

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of)	NOTICE OF ADOPTION OF
temporary emergency rules, New)	TEMPORARY EMERGENCY RULES
Rules I through VII, and repeal of)	AND REPEAL
37.107.101, 37.107.103, 37.107.104,)	
37.107.107, and 37.107.109)	
pertaining to the Montana medical)	
marijuana registry)	

TO: All Concerned Persons

1. The Department of Public Health and Human Services (department) is adopting the following emergency rules because Senate Bill 423 (SB423) revises the Montana Medical Marijuana Act (Act). SB423 changes the requirements for individuals to register as cardholders, in addition to changing requirements for caregivers who are now referred to as "providers" or "marijuana-infused products provider (MIPP)". SB423 also reflects changes in the debilitating conditions for which individuals can register under and includes changes to physician certifications for severe and chronic pain diagnosis.

SB423 gives the department emergency rule writing authority to allow for the issuance of registry identification cards in accordance with Sections 1 through 23 of SB423. In order to meet the requirements of Section 33 of SB423 and 2-4-306, MCA, the department must file these rules with the Secretary of State to be effective June 1, 2011. In addition to the authority granted to the department under Section 33 of SB423, the emergency rules are being written to guard the health, safety, and overall welfare of the individuals who participate in this program. If these rules were not implemented under the emergency rule guideline to be effective immediately, there is the possibility that current and future patients with debilitating medical conditions would be without the legal protections currently afforded to them. This situation constitutes an imminent peril to public health, safety, and welfare. Through the standard rulemaking procedure, the department will promulgate permanent rules to fully implement the Act.

The department has prepared a rule package under the authority of Section 33 of SB423 pertaining to the processes for issuance of registry identification cards. The rules address the process for the initial application for registered cardholders and for providers or MIPP. Further, the rules establish application and renewal fees; these fees generate revenue sufficient to offset all expenses of implementing and administering the requirements under the Act.

Last, this emergency rule package repeals the rules promulgated under the Montana Medical Marijuana Act found at Title 50, Chapter 46 in accordance to Section 34 of SB423.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on June 20, 2011, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. SB423 directs the department to begin issuing cards under the new requirements on June 1, 2011. Therefore, the effective date of these emergency rules is June 1, 2011, when these rules are filed with the Secretary of State.

4. The text of the temporary emergency rules provides as follows:

NEW RULE I DEFINITIONS For purposes of the Montana medical marijuana registry:

(1) "Cultivate" means to grow and prepare medical marijuana for use by registered cardholders.

(2) "Manufacture" means the act or process of producing medical marijuana.

(3) "Fee" means the mandatory fees necessary to process a medical marijuana registry card.

AUTH: Ch. 419, Section 33, L. 2011

IMP: Ch. 419, Section 33, L. 2011

NEW RULE II REGISTERED CARDHOLDER APPLICATION PROCESS

(1) An adult applicant, or a parent or guardian of a minor applicant, must have a Montana mailing address and submit an application form provided by the department for consideration to be placed in the state's confidential medical marijuana registry. An application form is available by contacting the Department of Public Health and Human Services, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, Montana, 59620-2953. Application forms are also available on the department's web site at www.dphhs.mt.gov/medicalmarijuana.

(2) Registered cardholder application materials that must be provided include:

(a) State of Montana Medical Marijuana Registered Cardholder Application Form. The information on this form includes but is not limited to:

(i) the applicant's name, address, date of birth, and social security number;

(ii) proof of residency/State of Montana Identification Number—as verified by a copy of either a State of Montana Drivers License or other State of Montana issued identification card;

(iii) a statement that the applicant will be:

(A) cultivating and manufacturing marijuana for the applicant's own use; or

(B) obtaining marijuana from a provider or MIPP.

(iv) a statement that the applicant agrees to not divert to any other person the marijuana that the person cultivates, manufactures, or obtains for the applicant's debilitating medical condition; and

(v) verification that the applicant is not in the custody of or under the supervision of the Department of Corrections or youth court.

(b) a signed, applicable Physician Statement, as defined in Section 2 of SB 423, attesting to the applicant's diagnosis of a debilitating medical condition, diagnosis of chronic pain, or certification for use by a minor. The Physician Statement includes but is not limited to:

(i) physician's name, address, and telephone number; and

(ii) physician's Montana medical license number.

(c) applicable fees as outlined in [New Rule VI].

(3) The department will verify with the Montana Board of Medical Examiners that the attending physician and/or the referral physician are licensed to practice medicine in Montana and the license is in good standing.

(4) The department will either approve or deny a registered cardholder application within 30 days of receiving the application. If approved, the department shall issue a registry identification card within five days of approving the application.

(5) Applicants who designate a provider or a MIPP on the application form will be issued a registry identification card listing no provider or MIPP, unless the named provider or MIPP is already registered with the department and has not reached the limit of registered cardholders they can serve. Named providers or MIPPs who are not already registered with the department will be sent application materials by the department. Upon approval by the department, the registered cardholder will be issued a new identification card, with the name of the registered provider or MIPP. The registered cardholder will be notified if the provider or MIPP applicant is denied, or if the provider or MIPP has reached the limit of registered cardholders they can serve.

(6) The registry identification card expires one year from the date of issuance unless:

(a) a physician has provided a written certification for a shorter period of time; or

(b) a registered cardholder changes provider or MIPP. When a change request form is received by the department, the registered cardholder's current card becomes void. After the change request is processed, the new registry identification card will not be valid until it is received by the registered cardholder.

(7) If the registered cardholder application is denied, the department will send the applicant notice of the denial and inform the applicant of the reasons for denial. Rejection of the application is considered a final department action, subject to judicial review.

AUTH: Ch. 419, Section 33, L. 2011

IMP: Ch. 419, Section 33, L. 2011

NEW RULE III PHYSICIAN STATEMENT (1) Registered cardholder applications must include one of the following three physician-written statements certifying the registered cardholder applicant's debilitating condition:

- (a) Physician Statement for Debilitating Condition;
- (b) Physician Statement for Chronic Pain Diagnosis; or
- (c) Physician Statement for Minors.

AUTH: Ch. 419, Section 33, L. 2011

IMP: Ch. 419, Section 33, L. 2011

NEW RULE IV APPLICATION REQUIREMENTS FOR MINORS (1) In addition to the requirements outlined in Section 4(2) and (3) of SB423 the minor's custodial parent or legal guardian with responsibility for health care decisions must submit to the department a Minor Registry Application Packet. A Minor Registry Application Packet must be requested from the department by contacting the Department of Public Health and Human Services, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. The Minor Registry Application Packet will include:

- (a) materials outlined in [NEW RULE II];
- (b) MIPP provider application;
- (c) legal documentation that the person completing the application is the legal guardian of the minor with responsibility for health care decisions; and
- (d) physician statement for a minor.

AUTH: Ch. 419, Section 33, L. 2011

IMP: Ch. 419, Section 33, L. 2011

NEW RULE V REQUIREMENTS FOR PROVIDERS (1) In order to apply to the department to be a provider or MIPP, a provider or MIPP applicant must first be named by a registered cardholder on a registered cardholder's application, or on a registered cardholder's change request form.

(2) Upon being named on a registered cardholder's application, or a registered cardholder's change request form, a provider or MIPP applicant will be sent a provider application by the department. The packet will include:

- (a) a provider application form; and
 - (b) applicable fee information.
- (3) Providers must reapply annually. Providers do not need to reapply every time they are named by a registered cardholder, unless it has been one year since their last application.

AUTH: Ch. 419, Section 33, L. 2011

IMP: Ch. 419, Section 33, L. 2011

NEW RULE VI FEES (1) The department shall assess the following fees:

- (a) registered cardholder application fee of \$25;
 - (b) provider, MIPP, or both, application fee of \$50; and
 - (c) annual registered cardholder renewal fee of \$10.
- (2) All fees shall be submitted with the application and must be paid by check or money order payable to the Department of Public Health and Human Services.
- (3) Fees are nonrefundable regardless of final application status.

AUTH: Ch. 419, Section 33, L. 2011
IMP: Ch. 419, Section 33, L. 2011

NEW RULE VII REPLACING LOST OR STOLEN REGISTRY IDENTIFICATION CARDS (1) If a registry identification card has been lost or stolen, the department must receive written notification from the registered cardholder, the provider, or the MIPP prior to replacing the registry identification card.

(2) If the registry identification card has been lost or stolen, the department will advise the registered cardholder, the provider, or the MIPP to notify local law enforcement.

(3) Upon notification from the registered cardholder that the card has been lost or stolen, the department will reissue a duplicate to the registered cardholder.

AUTH: Ch. 419, Section 33, L. 2011
IMP: Ch. 419, Section 33, L. 2011

5. The department proposes to repeal the following rules:

37.107.101 DEFINITIONS, is found on page 37-26707 of the Administrative Rules of Montana.

AUTH: 50-46-210, MCA
IMP: 50-46-103, 50-46-210, MCA

37.107.103 REGISTRATION AND APPLICATION PROCESS, is found on page 37-26709 of the Administrative Rules of Montana.

AUTH: 50-46-210, MCA
IMP: 50-46-103, 50-46-210, MCA

37.107.104 INVALIDATION OR REVOCATION OF REGISTRY IDENTIFICATION CARD, is found on page 37-26711 of the Administrative Rules of Montana.

AUTH: 50-46-210, MCA
IMP: 50-46-103, 50-46-210, MCA

37.107.107 FEES, is found on page 37-26713 of the Administrative Rules of Montana.

AUTH: 50-46-210, MCA
IMP: 50-46-103, 50-46-210, MCA

37.107.109 REPLACING LOST OR STOLEN REGISTRY IDENTIFICATION CARDS, is found on page 37-26715 of the Administrative Rules of Montana.

AUTH: 50-46-210, MCA
IMP: 50-46-103, 50-46-210, MCA

It is necessary to repeal the existing rules to prohibit potential conflict between the existing rules and the emergency rules. Upon passage of SB423, 50-46-103, MCA was repealed; thereby eliminating the department's authority to issue registry cards. The department considered not repealing the rules in conjunction with the new emergency rules but determined not taking action on existing rules would be detrimental to public health, safety, or welfare of current medical marijuana cardholders and caregivers.

6. The rationale for the temporary emergency rules is set forth in paragraph 1.
7. A standard rulemaking procedure will be undertaken prior to the expiration of these temporary emergency rules.
8. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to Kenneth Mordan at the address in 2 above.
9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the department.
10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ Kurt Moser
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State June 1, 2011