

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

BUREAU OF MARIJUANA REGULATION

MICHIGAN MEDICAL MARIHUANA

Filed with the secretary of state on October 25, 2019

These rules become effective immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the director of the department of licensing and regulatory affairs by section 5 of the Michigan medical marihuana act, 2008 IL 1, MCL 333.26425, and Executive Reorganization Order Nos. 1996-1, 1996-2, 2003-1, and 2011-4, MCL 330.3101, 445.2001, 445.2011, and 445.2030)

R 333.101, R 333.103, R 333.105, R 333.109, R 333.111, R 333.113, R 333.117, R 333.119, R 333.126, R 333.131, and R 333.133 of the Michigan Administrative Code are amended, and R 333.115 is rescinded, as follows:

R 333.101 Definitions.

Rule 1. As used in these rules:

(1) "Act" means the Michigan medical marihuana act, 2008 IL 1, MCL 333.26421 to 333.26430.

(2) "Applicant" means a qualifying patient applying for a medical marihuana registry identification card on a form provided by the department.

(3) "Conviction" or "convicted" means a criminal conviction of an offense by a guilty verdict from a judge or jury, plea of guilty, or plea of no contest.

(4) "Department" means the department of licensing and regulatory affairs.

(5) "Legal name" means a qualifying patient or primary caregiver's name as it appears on a valid, lawfully obtained Michigan driver license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300, or a voter registration card issued under the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

(6) "Parent or legal guardian" means the custodial parent or legal guardian with responsibility for health care decisions for a qualifying patient who is under 18 years of age.

(7) "Petition" means a written request for the department to add new medical conditions or treatments to the list of debilitating medical conditions under section 3(b) of the act, MCL 333.26423.

(8) Terms defined in the act have the same meanings when used in these rules.

R 333.103 New registration application; qualifying patient and primary caregiver.

March 15, 2019

Rule 3. (1) A qualifying patient shall apply for a registry identification card in a manner prescribed by the department, which may include an online application. An applicant for a registry card shall submit the required fee and all of the following:

(a) An original completed application that is signed by the qualifying patient and dated within 6 months of the date the application is received. The original completed application must include all of the following information:

(i) The legal name, mailing address, and date of birth of the qualifying patient. The address for the qualifying patient must be a physical address located in this state. A qualifying patient who is homeless is not required to provide a physical address, but he or she shall provide a mailing address where the department can send correspondence regarding the patient's registry status.

(ii) The physician's name as it appears on his or her Michigan physician's license, mailing address, and telephone number of the qualifying patient's physician who provided the written certification.

(iii) The legal name, mailing address, and date of birth of the patient's primary caregiver, if applicable. A qualifying patient may designate 1 primary caregiver to assist with his or her medical use of marihuana.

(iv) A designation of whether the qualifying patient or the patient's primary caregiver, if applicable, will be allowed to possess marihuana plants for the qualifying patient's medical use.

(v) An attestation by the primary caregiver named on the application that he or she agrees to serve as the patient's primary caregiver. The attestation must be signed by the primary caregiver and dated within 6 months of the date the application is received. The attestation must authorize the department to use the information provided on the application or as part of the attestation to secure the primary caregiver's criminal conviction history and determine if he or she has been convicted of any of the offenses provided under section 3(k) of the act, MCL 333.26423.

(vi) The department may require the attestation required under paragraph (v) of this subdivision to be submitted as part of the supporting documents and information required under subdivision (b) of this subrule.

(b) The supporting documents and information required under section 6 of the act, MCL 333.26426, which must include all of the following:

(i) Proof of the patient's Michigan residency. For the purposes of this paragraph, an applicant shall be considered to have proved legal residency in this state if he or she provides the department with either of the following:

(A) A copy of a valid, lawfully obtained Michigan driver license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300. The department may waive this requirement if the department is able to verify the applicant's Michigan driver license or personal identification card online through the department of state.

(B) A copy of a valid Michigan voter registration. A patient who submits a copy of a valid Michigan voter registration shall also submit a copy of a government-issued document that includes the patient's name and date of birth for verification purposes, as required in section 6(c) of the act, MCL 333.26426.

(ii) A written certification, as defined in section 3(q) of the act, MCL 333.26423, signed by a licensed physician in the course of a bona fide physician- patient relationship as

defined in section 3(a) of the act, MCL 333.26423, and dated within 6 months of the date the application is received. If the qualifying patient is under the age of 18, written certifications from 2 physicians are required. The physician shall include the legal name and date of birth of the qualifying patient, the physician's name as it appears on his or her physician's license, physician's license number, mailing address, and telephone number on the written certification.

(iii) If the qualifying patient is under the age of 18, a declaration of person responsible form.

(2) The department may allow an application, written certification, and any other required supporting documentation or information to be submitted online in a manner prescribed by the department. An online application process that meets the requirements of the act meets the requirements of this rule. For security purposes, the department may require a written certification and any other required supporting documentation or information to be submitted online.

(3) The department may require a photograph as a design element for an official state registry identification card as provided in section 6(e)(5) of the act, MCL 333.26426, if the secretary of state forwards to the department the image of an applicant for an official state registry identification card.

R 333.105 Declaration of person responsible form.

Rule 5. A declaration of person responsible form is required for any qualifying patient who is under the age of 18. The form must include all of the following:

(a) A statement that the qualifying patient's physicians have explained to the patient and the patient's parent or legal guardian the potential risks and benefits of the medical use of marihuana.

(b) Written consent of the qualifying patient's parent or legal guardian to allow the qualifying patient's medical use of marihuana.

(c) Written consent of the qualifying patient's parent or legal guardian to serve as the patient's primary caregiver and to control the acquisition, dosage, and frequency of use of the marihuana by the patient.

(d) The qualifying patient's parent or legal guardian shall provide proof of parentage or legal guardianship by submitting a copy of documentation issued by a governmental entity or certified letters of guardianship from a court.

R 333.109 Verification of information.

Rule 9. The department shall verify the information contained in an application and the accompanying documentation, which may include, but is not limited to, the following:

(a) Contacting an applicant or primary caregiver by telephone, mail, or electronic communication. If proof of identity cannot be determined with reasonable reliability, the department may require the production of additional identification materials.

(b) Contacting the parent or legal guardian of a qualifying patient who is under the age of 18 by telephone, mail, or electronic communication.

(c) Verifying that a physician is licensed to practice in this state.

(d) Contacting the certifying physician directly by telephone, mail, or electronic communication to confirm the validity of the written certification. The department may use an online certification process to fulfill the verification requirement in section 6(c) of the act, MCL 333.26426.

R 333.111 Fees; patient refunds.

Rule 11. (1) A qualifying patient shall pay a \$40.00 fee for a new or renewal application.

(2) The application of a qualifying patient who fails to submit the required \$40.00 fee is considered incomplete and shall be denied.

(3) The department may require a registered qualifying patient or registered caregiver to pay a \$10.00 fee for a replacement card.

(4) A registered qualifying patient or primary caregiver is not eligible for a refund if any of the following occurs:

(a) The qualifying patient's application is denied or the qualifying patient withdraws from the registry program.

(b) The department has processed the application and issued a registry card to the patient or primary caregiver.

(c) The department determines the primary caregiver listed on the application or change form is ineligible.

R 333.113 Registration approval; denial.

Rule 13. (1) Pursuant to section 6(c) of the act, MCL 333.26426, the department shall approve or deny an application within 15 business days of receiving the original complete application, required fee, and required supporting documentation and information.

(2) If an application is approved, within 5 business days of approving the application, the department shall issue a registry identification card to the registered qualifying patient and the registered primary caregiver, if applicable. For the purpose of this subrule, "issue" means the department has printed the registry identification card and mailed it to the qualifying patient and registered primary caregiver, if applicable.

(3) The department may issue a registry card that includes a photograph of the patient or caregiver.

(4) If an application is denied, within 5 business days of denying the application, the department shall mail the applicant a denial letter or send an email notification that states the reasons for denial. The department shall deny an application for any of the following reasons:

(a) The qualifying patient submitted an incomplete application or incomplete supporting documents or information.

(b) The qualifying patient did not submit the required fee.

(c) The department determines that any information provided by the qualifying patient, primary caregiver, or physician was falsified, fraudulent, incomplete, or cannot be verified.

(d) The qualifying patient designates a primary caregiver on the application and the department determines the primary caregiver is ineligible.

(e) The qualifying patient, primary caregiver, or physician, as applicable, failed to sign and date the application, caregiver attestation, or written certification.

(f) The department was unable to verify the information provided.

(5) A qualifying patient whose application is denied may reapply at any time by submitting a new application and the supporting documents and information as specified in R 333.103. Any fee that a patient submits with an application that is denied is valid for 6 months from the date the department received the fee and may be used by the patient to reapply.

R 333.115 Rescinded.

R 333.117 Biennial renewal; expiration of registry identification card; fee.

Rule 17. (1) Pursuant to section 6 (e) of the act, MCL 333.26426, a registry identification card must be renewed on a biennial basis to maintain active status as a registered qualifying patient or a registered primary caregiver.

(2) A registry identification card is valid for a period of 2 years.

(3) An applicant for renewal of a registry identification card shall submit an application and the required supporting documents and information as provided in R 333.103 and R 333.105, as applicable.

(4) If an applicant fails to comply with subrules (1) and (3) of this rule by the expiration date on the registry identification card, the registry identification card is null and void and of no further effect. The applicant may submit a new application to the department.

(5) An applicant may submit a renewal application up to 90 days before the expiration date on the registry identification card. A registry card is not renewed unless the department approves the renewal application prior to the expiration date of the registry card.

(6) The department shall verify the renewal application information in the same manner as specified in R 333.109.

R 333.119 Changes in status; notifications; requirements.

Rule 19. (1) After a registry card is issued, a registered qualifying patient, registered primary caregiver, or the registered qualifying patient's parent or legal guardian, as applicable, may submit a change form to the department to do any of the following:

(a) Change the registered qualifying patient's name. Proof of change of name must be satisfied by submitting the documents required to prove residency as specified in R 333.103 or documents specified in subrule (2)(a) of this rule.

(b) Change the registered qualifying patient's address.

(c) Change the individual designated as registered qualifying patient's primary caregiver, including removing or replacing the current registered primary caregiver.

(d) Change the registered qualifying patient's legal guardian. Proof of change of legal guardian must be satisfied by submitting documentation consistent with R 333.105(d).

(e) If the registered qualifying patient is an adult, change the individual designated to be in possession of the plants.

(2) A registered primary caregiver may submit a change form to the department to do any of the following:

(a) Change the registered primary caregiver's name. Proof of name change must be established by submitting a true copy of an official record, a certified marriage license, divorce decree, or a legal name change document. A true copy is an exact copy of a document with no alterations or changes.

(b) Change the registered primary caregiver's address.

(c) Terminate the registered primary caregiver's status as a patient's primary caregiver.

(3) Any changes made under subrule (1) or subrule (2) of this rule do not take effect until the department has verified and processed the requested change or changes. Receipt of the new registry card or cards is notification that the changes have taken effect.

(4) If a registered qualifying patient removes or replaces a registered primary caregiver under subrule (1)(c) of this rule, the department shall notify the initial primary caregiver by mail at the address of record that the caregiver's registry identification card is null and void and of no effect.

(5) If a registered qualifying patient's certifying physician notifies the department in writing that the patient has ceased to suffer from a debilitating medical condition, the department shall notify the patient within 20 business days of receipt of the written notification that the patient's registry identification card is null and void and of no effect. The registry card becomes null and void upon notification by the department to the patient.

(6) Any notifications the department makes under subrules (4) and (5) of this rule are subject to the confidentiality provisions in section 6(h) of the act, MCL 333.26426.

R 333.126 Withdrawal.

Rule 26. (1) A registered qualifying patient or registered primary caregiver may voluntarily withdraw from the Michigan medical marihuana program in a manner prescribed by the department.

(2) Upon receiving confirmation from the department that his or her withdrawal has been processed, the registered qualifying patient or registered primary caregiver shall destroy the registry identification card.

(3) A registered qualifying patient or registered primary caregiver's withdrawal from the Michigan medical marihuana program shall not result in the destruction of any confidential records the department is required to maintain under section 6(h) of the act, MCL 333.26426.

R 333.131 Panel for reviewing petitions for additional medical conditions or treatments; terms.

Rule 31. (1) The department shall appoint a panel to review petitions to add medical conditions or treatments to the list of debilitating medical conditions under section 3(b) of the act, MCL 333.26423. The department shall appoint an odd number of members to the panel, which must not exceed 15 total members. The panel shall meet at least twice each year and shall review and make a recommendation to the department concerning any petitions that have been submitted that meet the requirements of R 333.133(1).

(2) A majority of the panel members shall be licensed physicians, and the panel shall provide recommendations to the department regarding whether the petitions should be approved or denied.

(3) The members of the panel shall be appointed for a term of 4 years. A member of the panel shall not serve more than 2 terms and 1 partial term, consecutive or otherwise. However, a panel member serving on the effective date of this rule may complete the term to which the member was appointed.

(4) The department shall provide staff support to the panel to assist with the scheduling of meetings, conference calls, dissemination of petition-related materials, and to perform other administrative duties related to the performance of the panel's review.

(5) A majority of the panel of those who are present at each meeting must concur with the recommendation to be considered an official recommendation of the panel.

R 333.133 Petition to add qualifying diseases or medical conditions; review panel; recommendations.

Rule 33. (1) The department shall accept a written petition on a form prescribed by the department from any person requesting that a particular medical condition or treatment be included in the list of debilitating medical conditions under section 3(b) of the act, MCL 333.26423. The petition must include current medical, empirical, and evidence-based data, including both of the following:

(a) A summary of the evidence that the use of marihuana will provide palliative or therapeutic benefit for the medical condition or a treatment of the medical condition.

(b) Articles published in peer-reviewed scientific journals reporting the results of research on the effects of marihuana on the medical condition or treatment of the medical condition and supporting why the medical condition should be added to the list of debilitating medical conditions under section 3(b) of the act, MCL 333.26423(b).

(2) If the petition does not contain current medical, empirical, and evidence-based data as described in subrule (1) of this rule that is specific to the proposed medical condition or treatment, the department shall return the petition to the petitioner as incomplete.

(3) Upon receipt of a petition that meets the requirements in subrule (1) of this rule, the department shall do all of the following:

(a) Transmit the petition to the panel for review.

(b) Give notice of a public hearing not less than 10 days before the date of the hearing.

(c) Accept comments on the petition for a period of 5 business days beginning on the date of the public hearing.

(4) After a public hearing, the department shall forward the petition and any public comments that were received during and after the hearing to the panel for discussion and to vote on a recommendation to the department director.

(5) Within 180 days of the date the petition is filed with the department, the department director shall make a final determination on the petition. The approval or denial of the petition is a final department action subject to judicial review under the act.

(6) If the petition is approved, the department shall create a document verifying the addition of the new medical condition or treatment to the list of debilitating medical conditions identified under section 3(b) of the act, MCL 333.26423. Until these rules are amended to officially recognize the medical condition as a qualifying debilitating medical condition, the department shall develop a policy that allows the new medical condition to be used as a qualifier for a registry identification card.