

Draft Rule: Consumer, Qualifying Patient, and Primary Caregiver

PURPOSE: Under Article XIV, Section 1 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 ethical supervision of a physician or nurse practitioner. Additionally, under Article XIV, Section 2 of the Missouri Constitution, adults at least twenty-one years of age have the right to access marijuana. Pursuant to the same article, the Department of Health and Senior Services is tasked with ensuring patient access to medical marijuana and adult access to marijuana, subject to reasonable restrictions. This rule explains how the department will implement provisions of Article XIV related to Consumers, Qualifying Patients, and Primary Caregivers.

(1) Consumers. Individuals 21 years of age and older may purchase and possess marijuana product in accordance with the rules set forth herein. Consumers may obtain authority to cultivate as set forth below.

(2) Qualifying Patients. Individuals 18 years of age or older may obtain a medical marijuana patient identification card which allows them to purchase and possess medical marijuana product in accordance with the rules set forth herein. Non-emancipated individuals under the age of 18 may obtain a medical marijuana patient identification card with the written consent of a custodial parent or legal guardian. Qualifying patients may also obtain authority to cultivate as set forth below.

(A) Medical marijuana patient identification cards are valid for three (3) years.

(B) Physician or Nurse Practitioner Certification.

1. All qualifying patients must have a physician or nurse practitioner certification that certifies the individual has at least one qualifying medical condition.

2. A physician or nurse practitioner certification is required for all new and renewal patient applications.

3. The physician or nurse practitioner certification must be submitted within the patient application, and the signature date on the certification must be less than 30 days old from the application's submission date.

4. Qualifying patients must obtain a new physician or nurse practitioner certification at least every three years to have their medical marijuana license renewed.

(C) Qualifying Patient Responsibilities.

1. No qualifying patient shall smoke marijuana product for medical use in a public place, unless provided by law.

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

3. If a qualifying patient is no longer entitled to medical marijuana product 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.

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

(D) Non-emancipated Qualifying Patients. Individuals under the age of 18 may obtain a medical marijuana patient identification card with the written consent of a custodial parent or legal guardian.

1. A physician or nurse practitioner shall not issue a certification for the medical use of marijuana product for a non-emancipated qualifying patient without the written consent of a parent or legal guardian of the qualifying patient.

2. The department shall not issue a qualifying patient identification card on behalf of a non-emancipated qualifying patient 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.

3. Only a parent or legal guardian may serve as a primary caregiver for a non-emancipated qualifying patient.

4. Only the qualifying patient's parent or legal guardian who holds a primary caregiver identification card shall purchase or possess medical marijuana product for a non-emancipated qualifying patient.

5. A parent or legal guardian who holds a primary caregiver identification card shall supervise the administration of medical marijuana product to a non-emancipated qualifying patient.

(3) Primary Caregivers. Individuals 21 years of age or older may obtain a primary caregiver identification card which allows them to purchase and possess medical marijuana product on behalf of up to six (6) qualifying patients. Primary caregivers may also obtain authority to cultivate as set forth below.

(A) Primary caregiver identification cards are valid for three years.

(B) Individuals seeking primary caregiver status for non-emancipated qualifying patients must be the parent or legal guardian of the qualifying patient.

(C) Primary Caregiver Responsibilities.

1. No individual shall serve as the primary caregiver for more than six (6) qualifying patients.

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

3. 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.

4. If medical marijuana product in possession of a primary caregiver is stolen or lost, the primary caregiver must notify the department within two (2) days of discovery.

5. Caregivers shall provide ethical, safe, and secure access to medical marijuana product for the associated patient by way of purchase, possession, administration, and cultivation.

6. Caregivers shall not sell medical marijuana product to the patient, and may not consume the patient's medicine.

(4) Purchase and Possession Limitations.

(A) Consumers.

1. Consumers may only purchase up to three (3) ounces of dried, unprocessed marijuana product, or its equivalent, in a single transaction.

2. Consumers may only possess—

A. In the case of consumers who do not cultivate, up to three (3) ounces of dried, unprocessed marijuana product, or its equivalent; or

B. In the case of consumers who are cultivating marijuana, any supply of marijuana cultivated by the consumer in excess of three (3) ounces must remain in an enclosed, locked facility, at the consumer's private residence.

(B) Qualifying Patients and Primary Caregivers

1. Absent a certification from a physician or nurse practitioner authorizing more, qualifying patients may only purchase, or have purchased on their behalf by their primary caregivers, up to six (6) ounces of dried, unprocessed marijuana, or its equivalent, per qualifying patient, in a thirty- (30-) day period.

2. The six (6) ounce purchase limit established in this section shall not apply to a qualifying patient with written certification from a physician or nurse practitioner that there are compelling reasons why the qualifying patient needs a greater amount than the limit established in this section.

A. In such a case, the physician or nurse practitioner must state in their certification what amount the qualifying patient requires, which shall then be that patient's limit.

B. 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.

3. Qualifying patients may only possess, or instruct a primary caregiver to possess on their behalf—

A. 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

B. 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 product in excess of a sixty (60) day supply remains in an enclosed, locked facility.

4. 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.

5. Possession of between the legal limit and up to twice the legal limit shall subject the possessor to department sanctions, including an administrative penalty of up to two hundred dollars (\$200) and loss of the possessor's identification card(s) for up to a year.

(5) Consumer Personal Cultivation, Qualifying Patient Cultivation, and Primary Caregiver Cultivation, Generally.

(A) Except for good cause, any consumer, licensed qualifying patient at least 18 years of age, or licensed primary caregiver on behalf of a qualifying patient may obtain authorization to cultivate up to six (6) flowering marijuana plants, six (6) nonflowering marijuana plants fourteen (14) inches tall or more, and six (6) nonflowering plants under fourteen (14) inches tall at any given time in a single, enclosed locked facility, subject to the limitations below.

(B) Non-emancipated qualifying patients are not eligible for patient cultivation authorization, but a primary caregiver may obtain authorization to cultivate on behalf of the non-emancipated qualifying patient.

(C) A qualifying patient may not hold or obtain both a qualifying patient cultivation identification card and a consumer personal cultivation card at the same time, regardless of if the caregiver holds the cultivation identification card on behalf of the qualified patient.

(D) All consumer personal cultivation, qualifying patient, and primary caregiver cultivation shall take place in an enclosed, locked facility, as defined in 19 CSR 30-95.010.

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

(F) Consumer personal cultivation, qualifying patient, and primary caregiver cultivation shall not take place at a place of business.

(G) The department shall provide each consumer, qualifying patient, or primary caregiver who receives a cultivation authorization with a cultivation authorization identification card, 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 consumer, qualifying patient, or primary caregiver who has been authorized to cultivate, and the address at which that individual is authorized to cultivate marijuana.

(H) Consumer Personal Cultivation.

1. All consumer personal cultivation must take place at the consumer's private residence.

2. No more than twelve (12) flowering marijuana plants, twelve (12) nonflowering plants 14 inches tall or more, and twelve (12) nonflowering plants under 14 inches tall may be cultivated at a single private residence, regardless of the number of consumers who live at that private residence.

3. Plants and marijuana produced by the plants in excess of three (3) ounces must be kept at the authorized consumer cultivator's private residence, in an enclosed locked facility.

4. All cultivated flowering marijuana plants in the possession of a consumer shall be clearly labeled with the consumer's name.

5. A consumer personal cultivation identification card shall be valid for 12 months from its date of issuance and shall be renewable with the submittal of a renewal application.

(I) Qualifying Patient Cultivation.

1. Up to two (2) qualifying patients, who both hold valid qualifying patient cultivation identification cards, may share one (1) enclosed, locked facility.

2. No more than twelve (12) flowering marijuana plants, twelve (12) nonflowering plants 14 inches tall or more, and twelve (12) nonflowering plants under 14 inches tall may be cultivated in a single, enclosed locked facility.

3. 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.

4. Only one individual in a patient-caregiver relationship may be authorized for cultivation on behalf of the qualifying patient.

5. All cultivated flowering marijuana plants in the possession of a qualifying patient shall be clearly labeled with the qualifying patient's name.

6. A patient cultivation identification card shall be valid as long as the qualifying patient's identification card is still valid, up to three years from its date of issuance. The cultivation application fee will be the same for all cultivation applications no matter how much time remains on the validity of the patient's identification card. The cultivation identification card shall be renewable by submitting a renewal patient cultivation application, as long as the individual has an approved renewal patient application.

(J) Primary Caregiver Cultivation

1. A primary caregiver may cultivate on behalf of more than one (1) qualifying patient in a single, enclosed locked facility. No primary caregiver cultivating marijuana for more than one qualifying patient may exceed a total of twenty-four (24) flowering plants, twenty-four (24) nonflowering plants 14 inches tall or more, and twenty-four (24) nonflowering plants under 14 inches tall.

2. No single enclosed locked facility may exceed a total of twenty-four (24) flowering plants, twenty-four (24) nonflowering plants 14 inches tall or more, and twenty-four (24) nonflowering plants under 14 inches tall.

3. Only one individual in a patient-caregiver relationship may be authorized for cultivation on behalf of the qualifying patient.

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

5. A primary caregiver cultivator who is also a qualifying patient cultivator may not grow for personal medical and grow on behalf of the qualifying patient(s) using the same enclosed locked facility.

6. A primary caregiver cultivator who is also authorized as a consumer personal cultivator may not grow for personal use and grow on behalf of the qualifying patient(s) using the same enclosed locked facility.

7. A caregiver cultivation identification card shall be valid as long as the primary caregiver's identification card is still valid, up to three years from its date of issuance. The cultivation application fee will be the same for all cultivation applications no matter how much time remains on the validity of the primary caregiver's identification card. The cultivation identification card shall be renewable by submitting a renewal caregiver cultivation application, as long as the individual has an approved renewal caregiver application.

(6) Identification Cards

(A) Application Requirements.

1. The department will receive applications for qualifying patient, primary caregiver, and cultivation authorization identification cards 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://cannabis.mo.gov>.

A. Qualifying patients and primary caregivers shall obtain identification cards from the department, which will include unique, identifying numbers for each patient and each caregiver.

B. A qualifying patient or his or her primary caregiver(s) who wish to cultivate shall also obtain an identification card to cultivate for the exclusive use of that qualifying patient, which will include unique, identifying numbers for each authorized cultivator.

C. Consumers who wish to cultivate marijuana shall obtain identification cards from the department, which will include unique, identifying numbers for each authorized cultivator.

2. Qualifying Patient Identification Cards. All applications for qualifying patient identification cards and renewal of such identification cards shall include at least the following information:

A. The qualifying patient's name, date of birth, and Social Security number;

B. 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;

C. The qualifying patient's e-mail address;

D. A statement confirming that—

(I) One (1) physician or nurse practitioner certification, which is less than thirty (30) days old, has been submitted on behalf of the qualifying patient and is available for review within the submitted application; and

(II) If applicable, there are compelling reason(s) why the qualifying patient needs a greater amount than six (6) ounces in a thirty- (30-) day period;

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

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

G. If the qualifying patient is an emancipated qualifyig patient under the age of 18, a certified emancipation order from the issuing court.

H. If the qualifying patient is a nonemancipated qualifying patient,

(I) Written consent of a parent or legal guardian who will serve as primary caregiver for the qualifying patient, dated within the previous ninety (90) days; and

(II) An attestation that the individual signing the application and the parent/legal guardian consent is the qualifying patient's parent or legal guardian and—

a. A copy of a birth certificate or adoption record showing proof of relationship as qualifying patient's parent; or

b. A copy of documentation establishing legal guardianship;

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

J. 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 completed the qualifying patient application and will serve as primary caregiver for the qualifying patient; and

K. All applicable fees.

3. Primary Caregiver Identification Cards. All applications for primary caregiver identification cards and renewal of such identification cards shall include at least the following information:

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

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

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

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

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

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

G. Except in the case of a non-emancipated qualifying patient, patient authorization signed by the qualifying patient who the primary caregiver will serve and dated within the previous ninety (90) days, ;

H. If the qualifying patient is a non-emancipated qualifying patient, written consent of the parent or legal guardian who will serve as the qualifying patient's primary caregiver, dated within the previous ninety (90) days, and—

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

(II) A copy of documentation establishing legal guardianship of the primary caregiver over the qualifying patient;

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

J. The signature of the primary caregiver and date the primary caregiver signed; and

K. All applicable fees.

4. Cultivation Cards. All applications for consumer personal cultivation identification cards, qualifying patient cultivation identification cards, and primary caregiver cultivation identification cards and renewal of such cards shall include at least the following information:

A. The applicant's name, date of birth, and Social Security number;

B. The applicant's residence address and mailing address;

C. A statement that the applicant's cultivation will take place in Missouri.

D. The applicant's email address;

E. A legible copy of the applicant's photo identification card issued by a state or federal government entity;

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

G. The address of the location in which the applicant will cultivate marijuana;

H. For consumer personal cultivation authorization, attestation that the cultivation will be located at a private residence in a single, enclosed locked facility that permits access to only the applicant.

I. For qualifying patient or primary caregiver cultivation authorization, attestation that the cultivation will be located in a single, enclosed locked facility that permits access to only the qualifying patient and his or her licensed caregiver(s), as applicable;

J. If the cultivation will be by or on behalf of a qualifying patient—

(I) the qualifying patient's name and patient license number; and

(II) the primary caregiver's name and license number, if applicable.

K. If a qualifying patient seeks to share cultivation space, the name and Patient License Number of up to one (1) other qualifying patient with whom the cultivation space will be shared;

L. If a primary caregiver, requesting authorization to cultivate on behalf of a qualifying patient, seeks to grow plants for multiple patients in the cultivation space, the names and Patient License Numbers of up to six (6) other qualifying patients;

M. If a consumer seeks to share the cultivation space with one other licensed consumer personal cultivator, the name and license number of up to one (1) other licensed consumer personal cultivator with whom the cultivation space will be shared.

N. A statement affirming the applicant's agreement to immediately make available access to the cultivation space 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 applicant's choosing;

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

P. The signature of the applicant and date the applicant signed.

Q. All applicable fees.

(B) Application Processes.

1. The department shall charge a non-refundable fee for marijuana identification card applications.

A. 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 marijuana.

B. Requests for authority to cultivate medical marijuana on behalf of a qualifying patient may be made following approval of a qualifying patient or primary caregiver identification card. A cultivation authorization will only remain valid as long as the qualifying patient or primary caregiver's identification card is still valid. The fee for an application to cultivate on behalf of a qualifying patient will be the same for all applications no matter how much time remains on the validity of the patient or caregiver's identification card at the time of the request for cultivation authorization is submitted. The cultivation authorization must be renewed at the time the patient or caregiver identification card is renewed.

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

2. An application for an 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.

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

A. In the case of qualifying patient and patient cultivation identification cards, if the department fails to deny or fails to approve a complete application within thirty (30) days, a card will be issued that will be valid for three (3) years and will serve all the same functions as would a card issued after application approval.

4. If the name or address of a consumer personal cultivator, qualifying patient, or primary caregiver changes after an identification card is issued, the consumer, qualifying patient, or primary caregiver shall notify the department within fourteen (14) calendar days of the change.

5. Denial. Qualifying patient, primary caregiver, and cultivation identification cards may be denied.

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

B. If an applicant fails to provide a complete application within fourteen (14) calendar days of being notified that an application is incomplete, the 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 an e-mail address provided by the applicant.

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

D. If the applicant fails to pay the requisite application fee(s) associated with an application, the qualifying patient, primary caregiver, or cultivation identification card will be denied.

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

6. Renewal.

A. Qualifying patient identification cards are valid for three (3) years 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 renewal application, which shall include all information required by section (5)(A)2 , including a new physician certification.

B. Primary caregiver identification cards are valid for three (3) years 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 renewal application, which shall include all information required by section (5)(A)3.

C. Qualifying patient cultivation and primary caregiver cultivation identification cards are valid as long as the qualifying patient's or primary caregiver's identification card is still valid, up to three years from its date of issuance.

(I) The cultivation identification card shall be renewable by submitting, prior to expiration by at least thirty (30) days but no sooner than sixty (60) days, a new or renewal patient or caregiver cultivation application.

(II) The renewal cultivation application shall include all information required by section (5)(A)4.

(III) The application will only serve to renew the cultivation identification card if the individual has an approved renewal patient or caregiver application.

D. Consumer cultivation identification cards are valid for one (1) year 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 renewal application, which shall include all information required by section (5)(A)4.

(C) Administrative Penalties.

1. Qualifying patient, primary caregiver, and cultivation identification cards may be sanctioned, which may include administrative penalties up to and including revocation.

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

B. If, after an identification card has been issued, the Department determines that an applicant has failed to provide a complete application including requisite application fees, or has provided false or misleading information in the application, the Department may revoke the identification card.

C. If a card holder is found to be in possession of an amount of marijuana product between the legal limit applicable to that individual and up to twice the legal limit applicable to that individual, he or she shall be subject to department sanctions, including an administrative penalty of up to two hundred dollars and loss of their identification card for up to a year.

D. If a qualifying patient, primary caregiver, or patient cultivation card holder commits a criminal offense related to distribution of marijuana product, whether or not a criminal charge has been filed, any marijuana identification cards currently held by that individual will be revoked.

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

F. If a consumer cultivator, qualifying patient, or primary caregiver uses combustible gases or other dangerous materials to extract resins from marijuana, the individual's identification card may be subject to department sanctions, including an administrative penalty of one thousand dollars and loss of their identification card for up to one year.

2. Any revocation shall be issued by the department in writing to the consumer or 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 revocation and the process for requesting review of the department's decision.

(7) Disposal of Marijuana.

(A) In any case where an individual is no longer entitled to marijuana product under any provision of state law or is deceased, any excess marijuana product in the possession of the consumer, 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 individual ineligible.

(B) Any consumer, qualifying patient, or primary caregiver may choose to forfeit excess or unwanted marijuana product by turning it over to a licensed dispensary for disposal.

(C) Authorization for disposal:

1. Before transporting marijuana product to a dispensary for disposal, any individual not otherwise authorized to possess or transport marijuana product must contact the department, and the department will coordinate delivery arrangements between the individual and a dispensary.

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

(D) The possession and transportation of marijuana product 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.