# OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR

MIKE COONEY
LT. GOVERNOR


**TO:** Montanans; all officers and agencies of the State of Montana
**FROM:** Governor Steve Bullock
**DATE:** April 1, 2020
**RE:** Directive Implementing Executive Orders 2-2020 and 3-2020 and providing measures related to the provision and regulation of medical marijuana

Executive Orders 2-2020 and 3-2020 declare that a state of emergency exists in Montana due to the global outbreak of COVID-19 Novel Coronavirus.

During a declared state of emergency, the Governor has authority to "suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster." Section 10-3-104(2)(a), MCA. Moreover, the Department of Public Health and Human Services ("Department" or "DPHHS") may "issue written orders for correction, destruction, or removal" of "conditions of public health importance." § 50-1-202(1)(b), MCA. A condition of public health importance includes any "disease . . . that is identifiable on an individual or community level and that can reasonably be expected to lead to adverse health effects in the community." Section 50-1-101(2), MCA.

COVID-19 is an easily transmissible, potentially lethal respiratory disease caused by an infectious novel coronavirus that the World Health Organization has determined constitutes a global pandemic. Cases of COVID-19 have been confirmed throughout the entire state, including in circumstances that suggest possible transmission in the community. Various authorities, including the Centers for Disease Control, have emphasized the importance of avoiding close contact with potentially contagious individuals within a 6-foot radius, particularly in enclosed spaces. Accordingly, on March 26, 2020, I issued a Directive requiring all individuals within the State of Montana to stay at home except to engage in certain essential activities or operate essential businesses and operations. The Directive permits Montanans to continue to obtain services from licensed medical cannabis dispensaries and licensed cannabis cultivation centers. To limit close contact, the Directive limits non-essential travel and requires businesses, healthcare services, and others to adopt social distancing practices to the greatest extent possible.

To curtail the spread of the COVID-19 pandemic in Montana, it is necessary to reduce the number of people congregating in public places for the purpose of obtaining medical marijuana. By definition, Montana Medical Marijuana Program cardholders are people who suffer from a "debilitating medical condition" who therefore face an enhanced risk from COVID-19 exposure. *See* § 50-46-301(2)(b), MCA.[1] Special measures must be taken to reduce these individuals' potential for exposure. Strict compliance with certain regulatory statutes and administrative rules pertaining to the Medical

[1] The phrase "debilitating medical condition" specifically includes cancer patients, HIV/AIDS patients, and others whom the Centers for Disease Control have identified as a higher risk for severe illness from COVID-19. *See* https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/people-at-higher-risk.html.

Marijuana Program would prevent, hinder, or delay the State's necessary efforts to cope with the present emergency.

Therefore, in accordance with the authority vested in me under the Constitution, Article VI, Sections 4 and 13, and the laws of the State of Montana, Title 10, Chapter 3 and Title 50, Chapter 1, MCA, and other applicable provisions of the Constitution and Montana law, I hereby direct the following measures be in place in the State of Montana, effective immediately:

- To reduce unnecessary travel and exposures, registered cardholders may obtain that maximum allowable monthly amount of medical marijuana in one visit for the duration of the emergency. Under current law, registered cardholders may purchase up to 1 ounce of usable marijuana per day and possess up to 1 ounce of usable marijuana at any given time. And registered cardholders may, under current law, purchase a maximum of 5 ounces (or up to 8 ounces with an approved petition) of usable marijuana per month. The current limits require registered cardholders to travel a minimum of five days each month to obtain a monthly allowable limit. Frequent travel unnecessarily subjects registered cardholders to increased risk, accordingly:
    - Strict compliance with § 50-46-319, MCA, is hereby suspended to the extent that the daily one-ounce purchase and possession limit is suspended for the duration of the emergency and registered cardholders may purchase and possess up to the cardholder's applicable monthly maximum amount of usable marijuana in a single transaction per month.

- To reduce unnecessary travel and exposures, registered cardholders are not required to obtain a re-certification from a doctor for the duration of the emergency. Under current law, a physician's written certification for patient use is only valid for up to one year, requiring existing registered cardholders to be examined by a doctor to be re-certified. This places an undue burden on Montana's health care system, and in the case of doctors who do not or cannot conduct the examination by telemedicine, increases exposure to high-risk populations, accordingly:
    - Strict compliance with §§ 50-46-307(1)(j) and 50-46-310(2)(k), MCA, is hereby suspended to the extent that existing cardholders who are applying for an annual card renewal during the state of emergency are not required to submit a written certification.

- To reduce unnecessary travel and exposures, and reduce risk in the healthcare system, in-person encounters are not necessary for a Montana physician to certify a registered cardholder. A Montana physician certifying a registered cardholder may not use an audio-only telemedicine visit unless the physician has first established a physician-patient relationship through an in-person encounter. This increases exposure to vulnerable, high-risk populations and places an unnecessary burden on Montana's health care system, accordingly:
    - Strict compliance with § 50-46-310(4)(b), MCA, is hereby suspended to the extent that patients may obtain a physician's written certification for the duration of the emergency by way of audio-only telecommunication without any requirement that the physician first establish a physician-patient relationship through an in-person encounter.

- To reduce unnecessary exposures and risks to the healthcare system and registered cardholders, other statutes and administrative rules related to medical marijuana licensees and license applicants that necessitate in-person encounters between DPHHS personnel and licensees or applicants are suspended to the extent necessary to reduce risk during the emergency. These requirements increase the potential for transmission of COVID-19, accordingly:

- Strict compliance with §§ 50-46-303(5)(d) and 50-46-303(3), MCA, is hereby suspended for the duration of the emergency to the extent that DPHHS may, in its discretion, issue provisional license renewals to existing providers who are currently compliant with program requirements without conducting the required inspection or fingerprint-based background check.
- Strict compliance with § 50-46-329(1), MCA, and ARM § 37.107.425(1) is hereby suspended for the duration of the emergency to the extent that DPHHS shall limit all public complaint inspections to reports of violation that would immediately impact public health, welfare or safety.
- Strict compliance with §§ 50-46-303(5), MCA, and 50-46-305(11) and ARM § 37.107.115(7) is hereby suspended for the duration of the emergency to the extent that DPHHS shall not issue new provider licenses, including new canopy tier licenses, for the duration of the emergency or until this Directive is amended.
- Strict compliance with ARM §§ 37.107.124 and 37.107.118(18)(b) is hereby suspended for the duration of the emergency to the extent that licensed providers and their staff may hand-deliver medical marijuana items from a dispensary registered premises to a cardholder in a vehicle when parked immediately outside.

**Authorities:** Sections 10-3-104, -103, -302, and -305, MCA; §§ 50-1-202, -101, -203, and -204, MCA; Executive Orders 2-2020 and 3-2020; Montana Constitution, Art. VI, Sections 4 and 13; and all other applicable provisions of state and federal law.

**Limitations**

- This Directive is effective immediately and expires at the end of the declared state of emergency in Executive Orders 2-2020 and 3-2020.
- This Directive shall be implemented consistent with applicable law and subject to the availability of appropriations.
- Nothing in this Directive shall be construed to limit, modify, or otherwise affect the authority granted by law to the Governor, the Department, any department, agency, political subdivision, officer, agent, or employee of the State of Montana, or any local or municipal government except as expressly provided in this Directive or other Directives now in effect implementing Executive Orders 2-2020 and 3-2020.
- This Directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Montana, its departments, agencies, or entities, its officers, employees, or agents, or any other person.