DEPARTMENT OF HEALTH

Adoption of Chapter 11-160
Hawaii Administrative Rules

JUL 18 2015

SUMMARY

Chapter 11-160, Hawaii Administrative Rules, entitled "Medical Use of Marijuana", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 160

MEDICAL USE OF MARIJUANA

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SUBCHAPTER 1

GENERAL PROVISIONS

§11-160-1 Purpose. The purpose of this chapter is to set forth rules for the medical use of marijuana program pursuant to part IX of chapter 329, Hawaii Revised Statutes (HRS), including the process for the department to approve debilitating medical conditions, physician requirements to participate in the medical marijuana program, registration of qualifying patients and primary caregivers, monitoring and investigations, administrative procedure, and confidentiality of information. [Eff JUL 18 2015] (Auth: HRS §§321-9, 329-121) (Imp: HRS §§329-121 to 329-128)

§11-160-2 Definitions. As used in this chapter:

"Adequate supply" has the same meaning as defined in section 329-121, HRS.

"Applicant" means a physician, qualifying patient, or primary caregiver submitting an application to register or to renew the registration of a qualifying patient or primary caregiver pursuant to section 329-123, HRS.

"Bona fide physician-patient relationship" means a relationship in which the physician has ongoing responsibility for the assessment, care, and treatment of a qualifying patient's debilitating medical condition with respect to the medical use of marijuana which means:

(1) The physician has completed a full assessment of the qualifying patient's medical history and current medical condition, including conducting a review of the qualifying patient's medical records related to the debilitating condition as medically appropriate and conducting an in-person physical examination;

(2) The physician provides follow up care and treatment as medically appropriate to the qualifying patient and assesses the

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qualifying patient's condition during the course of the qualifying patient's medical use of marijuana; and

(3) The physician maintains records of the qualifying patient's treatment and condition in accordance with medically accepted standards.

"Certifying physician" means a physician who issues a written certification for a qualifying patient.

"Debilitating" means impairing the ability of a person to accomplish activities of daily living.

"Debilitating medical condition" has the same meaning as defined in section 329-121, HRS, and includes any other medical condition approved by the department pursuant to subchapter 2.

"Department" means the department of health.

"Director" means the director of the department of health, State of Hawaii, or the director's authorized agent.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Grow site" means a specific location designated by a qualifying patient to cultivate marijuana for medical use by the qualifying patient and identified by a street address, tax map key number, or a sufficient description to identify the physical location; provided that the department shall determine which type of identifier shall be used. The grow site shall be the qualifying patient's or primary caregiver's residential address or other location owned or controlled by the qualifying patient or primary caregiver.

"Marijuana" has the same meaning as defined in section 329-121, HRS.

"Medical use" has the same meaning as defined in section 329-121, HRS.

"Minor" means a person under the age of eighteen years.

"Parent, guardian, or person having legal custody" means a custodial parent or legal guardian with legal authority to make health care decisions for a minor or an adult lacking legal capacity.

"Patient identification number" means the unique number on the qualifying patient's valid driver's license issued by a state of the United States, state photo identification card issued by a state of the United States, or current passport; provided that if the qualifying patient is a minor and does not have any of these identification documents, the patient identification number means the unique number on the minor's birth certificate issued by a state of the United States.

"Petition" means a written request submitted pursuant to section 11-160-7 that requests adding a medical condition to the list of debilitating medical conditions that qualify for the medical use of marijuana.

"Physician" has the same meaning as defined in section 329-121, HRS.

"Primary caregiver" has the same meaning as defined in section 329-121, HRS.

"Qualifying patient" has the same meaning as defined in section 329-121, HRS.

"Registration card", "registry card", or "registration certificate" means an identification card or other document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.

"Signature" means a person's name written by the person in a distinctive way as a form of identification, including an electronic signature.

"Usable marijuana" has the same meaning as defined in section 329-121, HRS.

"Written certification" has the same meaning as defined in section 329-121, HRS. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §§329-121 to 329-128)

§11-160-3 Severability. If any provision of this chapter or the application thereof to any person

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or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §§329-121 to 329-128)

§11-160-4 Disclaimer. Nothing in this chapter is intended to represent anything about the legality of the use or possession of marijuana pursuant to federal law. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: SLH 2000, Act 228, §1)

SUBCHAPTER 2

DEBILITATING MEDICAL CONDITIONS

§11-160-6 List of debilitating medical conditions. A qualifying patient shall have a written certification from a physician for at least one of the following debilitating medical conditions for the medical use of marijuana:

(1) A statutorily-approved medical condition pursuant to section 329-121, HRS; or

(2) Any other medical condition that is approved by the director pursuant to section 11-160-7. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §329-121)

§11-160-7 Department-approved conditions; petition process. (a) Any physician or potentially qualifying patient seeking to add a medical condition to the list of debilitating medical conditions shall file a written petition with the department on forms and in a manner prescribed by the department. For purposes of this section, "potentially qualifying patient" means a person who has been diagnosed with

the medical condition for which the petition is being made.

(b) The petition shall, at a minimum, contain:

(1) The specific medical condition or its treatment for which the petition is being made;

(2) An explanation stating the reasons why the medical condition or its treatment should be added to the list of qualifying debilitating medical conditions;

(3) The extent to which the medical condition is generally accepted by the medical community as a valid, existing medical condition;

(4) A description of the symptoms and other physiological or psychological effects experienced by an individual suffering from the medical condition or its treatment and the extent to which these symptoms and physiological or psychological effects are debilitating;

(5) If one or more treatments for the medical condition, rather than the condition itself, are alleged to be the cause of a person's suffering, the extent to which the treatments causing suffering are generally accepted by the medical community as valid treatments for the medical condition;

(6) The availability of conventional medical therapies other than those that cause suffering to alleviate symptoms caused by the medical condition or its treatment;

(7) The extent to which evidence supports a finding that the use of marijuana alleviates symptoms caused by the medical condition or its treatment;

(8) Any information or studies regarding any beneficial or adverse effects from the use of marijuana in patients with the medical condition; and

(9) Letters of support from physicians or other licensed health care professionals knowledgeable about the medical condition.

(c) If a medical condition in a petition has been previously considered and denied by the department, or is determined by the department to be substantially similar to a denied condition, the department may deny the petition without further review unless new scientific research supporting the request is included in the petition.

(d) The department may make a final determination that a petition is frivolous and deny the petition without further review.

(e) If the petition does not meet the requirements of this section or is denied under subsection (c) or (d), the department shall notify the petitioner that the petition does not meet the requirements of this section and give the specific reason for the determination.

(f) If the petition meets the requirements of this section, the department shall notify the petitioner that the department will conduct a public hearing to discuss the petition.

(g) At least once per calendar year, if there are pending petitions, the department shall conduct a public hearing to receive public oral or written testimony on those petitions; provided that the department shall have the discretion to establish time deadlines for the inclusion of petitions in the public hearings.

(h) At least thirty calendar days before a public hearing, the department shall publish on its website the date, time, and location of the hearing, a list of the medical conditions that the department will be considering at the public hearing, and the procedure for submitting public comments. The department shall also maintain a list of names and mailing or electronic mail addresses of persons who request notification of public hearings to consider petitions and shall transmit a copy of the notice to those persons at their last known addresses at least fifteen calendar days before a public hearing.

(i) The department in its discretion may conduct an investigation, to the extent the department deems necessary, which may include:

(1) Consulting with one or more persons knowledgeable in the medical use of marijuana and one or more experts on the medical condition that is the subject of a petition;

(2) Conducting a literature review of peer-reviewed published scientific studies related to the use of marijuana for the medical condition that is the subject of the petition; and

(3) Gathering any other information the department believes relevant to making a decision on the petition.

(j) The director shall approve, deny, or defer a petition within ninety calendar days following the public hearing at which a petition was considered. In reaching a decision on a petition, the director may consider the following:

(1) The petition;

(2) Public comments and testimony; and

(3) The department's investigation pursuant to subsection (i).

(k) The director shall:

(1) Approve the petition if in the director's discretion the evidence supporting the petition justifies adding the condition as a debilitating medical condition;

(2) Deny the petition if in the director's discretion the evidence supporting the petition does not justify adding the condition as a debilitating medical condition; or

(3) Defer consideration of the petition if additional time is needed to review the evidence.

(l) The director's written decision shall include the factors supporting the decision and shall be sent to the petitioner and posted on the department's website, subject to redaction of any information protected under chapter 92F, HRS.

(m) A decision by the department to deny a petition pursuant to subsection (c) or (d) or a

decision of the director issued pursuant to subsection (j) is a final agency action. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §329-121)

§11-160-8 Department-approved conditions; removal or modification of conditions. The director may remove or modify a department-approved debilitating medical condition if the director determines, on the basis of substantial credible medical and scientific evidence that in the director's opinion the use of marijuana by patients who have the approved condition would more likely than not result in substantial harm to the patients' health. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §329-121)

SUBCHAPTER 3

PHYSICIAN REQUIREMENTS

§11-160-11 Physician requirements for issuing written certifications. Any physician issuing a written certification shall:

(1) Hold a current and valid Hawaii license to practice pursuant to chapter 453, HRS, and have authority to prescribe drugs;
(2) Be registered with the department of public safety pursuant to section 329-32, HRS;
(3) Have a bona fide physician-patient relationship with the qualifying patient;
(4) Diagnose the qualifying patient as having a debilitating medical condition;
(5) Be of the professional opinion that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient; and
(6) Explain 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 if the qualifying patient is a minor or an adult lacking legal capacity. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §§329-121, 329-122, 329-123, 329-126)

§11-160-12 Written certifications. (a) An applicant shall submit a written certification on a form and in a manner prescribed by the department.

(b) A written certification shall contain:

(1) The physician's full name, office and mailing addresses, electronic mail address, and telephone number;

(2) The physician's license number as issued by the Hawaii medical board;

(3) The physician's controlled substances registration number as issued by the department of public safety pursuant to section 329-32, HRS;

(4) The qualifying patient's full name, address, date of birth, and patient identification number;

(5) A photocopy of the qualifying patient's identification document showing the patient identification number;

(6) An attestation that the physician has a bona fide physician-patient relationship with the qualifying patient;

(7) An attestation that the physician has made a diagnosis of a debilitating medical condition for the qualifying patient;

(8) The qualifying patient's debilitating medical condition;

(9) An attestation that, in the physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient;

(10) An attestation that the physician has explained the potential risks and benefits of the medical use of marijuana to the

qualifying patient and also to a parent, guardian, or person having legal custody of the qualifying patient if the qualifying patient is a minor or an adult lacking legal capacity; and

(11) The physician's signature and date.

(c) Unless revoked, a written certification shall be valid for one year from the time of signing by the physician or a shorter time that the physician recommends. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §§329-121, 329-122, 329-123, 329-126)

§11-160-13 Medical records. (a) Physicians shall maintain a record-keeping system for all patients for whom the physician has issued a written certification for the medical use of marijuana.

(b) Physicians shall maintain records that support the decision to recommend the medical use of marijuana, including records of the diagnosis and treatment of the debilitating medical condition for which the medical use of marijuana is recommended.

(c) Pursuant to an investigation of a certifying physician, a physician shall produce and make available copies of all medical records for state and local law enforcement agencies or any other relevant authority for law enforcement purposes, including the investigation or prosecution of a violation of any provision of this chapter or part IX of chapter 329, HRS. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §§329-123, 329-126)

SUBCHAPTER 4

QUALIFYING PATIENT AND PRIMARY CAREGIVER REGISTRATION

§11-160-16 Qualifying patient and primary caregiver registration requirements. (a) To apply for or renew a qualifying patient's registration, an applicant shall submit the following to the department

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on a form and in a manner prescribed by the department:

(1) The qualifying patient's full name, residential and mailing addresses, date of birth, and signature;

(2) For a qualifying patient who is a minor or an adult lacking legal capacity, the full name, residential and mailing addresses, and date of birth of a parent, guardian, or person having legal custody of the minor or the adult lacking legal capacity;

(3) A written certification from the qualifying patient's certifying physician;

(4) A statement of whether the qualifying patient or the primary caregiver will be cultivating marijuana, if at all, for the qualifying patient's use;

(5) The location of the grow site, if any;

(6) Whether the qualifying patient or the primary caregiver is claiming the grow site as the qualifying patient's or primary caregiver's residential address or other location under the qualifying patient's or primary caregiver's ownership or control;

(7) An attestation by the qualifying patient or the primary caregiver that the qualifying patient or the primary caregiver resides at, owns, or controls the grow site;

(8) A clear photocopy of the qualifying patient's identification document showing the patient identification number;

(9) A consent by the qualifying patient or the qualifying patient's parent, guardian, or person having legal custody of the qualifying patient if the qualifying patient is a minor or an adult lacking legal capacity, for the certifying physician to release health information pertaining to the qualifying patient's debilitating medical condition to the department for the purpose of registration, monitoring, or investigation;

(10) If the qualifying patient is a minor or an adult lacking legal capacity, written consent by the parent, guardian, or person having legal custody of the qualifying patient 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;

(11) If the qualifying patient is a minor or an adult lacking legal capacity, an attestation by the person applying to register the minor or the adult lacking legal capacity that the person is a parent, guardian, or person having legal custody; provided that the department may require documentation confirming the legal status of the parent, guardian, or person having legal custody of the qualifying patient, including, but not limited to, a birth certificate, power of attorney, guardianship documents, divorce decrees, or other court orders;

(12) An attestation that the information provided in the application is true and correct;

(13) An attestation that the qualifying patient has read, understands, and agrees to abide by part IX of chapter 329, HRS, and this chapter;

(14) Payment of registration fees in accordance with section 11-160-17; and

(15) Any other information reasonably required by the department to process a qualifying patient's registration, to determine the qualifying patient's suitability for registration, or to protect public health and safety.

(b) If the qualifying patient is designating a primary caregiver, an applicant shall submit the

following to the department on a form and in a manner prescribed by the department:

(1) The primary caregiver's full name, residential and mailing addresses, date of birth, and signature;

(2) A photocopy of the primary caregiver's valid driver's license issued by a state of the United States, identification card with photo issued by a state of the United States, or current passport;

(3) An attestation by the primary caregiver that the primary caregiver agrees to undertake responsibility for managing the well-being of the qualifying patient with respect to the medical use of marijuana;

(4) An attestation by the primary caregiver that the primary caregiver meets all of the primary caregiver requirements pursuant to section 11-160-26; and

(5) Any other information reasonably required by the department to process a qualifying patient's registration, to determine the qualifying patient's suitability for registration, or to protect public health and safety. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §§329-121, 329-122, 329-123)

§11-160-17 Registration fees. (a) Fees for registration of a qualifying patient are as follows:

(1) For a new or renewal registration: $35; and

(2) For a replacement registration card: $15.

(b) Payment of registration fees shall be made in a form and manner as prescribed by the department.

(c) Value added electronic services provided through the portal manager may incur a separate fee pursuant to section 27G-2, HRS.

(d) Registration fees and value added electronic services fees are non-refundable.

[Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §§321-30.1, 329-123)

§11-160-18 Incomplete applications. (a) If the department determines that a registration application is inaccurate or incomplete, the department shall notify the applicant by telephone, by electronic mail, or in writing by mail and shall explain what documents or information is necessary for the department to deem the application complete.

(b) An applicant shall have thirty days from the date of notification to submit the materials required to complete the application; provided that for the purposes of this subsection, "date of notification" shall mean the date the department contacted an applicant by telephone or sent an electronic mail to an applicant, or three days after the department mailed a letter to an applicant; provided further the department may grant an extension for good cause prior to the expiration of the thirty days.

(c) If the applicant fails to submit the materials required to complete the application as required by subsection (b), the department shall notify the applicant that the incomplete application will not be processed, and the applicant may submit a new application at any time with all required documents and applicable fees in accordance with sections 11-160-16 and 11-160-17.

[Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §329-123)

§11-160-19 Verification of information. The department may verify information on an application and accompanying documentation by any or all of the following methods:

(1) Contacting an applicant by telephone, mail, or electronic mail, or, if proof of identity is uncertain, the department may require a face-to-face meeting and the production of additional identification materials;

(2) Contacting the parent, guardian, or person having legal custody of a minor or an adult lacking legal capacity;

(3) Contacting other state agencies to verify licenses or registration as required under this chapter;
(4) Contacting the physician to obtain further documentation to verify that the qualifying patient's medical diagnosis and medical condition meet the requirements of this chapter; and
(5) Contacting any other person or agency for the purpose of verifying information on the application and accompanying documentation. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §329-123)

§11-160-20 Time limits. The department shall approve or deny an application for registration or renewal of registration within thirty calendar days of receipt of an application that has been deemed complete by the department or as soon thereafter as is practicable. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §329-123)

§11-160-21 Denial of application for registration or renewal of registration. (a) The department may deny an application for or renewal of a qualifying patient's or primary caregiver's registration for any of the following reasons:
(1) Failure to provide the information required in section 11-160-16;
(2) Failure to meet the requirements set forth in this chapter or part IX of chapter 329, HRS, for registration;
(3) Provision of misleading, incorrect, false, or fraudulent information;
(4) Revocation of registration in the previous one hundred eighty days pursuant to section 11-160-38(a)(1), (2), (3), or (4);
(5) Failure to pay all applicable fees as required; or

(6) Any other ground that serves the purposes of this chapter or part IX of chapter 329, HRS.

(b) If the department denies an application or a renewal of an application, the department shall notify the applicant in writing of the department's denial decision, the reason therefor, and when the applicant may reapply.

(c) A person aggrieved by a decision made pursuant to this section may request a reconsideration of the action in accordance with section 11-160-51. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §329-123)

SUBCHAPTER 5

PRIMARY CAREGIVER REQUIREMENTS

§11-160-26 Primary caregiver requirements. To register with the department as the primary caregiver of a qualifying patient, a person shall:

(1) Be at least eighteen years of age;
(2) Not be the qualifying patient or the qualifying patient's physician;
(3) Agree to undertake responsibility for managing the well-being of the qualifying patient with respect to the medical use of marijuana;
(4) Be a parent, guardian, or person having legal custody of the qualifying patient where the qualifying patient is a minor or an adult lacking legal capacity;
(5) Be responsible for the care of only one qualifying patient at any given time;
(6) Be the only primary caregiver for the qualifying patient; and
(7) Be designated by the qualifying patient as the qualifying patient's primary caregiver.

[Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §§329-121, 329-122, 329-123)

§11-160-27 Primary caregiver responsibilities. Upon the department's issuance of a registration card to a primary caregiver, the primary caregiver may:

(1) Cultivate marijuana on behalf of a registered qualifying patient only at the grow site and in an amount that, jointly possessed between the qualifying patient and the primary caregiver, does not exceed an adequate supply;

(2) Prepare marijuana for consumption by a registered qualifying patient; and

(3) Administer marijuana to a registered qualifying patient. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §§329-122, 329-123)

SUBCHAPTER 6

REGISTRATION CARDS

§11-160-31 Possession of registration card; identification tags on marijuana plants. (a) A person to whom the department has issued a registration card shall carry the registration card on his or her person whenever the person is in possession of medical marijuana.

(b) The person who has been designated to cultivate marijuana shall have a legible identification tag, in a form and manner as determined by the department, on each marijuana plant being cultivated for the qualifying patient. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §329-123)

§11-160-32 Registration card; content. A registration card shall, at a minimum, contain:

(1) The qualifying patient's name and date of birth;

(2) The primary caregiver's name and date of birth;

(3) The location of the grow site, if any;
(4) The registration identification number;
(5) The date of its expiration; and
(6) The signature of the qualifying patient's physician; provided that the department may use an electronic signature.

[Eff JUL 13 2015] (Auth: HRS §321-9) (Imp: HRS §329-123)

§11-160-33 Notification of changes in information. (a) After obtaining a registration card, a qualifying patient shall notify the department, on forms and in a manner prescribed by the department, within ten working days after any change to the information the qualifying patient or the qualifying patient's primary caregiver previously submitted to the department pursuant to section 11-160-16.

(b) Pursuant to a notification of change, the department shall charge a replacement registration card fee pursuant to section 11-160-17 and issue a replacement registration card to the qualifying patient and primary caregiver, if any, only when there is a change to the information contained on the registration card.

(c) Upon receiving a replacement registration card, a qualifying patient or primary caregiver, if any, shall surrender the prior registration card to the department within five working days of receipt of the replacement registration card; provided that the department may make exceptions based on good cause. Failure to return the prior registration card to the department shall be cause for the department to revoke the replacement registration card.

(d) When changing primary caregivers, the new primary caregiver is not authorized to act as primary caregiver until the department has completed the registration process and issued a registration card for the new primary caregiver.

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(e) A qualifying patient shall immediately notify the qualifying patient's primary caregiver of any changes in status including, but not limited to:

(1) The qualifying patient has assigned another person to be the qualifying patient's primary caregiver; and

(2) The qualifying patient is no longer eligible for the medical use of marijuana.

(f) Failure to make a notification of change with the department pursuant to this section may result in the department revoking the registration card of the qualifying patient or primary caregiver pursuant to section 11-160-38. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §329-123)

§11-160-34 Term. A registration card shall be valid for up to one year from the date of issuance by the department unless suspended, revoked, or voided. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §§329-121, 329-123)

§11-160-35 Renewals. (a) A registration card may be renewed, on forms and in a manner prescribed by the department, by meeting the requirements of subchapter 4.

(b) The department shall process renewal applications in the same manner as specified in subchapter 4. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §§329-122, 329-123)

§11-160-36 Non-transferable. No registration card issued to a qualifying patient or primary caregiver shall be assigned or otherwise transferred to any other person. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §329-123)

§11-160-37 Lost or stolen registration card. (a) A qualifying patient or primary caregiver shall

report a lost or stolen registration card to the department within ten working days after discovery on a form and in a manner as prescribed by the department.

(b) The qualifying patient or primary caregiver shall attest to the loss of the registration card and the reasons and circumstances therefor.

(c) The department shall verify the identity of the qualifying patient or primary caregiver reporting a lost or stolen registration card.

(d) Upon notification in accordance with subsections (a) and (b) and upon payment of the replacement registration card fee in accordance with section 11-160-17, the department shall issue a replacement registration card to the qualifying patient and primary caregiver, if any.

[Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §329-123)

§11-160-38 Revocation of registration card. (a) The department may revoke a registration card for any of the following reasons:

(1) Violation of any provision of this chapter or part IX of chapter 329, HRS;
(2) Submission of misleading, incorrect, false, or fraudulent information;
(3) Fraudulent use of a registration card;
(4) Tampering, falsifying, altering, modifying, duplicating, or allowing another person to use, tamper, falsify, alter, modify, or duplicate a registration card;
(5) Failure to make a notification of change with the department in accordance with section 11-160-33;
(6) Where immediate action is required to comply with the law or protect the health and safety of the general public; or
(7) Any other reason consistent with applicable laws.

(b) The department shall send written notification of a revocation by certified mail to the

qualifying patient, the physician who issued the qualifying patient's written certification, and the primary caregiver, if any, and include the specific reason or reasons for the revocation and the process to request a reconsideration of the department's action pursuant to section 11-160-51.

(c) Registration cards shall be surrendered to the department upon receipt of revocation notification pursuant to subsection (b). Notwithstanding a person's failure to surrender a revoked registration card to the department, upon inquiry by a law enforcement agency for official law enforcement purposes, the department shall verify that the registration is revoked.

(d) A person aggrieved by a decision made pursuant to this section may request a reconsideration of the action in accordance with section 11-160-51. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §329-123)

§11-160-39 Void registration card. (a) A registration card issued to a qualifying patient shall automatically be void:

(1) At the expiration of its term;

(2) Upon the issuance of a replacement registration card due to a change in information pursuant to section 11-160-33 or a lost or stolen registration card pursuant to section 11-160-37;

(3) Upon the death of the qualifying patient;

(4) Upon receipt by the department of written notification from a certifying physician that the qualifying patient no longer has a debilitating medical condition or that the benefits of the medical use of marijuana would no longer likely outweigh the health risks for the qualifying patient; or

(5) Upon receipt by the department of written notification from a qualifying patient that the qualifying patient no longer has a debilitating medical condition.

(b) A registration card issued to a primary caregiver shall automatically be void:

(1) At the expiration of its term;

(2) Upon the issuance of a replacement registration card due to a change in information pursuant to section 11-160-33 or a lost or stolen registration card pursuant to section 11-160-37;

(3) Upon the death of the primary caregiver's qualifying patient;

(4) Upon written notification by the qualifying patient to the department that the individual registered as the primary caregiver is no longer the primary caregiver for the qualifying patient;

(5) When the primary caregiver's qualifying patient is no longer registered with the department or when the qualifying patient's registration card has been revoked; and

(6) Upon receipt by the department of written notification from a certifying physician that the qualifying patient no longer has a debilitating medical condition or that the benefits of the medical use of marijuana would no longer likely outweigh the health risks for the qualifying patient.

(c) Except at the expiration of a registration card's term, the department shall send written notification of a voided registration card by regular mail to the last known address of the qualifying patient, the physician who issued the qualifying patient's written certification, and the primary caregiver, as applicable.

(d) Registration cards shall be surrendered to the department upon receipt of voiding notification pursuant to subsection (c). Notwithstanding a person's failure to surrender a voided registration card to the department, upon inquiry by a law enforcement agency for official law enforcement purposes, the department shall verify that the registration is void.

(e) The department shall have the discretion to reissue a registration card at no additional cost to the qualifying patient or primary caregiver if the department determines the card was voided in error. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §329-123)

§11-160-40 Disposal of unused marijuana. Upon the revocation or voiding of a qualifying patient's or primary caregiver's registration card, all unused marijuana in the possession of the qualifying patient or primary caregiver shall be disposed of immediately by rendering the unused marijuana unusable in a manner approved by the department. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §329-123)

SUBCHAPTER 7

MONITORING AND INVESTIGATIONS

§11-160-46 Monitoring and investigations. (a) The department may, at any time during or after the registration or renewal process, contact a qualifying patient, primary caregiver, or certifying physician by telephone, mail, or in person to verify the current accuracy of information included in the registration system.

(b) If the department is unable to verify the current accuracy of information included in the registration system due to a failure by the qualifying patient, primary caregiver, or certifying physician to provide the department with relevant access or information, the department may revoke the qualifying patient or primary caregiver registration.

(c) The department, when it has reason to believe a violation of any provision of this chapter or part IX of chapter 329, HRS, has occurred, may either conduct an investigation to collect evidence of a violation or notify the proper state or local

authorities. Violations may include, but are not limited to:

(1) Failure by a qualifying patient to notify the department of any change in the information in accordance with section 11-160-33;

(2) Failure by a qualifying patient or primary caregiver to surrender to the department a void or revoked registration card; or

(3) Submission of false or inaccurate information by a qualifying patient, primary caregiver or certifying physician during the registration or renewal of registration process. [Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §329-123)

SUBCHAPTER 8

ADMINISTRATIVE PROCEDURE

§11-160-51 Request for reconsideration. (a) A person aggrieved by a decision made pursuant to section 11-160-21 or 11-160-38 may request a reconsideration of the action.

(b) A request for reconsideration shall be submitted to the department within five working days from the date of notification; provided that for the purposes of this subsection, "date of notification" shall mean the date the department sent an electronic mail to the aggrieved person or three days after the department mailed a letter to the aggrieved person.

(c) A request for reconsideration shall include an explanation of why the aggrieved person believes the action was improper and shall include all arguments, authorities, factors, affidavits, exhibits, and any other matter which the aggrieved person may deem relevant.

(d) The director shall issue a written final decision to the aggrieved person within fifteen working days of the receipt of a request for reconsideration, unless the director determines that

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an extension is necessary and provides written notice of the extended deadline to the aggrieved person.

(e) The director's final decision shall, at a minimum, contain the decision of whether to uphold the action and a detailed statement of the reasons for the final decision, including factual findings.

(f) A request for reconsideration shall not operate as a stay of the decision made pursuant to sections 11-160-21 and 11-160-38.

(g) A final decision by the director on a request for reconsideration is a final agency action, of which jurisdiction and venue for judicial review are vested in the Hawaii circuit court.

[Eff JUL 18 2015] (Auth: §321-9) (Imp: §329-123)

SUBCHAPTER 9

CONFIDENTIALITY OF INFORMATION

§11-160-56 Confidential information; exceptions. (a) All information received and records kept by the department for purposes of administering this chapter are confidential and not subject to disclosure except to:

(1) Employees or agents of the department as necessary to perform their official duties under this chapter;

(2) State or local law enforcement agencies for the purpose of verifying registration with the department pursuant to this chapter or for official law enforcement purposes;

(3) An individual or entity pursuant to an order or subpoena from a court or agency of competent jurisdiction; and

(4) A person or entity with the written permission of the qualifying patient or, if the qualifying patient is a minor or an adult lacking legal capacity, of the qualifying patient's parent, guardian, or person having legal custody.

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(b) Nothing in this section precludes the department from the following:

(1) Notifying law enforcement or relevant authorities about falsified or fraudulent information submitted to the department;

(2) Notifying state or local law enforcement about suspected criminal violations; and

(3) Publishing non-identifying aggregated data or statistics of program information.

[Eff JUL 18 2015] (Auth: HRS §321-9) (Imp: HRS §§92F-13, 329-123)

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DEPARTMENT OF HEALTH

Chapter 11-160, Hawaii Administrative Rules, on the Summary Page dated JUL 1 8 2015, was adopted on JUL 1 8 2015, following public hearings held on January 28, 2015 and February 2, 3, and 5, 2015, after public notice was given in the Honolulu Star Advertiser, Hawaii Tribune Herald, West Hawaii Today, The Garden Island, and The Maui News on December 25, 2014.

The adoption of chapter 11-160 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Virginia Pressler

Virginia Pressler, Director
Department of Health

APPROVED:

David Y. Ige

David Y. Ige
Governor
State of Hawaii

Dated: 7-6-15

APPROVED AS TO FORM:

Jill L. Nagamine

Deputy Attorney General

JUL 0 8 2015

Filed

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LIEUTENANT GOVERNOR
OFFICE

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