

DEPARTMENT OF PUBLIC SAFETY

Adoption of Chapter 23-202  
Hawaii Administrative Rules

December 14, 2000

SUMMARY

Chapter 23-202, Hawaii Administrative Rules,  
entitled "Medical Use of Marijuana" is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 23

DEPARTMENT OF PUBLIC SAFETY

SUBTITLE 3

LAW ENFORCEMENT

CHAPTER 202

MEDICAL USE OF MARIJUANA

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§23-202-1 Purpose. The purpose of this chapter is to set forth rules for the medical use, the registration of qualifying patients, and procedures for the implementation of Act 228, SLH 2000, Medical Use of Marijuana as specified in chapter 329, part IX, Hawaii Revised Statutes. The intent is not to legalize

marijuana for other than medical purposes, nor to diminish public policy and laws against illegal drug use. [Eff. **DEC 28 2000**] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §353C-2, SLH 2000, Act 228)

§23-202-2 Definitions. The following definitions shall apply in the interpretation and enforcement of this chapter:

"Adequate supply" means an amount of marijuana jointly possessed between the qualifying patient and the primary caregiver that is not more than is reasonably necessary to assure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition; provided that the "adequate supply" jointly possessed by the qualifying patient and the primary caregiver not exceed three mature marijuana plants, four immature marijuana plants, and one ounce of usable marijuana per each mature plant.

"Administrator" means the administrator of the narcotics enforcement division, department of public safety.

"Debilitating medical condition" means:

- (1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;
- (2) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:
  - (A) Cachexia or wasting syndrome;
  - (B) Severe pain;
  - (C) Severe nausea;
  - (D) Seizures, including those characteristic of epilepsy; or
  - (E) Severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohn's disease;or
- (3) Any other medical condition approved by the department of health pursuant to administrative rules in response to a request

from a physician or potentially qualifying patient.

"Department" means the department of public safety.

"Immature marijuana plant" means a marijuana plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided visual examination.

"Marijuana" shall have the same meaning as "marijuana" and "marijuana concentrate" as provided in sections 329-1 and 712-1240, Hawaii Revised Statutes.

"Mature plant" means a marijuana plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination.

"Medical use" means the acquisition, possession, cultivation, use, distribution, or transportation of marijuana or paraphernalia relating to the administration of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition. For the purposes of "medical use", the term distribution is limited to the transfer of marijuana and paraphernalia from the primary caregiver to the qualifying patient.

"Patient identification number" means with respect to the qualifying patient and primary caregiver:

- (1) The unique, valid Hawaii driver's license number of the qualifying patient, primary caregiver, Hawaii State identification number, or passport number;
- (2) If the qualifying patient or primary caregiver does not have a Hawaii driver's license or Hawaii State Identification number, the "patient identification number" means the patient's social security *number*; and
- (3) If the qualifying patient is less than eighteen years old and has no Hawaii driver's license, Hawaii State identification number, passport number or social security number, then the patient identification number means the unique number contained on the valid driver's license of the patient's parent or legal guardian.

"Physician" means a person who is licensed under chapters 453 and 460, Hawaii Revised Statutes, and is licensed with authority to prescribe drugs and is registered under section 329-32, Hawaii Revised Statutes. "Physician" does not include physician's assistant as described in section 453-5.3, Hawaii Revised Statutes.

"Primary caregiver" means a person, other than the qualifying patient and the qualifying patient's physician, who is eighteen years of age or older, and who has agreed to undertake responsibility for managing the well-being of the qualifying patient with respect to the medical use of marijuana. In the case of a minor or an adult lacking legal capacity, the primary caregiver shall be a parent, guardian, or person having legal custody.

"Registry identification certificate" means a document issued by the department that identifies a patient authorized to engage in the medical use of marijuana, the patient's physician, the patient's designated primary caregiver, if any, and the location of the authorized marijuana plants.

"Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

"Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture of preparations thereof, that is appropriate for the medical use of marijuana. "Usable marijuana" does not include the seeds, stalks, and roots of the plant.

"Written certification" means the qualifying patient's medical records or a statement signed by a qualifying patient's physician, stating that in the physician's professional opinion, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient. "Written certifications" are valid for only one year from the time of signing.

[Eff **DEC 28 2000** ] (Auth: HRS §§329-31, 353C-2)  
(Imp: HRS §§329-121, 353C-2)

§23-202-3 Medical use of marijuana and conditions of use. (a) Notwithstanding any law to the contrary, the medical use of marijuana by a qualifying patient shall be permitted only if:

- (1) The qualifying patient has been diagnosed by a physician as having a debilitating medical condition;
- (2) The qualifying patient's physician has certified in writing that, in the physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the particular qualifying patient; and
- (3) The amount of marijuana does not exceed an adequate supply.

(b) Subsection (a) shall not apply to a qualifying patient under the age of eighteen years, unless:

- (1) The qualifying patient's physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian, or person having legal custody of the qualifying patient; and
- (2) A parent, guardian, or person having legal custody consents in writing to:
  - (A) Allow the qualifying patient's medical use of marijuana;
  - (B) Serve as the qualifying patient's primary caregiver; and
  - (C) Control the acquisition of the marijuana, the dosage, and the frequency of the medical use of marijuana by the qualifying patient.

(c) The authorization for the medical use of marijuana in this section shall not apply to:

- (1) The medical use of marijuana that endangers the health or well-being of another person;
- (2) The medical use of marijuana:
  - (A) In a school bus, public bus, or any moving vehicle;
  - (B) In the workplace of one's employment;
  - (C) On any school grounds;
  - (D) At any public park, public beach, public

- recreation center, recreation or youth center; or
- (E) Any other place generally accessible to the public;
- (3) Any sale of marijuana; or
- (4) The use of marijuana by a qualifying patient, parent, or primary caregiver for purposes other than medical use permitted by this chapter. [EFFECTIVE DATE: DEC 28 2000] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §§329-122, 353C-2)

- §23-202-4 Registration requirements. (a) Physicians who issue written certification shall register the names, addresses, patient identification numbers, and other identifying information of the qualifying patients issued written certifications with the department using the written certification/registry identification forms designated in section 23-202-8.
- (b) Qualifying patients shall register with the department using the written certification/registry identification forms designated in section 23-202-8. Such registration shall be effective until the expiration of the certificate issued by the physician. Every qualifying patient shall provide sufficient identifying information to establish the identity of the qualifying patient and the primary caregiver. Upon verification of the information provided, the department shall issue to the qualifying patient a registry identification certificate.
- (c) Primary caregivers shall register with the department using the written certification/registry identification forms designated in section 23-202-8. Every primary caregiver shall be responsible for the care of only one qualifying patient at any given time.
- (d) Qualifying patients and primary caregivers shall report any change in information required by the department within five working days. A qualifying patient shall have only one primary caregiver and only one physician issuing a written certificate at any given time.
- (e) Upon an inquiry by a law enforcement agency, the department of public safety shall verify that a patient is a lawful possessor of a registry

identification certificate, that a person is the designated primary caregiver of such a patient, that a person has submitted an application for a registry identification certificate that is pending verification by the department, that the persons registry identification certificate was denied but the denial is being appealed or to supply optional information provided on the written certification/registry identification forms, or as provided in section 23-202-11. [Eff DEC 28 2000] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §§329-123, 353C-2)

§23-202-5 Fees for registration and re-registration. (a) For each registration or re-registration of a qualifying patient to utilize marijuana for medical use, the qualifying patient shall pay a registration fee of \$25 for an annual registration.

(b) For each duplicate registration requested, the registrant shall submit a written request and shall pay a fee of \$10. [Eff DEC 28 2000] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §§329-123, 353C-2)

§23-202-6 Time and method of registration. (a) Registration fees shall be paid at the time the written certification/registry identification forms are submitted to the department. Payment shall be made in the form of a personal, certified, or cashier's check or money order made payable to the narcotics enforcement division, department of public safety. Payment made in the form of stamps, foreign currency, or third party endorsed checks will not be accepted. No refund will be issued once the written certification/registry identification forms has been received at the department.

(b) No person shall engage in the use of marijuana for medical purposes, until the completed written certification/registry identification forms and registration fees are submitted to the Department by the qualifying patient's physician. Upon receipt of the written certification/registry identification forms and registration fees, the department shall issue



a receipt, which shall serve as a temporary registration certificate. The temporary registration certificate shall be valid for not more than 60 days from the date of issuance or until the department issues or denies the registry identification certificate. In the absence of a natural disaster, state emergency, or union strike which would prevent the department from reviewing the written certification/registry identification forms, any registration pending more than sixty days after receipt of the completed written certification/registry identification forms shall be deemed granted.

(c) Each certificate shall expire annually as noted on the certificate. Qualifying patients and their primary caregivers may apply for renewal not earlier than sixty days prior to the expiration date of their certificate.

(d) Failure to obtain a certificate from the department will prohibit the applicant from engaging in any activity utilizing the medical use of marijuana as designated in section 329-122, Hawaii Revised Statutes.

(e) The administrator may require an applicant to submit such documents or written statements of fact relevant to the registration, as the administrator deems necessary to verify information on the written certification/registry identification forms. The failure of the applicant to provide the documents or statements within thirty days after being mailed a request to do so shall be deemed to be a waiver by the applicant of an opportunity to present the documents or facts for consideration by the administrator in processing the registration.

(f) The termination of a certificate shall occur:

- (1) Upon its expiration date;
- (2) For failure to pay the applicable registration or re-registration fees; or
- (3) For payment with a check that is dishonored upon first deposit that shall cause the certificate to be void ab initio.

[Eff: **DEC 28 2000** ] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §§329-123, 353C-2)

523-202-7 Modification, transfer, and termination of certificate. (a) In the event of a change of name or address of the qualifying patient, primary caregiver, or the location where the qualifying patient will elect to grow the qualifying patient's medical marijuana, the qualifying patient shall submit a letter to the department of public safety, narcotics enforcement division, with the updated information. The notification shall be submitted to the department within five working days of the change. No fee shall be assessed for the modification of the certificate.

(b) Failure to report a change of any of the information mentioned in subsection (a) shall invalidate the certificate as of the date of the change plus five working days and shall require re-registration and the imposition of a \$10 late fee.

(c) No certificate issued to a qualifying patient shall be assigned or otherwise transferred to any other patient.

(d) A qualifying patient who possesses a registry identification certificate pursuant to this section who no longer suffers from a debilitating medical condition shall return the registry identification certificate to the department within seven calendar days of notification of the diagnosis. The qualifying patient's primary caregiver shall also return the issued registry identification certificate within the same period of time and the qualifying patient's medical marijuana supply disposed of in accordance with procedures set forth in section 23-200-20.

(e) The qualifying patient's attending physician shall notify the department that the qualifying patient's condition no longer warrants the use of marijuana for medical purposes. The physician shall notify the qualifying patient of the contact.

(f) A certificate issued to a qualifying patient or primary caregiver is void upon the qualifying patient's death or if the patient's primary physician revokes the qualifying patient's written certificate. The qualifying patient's family, legal guardian, or primary caregiver shall notify the department within seven calendar days of the qualifying patient's death or revocation of the written certificate by the primary physician. The certificate shall be returned to the

department and the qualifying patient's medical marijuana supply shall be disposed of in accordance with the procedures set forth in section 23-200-20.

[Eff **DEC 28 2000**] (Auth: HRS §§329-31, 353C-2)  
(Imp: HRS §§329-123, 353C-2)

§23-202-8 Written certification/registry identification forms and verification. (a) The department shall create registry identification registration forms and physician written certification forms for the medical use of marijuana and issue them to requesting physicians. The written certification /registry identification forms shall be issued by the department and serve as the physician's written certification and the registration forms for the qualifying patient and any primary caregiver. Physicians shall submit the completed qualifying patient and primary caregiver written certification /registry identification forms which shall include the names, patient identification numbers, date of birth, addresses and other information required by the department. The written certification/registry identification forms shall serve as the physician's written certification that the qualifying patient has been diagnosed with a debilitating medical condition; and that the physician has certified that in the physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the particular qualifying patient.

(b) Except as provided in subsection (d), the department shall issue a registry identification certificate to any qualifying patient authorized by a physician to utilize marijuana for medical purposes, who pays a fee in the amount established by the department, and who provides to the department a completed registration form that has been verified and approved.

(c) Written certification/registry identification forms are deemed complete when the qualifying patient's physician supplies all of the following information:

- (1) Completed copy of the written certification /registry identification forms, and parent/legal guardian (if applicable) forms;
  - (2) The qualifying patient and the primary caregiver (if applicable) must provide a copy of photo identification (i.e., Hawaii driver's license, State of Hawaii identification card, or passport) with the written certification/registry identification forms; and
  - (3) Optional information may be added to registration forms at the discretion of the department if the information serves the best interest of the qualifying patient and assists agencies in the implementation of Act 228, SLH 2000, Medical Use of Marijuana.
- (d) The department shall issue a registry identification certificate to a patient who is under eighteen years of age if the patient submits the materials required under subsection (a), and one of the patient's parents or legal guardians signs and has notarized a written declaration that states:
- (1) The patient's attending physician has explained to the patient and to one of the patient's parents or legal guardians the possible risks and benefits of the medical use of marijuana;
  - (2) The parent or legal guardian consents to the use of marijuana by the patient for medical purposes;
  - (3) The parent or legal guardian agrees to serve as the patient's designated primary caregiver; and
  - (4) The parent or legal guardian agrees to control the acquisition of marijuana and the dosage and frequency of use by the patient.
- (e) The department shall verify information on all initial registration forms and written documentation.
- (1) The department shall contact each qualifying patient and primary caregiver (if appropriate) by phone or by mail to confirm that the information provided is accurate. In cases where the qualifying patient is less

than eighteen years old, the department also shall contact the parent or legal guardian to verify the information. In cases where proof of identify is uncertain, the department may require a face-to-face meeting with the qualifying patient or primary caregiver or the production of additional identification materials for verification purposes or both; and

- (2) The department shall verify that the attending physician is licensed to practice in the State under chapters 453 and 460, Hawaii Revised Statutes, and is currently registered under section 329-32, Hawaii Revised Statutes. The department shall also contact each attending physician by phone or by mail to confirm that the information provided is accurate.

(f) Upon annual renewal of a registration, the department shall verify all new information and may verify information that has not changed.

[Eff: **DEC 28 2000** ] (Auth: HRS §§329-31, 353C-2)  
(Imp: HRS §§329-123, 353C-2)

§23-202-9 Registry identification certificate.

(a) Once the department has verified the information in the completed written certification/registry form submitted pursuant to this section, including the designated registration fee, the department shall issue a serially numbered registry identification certificate. The registry identification certificate shall state:

- (1) The certificate holder's name, address, patient identification number, and date of birth;
- (2) The date of issuance and expiration date of the registry identification certificate;
- (3) The name, address, and date of birth of the patient's designated primary caregiver, if any;
- (4) The name, address, and telephone number of the qualifying patient's physician;

(5) The address where the marijuana will be grown; and

(6) Such other optional information as the department may specify.

(b) When the patient to whom the department has issued a registry identification certificate pursuant to this section has specified a designated primary caregiver, the department shall issue an identification certificate to the designated primary caregiver. The primary caregiver's registry identification certificate shall contain the information provided in subsection (a).

(c) The department may deny a registration for the following reasons:

(1) The applicant did not provide the information required pursuant to section 23-202-8, and following a mailing from the department requesting additional information to complete the registration, did not adequately respond within thirty days; or

(2) The department determines that the information provided was falsified.

(d) When the department determines that an applicant does not qualify for a registry identification certificate, the department shall send the applicant a denial letter within sixty days of receipt of the fully completed registration. The letter shall state the reason for denial.

(e) An applicant may, within thirty days after notification of denial of registration, request in writing an administrative hearing to contest the department's decision in conformity with chapter 91, Hawaii Revised Statutes. Only the patient or primary caregiver whose registration has been denied, or, in the case of a patient under the age of eighteen years of age whose registration has been denied, the patient's parent or legal guardian shall have standing to contest the department's action.

[Eff: **DEC 28 2000**] (Auth: HRS §§329-31, 353C-2)  
(Imp: HRS §§329-123, 353C-2)

523-202-10 Confidentiality of information and records. (a) The department shall create and maintain

both paper and computer data files of the qualifying patients and primary caregivers to whom the department has issued registry identification certificates. The data files will include all information collected on the registration forms or equivalent information from other written documentation, the date of issue, and the expiration date. Except as provided in subsection (b), the maintained information shall be confidential and not subject to public disclosure.

(b) Names and other identifying information from the data file established pursuant to subsection (a) may be released to:

- (1) 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
- (2) Authorized employees of state or local law enforcement agencies when they provide a specific name or address. Information will be supplied as necessary to verify that a patient is a lawful possessor of a registry identification certificate, that a person is the designated primary caregiver of such a patient that a person has submitted an application for a registry identification certificate that is pending verification by the department, that the persons registry identification certificate was denied but the denial is being appealed or to supply optional information provided on the registration forms, or as provided in section 23-202-11. [Eff: DEC 28 2000] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §§329-123, 353C-2)

§23-202-11 Monitoring and investigations. (a) The department may, at any time, contact a qualifying patient, primary caregiver, or attending physician by phone, mail, or in person to verify the current accuracy of information provided to the registration system.

(b) Notwithstanding subsection (a), the department may, when it has reason to believe a violation of the conditions of registration exist, either conduct investigations to collect evidence of violations of Act 228, SLH 2000, Medical Use of Marijuana, or refer violation to the proper state or local authorities. Such violations include, but are not limited to the following:

- (1) A qualifying patient fails to notify the department of any change in the patient's name, address, attending physician, designated primary caregiver, or growing location of marijuana to be used for medical purposes;
- (2) A qualifying patient or designated primary caregiver fails to return the registry identification certificate to the department within seven calendar days of notification of the diagnosis that the qualifying patient no longer has a debilitating medical condition; and
- (3) A qualifying patient, designated primary caregiver, or attending physician falsifies information during the registration or registration renewal process.

[Eff: **DEC 28 2000** (Auth: HRS §§329-31, 353C-2) (Imp: HRS §§329-123, 353C-2)]

§23-202-12 Revocation of registry identification certificate. (a) In accordance with these rules, the department has the authority to revoke a registry identification certificate, with suspension of the registry identification certificate pending administrative hearing on the revocation. The department under one or more of the following conditions may revoke a registry identification certificate:

- (1) The applicant or physician has furnished false or fraudulent material information or omitted information in any of the written certification/registry forms submitted to the department under this chapter;



- (2) The written certificate issued to the qualifying patient was not based upon provisions set forth in section 329-126, Hawaii Revised Statutes;
- (3) Suspension or revocation of a physician's medical license or state controlled substance registration as designated under section 329-32, Hawaii Revised Statutes; or
- (4) For violations of section 23-202-3, 23-202-7, 23-202-13 or 23-202-14.

(b) When the department proposes to revoke a registration certificate of a qualifying patient or a designated primary caregiver, the department shall send a notice of proposed revocation by mail to the patient's address currently listed in the data file and a copy to the qualifying patient's primary caregiver and physician.

(c) A qualifying patient or designated primary caregiver may contest the proposed revocation of registration by submitting a request in writing within thirty days of the revocation for an administrative hearing in conformity with chapter 91, Hawaii Revised Statutes. The request for hearing shall be addressed to: Narcotics Enforcement Division, Department of Public Safety, 711 Kapiolani Boulevard, Suite 1422, Honolulu, HI 96813.

(d) The department may reinstate a registration certificate without reapplication. [Ef **DEC 28 2000**]  
(Auth: HRS §§329-31, 353C-2) (Imp: HRS §§329-123, 353C-2)

§23-202-13 Permissible amounts of medical marijuana. (a) A qualifying patient who possesses a registry identification certificate issued pursuant to section 329-123, Hawaii Revised Statutes, may engage in and a registered primary caregiver of the patient may assist in, the medical use of marijuana only as justified to mitigate the symptoms or effects of the qualifying patient's debilitating medical condition.

(b) The medical marijuana shall be grown only at the following locations:

- (1) The qualifying patient's home address; or

(2) The primary caregiver's home address or other location owned or controlled by the qualifying patient or the primary caregiver that is approved by the administrator and designated on the registry certificate issued by the department.

(c) The qualifying patient and primary caregiver jointly may not possess more than an "adequate supply" which shall not exceed a total of three mature marijuana plants, four immature marijuana plants, and one ounce of usable marijuana per each mature plant.

(d) If any individuals described in subsection (a) possess, deliver, or produce marijuana in excess of the amounts allowed in subsection (c), such individuals are not exempted from the criminal laws of the State.

[Eff: **DEC 28 2000**] (Auth: HRS §§329-31, 353C-2)  
(Imp: HRS §§329-121, 353C-2)

§23-202-14 Offenses and penalties. Every person violating any provision of this chapter shall be subject to the provisions set forth in section 329-128, Hawaii Revised Statutes. [Eff: **DEC 28 2000**] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-128)

§23-202-15 'Severability. Should any section, paragraph, sentence, clause, phrase, or application of this chapter be declared unconstitutional or invalid for any reason, the remainder or any other application of this chapter shall not be affected thereby. [Eff: **DEC 28 2000**] (Auth: §§329-31, 353C-2) (Imp: HRS §353C-2, SLH 2000, Act 228)