

**Oregon Administrative Rules  
2002 Compilation**

**DEPARTMENT OF HUMAN SERVICES, HEALTH SERVICES**

**DIVISION 8**

**MEDICAL MARIJUANA**

333-008-0000

Description of the Oregon Medical Marijuana Act

The Oregon Medical Marijuana Act was adopted by voters in the November 3, 1998 general election (Ballot Measure 67). The Act was amended by House Bill 3052, passed during the 1999 legislative session. The text of the combined Act and House Bill 3052 is included in ORS 475.300 - ORS 475.346. The Oregon Department of Human Services was assigned rule-making authority necessary for the implementation and administration of the Oregon Medical Marijuana Act.

The Act intends:

- (1) To allow Oregonians with debilitating medical conditions who may benefit from the medical use of marijuana to receive the benefit of their doctor's professional advice regarding the possible risks and benefits of medical marijuana;
- (2) To allow Oregonians suffering from debilitating medical conditions to use small amounts of marijuana without fear of civil or criminal penalties when their doctors advise that such use may provide a medical benefit to them; and
- (3) To make only those changes to existing Oregon laws that are necessary to protect patients and their doctors from criminal and civil penalties, and are not intended to change current civil and criminal laws governing the use of marijuana for non-medical purposes.

Stat.Auth.: ORS 475.300

333-008-0010

## Definitions

For the purposes of OAR 333-008-0000 through 333-008-0090, the following definitions apply:

(1) “Attending physician” means a physician who has established a physician/patient relationship with the patient, is licensed under ORS chapter 677, and who, with respect to a patient diagnosed with a debilitating medical condition:

- (a) Is primarily responsible for the care and treatment of the patient;
- (b) Is primarily responsible for providing medical specialty care and treatment of the patient as recognized by the American Board of Medical Specialties;
- (c) Has been asked to consult and treat the patient by the patient's primary care physician who is licensed under ORS 677, a Physician Assistant licensed under ORS 677, or a Nurse Practitioner licensed under ORS 678; or
- (d) Has reviewed a patient's medical records at the patient's request, 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.

(2) “Debilitating medical condition” means:

- (a) Cancer, glaucoma, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, agitation due to Alzheimer's disease, 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:
  - (i) Cachexia;

- (ii) Severe pain;
- (iii) Severe nausea;
- (iv) Seizures, including but not limited to seizures caused by epilepsy; or
- (v) 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.

(3) “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.

(4) “Department” means the Oregon Department of Human Services.

(5) “Designated primary caregiver” means an individual eighteen 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. Each patient may have only one designated primary caregiver at any given time.

(6) “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 there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(7) “Mature plant” means the following: A marijuana plant shall be considered mature when male or female flower buds are readily observed on

the plant by unaided visual examination. Until this sexual differentiation has taken place, a marijuana plant will be considered immature.

(8) “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.

(9) “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.

(10) “Production” includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(11) “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.

(12) “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.

(13) “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 475.005 & 677.010 & 475.302 & 475.309(3)

333-008-0020

### Registration Application and Verification

(1) The Department shall create registration application forms and issue them to requesting physicians, applicants, or designated primary caregivers. Except as provided in subsection (3) of this section, the Department shall issue a registry identification card to any person who pays a fee of \$150 (one

hundred and fifty dollars) per initial or renewal application and provides to the Department a completed application.

(a) To supply a completed application, the patient must provide to the Department either: (1) completed copies of all patient application, attending physician declaration, and parent/legal guardian (if applicable) forms; or (2) legible written statements that includes all information required on the Department's forms. A copy of the relevant portions of the patient's medical record may serve as written documentation from the attending physician as long as it states that the patient has been diagnosed with a debilitating medical condition; the medical use of marijuana may mitigate the symptoms or effects of the patient's debilitating medical condition; and contains the physician's signature and the date the medical record was made.

(b) In addition to the information required in ORS 475.309(2), the patient and the designated primary caregiver (if applicable) must provide a copy of current, legible photographic identification (i.e., Oregon driver's license, Oregon identification card, or Voter Registration card plus another current, legible photographic identification). The designated primary caregiver (if applicable) must also supply his or her address and date of birth. The patient must provide the Department with the address of the site where marijuana will be manufactured or produced, and indicate whether the property is under the control of the patient or the designated primary caregiver of the patient.

(2) Optional information may be added to application forms at the discretion of the Department if such information serves the best interest of the patient and assists agencies in the implementation of the Act. Optional information need not be provided by the patient, attending physician or designated primary caregiver, and failure to provide optional information will have no bearing on the approval or denial of a registry identification card.

(3) The Department shall issue a registry identification card to a person who is under eighteen years of age if the person submits the materials required under subsection (1) of this section, and one of the person's parents or legal guardians signs and has notarized a written declaration that states:

(a) The person's attending physician has explained to the person and to one of the person's parents or legal guardians the possible risks and benefits of the medical use of marijuana;

(b) The parent or legal guardian consents to the use of marijuana by the person for medical purposes;

(c) The parent or legal guardian agrees to serve as the person's designated primary caregiver; and

(d) The parent or legal guardian agrees to control the acquisition of marijuana and the dosage and frequency of use by the person.

(4) The Department will verify information on all initial registration applications or written documentation.

(a) The Department will contact each patient and designated primary caregiver (if appropriate) by telephone or by mail to confirm that the information provided is accurate. In cases where the patient is less than eighteen years old, the Department will also contact the parent or legal guardian to verify the information. In cases where proof of identity is uncertain, the Department may require a face-to-face meeting with the patient or designated primary caregiver and/or the production of additional identification materials for verification purposes.

(b) The Department will verify with the Oregon Board of Medical Examiners that the attending physician is licensed to practice in the state and is in good standing. The Department will also contact each attending physician to confirm that the information provided is accurate and valid, and that the physician is an "attending physician" as defined by 333-008-0010(1).

(5) Upon annual renewal of a registration application, the Department will verify all new information, but may use its discretion in determining the need to verify information that has not changed.

Stat. Auth.: ORS 475.309 & 475.312 & 475.316

## Registration Approval and Denial

(1) The Department shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within 30 days of receiving the fully completed application, including payment of the designated fee.

(2) Once the Department has verified the information in a completed application, the Department shall issue a serially numbered registry identification card within five days. The registry identification card shall state:

- (a) The cardholder's name, address and date of birth;
- (b) The date of issuance and expiration date of the registry identification card;
- (c) The name and address of the person's designated primary caregiver, if any; and
- (d) Such other optional information as the Department may specify.

(3) When the person to whom the Department has issued a registry identification card pursuant to this section has specified a designated primary caregiver, the Department shall issue an identification card to the designated primary caregiver. The designated primary caregiver's registry identification card shall contain the information provided in subsection (2) (a), (b), and (d) of this section. The designated primary caregiver's registry identification card shall also contain the patient's name and address.

(4) In accordance with provisions of these rules, the Department has the authority to deny a registration application and to preclude a person from obtaining or using a registry identification card for a period of up to six months.

(5) The Department may deny an application only for the following reasons:

- (a) The applicant did not provide the information required as provided in ORS 475.309; or
  - (b) The Department determines that the information provided was falsified.
- (6) When the Department determines that an applicant does not qualify for a registry identification card, the Department shall send the applicant a denial letter within 30 days of receipt of the application or renewal application. The time periods set forth in subsection (9)(a) and (b) of this rule, that provide an applicant an opportunity to supplement an application that does not meet all of the requirements of ORS 475.309, do not count towards the 30-day time limitation for processing an application. The denial letter will be sent by certified, first-class mail to the address listed on the application form. The letter will state the reason for denial and the date at which another application may be submitted.
- (7) 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 eighteen years of age whose application has been denied, the person's parent or legal guardian shall have standing to contest the Department's action.
- (8) Any person whose application has been denied may not reapply for six months from the date of the denial, unless so authorized by the Department or a court of competent jurisdiction.
- (9) The Department will deny and return to the applicant a copy of the application including the application fee if either of the conditions below applies to the application:
- (a) The applicant did not provide all required information, and following a written request by the Department for the missing information, did not adequately respond within 14 days; or
  - (b) Following an investigation by the Department, the Department has been unable to verify that the individual signing the application as the attending physician meets the definition under OAR 333-008-0010(1). The applicant will be allowed 30 days to submit written documentation and/or a new attending physician's declaration from a physician meeting the requirements

of these rules. After that time, if no adequate response has been received, the application will be denied and returned.

(c) Applicants whose application is denied under (a) or (b) above may re-apply for a registry identification card at any time.

Stat.Auth.: ORS 475.309 & 475.316

333-008-0040

### Annual Renewal and Interim Changes

(1) A person who possesses a registry identification card shall register on an annual basis to maintain active registration status.

(2) Between 30 and 45 calendar days prior to expiration, the Department shall mail notification to the patient's address of the upcoming expiration date.

(a) The patient must submit, prior to the expiration, the following:

(A) Written documentation to reconfirm the person's debilitating medical condition;

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

(C) Confirmation that existing application information has not changed.

(c) If the application is not received by the expiration date, the patient's registry identification card and the designated primary caregiver's card (if applicable) will be deemed expired. The expiration date may be extended, due to personal hardship, at the discretion of the Department.

(d) A patient must notify the Department within 30 working days of any change in his or her name, address, telephone number, attending physician, designated primary caregiver, or grow site.

(e) A person who possesses a registry identification card pursuant to this section and who has been diagnosed by the person's attending physician as no longer having a debilitating medical condition shall return the registry identification card to the Department within seven calendar days of notification of the diagnosis. Any designated primary caregiver shall return his or her registry identification card within the same period of time.

Stat. Auth.: ORS 475.309 & 475.312

333-008-0050

### Confidentiality

(1) The Department shall create and maintain both paper and computer data files of the persons to whom the Department has issued registry identification cards. The data files will include all information collected on the application forms or equivalent information from other written documentation, plus registry identification card, date of issue and expiration date. Except as provided in subsection (2) of this section, the names and identifying information of persons to whom the Department has issued registry identification cards pursuant to ORS 475.309 and their designated primary caregivers, and the names and identifying information of pending applicants for such cards and their designated primary caregivers, shall be confidential and not subject to public disclosure.

(2) Names and other identifying information made confidential under subsection (1) of this section 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; and

(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 that a person is a lawful possessor of a registry identification card, that a person is the designated primary caregiver of such a person, or to supply optional information provided on the application forms, or 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 written request given by the registered patient or designated primary caregiver. Information will be supplied only as necessary to verify that a person is a lawful possessor of a registry identification card, that a person is the designated primary caregiver of such a person, or to supply other specific information provided, as requested in writing by the patient.

Stat. Auth.: ORS 475.331

333-008-0060

### Monitoring and Investigations

(1) The Department may, at any time, contact a patient, designated primary caregiver, or attending physician by telephone, mail or in person to verify the current accuracy of information provided to 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 or an attending physician.

(2) Notwithstanding (1) above, the Department may, when it has reason to believe a violation of the conditions of registration exists, either conduct investigations to collect evidence of violations of the Oregon Medical Marijuana Act, or arrange for this responsibility to be assumed by the proper state or local authorities.

(a) Such violations include, but are not limited to:

(A) A patient fails to notify the Department of any change in the patient's name, address, attending physician, or designated primary caregiver.

(B) A patient or designated primary caregiver fails to return the registry identification card to the Department within seven calendar days of notification of the diagnosis that he or she no longer has a debilitating medical condition.

(C) A patient, designated primary caregiver, or attending physician falsifies information during the registration or registration renewal process.

(D) A patient or designated primary caregiver is convicted 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 OAR 333-008-0010(1) and does not include review of any clinical judgments such as adequacy of diagnosis or propriety of treatment. The Department will send written notification allowing the physician 10 days to provide additional information requested by the Department, a copy of the patient's medical record, or the original medical record for Department review.

(4) In determining whether to examine a patient's medical record pursuant to subsection (3) of this section, 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, and/or number of applicants for whom the physician provided documentation during a specific time period.

(5) In determining whether to examine a patient's medical record pursuant to subsection (3) the Department will notify the patient of the intent to review the medical records and request his or her authorization to conduct the review. A patient's failure to authorize a review of his or her medical records for investigation purposes may result in an incomplete application and the denial of the patient's registry identification card.

(6) At any time, the attending physician may notify the Department that the patient's condition no longer warrants the use of medical marijuana. The Department shall then request that the physician notify the patient of the contact.

(7) The Department shall refer criminal and/or medical practice complaints against patients, designated primary caregivers, or attending physicians to the appropriate state or local authorities.

333-008-0070

## Suspensions

(1) In accordance with provisions of these rules, the Department has the authority to suspend a registry identification card. The Department may preclude a person from using a registry identification card for a period of up to six months, at the discretion of the Department.

(2)(a) When the Department proposes to suspend a registry identification card of a patient or a designated primary caregiver, the Department shall send a notice of proposed suspension by certified, first-class mail to person's address currently listed in the data file.

(b) The notice shall contain the information required under ORS 183.415.

(c) A person who possesses a registry identification card (patient or designated primary caregiver) may contest the proposed suspension of a registry identification card by submitting a request for a hearing in writing. The request for hearing shall be addressed to: State Public Health Officer, Department of Human Services, Health Services, 800 NE Oregon Street, Portland, Oregon 97232, and must be received within 21 days of receipt of notice of the proposed action.

(3)(a) When the Department obtains evidence that establishes a person who possesses a registry identification card has committed egregious violations of the Act, including obtaining a registry identification card by fraud, committing multiple and/or continuing violations, or being convicted of a marijuana-related offense, the Department may immediately deem the registration suspended. The Department will immediately attempt to notify the person who possesses a registry identification card by telephone and will send written notification of the action by certified, first-class mail within one working day.

(b) The notification of immediate suspension will allow the person who possesses a registry identification card an opportunity to immediately request a hearing on the suspension.

(c) The hearing will be conducted as soon as practicable and will be conducted under the provisions of ORS 183.

(4) The Department may, at its discretion, reinstate a registry identification card without re-application. However, if the registry identification card was obtained by fraudulent means, the Department may require the person to re-apply.

Stat. Auth.: ORS 475.316

333-008-0080

#### Permissible Amounts of Medical Marijuana

(1) A person who possesses a registry identification card issued pursuant to OAR 333-008-0030 may engage in, and a designated primary caregiver of such a person may assist in, the medical use of marijuana only as justified to mitigate the symptoms or effects of the person's debilitating medical condition.

(2) A patient and a designated primary caregiver may not individually or collectively possess more than a total amount of one ounce of usable marijuana, if present at a location at which marijuana is not produced, including any residence associated with that location.

(3) A patient and a designated primary caregiver may not individually or collectively possess more than a total of three mature marijuana plants, four immature marijuana plants, and one ounce of usable marijuana per each mature plant, if present at a location at which marijuana is produced, including any residence associated with that location.

(4) If any individuals described in subsection (1) above possess, deliver, or produce marijuana in excess of the amounts allowed in subsections (2) and (3) of this section, such individuals are not excepted from the criminal laws of the state but may establish an affirmative defense to such charges, by a preponderance of the evidence, that the greater amount is medically necessary as determined by the person's attending physician to mitigate the symptoms or effects of the person's debilitating medical condition.

Stat. Auth.: ORS 475.306 & 475.319(1)(c)

333-008-0090

### Addition of Qualifying Diseases or Medical Conditions

- (1) The Department shall accept a written petition from any person requesting that a particular disease or condition be included among the diseases and conditions that qualify as debilitating medical conditions under section 333-008-0010(2) of these rules and be added to the list.
- (2) The Department shall, within 14 days of receipt of the petition, send a letter by first-class mail requesting the petitioner to provide if possible:
  - (a) An explanation for why the condition should be included;
  - (b) Any literature supporting the addition of the condition to the list;
  - (c) Letters of support from physicians or other licensed health care professionals knowledgeable about the condition; and,
  - (d) Suggestions for potential expert panel members.
- (3) The State Public Health Officer or designee may make a final determination that a petition is frivolous and deny the petition without further review.
- (4) If the petition is not denied under (3) above, the Department shall appoint an expert panel of five to seven individuals to review a petition. The members of the panel shall include the State Public Health Officer or designee, other physicians licensed under ORS 677, at least one patient, at least one patient advocate, and other professionals knowledgeable about the condition being considered.
  - (a) If the petitioner so desires, she or he shall be given the opportunity to address the panel in person or by telephone.

- (b) If the petitioner so desires, his or her confidentiality shall be strictly maintained.
- (5) The Department shall submit the written petition to the expert panel, which shall make recommendations to the Department regarding approval or denial.
- (a) The members of the panel may examine medical research pertaining to the petitioned condition, and may gather information (in person or in writing) from other parties knowledgeable about the condition being considered.
- (b) The panel members will submit individual recommendations to the State Public Health Officer, and the meetings of the panel will not be considered to be public hearings.
- (6) The Department will make a final determination on a petition within 180 days of receipt of the petition.
- (7) Denial of a petition shall be considered a final Department action subject to judicial review.
- (8) In cases where the condition in a person's petition is the same as, or is, as determined by the Department's State Public Health Officer, substantially equivalent to a condition that has already been denied in a previous determination, the Department may similarly deny the new petition unless new scientific research supporting the request is brought forward.

Stat.Auth.: ORS 475.334