



2017 JUN 28 PM 3:02

OFFICE OF THE  
SECRETARY

MURIEL BOWSER  
MAYOR

JUN 28 2017

The Honorable Phil Mendelson  
Chairman  
John A. Wilson Building  
Council of the District of Columbia  
1350 Pennsylvania Avenue, N.W., Suite 504  
Washington, D.C. 20004

Dear Chairman Mendelson:

Enclosed for consideration and approval is the "Medical Marijuana Additional Recommenders Rulemaking Approval Resolution of 2017." These rules establish the requirements and guidelines for additional health professionals who have been authorized to recommend medical marijuana for the treatment of illness.


The medical marijuana community believes that the number of physicians recommending patients for medical marijuana is not sufficient to meet the needs of District citizens who would benefit from treatment with medical marijuana. This rulemaking will provide District citizens with greater access to the treatment of illness with medical marijuana by establishing guidelines for naturopathic physicians, physician assistants, advanced practice nurse practitioners, and dentists to recommend qualified patients to the District's medical marijuana program in addition to the District's physicians who are already permitted by law to recommend such treatment. Additionally, this rulemaking will clarify that a referral or request for a consultation from a qualifying patient's primary care provider or specialist for the purposes of determining whether the patient may benefit from the use of medical marijuana is within the permissible scope of a bona fide authorized practitioner-patient relationship for purposes of complying with the Legalization of Marijuana for Medical Treatment Amendment Act of 2010 and the regulations implementing the Act; and further define prohibited conduct with respect to authorize practitioners, their employees, agents, volunteers, and independent contractor, and the employees, agents, volunteers, and independent contractors of dispensaries, cultivation centers, testing laboratories, and expeditors.

I urge the Council to take prompt and favorable action on the enclosed legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser".

Muriel Bowser

  
Chairman Phil Mendelson  
at the request of the Mayor

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Phil Mendelson, at the request of the Mayor, introduced the following resolution, which was referred to the Committee on \_\_\_\_\_.

To approve proposed rules adopted by the Department of Health to establish the requirements and guidelines for additional health professionals that have been authorized to recommend medical marijuana, including dentists, physician assistants, advanced practice registered nurses, and naturopathic physicians; clarify that a referral or request for a consultation from a qualifying patient's primary care provider or specialist for the purposes of determining whether the patient may benefit from the use of medical marijuana is within the permissible scope of a bona fide authorized practitioner-patient relationship for purposes of complying with the Legalization of Marijuana for Medical Treatment Amendment Act of 2010 and the regulations implementing that act; and further define prohibited conduct.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this resolution may be cited as the "Medical Marijuana Additional Recommenders Rulemaking Approval Resolution of 2017."

Sec. 2. Pursuant to section 14(b) of the Legalization of Marijuana for Medical Treatment Initiative of 2010 (Act), effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code §§ 7-1671.13(b)), the Council approves the proposed rulemaking adopted by the Department of Health amending chapter 8 and chapter 99 of Title 22-C of the District of Columbia Municipal Regulations to establish the requirements and guidelines for additional health professionals that have been authorized to recommend medical

1 marijuana, including dentists, physician assistants, advanced practice registered nurses,  
2 and naturopathic physicians; clarify that a referral or request for a consultation from a  
3 qualifying patient's primary care provider or specialist for the purposes of determining  
4 whether the patient may benefit from the use of medical marijuana is within the  
5 permissible scope of a bona fide authorized practitioner-patient relationship for purposes  
6 of complying with the Act and the regulations implementing the Act; and further define  
7 prohibited conduct.

8       Sec. 3. Fiscal impact.

9       The Council adopts the fiscal impact statement of the Budget Director as the  
10 fiscal impact statement required by section 4a of the General Legislative Procedures Act  
11 of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

12       Sec. 4. The Council shall transmit a copy of this resolution, upon its adoption, to  
13 the Mayor, the Director of the Department of Health, and the Administrator of the Office  
14 of Documents and Administrative Issuances.

15       Sec. 5. This resolution shall take effect immediately.


Government of the District of Columbia  
Office of the Chief Financial Officer



Jeffrey S. DeWitt  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia

**FROM:** Jeffrey S. DeWitt  
Chief Financial Officer 

**DATE:** June 19, 2017

**SUBJECT:** Fiscal Impact Statement – Medical Marijuana Additional  
Recommenders Rulemaking Approval Resolution of 2017

**REFERENCE:** Draft resolution shared with the Office of Revenue Analysis on June 8,  
2017

---

**Conclusion**

Funds are sufficient in the fiscal year 2017 budget and fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the resolution.

**Background**

The resolution approves rules<sup>1</sup> from the Department of Health (DOH) that establish<sup>2</sup> requirements and guidelines for advanced practice registered nurses, dentists, naturopathic physicians, and physician assistants to recommend the use of medical marijuana to a qualifying patient. The rules also clarify that a referral or request for a consultation from a qualifying patient's primary care provider or specialist for the purposes of determining whether the patient may benefit from the use of medical marijuana is within the permissible scope of a bona fide authorized practitioner-patient relationship.<sup>3</sup>

---

<sup>1</sup> Pursuant to section 14(b) of the Legalization of Marijuana for Medical Treatment Initiative of 2010, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.13(b)).

<sup>2</sup> By amending Chapters 8, 10, and 99 of Title 22-C of the District of Columbia Municipal Regulations.

<sup>3</sup> A practitioner must complete a full assessment of the patient's medical or dental history and current medical or dental condition, including a personal physical examination and must be responsible for ongoing care and treatment of the patient.

The Honorable Phil Mendelson

FIS: "Medical Marijuana Additional Recommenders Rulemaking Approval Resolution of 2017," Draft resolution as shared with the Office of Revenue Analysis on June 8, 2017.

**Financial Plan Impact**

Funds are sufficient in the fiscal year 2017 budget and fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the resolution. DOH can absorb enforcement costs within existing resources.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of the Attorney General**



Legal Counsel Division

**MEMORANDUM**

**TO:** Lolita S. Alston  
Director  
Office of Legislative Support


**FROM:** Janet M. Robins  
Deputy Attorney General  
Legal Counsel Division

**DATE:** June 7, 2017

**SUBJECT:** Legal Sufficiency Review of the Medical Marijuana Additional  
Recommenders Rulemaking Approval Resolution of 2017  
(AR-17-318)

---

**This is to certify that** this Office has reviewed the above-referenced Resolution and found it legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.

  
Janet M. Robins

## DEPARTMENT OF HEALTH

### NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to Section 14 of the Legalization of Marijuana for Medical Treatment Amendment Act of 2010, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.13 (2016)); section 4902(d) of the Health Clarifications Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 7-731(d) (2016)), and Mayor's Order 2011-71, dated April 13, 2011, hereby gives notice of her intent to adopt the following amendments to Subtitle C (Medical Marijuana) of Title 22 (Health) of the District of Columbia Municipal Regulations ("DCMR"), in final, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, and upon completion of the thirty (30) day Council period of review if the Council does not act earlier to adopt a resolution approving the rules.

The purpose of this rulemaking is to establish the requirements and guidelines for advanced practice registered nurses, dentists, naturopathic physicians, and physician assistants to recommend the use of medical marijuana to a qualifying patient; to clarify that a referral or request for a consultation from a qualifying patient's primary care provider or specialist for the purposes of determining whether the patient may benefit from the use of medical marijuana is within the permissible scope of a bona fide authorized practitioner-patient relationship for purposes of complying with the Act and the regulations implementing the Act; and to further define prohibited conduct.

**Chapter 8, RECOMMENDING AUTHORIZED PRACTITIONERS, of Title 22-C, MEDICAL MARIJUANA, of the DCMR is amended as follows:**

**The title of Chapter 8 is amended to read as follows:**

#### **Chapter 8      RECOMMENDING AUTHORIZED PRACTITIONERS**

**The title of Section 800 is amended to read as follows:**

#### **800      QUALIFICATIONS TO BE A RECOMMENDING AUTHORIZED PRACTITIONER**

**Section 800, QUALIFICATIONS TO BE A RECOMMENDING AUTHORIZED PRACTITIONER, is amended to read as follows:**

#### **800              QUALIFICATIONS TO BE A RECOMMENDING AUTHORIZED PRACTITIONER**

**800.1              An authorized practitioner who is licensed and in good standing to practice medicine, osteopathy, advanced practice registered nursing, dentistry, naturopathic medicine, or as a physician assistant in the District of Columbia may recommend the use of medical marijuana to a qualifying patient if the authorized practitioner:**

- (a)              Is in a bona fide relationship with the qualifying patient, which for purposes of complying with this chapter and the Act shall mean that the authorized practitioner:**

- (1)              Has completed a full assessment of the patient's medical or dental**

history and current medical or dental condition, including a personal physical examination, not more than ninety (90) days prior to making the recommendation; and

- (2) Has responsibility for the ongoing care and treatment of the patient either directly or in consultation with another licensed authorized practitioner;
- (b) Makes the recommendation based upon the authorized practitioner's assessment of the qualifying patient's:
  - (1) Medical or dental history;
  - (2) Current medical or dental condition; and
  - (3) A review of other approved medications and treatments that might provide the qualifying patient with relief from a qualifying medical or dental condition or the side effects of a qualifying medical or dental treatment; and
- (c) Is not the owner, director, officer, member, incorporator, agent, or employee of a dispensary, cultivation center, or testing laboratory.

800.2 An authorized practitioner who is licensed and in good standing to practice medicine, osteopathy, advanced practice registered nursing, dentistry, naturopathic medicine, or as a physician assistant in the District of Columbia may evaluate a patient for the sole or primary purpose of the recommendation of medical marijuana only if:

- (a) The evaluation is based upon a written referral to the recommending authorized practitioner by the patient's current primary care authorized practitioner or an authorized practitioner specialist responsible for the current treatment of the patient's medical condition;
- (b) The recommending authorized practitioner complies with the requirements set forth in subsection 800.1; and
- (c) There is no exchange of any form of remuneration, gift, donation, bartering, referral fees, or fee-splitting between the referring and recommending authorized practitioner either directly or indirectly.

**Section 801, FORM OF RECOMMENDATION, is amended as follows:**

**Section 801.1 is amended to read as follows:**

801.1 An authorized practitioner's recommendation that a qualifying patient may use medical marijuana shall be written on a form provided by the Department and include the following:

- (a) The name, address, telephone number, and specialty or primary area of clinical practice of the authorized practitioner;



- (b) The authorized practitioner's District of Columbia health occupation license number;
- (c) The qualifying patient's name, date of birth, and home address;
- (d) The patient's qualifying medical or dental condition or qualifying medical or dental treatment;
- (e) A statement certifying that the patient has a qualifying medical or dental condition or suffers from the side effects of a qualifying medical or dental treatment, and that in the authorized practitioner's professional opinion the potential benefits of the medical use of marijuana would likely outweigh the health risks for this patient;
- (f) The length of time that the qualifying patient has been under the care of the authorized practitioner;
- (g) A statement that the authorized practitioner has explained the potential risks and benefits of the use of marijuana to the qualifying patient and the qualifying patient's parent or legal guardian, if applicable;
- (h) The authorized practitioner's signature and date; and
- (i) The qualifying patient's signed consent for the release of medical or dental information related to the patient's qualifying medical or dental condition or treatment.

**Section 802, RECORDS MAINTAINED BY PHYSICIAN AND DEPARTMENT, is amended to read as follows:**

**802 RECORDS MAINTAINED BY AUTHORIZED PRACTITIONERS AND DEPARTMENT**

**802.1** An authorized practitioner recommending the use of medical marijuana to a qualifying patient shall maintain a record for each qualifying patient which shall:

- (a) Accurately reflect the evaluation and treatment of the patient and include the following as applicable:
  - (1) Patient's name and the date(s) of treatment;
  - (2) Patient's medical or dental history and updated health history;
  - (3) Documented results of a full assessment of the patient's medical or dental history and current medical or dental condition;
  - (4) Documented results of the authorized practitioner's physical examination of the patient;

- (5) Treatment plan;
  - (6) Informed consent document(s);
  - (7) Diagnosis and treatment rendered;
  - (8) List of drugs prescribed, administered, dispensed and the quantity;
  - (9) Radiographs;
  - (10) Patient financial/billing records;
  - (11) Name of the authorized practitioner or assistive personnel providing service(s);
  - (12) Laboratory work orders; and
- (b) Be kept for three (3) years after last seeing the patient or three (3) years after a minor patient reaches eighteen (18) years of age.

802.2 The Department shall maintain a confidential record, which shall not be subject to requests under the Freedom of Information Act, of each recommending authorized practitioner for the purpose of monitoring compliance with the Act.

**Section 803, NO OFFICE AT DISPENSARY OR CULTIVATION CENTER, is amended to read as follows:**

**803 NO OFFICE AT A DISPENSARY, CULTIVATION CENTER, OR TESTING LABORATORY**

- 803.1 An authorized practitioner recommending the use of medical marijuana to a qualifying patient shall not:
- (a) Have a professional office located at or adjacent to a dispensary, cultivation center, or testing laboratory;
  - (b) Have employees, agents, volunteers, or independent-contractors affiliated directly or indirectly with the authorized practitioner located at or adjacent to a dispensary, cultivation center, or testing laboratory; or
  - (c) Receive financial compensation directly or indirectly from a dispensary, cultivation center, or testing laboratory, or a director, officer, member, incorporator, agent, or employee of a dispensary, cultivation center, or testing laboratory.
- 803.2 An authorized practitioner recommending the use of medical marijuana to a qualifying patient shall not have employees, agents, volunteers, or independent-contractors affiliated directly or indirectly with a dispensary, cultivation center, or testing laboratory on the premises of the authorized practitioner's professional office, clinic, or

an institutional facility where the authorized practitioner sees patients or has privileges to see patients.

- 803.3 An authorized practitioner recommending the use of medical marijuana to a qualifying patient shall not have expeditors or employees, agents, volunteers or independent-contractors affiliated directly or indirectly with an expeditor on the premises of the authorized practitioner professional office, clinic, or an institutional facility where the authorized practitioner sees patients or has privileges to see patients.

**Section 804, NOTIFICATION OF END OF QUALIFYING MEDICAL CONDITION OR TREATMENT, is amended to read as follows:**

**804 NOTIFICATION OF END OF QUALIFYING MEDICAL OR DENTAL CONDITION OR TREATMENT**

- 804.1 An authorized practitioner shall notify the Department in writing within fourteen (14) calendar days after advising a qualifying patient that he or she no longer suffers from a qualifying medical or dental condition or treatment.

**Section 805, TRAINING PROGRAM FOR RECOMMENDING PHYSICIANS, is amended to read as follows:**

**805 TRAINING PROGRAM FOR RECOMMENDING AUTHORIZED PRACTITIONERS**

- 805.1 The Department shall make available an educational program for authorized practitioners on the medical and dental indications, uses, and side effects of medical marijuana and the District's medical marijuana program, and may charge a fee for the training program.
- 805.2 The program shall be made available to authorized practitioners licensed to practice medicine, osteopathy, advanced practice registered nursing, dentistry, naturopathic medicine, or as a physician assistant in the District of Columbia who recommend or intend to recommend the use of medical marijuana to qualifying patients.
- 805.3 If approved by the District of Columbia Board of Medicine, Nursing, or Dentistry the program may be used toward satisfying the continuing education requirements for the respective health profession for the number of credits approved by the board.

**A new section 806, BOARD AUDITS OF RECOMMENDATIONS, is added to read as follows:**

**806 BOARD AUDITS AND REVIEW OF RECOMMENDATIONS**

- 806.1 The Department shall timely notify the Board of Medicine whenever a physician, naturopathic physician, or physician assistant provides more than 250 recommendations in any 12-month period to patients for the use of medical marijuana.
- 806.2 The Department shall timely notify the Board of Nursing whenever an advance practice registered nurse provides more than 250 recommendations in any 12-month period to

patients for the use of medical marijuana.

806.3 The Department shall timely notify the Board of Dentistry whenever a dentist provides more than 250 recommendations in any 12-month period to patients for the use of medical marijuana.

806.4 The Boards of Medicine, Nursing, and Dentistry shall audit and review the recommendations submitted by the authorized practitioners under its purview who provide more than 250 recommendations in a 12-month period.

**Section 1000, COMPLAINTS AGAINST PATIENTS, CAREGIVERS OR RECOMMENDING PHYSICIANS, is amended as follows:**

**The title of Section 1000 is amended to read as follows:**

**1000 COMPLAINTS AGAINST PATIENTS, CAREGIVERS, OR RECOMMENDING AUTHORIZED PRACTITIONERS**

**Subsection 1000.1 is amended to read as follows:**

1000.1 The Department shall receive, at any time during the registration period, complaints from any person alleging a violation or misconduct by a patient, caregiver, or recommending authorized practitioner. Complaints shall be in writing and set forth enough information to allow the Department staff to investigate the matter, which shall include at a minimum:

- (a) The facts or circumstances that form the basis of the complaint, including the date(s), time(s), and location(s) of the incident(s);
- (b) Clear identification of the patient, caregiver, or recommending authorized practitioner who is the subject of the complaint;
- (c) The name(s), and contact information (if known) of any witnesses to the incident;
- (d) Any supporting documentation or photos; and
- (e) The contact information for the complainant.

**Subsection 1000.5 is amended to read as follows:**

1000.5 Complaints against recommending authorized practitioners shall be forwarded to the relevant licensing board for disposition.

**Chapter 99, DEFINITIONS, of Title 22-C, MEDICAL MARIJUANA, of the DCMR is amended as follows:**

**Section 9900, DEFINITIONS, Subsection 9900.1, is amended by adding one (1) new definition to**

**appear in alphabetical order:**

**Authorized practitioner-** a physician, advanced practice registered nurse, physician assistant, dentist, or naturopathic physician who is licensed and in good standing to practice under District law.

**Bona fide relationship with a qualifying patient-** a relationship between an authorized practitioner and qualifying patient for which the authorized practitioner:

- (a) Has completed a full assessment of the patient's medical or dental history and current medical or dental condition, including a personal physical or dental examination; and
- (b) Has responsibility for the ongoing care and treatment of the patient.

**Caregiver-** a person who:

- (a) Is designated by a qualifying patient as the person authorized, on the qualifying patient's behalf, to possess, obtain from a dispensary, dispense, administer, and assist in the administration of medical marijuana;
- (b) Is registered with the Department as the qualifying patient's caregiver;
- (c) Is not currently, with the exception of caregivers providing services on behalf of nursing homes and hospices, serving as the caregiver for another qualifying patient; and
- (d) Is at least 18 years of age.

**Dentist-** an individual who is licensed and in good standing to practice dentistry under District law, but does not include an individual who only holds a dental teaching license.

**Expediter** - other than a registered caregiver, any person or entity employed, contracted, volunteering, or compensated by any form of remuneration, gift, donation, or bartering, to register individuals as patients in the medical marijuana program, to connect individuals with recommending authorized practitioners, to solicit individuals to become qualifying patients, to complete application forms or to assist individuals in completing application forms to become qualifying patients, or to transport or deliver to the Department application forms for individuals seeking to become qualifying patients.

**Qualifying medical or dental condition-** any condition for which treatment with medical marijuana would be beneficial, as determined by the patient's authorized practitioner.

**Qualifying medical or dental treatment-** means:

- (a) Chemotherapy;
- (b) The use of azidothymidine or protease inhibitors;
- (c) Radiotherapy; or
- (d) Any other treatment, as determined by rulemaking, whose side effects require treatment

through the administration of medical marijuana in the same manner as a qualifying medical or dental condition.

**Qualifying patient-** a resident of the District who has a qualifying medical or dental condition or is undergoing a qualifying medical or dental treatment, or a patient enrolled in another jurisdiction's medical marijuana program; provided, that a patient from another jurisdiction shall not be a qualifying patient if the Department determines that there is a shortage of medical marijuana or the real-time electronic records system referenced in the Act is inactive.

**Testing laboratory-** an entity that is not owned or operated by a director, officer, member, incorporator, agent, or employee of a cultivation center or dispensary, and is registered by the Department to test medical marijuana and medical marijuana products that are to be sold under the Act.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Phillip Husband, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 6<sup>th</sup> Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m. at the address listed above, or by contacting Angli Black, Paralegal Specialist, at [Angli.Black@dc.gov](mailto:Angli.Black@dc.gov), (202) 442-5977.