

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: 5-10-21

To: Veterans & Legal Affairs Committee

From: Sam Praver, Legislative Analyst

<u>LD 1242, An Act To Ensure Appropriate Oversight of Maine's Medical Marijuana Program</u>	<u>LD 1319, An Act Regarding Registered Dispensaries and Rules under the Maine Medical Use of Marijuana Act and the Definition of "Resident" in the Marijuana Legalization Act</u>
1. It changes the designation of rules governing the medical use of marijuana from routine technical to major substantive. 2. It provides that the Department of Administrative and Financial Services rules governing the medical use of marijuana are those that were last amended February 1, 2018. Before adopting or amending rules governing the medical use of marijuana, the department must establish a process to include caregivers, registered caregivers and patients and physicians and certified nurse practitioners with significant knowledge and experience certifying patients under the laws governing the medical use of marijuana in the development of these rules or amendments and must consult with caregivers, registered caregivers, patients, physicians and certified nurse practitioners. 3. It requires the department to develop a process to retain any consultant hired to advise on rule changes related to the laws governing the medical use of marijuana and report on the development of this process no later than September 1, 2021 and report on any subsequent changes to this process to the joint standing committee of the Legislature having jurisdiction over health and human services matters. 4. It eliminates the requirement that a registered caregiver, a registered dispensary, a marijuana testing facility or a manufacturing facility complete an annual audit conducted by a 3rd party of business transactions. (overlap with LD 939) 5. It eliminates the requirement that the department develop and implement a statewide electronic portal through which registered caregivers, registered dispensaries, marijuana testing facilities and	1. This bill provides that the Department of Administrative and Financial Services may not issue more than 14 marijuana dispensary registration certificates. 2. It also provides that the Department of Administrative and Financial Services, office of marijuana policy may not adopt rules governing the medical use of marijuana until December 31, 2023. 3. Beginning December 31, 2023, the office of marijuana policy may adopt rules governing the medical use of marijuana only if the office, using existing resources and before the adoption of those rules, conducts studies on the economic impact of the rules and how the rules would affect the access of patients to marijuana for medical use. 4. The bill also extends the repeal date of a portion of the definition of "resident" in the Marijuana Legalization Act from June 1, 2021 to June 1, 2025.

OFFICE OF POLICY AND LEGAL ANALYSIS

manufacturing facilities may submit certain records to the department. (metric)	
LD 1242	LD 1319
Sec. 1. <u>22 MRSA §2422-A, sub-§2</u>, as enacted by PL 2017, c. 409, Pt. E, §3, is amended to read: 2. Rulemaking. The department, after consultation with the Department of Health and Human Services, may adopt rules as necessary to administer and enforce this chapter or amend rules previously adopted pursuant to this chapter. Rules <u>After February 1, 2018, rules adopted pursuant to this subsection are routine technical major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Before adopting rules pursuant to this subsection, the department shall consult with caregivers, registered caregivers and patients and physicians and certified nurse practitioners with significant knowledge and experience certifying patients under this chapter. The department shall develop a process to retain any consultant hired to advise on rule changes related to this chapter and shall report on the development of this process no later than September 1, 2021 and shall report on any subsequent changes to this process to the joint standing committee of the Legislature having jurisdiction over health and human services matters.</u> Sec. 2. <u>22 MRSA §2423-A, sub-§10, ¶D</u>, as repealed and replaced by PL 2019, c. 331, §13 and c. 354, §3, is repealed and the following enacted in its place: <u>D. The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A governing marijuana testing facilities, including but not limited to:</u> <u>(1) Marijuana testing facility officer or director qualification requirements;</u> <u>(2) Required security for marijuana testing facilities; and</u> <u>(3) Requirements for the registration, certification or other approval of marijuana testing facilities.</u> <u>The failure of the department to adopt rules under this paragraph does not prevent a marijuana testing facility from engaging in activities in compliance with this chapter. After February 1, 2018, rules adopted</u>	Sec. 1. <u>22 MRSA §2428, sub-§11-A, ¶A</u>, as enacted by PL 2017, c. 452, §16, is amended to read: A. In addition to the 8 dispensary registration certificates issued as of April 1, 2018, the department shall issue 6 dispensary registration certificates to applicants that the department determines meet all criteria established in rule. Of the new registration certificates issued after April 1, 2018, the department may not issue more than one additional registration certificate to any dispensary operating in the State on April 1, 2018 or to its successor in interest and the department may not issue more than one dispensary registration certificate to any person that did not hold a dispensary registration certificate as of April 1, 2018. After January 1, 2021, the department may not limit the number of registration certificates it issues to a person to operate as a dispensary. The department may not issue more than 14 dispensary registration certificates. Sec. 2. <u>28-B MRSA §102, sub-§48, ¶A</u>, as enacted by PL 2017, c. 409, Pt. A, §6, is amended to read: A. Has filed a resident individual income tax return in this State pursuant to Title 36, Part 8 in each of the 4 years prior to the year in which the person files an application for licensure under this chapter. This paragraph is repealed June 1, 2024 <u>2025</u>; Sec. 3. Rules moratorium. The Department of Administrative and Financial Services, office of marijuana policy may not adopt rules governing the medical use of marijuana until December 31, 2023. Beginning December 31, 2023, the office of marijuana policy may adopt rules governing the medical use of marijuana only if the office, using existing resources and before the adoption of those rules, conducts studies on the economic impact of the rules and how the rules would affect the access of patients to marijuana for medical use.

OFFICE OF POLICY AND LEGAL ANALYSIS

pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 3. 22 MRSA §2423-A, sub-§10, ¶D-1, as enacted by PL 2019, c. 354, §4, is amended to read:

D-1. Upon the adoption of rules pursuant to paragraph D and this paragraph, a marijuana testing facility must be certified by the certification program established pursuant to section 569 as meeting all operational and technical requirements in accordance with rules adopted by the department after consultation with the Maine Center for Disease Control and Prevention. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that after February 1, 2018 rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. A marijuana testing facility operating in compliance with this chapter on the date of the adoption of rules pursuant to this paragraph and paragraph D may continue to operate pending completion of certification under this paragraph. The failure of the department to adopt rules under this paragraph does not prevent a marijuana testing facility from engaging in activities in compliance with this chapter.

Sec. 4. 22 MRSA §2423-B, sub-§2-A, ¶D, as enacted by PL 2017, c. 452, §5, is amended by amending the last blocked paragraph to read:

The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A to implement the reimbursement request under this paragraph, except that after February 1, 2018 rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 5. 22 MRSA §2423-F, sub-§10, as repealed and replaced by PL 2019, c. 331, §17, is amended to read:

10. Rulemaking. The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A governing manufacturing facilities, including but not limited to:

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

OFFICE OF POLICY AND LEGAL ANALYSIS

- A. Requirements for the registration of a manufacturing facility and an officer or director or assistant of a registered manufacturing facility;
- B. Requirements for engaging in marijuana extraction using inherently hazardous substances;
- C. Manufacturing facility officer or director qualification requirements;
- D. Required security for manufacturing facilities;
- E. Requirements of a disposal plan for harvested marijuana used in the manufacturing process; and
- F. Minimum record-keeping requirements, including an annual audit requirement.

The failure of the department to adopt rules under this subsection does not prevent a person authorized pursuant to subsection 3, paragraph A from engaging in conduct authorized under this section. After February 1, 2018, rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 6. 22 MRSA §2424, sub-§1-A, as enacted by PL 2017, c. 452, §10, is amended to read:

1-A. Rulemaking. The department may adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that after February 1, 2018 rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 7. 22 MRSA §2424, sub-§4, as amended by PL 2019, c. 217, §4, is further amended to read:

4. Enforcement and compliance. ~~The~~ On or before February 1, 2018, the department shall adopt routine technical rules and after February 1, 2018, the department shall adopt major substantive rules as defined in Title 5, chapter 375, subchapter 2-A regarding enforcement and compliance of authorized conduct under this chapter, including rules governing:

- A. Minimum oversight requirements for dispensaries and registered caregivers and the one permitted additional location at which a

OFFICE OF POLICY AND LEGAL ANALYSIS

dispensary cultivates marijuana plants for medical use by qualifying patients; and

B. Minimum security requirements for registered caregivers operating caregiver retail stores pursuant to section 2423-A, subsection 2, paragraph P and registered dispensaries and any additional location at which a dispensary cultivates marijuana plants for medical use by qualifying patients.

Sec. 8. 22 MRSA §2425-A, sub-§3-A, as amended by PL 2019, c. 331, §19, is further amended by amending the last blocked paragraph to read:

The department, with the Department of Public Safety, Bureau of State Police, State Bureau of Identification, shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that after February 1, 2018 rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 9. 22 MRSA §2425-A, sub-§10, as enacted by PL 2017, c. 452, §12, is amended to read:

10. Fees. The department shall adopt rules to establish fees in accordance with this subsection. The fees must be credited to the Medical Use of Marijuana Fund pursuant to section 2430. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that after February 1, 2018 rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

A. There is no annual registration fee for a qualifying patient or visiting qualifying patient or a caregiver who is not required to register pursuant to section 2423-A, subsection 3, paragraph C. There is no annual registration fee for a caregiver who does not cultivate marijuana plants for a qualifying patient.

B. There is an annual registration fee for a caregiver who cultivates marijuana plants on behalf of a qualifying patient pursuant to section 2423-A, subsection 2, paragraph B. The fee may not be less than \$50 or more than \$240 for each group of up to 6 mature marijuana plants cultivated by the caregiver. The caregiver shall notify the department of the number of marijuana plants the caregiver cultivates.

OFFICE OF POLICY AND LEGAL ANALYSIS

C. There is an annual registration fee for a dispensary, which may not be less than \$5,000 or more than \$12,000. There is a fee to change the location of a registered dispensary or the location at which a registered dispensary cultivates marijuana plants, which may not be less than \$3,000 or more than \$4,000.

D. There is an annual registration fee for a tier 1 manufacturing facility, which may not be less than \$50 or more than \$150.

E. There is an annual registration fee for a tier 2 manufacturing facility, which may not be less than \$150 or more than \$250.

F. There is an annual registration fee to engage in marijuana extraction under section 2423-F, subsection 3, which may not be less than \$250 or more than \$350.

G. There is an annual registration fee for a marijuana testing facility, which may not be less than \$250 or more than \$1,000, except that there is no fee if the testing facility is licensed in accordance with Title 28-B, chapter 1.

H. There is an annual registration fee for an officer or director or assistant of a registered caregiver or registered dispensary, which may not be less than \$20 or more than \$50.

I. There is a fee to replace a registry identification card that has been lost, stolen or destroyed or a card that contains information that is no longer accurate, which may not be less than \$10 or more than \$20. Replacement of a registry identification card does not extend the expiration date.

J. There is an annual fee for a criminal history record check for a caregiver or an officer or director or assistant of a registered dispensary, marijuana testing facility or manufacturing facility, which may not be less than \$31 or more than \$60. The fee must be paid by the caregiver or by the registered dispensary, marijuana testing facility or manufacturing facility for an officer or director or assistant of the registered dispensary, marijuana testing facility or manufacturing facility.

Sec. 10. [22 MRSA §2425-A, sub-§13, ¶A](#), as enacted by PL 2017, c. 452, §12, is amended to read:

A. A registered caregiver or a dispensary shall submit annually a report of the number of qualifying patients and visiting qualifying patients assisted by the caregiver or dispensary. A report may not directly or indirectly disclose patient identity. The department shall adopt rules to

OFFICE OF POLICY AND LEGAL ANALYSIS

implement this paragraph. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that after February 1, 2018 rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 11. 22 MRSA §2430, sub-§5, as amended by PL 2019, c. 331, §31, is further amended to read:

5. Medical marijuana research grant program established. The medical marijuana research grant program, referred to in this subsection as "the program," is established within the department to provide grant money to support objective scientific research, including observational and clinical trials and existing research, on the efficacy of harvested marijuana as part of medical treatment and the health effects of harvested marijuana used as part of medical treatment. The program must be funded from the fund. The department shall adopt rules necessary to implement the program, including, but not limited to, required qualifications of persons conducting the research; determining the scientific merit and objectivity of a research proposal; criteria for determining the amount of program funds distributed; criteria for determining the duration of the research; procedures for soliciting research participants, including outreach to patients, and for obtaining the informed consent of participants; and reporting requirements for the results of the research and evaluation of the research results. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that after February 1, 2018 rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 12. 22 MRSA §2430-E, sub-§2, as enacted by PL 2017, c. 452, §24, is amended to read:

2. Repeat forfeiture. If a cardholder has previously forfeited excess marijuana pursuant to subsection 1 and a subsequent forfeiture occurs, the department shall revoke the registry identification card of the cardholder and the entire amount of marijuana plants or harvested marijuana possessed by that cardholder must be forfeited to a law enforcement officer. The department shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that after February 1, 2018 rules

OFFICE OF POLICY AND LEGAL ANALYSIS

adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 13. 22 MRSA §2430-F, sub-§1, as enacted by PL 2017, c. 452, §24, is amended to read:

1. Department suspension or revocation. The department may suspend or revoke a registry identification card for violation of this chapter and the rules adopted under this chapter. Revocation in accordance with section 2430-E, subsection 2 is considered a final agency action, subject to judicial review under Title 5, chapter 375, subchapter 7. Unless otherwise specified as final agency action, a person who has had authorization for conduct under this chapter revoked due to failure to comply with this chapter and rules adopted by the department may request an informal hearing. The department shall adopt rules to specify the period of time, which may not exceed one year, that the person whose registry identification card was revoked is ineligible for reauthorization under this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that after February 1, 2018 rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

The department shall immediately revoke the registry identification card of an officer or director or assistant of a dispensary who is found to have violated section 2428, subsection 9, paragraph B, and that person is disqualified from serving as an officer or director or assistant of a dispensary.

Sec. 14. 22 MRSA §2430-G, sub-§1, ¶A, as enacted by PL 2017, c. 452, §24, is amended to read:

A. A registered caregiver, a registered dispensary, a marijuana testing facility and a manufacturing facility shall:

(1) Keep a record of all transfers of marijuana plants and harvested marijuana;

OFFICE OF POLICY AND LEGAL ANALYSIS

(2) Keep the books and records maintained by the registered caregiver, registered dispensary, marijuana testing facility or manufacturing facility for a period of 7 years; and

~~(3) Complete an annual audit of business transactions of the registered caregiver, registered dispensary, marijuana testing facility or manufacturing facility by an independent 3rd party; and~~

(4) Make the books and records maintained under this subsection available to inspection by the department upon the department's demand.

Records kept under this paragraph must avoid identifying qualifying patients.

Sec. 15. 22 MRSA §2430-G, sub-§1, ¶B, as amended by PL 2019, c. 331, §32, is repealed.

~~B. The department shall develop and implement a statewide electronic portal through which registered caregivers, registered dispensaries, marijuana testing facilities and manufacturing facilities may submit to the department the records required under paragraph A and in accordance with rules adopted by the department. A registered caregiver, registered dispensary, marijuana testing facility and manufacturing facility shall pay all costs and fees associated with the use of this electronic portal and all other fees associated with the keeping of records required in this section in accordance with rules adopted by the department. The department shall adopt rules regarding the process and content of records to be submitted, the frequency with which the records must be submitted, the costs and fees associated with using the electronic portal and any other requirements necessary to implement this paragraph.~~

Sec. 16. Rules governing the medical use of marijuana. The rules governing the medical use of marijuana are those rules that were last amended February 1, 2018. Before adopting or amending rules governing the medical use of marijuana, the Department of Administrative and Financial Services shall establish a process to include caregivers, registered caregivers and patients, as these terms are defined in the Maine Medical Use of Marijuana Act, and physicians and certified nurse practitioners, as these

OFFICE OF POLICY AND LEGAL ANALYSIS

terms are defined in the Maine Medical Use of Marijuana Act, with significant knowledge and experience certifying patients under the Maine Medical Use of Marijuana Act, in the development of these rules or amendments and shall consult with caregivers, registered caregivers, patients, physicians and certified nurse practitioners. Sec. 17. Retroactivity. This Act applies retroactively to February 1, 2018. Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.		
Tech Notes	Sec. 1. - What constitutes “significant knowledge and experience”? As determined by the department? - What does “shall develop a process to retain any consultant hired” mean? Unclear what kind of process and retaining must happen? Must hire everyone consulted with?	Unclear if rules moratorium disrupts old rules. Maybe clarify as “may not adopt new rules” or use language similar to 1242.
Fiscal Impact	Fiscal impact information not available at time of writing.	Fiscal impact information not available at time of writing.