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Medical Use of Marijuana Program OVERVIEW OF 9/28/11 CHANGES (A Layperson's Guide)

MMMP RULES. Current rules have been in effect since August 4, 2010. Additional rulemaking is anticipated.

PROGRAM CHANGES

PATIENTS

1. VOLUNTARY REGISTRATION

- *Patient* registration with the Department is voluntary as of September 28, 2011.
- A patient is not required to pay a fee to voluntarily register for a registry ID card.
- Application forms are available at <http://www.maine.gov/dhhs/dlrs/index.shtml>
- When patients voluntarily register with the Department, they attach a copy of their physician certification form to their application for a registry identification card. No medical information about the patient is included on the physician certification form.
- The patient may either cultivate or designate a caregiver or dispensary to cultivate marijuana.
- The registry ID card and the physician certification form expire on the same date. The expiration date is determined by the physician.

2. PROOF OF AUTHORIZED CONDUCT

- **Voluntarily registered patients** must have their registry ID card whenever they are in possession of marijuana. Possession of a registry ID card is recognized statewide by law enforcement to identify a patient who has a qualifying condition.
- **Non-registered patients** must present their original physician certification form to law enforcement. If a patient chooses not to register, it is important that the patient carry his or her original physician certification form whenever they are in possession of marijuana. If you do not have a registry ID card, the physician certification form must be presented to law enforcement.

- **Photo ID.** In addition to either a registry ID card or a physician certification form, all patients, including both non-registered and voluntarily registered patients, must also present their Maine driver license or other Maine-issued photo identification card to law enforcement, upon request.

3. PHYSICIAN CERTIFICATION FORM

- The physician certification form verifies that the patient, including both the non-registered patient and the voluntarily registered patient, has a qualifying condition and is likely to benefit from the medical use of marijuana.
- The physician, in his or her discretion, shall determine how long the certification will be valid, not to exceed 12 months. At that time, a new physician certification is required.
- These Department-approved certification forms will be printed by the physician on tamper resistant paper to protect against unlawful duplication or alteration.

4. POSSESSION OF MARIJUANA

- A qualifying patient may possess up to 2 ½ ounces of prepared marijuana; and
- A qualifying patient may either
 - a) cultivate marijuana plants on his or her own; or
 - b) obtain marijuana from a caregiver or dispensary.
- There can be no more than 6 flowering marijuana patients for each patient.

5. DESIGNATION FORMS

- There are special department-approved caregiver/dispensary designation forms at the following website <http://www.maine.gov/dhhs/dlrs/mmm/index.shtml> .
- These forms are required for all patient, caregiver and dispensary relations after September 28, 2011, or upon renewal of the patient registry ID card.
- If a patient de-designates a caregiver, the caregiver must return the caregiver designation form to the patient. It is the property of the patient. The caregiver will have 10 days from date of notice from the patient to either destroy excess marijuana or to replace the patient with another patient. If the caregiver does not return the designation form to the patient upon demand, the patient may file a complaint with the Department and the Department may take action, including but not limited to making a demand for the designation form and/or revoking the caregiver ID card associated with that patient.

CAREGIVERS

1. REGISTRATION REQUIRED

- Primary caregivers who are required to register are designated by the patient, and the patient will specify the type of assistance the caregiver will provide, including whether the primary caregiver will cultivate marijuana for the patient.
- The law includes **THREE EXCEPTIONS** to the caregiver registration requirement:
 1. When the caregiver designated to cultivate for a patient is a member of the same household as the patient;
 2. When two primary caregivers, who are also both qualifying patients, are members of the same household and assist one another with cultivating; and
 3. When a primary caregiver cultivates for a qualifying patient if that patient is a member of the caregiver's family.
- Caregivers may not have a disqualifying drug offense and are subject to a criminal background check by the department.
- The registry ID cards expires after one year or sooner if it is invalidated or revoked.
- There are special caregiver designation forms which can be downloaded at: <http://www.maine.gov/dhhs/dlrs/mmm/index.shtml>.

2. NO COLLECTIVES

- Caregivers must cultivate marijuana themselves for their designated patient's medical use.
- Collectives are prohibited by law.

3. ONE EMPLOYEE TO HELP CULTIVATE

- However, a caregiver may employ only one individual to assist in the cultivation, regardless of the number of patients that have designated the caregiver to cultivate marijuana.
- This employee must be identified to the Department and a criminal background check performed. A registry ID card will be issued if there is no disqualifying drug offense and other requirements are met. This will be memorialized in upcoming rulemaking.

4. SHORT-TERM ASSISTANCE CULTIVATING DURING A CAREGIVER'S ABSENCE

- In addition, a registered caregiver may utilize the services of another registered caregiver to tend cultivation activities for up to two weeks as long as there is no remuneration. This will be memorialized in upcoming rulemaking.
- There must be written evidence on forms provided by the department that the individual is acting on the caregiver's behalf along with the dates associated with that short-term assistance. The authorization forms can be found at: <http://www.maine.gov/dhhs/dlrs/mmm/index.shtml>.

5. CULTIVATE FOR A MAXIMUM OF 5 PATIENTS.

- Caregivers may apply for up to 5 patient licenses. Each patient license will have a unique number. When a patient designates a caregiver, the caregiver must indicate which of the license numbers will be assigned to that patient.

6. EDIBLES

- If the primary caregiver will be preparing edible goods containing marijuana, the primary caregiver must meet the food establishment licensing requirements.

7. NURSING HOMES AND HOSPICE PROGRAMS

- Staff in nursing homes and hospice may be non-growing caregivers.

8. FEES

- There is no fee for a caregiver who does not cultivate marijuana.
- The fee is \$300 for each patient the caregiver is designated to cultivate for. This is an annual fee.
- A caregiver may assist up to five patients and must have a registry ID card for each patient.

DISPENSARIES

- Maine nonprofit corporations will operate dispensaries in each of the 8 public health districts.
- DHHS will select the best application for each Public Health District Dispensary based on compliance with local ordinances, security of the proposed cultivation site, the long-term business plan of the nonprofit dispensary, convenience and access for patients, ability to ensure a steady supply of marijuana for the projected number of patients, business experience, administrative controls that will discourage unlawful activity, staffing plans, and strength of patient education.
- A selected dispensary is permitted one location for cultivation, which may be a location separate from the retail operation if it chooses to keep growing and dispensary operations separate, and both are subject to inspection by DHHS without notice.
- Dispensaries must utilize appropriate security measures at both locations.
- Dispensaries must ensure adequate administrative and business practices and personnel policies and practices.
- A dispensary must provide patient education services, including printed materials on the effects of different strains of marijuana and methods of administration, means of achieving proper dosage, tolerance, dependence and withdrawal, signs and symptoms of substance abuse and whether the dispensary's marijuana meets organic certification standards.
- A dispensary must have and adhere to an alcohol and drug-free workplace policy. Applicants who have been offered employment must submit to substance abuse testing and employees must receive a negative test result. Employees who are qualifying patients and who test positive for marijuana will not be impacted. The policy must

provide for probable cause substance abuse testing in accordance with Maine labor laws.

- DHHS may refuse to issue a registry ID card to an employee or applicant who has more than one positive test result in a 12-month period, unless the employee is a registered patient and the positive test result is for marijuana.
- The dispensary must also offer employees the services of an approved employee assistance program.
- A dispensary must cultivate its own marijuana. Collectives are illegal. The dispensary may dispense only to a qualifying patient who has designated the dispensary to cultivate for the patient or to that patient's caregiver.
- The dispensary may not cultivate, dispense or handle marijuana in any way except for the use of patients who have designated the dispensary.
- The dispensary must maintain records of its patients, all dispensing of marijuana and daily inventory.
- The dispensary must comply with Maine food laws on cleaning, sorting, grading, weighing and packaging and is subject to inspection and testing for quality control.
- The dispensary is required to report to DHHS violations of the rules on next-day incident reports and must report to law enforcement all suspected illegal activity.
- The application/annual renewal fee is \$15,000.
- A dispensary must pay a fee of \$25 per person for registry identification cards for principal officers, board members and employees, and must pay a \$31 fee for each criminal background check for each of those persons and fees for lab testing required by DHHS.

CONFIDENTIALITY

- Patient and caregiver applications and supporting information is confidential.
- Information maintained by DHHS that identifies patients, primary caregivers and physicians is confidential. This information may be disclosed for limited purposes stated in the law.
- DHHS may disclose to law enforcement whether a registry ID card is valid.
- Information regarding the dispensary is not confidential, except if it identifies a qualifying patient, caregiver or physician it is confidential.

EXPUNGE RECORD OF MEDICAL CONDITION

- Within 60 days after September 28, 2011, DHHS will expunge all information in its records indicating a patient's specific medical condition.

REQUEST REMOVAL FROM MMMP REGISTRY

- For 6 months following September 28, 2011, cardholders may request to be removed from the registry and have all of their information expunged by the State.
- Expungement will be completed within 60 days of receipt of a request.

- Beyond the allotted 6-month time for expungement requests, all new and remaining information required for a person to register as a patient or primary caregiver must be retained by the State for 6 years.
- The expungement requirements of this section do not apply to a record with respect to which there is a pending law enforcement investigation.

TREATMENT OF MINORS

- The manner in which minors are approved to participate in the program will be subject to upcoming rule changes.

PENALTIES: ENCLOSED LOCKED FACILITIES

- Patients and caregivers are required to adhere to the requirements for enclosed locked facilities.
- Law enforcement may direct a patient or caregiver to correct a situation in which marijuana is not grown in accordance with the requirement for an enclosed locked facility.

COLLECTIVES PROHIBITED

- Collectives are prohibited. A collective is an association, cooperative, affiliation or group of primary caregivers who physically assist each other in the act of cultivation, processing or distribution of marijuana for medical use for the benefit of the members of the collective.

FORFEITURE OF EXCESS MARIJUANA

- If an authorized person possesses marijuana in excess of the limits, the excess amounts must be forfeited to law enforcement.
- Law enforcement is authorized to remove all excess marijuana seedlings, marijuana plants and prepared marijuana.
- The possession of excess marijuana may also bring with it civil or criminal citations.

MEDICAL PURPOSE DEFENSE

- If a qualifying patient has forfeited excess marijuana, that patient may assert the medical purpose for using marijuana as a defense to prosecution involving possession.
- The qualifying patient may present evidence in court that the patient's necessary medical use or cultivation circumstances warranted exceeding the amount of marijuana allowed and that the amount was reasonably necessary for the purpose of treating or alleviating the patient's debilitating medical condition or symptoms.
- A decision on this matter is in the jurisdiction of the courts.

FRAUDULENT MISREPRESENTATION

- Fraudulent misrepresentation regarding lawful possession of medical use of marijuana and fraudulent procurement will be sanctioned as follows:
 - A. A person who misrepresents to a law enforcement official any fact or circumstance relating to the possession or medical use of marijuana under this law to avoid arrest or prosecution commits a civil violation for which a fine of \$200 must be adjudged.
 - B. A qualifying patient who obtains marijuana from more than one source with the result that the person receives more than 2 1/2 ounces of prepared marijuana in a 15-day period commits a civil violation for which a fine of \$200 must be adjudged.

PETITIONS TO ADD DEBILITATING MEDICAL CONDITIONS

- The process for adding debilitating medical conditions will be the subject of future rulemaking.

LIMITATION ON THE NUMBER OF NON-FLOWERING PLANTS

- The department will propose limits on the number of non-flowering plants in future rulemaking.