



## MEMORANDUM

**TO:** Cannabis Regulatory Commission Board

**FROM:** Jeff Brown, Executive Director

**SUBJECT:** Recommendation for Consideration of Alternative Treatment Center Expansion of Operations to Adult Personal-Use

**DATE:** [May 24, 2022](#)

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### BACKGROUND AND SUMMARY

The Cannabis Regulatory Commission's ("Commission" or "CRC") strategy for launching the new Adult Personal-Use (also herein referenced as "recreational") market in a manner that has focused on three (3) primary goals:

1. Strengthen access to medicinal cannabis by issuing new medicinal cannabis permits;
2. Establish a pathway to licensure for new businesses in the recreational cannabis market that puts social equity first; and
3. Work with current medicinal cannabis Alternative Treatment Centers ("ATC") to assess readiness to expand operations to recreational sales.

The CRC has been successful at addressing the first two (2) goals: 1) 44 new medicinal awards were issued in October and December of 2021 for new ATCs to ensure there is adequate ongoing supply in the medicinal cannabis market; and 2) the CRC issued rules for Adult Personal-Use cannabis business licenses in August 2021, launched a new licensure portal for submitting applications on December 15, 2021, and has already issued 68 conditional license awards for new cultivators and manufacturers.

Regarding the third goal, the CRC has conducted a review of the ATC Certifications to expand to recreational sales, and related to that review, has received commitments from each ATC to enact a plan for protecting patient access during transition and for ensuring adequate inventory for patients.

At its April 11, 2022, Special Meeting, the Commission approved seven (7) submissions received from ATCs requesting certification to expand cannabis business operations to include adult personal-use cannabis. Those submissions were submitted by ATCs that received permits in accordance with the original Request for Application ("RFA") process conducted by the Department of Health's Medicinal Marijuana Program (2011 and 2018). At this time, none of the 2019 awardees are permitted to operate in the medicinal market, and have therefore not requested to expand into adult personal-use sales.

This memo provides recommendations for approval for one (1) additional ATC to expand to recreational cannabis, cultivation, production and sales, as well as two (2) additional dispensary locations for ATCs whose initial certifications were approved at the April 11, 2022, Special Meeting.



## AUTHORITY

Statutory – N.J.S.A. 24:6I-46a(3)(a)(ii); Regulatory – N.J.A.C. 17:30-7.1; Guidance – November 23, 2021, Expanded Alternative Treatment Centers memorandum from the Office of the Executive Director. Statutory and regulatory authority are included in Appendix A. The Guidance for ATCs can be found on the Commission’s website.<sup>1</sup>

## INTERNAL PROCESS

Notice was provided to the ATCs through the adoption of the rules at N.J.A.C. 17:30 on August 19, 2021, and through the Executive Director’s November 23, 2021, memorandum that detailed requirements for certifications for Expanded Alternative Treatment Centers to be accepted by the Commission. On February 4, 2022, the Executive Director and Staff held a call with all ATCs that are statutorily permitted to request acceptance as expanded ATCs to answer questions and address concerns.

Initial submissions by ATC were received between December 10, 2021, and January 11, 2022. Due to concerns with regarding necessary canopy and patient access, one of the initial submissions, from GSD NJ LLC/Ayr Wellness, Inc. was not recommended for consideration at the April 11, 2022, Special Meeting. On May 5, 2022, Garden State Dispensary submitted additional materials to support their certification. On May 5, 2022, and May 10, 2022, previously approved ATCs (Ascend New Jersey, LLC and TerrAscend NJ) submitted requests to include additional dispensary locations for expanded operations.

The Office of the Chief Counsel coordinated with ATCs and conducted a completeness review to ensure that all requesting ATCs submitted the following documentation:

1. A letter of intent notifying the Commission of the licenses sought by the ATC;
2. Municipal approval of each class of license sought by the ATC, including:
  - a. 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;
  - b. 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;
  - c. 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;
3. A certification to the Commission that the ATC has sufficient quantities of medicinal cannabis and medicinal cannabis products available to meet the reasonably anticipated needs of registered qualifying patients;

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<sup>1</sup> New Jersey Cannabis Regulatory Commission – Expanded Alternative Treatment Centers Guidance.  
<https://www.nj.gov/cannabis/documents/rules/Memo%20to%20ATCs%20-%20Expanded%20ATC%20Certification%20FINAL.pdf>



4. A certification to the Commission that the ATC shall not make operational changes that reduce access to medicinal 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;
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.

The Office of the Executive Director (“Office”) completed substantive review of the ATC expansion submissions, including the submission of GSD NJ LLC/Ayr Wellness, Inc., before you today. In addition to reviewing submissions, the Office assessed:

1. Total qualifying patient enrollment in the statewide medicinal cannabis program;
2. Qualifying patient enrollment at the ATC;
3. Statewide inventory and inventory of the ATC;
4. Statewide sales of medicinal cannabis and medicinal cannabis products, and sales at the ATC;
5. The current medicinal cannabis canopy of the ATC;
6. The total medicinal cannabis canopy needed to serve the ATCs qualifying patients on an ongoing basis;
7. The total medicinal cannabis canopy needed to serve the total number of qualifying patients in the medicinal cannabis program on an ongoing basis; and
8. The operational plans and capacity of the ATC to maintain or expand medicinal cannabis access for qualifying patients.

The Office also requested and reviewed each ATC’s *Plans for Addressing Equity and Safety*, in the proposed expansion process to recreational sales.

Finally, CRC conducted site visits at all ATCs that have submitted certifications to assess readiness, review patient access and supply plans, and review issues pertaining to compliance with N.J.A.C. 17:30, and conducted follow-up meetings as necessary. Any substantive deficiencies were communicated to the ATCs at or prior to these meetings. The site visits were conducted by a team consisting of representatives from the Office of the Executive Director, Counsel’s Office, and the Office of Compliance and Licensing.

## SUMMARY OF UPDATED ATC CERTIFICATION SUBMISSIONS

ATC	Location(s)	License Requested
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GSD NJ, LLC/Ayr Wellness, Inc.	950 U.S. Highway 1, Woodbridge, NJ	Class 1 Cultivator and Class 5 Retailer
	2000 East Park Blvd. Suite 2002, South Brunswick, NJ	Class 2 Manufacturer
	2536 Route 22, Union, NJ	Class 5 Retailer
	59 NJ-35, Eatontown, NJ	Class 5 Retailer

ATC	Location(s)	License Requested
Ascend New Jersey, LLC	395 Bloomfield Avenue, Montclair, NJ	Class 5 Retailer

ATC	Location(s)	License Requested
TerrAscend NJ	200 Route 17 South, Lodi, NJ	Class 5 Retailer

### SUBSTANTIVE REVIEW: MEDICINAL MARKET CONDITIONS

In the Recommendation Report for the 2019 Request for Applications<sup>2</sup> (“2019 RFA Report”), CRC Staff presented data outlining the need for cultivation canopy – the grow space required to support the medicinal market in the future – and the need for dispensaries. This analysis concluded that New Jersey did not have enough dispensaries and additional canopy and additional cultivators were needed. Those recommendations were sound, and the analysis has not changed.

In fact, because the CRC acted on the 2019 RFA awards, there are now 30 additional dispensaries and over 300,000 square feet of additional canopy in the process of being permitted and operational. That action reinforced the future of the medical market, even as the CRC considers the expansion of current medicinal cannabis Alternative Treatment Centers – and the fact that Alternative Treatment Centers can expand to recreational sales factored into the decision to increase awards to ensure the medicinal cannabis market continue to be supported.

Overall, the active market has been improving over the last 6 months:

- Canopy has increased from 250,000 square feet to almost 330,000 square feet;
- Supply is increasing month over month; and
- Prices have started to decline for patients, with more sale and discount items being offered.

While there remain several issues in the short-term, primarily a need for more dispensaries and more canopy, the CRC has put in motion the mechanisms to solve these issues and progress is already being made thanks to actions by the current medicinal cannabis industry.

As such, CRC Staff’s analysis of market-wide conditions concludes:

1. Patient Enrollment – Current enrollment is 128,000 patients. Patient enrollment continues to increase with new patient enrollment between 4,000 and 6,000 every month. Consistent with the

<sup>2</sup> New Jersey Cannabis Regulatory Commission – Medicinal Cannabis Businesses - 2019 RFA Process, Selection Documents: <https://www.nj.gov/cannabis/businesses/medicinal/>



findings in the 2019 RFA report, more patients continue to disenroll every month, but enrollment is outpacing disenrollment.

2. Statewide Inventory – Statewide inventory is increasing month over month, mostly driven by increases in bulk product and by three (3) ATCs specifically.
3. Sales at ATCs to Qualifying Patients – Sales at ATCs are generally increasing month over month with a 5,000 ounce per month increase seen in December 2021 (partially attributed to holiday purchasing), and January 2022 seeing 1,000 more ounces sold to patients than in September 2021.
4. Statewide Canopy – The growth canopy for medicinal cannabis increased by 80,000 square feet since the fourth quarter of 2021. An additional 360,000 square feet is in process through the 2019 RFA awards.

Because all statewide metrics are improving and are forecasted to drastically improve throughout 2022 and into 2023, CRC Staff do not believe that any of these factors alone are an impediment to assessing each individual ATC for expansion based on their individual supply, patient access plans, and overall merits – provided the proper safeguards are in place.

Although CRC Staff do not believe any of the market-wide factors preclude review of individual certifications, we do reject – again – the assertion and analysis submitted by several ATCs as part of their certifications that concludes the entire medicinal cannabis market can be served by roughly 90,000 square feet of canopy. Not only is this analysis not supported by any impartial data, anywhere; it is antithetical to the American system of economy. New Jersey’s medicinal cannabis market, like other sectors of the economy, must be driven by innovation, competition, and choice. These are the factors that deliver value to patients. Not only is the bare minimum unacceptable for patients, to accept this assertion would be to accept that patients should have no choice and be forced to accept whatever the ATCs produce for them. That is an unacceptable and offensive proposition and one that has no place in this market.

## **SUBSTANTIVE REVIEW: FUTURE RECREATIONAL MARKET CONDITIONS**

In order to project potential impacts of the recreational market on medical access, the CRC developed a series of statistical projections based on different inputs. The projections utilized the following metrics to project both medical and recreational demand:

- Production volume per square foot of canopy in grams;
- Harvests per year per square foot of canopy;
- Number of patients enrolled;
- Demand from patients per month in ounces;
- Percent of total adults (21+) in New Jersey using cannabis;
- Percent of total adults (21+) in New York and Philadelphia Metro Media markets using cannabis; and
- Demand from non-patient adults in ounces.

These factors were used to calculate several scenarios of projected demand and compared against current cultivation canopy in New Jersey, using different numbers for production rates. The analysis, which is



attached as Appendix B- *Patient Need versus Utilization: Understanding Market Projections in Different Legal Contexts*, was conducted at 40 grams per square foot (“sq. ft”) and 65 grams per sq. ft (calculation used by ATCs for submitted production analysis) and takes into consideration several complex analyses like the Vermont Medical and Adult-Use Cannabis Supply and Demand Model.

CRC staff also look at market-wide projections for both medicinal and recreational cannabis demand, and reviewed data from other states.

CRC staff included the following assumptions in the analysis based on a review of data in other states:

- Recreational consumers purchase less in a year than medicinal cannabis patients;
- Actual cannabis use is likely higher than what is reported in federal (Substance Abuse and Mental Health Services Administration) surveys; and
- New Jersey will see significant cannabis tourism, particularly from bordering states and the broader media markets.

### PROJECTED SCENARIO

Patients	New Jersey Consumers	Tourism Consumers	Medical Demand (Lbs.)	Recreational Demand (Lbs.)	Gs/Sq Ft	Production Capacity (Lbs.)
130,000	836,009	788,040	97,500	258,254	40	147,268
130,000	836,009	788,040	97,500	258,254	65	239,311

This projected scenario assumes that 12% of New Jerseyans over the age of 21 purchase recreational cannabis throughout the first year of sales and that average sales among New Jersey-based recreational consumers is roughly four (4) ounces per year. By comparison, patients purchase between six (6) and 12 ounces on average per year and this model assumes 12 to ensure patient needs are met and because high prices are still limiting patient demand. Finally, it assumes that nearly 800,000 consumers visit New Jersey from surrounding media markets during the first year of legal sales and make purchases, though substantially less per consumer than in-state cannabis consumers.

Importantly, given recent cultivation expansions focused on future recreational capacity (additions above and beyond previous medical capacity), now both these models show that there is excess capacity among current ATCs that can be attributed to recreational sales – with the appropriate safeguards in place. However, both sets of analyses also clearly demonstrate that the current market is vastly under-supplied for what demand will ultimately be in New Jersey’s recreational cannabis market – to be exact the analysis projects a deficit between 116,000 pounds and 208,000 pounds versus projected demand, but this deficit





can be limited to recreational capacity only provided ATCs adhere to minimum inventory thresholds for patients as ascribed in this memo.

Finally, a review of inventory reports over the last six (6) months supports the conclusion of these models that there is growing capacity that can be attributed to recreational sales – and since recreational sales have begun at seven ATCs, there have been no supply shortages for medicinal cannabis patients.

Therefore, based on a review of the existing medicinal cannabis market and projected future recreational market conditions, CRC Staff do not view any statewide impediments to assessing each ATC’s certification for expansion on the merits of their individual supply, patient access plans, local approvals and social equity and safety submissions. In both models under review, there was excess supply that could be attributed to recreational sales – even when accounting for 1 ounce per patient per month.

## **GUIDANCE FOR ENSURING PATIENT ACCESS, PROMOTING EQUITY**

Before providing ATC-specific recommendations, the Office of the Executive Director, in consultation with Counsel’s Office, and the CRC’s Office of Compliance and Licensing, created a path forward to legal sales that protects patient access and gives ATCs certainty as to transition to the new recreational marketplace. This plan also gives CRC Staff the comfort needed to recommend a larger cohort of ATCs for approval by the Board of the Commission, as they have committed to minimum standards for patient access and minimum product and inventory set asides.

This plan has been developed to ensure that even expanded ATCs are required to have clear protocols for protecting patient access and clear guidance on inventory controls and set asides to ensure product availability.

### Approval Conditions to protect Patient Access

Launches in other states have shown hours long lines, traffic and other challenges that could restrict access by patients, so the CRC staff is recommending that any approvals issued by the CRC include the following conditions to address patient access. This is consistent with feedback from the CRC’s Office of Compliance and Licensing. Specifically, CRC Staff recommends that any Final Agency Decisions by the Board of Commissioners to approve an ATC for expansion should require the ATC to:

- Initially, have at least 14 patient-only hours spread over at least three (3) days per week, and at least one (1) weekend day. Patient-only hours should be held at different times throughout the week to accommodate different schedules;
- Provide exclusive parking options for patients at all times;
- Provide exclusive patient point-of-sale systems at all times and express access to the ATC so that patients do not have to wait in extraordinary lines;
- Provide patients with the exclusive ability to reserve products ahead of time, so that they can be assured their order will be filled when going to the ATC;
- Provide a patient access hotline – a telephone line staffed by ATC employees during all business hours to assist patients trying to access the ATC;



- Hold at least two (2) virtual town halls (in a manner compliant with privacy laws) with registered patients and caregivers to provide info on the ATC’s patient access plan; and
- Provide the CRC with weekly reports on patient-access.

Additionally, it should be recommended (though not required) that all ATCs wishing to expand to recreational sales initiate the following options for patients if possible:

- Exclusive home delivery for patients; and
- Online ordering and exclusive express curbside pick-up for patients.

#### Approval Conditions for Ensuring Adequate Inventory

Given that cannabis is an agricultural commodity in nature, cultivation facilities can experience issues like mold infestation, insects, and other negative externalities that can yield significant crop loss. As such, there is need to ensure that the supply of medicinal cannabis remains uninterrupted even when significant new demand is placed on supply.

Therefore, CRC Staff recommends that ATCs be required to always keep a certain minimum threshold level of medicinal cannabis on hand for patients – with some ability to maintain flexibility in inventory management.

CRC staff recommend that any Final Agency Decisions or Resolutions by the Board of Commissioners to approve an ATC for expansion should require the ATC to:

1. Maintain a Minimum Adequate supply of Medicinal cannabis for patients, plus a Reasonable Minimum Reserve.
  - i. A “Minimum Adequate Supply” shall be calculated by determining the average purchases by patients in the preceding three (3) months at the ATC. To fulfill the minimum adequate supply, the ATC shall only consider packaged products.
  - ii. The “Minimum Adequate Supply” should be adjusted up to account for new patient enrollment, should the ATC experience and increase in the number of patients enrolled at the ATC month over month.

Minimum Adequate Supply = [(current patients enrolled at the ATC)/(patients enrolled at the ATC 3 months prior)] X (Average Purchases over the preceding three (3) months at the ATC)

- iii. A “Reasonable Minimum Reserve” shall be a three-month reserve calculated by determining the average purchases over the last three (3) months and multiplying it by three (3).
  1. To meet the Reasonable Minimum Reserve, the ATC may include packaged and bulk product.





2. The ATC may also include flower that is drying or curing, and the raw materials for manufacturing medicinal cannabis products.

Reasonable Minimum Reserve = three-month reserve = (average purchases over last 3 months) x 3.

2. Produce weekly reports to the CRC on medicinal cannabis product availability and inventory levels.

Additionally, until licensed third-party laboratories are available, any ATC approved to expand should be required to utilize a third-party laboratory under the CRC's interim testing standards until such time as they can access a licensed third-party laboratory. This will ensure any recreational products are appropriately tested and deemed safe in accordance with those interim standards.

3. For Garden State Dispensary specifically, given the limited cultivation canopy in their current Woodbridge cultivation location, CRC staff recommend issuing the Class 1 Cultivation License when GSD has their first harvest from their new Lakewood facility (also pending CRC approval). All other licenses can be issued as soon as an operational inspection/assessment is completed.

#### Conditions for ensuring Social Equity

N.J.A.C. 17:30-9.4(e) states:

“(e) A license holder shall make a good faith effort to recruit and employ persons who would otherwise qualify for the provisions at N.J.A.C. 17:30-6.6(a)1 or 2.”

This regulation requires that all licensed cannabis businesses make a good faith effort to employ individuals who either 1) have past marijuana or hashish convictions, or 2) have lived in an Economically Disadvantaged Area for five (5) of the last ten (10) years and in the preceding tax year, made 80% or less of the median house-hold family income.

While this is a condition of licensure for all cannabis businesses, it should be specifically included in any Expanded ATC Final Agency Decisions or resolutions approving Expanded ATCs by the Board of Commissioners. Additionally, the Commission should require the ATC to submit reports on progress on a monthly basis.

Adding this requirement to the already submitted equity plans will ensure that as ATCs are approved to expand to recreational sales, they are doing so in a manner that supports the people and communities who have paid the highest price in the past for criminalization of cannabis use.



### Additional Consideration: Municipal Coordination

In addition to the three (3) aforementioned plans, CRC staff has also assessed municipal coordination with each ATC. All ATCs recommended for approval have considered the following factors in their overall protocols for launching recreational sales with their host municipalities:

1. Traffic and crowd management;
2. Emergency vehicle and personnel access;
3. Patient accessibility to the ATC's site(s);
4. Reducing disruptions to neighbors to the ATC; and
5. Any other issues the municipal government identifies as impacting the public health, safety, and welfare.

### **SUBSTANTIVE REVIEW: INDIVIDUAL ATC CERTIFICATIONS**

Assessment of the ATC certifications included close examination of three (3) areas required by statute: 1) assessment of supply; 2) assessment of operational capacity to continue to serve patients; and 3) municipal approval. CRC staff has also reviewed the full range of submissions required by regulation to ensure compliance and completeness.

#### Assessment of Supply

To analyze individual supply, CRC Staff evaluated the following data:

- Inventory reports from ATC inventory management systems;
- List of cultivation canopy by ATC;
- Number of active patients per ATC;
- Patient purchases by ATC in the last six (6) months;
- Projections for future patient demand; and
- Projections for future recreational cannabis demand.

When examining the market supply, canopy, and ATC certifications, it becomes readily apparent that there are three (3) cohorts of ATCs in the market currently:

1. Those that can demonstrate that they can continue to meet the need of the medicinal market, from a supply perspective, while also efficiently following the guidelines of adult personal-use;
2. Those that are on the cusp and could get there if they add new cultivation and wholesale options; and
3. Those that still have work to do and have several hurdles to jump before they are ready to expand (this cohort has not yet submitted certifications to expand).

Based on an analysis of supply, these are the three (3) ATCs included in this recommendation memo all have shown they can supply both their medicinal patients and additional recreational consumers.



TerrAscend and Ascend Wellness were both previously approved by the Commission for both Class 1 Cultivation and Class 2 Manufacturer Licenses and therefore have been deemed to meet the supply measures by the NJCRC already to be able to cultivate, manufacture, and transfer cannabis to retail outlets.

Garden State Dispensary has limited canopy at their Woodbridge facility but has shown that their new Lakewood facility would bring 68,000 square feet of canopy online for medical cannabis only supply. They project their first harvest in July and have shown that through wholesale and through existing stock they can supply their medicinal cannabis patient population sufficiently. They have also shown that they can maintain the minimum reserves for patients recommended by the Commission. Because of the amendment to their certification, staff no longer has concerns about GSD's ability to convert to recreational sales on supply grounds, but do recommend that the Commission condition the issuance of their Class 1 Cultivation License for Woodbridge on the realization of the first harvest from their new Lakewood site (also pending CRC approval).

#### Assessment of Patient Access Measures

Aside from overall supply, the next most important aspect to protecting patients is ensuring they can access dispensaries during an expansion to recreational retail sales. Early recreational retail sales bring long lines, extremely high demand, and issues with product availability.

CRC Staff have outlined patient access requirements that should be conditioned upon every expanded ATC and has conducted onsite assessments to review the certifications and discuss specific patient access measures. Every ATC that has submitted a certification has committed to following these measures. CRC believe that with these commitments all three (3) ATCs have all demonstrated the ability to ensure patient access. All three ATCs have appropriately modified their facilities to be able to handle both recreational and medicinal consumers. GSD, for example, expanded from 5 point-of-sale (POS) systems in their busiest Woodbridge location to 14 POS systems, with 4 dedicated to patient-only access.

#### Municipal Approval

There are no concerns on municipal approval for any of the ATC certifications. All three (3) have submitted the documentation required by law and regulation.

#### Social Equity and Other Outstanding Issues

In addition to previously submitted social equity plans, all three (3) ATCs have committed to following the CRC's regulations pertaining to social equity from day one and have committed to attempting to hire a workforce that includes individuals previously convicted for marijuana-related charges and/or who live in economically disadvantaged areas. Furthermore, all three (3) have committed to periodic reporting to the CRC on progress.



**DISCUSSION/RECOMMENDATION**

Of the ATCs before the Commission for consideration to expand, all three (3) have demonstrated they meet the requirements of the statute and the CRCs regulations and should be approved to expand for the licenses proposed.

CRC Staff recommend the aforementioned ATCs for expansion based on the following:

- The ATCs have implemented facility expansions to increase production and their capacity to serve additional consumers beyond their patient base;
- The ATCs have confirmed via data submitted to the CRC that they can maintain a supply and reserve of product and because of additional capacity, will be able to also serve recreational consumers;
- The ATCs have demonstrated in their certifications and supporting materials that they can implement patient access measures to ensure that patient access is minimally impacted;
- CRC Staff have conducted onsite assessments to review plans for patient access and supply at these ATCs and found them satisfactory;
- These ATCs have submitted all the required municipal approvals for their proposed locations;
- These ATCs have committed to embracing and supporting social equity in their expansion efforts, including hiring individuals with past marijuana convictions and from economically disadvantaged areas;
- Because of facility expansions at these ATCs, and since there is over 300,000 sq ft of canopy in the process of becoming operational for medicinal purposes only, and because there a reasonable reserve of inventory in the medicinal market as a whole – and because the ATCs in question have all agreed to maintain a reserve and shown they have the ability to do so – there are no medicinal market-wide concerns to approving this cohort; and
- Although these three (3) entities can't come close to supplying the full demand of New Jersey's nascent recreational market, that should not stop the Commission from moving them forward – the CRC has already issued 68 conditional licenses to new businesses and approvals will continue to bring new competition, new supply, and new retailers to the market to help it develop.

Therefore, the ATCs and their recommended determinations are:

<b>ATC/Certification Requirement</b>	<b>Recommendation for Commission</b>
TerrAscend (Lodi Dispensary)	Approve for Expansion
Certification of Adequate Supply	Accept
Certification of Patient Access	Accept
Municipal Compliance and Approval	Accept

<b>ATC/Certification Requirement</b>	<b>Recommendation for Commission</b>
GSD NJ, LLC/Ayr Wellness, Inc.	Approve for Expansion
Certification of Adequate Supply	Accept
Certification of Patient Access	Accept



Municipal Compliance and Approval	Accept
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ATC/Certification Requirement	Recommendation for Commission
Ascend Wellness (Montclair Dispensary)	Approve for Expansion
Certification of Adequate Supply	Accept
Certification of Patient Access	Accept
Municipal Compliance and Approval	Accept

CRC Staff recommend that the Commission approve TerrAscend for its Lodi dispensary, GSD NJ, LLC/Ayr Wellness Inc. for its Woodbridge cultivation and dispensary facilities, its South Brunswick manufacturing facility, its Union dispensary, and its Eatontown dispensary, and Ascend Wellness for its Montclair dispensary for licensure as Class 1 Cultivators, Class 2 Manufacturers, and Class 5 Retailers, as requested.

Should the Commission determine to approve the above three ATCs, licensure will remain contingent on the ATCs continued ability to meet supply and access for medicinal patients. Pursuant to N.J.A.C. 17:30-7.1(d), ATCs must prove 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.

CRC staff and Counsel’s Office propose enforcement of the supply and access requirements for ATCs by imposition of fines, in an amount of \$10,000.00 per day that an ATC fails to adequately provide for their medicinal patients, in addition to license suspension for continued failure to prioritize patient access. The Commission is authorized to take these actions pursuant to N.J.A.C. 17:30-17.5.

Because the CRC has not issued regulations for Class 3 Wholesaler, Class 4 Distributor, and Class 6 Delivery Licenses, consideration of requests for those licenses should be deferred. It is noted that wholesaling, distribution, and delivery are all authorized under the other licenses recommended for issuance today. Once the CRC promulgates the appropriate sections of regulations, any expanded ATC in good standing that has requested certification for Class 3 Wholesaler, Class 4 Distributor, and Class 6 Delivery licenses will be issued that/those license(s) in accordance with the statute.

Alternative Treatment Center	Location(s)/License Requested	Personal-Use License Approved
GSD NJ, LLC/Ayr Wellness, Inc.	950 U.S. Highway 1, Woodbridge, NJ	Class 1 Cultivator and Class 5 Retailer
	2000 East Park Blvd. Suite 2002, South Brunswick, NJ	Class 2 Manufacturer
	2536 Route 22, Union, NJ	Class 5 Retailer
	59 NJ-35, Eatontown, NJ	Class 5 Retailer

Alternative Treatment Center	Location(s)/License Requested	Personal-Use License Approved
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Ascend New Jersey	395 Bloomfield Avenue, Montclair, NJ	Class 5 Retailer
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Alternative Treatment Center	Location(s)/License Requested	Personal-Use License Approved
TerrAscend NJ	200 Route 17 South, Lodi, NJ	Class 5 Retailer

**NEXT STEPS:**

If approved, ATCs would need to undergo the following steps to begin sales:

- Regulatory Compliance Inspections/Assessments – Complete a pre-licensure assessment to confirm compliance with N.J.A.C. 17:30. CRC Staff are prepared to get these underway immediately following approval and have conducted some even in advance of a CRC approval for expansion. The purpose of these inspections will be for the CRC to decide as to whether the premises, operations, and procedures are consistent with the ATCs certification submission, and compliant with the Act and regulation.
- Following the Pre-licensure Expanded ATC Regulatory Compliance Inspection and upon a determination of compliance with the Act and regulation, the Commission will issue the appropriate cannabis license(s) to the expanded ATC.
- For post-award accountability, if an Expanded ATC fails to continue to provide adequate patient access and supply compliant with the statute, regulations, and the conditions within this memo, that ATC shall be fined \$10,000 per day and, if access or supply is uncorrected in 7 days, CRC staff recommend the Commission move to suspend any licenses issued pursuant to these recommendations.
- Expanded ATC Certification Fee - Upon approval of ATC expansion, the ATC must submit the appropriate fee outlined in N.J.A.C. 17:30-7.17 and demonstrated below. The fee must be submitted through <https://www.nj.gov/cannabis/businesses/resources/>

Expanded ATC Certification Fee	Medical Cannabis Cultivator Expansion – \$400,000 Medical Cannabis Manufacturer Expansion – \$300,000 Medical Cannabis Dispensary Expansion – \$100,000 Vertically Integrated ATC with 1 dispensary – \$800,000 Vertically Integrated ATC with 2 dispensaries – \$900,000 Vertically Integrated ATC with 3 dispensaries – \$1,000,000
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## APPENDIX A

### **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 subparagraph (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 subparagraph (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 subparagraph (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 subparagraph (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 subsubparagraph (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 subsubparagraph (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.



## Appendix B

### **Patient Need versus Utilization: Understanding Market Projections in Different Legal Contexts**

#### *Patient Need and Recreational Cannabis Supply/Demand*

The Cannabis Regulatory Commission's ("CRC") authorizing statutes task the CRC with assessing cannabis market conditions to make several key decisions:

- The number of permits to issue for medicinal cannabis Alternative Treatment Centers; See N.J.S.A. 24:6I-7.3
- Whether or not to establish statewide limits on the number of licenses for recreational cannabis businesses; See N.J.S.A. 24:6I-37; N.J.S.A. 24:6I-39; N.J.S.A. 24:6I-40; N.J.S.A. 24:6I-41; N.J.S.A. 24:6I-42; N.J.S.A. 24:6I-43; and
- Whether Alternative Treatment Centers can certify that they have enough product to serve patients such that they can transition and expand to recreational sales. See N.J.S.A. 24:6I-46

For medicinal cannabis, the Legislature through N.J.S.A 24:6I-46 mandates the Commission to assess patient need. Because the needs of patients extend well beyond simply having medicinal cannabis available to them – they also need affordable prices and a wide variety of products. The Commission has determined that this analysis must be broader than simply establishing the minimum production needed to supply patients. It must account for measures that yield competitive pricing, wide product availability, and a consumer-driven market.

The Commission has used a data driven approach to determine patient need. In the last Biennial Report issued under the New Jersey Department of Health ("DOH") and in the 2019 Request for Applications ("RFA") Recommendation Report, DOH and the CRC presented a statistical analysis that utilized a "Max Demand" measure of two (2) ounces per patient per month. The two (2) ounce per month measure was utilized because when assessing how many permits should be issued, it allowed/s the DOH/CRC to look past strict utilization to those other factors in the market that yield the adequate access, diversity of products, and competitive pricing that is at the heart of patient need.

The Commission has found that using a higher utilization measure per patient to predict the total amount of square footage needed yields several positive market factors that ultimately benefit patients and lead to a healthy, competitive market – and account for key trends in cannabis markets.

First, permitting more canopy than is actually utilized is necessary to ensure there is room for growth, ensure that as demand increases there is excess capacity to be used, and to create some surplus to produce downward pressure on prices (which in turn will increase demand and reduce surplus). Similarly,



when licensing hospitals, generally regulators will license more beds than the hospital intends to operate at any given time (there are more licensed beds versus staffed beds).

Second, we studied several complex analyses that sought to factor in the various types of production and yields for extracted products, as well as the average waste produced in cultivation and manufacturing, and found that simply raising the amount of raw cannabis flower per patient achieved the same results. For example, VS Strategies produced this highly complex and well-articulated model for the Vermont Cannabis Control Commission:

- Vermont Medical and Adult-use Cannabis Supply and Demand Model - Cannabis Control Board (9-1-21).xlsx (live.com)<sup>3</sup>

This model measures yields of whole flower, trim, and other factors and then compares that production to yields in extraction processes, and finally projects demand in the market for a variety of products. The result is that, per this model, for roughly 120,000 projected recreational consumers in Vermont, the state should license roughly 440,000 to 460,000 sq ft of canopy (400k indoor, 40-60k greenhouse) to serve those consumers.

In the CRC's "Biennial Report Model Updated" graph in the 2019 RFA Recommendation Report, by simply increasing projected utilization for patients to "Max Demand" – 2 ounces per month – the simpler model yields nearly the same results. For 121,000 patients in New Jersey, the CRC should seek to permit 418,000 square feet of canopy.

In projecting how many permits (or licenses) to issue the CRC is charged with assessing where the market should be (and what it should be), not simply where it is. In this context the statute gives the CRC flexibility to use measures beyond strict utilization/sales to assess market health and competitiveness and how well it is serving the needs of patients and consumers. Additionally, the legislature clearly highlights the importance of patient need, as it authorizes the Commission to "issue fines, limit retail or other sales or temporarily suspend the alternative treatment center's cannabis establishment" if an ATC is found by the Commission to not have sufficient quantities of medical cannabis to meet the needs of patents. See N.J.S.A. 24:6I-46a(3)(a)(iv).

#### *ATC Certifications*

For ATC Certifications, the statute charges the CRC with assessing where the market is – and where a specific ATC is – related to factors that are established in statute and regulation. The statute states that an "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 treatment needs of registered qualifying patients" before it can expand to recreational sales. N.J.S.A.

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<sup>3</sup> Vermont Medical and Adult-Use Cannabis Supply and Demand Model: [Vermont Medical and Adult-use Cannabis Supply and Demand Model - Cannabis Control Board \(9-1-21\).xlsx \(live.com\)](#)



24:6I-46a(3)(a)(iii). Furthermore, the statute specifically says the CRC shall assess that certification based on “patient enrollment, sales, inventory, and other factors determined by the commission through regulation.”

The full list of factors determined through regulation at N.J.A.C. 17:30-7.1(c) are:

1. Total qualifying patient enrollment in the statewide medicinal cannabis program;
2. Qualifying patient enrollment at the ATC;
3. Statewide inventory and inventory of the ATC;
4. Statewide sales of medicinal cannabis and medicinal cannabis products, and sales at the ATC;
5. The current medicinal cannabis canopy of the ATC;
6. The total medicinal cannabis canopy needed to serve the ATCs qualifying patients on an ongoing basis;
7. The total medicinal cannabis canopy needed to serve the total number of qualifying patients in the medicinal cannabis program on an ongoing basis; and
8. The operational plans and capacity of the ATC to maintain or expand medicinal cannabis access for qualifying patients.

For assessing the ATC Certifications, the CRC must assess the market conditions as enumerated in statute and regulation but with a more granular focus on each individual ATC’s certification, and whether they can continue to meet the needs of their patients from both a supply and access perspective.

Because of the statutory mandated focus on “patient enrollment, sales, inventory” and the enumeration in the CRC’s rules to assess the “total medicinal cannabis canopy needed to serve the ATCs qualifying patients on an ongoing basis,” the CRC is tasked to look at a specific picture of a specific ATC in the context of the overall market – to look more at actual utilization versus projections and models. We are to focus more so on where the market is, versus where it should be.

For ATC certifications, the CRC must use an analysis tied closer to actual utilization – because that is what the statute states the ATCs must use when determining they have enough supply to expand to recreational sales: patient enrollment, sales, and inventory.

We cannot assess price as part of this analysis, nor other factors that are not in the statute or regulation, nor can we hold the ATCs to where we think the market needs to be – we can only hold them to where it is and whether they can continue to effectively serve their patients and expand to recreational consumers. Therefore, CRC staff have presented two (2) looks at the ATCs in question for this recommendation memo that measure their individual canopy, patient enrollment, inventory, and the actual patient sales over the last three months to project the set-aside amounts required by the recommendations in this memo. The analysis also shows projected supply at both 40 gram per square foot production levels (as contained in the BOTE report done for Washington State) and 65 grams per square feet (as asserted by the New Jersey Cannabis Trade Association). In both cases, all three ATCs considered today show surpluses – even with minimum set-asides for patients -- that can be attributed to recreational sales.