

Oregon Administrative Rules 2005 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, **and amended again by SB 1085, passed during the 2005 legislative session (Oregon Laws 2005, Chapter 882). The statutes governing the Oregon Medical Marijuana Program are** *[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 475.338
Stats. Implemented : ORS 475.300 – 475.346

333-008-0010

Definitions

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

(1) “Act” means the Oregon Medical Marijuana Act.

(2) “Applicant” means a person applying for an Oregon Medical Marijuana registry identification card on a form prescribed by the Department.

*[1](3) "Attending physician" means a **Doctor of Medicine (MD) or Doctor of Osteopathy (DO)**, [physician who has established a physician/patient relationship with the patient, is] licensed under ORS chapter 677, **who has primary responsibility for the care and treatment of a person** [, 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 Chapter 677, a Physician Assistant licensed under ORS Chapter 677, or a Nurse Practitioner licensed under ORS Chapter 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](4) "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](5) "Delivery" means:

- (a) 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; **and**
- (b) **The sharing of useable marijuana, seeds, or live plants with any other registry identification cardholder as long as the amount being transferred is within the legal limits established in ORS 475.300 to 475.346, and the reimbursement for the cost of supplies and utilities associated with the production of marijuana from a patient to a designated primary caregiver or person responsible for a marijuana grow site does not constitute delivery for consideration.**

[4](6) "Department" means the Oregon Department of Human Services.

[5](7) "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.

(8) "Grow site registration card" means the card issued to the patient and displayed at the grow site.

[6](9) "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](10) "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]* **a marijuana plant that does not fall within the definition of a seedling or a start.**

[8](11) "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] "New application" means an application defined under OAR 333-008-0020 signed, dated, and submitted by:

(a) A new applicant to qualify for an initial registry identification card;

(b) A patient after the patient's previous application has been denied or after the patient's registry identification card has been suspended; or

(c) A patient after the expiration date of the patient's previously issued registry identification card.]

[10](12) "Oregon Health Plan (OHP)" means the medical assistance program administered by the Department under ORS chapter 414.

(13) "Oregon Medical Marijuana Program identity card" means a wallet-sized card issued by the Department in addition to the official registration card that designates a person as a patient, primary caregiver, or person responsible for a marijuana grow site.

[11](14) "Parent or legal guardian" means the custodial parent or legal guardian with responsibility for health care decisions for the person under [18 years] **eighteen (18) years** of age.

(15) "Patient" has the same meaning as "registry identification cardholder".

(16) "Person responsible for a marijuana grow site" means a person who has been selected by a patient to produce medical marijuana for

the patient, and who has been registered by the Department for this purpose.

(17) “Primary responsibility” for the purposes of being an attending physician means:

(a) that the physician:

(A) provides primary health care to the patient; or

(B) provides medical specialty care and treatment to the patient as recognized by the American Board of Medical Specialties; or

(C) is a consultant who has been asked to examine and treat the patient by the patient’s primary care physician licensed under ORS Chapter 677, the patient’s Physician Assistant licensed under ORS Chapter 677, or the patient’s Nurse Practitioner licensed under ORS Chapter 678; and,

(b) has reviewed a patient’s medical records at the patient’s request and has conducted a thorough physical examination of the patient, has provided or planned follow-up care, and has documented these activities in the patient’s medical record.

[(12)](18) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

[(13)](19) "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.

(20) “Registry identification cardholder” means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person’s debilitating medical condition, and who has been issued a patient registry identification card by the Department.

[(14) "Renewal application" means an application as defined under OAR 333-008-0040, signed, dated, and submitted by a patient within 3 months prior to the expiration date of the patient's current registry identification card and no later than the expiration date of that current card. Applications received after the expiration date of the patient's current registry identification card must meet all criteria for a "new application" under OAR 333-008-0010(9).]

(21) “Seedling or start” means a marijuana plant that has no flowers and is less than twelve (12) inches in height and less than twelve (12) inches in diameter. A seedling or start must meet all three (3) criteria set forth above or it will be considered a mature plant.

~~[(15)]~~**(22)** "Supplemental Security Income (SSI)" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources.

~~[(16)]~~**(23)** "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.

~~[(17)]~~**(24)** "Written documentation" means a statement signed and dated by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records, maintained in accordance with standard medical record practices.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - ORS 475.346

333-008-0020

New Registration Application and Verification

(1) A person may apply for a registry identification card on a form prescribed by the Department. In order to be considered complete, an applicant must submit the following:

(a) An application form, signed and dated by the applicant.

(b) Copies of legible photographic identification from the applicant, the designated primary caregiver, and person responsible for a marijuana grow site, as applicable. The following are acceptable forms of identification:

(A) Oregon Driver’s License;

(B) Oregon Identification Card with photo;

(C) Voter Registration Card with photo; or

(D) If a caregiver, a military photo identification card;

(c) Documentation, which may consist of relevant portions of the applicant’s medical record, signed by the applicant’s attending physician within ninety (90) days of the date of receipt by the

Department, which describes the applicant's debilitating medical condition and states that the use of marijuana may mitigate the symptoms or effects of the applicant's debilitating medical condition;

(d) A completed "Declaration of Person Responsible for Minor" form for any person under eighteen (18) years of age, signed and dated by the person responsible for the minor; and

(e) An application fee in the form of cash, bank check, or personal check. The Department will place a ten (10) day hold on the issuance of a registry identification card for an application accompanied by a personal check. An applicant will be given fourteen (14) days from Department receipt of non-sufficient funds (NSF) or stop payment notification to submit payment in the form of a bank check or cash.

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

(3) For applications received on or after December 1, 2005, the fee for a new application is \$100.00 (one hundred dollars), unless an applicant can demonstrate current eligibility in the Oregon Health Plan (OHP), or receipt of current Supplemental Security Income (SSI) benefits, in which case the application fee is \$20.00 (twenty dollars).

(a) To qualify for a reduced fee on the basis of current eligibility in the OHP, an applicant must provide a copy of the applicant's current eligibility statement.

(b) To qualify for a reduced fee on the basis of receipt of current SSI benefits, an applicant must provide a copy of a current monthly SSI benefit card, showing dates of coverage.

(4) The Department will verify information on each application and accompanying documentation, including:

(a) Contacting each applicant by telephone or by mail. If proof of identity is uncertain the Department may require a face-to-face meeting and may require the production of additional identification materials;

(b) Contacting a minor's parent or legal guardian;

(c) Contacting the Oregon Board of Medical Examiners to verify that an attending physician is licensed to practice in the state and is in good standing;

(d) Contacting the attending physician to request further documentation to support a finding that the physician is the applicant's attending physician. The Department will notify the applicant of the intent to review the medical records and request the applicant's authorization to conduct the review. Failure to authorize a review of medical records may result in the application being declared incomplete, or denial of an application;

(e) Contacting the OHP or Social Security Administration (SSA) to verify eligibility for benefits; and

(f) Running a criminal background check to determine whether an applicant, a designated primary caregiver, or a person responsible for a marijuana grow site has been convicted of a violation described in Oregon Laws 2005, Chapter 882, Section 8(6).

(5) The Department will notify an applicant who submits a reduced fee for which the patient is not eligible and will give the patient fourteen (14) days from the date of notice to pay the correct fee, submit a current, valid eligibility determination statement for the OHP, or to submit a copy of a receipt for current SSI monthly benefit, as applicable. The Department will not suspend processing of the applicant's application pending receipt of an eligibility statement. The Department will not grant an application fee refund for any eligibility determination made on or after the date of issuance of the applicant's registry identification card.

(6) If an applicant does not provide all the information required and the application is considered incomplete, the Department shall notify the applicant of the information that is missing, and shall give the applicant fourteen (14) days to submit the missing information.

(7) If the Department is unable to verify that the applicant's attending physician meets the definition under OAR 333-008-0010(1) the applicant will be allowed thirty (30) days to submit written documentation and/or a new attending physician's declaration from a physician meeting the requirements of these rules. Failure to submit the required attending physician documentation is grounds for denial under ORS 475.309 and OAR 333-008-0030.

(8) If an applicant does not provide the information necessary to declare an application complete, or to complete the verification process within the timelines established in subsection (6) of this rule, the application will be returned to the applicant as incomplete, along with the application fee. An applicant whose application is returned as incomplete may reapply at any time.

(9) The application forms referenced in this rule may be obtained by contacting the: Oregon Medical Marijuana Program (OMMP) at PO Box 14450, Portland, OR 97293-0450 or calling 971-673-1226.

[(1) The Department shall create registration application forms and issue them to requesting physicians, applicants, or designated primary caregivers.

(2) Except as provided in subsection (4) of this section, the Department shall issue a registry identification card to any person who pays a new or renewal application fee as set forth in subsections (2)(a) and (2)(b) of this section and who provides to the Department a completed application as set forth in subsections (2)(c) and (2)(d) of this section.

(a) For the period January 1, 2005 through December 31, 2006, the following fees will be charged: \$55 (fifty-five dollars) for a new application; \$55 (fifty-five dollars) for a renewal application; or, \$20 (twenty dollars) for either a new or renewal application by any patient who can demonstrate current eligibility in the Oregon Health Plan or who can demonstrate being a recipient of current Supplemental Security Income monthly benefits.

(A) Eligibility in the Oregon Health Plan is demonstrated by providing a current, valid eligibility determination statement from the Department's Office of Medical Assistance Programs. To qualify for a reduced fee, a copy of the patient's current eligibility statement must be provided at the time the patient submits an application. The Department will verify the patient's Oregon Health Plan eligibility with the Office of Medical Assistance Programs.

(B) Eligibility for Supplemental Security Income is demonstrated by providing a copy of a receipt of a current monthly benefit. To qualify for a reduced fee, a copy of a receipt of a current Supplemental Security Income monthly benefit must be provided at the time the patient submits an application. The Department will verify the patient's current Supplemental Security Income receipt of monthly benefits through the Department or with the Social Security Administration.

(b) The Department will notify any patient who submits a reduced fee for which the patient is not eligible and will give the patient 14 days from the date of notice to pay the correct fee or to submit a current, valid eligibility determination statement for the Oregon Health Plan, or to submit a copy of a receipt for current Supplemental Security Income monthly benefit, as applicable. The Department will not suspend processing of the patient's application pending receipt of an eligibility statement. The Department will not grant application fee refunds for any eligibility determination made on or after the issue date of the patient's registry identification card.

(c) To supply a completed application, the patient must provide to the Department either:

(A) completed copies of all patient application, attending physician declaration, and parent/legal guardian (if applicable) forms; or

(B) legible written statements that include 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.

(d) 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.

(3) 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.

(4) 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 (2) 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.*
- (5) 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).*
- (6) 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 475.338

Stats. Implemented: ORS 475.300 - 475.346

333-008-0025

Marijuana Grow Site Registration

(1) A patient must register a marijuana grow site with the Department. The Department will register only one grow site per patient, and will only register grow sites in Oregon.

(2) To register a marijuana grow site, an applicant or patient must submit to the Department an application, prescribed by the Department, that includes:

(a) The name of the person responsible for the marijuana grow site;

- (b) The date of birth of the person responsible for the marijuana grow site;**
- (c) The physical address of the marijuana grow site where marijuana is to be produced;**
- (d) The mailing address of the person responsible for the marijuana grow site;**
- (e) The registry identification card number of the registry identification cardholder, if known, for whom the marijuana is being produced; and**
- (f) Any other information the Department deems necessary.**

(3) The Department will conduct a criminal background check on the person identified as being responsible for the grow site.

(a) If the patient is identified as the person responsible for the grow site and the patient was convicted on or after January 1, 2006 of violating ORS 475.992 (1)(a) or (b), the patient will be informed by registered mail that he or she is prohibited from being the person responsible for the grow site for a period of five years from the date of conviction, and that the patient must identify another person responsible for the grow site.

(b) If a designated primary caregiver or a third party is identified as the person responsible for the grow site and that person was convicted on or after January 1, 2006 of violating ORS 475.992 (1)(a) or (b), the patient will be informed by registered mail that the identified person is prohibited from being a person responsible for a grow site for a period of five years from the date of conviction, and that the patient must identify another person responsible for the grow site.

(c) If any person identified as the person responsible for a grow site was convicted on or after January 1, 2006 of multiple violations of ORS 475.992(1)(a) or (b), the patient will be informed by registered mail that the identified person is permanently prohibited from being a person responsible for a grow site, and the patient must identify another person responsible for the grow site.

(4) The Department will issue a marijuana grow site registration card to a patient who has met the requirements of subsection (2) of this section, unless the person responsible for a grow site is disqualified under subsection (3) of this section.

(5) A person responsible for a marijuana grow site must display a marijuana grow site registration card for each patient for which marijuana is being produced, at the marijuana grow site at all times.

(6) All usable marijuana, plants, seedlings and seeds, associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site, are the property of the registry identification cardholder and must be provided to the registry identification cardholder upon request.

(7) All marijuana produced for a patient must be provided to the patient or primary designated caregiver when the person responsible for a marijuana grow site ceases producing marijuana for the patient.

(8) A person responsible for a marijuana grow site must return the grow site registration card to the patient to whom the card was issued when requested to do so by the patient or when the person responsible for a marijuana grow site ceases producing marijuana for the patient.

(9) A patient or the designated primary caregiver of the patient may reimburse the person responsible for a marijuana grow site for the costs of supplies and utilities associated with production of marijuana for the registry identification cardholder. No other costs associated with the production of marijuana for the patient, including the cost of labor, may be reimbursed.

(10) If marijuana used by a patient is to be produced at a grow site where the patient or designated caregiver is not present, the person responsible for the grow site may only produce marijuana for up to four (4) patients or designated primary caregivers per year.

(a) If a person responsible for a grow site produces marijuana for four (4) patients or designated primary caregivers, as permitted by law, that person may not produce marijuana for any additional patients or designated primary caregivers until a year from the Department's receipt of notice by a patient that the person is no longer the person responsible for the grow site;

(b) A patient or designated caregiver will be considered to be "present" at a grow site if the patient or designated caregiver has their primary residence at the grow site. For purposes of this section, a "primary

residence” is the physical location where a person lives, during any 12-month period, more than he or she lives elsewhere during that period.

Stat.Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

333-008-0030

Registration Approval and Denial

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

(2) **If the Department approves the application, the Department** *[Once the Department has verified the information in a completed application the Department]* shall issue a serially numbered registry identification card **to the patient** within **five (5) business days**. The registry identification card shall **include the following information** *[state]:*

(a) The **patient’s** *[cardholder’s]* name, address and date of birth (**DOB**);

(b) The **effective date**, date of issuance and expiration date of the registry identification card;

(c) The **designated primary caregiver’s** name, *[and]* address, **and date of birth (DOB)**, **if applicable** *[of the person’s designated primary caregiver, if any];*

(d) **The name, address, and date of birth (DOB) of the person responsible for a marijuana grow site, if applicable;**

(e) **The location where the marijuana is produced; and**

(f) Such other optional information as the Department may specify.

(3) When the **patient** *[person]*, to whom the Department has issued a registry identification card, pursuant to this section, has specified a designated primary caregiver, **or a person responsible for a marijuana grow site**, the Department shall issue an *[identification]* **Oregon Medical Marijuana Program identity card** for the designated primary caregiver **and the person responsible for the grow site**. **The Department shall also issue a grow site registration card to the patient.** *[The designated primary caregiver’s registry identification]* **All cards shall contain the information specified** *[provided]* in subsection (2) *[(a), (b), and (d)]* of this **rule** *[section]*, **as appropriate.** *[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 **if** *[only for the following reasons]*:

(a) The applicant did not provide the information required as provided in ORS 475.309 **to establish the applicant's debilitating medical condition and to document the applicant's consultation with an attending physician regarding the medical use of marijuana in connection with such condition;** or

(b) The Department determines that the information provided was falsified.

~~[(6)]~~**(5)** **If** *[When]* the Department **denies an application** *[determines that an applicant does not qualify for a registry identification card]*, the Department shall send the applicant a denial letter within **thirty** (30) days of receipt of the **complete** application *[or renewal application]*. The time period~~[s]~~ set forth in **OAR 333-008-0020** *[subsection (9)(a) and (b) of this rule,]* that provides an applicant an opportunity to supplement **an incomplete application** *[that does not meet all of the requirements of ORS 475.309, do]* **does** not count towards the **thirty** (30) ~~[-]~~ day **deadline** *[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(s) for denial and **when the applicant may reapply**. *[the date at which another application may be submitted]*.

~~[(7)]~~**(6)** Denial of a registry identification card shall be considered a final Department action, subject to judicial review. Only the person whose application has been denied, or, in the case of a person under the age of eighteen (**18**) 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)]~~ **(7)** Any person whose application has been denied may not reapply for six (**6**) 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)]

[(c) An applicant whose application is denied under (a) or (b) above may reapply for a registry identification card at any time.]

Stat.Auth.: ORS 475.338

Stats Implemented: ORS 475.300 - 475.346

333-008-0040

Annual Renewal and Interim Changes

(1) A **patient** *[person who possesses a registry identification card]* shall register on an annual basis to maintain active registration status **by submitting a renewal application prescribed by the Department.**

(2) Between *[30 and 45]* **sixty (60) to ninety (90)** calendar days prior to expiration, the Department shall mail *[notification]* to the patient's address **of record, a letter notifying the patient** of the upcoming expiration date, **along with a renewal application.**

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

[(A)](a) Written documentation, **signed by the patient's attending physician, reconfirming** *[to reconfirm]* the **patient's** *[person's]* debilitating medical condition;

[(B)](b) A copy of the patient's current, valid Oregon Health Plan (OHP) eligibility determination statement or a copy of a **current monthly Supplemental Security Income (SSI) benefit card, showing dates of coverage** *[receipt of the patient's current Supplemental Security Income monthly benefit]*, if applicable;

[(C)](c) The name of the **patient's** *[person's]* designated primary caregiver, if a primary caregiver has been designated for the upcoming year; *[and]*

(d) The name of the person responsible for the marijuana grow site; and

[(D)] (e) Confirmation that existing application information has not changed.

[(b)] (4) If the **renewal information** [application] is not received by the expiration date **on the registry identification card**, the patient's registry identification card and **all other associated Oregon Medical Marijuana Program cards, if any** [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. **If a person fails to apply for renewal within the time period specified in this rule, that person must submit a new application.**

[(c)](5) A patient must notify the Department within **thirty (30) calendar** [30 working] days of any change in **the patient's** [his or her] name, address, telephone number, attending physician, designated primary caregiver, **person responsible for a marijuana grow site** or grow site **address.**

[(d)](6) A **patient** [person who possesses a registry identification card pursuant to this section and] who has been diagnosed by **an** [the person's] attending physician as no longer having a debilitating medical condition shall return the registry identification card to the Department within seven (7) calendar days of notification of the diagnosis. A [Any] designated primary caregiver **and person responsible for a marijuana grow site** shall return **their** [his/or her] **Oregon Medical Marijuana Program** registry [identification] card(s) within the same period of time.

(7) For renewal applications received on or after December 1, 2005, the renewal fee is \$100.00 (one hundred dollars), unless an applicant can demonstrate current eligibility in the Oregon Health Plan (OHP) or receipt of current Supplemental Security Income (SSI) benefits, in which case the fee is \$20 as set forth in OAR 333-008-0020(3).

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

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

333-008-0050

Confidentiality

(1) The Department shall create and maintain both paper and computer data files of **patients, designated caregivers, persons responsible for a grow site, and grow site addresses** [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 **a copy of Oregon Medical Marijuana Program** registry *[identification]* card(s), **effective date**, date of issue, and expiration date. Except as provided in subsection (2) of this **rule** *[section]*, the names and identifying information of **registry identification cardholders** *[persons to whom the Department has issued registry identification cards pursuant to ORS 475.309, and their designated primary caregivers,]* and the name[s] and identifying information of **a pending applicant[s]** for *[such]* **a card[s]**, *[and their]* **a designated primary caregiver[s]**, **and a person responsible for a grow site, and a marijuana grow site location**, shall be confidential and not subject to public disclosure.

(2) Names and other identifying information made confidential under subsection (1) of this **rule** *[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:

(A) *[i]***Is or was** a lawful possessor of a registry identification card; **or**

(B) **That the address is or was a documented grow site**; *[that a person is the designated primary caregiver of such a person, or]* **or**

(C) *[t]***To** supply optional information provided on the application forms;[,] **or**

(D) *[a]***As** provided in OAR 333-008-0060(2)[.];

(c) Other persons (such as, but not limited to, employers, lawyers, family members, other government officials) upon **receipt of a properly executed release of information signed** *[written request given]* by the *[registered]* patient, **the patient's parent or legal guardian**, *[or]* designated primary caregiver **or person responsible for a marijuana grow site**. *[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.]* **The release of information must specify what information the Department is authorized to release and to whom.**

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 – 475.346

333-008-0060

Monitoring and Investigations

(1) The Department may, at any time, contact a **registry identification cardholder** *[patient, designated primary caregiver,]* or a **patient's** attending physician by telephone, mail or in person to verify the current accuracy of information **included in** *[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 **to search the property of** an attending physician.

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

(a) **Failure by a** *[A]* patient *[fails]* to notify the Department of any change in the patient's name, address, attending physician, *[or]* designated primary caregiver, **person responsible for a marijuana grow site, or grow site location.**

(b) **Failure by a** *[A]* patient *[or]* designated primary caregiver, **or person responsible for a marijuana grow site** *[fails]* to return the **Oregon Medical Marijuana Program identity and official registration** *[registry identification]* card(s) to the Department within seven (7) calendar days of **the patient's** notification of the diagnosis that **the patient** *[he or she]* no longer has a debilitating medical condition.

(c) **Failure by a designated primary caregiver or person responsible for a marijuana grow site to return the Oregon Medical Marijuana Program identity and official registration card(s) to the Department within seven (7) calendar days of notification by the patient that the person's designation as primary caregiver or person responsible for a marijuana grow site has been terminated.**

[(C)] (d) **Submission of false information by a** *[A]* patient, designated primary caregiver, **person responsible for a marijuana grow site,** or attending physician *[falsifies information]* during the registration or registration renewal process.

[(D)](e) **Conviction of a** *[A]* patient, *[or]* designated primary caregiver, **or person responsible for a marijuana grow site** *[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 **attending physician in 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 **ten (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 **rule [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]* **The** Department will notify the patient of the intent to review the medical records **pursuant to subsection (3) of this rule** and request **the patient's [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]* **suspension or expiration 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, **and the patient must return the registry identification card.**

(7) The Department shall refer criminal *[and/or medical practice]* complaints against **registry identification cardholders, designated primary caregivers, or persons responsible for marijuana grow sites; or medical practice complaints against [patients, designated primary**

caregivers, or] attending physicians to the appropriate state or local authorities.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 – 475.346

333-008-0070

Suspensions

(1)(a) In accordance with provisions of these rules, the Department **may, in its discretion** *[has the authority to]* suspend a registry identification card, **and** *[. 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 Division.]* **when the Department obtains evidence that establishes a registry identification cardholder:**

(A) **Has committed egregious violations of the Act, including obtaining a registry identification card by fraud;**

(B) **Has committed multiple and/or continuing violations of the Act; or**

(C) **Has been convicted of a marijuana-related offense.**

(b) **The Department will send written notification of the action by certified, first-class mail. The notice shall contain the information required under ORS 183.415.**

(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 **patient** [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, **Public Health**, Department of Human Services, *[Health Services]* 800 NE Oregon Street, Portland, Oregon 97232-**2162**, and must be received within **twenty-one (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. The hearing will be conducted as soon as practicable under the provisions of ORS 183.

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

[(4)](3) 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 475.338

Stats. Implemented: ORS 475.300 – 475.346

333-008-0080

Permissible Amounts of Medical Marijuana

(1) If the marijuana used by a patient is produced at a location where the patient or designated primary caregiver is present, a patient or the patient’s designated primary caregiver may possess up to six (6) mature marijuana plants and twenty-four (24) ounces of usable marijuana. A patient and the patient’s designated primary caregiver may possess a combined total of up to eighteen (18) marijuana seedlings or starts.

(2) Notwithstanding subsections (1) and (2) of this rule, if a patient has been convicted of violating ORS 475.992(1)(a) or (b), the patient or the designated primary caregiver may possess one (1) ounce of usable marijuana at any given time for a period of five (5) years from the date of the conviction.

(3) If the marijuana used by a patient is produced at a marijuana grow site, where the patient or designated primary caregiver is not present, the person responsible for the marijuana grow site:

(a) May produce marijuana for and provide marijuana to a patient or that person’s designated primary caregiver as authorized under ORS 475.300 to 475.346 and these rules;

(b) May possess up to six (6) mature plants and up to twenty-four (24) ounces of usable marijuana for each patient for which marijuana is being produced;

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

(d) May produce marijuana for up to four (4) patients per year, but may never grow for more than four (4) patients at any given time;

(4) Except as provided in subsections (1), (2), (3) and (4) of this rule, a patient, the designated primary caregiver for a patient and the person responsible for a marijuana grow site producing marijuana for the patient may possess a combined total of up to six (6) mature plants and twenty-four (24) ounces of usable marijuana for that registry identification cardholder.

(5) A patient, the designated primary caregiver for a patient and/or a person responsible for a marijuana grow site must possess the Oregon Medical Marijuana Program identity card when using or transporting marijuana in a location other than the residence of the cardholder.

[(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 that patient's 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 475.338

Stats. Implemented: ORS 475.300 – 475.346

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 **fourteen** (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 **(5)** to seven **(7)** 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 **one hundred eighty (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 475.338

Stats. Implemented: ORS 475.300 – 475.346

333-008-0110

Advisory Committee on Medical Marijuana

(1) The Advisory Committee on Medical Marijuana (ACMM) shall advise the director of the Department on the administrative aspects of the Oregon Medical Marijuana Program, review current and proposed administrative rules of the program, and provide annual input on the fee structure of the program.

(2) The Department will provide staff support to the ACCM by assisting with the scheduling of meetings, recording of minutes, and dissemination of meeting-related materials.

(3) The ACMM will adopt a Charter and By-Laws that details:

(a) How meetings will be conducted;

(b) The election of presiding officers; and

(c) The scheduling of at least four (4) public meetings per year.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

333-008-0120

System to Allow Verification of Data at All Times

(1) The OMMP will establish an interactive method to allow authorized employees of state and local law enforcement agencies to use the Oregon State Police Law Enforcement Data System (LEDS) to query an OMMP data file in order to verify at any time whether a particular patient, designated primary caregiver, person responsible for a marijuana grow site, or grow site location is registered with OMMP.

(2) LEDS access will only allow a yes or no answer to the query and the information obtained may not be used for any other purpose other than verification.

(3) The OMMP may allow the release of reports related to verification if it is without identifying data.

(4) The OMMP will have staff available by phone to verify law enforcement agency employee questions during regular business hours in case the electronic verification system is down, and in the event the system is expected to be down for more than two (2) business days, the OMMP will ensure program staff are available by phone for verification purposes 11:00 AM to 11:00 PM every day.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 – 475.346