

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Interim Director of the Department of Health, pursuant to Section 14 of the Legalization of Marijuana for Medical Treatment Amendment Act of 2010 (Act), effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code §§ 7-1671.01, *et seq.*), and Mayor's Order 2011-71, dated April 13, 2011, hereby gives notice of his intent to take final rulemaking action to adopt the following amendments to Subtitle C (Medical Marijuana) of Title 22 (Public Health and Medicine) of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, and upon completion of the thirty (30) day Council period of review, if the Council does not act earlier to adopt a resolution approving the rules.

The purpose of this rulemaking is to add a new Chapter 14, which establishes the composition and duties of the medical marijuana advisory committee, and the procedures for the committee to accept and review petitions from any individual or association of individuals requesting the addition of a new qualifying medical condition or qualifying medical treatment for the purpose of participating in the medical marijuana program and all lawful privileges under the act. This rulemaking will also add a new Chapter 63, to set forth the provision of medical marijuana on a sliding scale to qualifying patients determined eligible, pursuant to § 1300.4 of this subchapter. This rulemaking will also repeal the provisions authorizing the transfer of a cultivation center or dispensary registration to a new owner; prohibit the transfer of a cultivation center or dispensary registration to a new owner; and repeal sections pertaining to the transfer of a cultivation center or dispensary registration to a new location, which is prohibited by 22-C DCMR § 5003.

A new Chapter 14 (Medical Marijuana Advisory Committee) of Subtitle C (Medical Marijuana) is added to Title 22 of the DCMR to read as follows:

CHAPTER 14 MEDICAL MARIJUANA ADVISORY COMMITTEE**1400 COMPOSITION OF ADVISORY COMMITTEE**

- 1400.1 The Advisory Committee ("Committee") shall consist of seven (7) members, which shall be appointed as follows: The Director of the Department of Consumer and Regulatory Affairs, the Chief of the Metropolitan Police Department, and the City Administrator shall each appoint one member, who shall be either himself or herself or a subordinate designee; the Director of the Department of Health shall appoint four (4) members, one of which shall be the Director himself or herself or a subordinate designee, and the other three (3) of which shall be residents of the District of Columbia that possess either medical or scientific expertise that the Director of the Department of Health deems would be useful to the Committee.
- 1400.2 The Director of the Department of Health ("Director"), or his or her subordinate designee, shall act as the chair of the Committee.

- 1400.3 All actions of the Committee shall be taken pursuant to a vote of a majority of the members of the Committee. For purposes of determining the existence of a quorum, a quorum shall be deemed to mean a majority of the appointed members.
- 1400.4 The chairperson shall only vote in cases of a tie among Committee members.
- 1400.5 Each member of the Committee shall serve at the pleasure of the Mayor or of the appointing agency director or City Administrator. Public members of the Committee shall serve a maximum term of nine (9) years from the date of appointment.
- 1400.6 Members of the Committee shall not be compensated for time expended in the performance of his or her Committee duties.

1401 DUTIES AND RESPONSIBILITIES OF THE ADVISORY COMMITTEE

- 1401.1 The Advisory Committee shall convene at least twice (2) per year to:
- (a) Accept and review petitions for the approval of additional qualifying medical conditions and qualifying medical treatments, and to recommend in favor or against approval to the Director;
 - (b) Monitor best practices in other states, monitor scientific research on the use of medical marijuana, monitor the effectiveness of the District's medical marijuana program, and make recommendations to the Mayor, the Council, the Director, and when asked to consult by other agencies;
 - (c) Issue recommendations to the Director of the quantities of cannabis, not to exceed four (4) ounces per month, that are necessary to constitute an adequate supply for qualified patients and designated caregivers; and
 - (d) Issue a report to the Mayor and Council recommending whether the District should allow qualifying patients and caregivers to cultivate medical marijuana, how to implement and regulate cultivation of medical marijuana by qualifying patients and caregivers, and any other comments the Committee believes to be of importance.
- 1401.2 The Committee shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, and avoid delay. The chairperson shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial resolution of issues that arise during public hearing proceedings or any public meeting in which a quorum of the Committee are present.

1402 PETITION REQUIREMENTS

1402.1 On a biannual basis, notice of which shall be published in the D.C. Register, the Committee may accept and review petitions from any individual or association of individuals requesting the addition of a new qualifying medical condition or qualifying medical treatment for the purpose of participating in the medical marijuana program and all lawful privileges under the act.

1402.2 Except as otherwise provided, a petitioner filing a petition shall file the originals and seven (7) copies with the Director pursuant to the filing instructions set forth in the Notice, by either personal delivery, express or first class mail and in a manner to ensure receipt of delivery. In order for a petition to be processed and forwarded to the Committee the following information shall be included in the petition:

(a) All documents, except exhibits, shall be submitted on a form provided by the Department of Health (“Department”). The petitioner shall include in the petition documents a narrative address to the advisory board, which includes:

(1) The petition caption stating the name, address and telephone number of the petitioner and the medical condition, medical treatment or disease sought to be added to the existing debilitating medical conditions;

(2) An introductory narrative of the individual or association of individuals requesting the inclusion of a new medical condition, medical treatment or disease to include the individual or association of individuals' relationship or interest for the request whether that interest is professional or as a concerned citizen;

(3) The proposed benefits from the medical use of cannabis specific to the medical condition, medical treatment or disease sought to be added to the existing debilitating medical conditions listed under the act; and

(4) Any additional supporting medical, testimonial, or scientific documentation.

(b) If the petitioner wishes to present technical evidence at the hearing the petition shall include a statement of intent. The statement of intent to present technical evidence shall include:

(1) the name of the person filing the statement;

(2) the name and curriculum vitae for each witness;

(3) an estimate of the length of the direct testimony of each witness;

(4) a list of exhibits, if any, to be offered into evidence at the hearing; and

(5) a summary or outline of the anticipated direct testimony of each witness.

(c) If the petitioner is submitting their requests as a potential qualified patient applicant, the petitioner shall include a signed, written statement from the patient's District of Columbia licensed physician, which includes the following information:

(1) The name, address, telephone number and DC license number of the physician;

(2) The petitioner's name, address, and debilitating medical condition;

(3) The medical justification for practitioner's statement that would benefit from the medical use of cannabis;

(4) The length of time the petitioner has been under the care of the practitioner providing the medical provider certification for patient eligibility;

(5) The practitioner's notarized and dated signature;

(d) The petitioner's signature and date; and

(e) A signed consent for release of medical information to the Committee, if applicable.

1402.3 The Department shall maintain a confidential file containing the names and addresses of the persons who have submitted a petition. Individual names and contact information on the list shall be confidential and not subject to disclosure, except:

(a) To authorized employees or agents of the Department and members of the Committee as necessary to perform the duties of the Department pursuant to the provisions of the act or this part;

(b) As provided in the federal Health Insurance Portability and Accountability Act of 1996.

1402.4 A petitioner may withdraw a petition at any time prior to a decision by the Committee by filing a notice of withdrawal with the Director.

1403 MEDICAL MARIJUANA ADVISORY COMMITTEE HEARING ON PETITIONS

1403.1 The Committee shall convene by public hearing twice (2) per year to accept and

review petitions requesting the inclusion of additional qualifying medical conditions and qualifying medical treatments for the purpose of participating in the medical marijuana program and all lawful privileges under the act.

- 1403.2 Any meeting consisting of a quorum of the Committee members held for the purpose of evaluating, discussing or otherwise formulating specific opinions concerning the recommendation of a petition filed pursuant to this rule, shall be declared a public hearing open to the public at all times.
- 1403.3 A notice of public hearing setting forth the date, time and location of the hearing, shall be published in the *D.C. Register*. The Committee chairperson shall conduct the public hearing so as to provide a reasonable opportunity for all interested persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition.
- 1403.5 The petitioner or by representative may present evidence to the Committee. Except as provided in § 1403.6, the Committee shall consider only the findings of fact or scientific conclusions of medical evidence presented by the petitioner or by representative to the Committee prior to or contemporaneously with the public hearing.
- 1403.6 Nothing in this chapter shall be deemed as preventing the Committee from making its own independent inquiries or conducting its own research to verify the evidence and testimony presented.
- 1403.7 The Committee may provide for a public comment period. Public comment may be by written comment, verbal or both.
- 1403.8 Any individual or association of individuals may submit written comment to the Committee either in opposition or support of the inclusion of additional qualifying medical conditions and qualifying medical treatments.
- 1403.9 Any member of the general public may testify at the public hearing. No prior notification is required to present general non-technical statements in support of or in opposition to the petition. Any such member may also offer exhibits in connection with his or her testimony, so long as the exhibit is non-technical in nature and not unduly repetitious of the testimony.
- 1403.10 Where more than one petition is submitted requesting the inclusion of the same additional qualifying medical condition or qualifying medical treatments for the purpose of participating in the medical marijuana program and all lawful privileges under the act, the Committee may consolidate the hearings.
- 1403.11 The Committee shall keep minutes of all its public hearings. The minutes shall include at a minimum the date, time and place of the public hearing, the names of Committee members in attendance and those absent, the substance of the

petition considered and a record of any decisions and votes taken that show how each member voted. Any person, other than the Committee, desiring a copy of the minutes shall order a copy from the Department and pay all applicable copy fees.

- 1403.12 Upon final determination, the Committee shall provide a recommendation to the Director, for either the approval or denial of the petitioner's request. The recommendation shall include a medical justification for the recommendation based upon the individual or collective expertise of the Committee membership. The medical justification shall delineate between the findings of fact made by the Committee and scientific conclusions of credible medical evidence.
- 1403.13 The Department shall notify the petitioner by certified mail within sixty (60) days of the Department's determination. A denial by the Department regarding the inclusion of a medical condition or medical treatment to the existing list of qualifying medical conditions and qualifying medical treatments under the act shall not represent a permanent denial by the Department. Any individual or association of individuals may upon good cause re-petition the Committee during the next open period for receipt of petitions, subject to the requirement that the repetition shall present new supporting findings of fact, or scientific conclusions of credible medical evidence not previously examined by the Committee. The Committee shall not accept any petition that does not on its face clearly show that this requirement has been met.

Chapter 50, REGISTRATION, LICENSING, AND ENFORCEMENT OF CULTIVATION CENTERS AND DISPENSARIES, of Title 22-C, MEDICAL MARIJUANA, is amended as follows:

The Section Heading of 5003, NON-TRANSFERABILITY OF LOCATIONS, is change to read as follows:

5003 NON-TRANSFERABILITY OF LOCATIONS AND OWNERSHIP

New Subsections 5003.4-5003.7 are added to read as follows:

- 5003.4 An application for a dispensary or cultivation center registration shall clearly identify the individual applicant, partnership or limited liability company applicant, or corporate applicant as required under these regulations. An applicant shall not be permitted to change the proposed ownership or controlling interest of the entity after the application has been submitted.
- 5003.5 A registration for a dispensary or cultivation center, and the authorization to apply for the registration upon approval by the Department, shall be issued for the specific individual applicant, partnership or limited liability company applicant, or corporate applicant as identified in the application and shall not be transferable in whole or in part.

5003.6 A dispensary or cultivation center registration is not transferable to a new owner.

5003.7 A dispensary or cultivation center registration shall not be leased, or subcontracted, in whole or in part.

Chapter 51, REGISTRATION AND PERMIT CATEGORIES, of Title 22-C, MEDICAL MARIJUANA, is amended as follows:

Subsections 5104.6 and 5104.7 are repealed.

Chapter 54, REGISTRATION APPLICATIONS, of Title 22-C, MEDICAL MARIJUANA, is amended as follows:

Subsection 5400.1 is amended to read as follows:

5400.1 Before issuing, or renewing a registration or permit for either a business applicant or an individual applicant, the Director shall determine that the applicant meets all of the following criteria:

- (a) The applicant is of good character and generally fit for the responsibilities of registration;
- (b) The applicant is at least twenty-one (21) years of age;
- (c) The applicant has not been convicted of any felony before filing the application;
- (d) The applicant has not been convicted of a misdemeanor for a drug-related offense before filing the application;
- (e) The applicant has paid the annual fee;
- (f) The applicant is not a licensed physician making patient recommendations;
- (g) The applicant is not a person whose authority to be a caregiver or qualified patient has been revoked by the Department; and
- (h) The applicant has complied with all the requirements of the Act and this title.

Subsection 5404.4 is repealed.

Section 5415, ADDITIONAL CONSIDERATIONS FOR TRANSFER TO NEW OWNER, is repealed.

Section 5416, INVOLUNTARY TRANSFERS, is repealed.

Chapter 55, REGISTRATION CHANGES, of Title 22-C, MEDICAL MARIJUANA, is amended as follows:

Section 5501 is amended to read as follows:

5501 INDIVIDUAL OWNERSHIP, PARTNERSHIP, LIMITED LIABILITY COMPANY OR PARTNERSHIP, AND CORPORATE CHANGES

- 5501.1 If there is a change in corporate officers, directors, or other persons, owning or controlling one percent (1%) or more, but less than ten percent (10%), of the common stock of a corporate registration, the corporation shall submit to the Department, within fifteen (15) calendar days of the change, the minutes or other instrument giving the names and addresses of any new officer, director, or person owning or controlling one percent (1%) or more, but less than ten percent (10%) of the stock.
- 5501.2 If there is a change in the ownership of an individual ownership, partnership, or limited liability company or partnership, resulting in a change of ownership of one percent (1%) or more, but less than ten percent (10%), of the total ownership interest of the business entity, the individual owner, partnership, or limited liability company or partnership members shall submit to the Department in a timely manner, but no later than fifteen (15) calendar days after the change has occurred, the instruments reflecting the change in ownership interests.
- 5501.3 Within fifteen (15) calendar days of the changes set forth in § 5501.1 and 5501.2, the individual owner, partnership, limited liability company or partnership, or corporation shall furnish to the Department any data pertaining to the personal and business history of any new officer, director, stockholder, member, general or limited partner, or other person that the Department may require, and each new person shall apply for a registration as required under this subtitle.
- 5501.4 The fee for a change of officer, director, stockholder, or general or limited partner, or member shall be one hundred dollars (\$100).
- 5501.5 If there is a change in corporate officers, directors, or other persons, owning or controlling ten percent (10%) or more of the common stock of a corporate registration, the corporations' dispensary or cultivation center registration, or the corporation's authorization to apply for a dispensary or cultivation center registration, shall automatically be deemed void and shall be surrendered to the Department upon demand.
- 5501.6 If there are changes in the ownership of an individual ownership, partnership, or limited liability company or partnership, resulting in a change of ownership of ten

percent (10%) or more of the total ownership of the business entity, the individual owner, partnership or limited liability company members' registration, or authorization to apply for a dispensary or cultivation center registration, shall automatically be deemed void and shall be surrendered to the Department upon demand.

5501.7 This subsection shall not be used to circumvent the prohibition against the transfer of ownership, leasing, or subcontracting, of a dispensary or cultivation center registration. If, after investigation, the Director determines that there is cause to believe that entity has made changes pursuant to this subsection in an attempt to circumvent these prohibitions, the Director shall take action to revoke the dispensary or cultivation center registration, or the authorization to apply for a dispensary or cultivation center registration.

Section 5502 is repealed.

Chapter 56, GENERAL OPERATING REQUIREMENTS, of Title 22-C, MEDICAL MARIJUANA, is amended as follows:

Subsection 5613.1 is amended to read as follows:

5613.1 A registered cultivation center or dispensary that discontinues its operations for any reason shall surrender its registration to the Department for safekeeping within three (3) calendar days of discontinuing its operations. The Department shall hold the registration for one hundred twenty (120) days or until the establishment resumes business whichever occurs first. If the registrant has not initiated proceedings to resume operations within one hundred twenty (120) days, the Department shall deem the registration abandoned and cancel the registration.

Chapter 62, ENFORCEMENT PROCEEDINGS AND HEARINGS, of Title 22-C, MEDICAL MARIJUANA, is amended as follows:

Subsections 6205.2 and 6205.3 are repealed.

A new Chapter 63, SLIDING SCALE PROGRAM, of Subtitle C is added to Title 22 of the DCMR to read as follows:

6300 SLIDING SCALE PROGRAM

6300.1 A registered dispensary shall devote two percent (2%) of its annual gross revenue to the Department program established to provide medical marijuana on a sliding scale to qualifying patients determined eligible pursuant to § 1300.4 of this subchapter.

6300.2 Not later than February 15th of each calendar year, each registered dispensary in the District of Columbia shall submit to the Director:

- (a) A statement of its gross revenues for the previous calendar year;
 - (b) An attestation made under penalty of perjury of the accuracy and truthfulness of the gross revenues statement; and
 - (c) Payment equaling two percent (2%) of the amount set forth in the gross revenue statement.
- 6300.3 Payments made by registered dispensaries under § 5905.2 of this subchapter shall be deposited into a fund controlled by the Department to assist in providing medical marijuana to eligible qualifying patients who are unable to afford it.
- 6300.4 A qualifying patient who establishes pursuant to § 1300.4 of this subchapter that his or her income is equal to or less than two hundred percent (200%) of the federal poverty level, shall be entitled to purchase medical marijuana directly, or through a caregiver, on a sliding scale from a registered dispensary in the District of Columbia.
- 6300.5 A registered dispensary shall sell medical marijuana to a qualifying patient, who is registered to purchase medical marijuana on a sliding scale, at a discount of not less than twenty (20%) of its regular retail price.
- 6300.6 Not later than April 15th of each calendar year, the Department shall review the sliding scale program. As part of its review and subject to the limitation of the total amount collection:
- (a) The Department may reimburse dispensaries to offset the discounts provided to eligible patients; and
 - (b) May adjust the percentage required to be devoted by dispensaries and the required discount to qualifying patients.
- 6300.7 The gross revenue amount to be contributed by the dispensary to the sliding scale program shall be subject to audit by the Department.

Section 9900.1 is amended to add the following term:

9900 DEFINITIONS

- 9900.1 When used in this subtitle, the following terms and phrases shall have the meanings ascribed:

Quorum- a majority of the appointment members of the Committee being present.

Comments on this rule should be submitted, in writing, to Patricia D'Antonio, DC Department of

Health, 899 N. Capitol Street, NE, Second Floor, Washington, D.C. 20002, or to Doh.mmp@dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of this rule are available Monday through Friday between the hours of 8:30 a.m. and 4:00 p.m. from Patricia D'Antonio, DC Department of Health, 899 N. Capitol Street, NE, Second Floor, Washington D.C. 20002.