



JANET T. MILLS
GOVERNOR

STATE OF MAINE
OFFICE OF CANNABIS POLICY
162 STATE HOUSE STATION
19 UNION STREET
FIRST FLOOR
AUGUSTA, MAINE 04333-0162

ADMINISTRATIVE & FINANCIAL SERVICES

KIRSTEN LC FIGUEROA
COMMISSIONER

OFFICE OF CANNABIS POLICY

JOHN HUDAK
DIRECTOR

February 7, 2024

Re: LD 2185, *Resolve, Regarding Legislative Review of Chapter 2: Medical Use of Cannabis Program Rule, a Major Substantive Rule of the Department of Administrative and Financial Services, Office of Cannabis Policy*

Senator Hickman, Representative Supica, members of the Joint Standing Committee on Veterans and Legal Affairs:

I am Gabrielle Bérubé Pierce, the policy director for the Office of Cannabis Policy and I am pleased to be before you today to present the following revisions to the *Maine Medical Use of Cannabis Program Rule* that have been provisionally adopted by our office.

The revisions in this rule represent the Office's efforts to bring the program rules into alignment with the existing medical program statute, while also reserving some modifications to the rules until this committee completes its top-to-bottom review and revision of Title 22, chapter 558-C. We encourage this committee to support the final adoption of these rules in accordance with the *Maine Administrative Procedures Act*, Title 5, ch. 375 and the requirements of Title 22, section 2422-A.

Before I get into the content of the rule, I want to walk everyone through the major substantive rulemaking process undertaken by our office last year in order to implement statutory changes made since 2018, as well as changes identified by our office through regulatory lookback and discussions with stakeholders since the Office assumed responsibility for the medical program in 2019. The rules before you today represent the third attempt at rulemaking for the medical program undertaken by the Office in the past five years. These rules, as we explained in the forms and basis statements that accompany our rulemaking filing, represent the Office's good faith efforts to standardize program administration and ensure a shared understanding of program requirements by registrants and the office alike.

Simply put: these rules are more than five years in the making and represent not only those changes identified by industry stakeholders during the formal rulemaking process, but lessons learned from countless discussions with the broad constituencies represented by our office. When it comes to cannabis policy it's important to remember that it is not only cannabis businesses and patients who have a stake in the programs we administer, but also the thousands of Mainers who are not cannabis entrepreneurs or patients.

OCP and the legislature have a duty not only to the industry participants who frequent this committee, but also to municipal officials who are contemplating whether to allow medical cannabis businesses within their borders, parents and school officials who are grappling year after year with how to discipline students for bringing cannabis to school and distributing it among their classmates, and public health researchers who are examining how the proliferation of cannabis businesses in certain communities impacts perceptions of risk and harm associated with the use of cannabis. It is imperative that policymakers consider all perspectives when developing cannabis policy, as the consequences extend far beyond the economic impacts on the cannabis industry.

In order to hear from these diverse voices, OCP has expanded our outreach efforts over recent years beyond the rulemaking process to provide myriad opportunities for the public to let us know what they think. Members of our leadership team have visited cannabis business owners and municipal officials across the state to hear about the challenges and opportunities facing their regions and we have fielded questions and concerns from hundreds of Mainers through community conversations, webinars, workgroups, roundtables, trainings, radio call-in programs and individual meetings. It is these discussions, as well as the insight and expertise developed through our administration of the medical and adult use cannabis programs, that prepared our office to engage in thoughtful and systemic regulatory lookback last year before we began rulemaking after the end of the first special session of the 131st legislature.

Therefore, when we sat down in August to write these rules, we looked not only at the laws enacted since the rules were last updated, but at the issues identified by our constituents, staff, and industry stakeholders over the years.¹ We addressed substantial statutory changes to the medical program law like eliminating the requirement that patients designate a caregiver or dispensary to cultivate cannabis on their behalf, laid out in rule the application and renewal process for assistants, officers and directors to obtain registry identification cards, and standardized compliance requirements for registrants engaged in the same activity. Additionally, we clarified existing rule provisions to reflect guidance previously issued by the Office.²

On September 6th of last year, we made a draft of the rules available for review by the public and began accepting comments on the rules immediately, via e-mail, USPS mail and online submissions. In addition to accepting written, audio and video public comments submitted electronically, we held a public hearing in-person at our office in Augusta on September 26th. At the hearing we heard testimony from 30 members of the public and responded to several questions asked by those testifying. Following the hearing we continued to accept written, audio and video comments until 11:59 pm on

¹These rules implement the following laws passed since the rules were last updated in February 2018: PL 2017, ch. 409 (*Emergency*, Veto Overridden, May 2, 2018); PL 2017, ch. 447 (*Emergency*, Veto Overridden, July 9, 2018); PL 2017, ch. 452; PL 2019, ch. 256; 2019, ch. 312; PL 2021, ch. 251; PL 2021, ch. 367; PL 2021, ch. 662 (*Emergency*, law without signature April 26, 2022); PL 2021, ch. 669; PL 2023, ch. 6, (*Emergency*, Signed March 15, 2023); and PL 2023, ch. 365.

² *Id.* See also “Guidance Documents”, available at: <https://www.maine.gov/dafs/ocp/resources/guidance-documents>

October 10th. We reviewed the comments received online and in person, compiled them into a document along with the agency's response to each comment, and have attached those comments and responses to the basis statement submitted for the rule.³ We then updated the rules to reflect the public comments accepted and submitted those rules for form and legality review by the Office of the Attorney General. Once the AG's office affirmed that the rules were in the appropriate form pursuant to the *Maine Administrative Procedure Act* and legally consistent with the *Maine Medical Use of Cannabis Act*, the rules were timely submitted to the legislature during the "legislative acceptance period" at the beginning of this year.⁴

Which brings us to the matter before you today – legislative review of these provisionally adopted major substantive rules. While we provided much greater detail in the legal filing accompanying the rule, I will give a brief overview of the changes to the rules before taking your questions.

For your reference, I have provided in footnote 1 a list of all the public laws addressed in this round of revisions.

Given the ongoing work of the subcommittee to review the medical cannabis statute, the bulk of our efforts were focused on removing out-of-date provisions of the rule like the patient designation requirements discussed above, changing the word "marijuana" to "cannabis" throughout the rule, and clarifying the compliance requirements for medical program participants and integrating the procedural safeguards of the *Maine Administrative Procedures Act* into the enforcement section of the rule. It was our goal to update the rule to address statutory changes since February 2018 while also preparing the rule for further revision once this committee completes the work of revising and reorganizing the medical program law. Until that broader statutory work is done, our Office is limited in how much we can do on our own to resolve the policy conflicts and ambiguities that pervade the medical program law.

On the whole, we are very proud of the years of work and collaborative problem solving that resulted in the rules before you today. As you will see in our filing, we received a total of 318 comments regarding various portions of rule before you. The majority of the comments received by our office were "general comments" where no specific change to the rules was requested by the commenter. Where the recommended changes aligned with the statutory requirements for the program, our office was generally in the position to accept those comments in part or full. Of the 318 comments received, OCP accepted 46 comments. Another 206 of the comments received by the office were "general comments" with no specific change to the rules requested, while the remaining 66 comments were requesting changes that required statutory change to the *Maine Medical Use of Cannabis Act*.

³ In total, OCP received 318 comments from a total of 30 individuals. A complete list of all comments received by OCP, along with the Office's response, is included in the rulemaking packet for the rule.

⁴ Additional information regarding the legal requirements for major substantive rulemaking can be found in the *Maine Administrative Procedures Act*, Me. Rev. Stat. Title 5, chapter 375 and Title 22, section 2422-A.

We understand that there may be provisions that were overlooked or revisions that were missed, and we appreciate the Legislature's role in addressing those technical changes. However, it is also our expectation that the expertise of our office and the substantial deliberation and effort that went into the development of these legally sound, practical and administrable rules will guide the committee's review of these rules and recommendations to the 131st Legislature.

As always, we thank the committee for its consideration and we will do our best to answer any questions you may have.

Major Substantive Rulemaking for the MMCP

Rulemaking Timeline

OCP received **318** public comments on the proposed rules

65%

did not request a specific change

21%

would require a statutory change

14%

were accepted in full or in part

June 2022

OCP launches statewide community listening tour, conducts several other stakeholder engagement events over the next year

18-691 C.M.R. ch. 2, *Maine Medical Use of Cannabis Program Rule*

This major substantive rulemaking updates the existing program rule and addresses recent legislative changes

- » **318** public comments submitted on the proposed rules from a total of **30** individuals
- » **22** comments accepted
- » **24** comments accepted in part
- » **206** general comments
- » **66** comments rejected (*statutory change required*)

Examples of “general comments” that did not request specific changes to the proposed rules:

“OCP’s reference to compliance with federal law in several areas of the Proposed Rule is problematic. The program is contrary to federal law.”

“These standards are to[o] high. Adopt rules that a bar, or brewery would have.”

Examples of comments that would require a statutory change:

“Drop this rule and allow us to take part in open farm weekend events and other activities, with only proof of age to enter.”

“There is no legitimate reason that members of the same family are limited to only two members of the family. What if the family is more than two people? This concept is not needed.”

August 2023

OCP drafts updated MMCP rules based on regulatory lookback findings and stakeholder feedback

September 6, 2023

OCP posts proposed rules online, public comment period begins

September 26, 2023

OCP hosts a public hearing on the proposed rules

October 10, 2023

Public comment period ends

Fall/Winter 2023

Rules updated to reflect the public comments accepted, submitted for form and legality review by the Office of the Attorney General

January 2024

Rules timely submitted to the Legislature and provisionally adopted by OCP