

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF PUBLIC HEARING ON  
Rules I through III pertaining to the ) PROPOSED ADOPTION  
Montana medical marijuana program )

TO: All Concerned Persons

1. On August 24, 2017, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 9, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I LEGAL PROTECTIONS -- ALLOWABLE AMOUNTS (1) A registered cardholder who has named a provider may possess up to 1 ounce of useable marijuana.

(2) A registered cardholder who has not named a provider may possess up to 4 mature plants, 12 seedlings, and 1 ounce of useable marijuana.

(3) A provider or marijuana-infused products provider may possess 4 mature plants, 12 seedlings, and 1 ounce of useable marijuana for each registered cardholder who has named the person as the registered cardholder's provider.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-319, 50-46-344, MCA

NEW RULE II TESTING LABORATORIES (1) Until such time as permanent rules for licensure are adopted the department shall determine if a temporary license will be issued to a laboratory after consideration of the application.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-311, 50-46-312, 50-46-328, 50-46-329, 50-46-344, MCA

NEW RULE III CHEMICAL MANUFACTURING ENDORSEMENTS (1) Until such time as permanent rules for chemical manufacturing endorsements are adopted the department shall determine if a temporary endorsement will be issued to a marijuana provider or marijuana-infused products provider after consideration of the application.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-312, 50-46-319, 50-46-328, 50-46-329, 50-46-344, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt New Rules I through III because emergency rules were promulgated as MAR Notice No. 37-803 in Issue 13 of the Montana Administrative Register on July 7, 2017. The emergency rules were effective June 30, 2017 and are only valid for only 120 days. The rules are proposed to replace the emergency rules and allow for the transition period between the emergency rules and when the department will further adopt rules to implement the provisions of Senate Bill 333 (SB333). At that time, these rules will be amended to further define the allowable amount language and identify the specific requirements for marijuana testing laboratories and marijuana providers who seek chemical manufacturing endorsements.

##### New Rule I

The intent of New Rule I is to track the allowable amounts language from Initiative 182 (I-182) and SB333. These allowable amounts are already familiar to stakeholders, cardholders, providers, and law enforcement and will remain consistent and in effect until other permanent rules address this topic in terms of canopy allotment.

##### New Rule II

New Rule II is to facilitate a smooth transition of testing procedures, standards, and guidelines in furtherance of public health and safety. The rule will temporarily license testing laboratories. This will allow the testing labs to exist and legally handle medical marijuana samples. Issuance of a temporary license does not guarantee that a facility will meet the requirements that will be established through the normal rulemaking process.

##### New Rule III

New Rule III provides the means to issue a temporary chemical manufacturing endorsement to medical marijuana providers and medical marijuana-infused products providers. Due to the volatile nature of some chemical manufacturing, it is imperative for public safety for the department to know the location and by what means chemical manufacturing will occur. Issuance of a temporary chemical

manufacturing endorsement does not guarantee that a facility will meet the requirements that will be established through the normal rulemaking process.

### Fiscal Impact

There is no fiscal impact with the proposed rulemaking.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., September 1, 2017.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, have been fulfilled. The primary bill sponsor was notified by email on July 12, 2017.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

10. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Flint Murfitt  
Flint Murfitt, Attorney  
Rule Reviewer

/s/ Sheila Hogan  
Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State July 24, 2017.