



MEMORANDUM

TO: CANNABIS REGULATORY COMMISSION BOARD
FROM: CHRISTOPHER RIGGS, ACTING EXECUTIVE DIRECTOR
SUBJECT: NICHE, LLC'S CERTIFICATION TO EXPAND
DATE: SEPTEMBER 19, 2024

BACKGROUND: On July 10, 2024, Micci J. Weiss, attorney for Niche, LLC (“Niche”), submitted certifications on behalf of Niche requesting to expand the operations of their Alternative Treatment Center to include an adult-use Class 1 Cultivator at their City of North Bergen facility.

Niche opened their doors and commenced operations as a medical cultivator on May 27, 2024.

In summary, Niche is requesting approval of the following for expansion:

- CLASS 1 CULTIVATOR, 2600 71ST STREET, NORTH BERGEN, NEW JERSEY

AUTHORITY: N.J.S.A. 24:6I-46a(3)(a)(ii) establishes that the CRC shall not require the submission of an application for licensure to operate as a personal use cannabis business, as the application requirement is deemed satisfied by the ATC’s previously approved permit application. However, that section also sets forth that an ATC shall not begin to operate as any class of personal use cannabis establishment, or as a cannabis distributor or delivery service, until the CRC certifies that the ATC has sufficient quantities of medicinal cannabis and medicinal cannabis products available to meet the reasonably anticipated needs of registered qualifying patients in accordance with the law. The CRC issued guidance and established a certification process to determine whether an ATC has met the standard to expand its operations into the personal use cannabis market.

COMPLETENESS REVIEW: N.J.A.C. 17:30-7.1(b) establishes the necessary submissions that an ATC must provide to the Commission in order to be considered for engaging in the cultivation, manufacturing, retailing, wholesaling, distributing, or delivery of cannabis items for personal use. The chart below outlines the required documents for submission to the CRC for ATC expansion and whether the documents were received by the CRC. A response of “Y” indicates that a document was received.



REQUIRED DOCUMENTATION SUBMISSION	RECEIVED (Y/N)
A letter of intent notifying the Commission of the licenses sought by the ATC	Y
Municipal approval of each class of license sought by the ATC, including:	Y
The ordinance(s) adopted by the municipality authorizing the operation of each class of cannabis business license being sought by the ATC, or a statement explaining that there exists no municipal ordinance prohibiting the class of cannabis business license and, thus, all classes are allowed	Y
An attestation by the ATC that, as a condition of licensure, it shall comply with all restrictions on the location, manner, and times of operation of cannabis businesses established by the municipality;	Y
Zoning approval, a resolution from the municipality's governing body, or a letter from the highest-ranking municipal official, as applicable, that authorizes the ATC to engage in the cultivation, manufacturing, retailing, wholesaling, distributing, or delivery of cannabis items at the ATCs current premises	Y
A certification to the Commission that the alternative treatment center has sufficient quantities of medical cannabis and medical cannabis products available to meet the reasonably anticipated needs of registered qualifying patients	Y
A certification to the Commission that the alternative treatment center shall not make operational changes that reduce access to medical cannabis for current and newly registered qualifying patients in order to operate a cannabis establishment or delivery service. Such certification shall include a detailed plan for prioritizing and meeting the needs of registered qualifying patients	Y
A list of owners, principals, management services contractors, financial sources, and vendor-contractors associated with the proposed cultivation, manufacturing, retailing, wholesaling, distributing, or delivery of cannabis items, as applicable	Y
An attestation signed by a bona fide labor organization stating that the ATC has entered into a labor peace agreement with such bona fide labor organization	Y
Any other information the Commission deems relevant in determining whether to accept the ATC's certifications	N/A



COMMISSION ASSESSMENT: N.J.A.C. 17:30-7.1(c) sets forth the assessment required to be conducted by the Commission in order to accept ATC certifications.

ASSESSMENT CRITERIA	ACCEPTABLE (Y/N)
Total qualifying patient enrollment in the Statewide medical cannabis program	Y
Qualifying patient enrollment at the ATC	Y
Statewide inventory and inventory of the ATC	Y
Statewide sales of medical cannabis and medical cannabis products, and sales at the ATC	Y
The current medical cannabis canopy of the ATC	Y
The total medical cannabis canopy needed to serve the ATCs qualifying patients on an ongoing basis	Y
The total medical cannabis canopy needed to serve the total number of qualifying patients in the medical cannabis program on an ongoing basis	Y
The operational plans and capacity of the ATC to maintain or expand medical cannabis access for qualifying patients	Y

IN-DEPTH REVIEW: N.J.A.C. 17:30-7.1(d) requires that the Commission only accept a certification from an ATC when an ATC has proven, by clear and convincing evidence that engaging in the cultivation, manufacturing, retailing, wholesaling, distributing, or delivery of cannabis items, as applicable, shall not impact access for registered qualifying medical cannabis patients and shall not impact the availability of medical cannabis or medical cannabis products.

RECOMMENDATION: At this time, NJ-CRC OCI Staff, based on the reasoning below, recommends approval of the certifications from Niche to expand its operations to adult use as follows:

- CLASS 1 CULTIVATOR, 2600 71ST STREET, NORTH BERGEN, NEW JERSEY

Niche has submitted all the requisite information and documentation to support its certifications that it will continue to ensure patient access while also serving the adult use consumer market. All requisite resolutions and ordinances have been provided and reviewed by OCI staff and the Director.

APPENDIX

N.J. Stat. Ann. § 24:6I-46a.(3)(a)(ii), (iii), and (iv)

(ii) For each alternative treatment center deemed to have licenses pursuant to subsubparagraph (i) of this subparagraph, the commission shall not require the submission of an application for licensure, as the application requirement is deemed satisfied by the alternative treatment center's previously approved permit application that was submitted to the Department of Health or to the commission pursuant to section 7 of P.L.2009, c. 307 (C.24:6I-7), but the alternative treatment center shall not begin to operate as any class of cannabis establishment distributor, or delivery service until the alternative treatment center has submitted a written approval for a proposed cannabis establishment distributor, or delivery service from the municipality in which the proposed establishment distributor, or delivery service is to be located, which approval is based on a determination that the proposed establishment distributor, or delivery service complies with the municipality's restrictions on the number of establishments distributor, or delivery services, as well as the location, manner, and times of operation of establishments or distributors enacted pursuant to section 31 of P.L.2021, c. 16 (C.24:6I-45). The commission shall thereafter only issue the initial license to the alternative treatment center for a cannabis establishment of the appropriate class, or for a cannabis distributor or delivery service, once the commission certifies that it has sufficient quantities of medical cannabis and medical cannabis products available to meet the reasonably anticipated needs of registered qualifying patients in accordance with subsubparagraph (iii) of this subparagraph. The commission shall begin accepting municipal approvals from alternative treatment centers beginning on the date of adoption of the commission's initial rules and regulations pursuant to subparagraph (a) of paragraph (1) of subsection d. of section 6 of P.L.2021, c. 16 (C.24:6I-34).

(iii) An alternative treatment center with approval from a municipality pursuant to subsubparagraph (ii) of this subparagraph shall not engage in activities related to the growing, manufacturing, wholesaling, transporting or delivering of cannabis or cannabis items until it has certified to the commission that that it has sufficient quantities of medical cannabis and medical cannabis products available to meet the reasonably anticipated needs of registered qualifying patients, and the commission has accepted the alternative treatment center's certification, which acceptance is conditioned on the commission's review of the alternative treatment center as set forth in subsubparagraph (iv) of this subparagraph. Upon acceptance of the certification, the commission shall issue the initial license to the alternative treatment center for a cannabis establishment of the appropriate class or for a cannabis distributor or delivery service.

Notwithstanding the date determined by the commission pursuant to paragraph (2) of subsection d. of section 6 of P.L.2021, c. 16 (C.24:6I-34) to be the first date on which cannabis retailers issued licenses and conditional licenses begin retail sales of personal use cannabis items, an alternate treatment center, if approved by the commission to operate as a cannabis retailer, may begin to engage in the retail sale of cannabis items on any date after the date that the commission adopts its initial rules and regulations pursuant to subparagraph (a) of paragraph (1) of subsection d. of section 6 of that act (C.24:6I-34), so long as it has certified to the commission that it has sufficient

quantities of medical cannabis and, if applicable, medical cannabis products available to meet the reasonably anticipated needs of registered qualifying patients, and the commission has accepted the alternative treatment center's certification, which acceptance is conditioned on the commission's review of the alternative treatment center as set forth in subparagraph (iv) of this subparagraph. Upon acceptance of the certification, the commission shall issue the initial cannabis retailer license to the alternative treatment center for engaging in the retail sale of cannabis items.

(iv) An alternative treatment center issued a license for a cannabis establishment or delivery service shall be authorized to use the same premises for all activities authorized under P.L.2021, c. 16 (C.24:6I-31 et al.) and the “Jake Honig Compassionate Use Medical Cannabis Act,” P.L.2009, c. 307 (C.24:6I-1 et al.), without being required to establish or maintain any physical barriers or separations between operations related to the medical use of cannabis and operations related to personal use of cannabis items, provided that the alternative treatment center shall be required to certify that it has sufficient quantities of medical cannabis and, if applicable, medical cannabis products available to meet the reasonably anticipated needs of registered qualifying patients, as set forth in subparagraph (ii) or (iii) of this subparagraph, and only if accepted by the commission, which is a condition for licensure as a cannabis establishment of the appropriate class or as a cannabis delivery service.

In determining whether to accept, pursuant to this subparagraph, an alternative treatment center's certification that it has sufficient quantities of medical cannabis or medical cannabis products available to meet the reasonably anticipated needs of registered qualifying patients, the commission shall assess patient enrollment, inventory, sales of medical cannabis and medical cannabis products, and any other factors determined by the commission through regulation.

As a condition of licensure following acceptance of a certification, an alternative treatment center shall meet the anticipated treatment needs of registered qualifying patients before meeting the retail requests of cannabis consumers, and the alternative treatment center shall not make operational changes that reduce access to medical cannabis for registered qualifying patients in order to operate a cannabis establishment or delivery service. If an alternative treatment center is found by the commission to not have sufficient quantities of medical cannabis or medical cannabis products available to meet the reasonably anticipated needs of qualified patients, the commission may issue fines, limit retail or other sales, temporarily suspend the alternative treatment center's cannabis establishment, distributor, or delivery service license, or issue any other penalties determined by the commission through regulation.

17:30–7.1 Expanded alternative treatment centers

(a) Pursuant to N.J.S.A. 24:6I–46.a(e)(a)(ii), the Commission shall not require a full application pursuant to N.J.A.C. 17:30–7.10 from an alternative treatment center in order for the ATC to begin engaging in the cultivation, manufacturing, retailing, wholesaling, distributing, or delivery of cannabis items, as applicable.

(b) Notwithstanding (a) above, an ATC that wishes to engage in the cultivation, manufacturing, retailing, wholesaling, distributing, or delivery of cannabis items, as applicable, shall submit to the Commission:

1. A letter of intent notifying the Commission of the licenses sought by the ATC;
2. Municipal approval for each class of license sought by the ATC, which shall include:
 - i. The ordinance(s) adopted by the municipality authorizing the operation of each class of cannabis business license being sought by the ATC, or a statement explaining that there exists no municipal ordinance prohibiting the class of cannabis business license and, thus, all classes are allowed pursuant to N.J.S.A. 24:6I-45;
 - ii. An attestation by the ATC that, as a condition of licensure, it shall comply with all restrictions on the location, manner, and times of operation of cannabis businesses established by the municipality; and
 - iii. Zoning approval, a resolution from the municipality's governing body, or a letter from the highest-ranking municipal official, as applicable, that authorizes the ATC to engage in the cultivation, manufacturing, retailing, wholesaling, distributing, or delivery of cannabis items at the ATC's current premises;
3. A certification to the Commission that the alternative treatment center has sufficient quantities of medical cannabis and medical cannabis products available to meet the reasonably anticipated needs of registered qualifying patients;
4. A certification to the Commission that the alternative treatment center shall not make operational changes that reduce access to medical cannabis for current and newly registered qualifying patients in order to operate a cannabis establishment or delivery service. Such certification shall include a detailed plan for prioritizing and meeting the needs of registered qualifying patients;
5. A list of owners, principals, management services contractors, financial sources, and vendor-contractors associated with the proposed cultivation, manufacturing, retailing, wholesaling, distributing, or delivery of cannabis items, as applicable.
 - i. Any new owners, principals, management services contractors, financial sources, or vendor-contractors may be required to comply with the provisions at N.J.A.C. 17:30-7.11, 7.12, and 7.13;
6. An attestation signed by a bona fide labor organization stating that the ATC has entered into a labor peace agreement with such bona fide labor organization; and
7. Any other information the Commission deems relevant in determining whether to accept the ATC's certifications.

(c) In determining whether to accept the ATC's certifications pursuant to (b) above, the Commission shall assess:

1. Total qualifying patient enrollment in the Statewide medical cannabis program;
2. Qualifying patient enrollment at the ATC;

3. Statewide inventory and inventory of the ATC;
4. Statewide sales of medical cannabis and medical cannabis products, and sales at the ATC;
5. The current medical cannabis canopy of the ATC;
6. The total medical cannabis canopy needed to serve the ATC's qualifying patients on an ongoing basis;
7. The total medical cannabis canopy needed to serve the total number of qualifying patients in the medical cannabis program on an ongoing basis; and
8. The operational plans and capacity of the ATC to maintain or expand medical cannabis access for qualifying patients.

(d) The Commission shall only accept a certification from an ATC pursuant to (c) above, when an ATC has proven, by clear and convincing evidence that engaging in the cultivation, manufacturing, retailing, wholesaling, distributing, or delivery of cannabis items, as applicable, shall not impact access for registered qualifying medical cannabis patients and shall not impact the availability of medical cannabis or medical cannabis products.

(e) The Commission shall approve an expanded ATC in accordance with this subchapter where:

1. An ATC has submitted complete and accurate and verifiable information, as determined by the Commission, pursuant to (b) above;
2. The Commission accepts the ATC's certifications, pursuant to (b), (c), and (d) above; and
3. The ATC pays the conversion fee pursuant to N.J.A.C. 17:30-7.17.

(f) The Commission shall issue a written notice of its approval to an expanded ATC.

(g) After the expanded ATC has completed any necessary construction or preparation of an expanded ATC, the expanded ATC shall request an onsite assessment.

(h) The Commission shall conduct an onsite assessment of the expanded ATC and determine whether its premises, operations, and procedures are consistent with its application, and compliant with the Act and this chapter.

(i) If the Commission determines compliance, it shall issue the cannabis license(s) to the expanded ATC.

(j) The Commission may deny an expanded ATC where:

1. The Commission does not accept the ATC's certifications pursuant to (c) and (d) above;
2. The ATC does not meet the requirements of (b) above;

3. The ATC fails to provide information, documentation, and assurances as required pursuant to P.L. 2021, c. 16 (N.J.S.A. 24:6I–31 et seq.), or this subchapter, or as requested by the Commission;
4. The ATC fails to reveal any material fact pertaining to the ATC's certifications; or
5. The ATC supplies information that is untrue or misleading as to a material fact pertaining to the qualification criteria for an expanded ATC.

(k) If an expanded ATC is denied pursuant to this subchapter, the Commission shall provide the denial to the ATC in writing, which shall include:

1. Notice of the denial of the expanded ATC and the specific reason for the denial; and
2. The opportunity to request an administrative hearing within 45 days after the date of the denial.

(l) The final decision on an expanded ATC shall be considered a final agency decision, subject to judicial review by, and of which jurisdiction and venue for such review are vested in, the Appellate Division of the Superior Court pursuant to N.J.A.C. 17:30–17.9.

(m) An expanded ATC is a cannabis business and subject to all provisions of this chapter that are applicable to cannabis businesses.