

Mark Barnett  
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## **NEEDED CHANGES TO RULE NO MATTER CAREGIVER SIZE**

### 1.1 - Department Authority.

The Department may enforce this Rule and any relevant provisions of 4 MRS, 5 MRS, 22 MRS, ~~28-B MRS~~ and other general statutes, laws, executive orders or subsequently passed legislation. The Department shall set registration fees in accordance with 22 MRS §2425-A. As applicable, the Department may delegate authority to appropriate state and local agencies. The Department, or an agent thereof, shall have the authority to inspect, during hours of operation, times of apparent activity or other reasonable time, any registered caregiver, including a registered caregiver's retail store, dispensary, manufacturing facility, including inherently hazardous substance extraction facilities, or marijuana testing facility including their business records or vehicles used to transport marijuana or harvested marijuana for medical use.

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**Fourth Amendment protections apply, warrant required. Title 28 Adult Use only.**

### 1.4 - DEFINITIONS

13. ~~Child-resistant~~ means conforming to 16 C.F.R. Part 1700 (2018), specially designed or constructed to be significantly difficult for a typical child under 5 years of age to open and not significantly difficult for a typical adult to open or reseal. ~~A container that holds more than one serving or dose of harvested marijuana shall be resealable.~~

"Child-resistant" means, with respect to packaging or a container:

- A. Specially designed or constructed to be significantly difficult for a typical child under 5 years of age to open and not to be significantly difficult for a typical adult to open and reseal; and [PL 2017, c. 452, §3 (NEW).]
- B. With respect to any product intended for more than a single use or that contains multiple servings, resealable. [PL 2017, c. 452, §3 (NEW).]

**Revert to statutory definition.**

**20. 'Digital certification' means an electronic copy of the patient certification in possession of the patient that must be checked against other forms of ID such as a state ID for verification.**

**Digital certifications should be accepted as they are for licenses or insurance.**

~~29. Home base registered caregiver means a registered caregiver who engages in all authorized cultivation and manufacturing activities at the registered caregiver's primary residence and who does not operate a caregiver retail store. A home based registered caregiver must comply with all applicable requirements of the Act and Section 11 of this Rule.~~

No statutory authority to differentiate. Also, meaningless. A caregiver who grows at home may have a large facility with many employees, may also have a retail store, etc. E.G. a caregiver who has a retail store may have just 3 employees and no cultivation.

35. **Inventory tracking system** means the voluntary statewide electronic portal developed, implemented and maintained by the Department or its designee for the purposes of tracking all marijuana for medical use from immature marijuana plant to the point of sale.

By statute, Department may not require participation as requirement for program.

38. **Manufacture or manufacturing** means the production, blending, infusing, compounding or other preparation of marijuana concentrate and marijuana products including, but not limited to, marijuana extraction or preparation by means of chemical synthesis or the application of heat and/or pressure use of solvents. Manual processing is excluded from this definition

37. 'Manual processing' means the extraction, processing, or manufacturing of marijuana using only mechanical methods that do not involve the use of chemicals or solvents other than water or ice; and the infusion of marijuana in typical cooking fats and food additives.

These activities are already considered part of a caregiver's authorized activities, no Tier 1 or Tier 2 license needed in order to perform them.

43. **Marijuana drink** means a liquid edible marijuana product but excludes tinctures.

Tinctures should not require a Beverage Plant license and therefore must be defined separately from 'marijuana drink'.

45. **Marijuana product** means a product composed of harvested marijuana and other ingredients. "Marijuana product" includes, but is not limited to, an edible marijuana product, amarijuana ointment, marijuana tincture and a marijuana drink. "Marijuana product" does not include marijuana concentrate.

46. **Marijuana tincture** means a solution prepared from harvested marijuana or marijuana product blended into a menstruum using edible oils, alcohol, glycerin, vinegar, witch hazel, or other edible medium. Manufacture of tinctures does not require a Beverage Plant License.

63. **Registered premises** means the structure or structures and land specified in the application for registration, and approved by the Department, that is owned, leased, or otherwise held under the control of the applicant or registrant where conduct under the Act and this Rule occurs. The premises shall be a contiguous area and may only be occupied by one registrant, unless otherwise permitted by the Act and this Rule. Registered premises does not preclude authorized activities on patient property or property of another program registrant for the purpose of making transfers.

Restriction not authorized by statute and conflicts with the first line of the definition. Caregiver authorized activities are not location-specific by statute and

**Rule may not make them so. Language necessary to protect patient access to delivery services.**

74. **Solvent** means a liquid or compressed gas that can be used to extract cannabinoids from harvested marijuana, **but does not include water.**

**Ice-water extraction is a very safe caregiver authorized activity, it needs no additional regulation.**

**86. Written certification** means an original document authorizing a qualifying patient to possess and use marijuana for medical use that is printed on tamper-resistant paper supplied by the Department to a medical provider **or an electronic (digital?) record thereof**, and executed and signed by a qualified medical provider in accordance with this Rule. A written certification is valid for the term indicated by the medical provider, which may not exceed one year. ~~Digital, scanned, photocopied or any other copies of written certification may not be used to demonstrate lawful conduct in accordance with this Rule and the Act.~~

**Digital certifications should be accepted as they are for licenses or insurance.**

## 2.1 - Qualifying Patients

~~2.1.1.D - A written certification may be made only in the course of a bona fide medical provider-patient relationship after the medical provider has completed a full assessment of the patient's medical history. If a patient has not provided a medical provider who is not the patient's primary care provider with the name and contact information of the patient's primary care provider, a medical provider shall conduct an in-person consultation with the patient prior to providing a written certification.~~

**A requirement for patients without a PCP (est. at least 25% of the population) for telehealth is an unreasonable barrier to access and should be removed.**

## 2.1.2 - Authorized Conduct

2.1.2.G - Obtain or receive harvested marijuana **and marijuana plants** for the qualifying patient's medical use in accordance with the Act and this Rule;

**Access to cultivating one's own medicine is a powerful and affordable means of meeting one's health needs.**

## 2.2.1 - Qualifying Patient Application for an Inherently Hazardous Substance Manufacturing Facility Registration Certificate.

~~L.3. A lease document if the property is not owned by the applicant;~~

**Item 4 is sufficient. The Department can't compel a lease. All assertions otherwise should be removed from Rule.**

## 3.1.2 Bona Fide Medical Provider-Patient Relationship

A.1.b. -Evidence of screening for substance use disorder **if the provider deems it necessary for evaluating a patient's care plan.**

**Not only is this invasive if mandatory, it flies in the face of the reality that cannabis can help many with recovery from other substance abuse.**

### 5.3.2 Additional Requirements for a Caregiver Registry Identification Card Application.

1.

In addition to the information required in Section 5.3.1, each applicant for a caregiver registry identification card shall provide the following information on forms made available by the Department:

A. The legal name, ~~organizing documents, operating and/or management agreements, bylaws, and any other business information required by the Department to prove compliance with Section 6.2.2 for the single allowable business entity organized by the applicant associated with the caregiver registry identification card, if applicable.~~ **of any entities in which authorized activities take place.**

B. Identification of all natural persons and business entities having an ownership interest in the applied-for registry identification card and the nature and extent of the interest held by each person or entity and, if applicable, the nature and extent of any interest the person or entity has in any other registrations applied for or issued under this Rule.

C. Proof of sales tax registration **for each entity in which authorized activity takes place** according to 36 MRS and the rules of the Maine Revenue Service.

D. Proof of all required licenses, registrations, or certificates from the Department of Agriculture, Conservation and Forestry, the Department of Health and Human Services and the Department of Environmental Protection in accordance with Section 6.1.4 of this Rule, if applicable.

E. Identification of **the person responsible for** inventory-tracking system administrator **medical marijuana product.**

F. F. ~~An~~ detailed operating plan of record to the Department on forms made available by the Department. The operating plan of record shall include, ~~without limitation,~~ information related to the following, if applicable:

- (1) Diagram(s) of the ~~proposed-registered~~ premises;
- (2) Security;
- (3) Operating days and hours of operation;
- (4) Cultivation and cultivation areas;
- (5) Manufacturing and manufacturing areas;
- (6) Specific products and **Production** processes;
- (7) Compliance with packaging and labeling;
- (8) ~~Signs, advertising and marketing;~~
- (9) Sales to patients;
- (10) Wholesale activities;
- (11) Caregiver retail store;
- (12) Record keeping;
- (13) Disposal of marijuana waste;
- (14) ~~A workplace safety plan consistent with 29 CFR Part 1910, covering personal protective equipment, hazard assessment, safe equipment operation, proper application of agricultural chemicals, ladder use, hazard communication and other state and federal workplace safety requirements, as applicable;~~

~~(15) Compliance with applicable building code, the National Fire Protection Association (NFPA) model fire code, the applicable electrical codes, and federal and state environmental requirements;~~

(16) Co-location with adult use licensees in accordance with 28-B MRS, ch. 1 and 18-691 CMR, ch.1.

2.

1. Strike 'without limitation' from all items in 5.3.2.
2. Strike lease document, 'all other information requested' language in all items in 5.3.2. OMP cannot compel a lease. Documentation of property owner's consent is sufficient.
3. Strike 5.3.2 I. 3,4,5,6,7. Caregiver authorized activities are not location-specific.
4. Strike 5.3.2 J (mislabeled G).2, 3,4,5, 6,7. Caregiver authorized activities are not location-specific.
5. Strike 5.3.2.K (mislabeled as H) 1.b. A caregiver's right to have a store is unabridged by municipal approval in the eyes of statute:

Title 22 558-C 2423 A.2."P. Operate one caregiver retail store to sell harvested marijuana to qualifying patients for the patients' medical use in accordance with this chapter; and [PL 2019, c. 217, §2 (AMD).]

**Why we reject and oppose the OMP's rulemaking on full display here. This is almost an exact replica of the Adult Use qualifications and could easily lead to years of backlog just processing applications.**

#### 5.4 - Registration Certificate Types

1. Department should issue 'Certificate' to all caregivers that permits all authorized activities.
2. Increase tier 1 limit as in statute to 200 and 1,000 from 40 and 200.

**Difficult to obtain cannabis business services without more formal documentation than a plastic card. Tier limits should be removed from statute and set in rule.**

#### 5.5 - Registration Certificate Qualifications

Strike 5.5.1. B.2

**May not prohibit investment in business entities through which authorized activities are conducted. AG has already spoken on this issue, supported by resolved litigation.**

5.6 - Remove all 'without limitation'.

#### 5.6.4 Additional Requirements for a Dispensary Registration Certificate.

5.6.4 B. The legal name, organizing documents, operating and/or management agreements, bylaws, and any other business information required by the Department. of the business entity if the applicant is a business entity.

5.6.4 G. Strike 3, 7 just 'Production processes', strike 9, strike 15, strike 16

5.6.4 H. Strike 3 may not compel, strike 6

5.6.4 I Strike 2, 5, 7  
5.6.4 J Strike 2  
5.6.4 L Strike 2

**Nothing in statute calls for this authority.**

5.7 - Application for Renewal of a Registry Identification Card or a Registration Certificate

Remove all 'without limitation'.

5.7.1 - Department presumes continued operations of applicant until renewal is complete.

5.7.1 - A. Total rewrite needed. 'Demonstrate all registration criteria' far too broad.  
Strike

C, E, H

**Goal is to protect caregiver/registrant from not having a renewal reviewed in time.**

5.8 - Department Review of Applications for Registry Identification Cards, Registration Certificates and Renewals

5.8.1 Dept does not have unlimited power to compel. Strike all.

5.8.2 Clarify presumption of continued operations during any back and forth that lasts beyond the effective date of existing registration.

**Consistently overreaching outside of statute.**

5.8.5 - Denial

\_\_\_\_ B. The Department may deny an application if:

~~(1) The applicant did not provide the all information required by the Act and this Rule;~~

(2) The Department determines that the applicant does not qualify; or

(3) The Department determines that the information provided by the applicant includes any ***intentional*** material misstatement of facts.

**Applicant must have the ability to provide any missing information prior to a decision.**

5.9 - Application to Change Registry Identification Card Information Required Forms for All Applications to Change Registry Identification Card Information.

5.9.1 - 'shall demonstrate continued compliance with all registration criteria' far too vague. Strike C.1 besides legal name, limit 3 to cultivation and manufacturing, testing, and dispensary certificates.

**Intentionally vague and open-ended.**

5.10 - Application to Change Registration Certificate Information

5.10.1 - Strike all 'without limitation'. Strike C 1 except legal name.

6.1.1 General Conduct Requirements.

6.1.1.1.2 Recordkeeping to 3 years (**fix in statute**)

6.1.1.J, strike & also strike in statute

6.1.2 Registered Premises

Strike B, nowhere in statute.

Strike C 5

6.1.3 Security. Each registrant must enact security measures to prevent the diversion of marijuana plants or harvested marijuana that are being cultivated, manufactured, tested, packaged, stored, displayed or transported. The Department may require that each registrant, with the exception of a home-based registered caregiver in accordance with Section 11 of this Rule, demonstrate compliance with the following standards on the registrant's operating plan of record.

A. Lighting must be sufficient to deter unauthorized activity.

~~(1) Any gate or perimeter entry point of a registered premises must have lighting sufficient for observers to see, and cameras to record, any activity within 10 feet of the gate or entry.~~

~~(2) A motion detection lighting system may be employed to light required areas in low-light conditions.~~

~~B. Doors and windows must be designed to deter forced entry.~~

~~(1) Commercial grade locks, appropriate for facilities requiring high levels of physical security, are required on all perimeter entry doors to the registered premises.~~

~~(2) All perimeter windows of the registered premises must be in good condition and lockable.~~

~~C. An alarm system is required.~~

~~(1) Monitored sensors are required on all perimeter entry points and perimeter windows of the registered premises.~~

~~(2) Alarm systems must be monitored by a licensed security company capable of contacting the registrants and, if necessary, law enforcement.~~

~~(3) The system must include an audible alarm, which must be capable of being disabled remotely by the security company.~~

~~D. Video surveillance is required to deter unauthorized activity and to allow Department review during any inspection or investigation.~~

~~(1) Placement and coverage of cameras must be sufficient.~~

~~(a) Cameras must be permanently fixed inside and outside each entry/exit point of the registered premises to ensure identification of persons entering and exiting.~~

~~(b) A sufficient number of cameras must be permanently fixed to allow the viewing, in its entirety, of any area where harvested marijuana, marijuana plants, immature marijuana plants, seedlings, or seeds are cultivated, manufactured, tested, packaged, stored, displayed or transported.~~

~~(c) A sufficient number of cameras must be permanently fixed to allow the viewing, in its entirety, of any area where marijuana waste is stored before being made unusable, or where marijuana waste is made unusable.~~

~~(2) Video surveillance shall meet the following minimum requirements:~~

~~(a) Minimum camera resolution is 720p;~~

~~(b) System storage and cameras are internet protocol (IP) compatible;~~

- ~~(c) All cameras must record continuously twenty-four hours per day and at a minimum of 15 frames per second;~~
- ~~(d) All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards; and~~
- ~~(e) The surveillance system storage device must be secured on the premises in a lockbox, cabinet or closet, or must be on a third-party server or secured in another manner to protect from employee tampering or criminal theft.~~
- ~~(3) All surveillance recordings must be kept for a minimum of 30 days on the registrant's recording.~~
- ~~(4) All videos are subject to inspection by any Department employee or law enforcement officer and must be copied and provided to the Department or law enforcement officer upon request.~~
- ~~(5) Each registrant shall maintain a list of all persons with access to video surveillance recording and procedures for controlling access to recordings.~~

**XXXXXX**

**Among the most overreaching sections. Security requirements should not be mandatory at state level. Towns require them, decision on how to control security is a private decision. OMP's proposal would cost tens of thousands of dollars and in some cases more depending on facilities without any demonstrated 'safety benefit' to the public. The existing 'enclosed, locked' facility language is sufficient. Significant privacy issues in requiring video. Decision left to registrant.**

#### 6.1.4 Licenses, Registrations and Certificates from Other State Agencies Required.

E. Sales tax registration required. A registrant engaged in sales of marijuana plants and harvested marijuana shall obtain from Maine Revenue Services a sales tax registration certificate **for any business entity in which authorized activity occurs**

**A backdoor attempt to fundamentally change caregiver operations and block delivery services for patients. Caregiver operations that are not cultivation or a retail store are not location specific. Caregiver transfers are not location specific.**

#### 6.2.2 Registered Caregivers and Business Entities.

- A. ~~Each registered caregiver may form only one legal business entity for all of the registered caregiver's authorized activities;~~
- B. ~~Each registered caregiver shall be the sole equity owner of the business entity;~~
- C. ~~Each registered caregiver shall retain sole **majority** control of the **any** business entity **in which authorized activity occurs**;~~
- D. ~~Each registered caregiver shall provide to the Department all information and documentation relating to the business in accordance with this Rule;~~

**Must clarify, can't leave an open-ended vortex of demands.**

- E. Each registered caregiver may seek and accept loans on behalf of **any business entity in which authorized activity occurs** the business provided that the registered caregiver retains sole equity ownership and **majority** control of the **each** business entity;
- F. Each registered caregiver shall disclose to the Department any person or entity who is



an officer or director or who otherwise holds an ownership interest in the business entity ***any business entity in which authorized activity occurs***;

G. Each registered caregiver shall notify the Department when a change in ownership interest occurs;

H. Each registered caregiver shall ensure that all employees assisting the registered caregiver in the conduct of the registered caregiver's authorized activities through the business entity must be registered caregiver assistants of the registered caregiver;

I. Each registered caregiver shall acknowledge that all restrictions regarding cultivation, possession, transfer, manufacture and retail sales of marijuana for medical use apply to the business entity as an extension of the registered caregiver's authorized conduct;

J. ~~Each registered caregiver shall agree not to transfer any ownership or control of the business entity to any other person, except that a registered caregiver may sell or transfer the entirety of their business assets to another registered caregiver so long as the sale or transfer does not violate this Section; and~~

K. Each registered caregiver shall acknowledge that both the registered caregiver and the business entity are prohibited from conducting any authorized caregiver activities if the caregiver does not hold a current valid registry identification card.

**This entire section is a disaster. None of this is called for in statute and much of it violates other elements of title 22 and the Dormant Commerce Clause.**

~~6.2.3 Registered Premises. Each registered caregiver shall register all locations, subject to certain limitations in this Rule or the Act, to conduct authorized activities as approved by the Department through the operating plan of record.~~

~~A. Each registered caregiver is permitted to conduct authorized activities, excluding activities related to authorized transportation, only at registered premises disclosed to the Department and controlled by the registrant.~~

~~B. Registered caregiver authorized activities are location specific and may only be conducted in the location and manner approved by the Department through the operating plan of record.~~

**No statutory basis. Existing regulation of cultivation facilities and retail storefronts sufficient.**

Mark Barnett  
Maine Craft Cannabis Association, Auburn

Good morning all,

Please find attached a cursory summary of disputes that the community has with the current Proposed Rule. This should not be construed as final by any means, but please consider these points when considering a 'backup' 'manageable' Rule. It totals 9 pages and hasn't yet reached section 7. Sections 5 & 6 in particular are disastrous for this industry. My apologies for this incomplete work but this has been a truly unbelievable task trying to unpack for the Committee the many dozens of serious issues.

I think first and foremost in member's minds should be the vast quantity of testimony against these.