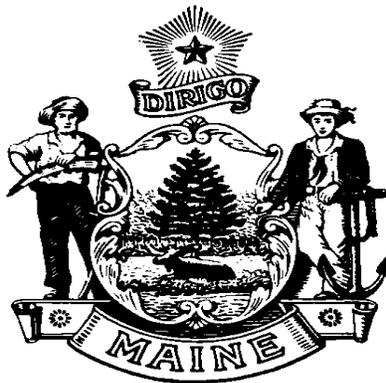


# Rules Governing the Maine Medical Use of Marijuana Program

10-144 CMR Chapter 122

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**Purpose.** These rules implement the Maine Medical Use of Marijuana Program (MMMP). The rules include definitions of terms, and identification of debilitating medical conditions for which the medical use of marijuana is authorized. They also include procedures for issuing a certificate of registration to a dispensary, and registry identification cards to qualified patients, primary caregivers, staff of hospice providers and nursing facilities, and qualified principal officers, board members and employees of dispensaries. The MMMP rules also govern confidentiality, payments of fees, and enforcement of these rules. The activities described in these rules are considered a violation of federal law. Qualifying patients, primary caregivers and dispensaries may be subject to federal sanctions for what is otherwise considered authorized conduct in the state of Maine. The department is not responsible or liable for the actions of patients, primary caregivers and dispensaries under these rules.

**Section 1. DEFINITIONS.** As used in these rules, unless the context otherwise indicates, the following terms have the following meanings.

**1.1 RESERVED.**

**1.2 Act.** Act means the Maine Medical Use of Marijuana Act.

**1.3 Adulterated.** For the purposes of these rules, adulterated means made impure or inferior by adding extraneous ingredients. Goods that are prepared in food establishments that are licensed facilities pursuant to 22 Maine Revised Statutes §2167 and that contain marijuana for medical use by a qualifying patient are not considered to be adulterated.

**1.4 Applicant.** Applicant means any person applying for a registry identification card to participate in the Maine Medical Use of Marijuana Program, hereinafter MMMP.

**1.5 Cardholder.** Cardholder means a registered patient, a registered primary caregiver or a principal officer, board member, or employee of a registered dispensary who has been issued and possesses a valid registry identification card.

**1.6 Collective.** Collective means an association, cooperative, affiliation or group of primary caregivers who physically assist each other in the act of cultivation, processing or distribution of marijuana for medical use for the benefit of the members of the collective. See 22 M.R.S.A. §2422 (1-A)

**1.7 Debilitating medical condition.** Debilitating medical condition means a chronic or debilitating disease, medical condition or symptom listed in these rules that qualifies for the medical use of marijuana by a qualifying patient.

**1.8 Deficiency.** Deficiency means a violation of or failure to comply with a provision of these rules.

**1.9 Department.** Department means the Department of Health and Human Services (DHHS or department).

**1.9-A Dispensary.** Dispensary means “registered dispensary,” as defined in Section 1.33 of these rules.

**1.10 Disqualifying drug offense.** Disqualifying drug offense means a conviction for a violation of a state or federal controlled substance law that is a crime punishable by imprisonment for one year or more. It does not include:

**1.10.1** An offense for which the sentence, including any term of probation, incarceration or supervised release, was completed 10 or more years earlier; or

**1.10.2** An offense that consisted of conduct that would have been permitted under these rules.

**1.11 Division.** Division means the Division of Licensing and Regulatory Services (DLRS or division).

**1.12 Enclosed, locked facility and enclosed outdoor area.** Enclosed, locked facility means a closet, room, building, greenhouse or other enclosed area that is equipped with locks or other security devices that permit access only by the individual authorized to cultivate the marijuana. See 22 M.R.S.A. §2422(3).

**1.13 Final agency action.** Final agency action means a decision by DHHS which affects the legal rights, duties or privileges of specific persons, which is dispositive of all issues, legal and factual, and for which no further recourse, appeal or review is provided within DHHS. See 5 M.R.S.A. §8002 (4).

**1.14 Food establishment.** For the purposes of these rules, food establishment includes a primary caregiver or a registered dispensary that prepares goods containing marijuana for medical use by a qualifying patient. See 22 M.R.S.A. §2152 (4-A).

**1.15 RESERVED**

**1.16 Intractable pain.** For the purposes of these rules, intractable pain means pain that has not responded to ordinary medical or surgical measures for more than 6 months.

**1.17 Marijuana.** Marijuana means the leaves, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake or sterilized seed of the plant which is incapable of germination.

- 1.17.1 Allowable usable amount of marijuana for medical use.** The allowable usable amount of marijuana for medical use that may be possessed at any one time by an authorized person means 2 ½ ounces or less of prepared marijuana and a total of up to 6 mature marijuana plants.
- 1.17.2 Incidental amount of marijuana.** Incidental amount of marijuana per patient means up to 12 female nonflowering marijuana plants; an unlimited amount of marijuana seedlings, seeds, stalks and roots; and up to eight (8) pounds of harvested dried unprepared marijuana in varying stages of processing that are not included when calculating the “allowable useable amount of marijuana.” See 22 M.R.S.A. §2422 (4-A).
- 1.17.3 Mature marijuana plant.** Mature marijuana plant means a harvestable female marijuana plant that is flowering. See 22 M.R.S.A. §2422 (4-B).
- 1.17.4 Prepared marijuana.** Prepared marijuana means the dried leaves and flowers of the marijuana plant that require no further processing, and any mixture or preparation of those dried leaves and flowers, including but not limited to tinctures, ointments, and other preparations. It does not include the seeds, stalks, leaves that are disposed of and not dried for use and roots of the marijuana or other ingredients in goods prepared for human consumption or use.
- 1.17.5 Seedling.** Seedling means a marijuana plant that has no flowers (buds), is less than 12 inches in height and diameter. A plant that does not meet all three criteria will not be considered a seedling.
- 1.17.6 Tincture.** For the purposes of these rules, tincture means a mixture created from a concentrated extract of marijuana.
- 1.17.7 Topical treatment.** Topical treatment means a mixture or extract of marijuana made into a balm, lotion, ointment or rubbing alcohol solution, that is applied transcutaneously.
- 1.18 RESERVED**
- 1.19 RESERVED**
- 1.20 RESERVED**
- 1.21 RESERVED**
- 1.22 RESERVED**
- 1.23 Medical use.** Medical use means the acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the

administration of marijuana to treat or alleviate a qualifying patient’s debilitating medical condition or symptoms associated with the qualifying patient’s debilitating medical condition.

- 1.24 Member of the family.** Member of the family means a person who is a spouse, domestic partner, child, sibling, aunt, uncle, niece, nephew, parent, stepparent, grandparent or grandchild of another person. Member of the family includes a person living with a person as a spouse and a natural parent of a child of a person. See 22 M.R.S.A. §2422 (5-A).
- 1.25 Members of the same household.** Members of the same household means 2 or more people who share a dwelling unit. See 22 M.R.S.A. §2422 (5-B).
- 1.26 Organic.** Organic means certified by an accredited organic certifier in the State of Maine as being in compliance with the United States Department of Agriculture certification requirements applying to organic products.
- 1.27 Paraphernalia.** For the purpose of these rules, paraphernalia is limited to equipment, products and materials that are ordinarily used in planting, propagating, cultivating, growing, harvesting, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling or otherwise introducing marijuana into the human body. It includes:
  - 1.27.1** Kits used or intended for use in the planting, propagating, cultivating, growing or harvesting of any species of marijuana;
  - 1.27.2** Isomerization devices used or intended for use in increasing the potency of any species of the marijuana plant;
  - 1.27.3** Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of marijuana;
  - 1.27.4** Scales and balances used or intended for use in weighing or measuring marijuana;
  - 1.27.5** Separation gins and sifters, used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
  - 1.27.6** Envelopes and other containers used or intended for use in packaging small quantities of marijuana for medical use;
  - 1.27.7** Containers and other objects used or intended for use in storing medical marijuana; and
  - 1.27.8** Objects used or intended for use in ingesting, inhaling or otherwise introducing marijuana into the human body, including but not limited to:

- 1.27.8.1 Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
- 1.27.8.2 Water pipes;
- 1.27.8.3 Carburetion tubes and devices;
- 1.27.8.4 Smoking and carburetion masks;
- 1.27.8.5 Roach clips, meaning objects used to hold burning marijuana cigarettes that have become too small or too short to be held in the hand;
- 1.27.8.6 Chamber pipes;
- 1.27.8.7 Carburetor pipes;
- 1.27.8.8 Electric pipes;
- 1.27.8.9 Air-driven pipes;
- 1.27.8.10 Chillums;
- 1.27.8.11 Bongs designed for marijuana and not for cocaine; or
- 1.27.8.12 Ice pipes or chillers.

**1.28 Physician.** Physician means a person licensed as an osteopathic physician by the Board of Osteopathic Licensure pursuant to 32 M.R.S.A. Chapter 36 or a person licensed as a physician or surgeon by the Board of Licensure in Medicine pursuant 32 M.R.S.A. Chapter 48 who is in good standing and who holds a valid federal Drug Enforcement Administration license to prescribe drugs.

**1.29 Physician’s written certification.** Physician’s written certification or written certification means a document on tamper-resistant paper signed and dated by a physician that expires in one year. The expiration date is included on the issued written certification. The physician’s written certification must state that in the physician’s professional opinion a patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient’s debilitating medical condition or symptoms associated with the debilitating medical condition.

**1.30 Prepared marijuana.** Prepared marijuana means the dried leaves and flowers of the marijuana plant that require no further processing, and any mixture or preparation of

those dried leaves and flowers, including but not limited to tinctures, ointments, and other preparations. It does not include the seeds, stalks, leaves that are disposed of and not dried for use and roots of the marijuana or other ingredients in goods prepared for human consumption or use.

**1.31 Primary caregiver.** Primary caregiver means a person who is designated by a qualifying patient to assist the qualifying patient with the medical use of marijuana in accordance with these rules. Qualifying patients include non-registered and voluntarily registered patients. A person who is a primary caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense. See 22 M.R.S.A. §2422(8-A).

**1.31.1** Primary caregiver also means a hospice provider licensed under chapter 1681 or a nursing facility licensed under chapter 405 that is designated by a registered patient as a primary caregiver to assist the registered patient with the medical use of marijuana in accordance with these rules.

**1.32 Qualifying patient.** Qualifying patient or patient means a person who has been diagnosed by a physician as having a debilitating medical condition and who possesses a valid physician’s written certification authorizing the medical use of marijuana in accordance with these rules. See 22 M.R.S.A. §2422 (9).

**1.33 Registered dispensary.** Registered dispensary or dispensary means a not-for-profit entity registered pursuant to Section 6 of these rules that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana, paraphernalia or related supplies and educational materials to qualifying patients and the primary caregivers of those patients.

**1.34 Registered patient.** Registered patient means a qualifying patient who is registered by the department pursuant to Section 4 of these rules.

**1.35 Registered primary caregiver.** Registered primary caregiver means a primary caregiver who is registered by the department pursuant to Section 5 of these rules. See 22 M.R.S.A. §2422 (11).

**1.36 Registry identification card.** Registry identification card means a document issued by the department that identifies a person as a registered patient, registered primary caregiver, or a principal officer, board member, or employee of a registered dispensary.

**1.37** RESERVED.

**1.38 Tamper-resistant paper.** Tamper-resistant paper means paper that possesses an industry-recognized feature that prevents copying of the paper, erasure or modification of information on the paper and the use of counterfeit documentation. See 22 M.R.S.A. §2422 (13-A).

**1.39** RESERVED

**1.40** RESERVED

**1.41** **Visiting qualifying patient.** Visiting qualifying patient means a patient with a debilitating medical condition who is not a resident of Maine or who has been a resident of Maine less than 30 days who is qualified by another jurisdiction for the medical use of marijuana.

**Section 2: SCOPE AND PROTECTED CONDUCT**

**2.1 Protections: legal medical use of marijuana.** The protections and requirements of these rules are for conduct that is expressly authorized by these rules for the legal medical use of marijuana by qualifying patients, and for those who assist qualifying patients as primary caregivers and principal officers, board members and employees of registered dispensaries. Also see Section 11.14.

**2.1.1 Violation of other laws.** These protections do not extend to violations of other state and federal laws.

**2.1.2 Protected conduct by anyone providing paraphernalia.** A person may provide a qualifying patient or a primary caregiver with marijuana paraphernalia for purposes of the qualifying patient's medical use of marijuana in accordance with these rules and be in the presence or vicinity of the medical use of marijuana as allowed under these rules. The person providing the paraphernalia must verify the registry identification card of the registered patient or registered primary caregiver; or the qualifying patient's written physician certification or the primary caregiver's written designation by the qualifying patient, if the qualifying patient or the primary caregiver is not registered with the department.

**2.1.3 Protected conduct by a visiting qualifying patient.** A qualifying patient visiting the State from another jurisdiction that authorizes the medical use of marijuana pursuant to a law or regulation of another state or political subdivision may engage in conduct authorized for a qualifying patient by these rules if the following criteria are met:

**2.1.3.1 Maine form.** The visitor shall possess a valid Maine-approved written physician certification form completed, signed and dated by the visitor's home-jurisdiction treating physician. The Maine form is available on the division's webpage at <http://www.maine.gov/dhhs/dlrs/mmm/index.shtml>.

**2.1.3.2 Home-jurisdiction certification.** The visitor shall possess a valid medical use of marijuana certification issued by the visitor's home-jurisdiction.

**2.1.3.3 Photographic identification.** The visitor shall possess a valid photographic identification card or driver's license issued by the visitor's home-jurisdiction.

**2.1.4 Possession of certain documents; application for registry identification card.** Possession of a registry identification card by a cardholder, the act of applying for a registry identification card, possession of a physician's written certification or possession of a primary caregiver or dispensary designation form is not

evidence of unlawful conduct and may not be used to establish probable cause for the search of that person or that person's property.

**2.1.4.1** The possession of or application for a registry identification card or possession of a physician's written certification does not prevent the issuance of a warrant if probable cause exists on other grounds. See 22 M.R.S.A. §2425(7).

**2.2 Rights of persons or entities acting pursuant to these rules.** A person whose conduct is authorized under these rules may not be denied any right or privilege or be subjected to arrest, prosecution, penalty or disciplinary action, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for lawfully engaging in conduct involving the medical use of marijuana authorized under these rules. See 22 M.R.S.A. §2423-E (1).

**2.3 School, employer or landlord may not discriminate.** A school, employer or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person solely for that person's status as a qualifying patient or a primary caregiver unless failing to do so would put the school, employer or landlord in violation of federal law or cause it to lose a federal contract or funding.

**2.3.1** Section 2.3 of these rules does not prohibit a restriction on the administration or cultivation of marijuana on premises when that administration or cultivation would be inconsistent with the general use of the premises.

**2.3.2** A landlord or business owner may prohibit the smoking of marijuana for medical purposes on the premises of the landlord or business if the landlord or business owner prohibits all smoking on the premises and posts notice to that effect on the premises. See 22 M.R.S.A. §2423-E (2).

**2.4 Person may not be denied parental rights and responsibilities or contact with a minor child.** A person may not be denied parental rights and responsibilities with respect to or contact with a minor child as a result of acting in accordance with these rules, unless the person's conduct is contrary to the best interests of the minor child as set out in 19-A Maine Revised Statutes, section 1653, subsection 3.

**2.5 Prohibition on seizure and retention.** Except when necessary for an ongoing criminal or civil investigation, a law enforcement officer may not seize marijuana that is in the possession of a qualifying patient, primary caregiver or registered dispensary as authorized by these rules.

**2.5.1** A law enforcement officer in possession of marijuana seized in violation of Section 2.5 of these rules must return the marijuana within 7 days after receiving a written request for return from the owner of the marijuana.

**2.5.2** Notwithstanding the provisions of Title 14 Maine Revised Statutes, chapter 741, if the law enforcement officer fails to comply with Section 2.5 by returning marijuana possessed in violation of these rules, the owner of the marijuana may file a claim in the District Court in the district where the owner lives, or where the law enforcement officer is employed. See 22 M.R.S.A. §2423-E (4).

**2.6 Proof of authorized conduct.** To receive protection for conduct authorized by these rules, a qualifying patient, a visiting qualifying patient and a primary caregiver must comply with the following applicable provision.

**2.6.1 Qualifying patient.** As proof of authorized conduct, a qualifying patient must present upon request of a law enforcement officer the patient's driver's license that contains a photograph as described under 29-A, Maine Revised Statutes, section 1401 or a nondriver photo identification card as described under 29-A, Maine Revised Statutes, section 1410 and one of the following:

**2.6.1.1** The original, unexpired physician's written certification issued to the non-registered qualifying patient; or

**2.6.1.2** An unexpired registry identification card issued to the qualifying patient who voluntarily registered with the department.

**2.6.2 Visiting qualifying patient.** A qualifying patient who is visiting the State from another jurisdiction must present upon request of a law enforcement officer proof of authorized conduct in compliance with Section 2.1.3 of these rules.

**2.6.3 Primary caregiver.** As proof of authorized conduct, a primary caregiver must present upon request of a law enforcement officer the primary caregiver's driver's license that contains a photograph as described under 29-A, Maine Revised Statutes, section 1401 or a nondriver photo identification card as described under 29-A, Maine Revised Statutes, section 1410 and one of the following:

**2.6.3.1** An unexpired registry identification card issued to the primary caregiver who is required to register with the department; or

**2.6.3.2** The original, unexpired primary caregiver designation form signed and dated by the qualifying patient if the primary caregiver does not have to register. See 22 M.R.S.A. §2423-E (5).

## CULTIVATION OF MARIJUANA

**2.7 Cultivation of marijuana.** All cultivation of marijuana must take place in an enclosed locked facility or an enclosed outdoor area on property that is owned or under the control

of the qualifying patient, caregiver or registered dispensary, subject to the limitations below.

**2.7.1 Enclosed, locked facility and enclosed outdoor area.** Enclosed, locked facility means a closet, room, building, greenhouse or other enclosed area that is equipped with locks or other security devices that permit access only by the individual authorized to cultivate the marijuana. See 22 M.R.S.A. §2422(3).

**2.7.1.1 Security.** Cultivation of marijuana in an enclosed locked facility or an enclosed outdoor area requires implementation of appropriate security measures to discourage theft of marijuana and prevent unauthorized entrance, in accordance with the following:

**2.7.1.1.1 Fence.** An enclosed outdoor area must have a privacy fence at least 6 feet high that obscures the view of the marijuana to discourage theft and unauthorized intrusion. When this height requirement is inconsistent with local ordinances regarding fences, deference is given to local ordinance height requirements. Qualifying patients or caregivers must comply with local ordinances, if any, regarding boundary setback requirements.

**2.7.1.1.2 Locks.** Enclosed locked facilities and enclosed outdoor areas must have locks sufficient to discourage theft and unauthorized entrance.

**2.7.1.2 Pesticides.** Registered dispensaries and registered primary caregivers may not use a pesticide on marijuana plants cultivated for patients unless the pesticide is exempt from federal registration requirements pursuant to 7 U.S.C. § 136w (b) and is registered with the Maine Board of Pesticides Control pursuant to 7 M.R.S.A. § 607.

**2.7.1.2.1 Incorporation by reference.** Pesticides exempt from federal registration are set forth in 40 C.F.R. §152.25 (f) (2012), which is incorporated herein by reference pursuant to 5 M.R.S.A. § 8056.

**2.7.1.2.2 Copy.** A copy of 40 C.F.R. §152.25 (f) (2012) is available online at <http://www.gpo.gov/fdsys/pkg/CFR-2012-title40-vol25/xml/CFR-2012-title40-vol25-sec152-25.xml>, or may be obtained from the Maine Department of Health and Human Services, Division of Licensing and Regulatory Services, 11 State House Station, Augusta, Maine 04333, or the Maine Office of the Secretary of State, 101 State House Station, Augusta, Maine 04333.

**2.7.1.2.3 Violation.** A violation of 40 C.F.R. §152.25 (f) (2012) constitutes a violation of the *Rules Governing the Maine Medical Use of Marijuana Program*, 10-144 C.M.R. Ch. 122.

**2.7.2 Patient cultivation of marijuana.** A qualifying patient who elects to cultivate marijuana plants must keep the plants in an enclosed, locked facility unless the plants are being transported because the patient is moving or taking the plants to the patient's own property in order to cultivate them. See 22 M.R.S.A. §2423-A(3)(A).

**2.7.2.1 Same household.** Two or more qualifying patients who are members of the same household and cultivating their own marijuana may share one enclosed, locked facility for cultivation; See 22 M.R.S.A. §2423-A(1)(B).

**2.7.2.2 Designate registered caregiver when absent.** When a patient is absent and unable to care for his or her marijuana plants, the cultivating qualifying patient may designate a registered primary caregiver to care for the marijuana plants in the qualifying patient's enclosed locked facility without pay and for a time-limited period. The qualifying patient must give a completed department-approved designation form that includes the designation is without pay and the specific time-limited dates to the designated registered primary caregiver prior to taking temporary care of the marijuana plants.

**2.7.3 Primary caregiver cultivation of marijuana.** A primary caregiver who has been designated by a qualifying patient to cultivate marijuana for the patient's medical use must keep all plants in an enclosed, locked facility unless the plants are being transported because the primary caregiver is moving or taking the plants to the primary caregiver's own property in order to cultivate them.

**2.7.3.1 Same household or family.** Two primary caregivers who are members of the same family or household may share the same enclosed, locked facility. See 22 M.R.S.A. §2423-A (3) (D).

**2.7.3.2 Designate registered caregiver when absent.** When the cultivating primary caregiver is absent and unable to care for the marijuana plants, the cultivating primary caregiver may designate a registered primary caregiver to care for the marijuana plants in the cultivating primary caregiver's enclosed locked facility without pay and for a time-limited period. The cultivating primary caregiver must give a completed department-approved designation form that includes the designation is without pay and the specific time-limited dates to the designated

registered primary caregiver prior to taking temporary care of the marijuana plants.

**2.7.4 Registered dispensary cultivation of marijuana.** The registered dispensary that has been designated by a qualifying patient to cultivate marijuana for the patient's medical use must keep all plants in an enclosed, locked facility unless the plants or paraphernalia are being transported between the retail location of the registered dispensary and the dispensary's cultivation site. For the purposes of this section only, the number of plants that may be cultivated in an enclosed outdoor area may not exceed thirty.

**2.7.4.1 Access by registered cardholders.** Access to the enclosed, locked facility is limited to a registered cardholder who is a principal officer, board member, or employee of a registered dispensary when acting in his or her official capacity.

**2.7.4.2 RESERVED**

**2.7.4.3 Organic certification.** Marijuana for medical use may not be labeled "organic" unless the marijuana plants and prepared marijuana are produced, processed, and certified to be consistent with national organic standards in compliance with the laws and regulations promulgated by the United States Department of Agriculture.

**2.8 Lawful disposal of excess prepared marijuana.** Qualifying patients, primary caregivers, hospices and nursing facilities designated as primary caregivers, and registered dispensaries may lawfully dispose of excess prepared marijuana in accordance with the following provisions:

**2.8.1 Qualifying patient.** For the purpose of disposing of excess prepared marijuana that is no longer needed for the qualifying patient's medical use, the qualifying patient may furnish or offer to furnish to another qualifying patient for that qualifying patient's medical use of marijuana up to 2 ½ ounces of prepared marijuana if nothing of value is offered or transferred in return; See 22 M.R.S.A. §2423-A (1) (D).

**2.8.1.1** The qualifying patient who is furnishing the prepared marijuana to another qualifying patient is prohibited from cultivating more than the allowed number of plants as set out in these rules unless the patient furnishing the marijuana is also the primary caregiver of the other patient.

**2.8.2 Primary caregiver.** For the purpose of disposing of excess prepared marijuana, a primary caregiver may give the marijuana to a registered dispensary or another primary caregiver if nothing of value is offered or transferred in return.

- 2.8.2.1** A primary caregiver who transfers excess prepared marijuana in accordance with these rules does not by virtue of only that transfer qualify as a member of a collective. See 22 M.R.S.A. §2423-A (2) (H).
- 2.8.3 Registered dispensary.** For the purpose of disposing of excess prepared marijuana that is no longer needed for a qualifying patient's medical use, the registered dispensary may, at no cost and not for resale, give it to qualifying patients who cannot afford to purchase marijuana for medical use if nothing of value is offered or transferred in return. The dispensary must keep records of these transactions.
- 2.8.4 Hospice or nursing facility.** For the purpose of disposing of excess prepared marijuana, a hospice provider or a nursing facility designated as a primary caregiver may give the prepared marijuana to a registered dispensary or another primary caregiver if nothing of value is offered or transferred in return.
- 2.8.5 Law enforcement office.** For the purpose of disposing of excess prepared marijuana, it may be transported to a state or local law enforcement office. Presentation of a valid registry identification card or a valid physician's written certification and a Maine driver's license or other state-issued photo identification may be required.
- 2.9 Unlawful possession of excess marijuana; forfeiture.** A person who possesses female nonflowering marijuana plants, mature marijuana plants, prepared marijuana, or harvested dried unprepared marijuana in varying stages of processing in excess of the limits provided in these rules must forfeit the excess amounts to a law enforcement officer. The law enforcement officer is authorized to remove all excess female nonflowering marijuana plants, mature marijuana plants, prepared marijuana, and harvested dried unprepared marijuana in varying stages of processing in order to catalog the amount of excess marijuana. Possession of marijuana in excess of the limits authorized by these rules is a violation of the following laws:
- 2.9.1** Possession of marijuana in an excess amount up to 2 ½ ounces is a violation of 22 M.R.S.A. chapter 558, §2383; and
- 2.9.2** Possession of marijuana in an excess amount over 2 ½ ounces is a violation of 17-A M.R.S.A. chapter 45. See 22 M.R.S.A. §§ 2423-A (7) and 2423-E (6).
- 2.10 Repeat forfeiture.** If a cardholder has previously forfeited excess marijuana pursuant to Section 2.9 of these rules and a subsequent forfeiture occurs, the department shall revoke the registry identification card of the cardholder and the entire amount of marijuana seedlings, seeds, stalks and roots, female nonflowering marijuana plants, mature marijuana plants, prepared marijuana, and harvested dried unprepared marijuana in

varying stages of processing must be forfeited to a law enforcement officer. See 22 M.R.S.A. §§ 2323-A (8) and 2423-E (7).

**2.11 Defense for possession of excess marijuana.** Except as provided in Section 2.10 of these rules, a qualifying patient may assert the medical purpose for using marijuana as a defense to any prosecution involving marijuana possession.

**2.11.1** A qualifying patient may present evidence in court that the patient's necessary medical use or cultivation circumstances warranted exceeding the amount of marijuana allowed by these rules and that the amount was reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of treating or alleviating the patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition. See 22 M.R.S.A. §2423-E (8).

**2.12 Prohibitions.** These rules prohibit any person from:

**2.12.1** Undertaking any task under the influence of marijuana when doing so would constitute negligence or professional malpractice or would otherwise violate any professional standard;

**2.12.2** Possessing marijuana or otherwise engaging in the medical use of marijuana:

**2.12.2.1** In a school bus;

**2.12.2.2** On the grounds of any preschool or primary or secondary school; or

**2.12.2.3** In any correctional facility.

**2.12.3** Smoking marijuana:

**2.12.3.1** On any form of public transportation; or

**2.12.3.2** In any public place.

**2.12.4** Operating, navigating, or be in actual physical control of any motor vehicle, aircraft, motorboat, snowmobile, or all-terrain vehicle while under the influence of marijuana; or

**2.12.5** Using marijuana if that person does not have a debilitating medical condition.

**2.13 Construction.** These rules may not be construed to require:

**2.13.1** A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or

**2.13.2** An employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana.

**2.14** **Laboratory testing of marijuana.** The department may obtain, possess and perform laboratory testing on marijuana from registered dispensaries.

**2.15** **Annual report.** The department shall submit to the Legislature an annual report by April 1st each year that does not disclose any identifying information about cardholders or physicians, but does contain, at a minimum:

**2.15.1** The number of applications and renewals filed for registry identification cards;

**2.15.2** The number of registered patients and primary caregivers approved in each county;

**2.15.3** The number of registry identification cards revoked;

**2.15.4** The number of physicians providing written certifications for registered patients;

**2.15.5** The number of registered dispensaries;

**2.15.6** The number of principal officers, board members and employees of registered dispensaries; and

**2.15.7** Program revenues and expenses. See 22 M.R.S.A. §2425 (10).

**Section 3. DEBILITATING MEDICAL CONDITIONS**

**3.1 List of debilitating medical conditions.** A qualifying patient must have a written certification from a physician for at least one of the following debilitating medical conditions for the medical use of marijuana:

**3.1.1 Disease or medical condition or its treatment.**

**3.1.1.1** Cancer;

**3.1.1.2** Glaucoma;

**3.1.1.3** Positive status for human immunodeficiency virus (HIV);

**3.1.1.4** Acquired immune deficiency syndrome;

**3.1.1.5** Hepatitis C;

**3.1.1.6** Amyotrophic lateral sclerosis;

**3.1.1.7** Crohn's disease;

**3.1.1.8** Agitation of Alzheimer's disease; or

**3.1.1.9** Nail-patella syndrome.

**3.1.2 Intractable pain.** A chronic or debilitating disease or medical condition or its treatment that produces intractable pain, as defined in Section 1.16 of these rules.

**3.1.2.1** The physician must follow 2-373 or 2-383, Code of Maine Rules (C.M.R.), Chapter 21, *Use of Controlled Substances for Treatment of Pain* when certifying a patient for the medical use of marijuana.

**3.1.3 Symptoms.** A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following symptoms:

**3.1.3.1** Cachexia or wasting syndrome;

**3.1.3.2** Severe nausea;

**3.1.3.3** Seizures including but not limited to those characteristic of epilepsy;  
or

3.1.3.4 Severe and persistent muscle spasms including but not limited to those characteristic of multiple sclerosis; or

3.1.4 **Other.** Any other medical condition or its treatment that is approved by the commissioner, pursuant to Section 3.2 of these rules.

3.2 **Public petitions: adding debilitating medical conditions:** The department shall consider written public petitions to add a disease or medical condition to the list of debilitating medical conditions set forth in Section 3.1 of these rules.

3.2.1 A petition to add a disease or medical condition must be submitted on forms provided by the department.

3.2.2 The petition must clearly identify the specific debilitating disease or medical condition.

3.2.3 The petition must include reputable scientific evidence that supports the use of marijuana for the treatment of the disease or medical condition.

3.2.4 The petition must include sufficient evidence to demonstrate that the medical use of marijuana would benefit qualifying patients with the disease or medical condition.

3.2.4.1 A petition to benefit an individual patient on whose behalf the petition is submitted that does not comply with the provisions in Sections 3.2.2, 3.2.3, 3.2.4 and 3.2.5 shall be denied by the department.

3.2.5 The petition must include sufficient evidence that marijuana therapy is effective enough to warrant its use.

3.3 **Public hearing.** The department shall publish a notice indicating the date, time and place of the public hearing on the petition. The notice shall be posted on the department's webpage and electronically sent to individuals who contact the department to be placed on the department's interested parties' mailing list.

3.4 **Written comments.** The department shall accept written comments on the petition for 10 business days after the date of the public hearing.

3.5 **Commissioner's decision.** The commissioner shall approve or deny a petition within 180 days of its submission. The written decision shall include the factors supporting the decision. Factors considered by the commissioner include but are not limited to the following:

3.5.1 The written petition including required documentation;

**3.5.2** Public testimony and written comments; and

**3.5.3** Consultation with physicians and additional research conducted by or on behalf of the department at its discretion.

**3.6 Final agency action.** The approval or denial of a petition constitutes final agency action subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.

## **Section 4. QUALIFYING PATIENT**

**4.1 Voluntary patient registration: no fee.** Registration is voluntary for qualifying patients who want to secure a department-issued registry identification card. There is no fee to register. The voluntary application process for a registry identification card is set out in Section 8 of these rules. Registration is also voluntary for homeless qualifying patients, minor qualifying patients and incapacitated adult qualifying patients.

**4.1.1 Department to expunge patient's specific medical condition.** On or before November 28, 2011, the department shall expunge all information in the records of the State's medical use of marijuana program indicating a patient's specific medical condition.

**4.1.2 Eligible individuals may request removal from registry within 6 months after the effective date of these rules.** Individuals who were cardholders on or before September 28, 2011 (effective date of Public Law 2011, chapter 407) may submit a written request to be removed from the MMMP registry and have all of their information expunged by the department.

**4.1.2.1** A patient removed from the registry becomes a non-registered qualifying patient if all other requirements are met.

**4.1.2.2** Expungement must be completed by the department within 60 days of receipt of a request from an eligible individual.

**4.1.2.3** After the 6 month period, all new and remaining, non-expunged information must be retained by the State for 6 years.

**4.1.3 Exception to expungement.** The expungement provisions in Sections 4.1.1 and 4.1.2 of these rules do not apply to a record with respect to which there is a pending law enforcement investigation. See Public Law 2011, Chapter 407, Sec. C-1.

**4.2 Non-registered qualifying patients; lawful use of marijuana.** A non-registered qualifying patient is not prohibited from the lawful medical use of marijuana if the patient possesses a physician-issued written certification and meets other requirements in compliance with these rules.

## **PHYSICIAN'S WRITTEN CERTIFICATION**

**4.3 Written certification required.** Prior to obtaining or using marijuana for medical use, a qualifying patient, including non-registered and voluntarily registered patients, must obtain a written certification from his or her physician in accordance with these rules.

- 4.4 Physician's written certification form.** To receive protection for conduct authorized by these rules, the qualifying patient's physician shall use the department-approved written certification form. The physician shall give the original signed and dated written certification directly to the qualifying patient.
- 4.4.1 Tamper-resistant paper.** The written certification form must be printed on tamper-resistant paper. See 22 M.R.S.A. §2422 (13-A).
- 4.4.2 Medical condition not disclosed.** The treating physician shall not disclose the patient's specific medical condition on the issued written certification for the medical use of marijuana. See 22 M.R.S.A. §2423-B (4).
- 4.4.3 Expiration.** The physician-issued written certification form for the medical use of marijuana expires one year after issuance by the qualifying patient's physician. Each written certification must include the date issued and the expiration date. See 22 M.R.S.A. §2423-B (3).
- 4.5 Bona fide physician-patient relationship.** The physician's written certification must be made in the course of a bona fide physician-patient relationship as indicated by the existence of an evaluation, treatment plan, periodic review and documentation and other professional principles of treatment, after the physician has completed a full assessment of the patient's medical history.
- 4.5.1** The physician must demonstrate that a bona fide relationship between the patient and physician exists.
- 4.5.2** The physician must agree to monitor the patient's on-going need for the medical use of marijuana.
- 4.6 Records.** The physician must agree to retain and maintain records that support the decision to recommend the medical use of marijuana, including records of the diagnosis of the debilitating medical condition for which the medical use of marijuana is recommended, including:
- 4.6.1** A description of the ordinary medical or surgical measures for intractable pain that the patient has not responded to for more than 6 months; or
- 4.6.2** A description of the symptoms resulting from a chronic or debilitating disease or medical condition or its treatment that satisfies the criteria in Section 3 of these rules.
- 4.6.3** A nonbinding estimate of the length of time that the medical use of marijuana is needed for the treatment of the debilitating medical condition.

- 4.7 Minor patient’s certification; treating physician.** In addition to compliance with Sections 4.3, 4.4 and 4.5 of these rules, prior to providing written certification for the medical use of marijuana for a minor qualifying patient, the treating physician shall:
- 4.7.1** Inform the minor qualifying patient and the parent, legal guardian or person having legal custody of the minor of the risks and benefits of the medical use of marijuana and that the minor patient may benefit from the medical use of marijuana; and
  - 4.7.2** Consult with a qualified physician, referred to as “the consulting physician,” unless the minor patient is registered with the department and eligible for hospice care.
  - 4.7.3 Consulting physician.** The consulting physician shall be selected from a list of physicians who may be willing to act as consulting physicians. The list is compiled by the department after consultation with statewide associations representing licensed medical professionals. This list is maintained by the department and available to treating physicians upon request.
    - 4.7.3.1** The consultation between the treating physician and the consulting physician shall consist of examination of the patient or review of the minor patient’s medical file.
    - 4.7.3.2** The consulting physician shall provide a written advisory opinion to the treating physician and the parent, legal guardian or person having legal custody of the patient stating whether the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the minor patient’s debilitating medical condition.
  - 4.7.4 Respond in 10 days.** The treating physician may provide a minor with a written certification for treatment without consultation with another physician if one of the following occurs:
    - 4.7.4.1** The department fails to provide a list of consulting physicians within 10 days of receipt of the written request of a treating physician; or
    - 4.7.4.2** The consulting physician fails to provide a written advisory opinion within 10 days of receipt of the written request of a treating physician. See 22 M.R.S.A. §2423-B (2).
  - 4.7.5 Consent of parent, legal guardian or person having legal custody of minor patient.** Prior to issuing a written certification, the treating physician shall secure the written consent of the parent, legal guardian, or person having legal custody of the minor qualifying patient, including non-registered and

voluntarily registered patients. The parent, legal guardian or person having legal custody of the minor must:

- 4.7.5.1** Consent to the patient’s medical use of marijuana;
- 4.7.5.2** Consent to serve as one of the patient’s primary caregivers;
- 4.7.5.3** Consent to control the acquisition of the marijuana and the dosage and the frequency of the medical use of marijuana by the patient;
- 4.7.5.4** Consent to comply with the requirements of these rules regarding securing a written certification from a treating physician; and
- 4.7.5.5** Consent to comply with all other applicable provisions of these rules.

**4.8 Incapacitated adult patient; physician’s certification.** In addition to compliance with Sections 4.3, 4.4 and 4.5 of these rules, prior to issuing written certification for the medical use of marijuana for an incapacitated adult qualifying patient, including non-registered and voluntarily registered patients, the physician shall secure the following written documentation from the legal guardian or the power of attorney for health care of the incapacitated adult qualifying patient:

**4.8.1 Consent of guardian or power of attorney for health care.** The legal guardian or the power of attorney for health care must:

- 4.8.1.1** Consent to the patient’s medical use of marijuana;
- 4.8.1.2** Consent to serve as one of the patient’s primary caregivers;
- 4.8.1.3** Consent to control the acquisition of the marijuana and the dosage and the frequency of the medical use of marijuana by the incapacitated adult patient; and
- 4.8.1.4** Consent to comply with all other applicable provisions of these rules.

**4.8.2 Proof of authority to act for another.** The legal guardian or the power of attorney for health care must submit a copy of the legal documentation issued by the court that appointed the guardian; or a copy of the incapacitated adult patient’s power of attorney for health care.

## **DESIGNATION FORM**

**4.9 Department-approved designation form required.** A qualifying patient, including a non-registered and a voluntarily registered qualifying patient, who elects to designate a primary caregiver or a registered dispensary to assist the qualifying patient with the

medical use of marijuana, shall use the department-approved form to designate either the primary caregiver or the registered dispensary. The form is available on the division's webpage at <http://www.maine.gov/dhhs/dlrs/mmm/index.shtml>.

- 4.9.1 Designate one primary caregiver or dispensary to cultivate marijuana.** The qualifying patient may designate either one primary caregiver or a registered dispensary to cultivate marijuana for the patient's medical use.
- 4.9.2 Maximum of 6 plants per patient may be cultivated.** The qualifying patient is allowed a total of 6 mature marijuana plants to be cultivated for his or her medical use.
- 4.9.3 Number of plants to be cultivated by each entity.** The combined total number of plants cultivated by a qualifying patient and either a primary caregiver or registered dispensary must not exceed the maximum allowable number of 6 mature marijuana plants for the qualifying patient's medical use. The signed and dated designation form must clearly specify the following:
  - 4.9.3.1** The number of marijuana plants, if any, the qualifying patient elects to cultivate for his or her own medical use; and
    - 4.9.3.1.1** The number of marijuana plants, if any, the primary caregiver is designated to cultivate on behalf of the qualifying patient; or
    - 4.9.3.1.2** The number of marijuana plants, if any, the registered dispensary is designated to cultivate on behalf of the qualifying patient.
- 4.9.4 Patient's signature.** The qualifying patient must sign and date the form.
- 4.9.5 Primary caregiver's or dispensary's acknowledgement.** The primary caregiver or registered dispensary must sign the form. The signature is an acknowledgement that the primary caregiver or the registered dispensary understands that the primary caregiver or the registered dispensary may be contacted to confirm that designation and the number of mature plants the primary caregiver or registered dispensary is designated to cultivate for the qualifying patient.
- 4.9.6 Expiration date.** The designation form must include an expiration date that is no later than the expiration date on the physician's written certification issued to the qualifying non-registered or voluntarily registered patient. The designation form may be terminated on an earlier date by either the qualifying patient, or the primary caregiver or the registered dispensary. The expiration date must be clearly stated on the designation form. See 22 M.R.S.A. §2423-A(1)(F).

**PATIENT’S AUTHORIZED CONDUCT**

**4.10 Patient’s medical use of marijuana; authorized conduct.** Subject to the provisions of Section 2.12 of these rules, the conduct of a non-registered or voluntarily registered qualifying patient is authorized in accordance with the following:

**4.10.1 Lawful possession.** A qualifying patient, in compliance with the following, may lawfully possess an “allowable useable amount” of marijuana and an “incidental amount” of marijuana. The incidental amount of marijuana is not included when calculating the allowable useable amount of medical use marijuana.

**4.10.1.1 Allowable useable amount of marijuana for medical use.** The allowable useable amount of marijuana for medical use that a qualifying patient may possess includes the following:

**4.10.1.1.1 Prepared marijuana.** A qualifying patient may possess up to 2 ½ ounces of prepared marijuana; and

**4.10.1.1.2 Cultivate a maximum of 6 mature plants.** A qualifying patient may cultivate or allocate the total cultivation of a maximum of 6 mature marijuana plants.

**4.10.1.1.2.1 Patient allocates cultivation.** The qualifying patient may elect to cultivate some marijuana plants for his or her medical use and designate either a primary caregiver or a registered dispensary to cultivate the balance of the allowable maximum total of 6 mature plants for that qualifying patient. The signed and dated designation form must clearly specify the number of plants each entity is designated to grow.

**4.10.1.2 Incidental amount of marijuana.** A qualifying patient may possess an incidental amount of marijuana.

**4.10.1.2.1 Incidental amount of marijuana per patient means up to 12 female nonflowering marijuana plants; an unlimited amount of marijuana seedlings, seeds, stalks and roots; and up to eight (8) pounds of harvested dried unprepared marijuana in varying stages of processing that are not included when calculating the**

“allowable useable amount of marijuana.” See Section 1.17.2.

- 4.10.2 Patient does not cultivate marijuana.** When the qualifying patient does not elect to cultivate his or her own marijuana, then the patient must designate either a primary caregiver or a registered dispensary to cultivate marijuana for the patient’s medical use. See 22 M.R.S.A. §2423-A (1) (F).
- 4.10.3 Paraphernalia.** Possess marijuana paraphernalia;
- 4.10.4 Use or administration of marijuana.** Be in the presence or vicinity of the medical use of marijuana and assist any qualifying patient with using or administering marijuana.
- 4.11 Patients who may not cultivate.** The following qualifying patients may not elect to cultivate their own marijuana:

  - 4.11.1 RESERVED**
  - 4.11.2 Minor qualifying patient may not cultivate.** A minor qualifying patient may not cultivate his or her own marijuana. Only one of the minor’s primary caregivers described in these rules may be designated to cultivate marijuana for the minor qualifying patient’s medical use. Instead of designating a primary caregiver to cultivate marijuana, a dispensary may be designated to cultivate marijuana for the minor qualifying patient.
  - 4.11.3 Incapacitated adult qualifying patient may not cultivate.** An incapacitated adult qualifying patient may not cultivate his or her own marijuana. Only one of the primary caregivers described in these rules may be designated to cultivate marijuana for the incapacitated adult qualifying patient’s medical use. Instead of designating a primary caregiver to cultivate marijuana, a dispensary may be designated to cultivate marijuana for the incapacitated adult qualifying patient.
  - 4.11.4 Registered patients in hospice or nursing facility may not cultivate.** Registered patients in a hospice or nursing facility designated as the registered patient’s primary caregiver may not cultivate his or her own marijuana. See Section 11.4.1 of these rules.
  - 4.11.5 Homeless qualifying patients not subject to cultivation limitation.** A homeless qualifying patient may cultivate marijuana for their medical use in an enclosed locked facility or an enclosed outdoor area on property that is owned or under the control of the homeless qualifying patient if all other requirements in these rules are met.

**PHYSICIAN'S AUTHORIZED CONDUCT**

**4.12 Authorized conduct by a physician.** A physician may provide a written certification for the medical use of marijuana pursuant to these rules and, after having done so, may otherwise state that in the physician's professional opinion a qualifying patient is likely to receive therapeutic benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition. See 22 M.R.S.A. §2423-B.

**4.12.1 Possible sanction.** Nothing in these rules prevents a professional licensing board from sanctioning a physician for failing to properly evaluate or treat a patient's medical condition or otherwise violating the applicable standard of care for evaluating or treating medical conditions. See 22 M.R.S.A. §2423-B (5).

**Section 5. PRIMARY CAREGIVER**

- 5.1 Primary caregiver designated by patient.** A qualifying patient, including a non-registered and a voluntarily registered qualifying patient, may designate a primary caregiver to assist the qualifying patient with the patient's medical use of marijuana.
- 5.2 Patient's sole preference.** A patient's primary caregiver is determined solely by the patient's preference as indicated on the department-approved designation form given by the patient to the caregiver.
- 5.3 Designation form required.** Each primary caregiver must have a designation form signed and dated by the qualifying patient.
- 5.4 Primary caregiver registration required; exceptions.** A primary caregiver designated by a qualifying patient is required to register with the department, except that the following primary caregivers are not required to register:
- 5.4.1** A primary caregiver designated to cultivate for a qualifying patient if that qualifying patient is a member of the household of that primary caregiver;
  - 5.4.2** Two primary caregivers who are also both qualifying patients, if those primary caregivers are members of the same household and assist one another with cultivation; or
  - 5.4.3** A primary caregiver who cultivates for a qualifying patient if that qualifying patient is a member of the family of that primary caregiver. See 22 M.R.S.A. §2423-A (3) (C).
- 5.5 Application for registry identification cards.** Primary caregivers who are required to register with the department must submit an application for a registry identification card as set out in Section 8 of these rules.
- 5.5.1 Eligible individuals may request removal from registry within 6 months after the effective date of these rules.** Individuals who were cardholders on or before September 28, 2011 (effective date of Public Law 2011, chapter 407) may submit a written request to be removed from the MMMP registry and have all of their information expunged by the department.
    - 5.5.1.1** A primary caregiver removed from the registry may not participate in the MMMP as a primary caregiver except as set out in Section 5.4 of these rules.
    - 5.5.1.2** Expungement must be completed by the department within 60 days of receipt of a request from an eligible individual.

**5.5.1.3** After the 6 month period, all new and remaining, non-expunged information must be retained by the State for 6 years.

**5.5.2 Exception to expungement.** The expungement provisions in Section 5.5.1 of these rules do not apply to a record with respect to which there is a pending law enforcement investigation. See Public Law 2011, Chapter 407, Sec. C-1.

**5.6 A second primary caregiver.** Only the following qualifying patients may have a second primary caregiver:

**5.6.1 A minor qualifying patient.** A minor qualifying patient's parent, legal guardian or the person who has legal custody of the minor shall serve as the minor's primary caregiver. In addition, a qualifying patient under 18 years of age may have a second primary caregiver.

**5.6.2 An incapacitated adult qualifying patient.** An incapacitated adult qualifying patient's legal guardian or power of attorney for health care shall serve as the incapacitated adult's primary caregiver. In addition, an incapacitated adult qualifying patient may have a second primary caregiver.

**5.6.3 Registered patient in a hospice or nursing facility.** The registered patient's hospice provider or nursing facility may serve as the registered patient's primary caregiver. In addition, the registered patient may have a second primary caregiver to cultivate marijuana or to assist with the registered patient's medical use of marijuana. See Section 11 of these rules.

## **FOOD ESTABLISHMENT LICENSE**

**5.7 Food establishment license.** A primary caregiver must obtain a food establishment license, pursuant to 22 Maine Revised Statutes section 2167, prior to preparing goods containing marijuana for medical use by a qualifying patient.

**5.7.1 Exception: household or family member.** A primary caregiver conducting activities which otherwise require a food establishment license is not required to obtain such license if it is being prepared for a qualifying patient who is a member of the family or member of the household. See 22 M.R.S.A. §2152(4-A)(G).

**5.7.2 Packaging and labeling.** Registered primary caregivers who are required to obtain a food establishment license must comply with the packaging and labeling provisions set out in these rules.

## PRIMARY CAREGIVER'S AUTHORIZED CONDUCT

**5.8 Authorized conduct: primary caregiver.** Subject to the provisions of Section 2.12 of these rules, the conduct of a primary caregiver for the purpose of assisting a qualifying patient is authorized in accordance with the following:

**5.8.1 Lawful possession.** A primary caregiver, in compliance with the following, may lawfully possess an “allowable useable amount” of marijuana and an “incidental amount” of marijuana for each qualifying patient served. The incidental amount of marijuana is not included when calculating the allowable useable amount of medical use marijuana.

**5.8.1.1 Allowable useable amount of marijuana for medical use.** The allowable useable amount of marijuana for medical use includes the following:

**5.8.1.1.1 Prepared marijuana.** A primary caregiver may possess up to 2 ½ ounces of prepared marijuana for each qualifying patient served.

**5.8.1.1.2 Cultivate a maximum of 6 mature plants.** A primary caregiver may cultivate up to a total of 6 mature marijuana plants for each qualifying patient served when the qualifying patient has designated the primary caregiver for that purpose on a department-approved designation form. The signed and dated designation form must clearly specify the number of plants the primary caregiver is designated to grow.

**5.8.1.1.2.1 Legible tag on each mature plant.** A primary caregiver must have a legible tag on each mature marijuana plant. The tag must include at least the patient’s last name.

**5.8.1.2 Incidental amount of marijuana.** A primary caregiver may possess an incidental amount of marijuana for each qualifying patient served.

**5.8.1.2.1** Incidental amount of marijuana per patient means up to 12 female nonflowering marijuana plants; an unlimited amount of marijuana seedlings, seeds, stalks and roots; and up to eight (8) pounds of harvested dried unprepared marijuana in varying stages of processing that are not included when calculating the “allowable useable amount of marijuana.” See Section 1.17.2.

- 5.8.2 RESERVED
  - 5.8.3 Assist no more than 5 qualifying patients at any one time with their medical use of marijuana;
  - 5.8.4 Receive reasonable monetary compensation for costs associated with assisting a qualifying patient who designated the primary caregiver on the department-approved designation form signed and dated by the qualifying patient;
  - 5.8.5 Receive reasonable monetary compensation for costs associated with cultivating marijuana for a qualifying patient who designated the primary caregiver to cultivate marijuana;
  - 5.8.6 Be in the presence or vicinity of the medical use of marijuana and assist any qualifying patient with the medical use or administration of marijuana;
  - 5.8.7 Prepare goods containing marijuana for medical use by a qualifying patient if the primary caregiver preparing the goods is required to and has obtained a food establishment license; and
  - 5.8.8 Dispose of excess marijuana in accordance with Section 2.8 of these rules.
- 5.9 **Collectives are prohibited.** Collectives are prohibited. A person may not form or participate in a collective.

**Section 6. REGISTERED DISPENSARIES**

- 6.1 Patient selects dispensary.** A registered dispensary is selected by a patient based solely on the patient’s preference as indicated on the non-registered or the voluntarily registered patient’s designation form.
  
- 6.2 Certificate of registration required.** No person shall operate a dispensary for marijuana for medical use without a department-issued certificate of registration. The application and renewal requirements for a certificate of registration are in Sections 6.27 and 6.28 of these rules.
  - 6.2.1 Certificate of registration nontransferable.** The certificate of registration issued by the department to a dispensary is nontransferable.
  
  - 6.2.2 Display certificate of registration.** A dispensary must display the department-issued registration certificate in a publicly visible location in the dispensary.
  
  - 6.2.3 Expiration of dispensary certificate of registration.** A dispensary’s certificate of registration expires one year after the date of issuance.
  
  - 6.2.4 Patients seen by appointment only.** The retail site of a dispensary that sees patients by appointment only must comply with all requirements in these rules.
  
- 6.3 Food establishment license required.** A registered dispensary must obtain a food establishment license, pursuant to 22 Maine Revised Statutes section 2167, prior to preparing goods containing marijuana for consumption by a qualifying patient.

**DISPENSARY’S AUTHORIZED CONDUCT**

- 6.4 Authorized conduct: registered dispensary.** For the purpose of assisting a qualifying patient, the conduct of a registered dispensary and its principal officers, board members, and employees who must be at least 21 years of age is authorized in accordance with the following:
  - 6.4.1 Lawful possession.** A registered dispensary, in compliance with the following, may lawfully possess an “allowable useable amount” of marijuana and an “incidental amount” of marijuana for each qualifying patient served. The incidental amount of marijuana is not included when calculating the allowable useable amount of medical use marijuana.
    - 6.4.1.1 Allowable useable amount of marijuana for medical use.** The allowable useable amount of marijuana for medical use that a registered dispensary may possess includes the following:

**6.4.1.1.1 Prepared marijuana.** A registered dispensary may possess up to 2 ½ ounces of prepared marijuana for each qualifying patient served.

**6.4.1.1.2 Cultivate a maximum of 6 mature plants.** A registered dispensary may cultivate up to a total of 6 mature marijuana plants for each qualifying patient served when the qualifying patient has designated the primary caregiver for that purpose on a department-approved designation form. The signed and dated designation form must clearly specify the number of plants the registered dispensary is designated to grow.

**6.4.1.1.2.1 Legible tag on each mature plant.** A registered dispensary must have a legible tag on each mature marijuana plant. The tag must include at least the patient's last name.

**6.4.1.2 Incidental amount of marijuana.** A registered dispensary may possess an incidental amount of marijuana for each qualifying patient served.

**6.4.1.2** Incidental amount of marijuana per patient means up to 12 female nonflowering marijuana plants; an unlimited amount of marijuana seedlings, seeds, stalks and roots; and up to eight (8) pounds of harvested dried unprepared marijuana in varying stages of processing that are not included when calculating the "allowable useable amount of marijuana." See Section 1.17.2.

**6.4.2 RESERVED**

**6.4.3 Compensation.** Receive reasonable monetary compensation for costs associated with assisting or for cultivating marijuana for a patient who designated the dispensary.

**6.4.4 Assist.** Assist any qualifying patient who designated the registered dispensary to cultivate marijuana for the medical use or administration of marijuana.

**6.4.5 Dispense.** Dispense no more than 2 ½ ounces of prepared marijuana to a qualifying patient or to a primary caregiver on behalf of a qualifying patient during a 15-day period.

**6.4.6 Dispose.** Dispose of excess marijuana in accordance with Section 2.8.3 of these rules.

- 6.4.7 Acquire.** Acquire marijuana in accordance with Sections 2.8.1 and 2.8.2 of these rules. The dispensary must keep a record of marijuana acquired in accordance with Sections 2.8.1 and 2.8.2.

### **REGISTRY IDENTIFICATION CARDS**

- 6.5 Registry identification cards required.** The dispensary must obtain registry identification cards for its principal officers, board members, and employees. The dispensary's application process for a registry identification card is set out in Section 8 of these rules.

### **INSPECTION AND QUALITY CONTROL**

- 6.6 Inspections.** A registered dispensary, including its retail location and any additional location at which the registered dispensary cultivates marijuana for medical use, is subject to inspection by the department.
- 6.6.1** The department may enter without notice to carry out an inspection in accordance with these rules.
- 6.6.2** Submission of an application for a dispensary certificate of registration constitutes permission for entry and inspection of the dispensary.
- 6.6.3** Failure to cooperate with required inspections may be grounds to revoke the dispensary's certificate of registration, as set forth in Section 10 of these rules.
- 6.6.4** During an inspection, the department may identify violations of these rules and the dispensary's policies and procedures. The dispensary shall receive written notice of the nature of the violations. The dispensary shall notify the department in writing with a postmark date within twenty (20) business days of the date of the notice of violations identifying the corrective actions taken and the date of the correction.
- 6.7 Quality control.** To ensure the safety of qualifying patients, the registered dispensary shall provide samples to the department upon request during announced and unannounced inspections for product quality control.
- 6.7.1 Sample collection and labeling.** During an inspection of the registered dispensary, the department shall
- 6.7.1.1** Collect soil and plant samples, and samples of products containing marijuana prepared at the dispensary;
- 6.7.1.2** Place the dispensary's registration number on each sample container;

- 6.7.1.3** Label the sample containers with the description and quantity of its content;
  - 6.7.1.4** Seal sample containers; and
  - 6.7.1.5** Have dispensary and department staff initial each sample container.
- 6.7.2 Chain of custody of samples.** Chain of custody documentation shall be maintained by the department.
- 6.7.2.1** The department shall provide a receipt for the collected samples to the dispensary's representative.
  - 6.7.2.2** The department shall maintain an accounting of all collected sample containers for control purposes.
- 6.7.3 Sample testing.** The department shall test samples for at least pests, mold, mildew, heavy metals and the presence of pesticides. Written results shall be reported to the dispensaries.

## **SECURITY**

- 6.8 Dispensary security: protections of premises and persons.** Registered dispensaries must implement appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana at the registered dispensary and the grow location for the cultivation of marijuana, if any. Security measures to protect the premises, qualifying patients, primary caregivers, and principal officers, board members and employees of the registered dispensary must include but are not limited to the following:
- 6.8.1** On-site parking must be provided.
  - 6.8.2** Exterior lighting must be sufficient to deter nuisance activity and facilitate surveillance, but must not disturb neighbors.
  - 6.8.3** Devices or a series of devices, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device to detect an unauthorized intrusion.
  - 6.8.4** The interior must be equipped with electronic monitoring, video cameras, and panic buttons. Electronic monitoring and video camera recording records must be maintained by the dispensary for at least 14 days.
  - 6.8.5** Registered dispensaries must consistently and systematically prevent loitering.

## **POLICIES, PROCEDURES AND RECORDS**

- 6.9 Dispensary policies, procedures and records.** The operating documents of a registered dispensary must include procedures for the oversight of the registered dispensary and procedures to ensure accurate record keeping. Dispensaries must develop, implement and comply with dispensary policies and procedures. When changes are made to its policies or procedures, the dispensary must notify the department in writing at least 10 days before implementation of the change, except when immediate implementation is required, in which case, the dispensary must simultaneously notify the department when it implements the changed policy or procedure. The written simultaneous notice must include an explanation of why it was necessary to implement the change before giving the department at least 10 days' notice. The dispensary policies, procedures, and records must be available for inspection by the department, upon request. Dispensary records subject to inspection include but are not limited to:
- 6.9.1 Personnel policies and practices.** The registered dispensary must have written policies and practices that are available to the department upon request.
  - 6.9.2 Residency requirement policy.** All principal officers and board members of a registered dispensary must be residents of the State of Maine.
    - 6.9.2.1** Documentation of current state residency shall be maintained in the personnel files of principal officers and board members and shall include, but not be limited to, a copy of a Maine driver's license or other state-issued photo identification and physical home address (not mailing address) in Maine.
    - 6.9.2.2** To maintain Maine residency status, each principal officer and board member of the dispensary must spend in the aggregate more than 183 days of the year in Maine.
  - 6.9.3 Job description and employment contract policies.** The policy regarding job descriptions and employment contracts shall include duties, authority, responsibilities, qualifications, supervision, training in, and adherence to, confidentiality requirements, periodic performance evaluations and disciplinary actions.
  - 6.9.4 Business records.** Registered dispensaries must maintain business records including manual or computerized records of assets and liabilities, tax returns, contracts, board meeting minutes reflecting actions of the board, monetary transactions, various journals, ledgers, and supporting documents, including agreements, checks, invoices, and vouchers which the dispensary keeps as its books of accounts. All business records must be maintained and retained for 6 years.

**6.9.4.1 Sales record.** Business records include the sales record that indicates the name of the qualifying patient or primary caregiver to whom marijuana has been distributed, including the quantity and form. The sales record must indicate the sale price of the product.

**6.9.5 Patient education.** Dispensary policies must include a provision that requires dispensaries to provide educational materials about marijuana to qualifying patients and their primary caregivers. Each dispensary must have an adequate supply of up-to-date education material available for distribution. Educational materials must be available for inspection by the department upon request. The educational material must include at least information about the following:

**6.9.5.1** Strains of marijuana have different effects, as do various forms and route of administration. Dispensaries must have educational materials available to assist in the selection of prepared marijuana. Dispensaries shall provide “tracking sheets” to qualifying patients and primary caregivers who request them to keep track of the strains used and their effects.

**6.9.5.2** How to achieve proper dosage for different modes of administration. Emphasis shall be on using the smallest amount possible to achieve the desired effect. The impact of potency must also be explained.

**6.9.5.3** Information on tolerance, dependence and withdrawal must be provided. Dispensaries are not required to continue to furnish marijuana for medical purposes if it is believed that a qualifying patient or primary caregiver is abusing marijuana or other substances.

**6.9.5.4** Information regarding substance abuse signs and symptoms must be available, as well as referral information.

**6.9.5.5** Information on whether the dispensary’s marijuana and associated products meet organic certification standards.

**6.9.6 Personnel Files.** The registered dispensary must maintain a confidential personnel file on each principal officer, board member and employee. The personnel files shall include at least the following information:

**6.9.6.1** Documentation of state residency for each principal officer and board member.

**6.9.6.2** Copy of current dispensary registry identification card and copy of a Maine driver’s license or other state-issued photo identification card.

**6.9.6.3** Employment application and required documentation.

- 6.9.6.4 Documented verification of references.
- 6.9.6.5 Documentation of background checks.
- 6.9.6.6 Job description or employment contract.
- 6.9.6.7 Documentation of training, including training regarding confidentiality requirements.
- 6.9.6.8 Documentation of periodic performance evaluations.
- 6.9.6.9 Documentation of disciplinary actions.
- 6.9.6.10 Documented results of drug tests.

**6.9.7 Alcohol and drug-free workplace policy.** The registered dispensary must have and adhere to a written alcohol and drug-free workplace policy. The policy must be available to the department upon request. The policy must include at least the following provisions:

- 6.9.7.1 **Applicants: substance abuse testing.** Applicants who have been offered employment by the registered dispensary must submit to a substance abuse test. The offer of employment must be conditioned on the applicant receiving a negative test result. Substance abuse testing must comply with 26 M.R.S.A. Chapter 7, Subchapter 3-A. This does not apply if an applicant, who is also a registered patient, fails the drug test solely because of the presence of marijuana in a confirmed positive test result.
- 6.9.7.2 **Employees: substance abuse testing.** The registered dispensary must have a policy providing for probable cause substance abuse testing consistent with 26 M.R.S.A. Chapter 7, Subchapter 3-A.
- 6.9.7.3 **Testing for specific substances of abuse.** The registered dispensary shall request a report disclosing the presence or absence of at least the following specific substances of abuse:
  - 6.9.7.3.1 Marijuana (grass, pot, weed, hash, joint, Acapulco gold).
  - 6.9.7.3.2 Cocaine (coke, crack, snow, blow, flake, “C”, rock, base).
  - 6.9.7.3.3 Opiates – opium and codeine derivatives (heroin, horse, “H”, junk, smack, scag, Miss Emma).

**6.9.7.3.4** Amphetamines – amphetamines and methamphetamines (uppers, speed, bennies, black beauties, Christmas trees, crystal, mollies, crank, BAM, dexies).

**6.9.7.3.5** Phencyclidine – PCP (angel dust, peace pill, hog, supergrass, embalming fluid, rocket fuel, killer weed).

**6.9.7.4** **Notify department: failed drug test.** The registered dispensary must notify the department within one business day of receipt of a confirmed positive result to a lawfully administered substance abuse test.

**6.9.7.5** **Repeat failure of drug test.** The department shall refuse to issue or renew a registry identification card to a person who within the 12 months prior to the date of application has had a confirmed positive result to a lawfully administered substance abuse test that occurred within 12 months of another confirmed positive result. This does not apply if that individual failed the drug test solely because of the presence of marijuana in the confirmed positive test result and that person is a qualifying patient.

**6.9.7.6** **Employee assistance program.** To provide opportunities to assist an employee with a substance abuse problem, the registered dispensary must have a contract with an approved Maine employee assistance program (EAP).

**6.9.8** **Record of disposal of marijuana.** The registered dispensary must create and maintain records of the disposal of marijuana that is not distributed by the dispensary.

**6.9.9** **Record of current patients.** The registered dispensary must keep on file and available for department inspection, upon request, a copy of each current patient’s registry identification card or, for non-registered qualifying patients, a copy of the written physician certification and the department-approved dispensary designation form, and one of the following:

**6.9.9.1** A Maine driver’s license or

**6.9.9.2** Other state-issued photo identification.

## INVENTORY

**6.10** **Inventory.** A registered dispensary is authorized to have up to six (6) mature marijuana plants and an incidental amount of marijuana per qualifying patient.

- 6.10.1** In addition to up to six (6) mature marijuana plants per qualifying patient, the registered dispensary may have plants in varying stages of processing in order to ensure that the dispensary is able to meet the needs of its patients.
- 6.10.2** During the first sixty (60) days after start-up, a registered dispensary may have twenty-four (24) mature marijuana live plants, incidental marijuana, and others plants in various stages of cultivation without having any qualifying patients in order to build initial inventory.
- 6.10.3** When there is a decrease in the number of patients who have designated the dispensary to cultivate marijuana, the dispensary shall have 10 business days to adjust the inventory to meet the requirements of Section 6.4.
- 6.11 Daily inventory.** Prepared marijuana must be kept under double lock and inventoried daily by two cardholders.
- 6.12 Dispensing inventory.** Quantities of prepared marijuana must be weighed, logged in and signed out by two cardholders when dispensed.
- 6.13 Trip tickets.** Distribution of marijuana for medical use to a qualifying patient or a primary caregiver for use by a qualifying patient must be labeled with a trip ticket to identify the dispensary, the MMMP patient number if the patient is registered or a unique identifier assigned by the dispensary to non-registered qualifying patients, or the MMMP caregiver number if the caregiver is required to be registered or a unique identifier assigned by the dispensary if the primary caregiver is not required to be registered, the product, the amount and form, the time and date of origin, and destination of the product.

  - 6.13.1** Primary caregivers shall take reasonable steps to deliver the product directly to the qualifying patient as a safety precaution and to alleviate concerns about drug diversion.
  - 6.13.2** A dispensary with a growing location that is not located with the retail dispensary must label the marijuana that is being moved between the growing location and the dispensary with a trip ticket that identifies the name and address of the dispensary, the address of the growing location, the time, date, origin and destination of the material being transported, and the amount and form of marijuana and marijuana material that is being transported.
- 6.14 Packaging and labeling.** The labels on prepared marijuana and goods containing marijuana that are sold by dispensaries and caregivers are used as evidence of compliance with the law that limits possession and dispensing to 2.5 ounces of prepared marijuana per qualifying patient. The packaging and labeling of prepared marijuana and marijuana products for sale by registered dispensaries and caregivers must comply with applicable State labeling laws. See 22 M.R.S.A. §2157.

## **INCIDENT REPORTING**

**6.15 Incident reporting.** A registered dispensary must submit a department-approved incident report form on the next business day after it discovers a violation of the requirements set out in these rules regarding the operation of dispensaries. The report must indicate the nature of the breach and the corrective actions taken by the dispensary.

**6.15.1** For the purposes of these rules, an incident includes:

**6.15.1.1** Confidential information accessed or disclosed in violation of these rules;

**6.15.1.2** Loss of inventory by theft, diversion or any other means;

**6.15.1.3** Intrusion of the retail dispensary or the grow location, if marijuana is not grown at the retail site; and

**6.15.1.4** Any other violations of these rules governing operation of the dispensary.

**6.16 Illegal activity reporting.** Any suspected illegal activity involving dispensary operations must be reported to law enforcement by the dispensary.

## **IMMUNITY**

**6.17 Immunity.** The following immunity provisions apply to a registered dispensary and officers, board members, agents and employees of the dispensary.

**6.17.1** A registered dispensary is not subject to prosecution, search, seizure or penalty in any manner, including but not limited to a civil penalty or disciplinary action by a business or an occupational or professional licensing board or entity, and may not be denied any right or privilege solely for acting in accordance with these rules to assist qualifying patients with the medical use of marijuana.

**6.17.2** A principal officer, board member, agent or employee of a registered dispensary is not subject to arrest, prosecution, search, seizure or penalty in any manner, including but not limited to a civil penalty or disciplinary action by a business or an occupational or professional licensing board or entity, and may not be denied any right or privilege solely for working for or with a registered dispensary to provide prepared marijuana to qualifying patients or to otherwise assist qualifying patients with the medical use of marijuana. See 22 M.R.S.A. §2428 (8-A).

## MAINE DISPENSARIES

- 6.18 Limitation on number of dispensaries.** During the first year of operation of dispensaries, the department may not issue more than one certificate of registration for a dispensary in any of the 8 Public Health Districts of the department. The eight Public Health Districts are: York District 1 (York County); Cumberland District 2 (Cumberland County); Western District 3 (Androscoggin, Franklin, and Oxford Counties); Midcoast District 4 (Waldo, Lincoln, Knox, Sagadahoc Counties); Central Maine District 5 (Somerset and Kennebec Counties); Penquis District 6 (Penobscot and Piscataquis Counties); Downeast District 7 (Washington and Hancock Counties); and Aroostook District 8 (Aroostook County). See 22 M.R.S.A. §2428 (11).
- 6.19 Not-for-profit corporation.** Dispensaries are required to incorporate pursuant to Title 13-B, Maine Revised Statutes and to maintain the corporation in good standing with the Secretary of State. The dispensary must operate on a not-for-profit basis for the mutual benefit of qualifying patients who have designated the dispensary to cultivate marijuana.
- 6.19.1 By-laws.** The bylaws of the dispensary and its contracts with qualifying patients must contain such provisions relative to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its not-for-profit status.
- 6.19.2 Not required to be tax-exempt.** A dispensary is not required to be a tax-exempt organization under 26 United States Code, Section 501(c)(3).
- 6.19.3 Board members; avoid conflict of interest.** Board members shall carry out their board duties with the proper use of their authority, and in a professional and ethical manner. Board members shall avoid conflicts of interest, including direct and indirect gains which could accrue to the member as a result of actions or decisions made in the capacity of board authority. Examples of potential conflict of interest include:
- 6.19.3.1** A board member makes a decision motivated by considerations other than the best interests of the registered dispensary.
- 6.19.3.2** A board member or close family member personally enters into a contract with the registered dispensary.
- 6.19.3.3** A board member learns of and acts on an opportunity for profit which may be valuable to him or her personally or to another organization of which he or she is a member.
- 6.19.3.4** A board member assists a third party in his or her dealings with the registered dispensary where such assistance could result in favorable

or preferential treatment being granted the third party by the registered dispensary.

**6.19.3.5** A board member receives gifts or loans from the registered dispensary.

**6.20 Location of dispensary: schools.** A dispensary or its grow site if marijuana is not grown at the retail dispensary site may not locate within 500 feet of the property line of a preexisting public or private school. For the purposes of these rules, school means an entity that satisfies Maine’s compulsory education requirements.

**6.21 Local regulation of dispensary.** These rules do not prohibit a political subdivision of this State from limiting the number of registered dispensaries that may operate in the political subdivision or from enacting reasonable regulations applicable to registered dispensaries.

## **SELECTION PROCESS**

**6.22 Selection process: notice.** The department shall publish a notice of open application for dispensary certificates of registration that includes the application requirements. Notices will appear, at a minimum, in the Kennebec Journal and at [www.maine.gov/dhhs/dlrs](http://www.maine.gov/dhhs/dlrs). Applicants may apply for one or more districts, but must designate which districts they apply for. The notice will contain the deadline for receipt of applications and the process for obtaining application material.

**6.23 Scoring applications.** A panel shall be convened by the department to evaluate and score each application. The maximum point value is based on the quality of the applicant’s submission. The maximum points for each criterion are indicated in Section 6.25 of these rules. To be considered responsive, an application must have at least 70 points. The panel shall set forth through consensus comments the basis of the scoring decision for each criterion. A certificate of registration shall be issued in response to the application in each public health district with the highest score, as long as the application meets all criteria and the minimum score. In case of a tie, the panel reserves the right to seek supplemental information through written questions of the applicants and to raise or lower the applicants’ scores based upon the supplemental information.

**6.24 Application fee.** Applicants must submit an application fee of \$15,000 for each district dispensary included in the application for the application to be considered by the panel. Unsuccessful applicants are assessed a \$1,000 fee, and refunded \$14,000. Thereafter, application fees shall be non-refundable. Application requirements are in Section 6.27 of these rules.

## SELECTION CRITERIA

**6.25 Selection criteria.** Each application shall address all criteria and measures, even when no point values are assigned. Failure to address all of the criteria and measures will result in the application being considered non-responsive and not accepted for review.

### **6.25.1 Criterion 1: Submission of Required Information Regarding Applicant and Facility (up to 25 points)**

**Measure 1:** The applicant shall provide the legal name of the corporation, a copy of the articles of incorporation and by-laws of the corporation. [no points assigned]

**Measure 2:** The applicant shall provide the proposed physical location of the retail dispensary and if marijuana is not cultivated at the retail site, the one site where marijuana may be grown, if a precise address has been determined. [up to 5 points]

- ✓ For each proposed physical address, provide legally binding evidence of site control sufficient to enable the applicant to use and possess the subject property.
- ✓ If the applicant indicated that a precise address has not been determined, the applicant has at least identified the general location(s) where the facilities will be sited, and when.

**Measure 3:** The applicant shall provide evidence of compliance with local codes and ordinances for each physical address which will be used for dispensing and growing marijuana under the MMMP, and that neither location is within five hundred (500) feet of a preexisting public or private school boundary. A school in this context is interpreted to mean an entity that satisfies Maine's compulsory education requirements. [no points assigned]

**Measure 4:** The applicant shall describe the enclosed, locked facilities that will be used in the growing, cultivation and sale of marijuana, the security measures and whether it is visible from the street or other public areas. [up to 5 points]

**Measure 5:** The applicant shall provide the name, address and date of birth of each principal officer and board member of the dispensary, along with a photocopy of their Maine driver's license or other state-issued identification card. Temporary new driver's licenses are not acceptable. [no points assigned]

**Measure 6:** The applicant shall provide a list of all persons or business entities having direct or indirect authority over the management or policies of the dispensary, and a list of all persons or business entities having 5% or more

ownership in the dispensary, whether or not the interest is in the land or buildings, including owners of any business entity which owns all or part of the land or building. [no points assigned]

**Measure 7:** The applicant shall provide the identity of any creditor holding a security interest in the premises, if any, and the terms of that agreement. The applicant shall identify any principal officer or board member of the dispensary who is a creditor and disclose the terms and conditions. [no points assigned]

**Measure 8:** The application shall include the required signed cover letter, and the completed application form supplied by the department. [no points assigned]

**Measure 9:** The applicant shall describe how the dispensary will operate on a long-term basis as a non-profit organization and a business plan that includes, at a minimum, the following: [up to **15** points]

- ✓ A detailed description about the amount and source of the equity and debt commitment for the proposed dispensary that demonstrates the immediate and long-term financial feasibility of the proposed financing plan, the relative availability of funds for capital and operating needs; and the financial capability to undertake the project.
- ✓ A copy of the proposed policy regarding services to registered patients who cannot afford to purchase marijuana for medical purposes.
- ✓ The application indicates whether or not the applicant will accept unused excess marijuana from registered patients or caregivers, the process for assuring that the marijuana is not adulterated (how it will be tested) and how it will be redistributed (cannot be sold) to those registered patients who cannot afford marijuana for medical purposes.
- ✓ Projected income statements for the first three (3) years after implementation (forms to be supplied by the department).
- ✓ The applicant provides evidence that salaries are in line with the non-profit sector.
- ✓ Control of the organization is exercised by a governing body.
- ✓ There are sufficient board members to fire an executive or to remove board members.

- ✓ Plans for distribution of net revenues annually.

**6.25.2 Criterion 2: Overall Health Needs of Registered Patients and Safety of the Public [up to 75 points]**

**Measure 1:** The applicant demonstrates their proposed location and services will be convenient for qualifying patients and caregivers. [up to 10 points]

**Measure 2:** The applicant demonstrates a steady supply of marijuana for medical use will be available to the projected number of registered patients. [up to 10 points]

- ✓ There is a start-up timetable which provides an estimated time from registration of the dispensary to full operation, and the assumptions used for the basis of those estimates.
- ✓ The applicant shall demonstrate knowledge of organic growing methods to be used in their growing and cultivation of marijuana.
- ✓ The applicant shall demonstrate that steps will be taken to ensure the quality of the marijuana, including purity and consistency of dose.
- ✓ The applicant discloses the various strains of marijuana to be dispensed and for which conditions and the form(s) in which marijuana will be dispensed.

**Measure 3:** The applicant demonstrates the knowledge and ability to manage a non-profit organization or other business. [up to 10 points]

- ✓ Personnel.
- ✓ Fiscal (payroll, bookkeeping case management).

**Measure 4:** The applicant demonstrates that its plan for record keeping, inventory, quality control and security and other policies and procedures will discourage unlawful activity. [up to 20 points]

**Measure 5:** The applicant fully describes a staffing plan that will provide accessible business hours, safe growing and cultivation, and maintenance of confidential information regarding the grow sites and the identity of patient information. [up to 20 points]

**Measure 6:** The application indicates consent to pay for state and federal background checks for all proposed and future registry card holders. [no points assigned]

**Measure 7:** The application reflects a strong patient education component which addresses the diversity of qualifying medical conditions. [up to 5 points]

## **AWARD DECISION**

**6.26 Award decision.** The award decision shall be made in writing to the successful applicants.

**6.26.1 Department determination.** Subject to the limitations on the number and location of dispensaries (Section 6.18), within 30 calendar days of receipt of a completed application form with a score of at least 70 points and with all required documents and required fees, the department shall register a dispensary and issue a certificate of registration to any person or entity that complies with the certificate of registration requirements set out in these rules and has the highest number of points of the applicants for the district.

**6.26.2 Award is void.** Failure of the award recipient to secure a certificate of registration within 120 days of receipt of the department's award decision may, at the discretion of the department, render the award void. When an award is voided, the department shall issue a written decision to void an award to operate a dispensary.

**6.26.2.1 Final agency action: void an award.** The department's written decision to void an award to operate a dispensary is considered final agency action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.

**6.26.3 Notice of denial sent to non-selected applicants.** The department shall send a written notice of denial to non-selected applicants.

**6.26.3.1 Final agency action: notice of denial.** Written notice of denial of an application (non-selection) is considered final agency action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.

**6.26.4 Record.** The record for review is the applications and any attached supporting documents, any other documents relied upon by members of the scoring panel in its decision, consensus comments of the panel, notices of denial and acceptance, and any other written communications between the department and the applicants related to the decision.

## **APPLICATION PROCESS**

- 6.27 Application: dispensary certificate of registration.** A dispensary must submit a completed department-approved application form with all required documentation and the required fees (Section 7). The dispensary application must include, at a minimum:
- 6.27.1** The legal name of the dispensary;
  - 6.27.2** The physical address of the retail dispensary and the physical address of the location where marijuana will be cultivated for qualifying patients who have designated the dispensary to cultivate marijuana for them;
  - 6.27.3** The distance to the closest school from the dispensary;
  - 6.27.4** A copy of the dispensary's articles of incorporation and bylaws, and evidence that the corporation is in good standing with the Secretary of State;
  - 6.27.5** The name, address and date of birth of each principal officer and board member of the dispensary;
  - 6.27.6** The name, address and date of birth of any person who is employed by the dispensary;
  - 6.27.7** A copy of the dispensary's policies and procedures;
  - 6.27.8** A copy of the dispensary's liability insurance policy;
  - 6.27.9** A business plan demonstrating the on-going viability as a non-profit organization; and
  - 6.27.10** Narrative describing how the applicant will meet all the criteria in Sections 6.25.1 and 6.25.2.

## **RENEWAL PROCESS**

- 6.28 Renewal of dispensary certificate of registration.** The department shall renew a dispensary's certificate of registration within 10 days in compliance with the following:
- 6.28.1** A registered dispensary must submit a completed department-approved renewal of certificate of registration form with all required documentation and the required fees (Section 7).
  - 6.28.2** When requesting a renewal of the certificate of registration, registered dispensaries must update as needed all information submitted by the dispensary

on its application for a certificate of registration pursuant to Section 6 of these rules.

- 6.28.3** Failure to provide all current up-to-date information is grounds for denial of the renewal.

## **DISPENSARY PROHIBITIONS**

**6.29 Dispensary prohibitions.** The following prohibitions apply to registered dispensaries:

- 6.29.1** A registered dispensary may not possess more than 6 mature marijuana plants for each qualifying patient who has designated the registered dispensary to cultivate marijuana for the qualifying patient's medical use.
- 6.29.2** A registered dispensary may not dispense, deliver or otherwise transfer marijuana to a person other than a qualifying patient who has designated the dispensary to cultivate marijuana for the qualifying patient or to the patient's primary caregiver.
- 6.29.3** Except as provided in Sections 2.8.1 and 2.8.2 of these rules, a registered dispensary may not acquire prepared marijuana or marijuana plants except through the cultivation of marijuana by that dispensary either at the location of the retail dispensary or at the dispensary's grow location, if different.
- 6.29.4** A registered dispensary may not contract for the cultivation of seeds, seedlings or small plants or the cultivation, production or preparation of marijuana or goods containing marijuana for medical use.
- 6.29.5** A registered dispensary is prohibited from acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying or dispensing marijuana for any purpose except to assist qualifying patients who have designated the dispensary to cultivate marijuana for them.

**Section 7. FEES**

**7.1 Fees.** All fees, with the exception under Section 6.24 for a refund of \$14,000 to unsuccessful dispensary applicants, are nonrefundable and payable to the *Treasurer, State of Maine*.

**7.2 Registered patient: no fees.** There is no fee for a qualifying patient to apply for or renew a department-issued registry identification card.

**7.3 Registered primary caregiver fees**

**7.3.1 Application and annual renewal fee: cultivation.** The primary caregiver designated to cultivate marijuana must submit an application fee and an annual renewal fee of \$300 per qualifying patient with the completed application and renewal form for a registry identification card.

**7.3.1.1 New patient substituted for former patient.** Registered primary caregivers may substitute a new qualifying patient who designates the primary caregiver for a former qualifying patient who has rescinded designation of the same primary caregiver. The primary caregiver's application for a registry identification card for the new qualifying patient must be filed within 10 days of rescission by the former qualifying patient; and

**7.3.1.1.1 Pro-rate registration fee.** The department shall prorate the \$300 registration fee paid by the primary caregiver for a registry identification card for the *new* qualifying patient by reducing it by \$25 for each month left on the primary caregiver's unexpired registry identification card for the *former* qualifying patient.

**7.3.1.1.2 Caregiver registration status.** If the primary caregiver complies with Section 7.3.1.1 of these rules, the primary caregiver's registration status continues in full effect without interruption. See Public Law 2011, Chapter 383(6), unallocated language.

**7.3.1.2** Instead of paying the fee at the time of designation by a qualifying patient, a primary caregiver may choose to submit an annual fee of up to \$1500 based on \$300 per patient that allows the registered primary caregiver to change the qualifying patients who designate them to cultivate marijuana throughout the year without submitting the per patient fee at the time of the change. The primary caregiver must never have more than 5 qualifying patients at any one time.

- 7.3.2 No application fee: no cultivation.** No application or renewal fee is charged for a registry identification card when primary caregivers do not cultivate marijuana.
- 7.3.3 Background check fee.** Each primary caregiver application or renewal for a registry identification card must include a check for \$31 payable to the *Treasurer, State of Maine* for the cost of criminal background checks. The background check fee is assessed on each registry identification card application or renewal including applications or renewals submitted by primary caregivers who are exempt from the application or renewal fee as set out in Section 7.3.2 of these rules.
- 7.4 Registered dispensary fees**
- 7.4.1 Certificate of registration application fee.** The \$15,000 registration fee must be submitted with the dispensary's completed certificate of registration application.
- 7.4.2 Registration renewal fee.** The \$15,000 registration renewal fee must be submitted annually with the dispensary's completed registration renewal form.
- 7.4.3 Identification card fee.** The registered dispensary shall be assessed a \$25 fee for each registry identification card issued for each principal officer, board member, and employee of the registered dispensary.
- 7.4.4 Identification card renewal fee.** The registered dispensary shall be assessed a \$25 fee for the annual renewal of each registry identification card issued for each principal officer, board member, and employee of the registered dispensary.
- 7.4.5 Background check fee.** The registered dispensary must include a check for \$31 payable to the "*Treasurer, State of Maine*" for the cost of criminal background checks with each application or renewal for a registry identification card for each principal officer, board member, and employee of the registered dispensary.
- 7.4.6 Change of location fee.** A registered dispensary that changes its physical location or its grow location is required to submit a completed department-approved change in location form to secure a new certificate of registration and shall be assessed a fee of \$5,000 for each change of the dispensary's physical location or its grow location.
- 7.5 Processing fee: reissued card.** A processing fee of \$10 shall be charged to registered primary caregivers and registered dispensaries for reissuing a lost card or a card reissued by the department due to changes regarding the information on the registry identification card, such as an address change.

**7.6 Laboratory testing fees.** Registered dispensaries are responsible for the cost of laboratory testing of marijuana that is required by these rules.

**Section 8. REGISTRY IDENTIFICATION CARD**

**8.1 Card required.** Persons who are required to become registered as primary caregivers, principal officers, board members, and employees of registered dispensaries, and staff of hospice providers and nursing facilities named as primary caregivers, must possess a valid registry identification card issued by the department.

**8.1.1 Valid proof of authorized participation.** A registered patient, registered primary caregiver or principal officer, board member or employee of a registered dispensary who has been issued a valid registry identification card must also possess a valid Maine-issued driver's license with a photo or other Maine-issued photo identification in order to establish proof of authorized participation in the medical use of marijuana program. See 22 M.R.S.A. §2425(11).

**VOLUNTARY PATIENT REGISTRATION CARD**

**8.2 Voluntary patient application for a registry identification card: no fee.** A qualifying patient may voluntarily register with the department to secure a registry identification card for the lawful medical use of marijuana by submitting a completed department-approved application form with required documentation. There is no fee. The patient's application is not considered complete until the department receives all required information, including the physician's written certification. The application shall include, at a minimum, the following information:

**8.2.1** Name, address and date of birth of the patient.

**8.2.2** A copy of the written certification issued by the qualifying patient's physician for the medical use of marijuana.

**8.2.3** A copy of the patient's Maine driver license or other state-issued photo identification.

**8.2.4 Patient cultivation.** The patient who elects to cultivate some or all of the maximum allowed amount of marijuana for his or her own medical use must indicate that choice on the application.

**8.2.5** Other information required by the department.

**PRIMARY CAREGIVER REGISTRATION CARD**

**8.3 Primary caregiver application for a registry identification card.** A primary caregiver who is required to register must submit a completed department-approved primary caregiver application form with the required documentation and the registration fee, if any, (Section 7) for a registry identification card. The application shall include, at a minimum, the following information:

- 8.3.1 Name, address and date of birth of the primary caregiver;
- 8.3.2 A copy of the primary caregiver's Maine driver's license, or other state-issued photo identification in compliance with Section 2.6.3 of these rules; and
- 8.3.3 Other information required by the department.

#### **DISPENSARY REGISTRY IDENTIFICATION CARDS**

**8.4 Dispensary registry identification cards.** The dispensary is required to obtain a registry identification card for each qualified principal officer, board member, and employee of the registered dispensary.

**8.4.1 Application form.** The dispensary shall submit a completed department-approved application for each registry identification card with the required documentation and the registration fee (Section 7). The application shall include, at a minimum, the following information:

- 8.4.1.1 Name, address and date of birth of the qualified principal officer, board member, or employee;
- 8.4.1.2 A copy of the qualified principal officer's, board member's, or employee's current Maine driver's license, or other state-issued photo identification in compliance with Section 2.6.3 of these rules; and
- 8.4.1.3 Other information required by the department.

**8.4.2 New principal officers, board members and employees: application required.** Each time the dispensary has a new principal officer, board member or employee, it must submit an application form for a registry identification card for that new principal officer, board member or employee in compliance with Section 8.4.1 of these rules. A registered dispensary must notify the department each time it has a new principal officer, board member or employee.

**8.4.3 Background checks.** The department shall conduct background checks of each principal officer, board member and employee of registered dispensaries during the application process for a registry identification card. Background checks shall be conducted in each state where the individual has resided since the age of 18.

- 8.4.3.1 **Annual background checks.** Updated background checks shall be conducted annually at the time of renewal of registry identification cards.

- 8.4.3.2 Disqualifying drug conviction.** The department may not issue or renew a registry identification card to any principal officer, board member, agent or employee of a dispensary who has been convicted of a disqualifying drug offense in Maine or another jurisdiction.
- 8.4.3.3 Employment or affiliation prohibited.** Any person who has been convicted of a disqualifying drug offense may not be a principal officer, board member or employee of a registered dispensary.
- 8.4.4 No work or affiliation prior to issuance of card.** No principal officer, board member or employee may begin to work at or affiliate with the registered dispensary before he or she is issued a registry identification card.
- 8.4.5 Notice to department when employment or affiliation ceased.** The registered dispensary must notify the department within 10 days of the date that a principal officer, board member or employee ceases to work at or be affiliated with the registered dispensary.

  - 8.4.5.1 Card expires after notice to department when employment or affiliation ceased.** The registry identification card of a principal officer, board member or employee expires 10 days after the registered dispensary notifies the department that the person ceases to work at or be affiliated with the registered dispensary.
- 8.4.6 Card surrendered.** The registered dispensary must surrender to the department any registry identification card that is no longer eligible for valid use.
- 8.4.7 Dispensary action after repeat positive test result.** The registered dispensary must require a principal officer, board member or employee to turn over his or her registry identification card if that person has confirmed positive results from two lawfully administered substance abuse tests within 12 months.

## **DEPARTMENT DECISION**

- 8.5 Department determination: application for registry identification card.** The department shall verify the qualified patient's, the primary caregiver's or the registered dispensary's information contained in an application for a registry identification card and shall approve or deny an application for a registry identification card in accordance with these rules. The department determination shall be made within 30 calendar days of the date the department received the completed application for a registry identification card with all required documents and the registration fee, if required. (Section 7).

  - 8.5.1 Expedited determination: hospice.** After verifying the information, the department shall approve or deny an application for or renewal of a registry identification card submitted by a registered patient of a hospice provider within

5 business days of the date the department received the completed application for or renewal of a registry identification card with all required documents.

**DEPARTMENT ISSUED CARDS**

**8.6 Issuance of cards.** The department shall issue registry identification cards to registered patients, to registered primary caregivers, and to staff of hospice providers and nursing facilities designated by registered patients as primary caregivers within 5 days of approving an application or renewal of a registry identification card. See 22 M.R.S.A. §2425(5).

**8.6.1** The department shall issue each principal officer, board member and employee of a dispensary a registry identification card within 10 days of receipt of the person's name, address, and date of birth and the fee set out in Section 7 of these rules. See 22 M.R.S.A. §2428(2)(C).

**8.7 Information on registry identification card.** Registry identification cards must contain the required information in compliance with the following provisions.

**8.7.1 Patient registry identification card.** Each registry identification card issued to a qualifying patient who voluntarily registered must contain, at a minimum, the following information:

**8.7.1.1** The name, address and date of birth of the registered patient;

**8.7.1.2** A random MMMP identification number that is unique to the cardholder;

**8.7.1.3** The date issued and the expiration date of the registry identification card; and

**8.7.1.4** A clear designation showing whether the cardholder is allowed under these rules to cultivate marijuana plants.

**8.7.2 Primary caregiver registry identification card.** Each registry identification card issued to a primary caregiver who must register and to staff of hospice providers and nursing facilities designated as primary caregivers must contain, at a minimum, the following information:

**8.7.2.1** The name, address and date of birth of the cardholder;

**8.7.2.2** The random MMMP identification number that is unique to the cardholder;

**8.7.2.3** The date of issuance and expiration date of the registry identification card; and

**8.4.2.4** A clear designation showing whether the cardholder is allowed pursuant to these rules to cultivate marijuana plants.

**8.7.3** **Dispensary registry identification cards.** Each registry identification card issued to a dispensary principal officer, board member or employee must contain, at a minimum, the following information:

**8.7.3.1** The card must specify that the cardholder is a principal officer, board member or employee of a registered dispensary;

**8.7.3.2** The name, address, and date of birth of the principal officer, board member or employee;

**8.7.3.3** The legal name of the registered dispensary with which the principal officer, board member or employee is affiliated;

**8.7.3.4** The random MMMP identification number that is unique to the cardholder;

**8.7.3.5** The date of issuance and expiration date of the registry identification card;

**8.8** **Expired card.** Registry identification cards expire one year after the date of issuance except that the date of issuance and expiration date of a registered primary caregiver's registry identification card must be the same as the issuance and expiration dates on the patient's registry identification card. See 22 M.R.S.A. §2425(5).

#### **ANNUAL RENEWAL OF CARDS**

**8.9** **Annual renewal of card required.** At least thirty (30) calendar days before a card expires, the voluntarily registered patient or the registered primary caregiver must submit a completed department-approved annual renewal form with all required documentation and the renewal fee, if required. (Section 7).

**8.9.1** **Annual renewal of dispensary registry identification cards.** At least thirty (30) calendar days before a card expires, a registered dispensary must submit a completed department-approved annual renewal form with all required documentation and the renewal fee (Section 7) for the renewal of each dispensary registry identification card for each principal officer, board member and employee of the registered dispensary.

**8.10 Department determination: annual renewal.** The department shall verify the information submitted with the renewal form by patients, caregivers and dispensaries and shall approve or deny the submitted annual renewal request for a registry identification card in accordance with these rules. The department determination shall be made within 30 days of the date the department received the completed renewal form with all required documents and the registration fee, if required. (Section 7).

**8.10.1 Department denial of renewal.** Written notification of the department's decision to deny the renewal of a registry identification card and the reason for the denial shall be sent to the voluntarily registered qualifying patient, the registered primary caregiver or the registered dispensary.

### **REISSUED CARDS**

**8.11 Loss of card or change in status of cardholder: department notification.** Cardholders must notify the department within 10 days of the following occurrences.

**8.11.1 Loss of card.** Within 5 days of receiving notice that a card was lost and the reissuing fee (Section 7), the department shall issue the new registry identification card with a new random identification number. See 22 M.R.S.A. §2425 (6)(F).

**8.11.2 Change in cardholder's status.** The department must be notified when the following status changes occur:

**8.11.2.1 Registered patient's status change:**

**8.11.2.1.1** Name change;

**8.11.2.1.2** Address change; or

**8.11.2.1.3** Patient ceases to have a debilitating medical condition.

**8.11.2.2 Registered primary caregiver status change:**

**8.11.2.2.1** Name change;

**8.11.2.2.2** Address change;

**8.11.2.2.3** A qualifying patient no longer designates the primary caregiver unless the caregiver has registered with a \$1500 annual fee for up to five patients; or

**8.11.2.2.4** A new patient has designated the primary caregiver unless the caregiver has registered with a \$1500 annual fee for up to five patients.

**8.11.2.3 Dispensary's principal officer, board member or employee status change:**

**8.11.2.3.1** Registered dispensaries must notify the department each time a principal officer, board member or employee ceases to work or be affiliated with the registered dispensary.

**8.11.3 New card issued: change in status.** The department shall issue the new registry identification card with a new random identification number within 10 days of receiving the changed status information and the reissuing fee (Section 7). See 22 M.R.S.A. §2425 (6)(D).

**8.11.4 Surrender old card or new card voided.** The registry identification card with outdated information must be surrendered by returning it to the department. It must be received by the department within ten (10) business days of the person's receipt of the new registry identification card. Failure to timely surrender the superseded card to the department may result in the department voiding the newly issued card.

## **Section 9. CONFIDENTIALITY**

- 9.1 Patients: applications and supporting information.** Applications and supporting information submitted by qualifying and registered patients under these rules, including information regarding their primary caregivers and physicians are confidential.
- 9.2 Primary caregivers and physicians: applications and supporting information.** Applications and supporting information submitted by primary caregivers and physicians operating in compliance with these rules are confidential.
- 9.3 List of cardholders.** The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards.
- 9.3.1** Individual names and other identifying information on the list are confidential, exempt from the freedom of access laws, 1 M.R.S.A. Chapter 13, and not subject to disclosure except as provided in these rules and to authorized employees of the department as necessary to perform official duties of the department.
- 9.4 Verification of authenticity of card to law enforcement.** The department shall verify to law enforcement personnel whether a registry identification card is valid without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.
- 9.5 Dispensaries: applications and other information.** Applications, supporting information and other information regarding a registered dispensary are *not* confidential except that information that is contained within dispensary information that identifies a qualifying patient, the patient's physician and the patient's primary caregivers is confidential.
- 9.6 Department records.** Records maintained by the department pursuant to these rules that identify applicants for a registry identification card, registered patients, registered primary caregivers, and registered patient's physicians are confidential and may not be disclosed except:
- 9.6.1** To department employees who are responsible for carrying out these rules;
- 9.6.2** Pursuant to a court order or subpoena issued by a court;
- 9.6.3** With the written permission of the patient or the registered patient's legal guardian, or a parent or person with legal custody if the patient has not attained 18 years of age;
- 9.6.4** As permitted or required for the disclosure of health care information pursuant to 22 Maine Revised Statutes, section 1711-C;

- 9.6.5** To a law enforcement official for verification purposes. The records may not be disclosed further than necessary to achieve the limited goals of a specific investigation; and
- 9.6.6** To a registered patient's treating physician and to a registered patient's primary caregiver for the purpose of carrying out these rules.
- 9.7** **Not prohibited: physician notification of department.** These rules do not prohibit a physician from notifying the department if the physician acquires information indicating that a registered patient is no longer eligible to use marijuana for medical purposes or that a registered patient falsified information that was the basis of the physician's certification of eligibility for the medical use of marijuana.
- 9.8** **Not prohibited: disclosure to state agencies.** The department may disclose to an agency of State Government designated by the commissioner and employees of that agency any information necessary to produce registry identification cards or manage the identification card program and may disclose data for statistical or research purposes in such a manner that individuals cannot be identified.
- 9.9** **Hearing records.** The hearing, the hearing record, and the hearing decision concerning the revocation of a registry identification card are confidential. See 22 M.R.S.A. §2425(8).

## **Section 10: ENFORCEMENT**

### **DENIAL OF APPLICATION OR RENEWAL OF CARD**

- 10.1 Denial of application.** The effective date of denial of an application for a registry identification card is the date shown on the department's written notice to the applicant's last known address. The department may deny an application for a registry identification card based on the following:
- 10.1.1** The applicant's failure to comply with the application requirements set out in these rules, including the applicant's failure to provide the required information.
  - 10.1.2** The department's determination that the information provided was materially inaccurate or incomplete.
- 10.2 Denial of renewal.** The effective date of denial of a request for renewal of a registry identification card is the date shown on the department's written notice to the cardholder's last known address. The department may deny a cardholder's request for renewal of his or her registry identification card based on the following:
- 10.2.1** The cardholder's failure to comply with the renewal requirements set out in these rules, including the cardholder's failure to provide the required information.
  - 10.2.2** The department's determination that the information provided was materially inaccurate or incomplete.
- 10.3 Reapplication.** When an application or renewal has been denied, the person may reapply for a registry identification card. The person must demonstrate compliance with these rules, including those provisions that were the basis for the denial, and submit a completed department-approved form, all required documentation and required fees.

### **REVOCAION OF CARD**

- 10.4 Revocation of registry identification card.** The department may revoke a registry identification card.
- 10.4.1 Effective date of revocation.** The effective date of revocation of a registry identification card is 3 days after the date shown on the department's written notice to the cardholder's last known address.
  - 10.4.2 Revoked card: no dispensary employment or affiliation.** A principal officer, board member, or employee of a registered dispensary whose card has been revoked by the department is disqualified from serving as a principal officer, board member, or employee of a registered dispensary.

**10.5 Grounds for revocation of registry identification card.** Grounds for revocation of a registry identification card include the following:

- 10.5.1** The cardholder is convicted of selling, furnishing, or giving marijuana to a person who is not allowed to possess marijuana for medical purposes in accordance with these rules.
- 10.5.2** A registered caregiver or a registered dispensary cardholder is convicted of a disqualifying drug offense.
- 10.5.3** A primary caregiver, or staff of a hospice provider or nursing facility named as a primary caregiver, or a dispensary cardholder knowingly violates the confidentiality of information protected by these rules.
- 10.5.4** A registered dispensary cardholder is convicted of dispensing, delivering, or otherwise transferring marijuana to a person other than a registered patient who has designated the dispensary to cultivate marijuana; or a registered dispensary cardholder is convicted of dispensing, delivering, or otherwise transferring marijuana to a person other than a patient's registered primary caregiver.
- 10.5.5** A cardholder no longer lives in Maine and the card is not surrendered to the department. For the purposes of these rules, "living in Maine" means having a physical home address in Maine and living, in the aggregate, more than 183 days of the calendar year in Maine.
- 10.5.6** A cardholder who commits a civil violation for fraud. See 22 M.R.S.A. §2426(3-A).
- 10.5.7** A cardholder has repeat forfeiture of excess marijuana. See 22 M.R.S.A. §2423-E(7).

#### **REVOCAION OF DISPENSARY CERTIFICATE OF REGISTRATION**

**10.6 Revocation of dispensary certificate.** The department may seek a district court order revoking a dispensary's certificate of registration.

- 10.6.1** The date of the revocation is the date designated in the court order or the date appeal rights are exhausted, whichever is later.

**10.7 Grounds for revocation of dispensary certificate.** Grounds for revocation of a dispensary's certificate of registration include the following:

- 10.7.1** Failure to cooperate with required inspections.
- 10.7.2** Violations of any of these rules or dispensary policies and procedures that govern the operation of a dispensary.

- 10.7.3** Committing, permitting, aiding or abetting any illegal practices in the operation of the dispensary.
- 10.7.4** Conduct or practices that are detrimental to the safety and welfare of registered patients or registered primary caregivers.
- 10.7.5** Providing information that is materially inaccurate or incomplete.
- 10.7.6** Failure to pay required state and local taxes.

### **EMERGENCY SUSPENSION OF DISPENSARY CERTIFICATE**

**10.8 Emergency suspension of dispensary certificate.** The department may suspend a dispensary's certificate of registration on an emergency basis for up to 30 days based upon a threat to the health or physical safety of a person.

**10.8.1 Department notice.** The department notice of an emergency suspension of the dispensary's certificate shall include the following information:

- 10.8.1.1** The grounds for the emergency suspension;
- 10.8.1.2** The length of the emergency suspension;
- 10.8.1.3** Whether the department intends to seek a district court order revoking the dispensary's certificate of registration; and
- 10.8.1.4** Any other relevant information.

### **VOIDING REGISTRY IDENTIFICATION CARD**

**10.9 Void card is inactive and invalid.** A void registry identification card is inactive and no longer valid.

**10.10 Grounds.** The registry identification card is voided by the department when any of the following occurs:

- 10.10.1** A new card is issued to a dispensary cardholder based on a change in status, and the superseded card is not surrendered to the department.
- 10.10.2** A person is no longer employed by or affiliated with a dispensary or a hospice provider or nursing facility and the card is not surrendered to the department.

**10.10.3** A person within 12 months has confirmed positive results from two lawfully administered substance abuse tests and the card is not surrendered to the department.

**10.10.4** A patient's certifying physician notifies the department in writing that the registered patient has ceased to suffer from a debilitating medical condition, and the card is not surrendered to the department.

**10.11 Date card is void.** The registry identification card is void 10 days after the date shown on the department's written notice to the cardholder and the dispensary, if applicable.

#### **NOTICE OF DEPARTMENT ACTION**

**10.12 Notice of department action.** Prior to taking action against cardholders or dispensaries, the department shall issue a written notice that includes the following information:

**10.12.1 Nature of violation.** The nature of the violation and the rules violated.

**10.12.2 Effective date.** The date the department's action takes effect.

**10.12.3 Right to appeal.** The right to appeal the department's action.

**10.13 Final agency action.** The department's action is considered final agency action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.

**10.13.1 Record.** The record for review is the department's file for that cardholder or dispensary for the period in question, any other documents relied upon by the department in taking the action, the department's notice of the action, and other communications between the department and the cardholder or dispensary regarding the action.

**10.13.2 Admissibility of records.** A certificate, signed by the commissioner or the commissioner's designee, stating what the records of the department show on any given matter related to these rules is admissible in evidence in all courts of this State to prove what the records of the department are on that matter. Upon testimony of a law enforcement officer that the certificate and records were obtained by that law enforcement officer from the department, the court shall admit that certificate and those records as evidence without any further foundation or testimony. If the department stores records in a computer or similar device, a printout or other output readable by sight of information stored in the department's computer or similar device, certified by the commissioner or the commissioner's designee as an accurate reflection of the stored information, is admissible in evidence to prove the content of the records. See 22 M.R.S.A. §2430-B.

## **FINES**

**10.14 Court ordered fines.** The department may seek a court order imposing the following fines:

**10.14.1 Failure to notify department of status change.** Registered patients and registered primary caregivers who fail to notify the department when there is a status change commit a civil violation for which a fine of not more than \$150 may be adjudged.

**10.14.2 Violation of confidentiality.** Subject to the provisions in Section 9 of these rules, a person who knowingly violates the confidentiality of information protected by these rules commits a civil violation for which a fine of up to \$1,000 may be imposed.

**10.14.2.1 Exception.** Section 10.14.2 of the rules does not apply to a physician, or staff of a hospice provider or nursing facility named as a primary caregiver or any other person directly associated with a physician or a hospice provider or nursing facility that provides services to a registered patient.

**10.14.3 Dispensary employment or affiliation after conviction.** A person who is employed by or is a principal officer or board member of a dispensary after that person has been convicted of a disqualifying drug offense commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

## **CLASS D CRIME**

**10.15 Repeat convictions: Class D crime.** A person who is employed by or is a principal officer or board member of a dispensary in violation of Section 10.14.3 of these rules and who at the time of the violation has been previously convicted of a disqualifying drug offense, commits a Class D crime.

## **Section 11. INPATIENT HOSPICE AND NURSING FACILITIES**

**11.1 Voluntary participation.** Inpatient hospice providers and nursing facilities (the facility) may voluntarily participate in the Maine Medical Use of Marijuana Program to assist registered patients who use marijuana for medical purposes. See 22 M.R.S.A. §2423-A(4).

**11.1.1 “Home” hospice programs.** Home hospice programs are not subject to Section 11 of these rules. Only inpatient hospice programs are permitted to be a designated MMMP caregiver. However, in accordance with Section 5 of these rules, a qualifying patient may designate the individual home hospice employee who provides hospice care to the patient to also be his or her MMMP designated primary caregiver if the employer’s policies allow.

**11.1.2 MMMP participation provisions are separate from licensing provisions.** The requirements for MMMP participation are subject to the Maine Medical Use of Marijuana Act, not facility licensing laws.

**11.1.2.1 MMMP and licensing documentation kept separate.** MMMP documentation shall not be included in the medical record, chart or medication administration record (MAR) that is required under facility licensing laws. A registered patient’s MMMP record must be maintained at the facility as a separate record and shall include but is not limited to the inventory record, documentation of marijuana administration and the relief provided.

**11.2 Registered patients designate an inpatient hospice provider or a nursing facility as a primary caregiver.** Registered patients may designate the inpatient hospice provider or the nursing facility as a primary caregiver. Designation of a primary caregiver is based solely on the patient’s preference. See Section 5.2 of these rules.

**11.3 Facility program registration required prior to assisting patients.** Inpatient hospice providers and nursing facilities must submit a department-approved application form to become a registered primary caregiver in the Maine Medical Use of Marijuana Program. There is no application or renewal fee.

**11.3.1 Department determination.** The department shall verify the information contained in the facility’s application and shall approve or deny the application within 30 calendar days of the date the department received the completed application with required documents.

**11.3.1.1 Expedited determination: hospice.** The department shall approve or deny a hospice program’s application within 5 business days of the date the department received the completed application with required documents.

**11.3.2 Registration issued.** The approved registration shall be issued within 5 business days after the department's decision.

**11.3.3 Designated caregiver is the facility.** It is the inpatient hospice provider or the nursing facility, not their staff, that is designated a registered caregiver.

**11.3.4 Registry identification cards for staff members.** Inpatient hospice providers and nursing facilities must apply to the MMMP for registry identification cards for each individual staff member they assign to assist registered patients. A registry identification card is issued only to a staff person who is at least 21 years of age and not convicted of a disqualifying drug offense. The application process for a registry identification card is set out in Section 8 of these rules.

**11.3.4.1 Criminal background check.** The facility must include the copy of a criminal background check on each staff member when the facility submits an application for a registry identification card. The criminal background record submitted by the facility must have been secured within the past 12 months. If the facility does not have the required criminal background record for an individual staff member, the facility must pay for and secure a criminal background check to submit with the application for a registry identification card.

**11.3.4.2 Facility registration and staff cards required prior to assisting patients.** Prior to assisting registered patients, the hospice provider or nursing facility must be registered and MMMP registry identification cards issued to their staff.

**11.3.4.3 Keep issued cards locked.** The facility must keep the staff registry identification cards in a secure locked location on the premises at all times except when the staff member is transporting marijuana outside the facility. No staff member should remove his or her card from the facility.

**11.4 Marijuana cultivation: not by facility or staff.** A hospice provider or a nursing facility that is designated as a primary caregiver by a registered patient and the staff of the provider or facility who assist the registered patient with the medical use of marijuana may not cultivate marijuana for a registered patient.

**11.4.1 Registered patients in facility may not cultivate.** Registered patients in a hospice program or a nursing facility may not elect to cultivate their own marijuana.

**11.4.2 Designate a second caregiver or dispensary to cultivate.** The registered patient may either designate an individual, who is not a facility staff member, as

a second primary caregiver to cultivate marijuana for the patient's use or the patient may designate a dispensary to cultivate marijuana for medical use.

**11.4.3 Only one cultivation source at any time.** The registered patient shall designate, on forms approved by the department, only one cultivation source at any time: either a registered dispensary or a primary caregiver designated to cultivate marijuana.

**11.4.4 Changing the designated cultivating caregiver or dispensary.** The registered patient may change his or her designated registered dispensary or primary caregiver who cultivates marijuana for the patient's medical use at any time by notifying the registered dispensary or primary caregiver of the change, securing the return of the designation form, and giving the newly designated registered dispensary or primary caregiver a new signed and dated department-approved designation form.

## **11.5 Marijuana acquisition: from dispensary or cultivating caregiver**

**11.5.1 Dispensary.** A facility acquires marijuana from a dispensary by either sending a facility staff member with a registry identification card to the dispensary to pick up the marijuana, or the dispensary delivers the marijuana to the facility.

**11.5.2 Cultivating caregiver.** If the registered patient has not designated a dispensary, the patient may designate a cultivating caregiver to furnish the marijuana to the facility for the patient's use.

**11.5.3 Products containing marijuana must be purchased.** A facility may not make marijuana into products to be ingested. These products must be purchased from the designated dispensary or the designated cultivating caregiver.

**11.5.4 Trip tickets.** The facility must retain the marijuana trip ticket from the dispensary or the cultivating caregiver with the stored marijuana.

**11.6 Storage of marijuana.** Registered patients may not keep marijuana in their room or on their person as it is a danger to other residents. The facility must store the marijuana in accordance with the provisions for storing controlled substances. Special storage consideration is required for food that contains this controlled substance.

**11.7 Inventory control.** When marijuana is removed from inventory, it must be signed out by two staff persons, one of whom shall be licensed, who have MMMP registry identification cards.

**11.7.1 Tools needed.** Unless the dispensary or the cultivating caregiver has provided the marijuana in unit doses, the facility shall need scales and other necessary tools to monitor its marijuana inventory.



**11.12 Discharge from facility.** A resident may not be discharged solely because the patient registers in the Maine Medical Use of Marijuana Program.

**11.13 Disposal of unused marijuana.** The facility must comply with Section ~~2.52.8~~ of these rules regarding the disposal of unused marijuana.

**11.14 Protected conduct: hospice providers, nursing facilities, and staff.** The protections and requirements of these rules are for conduct that is expressly authorized for hospice providers, nursing facilities and their staff that provide care for a registered patient in accordance with these rules.

**Statutory Authority**

22 M.R.S.A. Chapter 558-C

22 M.R.S.A. §42

22-A M.R.S.A. §205

**History**

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

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

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

**ADOPTED**

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

**EFFECTIVE DATE:**

August 4, 2010 – filing 2010-317

**AMENDED:**

December 31, 2012 – filing 2012-353

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

**AMENDED: (limited use of pesticides)**

September 17, 2013 – filing 2013-221