

RULES AND REGULATIONS
RELATED TO THE
MEDICAL MARIJUANA PROGRAM
(R21-28.6-MMP)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Health

March 2006 (E)

INTRODUCTION

These rules and regulations are promulgated pursuant to the authority conferred under section 21-28.6-5 of the General Laws of Rhode Island of, as amended, and are established for the purpose of adopting standards for the implementation of a medical marijuana program in Rhode Island.

The General Assembly finds and declares that (1) Modern medical research has discovered beneficial uses for marijuana in treating or alleviating pain, nausea and other symptoms associated with certain debilitating medical conditions, as found by the National Academy of Sciences' Institute of Medicine in March 1999. (2) According to the U.S. Sentencing Commission and the Federal Bureau of Investigation, ninety-nine (99) out of every one hundred (100) marijuana arrests in the United States are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marijuana. (3) Although federal law currently prohibits any use of marijuana, the laws of Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, Oregon, Vermont, and Washington permit the medical use and cultivation of marijuana. Rhode Island joins in this effort for the health and welfare of its citizens. (4) States are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. Therefore, compliance with the Act does not put the state of Rhode Island in violation of federal law. (5) State law should make a distinction between the medical and non-medical use of marijuana. Hence, the purpose of the Act is to protect patients with debilitating medical conditions, and their physicians and primary caregivers, from arrest and prosecution, criminal and other penalties, and property forfeiture if such patients engage in

the medical use of marijuana. (6) The general assembly enacts the Act pursuant to its police power to enact legislation for the protection of the health of its citizens, as reserved to the state in the Tenth Amendment of the United States Constitution.

In accordance with the provisions of section 42-35-3(c) of the General Laws of Rhode Island, as amended, in the development of the regulations, consideration was to: (1) alternative approaches to the regulations; and (2) duplication or overlap with other state regulations. Based on the available information, no known alternative approach, duplication or overlap was identified. The health, safety and welfare of the public overrides any economic impact which may be incurred from these regulations.

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Registration Requirements for the Medical Marijuana Program

Section 1.0 *Definitions*

Wherever used in these rules and regulations the following terms shall be construed as follows:

- 1.1 “***Act***” means Chapter 21-28.6 of the Rhode Island General Laws, as amended, entitled “The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act.”
- 1.2 “***Debilitating medical condition***” means:
 - a) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, Hepatitis C, or the treatment of these conditions;
 - b) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe, debilitating, 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 or Crohn’s disease; or agitation of Alzheimer's Disease; or
 - c) Any other medical condition or its treatment approved by the Department, as provided for in section 21-28.6-5 of the Rhode Island General Laws, as amended.
- 1.3 “***Department***” means the Rhode Island Department of Health or its successor agency.
- 1.4 “***Marijuana***” has the meaning given that term in section 21-28-1.02(26) of the Rhode Island General Laws, as amended, and is as follows: all parts of the plant (*Cannabis sativa, L.*), whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, but shall 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 mature stalks, (except the resin extracted from it), fiber, oil or cake, or the sterilized seed from the plant which is incapable of germination.
- 1.5 “***Medical use***” means the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate a registered qualifying patient’s debilitating medical condition or symptoms associated with the medical condition.
- 1.6 “***Paraphernalia***” , as used herein, means any equipment, product, or material of any kind that is primarily intended or designed for use in manufacturing, compounding, converting, producing, processing, preparing, inhaling, or otherwise introducing into the human body marijuana, including but not limited to: metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, or punctured metal bowls; water pipes, roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand; bongs; ice pipes or chillers.

- 1.7 “**Parent or legal guardian**” means the custodial parent or legal guardian with responsibility for health care decisions for a person under eighteen (18) years of age.
- 1.8 “**Practitioner**” means a person who is licensed to practice medicine with authority to prescribe drugs pursuant to Chapter 5-37 of the Rhode Island General Laws, as amended.
- 1.9 “**Primary caregiver**” means a person who is at least twenty-one (21) years old and who has agreed to assist with a person's medical use of marijuana and who does not have a felony drug conviction. A primary caregiver may assist no more than five (5) qualifying patients with their medical use of marijuana.
- 1.10 “**Qualifying patient**” means a person who has been diagnosed by a physician as having a debilitating medical condition and is a resident of Rhode Island.
- 1.11 “**Registry identification card**” means a document issued by the Department that identifies a person as a qualifying patient or primary caregiver.
- 1.12 “**Usable marijuana**” means the dried leaves and flowers of the marijuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant.
- 1.13 “**Written certification**” means the qualifying patient’s medical records, and a statement signed by a practitioner, stating that in the practitioner’s professional opinion the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient. A written certification shall be made only in the course of a bona fide practitioner-patient relationship after the practitioner has completed a full assessment of the qualifying patient's medical history. The written certification shall specify the qualifying patient's debilitating medical condition or conditions.

Section 2.0 ***General Requirements***

Administration of the Program

- 2.1 The Division of Health Services Regulation within the Rhode Island Department of Health shall be responsible for the administrative functions required to implement the provisions of Chapter 21-28.6 of the General Laws of Rhode Island, as amended, and the rules and regulations herein, as they apply to the implementation of the medical marijuana program in Rhode Island.

Written Certifications

- 2.2 Practitioners shall provide written certifications for their patients on such forms as shall be provided by the Department.
- 2.3 The written certification shall specify the qualifying patient's debilitating medical condition or conditions.
- 2.4 A written certification shall be made only in the course of a bona fide practitioner-patient relationship after the practitioner has completed a full assessment of the qualifying patient's medical history.

Addition of Debilitating Medical Conditions

- 2.5 The Department shall accept a written petition from any person requesting that a particular disease or condition be included among the diseases and conditions that qualify as “debilitating medical conditions” contained in section 1.2 herein.
- 2.6 The petitioner shall provide to the Department, as available:
- a) An explanation stating the reason(s) why the condition should be included;
 - b) Any literature supporting the addition of the condition to the list;
 - c) Letter(s) of support from physicians or other licensed health care professional knowledgeable about the condition and its treatment;
- 2.7 The Department shall respond to the petition in accordance with the requirements set forth in section 42-35-6 of the Administrative Procedures Act (Chapter 42-35 of the Rhode Island General Laws, as amended).

Sunset Provisions

- 2.8 The provisions of the Act shall be repealed effective June 30, 2007.

Section 3.0 Application for Registry Identification Cards and Fees

Registry Identification Cards for Qualifying Patients

- 3.1 The Department shall issue registry photo identification cards to qualifying patients who submit the following, in accordance with the Act and the rules and regulations herein, on such forms as shall be provided by the Department and shall be accompanied by the following documents:
- 3.1.1 written certification as defined in section 1.13 herein;
 - 3.1.2 non-returnable, non-refundable application or renewal fee of seventy-five dollars (\$75.00);
 - i) Provided, however, qualifying patients who submit satisfactory evidence to the Department of being a recipient of Medicaid or Supplemental Security Income (SSI), a non-returnable, non-refundable application or renewal fee of ten dollars (\$10.00) shall be submitted.
 - 3.1.3 name, address, and date of birth of the qualifying patient; provided, however, that if the patient is homeless, no address is required;
 - 3.1.4 name, address, and telephone number of the qualifying patient’s practitioner; and
 - 3.1.5 name, address, and date of birth of each primary caregiver of the qualifying patient, if any.

Registry Identification Cards for Minors

- 3.2 The Department shall not issue a registry identification card to a qualifying patient under the age of eighteen (18) unless:
 - 3.2.1 The qualifying patient's practitioner has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian or person having legal custody of the qualifying patient; and
 - 3.2.2 A parent, guardian or person having legal custody consents in writing to:
 - (i) Allow the qualifying patient's medical use of marijuana;
 - (ii) Serve as one of the qualifying patient's primary caregivers; and
 - (iii) Control the acquisition of the marijuana, the dosage, and the frequency of the medical use of marijuana by the qualifying patient.

Registry Identification Cards For Caregivers

- 3.3 The Department shall issue a registry photo identification card to each primary caregiver, if any, who is named in a qualifying patient's approved application, up to a maximum of two (2) primary caregivers per qualifying patient.

Section 4.0 Issuance and Renewal of Registry Identification Cards

- 4.1 The Department shall verify the information contained in an application or renewal submitted pursuant to the Act, and shall approve or deny an application or renewal within thirty (30) days of receiving it.
- 4.2 The Department shall issue registry identification cards within five (5) days of approving an application or renewal, which shall expire one (1) year after the date of issuance.
- 4.3 The Department may deny an application or renewal only if the applicant did not provide the information required pursuant to the Act, or if the Department determines that the information provided was falsified.
- 4.4 Rejection of an application or renewal is considered a final Department action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.
- 4.5 A registry identification card shall not be transferable.
- 4.6 Registry identification cards shall contain:
 - 4.6.1 Name, address, and date of birth of the qualifying patient;
 - 4.6.2 Name, address, and date of birth of the each primary caregiver of the qualifying patient, if any;

- 4.6.3 The date of issuance and expiration date of the registry identification card;
- 4.6.4 A random registry identification number; and
- 4.6.5 A photograph.

Requirements Related to Registry Identification Cards

- 4.7 Persons issued registry identification cards shall be subject to the following:
 - 4.7.1 A qualifying patient who has been issued a registry identification card shall notify the Department of any change in the qualifying patient's name, address, or primary caregiver; or if the qualifying patient ceases to have his or her debilitating medical condition, within ten (10) days of such change.
 - 4.7.2 A registered qualifying patient who fails to notify the Department of any of these changes is responsible for a civil infraction, punishable by a fine of no more than one hundred fifty dollars (\$150). If the person has ceased to suffer from a debilitating medical condition, the card shall be deemed null and void and the person shall be liable for any other penalties that may apply to the person's non-medical use of marijuana.
 - 4.7.3 A registered primary caregiver shall notify the Department of any change in his or her name or address within ten (10) days of such change. A primary caregiver who fails to notify the Department of any of these changes is responsible for a civil infraction, punishable by a fine of no more than one hundred fifty dollars (\$150).
 - 4.7.4 When a qualifying patient or primary caregiver notifies the Department of any changes listed in this subsection, the Department shall issue the registered qualifying patient and each primary caregiver a new registry identification card within ten (10) days of receiving the updated information and a ten dollar (\$10.00) non-returnable, non-refundable fee.
- 4.8 When a qualifying patient who possesses a registry identification card changes his or her primary caregiver, the Department shall notify the primary caregiver within ten (10) days. The primary caregiver's protections as provided in the Act shall expire ten (10) days after notification by the Department.
- 4.9 If a registered qualifying patient or a primary caregiver loses his or her registry identification card, he or she shall notify the Department and submit a ten dollar (\$10.00) non-returnable, non-refundable fee within ten (10) days of losing the card. Within five (5) days, the Department shall issue a new registry identification card with new random identification number.
- 4.10 If a qualifying patient and/or primary caregiver willfully violates any provision of the Act or the rules and regulations herein as determined by the Department, his or her registry identification card may be revoked.

- 4.11 Possession of, or application for, a registry identification card shall not constitute probable cause or reasonable suspicion, nor shall it be used to support the search of the person or property of the person possessing or applying for the registry identification card, or otherwise subject the person or property of the person to inspection by any governmental agency.

Section 5.0 *Confidentiality Provisions*

- 5.1 Applications and supporting information submitted by qualifying patients, including information regarding their primary caregivers and practitioners, are confidential and protected under the federal Health Insurance Portability and Accountability Act of 1996.
- 5.2 The Department shall maintain a confidential list of the persons to whom the Department has issued registry identification cards and shall notify local and state law enforcement of the number of qualified patients in any given city or town.
- 5.3 Individual names and other identifying information on the list shall be confidential, exempt from the provisions of Rhode Island Access to Public Information, Chapter 2 of Title 38, and not subject to disclosure, except to authorized employees of the Department as necessary to perform official duties of the Department.
- 5.4 The Department shall verify to law enforcement personnel whether a registry identification card is valid solely by confirming the random registry identification number.

Section 6.0 *Scope of the Act*

- 6.1 The Act and the rules and regulations herein shall not permit:
- 6.1.1 Any person to undertake any task under the influence of marijuana, when doing so would constitute negligence or professional malpractice;
- 6.1.2 The smoking of marijuana:
- a) In a school bus or other form of public transportation;
 - b) On any school grounds;
 - c) In any correctional facility;
 - d) In any public place; or
 - e) In any licensed drug treatment facility in this state.
- 6.1.3 Any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana. However, a registered qualifying patient shall not be considered to be under the influence solely for having marijuana metabolites in his or her system.
- 6.2 Nothing in the Act or the rules and regulations herein shall be construed to require:
- 6.2.1 a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or

6.2.2 an employer to accommodate the medical use of marijuana in any workplace.

- 6.3 Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution shall be punishable by a fine of five hundred dollars (\$500) which shall be in addition to any other penalties that may apply for making a false statement for the nonmedical use of marijuana.

Section 7.0 ***Penalties for Violations***

- 7.1 Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution shall be punishable by a fine of five hundred dollars (\$500) which shall be in addition to any other penalties that may apply for making a false statement for the non-medical use of marijuana.

Section 8.0 ***Practices and Procedures***

- 8.1 All hearings and reviews required under the provisions of Chapter 21-28.6 of the General Laws of Rhode Island, as amended, shall be held in accordance with the provisions of the *Rules and Regulations of the Rhode Island Department of Health Regarding Practices and Procedures Before the Department of Health and Access to Public Records of the Department of Health (R42-35-PP)*.

Section 9.0 ***Severability***

- 9.1 Any section of the Act being held invalid as to any person or circumstances shall not affect the application of any other section of the Act that can be given full effect without the invalid section or application.