provided the SAO with numerous AHC decisions, the SAO relied primarily on *Heya v. DHSS*, one of only two cases in which DHSS did not prevail after hearing in the 849 appeals. Importantly, *Heya* was vacated shortly after issuance, meaning it has no legal effect. The SAO did not meaningfully consider approximately 60 valid decisions upholding DHSS's processes, nor did it reference the extensive expert testimony presented in later cases.

- Findings That Contradict Final Adjudications
  The SAO asserts that its conclusions do not conflict with AHC or judicial determinations. However, Section 1 of the SAO report directly contradicts final adjudications on key issues, including the design of the scoring system, regulatory compliance, oversight of the scoring entity, and the consistency of scoring outcomes. These matters were thoroughly litigated and resolved in DHSS's favor time after time.
- Limited Relevance Under Current Law
  Article XIV has been amended to award licenses by lottery rather than through scored applications. As a result, recommendations related to scoring systems repealed by voters more than three years ago offer minimal practical value and risk establishing a precedent of disregarding binding adjudicatory outcomes.

Clarifications on Litigation and Documentation

The SAO suggests that inconsistent or insufficiently documented scoring contributed to applicant lawsuits and increased state legal costs. However, a comprehensive review of hundreds of appeals shows that scoring was consistent and well-supported. Litigation in other states with similar scoring and ranking mandates is common regardless of documentation quality, driven largely by the significant financial incentives associated with licensure. The mere existence of any number of appeals does not indicate flaws in the scoring process. Furthermore, the cost of defending state decisions is often necessary and, as in this case, proven to be particularly wise when those state decisions are upheld. What is objectionable is unnecessarily and inefficiently relitigating resolved issues through this audit after the state has expended resources to have those issues determined in the appropriate forum.

Below is a non-exhaustive list of errors for this section of the report that was provided to the SAO but was not addressed:

- The SAO's finding states "DCR license application and evaluation process used for dispensary, cultivator, manufacturing, and testing facilities did not ensure consistency or transparency," and that the "license scoring and evaluation decisions were inconsistent." This has been proven untrue by a qualified, unbiased tribunal based on all relevant evidence and arguments. Again, analysis of appeals shows a high rate of consistency in results across the applicant pool.
- The SAO finding states, "Based on a review of the applications and related scores, we identified significant deficiencies in how the scoring process was designed and how the DCR monitored Wise Health Solution's (WHS) implementation of the scoring process." This is misleading and false. The SAO's "review of the applications" included only 67 applications, 25 of which were not chosen at random.

Additional responses:

1. Of the numerous AHC decisions on scoring appeals, all provided to the SAO, the SAO only cites two: *Heya v. DHSS* and *MDCC v. DHSS*. The SAO cites *Heya* the most. *Heya* was one of only two decisions in which the AHC ruled against DHSS after hearing, and *Heya* was vacated by the AHC and Circuit Court shortly after it was entered.[1] The legal effect of vacating an order is that it no longer exists and, in fact, that it never existed. More recent decisions are more reliable than an older, vacated decision. The *Heya* decision is the outlier in medical marijuana scoring appeals. It is unknown why the SAO would choose to primarily rely on a vacated decision that is not representative of the five years of litigation, particularly when there are approximately 60 decisions in favor of DHSS that are relevant and still valid. While the SAO may believe the testimony in the *Heya* case is still relevant, DHSS suggests testimony from other cases is more informative and a better representation of the overall body of litigation. For example, in *Heya* there was no expert testimony whereas a DHSS expert testified in numerous cases after *Heya*. The SAO does not

[1] *Heya Kirksville v. DHSS*, Case No. 20-0213, November 21, 2021 Order.

reference any of the expert testimony in these cases, suggesting the SAO has not read them or chooses to ignore them.

- Importantly, while the SAO has asserted to DHSS that it has not made findings that are in direct contradiction to a final adjudication of the AHC or judiciary, this is exactly what Section 1 represents. In the AHC cases related to scoring, the application process, design of the scoring system, the regulations, whether DHSS and the scoring entity followed those regulations, DHSS's oversight of the scoring entity, the consistency of processes and outcomes, and the performance of both DHSS and the scoring entity were at issue and thoroughly reviewed. The decisions of the AHC are directly contrary to the conclusions of the SAO on the very same matters.

- Finally, Article XIV has changed regarding how licenses are awarded. Specifically, licenses are now awarded by lottery rather than scored applications. Therefore, little to no benefit will be realized by including recommendations related to application scoring systems, especially when the inclusion of this section of the report will be establishing a new precedent of contradicting judicial or quasi-judicial final adjudications.

2. In paragraph 1, the SAO states that scoring decisions were "inconsistent and insufficiently documented, creating uncertainty in the results. This uncertainty was a contributing factor in a significant number of license applicants filing lawsuits and resulted in significant legal cost to the state."

- A thorough review of all scoring evidence in hundreds of appeals demonstrates scoring was done consistently. The statement that decisions were insufficiently documented is an unsupported argument. It is speculation without basis that scoring decisions created uncertainty, and that perceived uncertainty contributed to lawsuits. Every state with scoring and ranking for limited licenses had significant appeals and lawsuits, regardless of the level of documentation. The more likely cause of the appeals is the great financial incentive of applicants to appeal in hopes of getting a license. Every applicant has a right to appeal a decision, but the existence of appeals does not mean the process was uncertain, unfair, or inconsistent. DHSS suggests that the outcome of such litigation would be a better indication of the fairness of the process rather than the existence of litigation. In fact, the results of the litigation in hundreds of cases shows the process was consistent and fair. Evidence in recent hearings illustrates WHS consistently scored identical application responses with the same score 95% of the time.

3. The SAO's perspective on scoring consistency is contradicted by at least eleven AHC decisions after hearing:

- *Wtig Troy, LLC, v. DHSS*, Case No. 20-0452, (August 28, 2020) – "The Department was not inconsistent in the manner in which it scored WTIG's and other similar applicants' applications."

- *Missouri Delta Cannabis Company v. DHSS*, Case No. 20-0883, (April 8, 2022) – "We have reviewed the scores assessed by Harrington and have determined that his scoring, though harsh, was not inconsistent. . . . We find he scored the dispensary applications (for all facilities) in a consistent manner."

- *Blue Arrow v. DHSS*, Case No. 20-1220/1222 (January 29, 2025) – "the 'only way' to determine whether Blue Arrow's application was scored incorrectly is to compare its applications to those of other applicants. See *State ex rel. Dep't of Health & Senior Servs. v. Slusher*, 638 S.W.3d 496, 500 (Mo. banc 2022)

- *Manchester RH, LLC* v. *DHSS*, Case No. 20-1001 (May 12, 2023) – "the 'only way' to determine whether Manchester RH's application was scored incorrectly is to compare its application to those of other applicants. See *State ex rel. Dep't of Health Senior Servs. v. Slusher,* 638 S.W.3d 496, 500 (Mo. banc 2022)… As discussed in this decision, the Department's scoring system hinged on the subjective determinations of its scorers. So long as those determinations are consistent as required by the

Department regulations, we find that reasonable minds may disagree as to the appropriate score for any given question."

- *13013 State Line KC, LLC v. DHSS*, Case No. 20-1007 (May 12, 2023) – "the 'only way' to determine whether State Line's application was scored incorrectly is to compare its application to those of other applicants. See *State ex rel. Dep't of Health Senior Servs. v. Slusher,* 638 S.W.3d 496, 500 (Mo. banc 2022)... these scoring determinations hinged on the subjective valuations of the individual scorers. . . . The Evaluation Criteria Scoring Table allows reasonable minds to disagree on the appropriate scores for applicants' answers, but this inherent subjectivity does not permit inconsistency."

- *Walnut KC, LLC v. DHSS*, Case No. 20-1008 (May 12, 2023) – "the 'only way' to determine whether Walnut's application was scored incorrectly is to compare its application to those of other applicants. See State ex rel. Dep't of Health Senior Servs. v. Slusher, 638 S.W.3d 496, 500 (Mo. banc 2022)... these scoring determinations hinged on the subjective valuations of the individual scorers. . . . The Evaluation Criteria Scoring Table allows reasonable minds to disagree on the appropriate scores for applicants' answers, but this inherent subjectivity does not permit inconsistency."

- See also, *Hippos v. DHSS*, Case No. 20-0551; *Hippos v. DHSS*, Case No. 20-1181, *Hippos v. DHSS*, Case No. 20-1634; *Cannabis v. DHSS*, Case No. 20-0472; *Cannabis v. DHSS* Case No. 20-0680.

Finding 1.1 Significant flaws in application scoring design

The SAO's report claims there were significant flaws in the application scoring design in the initial application round for medical marijuana licensure. This finding is not accurate. The SAO's claims are inaccurate and directly contradicted by five years of litigation, expert testimony, and AHC outcomes. A litany of assertions about the scoring process – ranging from supposed prohibitions on notetaking, to claims of "minimum evaluation criteria," to allegations that applicants circumvented blind scoring or violated redaction rules – are inconsistent with the governing rules, the facts of how those rules were applied in scoring applications, and the extensive evidentiary record applicable to these points, which uniformly shows that graders acted within established guidelines and were never at risk of knowing applicant identities. The SAO's conclusions rely on speculative interpretations, small or skewed samples, and assumptions disproven in hundreds of appeals. The scoring system's design – where graders evaluated individual questions rather than full applications – was intentionally structured to promote fairness and consistency and protect against bias, a structure and outcome repeatedly upheld by the AHC.

Below is a non-exhaustive list of errors for this section of the report that was provided to the SAO but was not addressed:

- The SAO's finding states "DCR approved an application scoring process with significant design flaws." This is false and is contradicted by unbiased tribunal findings and expert testimony.
- The SAO's finding states scorers who were evaluating the applications for WHS "were instructed to not document notes to support their scoring decisions." This is false and misleading. In the source documents, scorers were reminded that their notes would be scrutinized. There was never an instruction to "not document notes."
- The SAO's finding states "21 of the 45 scorers (47 percent) made at least 1 scoring assessment contradicting the DCR's own minimum evaluation criteria." This is not accurate. It is undisputed and confirmed in five years of litigation that the evaluation criteria established in rule permitted graders to assign a 0,4,7, or 10 for a response based on their subjective evaluation. There was no "minimum evaluation criteria" that required a certain score to be given in the subjective analysis.
- The SAO's finding states "applicants were allowed to circumvent the blind scoring process." This is not accurate. In five years of litigation, there has never been a finding or evidence that a grader knew the identity of the applicant. The SAO's conclusion is based only on the SAO's speculation and imagination,

saying "potentially" in two places when describing the possibility that a grader might match certain anonymized initials with business names. The SAO's opinion that this "potentially" could happen is not support for a conclusion that it did happen.

- The SAO's finding concludes that some anonymous, self-assigned Unique Application (UA) numbers, consisting of four letters and four numbers, were "violating redaction rules." This is not accurate. The redaction rule prohibited listing business names but not initials. According to expert testimony, self-assigning anonymous ID numbers did not violate the anonymity requirement. The SAO is alone in its conclusion as no court or tribunal has found that this occurred in five years of litigation in hundreds of cases.
- The SAO's finding states "DCR officials did not indicate why they allowed applicants to create their own UA. The DCR likely did not assess the risks of allowing applicants to create their own application identifier numbers." Neither statement is accurate. DHSS has explained to the SAO why applicants were allowed to create their own UA and assessed the risks. In summary, the application system could not assign numbers to the pages itself, which was needed for anonymous grading. Manually adding an anonymous identifier to hundreds of thousands of documents presented logistical challenges and created new risks, such as errors or perceptions of agency manipulation of applicant responses. The risks were assessed for self-assigning, and DHSS concluded the risks were small. As stated above, there has been no evidence in five years of litigation or elsewhere that a grader knew the identity of an applicant based on UA numbers or other information.

Additional responses:

1. The SAO's report suggests there was conflicting direction on note taking.

   This conclusion is not supported by the training manual. The training manual states that graders were encouraged to take notes but not required to do so. The quoted language on page 17 from the training manual was to make graders aware that anything they write would be reviewed by others, and to write appropriate notes when doing so. The SAO construes this as a directive to not take notes at all and fails to consider this language in the context of the rest of the training manual. It would be one thing to suggest DHSS should have required notes to be taken in all circumstances, but to say DHSS instructed notes not be taken at all is inaccurate.

2. The SAO's report states "applicants were allowed to circumvent the blind scoring process" by concluding the anonymous IDs were "reasonably indicative of the applicant's business name, such that graders familiar with the applicant could potentially deduce the applicant's identity."

   Other than potentially the Heya and BBMO IDs, the rest of the examples provided by the SAO and the more than 2000 remaining IDs are not "reasonably indicative" of an applicant at all. For example, it is unreasonable to conclude that NGHC2609 is "reasonably indicative" of any applicant as suggested by the SAO. Further, similar arguments were raised and investigated through extensive discovery in AHC appeals, there is no record in hundreds of AHC appeals that a grader knew or could have known an applicant's identity by four letters and four numbers, including in the instance of Heya and BBMO, which supports DHSS's conclusion that this was never a reasonable risk. The SAO suggests WHS or the applicant should have been "penalized for violating the rules," but the rules did not prohibit using initials; the rules only prohibited listing the full name of the business applicant entity.[2]

3. The SAO's report alleges that while only 15% of the overall population of applications (348 of 2,257) received licenses, applicants with identifying UAs benefited from the lack of anonymity, with 83 percent (10 of the 12 applications reviewed) being granted licenses.
   First, as stated above, the anonymous IDs did not violate the rules and did not reasonably identify the applicant. Second, there is no evidence in five years of litigation that any grader knew the identity of an applicant or that any applicant was given favorable treatment for any reason. Third, the SAO skews the

[2] Assuming, as the SAO does, that the redaction rules apply to the anonymous ID provided by the applicant, initials were a permitted method to anonymize individuals.

percentages by failing to account for multiple denied applications submitted by the same applicants with similar anonymous IDs. DHSS provided the SAO with the complete list of similar IDs showing 37 out the 62 were licensed (60%), rather than 83% alleged by the SAO. Due to the small sample size and lack of evidence to the contrary, it is speculation that these applicants received licenses at this rate because of their UAs and not due to the merit of their responses.

4. The SAO's report alleges "DCR officials did not indicate why they allowed applicants to create their own UA" and states "Complia...had the ability to automatically generate non-identifying Unique Application Numbers (UAs)."

   This is false. DHSS has explained to the SAO and in hearings that due to a technological limitation in the Complia application system, the UAs could not be placed or stamped on the uploaded documents themselves, which was required for blind scoring. The most reasonable and cost-effective way to do this in the short time required was to have applicants add a facility ID. DHSS officially concluded at the time that this would not reveal the identity of applicants. After 5 years of litigation and 2.5 years of auditing, there is no evidence that any grader knew an applicant's identity because of the facility ID or any other reason. To suggest otherwise is again speculation and contrary to the known facts.

5. The SAO's report alleges "Application response information was not maintained in a manner that allowed responses to be evaluated across applications, hindering the DCR's ability to adequately assess the consistency and fairness of the grading process."

   The system was designed so each grader only graded specific questions, not complete applications. This system was fair in that it promoted consistency across competing questions and further insulated the graders from knowing the contents of a whole application, reducing the chance for bias.

   The SAO mischaracterizes DHSS statements that DHSS officials did not want "secondary audits or reviews" such as what the SAO is doing now. Rather, DHSS did not want to substitute its own judgment for that of the grader or to influence grader outcomes. The AHC found that "if [someone other than the grader] were allowed to substitute his own judgment for that of the original scores, it would create unnecessary inconsistencies when ranking that application against others." *521 Walnut v. DHSS*, Case No. 20-1008, April 17, 2023, Order, at 19. This inconsistency and unfairness are exactly what DHSS wanted to avoid.

6. The SAO's perspective that applicants circumvented the blind scoring process by their choice of facility IDs is a baseless accusation raised and disregarded in more than 15 AHC cases (20-1206; 20-1218; 20-0654; 20-0806; 20-0475; 20-1450; 20-1371; 20-1382; 20-1391; 20-1379; 20-1393; 20-1373; 20-0633; 20-0833; and 20-1430) and in one federal court case. In all these cases, there has been no evidence or finding of the blind scoring being compromised, through any mechanism. If there had actually been any instance of scorers knowing the identity of applicants, as speculated by the SAO, this almost certainly would have been discovered in the discovery process for any one of the at least fifteen cases where this allegation was raised. Not a single instance was discovered.

Finding 1.2 The DCR did not ensure controls to detect inconsistencies in the grading process were implemented by the contractor

The SAO's report claims DHSS did not establish proper oversight to detect or prevent inconsistencies in the grading process. This finding is not accurate. These claims rest on unsupported assumptions and misunderstandings of the governing rules. The SAO infers that required reviews did not occur after determining that documentation of such reviews was limited; the SAO has no evidence that the reviews were not performed. DHSS clearly established expectations through its rules and guidance to application graders, and the evaluation criteria—adopted in regulation—required graders to rely on their own knowledge and experience, not on secondary review or collective judgment. The SAO's conclusions rely on layering assumptions about missing documentation and alleged inconsistencies, but these assumptions conflict with the regulatory framework and the established record showing that the scoring system operated as designed.

DHSS Response to DCR Performance Audit
January 7, 2026

Below is a non-exhaustive list of errors for this section of the report that was provided to the SAO but was not addressed:

- The SAO's finding states "WHS management approved and transmitted scores to the DCR without following these established controls during the scoring process." This is an unsupported assumption by the SAO. The SAO did not find the documentation it would have liked to see and concluded this means certain actions did not occur. However, there is no evidence that the review did not occur. Rather, the SAO's conclusion is an inference based on the SAO's belief that documentation was insufficient.

Additional responses:

1. DHSS disagrees with the SAO's premise and conclusion. DHSS set out its expectations in DHSS's rules and in the Medical Marijuana Application Scorers Guide. While WHS expanded on the values and goals expressed by DHSS in the rules and Guide, the training manual did not create or impose duties upon DHSS. Moreover, the revisionist expectations set out by the SAO are contrary to the evaluation criteria scoring table, adopted in rule, which requires scoring decisions to be based on the knowledge and experience of the specific grader. There was no expectation that the knowledge or experience of any other person other than the grader would inform a specific scoring outcome, and such an occurrence would have violated DHSS's rules.

2. The SAO stacks assumptions upon assumptions to reach a its conclusion: The SAO assumes further the lack of reviews led to "various scoring inconsistencies." As stated above, the SAO is incorrect about the review required and incorrect about scoring inconsistencies.

3. The SAO's perspective that DHSS should have weighed in on scoring decisions has been directly refuted in several AHC decisions:

   521 Walnut v. DHSS, Case No. 20-1008 (April 17, 2023) - The AHC found that "if [someone other than the grader] were allowed to substitute his own judgment for that of the original scores, it would create unnecessary inconsistencies when ranking that application against others."

Finding 1.3 Significant scoring inconsistencies identified

The SAO's report claims the outcomes of the application scoring process were inconsistent. This finding is not accurate. These conclusions are unsupported, based on misunderstandings of the application evaluation criteria established in rule, and are directly contradicted by five years of litigation and expert testimony. The SAO's assertions—such as claims that "substantially similar" answers should receive identical scores, that responses meeting "minimum criteria" were improperly given a score of zero, or that redaction rules were inconsistently applied—misstate or misinterpret the governing directives and ignore repeated tribunal rulings confirming that the scoring system was intentionally subjective, that no minimum response to an application question guaranteed a positive score, and that redaction requirements applied specifically and only to applicant business names. Allegations of pervasive inconsistencies or inadequate oversight are further undermined by the limited and nonrepresentative sample reviewed by the SAO and by extensive evidence showing that graders consistently applied scoring criteria with reliability rates exceeding 95%. This reliability rating has been validated by Dr. Wes Bonifay, an independent expert in Measurement Theory and Classical Test Theory from the University of Missouri who served as an expert witness in several AHC hearings. The litigation record consistently upheld the fairness and integrity of the scoring system and DHSS's active oversight of the scoring vendor, demonstrating that the scoring process functioned as designed and did not permit or result in the widespread inconsistencies claimed by the SAO.

Below is a non-exhaustive list of errors for this section of the report that was provided to the SAO but was not addressed:

- The SAO's finding states "Our review of a sample of applications identified significant scoring inconsistencies." This statement is inconsistent with outcomes of five years of scoring litigation and is contrary to expert opinion.
- The SAO's finding states "substantially similar responses to the same question received different scores from the same grader." The SAO's conclusion ignores the directives in scoring documents that only identical answers should receive the same score. There is no inconsistency when only "substantially similar" answers receive different scores. Similar arguments were made and rejected in multiple appeals by a qualified and unbiased tribunal as well as expert testimony.
- The SAO's finding states "responses that met the minimum criteria were scored as 0." This finding reflects a basic misunderstanding of the scoring system. There was not a set "minimum criteria" to receive a certain score. The evaluation table permitted a grader to give any score based on his/her subjective evaluation of the response. The SAO's conclusion is contrary to directives in scoring documents and findings by tribunals. Similar arguments were raised in early appeals and have been universally rejected.
- The SAO's finding states the "redaction rules were inconsistently applied" and notes three applications where the SAO believes the redaction rule should have been applied. This conclusion is incorrect. The redaction rule requires the business name of the applicant to be redacted. The examples in figure 4 of the SAO's report do not list the business applicant name of "JG Missouri." The SAO further concludes that 7 other applications had similar redaction errors but does not explain why there is an error.
- The SAO's finding states "Responses meeting the minimum criteria were not always assigned positive scores." This finding is incorrect and reflects a misunderstanding of the scoring system. This issue has been litigated extensively, and it has consistently been found there is no minimum criteria to receive a score above a zero. See *MDCC v. DHSS*, Case No. 20-0883, April 8, 2022 Decision at 21; finding a score of zero, despite details in answer, was not incorrect. See also *Hippos v. DHSS*, Case No. 20-0551, March 15, 2022 Decision, at 62, finding "these questions were scored on the subjective, 0-10 scale. As such, we find that any score for these questions could be correct depending on the subjective valuations of its scorer."
- The SAO's finding states DHSS's "management and oversight of the application process allowed serious inconsistencies to pervasively occur." This is false, and has been proven untrue by a qualified, unbiased tribunal with all relevant evidence and arguments available over the course of five years of litigation.
- The SAO's finding states "DCR delegated oversight responsibility entirely to WHS." This is false. DHSS was actively communicating with WHS and overseeing its work to implement the system set up by DHSS.

Additional responses:

1. The SAO's report claims to find "significant scoring inconsistencies",

   The SAO admits to only reviewing 67 of the 2195 applications (3%) to reach its conclusion. The SAO also fails to understand basic concepts of the evaluation scoring criteria as discussed further below.

2. The SAO's report states "responses that met the minimum criteria were scored as 0, responses that did not meet the minimum criteria received a score higher than 0."

   The SAO misunderstands the evaluation scoring criteria required by regulation. There was not a "minimum criteria" to get a score above a zero. Under the evaluation criteria in rule, graders could score a zero in many circumstances, including if the grader had "low confidence" in the approach.[3] The grader was required to use his or her own experience to determine this. More than three years before this audit, a denied applicant advanced the same opinion of the SAO, claiming the evaluation criteria did require a score above a zero in certain circumstances. This was litigated, and the AHC found that a grader giving a score of zero on 60% of applications was not an incorrect result, and doing so was consistent with the evaluation criteria. *MDCC v. DHSS*, Case No. 20-0883, April 8, 2022 Order, at 21. This, as with so many issues the SAO raises, is very much an issue of legal interpretations, and the Constitutionally designated reviewer has made its decision on this point.

[3] By regulation, a grader could give a zero if, using his or her knowledge and experience, the response was "unsatisfactory". This was defined in the evaluation criteria as "Response fails to meet minimum expectations; has significant weaknesses and lacks detail and/or clarity; little or no confidence in the proposed approach or ability to fulfill claims."

The SAO or another grader could look at any response and give a higher score under DHSS' system, since it relied on the evaluation of the particular grader. The SAO might prefer a different scoring system than the one DHSS implemented, but to say that a particular grader was required to give a 4, 7, or 10 under DHSS rules is incorrect. See also *Hippos v. DHSS*, Case No. 20-0551, March 15, 2022 Decision, for full discussion of this concept.

3. The SAO's report alleges WHS graders assigned different scores to identical or nearly identical responses, which is inconsistent with WHS Grader Training Manual guidance. "Our review identified 59 instances involving 14 of the 67 applications reviewed (21 percent) in which two applicants submitted identical, nearly identical, or substantially similar responses, and the grader for the given question assigned different scores."

   The SAO's small sample size is not indicative of the consistency of WHS in scoring identical answers the same. Recent hearings demonstrate a consistency of 95-98%. (see exhibit R-BQ from *Kinner Growing Collective v. DHSS*, Case No. 20-0475, 20-0806, 20-1450 hearing, held September 22, 2025).

   Through the course of years of litigation, the consistency of scoring has been thoroughly reviewed. Dr. Wes Bonifary, an independent expert in Measurement Theory and Classical Test Theory from the University of Missouri, reviewed scoring outcomes and testified about his review in public hearings. Recent testimony from the Kinner hearing demonstrates how consistent these scores were.

   · · · ·Q.· · Are you familiar with Dr. Sireci opining that 90 percent consistency in scoring would indicate -- I think he's used the word "some level of scoring consistency?"
   · · · ·A.· · Yes.
   · · · ·Q.· · Do you agree with that – that conclusion?
   · · · ·A.· · Yes, I do agree. And would actually add a little bit that 90 percent is typically regarded as more than just some degree of accuracy. It's a high degree. In psychometrics, 90 percent is often considered excellent reliability, very high measurement precision.
   · · Q.· · Is it common to see reliability over 90 percent?
   · · · ·A.· · I would not call that common in most applied educational measurement research.
   · · · ·Q.· · Why isn't the expectation to get 100 percent?
   · · · ·A.· · Classical Test Theory says that when we are collecting data from humans, human test takers or graders, we should not ever expect to see perfect consistency. That there will be human error as part of the scoring system.[4]
   · · A.· · So for each set of applications, it shows there in column CH the total consistency. And so, for that first set, there was 100 percent consistency. If you were to scroll down, you'll see the consistency within each set of applications. So, there's 98 percent consistency for that group and there's a handful more in this first spreadsheet.
   · · · · · · · ·If you go back up to the top, you'll see a cell that says Sheet Average Consistency. So, this is just the average consistency across all of the application groupings in this first tab of the spreadsheet and its 98.14 percent.
   · · · ·Q.· · Is 98.14 percent consistency indicative of reliable evaluative outcomes?
   · · · ·A.· · It is indicative of very high reliability.
   · · Q.· · The overall average consistency of the applications that are in the Excel spreadsheet was 95.91; is that right?
   · · · ·A.· · Yes.
   · · · ·Q.· · Okay. What do you make of those numbers?
   · · · ·A.· · They reflect the protocols that are in the training manual, that the graders were trained to answer these questions in a consistent way, that they tried to do so where we very rarely have evidence that they failed to apply the scoring criteria table inconsistently, and the data support that. That you have 98.14 percent overall in the applications included in this spreadsheet – or in the tab of this overall spreadsheet.

[4] "These questions were scored on the subjective, 0-10 scale. As such, we find that any score for these questions could be correct depending on the subjective valuations of its scorer." Hippos at page 62.

The AHC has found Dr. Bonifay to offer a "neutral analysis based on psychological measurement theory" and that his "expert opinion is reliable and useful." See *13013 State Line KC, LLC v. DHSS*, Case No. 20-1007, May 12, 2023, Decision, at 23.

4. The SAO's report concludes "Responses meeting the minimum criteria were not always assigned positive scores."

   The SAO's report concludes that a response to three questions met "minimum criteria" and, in their opinion, should have received a higher score. As stated above, the SAO fails to understand the grading was subjective by design, much like the subjective portion of state Request for Proposal bids used for decades by the Office of Administration Division of Accounting.

   The SAO misinterprets the concept of "minimum criteria." DHSS required every answer to be scored pursuant to the Evaluation Criteria Scoring Table, which references "minimum expectations" in every scoring option (0, 4, 7, 10 or 0, 10). The minimum expectations referenced in the Evaluation Criteria Scoring Table are the minimum expectations of the grader and were not imposed by DHSS. Elsewhere in the Medical Marijuana Application Scorers Guide, additional information is provided to the graders which was incorporated into the Personalized Scoring Rubric template. However, this information was guidance only and did not establish mandatory scoring outcomes. The ancillary information provided to graders was subject to the directive to graders that "[t]he Evaluation Criteria Scoring Table should be followed in all instances." The SAO's interpretation of the purpose and effect of the ancillary information violates DHSS's rules.

   The SAO's arguments of answers deserving more than zero was decided 3 years ago. A grader giving a score of zero on 60% of applications was not incorrect, and doing so was consistent with the evaluation criteria. *MDCC v. DHSS*, Case No. 20-0883, April 8, 2022, Decision, at 21. Again, this is an issue of legal interpretations, and the constitutionally designated reviewer has made its decision on this point.

5. The SAO's report alleges that "the WHS work plan requires consistency and objectivity and prohibits the introduction of personal or unauthorized standards." The SAO says this resulted in "unequal treatment."

   The whole scoring project, including the work plan, is organized around using personal standards of the grader (a combination of knowledge and experience), but doing so consistently, therefore giving all applicants equal treatment. The scorers fulfilled this expectation, at greater than 90% consistency. The work plan was primarily a roadmap for the scoring project, but the SAO treats it as regulation to bind the scorers. Graders were only bound by the evaluation criteria in rule, which required them to use their own personal knowledge and experience. By having the same grader score all competing questions, there was no "unequal treatment."

   The SAO or another entity could devise a different system, with no subjective analysis. But the graders here correctly implemented the system designed by DHSS by using their knowledge and experience in assigning a score using the evaluation criteria in rule.

6. The SAO's report claims application scoring deficiencies resulted in significant legal challenges and costs. The SAO speculates "the perceived and actual deficiencies in the application scoring process documented in our audit were a contributing factor to the state being subject to significant legal challenges and costs."

   The SAO can only assume the motivations of appellants. The most logical reason for an applicant to file an appeal is the financial incentive of acquiring a marijuana license. Because fewer than 1% of appeals were successful at the AHC, it is most reasonable to assume there were no deficiencies in the scoring process as alleged and that other factors contributed to the applicant's decision to appeal.

7. The SAO's report alleges, "As a result of appeals, 68 additional licenses were awarded."

   It is true additional licenses were awarded as part of settlements with applicants, but the SAO seems unaware that settlements were needed to fill openings in license categories, to meet new minimums after census results were published, and to meet demand in the state after the passage of adult use. As with all litigation, the choice to settle is determined by several factors, such as score and rank of original applicant, program needs, cost of litigation, and individual circumstances of each case.

8. The SAO's report concludes the scoring system permitted "serious inconsistencies to pervasively occur."

   As discussed in all the points above, this conclusion is not supported by the evidence. Such a conclusion can only be reached if one is determined to prove inconsistency and ignore the near perfect record of litigation at the AHC and courts where the process has been thoroughly reviewed by unbiased authorities with access to all relevant information and arguments for 5 years.

9. The SAO's perspective that narrative responses could not receive a score of zero if they met some undefined set of minimum criteria has been soundly rejected by the AHC in at least fourteen decisions:

- *MDCC v. DHSS*, Case No. 20-0883, April 8, 2022 Decision, at 21 – Finding a score of zero, despite details in answer, was not incorrect.

- *Hippos v. DHSS*, Case No. 20-0551, March 15, 2022 Decision, at 62 (see also Case No. 20-1181 and Case No. 20-1634) – "These questions were scored on the subjective, 0-10 scale. As such, we find that any score for these questions could be correct depending on the subjective valuations of its scorer."

- *Blue Arrow v. DHSS*, Case No. 20-1222, January 29, 2025, Decision at 31 – "The Department's scoring system hinged on the subjective determinations of its scorers. So long as those determinations are consistent as required by Department regulations, we find that reasonable minds may disagree as to the appropriate score for any given question."

- *MoCannCure, Inc., v. DHSS,* Case No. 20-0687, March 31, 2025, Order at 17 – "The question is whether scores should have been higher according to the grader's own individual framework for applying the Evaluation Criteria Scoring Table. How another person would interpret and apply the scoring table is irrelevant and does not provide a legal basis to alter MoCanCure's scores."

- *NGWMO v. DHSS*, Case No. 20-0385, December 28, 2021 Decision, at 24 – We agree that the Evaluation Scoring Criteria allows reasonable minds to disagree on the appropriate scores for applicants' answers…The Department intended this subjectivity and promulgated guidance instructing scorers to apply their own specific knowledge and expertise when scoring a question.

- See also *521 Walnut KC, LLC*, Case No. 20-1008, May 12, 2023; *9330 Manchester RH, LLC*, Case No. 20-1001, May 12, 2023; *13013 State Line KC, LLC*, Case No. 20-1007, May 12, 2023

Finding 2. Ownership Change Requests Not Processed Timely and Lack Appropriate Benchmark

The SAO's report claims that DHSS did not process business change requests in a timely manner and does not maintain a centralized record for tracking business change application processing. These findings are not accurate. The SAO's conclusions regarding the timeliness and tracking of business change requests are unsupported and contradicted by both the applicable regulatory framework and documentation already provided by DHSS. The SAO further rests its findings on a facility survey that DHSS was never given the opportunity to review, preventing meaningful engagement or rebuttal. Overall, the SAO's findings disregard provided evidence, misinterpret

regulatory requirements, and rely on information the SAO has withheld, resulting in conclusions that do not reflect the actual performance or compliance of DHSS's business change request processes.

Below is a non-exhaustive list of errors for this section of the report that was provided to the SAO but was not addressed:

- The SAO's finding states "The DCR has not processed business change requests timely and does not adequately track the progress of the requests." This is inaccurate, and the conclusion regarding timeliness is not supported by the SAO's report. Timely means on time, and the SAO's explanation of this conclusion does not include any evidence that DHSS has failed to meet deadlines. If by "timely," the SAO means these requests should have been processed more quickly, the SAO cites no standard for that conclusion. Comparison to other cannabis regulatory programs' similar laws/processes will show these requests are being processed at least as efficiently as those other states. It is also false that DHSS is not adequately tracking the progress of requests. See below.
- The SAO's finding states "However, DCR does not maintain a centralized record of when the applications were 'complete' to help ensure the timelines were met (which would start the 60-, 90-, or 150-day timeframe for the DCR to approve the request)." This is false. DHSS does maintain a centralized tracking record to track business change application processing timeframes and has provided the SAO with documentation as evidence. Within the centralized record, the assigned team member updates the status to "supervisor review" with a status date when their review is complete. This marks the beginning of the timeframes in rule as this is when the specialist indicates the submission is complete. However, the file can still be sent back to the specialist by the supervisor if the supervisor determines information is still missing. Once missing information is received, the timeframes described in rule for final review of complete applications begins again.
- The SAO's finding states "Officials stated the 'complete' date of an application is tracked as part of each application file, but did not specify why they do not maintain a record of the 'complete' date in a central log or other similar record to allow for oversight of timeline compliance." This is inaccurate. As stated above, DHSS has provided the SAO documentation to demonstrate centralized tracking, which includes an indication of completion dates.
- The SAO's finding states "Facility survey suggests frustration with timeliness and the need for clarification of guidance." DHSS has not received a copy of the survey or the survey results and therefore has not been given an opportunity to review data or other information the SAO uses as a basis for this finding. This is an outlier as the SAO's audit practice in every other instance has included offering DHSS the opportunity to engage to ensure understanding. DHSS cannot provide clarifying perspectives or counter allegations when the full set of relevant information is withheld.
- The SAO's finding states "The previous rule regarding change requests, 19 CSR 30-95.040, was changed in February 2023, and lacked specific timeliness requirements." This is inaccurate. The rule change in 19 CSR 100-1.100(2) adding timelines for business change requests went into effect on July 30, 2023, not in February 2023.

Additional responses:

1. The SAO acknowledges the change in state regulation from 19 CSR 30-95 to 19 CSR 100-1 but does not recognize the difference in emergency versus final rule. The emergency rule in effect in February 2023 did not impose timelines for approval or denial of applications on DHSS. The timelines to approve or deny applications were instituted in the final rule, which was effective on July 30, 2023. Within the final rule, there are different deadlines dependent on the type of business change application related to ownership (not only 60 days as referenced by the SAO) including 60 days to transfer a license to a different entity with the same ownership, 90 days to make any changes that would result in an individual becoming an owner that was not an owner previously, and 150 days to make any changes that would result in an overall change in ownership interests of 50% or more. All these timelines begin when DHSS confirms an application is

complete. The SAO's review is based on business change applications submitted through November 2, 2023, so only approximately three months of the reviewed period was subject to these timelines.

2. The SAO's report states "DCR officials also indicated they do not communicate when the request is complete because there is no rule requiring the DCR to do so."

   This is misleading. DHSS said that there is no rule requiring DHSS to formally notify a licensee when a business change request is "complete," which is a fact. During the audit, DHSS responded to the SAO, "There is no rule requiring DCR to formally notify a licensee when a business change request is 'complete.' A licensee will only be formally notified when the application review is approved or denied. If an application is incomplete, the Business Licensing Services (BLS) Specialist will contact the licensee for additional information or clarification. If a licensee reaches out for an update on an application, DCR will provide a status."

   Considering the uniqueness of each request, DHSS cannot anticipate questions that might arise from the submitted documentation, including a need for additional documentation. An application is only considered "complete" once DHSS has determined no additional documentation is required.

3. The SAO's report states "Maintaining accurate information on compliance with applicable regulations is necessary to achieve these goals. Tracking the 'complete' date of an application is necessary to allow the DCR to monitor compliance with state regulation."

   DHSS does maintain accurate information on compliance with applicable regulations specific to requirements for timelines for approval or denial of business change request applications. DHSS has provided the SAO with documentation to demonstrate centralized tracking of business change application processing timeframes, which includes "complete" date indication. The SAO has provided no explanation to DHSS for why the documentation of centralized tracking of completion dates was ignored.

Finding 3. Market Oversight Procedures are Inadequate

The SAO's report claims that DHSS's market oversight procedures are inadequate. This finding is not accurate. The SAO's conclusions regarding DHSS's inspection and inventory control practices rest on misinterpretations of governing rules, unsupported assumptions, and an unduly narrow understanding of what constitutes effective regulatory oversight. The audit incorrectly treats only inspections labeled "Annual Inspections" as satisfying the requirement to "enter and inspect at least annually," disregarding that any physical inspection meets the expectations expressed in rule, that DHSS conducted numerous inspections each year, and that DHSS consistently communicates inspection outcomes through established compliance processes. Similarly, the SAO's findings on inventory control rely on the mistaken premise that onsite inventory inspections are the primary tool for detecting diversion of marijuana inventory, ignoring DHSS's repeated explanations that seed-to-sale tracking data analysis is the gold standard for monitoring for and detecting diversion and inversion of marijuana product. Assertions that DHSS approved operations without ensuring compliance, lacked awareness of ongoing compliance, or allowed licensees to operate "for years" without product accountability are contradicted by the factual record. Overall, the SAO's findings disregard the layered, data driven oversight model employed by DHSS and required under Missouri law, misstate regulatory history, and substitute speculative inferences in place of an accurate representation of DHSS's comprehensive compliance framework.

Below is a non-exhaustive list of errors for this section of the report that was provided to the SAO but was not addressed:

- The SAO's finding states "...many licensees were allowed to operate without ongoing inspections from the DCR..." This is false. DHSS provided the SAO with evidence of many more inspections than the SAO references.

- The SAO's finding states "...passing grades were sometimes given without the licensee proving compliance." This is false. No licensee passed an inspection without proving compliance to whatever extent necessary to pass that inspection.
- The SAO's finding states "...DCR performed minimal inventory inspections to ensure cannabis was not being diverted into the black market." There are significant issues with the SAO's position that a lack of inventory-specific inspections means DHSS did not ensure cannabis was not diverted to the black market. See below in Section 3.2.

Finding 3.1 Licensee inspections infrequent, incomplete, and results not communicated

Below is a non-exhaustive list of errors for this section of the report that was provided to the SAO but was not addressed:

- The SAO's finding states "...DCR did not complete all subsequent annual inspections as required by state regulation." There is a significant misapplication of rule here that affects a large part of this section. The rule under the medical program (19 CSR 30-95), which was effective from June 3, 2019, to February 3, 2023, stated "The department will enter and inspect at least annually, with or without notice, to ensure compliance with this chapter." The SAO conflates performance of an Annual Inspection in a calendar year with the actual standard that DHSS enter and inspect at least once every twelve months, which should be counted from each facility's unique commencement date and not calculated by calendar year.
- The SAO's finding states "...DCR does not always formally communicate the results of inspections to the licensees." DHSS is not sure what the SAO believes would constitute "formal'" communication of the result of inspections, but licensees are always aware of the outcomes of inspections, which can be that there is nothing to communicate, educational warnings, notices of violation, notices of investigation, requests for follow-up, follow-up visits, etc. There is no confusion about how to communicate with the DHSS Compliance Officers if there were ever any questions about the outcome of an inspection.
- The SAO's finding states "The DCR did not inspect each licensee annually, as required by state regulation, during our audit period. We compared the list of annual inspections the DCR performed during our audit period to the number of licensees in Figure 7." The SAO misunderstands the expectation expressed in rule. Any physical inspection would be sufficient for purposes of fulfilling the rule expectation, not just an inspection titled Annual Inspection.
- The SAO's finding states "DCR officials stated they could not meet the annual inspection requirement due to a limited number of DCR compliance officers." This is a misleading statement. While staffing may have dictated the type and frequency of inspections, this is not the same thing as not meeting a rule requirement.
- The SAO's finding states "DCR officials removed the state regulation requirement for annual inspections in February 2023." DHSS officials did not remove a state regulation. The rules were replaced through the formal rulemaking process due to changes in law for adult use effective in December 2023. However, again, the original rule stated that DHSS would enter and inspect at least annually. This is different from what the SAO believes the rule requires since the SAO seems to only count inspections that were termed Annual Inspection.
- The SAO's finding states "DCR personnel approved licensees to operate without ensuring the licensees' operations were compliant with state regulations." This statement is false and unsupported by the SAO's report. Being unable to provide a certain type of document does not equal the very serious claim that DHSS approved licensees to operate without ensuring compliant operations. If the SAO believes DHSS should have retained additional documentation, that can be stated, but that does not lead to the conclusion that licensees were allowed to operate without confirming compliant operations.
- The SAO's finding states "As a result, the DCR is unaware if these licensees continue to operate out of compliance with state regulations." Again, this statement is completely false and also unsupported by the report. The SAO determined DHSS was unable to provide documentation showing resolution of deficiencies in a particular process. This is not the same thing as determining DHSS did not know if licensees continue to operate out of compliance with regulations.
- The SAO's finding states "Allowing licensees to pass inspection without ensuring compliance with state regulations undermines the inspection process and increases the risk of licensees not being in compliance with state regulations in the future, and ultimately results in a threat to public safety." As stated above, the

inability to provide documentation showing resolution of deficiencies, even if this "suggests" there may have been no resolution, does not mean licensees were allowed to pass inspections without ensuring compliance.

- The SAO's finding states "DCR officials removed the requirement for providing the follow-up report within a certain timeframe from its inspection procedures." As stated above, DHSS officials did not remove regulations. The regulations were replaced through the formal rulemaking process due to changes in law effective in December 2023.

Additional responses:

1. The SAO finds that "many licensees were allowed to operate without ongoing inspections from DCR."

- This is not accurate. Prior to being allowed to operate and have marijuana within the facility, all licensees are required to go through a rigorous commencement inspection process, ensuring that licensees are prepared to operate. DHSS confirms overall compliance through inspection of documentation, including standard operating procedures, permits, certifications, etc., as well as an on-site inspection.

- Regulating cannabis is different than regulating many other businesses, as inspections are not only physical. This inspection expectation is laid out within rule. Inspections may be on-site or a review of records. DHSS consistently utilizes many inspection methods outside of stepping foot into a licensed facility.

- For example, Article XIV of the Missouri Constitution requires seed-to-sale tracking of marijuana product and security of product. Seed-to-sale tracking is captured in the statewide track and trace system (Metrc). DHSS staff conduct regular inspections by reviewing Metrc records directly in the system and through system-generated reports. In addition, DHSS staff conduct inspections by remotely monitoring extensive real time and historic facility security camera footage.

- Additionally, DHSS staff communicate with licensees on a regular basis to assist licensees with maintaining compliance.

2. The SAO's report claims that "when the DCR did perform inspections, passing grades were sometimes given without the licensee proving compliance."

- It is a significant logical leap to go from noting DHSS could not in every case produce the type of documentation the SAO would have preferred to concluding licensees began operating without proving compliance. As DHSS has explained to the SAO, where the rigorous commencement inspection process ended with outstanding issues in need of correction, DHSS staff worked with licensees to ensure issues were addressed, and the same is true for other inspection types. The methods of review to ensure remediation included receipt and review of documents, review of security camera footage, phone calls, reports, and occasionally follow-up site visits. Once addressed, DHSS issued a letter granting approval to operate. The letter is the documentation that the licensee complied, and provision of such a letter resolves the majority of the instances where the SAO claims DHSS should have had more documentation showing final verification of compliance.

Finding 3.2 Inventory inspections have been limited

Below is a non-exhaustive list of errors for this section of the report that was provided to the SAO but was not addressed:

- The SAO's finding states "DCR employees did not perform reviews of product inventory until February 2022, allowing licensees to operate for years without ensuring their products were accounted for in Metrc and not being diverted to illicit gray and black markets." This is an egregiously inaccurate statement. Physical inspections are not the primary mechanism to prevent inversion and diversion, and in fact, they are highly ineffective at detecting inversion and diversion. The gold standard in cannabis regulation for

ensuring product is not being diverted is analysis of seed-to-sale tracking data, such as waste weights and biomass conversion ratios. Even 24/7 remote camera access requirements are more effective at preventing and detecting inversion and diversion than periodic inventory inspections. DHSS is not saying onsite inventory inspections have no value and has in fact incorporated inspections for that purpose in the periodic inspection rotation. What is false, and severely damaging to the public trust, is that any lack of a particular type of onsite inspection means DHSS allowed licensees to operate for years without ensuring product was not being inverted or diverted. DHSS did, in fact, monitor for and detect indications of inversion and diversion throughout the life of the program. The SAO's statement is demonstrably false and, in fact, dangerous, as wide publication of DHSS' thorough oversight and the significant enforcement actions (revocations and recalls) for noncompliance in this area is one of the best methods for discouraging inversion and diversion. Publishing the (wildly inaccurate) finding that DHSS is not monitoring for inversion and diversion creates new risk that licensees will attempt these actions.

- The SAO's finding states "The DCR did not prioritize performing inventory inspections until 2023, after many licensees had already been operating for 2 to 3 years. While licensee personnel indicated they perform internal inventory counts daily, weekly, and monthly, and report any issues to a DHSS compliance officer, this control alone is not sufficient to prevent or detect inventory issues because licensees are unlikely to self-report intentional inventory violations." DHSS agrees relying on licensee self-analysis would be insufficient to detect inventory issues, and as explained in detail, that is not what has occurred.

- The SAO's finding states "Comprehensive inventory inspections are necessary to ensure compliance with these requirements, and to ensure product is accounted for and not being diverted into illicit gray and black markets, or otherwise processed improperly." Onsite inventory-specific inspections are valuable as one tool of many, but they are not necessary to ensure compliance with the cited rules and are not necessary to ensure product is not being diverted. To say otherwise reveals an inexpert point of view.

- Before adding inventory-specific physical inspections to its roster of quarterly inspections in 2023, DHSS ensured inventory control with deeply layered oversight, beginning even before commencement inspections. An abbreviated list of oversight activities before 2023 includes:

  1) Ensured before and during commencement that facilities were constructed compliantly and prepared for DHSS oversight – verified square footage for flowering plant spaces (trays, racks, tiers, walkways, etc.) and calculated number of plants expected for that space; verified required number of cameras and camera angles; verified remote access capability; verified waste log templates included time and camera angles at time of waste.

  2) Ensured facility staff was equipped to conduct proper inventory control – verified applicable standard operating procedures were in place and training was conducted in processes and proper use of tracking systems.

  3) Conducted remote monitoring through security footage review, both regular and spot checks, and utilized real time and historical footage to investigate potential issues.

  4) Conducted remote monitoring through data review – virtual transfers, test result changes, yield ratios, package adjustments, waste weights, etc.

  5) Routine and surprise inspections.

  6) Complaint investigations.

DHSS Response to DCR Performance Audit
January 7, 2026

Additional responses:

1. The SAO's report claims "DCR employees did not perform reviews of product inventory until February 2022, allowing licensees to operate for years without ensuring their products were accounted for in Metrc and not being diverted to illicit gray and black markets."

- The first marijuana facilities were operational in June 2020 with 43 approved to operate in 2020 and 265 in 2021. In addition to on-site inventory inspections, DHSS monitored seed-to-sale tracking data, communicated with licensees through email and phones for compliance oversight, and conducted inspections by remotely monitoring extensive real time and historic facility security camera footage.

2. The SAO's report claims "The DCR did not prioritize performing inventory inspections until 2023, after many licensees had already been operating for 2 to 3 years. While licensee personnel indicated they perform internal inventory counts daily, weekly, and monthly, and report any issues to a DCR compliance officer, this control alone is not sufficient to prevent or detect inventory issues because licensees are unlikely to self-report intentional inventory violations."

   DHSS does not rely on licensees' self-reporting for inventory control and agrees that if that was the only control, it would not be sufficient. The requirement that licensees conduct regular reviews of their inventory is one of many layers of controls.

- DHSS has always prioritized inventory inspections. As explained here and throughout the auditing process, DHSS inspects inventory in many ways and continues to improve on these processes.

3. The explanation of how DHSS ensured inventory control with deeply layered oversight was provided to the SAO during the audit process, further clarified in DHSS's response to this finding in the SAO's initial final report draft, and discussed twice after DHSS received the SAO's initial final report draft. DHSS has made extensive efforts to provide detailed information, based on expertise DHSS has, and the SAO does not, but the SAO continues to hold a narrow view on standards of inventory control that is not applicable to cannabis regulation under Missouri law. Again, this finding is not accurate and misrepresents the robust inventory controls DHSS has utilized through the life of this program.

Finding 3.3 State regulations do not ensure confidentiality of adult-use user data

Below is a non-exhaustive list of errors for this section of the report that was provided to the SAO but was not addressed:

- The SAO's finding states "Dispensaries retain confidential information from customers without obtaining consent from the customer to retain this information." Many dispensaries obtain consent to retain information. If the SAO determined not all do, then the report should say "some" dispensaries do not obtain consent. However, DHSS has not reviewed any evidence that some dispensaries do not obtain consent, and neither DHSS nor licensees have been given an opportunity to clarify the SAO's understanding on this point.
- The SAO's finding states "In a survey we conducted with the licensees, 38 of 45 respondent dispensaries stated they retain adult user personal information." DHSS was not provided this data to review for accuracy or clarifications.

Additional responses:

1. DHSS does not require data to be retained from consumers and in fact cannot require such retention, per Article XIV of the Missouri Constitution. Licensees are required to comply with all applicable local, state, and federal regulations, such as RSMo § 407.1500.1. When issues are discovered, DHSS may address within its authority. The additional collection outside of requirements for age verification is a business decision of the dispensary, a choice of the consumer, and subject to any existing data privacy requirements.

2. The SAO's report states that "modification of this regulation is needed to clarify there is not an expectation of retention of personal customer information by the licensee." DHSS did not establish a regulation to require the collection of this data, and its rules do not imply a requirement to do so.

Finding 3.4 Controls to ensure product purchase limits need improvement

Response:

1. Though instances of overselling are rare, DHSS has now developed a report in Metrc to more frequently review for dispensary licensees that are overselling to consumers. DHSS will take appropriate enforcement action if such instances are identified.

Finding 4. Marijuana Revenues Have Not Been Distributed in Accordance with the Constitution

DHSS does not have a position on this finding as the SAO stated that it was not a finding directed at DHSS.

Finding 5. Microbusiness Licensing Process Resulted in Approvals to Noncompliant Applicants

The SAO's report claims that DHSS has approved microbusiness licensees that were not compliant with constitutional requirements. DHSS has been consistent in application and remediation of location issues for all licensees. The circumstances underlying these findings have been misconstrued.

The Microbusiness program was established by DHSS through authority within Article XIV and is designed to provide a path to facility ownership for individuals who might not otherwise easily access that opportunity. Applicants in the microbusiness program may not have the resources to ensure a proposed location is compliant prior to becoming a licensee. As applicants are selected through a lottery process, it is not expected that applicants make any investment in owning, leasing, or contracting for the proposed location at the time of application. Because of this, it has been DHSS's practice, barring unusual circumstances, to allow licensees to remedy violations related to proposed locations, which was communicated to applicants ahead of the application rounds for microbusiness licenses.

If the proposed location provided in the application does not meet the requirements of both DHSS and local government, the licensee will be in violation. However, licensees may submit a business change application or documentation demonstrating compliance with location ordinances and thereby come into compliance with all location requirements. The microbusiness applicants noted by the SAO have either come into compliance with the regulation through appropriate processes or have not maintained their license.

Finding 5.1 Licenses awarded to facilities not in compliance with distance requirements

The SAO raises concerns with the locations of two microbusiness licensees.

Response:

1. On July 31, 2024, MBW000001 received approval to operate in Rothville, MO. On May 13, 2025, after discovering that the licensee was in violation, DHSS issued an initial notice of violation (INOV) to the licensee for non-compliance with 19 CSR 100-1.100(1)(C). The remedial actions required the Licensee to come into compliance through a business change application or submission of documentation demonstrating compliance with local ordinances. The Licensee provided documentation from a Rothville Board of Trustees meeting where the Board waived certain location requirements applicable to a cannabis business to clarify their approval for MBW000001 to operate in its existing location. On July 9, 2025, DHSS issued a letter to the Licensee noting that the May 13, 2025 INOV had been satisfied. Therefore, MBW000001 is in compliance with location requirements, resolving this matter.

2. The SAO claims another Licensee was located in an impermissible location but was revoked for unrelated reasons. Though the SAO's claim is vague, DHSS believes the SAO is referring to MBW000020. The License was revoked both for noncompliance with distance requirements and another, unrelated violation that, unlike a distance requirement violation, could not be remedied.

3. DHSS procedures for verifying licensees' compliance with state and local requirements for distance from churches, schools, and daycares have been effective, as demonstrated by the records available to the SAO. This is true for microbusiness licensees and all other license types throughout the administration of the cannabis program.

Finding 5.2 DCR did not ensure adequate review of local zoning compliance

The SAO notes a microbusiness wholesale facility, MBW000028, was located where it would not be permitted by local zoning regulations to conduct manufacturing.

Response:

1. Local zoning regulations did allow for cultivation in the proposed facility location for MBW000028, which is one of the activities a microbusiness wholesaler may choose to conduct. Microbusiness wholesalers do not have to conduct manufacturing, and most do not. The Licensee has since moved out of the county it was in, so to the extent there would be an issue with this Licensee's location, the matter is resolved.

Finding 6. DCR Product Data Was Not Used by DOR for Marijuana Tax Audits

The SAO claims that DHSS and the Department of Revenue (DOR) have not coordinated to allow the DOR to use Metrc data to conduct tax audits of marijuana dispensary revenues. This finding is false. DHSS has coordinated and continues to coordinate with DOR to ensure proper tax collection, including through sharing aggregated sales data.

Response:

1. The sales data in the statewide track and trace system is protected as proprietary business information within the confines of Article XIV and is a closed record. DHSS has shared aggregated sales information with DOR as requested and has understood this to be sufficient for their needs. DHSS will continue to offer to share information in aggregate and report format as there are contractual, logistical, and legal barriers to opening the entire tracking system to another executive agency.
2. Since September 2024, DHSS and the DOR have coordinated to ensure licensees are responsive to delinquent taxes and/or filings. DHSS continues to coordinate with DOR on these efforts.

Report Recommendations

As detailed above, DHSS disputes the majority of the findings on which the below recommendations are based. However, the recommendations themselves are reasonable, and in most cases, DHSS is already operating as the recommendations describe.

Recommendation 1.1 – The DCR ensure adequate documentation for future application evaluation processes is maintained, take steps to ensure the integrity of future blind scoring processes is maintained, and allow for agency oversight of significant agency operations and decisions.

DCR Response 1.1 –DHSS has always ensured adequate documentation for cannabis application evaluation processes and will continue to do so. There is also extensive evidence that DHSS ensured the integrity of the initial blind scoring process for licensure and absolutely no evidence otherwise. Furthermore, DHSS cannot implement any changes to the blind scoring process in the future because the law requiring blind scoring was repealed in 2022 by constitutional amendment. All future licenses must be

issued by lottery. Finally, DHSS has always ensured appropriate oversight of significant agency operations and decisions, and the SAO's report offers no reliable information on which to conclude otherwise.

Recommendation 1.2 – The DCR perform adequate oversight of vendors in the future to ensure agreed-upon controls are implemented as the vendor completes the project.

DCR Response 1.2 – DHSS has always performed adequate oversight of vendors to ensure all requirements are met and performed according to expectations, and it will continue to do so.

Recommendation 1.3 – The DCR ensure future application processes are carried out in a consistent and transparent manner.

DCR Response 1.3 – DHSS has always ensured cannabis application processes are carried out in a consistent and transparent manner and will continue to do so.

Recommendation 2 – The DCR modify internal systems to track the "complete" date of license ownership change applications, and monitor compliance with the 60-day requirement established in state regulation. The DCR should also consider formally communicating the "complete" status to the licensees to allow them to monitor the DCR's compliance with the required time limit.

DCR Response 2 – DHSS already modified internal systems to track the "complete" date when the 60-, 90-, and 120-day timeframes were established in rule in July 2023. DHSS will consider notifying licensees of the "complete" date. In practice, this date will be little different than the date on which licensees receive notice of final resolution as that is when DHSS has finally determined no additional documentation is needed. What is more useful to licensees is DHSS's willingness to provide status updates at any point in the process; DHSS does and will continue to provide status updates to licensees when requested.

Recommendation 3.1 – The DCR continue to develop internal processes to ensure inspections are completed on schedule, and ensure any identified noncompliance is communicated and addressed on a timely basis.

DCR Response 3.1 – DHSS already has processes in place to ensure inspections are completed as scheduled. Per current practice, all operational licensees received at least one inspection each quarter in 2025 with notification of any noncompliance. DHSS will continue to improve these processes.

Recommendation 3.2 – The DCR continue to prioritize inventory inspections, and take the steps necessary to ensure inventory inspections are completed regularly for all appropriate licensees.

DCR Response 3.2 – Since inception, DHSS has prioritized and continues to prioritize inventory control through review of the statewide track and trace system, the state's official inventory record. There has never been a time DHSS did not prioritize oversight of licensees for the purpose of preventing or detecting inversion and diversion of marijuana product. DHSS also conducts a variety of inspections that ensure physical inventory is accurately represented in the statewide track and trace system as seed-to-sale tracking is the foundation for ensuring marijuana product is safe for patients and consumers.

Recommendation 3.3 – The DCR develop rules to ensure dispensaries are obtaining consent from adult-use customers prior to collecting and maintaining personal information, and consider clarifying state rules to clarify that retention of personal information is not required to comply with transaction limits.

DCR Response 3.3 – DHSS does not need to develop rules to ensure dispensaries are obtaining consent as that requirement is already established within the current rule which requires licensees to comply with all applicable local, state, and federal regulations such as RSMo § 407.1500.1. Additionally, DHSS did not establish a regulation to require the collection of this data and the existing rules do not implicitly require

or encourage such collection, either. To DHSS's knowledge, this has not been a point of confusion, but DHSS will consider guidance to licensees.

Recommendation 3.4 – The DCR integrate real-time transaction analysis capabilities into Metrc, and require dispensaries to implement internal controls that automatically prevent over-limit transactions. Additionally, the DCR should review historical Metrc data for patterns of over-limit sales transactions and follow up with appropriate enforcement actions.

DCR Response 3.4 – Metrc functionality currently does not prevent over-limit transactions, and it is the responsibility of licensees to comply with the rule, as is the cases with many other rules. Rules require dispensary licensees to implement internal controls to prevent overselling and to set out staff training requirements to avoid non-compliance with rules. Additionally, DHSS has developed a query to identify the rare occurrence of dispensary licensees overselling to patients or consumer and will follow-up as necessary with appropriate enforcement actions. Periodic use of this query is a much more cost-efficient solution for this issue than developing new technology.

Recommendation 5.1 – The DCR revise procedures to ensure measurements are conducted using accurate GIS tools and in accordance with demarcation points defined in Article XIV, Section 2.5(4) of the Missouri Constitution.

DCR Response 5.1 – DHSS has been highly successful in verifying distance requirements for cannabis licensee locations but will continue to improve procedures for doing so.

Recommendation – 5.2 – The DCR improve procedures to verify licensee compliance with local zoning regulations.

DCR Response 5.2 – DHSS has been highly successful in verifying licensee compliance with local zoning regulations but will continue to improve processes for doing so.

Recommendation 6 – The DCR coordinate with the DOR to ensure Metrc reports are available as a cross-verification tool in marijuana tax compliance reviews, and DOR auditors have access to Metrc data and are trained on system functionality to ensure its effective use in DOR's audit processes.

DCR Response 6 – The individualized sales data in the statewide track and trace system is protected as proprietary business information within the confines of the Article XIV and is a closed record. DCR has shared aggregated sales information with DOR as requested and has understood this to be sufficient for their needs. DCR will continue to offer to share information in aggregate and report format as there are contractual, logistical, and legal barriers to opening the entire tracking system to another executive agency.

Sincerely,

Sarah Willson, MBA, BSN, RN, FACHE
Director
Department of Health and Senior Services

Amy Moore, Director
Division of Cannabis Regulation

Mike Kehoe
Governor

Kenneth J. Zellers
Commissioner

Dan Haug
Director
Division of Budget and Planning

State of Missouri
Office of Administration
Division of Budget and Planning
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Wednesday, December 17, 2025

The Honorable Scott Fitzpatrick
Missouri State Auditor
Missouri State Auditor's Office
PO Box 869
Jefferson City, MO 65102

Dear Mr. Fitzpatrick,

The Office of Administration acknowledges the recommendation in the Missouri State Auditor's report on the Marijuana Program. The OA appreciates the opportunity to respond to the audit, correct factual inaccuracies, and inform the public on the methodologies of the Office of Administration, Division of Budget and Planning (OA – B&P).

The Auditor's report provided the following recommendation:

> The OA and Missouri General Assembly evaluate the manner in which revenues in the [Missouri] Veteran Health and Care Fund, and the Veterans, Health, and Community Reinvestment Fund are distributed, and ensure the funding is distributed in accordance with the Missouri Constitution to ensure the programs these funds are dedicated for have timely access to the funding.

The OA-B&P partially agrees with the Auditor's recommendations.

Neither Article XIV, § 1 of the Missouri Constitution, enacted in 2018, nor Article XIV, § 2 of the Missouri Constitution, enacted in 2022, contain formulas or procedures for transferring funds to support program funding. As a result, the OA-B&P has utilized an arrears-based transfer methodology when making budget recommendations to the Governor. This methodology is similar to how other Constitutional funds such as the Budget Reserve Fund and the Facilities Maintenance Reserve Fund are managed. Any existing cash balance is evidence of a cautious and deliberative approach towards spending money collected from a new (and potentially unpredictable) source of revenue. The OA-B&P has prioritized sustainable funding commitments over maximum fund allocations to ensure that the State can fulfill its long-term commitment to individuals with substance use disorders, the Public Defender System, and the Missouri Veterans Commission.

The OA-B&P disagrees with the Auditor's recommendations concerning accelerating transfers to the Missouri Veterans' Health and Care Fund as the cash balance continues to decline as fewer Missourians purchase medical marijuana under Article XIV, § 1. At year end for fiscal year 2025, the Missouri Veterans Health and Care Fund had a cash balance of approximately $12.2 million, and the OA-B&P expects that the FY 2026 ending cash balance will not exceed $3.4 million. At year end for FY 2025, the Veterans, Health, and Community Reinvestment Fund had a cash balance of approximately $77 million, however, this number does not reflect transfers totaling $60 million that will occur by the end of FY 2026. The OA-B&P anticipates that revenues for both funds will stabilize in FY 2027 and that will be taken into consideration for future budget recommendations.

By the end of FY 2026, the OA-B&P expects that more than $128M will have been transferred to support the Missouri Veterans Commission, Substance Use Disorder programs, and the Missouri Public Defender System since the enactment of Article XIV, § 2. The OA-B&P agrees there is a cash balance in the Missouri Veteran Health and Care Fund and the Veterans, Health, and Community Reinvestment Fund. Such a cash balance is not only allowable under the Constitution, it is part of a cautious budget strategy that prioritizes sustainable funding over short-term cash injections. The cash balance in the fund is reasonable under the Missouri Constitution upon evaluation of the projected revenues, actual revenues, projected expenses, actual expenses, and anticipated dispersals. The OA – B&P is obligated to follow the laws passed by the General Assembly and signed by the Governor, including appropriations bills. The OA B&P agrees to continue to monitor the cash balances in all funds as the Marijuana Program matures and make reasonable adjustments in its recommendations to the Governor and General Assembly as more historical trend data becomes available.

If you have any questions, please contact me at (573) 751-2345 or Dan.Haug@oa.mo.gov.

Sincerely,

Daniel D. Haug

Dan Haug
Director
Office of Administration, Division of Budget & Planning

Appendix C

Marijuana Program
Statement of Receipts and Disbursements by Fund

	Year Ended June 30,							
	2019	2020	2021	2022	2023	2024	2025	Totals
Veteran Health and Care Fund (0606)								
Receipts								
Medical marijuana tax	$ 0	0	2,004,425	11,398,720	15,966,949	8,840,293	7,268,116	45,478,503
Medical marijuana fees	3,958,000	21,338,720	11,887,562	14,187,428	9,599,367	2,051,380	775,131	63,797,588
Penalties	0	0	0	45,039	165,285	108,472	376,000	694,796
Other income	20,496	192,004	79,987	73,285	424,380	735,257	603,071	2,128,480
Total receipts	3,978,496	21,530,724	13,971,974	25,704,472	26,155,981	11,735,402	9,022,318	112,099,367
Disbursements								
Office of Administration	102,216	1,008,021	1,481,510	1,785,340	1,471,230	1,750,000	927,388	8,525,705
DHSS salaries and other operating expenses	585,014	6,276,380	9,394,757	8,492,099	6,497,400	4,156,129	2,998,609	38,400,388
Veterans Commission	0	0	2,135,510	11,843,310	13,000,000	13,000,000	13,000,000	52,978,820
Total disbursements	687,230	7,284,401	13,011,777	22,120,749	20,968,630	18,906,129	16,925,997	99,904,913
Receipts over/(under) disbursements	3,291,266	14,246,323	960,197	3,583,723	5,187,351	(7,170,727)	(7,903,679)	12,194,454
Cash and investments, July 1	0	3,291,266	17,537,589	18,497,786	22,081,509	27,268,860	20,098,133	
Cash and Investments July 30	$ 3,291,266	17,537,589	18,497,786	22,081,509	27,268,860	20,098,133	12,194,454	
Veterans, Health, and Community Reinvestment Fund (0608)								
Receipts								
Recreational marijuana tax	$ 0	0	0	0	17,423,704	67,913,887	78,849,219	164,186,810
Recreational marijuana fees	0	0	0	0	4,777,720	10,777,481	5,094,885	20,650,086
Other income	0	0	0	0	49,924	1,696,532	2,271,206	4,017,662
Total receipts	0	0	0	0	22,251,348	80,387,900	86,215,310	188,854,558
Disbursements								
Office of Administration	0	0	0	0	894,330	4,046,538	5,895,852	10,836,720
Office of State Courts Administrator	0	0	0	0	495,476	1,496,921	1,660,000	3,652,397
Circuit courts					371,228	1,218,273	874,857	2,464,358
DHSS salaries and other operating expenses	0	0	0	0	1,424,094	11,284,357	12,495,634	25,204,085
Veterans Commission	0	0	0	0	0	6,355,407	20,780,603	27,136,010
Transfer to DHSS for substance abuse grants						6,355,407	20,780,603	27,136,010
Transfer to Public Defender system	0	0	0	0	0	6,355,407	9,098,619	15,454,026
Total disbursements	0	0	0	0	3,185,128	37,112,311	71,586,168	111,883,606
Receipts over (under) disbursements	0	0	0	0	19,066,220	43,275,589	14,629,142	76,970,952
Cash and investments, July 1	0	0	0	0	0	19,066,220	62,341,810	
Cash and investments July 30	$ 0	0	0	0	19,066,220	62,341,810	76,970,952	
Total receipts for both funds	$ 3,978,496	21,530,724	13,971,974	25,704,472	48,407,329	92,123,302	95,237,628	300,953,925
Total disbursements for both funds	$ 687,230	7,284,401	13,011,777	22,120,749	24,153,758	56,018,440	88,512,165	211,788,519
Total receipts over/(under) disbursements	3,291,266	14,246,323	960,197	3,583,723	24,253,571	36,104,862	6,725,463	89,165,406

Note: State fund numbers are shown in parentheses after the fund names.