

[CHAPTER 329D]
MEDICAL MARIJUANA DISPENSARY SYSTEM

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Note

Legislative oversight working group; improvement of the medical marijuana dispensary system (ceases to exist June 30, 2018); reports to 2017-2018 legislature. L 2016, c 230, §23.

Personnel and contracts, exemption from chapter 76 (July 1, 2015 to

June 30, 2017). L 2015, c 241, §14.

Repayment plan and schedule for deposits into medical marijuana registry and regulation special fund (not later than July 1, 2017). L 2015, c 241, §12.

Cross References

Medical marijuana; economic and other data; collection, see §201-13.9.

Medical marijuana testing and research programs, see §304A-1865.

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§329D-1 Definitions. As used in this chapter:

"Department" means the department of health.

"Dispense" or "dispensing" means the act of a licensed dispensary providing marijuana or manufactured marijuana products to a qualifying patient or a primary caregiver for a fee.

"Enclosed indoor facility" means a permanent, stationary structure with a solid floor, rigid exterior walls that encircle the entire structure on all sides, and a roof that protects the entire interior area from any exterior view and elements of weather; provided that the roof of an enclosed indoor facility utilized as a production center pursuant to a medical marijuana dispensary license application or license renewal application submitted after January 29, 2016, may be partially or completely transparent or translucent. An enclosed indoor facility excludes a greenhouse or shade house that does not comply with these requirements. Nothing in this definition shall be construed to relieve a medical marijuana dispensary license applicant or license renewal applicant of the duty to comply with all applicable building codes and regulations.

"Manufacture" means the preparation, propagation, compounding, conversion, or processing of a substance containing marijuana or its principal psychoactive constituent tetrahydrocannabinol, either directly or indirectly, by a person other than a qualifying patient or primary caregiver for the qualifying patient's use, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container.

"Manufactured marijuana product" means any capsule, lozenge, oil or oil extract, tincture, ointment or skin lotion, pill, transdermal patch, or pre-filled and sealed container used to aerosolize and deliver marijuana orally, such as an inhaler or nebulizer, that has been manufactured using marijuana, or any other products as specified by the department pursuant to section 329D-10(a)(9).

"Marijuana" shall have the same meaning as in section 329-121.

"Medical marijuana dispensary" or "dispensary" means a person licensed by the State pursuant to this chapter to own, operate, or subcontract up to two production centers and up to two retail dispensing locations.

"Medical marijuana production center" or "production center" means a farm or facility wholly owned, operated, or subcontracted by a person licensed by the State pursuant to this chapter as a medical marijuana dispensary that produces marijuana and manufactured marijuana products solely to supply marijuana and manufactured marijuana products to one or more of the retail dispensing locations of the licensed medical marijuana dispensary.

"Person" means an individual, firm, corporation, partnership, association, or any form of business or legal entity.

"Primary caregiver" shall have the same meaning as in section 329-121.

"Production" or "produce" means the planting, cultivating, growing, or harvesting of marijuana. "Production" includes the manufacture of medical marijuana products pursuant to this chapter.

"Qualifying patient" shall have the same meaning as in section 329-121.

"Retail dispensing location" means an establishment owned, operated, or subcontracted by a medical marijuana dispensary where marijuana and manufactured marijuana are made available for retail sale to qualifying patients or primary caregivers.

"Subcontractor" or "contractor" means any person or entity with whom the dispensary licensee has a contract to perform any of its production center or retail dispensing location operations; provided that it does not include a person or entity retained by a dispensary licensee to perform services ancillary to the operations of a dispensary, including but not limited to construction, installation, or maintenance of the dispensary's facility, security systems, or tracking system, and laboratory testing. [L 2015, c 241, pt of §2; am L 2016, c 230, §14]

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§329D-2 Medical marijuana dispensaries; authorized; licensure.

(a) No person shall operate a medical marijuana dispensary unless the person has a license issued by the department pursuant to this chapter.

(b) The director of health shall grant medical marijuana dispensary licenses to allow dispensaries to produce, manufacture, and dispense marijuana and manufactured marijuana products pursuant to this chapter.

(c) Each medical marijuana dispensary license shall allow production, manufacture, and dispensing of marijuana and manufactured marijuana products only in the county for which the license is granted.

(d) The department shall issue eight dispensary licenses statewide; provided that three dispensary licenses shall be issued for the city and county of Honolulu, two dispensary licenses each shall be issued for the county of Hawaii and the county of Maui, and one dispensary license shall be issued for the county of Kauai; provided further that no dispensary license shall be issued for the county of Kalawao.

(e) No person may be granted a dispensary license in more than one county.

(f) Up to two production centers shall be allowed under each dispensary license, provided that each production center shall be limited to no more than three thousand marijuana plants. For purposes of this subsection, "plant" means a marijuana plant that is greater than twelve vertical inches in height from where the base of the stalk emerges from the growth medium to the tallest point of the plant, or greater than twelve horizontal inches in width from the end of one branch to the end of another branch; provided that multiple stalks emanating from the same root ball or root system shall be considered part of the same single plant.

(g) A dispensary licensee may establish up to two retail dispensing locations under the licensee's dispensary license.

(h) Each dispensary licensee may commence dispensing medical marijuana and manufactured marijuana products to qualifying patients or primary caregivers no sooner than July 15, 2016, with approval by the department, in accordance with this chapter.

(i) Retail dispensing locations shall not be at the same location as the dispensary licensee's production centers.

(j) Notwithstanding subsection (d), the department shall determine whether, based on the qualifying patient need, additional dispensary licenses shall be offered to qualified applicants in the State after October 1, 2017; provided that the department shall make available not more than one license per five hundred qualifying patients residing in any single county.

(k) Notwithstanding any other law to the contrary, a dispensary shall not be subject to the prescription requirement of section 329-38 or to the board of pharmacy licensure or regulatory requirements under chapter 461. [L 2015, c 241, pt of §2; am L 2016, c 230, §15]

[§329D-3] Qualifications for licensure. (a) Each application for a dispensary license shall include both an individual applicant and an applying entity.

(b) The application shall be submitted to the department and shall include supporting documentation to establish the following:

(1) That the individual applicant:

- (A) Has been a legal resident of the State for not less than five years preceding the date of application;
- (B) Is not less than twenty-one years of age; and
- (C) Has had no felony convictions;

(2) That the applying entity:

- (A) Has been organized under the laws of the State;
- (B) Has a Hawaii tax identification number;
- (C) Has a department of commerce and consumer affairs business registration division number and suffix;
- (D) Has a federal employer identification number;
- (E) Is not less than fifty-one per cent held by Hawaii legal residents or entities wholly controlled by Hawaii legal residents who have been Hawaii legal residents for not less than five years immediately preceding the date the application was submitted;
- (F) Has financial resources under its control of not less than \$1,000,000 for each license applied for, plus not less than \$100,000 for each retail dispensing location allowed under the license applied for, in the form of bank statements or escrow accounts, and that the financial resources have been under the control of the applying entity for not less than ninety days immediately preceding the date the application was submitted; and
- (G) Is composed of principals or members, each of whom has no felony convictions.

(c) A dispensary license shall not be sold or otherwise transferred from one person to another person. [L 2015, c 241, pt of §2]

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§329D-4 Medical marijuana dispensaries; license application procedure and verification; fees.

(a) The department shall make a medical marijuana dispensary license application form available to the public on January 11, 2016, commencing at 8:00 a.m., Hawaii-Aleutian Standard Time.

(b) The department shall establish an open application period for each available license, the first of which shall be no later than 8:00 a.m., Hawaii-Aleutian Standard Time, on January 12, 2016, during which an application may be submitted. This submittal period shall be closed on January 29, 2016, at 4:30 p.m. The department shall publish notice of the open application period no less than thirty days prior to the start of the open application period.

(c) A nonrefundable application fee of \$5,000 for each license application shall be submitted to the department by certified or cashier's check. Within seven days of approval, a dispensary license fee of \$75,000 for each license approved shall be submitted to the department by certified or cashier's check or the department shall issue a license to the next qualified applicant.

(d) All fees collected pursuant to this section shall be deposited in the medical marijuana registry and regulation special fund pursuant to section 321-30.1.

(e) Immediately upon receipt of each completed application form, the department shall issue a receipt to each applicant that includes the date and time of receipt.

(f) If an applicant submits an application form in which all required information is not complete and valid, the application shall not be accepted by the department and the nonrefundable application fee shall be deposited in the medical marijuana registry and regulation special fund established pursuant to section 321-30.1.

(g) The medical marijuana dispensary application form shall request information necessary to verify that applicants meet the required qualifications pursuant to section 329D-3. Applicants shall provide a minimum of the following information:

- (1) Legal name and date of birth of individual applicant;
- (2) Last four digits of individual applicant's social security number;
- (3) Validation code from an eCrim report for the individual applicant generated by the Hawaii criminal justice data center no earlier than December 12, 2015, at 8:00 a.m., Hawaii-Aleutian Standard Time;
- (4) Street address, telephone number, fax number, and e-mail address of the individual applicant;
- (5) A tax clearance certificate issued by the department of taxation dated not more than thirty days prior to the date of the application;
- (6) Name of the applying entity and any other name under which the applying entity does business, if applicable;

- (7) Street address, telephone number, fax number, and e-mail address of the applying entity;
- (8) Date the applying entity was organized under the laws of Hawaii;
- (9) A certified copy of the organizing documents of the applying entity;
- (10) A copy of the applying entity's bylaws;
- (11) Federal employer identification number of the applying entity;
- (12) Hawaii tax identification number of applying entity;
- (13) Department of commerce and consumer affairs business registration number and suffix of the applying entity;
- (14) Name(s) of all owners of the applying entity, in whole or in part, and their percentage of ownership;
- (15) Date when continuous legal residence in Hawaii began for each Hawaii legal resident that owns a percentage of the applying entity;
- (16) Total percentage of the applying entity that is owned by Hawaii legal residents;
- (17) Designation of the county for which the dispensary license applied for and proof that the required minimum financial resources of \$1,200,000 are met;
- (18) Total dollar amount of financial resources under control of the applying entity in the form of bank statements or escrow accounts;
- (19) Date from when financial resources have been continuously controlled by the applying entity; and
- (20) Copies of the entity's bank statements for the twelve months prior to the date of the application.
 - (h) The department shall maintain a record of the time and date that all completed application forms were submitted.
 - (i) The department shall process and deposit the application fee within four business days of receipt of the completed application form.
 - (j) If, for any reason, the application fee is not available for deposit, the application shall be deemed void and the department shall inform the applicant in writing that its application has been rejected.
 - (k) The department shall review and verify the information and documentation materials only of applicants whose nonrefundable application fee has been processed and deposited.
 - (l) The department shall verify that the information submitted in the application is true and valid and meets the requirements established in section 329D-3(b).
 - (m) Upon verification of the minimum requirements, the

department shall place the verified application into the pool of applicants for further review and selection based on merit by the department.

(n) A dispensary license may be renewed annually by payment of an annual renewal fee of \$50,000 and subject to verification by the department through an unannounced inspection that the individual licensee and entity licensee continue to meet all licensing requirements from the date the initial licenses were issued. [L 2015, c 241, pt of §2; am L 2016, c 184, §5]

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[§329D-5] Medical marijuana dispensaries; selection. (a) By January 4, 2016, the department shall provide for a selection process and criteria based on merit for verified applicants for medical marijuana dispensary licenses; provided that the selection process, at minimum, includes the criteria of section 329D-7(3).

(b) This selection process shall be utilized by the department to grant medical marijuana dispensary licenses. Licensees selected will be announced by April 15, 2016. A dispensary licensed pursuant to this chapter may begin dispensing not sooner than July 15, 2016, with the approval of the department. [L 2015, c 241, pt of §2]

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§329D-6 Dispensary operations. (a) No person shall operate a dispensary, nor engage in the production, manufacture, or sale of marijuana or manufactured marijuana products, unless the person has obtained a license from the department pursuant to this chapter.

(b) No dispensary licensee, its officers, employees, or agents shall provide written certification for the use of medical marijuana or manufactured marijuana products for any person.

(c) No person under the age of twenty-one shall be employed by a dispensary licensee.

(d) Notwithstanding any other law to the contrary, including but not limited to sections 378-2 and 378-2.5, no dispensary shall employ a person convicted of a felony. Employment under this chapter shall be exempt from section 378-2(a)(1), as it relates to arrest and court record discrimination, and section 378-2.5.

(e) Retail dispensing locations shall not be open for retail sales before 8:00 a.m. or after 8:00 p.m., Hawaii-Aleutian Standard Time, Monday through Sunday. Retail dispensing locations shall be closed on official state and federal holidays.

(f) All dispensary facilities, including but not limited to production centers and retail dispensing locations, shall be enclosed indoor facilities and shall maintain twenty-four hour security measures, including but not limited to an alarm system, video monitoring and recording on the premises, and exterior lighting. A dispensary licensee who intends to utilize, as a production center, an enclosed indoor facility that includes a roof that is partially or completely transparent or translucent, as provided under section 329D-1, shall notify the department of that intention prior to altering or constructing the facility. Production centers shall remain locked at all times. Retail dispensing locations shall remain locked at all times, other than business hours as authorized by subsection (e), and shall only be opened for authorized persons.

(g) In all dispensary facilities, only the licensee, if an individual, registered employees of the dispensary licensee, registered employees of a subcontracted production center or retail dispensing location, employees of a certified laboratory for testing purposes, state employees authorized by the director of health, and law enforcement and other government officials acting in their official capacity shall be permitted to touch or handle any marijuana or manufactured marijuana products, except that a qualifying patient or the primary caregiver of a qualifying patient may receive manufactured marijuana products at a retail dispensing location following completion of a sale.

(h) A dispensary shall provide the department with the address, tax map key number, and a copy of the premises lease, if applicable, of the proposed location of a production center allowed under a license for a county not later than thirty days prior to any medical marijuana or manufactured marijuana products being produced or manufactured at that production center.

(i) A dispensary shall provide the department with the address,

tax map key number, and a copy of the premises lease, if applicable, of the proposed location of each retail dispensing location allowed under a license not less than sixty days prior to opening for business.

(j) The department shall establish, maintain, and control a computer software tracking system that shall have real time, twenty-four hour access to the data of all dispensaries relating to:

- (1) The total amount of marijuana in possession of all dispensaries from either seed or immature plant state, including all plants that are derived from cuttings or cloning, until the marijuana, marijuana plants, or manufactured marijuana product is sold or destroyed pursuant to section 329D-7;
- (2) The total amount of manufactured marijuana product inventory, including the equivalent physical weight of marijuana that is used to manufacture manufactured marijuana products, purchased by a qualifying patient and primary caregiver from all retail dispensing locations in the State in any fifteen day period;
- (3) The amount of waste produced by each plant at harvest; and
- (4) The transport of marijuana and manufactured marijuana products between production centers and retail dispensing locations, including tracking identification issued by the tracking system, the identity of the person transporting the marijuana or manufactured marijuana products, and the make, model, and license number of the vehicle being used for the transport.

The procurement of the computer software tracking system established pursuant to this subsection shall be exempt from chapter 103D; provided that: the department shall publicly solicit at least three proposals for the computer software tracking system; and the selection of the computer software tracking system shall be approved by the director of the department and the chief information officer.

(k) A dispensary licensed pursuant to this chapter shall purchase, operate, and maintain a computer software tracking system that shall:

- (1) Interface with the department's computer software tracking system established pursuant to subsection (j);
- (2) Allow each licensed dispensary's production center to submit to the department in real time, by automatic identification and data capture, all marijuana, marijuana plants, and manufactured marijuana product inventory in possession of that dispensary from either seed or immature plant state, including all plants that are derived from cuttings or cloning, until the marijuana or manufactured marijuana product is sold or destroyed pursuant to section 329D-7; and
- (3) Allow the licensed dispensary's retail dispensing location to submit to the department in real time for the total amount of marijuana and manufactured marijuana product purchased by a qualifying patient and primary caregiver from the dispensary's retail dispensing locations in the State in any fifteen day period; provided that the software tracking system shall impose an automatic stopper in real time, which cannot be overridden, on any further purchases of marijuana or manufactured marijuana products, if the maximum allowable amount of marijuana has already been purchased for the applicable fifteen day

period; provided further that additional purchases shall not be permitted until the next applicable period.

(l) No free samples of marijuana or manufactured marijuana products shall be provided at any time, and no consumption of marijuana or manufactured marijuana products shall be permitted on any dispensary premises.

(m) A dispensary shall not transport marijuana or manufactured marijuana products to another county or another island; provided that this subsection shall not apply to the transportation of marijuana or any manufactured marijuana product solely for the purposes of laboratory testing pursuant to section 329D-8, and subject to subsection (j), if no certified laboratory is located in the county or on the island where the dispensary is located; provided further that a dispensary shall only transport samples of marijuana and manufactured marijuana products for laboratory testing for purposes of this subsection in an amount and manner prescribed by the department, in rules adopted pursuant to this chapter, and with the understanding that state law and its protections do not apply outside of the jurisdictional limits of the State.

(n) A dispensary shall be prohibited from off-premises delivery of marijuana or manufactured marijuana products to qualifying patients or to primary caregivers of qualifying patients.

(o) A dispensary shall not:

(1) Display marijuana or manufactured marijuana products in windows or in public view; or

(2) Post any signage other than a single sign no greater than one thousand six hundred square inches bearing only the business or trade name in text without any pictures or illustrations; provided that if any applicable law or ordinance restricting outdoor signage is more restrictive, that law or ordinance shall govern.

(p) No marijuana or manufactured marijuana products shall be transported to, from, or within any federal fort or arsenal, national park or forest, any other federal enclave, or any other property possessed or occupied by the federal government.

(q) A dispensary licensed pursuant to this chapter shall be prohibited from providing written certification pursuant to section 329-122 for the use of medical marijuana for any person. [L 2015, c 241, pt of §2; am L 2016, c 230, §16]

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§329D-7 Medical marijuana dispensary rules. The department shall establish standards with respect to:

- (1) The number of medical marijuana dispensaries that shall be permitted to operate in the State;
- (2) A fee structure for the submission of applications and renewals of licenses to dispensaries; provided that the department shall consider the market conditions in each county in determining the license renewal fee amounts;
- (3) Criteria and procedures for the consideration and selection, based on merit, of applications for licensure of dispensaries; provided that the criteria shall include but not be limited to an applicant's:
 - (A) Ability to operate a business;
 - (B) Financial stability and access to financial resources; provided that applicants for medical marijuana dispensary licenses shall provide documentation that demonstrates control of not less than \$1,000,000 in the form of escrow accounts, letters of credit, surety bonds, bank statements, lines of credit or the equivalent to begin operating the dispensary;
 - (C) Ability to comply with the security requirements developed pursuant to paragraph (6);
 - (D) Capacity to meet the needs of qualifying patients;
 - (E) Ability to comply with criminal background check requirements developed pursuant to paragraph (8); and
 - (F) Ability to comply with inventory controls developed pursuant to paragraph (13);
- (4) Specific requirements regarding annual audits and reports required from each production center and dispensary licensed pursuant to this chapter;
- (5) Procedures for announced and unannounced inspections by the department or its agents of production centers and dispensaries licensed pursuant to this chapter; provided that inspections for license renewals shall be unannounced;
- (6) Security requirements for the operation of production centers and retail dispensing locations; provided that, at a minimum, the following shall be required:
 - (A) For production centers:
 - (i) Video monitoring and recording of the premises;
 - (ii) Fencing that surrounds the premises and that is sufficient to reasonably deter intruders and prevent anyone outside the premises from viewing any marijuana in any form;
 - (iii) An alarm system; and
 - (iv) Other reasonable security measures to deter or prevent intruders, as deemed necessary by the department;
 - (B) For retail dispensing locations:
 - (i) Presentation of a valid government-issued photo

identification and a valid identification as issued by the department pursuant to section 329-123, by a qualifying patient or caregiver, upon entering the premises;

- (ii) Video monitoring and recording of the premises;
- (iii) An alarm system;
- (iv) Exterior lighting; and
- (v) Other reasonable security measures as deemed necessary by the department;

(7) Security requirements for the transportation of marijuana and manufactured marijuana products between production centers and retail dispensing locations;

(8) Standards and criminal background checks to ensure the reputable and responsible character and fitness of all license applicants, licensees, employees, subcontractors and their employees, and prospective employees of medical marijuana dispensaries to operate a dispensary; provided that the standards, at a minimum, shall exclude from licensure or employment any person convicted of any felony;

(9) The training and certification of operators and employees of production centers and dispensaries;

(10) The types of manufactured marijuana products that dispensaries shall be authorized to manufacture and sell pursuant to sections 329D-9 and 329D-10;

(11) Laboratory standards related to testing marijuana and manufactured marijuana products for content, contamination, and consistency;

(12) The quantities of marijuana and manufactured marijuana products that a dispensary may sell or provide to a qualifying patient or primary caregiver; provided that no dispensary shall sell or provide to a qualifying patient or primary caregiver any combination of marijuana and manufactured products that:

- (A) During a period of fifteen consecutive days, exceeds the equivalent of four ounces of marijuana; or
- (B) During a period of thirty consecutive days, exceeds the equivalent of eight ounces of marijuana;

(13) Dispensary and production center inventory controls to prevent the unauthorized diversion of marijuana or manufactured marijuana products or the distribution of marijuana or manufactured marijuana products to qualifying patients or primary caregivers in quantities that exceed limits established by this chapter; provided that the controls, at a minimum, shall include:

- (A) A computer software tracking system as specified in section 329D-6(j) and (k); and
- (B) Product packaging standards sufficient to allow law enforcement personnel to reasonably determine the contents of an unopened package;

(14) Limitation to the size or format of signs placed outside a retail dispensing location or production center; provided that the signage limitations, at a minimum, shall comply with section 329D-6(o)(2) and shall not include the image of a cartoon character or other design intended to appeal to children;

(15) The disposal or destruction of unwanted or unused marijuana and manufactured marijuana products;

(16) The enforcement of the following prohibitions against:

- (A) The sale or provision of marijuana or manufactured marijuana products to unauthorized persons;
- (B) The sale or provision of marijuana or manufactured marijuana products to qualifying patients or primary caregivers in quantities that exceed limits established by this chapter;
- (C) Any use or consumption of marijuana or manufactured marijuana products on the premises of a retail dispensing location or production center; and
- (D) The distribution of marijuana or manufactured marijuana products, for free, on the premises of a retail dispensing location or production center;

(17) The establishment of a range of penalties for violations of this chapter or rule adopted thereto; and

(18) A process to recognize and register patients who are authorized to purchase, possess, and use medical marijuana in another state, United States territory, or the District of Columbia as qualifying patients in this State; provided that this registration process may commence no sooner than January 1, 2018. [L 2015, c 241, pt of §2; am L 2016, c 184, §6]

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[§329D-8] Laboratory standards and testing; laboratory certification. (a) The department shall establish and enforce standards for laboratory-based testing of marijuana and manufactured marijuana products for content, contamination, and consistency.

(b) The department may certify laboratories that can test marijuana and manufactured marijuana products prior to the sale of marijuana and manufactured marijuana products. [L 2015, c 241, pt of §2]

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[§329D-9] Manufacturing of medical marijuana products. (a) Any medical marijuana dispensary licensed by the department pursuant to this chapter shall be permitted to manufacture marijuana products; provided that the dispensary shall also obtain any other state or county permits or licenses that may be necessary for a particular manufacturing activity.

(b) The department shall establish health, safety, and sanitation standards regarding the manufacture of manufactured marijuana products.

(c) A manufacturer of a manufactured marijuana product shall calculate the equivalent physical weight of the marijuana that is used to manufacture the product and shall make the equivalency calculations available to the department and to a consumer of the manufactured marijuana product. [L 2015, c 241, pt of §2]

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§329D-10 Types of manufactured marijuana products. (a) The types of medical marijuana products that may be manufactured and distributed pursuant to this chapter shall be limited to:

- (1) Capsules;
- (2) Lozenges;
- (3) Pills;
- (4) Oils and oil extracts;
- (5) Tinctures;
- (6) Ointments and skin lotions;
- (7) Transdermal patches;
- (8) Pre-filled and sealed containers used to aerosolize and deliver marijuana orally, such as with an inhaler or nebulizer; and
- (9) Other products as specified by the department.

(b) As used in this section, "lozenge" means a small tablet manufactured in a manner to allow for the dissolving of its medicinal or therapeutic component slowly in the mouth. [L 2015, c 241, pt of §2; am L 2016, c 230, §17]

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[§329D-11] Advertising and packaging. (a) The department shall establish standards regarding the advertising and packaging of marijuana and manufactured marijuana products; provided that the standards, at a minimum, shall require the use of packaging that:

- (1) Is child-resistant and opaque so that the product cannot be seen from outside the packaging;
- (2) Uses only black lettering on a white background with no pictures or graphics;
- (3) Is clearly labeled with the phrase "For medical use only";
- (4) Is clearly labeled with the phrase "Not for resale or transfer to another person";
- (5) Includes instructions for use and "use by date";
- (6) Contains information about the contents and potency of the product;
- (7) Includes the name of the production center where marijuana in the product was produced, including the batch number and date of packaging;
- (8) Includes a barcode generated by tracking software; and
- (9) In the case of a manufactured marijuana product, a listing of the equivalent physical weight of the marijuana used to manufacture the amount of the product that is within the packaging, pursuant to section 329D-9(c).

(b) Any capsule, lozenge, or pill containing marijuana or its principal psychoactive constituent tetrahydrocannabinol shall be packaged so that one dose, serving, or single wrapped item contains no more than ten milligrams of tetrahydrocannabinol; provided that no manufactured marijuana product that is sold in a pack of multiple doses, servings, or single wrapped items, nor any containers of oils, shall contain more than a total of one hundred milligrams of tetrahydrocannabinol per pack or container. [L 2015, c 241, pt of §2]

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§329D-12 Background checks. (a) *[Subsection effective until December 31, 2016. For subsection effective January 1, 2017, see below.]* The following shall be subject to background checks conducted by the department or its designee, including but not limited to criminal history record checks in accordance with section 846-2.7:

- (1) Each applicant and licensee for a medical marijuana dispensary license, including the individual applicant and all officers, directors, shareholders with at least twenty-five per cent or more ownership interest, members, and managers of an entity applicant;
- (2) Each employee of a medical marijuana dispensary;
- (3) Each employee of a subcontracted production center or retail dispensing location;
- (4) All officers, directors, shareholders with at least twenty-five per cent or more ownership interest in a subcontracted production center or retail dispensing location; and
- (5) Any person permitted to enter and remain in dispensary facilities pursuant to section 329D-15(a)(4) or 329D-16(a)(3).

The person undergoing the background check shall provide written consent and all applicable processing fees to the department or its designee to conduct the background checks.

(a) *[Subsection effective January 1, 2017. See Note below. For subsection effective until December 31, 2016, see above.]* The following shall be subject to background checks conducted by the department or its designee, including but not limited to criminal history record checks in accordance with section 846-2.7:

- (1) Each applicant and licensee for a medical marijuana dispensary license, including the individual applicant and all officers, directors, members of a limited liability corporation; shareholders with at least twenty-five per cent or more ownership interest in a corporation; and managers of an entity applicant;
- (2) Each employee of a medical marijuana dispensary;
- (3) Each employee of a subcontracted production center or retail dispensing location;
- (4) All officers, directors, members of a limited liability corporation; and shareholders with at least twenty-five per cent or more ownership interest in a corporate owner of a subcontracted production center or retail dispensing location; and
- (5) Any person permitted to enter and remain in a dispensary facility pursuant to section 329D-15(a)(4) or 329D-16(a)(3).

The person undergoing the background check shall provide written consent and all applicable processing fees to the department or its designee to conduct the background checks.

(b) This section shall not apply to:

(1) Qualifying patients and their primary caregivers who enter or remain on the premises of a retail dispensing location for the purpose of a transaction conducted pursuant to sections 329D-6 and 329D-13; or

(2) Government officials and employees acting in an official capacity and employees of a certified laboratory who enter or remain on the premises of a retail dispensing location or production center for any purpose authorized by this chapter. [L 2015, c 241, pt of §2; am L 2016, c 230, §§18, 19]

Note

L 2016, c 230, §25(2) provides:

"SECTION 25. This Act shall take effect on July 1, 2016; provided that:

- (2) Section 19 [amending §329D-12(a)] shall take effect on January 1, 2017, and shall not apply to medical marijuana dispensary license applications submitted on or before January 29, 2016; provided that section 19 shall apply to medical marijuana dispensary license renewal applications and to medical marijuana license applications submitted after January 29, 2016."

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[§329D-13] Qualifying patients and primary caregivers; dispensing limits; other states. (a) A qualifying patient or a primary caregiver on behalf of a qualifying patient shall be allowed to purchase no more than four ounces of marijuana within a consecutive period of fifteen days, or no more than eight ounces of marijuana within a consecutive period of thirty days.

(b) A qualifying patient or a primary caregiver on behalf of a qualifying patient may purchase marijuana from any dispensary location in the State, subject to the limits set forth in subsection (a).

(c) Beginning on January 1, 2018, this section may apply to qualifying patients from other states, territories of the United States, or the District of Columbia; provided that the patient is verified as a patient in their home state and registers with the department through a registration process established by the department. [L 2015, c 241, pt of §2]

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[§329D-14] Prohibited acts related to exceeding limits; fraud; penalties. (a) It shall be unlawful for any person to obtain or attempt to procure any medical marijuana or medical marijuana product by:

- (1) Fraud, deceit, misrepresentation, embezzlement, or theft;
- (2) The forgery or alteration of a medical marijuana permit;
- (3) Furnishing fraudulent medical information or the concealment of a material fact;
- (4) The use of a false name or patient identification number, or the giving of a false address; or
- (5) The alteration of a state issued medical use of marijuana permit card.

(b) Any person who violates subsection (a) shall be guilty of a class C felony. [L 2015, c 241, pt of §2]

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[§329D-15] Criminal offense; unauthorized access to retail dispensing location. (a) No person shall intentionally or knowingly enter or remain upon the premises of a medical marijuana retail dispensing location unless the individual is:

- (1) An individual licensee or registered employee of the dispensary;
- (2) A qualifying patient or primary caregiver of a qualifying patient;
- (3) A government employee or official acting in the person's official capacity; or
- (4) Previously included on a current department-approved list provided to the department by the licensee of those persons who are allowed into that dispensary's facilities for a specific purpose for that dispensary, including but not limited to construction, maintenance, repairs, legal counsel, or investors; provided that:
 - (A) The person has been individually approved by the department to be included on the list;
 - (B) The person is at least twenty-one years of age, as verified by a valid government issued identification card;
 - (C) The department has confirmed that the person has no felony convictions;
 - (D) The person is escorted by an individual licensee or registered employee of the dispensary at all times while in the dispensary facility;
 - (E) The person is only permitted within those portions of the dispensary facility as necessary to fulfill the person's purpose for entering;
 - (F) The person is only permitted within the dispensary facility during the times and for the duration necessary to fulfill the person's purpose for entering;
 - (G) The dispensary shall keep an accurate record of each person's first and last name, date and times upon entering and exiting the dispensary facility, purpose for entering, and the identity of the escort; and
 - (H) The approved list shall be effective for one year from the date of the department approval.

(b) No individual licensee or registered employee of a medical marijuana dispensary with control over or responsibility for a retail dispensing location shall intentionally or knowingly allow another to enter or remain upon the premises of the retail dispensing location, unless the other is permitted to enter and remain as specified in subsection (a).

(c) Unauthorized access to a retail dispensing location is a class C felony. [L 2015, c 241, pt of §2]

[§329D-16] Criminal offense; unauthorized access to production centers. (a) No person shall intentionally or knowingly enter or remain upon the premises of a medical marijuana production center unless the person is:

- (1) An individual licensee or registered employee of the production center;
- (2) A government employee or official acting in the person's official capacity; or
- (3) Previously included on a current department-approved list provided to the department by the licensee of those persons who are allowed into that dispensary's facilities for a specific purpose for that dispensary, including but not limited to construction, maintenance, repairs, legal counsel, or investors; provided that:
 - (A) The person has been individually approved by the department to be included on the list;
 - (B) The person is at least twenty-one years of age, as verified by a valid government issued identification card;
 - (C) The department has confirmed that the person has no felony convictions;
 - (D) The person is escorted by an individual licensee or registered employee of the dispensary at all times while in the dispensary facility;
 - (E) The person is only permitted within those portions of the dispensary facility as necessary to fulfill the person's purpose for entering;
 - (F) The person is only permitted within the dispensary facility during the times and for the duration necessary to fulfill the person's purpose for entering;
 - (G) The dispensary shall keep an accurate record of each person's identity, date and times upon entering and exiting the dispensary facility, purpose for entering, and the identity of the escort; and
 - (H) The approved list shall be effective for one year from the date of department approval.

(b) No individual licensee or registered employee of a medical marijuana dispensary with control over or responsibility for a production center shall intentionally or knowingly allow another to enter or remain upon the premises of the production center, unless the other is permitted to enter and remain as specified in subsection (a).

(c) Unauthorized access to a production center is a class C felony. [L 2015, c 241, pt of §2]

[§329D-17] Prohibition of distribution of medical marijuana and medical marijuana products to minors; penalties. (a) A person commits the offense of promoting medical marijuana or medical marijuana products to a minor if the person intentionally or knowingly distributes any amount of marijuana or manufactured marijuana products that came from a dispensary or production center to a minor who is not a registered qualifying patient.

(b) Any person who violates this section shall be guilty of a class B felony. [L 2015, c 241, pt of §2]

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[§329D-18] Diversion from dispensary or production center; penalties. (a) A person commits diversion from a dispensary or production center if the person is a licensee, operator, or employee of a dispensary or production center and intentionally or knowingly diverts to the person's own use or other unauthorized or illegal use, or takes, makes away with, or secretes, with intent to divert to the person's own use or other unauthorized or illegal use, any medical marijuana, manufactured marijuana product, or marijuana concentrate under the person's possession, care, or custody as a licensee, operator, or employee of a medical marijuana dispensary or production center licensed by the department.

(b) Any person who violates this section shall be guilty of a class C felony. [L 2015, c 241, pt of §2]

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[§329D-19] Criminal offense; alteration or falsification of medical marijuana dispensary records. (a) A person commits the offense of alteration or falsification of medical marijuana dispensary records if the person intentionally or knowingly:

- (1) Makes or causes a false entry in medical marijuana dispensary records;
- (2) Alters, erases, obliterates, deletes, removes, or destroys a true entry in medical marijuana dispensary records;
- (3) Omits to make a true entry in medical marijuana dispensary records in violation of a duty that the person knows to be imposed upon the person by law or by the nature of the person's position; or
- (4) Prevents the making of a true entry or causes the omission thereof in medical marijuana dispensary records.

(b) Alteration or falsification of medical marijuana dispensary records is a class C felony.

(c) For the purposes of this section:

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or other similar capabilities.

"Information" includes data, text, images, sounds, codes, computer programs, software, or databases.

"Medical marijuana dispensary records" means any inventory tracking records and other records maintained by a licensed medical marijuana dispensary, including the records of its retail dispensing locations and production centers, that are required by law to be created and retained or provided to the department.

"Record" means information that is written or printed or that is stored in an electronic or other medium and is retrievable in a perceivable form. [L 2015, c 241, pt of §2]

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[§329D-20] Law enforcement access to dispensary and production center records. Notwithstanding any other law, the department shall disclose information, documents, and other records regarding medical marijuana dispensaries and production centers, upon request, to any state, federal, or county agency engaged in the criminal investigation or prosecution of violations of applicable state, county, or federal laws or regulations related to the operations or activities of a medical marijuana dispensary. [L 2015, c 241, pt of §2]

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[§329D-21] Revocation and suspension of licenses. (a) In addition to any other actions authorized by law, the department may deny, revoke, or suspend any license applied for or issued by the department, in accordance with this chapter, and to fine or otherwise discipline a licensee for any cause authorized by law, including but not limited to the following:

- (1) Procuring a license through fraud, misrepresentation, or deceit;
- (2) Professional misconduct, gross carelessness, or manifest incapacity;
- (3) Violation of any of the provisions of this chapter or the rules adopted thereto;
- (4) False, fraudulent, or deceptive advertising;
- (5) Any other conduct constituting fraudulent or dishonest dealings;
- (6) Failure to comply with a department order; and
- (7) Making a false statement on any document submitted or required to be filed by this chapter, including furnishing false or fraudulent material information in any application.

(b) Any person who violates any of the provisions of this chapter or the rules adopted pursuant thereto shall be fined not less than \$100 nor more than \$1,000 for each violation.

(c) If the department revokes or suspends a license under this section, the licensee shall not:

(1) Dispense, sell, transfer, or otherwise dispose of any marijuana or manufactured marijuana products owned by or in the possession of the licensee; or

(2) Manufacture marijuana products.

Upon a revocation order becoming final, all marijuana and manufactured marijuana products may be forfeited to the State.

(d) All proceedings for denial, suspension, fine, or revocation of a license on any ground specified in subsection (a) shall be conducted pursuant to chapter 91, including the right to judicial review. [L 2015, c 241, pt of §2]

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[§329D-22] Medical marijuana zoning. (a) Medical marijuana production centers and dispensaries shall comply with all county zoning ordinances, rules, or regulations; provided that:

- (1) A medical marijuana production center shall be permitted in any area in which agricultural production is permitted except as provided within this chapter; and
 - (2) No medical marijuana production center or dispensary shall be permitted within seven hundred fifty feet of the real property comprising a playground, public housing project or complex, or school.
- (b) As used in this section:

"Playground" means any public outdoor facility, including any parking lot appurtenant thereto, that is intended for recreation, with any portion thereof containing three or more separate apparatus intended for the recreation of children, including but not limited to sliding boards, swing sets, and teeterboards.

"Public housing project or complex" means a housing project directly controlled, owned, developed, or managed by the Hawaii public housing authority pursuant to the federal or state low-rent public housing program.

"School" means any public or private preschool, kindergarten, elementary, intermediate, middle, secondary, or high school. [L 2015, c 241, pt of §2]

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§329D-23 Annual inspections, audits, and reports. (a) Each medical marijuana production center and dispensary licensed pursuant to this part shall:

- (1) Be subject to an annual announced inspection and unlimited unannounced inspections of its operations by the department; provided that inspections for license renewals shall be unannounced;
- (2) Submit reports on at least a quarterly basis, or as otherwise required, and in the format specified by the department; and
- (3) Annually cause an independent financial audit, at the dispensary licensee's own expense, to be conducted of the dispensary, its production center, and retail dispensing locations and shall submit the audit's findings to the department.

(b) The department shall report annually to the governor and the legislature on the establishment and regulation of medical marijuana production centers and dispensaries including but not limited to the number and location of production centers and dispensaries licensed, the total licensing fees collected, the total amount of taxes collected from production centers and dispensaries, and any licensing violations determined by the department. [L 2015, c 241, pt of §2; am L 2016, c 184, §7]

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[§329D-24] Cultivation of medical marijuana by qualifying patients and primary caregivers. Nothing in this chapter shall be construed as prohibiting a qualifying patient or primary caregiver from cultivating or possessing an adequate supply of medical marijuana pursuant to part IX of chapter 329. [L 2015, c 241, pt of §2]

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[§329D-25] Coordination among state and federal agencies. The department shall initiate ongoing dialogue among relevant state and federal agencies to identify processes and policies that ensure the privacy of qualifying patients and the compliance of qualifying patients, primary caregivers, and medical marijuana dispensaries with state laws and regulations related to medical marijuana. [L 2015, c 241, pt of §2]

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[§329D-26] Public education. (a) The department shall conduct a continuing education and training program to explain and clarify the purposes and requirements of this chapter or to provide substance abuse prevention and education. The program shall target community partner agencies, physicians and other health care providers, patients and caregivers, law enforcement agencies, law and policy makers, and the general public.

(b) The department shall employ at least one full-time staff member whose qualifications and duties include the provision of medical marijuana health education. [L 2015, c 241, pt of §2]

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§329D-27 Administrative rules. (a) The department shall adopt rules pursuant to chapter 91 to effectuate the purposes of this chapter.

(b) No later than January 4, 2016, the department shall adopt interim rules, which shall be exempt from chapter 91 and chapter 201M, to effectuate the purposes of this chapter; provided that the interim rules shall remain in effect until July 1, 2018, or until rules are adopted pursuant to subsection (a), whichever occurs sooner.

(c) The department may amend the interim rules, and the amendments shall be exempt from chapters 91 and 201M, to effectuate the purposes of this chapter; provided that any amended interim rules shall remain in effect until July 1, 2018, or until rules are adopted pursuant to subsection (a), whichever occurs sooner. [L 2015, c 241, pt of §2; am L 2016, c 230, §20]

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