DEPARTMENT OF HEALTH

NOTICE OF SECOND EMERGENCY RULEMAKING

The Director of the Department of Health, pursuant to Section 14 of the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.13 (2018 Repl.)); Section 4902(d) of the Department of Health Functions Clarifications Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 7-731(d) (2018 Repl.)); Mayor's Order 2011-71, dated April 13, 2011; Mayor's Order 2020-045, dated March 11, 2020; and Mayor's Order 2020-050, dated March 20, 2020, hereby gives notice of the adoption, on an emergency basis, of the following amendments to Chapter 57 (Prohibited and Restricted Activities) of Subtitle C (Medical Marijuana) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

This emergency rulemaking is necessary to protect the health, safety, and welfare of the District's residents reducing the spread of COVID-19 by enabling District of Columbia residents registered as qualifying patients to obtain medical marijuana while also adhering to the District's social distancing guidelines.

The purpose of this rulemaking is to continue to allow, on a temporary basis, District of Columbia registered dispensaries to provide medical marijuana to qualifying patients through delivery, curbside pickup, and at-the-door pickup options.

A Notice of Emergency rulemaking was published in the *D.C. Register* on April 24, 2020 at 67 DCR 4567. Those emergency rules were adopted on April 10, 2020, and will expire one hundred twenty (120) days from the date of adoption, on August 8, 2020. Mayor's Order 2020-079, issued July 22, 2020, extended the declared public emergency and public health emergency in the District of Columbia through October 9, 2020. The Mayor's Order included the finding that the spread of COVID-19 remains a continued threat to the health, safety, and welfare of District residents. This second emergency rulemaking action is necessary to maintain the continuity of these provisions through the extended period of the public emergency and public health emergency.

This emergency rulemaking was adopted on August 11, 2020, and became effective immediately on that date. The emergency rule will expire one hundred twenty (120) days from the date of adoption (December 9, 2020) or forty-five (45) days after the public health emergency declared by Mayor's Order 2020-079, dated July 22, 2020, or any substantially similar subsequent Mayor's Order is declared over, whichever occurs first.

Chapter 57, PROHIBITED AND RESTRICTED ACTIVITIES, of Title 22-C DCMR, MEDICAL MARIJUANA, is amended as follows:

Section 5703, DELIVERY OF MEDICAL MARIJUANA, is amended to read as follows:

5703.1 Except as provided in §§ 5703.2 and 5703.3, a dispensary shall not be permitted to transport or deliver medical marijuana to a qualified patient or caregiver or from a cultivation center or testing laboratory. It shall be a violation of this subtitle for a

dispensary to transport or deliver medical marijuana to a qualified patient, cultivation center, or testing laboratory other than as provided in §§ 5703.2 and 5703.3.

5703.2 A dispensary, meeting the requirements of § 5703.3, shall only be permitted to deliver medical marijuana to a qualifying patient or caregiver registered in the District of Columbia Medical Marijuana Program and that has been issued a District of Columbia Government medical marijuana card. A dispensary shall not deliver or transport medical marijuana to a nonresident patient or to an individual who possesses a medical marijuana card that was not issued by the District of Columbia Department of Health. A dispensary that delivers medical marijuana to nonresident patients or individuals who possess cards issued by unauthorized entities on the Internet such as getnugg.com shall be subject to disciplinary action, up to and including revocation of registration.

5703.3 A dispensary shall only be permitted to deliver medical marijuana to a qualifying patient or caregiver registered in the District of Columbia Medical Marijuana Program if the dispensary complies with the following requirements:

(a) The dispensary shall register its delivery vehicle with the Department by completing a Department-issued application form and providing all required information which shall include: the vehicle license plate number, the vehicle's vehicle identification number (VIN), and the make, model and color of the vehicle;

(b) The dispensary shall only register one (1) delivery vehicle;

(c) The delivery vehicle shall not be marked with any signage, symbols, images, or advertisement identifying the vehicle as associated with medical marijuana;

(d) The delivery vehicle shall have a functioning global positioning system (GPS) to ensure that the most direct delivery route is followed;

(e) The dispensary shall register the name and medical marijuana employee registration number of the delivery driver(s) with the Department;

(f) The dispensary's delivery driver(s) shall have an active District of Columbia medical marijuana employee registration;

(g) The dispensary's delivery driver(s) shall wear an employee badge when making deliveries;

(h) The dispensary shall implement a mechanism or process for patients and caregivers to submit copies of their registration cards and identification cards to the dispensary for verification prior to delivery, and the dispensary

shall maintain a copy of both as part of the dispensary's recordkeeping requirements;

(i) Prior to delivery, the dispensary shall:

(1) Verify that the patient, or the patient and caregiver, is actively enrolled in the District of Columbia medical marijuana program, and that the delivery address matches the patient's or caregiver's home address;

(2) Maintain a copy of the medical marijuana program registration card and a copy of the government-issued identification card; and

(3) Verify that the patient's requested amount does not exceed the patient's rolling thirty (30)-day limit of four (4) ounces;

(j) The dispensary shall only make deliveries to residential addresses located within the District of Columbia to qualifying patients and caregivers registered in the District of Columbia medical marijuana program as set forth in § 5703.2;

(k) The dispensary shall only make deliveries between the hours of 11:00 a.m. and 7:00 p.m.;

(l) The dispensary's delivery driver(s) shall meet the patient or caregiver curbside in front of the patient's residence or caregiver's residence and complete the delivery quickly and efficiently;

(m) The dispensary shall implement a mechanism or recordkeeping process for patients and caregivers to document receipt of medical marijuana deliveries, and shall maintain the records as part of the dispensary's recordkeeping requirements. If, in an enforcement action pursuant to Chapter 62, a patient or caregiver disputes receiving the medical marijuana and the dispensary does not have documentation proving the delivery occurred, the Department shall apply a rebuttable presumption that the delivery did not occur;

(n) A dispensary delivery driver shall not make more than ten (10) deliveries in a single delivery run;

(o) A dispensary delivery driver shall only travel from the dispensary to a delivery address(es) and return to the dispensary. A delivery driver shall ensure that there is sufficient gasoline in a delivery vehicle before loading the vehicle for deliveries, and if there is not sufficient gasoline, shall fill the vehicle with sufficient gasoline before loading the vehicle for deliveries or obtain the gasoline after completing all deliveries for that delivery run;

(p) A dispensary delivery driver shall not at any time possess a combined total of cash and medical marijuana exceeding five thousand dollars ($5,000.00) in value;

(q) The dispensary shall record each delivery in the METRC delivery manifest system in real-time and maintain a copy of the record as part of the dispensary's recordkeeping requirements;

(r) The dispensary shall provide a copy of its delivery manifest to the Department and the Metropolitan Police Department (MPD) by 12:00 noon each Monday, which shall contain the entries for all deliveries made during the previous week; and

(s) The dispensary shall provide a copy of its delivery manifest to the Department or MPD immediately upon request.

5703.4 A dispensary shall only be permitted to dispense medical marijuana through curbside pickup or at-the-door pickup to a qualifying patient or caregiver if the dispensary complies with the following requirements:

(a) A dispensary shall only be permitted to dispense medical marijuana through curbside pickup or at-the-door pickup to a qualifying patient or caregiver registered in the District of Columbia medical marijuana program, or to a patient enrolled in another state's medical marijuana program who is recognized by the Department, as evidenced by a state-issued medical marijuana patient card and with a government-issued identification card. A dispensary that dispenses medical marijuana to individuals who possess cards issued by unauthorized entities on the Internet such as getnugg.com or states that are not yet recognized by the Department shall be subject to disciplinary action up to and including revocation of registration;

(b) The dispensary shall implement a mechanism or process for a patient or a District of Columbia registered caregiver to submit a copy of the patient's, or registered caregiver's, medical marijuana registration card and the patient's, or registered caregiver's, government-issued identification card to the dispensary for verification prior to dispensing. The dispensary shall maintain a copy of both as part of the dispensary's recordkeeping requirements;

(c) Prior to dispensing, the dispensary shall:

(1) Verify that the patient, or patient and registered caregiver, is actively registered in the District of Columbia medical marijuana program, or that the nonresident patient is actively enrolled in another state's medical marijuana program;

(2) Maintain a copy of the medical marijuana program registration card and a copy of the government-issued identification card; and

(3) Verify that the patient's requested amount does not exceed the patient's thirty (30)-day limit of four (4) ounces;

(d) The dispensary shall ensure that the entire exchange of the medical marijuana product to the patient or registered caregiver is clearly captured on the dispensary's video surveillance system;

(e) The dispensary shall only provide curbside pickup at curbside directly in front of the dispensary and in view of the dispensary's video surveillance cameras. If the dispensary's location or video surveillance system is not equipped to meet this requirement, the dispensary shall not provide curbside pickup or at-the-door pickup.

(f) The dispensary shall implement procedures to ensure that curbside pickup or at-the-door pickup is completed quickly and efficiently; and

(g) The dispensary shall implement a mechanism or recordkeeping process for patients to document receipt of curbside pickup or at-the-door pickup, and shall maintain the records as part of the dispensary's recordkeeping requirements. If, in an enforcement action pursuant to Chapter 62, a patient disputes receiving the medical marijuana and the dispensary does not have documentation including clear video evidence proving the dispensing occurred, the Department shall apply a rebuttable presumption that the dispensing did not occur.

5703.5 At the dispensary's discretion, the dispensary may require electronic payment before scheduling a delivery, curbside pickup or at-the-door pickup; may limit deliveries, curbside pickup, or at-the-door pickup to electronic payment only; and may limit the areas to which the dispensary will deliver.

5703.6 A cultivation center shall not be permitted to deliver medical marijuana to any premises other than the specific registered premises of the dispensary where the medical marijuana is to be sold.