

Rulemaking Cover Sheet

MAPA-1

TO: **Secretary of State**
ATTN: **Administrative Procedure Officer,**
State House Station 101, Augusta, Maine 04333.

1. **Agency:** Office of Cannabis Policy, Department of Administrative and Financial Services
2. **Agency umbrella and unit number:** 18-691
(2 digit umbrella # and 3 digit unit #)
3. **Title of rule:** Medical Use of Cannabis Program Rule
4. **Chapter number assigned to the rule:** Chapter 2
(must be 3 digits or less)
5. **Date(s)/method(s) of notice:** E-mail and social media notice to interested parties list on September 6, 2023; Official SoS Notice of Rulemaking Published in Newspapers September 6, 2023.
6. **Date(s)/place(s) of hearing(s):** Tuesday, September 26, 2023; 10:00 a.m.; Office of Cannabis Policy, 19 Union St., Augusta, Maine, 3rd Floor, Room 325.
7. **Type:** new rule partial amendment(s) of existing rule
 suspension of existing rule repeal of rule emergency rule
 repeal and replace: complete replacement of existing chapter, with former version simultaneously repealed.
8. **Name/phone of agency contact person:** Gabi Pierce; Office of Cannabis Policy, 162 State House Station, Augusta, ME 04333; Phone: (207) 530-0507; Fax (207) 287-2671; e-mail: Gabi.Pierce@maine.gov
9. **If a major substantive rule under Title 5, c. 375, sub-CII-A, check one of the following**
 Provisional adoption **Final adoption**
(prior to Legislative review)
 emergency adoption of major-substantive rule

10. **Certification Statement:** I, Kirsten LC Figueroa hereby certify that the attached is a true copy of the rule(s) described above and lawfully adopted by

the Dept. of Administrative + Financial Services on 01-08-2024
(name of agency) (date)

I further certify that all portions of this rule are adopted in compliance with the requirements of the Maine Administrative Procedure Act.

Signature: Kirsten LC Figueroa
(original signature, personally signed by the head of agency)

Printed name & title: Kirsten LC Figueroa, Commissioner

11. Approved as to form and legality by the Attorney General on 1/8/2024.

(date)

Signature Sarah A Forster
(original signature, personally signed by an Assistant Attorney General)

Printed Name: Sarah A Forster

Notice of Agency Rulemaking Adoption

AGENCY: Office of Cannabis Policy, Department of Administrative and Financial Services

CHAPTER NUMBER AND TITLE: Medical Use of Cannabis Program Rule, 18-691 CMR, Chapter 2

ADOPTED RULE NUMBER: **20xx.xxx**
(LEAVE BLANK - ASSIGNED BY SECRETARY OF STATE)

CONCISE SUMMARY

The Department of Administrative and Financial Services, Office of Cannabis Policy, is promulgating revisions to the *Maine Medical Use of Cannabis Program Rule*, 18-691 CMR, ch. 2, to incorporate legislative changes to the *Maine Medical Use of Cannabis Act*, Title 22, ch. 558-C (the Act), specifically:

- *An Act to Implement a Regulatory Structure for Adult Use Marijuana*, PL 2017, ch. 409 (Emergency, Veto Overridden, May 2, 2018);
- *An Act To Amend the Maine Medical Use of Marijuana Act*, PL 2017, ch. 447 (Emergency, Veto Overridden, July 9, 2018);
- *An Act to Amend Maine's Medical Marijuana Law*, PL 2017, ch. 452;
- *An Act To Allow Maine Medical Marijuana Caregivers To Measure Cultivation Limits by Plant Canopy Size*, PL 2019, ch. 256;
- *An Act To Clarify the Pathway for a Registered Dispensary under the Maine Medical Use of Marijuana Act To Become a For-profit Entity*, PL 2019, ch. 312;
- *An Act to Make Technical Changes to the Maine Medical Use of Marijuana Act*, PL 2021, ch. 251;
- *An Act to Support Maine's Medical Marijuana Program and Ensure Patient Access*, PL 2021, ch. 367;
- *An Act To Update and Clarify the Maine Medical Use of Marijuana Act*, PL 2021, ch. 662 (Emergency, law without signature April 26, 2022);
- *An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Reducing Restrictions Related to Convictions for Drug Offenses and To Replace the Term "Marijuana" with the Term "Cannabis" in the Maine Revised Statutes*, PL 2021, ch. 669;
- *An Act to Clarify State Policy Regarding Cannabis Paraphernalia in the Maine Medical Use of Cannabis Act and the Cannabis Legalization Act*, PL 2023, ch. 6, (Emergency, Signed March 15, 2023); and
- *An Act to Sustain the Medical Use of Cannabis Program*, PL 2023, ch. 365.

Because it is the Office's understanding that the Act is currently subject to review, revision and recodification by a subcommittee of the Veterans and Legal Affairs Committee, with the goals of simplifying and clarifying the requirements of the Act, as well as correcting conflicting provisions within the Act, the Office made many references to the Act in this rule, in order to limit the potential for conflicts between this rule and the Act. As a result, program requirements not addressed in this Rule will be controlled by the plain language of the Act. The Office made a number of changes to the proposed rule in response to comments received from the public during the rulemaking process. Those changes are summarized below and attached to this Basis Statement as an itemized list of changes made to the rule in response to public comments.

In addition to changes necessitated by legislation and public comments, the revisions to the rule also reflect changes necessitated to clarify statutory provisions related to the assessment of annual fees for registry identification cards and registration certificates issued as proof of authorized conduct under the program.

EFFECTIVE DATE:
(TO BE FILLED IN BY SECRETARY OF STATE)

AGENCY CONTACT PERSON: Gabi Pierce e-mail: Gabi.Pierce@maine.gov

AGENCY NAME: Office of Cannabis Policy

ADDRESS: 162 State House Station, Augusta, ME 04333

TELEPHONE: (207) 530-0507

Notice of Agency Rulemaking Proposal

AGENCY: 18-691 – Office of Cannabis Policy, Department of Administrative and Financial Services

CHAPTER NUMBER AND TITLE: Ch. 2 – Medical Use of Cannabis Program Rule

TYPE OF RULE (check one): Routine Technical Major Substantive

PROPOSED RULE NUMBER (leave blank; to be assigned by Secretary of State):

BRIEF SUMMARY:

This major substantive rulemaking updates the existing *Medical Use of Cannabis Program Rule* to strike provisions no longer supported by the enabling statute, 22 MRS, ch. 558-C, the *Maine Medical Use of Cannabis Act*, and includes amendments to Section 10 of that rule to implement the requirements legislation enacted in the first regular and special sessions of the 131st Legislature, specifically PL 2023, ch. 6 (*Emergency*, signed March 15, 2023) and PL 2023, ch. 365. The amendments to section 10 include compliance requirements applicable to registry identification cardholders and registrants, including the implementation of a two-tiered system for assessment of fines for violations of program requirements, and revision of the notice requirements applicable to the State when it identifies violations of program requirements by a registrant or a registrant's employee or other agent.

Date, time and location of PUBLIC HEARING (if any): September 26, 2023; 9:00 a.m.; Office of Cannabis Policy, 19 Union Street., Augusta, Maine, 3rd Floor, Room 325.

COMMENT DEADLINE: Tuesday, October 10, 2023 at 11:59 p.m.

CONTACT PERSON FOR THIS FILING (include name, mailing address, telephone, fax, TTY, email): Gabi Pierce; Office of Cannabis Policy, 162 State House Station, Augusta, ME 04333; Phone: (207) 530-0507; Fax: (207) 287-2671; gabi.pierce@maine.gov.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (if different): N/A

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (if any): de minimus

STATUTORY AUTHORITY FOR THIS RULE: Title 22, Chapter 558-C (Maine Medical Use of Cannabis Act), including PL 2023, ch. 6 (*Emergency*, signed March 15, 2023) and PL 2023, ch. 365.

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (if different):

AGENCY WEBSITE: <https://www.maine.gov/dafs/ocp/>

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: anya.trundy@maine.gov

* Check one of the following two boxes.

The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rulemaking notice posted on the Secretary of State's website. Title 5 §8053, sub-§3, ¶D & sub-§6.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT  DATE: 08/29/2023

(authorized signature)

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
014	18M	Z265	01	4946				

BASIS STATEMENT AND FINDINGS FOR REVISIONS TO THE MAINE MEDICAL USE OF CANNABIS PROGRAM RULE

18-691 CMR, CH. 2

The Department of Administrative and Financial Services, Office of Cannabis Policy, is promulgating revisions to the *Maine Medical Use of Cannabis Program Rule*, 18-691 CMR, ch. 2, to incorporate legislative changes to the *Maine Medical Use of Cannabis Act*, Title 22, ch. 558-C (the Act), specifically:

- *An Act to Implement a Regulatory Structure for Adult Use Marijuana*, PL 2017, ch. 409 (Emergency, Veto Overridden, May 2, 2018);
- *An Act To Amend the Maine Medical Use of Marijuana Act*, PL 2017, ch. 447 (Emergency, Veto Overridden, July 9, 2018);
- *An Act to Amend Maine's Medical Marijuana Law*, PL 2017, ch. 452;
- *An Act To Allow Maine Medical Marijuana Caregivers To Measure Cultivation Limits by Plant Canopy Size*, PL 2019, ch. 256;
- *An Act To Clarify the Pathway for a Registered Dispensary under the Maine Medical Use of Marijuana Act To Become a For-profit Entity*, PL 2019, ch. 312;
- *An Act to Make Technical Changes to the Maine Medical Use of Marijuana Act*, PL 2021, ch. 251;
- *An Act to Support Maine's Medical Marijuana Program and Ensure Patient Access*, PL 2021, ch. 367;
- *An Act To Update and Clarify the Maine Medical Use of Marijuana Act*, PL 2021, ch. 662 (Emergency, law without signature April 26, 2022);
- *An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Reducing Restrictions Related to Convictions for Drug Offenses and To Replace the Term "Marijuana" with the Term "Cannabis" in the Maine Revised Statutes*, PL 2021, ch. 669;
- *An Act to Clarify State Policy Regarding Cannabis Paraphernalia in the Maine Medical Use of Cannabis Act and the Cannabis Legalization Act*, PL 2023, ch. 6, (Emergency, Signed March 15, 2023); and
- *An Act to Sustain the Medical Use of Cannabis Program*, PL 2023, ch. 365.

Because it is the Office's understanding that the Act is currently subject to review, revision and recodification by a subcommittee of the Veterans and Legal Affairs Committee, with the goals of simplifying and clarifying the requirements of the Act, as well as correcting conflicting provisions within the Act, the Office made many references to the Act in this rule, in order to limit the potential for conflicts between this rule and the Act.¹ As a result, program requirements not addressed in this Rule will be controlled by the plain language of the Act.

¹ See generally, VLA Subcommittee to Consider Non-substantive Changes to the Maine Medical Use of Cannabis Act, including a decision at the third interim meeting to expand the scope of the proposed changes to include substantive matters: <https://legislature.maine.gov/vla-subcommittee-to-consider-non-substantive-changes-to-the-maine-medical-use-of-cannabis-act>

The Office made a number of changes to the proposed rule in response to comments received from the public during the rulemaking process. Those changes are summarized below and attached to this Basis Statement as an itemized list of changes made to the rule in response to public comments.

In addition to changes necessitated by legislation and public comments, the revisions to the rule also reflect changes necessitated to clarify statutory provisions related to the assessment of annual fees for registry identification cards and registration certificates issued as proof of authorized conduct under the program.

A complete list of the public comments received by the Office during the rulemaking period, as well as the agency's response to these comments, is attached to this Basis Statement. Additionally, the Office has included, as another attachment hereto, a list of all changes to this rule made in response to comments.

Statutory changes

These provisionally adopted rules represent the first revision of the Maine Medical Use of Cannabis Program Rules since the rules were updated in February 2018. Since that time, both the program itself and the statute that forms the foundation of that program, have evolved dramatically, so that much of the February 2018 rule was no longer supported by the underlying statute.

Given the ongoing work of the subcommittee of the Veterans and Legal Affairs Committee, as well as the Office's repeated public statements regarding the conflicts within the statute and the mismatch between the current statutory structure and program participants' understanding regarding the scope of the program requirements, OCP sought to make minimal changes to the rule overall in anticipation of a more comprehensive recodification and revision of the Act in the near future. As a result, most of OCP's changes to this rule were focused on striking out provisions of the rule no longer supported by the Act, changing the term "marijuana" to "cannabis" throughout the rule, and clearly identifying the compliance requirements for program participants. OCP expects that the changes included in this rule will expedite future rulemaking efforts when the legislature completes its work of recodifying and revising the Act.

Later in 2018, three bills affecting Maine's medical cannabis program, PL 2017, chapters 409, 447, and 452, were enacted by the Legislature that transformed the program from one primarily supported by small, independent caregivers serving no more than five qualifying patients at a time to a more commercialized model that allowed caregivers to operate cannabis businesses much more similar to recently approved adult use cannabis establishments and registered medical cannabis dispensaries. As a result, the rules governing the medical program have been out of synch with the laws governing the program since the summer of 2018.

Since that time, the Legislature has continued to make piecemeal revisions to certain provisions of the law that have exacerbated conflicts within the statute and caused ample confusion for program participants and regulators regarding the requirements for the Maine Medical Use of Cannabis Program. In response, OCP has repeatedly urged the Legislature to take a holistic

approach to reviewing the entirety of the Act and revising the law to once again modernize program requirements to reflect the current state of Maine's cannabis economy and to resolve a number of internal conflicts within the statute. Following amendment to the statute again in 2019, 2021, 2022 and 2023, the Office determined it had enough legislative clarity to make some changes to the program rule while the Legislature continues its work to recodify and revise the underlying program statute. What follows is a list of the provisions from the above-referenced laws that have been integrated into this provisionally adopted rule in an attempt to better align the rule with the existing statute.

An Act to Implement a Regulatory Structure for Adult Use Marijuana, PL 2017, ch. 409 (Emergency, Veto Overridden, May 2, 2018) created the Cannabis Legalization Act (the law governing Maine's adult use cannabis program) while also amending the requirements of Maine's medical cannabis law. Specifically, this law amended the medical cannabis law to make the Department of Administrative and Financial Services the department of jurisdiction for cannabis regulation, including rulemaking. This change is reflected in the transfer of this rule from the Department of Health and Human Services to the Department of Administrative and Financial Services, Office of Cannabis Policy.

An Act To Amend the Maine Medical Use of Marijuana Act, PL 2017, ch. 447 (Emergency, Veto Overridden, July 9, 2018) created the authorized activity of cannabis manufacturing and extraction for medical program participants, as well as creating separate registration certificates for individuals and entities that are not registered caregivers or dispensaries to engage in manufacturing activities. This rule was revised to reflect the addition of this authorized activity and to include fee schedules for these new registration types. More detailed rules regarding manufacturing of medical cannabis are included in the rules for *Cannabis Manufacturing Facilities*, 18-691 CMR, ch. 2 (effective August 1, 2019).

An Act to Amend Maine's Medical Marijuana Law, PL 2017, ch. 452 was the most comprehensive of the three bills enacted in 2018 following adoption of the last version of the medical cannabis program rules. That bill transformed the program by changing the registered caregiver model from one of small, local caregivers serving no more than 5 qualifying patients that would designate that caregiver as their "primary caregiver", to a fully commercialized system where registered caregivers are permitted to hire an unlimited number of "assistants" to staff the caregiver's business operations, operate caregiver retail stores, and engage in some wholesale transfers to other registered caregivers and registered dispensaries. In that same bill the legislature also included provisions regarding mandatory recordkeeping and inventory tracking, as well as a provision requiring municipal authorization and approval for new medical cannabis businesses within their borders. In response, this rule has been revised to remove all references to "designated primary" caregivers, replacing the term with "registered caregivers" throughout, and removing most references to patient "designations" except as still required by the Act for pediatric qualifying patients, qualifying patients in long term care facilities and qualifying patients who have been determined to be incapacitated. Revisions to this rule also reflect the requirement that registered caregivers operating a retail store obtain local authorization and approval before operating a caregiver retail store.

An Act To Allow Maine Medical Marijuana Caregivers To Measure Cultivation Limits by Plant Canopy Size, PL 2019, ch. 256 permitted registered caregivers to register to cultivate medical cannabis plants not only by plant count (with a maximum of 30 mature cannabis plants) but also by plant canopy (up to 500 square feet of mature plant canopy). This law failed to provide a separate fee schedule for those caregivers registering by plant canopy, which was corrected subsequently in PL 2021, ch. 251. The registration section of these rules has been updated to permit registration by caregivers based upon plant canopy, with the fee permitted under PL 2021, ch. 251.

An Act To Clarify the Pathway for a Registered Dispensary under the Maine Medical Use of Marijuana Act To Become a For-profit Entity, PL 2019, ch. 312 permitted existing registered dispensaries to convert their businesses from non-profit entities to for-profit entities and removed the cap on dispensary registrations, as well as eliminating the competitive application process for dispensary registration certificates. As a result, this rule has been updated to remove the competitive application process and criteria and to reflect that dispensary registrations are no longer limited.

An Act to Support Maine's Medical Marijuana Program and Ensure Patient Access, PL 2021, ch. 367 permitted registered caregivers to hire assistants who are family members between the ages of 18 and 20, an exception to the general requirement that assistants in the medical cannabis program must be at least 21 years of age. That law also permitted registered caregivers and registered dispensaries to engage in the wholesale transfer of an unlimited amount of medical cannabis to other registered caregivers and registered dispensaries. This rule was updated to reflect the 18 year old age limit for assistants who are members of a registered caregiver's family, as well as the authorization for registered caregivers and registered dispensaries to conduct unlimited wholesale activities.

An Act To Update and Clarify the Maine Medical Use of Marijuana Act, PL 2021, ch. 662 (*Emergency*, law without signature April 26, 2022) made a number of changes to the pediatric patient certification process, allowed for the conduct of patient certifications via telemedicine, permitted qualifying patients to use a digital image of their patient certification to obtain medical cannabis, allowed assistants and officers and directors of registered caregivers, registered dispensaries and registered manufacturing facilities to obtain one registry identification card as proof of authorized conduct within the medical program, without having to obtain a registry identification card for each registrant that employs the assistant, and amended the definitions of "cultivation area" and "plant canopy". In response, these rules were updated to reflect the removal of qualifying conditions for pediatric patients, authorization for the use of telemedicine for patient certification appointments, allowance for the use of a digital image of a patient certification, a streamlined process for the issuance of registry identification cards to employees, officers and directors of registrants, and updated the definitions of "cultivation area" and "plant canopy".

An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Reducing Restrictions Related to Convictions for Drug Offenses and To Replace the Term "Marijuana" with the Term "Cannabis" in the Maine Revised Statutes, PL 2021, ch. 669 required the

replacement of the term “marijuana” with the term “cannabis” in most of the Maine Revised Statutes, as well as rules promulgated by the executive branch. In response, the rule has been revised to reflect the use of the term “cannabis” where the term “marijuana” was previously used.

An Act to Clarify State Policy Regarding Cannabis Paraphernalia in the Maine Medical Use of Cannabis Act and the Cannabis Legalization Act, PL 2023, ch. 6, (*Emergency*, Signed March 15, 2023) created a definition of “cannabis paraphernalia” in the medical cannabis law and distinguished “cannabis paraphernalia” from “tobacco products”. In response, the rule was updated to include the new definition of “cannabis paraphernalia”.

An Act to Sustain the Medical Use of Cannabis Program, PL 2023, ch. 365 created several new compliance and enforcement tools for state regulators, including authorization for the Department to assess fines for violations of program requirements and an updated enforcement process for instances where a registrant or their authorized agent or employee conducts sales to nonpatients. This law also permitted the Department to seize and destroy medical cannabis when it takes enforcement action against a registrant for misconduct. In response, the medical cannabis program rules were revised to allow for these new provisions and to categorize a number of program violations as “minor violations”, “major violations” and “major violations affecting public safety”.

Changes made in response to public comments

A number of individuals, both at the public hearing, and in written comments, indicated that OCP had erroneously extended cultivation requirements for registrants to cultivation by qualifying patients themselves. OCP noted this error at the public hearing and corrected the issue by removing qualifying patients from the list of individuals and entities subject to the cultivation requirements of the rule and the Act.

Similarly, a number of commentators noted that OCP had not explicitly included any provisions permitting the use of telehealth technology for the conduct of patient certification by certifying providers. While OCP had made reference to the requirements of the Act, which explicitly permits the use of telehealth for the conduct of such exams, OCP further clarified in the rule that telehealth visits were permitted. In response to multiple comments at the public hearing, OCP also struck from the rule the existing requirements for certifying providers to demonstrate the existence of a bona fide medical provider-patient relationship, deferring instead to the professional licensing requirements for each certifying medical provider.

Findings regarding the clarification of fees

Upon review of public comments and revisions to the proposed rule regarding the same, the Office determined that both the rule and the statute used inconsistent terminology to refer to the fees authorized under the Act to be assessed for the issuance or renewal of a registry identification card or registration certificate under the Act. Specifically, the Office determined that the Act refers to “application”, “registration”, “renewal” and “annual” fees that may be

assessed by the Office, and the Act also explicitly requires that "application and renewal fees must generate revenues sufficient to offset all expenses of implementing and administering [the Act]." ² Furthermore, some of these terms are used in combination with one another (i.e. "annual registration fee"), while others are not used to identify any particular fee at all (i.e. "application fee" and "renewal fee"), while yet another fee is used to refer to fees assessed by the Office as well as fees paid to a third party (i.e. "annual" fees for criminal history records checks as well as those paid by manufacturing facility registrants). As a result, the Office chose to simplify the terminology used in the rule to refer to any fee assessed annually by the Office as an "annual fee". This is to ensure that all registry identification cardholders or registration certificate-holders that are conducting authorized activities have clear, predictable fees assessed annually whether they are applying for a new registry identification card or registration certificate, or renewal of the same. Upon review, the Office determined that the administrative costs of administering the program do not vary based upon whether an applicant is applying for the first time or for renewal of existing credentials.

Furthermore, while 22 MRS § 2425-A(10)(A) provides that "there is no annual registration fee for a caregiver who does not cultivate cannabis plants for a qualifying patient", it is clear that the Legislature did not intend for registered caregivers who do not cultivate cannabis plants, but who operate a caregiver retail store or manufactures medical cannabis without the use of inherently hazardous substances to pay no fee to sustain the program. To allow such a waiver of fees would require registered caregivers cultivating 30 mature cannabis plants or 500 square feet of mature plant canopy to pay fees to sustain the program while those who only wholesale cannabis from these small operators pay nothing to manufacture or sell the raw plant material produced by those registered caregivers. Therefore, in the interests of equity and clarity, the Office refers only to "annual" fees when referring to those fees paid at the time of application for a registry identification card or registration certificate.

Conclusion

These provisionally adopted rules represent the Office's good faith efforts to update the rules to reflect current statutory provisions and to remove program requirements no longer supported by the Act, make clear the compliance requirements for participants in Maine's medical cannabis program, and standardize the language used to fees paid annually by program participants.

² See 22 MRS § 2425-A(3)(A) and (6), "An application must include, as applicable:

A. The **annual fee** required pursuant to subsection 10" [Emphasis added]; 22 MRS § 2425-A(10), 1st ¶, "The department shall adopt rules to establish fees in accordance with this subsection. The **application and renewal fees** must generate revenues sufficient to offset all expenses of implementing and administering this chapter." [Emphasis added]; 22 MRS § 2425-A(10)(A-H) see references to "annual registration fee"; 22 MRS § 2423-F(8)(A)(1), "the **annual fee** required pursuant to section 2425-A, subsection 10" [Emphasis added];

Small Business Impact Statement required pursuant to 5 MRS § 8052(5-A):

The following businesses may be impacted by the requirements of this rule: All medical cannabis businesses, specifically: 1,763 registered caregivers and 59 registered dispensaries as of December 31, 2023.

The projected reporting and record-keeping costs of this rule are not applicable, this rule is not expected to require any additional reporting or record-keeping costs for program participants.

The probable impact of these costs is not applicable.

Administrative Procedure Act

CHECKLIST

Agency: Office of Cannabis Policy, Department of Administrative and Financial Services

Chapter Number and Title of Rule: Ch. 2 – Medical Use of Cannabis Program Rule

PROPOSED RULE:

1. Was this rule listed on the last regulatory agenda? Yes
2. Date of notification of: Anyone on mailing list September 6, 2023
Any trade, industry or professional group _____
Any trade publications _____
3. Date Notice of Rulemaking Proposal (MAPA-3) sent to Secretary of State: August 29, 2023
4. Date Fact Sheet sent to Executive Director of Legislative Council: August 30, 2023
5. Date of publication in Secretary of State's rulemaking ad.: September 6, 2023
6. Date of hearing(s): September 26, 2023 7. Comment deadline: October 10, 2023

ADOPTED RULE:

8. Was comment deadline extended or comment period reopened? No.
If yes, date of second notice publication in Secretary of State's rulemaking ad: _____
9. Is adopted rule consistent with what was proposed? See comments and responses.
(If not, please address the changes in the comments and responses section of your filing.)
10. Is the person signing the Certification Statement (MAPA-1, #9) authorized to do so as stated in your statutes or in 5 MRSA, c.71? Yes.
11. Was the rule adopted within 120 days of the comment deadline? Yes.
12. Was the rule approved and signed by the Office of the Attorney General within 150 days of the comment deadline? Yes.
13. Is a Basis Statement included? Yes. Is a copy of the Fact Sheet included? Yes.
Are comments, with names and organizations, and your responses included? Yes.

Rulemaking Fact Sheet

(5 MRS 8057-A)

AGENCY: 18-691 – Office of Cannabis Policy, Department of Administrative and Financial Services

NAME, ADDRESS, PHONE NUMBER, EMAIL OF AGENCY CONTACT PERSON: Gabi Pierce; Office of Cannabis Policy, 162 State House Station, Augusta, ME 04333; Phone: (207) 530-0507; Fax: (207) 287-2671; gabi.pierce@maine.gov.

CHAPTER NUMBER AND RULE TITLE: Ch. 2 – Medical Use of Cannabis Program Rule

TYPE OF RULE (*check one*): Routine Technical Major Substantive

STATUTORY AUTHORITY: Title 22, Chapter 558-C (Medical Use of Cannabis Act), including PL 2023, ch. 6 (*Emergency*, signed March 15, 2023) and PL 2023, ch. 365

DATE, TIME AND PLACE OF PUBLIC HEARING: September 26, 2023; 9:00 a.m.; Office of Cannabis Policy, 19 Union Street., Augusta, Maine, 3rd Floor, Room 325.

COMMENT DEADLINE: Tuesday, October 10, 2023 at 11:59 p.m.

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A)&(C)]

This major substantive rulemaking updates the existing *Medical Use of Cannabis Program Rule* to strike provisions no longer supported by the enabling statute, 22 MRS, ch. 558-C, the *Maine Medical Use of Cannabis Act*, and includes amendments to Section 10 of that rule to implement the requirements legislation enacted in the first regular and special sessions of the 131st Legislature, specifically PL 2023, ch. 6 (*Emergency*, signed March 15, 2023) and PL 2023, ch. 365.

The amendments to section 10 include compliance requirements applicable to registry identification cardholders and registrants, including the implementation of a two-tiered system for assessment of fines for violations of program requirements, and revision of the notice requirements applicable to the State when it identifies violations of program requirements by a registrant or a registrant’s employee or other agent.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? X YES NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]

The amendments promulgated in this rulemaking are expected to clarify compliance requirements for medical cannabis program participants (registry identification cardholders, registered caregivers, registered dispensaries, registered manufacturing facilities and registered cannabis testing facilities) and to remove from the existing rules provisions no longer supported by the enabling statute, 22 MRS, ch. 558-C, which has been amended several times since the rules were last updated in February 2018.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [*see* §§8057-A(1)(E) & 8063-B]

OCP is informed by:

The legislative discussions regarding PL 2023, chapters 6 and 365;
 Previous efforts at making rules for the medical cannabis program;
 Stakeholder engagement efforts including community conversations, small group informal discussions and the Medical Marijuana Workgroup convened by OCP in 2021; and
 Public comments.

ESTIMATED FISCAL IMPACT OF THE RULE: This rulemaking is not expected to make a substantive impact on existing state resources.

FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:
[see §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED
AND HOW THEY WILL BE AFFECTED: [see §8057-A(2)(B)]

BENEFITS OF THE RULE: [see §8057-A(2)(C)]

Note: If necessary, additional pages may be used.

Pierce, Gabi

From: Pierce, Gabi
Sent: Tuesday, October 10, 2023 1:47 PM
To: Jacques, Tracy; Sirois, Anna
Subject: FW: Medical Program Rulemaking Comment

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Gabrielle Bérubé Pierce, Esq.

Policy Director

Office of Cannabis Policy | Department of Administrative and Financial Services

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From: Thomas Falby <thomasbfalby@gmail.com>
Sent: Tuesday, October 10, 2023 12:56 PM
To: Pierce, Gabi <Gabi.Pierce@maine.gov>
Subject: Medical Program Rulemaking Comment

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When this medical program first started the focus was on patients and what is best for the patient. One of the agreed-upon criteria was that the more choices that the patient had the better. There was a broad recognition that no single cultivar of cannabis could help everybody. There was also a broad recognition that the people cultivating cannabis were not industrial scale farmers. As small scale farmers the hope was that they would maintain high standards of cultivation.

On the patient side it was widely recognized that they were very capable of advocating for themselves. They had inevitably been through multiple doctors and multiple attempts at alleviating their condition before arriving at cannabis. They were very accustomed to having mainstream medical practices not being able to help their condition. They were very accustomed to searching out alternatives from what was recommended by the mainstream. As a result they are very strong advocates for themselves.

Recognizing these two factors, that the wider choice is best for the patient to find what will help them as well as the fact that patients are strong self-advocates, the outlook is that the buyer of cannabis can ascertain on the market what is best for them. If they want to find cannabis that is tested they can go to a caregiver that has tested cannabis. If they

happen to find a strain that works very well for them, but is not tested, they still have alleviation of their condition with that strain as well as the personal relationship with the cultivator as to whether or not their cannabis is at a quality that they find acceptable

These recognitions in this system is what has worked well for the medical program for the last nearly 15 years. There have been very few complaints. I would actually be interested to see the ocp log of complaints that have been lodged specifically against caregivers. As a caregiver for the last 12 years I have patients who come to me specifically for strains that I grow. They are no longer popular strains. They may not have the greatest yield. Those two factors are what is driving the adult use market and increasingly the medical market. The search for the most outlandish strain with the highest THC level is typically what drives cultivation choices. In addition the yield of said strain is also a strong consideration.

If a cultivator wants to portray the fact that they grow clean cannabis that is certified by a private third party they can go to Maine organic Farmers association. They will pay \$800 for an annual certification. This choice is much more attractive than having to pay testing per harvest which would far exceed that.

In closing I say, if it's not broke don't fix it. This program has helped many people over the years. Increasingly I talk to patients who cannot find the relief they need as a result of lack of strain diversity. There is a real danger of forcing to the margins the very marginalized people for whom the medical program was initiated. Onsite, in store sample collection for testing at random seems the most fair way to progress if there must be some sort of testing.

Sincerely,

Thomas Falby

Pierce, Gabi

From: Pierce, Gabi
Sent: Tuesday, October 10, 2023 11:51 AM
To: Jacques, Tracy; Sirois, Anna
Subject: FW: Attn: Gabi Pierce

Rulemaking comment below.

--

Gabrielle Bérubé Pierce, Esq.

Policy Director

Office of Cannabis Policy | Department of Administrative and Financial Services

Mobile: (207) 530-0507

E-mail: Gabi.Pierce@maine.gov



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From: Nova Grosz <ngrosz@thehashery.me>
Sent: Tuesday, October 10, 2023 11:16 AM
To: Pierce, Gabi <Gabi.Pierce@maine.gov>
Subject: Attn: Gabi Pierce

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Office of Cannabis Policy
Medical Program Rulemaking Comment), (Attn: Gabi Pierce,

Hi there. I am an owner of The Hashery. We have been tirelessly following the ever-changing rules to still not have clarity or accountability for this industry.

People that follow the rules are being fined, looked at and questioned. Meanwhile places like JAR Co that find grey spots in the rules get to play both sides of a Rec and Medical. Meaning places like Kind Farms built it right per requested and spent a ton of money.

The issue here is over regulation. Stop making it harder for people to follow the rules or the black market is going to grow. Stop messing with people that are looking forward with regulations with respect. Clarity for the rules will help people follow them. We need them sustainable and friendly for small businesses or Maine is going to turn into something WE are not proud of. Please. Listen.

We are all waiting. I am available to help if you need to understand more about these matters.
We are all frustrated and need you a part of the team.

With best regards,
Nova Dawn Grosz
Med patient since 2016
Owner of the Hashery
207-440-3556

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Pierce, Gabi

From: Pierce, Gabi
Sent: Monday, September 18, 2023 3:13 PM
To: Jacques, Tracy; Sirois, Anna
Subject: FW: Medical cannabis rulemaking information
Attachments: image001.png; image002.png; image003.png; image004.jpg

Medical rulemaking comment below.

-Gabi

--

Gabrielle Bérubé Pierce, Esq.

Policy Director

Office of Cannabis Policy | Department of Administrative and Financial Services

Mobile: (207) 530-0507

E-mail: Gabi.Pierce@maine.gov



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From: Jared Bourassa <jared.bourassa@gmail.com>
Sent: Monday, September 18, 2023 3:09 PM
To: Pierce, Gabi <Gabi.Pierce@maine.gov>
Subject: Re: Medical cannabis rulemaking information

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Hello Gabi - if I can submit comments directly to you, that would be easiest for me.

I am and have been a medical patient in the state of Maine for over 3 years now. There is a lot of legalese to unpack in the proposed changes, but from what I can read is that this will be detrimental to the smaller independent growers and caregivers and beneficial to large agro. There are many reasons we don't want to become Massachusetts again. It's difficult to be articulate when these changes will directly impact my mental health, the affordability of a medication that helps me stay away from alcohol and handcuffs, and makes me a better person.

Moreover, this is clearly a states rights issue and if there is one thing New England should be known for would be it's own ability to use it's police powers. There are no effective arguments against this beyond pearl clothing (again, I'm sorry).

If you can buy fake "whiskey" in the form of fireball in every gas station in Maine next to some cigs down the road from a gun store, I would like controlled access to my drug if choice. Some choose methadone, nicotine, sugar. Me? A medicated candy bar so I can go to bed not drunk and not in an existential panic.

On Mon, Sep 18, 2023, 2:29 PM Pierce, Gabi <Gabi.Pierce@maine.gov> wrote:

Jared:

Thank you for reaching out to our office. As we discussed, you can submit comments directly to me via e-mail. We are also accepting comments online [through the webform on our website](#). Additionally, interested parties can submit comments via the mail to my attention at 19 Union St, Augusta, ME 04330. Comments will be accepted until 11:59 PM on October 10th and mail submissions postmarked by that day will also be accepted.

Please don't hesitate to reach out if you have additional questions.

Cheers!

-Gabi

--

Gabrielle Bérubé Pierce, Esq.

Policy Director

Office of Cannabis Policy | Department of Administrative and Financial Services

Mobile: (207) 530-0507

E-mail: Gabi.Pierce@maine.gov



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Maine Cannabis Union, Local 420

www.mainecannabisunion.org

Location in Proposed Rule

Maine Cannabis Union Comment, Issue, applicable statute and notes

In general, OCP needs to REVIEW application sections and deadlines of The Act. Many changes here, and many areas in which these proposed rules conflict. Additionally, definitions defined in the Act, if contained in the Rule, must mirror the Act's definitions. Good example of "Bonafide Medical ..."

§2425-A. Registry identification cards and registration certificates, 4. An applicant whose application is denied pursuant to this subsection may request an administrative hearing in accordance with Title 5, chapter 375, subchapter 4. In the case of a caregiver's application for renewal of a registry identification card, upon receipt of a timely filed, complete application submitted by the caregiver, the department shall provide the caregiver with a written statement acknowledging receipt of the application that authorizes the caregiver to continue operating under the caregiver's current card until the application is approved and a renewed card is issued by the department, the application is denied and the current card expires, 90 days elapse from the date of the written statement or the current card is suspended or revoked in accordance with this chapter, whichever occurs first. If the department fails to issue or deny a renewal of a registry identification card within 90 days of providing the written statement acknowledging receipt of the application, the renewal is deemed granted and a copy of the application for renewal of the registry identification card is deemed a valid registry identification card. If the department fails to issue or deny a valid registry identification card in response to a complete application for a card submitted pursuant to subsection 3 within 45 days of its submission, the registry identification card is deemed granted and a copy of the application for a registry identification card is deemed a valid registry identification card. [PL 2021, c. 662, §22 (AMD).]

p. 22

Definition of Caregiver versus Dispensary. a Caregiver ought to have a mirrored Definition to Dispensary. Even though Title 22 Ch 558C introduces the term Caregiver and utilizes it throughout the act, 558c does not explicitly define Caregiver in the list of definitions introduced in 2421 of the chapter. Regardless, 2423A, subsection 2, clearly defines the actions a caregiver may perform. these actions mirror those of a Dispensary within a Caregivers licensed plant count ranges. This needs to be addressed via statute amendment; however, it would be prudent that OCP in the meanwhile, define the term caregiver appropriately in Rule based upon the very clear section of the Act.

p.24 proof of authorized

how exactly does one "verify proof of authorized conduct?" How does a pharmacy or an agency liquor store do this?

P.27 2 (A) & (B)

Fence. An enclosed outdoor cultivation area must have a commercial or security grade fence at least 6 ft high that obscures the view of the cannabis. NO WHERE in THE ACT does a cultivation area even require a FENCE for qualifying patients. "Snow fence is considered commercial grade. Adequate privacy fence. Same goes for commercial-grade locks- adequately locked to deter theft and unauthorized entrance. Additionally, this does NOT APPLY to qualifying patients. ""Title 22, Ch 558C, §2422. Definitions 3. Cultivation area. ""Cultivation area"" means an indoor or outdoor area used for cultivation of mature cannabis plants, immature cannabis plants or seedlings in accordance with this chapter that is enclosed and equipped with locks or other security devices that permit access only by a person authorized to have access to the area under this chapter. A cultivation area may include multiple indoor or outdoor areas, whether contiguous or noncontiguous, on the same parcel or tract of land. [PL 2021, c. 662, §2 (AMD); PL 2021, c. 669, §5 (REV).]"

p. 28

OCP please re-read the section of THE ACT regarding municipal authority. Municipal Authority does not apply to qualifying patients any more than it applies to a patient with a prescription for hydrocodone. Municipal authority applies to dispensaries, manufacturing facilities and caregiver store fronts. Saying this in RULE does not make it so.

p. 28 (B) Locks

Locks. Enclosed, locked facilities and enclosed outdoor areas must have commercial grade locks sufficient to prevent theft and unauthorized entrance. This statement is impossible to achieve. Current 2018 rule states: "Locks. Enclosed, locked facilities and enclosed outdoor areas must have locks sufficient to discourage theft and unauthorized entrance." One CANNOT PREVENT theft nor unauthorized entrance. Again, OCP is creating a hostile environment in which participants are afraid to even report being a victim of theft.

p. 17-23

All definitions contained in RULE that are defined in THE ACT need to be identical to the definition contained in THE ACT.

p.30-31, # 62 A--E

2-C. Bona fide provider-patient relationship. A written certification may be made only in the course of a bona fide provider-patient relationship after the provider has completed a full assessment of the patient's medical history. If a patient has not provided a medical provider who is not the patient's primary care provider with the name and contact information of the patient's primary care provider, a medical provider shall conduct an in-person consultation with the patient prior to providing a written certification. " Replace ocp rule definition with statute language regarding bona fide medical provider relationship, eliminating A-E OCP's interpretation of a doctor-patient relationship.

p 31, (E) (4)	<p>It is NOT OCP's job to define what needs to be contained in a patient record. Eliminate Section E on p 31.</p> <p>This seems it would be the appropriate area in the rules to mention that per the Act, §2423-B. Authorized conduct by a medical provider, subparagraph 9, Telehealth is specifically permitted as means of patient certification. This section of the proposed rule needs a lot of work to bring it in alignment with the current language of the Act, especially in that telemedicine is explicitly and specifically indicated as a manner in which a person can receive their patient designation. The legislative intent is very clear here -- there was zero intent of encumbering a patient's access to the widely accepted practice of telehealth. ***Imperative that rule aligns with the Act and EXPLICITLY ALLOWS TELEMEDICINE!</p> <p>"9. Telehealth. A medical provider who provides written certifications for the medical use of cannabis under this section may use telehealth services to consult with a patient subject to the following conditions: A. A medical provider using telehealth services to consult with a patient seeking a written certification for the medical use of cannabis under this section shall engage in a synchronous encounter with a patient before providing a written certification or renewal of a written certification; and [PL 2021, c. 662, §21 (NEW); PL 2021, c. 669, §5 (REV).] B. A medical provider who provides written certifications for the medical use of cannabis and uses telehealth services to consult with patients shall operate within the standards of practice determined by the licensing board for that medical provider. [PL 2021, c. 662, §21 (NEW); PL 2021, c. 669, §5 (REV).]"</p>
p. 30-32	<p>minor patient rules are NOT in alignment with current language of the Act including consent, after hours contact protocols or instruction, and "proof of authority " to act for another. OCP needs to educate themselves on current law (I suggest re-reading Maine Title 22 Chapter 558-C.) "§2423-B. Authorized conduct by a medical provider Title 22, Ch 558C: 2-A. Minor qualifying patient. A medical provider who provides a written certification to a patient who has not attained 18 years of age shall: A. Prior to providing written certification, inform the qualifying patient and the parent, legal guardian or person having legal custody of the patient of the risks and benefits of the medical use of cannabis and that the patient may benefit from the medical use of cannabis; and [PL 2021, c. 662, §18 (AMD); PL 2021, c. 669, §5 (REV).] B. [PL 2021, c. 662, §18 (RP).] C. [PL 2021, c. 662, §18 (RP).] D. [PL 2021, c. 662, §18 (RP).] E. Provide the parent, legal guardian or person having legal custody of the qualifying patient with a reliable method of communicating with the medical provider at all times, including when the medical provider's office is closed, regarding the proper dosage of and mitigation of any side effects caused by cannabis used by the qualifying patient for medical purposes. [PL 2021, c. 662, §18 (NEW); PL 2021, c. 669, §5 (REV).]"</p>
p. 32	<p>Qualifying Patients who are not caregivers nor dispensary owners are not Registry identification cardholders. They are not subject to registering with OCP, nor demonstration of compliance with electrical code TO OCP, security measures implemented by ocp, etc. Excepting the legible tag on plants, this section does not apply to patients who are not required to (and would be foolish to voluntarily do so) register with ocp.</p>
p. 27	<p>Qualifying Patients are not subject to municipal authority. §2429-D. Local regulation Pursuant to the home rule authority granted under the Constitution of Maine, Article VIII, Part Second and Title 30-A, section 3001, a municipality may regulate registered caregivers, caregiver retail stores operating pursuant to section 2423-A, subsection 2, paragraph P, registered dispensaries, cannabis testing facilities and manufacturing facilities. [PL 2019, c. 217, §5 (AMD); PL 2021, c. 669, §5 (REV).] A municipality may not: [PL 2017, c. 452, §18 (NEW).] 1. Registered caregivers. Prohibit or limit the number of registered caregivers;</p>
p. 28	<p>impossible criteria for locks. Even commercial grade locks do not prevent theft and unauthorized access. locks are a deterrent, not by any means a prevention. additionally,</p>
p. 28	<p>patients are still not subject to ocp inspection to ever verify these criteria.</p>
p. 27 B Indoor cultivation.	<p>No basis in statute for electrical inspectors to inspect qualifying patient homes, nor any non-commercial grow room. While we can recommend a citizen verify electrical code compliance, this is not in OCP's scope. A commercial operation?</p>
p. 27-28 fence	<p>There is no statutory requirement for a fence. The Act requires that any cultivation area access is restricted to authorized persons. The Act makes no mention of plants visibility or invisibility, fences, nor fences opacity.</p>
p. 27 packaging and labeling	<p>Please refer to the Act, subchapter 2423-F 9, and 2429-A. This is unclear, erroneous application of rule that is not encompassed in the Act.</p>
p.33	<p>(A) Written certification OR DIGITAL IMAGE PER the Act subparagraph 2422 Definitions, 16.</p>
p. 33	<p>minors may not designate per law. (Parent or legal guardian of a minor or incapacitated adult...)</p>
p 33 4 A	<p>typo. but may be designate... eliminate be</p>

p.35	"authorized source"? Registered Caregiver, a qualifying patient, a dispensary? Are there other "authorized sources?"
p. 35	Employ assistants: How is this recorded by OCP- Do they still have to pick the person they are working under?
p.37 eliminate B 1	If OCP issued a RIC to a potential employee, as employer, I assume OCP has completed the required background check and per the Act, OCP may not share this report with employers. See language on p41 of the proposed rule for Dispensary language regarding employment of staff. Similar language could read for Registered Caregiver's who employ RIC's
p. 37 ?	what is a "registered caregiver employee" and what taxes? Sales? Income? Corporate?
p. 38 Second Primary Caregiver	This was utilized for school administration of cannabis to a minor -- is this addressed elsewhere in the Rule or left to the Act? A parent cannot always work around a school and work schedule, and a second primary cg was so that another responsible person could be authorized to administer cannabis to a pediatric patient on school grounds.
p. 37	84 A (4) application for registry identification cards. location of caregiver retail store and proof of municipal authorization for retail store. municipal authorization is not required for a caregiver without a storefront. §2429-D. Local regulation, paragraph 3. Municipal authorization needed
p.41(A-F)	These read far better and appropriately than p35 list of Authorized Conduct for a caregiver. P 35 list for authorized conduct for a caregiver ought to mirror this.
pp50-51 reporting illegal activi	per The Act, 2430-G, 3. Incident and illegal activity reporting. A registered caregiver, registered dispensary, cannabis testing facility and manufacturing facility shall report... this applies not only to dispensaries but to caregivers, testing facilities and manufacturing facilities.
p. 50 Trip Tickets	as above, applies to caregivers as well, but concerns about patient confidentiality issues here. The Act reads as follows here: C. A registered caregiver, registered dispensary, cannabis testing facility and manufacturing facility shall accompany all cannabis plants and harvested cannabis being transported pursuant to this chapter with a label that identifies: (1) The person transferring the cannabis plants or harvested cannabis, including the person's registry identification number; (2) The person receiving the cannabis plants or harvested cannabis, including the person's registry identification number or, if the person is not required to register under this chapter, a unique identifier assigned to the person; (3) A description of the cannabis plants or harvested cannabis being transferred, including the amount and form; (4) The time and date of the transfer; and (5) The destination of the cannabis plants or harvested cannabis. [PL 2017, c. 452, §24 (NEW); PL 2021, c. 669, §5 (REV).]" This paragraph does NOT apply to a patient leaving the facility with their medicine. Just like leaving the pharmacy, I don't need permission.
P. 44 (6) (C)	inspections: Is this the same procedure for all? Standardized inspection forms and criteria are required by the ACT.
P 45 11(D)	"Video recordings may be motion activated provided the recording captures all motion for 60 seconds PRIOR? to the triggering event. Is this standard or was this supposed to read 0 secondss post? If not, what time frame is required POST triggering event?
p. 46 (B) (1)	blank? tracking sheets that a patient may utilize to keep track of their preferred strains? Clarify.
p.50	Inventory Supply Records these should be required of both Caregivers and Dispensaries. This is one tool we can utilize to determine participants who are purchasing product from the illicit market. Much of the work OCP has completed to update these rules has focused on the Dispensary model (appropriately); however, these same rules can be and ought to be appropriately scaled to a Caregiver model. Transaction Logs by law are required to be maintained by all per the Act. These transaction logs are the key to appropriate transaction reporting in the medical program (without requiring metrc).
p.50	Here is another example of the focus upon dispensary and the shift to eliminate caregivers from rule. p51 of the proposed rule speaks of Illegal activity reporting . 3. Incident and illegal activity reporting. A registered caregiver, registered dispensary, cannabis testing facility and manufacturing facility shall report:... All these persons are by the Act required to report Illegal activity. The rule needs to reflect the legislative intent to protect the program via reporting. The Department Incident report form should be widely available. Inspections need to foster a learning relationship. You will not ask questions if you are scared of a violation.
p.57	Dispensary application process, renewal specifically-- renewal applications should allow for nonsubmission of information that was originally submitted and remains unchanged. Updates to submitted materials may be labeled addendum or update. It is a burden on both regulators and businesses to duplicate piles of paper that was only submitted less than a year prior.

p.62	patients may choose not to renew their certification, or they may let it lapse. Clarify. Eliminate this language. Excepting the number of patients being served by the program, leave the patients alone.
p. 63	The MCU strongly recommends that if you are only a patient, and not a caregiver, dispensary, or RIC in the program, DO NOT register with OCP. Even if OCP disagrees, they may want to require the name of the business or llc that a caregiver is doing business as. Per Title 22, Ch 558C, §2423-A. Authorized conduct for the medical use of cannabis Q. Be organized as any type of legal business entity recognized under the laws of the State. [PL 2021, c. 662, §13 (AMD).]
p. 63	Inconsistent language/terminology. Assistant? Registry Identification Cardholder? There are RICs who are not Dispensary Assistants and this timely application part of The Act applies to them as well.
p. 65	No Work prior to issuance of card. OCP needs to review new laws in the Act that apply here regarding submission of completed applications.
P. 64 (5)	Annual renewal of card. OCP needs to review new laws in the Act that apply here regarding submission of completed applications.
P. 65 (8)	(8) All registrants shall ensure that any extraction of medical cannabis using inherently hazardous substances is conducted in accordance with the requirements of the rules governing the medical cannabis programs. and any other local, state or federal law or regulation. The entire program operates outside of federal law.
P. 66 10 (8)	Language needs work as it indicates that one cannot transfer to a visiting qualifying patient which is incorrect.
P. 66 10 (1)	5. This paragraph needs language to ensure patient confidentiality. Fix please.
p. 69	Delete. This is ridiculous. The name of the entire program is a CLAIM. Eliminate this ridiculous and subjective language. The Federal government is in clear violation of this rule (but are not subject to OCP) as the federal government has a patent on cannabis as an anti-inflammatory and anti-cancer substance. This is ludicrous.
p. 74, xiii	The under 21 language is too subjective. The concept is too subjective in my opinion. How does one determine that something appeals to those under 21?
p. 75	These are reasonable IF AND ONLY IF the language regarding under 21 is made objective or eliminated.
p. 75	OCP needs to review new laws passed in 2023 1st session regarding notice of violations and timely reporting to the registrant.
p. 77	This language would not allow an appellant to bring industry experts AND their legal representation. While OCP may be right in preventing a crowd of 100, this language impeded an appellant's rights to defend their case. Within reason, an appellant should be allowed their choice of who sits in that room.
p. 80 2 c	Inconsistent language - Registered Caregiver versus "Cultivating" Caregiver.
p. 91	

Maine Cannabis Union Official testimony to 2023 OCP Proposed Rule, Please also see detailed spreadsheet with a line by line analysis of the many issues contained in the Proposed Rule.

Proposed Rule General Misalignment with the Act, Title 22, Chapter 558C
Page numbers refer to OCP's Proposed Rule.

General Misalignment of Title 22, Chapter 558C ("The Act") and OCP Proposed Rule

In general, OCP has failed to encompass 2023 new legislation that will take effect at the end of October 2023. This includes the "timely application," in which Title 22, Chapter 558C now calls for very specific deadlines of 30 days from receipt. The Proposed Rules propose vague allusions as to "timely." Other areas in which OCP has not properly encompassed changes in legislation include the comprehensive Proposed Rule definition of Bonafide Provider Patient Relationship (pp.30-31), a comprehensive Rule-based list of what constitutes a patient record(p.31), and an apparent "overlooking" of the new, explicit TELEHEALTH authorization. Healthcare providers are not regulated by OCP and do not need OCP to mandate what a complete patient record encompasses. Especially during covid, Telehealth has been a valuable tool in Maine and nationwide for years. In Maine's vast geography and shortage of primary care providers and specialists, Telehealth has proven critical to patient care not only in the medical cannabis industry, but also in general. Telehealth has increased access to patients immensely. OCP cannot disregard access to patients in Maine to Telehealth. Further, definitions listed in the Proposed Rule (pp17-23) must align with the definitions found in Title 22, Chapter 558C, the Act, and the Act very clearly allows access to Telehealth. Legislative intent on this matter is very clear – the intent is to ensure access to this widely accepted practice of Telehealth, even to the point of clearly defining asynchronous versus synchronous encounters. OCP needs to review subchapter 2423 B 9. Along the same lines, p.35 of Proposed Rule mentions "authorized sources" including "registered caregiver, a qualifying patient, a dispensary." Are there other authorized sources?

OCP's reference to compliance with federal law in several areas of the Proposed Rule is problematic as the entire program is contrary to federal law. See page 66 for an example. Any reference to participants being in compliance with federal law needs to be removed from this Rule. Similarly, punctuation on p. 66 is unclear in regard to visiting qualifying patients. [p. 66, 10 (1)]. P 69 of the Proposed Rule in regard to patient confidentiality, this language needs work, "electronic copies of records" – this needs to be clear that they must redact identifying patient information including names, dobs, addresses of patients before taking photos/digital copy.

On p. 74, xiii, again, in regard to medical claims, the name of the program is a health claim – this is the Maine Medical Use of Cannabis Program. IF cannabis has no medical use, why are we here? We clearly disagree with this ludicrous statement. By calling a program, "Maine's Medical Use of Cannabis Program," we have admitted that cannabis HAS a medical use. The National Health Institute has countless peer-reviewed and other articles about the medical use of cannabis, and the Federal government holds patents on specific cannabinoids in regard to their anti-cancer and anti-inflammatory characteristics; therefore the federal government, though not subject to OCP authority, is in violation of this claim. This is ludicrous. Please review all packaging and labeling requirements in the Act, specifically, §2429-A. Packaging and labeling requirements. On p. 75, the "under 21" language is far too subjective. Please let us know how we can market exclusively to those who are over age 21 (and/or are qualified patients)? In clear objective, measurable standards?

P. 75 Fines. These are excessive. Fines ought to be used to punish repeat offenders and to dissuade actions that endanger the public. They should not be so high as to regulate a company directly out of business. On p.

Submitted by President Susan W. Meehan on behalf of the Maine Cannabis Union, 698 Lisbon St, Lisbon, ME 04252.

77, OCP has not considered new laws that take effect at the end of October, 2023 that ensure rapid notification to registrants of program violations discovered in an inspection. An example of compliance encouraging compliance and assisting a business to be in compliance is a licensed kitchen inspection. The goal of the Department of Agriculture is to work with a registrant to regulate them into compliance and license their kitchen. The goal of OCP ought to be to encourage compliance and help registrants into compliance rather than help them out of business.

Revocation. P. 73-75 Revocation, and sweeping language of "but not limited to" (pp 73 AND p.74) must be struck. "Major violations include, ~~but are not limited to.~~" OCP has historically demonstrated that we cannot allow OCP a blank slate. The statement on the bottom of p. 73 is a good definition of a major registration violation encompassing will and intent and recklessness. We still feel the "but not limited to" is too powerful and too encompassing, especially when that section refers to revocation of one's registration.

iii. "(ciii) Engaging in marketing or advertising of cannabis or cannabis products, by or on behalf of a registrant, to individuals under the age of 21 years of age or individuals who are not qualifying patients;" This must be eliminated unless objective criteria can be established to determine what constitutes marketing to those under 21. Same issue on p.75 and anywhere else this is addressed in the Proposed Rule.

P. 80 2 c. An appellate may bring not only an attorney, but also any industry experts or persons who support their case to an appeal hearing. This language restricts an appellate to bringing only their legal representation. This is a direct aim at appellants who have brought people who are more familiar with industry law and politics than they may be, or people who can better articulate their case, but may not be their actual legal representation. An appellate who is fighting to retain or regain their business, their livelihood, should have the right to bring those who can help them state their case, whether an industry expert of their choosing, patient(s) who support the registrant, or anyone whom they choose.

Pediatric Issues

OCP's Proposed Rule does not align with the Act in regard to pediatric licensing attempting to redefine parental rights over their children and placing undue hardship on a parent to prove they have the right to make decisions for their children. The Act is clear. The Rule needs to mirror the language provided by the Act. Additionally, the Act provides clear instruction about things OCP has failed to mention in the Proposed Rule in regard to after hours parent/guardian contact the healthcare provider access information. P. 32-33 of the Proposed Rules indicates that a minor patient may designate - a minor cannot, but a parent (or guardian) can on their behalf. Please read subchapter 2423B of the Act. P.33 also muddies the water on the Act's acceptance of Digital Images of a patient card. Pp 35-37 of the Proposed Rule presents some unclarity in regard to pediatric school administration and background checks of employees. If a potential employee presents with a valid and unexpired OCP issues Registry Identification Card, said potential employee assumably passed a background check to acquire said card, no? P. 38 also eliminates language for a "Second Primary Caregiver," which historically and practically has been used to certify a secondary caregiver to administer cannabis medication to a registered minor patient on school grounds along with background check criteria for said administration.

Municipal Authority, Patient Confidentiality, trip tickets :

OCP will need to review the Act, subparagraph 2429-D in regard to municipal authority and to whom/what municipal authority applies in the program. There is NO basis in the Act in regard to inspections of patient homes electrical systems, fences or locks. (Any qualifying patient who voluntarily registers with OCP is not making a wise decision)Patients are NOT subject to OCP inspection to ever verify compliance with electrical

Submitted by President Susan W. Meehan on behalf of the Maine Cannabis Union, 698 Lisbon St, Lisbon, ME 04252.

code. This is out of OCP's scope. Patient confidentiality protects patients from OCP inspection of their homes. Additionally, the Act makes no mention of plants visibility or invisibility, nor a fence's opacity or "commercial" designation. Will we be opening up all Maine citizens to random electrical code inspections if we suspect they grow medical or adult use cannabis? Also in regard to patient confidentiality, trip tickets are required of a "...registered caregiver, registered dispensary, cannabis testing facility and manufacturing facility" must have a label that contains the following information...A retail sale does not need to be accompanied by this label or "trip ticket" as they are known – one does not require OCP permission to travel from the store to their home in either an Adult Use or Medical sale. In regard to QUALIFYING PATIENTS, the Act is clear: "D. The department may not conduct inspections of a qualifying patient or caregiver operating under section 2423-A, subsection 3, paragraph C." OCP has no authorization to inspect qualifying patient homes, cultivation areas or electrical circuits.

Municipal authority granted per Title 22, Chapter 558C indicates the following, "3. Municipal authorization needed. Authorize caregiver retail stores, registered dispensaries, cannabis testing facilities and manufacturing facilities that are not operating on the effective date of this section...[PL 2019, c. 217, §5 (AMD); PL 2021, c. 669, §5 (REV).]" Because municipalities explicitly may not limit the number of caregivers, if a caregiver is not operating a storefront within a municipality, OCP does not need to require proof of municipal authority for a caregiver application with no storefront.

Caregiver Authorized Conduct:

OCP's disregard for the basis that built Maine's Medical Cannabis Program is clear when comparing page 35 to page 41 of the Proposed Rule. The list of Authorized Conduct for a Caregiver on page 35 ought to mirror the list provided on page 41 as the authorized conduct by the Act, Title 22, Chapter 558C is the same. P.50 of the Proposed Rule illustrates another example of OCP's disregard for caregivers. Transaction logs are required to be kept by all caregivers and dispensaries operating within the program. These logs are key to Maine's Cannabis Council's proposed alternative to Metrc in the medical program, an alternative that would function a lot like Maine's GAP program (Good Agricultural Practices) and Maine's Hemp program.

Page 50, under the heading of Dispensary, also illustrates reporting mechanisms by which a dispensary can report illegal activity to OCP via a Department Incident Report. Per the Act, this is applicable to "...registered caregivers, dispensaries, cannabis testing and manufacturing facilities..." This Department Incident Report needs to be widely available and program registrants are required by the Act to report illegal activity, and OCP (and or law enforcement) needs to take action on these matters such as illegal grow operations. While we realize that OCP has no authority over illegal operations, law enforcement does. Encouraging registrants to report illegal activity, and use of the published and available Criteria for Registered Caregiver Inspections form can help OCP to develop a partnership and learning experience with registrants. While OCP does not have authority over illegal operations, when a OCP registrant buys or sells from an unregistered cultivator, OCP has authority over that registrant, and this ought to be a violation endangering public safety (supporting the illicit market).

Inspection criteria are to be available publicly per the Act; however, we only see criteria for Caregiver inspections. Per the Act, this law applies to all registrant inspections and criteria are to be publicly available. "B. The department shall adopt rules: (1) Establishing standards for compliance with this chapter that are available publicly;" Further, good leadership would perhaps establish the goal of inspections to encourage and develop compliance with program rule and law, not to regulate segments of the industry out of business. If people are afraid of repercussions rather than anticipating assistance in solving a problem, they are less likely to report or be honest about a problem.

Submitted by President Susan W. Meehan on behalf of the Maine Cannabis Union, 698 Lisbon St, Lisbon, ME 04252.

P.63 represents a long-standing detail-disagreement with OCP and the industry. Even if OCP employees disagree, the Act clearly states that a caregiver may be "...organized as any type of legal business entity under the laws of the State." (Subchapter 2423-A, Q." OCP may want to require the business name and/or any DBA names from a caregiver? Along the same lines are the references to timely filed applications, especially for renewal. Title 22, Chapter 558C, §2425-A. Registry identification cards and registration certificates applies to all applications. Throughout the Proposed Rule, OCP refers to timely filed with no regard to the provisions provided in this subparagraph 2425-A.

Cultivation Area (Fences and locks)

The Act:3. Cultivation area. "Cultivation area" means an indoor or outdoor area used for cultivation of mature cannabis plants, immature cannabis plants or seedlings in accordance with this chapter that is enclosed and equipped with locks or other security devices that permit access only by a person authorized to have access to the area under this chapter. A cultivation area may include multiple indoor or outdoor areas, whether contiguous or noncontiguous, on the same parcel or tract of land. [PL 2021, c. 662, §2 (AMD); PL 2021, c. 669, §5 (REV).]

The Act is clear that OCP shall implement security measures (to be approved by the legislative committee of oversight, currently the Veterans and Legal Affairs Committee). To require that fences be "commercial grade", fencing is just not Maine. Many of us do for ourselves. The fence must deter access to unauthorized persons, permitting access only by a person authorized to have said access. Locks, fences and any security measure can be defeated – perhaps unless they are protected by the 20k soldiers who protect Fort Knox. As is commonly heard, "locks keep out honest people." We can require fences and locks, but even the second best of systems can be defeated. Anything controlled electronically can be hacked, even government databases such as OCP. The language on p. 28 in regard to locks is impossible to attain. "...commercial grade locks sufficient to prevent theft..." perhaps DETER theft, rather than PREVENT theft may be more appropriate language. No lock can 100% prevent a determined thief. One cannot PREVENT unauthorized access or theft no matter the lock or fence within the boundaries of the law. May I install an electric fence, for example? This language needs to be realistic using terms like *deter* rather than *prevent*. Additionally, none of these provisions are subject to OCP inspection or verification on private patient-only property (not a caregiver). OCP is creating an environment in which participants are afraid to even report being a victim of theft, for fear they will lose their license or face extraordinary fines for not preventing the said theft. Additionally, there is nothing in the Act that indicates that cannabis must be obscured from view by a 6 foot opaque fence. In some areas of Maine, this immediately signals thieves that one is growing cannabis. .

Packaging and Labeling.

While there are several issues, these are basically per statute and must be addressed accordingly.

Pierce, Gabi

From: Pierce, Gabi
Sent: Tuesday, September 12, 2023 2:01 PM
To: Jacques, Tracy; Sirois, Anna
Subject: FW: MU Proposed Rules

Please add this to the public comment tracker.

--

Gabrielle Bérubé Pierce, Esq.

Policy Director

Office of Cannabis Policy | Department of Administrative and Financial Services

Mobile: (207) 530-0507

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From: Schooler, Nichole C <Nichole.C.Schooler@maine.gov>
Sent: Tuesday, September 12, 2023 1:58 PM
To: Pierce, Gabi <Gabi.Pierce@maine.gov>; Ellis, Elisa <Elisa.Ellis@maine.gov>
Subject: MU Proposed Rules

I had a call earlier who wanted to know if the proposed rules eliminate the ability deliver to patients?

Do your best to (deliver?) to patients, but he can not locate it now and wants clarification if the ability to deliver will go away.

Danielle Mattin 207-808-9615

Thank you,

Nikki Schooler

Office Specialist I | [Office of Cannabis Policy](#)

Maine Department of Administrative and Financial Services

#162 State House Station, Augusta, ME 04333-0162

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Pierce, Gabi

From: Pierce, Gabi
Sent: Thursday, October 5, 2023 4:14 PM
To: Jacques, Tracy
Subject: Fwd: Rulemaking written testimony
Attachments: Maine Cannabis Union 2023 ANALYSIS OF OMP PROPOSED RULES 2023 09 06 - Google Sheets.pdf; Maine Cannabis Union summary of general issues with proposed rule 2023.pdf

—
Gabrielle Bérubé Pierce, Esq.
Policy Director
Office of Cannabis Policy | Department of Administrative and Financial Services
Gabi.Pierce@maine.gov
(207) 530-0507

From: susan meehan <goldenwolf458@gmail.com>
Sent: Thursday, October 5, 2023 4:11:41 PM
To: Pierce, Gabi <Gabi.Pierce@maine.gov>
Subject: Rulemaking written testimony

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Ms. Pierce,

Attached please find testimony on behalf of the Maine Cannabis Union, MCU, an affiliate of the International Association of Machinists and Aerospace Workers. We have provided both my written testimony, and the spreadsheet line-by-line analysis of the Proposed Rule.

Thank you for hosting the public hearing al beit without a zoom link. We appreciated your team's time and efforts.

Regards,

Susan Meehan, President
Maine Cannabis Union, MCU
207-861-1945

Maine Organic Farmers and Gardeners Association (MOFGA)
MOFGA Certification Services, LLC.



October 10, 2023

Mr. John Hudak
Ms. Gabi Pierce
Office of Cannabis Policy
Department of Administrative and Financial Services

Docket: Proposed *Medical Use of Cannabis Program Rule*, 18-691 CMR, Chapter 2.

Dear Mr. Hudak and Ms. Pierce,

The following comments are submitted by the Maine Organic Farmers and Gardeners Association (MOFGA). MOFGA, in addition to our USDA-accredited organic certification program, operates a third-party certification program of medical and adult-use cannabis producers in Maine, known as Certified Clean Cannabis by MOFGA (MC3). This is a voluntary program and caregivers and cultivators apply for certification and renew annually. Our program mirrors the production components of the USDA's National Organic Program and verifies a certified producer is meeting the growing and production standards set forth. We currently certify 14 cannabis operations throughout Maine, many who are small-scale artisan producers. Operations in our Certified Clean Cannabis program have an increasing community of patients and consumers who are concerned about the health and environmental impacts of cannabis grown using conventional methods, including hydroponic and synthetic fertility. They seek products free of synthetic pesticides recognizing that management practices emulating those of the National Organic Program are safer for humans, wildlife, soil and water.

We appreciate the opportunity to comment on the proposed Maine Medical Use of Cannabis Program rule.

Introduction and background

MOFGA (Maine Organic Farmers and Gardeners Association), formed in 1971, is the oldest and largest state organic organization in the country. MOFGA began certifying organic farms in 1972, and also owns MOFGA Certification Services, a USDA-accredited organic certification agency. MOFGA is a broad-based community of Maine stakeholders that educates and advocates for organic agriculture. MOFGA created the MC3 program in 2015 with a group of medical use caregivers, and formally launched the program in 2017.

MOFGA is extremely concerned over the growing misapplication of the term 'Organic' in the Maine Medical Use and Adult Use cannabis marketplaces, especially from those who do not

have any third-party verification of production claims. Cannabis, exclusive of Hemp exempted in the 2018 Farm Bill, continues to be a Schedule I substance and therefore ineligible for USDA certification as 'Organic'. Current Maine Cannabis Adult Use [1] regulations as well as proposed Medical Use [2] regulations create inconsistencies with Federal law by permitting the use of the term 'Organic' while referencing incomplete accreditation standards. The result is consumer confusion as well as potentially deceptive marketing practices.

Recognizing consumer, environmental, and market benefits of consistent standards, the states of California and Washington, have structured rules for their regulated cannabis markets that permit certification of cannabis under programs [3] "comparable to organic" while avoiding the term 'Organic'. Rules in these states regulate certification, labeling, and marketing in a manner equivalent to those for USDA certified organic crops and processed products.

MOFGA advocates modifying current Maine cannabis regulations to align with other regulated states. Because of the value of the term 'Organic' in public perception, we further recommend that rule changes affecting 'Organic' labeling and certification be applied equally to Medical Use and Adult Use programs.

- Avoid conflict with Federal and USDA regulations by prohibiting the use of 'Organic' on Maine cannabis labeling as well as marketing claims. Align with current USDA guidance to accredited certifiers, via the National Organic Program Handbook, and allow 'Organic' in business names, only if an operation has a "comparable to organic" certification through an accredited certifier. [Link to NOP Handbook document 4012, Use of Brand or Company Names Containing the Word "Organic"](#).
- Address consumer desires by permitting a system of accredited third-party agents certifying cannabis growers and processors to uniform standards comparable to the USDA National Organic Program.
- Allow marketing claims for cannabis growing and processing standards comparable to organic with defined limits, and only with third party certification.
- Protect current Maine Medical and Adult Use cannabis licensees that have certified their operations via accredited agents using standards based on the National Organic Program. Adhering to substantially equivalent standards may reduce transition costs to certified organic status when cannabis is rescheduled under the CSA (Controlled Substances Act) or Federally regulated.

Maine medical and adult use marketplace concerns

During the summer of 2023, publicly available websites, social-media feeds, and cannabis marketplace sites such as Weedmaps [4] and Leafly [5] were surveyed for Maine cannabis producers' use of the term 'Organic' in customer and patient communications. Further, Maine licensed cannabis producers were compared against third-party certifier lists [6] to confirm if the producers had any certification of growing practices, verification that pesticides and soil amendments are approved for use in organic production, or recordkeeping practices under parallel programs compliant with the NOP.

- Two medical growers/dispensaries as well as an Adult Use dispensary prominently feature the term 'Organic' or its homonym in their trade names, even extending this claim to their marketing on Weedmaps [7] or their social media pages [8]. Neither company has a known certification.

- One dispensary prominently features the term 'Organic' in their trade name, The 'Organically Maine Grown Cannabis Company' [9]. Although a retail outlet cannot be certified, the business makes numerous inferences to their "organically Maine grown and sustainably packaged products". When examined, few, if any of the dispensary's products can claim certification of any type [10].

- One Maine grower claims [11] organic flower and certification by the "MMP" [assumed to mean the Medical Marijuana Program]. The MMP is not a certifying organization nor is this grower certified by any of the surveyed third parties.

The above is not a comprehensive listing yet is indicative of the misapplication of the term 'Organic' in the Maine cannabis marketplaces.

Despite the misuse of 'Organic' by cannabis licensees, there are Maine licensed growers and processors that have submitted their practices to third parties for certification adhering to NOP standards. In MOFGA's Certified Clean Cannabis (MC3) program, there have been as many as 38 operations certified, with some being hemp producers that were able to pivot to organic certification with the legalization of hemp through the 2018 farm bill. A current review of certifier records shows at least fourteen growers and processors, both in Medical Use and Adult Use, have certified their operations under programs equivalent to NOP standards:

- Ten Maine Medical Use cannabis producers were certified under programs substantially equivalent to the requirements of the NOP [12] (National Organic Program).
- Four Maine Medical and Adult Use cannabis producers were certified under similar programs.

The concerns over misuse and misapplication of the term 'Organic' have implications for the integrity of the Maine regulated Medical and Adult Use programs:

1. Labeling a Federally illegal substance as 'Organic' is not permitted and may create future complications for the OCP (Office of Cannabis Policy) as well as the offending businesses. This is per the 7 CFR, Part 205, citation 205.100 (What has to be certified).

2. The use of the term 'Organic' as a marketing description when no certification exists is inherently deceptive to the consumer. The uniform national standards defined by the NOP have established positive connotations with consumers [13]:

- a. Safer, free of dangerous substances
- b. More natural
- c. Better for soil and environmental health

Producers misappropriating these values may expose susceptible medical patients to risk. Simply claiming partial compliance, such as "grown using organic seeds" may hide the use of unapproved pesticides or practices.

3. The misuse of the term 'Organic' in advertising may create an unfair advantage for the offending parties and erode trust in the market. A cohort of Maine cannabis growers and processors have expended efforts and costs to be certified to standards equivalent to the NOP. Companies that market products under a perception of certification distort market quality and may gain unfair economic advantages over more ethical licensees.

An aligned approach to certification, labeling, and marketing

Our approach recommends amending regulations to:

1. Eliminate potential conflicts with the USDA over the use of 'Organic' in cannabis labeling.
2. Permit programs for certification of products to NOP (National Organic Program) standards listed in 7 CFR 205, to the extent possible, and without the use of the term 'Organic'. Exempting the use of business or trade names using the term 'Organic', if the operations are certified through a 'comparable to organic' certification program, per NOP Handbook document 4012 noted above.
3. Amend labeling and marketing rules to define permissible use of certifications. Permissible use should follow NOP standards and guidance wherever possible.
4. Minimize present and future costs for Maine Medical and Adult Use licensees by adhering as closely as possible to existing national standards for organic certification.
5. Harmonize state cannabis prohibited pesticides list to align with the prohibited pesticides list of the USDA-NOP, found in [NOP Handbook document 2611-1](#).
6. Minimize regulatory costs to the OCP (Office of Cannabis Policy) by relying on existing accreditation systems to qualify certifying agents. ACA's (Accredited Certifying Agents) could certify growers and processors in states where it is legal, who already have USDA accreditation.

We recommend harmonizing regulations for the Maine Medical Use and Adult Use markets because the term 'Organic' is misused in both. Adopting different definitions for the Adult Use and Medical Use programs risks confusion and erosion of consumer trust.

Aligning new rules to mirror existing precedent and standards will help to set uniform expectations among growers, processors, regulators, patients, and consumers. Mirroring existing regulations to the extent possible allows the OCP to minimize administering parallel and conflicting requirements.

Recommendations and rationale

1. In the Maine Medical Use of Cannabis rule, 18-691, Chapter 2:

a. Strike the paragraph on p. 20 beginning with: "*Organic means certified by an accredited organic certifier in the State of Maine as being in compliance with the United States Department of Agriculture...*"

b. Strike the paragraph on p. 28 beginning with: "**Organic certification.** *Cannabis for medical use may not be labeled "organic" unless the cannabis plants and cannabis or cannabis products for medical use prepared cannabis are produced, processed and certified...*"

c. Strike the paragraph on p. 54 beginning with: "*The applicant demonstrates knowledge of organic growing methods...*"

i. Rationale: Organic certification is currently impossible under the USDA for Federally illegal crops such as cannabis.

ii. Simply demonstrating knowledge of organic growing methods is not equivalent to an accredited certification of growing and processing operations.

2. In MRS Title 28-B, Chapter 1. CANNABIS LEGALIZATION ACT:

a. **§701. Labeling and packaging, 3. Other approved labeling and packaging,** Replace paragraph C with:

Use of the terms "organic," "organically cultivated", "organically grown", or implications that the final cannabis product is "organic" is not permitted, or is permitted with strict usage parameters through certification by third party accredited certification bodies.

i. Rationale: Identical to (1).

3. In the draft rules insert:

Cannabis products may be labeled as "certified" to a program comparable to organic, certified by an accredited third party, subject to:

- a. The producer has been certified under a program with a scope limited to cannabis offered by an ACA (Accredited Certifying Agent).
- b. The ACA has a valid accreditation under the NOP (National Organic Program) defined in 7 CFR 205.
- c. The cannabis certification program offered by the ACA is substantially equivalent to the requirements defined in 7 CFR 205.

i. Rationale: Basing certification on the existing uniform, national standard defined by the NOP minimizes consumer confusion as well establishing a known, level playing field for the market. This approach is the basis of "equivalent to organic" certification programs in California and Washington. Grounding programs in the NOP may allow state cannabis licensees to integrate into Federal programs more quickly should cannabis be rescheduled or re-legislated.

Taking advantage of the existing regulatory hierarchy of rulemaking, accredited certifiers, and audit procedures for agriculture makes multiple ACA available to Maine cannabis growers and processors. This will encourage good practices while providing a competitive market for certification.

Allowing "equivalent to organic" certifications respects the efforts and investments of Maine Medical and Adult Use licensees that have submitted to audit and inspection by an ACA. Further, the existence of a validated chain of accreditation and audit significantly reduces potential OCP expenses in establishing programs that parallel the National Organic Program.

4. In the draft rules for labeling insert:

Cannabis licensees may include certifications permitted by their corresponding ACA (Accredited Certifying Agencies) on their packaging and marketing materials, including social media, web sites, and web marketing services if:

- a. The producer is certified under an “equivalent to organic” program defined in [these rules] for the product being labeled.
- b. The certification is for a final product, and not for components associated with production that are not indicative of the final product. (e.g.— *grown in certified soil* is not indicative of the final product, or using OMRI “approved for use in organic” inputs)
 - i. Rationale: Material inputs approved for use in organic production are not eligible for certification under the National Organic Program, but are approved materials used to meet compliance with the regulations.

We will be submitting a separate comment to address the inconsistencies in testing labs in the state, with suggestions for harmonizing the different accreditation systems that currently exist for the five laboratories testing cannabis in Maine, and the lack of consistent reference and standard requirements. With each lab having their accuracy confirmed by a different organization, there are inconsistencies. One solution could be for the OCP/CDC to specify one private reference standard and require laboratories to compare themselves against that standard. With no national standard reference materials for cannabis due to scheduling, there are inherent inconsistencies that threaten the public interest and accuracy of testing.

Conclusions

MOFGA, as the principal USDA accredited organic certification body in Maine, is committed to maintaining the integrity of the National Organic Program as well as protecting the integrity of marketing claims for consumers. The uncontrolled use of the term ‘Organic’ in the Maine Adult Use and Medical Use programs directly affects the integrity of organic certification programs, and thereby can erode public trust and market equity. Our opinion is that the unregulated use of the term ‘Organic’ can no longer be overlooked. Sales from Maine’s regulated cannabis markets now far exceed the value of any USDA recognized crop in the state.

We feel our recommendations to the Maine Office of Cannabis Policy (OCP) represent a fair balance between the integrity of the NOP, the interests of consumers, the investments of licensed cannabis producers, and OCP's mission of responsibly regulating the cannabis market in Maine.

Again, we are making these proposals in good faith as a professional organization. We remain open to freely sharing information supporting our proposals with the OCP, as well as serving as a resource for information regarding the NOP, accreditation, and coordination with national agricultural standards.

We would welcome the opportunity to share our knowledge with the members of the OCP.

Respectfully submitted,



Chris Grigsby
Director, MOFGA Certification Services, LLC.
cgrigsby@mofga.org

[1] MRS Title 28-B, Chapter 1, §701. Labeling and packaging, 3,C. Retrieved 2023/09/25
<https://legislature.maine.gov/statutes/28-B/title28-Bch1.pdf>

[2] Maine Medical use of Cannabis Program Rule 18-691, Chapter 2, page 20, Retrieved 2023 09 28
<https://www.maine.gov/dafs/ocp/sites/maine.gov.dafs.ocp/files/inline-files/Proposed%20Rule%2018-691%20CMR%20ch2%20-%20Maine%20Medical%20Use%20of%20Cannabis%20Program%20Rule.pdf>

[3] The OCal program under the CDFA programs summarizes the parallel approach to "comparable to organic", <https://www.cdfa.ca.gov/is/ocal.html> Retrieved 2023/09/28

[4] www.weedmaps.com Searches limited to Maine zip codes using the term 'Organic'

[5] www.leafly.com Searches limited to Maine zip codes using the term 'Organic'

[6] Lists obtained from MC3 (part of MCS, MOFGA Certification Services LLC, CCOF (California Certified Organic Farmers), ProCert AG, Clean Green Certified, Envirocann, and Certified Kind.

[7] <https://weedmaps.com/dispensaries/marks-organix-inc#details> Retrieved 2023/08/16. See Attachment A

[8] <https://www.reddit.com/user/FireflyOrganics/> , Retrieved 2023/08/16. See attachment B.

[9] <https://omglove.me/about-us/> , Retrieved 2023 08 19. See attachment C.

[10]

https://omglove.me/shop/?store_path=%2F&store_query=filter%25Bmatch%25D%3Dorganic , Retrieved 2023/08/19. See Attachment C

[11] Loud and Local Cannabis, Retrieved between 2023/08/19 and 2023/09/30. See Attachment D.

[12] <https://mofgacertification.org/mc3-producer-directory/>, retrieved 2023/09/25

[13] Gundala RR, Singh A (2021) *What motivates consumers to buy organic foods? Results of an empirical study in the United States*. PLoS ONE 16(9)
<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0257288>

Appendix 1—Hierarchy of standards, accreditations, certifiers, and Sample programs

<p>National Organic Program (7 CFR 205) Uniform, national, standards rule. Responsible for developing rules and regulations for organic production and handling, as well as overseeing the accreditation of certifying agents.</p>			
<p>ACA (Accredited certifying agent) Applies to NOP to become an ACA, defining its structure, staffing, and procedures. Must demonstrate the resources and capabilities to perform certification services.</p> <ol style="list-style-type: none"> 1. NOP reviews application. 2. NOP or its representative conducts an on-site evaluation of the proposed ACA. 3. If approved, NOP grants accreditation. 4. Accreditation reviewed regularly. 			
<p>Conventional Crops</p>	<p>Cannabis—cannot receive a USDA ORGANIC certification Independent ACA may develop programs for cannabis using standards defined in 7 CFR 205</p>		
	<p>California OCal</p>	<p>Washington WSDA</p>	<p>Maine Proposal</p>

Organic farmers and processors	State	State	State
<ol style="list-style-type: none"> 1. Select an ACA and submit an application . 2. ACA reviews application . 3. If acceptable , ACA schedules on-site inspection 4. If successful, approves Organic certification. 	<ol style="list-style-type: none"> 1. CDFA (California Department of Food and Agriculture) registers ACA. 2. Cannabis operation submits application to registered ACA. 3. If approved, operation is certified by CDPH (California Department of Public Health) 	<ol style="list-style-type: none"> 1. WSDA, as a USDA ACA, will develop an “equivalent to organic” program for cannabis licensees. 2. All other steps identical to conventional crops. 3. [WSDA may be the only permitted ACA] 	<ol style="list-style-type: none"> 1. Establishes rules for certification and labeling to “equivalent to organic”. 2. Limits certifiers to ACA under the NOP.
<p>Farm or processor may use USDA Organic label as specified</p>	<p>Certified operations may use OCAL symbol on products.</p>	<p>WSDA development and administration costs are obligated to be self-supporting.</p>	<p>Costs borne by ACA to develop programs and cannabis licensees for applications and inspections.</p>
<p>Costs borne by farmers, processors, and ACA.</p>	<p>Multiple additional costs to ACA and licensees for state administration.</p>	<p>Costs borne by cannabis licensees.</p> <p>Certified operations may use WSDA certification.</p>	<p>Costs borne by ACA to develop programs and cannabis licensees for applications and inspections.</p> <p>Certified operations may use corresponding certifications that avoid the use of the term ‘Organic’.</p>



Our Story starts like this...









Mark has years of experience growing and cultivating plants and landscapes the right way, using sustainable methods coupled with organic soils and materials. Dismayed at the great number of Maine patients who lost their quality of life to prescription opioids, Mark was inspired to turn his green thumb to healing. He began growing medical cannabis and employed his years of cultivation experience to yield top-quality medicinal cultivars. After

Our Products:

Marks Organix cannabis provides York County patients with a robust variety of top-quality medicines from which to choose. We cultivate flowers, sourced from local growers with stable genetics, using nutrient-rich soil and absolutely zero pesticides. Patients may sample a wide variety of flower strains, along with an assortment of tinctures, capsules, concentrates, cartridges and edibles. All of Marks Organix delivery products undergo lab testing for quality assurance. We pride ourselves on providing top quality medicine and service! See you soon!

From website <https://www.marksorganix.com/about-us-1> Reviewed 2023/08/16

Store details

-  License information 
-  Best of Year  Medical Retail: CGR25553
-  Storefront | Pickup
-  Open today 10:00am - 7:00pm
-  **134 State Road, Kittery, Maine 03904**
-  **(207) 475-6224**
-  Medical
-  [Email](#)
-  [Website](#)
-  **Supports the Black community**

Amenities

-  18+
Minimum Age
-  ATM
-  Curbside Pickup
-  Medical
-  Brand Verified
-  Best of Weedmaps

Introduction

Marks Organix is proud to offer organic, pharmaceutical-grade medical marijuana flower and edibles to patients in Kittery and beyond. Please visit our caregiver home occupation at 134 State Road in Kittery!

About us

History:

The founder of Marks Organix boasts a long career of cultivating and curating plants and landscapes in general before turning to cannabis. His first entrepreneurial venture was a turf management company that was extremely successful. Dismayed at the great number of Maine patients who lost their quality of life to prescription opioids, Mark wanted to turn his green thumb to healing. He began growing medical cannabis and employed his years of cultivation experience to yield top-quality medicinal cultivars. After fine-tuning his methods and creating cannabis medicines to suit a variety of health concerns, Marks Organix is proud to offer a dedicated caregiver storefront right off the traffic circle on State Road in Kittery.

Products:

Marks Organix' cannabis provides York county patients with a robust variety of top-quality medicines from which to choose. He cultivates his flowers, sourced from local breeders and stable genetics, with nutrient-rich soil and absolutely zero pesticides. Patients may sample different flower strains, with an assortment of textures, aromas, concentrations, and edibles all thrown into the mix. All of Marks Organix' products

From Weedmaps store information page: <https://weedmaps.com/dispensaries/marks-organix-inc#details>

Reviewed 2023/08/16.

INSTAGRAM PAGE

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fireflyorganics Follow Message ...

35 posts 5,062 followers 90 following

FireFly Organics
Product/service
MMMP Licensed Caregiver
Family Owned and Operated | Hand Watered | Hand Trimmed | Organic | Est. 2015 | Nothing For Sale



WKNDWLK.1

POSTS REELS TAGGED



<https://www.instagram.com/fireflyorganics/>

Reviewed 2023/08/16.

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Maine, organic and soil grown cannabis. Located in southern Maine, using this page to help better our communication from farm to patient 🌿

565

Post Karma

838

Comment Karma

Sep 12, 2022

Cake day

LINKS

Instagram

Firefly Weedmaps!

as

in

1

<https://www.reddit.com/user/FireflyOrganics/>

Reviewed 2023/08/16.

Organic and Locally Sourced Products

Summer is a time to savor the bounties of nature, and at OMG Cannabis Co., we prioritize organic and locally sourced products. Our commitment to supporting Maine growers and artisans ensures that our customers enjoy the freshest and highest quality cannabis products. From organically grown flower to sustainably produced concentrates and edibles, we offer a wide selection that satisfies both your palate and your conscience.

<https://omglove.me/sustainable-summer-cannabis/> Reviewed 2023/08/16.

ATTACHMENT C-OMG (ORGANICALLY MAINE GROWN CANNABIS) (CONTINUED)

OMG on-line store listing for 'Organic' Products. Of the 177 products listed in the on-line store only 37 products (21%) are labeled 'Organic'. Within the 'Organic' products, all labeling violates USDA regulations.

Align Yourself With Our Vast Selection

 [Log in](#)


Menu Details

Categories

- All products
- Edibles (29)
- Vape pens (1)
- Gear (2)
- Topicals (5)

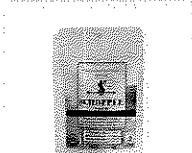

Brands

Search 11 Brands

-  Full Bloom
-  Highbrow
-  Keef Brands
-  Medible Delights
-  Paul's Boutique
-  River Driver Cannabis Co
-  SeaWeed Co.
-  Squier's Specialty Edibles

37 products matching "organic"

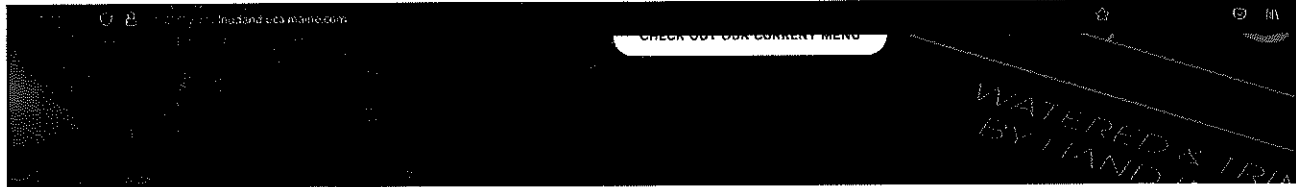
All products Relevance

			
Chocolates Hybrid Organic Milk Chocolate Bar 100mg 100mg THC River Driver Cannabis Co \$35.00 Each	Chocolates Sativa Organic Strawberry Milk Chocolate Bar 100mg 100mg THC River Driver Cannabis Co \$35.00 Each	Chocolates Indica Organic Smore's Milk Chocolate Bar 100mg 100mg THC River Driver Cannabis Co \$35.00 Each	Treats Organic CBD Dog Treats - Schoppee Farm \$25.00 Each
			

https://omglove.me/shop/?store_path=%2F&store_query=filter%255Bmatch%255D%3Dorganic

Reviewed 2023/08/16.

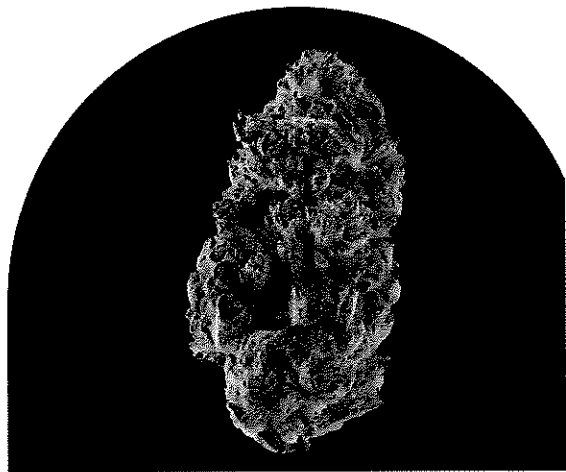
<https://www.loudandlocalmaine.com/>



LOCALLY GROWN CANNABIS.

Loud & Local is a team of two caregiver siblings born and raised in Maine. We're doing what we love: growing happy plants and providing good medicine to the people. Discover our hand-trimmed organic flower grown in nutrient-rich living soil made with local inputs.

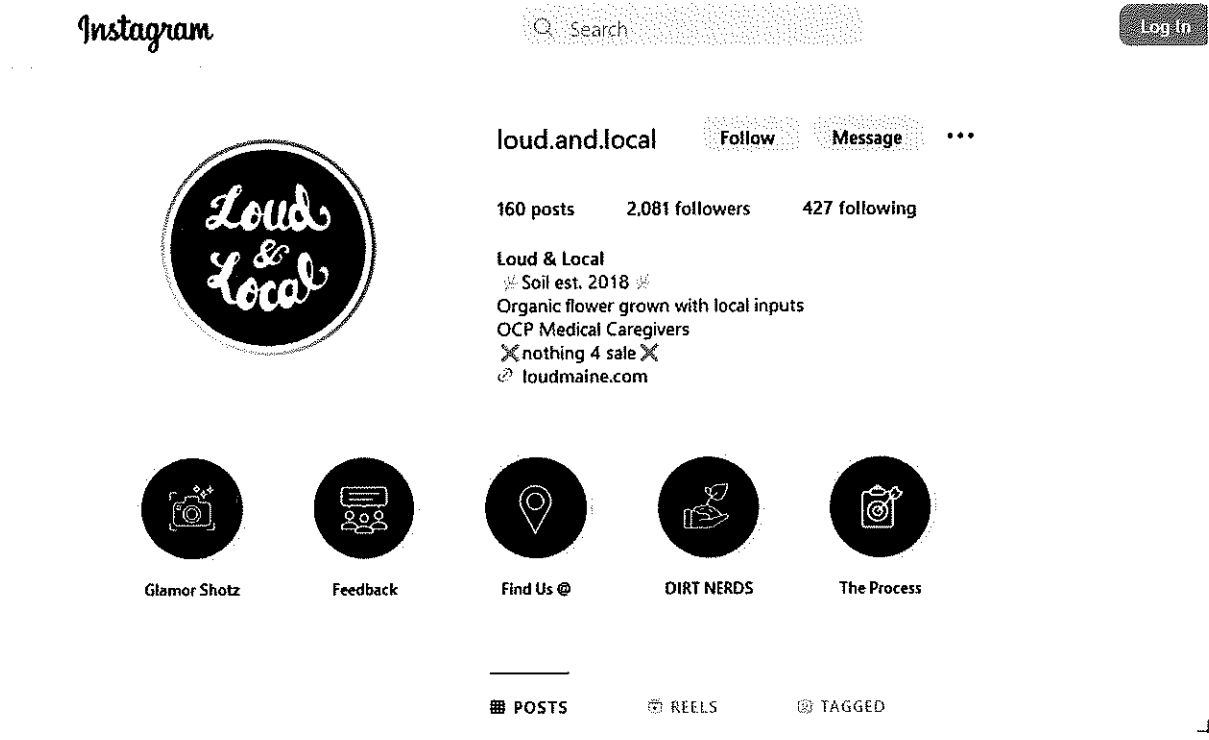
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Loud and Local Web Page <https://www.loudandlocalmaine.com/>

Reviewed 2023/09/30

Loud and Local Instagram page



Clip from Instagram Page <https://www.instagram.com/loud.and.local/>

Reviewed 2023/08/19



Senator Craig Hickman, House Chair Laura Supica and other distinguished members of the committee of Veteran and Legal Affairs and the new Medical Cannabis Sub-Committee. I am speaking today against the proposed re-write of the Maine Medical Cannabis Act.

My Name is Andelena Henderson, of Paris Maine. I am a medical cannabis patient, Founder of West Paris Provisions, a woman business owner, and Navy Veteran. I am on the Planning Board for the town of West Paris, as well as a 13 year volunteer for Maine Adaptive's and Veterans No Boundaries. Also a of member of West Paris Baptist Church, The VFW and American Legion.

Being in the Medical Industry, and volunteering with disabled Veterans, this proposal is a direct attack on shops like mine and medical patients. OCP is hiding behind claims of this being beneficial for the health and safety of Mainers, when in reality it's a means to achieve their agenda which is the death of medical cannabis in Maine. Because this is such an extensive bill, I have picked a few key areas of concern.

1st and foremost I am disgusted with the time frame and lack of access to people to testify. The new language was made public on Sept. 6, with the public hearing today only 20 days later with changes added as well. I am dyslexic and work 60-80 hours a week, am a parent and the sole provider for my home and now I had 20 days to read this? to digest this? To take time out of my busy life to verbally fight against a bill that would be the death of my livelihood! On top of that the removal of access to testify via zoom for this has cut off the voice of so many disabled patients whom this bill would directly impact that couldn't make it here today or have the ability to read the proposed changes? An unfair tactic to silence medical patients who would speak out against these changes.

2nd, my husband is in remission after surviving stage 4 throat cancer. Part of this proposal would require him to find yet another doctor who supports medical use to obtain a medical card. I know every one of you sitting here knows the medical crisis we're in - our waitlists to get into doctors offices anywhere throughout the state is a minimum of 8 months waitlist! and that's if you even get placed with a

provider who is supportive of medical use. This is surely proof that they're trying to get rid of the medical program and go to all rec.

3rd, the extreme financial costs these proposed changes would bring is a sure fire way to knock out the medical industry. Starting with fencing changes, under what grounds, as far as I can think of, have there been any recent concerns brought up in previous bills about fencing requirements? Aren't proposals like this supposed to reflect the past session concerns? and who, especially patients, can afford commercial fencing for the allotted 6 plants to treat their terminal cancer? And the big one is mandatory testing? This one infuriates me. OCP is hiding behind fake care - yes we all want clean safe medicine, but the costs for testing everything is outrageously expensive and would put us in the red and all small grows and stores..California the 1st state to require testing made a loop hole for small growers like me Are not required to test. I would be more than okay to have OPC come into my store one to two times a year and pick one thing to test. What you do not realize the smaller the grow the safer the medicine! Making testing mandatory it would guarantee the death to small businesse establishments. These changes disguised as care are really about lining their own pockets with money.

My last point I want to make, as this one is one of the most scary wordings in the proposal: In regards to revoking registrations and licenses, OCP has worded it as "any major violations including but not limited too" which means it is still up to their discretion and interpretation of what a violation is in which they can cherry pick and choose whose shops they want to shut down! I've shared with the VLA Committee my story of how my shop was shut down and the hellish process I went through to restore my business. This will only make it easier for OCP to do to me and others and rip away the livelihoods of small farmers and small maine medical businesses.

OCP should be ashamed of themselves. These 4 points I've made of many more I could make with the amount of changes in this proposal, are more than enough to show that the true intentions of OCP is not to insure effective and responsible regulation, but to wipe the medical industry completely and line their own pockets with money. Shame on you OCP.

Thank You for your time.

Andelena Henderson (207)400-5202

Maine Cannabis Union

2023 Proposed Rule General Misalignment with, Title 22, Chapter 558C, & other issues

Maine Cannabis Union

698 Lisbon Street, Lisbon, ME 04252

207-240-0556

To: Office of Cannabis Policy, 19 Union Street, Augusta, Maine 04334

Please accept this summary along with our **Analysis, Proposed Rule for Maine Medical Use of Cannabis Program, September 26, 2023** as our testimony on behalf of the Maine Cannabis Union which is being organized as an affiliate of the International Association of Machinists and Aerospace Workers, and the Maine Cannabis Coalition, an educational organization supporting thousands of patients and medical cannabis businesses in Maine.

- **Ocp has 30 days to act upon a complete application.** Title 22, Chapter 558C, §2425-A. applies to all applications. Throughout the Proposed Rule, OCP refers to "timely filed" with no regard to the provisions provided in this §2425-A.
- **Telehealth** using a synchronous visit is **explicitly** allowed to be utilized for patient certification per the Act §2423B 9, but is omitted in the Proposed Rule.
- **Terms defined by the Act** and do not need further contradictory definitions in rule, for example *Bonafide Provider Patient Relationship*. Any definitions in the Rule that are also in the Act, need to align with the Act.
- Medical licensing boards determine what a healthcare provider records in a **Patient Record**. This is not in OCP's scope.
- OCP's reference to compliance with **federal law** in several areas of the Proposed Rule is problematic. The program is contrary to federal law.
- **Patient Confidentiality:** names & identifying information (dob, addresses) are confidential. Several areas of the Proposed Rule disregard this fact. IF contradictions within the Act exist, these should be referred to the subcommittee handling the re-codification efforts in the VLA.
- **Patient Inspections?** The department may not conduct inspections of a qualifying patient or caregiver operating under §2423-A, subsection 3, C. OCP Proposed Rule makes reference to electrical code for patient cultivation areas and fencing requirements. Per the Act, OCP doesn't inspect patient homes.
- **Revocation.** P. 73-75 Revocation, and sweeping language of **"...but not limited to"** (pp 73 AND p.74) **must be struck.** "Major violations include, but are not limited to:"

Page numbers refer to OCP's Proposed Rule. This is a summary.

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Maine Cannabis Union

2023 Proposed Rule General Misalignment with, Title 22, Chapter 558C, & other issues

- How does one objectively **quantify marketing to those under the age of 21**? Please provide objective measurement criteria of this in the Proposed Rules.
- **The rules indicate on p. 80 2 c. an appellate may bring ONLY an attorney.** This language restricts an appellate allowing no industry expert, no witness, no employee? We do not agree to such limitation and oppose this Proposed Rule.
- **Pediatric Qualifying Patients.** OCP's Proposed Rule does not align with the Act in regard to pediatric licensing. Redefining parental rights? The Rule needs to mirror the language provided by the Act, Subchapter 2423B.
- **"Municipal authorization** needed. Authorize caregiver retail stores, registered dispensaries, cannabis testing facilities and manufacturing facilities that are not operating on the effective date of this section...[PL 2019, c. 217, §5 (AMD); PL 2021, c. 669, §5 (REV).]" *Municipal authorization* is NOT required of a patient or a caregiver without a storefront in the town. (setback, etc)
- The list of **Authorized Conduct for a Caregiver** on page 35 ought to mirror the list provided on page 41 as the authorized conduct by the Act, Title 22, Chapter 558C is very much the same excepting plant counts.
- **Department Incident Report.** Page 50, under the heading of Dispensary, also illustrates reporting mechanisms by which a *dispensary* can report illegal activity to OCP via a **Department Incident Report**. Per the Act, this is applicable to "...registered caregivers, dispensaries, cannabis testing and manufacturing facilities..." **This Department Incident Report needs to be widely available and all program registrants are required by the Act to report illegal activity, and OCP (and law enforcement) needs to take action on these matters such as illegal grow operations.**
- **Fences and Locks DETER (do not prevent) THEFT.** OCP language in the Proposed Rule indicates a registrant may be concerned reporting a theft because their security system failed. There is nothing in the Act that indicates that cannabis must be **obscured from view** by a 6 foot opaque fence. In some areas of Maine, this immediately signals thieves that one is growing cannabis.
-
- §2423-A, Q contradicted by P.63 represents a long-standing detail-disagreement with OCP and the industry. Even if OCP employees disagree, the Act clearly states that a **caregiver may be "...organized as any type of legal business entity under the laws of the State."**

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Maine Cannabis Union

2023 Proposed Rule General Misalignment with, Title 22, Chapter 558C, & other issues

- **Inspection Criteria publicly available.** For all registrants, "B. The department shall adopt rules: (1) Establishing standards for compliance with this chapter that are available publicly;" The only publicly available criteria apply to Caregivers (and make no mention of fences or locks). Where does a dispensary or a manufacturing laboratory find their publicly available criteria?
- Overall, OCP continues to create an environment in which participants are afraid to even report being a **victim of theft**, for fear they will lose their license or face extraordinary fines for not **preventing** the said theft.
- Further, good leadership would perhaps establish the goal of inspections to encourage and develop compliance with program rule and law, not to regulate segments of the industry out of business. If people are afraid of repercussions rather than anticipating assistance in solving a problem, they are less likely to report or be honest about a problem.

This bullet list is a summary of this attached analysis of the Proposed Rule, 2023. Thank you for hosting this meeting today. We will be assisting our constituents who were not allowed to participate in this live hearing via zoom or other electronic synchronous venue to provide written testimony prior to the October 10th deadline.

Susan Meehan, President, Maine Cannabis Union and Board Member of the Maine Cannabis Coalition
207-861-1945

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Maine Cannabis Union

2023 Proposed Rule General Misalignment with, Title 22, Chapter 558C, & other issues

Analysis, Proposed Rule for Maine Medical Use of Cannabis Program, September 26, 2023

General Misalignment of Title 22, Chapter 558C (“The Act”) and OCP Proposed Rule

In general, OCP has failed to encompass 2023 new legislation that will take effect at the end of October 2023. This includes the “timely application,” in which Title 22, Chapter 558C now calls for very specific deadlines of 30 days from receipt. The Proposed Rules propose vague allusions as to “timely.” Other areas in which OCP has not properly encompassed changes in legislation include the comprehensive Proposed Rule definition of Bonafide Provider Patient Relationship (pp.30-31), a comprehensive Rule-based list of what constitutes a patient record(p.31), and an apparent “overlooking” of the new, explicit TELEHEALTH authorization. Healthcare providers are not regulated by OCP and do not need OCP to mandate what a complete patient record encompasses. Especially during covid, Telehealth has been a valuable tool in Maine and nationwide for years. In Maine’s vast geography and shortage of primary care providers and specialists, Telehealth has proven critical to patient care not only in the medical cannabis industry, but also in general. Telehealth has increased access to patients immensely. OCP cannot disregard access to patients in Maine to Telehealth. Further, definitions listed in the Proposed Rule (pp17-23) must align with the definitions found in Title 22, Chapter 558C, the Act, and the Act very clearly allows access to Telehealth. Legislative intent on this matter is very clear – the intent is to ensure access to this widely accepted practice of Telehealth, even to the point of clearly defining asynchronous versus synchronous encounters. OCP needs to review subchapter 2423 B 9. Along the same lines, p.35 of Proposed Rule mentions “authorized sources” including “registered caregiver, a qualifying patient, a dispensary.” Are there other authorized sources?

OCP’s reference to compliance with federal law in several areas of the Proposed Rule is problematic as the entire program is contrary to federal law. See page 66 for an example. Any reference to participants being in compliance with federal law needs to be removed from this Rule. Similarly, punctuation on p. 66 is unclear in regard to visiting qualifying patients. [p. 66, 10 (1)]. P 69 of the Proposed Rule in regard to patient confidentiality, this language needs work, “electronic copies of records” – this needs to be clear that they must redact identifying patient information including names, dobs, addresses of patients before taking photos/digital copy.

Please review all packaging and labeling requirements in the Act, specifically, §2429-A. Packaging and labeling requirements. On p. 75, the “under 21” language is far too subjective. Please let us know how we can market exclusively to those who are over age 21 (and/or are qualified patients)? In clear objective, measurable standards?

P. 75 Fines. These are excessive. Fines ought to be used to punish repeat offenders and to dissuade actions that endanger the public. They should not be so high as to regulate a company directly out of business. On p. 77, OCP has not considered new laws that take effect at the end of October, 2023 that ensure rapid notification to registrants of program violations discovered in an inspection. An example of compliance encouraging compliance and assisting a business to be in compliance is a licensed kitchen inspection. The goal of the Department of Agriculture is to work with a registrant to regulate them into compliance and license their kitchen. The goal of OCP ought to be to encourage compliance and help registrants into compliance rather than help them out of business.

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2023 Proposed Rule General Misalignment with, Title 22, Chapter 558C, & other issues

Revocation. P. 73-75 Revocation, and sweeping language of "but not limited to" (pp 73 AND p.74) must be struck. "Major violations include, ~~but are not limited to:~~" OCP has historically demonstrated that we cannot allow OCP a blank slate. The statement on the bottom of p. 73 is a good definition of a major registration violation encompassing will and intent and recklessness. We still feel the "but not limited to" is too powerful and too encompassing, especially when that section refers to revocation of one's registration.

lii. "(ciii) Engaging in marketing or advertising of cannabis or cannabis products, by or on behalf of a registrant, to individuals under the age of 21 years of age or individuals who are not qualifying patients;" This must be eliminated unless objective criteria can be established to determine what constitutes marketing to those under 21. Same issue on p.75 and anywhere else this is addressed in the Proposed Rule.

P. 80 2 c. An appellate may bring not only an attorney, but also any industry experts or persons who support their case to an appeal hearing. This language restricts an appellate to bringing only their legal representation. This is a direct aim at appellants who have brought people who are more familiar with industry law and politics than they may be, or people who can better articulate their case, but may not be their actual legal representation. An appellate who is fighting to retain or regain their business, their livelihood, should have the right to bring those who can help them state their case, whether an industry expert of their choosing, patient(s) who support the registrant, or anyone whom they choose.

Pediatric Issues

OCP's Proposed Rule does not align with the Act in regard to pediatric licensing attempting to redefine parental rights over their children and placing undue hardship on a parent to prove they have the right to make decisions for their children. The Act is clear. The Rule needs to mirror the language provided by the Act. Additionally, the Act provides clear instruction about things OCP has failed to mention in the Proposed Rule in regard to after hours parent/guardian contact the healthcare provider access information. P. 32-33 of the Proposed Rules indicates that a minor patient may designate - a minor cannot, but a parent (or guardian) can on their behalf. Please read subchapter 2423B of the Act. P.33 also muddies the water on the Act's acceptance of Digital Images of a patient card. Pp 35-37 of the Proposed Rule presents some unclarity in regard to pediatric school administration and background checks of employees. If a potential employee presents with a valid and unexpired OCP issues Registry Identification Card, said potential employee assumably passed a background check to acquire said card, no? P. 38 also eliminates language for a "Second Primary Caregiver," which historically and practically has been used to certify a secondary caregiver to administer cannabis medication to a registered minor patient on school grounds along with background check criteria for said administration.

Municipal Authority, Patient Confidentiality, trip tickets :

OCP will need to review the Act, subparagraph 2429-D in regard to municipal authority and to whom/what municipal authority applies in the program. There is NO basis in the Act in regard to inspections of patient homes electrical systems, fences or locks. (Any qualifying patient who voluntarily registers with OCP is not making a wise decision)Patients are NOT subject to OCP inspection to ever verify compliance with electrical code. This is out of OCP's scope. Patient confidentiality and very explicit language in the Act protect patients from OCP inspection of their homes.

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2023 Proposed Rule General Misalignment with, Title 22, Chapter 558C, & other issues

Additionally, the Act makes no mention of plants visibility or invisibility, nor a fence's opacity or "commercial" designation. Will we be opening up all Maine citizens to random electrical code inspections if we suspect they grow medical or adult use cannabis?

Also in regard to patient confidentiality, trip tickets are required of a "...registered caregiver, registered dispensary, cannabis testing facility and manufacturing facility" must have a label that contains the following information...A retail sale does not need to be accompanied by this label or "trip ticket" as they are known – one does not require OCP permission to travel from the storefront to home or wherever.

Because municipalities explicitly may not limit the number of caregivers, if a caregiver is not operating a storefront within a municipality, OCP does not need to require proof of municipal authority for a caregiver application with no storefront store to their home in either an Adult Use or Medical sale. In regard to QUALIFYING PATIENTS, the Act is clear: "D. The department may not conduct inspections of a qualifying patient or caregiver operating under section 2423-A, subsection 3, paragraph C." OCP has no authorization to inspect qualifying patient homes, cultivation areas or electrical circuits.

Municipal authority granted per Title 22, Chapter 558C indicates the following, "3. Municipal authorization needed. Authorize caregiver retail stores, registered dispensaries, cannabis testing facilities and manufacturing facilities that are not operating on the effective date of this section...[PL 2019, c. 217, §5 (AMD); PL 2021, c. 669, §5 (REV).]" .

Caregiver Authorized Conduct:

OCP's disregard for the basis that built Maine's Medical Cannabis Program is clear when comparing page 35 to page 41 of the Proposed Rule. The list of Authorized Conduct for a Caregiver on page 35 ought to mirror the list provided on page 41 as the authorized conduct by the Act, Title 22, Chapter 558C is the same. P.50 of the Proposed Rule illustrates another example of OCP's disregard for caregivers. Transaction logs are required to be kept by all caregivers and dispensaries operating within the program. These logs are key to Maine's Cannabis Council's proposed alternative to Metrc in the medical program, an alternative that would function a lot like Maine's GAP program (Good Agricultural Practices) and Maine's Hemp program.

Page 50, under the heading of Dispensary, also illustrates reporting mechanisms by which a dispensary can report illegal activity to OCP via a Department Incident Report. Per the Act, this is applicable to "...registered caregivers, dispensaries, cannabis testing and manufacturing facilities..." This Department Incident Report needs to be widely available and program registrants are required by the Act to report illegal activity, and OCP (and or law enforcement) needs to take action on these matters such as illegal grow operations. While we realize that OCP has no authority over illegal operations, law enforcement does. Encouraging registrants to report illegal activity, and use of the published and available Criteria for Registered Caregiver Inspections form can help OCP to develop a partnership and learning experience with registrants. While OCP does not have authority over illegal operations, when a OCP registrant buys or sells from an unregistered cultivator, OCP has authority over that registrant, and this ought to be a violation endangering public safety (supporting the illicit market).

Inspection criteria are to be available publicly per the Act; however, we only see criteria for Caregiver inspections. Per the Act, this law applies to all registrant inspections and criteria are to be publicly available. "B.

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The department shall adopt rules: (1) Establishing standards for compliance with this chapter that are available publicly;" Further, good leadership would perhaps establish the goal of inspections to encourage and develop compliance with program rule and law, not to regulate segments of the industry out of business. If people are afraid of repercussions rather than anticipating assistance in solving a problem, they are less likely to report or be honest about a problem.

P.63 represents a long-standing detail-disagreement with OCP and the industry. Even if OCP employees disagree, the Act clearly states that a caregiver may be "...organized as any type of legal business entity under the laws of the State." (Subchapter 2423-A, Q." OCP may want to require the business name and/or any DBA names from a caregiver? Along the same lines are the references to timely filed applications, especially for renewal. Title 22, Chapter 558C, §2425-A. applies to all applications. Throughout the Proposed Rule, OCP refers to timely filed with no regard to the provisions provided in this subparagraph 2425-A.

Cultivation Area (Fences and locks)

The Act:3. Cultivation area. "Cultivation area" means an indoor or outdoor area used for cultivation of mature cannabis plants, immature cannabis plants or seedlings in accordance with this chapter that is enclosed and equipped with locks or other security devices that permit access only by a person authorized to have access to the area under this chapter. A cultivation area may include multiple indoor or outdoor areas, whether contiguous or noncontiguous, on the same parcel or tract of land. [PL 2021, c. 662, §2 (AMD); PL 2021, c. 669, §5 (REV).]

The Act is clear that OCP shall implement security measures (to be approved by the legislative committee of oversight, currently the Veterans and Legal Affairs Committee). To require that fences be "commercial grade", fencing is just not Maine – many of us do it ourselves. Chain Link fencing covered with opaque material? A wooden frame fence? The fence must deter access to unauthorized persons, permitting access only by a person authorized to have said access. Locks, fences and any security measure can be defeated – perhaps unless they are protected by the 20k soldiers who protect Fort Knox. As is commonly heard, "locks keep out honest people." We can require fences and locks, but even the second best of systems can be defeated. Anything controlled electronically can be hacked, even government databases such as OCP. The language on p. 28 in regard to locks is impossible to attain. "...commercial grade locks sufficient to prevent theft..." perhaps DETER theft, rather than PREVENT theft may be more appropriate language. No lock can 100% prevent a determined thief. One cannot PREVENT unauthorized access or theft no matter the lock or fence within the boundaries of the law. May I install an electric fence, for example? This language needs to be realistic using terms like *deter* rather than *prevent*. Additionally, none of these provisions are subject to OCP inspection or verification on private patient-only property (not a caregiver). OCP is creating an environment in which participants are afraid to even report being a victim of theft, for fear they will lose their license or face extraordinary fines for not preventing the said theft. Additionally, there is nothing in the Act that indicates that cannabis must be obscured from view by a 6 foot opaque fence. In some areas of Maine, this immediately signals thieves that one is growing cannabis. .

end of analysis. MCU

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Maine Cannabis Union
2023 Proposed Rule General Misalignment with, Title 22, Chapter 558C, & other
issues

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OCP.

Good Day Ladies and Gentlemen of the Office of Cannabis Policy.

My name is Amy McFarland.

I am a medical cannabis patient and farmer, as well as the co-director of Liberate Maine Cannabis (a grassroots political action committee).

Today I am submitting testimony against the proposed medical rules as many items presented within these pages need correction.

For instance, on page 22 a Registered Caregiver is defined as a "Natural Person" who is registered by the dept. Pursuant to MRS 2425-A.

A Registered Dispensary is defined as "An Individual or Business Entity".

Also listed within the registered dispensary's definition is the authorized conduct.

A Registered Dispensary is authorized to acquire, possess, cultivate, manufacture, deliver, transfer, transport, sell and supply harvested cannabis, and cannabis plants to patients and caregivers.

This authorized conduct was omitted from the definition of a Registered Caregiver as well as the allowance of a caregiver to be a LLC or a C-Corp.

Next we have the fencing issue, requiring patients to install costly commercial or security grade fencing along with a commercial grade lock is overstepping the department's authority. (Maine residents over the age of 21 growing for personal use do not have these requirements.)

Now as for testing, the majority of us know the labs are not 100% accurate.

We have heard there is at least a 20% discrepancy, this needs to be taken into account when samples are being collected.

Stating a medical provider shall "Facilitate an encounter with the person and conduct a relevant physical examination occurring at a permanent location that is clinically appropriate for medical services" may limit a medical provider from performing their duties.

By statute, Telehealth is allowed.

Lastly, are the violations.

How does one "Engage in marketing or advertising of cannabis to individuals under the age of 21, or individuals who are not qualifying patients" ?

This is too vague and considered a major violation.

As a caregiver, I can't make claims about the health or physical benefit of cannabis for medical use. Yet, I grow medical cannabis.

If I do make a claim of any health benefits, it is considered a major violation.