

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

In the matter of the adoption of) NOTICE OF PROPOSAL OF
Temporary Rules I through III, and) ADOPTION OF TEMPORARY
the temporary amendment of ARM) RULES AND AMENDMENT
37.107.111, 37.107.115, and)
37.107.127 pertaining to the medical)
marijuana program)

TO: All Concerned Persons

1. The Department of Public Health and Human Services (department) is proposing to adopt and amend the above-stated temporary rules in order to implement certain "effective upon passage and approval" portions of 2019 Senate Bill 265 (SB 265). These portions of SB 265 became effective when the bill was signed into law on May 3, 2019.

Pursuant to the Montana Medical Marijuana Act and as amended by SB 265, the department licenses and regulates individuals and entities that provide medical marijuana to registered cardholders. Among other items, SB 265 clarified that rejection, denial, suspension, revocation, or other modification of registry identification cards, licenses, or endorsements constitutes an adverse action that must be reviewed as a contested case under the provisions of the Montana Administrative Procedure Act (MAPA), Mont. Code Ann. §§ 2-4-601, et seq.

MAPA also provides that a statute with an effective date prior to October 1 of the year of enactment or amendment "may be implemented by a temporary administrative rule, adopted before October 1 of that year, upon any abbreviated notice or hearing that the agency finds practicable..." 2-4-303(2), MCA. Temporary rules are effective until October 1 of the year of adoption. The department now enacts these temporary rules in order to comply with the requirements of SB 265 and intends to file a more comprehensive proposal notice implementing the legislation prior to the expiration of these temporary rules.

2. New Rule I makes applicable to the Montana Medical Marijuana Program specified existing administrative rules setting out contested case hearing procedures for programs administered by the department. New Rule II sets out additional procedures for the suspension or revocation of provider licenses. An important feature of New Rule II is that no new cardholders may designate a licensee presently involved in a contested case proceeding as their provider during the pendency of that proceeding. This protects unwitting cardholders by limiting their exposure to potentially untested or diverted marijuana product and minimizes disruption should their provider no longer be licensed at the culmination of the proceeding. New Rule III specifies administrative rules for contested case hearings with regard to medical marijuana card revocations.

3. The temporary rules are effective September 22, 2019.

4. The text of the proposed new temporary rules provides as follows:

NEW RULE I ADVERSE BUREAU ACTIONS CONCERNING REGISTRY PROVIDER LICENSES AND ENDORSEMENTS: APPLICABLE HEARING PROCEDURES

(1) Hearings to contest denial, modification, suspension, or revocation of an application for or existing registry identification card, provider license, or endorsement shall be conducted pursuant to the following administrative procedures: ARM 37.5.101, 37.5.117, 37.5.131, 37.5.301, 37.5.304, 37.5.307, 37.5.313, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

AUTH: 50-46-329, 50-46-344, MCA

IMP: 50-46-308, 50-46-312, 50-46-320, 50-46-329, 50-46-330, 50-46-331, MCA

NEW RULE II ADDITIONAL PROCEDURES FOR LICENSE AND ENDORSEMENT SUSPENSION OR REVOCATION (1) Except as provided in (2), providers may continue to serve existing cardholders at existing registered premises during the pendency of a contested case hearing, until a final agency decision is rendered. No new cardholders may designate a licensee in a contested case proceeding as their provider. No new registered premises may be licensed to a provider in a contested case proceeding.

(2) Upon a written finding by the bureau that public health, safety, or welfare imperatively requires emergency action, the bureau may summarily suspend a license and all operations of a provider pending the completion of a revocation proceeding. Emergency action may be taken when the public health, safety, or welfare is imperiled:

(a) by unsafe, contaminated, or adulterated marijuana or marijuana infused product;

(b) when credible evidence exists of deliberate provider diversion of marijuana or marijuana infused product to individuals or parties not authorized under statute or rule to possess the marijuana or marijuana infused product; or

(c) any other violation of this chapter that places an employee or members of the public at imminent risk of injury or harm.

AUTH: 50-46-329, 50-46-344, MCA

IMP: 50-46-308, 50-46-312, 50-46-320, 50-46-329, 50-46-330, 50-46-331, MCA

NEW RULE III ADVERSE BUREAU ACTIONS CONCERNING CARDHOLDERS: APPLICABLE HEARING PROCEDURES

(1) Hearings to contest card application denials or revocations by the bureau shall be conducted pursuant to the following administrative procedures: ARM 37.5.101, 37.5.117, 37.5.131, 37.5.301, 37.5.304, 37.5.307, 37.5.313, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

AUTH: 50-46-344, MCA

IMP: 50-46-320, 50-46-330, 50-46-331, MCA

5. The rationale for the temporary rules is set forth in paragraph 1.

6. The rules proposed to be temporarily amended provide as follows, new matter underlined, deleted matter interlined.

37.107.111 REGISTERED CARDHOLDER APPLICATION PROCESS

(1) through (7) remain the same.

~~(8) Any denial under this part is subject to judicial review.~~

(9) and (10) remain the same but are renumbered (8) and (9).

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-307, 50-46-310, 50-46-344, MCA

37.107.115 LICENSE AND ENDORSEMENT APPLICATION PROCESS

(1) through (3) remain the same.

(4) Applicants include, but are not limited to:

(a) any individual or legal entity who holds or controls an financial interest, ownership, or partnership in the business or entity;

(b) through (16) remain the same.

~~(17) Any denial under this part is subject to judicial review.~~

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-309, 50-46-344, MCA

37.107.127 DENIAL OF REGISTRY IDENTIFICATION CARD APPLICATION OR REVOCATION OF REGISTRY IDENTIFICATION CARD (1) The department,

after written notice to the applicant or registered cardholder, may deny or revoke an application or registry identification card if:

(a) through (h) remain the same.

(i) the department is notified in writing by a ~~landlord~~ property owner revoking permission under 50-46-307, MCA;

(j) through (l) remain the same.

~~(2) Any denial or revocation under this part is subject to judicial review.~~

AUTH: 50-46-344, MCA

IMP: Section 35, Ch. 419, L. 2011, 45-9-203, 50-46-303, 50-46-308, 50-46-320, 50-46-344, 61-11-101, MCA

7. STATEMENT OF REASONABLE NECESSITY

The temporary amendments to ARM 37.107.111 and 37.107.127 are necessary to remove conflicts with the provisions of Senate Bill 265 (SB 265), which applied the Montana Administrative Procedure Act (MAPA) contested case hearing process, *inter alia*, to denials of applications of registry identification cards. The replacement of the term "landlord" with "property owner" in ARM 37.107.127 is necessary to

reflect a change made in SB 265 to clarify legislative intent and situations where the property owner and landlord are not the same person or entity.

The temporary amendment to ARM 37.107.115 is necessary to implement a provision of SB 265 that applied the MAPA contested case hearing process to denials of applications for Montana Marijuana Program licenses and endorsements.

8. A standard rulemaking procedure will be undertaken prior to the expiration of these temporary rules on October 1, 2019.

9. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to Gwen Knight at the 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.

10. 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 9 above or may be made by completing a request form at any rules hearing held by the department.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by electronic mail on August 13, 2019.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Rule Reviewer

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

Certified to the Secretary of State August 13, 2019.