

**Title 19 – DEPARTMENT OF HEALTH AND
SENIOR SERVICES
Division 30 – Division of Regulation and Licensure
Chapter 95 – Medical Marijuana**

PROPOSED RULE

19 CSR 30-95.030 Qualifying Patient / Primary Caregiver

PURPOSE: Under Article XIV of the Missouri Constitution, patients with qualifying medical conditions have the right to discuss freely with their physicians the possible benefits of medical marijuana use and the right to use medical marijuana for treatment under the supervision of a physician. Pursuant to the same Article, the Department of Health and Senior Services is tasked with ensuring patient access to medical marijuana, subject to reasonable restrictions. This rule explains how the department will implement provisions of Article XIV related to Qualifying Patients and Primary Caregivers.

(1) Physician Certification. A qualifying patient must obtain a new physician certification at least annually. In every application for which a physician certification is required, the physician certification must be less than thirty (30) days old at the time the application is submitted.

(2) Identification Card Applications. Qualifying patients and primary caregivers shall obtain identification cards from the department, which will include unique, identifying numbers for each patient and each caregiver-patient relationship. A qualifying patient or his or her primary caregivers may also obtain an identification card to cultivate up to six (6) flowering marijuana plants for the exclusive use of that qualifying patient. The department will receive applications for qualifying patients, primary caregivers, and patient cultivation electronically through a department-provided, web-based application system. In the event of application system unavailability, the department will arrange to accept applications in an alternative, department-provided format and will notify the public of those arrangements through its website at <http://medicalmarijuana.mo.gov>.

(A) All applications for qualifying patient identification cards and renewal of such identification cards shall include at least the following information:

1. The qualifying patient's name, date of birth, and Social Security number;
2. The qualifying patient's residence address and mailing address or, if the qualifying patient has no residence or mailing address, an address where the qualifying patient can receive mail;
3. A statement that the qualifying patient resides in Missouri and does not claim resident privileges in another state or country, as well as proof of current Missouri residency, which shall be shown by—

A. A copy of a valid Missouri driver's license, a Missouri Identification Card, a current Missouri motor vehicle registration, or a recent Missouri utility bill; or

B. If none of these proofs are available, some other evidence of residence in Missouri, which shall be approved or denied by the director of the medical marijuana program as sufficient proof of residency.

4. The qualifying patient's e-mail address;
5. A statement confirming that—

A. One (1) physician certification, which is less than thirty (30) days old, has been submitted on behalf of the qualifying patient; or

B. Two (2) physician certifications, which are less than thirty (30) days old, have been submitted on behalf of the qualifying patient in order to authorize possession limits other than those established by section five (5) of this rule;

6. A legible copy of the qualifying patient's photo identification issued by a state or federal government entity

7. If the qualifying patient is a non-emancipated qualifying patient, the name, Social Security number, and a Parental/Legal Guardian Consent Form, included herein, completed by a parent or legal guardian who will serve as primary caregiver for the qualifying patient;

8. A clear, color photo of the applicant's face taken within the prior three (3) months;

9. At the option of the applicant, a statement indicating whether the applicant is currently receiving assistance from any Missouri programs for low-income individuals, and if so, which programs;

10. If the patient is seeking authority to cultivate medical marijuana:

A. The address of the facility in which the qualifying patient will cultivate marijuana;

B. A description of the security arrangements and processes that will be used to restrict access to only qualifying patients and their primary caregivers;

C. The name and Patient License Number or Caregiver License Number, if applicable, of one other qualifying patient or primary caregiver with whom the cultivating facility will be shared;

D. A statement affirming the applicant's agreement to immediately make available access to the patient cultivation facility upon request from the department. Such access will be only for purposes of confirming compliance with this rule and will be limited to the enclosed locked facility and any areas necessary to reach and enter the facility on a path of the patient's or primary caregiver's choosing;

11. An attestation that the information provided in the application is true and correct;

12. The signature of the qualifying patient and date the qualifying patient signed, or, in the case of a non-emancipated qualifying patient, the signature of the parent or legal guardian who will serve as primary caregiver for the qualifying patient and the date the parent or legal guardian signed; and

13. All applicable fees.

(B) All applications for primary caregiver identification cards and renewal of such identification cards shall include at least the following information:

1. The primary caregiver's name, date of birth, and Social Security number;

2. The primary caregiver's residence address and mailing address;

3. The primary caregiver's e-mail address;

4. The name and Patient License Number of the qualifying patient for whom the applicant seeks to serve as primary caregiver;

5. A legible copy of the primary caregiver's photo identification issued by a state or federal government entity;

6. If the qualifying patient is a non-emancipated qualifying patient, a statement that the primary caregiver is the qualifying patient's parent or legal guardian and:

A. A copy of a birth certificate or adoption record showing the primary caregiver as the qualifying patient's parent; or

B. A copy of documentation establishing legal guardianship of the primary caregiver over the qualifying patient;

7. A clear, color photo of the applicant's face taken within the prior three (3) months;
8. If the primary caregiver is seeking authority to cultivate medical marijuana on behalf of the patient:
 - A. The address of the facility in which the primary caregiver will cultivate marijuana;
 - B. A description of the security arrangements and processes that will be used to restrict access to only qualifying patients and their primary caregivers;
 - C. The name and Patient License Number or Caregiver License Number, if applicable, of one other qualifying patient or primary caregiver with whom the cultivating facility will be shared; and
 - D. A statement affirming the applicant's agreement to immediately make available access to the patient cultivation facility upon request from the department. Such access will be only for purposes of confirming compliance with this rule and will be limited to the enclosed locked facility and any areas necessary to reach and enter the facility on a path of the patient's or primary caregiver's choosing;
9. An attestation that the information provided in the application is true and correct;
10. The signature of the primary caregiver and date the primary caregiver signed;
11. Except in the case of a non-emancipated qualifying patient, a Patient Authorization Form, included herein, completed by the qualifying patient who the primary caregiver will serve; and
12. All applicable fees.

(3) Application Processes.

(A) Upon receiving an application for a qualifying patient identification card, primary caregiver identification card, or patient cultivation identification card, the department shall, within thirty (30) days, either approve the application or provide a written explanation for its denial.

1. In the case of qualifying patient and patient cultivation identification cards, if the department fails to deny or fails to approve an application within thirty (30) days, a card will be issued that will be valid for one (1) year and will serve all the same functions as would a card issued after application approval.

2. An application for a qualifying patient or patient cultivation identification card will be considered received when an application is submitted to the department that includes all information required by section (2) of this rule. The department will notify an applicant once if an application is incomplete and will specify in that notification what information is missing.

(B) Denial and revocation.

1. Qualifying patient, primary caregiver, and patient cultivation identification cards may be denied or revoked.

A. If an applicant provides false or misleading information in an application, the identification card for which the applicant is applying will be denied;

B. If an applicant fails to provide a complete application within ten (10) days of being notified that an application is incomplete, the identification card for which the applicant is applying will be denied;

(I) An applicant will be considered notified on the date the department sends a written explanation of how the application is incomplete to a mailing or e-mail address provided by the applicant.

(II) If an applicant fails to provide either a mailing or e-mail address, the department will not issue notice but will hold the application for thirty (30) days before denying it.

C. If a card holder violates any provision of this rule, any medical marijuana identification cards currently held by that individual may be revoked;

D. If a card holder is found to be in possession of an amount of marijuana greater than the medical marijuana legal limit applicable to that individual, any medical marijuana identification cards currently held by that individual will be revoked. In such a case, the identification card may be revoked for up to one (1) year;

E. If a card holder is convicted of, pleads guilty to, or receives a suspended imposition of sentence for a violation of section 579.020, 579.065, or 579.068, RSMo or for a violation of a similar law of another state, any medical marijuana identification cards currently held by that individual will be revoked. In such a case, the revocation shall be permanent, absent a gubernatorial pardon or expungement.

F. If an applicant has applied for a qualifying patient, primary caregiver, or qualifying patient cultivation identification card and received two (2) denials within a twelve- (12-) month period, has any of these types of identification cards revoked twice within a twenty-four (24) month period, or applied for any of these types of identification cards and been denied once and also had any of these types of identification cards revoked once within a twenty-four- (24-) month period, the identification card for which the applicant is applying will be denied.

G. If a patient cultivation identification card holder fails to immediately make available access to his or her patient cultivation facility upon request from the department, the patient cultivation identification card will be revoked;

H. If medical marijuana is stolen or lost, is identifiable as medical marijuana purchased by a particular qualifying patient or primary caregiver, is discovered in the possession of an individual who is not the qualifying patient or primary caregiver authorized to possess that medical marijuana, and was not timely reported as stolen or lost by the qualifying patient or primary caregiver authorized to possess that medical marijuana, the qualifying patient's or primary caregiver's identification card may be revoked;

I. If a qualifying patient or primary caregiver uses combustible gases or other dangerous materials to extract resins from marijuana, the qualifying patient's or primary caregiver's identification card may be revoked for up to one (1) year;

J. If the department determines there is good cause to do so, an application for a patient cultivation identification card may be denied.

2. Any denial or revocation shall be issued by the department in writing to the qualifying patient or, in the case of a primary caregiver, to the qualifying patient and the primary caregiver, and shall include the specific reasons for the denial or revocation and the process for requesting review of the department's decision.

(C) Renewal. Qualifying patient, primary caregiver, and patient cultivation identification cards are valid for twelve (12) months from their date of issuance and shall be renewable by submitting, prior to expiration by at least thirty (30) days but no sooner than sixty (60) days, a new or updated application, which shall include any information required by section (2) that has changed since the date of the previous application, including a new physician certification.

(D) The department shall charge a fee for medical marijuana identification card applications.

1. There will be a separate fee for each application to be a qualifying patient, each application to be a primary caregiver on behalf of a specific qualifying patient, and each application to cultivate medical marijuana on behalf of a specific qualifying patient.

2. Requests for authority to cultivate medical marijuana on behalf of a qualifying patient may be made within a qualifying patient or primary caregiver application or may be made separately

at a later time. However, the authorization to cultivate will be added to the qualifying patient or primary caregiver identification card and will only remain valid as long as the qualifying patient or primary caregiver's identification card is still valid.

3. Current fees, including any adjustments, will be posted on the department's website at <http://medicalmarijuana.mo.gov>.

(E) If the name or address of a qualifying patient or primary caregiver changes after an identification card is issued, the qualifying patient or primary caregiver shall notify the department within ten (10) days of the change.

(4) Qualifying Patient Cultivation.

(A) All qualifying patient cultivation shall take place in an enclosed, locked facility, as defined in 19 CSR 30-95.010.

(B) One (1) qualifying patient may cultivate up to six (6) flowering marijuana plants, six (6) nonflowering marijuana plants (over fourteen (14) inches tall), and six (6) clones (plants under fourteen (14) inches tall) at any given time in a single, enclosed locked facility. Two (2) qualifying patients, who both hold valid qualifying patient cultivation identification cards, may share one (1) enclosed, locked facility. No more than twelve (12) flowering marijuana plants, twelve (12) nonflowering plants, and twelve (12) clones may be cultivated in a single, enclosed locked facility, except when one (1) of the qualifying patients, as a primary caregiver, also holds a patient cultivation identification card for a third qualifying patient, in which case that primary caregiver may cultivate six (6) additional flowering marijuana plants, six (6) additional nonflowering marijuana plants, and six (6) additional clones for a total of eighteen (18) flowering marijuana plants, eighteen (18) nonflowering marijuana plants, and eighteen (18) clones in a single, enclosed locked facility.

(C) Under no circumstance will a qualifying patient be entitled to cultivate, or have cultivated on his or her behalf, more than six (6) flowering marijuana plants.

(D) Nothing in this section shall convey or establish a right to cultivate medical marijuana in a facility where state law or a private contract would otherwise prohibit doing so.

(E) All cultivated flowering marijuana plants in the possession of a qualifying patient or primary caregiver shall be clearly labeled with the qualifying patient's name.

(F) The department shall provide each qualifying patient or primary caregiver who receives a qualifying patient cultivation identification card with a cultivation authorization, which shall be clearly displayed within the enclosed cultivation area and in close proximity to the marijuana plants. The authorization shall list the name of the qualifying patient or primary caregiver and the address of the facility in which that qualifying patient or primary caregiver is authorized to cultivate marijuana.

(5) Purchase and Possession Limitations.

(A) Qualifying patients may only purchase, or have purchased on their behalf by their primary caregivers, four (4) ounces of dried, unprocessed marijuana per qualifying patient, or its equivalent, in a thirty- (30-) day period.

(B) Qualifying patients may only possess, or instruct a primary caregiver to possess on their behalf—

1. In the case of qualifying patients who do not cultivate or have medical marijuana cultivated on their behalf, up to a sixty- (60-) day supply of dried, unprocessed marijuana per qualifying patient, or its equivalent; or

2. In the case of qualifying patients who are cultivating marijuana for medical use or whose primary caregivers are cultivating marijuana on their behalf, up to a ninety- (90-) day supply of dried, unprocessed marijuana or its equivalent, so long as the supply of medical marijuana cultivated by the qualifying patients or primary caregivers remains on property under their control.

(C) All medical marijuana purchased from a dispensary must be stored in or with its original packaging.

(D) Primary caregivers may possess a separate legal limit for each qualifying patient under their care and a separate legal limit for themselves if they are a qualifying patient, each of which shall be stored separately for each qualifying patient and labeled with the qualifying patient's name.

(E) Purchase and possession limits established in this section shall not apply to a qualifying patient with written certification from two (2) independent physicians that there are compelling reasons why the qualifying patient needs a greater amount than the limits established in this section.

1. In such a case, both independent physicians must state in their certifications what amount the qualifying patient requires, which shall then be that patient's limit.

2. If the two (2) independent physicians disagree on what amount should be the patient's limit, the lower of the two (2) amounts shall be that patient's limit.

3. If the patient's limit is increased after receiving a qualifying patient identification card, the qualifying patient or primary caregiver shall notify the department within ten (10) days of the change.

(6) Non-Emancipated Qualifying Patient.

(A) A physician shall not issue a certification for the medical use of marijuana for a non-emancipated qualifying patient under the age of eighteen (18) without the written consent of a parent or legal guardian of the qualifying patient.

(B) The department shall not issue a qualifying patient identification card on behalf of a non-emancipated qualifying patient under the age of eighteen (18) without the written consent of a parent or legal guardian of the qualifying patient. Such card shall be issued to the parent or guardian and not directly to the patient.

(C) Only a parent or guardian may serve as a primary caregiver for a non-emancipated qualifying patient under the age of eighteen (18).

(D) Only the qualifying patient's parent or guardian who holds a primary caregiver identification card shall purchase or possess medical marijuana for a non-emancipated qualifying patient under the age of eighteen (18).

(E) A parent or guardian who holds a primary caregiver identification card shall supervise the administration of medical marijuana to a non-emancipated qualifying patient under the age of eighteen (18).

(7) Qualifying Patient Responsibilities.

(A) No qualifying patient shall consume marijuana for medical use in a public place, unless provided by law.

(B) No qualifying patient who is under the care of a primary caregiver may serve as the primary caregiver for another qualifying patient.

(C) If a qualifying patient is no longer entitled to medical marijuana or no longer wishes to hold a medical marijuana identification card, he or she must notify the department within ten (10)

days of that change. The department will confirm in writing that the qualifying patient has voluntarily surrendered the identification card and that the identification card is no longer valid.

(D) If a qualifying patient's medical marijuana is stolen or lost, the qualifying patient must notify the department within two (2) days.

(8) Primary Caregiver Responsibilities.

(A) No individual shall serve as the primary caregiver for more than three (3) qualifying patients.

(B) No individual shall serve as a primary caregiver for a qualifying patient who is already served by two (2) primary caregivers.

(C) If a primary caregiver is no longer entitled to serve as a primary caregiver or no longer wishes to hold a primary caregiver identification card, he or she must notify the department within ten (10) days of that change. The department will confirm in writing that the primary caregiver has voluntarily surrendered the identification card and that the identification card is no longer valid.

(D) If medical marijuana in possession of a primary caregiver is stolen or lost, the primary caregiver must notify the department in a department-approved format within two (2) days.

(9) Disposal of Qualifying Patient Medical Marijuana.

(A) In any case where a qualifying patient is no longer entitled to medical marijuana under any provision of state law or is deceased, any excess medical marijuana or marijuana plants in the possession of the qualifying patient or the patient's primary caregiver or discovered by a third party shall be turned over to a licensed dispensary for disposal within thirty (30) days of the event that makes the qualifying patient ineligible.

1. Before delivering the excess medical marijuana to a dispensary, the individual in possession of the excess medical marijuana must contact the department, and the department will coordinate delivery arrangements between the individual and a dispensary; and

2. The individual in possession of excess medical marijuana shall receive from the department written, temporary authorization to transport medical marijuana, which shall include details regarding the delivery arrangements approved by the department.

(B) The possession and transportation of medical marijuana under this section shall not subject the possessor to arrest, criminal or civil liability, or sanctions under Missouri law, provided that the possessor produces on demand to the appropriate authority a copy of the temporary authorization for transport or evidence of communication with the department regarding delivery arrangements.

AUTHORITY: Sections 1.3.(1)(b) and 1.3.(2) of Article XIV, Mo. Const. Original rule filed May 24, 2019. Emergency rule filed May 24, 2019, effective June 3, 2019, expires February 27, 2020.

PUBLIC COST: This proposed rule has an estimated cost to state agencies or political subdivisions of \$4,154,908 in the aggregate.

PRIVATE COST: This proposed rule has an estimated cost to private entities of at least \$3,500,000 in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Lyndall Fraker, PO Box 570, Jefferson City, MO 65102 or via email at MMPublicComment@health.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*