

STATE OF MAINE

**MAINE MEDICAL USE OF
MARIJUANA PROGRAM RULE**

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Chapter 2

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**Department of Administrative and Financial Services
Office of Marijuana Policy
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Augusta, Maine 04333**

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Chapter 2:	Maine Medical Use of Marijuana Program Rule

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Rules Governing the Maine Medical Use of Marijuana Program

Purpose

The Maine Medical Use of Marijuana Program Rule and the enabling statute, *Maine Medical Use of Marijuana Act*, govern the Maine Medical Use of Marijuana Program (MMMP). The Department is responsible for administering the MMMP to ensure qualifying patients' access to safe marijuana for medical use in the State of Maine. This rule clarifies statutory requirements and describes program administration and operations needed to carry out provisions of the statute. Implementation of program operations and assurance of lawful participation requires conjunctive application of both statute and rule.

This rule includes definitions of terms and procedures for issuing a certificate of registration to a dispensary and registry identification cards to persons authorized conduct under the Act. This rule also governs payments of fees and enforcement of these regulations.

The activities described in this rule and the enabling statute are considered a violation of federal law. Individuals participating in the MMMP may be subject to federal sanctions for what is otherwise considered authorized conduct in the State of Maine. The Department is not responsible or liable for the actions of program participants under this rule. This rule is effective 90 days following filing with the Secretary of State.

SECTION 1 DEFINITIONS

Definitions in this rule are in addition to definitions in the statute. As used in this rule, unless the context otherwise indicates, the following terms have the following meanings.

- A. **Act** means the *Maine Medical Use of Marijuana Act*.
- B. **Adulterated**, for the purposes of this rule, means made impure or inferior by adding extraneous ingredients. Goods that are prepared in food establishments that are licensed facilities pursuant to 22 M.R.S. §2167 and that contain marijuana for medical use by a qualifying patient are not considered to be adulterated.
- C. **Applicant** means any person applying for a registry identification card to participate in the Maine Medical Use of Marijuana Program, hereinafter MMMP.
- D. **Bona fide medical provider-patient relationship** means a relationship in which the treating medical provider has ongoing responsibility for the assessment, care, and treatment of a qualifying patient's debilitating medical condition with respect to the medical use of marijuana.

- E. Cardholder** means a registered patient, a registered primary caregiver, an employee of a primary caregiver or a principal officer, board member or employee of a registered dispensary who has been issued and possesses a valid registry identification card.
- F. Debilitating medical condition** means a chronic or debilitating disease, medical condition or symptom that qualifies for the medical use of marijuana by a qualifying patient in accordance with 22 M.R.S., Chapter 558-C.
- G. Deficiency** means a violation of or failure to comply with a provision of this rule or the statute.
- H. Department** means the Department of Health and Human Services (DHHS).
(APA Office Note: transferred to the Department of Administrative and Financial Services, Office of Marijuana Policy, 2019.)
- I. Dispensary** means “registered dispensary,” as defined in 22 MRS §2422(6).
- J. Marijuana** means the leaves, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake or sterilized seed of the plant which is incapable of germination.
- K. Marijuana; allowable usable amount of marijuana for medical use** means two and a half ounces or less of prepared marijuana and a total of up to six mature marijuana plants that a person may be authorized to possess for each qualifying patient at any one time.
- L. Marijuana; incidental amount of marijuana** means, for each qualifying patient, up to 12 female nonflowering marijuana plants; an unlimited amount of marijuana seedlings, seeds, stalks and roots; and up to eight pounds of harvested dried unprepared marijuana in varying stages of processing that are not included when calculating the “allowable useable amount of marijuana.”
- M. Marijuana; seedling** means a marijuana plant that has no flowers and is less than 12 inches in height and diameter. A plant that does not meet all three criteria will not be considered a seedling.
- N. Marijuana; tincture** means a liquid mixture created from a concentrated extract of marijuana for medical use for ingestion or inhalation by a qualifying patient.
- O. Marijuana; topical treatment** means a mixture or extract of marijuana for medical use made into a transcutaneous balm, lotion, ointment or rubbing alcohol solution.
- P. Organic** means certified by an accredited organic certifier in the State of Maine as being in compliance with the United States Department of Agriculture certification requirements applying to organic products.

- Q. On-site assessment** means the review process to determine compliance. An on-site assessment may include a paper review, interview and inspection of the medical marijuana cultivation, processing and retail sites and administrative locations for the purpose of ensuring compliance with the requirements of statute and this rule.
- R. Paraphernalia**, for the purpose of this rule, is limited to equipment, products and materials that are used in planting, propagating, cultivating, growing, harvesting, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling or otherwise introducing marijuana for medical use into the human body. Paraphernalia includes, but is not limited to the following:
1. Kits used or intended for use in the planting, propagating, cultivating, growing or harvesting of any species of marijuana;
 2. Isomerization devices used or intended for use in increasing the potency of any species of the marijuana plant;
 3. Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of marijuana;
 4. Scales and balances used or intended for use in weighing or measuring marijuana;
 5. Separation gins and sifters, used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
 6. Envelopes and other containers used or intended for use in packaging small quantities of marijuana for medical use;
 7. Containers and other objects used or intended for use in storing medical marijuana; and
 8. Objects used or intended for use in ingesting, inhaling or otherwise introducing marijuana into the human body, including but not limited to:
 - a. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
 - b. Water pipes;
 - c. Carburetion tubes and devices;
 - d. Smoking and carburetion masks;
 - e. Roach clips, meaning objects used to hold burning marijuana cigarettes that have become too small or too short to be held in the hand;

- f.** Chamber pipes;
 - g.** Carburetor pipes;
 - h.** Electric pipes;
 - i.** Air-driven pipes;
 - j.** Chillums;
 - k.** Bongs designed for marijuana and not for cocaine; or
 - l.** Ice pipes or chillers.

- S.** Primary caregiver means a person who is designated by a qualifying patient and authorized to assist the qualifying patient with the medical use of marijuana in accordance with this rule.

- T.** **Visiting qualifying patient** means a patient who is not a resident of Maine or who has been a resident of Maine fewer than 30 days, and who is qualified by another jurisdiction for the medical use of marijuana and authorized for the medical use of marijuana in Maine pursuant to this rule and the statute.

SECTION 2 SCOPE AND PROTECTED CONDUCT

- A. Protections: legal medical use of marijuana.** The protections and requirements of this rule is for conduct expressly authorized by this rule and the statute for the legal medical use of marijuana in the State of Maine by qualifying patients, and for those authorized to assist qualifying patients. To receive protection for conduct authorized by this rule and the statute, individuals must comply with applicable provisions of rule and statute, including possessing required documents as proof of authorized conduct. Protections under this rule do not extend to individuals who are not authorized to possess, cultivate, dispense, transport, furnish or administer marijuana for medical use.
- 1. Violation of other laws.** These protections do not extend to violations of other State and federal laws.
 - 2. Protected conduct of lawful possession of marijuana for medical use.** An authorized person who is compliant with statute and rule may lawfully possess marijuana plants, an “allowable useable amount of prepared marijuana” and an “incidental amount of marijuana” in accordance with statute and this rule. The incidental amount of marijuana is not included when calculating the allowable useable amount of marijuana for medical use.
 - 3. Valid proof of authorized participation.** A qualifying patient, primary caregiver, caregiver employee, or principal officer, board member or employee of a registered dispensary must possess a valid driver’s license with a photograph or other photographic identification in accordance with 22 M.R.S. §§ 2423-E(5) and 2425 (11) in order to establish proof of authorized participation in the medical use of marijuana program.
 - a.** In addition to proof of identity, additional documentation is required as proof of authorized conduct.
 - i. Patient conduct.** Qualifying patients are not required to register or to possess a registry identification card to receive protection for conduct authorized under this rule and the statute. A qualifying patient must possess the written certification from his or her medical provider and proof of identity in accordance with 22 M.R.S. §2423-E (5)(A) as proof of authorized conduct.
 - ii. Primary caregiver not required to register conduct.** A primary caregiver who assists only a patient who is a member of the caregiver’s family or household is not required to register. A primary caregiver who is not required to register may voluntarily register with the Department to obtain a registry identification card for each patient. A primary caregiver who assists patients who are family or household members, as defined by 22 M.R.S. §2422,

must possess a valid designation form and designation card for each patient up to the maximum number permitted by statute as proof of authorized conduct.

iii. Registered cardholders conduct. A primary caregiver employee or principal officer, board member or employee of a registered dispensary who is engaging in conduct authorized under this rule is required to possess a valid registry identification card as proof of authorized conduct.

iv. Registered primary caregiver conduct. A caregiver who assists a patient who is not a member of the primary caregiver's family or household is required to register in accordance with 22 M.R.S. §2423-A (3)(C)(2). The primary caregiver must possess a registry identification card for each patient the caregiver assists up to the maximum permitted in order to receive protection for conduct authorized under this rule and the statute. The registered primary caregiver must also possess a valid designation form signed by each patient as proof of authorized conduct.

b. Trip ticket. A primary caregiver or cardholder authorized to transport marijuana may be required to possess a trip ticket as proof of authorized conduct. Requirements for trip tickets are specified in Sections 6(A), 7(Q) and 11(I) of this rule.

4. Protected conduct by anyone providing paraphernalia. Prior to providing paraphernalia in accordance with this rule and the statute, a person must verify proof of authorized conduct. See paragraph 3 of this subsection of rule for documents required as proof of authorized conduct.

5. Protected conduct by anyone providing marijuana or product containing marijuana. A person authorized to possess and furnish marijuana for medical use must verify proof of authorized conduct of any person prior to providing that person with marijuana or product containing marijuana, including samples for research and development or testing purposes pursuant to this rule and the statute. See paragraph 3 of this subsection of rule for documents required as proof of authorized conduct.

B. Lawful disposal of excess marijuana for medical use. The marijuana, including marijuana plants, prepared marijuana or harvested marijuana in excess of the limits provided in this rule and the statute and that is not dispensed or disposed in accordance with this rule may be subject to forfeiture to a law enforcement officer. Qualifying patients, primary caregivers, hospices and nursing facilities designated as primary caregivers, and registered dispensaries may lawfully dispose of excess prepared marijuana for medical use in accordance with this rule and the statute.

- 1. Furnishing excess prepared marijuana for medical use.** Excess prepared marijuana for medical use that is no longer needed by the patient may be furnished to an authorized person in accordance with the statute and this rule. Qualifying patients, primary caregivers and registered dispensaries are prohibited from cultivating more than the allowed number of plants in accordance with the Act. Marijuana for medical use in excess of the limits authorized by this rule and the statute is a violation of this rule, the *Maine Medical Use of Marijuana Act* and may be a violation of 17-A M.R.S. Chapter 45.
- 2. Authorized transfer of excess prepared marijuana by a qualifying patient.** For the purpose of disposing of excess prepared marijuana that is no longer needed for the qualifying patient's medical use, the qualifying patient may furnish or offer to furnish prepared marijuana to another qualifying patient in accordance with 22 M.R.S. §2423-A (1)(D) for that qualifying patient's medical use of marijuana.
- 3. Authorized transfer of excess prepared marijuana by a primary caregiver.** For the purpose of disposing of excess prepared marijuana that is no longer needed for a qualifying patient's medical use, in accordance with 22 M.R.S. §2423-A (2), the primary caregiver, at no cost and not for resale, give it to qualifying patients and to a patient's designated caregiver if nothing of value is offered or transferred in return. Only a registered primary caregiver is permitted to sell excess prepared marijuana to a dispensary in accordance with statute. An authorized transfer of excess prepared marijuana to a dispensary may not exceed the limits specified in statute and this rule.
- 4. Authorized transfer of excess prepared marijuana by a registered dispensary.** For the purpose of disposing of excess prepared marijuana that is no longer needed for a qualifying patient's medical use, the registered dispensary may, at no cost and not for resale, give it to qualifying patients if nothing of value is offered or transferred in return. The dispensary must keep records of these transactions. A dispensary may transfer excess prepared marijuana to another dispensary in accordance with 22 M.R.S. §2428 (6)(L) and such transfer must be approved by the Department.
- 5. Authorized transfer of excess prepared marijuana by hospice or nursing facility.** For the purpose of disposing of excess prepared marijuana for medical use that is no longer needed by the qualifying patient, a hospice provider or a nursing facility designated as a primary caregiver by that qualifying patient may give the prepared marijuana to a registered dispensary or another primary caregiver if nothing of value is offered or transferred in return.
- 6. Forfeit to a law enforcement officer.** Marijuana plants, prepared marijuana and harvested marijuana in excess marijuana of limits permitted by the statute and this rule may be forfeited to law enforcement in accordance with 22 M.R.S. §§ 2423-A (7) and (8). For the purpose of disposing of excess marijuana for

medical use, it may be transported to a State or local law enforcement office. Presentation of a valid registry identification card or a valid medical provider written certification and a Maine driver's license or other Maine-issued photographic identification may be required.

7. **Dispensary inventory interruption.** A dispensary may acquire excess prepared marijuana from a registered primary caregiver or dispensary during an inventory interruption following approval from the Department in accordance with this rule and the statute. Inventory interruption includes, but is not limited to, a circumstance that is of a catastrophic nature, including facility malfunctions or damage and loss resulting from extreme weather, contamination or other natural occurrences.
 - a. **Approval to acquire excess prepared marijuana.** Prior to accepting excess prepared marijuana from a primary caregiver or another dispensary, a dispensary must obtain approval from the Department. The dispensary must complete a Request for Acquisition form available by request to the Department. The Department shall respond within one business day of receipt of a completed Request for Acquisition form. The dispensary's request for approval to acquire marijuana from an authorized source must include:
 - i. An explanation of the inventory interruption to justify the request;
 - ii. The name and registry identification number of the source; and
 - iii. The strain, total amount and cost of the marijuana.
 8. **Defense for possession of excess marijuana.** Except as provided in 22 M.R.S. §2426, a qualifying patient may assert the medical purpose for using marijuana as a defense to any prosecution involving possession of excess marijuana.
- C. **Criminal history record check.** Registry identification cards may not be issued without an annual criminal history record check. An annual criminal history record check may include each state where the individual has resided since the age of 18. The Department may waive the requirement of a criminal history check if the cardholder's application for an additional registry identification card is submitted within 12 months of a completed background check. A qualifying patient who is registering voluntarily is not required to have a criminal history record check. Annual criminal history record checks are governed by this rule and statute.
1. **Annual background checks.** Updated background checks shall be conducted annually at the time of renewal of registry identification cards.
 2. **Notice of disqualifying drug conviction.** When a criminal history record check reveals conviction for a disqualifying drug offense, the Department shall issue a written notice of the revocation or denial of a registry identification

card to the cardholder and, if the person is an employee, to the person's employing primary caregiver or dispensary authorized under the Act.

- D. Annual report.** The Department shall submit to the Legislature an annual report in accordance with statute.

SECTION 3 CULTIVATION OF MARIJUANA FOR MEDICAL USE

- A. Cultivation of marijuana for medical use.** All cultivation of marijuana for medical use must comply with this rule and the statute. A person authorized to cultivate marijuana for medical use is restricted to cultivating in an enclosed, locked facility or area on property that is owned or under the control of the qualifying patient, caregiver or registered dispensary, subject to the limitations below.
- 1. Shared cultivation locations.** Family members and household members are permitted to share an enclosed, locked area for cultivating marijuana plants for medical use in accordance with 22 M.R.S. §§ 2423-A (1)(B) and (3)(D).
 - a.** Two or more patients who are members of the same household may share the same enclosed, locked cultivation facility to cultivate the marijuana for their own medical use in accordance with the statute.
 - b.** No more than two primary caregivers who are members of the same family or household may share the same enclosed, locked facility to cultivate marijuana on behalf of qualifying patients in accordance with the statute.
 - c.** A primary caregiver employee may not cultivate the employee's marijuana in the same enclosed, locked facility used by the primary caregiver who employs the employee.
 - 2. Indoor cultivation.** Indoor cultivation locations are subject to provisions related to electrical installation and inspections by State electrical inspectors as set out in 32 M.R.S. §§ 1104 and 1105.
 - 3. Legible tag on each plant.** The identification system used by the primary caregiver or dispensary to identify plants must include, at a minimum, the unique numeric identifier appearing on the patient's valid written certification that is tagged to each mature and immature plant cultivated on behalf of that patient and included as part of that patient's record.
- B. Security.** Cultivation of marijuana for medical use requires implementation of appropriate security measures to discourage theft of marijuana, ensure safety and prevent unauthorized entrance to a cultivation site in accordance with this rule and the statute.
- 1. Fence.** An enclosed outdoor cultivation area must have a privacy fence at least six feet high that obscures the view of the marijuana to discourage theft of marijuana and prevent unauthorized intrusion.

SECTION 4 MEDICAL PROVIDER WRITTEN CERTIFICATION

- A. Authorized conduct by a medical provider; written certification.** Prior to issuing a written certification, the medical provider shall certify that it is the provider's professional opinion that the patient is likely to receive therapeutic benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition. Medical providers issuing written certification to qualifying patients must comply with this rule and the statute. Remote healthcare services for the purposes of the certification and treatment monitoring related to marijuana for medical use are not prohibited by this rule.
- 1. Department-approved certification process.** The qualifying patient's medical provider shall use the Department-approved certification process to issue a written certification for a qualifying patient's medical use of marijuana for at least one of the debilitating medical conditions or treatments listed in statute or approved pursuant to this rule. The medical provider shall give the original signed and dated written certification directly to the qualifying patient or patient's legal guardian.
 - a. Certification for minor qualifying patients.** When a list of physicians known to the Department to be willing to act as a consulting physician is not available, the Department will permit the inquiring treating medical provider to proceed with the certification process for a minor qualifying patient at the time of the request.
 - b. Replacement written certifications.** Except when it is determined to be medically necessary to examine the qualifying patient, a medical provider may, without an in-person encounter with the patient, re-print a written certification if the qualifying patient's certification has been lost or needs updated patient information. When the medical provider does not complete a full assessment of the patient, the expiration of the replacement written certification must not exceed the expiration date of the preceding lost or inaccurate written certification.
 - 2. Referral to professional licensing boards.** The Department may refer to the appropriate professional licensing board a report received regarding the medical provider's inappropriate evaluation or treatment of a patient's medical condition or a reported alleged violation of the applicable standard of care, or when the Department determines the medical provider has violated this rule or the statute.
 - 3. Medical provider compliance.** The medical provider must remain in good standing with professional licensing authorities and compliant with this rule and the statute to avoid interruption in the provider's capacity to issue written certifications.

- B. Public petitions: adding debilitating medical conditions.** The Department shall consider written public petitions to add a disease or medical condition to the list of debilitating medical conditions set forth in statute for the medical use of marijuana. A petition to benefit an individual patient on whose behalf the petition is submitted that does not comply with the provisions in this section shall be denied by the Department.
1. A petition to add a disease or medical condition must be submitted on forms provided by the Department.
 2. The petition must clearly identify the specific debilitating disease or medical condition.
 3. The petition must include reputable scientific evidence that supports the use of marijuana for the treatment of the disease or medical condition.
 4. The petition must include sufficient evidence to demonstrate that the medical use of marijuana would benefit qualifying patients with the disease or medical condition.
 5. The petition must include sufficient evidence that marijuana therapy is effective enough to warrant its use.
 6. The petition must include written endorsement from a Maine medical provider, as defined in statute.
- C. Public hearing.** The Department shall publish a notice indicating the date, time and place of the public hearing on the petition. The notice shall be posted on the Department's webpage and electronically sent to individuals who contact the Department to be placed on the Department's interested parties' mailing list.
- D. Written comments.** The Department shall accept written comments on the petition for ten business days after the date of the public hearing.
- E. Commissioner's decision.** The commissioner shall approve or deny a petition within 180 days of its submission. The commissioner's written decision shall include the factors supporting the decision. Factors considered by the commissioner include, but are not limited to, the following:
1. The written petition including required documentation;
 2. Public testimony and written comments; and
 3. Consultation with physicians and additional research conducted by, or on behalf of, the Department at its discretion.

- F. Bona fide medical provider-patient relationship.** The medical provider shall certify that the written certification has been provided in the course of a bona fide medical provider-patient relationship. The medical provider may have to verify that, prior to issuance of a written certification, a bona fide medical provider-patient relationship exists. In order to establish a bona fide medical provider-patient relationship for medical marijuana certification, the medical provider shall:
1. Conduct a full assessment of the patient's medical history, including substance misuse history and current condition, medication and treatment;
 2. Facilitate an encounter with the person and conduct a relevant physical examination occurring at a permanent location that, similar to a covered office visit or outpatient treatment in terms of site, extent, duration and frequency; is clinically appropriate for conducting medical services and effective for addressing the patient's debilitating condition; and that enables the patient to return for follow up, consultation or assistance, as needed;
 3. Review of prior records of relevant examinations, diagnostic test results, treatments and treatment response;
 4. Develop and document a plan of care;
 5. Create and maintain patient records and documentation, including:
 - a. The patient's medical history;
 - b. Results of the physical examination, including vital signs, and any laboratory tests;
 - c. Instructions to the patient, including discussions of the risks and benefits of the medical use of marijuana, and any disadvantages, alternatives, potential adverse effects, and expected response to treatment;
 - d. A description of the treatment(s) provided to the patient, including all past and current medications prescribed or administered (including the date, type, dose and quantity);
 - e. Results of ongoing monitoring of patient progress and the need for the continued use of medical marijuana; and
 - f. Notes on evaluations, communications and consultations with other medical providers.
- G. Retain and maintain records.** The medical provider must-retain and maintain records that support the decision to recommend the medical use of marijuana, including records of the diagnosis of the debilitating medical condition for which the medical use of marijuana is recommended, including:

1. A description of the ordinary medical or surgical measures for intractable pain that the patient has not responded to for more than six months; or
 2. A description of the symptoms resulting from a chronic or debilitating disease or medical condition or its treatment that satisfies criteria for the medical use of marijuana as set out in this rule and the statute; and
 3. A nonbinding estimate of the length of time that the medical use of marijuana is needed for the treatment of the debilitating medical condition.
- H. Minor patient; consent.** Prior to issuing a written certification for a minor patient's medical use of marijuana, the treating medical provider must secure written consent of the parent, legal guardian, or person having legal custody of the minor qualifying patient. The medical provider must have documentation of the consent of the parent, legal guardian or person having legal custody of the minor in accordance with the statute.
- I. Incapacitated adult patient consent.** Prior to issuing a written certification for an incapacitated adult patient's medical use of marijuana the medical provider must secure written consent that includes the following written documentation from the legal guardian or the power of attorney for health care of the incapacitated adult qualifying patient. The incapacitated adult patient's legal guardian or the power of attorney for health care must:
1. Consent to the patient's medical use of marijuana;
 2. Consent to serve as one of the patient's primary caregivers;
 3. Consent to control the acquisition of marijuana, and the dosage and frequency of the medical use of marijuana by the incapacitated adult patient; and
 4. Consent to comply with all other applicable provisions of this rule and the statute.
- J. Proof of authority to act for another.** The legal guardian or the power of attorney for health care of an incapacitated adult patient, or a minor's guardian or the person having legal custody of the minor must submit to the treating medical provider a copy of the legal documentation issued by the court that appointed the guardian, a copy of the incapacitated adult patient's power of attorney for health care or other legal documentation that the person has legal custody of the patient.

SECTION 5 QUALIFYING PATIENT

- A. Authorized conduct: qualifying patient.** The authorized conduct of a qualifying patient is governed by this rule and the statute. A qualifying patient possessing a valid medical provider written certification who is compliant with this rule and the statute is protected under the Act when exercising authorized conduct. Registration is voluntary for qualifying patients who want to secure a Department-issued registry identification card.
- B. One valid written certification.** Prior to engaging in the medical use of marijuana, a qualifying patient must obtain a valid written certification from his or her medical provider in accordance with this rule and the statute. A qualifying patient may not possess more than one medical provider written certification at one time, except that a visiting qualifying patient is required to have both the valid written medical use of marijuana certification from his or her home jurisdiction and a valid Maine written certification signed by the patient's treating medical provider.
- 1. Written certification required.** Prior to obtaining or using marijuana for medical use, a qualifying patient, including non-registered patients, voluntarily registered patients and visiting patients, must obtain a written certification from his or her medical provider in accordance with this rule.
- a.** The written certification form must be printed on tamper-resistant paper.
 - b.** The written certification may not disclose the medical condition on the written certification issued to the patient for the medical use of marijuana.
 - c.** The written certification expires within one year after issuance. Each written certification must include the date issued and the expiration date.
 - d.** The written certification must be issued in the course of bona fide medical provider-patient relationship. The patient is responsible for providing the necessary information in order for the medical provider to maintain documentation as required by this rule to demonstrate an existing bona fide medical provider-patient relationship.
- C. Updated certification required.** When a qualifying patient has a name change or address change, the qualifying patient must secure an updated written certification from the patient's medical provider. A written certification that has not been updated within 30 days to correct outdated patient information is not valid.
- D. Patients who may not cultivate.** Qualifying patients who may not cultivate their own marijuana for medical use are set out in this rule and the statute.
- 1. Minor qualifying patients may not cultivate.** A minor qualifying patient may not cultivate his or her own marijuana. Only one of the minor's primary caregivers described in this rule and the statute may be designated to cultivate

marijuana for the minor qualifying patient's medical use. Instead of designating a primary caregiver to cultivate marijuana, a dispensary may be designated to cultivate marijuana for the minor qualifying patient.

2. **Incapacitated adult qualifying patients may not cultivate.** An incapacitated adult qualifying patient may not cultivate his or her own marijuana. Only one of the primary caregivers described in these rules may be designated to cultivate marijuana for the incapacitated adult qualifying patient's medical use. Instead of designating a primary caregiver to cultivate marijuana, a dispensary may be designated to cultivate marijuana for the incapacitated adult qualifying patient.
 3. **Visiting qualifying patients.** A visiting qualifying patient may not cultivate marijuana. A visiting qualifying patient may designate a registered primary caregiver or a dispensary to cultivate marijuana for medical use.
- E. **Patient designation to assist.** The qualifying patient must complete the Department-approved Caregiver/Dispensary Designation Form required to designate a primary caregiver to assist the qualifying patient in the medical use of marijuana. Only specified qualifying patients may have two primary caregivers. The patient must provide the designation card and a copy of the signed and dated designation form to the designee. The Caregiver/Dispensary Designation Form is available on the Department's webpage at <http://www.maine.gov/dhhs/mecdc/public-health-systems/mmm/index.shtml>.
- F. **Designation required to cultivate.** When a qualifying patient elects to designate either a primary caregiver or a registered dispensary to cultivate marijuana for the qualifying patient's medical use, the patient must complete the Department-approved Caregiver/Dispensary Designation Form to designate the authorized conduct of the primary caregiver or dispensary. A patient may designate one source to cultivate and must specify the total number of plants the designee may cultivate on the patient's behalf. Designating a primary caregiver or dispensary does not preclude a patient from cultivating for himself or herself; however, at no time may the combined cultivation by the qualifying patient and the patient's designee exceed the maximum limits of plants permitted by statute. The patient must provide the designation card and a copy of the signed and dated designation form to the designee. The Caregiver/Dispensary Designation Form is available on the Department's webpage at <http://www.maine.gov/dhhs/mecdc/public-health-systems/mmm/index.shtml>.
- G. **Patient rescinds designation.** The patient may change his or her designated registered dispensary or primary caregiver at any time by notifying the registered dispensary or primary caregiver of the change. A qualifying patient may rescind the designation of a primary caregiver or dispensary by signing and dating the rescission section of the designation form and providing a copy of the updated form to the primary caregiver or dispensary. The patient who recently terminated a designation may not obtain marijuana from another source, including a newly designated primary caregiver or dispensary, if the transfer results in the patient possessing more than the amount permitted by statute.

SECTION 6 PRIMARY CAREGIVER

- A. Authorized conduct: primary caregiver.** The authorized conduct of a primary caregiver is governed by this rule and the statute. The primary caregiver who receives compensation for assisting a qualifying patient is required to pay applicable taxes and to maintain appropriate records for tax purposes. The Department may conduct a review of required documentation for compliance purposes. A primary caregiver may be designated by a qualifying patient to provide the following:
- 1. Assist and cultivate.** Assist any qualifying patient with the medical use of marijuana in accordance with this rule and the statute. The designation form shall indicate whether the primary caregiver is cultivating on behalf on the patient. Visiting qualifying patients who have designated a primary caregiver must be counted when calculating the maximum number of qualifying patients allowed by statute.
 - 2. Dispense.** A primary caregiver may dispense marijuana for medical use to a qualifying patient in accordance with statute. A primary caregiver may prepare and dispense goods containing marijuana for medical use to a qualifying patient in accordance with statute and this rule. A trip ticket is required if the primary caregiver is transporting marijuana from the cultivation location to dispense from a different location. See Section 7 (Q)(1) of this rule for requirements related to trip tickets.
 - 3. Acquire.** Acquire medical use marijuana from an authorized source on behalf of a qualifying patient in accordance with this rule and the statute.
 - 4. Dispose.** Dispose of excess prepared medical use marijuana in accordance with this rule and the statute.
 - 5. Other.** Other services authorized by this rule and the statute.
 - 6. Employ one person.** A primary caregiver who is registered may employ one person to assist in the duties of the registered primary caregiver. A registered primary caregiver must maintain personnel files in accordance with this rule.
- B. Designation form required.** A primary caregiver must have a Department-approved designation form signed and dated by each qualifying patient, including a visiting qualifying patient, who they assist.
- 1. Patient designation reporting.** The registered primary caregiver must report, at least annually, the total number of patients who have designated the primary caregiver. The unique count of patients served by the primary caregiver must be provided upon request by the Department. The report must include the following:

- a. The date of patient designation and rescission date, if applicable, and
 - b. The patient's unique identification number that appears on the patient's written certification.
2. **Disclosure; privacy protection.** The primary caregiver must ensure a level of privacy protection for qualifying patients and comply with requirement regarding confidentiality in 22 M.R.S. §2425(8). Unless otherwise stated in statute or rule, the primary caregiver may not disclose patient information without signed patient consent. These provisions also apply to the employee of a registered caregiver.
- C. **Patient designates cultivating primary caregiver.** A qualifying patient may designate either a primary caregiver or a dispensary to cultivate medical use marijuana. The maximum number of plants permitted by statute may not be exceeded by a combination of the primary caregiver who is designated to cultivate and the patient who also cultivates. The designation form must clearly identify the primary caregiver who the patient designates to cultivate and the number of plants designated to be cultivated on the patient's behalf. The primary caregiver retains the qualifying patient's designation card for the time the designation is in effect. No cultivation may occur until the primary caregiver has a designation form signed and dated by the qualifying patient. The primary caregiver who is required to register must obtain a registry identification card to be authorized to cultivate marijuana for medical use.
- D. **Patient rescinds designation.** A qualifying patient may rescind the designation of a primary caregiver by signing and dating the rescission section of the form and providing the rescinded designation form to the primary caregiver. Upon receipt of notice of rescission, the primary caregiver must return the designation card to the patient. Unless a new patient replaces the former patient, the primary caregiver who fails to notify the Department within ten days of the change in patient designation may be subject to enforcement action including fines in accordance with statute and this rule.
- E. **Primary caregiver may accept, refuse or discontinue designation.** A primary caregiver may accept, refuse or discontinue the designated relationship with a qualifying patient. The Department-approved designation form signed by the qualifying patient must also be signed and dated by the primary caregiver clearly indicating the acceptance, refusal or discontinuation of the designated relationship. Unless a new patient replaces the former patient, the primary caregiver who fails to notify the Department within ten days of a change in designation may be subject to enforcement action in accordance with statute and this rule.
- F. **Caregiver discontinues designated relationship.** A primary caregiver discontinues the designated relationship with a qualifying patient in accordance with the following:
 1. Signs and dates the qualifying patient's designation form indicating the discontinuation of the designation relationship.

2. Returns the designation card to the qualifying patient the same day the caregiver signs and dates the form. Once the discontinued designation form is signed and the card is returned to the qualifying patient, the qualifying patient is no longer counted when calculating the maximum number of qualifying patients allowed per primary caregiver by this rule and the statute.
3. The conduct protected by this rule and the statute expires ten days after the date the qualifying patient's designation is discontinued. Excess marijuana must be lawfully disposed within this ten-day period. A copy of the discontinued designation form may be needed as proof of authorized conduct.

G. Employee of a registered primary caregiver. The authorized conduct of an employee of a registered primary caregiver is governed by this rule and the statute.

1. The employee of a registered primary caregiver may assist in the duties designated to the employing registered primary caregiver.
2. The registered primary caregiver's employee's personnel file shall contain the following:
 - a. Documentation of background checks;
 - b. Job description or employment contract;
 - c. The Employment Eligibility Verification Form I-9 and
 - d. Copy of current registry identification card and copy of a Maine driver's license of other State-issued photographic identification card.
3. The authorization of an employee's conduct under this rule and the statute ceases when that person is no longer employed by a registered primary caregiver.
4. A registered primary caregiver employee is required to pay applicable taxes.

H. Application for registry identification cards. Primary caregivers who are required by statute to register with the Department must submit an application for a registry identification card and for an employee registry identification card, as applicable, in accordance with this rule and the statute. See Section 9 of this rule.

1. **Application criteria.** An applicant must submit a completed application for a registry identification card which includes, but is not limited to, the following information:
 - a. Residency information required for a criminal history record check;
 - b. Social Security Number or EIN, and, if applicable, a sales tax ID number for tax reporting purposes; and

- c. Cultivation location, if applicable.
 2. The Department may deny an application for a registry identification card if the applicant failed to provide required information or provided false information.
 3. Submission of an application for a registry identification card by a primary caregiver constitutes permission for entry and inspection of any part of a building or property under ownership or control of that primary caregiver used for cultivation, storage, preparation, processing, or furnishing of medical marijuana. Any samples taken shall be handled as for dispensary samples in Sections 7(J), 7(K) and 7(L).
 4. Failure to cooperate with on-site assessments may be ground to revoke the caregiver's registry identification card.
- I. A second primary caregiver.** In addition to a minor qualifying patient, the following qualifying patients may designate a second primary caregiver in accordance with this rule and the statute.
1. **An incapacitated adult qualifying patient.** An incapacitated adult qualifying patient's legal guardian or power of attorney for health care shall serve as the incapacitated adult's primary caregiver. In addition, an incapacitated adult qualifying patient may have a second primary caregiver.
 2. **Qualifying patient in a hospice or nursing facility.** The qualifying patient's hospice provider or nursing facility may serve only as the qualifying patient's non-cultivating primary caregiver. In addition, the qualifying patient may have a second primary caregiver designated to cultivate marijuana or to assist with the qualifying patient's medical use of marijuana.
- J. Food establishment license required.** Except as provided by this rule and statute, Aa primary caregiver must obtain a food establishment license from the Department of Agriculture, Conservation and Forestry (DACF), pursuant to 22 M.R.S. §§ 2152 and 2167, prior to preparing goods containing medical use marijuana, including tinctures, that are intended for ingestion. Licensed caregivers must comply with regulations applicable to food establishments, including 10-144 C.M.R., Chapter 200 and DACF rules.
1. **Food establishment exemption.** A primary caregiver is not required to obtain a food establishment license if the primary caregiver is preparing consumable goods containing marijuana for a patient who is a member of the primary caregiver's family or household and the product is furnished to that patient.
- K. Separate locations within a building.** Primary caregivers are prohibited from participating in a collective as defined in 22 M.R.S. §2422 (1-A). A collective does not include primary caregivers who rent separate, self-contained, locked and secured

locations within a building pursuant to this rule and the statute. Separate, self-contained, locked and secured areas are enclosed on all sides and function independently.

- 1. Caregivers in a common building.** Except as explicitly permitted by statute:
 - a.** A primary caregiver may not assist another caregiver in acts of cultivation or processing, which includes growing, harvesting, drying, manufacturing, storage, and dispensing; or in those duties designated to the caregiver and related to the administration of marijuana for medical use.
 - b.** All marijuana cultivated for medical use must be locked and stored separately.
 - c.** Materials used by a primary caregiver related to the cultivation may be stored in common areas.

SECTION 7 REGISTERED DISPENSARIES

- A. Dispensary registration certificate required.** No person shall operate a dispensary for marijuana for medical use without a Department-issued dispensary registration certificate. The application and renewal requirements for a dispensary registration certificate are set forth in this rule and the statute.
- 1. Nontransferable.** The dispensary-registration certificate issued by the Department to a dispensary is nontransferable.
 - 2. Compliance.** The cultivation facility and retail site of a dispensary, including, but not limited to, registered dispensaries that see patients only by appointment, must comply with all requirements and prohibitions in this rule and the statute. Failure to comply may result in enforcement action including, but not limited to, termination of the dispensary registration certificate.
- B. Food establishment license required.** A registered dispensary must obtain a food establishment license from the DDCF, pursuant to 22 M.R.S. §2167, prior to preparing goods containing marijuana, including tinctures of marijuana, intended for ingestion. A dispensary that is issued a food establishment license must comply with applicable provisions within 10-144 C.M.R., Chapter 200 and DDCF rules.
- C. Designation form required.** The registered dispensary must have a Department-approved designation form signed and dated by each qualifying patient or patient's legal representative assisted by the dispensary, including a visiting qualifying patient, and the patient's designation card.
- 1. Disclosure; privacy protection.** The dispensary must ensure a level of privacy protection for patients. Unless stated otherwise in statute or rule, principal officers, board members and employees of dispensaries may not disclose patient information, including designation cards without signed patient consent.
- D. Patient rescinds designation.** A qualifying patient may rescind his or her designation of a registered dispensary by signing and dating the rescission section of the form and providing the rescinded designation form to the registered dispensary. Within ten days of receipt of notice, the dispensary must return the designation card to the patient and, unless the former patient is replaced with a new patient, notify the Department of the change.
- E. Registered dispensary may accept, refuse or discontinue designation.** A registered dispensary may accept, refuse or discontinue the designated relationship with a qualifying patient. The Department-approved designation form signed by the qualifying patient must also be signed and dated by the registered dispensary clearly indicating acceptance, refusal or discontinuation of the designated relationship.

1. **Dispensary discontinues designated relationship.** A registered dispensary discontinues the designated relationship with a qualifying patient in accordance with the following:
 - a. Signs and dates the qualifying patient's original designation form indicating that the dispensary discontinues the designation relationship.
 - b. Returns the designation card to the qualifying patient the same day the dispensary signs and dates the form.
 - c. The conduct protected by this rule and the statute expires ten days after the qualifying patient's designation is discontinued.
- F. **Authorized conduct; registered dispensary.** The authorized conduct of a registered dispensary is governed by this rule and the statute. A registered dispensary may be designated by a qualifying patient to provide the following:
1. **Assist and cultivate.** Assist any qualifying patient who designated the registered dispensary to cultivate marijuana for the medical use and assist the patient with the administration of marijuana.
 2. **Dispense.** Dispense prepared marijuana to a qualifying patient or to a primary caregiver on behalf of a qualifying patient in accordance with statute.
 3. **Dispose.** Dispose of excess marijuana in accordance with this rule and the statute.
 4. **Acquire.** Acquire marijuana in accordance with this rule and the statute.
 - a. When acquiring excess marijuana from an authorized source, the dispensary must verify the person's authority to possess and furnish the medical marijuana.
 - b. Acquisition of marijuana or marijuana product from a registered primary caregiver or other dispensary requires prior approval by the Department. The dispensary must submit the Department-approved form to request approval from the Department, prior to acquiring excess marijuana from a registered primary caregiver or dispensary.
 5. **Other.** Other services authorized by this rule and the statute.
- G. **Dispensary prohibitions.** The following prohibitions apply to registered dispensaries:
1. A registered dispensary may not possess more than six mature marijuana plants for each qualifying patient who has designated the registered dispensary to cultivate marijuana for the qualifying patient's medical use.

2. A registered dispensary may not dispense, deliver or otherwise transfer marijuana to a person other than a qualifying patient who has designated the dispensary to cultivate marijuana for the qualifying patient or to the patient's primary caregiver
3. Except as provided by the statute and this rule, a registered dispensary may not acquire prepared marijuana or marijuana plants except through the cultivation of marijuana by that dispensary either at the location of the retail dispensary or at the dispensary's grow location, if different.
4. A registered dispensary may not contract for the cultivation of seeds, seedlings or small plants or the cultivation, production or preparation of marijuana or goods containing marijuana for medical use. The cultivation and production of marijuana for medical use is restricted to the dispensary's approved location(s).
5. A registered dispensary is prohibited from acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying or dispensing marijuana for any purpose except to assist qualifying patients who have designated the dispensary to cultivate marijuana for them.
6. No more than 30 mature plants may be cultivated by a registered dispensary in an enclosed outdoor area.

H. Dispensary registry identification cards required. The dispensary must obtain registry identification cards for its principal officers, board members, and employees in accordance with this rule and the statute. A dispensary may not apply for a registry identification card for a principal officer, board member or employee who is not a Maine resident or who has been convicted of a disqualifying drug offense. A dispensary may not employ a person under the age of 21.

1. **Application criteria.** An applicant must submit a completed application for a registry identification card which includes, but is not limited to, the following information:
 - a. Residency information required for a criminal history record check;
 - b. Social Security Number or sales tax ID number for tax reporting purposes; and
 - c. Cultivation location, if applicable.
2. The Department may deny an application for a registry identification card if the applicant failed to provide required information or provided false information.

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- I. Inspections.** Registered dispensaries, including all retail and cultivation locations, are subject to inspection at least annually by the Department in accordance with this rule and the statute.
1. Submission of an application for a dispensary registration certificate constitutes permission for entry and inspection of the dispensary location(s).
 2. Failure to cooperate with required inspections may be grounds to revoke the dispensary's registration certificate.
 3. During an inspection, the Department may identify violations of this rule, the statute and the dispensary's policies and procedures. The dispensary shall receive written notice of the nature of the violations. The dispensary shall notify the Department in writing with a postmark date within ten business days of the date of the notice of violations and identify the corrective actions taken and the date of the correction.
- J. Quality control.** To ensure the safety of qualifying patients, the registered dispensary shall provide samples to the Department upon request during announced and unannounced inspections for product quality control.
- K. Sample collection and labeling.** During an inspection of the registered dispensary, the Department shall:
1. Collect soil and plant samples, and samples of products containing marijuana prepared at the dispensary;
 2. Place the dispensary's registration number on each sample container;
 3. Label the sample containers with the description and quantity of its content;
 4. Seal sample containers; and
 5. Have dispensary and Department staff initial each sample container.
- L. Chain of custody of samples.** Chain of custody documentation shall be maintained by the Department.
1. The Department shall provide a receipt for the collected samples to the dispensary's representative.
 2. The Department shall maintain an accounting of all collected sample containers for control purposes.

- M. Sample testing.** The Department shall test samples for pests, mold, mildew, heavy metals and the presence of pesticides. Additional testing may be conducted. Written results shall be reported to the dispensaries.
- N. Dispensary security: protection of premises and persons.** Registered dispensaries must implement appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana at the registered dispensary and the grow location for the cultivation of marijuana, if any. Security measures to protect the premises, the public, qualifying patients, primary caregivers and principal officers, board members and employees of the registered dispensary must include, but are not limited to, the following:
1. On-site parking.
 2. Exterior lighting sufficient to deter nuisance activity and facilitate surveillance, but not disturb neighbors.
 3. Devices or a series of devices, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device to detect an unauthorized intrusion.
 4. Interior electronic monitoring, video cameras, and panic buttons. Electronic monitoring and video camera recording records must be maintained by the dispensary for at least 14 days.
 5. Consistent and systematic prevention of loitering.
- O. Dispensary policies, procedures and records.** The operating documents of a registered dispensary must include procedures for the oversight of the registered dispensary and procedures to ensure accurate record keeping. Dispensaries must develop, implement and comply with dispensary policies and procedures. When changes are made to its policies or procedures, the dispensary must notify the Department in writing at least ten days before implementation of the change, except when immediate implementation is required, in which case, the dispensary must simultaneously notify the Department when it implements the changed policy or procedure. The written simultaneous notice must include an explanation of why it was necessary to implement the change before giving the Department at least ten days' notice. The dispensary policies, procedures, and records must be available for inspection by the Department, upon request. Dispensary records subject to inspection include, but are not limited to:
1. **Residency requirement policy.** All employees, principal officers and board members of a registered dispensary must be residents of the State of Maine.
 - a. Documentation of current State of Maine residency shall be maintained in the personnel files of employees, principal officers and board members

and shall include, but not be limited to, a copy of a Maine driver's license or other Maine-issued photo identification and physical home address (not mailing address) in Maine.

- b. To maintain Maine residency status, each employee, principal officer and board member of the dispensary must have a physical street home address in Maine and, in the aggregate, spend more than 183 days of the year in Maine.

2. **Board members; avoid conflict of interest policy.** Board members shall carry out their board duties with the proper use of their authority, and in a professional and ethical manner. Board members shall avoid conflicts of interest, including direct and indirect gains which could accrue to the member as a result of actions or decisions made in the capacity of board authority. Examples of potential conflict of interest include:

- a. A board member makes a decision motivated by considerations other than the best interests of the registered dispensary.
- b. A board member or family member personally enters into a contract with the registered dispensary.
- c. A board member learns of and acts on an opportunity for profit which may be valuable to him or her personally or to another organization of which he or she is a member.
- d. A board member assists a third party in his or her dealings with the registered dispensary where such assistance could result in favorable or preferential treatment being granted the third party by the registered dispensary.
- e. A board member receives gifts or loans from the registered dispensary.

3. **Job description and employment contract policies.** The policy regarding job descriptions and employment contracts shall include duties, authority, responsibilities, qualifications, supervision, training in, and adherence to, confidentiality requirements, periodic performance evaluations and disciplinary actions.

4. **Patient education.** Dispensary policies must include a provision that requires dispensaries to provide educational materials about marijuana to qualifying patients and their primary caregivers. Each dispensary must have, available for distribution, an adequate supply of up-to-date education material that assists the patient or primary caregiver in the selection of prepared marijuana appropriate for the patient. Educational materials must be available for inspection by the

Department upon request. The educational material must include, at a minimum, the following:

- a. Information about the typical and potential effects of different strains of marijuana preparations, and methods of administration. Dispensaries shall provide “tracking sheets” to qualifying patients and primary caregivers who request them to keep track of the strains used and their effects.
- b. Information on how to achieve proper dosage for different modes of administration must be shared. Emphasis shall be on using the smallest amount possible to achieve the desired effect. The impact of potency must also be explained.
- c. Information on tolerance, dependence and withdrawal must be provided.
- d. Information regarding substance abuse signs and symptoms must be available, as well as referral information.
- e. Information on whether the dispensary’s marijuana and associated products meet organic certification standards must be provided.

5. Alcohol and drug-free workplace policy. The registered dispensary is subject to provisions of 26 M.R.S., Chapter 7, Subsection 3-A, this rule and the statute. A registered dispensary must have and adhere to a written alcohol and drug-free workplace policy. The policy must be available to the Department upon request. The policy must include at least the following provisions:

- a. **Applicants: substance abuse testing.** Applicants who have been offered employment by the registered dispensary must submit to a substance abuse test. The offer of employment must be conditioned on the applicant receiving a negative test result. Substance abuse testing must comply with 26 M.R.S, Chapter 7, Subchapter 3-A. This does not apply if an applicant, who is also a qualifying patient, fails the drug test solely because of the presence of marijuana in a confirmed positive test result.
- b. **Employees: substance abuse testing.** The registered dispensary must have a policy providing for probable cause substance abuse testing consistent with 26 M.R.S, Chapter 7, Subchapter 3-A. Substances or groups of substances shall include amphetamine/methamphetamine, barbiturates, cannabinoids, benzodiazepines, cocaine and/or metabolites, phencyclidine, opiates, methaqualone, methadone and alcohol.
- c. **Testing for specific substances of abuse.** The registered dispensary shall request a report from the qualified testing laboratory disclosing the presence or absence of, minimally, the following specific substances of abuse:

- e. Documentation of background checks.
 - f. Job description or employment contract.
 - g. Documentation of training, including training regarding confidentiality requirements.
 - h. Documentation of periodic performance evaluations.
 - i. Documentation of disciplinary actions.
 - j. Documented results of drug tests.
7. **Business records.** Registered dispensaries must maintain business records including manual or computerized records of assets and liabilities, tax returns, contracts, board meeting minutes reflecting actions of the board, monetary transactions, various journals, ledgers, and supporting documents, including agreements, checks, invoices and vouchers which the dispensary keeps as its books of accounts. All business records must be available upon request by the Department and maintained and retained for six years.
- a. **Transaction record.** Business records include the sales record that indicates the name of the qualifying patient or primary caregiver to whom marijuana has been distributed, sold or donated, including the quantity and form. The sales record must indicate the sale price of the product.
 - b. **Record of acquisition.** The dispensary records must include the marijuana and marijuana products acquired by the dispensary as set out in statute and rule.
 - c. **Record of samples.** The dispensary must maintain record of samples provided for quality control, testing or research and development purposes.
 - d. **Record of disposal of marijuana.** The registered dispensary must create and maintain records of the disposal of marijuana including marijuana not distributed by the dispensary.
8. **Record of current patients.** The registered dispensary must keep on file and available for Department inspection, upon request, a copy of each current patient's registry identification card or, for non-registered qualifying patients, a copy of the medical provider written certification and the Department-approved dispensary designation form, and the following:
- a. A Maine driver's license or

- b. Other Maine-issued photographic identification, and
- c. Verification of the patient's designated primary caregiver, if applicable, and other documents required to ensure compliance with this rule and the statute.

P. Inventory. A registered dispensary is authorized to have the amount designated to the registered dispensary by the qualifying patient, that is, up to six mature marijuana plants and an incidental amount of marijuana per qualifying patient. The dispensary's usual inventory supply must be based on the dispensary's own cultivation and production, and the needs of qualifying patients who have designated the dispensary to cultivate. The Department will not consider the absence of marijuana strains or products containing marijuana as an inventory interruption if the marijuana or marijuana product has not been produced by the dispensary as usual inventory. The dispensary must disclose to the qualifying patient if the patient is provided marijuana that was not cultivated or produced by the dispensary.

1. **Start-up Inventory.** During the first 60 days after initial authorization, in order to build initial inventory, a newly-registered dispensary without any qualifying patients, may have 24 mature marijuana plants, and the amount of incidental marijuana and nonflowering plants that is permitted for a maximum of five patients.
2. **Inventory reduction.** When there is a decrease in the number of patients who have designated the dispensary to cultivate marijuana, the dispensary shall have ten business days to adjust the inventory to meet the requirements of this rule and the statute.
3. **Daily inventory.** Prepared marijuana must be kept under double lock and inventoried daily by two cardholders.
4. **Dispensing inventory.** Quantities of prepared marijuana must be weighed, logged in and signed out by two cardholders when dispensed.

Q. Trip tickets. Distribution of marijuana for medical use to a qualifying patient or a primary caregiver for use by a qualifying patient must be labeled with a trip ticket to identify the dispensary, the MMMP patient number if the patient is registered or a unique identifier assigned by the dispensary to non-registered qualifying patients, or the MMMP caregiver number if the caregiver is required to be registered or a unique identifier assigned by the dispensary if the primary caregiver is not required to be registered, the product, the amount and form, the time and date of origin, and destination of the product.

1. Persons authorized to transport marijuana on behalf of a patient shall take reasonable steps to deliver the product directly to the qualifying patient as a safety precaution and to alleviate concerns about drug diversion. The required trip ticket must identify the written certification number of the patient to whom the

marijuana is being furnished; the source providing the marijuana; the registry identification number of the primary caregiver, if applicable; the amount of marijuana and form; the time, location and date of departure; and destination of the product.

2. A dispensary with a cultivation site that is not located with the retail dispensary must label the marijuana that is being moved between the cultivation site and the retail dispensary with a trip ticket that identifies the name and address of the dispensary, the address of the cultivation site, the time, date, origin and destination of the material being transported, and the amount and form of marijuana and marijuana material that is being transported.
- R. Inventory supply records.** The dispensary shall report the dispensary's inventory supply. The dispensary shall record the marijuana strains cultivated by the dispensary and the marijuana products produced and furnished by the dispensary. The registered dispensary shall identify the marijuana strains and the marijuana products that are acquired and did not originate from the dispensary's own cultivation and production. Inventory supply records must be available upon request by the Department.
- S. Patient designation reporting.** The registered dispensary must submit a monthly report of the total number of patients who have designated the dispensary. This report is due to the Department before the tenth day of the each month. The report must include the unique numeric patient identifier that appears on the patient's valid written certification, date of designation and, if applicable, date of rescission.
- T. Incident reporting.** A registered dispensary must submit a Department-approved incident report form on the next business day after it discovers a violation of the requirements set out in this rule and the statute regarding the operation of dispensaries. The report must indicate the nature of the breach and the corrective actions taken by the dispensary. For the purposes of this rule, an incident includes:
1. Confidential information accessed or disclosed in violation of this rule and the statute;
 2. Loss of inventory by theft, diversion or any other means;
 3. Intrusion of the retail dispensary or the cultivation site, if marijuana is not cultivated at the retail site; and
 4. Any other violations of this rule or the statute governing operation of the dispensary.
- U. Illegal activity reporting.** Any suspected illegal activity involving dispensary operations must be reported within 24 hours of suspicion to law enforcement and the Department. The dispensary must submit a written report to the Department using the dispensary's incident report form.

- V. **Competitive selection process to add new dispensaries.** The Department employs a competitive selection process when adding new dispensaries. A dispensary selected to be issued a registration certificate must comply with applicable the statute and this rule. During the first year of operation of dispensaries, the Department may not authorize more than one dispensary in any of the eight Public Health Districts of the Department.
1. **Not-for-profit corporation.** To be issued a dispensary registration certificate, a dispensary is required to incorporate pursuant to 13-B M.R.S. and to maintain the corporation in good standing with the Secretary of State. The dispensary must operate on a not-for-profit basis for the mutual benefit of qualifying patients who have designated the dispensary to cultivate marijuana.
 - a. **By-laws.** The bylaws of the dispensary and its contracts with qualifying patients must contain such provisions relative to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its not-for-profit status.
 - b. **Not required to be tax-exempt.** A dispensary is not required to be a tax-exempt organization under 26 United States Code, Section 501(c)(3).
 2. **Notice of open application.** The Department shall publish a notice of open application for dispensary registration certificates that includes the application requirements. Notices will appear, at a minimum, in the Kennebec Journal and on the Maine Medical Use of Marijuana webpage. Applicants may apply for one or more Districts, but must specify which Districts. The notice will contain the deadline for receipt of applications and the process for obtaining application material.
 3. **Scoring applications.** A panel shall be convened by the Department to evaluate and score each application. The maximum point value is based on the quality of the applicant's submission. The maximum points for each criterion are indicated in this rule. To be considered responsive, an application must have at least 70 points. The panel shall set forth through consensus comments the basis of the scoring decision for each criterion. A certificate of registration shall be issued in response to the application in a Public Health District with the highest score, as long as the application meets all criteria and the minimum score. In case of a tie, the panel reserves the right to seek supplemental information through written questions of the applicants and to raise or lower the applicants' scores based upon the supplemental information.
 4. **Application fee.** Applicants must submit an application fee of \$12,000 for each District included in the application for the application to be considered by the panel. Unsuccessful applicants are assessed a \$1,000 fee. Application requirements are set forth in this rule.

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5. **Selection criteria.** Each application shall address all criteria and measures, even when no point values are assigned. Failure to address all of the criteria and measures will result in the application being considered non-responsive and not accepted for review.
6. **Criterion 1: Submission of Required Information Regarding Applicant and Facility (up to 25 points)**
- a. The applicant shall provide the legal name of the corporation, a copy of the articles of incorporation and by-laws of the corporation. [no points assigned]
 - b. The applicant shall provide the proposed physical location of the retail dispensary and if marijuana is not cultivated at the retail site, the one site where marijuana may be grown, if a precise address has been determined.
 - i. For each proposed physical address, provide legally binding evidence of site control sufficient to enable the applicant to use and possess the subject property.
 - ii. If the applicant indicated that a precise address has not been determined, the applicant has at least identified the general location(s) where the facilities will be sited, and when. [up to 5 points]
 - c. The applicant shall provide evidence of compliance with local codes and ordinances for each physical address which will be used for dispensing and growing cultivating marijuana under the MMMP, and that neither location is within 500 feet of a preexisting public or private school boundary. A school in this context is interpreted to mean an entity that satisfies Maine's compulsory education requirements. [no points assigned]
 - d. The applicant shall describe the enclosed, locked facilities that will be used in the growing, cultivation and sale of marijuana, the security measures and whether it is visible from the street or other public areas. [up to 5 points]
 - e. The applicant shall provide the name, address and date of birth of each principal officer and board member of the dispensary, along with a photocopy of their Maine driver's license or other Maine-issued photographic identification card. Temporary new driver's licenses are not acceptable. [no points assigned]
 - f. The applicant shall provide a list of all persons or business entities having direct or indirect authority over the management or policies of the dispensary, and a list of all persons or business entities having 5% or more ownership in the dispensary, whether or not the interest is in the land or

buildings, including owners of any business entity which owns all or part of the land or building. [no points assigned]

- g.** The applicant shall provide the identity of any creditor holding a security interest in the premises, if any, and the terms of that agreement. The applicant shall identify any principal officer or board member of the dispensary who is a creditor and disclose the terms and conditions. [no points assigned]
- h.** The application shall include the required signed cover letter, and the completed application form supplied by the department. [no points assigned]
- i.** The applicant shall describe how the dispensary will operate on a long-term basis as a non-profit organization and a business plan that includes, at a minimum, the following: [up to 15 points]

 - i.** A detailed description about the amount and source of the equity and debt commitment for the proposed dispensary that demonstrates the immediate and long-term financial feasibility of the proposed financing plan, the relative availability of funds for capital and operating needs; and the financial capability to undertake the project.
 - ii.** A copy of the proposed policy regarding marijuana that is furnished without anything of value provided in return.
 - iii.** The application indicates whether the applicant will accept unused excess marijuana from qualifying patients or primary caregivers, the process for assuring that the marijuana is not adulterated (how it will be tested) and how it will be redistributed (cannot be sold) to patients.
 - iv.** Projected income statements for the first three years after implementation (forms to be supplied by the Department).
 - v.** The applicant provides evidence that salaries are in line with the non-profit sector.
 - vi.** Control of the organization is exercised by a governing body.
 - vii.** There are sufficient board members to fire an executive or to remove board members.
 - viii.** Plans for distribution of net revenues annually.

7. **Criterion 2: Overall Health Needs of Registered Patients and Safety of the Public**
[up to 75 points]
- a. The applicant demonstrates their proposed location and services will be convenient for qualifying patients and caregivers. [up to 10 points]
 - b. The applicant demonstrates a steady supply of marijuana for medical use will be available to the projected number of registered patients. [up to 10 points]
 - i. There is a start-up timetable which provides an estimated time from registration of the dispensary to full operation, and the assumptions used for the basis of those estimates.
 - ii. The applicant demonstrates knowledge of organic growing methods to be used in their growing and cultivation of marijuana.
 - iii. The applicant demonstrates that steps will be taken to ensure the quality of the marijuana, including purity and consistency of dose.
 - iv. The applicant discloses the various strains of marijuana to be dispensed and for which conditions and the form(s) in which marijuana will be dispensed.
 - c. The applicant demonstrates the knowledge and ability to manage a non-profit organization or other business. [up to 10 points]
 - i. Personnel.
 - ii. Fiscal (payroll, bookkeeping case management).
 - d. The applicant demonstrates that its plan for record keeping, inventory, quality control and security and other policies and procedures will discourage unlawful activity. [up to 20 points]
 - e. The applicant fully describes a staffing plan that will provide accessible business hours, safe growing and cultivation, and maintenance of confidential information regarding the cultivation sites and the identity of patient information. [up to 20 points]
 - f. The application indicates consent to pay for State and federal background checks for all proposed and future registry card holders. [no points assigned]

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- g. The application reflects a strong patient education component which addresses the diversity of qualifying medical conditions. [up to 5 points]
8. **Award decision.** The award decision shall be made in writing to the successful applicants.
- a. **Department determination.** Subject to the limitations on the number and location of dispensaries, within 30 calendar days of receipt of a completed application form with a score of at least 70 points and with all required documents and required fees, the department shall register a dispensary and issue a certificate of registration to the highest scored person or entity that complies with the certificate of registration requirements set out in these rules and has the highest number of points of the applicants for the District.
- b. **Award is void.** Failure of the award recipient to secure a certificate of registration within 120 days of receipt of the Department's award decision may, at the discretion of the Department, render the award void. When an award is voided, the Department shall issue a written decision to void an award to operate a dispensary. The Department's written decision to void an award to operate a dispensary is considered final agency action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.
- c. **Notice of denial.** The Department shall send a written notice of denial to non-selected applicants. Written notice of denial of an application or non-selection is considered final agency action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.
- d. **Record.** The record for review is the applications and any attached supporting documents, any other documents relied upon by members of the scoring panel in its decision, consensus comments of the panel, notices of denial and acceptance, and any other written communications between the Department and the applicants related to the decision.
- W. **Application for dispensary registration certificate.** When the application period is open, a Dispensary Registration Certificate Application form may be available by request to the Department. The applicant must submit a completed Department-approved application form with all required documentation and the required fees. The application for a dispensary registration certificate must include, at a minimum, the following:
1. The legal name of the dispensary and the DBA (doing business as) name of the dispensary;

2. The physical address of the retail dispensary and the physical address of the location where marijuana will be cultivated for qualifying patients who have designated the dispensary to cultivate marijuana for them;
3. The distance to the closest school from the dispensary;
4. A copy of the dispensary's articles of incorporation and bylaws, and evidence that the corporation is in good standing with the Secretary of State;
5. The name, address, proof of residency and date of birth of each principal officer and board member of the dispensary;
6. The name, address, proof of residency and date of birth of any person who is employed by the dispensary;
7. A copy of the dispensary's policies and procedures;
8. A copy of the dispensary's liability insurance policy;
9. A business plan demonstrating the on-going viability as a non-profit organization; and
10. Narrative describing how the applicant will meet all the selection criteria specified in this rule.

X. Renewal of dispensary registration certificate. The annual renewal of a dispensary registration certificate must comply with this rule and the statute.

1. A registered dispensary must submit a completed Department-approved application for the renewal of a current registration certificate-with all required documentation and the required fees 60 days prior to the expiration date. The dispensary registration certificate renewal application is available upon request made by a registered dispensary to the Department. Failure to submit a timely, complete renewal packet may be grounds for denial of the renewal and may result in expiration of the registration certificate to operate the dispensary.
2. When submitting for a renewal of the registration certificate, registered dispensaries must update, as needed, all information submitted by the dispensary on its initial application or previous renewal for a dispensary registration certificate. Failure to submit all current, up-to-date information timely may be grounds for denial of the renewal and may result in expiration of the registration certificate to operate the dispensary.
3. Within ten days of its decision to approve or deny the renewal, the Department shall issue a written decision that either includes the renewed dispensary registration certificate or the grounds for denial and statement of deficiency.

4. When the dispensary submits a complete and timely application for renewal, the registration certificate remains in good standing until the Department issues a new registration certificate, a statement of deficiency or a denial.

SECTION 8 FEES

- A. **Fees submissions.** Fees must be payable to the *Treasurer, State of Maine*. Payment may be made by bank check, money order, or electronically if an electronic payment method is available.
1. **Nonrefundable.** An unsuccessful dispensary registration certificate applicant is refunded the amount of the application fee, less \$1,000. All other fees are nonrefundable.
 2. **Application fee reduction.** The Department may apply fees that are less than the amounts specified in this section when the reduction of application fees is in conformity to the statute and this rule.
 - a. The percent in reduction of fees shall be applied equally across cardholders, but may not be less than the minimum fee required by statute.
 - b. The Department shall revise application forms to reflect any change in the fee required for the calendar year that follows a requisite review of the MMMP budget.
- B. **Registered patient fee.** A qualifying patient may voluntarily register with the Department to secure a registry identification card for the lawful medical use of marijuana. There is no fee for a qualifying patient to apply for or renew a Department-issued registry identification card.
- C. **Registered primary caregiver fees.** Registered primary caregiver fees are governed by this rule and the statute. The registered primary caregiver is required to submit the fees as follows, except that when a lesser amount is indicated on the Department-approved application forms, the applicant shall pay the lesser amount indicated on the Caregiver Application and, if applicable, the Employee/Board Member/Principal Officer Application.
1. **Application and annual renewal fee; cultivation.** The primary caregiver designated to cultivate marijuana must submit an application fee and an annual renewal fee of \$240 per registry identification card with the completed application and renewal form for a registry identification card.
 - a. **Hospice inpatient program and nursing facilities designated as primary caregivers: no fee.** There is no fee for hospice inpatient programs and nursing facilities designated as non-cultivating primary caregivers by a qualifying patient.
 2. **Discontinued patient designation.** The designation represents the choice of the qualifying patient and the primary caregiver's commitment to assist the patient for

the duration of the patient's medical use. When a patient designation is discontinued or rescinded, the registered primary caregiver may accept a designation by a new qualifying patient in place of the former qualifying patient so long as that occurs within ten days of the rescission or discontinuance. The primary caregiver must comply with reporting required by this rule and the statute regarding changes to the registry identification cards and patient designations. Unless the registered primary caregiver possesses five registry identification cards at the time the patient designation is discontinued, the primary caregiver's application for a registry identification card must be filed before the caregiver may assist a new patient.

- a. Pro-rate registration fee.** The Department shall prorate the registration fee paid by the primary caregiver for a registry identification card for the *new* qualifying patient by reducing it by \$20 for each month left on the primary caregiver's unexpired registry identification card for the *former* qualifying patient.
 - b. Caregiver registration status.** When the primary caregiver complies with this section of this rule and the statute, the primary caregiver's registration status continues in full effect without interruption.
 - 3. Per patient fee paid annually.** Instead of paying the fee at the time of designation by a qualifying patient, a primary caregiver may choose to submit an annual fee equal to \$1,200, based on \$240 per patient that allows the registered primary caregiver to change the qualifying patients who designate them to cultivate marijuana throughout the year without submitting the per-patient fee at the time of the change. The primary caregiver may be designated to assist up to the maximum number qualifying patients at any one time in accordance with this rule and the statute.
 - 4. Criminal history record check fees.** Each primary caregiver application or renewal for a registry identification card or application for a caregiver employee must submit payment for \$31 payable to the *Treasurer, State of Maine* for the cost of criminal background checks. The background check fee is assessed on each registry identification card application or renewal including applications or renewals submitted by primary caregivers who are exempt from the application or renewal fee. The Department may waive this requirement for a cardholder applying for an additional registry identification card within 12 months of the cardholder's completed background check.
- D. Registered dispensary fees.** Registered dispensary fees are governed by this rule and the statute. The registered dispensary is required to submit the fees as follows, except that when a lesser amount is indicated on the Dispensary Registration Certificate Application and Employee/Board Member/Principal Officer Application, the dispensary shall pay the lesser amount.

1. **Dispensary registration certificate application fee.** The \$12,000 registration fee must be submitted with the dispensary's completed registration certificate application.
 2. **Dispensary registration certificate renewal fee.** The \$12,000 registration renewal fee must be submitted annually with the dispensary's completed registration renewal form. The annual renewal fee is non-refundable.
 3. **Dispensary registry identification card fee.** The registered dispensary shall be assessed a \$25 fee for each dispensary registry identification card issued for each principal officer, board member and employee of the registered dispensary.
 4. **Dispensary registry identification card; renewal fee.** The registered dispensary shall be assessed a \$25 fee for the annual renewal of each dispensary registry identification card issued for each principal officer, board member and employee of the registered dispensary.
 5. **Criminal history record check.** Each principal officer, board member and employee of the registered dispensary is required to have a criminal history record check at least annually. The registered dispensary must include a check for \$31 payable to the "*Treasurer, State of Maine*" for the cost of criminal background checks with each application or renewal for a registry identification card for each principal officer, board member and employee of the registered dispensary. The Department may waive this requirement for a cardholder applying for an additional registry identification card within 12 months of the cardholder's completed background check.
 6. **Change of location fee.** A registered dispensary that changes its physical location or its cultivation location is required to submit a completed Department-approved change in location form to secure a new dispensary registration certificate. The Dispensary/Cultivation Change in Location Application is available by request. The dispensary shall be assessed a fee of \$4,000 for each change of the dispensary's physical location or its cultivation location.
- E. **Processing fee: reissued card.** A processing fee of \$10 shall be charged to registered cardholders for reissuing a lost card or a card reissued by the Department due to changes regarding the information on the registry identification card, such as an address change.
- F. **Laboratory testing fees.** Registered dispensaries are responsible for the cost of required laboratory testing. A registered primary caregiver or registered dispensary will be responsible for the minimum testing fee required by statute and for laboratory charges not exceeding \$300 per test specimen for each sample collected by the Department for compliance purposes.

SECTION 9 REGISTRY IDENTIFICATION CARD

- A. Registry identification card required.** Persons who are required to register pursuant to statute and this rule, must possess a valid registry identification card issued by the Department and Maine-issued photographic identification to establish proof of authorized conduct. Registry identification cards are issued to the applicant to serve as proof of conduct authorized by the Department and protections do not extend beyond the approved cardholder. Only the approved cardholder may possess the registry identification card issued and the registry identification card may not be transferred. Applicants must complete the applicable application form and submit the required fees. The Caregiver Application and the Employee/Board Member/Principal Officer Application forms are available on the Department's website at <http://www.maine.gov/dhhs/mecdc/public-health-systems/mmm/index.shtml> .
- 1. Primary caregiver required to register.** A primary caregiver who assists a patient who is not a member of the primary caregiver's family or household is required to register and obtain a registry identification card for each patient. A registered primary caregiver may be issued up to a maximum of five registry identification cards.
 - a.** An inpatient hospice or nursing home facility that assists a qualifying patient with the medical use of marijuana is required to register with the Department.
 - 2. Primary caregiver not required to register.** A primary caregiver who assists only patients who are family or household members is not required to register. A primary caregiver who is not required to register may voluntarily register with the Department to obtain a registry identification card for each patient the caregiver assists up to the maximum permitted by statute.
 - 3. Qualifying patient is not required to register.** A qualifying patient may voluntarily register with the Department and obtain a registry identification card. A qualifying patient who is not registered must possess the required written certification and a valid photographic identification in accordance with statute.
 - 4. Principal officer, board member or employee required to register.** A registered primary caregiver's employee and a principal officer, board member or employee of a registered dispensary are required to register with the Department.
 - 5. Denial of application.** The Department may deny an application or renewal in accordance with the statute and this rule. Written notification of the Department's decision to deny an application for or renewal of a registry identification card and the reason for the denial shall be sent to the applicant within 30 days of receipt of the completed application.

B. Voluntary patient application for a registry identification card. A qualifying patient may voluntarily register with the Department to secure a registry identification card for the lawful medical use of marijuana by submitting a completed Department-approved - Patient Voluntary Registration Application form with required documentation. There is no fee for a qualifying patient who voluntarily registers with the Department. A criminal history record check is not required prior to issuing a patient a registry identification card. The Department shall issue a registry identification card to a patient who submits a completed application in accordance with 22 M.R.S. §2425 (1) and the application shall include, at a minimum, the following information:

1. Name, address and date of birth of the patient.
2. A copy of the written certification issued by the qualifying patient's physician for the medical use of marijuana.
3. A copy of the patient's Maine driver license or other state-issued photographic identification.
4. The patient who elects to cultivate some or all of the maximum allowed amount of marijuana for his or her own medical use must indicate that choice on the application and report the location of the patient's cultivation area. The application must include the requested information regarding the primary caregiver or dispensary if one is designated to assist the patient.
5. Other information required by the Department.

C. Primary caregiver application for a registry identification card. A primary caregiver who is required to register must submit a completed Department-approved Primary Caregiver Application. A primary caregiver who is not required to register may voluntarily register. The application must include the required documentation and the registration fee, for each registry identification card, as applicable, up to a maximum of five registry identification cards. The application shall also include, but is not limited to the following information:

1. Name, address and date of birth of the primary caregiver;
2. A copy of the primary caregiver's Maine driver's license, or other Maine-issued photographic identification in compliance with this rule and the statute;
3. Name of the property owner and location of the primary caregiver's cultivation location;
4. Personal identification number for purpose of filing taxes; and
5. Other information required by the Department.

- D. Employee of a registered primary caregiver registry identification card.** An employee of a registered primary caregiver must have a registry identification card. A completed Department-approved employee application form must be submitted with the required documentation and the registration fee for a registry identification card. The application shall include, at a minimum, the following information:
1. Name, address and date of birth of the applicant;
 2. A copy of the applicant's Maine driver's license, or other Maine-issued photographic identification; and
 3. Name of the applicant's employer and location of that employer's cultivation area; and
 4. Other information required by the Department.
- E. No work prior to issuance of card.** Prior to receipt of a registry identification card, a primary caregiver who is required to register and the employee of a registered primary caregiver may not accept a designation form from a qualified patient, assist a qualified patient or possess or cultivate a patient's marijuana for medical use.
1. **Expedited determination: hospice or nursing facility.** After verifying the information, the Department will approve or deny an application for or renewal of a registry identification card submitted by a hospice provider or nursing facility within five business days of the date the Department received the completed application for or renewal of a registry identification card with all required documents.
- F. Notice to Department when employment or affiliation ceased.** A primary caregiver must notify the Department within ten days of the date that the primary caregiver's employee ceases to work for the primary caregiver.
1. **Card expires after notice to Department when employment or affiliation ceased.** The registry identification card of the registered primary caregiver's employee expires when person ceases to work for the primary caregiver.
- G. Card surrendered to Department.** A primary caregiver must surrender to the Department any primary caregiver registry identification card that is no longer eligible for valid use, including the registry identification card of a primary caregiver's employee.
- H. Dispensary registry identification cards.** The dispensary is required to obtain a registry identification card for each qualified principal officer, board member and employee of the registered dispensary. The registered dispensary must comply with provisions set forth in this rule and the statute.

1. **Application form.** The dispensary shall submit a completed Department-approved Employee/Board Member/Principal Officer Application for each registry identification card with the required documentation and the registry identification card fee. The application shall also include but is not limited to, the following information:
 - a. Name, address and date of birth of the qualified principal officer, board member, or employee;
 - b. A copy of the qualified principal officers', board members', or employees' current Maine driver's license or other Maine-issued photographic identification; and
 - c. Other information required by the Department.
 2. **New principal officers, board members and employees: application required.** Each time the dispensary has a new principal officer, board member or employee, it must submit an application form for a dispensary registry identification card for that new principal officer, board member or employee in compliance with this rule and the statute.
 3. **No work or affiliation prior to issuance of card.** No principal officer, board member or employee may begin to work at or affiliate with the registered dispensary before he or she is issued a dispensary registry identification card.
 4. **Notice to Department when employment or affiliation ceased.** The registered dispensary must notify the Department within ten days of the date that a principal officer, board member or employee ceases to work at or be affiliated with the registered dispensary.
 5. **Card surrendered.** The registered dispensary must surrender to the Department any registry identification card that is no longer valid.
 - a. **Dispensary action after repeat positive test result.** The registered dispensary must require a principal officer, board member or employee to turn over his or her registry identification card if that person has confirmed positive results from two lawfully administered substance abuse tests within 12 months.
- I. **Annual renewal of card required.** A completed Primary Caregiver/Employee/Board Member/Principal Officer Application, or a Qualifying Patient Voluntary Registration Application with all required documentation and the renewal fee must be submitted to the Department at least 30 calendar days before the registry identification card expiration date. The Department shall approve or deny the application in accordance with this rule and the statute.

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- J. Notification of change in cardholder's status.** The Department must be notified within ten days of a change in status or card information in accordance with the statute and this rule. A cardholder who fails to provide required notification may be subject to fines up to \$150 per incident.
- 1.** The patient's primary caregiver or dispensary must notify the Department of a change in status as a patient's designee in accordance with reporting requirements specified in this rule and the statute.
 - a.** A registered primary caregiver must notify the Department within ten days of a change in patient designation, unless the caregiver has registered with a \$1,200 annual fee and a new patient designates the primary caregiver within ten days of the rescinded patient designation.
- K. Surrender old card or new card voided.** The registry identification card with outdated information must be surrendered by returning it to the Department. It must be mailed or delivered to the Department within ten business days of the person's receipt of the new registry identification card. Failure to timely surrender the superseded card to the Department may result in the Department voiding the newly issued card.

SECTION 10
COMPLIANCE and ENFORCEMENT

- A. Compliance and enforcement.** Compliance and enforcement are governed by this rule and the statute. The Department may refer criminal activity that is outside the scope of this rule and the statute to law enforcement.
1. An individual who engages in conduct authorized by this rule is subject to a review conducted by the Department to assess compliance with statute and rule.
 2. Submission of an application for a registry identification card constitutes permission for a criminal history record check and on-site assessments which may include inspections to ensure compliance.
 3. Any patient, primary caregiver or cardholder must comply with the Department's request for evidence of authorized conduct and to inspect the premises and records, as appropriate, to assess compliance with this rule and the statute.
 4. Failure to comply with provisions of statute and rule may result in remedial action up to, and including, directed corrective action; suspension, revocation and denial of a registry identification card or registration certificate; civil penalties; and referral to the appropriate agency, department or entity if the conduct is determined to be outside the scope of MMMP, is not appropriate for agency directed corrective action, or has not been rectified through correction action.
- B. On-site assessment.** The Department may initiate an on-site assessment, in accordance with the statute and this rule to ensure compliance prior to issuing a registry identification card, as a routine review, in response to an allegation of non-compliance or as part of a plan of correction.
1. During an on-site assessment, the primary focus of the Department will be:
 - a. Verifying information submitted in an application;
 - b. Reviewing records for all required documents, including, but not limited to designation forms, registration, and licenses, labeling and employee records, as applicable;
 - c. Conducting interviews;
 - d. Entering areas used for conduct authorized by this rule and the statute to ensure any marijuana, including plants, usable marijuana and incidental marijuana cultivated for medical use, is within the specified limit and is identifiable and maintained as required;

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- e. Taking samples of marijuana cultivated for medical use and products containing marijuana for medical use; and
 - f. Assessing conduct for compliance with the rule and statute.
2. **Notification of an on-site assessment.** No prior notice is required for the Department to initiate an on-site assessment to determine compliance.
 3. **Entry to inspect premises during an on-site assessment.**
 - a. **Inspection of a registered dispensary.** In accordance with 22 M.R.S. §2428 (5), the Department may enter the dispensary and the one permitted additional location at which the dispensary cultivates marijuana at any time, without notification, to carry out an inspection.
 - b. **Inspection of a registered primary caregiver.** When the Department wants entry into an area reportedly used by a registered primary caregiver for conduct authorized by this rule to carry out an on-site assessment, the Department is not required to provide prior notification to the registered primary caregiver, including those who elect to cultivate at his or her residence.
 - i. **Exception: registered inpatient hospice facility or nursing facility.** The Department will provide a minimum of 24 hours' notice before entering an inpatient hospice facility or nursing facility registered as a primary caregiver.
 - c. **Inspection of a residence.** When the Department determines entry into and inspection of areas within a person's residence reportedly used for conduct authorized by this rule is necessary to ensure compliance, the Department will provide a notice of at least 24 hours prior to conducting an inspection of the person's residence if that person is not required to register.
 4. **Prior to entry.** The Department will show proof of identity when requesting entry to conduct an on-site assessment and to inspect an area reportedly used for conduct described under this rule and the statute. The Department will also provide the reason for the on-site assessment in standard written form developed by the Department prior to entry.
 5. **Precautions during on-site assessment.** The Department will take measures to reduce potential disruption and contamination to the cultivation area during an on-site assessment.
 6. **Evidence.** The Department may take samples, photographs or electronic copies during an on-site assessment to determine compliance.

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7. **Refusal of entry.** If entry into an area reportedly used for conduct authorized by this rule and the statute is refused when the Department is conducting an on-site assessment, the Department will consider such action a failure to comply with provisions of this rule.
 - a. Upon refusal, the Department may refer to law enforcement as a progressive enforcement action when compliance cannot be determined.
 - b. Additionally, if denied entry by a cardholder, the Department may also take action to revoke the registry identification card or dispensary registration certificate.

 8. **On-site assessment report.** An on-site assessment report will indicate whether any violation was identified and, if corrective action was taken, the outcome of that.
 - a. **No action required.** The Department will provide a report to the subject of the on-site assessment within 30 days of initiating the on-site assessment during which the Department did not identify a finding of non-compliance and no action was required.
 - b. **Finding of non-compliance; enforcement action taken.** The Department will provide a report within 30 days of initiating the on-site assessment during which the Department makes a finding of non-compliance, and may request a plan of correction.
 - c. **Immediate enforcement action.** The Department will document justification for any immediate enforcement action taken to suspend or revoke a registration certificate.

 - C. **Allegations of non-compliance.** The Department, upon receipt of a report alleging a participant's conduct is in violation of this rule or the statute, will record the allegation and may conduct an on-site assessment to ensure compliance.
 1. **Department response to allegations of non-compliance.** Responses to reports alleging non-compliance are determined by the Department and may include the following: an on-site assessment which may include an interview, a paper review, and an inspection of premises; suspension or revocation of a registry identification card or certificate; and referral to the appropriate agency, department or entity when the allegation or reported conduct is not within the scope of the MMMP or has not been resolved through Department directed corrective action.

- a. Documentation of report.** The Department will document reported allegations of non-compliance that result in an on-site assessment. Documentation will include the following:
- i.** Date of the report of alleged violation;
 - ii.** The identity of the subject of the report; and
 - iii.** The related provision of rule or statute.
- D. Plan of correction.** If a plan of correction is requested by the Department, the plan must be sent within five business days of receipt of the notice of non-compliance. The Department will provide notice of approval or denial of the plan of correction within five business days of receipt. The Department may issue a directed plan of correction if the Department does not receive a timely, acceptable corrective action plan, or the plan is not completed satisfactorily. Failure to submit a timely plan of correction or to comply with the approved plan of correction may result in further enforcement action by the Department up to and including revocation and referral of criminal activity to law enforcement. An acceptable plan of correction must include the following:
- 1.** Action steps to correct any finding, violation or deficiency noted by the Department in the notice of non-compliance;
 - 2.** Specific deadlines for each corrective action step; and
 - 3.** Steps to reduce potential future violation.
 - 4.** The Department is not obligated to remediate non-compliance with a corrective action plan and may take action for immediate registration revocation or other enforcement action.
- E. Progressive enforcement.** The Department may take progressive enforcement action when the Department is unable to determine compliance when conducting an on-site assessment, or when a finding of non-compliance is not resolved through technical assistance provided on-site or through other remedial action. Progressive enforcement action may include fines or penalties, required plan of correction, registration denial or revocation, and referral to law enforcement.
- F. Court ordered fines.** The Department may seek a court order imposing fines in accordance with this rule and the statute.
- G. Denial of application or renewal for a registry identification card.** The Department may deny an application or renewal for a registry identification card for the reasons stated in 22 M.R.S. §2425(3). The effective date of denial of an application or request for renewal for a registry identification card is the date shown on the Department's written notice that is sent to the applicant's or cardholder's last known address. The notice issued

by the Department will include the date of receipt of the application or request for renewal and reason for denial. When a request for renewal is denied, the registry identification card is void, unless timely appealed.

1. The Department may determine an applicant does not qualify for a registry identification card for reasons including, but not limited to, the following:
 - a. The applicant has failed to demonstrate compliance with this rule and the statute; and
 - b. The applicant is/will be using a location for conduct authorized by this rule and the statute where such conduct is prohibited by the host municipality's local codes and ordinances. Reapplication for a registry identification card.
2. **Reapplication for a registry identification card.** When an application or renewal has been denied, the person may reapply for a registry identification card after 30 days from the date of denial. The person must demonstrate compliance with this rule and the statute, including those provisions that were the basis for the denial, and submit a completed Caregiver Application or Employee/Board Member/Principal Officer Application, all required documentation and required fees.

H. Revocation of registry identification card. The Department may revoke a registry identification card. The effective date of revocation of a registry identification card is three days after the date shown on the Department's written notice that is sent to the cardholder's last known address. A revoked registry identification card is void unless timely appealed.

1. **Revoked card: no dispensary employment or affiliation.** A principal officer, board member or employee of a registered dispensary whose card has been revoked by the Department is disqualified from serving as a principal officer, board member or employee of a registered dispensary.

I. Grounds for revocation of registry identification card. Grounds for revocation of a registry identification card are governed by this rule and the statute and include, but are not limited to, the following:

1. The Department determines the cardholder is non-compliant with this rule or the statute, including failure to cooperate with on-site assessment or allow entry for inspection.
2. The cardholder is convicted of a disqualifying drug offense.
3. The cardholder knowingly violates the confidentiality of information protected by the statute.

4. The cardholder commits, permits, aids or abets any illegal practices or unauthorized conduct related to the cultivation, processing, acquisition, dispensing, delivering or transfer of marijuana.
 5. The cardholder no longer lives in Maine and the card is not surrendered to the Department. For the purposes of these rules, “living in Maine” means having a physical home address in Maine and living, in the aggregate, more than 183 days of the calendar year in Maine.
 6. The cardholder fails to pay required State and local taxes, in accordance with 36 M.R.S. §175.
 7. A cardholder commits a civil violation for fraudulent misrepresentation regarding authorized conduct, possession of prepared marijuana in excess of specified limits or failure to provide required notifications to the Department.
 8. A cardholder has repeat forfeiture of excess marijuana.
 9. A cardholder has been issued finding of repeated non-compliance, has failed to comply with the plan of correction or is no longer eligible for a registry identification card.
- J. Failure to surrender a void registry identification card.** A void registry identification card that is not surrendered to the Department is inactive and no longer valid.
- K. Grounds for voiding a registry identification card and authorized conduct.** The registry identification card is voided by the Department when any of the following occurs:
1. A new card is issued to a dispensary cardholder based on a change in status, and the superseded card is not surrendered to the Department.
 2. A person is no longer employed by or affiliated with a dispensary, a registered primary caregiver or facility including a hospice provider or nursing facility and the card is not surrendered to the Department.
 3. A person within 12 months has confirmed positive results from two lawfully administered substance abuse tests and the card is not surrendered to the Department.
 4. A patient’s certifying medical provider notifies the Department in writing that the qualifying patient has ceased to suffer from a debilitating medical condition.
 5. A request for registry identification card renewal is denied, and the card is not surrendered to the Department.
 6. A revoked registry identification card is not surrendered to the Department.

- L. Date card is void.** The registry identification card is void ten days after the date shown on the Department's written notice that is sent to the last known address of the cardholder and the dispensary, if applicable.
- M. Termination of dispensary registration certificate.** The termination of a dispensary registration certificate is governed by this rule and the statute. The Department may seek a district court order terminating a dispensary-registration certificate.
1. The date of the termination is the date designated in the court order or the date appeal rights are exhausted, whichever is later.
- N. Grounds for termination of dispensary registration certificate.** Grounds for termination of a dispensary registration certificate include the following:
1. Failure to cooperate with required inspections, including failure to allow entry or interference with entry;
 2. Violations of this rule, the statute or dispensary policies and procedures that govern the operation of a dispensary;
 3. Committing, permitting, aiding or abetting any illegal practices in the operation of the dispensary;
 4. Conduct or practices that are detrimental to the safety and welfare of qualifying patients or primary caregivers;
 5. Providing information that is materially inaccurate or incomplete; and
 6. Failure to pay required State and local taxes.
- O. Emergency suspension of dispensary registration certificate.** The Department may suspend a dispensary registration certificate on an emergency basis when the Department determines that the conduct of the dispensary threatened or may pose an immediate threat to the health or safety of a person or the public. In accordance with 5 M.R.S. §§ 10004(3) and (4) such suspension may not exceed 30 days. A threat to public health and safety, includes but is not limited to, providing product containing an unsafe level of a contaminant or pesticide.
- P. Final agency action.** The Department's action pursuant to Section 10(G) or 10(H) is considered final agency action, as defined in 5 M.R.S. §8002(4), and subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.

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- Q. Evidentiary record.** The record for review is the Department's file for that person, cardholder or dispensary for the period in question, any other documents relied upon by the Department in taking the action, the Department's notice of the action, and other communications between the Department and the person, cardholder or dispensary regarding the action.
- R. Notice and receipt of written notice.** Prior to taking action under Section 10(G) or 10(H) the Department shall issue a written notice that includes the reason for the action, and the applicable rule or statute; the date the Department's action takes effect; and the right to appeal the Department's action. A person is deemed to have received written Department notification on the earliest of the following dates:
1. The date the person signs for receipt of the notice; or
 2. The date that is three calendar days after the date the Department sends the notice by first class mail to the person's last known address.

SECTION 11 INPATIENT HOSPICE AND NURSING FACILITIES

- A. Voluntary participation of facility.** Inpatient hospice providers and nursing facilities may voluntarily participate in the Maine Medical Use of Marijuana Program, in accordance with this rule and the statute to assist qualifying patients who use marijuana for medical purposes. Nothing in this rule compels an inpatient hospice program or nursing facility to permit marijuana for medical use at the facility by a qualifying patient. Only the inpatient hospice program or nursing facility assisting the patient with the administration of marijuana for medical use is required to be designated by the patient and register as a cardholder.
- 1. Home hospice programs.** Home hospice programs are not subject to this rule and the statute. Only inpatient hospice programs are permitted to be a designated MMMP primary caregiver. However, in accordance with this rule and the statute, a qualifying patient may designate the individual home hospice employee who provides hospice care to the patient to also be his or her MMMP-designated primary caregiver, if the employer's policies allow.
 - 2. MMMP participation provisions are separate from licensing provisions.** The requirements for MMMP participation are subject to the *Maine Medical Use of Marijuana Act* and this rule, not facility licensing laws.
 - a. MMMP and licensing documentation kept separate.** MMMP documentation shall not be included in the medical record, chart or medication administration record (MAR) that is required under facility licensing laws. A qualifying patient's MMMP record must be maintained at the facility as a separate record and shall include, but is not limited to, the inventory record, and documentation of marijuana administration.
 - 3. Facility registration required** Prior to assisting a patient residing in the facility, inpatient hospice providers and nursing facilities must submit a Department-approved Primary Caregiver Application form to become a registered primary caregiver in the Maine Medical Use of Marijuana Program.-There is no application or renewal fee.
- B. A qualifying patient in a hospice or nursing facility.** A qualifying patient while in an inpatient hospice program or a nursing facility may participate in the Maine Medical Use of Marijuana Program in accordance with this rule and the statute. The facility's policy may require the patient to disclose possession when the patient is using or storing marijuana for medical use.
- C. Designated primary caregiver is the facility.** It is the inpatient hospice provider or the nursing facility, not their staff, that is designated a registered primary caregiver and must comply with applicable provisions of these rule and statute.

- 1. Not required to accept designation as caregiver.** An inpatient hospice provider or nursing facility is not required to accept a qualifying patient's designation as the patient's primary caregiver. A facility may not assist the patient with the medical use of marijuana unless designated by the qualifying patient.
- D. Registry identification cards for staff members.** Designated inpatient hospice providers and nursing facilities must apply for registry identification cards for each individual staff member assigned to assist qualifying patients. A registry identification card is issued only to a staff person who is at least 21 years of age and not convicted of a disqualifying drug offense. The application process for a registry identification card is set out in this rule and the statute.
- E. Criminal history record check.** The designated facility must include the copy of a criminal history record check on each staff member for whom the facility submits a registry identification card application or renewal. The criminal history record check submitted by the facility must have been secured within the past 12 months. If the facility does not have the required criminal history record for an individual staff member, the facility must pay for and secure a criminal history record check to submit with the application for a registry identification card.
- F. Facility registration and staff cards required prior to assisting patients.** Prior to assisting qualifying patients, the designated hospice provider or nursing facility must be registered as a primary caregiver and MMMP registry identification cards issued to facility staff who will assist with the patient's medical use of marijuana. No staff member should remove a registry identification card from the facility, except when the authorized staff member is transporting marijuana outside the facility to deliver to the patient or to legally dispose of the marijuana.
- G. Qualifying patients in facility may not cultivate.** Qualifying patients in a hospice inpatient program or a nursing facility may not cultivate their own marijuana.
- H. Designate a second primary caregiver or dispensary to cultivate.** The qualifying patient may either designate an individual, who is not a facility staff member, as a second primary caregiver to cultivate marijuana for the patient's use or the patient may designate a dispensary to cultivate marijuana for medical use.
- I. Marijuana acquisition: from dispensary or cultivating caregiver.** A qualifying patient who is in an inpatient hospice program or a nursing facility may acquire marijuana for medical use in accordance with this rule and the statute. The facility shall document acquisition in the patient's MMMP record.
 - 1. Dispensary.** A designated facility acquires marijuana from a dispensary by either sending a facility staff member with a registry identification card to the dispensary to pick up the marijuana or the dispensary delivers the marijuana to the facility.

2. **Cultivating caregiver.** When the qualifying patient has not designated a dispensary to cultivate, the patient may designate a cultivating primary caregiver to cultivate the marijuana for the patient's use.
 3. **Products containing marijuana must be purchased.** A facility may not possess, administer or furnish any other types of marijuana except prepared marijuana in an amount of two and a half ounces or less per qualifying patient that has designated the facility. A facility may not make marijuana into products to be ingested. Such products must be acquired or purchased from the designated dispensary or primary caregiver.
 4. **Trip tickets.** The facility must retain the marijuana trip ticket from the dispensary or the cultivating caregiver with the marijuana during transport.
 5. **Storage of marijuana for medical use.** Special storage consideration is required for marijuana and foods containing marijuana such that access is limited to only the patient and those authorized to assist the patient with the medical use of marijuana.
- J. Inventory control.** When the designated facility stores and maintains the inventory of medical use marijuana for a qualifying patient, the facility shall have a policy that addresses how inventory is recorded and access monitored.
1. **Access to inventory.** When marijuana is removed from the facility's inventory, the cardholder must document this in the patient's MMMP record.
 2. **Daily inventory.** Prepared marijuana must be stored in accordance with the provisions for storing controlled substances and inventoried daily by two staff persons who have MMMP registry identification cards.
- K. Assisting administration of marijuana.** A facility assisting a qualifying patient with the medical use of marijuana shall have protocols in place that are consistent with this rule and the statute to address the storage, inventory monitoring and patient access and use. When the designated facility administers medical use marijuana for a qualifying patient, the facility is subject to the following provisions.
1. **Facility staff.** A medication technician or a nurse may administer marijuana as long as he or she has been issued a registry identification card for the designated facility. Designated facilities should limit the number of individual staff members who can assist the qualifying patient with marijuana for medical use.
 2. **Administration of marijuana in a facility.** Only an authorized cardholder may assist a qualifying patient residing in a facility with the medical use of marijuana.
 3. **Disposal of unused marijuana.** The designated facility must comply with this rule and the statute regarding the disposal of unused medical use marijuana.

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- 4. Facility smoking policy.** The designated facility shall establish and maintain a policy for the administration of marijuana for medical use that includes smoking, vaporizing and using non-smokable forms of medical marijuana.
- L. Confidentiality.** The fact that a patient is participating in the Maine Medical Use of Marijuana Program is confidential and each facility serving MMMP patients must develop “need to know” protocols.
- M. Discharge from facility.** A resident may not be discharged solely because the patient is a qualifying patient in the Maine Medical Use of Marijuana Program.
- N. Protected conduct: hospice providers, nursing facilities, and staff.** The protections and requirements of this rule and the statute are for conduct that is expressly authorized for hospice providers, nursing facilities and their staff that provide care for a qualifying patient in accordance with this rule and the statute.
- O. Reimbursement.** This rule and statute do not affect whether the facility may be reimbursed by other than private money for assisting a qualifying patient with the medical use of marijuana.

Statutory Authority

22 M.R.S. Chapter 558-C

22 M.R.S. §42

22-A M.R.S. §205

P.L. 2011, Ch. 383(6)

History

In November 2009, voters approved an initiated bill that changed Maine's medical use of marijuana laws (IB 2009, c.1, §5). See 22 M.R.S.A. Chapter 558-C.

The Maine Legislature amended the initiated bill. See Public Law 2009, Chapter 631 (Emergency Preamble) that took effect April 9, 2010.

Emergency Rules (filing 2010-174) took effect May 5, 2010 for 90 days.

ADOPTED

(NEW) 10-144 C.M.R. Chapter 122, Rules Governing the Maine Medical Use of Marijuana Program

EFFECTIVE DATE:

August 4, 2010 – filing 2010-317

AMENDED:

December 31, 2012 – filing 2012-353

June 19, 2013 – 2.7.1.2 added, 2.7.4.2 removed, filing 2013-142 (Emergency)

AMENDED: (limited use of pesticides)

September 17, 2013 – filing 2013-221

AMENDED:

February 1, 2018 – filing 2017-168

TRANSFERRED:

2019 – from the Department of Health and Human Services to the Department of Administrative and Financial Services, Office of Marijuana Policy