

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on [upon filing] by the
Date prior to or same as filing date

Department of Human Services, Public Health Division 333
Agency and Division Administrative Rules Chapter Number

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to become effective [upon filing]. Rulemaking Notice was published in the [June 2010] Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Updating rules for Medical Marijuana pertaining to application documentation,
card replacement fee, and attending physicians

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

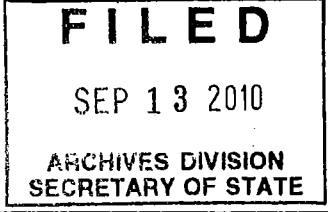
AMEND: 333-008-0010, 333-008-0030, 333-008-0040, 333-008-0050, 333-008-0060, 333-008-0080

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 475.338



Other Auth.:

Stats. Implemented: ORS 475.300 through 475.346

RULE SUMMARY

The Department of Human Services, Public Health Division, Oregon Medical Marijuana Program is permanently amending administrative rules in chapter 333, division 8 to clarify existing rule and add guidance in order to:

1. More clearly define what an immature plant is in order to alleviate confusion amongst growers and law enforcement.
2. Establish a fee to cover the cost to issue a replacement registry identification card.
3. Include procedures to verify compliance with the OMMA for attending physicians whom have over 450 such patients.

William J. Coulombe

William J. Coulombe

9-9-2010

Authorized Signer

Printed name

Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. **The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

PH 2-1-2010

OREGON ADMINISTRATIVE RULES
DEPARTMENT OF HUMAN SERVICES, PUBLIC HEALTH
CHAPTER 333

DIVISION 8

MEDICAL MARIJUANA

333-008-0010

Definitions

For the purposes of OAR 333-008-0000 through 333-008-0120, the following definitions apply:

- (1) "Act" means the Oregon Medical Marijuana Act.
- (2) "Applicant" means a person applying for an Oregon Medical Marijuana registry identification card on a form prescribed by the Department.
- (3) "Attending physician" means a Doctor of Medicine (MD) or Doctor of Osteopathy (DO), licensed under ORS chapter 677, who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.
- (4) "Debilitating medical condition" means:
 - (a) Cancer, glaucoma, agitation due to Alzheimer's disease, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or treatment for these conditions;
 - (b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:
 - (A) Cachexia;
 - (B) Severe pain;
 - (C) Severe nausea;
 - (D) Seizures, including but not limited to seizures caused by epilepsy; or
 - (E) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis; or
 - (c) Any other medical condition or treatment for a medical condition adopted by the Department by rule or approved by the Department pursuant to a petition submitted under OAR 333-008-0090.
- (5) "Delivery" means the actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship, but does not include transfer of marijuana from one patient to another patient if no consideration is paid for the transfer.
- (6) "Department" means the Department of Human Services.
- (7) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Department. "Designated primary caregiver" does not include the person's attending physician.
- (8) "Grow site registration card" means the card issued to the patient and displayed at the grow site.
- (9) "Grower" has the same meaning as "person responsible for a marijuana grow site".
- (10) "Immature plant" has the same meaning as "seedling or start".

- (11) "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. 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 (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- (12) "Mature plant" means a marijuana plant that does not fall within the definition of a seedling or a start.
- (13) "Medical use of marijuana" means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her debilitating medical condition.
- (14) "Oregon Health Plan (OHP)" means the medical assistance program administered by the Department under ORS chapter 414.
- (15) "OMMP identity card" means a wallet-sized card issued by the Department in addition to the registry identification card that designates a person as a patient, primary caregiver, or grower.
- (16) "Parent or legal guardian" means the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age.
- (17) "Patient" has the same meaning as "registry identification cardholder."
- (18) "Person responsible for a marijuana grow site" means a person who has been selected by a patient to produce medical marijuana for the patient, and who has been registered by the Department for this purpose.
- (19) "Primary responsibility" as that term is used in relation to an attending physician means that the physician:
- (a) Provides primary health care to the patient; or
 - (b) Provides medical specialty care and treatment to the patient as recognized by the American Board of Medical Specialties; or
 - (c) Is a consultant who has been asked to examine and treat the patient by the patient's primary care physician licensed under ORS chapter 677, the patient's Physician Assistant licensed under ORS chapter 677, or the patient's Nurse Practitioner licensed under ORS chapter 678; and,
 - (d) Has reviewed a patient's medical records at the patient's request and has conducted a thorough physical examination of the patient, has provided or planned follow-up care, and has documented these activities in the patient's medical record.
- (20) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.
- (21) "Registry identification card" means a document issued by the Department that identifies a person authorized to engage in the medical use of marijuana, and the person's designated primary caregiver, if any.
- (22) "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a patient registry identification card by the Department.
- (23) "Seedling or start" means a marijuana plant that has no flowers, is less than 12 inches in height, and less than 12 inches in diameter. A seedling or start that does not meet all three criteria will be considered a mature plant.

(24) "Supplemental Security Income (SSI)" 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.

(25) "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for medical use. "Usable marijuana" does not include the seeds, stalks and roots of the plant.

(26) "Written documentation" means a statement signed and dated by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records, maintained in accordance with standard medical record practices.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 through 475.346

333-008-0030

Registration Approval and Denial

(1) The Department will approve or deny an application within 30 days of receiving a complete application, including payment of the designated fee.

(2) If the Department approves the application, the Department shall issue a serially numbered registry identification card to the patient within five business days. The registry identification card shall include, but is not limited to:

- (a) The patient's name, address and date of birth;
- (b) The effective date, date of issuance and expiration date of the registry identification card;
- (c) The designated primary caregiver's name, address, and date of birth, if applicable;
- (d) The name, address, and date of birth of the grower, if applicable; and
- (e) The location where the marijuana is produced.

(3) When a patient has specified a designated primary caregiver, or a grower, the Department shall issue an OMMP registry identification card for the designated primary caregiver and the grower. The Department shall also issue a grow site registration card to the patient. All cards shall contain the information specified in section (2) of this rule, as appropriate.

(4) The Department may deny an application if:

- (a) The applicant did not provide the information required as provided in ORS 475.309 to establish the applicant's debilitating medical condition and to document the applicant's consultation with an attending physician regarding the medical use of marijuana in connection with such condition;
- (b) The Department determines that the information provided was falsified;
- (c) The applicant has been prohibited by a court order from obtaining a registry identification card; or

(d) An applicant has willfully violated the provisions of ORS 475.300 to 475.346 or these rules.

(5) If the Department denies an application, the Department shall send the applicant a denial letter within 30 days of receipt of the complete application. The time period set forth in OAR 333-008-0020 that provides an applicant an opportunity to supplement an incomplete application does not count towards the 30-day deadline for processing an application. The denial letter will be sent by certified mail to the address listed on the application form. The letter will 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. Only the person whose application has been denied, or, in the case of a person

under the age of 18 whose application has been denied, the person's parent or legal guardian shall have standing to contest the Department's action.

(7) Any person whose application has been denied may not reapply for at least six months from the date of the denial, unless so authorized by the Department or a court of competent jurisdiction.

(8) The fee is \$10 for a replacement registry identification card.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 through 475.346

333-008-0040

Annual Renewal and Interim Changes

(1) A patient shall register on an annual basis to maintain active registration status by submitting a renewal application prescribed by the Department.

(2) Between 60 to 90 calendar days prior to expiration, the Department shall mail to the patient's address of record, a letter notifying the patient of the upcoming expiration date, along with a renewal application.

(3) In addition to completing the renewal application, the patient must submit, prior to the expiration of the registry identification card:

(a) Written documentation signed by the patient's attending physician reconfirming the patient's debilitating medical condition and that the medical use of marijuana mitigates the symptoms of the patient's debilitating medical condition;

(b) A copy of the patient's current OHP eligibility determination statement, a copy of the patient's current food stamp benefits, or a copy of the patient's current monthly SSI benefit card;

(c) The name of the patient's designated primary caregiver, if a primary caregiver has been designated for the upcoming year;

(d) The name of the grower; and

(e) Confirmation that existing application information has not changed, if applicable.

(4) If the renewal information is not received by the expiration date on the registry identification card, the patient's registry identification card and all other associated OMMMP cards, if any, will be deemed expired. The expiration date may be extended, due to personal hardship, at the discretion of the Department. If a person fails to apply for renewal within the time period specified in this rule, that person must submit a new application.

(5) A patient shall notify the Department within 30 calendar days of any change in the patient's name, address, telephone number, attending physician, designated primary caregiver, grower or grow site address.

(6) A patient shall notify the designated primary caregiver and the grower of any changes in status including, but not limited to:

(a) The assignment of another individual as the designated primary caregiver for the patient;

(b) The assignment of another individual as a grower for the patient; or

(c) The end of eligibility of the patient to hold a registry identification card.

(7) If the Department is notified by the patient that a primary caregiver or a grower has changed, the Department shall notify the primary caregiver or the grower by mail at the address of record confirming the change in status and informing the caregiver or grower that his or her card is no longer valid and must be returned to the Department within seven calendar days.

(8) A patient who has been diagnosed by an attending physician as no longer having a debilitating medical condition or whose attending physician has determined that the medical use

of marijuana is contraindicated for the patient's debilitating medical condition shall return the registry identification card and all associated OMMP cards to the Department within 30 calendar days of notification of the diagnosis or notification of the contraindication. If, due to circumstances beyond control of the patient he or she is unable to obtain a second medical opinion about the patient's continuing eligibility to use medical marijuana before the 30-day period has expired, the Department may grant the patient additional time to obtain a second opinion before requiring the patient to return the registry identification card and all associated cards.

(9) The renewal fee is \$100, unless an applicant can demonstrate current eligibility in the OHP, receipt of current food stamp benefits, or receipt of current SSI benefits, in which case the fee is \$20 as set forth in OAR 333-008-0020(3).

(10) The Department will verify the renewal application information in the same manner as specified in OAR 333-008-0020(4).

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 through 475.346

333-008-0050

Confidentiality

(1) The Department shall create and maintain either paper or computer data files of patients, designated caregivers, growers, and grow site addresses. The data files will include all information collected on the application forms or equivalent information from other written documentation, plus a copy of OMMP registry identification cards, effective date, date of issue, and expiration date. Except as provided in section (2) of this rule, the names and identifying information of registry identification cardholders and the name and identifying information of a pending applicant for a card, a designated primary caregiver, a grower, and a marijuana grow site location, shall be confidential and not subject to public disclosure.

(2) Names and other identifying information made confidential under section (1) of this rule may be released to:

(a) Authorized employees of the Department as necessary to perform official duties of the Department, including the production of any reports of aggregate (i.e., non-identifying) data or statistics;

(b) Authorized employees of state or local law enforcement agencies when they provide a specific name or address. Information will be supplied only as necessary to verify:

(A) That a person is or was a lawful possessor of a registry identification card; or

(B) That the address is or was a documented grow site, and how many people are authorized to grow at that grow site; or

(C) How many people a person was or is authorized to grow for; or

(D) As provided in OAR 333-008-0060(2);

(c) Other persons (such as, but not limited to, employers, lawyers, family members, other government officials) upon receipt of a properly executed release of information signed by the patient, the patient's parent or legal guardian, designated primary caregiver or grower. The release of information must specify what information the Department is authorized to release and to whom.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 through 475.346

333-008-0060

Monitoring and Investigations

(1) The Department may, at any time, contact a patient, designated primary caregiver, grower, or a patient's attending physician by telephone, mail or in person to verify the current accuracy of information included in the registration system. This authority does not extend to allowing Department staff to routinely search the person or property of a person who possesses a registry identification card, a grow site, or to search the property of an attending physician.

(2) Notwithstanding section (1) above, the Department may, when it has reason to believe a violation of ORS 475.300 to 475.346 has occurred, either conduct an investigation to collect evidence of a violation of the Oregon Medical Marijuana Act, or arrange for this responsibility to be assumed by the proper state or local authorities. Such violations include, but are not limited to:

- (a) Failure by a patient to notify the Department of any change in the patient's name, address, attending physician, designated primary caregiver, grower, or grow site location.
- (b) Failure by a patient, designated primary caregiver, or grower to return the OMMP identity and registry identification cards to the Department within seven calendar days of the patient's notification of the diagnosis that the patient no longer has a debilitating medical condition.
- (c) Failure by a designated primary caregiver or grower to return the OMMP identity and registry identification cards to the Department within seven calendar days of notification by the patient that the person's designation as primary caregiver or grower has been terminated.
- (d) Submission of false information by a patient, designated primary caregiver, grower, or attending physician during the registration or registration renewal process.
- (e) Conviction of a patient, designated primary caregiver, or grower of a marijuana-related offense that occurred after the date of issuance of a registry identification card.

(3) If the Department has reason to believe that an individual, signing an application as the attending physician, does not meet the definition of attending physician under these rules, the Department may examine the original patient medical record in the physician's possession or a copy provided by the physician. The sole purpose of this examination is to determine whether the physician meets the definition of attending physician in OAR 333-008-0010, including whether the physician has primary responsibility for a patient as that is defined in OAR 333-008-0010, and will not include review of any clinical judgments such as adequacy of diagnosis or propriety of treatment.

(a) The Department will notify the patient of the intent to review the medical records pursuant to this section and request the patient's authorization to conduct the review. An applicant's or patient's failure to authorize a review of his or her medical records may result in denial of an application.

(b) The Department will send written notification allowing the physician 10-days to provide additional information requested by the Department.

(4) In determining whether to examine a patient's medical record pursuant to section (3) of this rule, the Department may consider, but is not limited to, factors such as complaints from patients or family members, complaints from health care providers, total number of applicants for whom the physician provided documentation, or number of applicants for whom the physician provided documentation during a specific time period.

(5) If the OMMP records show that any one physician is the attending physician of record for more than 450 patients at any point in time, the OMMP shall request, in writing, that the physician do one of the following:

- (a) Provide information for each new patient over the 450 threshold, including:
 - (A) Documentation that the patient's medical records have been reviewed;
 - (B) Patient chart notes documenting the patient was examined by the physician and the date of the examination; and
 - (C) Documentation showing provided or planned follow-up care;
- (b) Provide a letter from a clinic at which the physician provides care requesting that the physician be exempted from section (5) of this rule, and provide documentation from the clinic that:
 - (A) It has clear systems for ensuring medical records are reviewed and that each patient is examined by a physician;
 - (B) It provides follow-up care for patients;
 - (C) It maintains a record system documenting the review of medical records, physician examination, and follow-up care; and
 - (D) It will allow on-site inspections by OMMP to confirm compliance; or
- (c) Provide a written statement explaining why the physician should be released from this requirement, for example, an explanation that the physician:
 - (A) Has a practice that includes a disproportionately high percentage of patients with qualifying conditions;
 - (B) Serves as a consultant for other health care providers who refer patients requesting medical marijuana; or
 - (C) Has multiple practice sites and at one of the practice sites the physician clearly meets the attending physician definition.
- (6) If the OMMP receives a request from a physician to be exempted from the requirement in section (5) of this rule, the OMMP shall provide the physician a decision, in writing, explaining whether the physician is or is not exempted from the requirement in section (5) of this rule. The OMMP's written decision shall explain the basis for the OMMP's decision.
- (7) The Department shall refer criminal complaints against a patient, designated primary caregiver, or grower; or medical practice complaints against an attending physician to the appropriate state or local authorities.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 through 475.346

333-008-0080

Permissible Amounts of Medical Marijuana

- (1) A patient or the patient's designated primary caregiver may possess up to six mature marijuana plants, 24 ounces of usable marijuana, and a patient and the patient's designated primary caregiver may possess a combined total of up to 18 marijuana seedlings or starts.
- (2) Notwithstanding section (1) of this rule, if a patient has been convicted, on or after January 1, 2006, of a Class A or Class B felony under ORS 475.840 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, and the offense occurred on or after January 1, 2006, the patient or the patient's designated primary caregiver may possess only one ounce of usable marijuana at any given time for a period of five years from the date of the conviction.
- (3) A grower:
 - (a) May produce marijuana for and provide marijuana to a patient or that person's designated primary caregiver as authorized under ORS 475.300 to 475.346 and these rules;

(b) May possess up to six mature plants and up to 24 ounces of usable marijuana for each patient or caregiver for whom marijuana is being produced;

(c) May possess up to 18 marijuana seedlings or starts for each patient for whom marijuana is being produced;

(4) A grower may produce marijuana for no more than four patients or designated primary caregivers concurrently.

(5) A patient, the designated primary caregiver for a patient and the grower must have, in his or her possession, his or her OMMP identity card when transporting marijuana. A patient must have, in his or her possession, his or her OMMP identity card when using marijuana in a location other than the residence of the cardholder.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 through 475.346