

DEPARTMENT OF COMMUNITY HEALTH

DIRECTOR'S OFFICE

MICHIGAN MEDICAL MARIHUANA

(By authority conferred on the director of the department of community health by section 5 of initiated law 1 of 2008, MCL 333.26421 and executive reorganization order numbers 1996-1, 1996-2 and 2003-1, MCL 330.3101, MCL 445.2001 and MCL 445.2011)

R 333.101 Definitions.

Rule 1. As used in these rules:

- (1) "Act" means the Michigan medical marihuana act, Initiated Law 1 of 2008, MCL 333.26421.
- (2) "Applicant" means a qualifying patient applying for a medical marihuana registry identification card on a form provided by the department of community health.
- (3) "Code" means 1978 PA 368, MCL 333.1101.
- (4) "Conviction" or "convicted" means a criminal conviction of an offense by a guilty verdict from a judge or jury, plea of guilty, or plea of no contest.
- (5) "Debilitating medical condition" means 1 or more of the following:
  - (a) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.
  - (b) A chronic or debilitating disease or medical condition or its treatment that produces, for a specific patient, 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis.
  - (c) Any other medical condition or treatment for a medical condition approved by the department pursuant to a petition submitted under R 333.133.
- (6) "Department" means the department of community health.
- (7) "Enclosed, locked facility" means a closet, room, or other enclosed area equipped with locks or other security devices that permit access only by a registered primary caregiver or registered qualifying patient.
- (8) "Marihuana" means that term as defined in section 7106 of the code.
- (9) "Medicaid health plan" means the medical assistance program managed by the department.
- (10) "Medical use" means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.
- (11) "Paraphernalia" means any item defined as "drug paraphernalia" pursuant to section 7451 of the code.
- (12) "Parent or legal guardian" means the custodial parent or legal guardian with responsibility for health care decisions for a qualifying patient who is under 18 years of age.
- (13) "Petition" means a written request for the department to add new medical conditions or treatments to the list of debilitating medical conditions under R 333.101(5).
- (14) "Physician" means an individual licensed as a physician under part 170 or 175 of the code. For purposes of the act, neither a physician assistant nor a nurse practitioner is authorized to sign the statement attesting to the patient's debilitating medical condition.
- (15) "Primary caregiver" means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has never been convicted of a felony involving illegal drugs.
- (16) "Public place" means a place open to the public.
- (17) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.
- (18) "Registry identification card" means a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.

(19) "Supplemental Security Income" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources.

(20) "Usable marihuana" means the dried leaves and flowers of the marihuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant.

(21) "Visiting qualifying patient" means a patient who is not a resident of this state or who has been a resident of this state for less than 30 days.

(22) "Written certification" means a document signed by a physician stating the patient's debilitating medical condition and stating that, in the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

(23) Terms defined in the act have the same meanings when used in these rules.

History: 2009 AACCS.

R 333.103 New registration application; qualifying patient and primary caregiver.

Rule 3. A qualifying patient applying for a registry identification card shall comply with all of the following:

(a) Submit a completed application on a form provided by the department, together with the requisite fee. The completed application shall include all of the following:

(i) Name, address, and date of birth of the qualifying patient. The address for the qualifying patient shall be a physical address located in this state. A qualifying patient who is homeless shall not be required to provide a physical address.

(ii) Name, address, and telephone number of the qualifying patient's physician.

(iii) The name, address, and date of birth of the patient's primary caregiver, if applicable. A qualifying patient may designate 1 primary caregiver to assist with his or her medical use of marihuana.

(iv) A designation of whether the qualifying patient or the patient's primary caregiver, if applicable, will be allowed to possess marihuana plants for the qualifying patient's medical use.

(v) An attestation by the primary caregiver named on the application that he or she agrees to serve as the patient's primary caregiver.

(vi) A primary caregiver shall authorize the department to use the information provided on the application to secure his or her criminal conviction history to determine if he or she has a felony conviction involving illegal drugs.

(b) Submit photographic identification of both the qualifying patient and the patient's primary caregiver, if applicable. If the qualifying patient is under the age of 18 and does not have photographic identification, no photographic identification is required. Photocopies of the following shall be considered acceptable forms of identification:

(i) Current driver's license or identification card, with photo, issued by a state.

(ii) Identification card with photo issued by a federal, state, or government agency.

(iii) Current military identification card.

(iv) Current passport.

(v) Current student identification card with photo.

(vi) Native American tribal identification with photo.

(vii) Permanent resident card or alien registration receipt card.

(c) Submit a written certification, as defined in R 333.101(22), signed by a licensed physician. If the qualifying patient is under the age of 18, written certifications from 2 physicians are required.

(d) If the qualifying patient is under the age of 18, submit a declaration of person responsible form.

History: 2009 AACCS.

R 333.105 Declaration of person responsible form.

Rule 5. A declaration of person responsible form is required for any qualifying patient who is under the age of 18. The form shall include all of the following:

(a) A statement that the qualifying patient's physician has explained to the patient and the patient's parent or legal guardian the potential risks and benefits of the medical use of marihuana.

(b) Consent of the qualifying patient's parent or legal guardian to allow the qualifying patient's medical use of marihuana.

(c) Consent of the qualifying patient's parent or legal guardian to serve as the patient's primary caregiver and to control the acquisition, dosage, and frequency of use of the marihuana by the patient.

History: 2009 AACS.

#### R 333.107 Incomplete application.

Rule 7. If an applicant fails to provide the information required under R 333.103 or R 333.105, as applicable, the application shall be denied. The department shall notify the applicant of the information that is missing in the event the applicant wishes to reapply. An applicant may reapply at any time.

History: 2009 AACS.

#### R 333.109 Verification of information.

Rule 9. The department shall verify the information contained in an application and the accompanying documentation, which may include, but is not limited to, the following:

(a) Contacting each applicant by telephone or by mail. If proof of identity cannot be determined with reasonable reliability, the department may require the production of additional identification materials.

(b) Contacting the parent or legal guardian of a qualifying patient who is under the age of 18.

(c) Verifying that a physician is licensed to practice in the state.

(d) Contacting the certifying physician directly to confirm the validity of the written certification.

History: 2009 AACS.

#### R 333.111 Fees; reduced fees; renewal.

Rule 11. (1) The fee for a new or renewal application is \$100.00, unless a qualifying patient can demonstrate his or her current enrollment in the Medicaid health plan or receipt of current Supplemental Security Income benefits, in which case the application fee is \$25.00. To qualify for a reduced fee, an applicant shall satisfy either of the following requirements:

(a) Submit a copy of the qualifying patient's current Medicaid health plan enrollment statement.

(b) Submit a copy of the qualifying patient's current monthly Supplemental Security Income benefit card, showing dates of coverage.

(2) The department shall deny the application of a qualifying patient who submits a reduced fee for which he or she is not eligible and shall notify the qualifying patient of the application denial. A qualifying patient may resubmit the correct fee with his or her qualifying documentation at any time.

(3) The fee for a revised or duplicate copy of the registration identification card for the qualifying patient or the primary caregiver is \$10.00. If a duplicate card is requested, the qualifying patient or primary caregiver shall submit to the department the fee with a statement attesting to the loss or destruction of the card.

History: 2009 AACS.

#### R 333.113 Registration approval; denial.

Rule 13. (1) Pursuant to section 6(c) of the act, the department shall approve or deny an application within 15 days of receiving a completed application and the requisite fee.

(2) If an application is approved, within 5 days of approving the application, the department shall issue a registry identification card to the registered qualifying patient and the registered primary caregiver, if applicable. The registry identification card shall include all of the following:

- (a) The name, address, and date of birth of the registered qualifying patient.
  - (b) If the registered qualifying patient has designated a primary caregiver, the name, address, and date of birth of the registered primary caregiver.
  - (c) The issue date and expiration date of the registry identification card.
  - (d) A random and unique identification number.
  - (e) A clear designation showing whether the registered primary caregiver or the registered qualifying patient will be authorized to possess marijuana plants for the registered qualifying patient's medical use. The designation shall be determined based solely on the registered qualifying patient's preference.
- (3) When a registered qualifying patient has designated a primary caregiver, the department shall issue a registry identification card to the registered primary caregiver. The registered primary caregiver's registry identification card shall contain the information specified in subrule (2) of this rule, as appropriate.
- (4) The department shall deny an application for any of the following:
- (a) The applicant did not provide the physician's written certification.
  - (b) The department determines that any information provided by the applicant was falsified.
  - (c) An applicant fails to provide a physical address located in this state. This provision shall not apply if the applicant is homeless.
  - (d) The applicant failed to meet the requirements of R 333.107.
- (5) If the department denies an application, the department shall mail the applicant a denial letter within 15 days of receipt of the completed application. The denial letter shall be sent by certified mail to the address listed on the application form and shall state the reasons for denial and when the applicant may reapply.
- (6) Denial of a registry identification card shall be considered a final department action, subject to judicial review.

History: 2009 AACCS.

Rule 333.115 Primary caregiver; number of qualified patients; compensation.

- Rule 15. (1) The department shall issue a registry identification card to the primary caregiver, if any, who is named in a qualifying patient's approved application. A registered primary caregiver may assist not more than 5 qualifying patients with their medical use of marijuana.
- (2) A registered primary caregiver may receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marijuana. Any such compensation shall not constitute the sale of a controlled substance.

History: 2009 AACCS.

R 333.117 Annual renewal; expiration of registry identification card; fee.

- Rule 17. (1) Pursuant to section 6(e) of the act, a registry identification card shall be renewed on an annual basis to maintain active status as a registered qualifying patient or a registered primary caregiver.
- (2) A registry identification card shall expire on the first day of the month 1 year following issuance of the card.
- (3) An applicant for renewal of a registry identification card shall submit an application and information as provided in R 333.103(a), (c) and (d).
- (4) If an applicant fails to comply with subrules (1) and (3) of this rule by the expiration date on the registry identification card, the registry identification card shall be considered null and void and of no further effect. The applicant may submit a new application to the department.
- (5) The department shall verify the renewal application information in the same manner as specified in R 333.109.

History: 2009 AACCS.

R 333.119 Changes in status; notifications; requirements.

Rule 19. (1) In order to update registry information for a qualifying patient or primary caregiver, the registered qualifying patient, registered primary caregiver, or registered qualifying patient's parent or legal guardian, as applicable, is responsible for notifying the department of a change in any of the following:

- (a) The registered qualifying patient's name.
- (b) The registered qualifying patient's address.
- (c) The registered qualifying patient's primary caregiver.
- (d) The registered qualifying patient's legal guardian.

(2) The department may notify a registered primary caregiver by certified mail at the address of record within 14 days of any changes in status including, but not limited to, both of the following:

(a) The registered qualifying patient's termination of the individual's status as primary caregiver or designation of another individual as the registered primary caregiver.

(b) The end of eligibility for the registered qualifying patient to hold a registry identification card.

(3) If the department is notified by a registered qualifying patient that the registered primary caregiver for the patient has changed, the department may notify the initial primary caregiver by certified mail at the address of record that the caregiver's registry identification card is null and void and of no effect.

(4) If a registered qualifying patient's certifying physician notifies the department in writing that the patient has ceased to suffer from a debilitating medical condition, the department shall notify the patient within 14 days of receipt of the written notification that the patient's registry identification card is null and void and of no effect.

History: 2009 AACCS.

#### Rule 333.121 Confidentiality.

Rule 21. (1) Except as provided in subrules (2) and (3) of this rule, Michigan medical marijuana program information shall be confidential and not subject to disclosure in any form or manner. Program information includes, but is not limited to, all of the following:

- (a) Applications and supporting information submitted by qualifying patients.
- (b) Information related to a qualifying patient's primary caregiver.
- (c) Names and other identifying information of registry identification cardholders.
- (d) Names and other identifying information of pending applicants and their primary caregivers.

(2) Names and other identifying information made confidential under subrule (1) of this rule may only be accessed or released to authorized employees of the department as necessary to perform official duties of the department pursuant to the act, including the production of any reports of non-identifying aggregate data or statistics.

(3) The department shall verify upon a request by 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.

(4) The department may release information to other persons only upon receipt of a properly executed release of information signed by all individuals with legal authority to waive confidentiality regarding that information, whether a registered qualifying patient, a qualifying patient's parent or legal guardian, or a qualifying patient's registered primary caregiver. The release of information shall specify what information the department is authorized to release and to whom.

(5) Violation of these confidentiality rules may subject an individual to the penalties provided for under section 6(h)(4) of the act.

History: 2009 AACCS.

#### Rule 333.123 Complaints.

Rule 23. The department shall refer criminal complaints against a registered qualifying patient or registered primary caregiver to the appropriate state or local authorities.

History: 2009 AACCS.

R 333.125 Revocation; nullification.

Rule 25. (1) A registered qualifying patient or registered primary caregiver who has been convicted of selling marihuana to someone who is not allowed to use marihuana for medical purposes under the act, shall have his or her registry identification card revoked and may be found guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both, in addition to any other penalties for the distribution of marihuana.

(2) A registry identification card that is later determined to be based on fraudulent information is null and void and of no effect.

(3) Any person who has been convicted of a felony involving illegal drugs shall not serve as a qualifying patient's primary caregiver under the act.

(4) The department shall send written notice by certified mail to a registered qualifying patient or the patient's registered primary caregiver of any of the following:

(a) An intent to revoke or nullify a registry identification card.

(b) That a primary caregiver no longer qualifies for approval under the act based on a felony drug conviction.

(5) The notice referenced in subrule (4) of this rule shall include the right to request a contested case hearing. If the request for hearing is not filed with the department within 21 days from the date the notice was mailed by the department, the right to request a contested case hearing shall be waived.

History: 2009 AACs.

Rule 333.127 Management of medical marihuana.

Rule 27. (1) A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with the act, if the qualifying patient possesses an amount of marihuana that does not exceed the following:

(a) Two and one-half (2.5) ounces of usable marihuana.

(b) If the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility.

(c) Any incidental amount of seeds, stalks, and roots.

(2) A primary caregiver who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana in accordance with the act, if the primary caregiver possesses an amount of marihuana that does not exceed the following:

(a) Two and one-half (2.5) ounces of usable marihuana for each registered qualifying patient to whom he or she is connected through the department's registration process.

(b) For each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility.

(c) Any incidental amount of seeds, stalks, and unusable roots.

(3) An individual may simultaneously be registered as a qualifying patient and as a primary caregiver.

History: 2009 AACs.

Rule 333.131 Review panel for reviewing petitions for additional medical conditions or treatments.

Rule 31. (1) The department shall appoint a panel of not more than 15 members to review petitions to add medical conditions or treatments to the list of debilitating medical conditions under R 333.101 (5). A majority of the panel members shall be licensed physicians, and the panel shall provide recommendations to the department regarding whether the petitions should be approved or denied.

(2) Members of the review panel shall include, but not be limited to, the Michigan chief medical executive and 7 appointed members of the advisory committee on pain and symptom management as described in MCL 333.16204a. The 7 review panel members from the advisory committee on pain and symptom management shall include 4 licensed physicians and 3 non-physicians.

(3) The department shall provide staff support to the review panel to assist with the scheduling of meetings, conference calls, dissemination of petition-related materials, and to perform other administrative duties related to the performance of the panel's review.

(4) A quorum of the review panel shall concur with the recommendation in order to be considered an official recommendation of the panel. For the purposes of this subrule, a majority of the members appointed and serving on the review panel constitutes a quorum.

History: 2009 AACCS.

Rule 333.133 Petition to add qualifying diseases or medical conditions; review panel; recommendations.

Rule 33. (1) The department shall accept a written petition from any person requesting that a particular medical condition or treatment be included in the list of debilitating medical conditions under R 333.101.

(2) The department shall submit the written petition to the review panel. Within 60 days of receipt of the petition, the panel shall make a recommendation to the department regarding approval or denial of the petition.

(3) Upon receipt of a recommendation from the review panel, the department shall do all of the following:

(a) Post the panel's recommendations on the department's website for public comment for a period of 60 days.

(b) Give notice of a public hearing not less than 10 days before the date of the hearing.

(c) Hold a public hearing within the 60-day time period that the recommendation from the panel is posted on the department's website.

(4) After a public hearing, the department shall forward comments made during the hearing to the panel for review. If, based on a review of the comments, the panel determines that substantive changes should be made to its initial recommendation, the petition shall be denied, the department shall provide the petitioner with a copy of the initial recommendation and an explanation of the substantive changes, and the petitioner may resubmit the petition to the department at any time. If no changes are made to the initial recommendation or the changes are minor and do not affect the general content of the recommendation, the department shall forward the recommendation to the department director for a final determination on the petition.

(5) Within 180 days of the date the petition is filed with the department, the department director shall make a final determination on the petition. The approval or denial of the petition shall be considered a final department action subject to judicial review under the act.

(6) If the petition is approved, the department shall create a document verifying the addition of the new medical condition or treatment to the list of debilitating medical conditions identified under R 333.101. Until such time as these rules are amended to officially recognize the medical condition as a qualifying debilitating medical condition, the department shall develop a policy that allows the new medical condition to be used as a qualifier for a registry identification card.

History: 2009 AACCS.