

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 2008~~ ] (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

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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

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