



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Health TITLE-SERIES: 64-113
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: medical cannabis program-safe harbor letter
CITE STATUTORY AUTHORITY: 16A-3-1(b)

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB 339

Section 64-5-1(k) Passed On 3/5/2020 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 21, 2020

This rule shall terminate and have no further force or effect from the following date:

April 21, 2025

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

April L Robertson -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 64
LEGISLATIVE RULE
BUREAU FOR PUBLIC HEALTH

SERIES 113
MEDICAL CANNABIS PROGRAM – SAFE HARBOR LETTER

§64-113-1. General

1.1. Scope. The provisions of these rules include provisions for obtaining a safe harbor letter from the bureau that authorizes a terminally ill cancer patient to use medical cannabis purchased in another state that has entered into a reciprocity agreement with the bureau.

1.2. Authority. W. Va. Code §16A-3-1(b) and §16A-3-5.

1.3. Filing Date. April 21, 2020.

1.4. Effective Date. April 21, 2020.

1.5. Sunset Provision. These rules will terminate and have no further force or effect on April 21, 2025.

1.6. Applicability. These rules apply to a person who is a terminally ill cancer patient who desires to use medical cannabis purchased in another state that has entered into a reciprocity agreement with the bureau.

§64-113-2. Definitions.

2.1. “Act” means the West Virginia Medical Cannabis Act (W. Va. Code §16A-1-1 *et seq.*).

2.2. “Applicant” means an applicant who wishes to submit or submits an application to the bureau for a Safe Harbor letter.

2.3. “Bureau” means the West Virginia Bureau for Public Health within the Department.

2.4. “Caregiver” means the individual designated by a patient or, if the patient is under 18 years of age, an individual authorized under W. Va. Code §16A-5-1 *et seq.*, to deliver medical cannabis.

2.5. “Certified medical use” means the acquisition, possession, use, or transportation of medical cannabis by an applicant, or the acquisition, possession, delivery, transportation, or administration of medical cannabis by a caregiver, for use as part of the treatment of the applicant’s serious medical condition, as authorized in an applicant certification issued under the Act, including enabling the applicant to tolerate treatment for the serious medical condition.

2.6. “Department” means the Department of Health and Human Resources.

2.7. “Medical cannabis” means cannabis that is grown and sold pursuant to the provisions for certified medical use as set forth in the Act and in a form set forth in the provisions of §64-110-10.

2.8. “Medical cannabis program” means the program authorized under the Act and implemented by the bureau.

2.9. "Patient" means an individual who:

2.9.a. Is a terminally ill cancer patient.

2.9.b. Has met the requirements for certification under the Act.

2.9.c. Is a resident of the state of West Virginia.

2.10. "Safe Harbor Letter" means a letter provided by the bureau to an applicant under W. Va. Code §16A-3-5 that allows the applicant to administer to him or herself medical cannabis purchased in another state with which the state has entered into a reciprocity agreement.

2.11. "Terminally ill cancer patient" means a person with a diagnosis of cancer and a medical prognosis of life expectancy of approximately one year or less if the illness runs its normal course.

§64-113-3. Medical cannabis from outside this State.

3.1. Application for Safe Harbor Letter. An applicant may apply to the bureau for a Safe Harbor Letter authorizing the applicant to use medical cannabis in this state that was obtained from a state with which bureau has entered into a reciprocity agreement.

§64-113-4. Application.

4.1. An applicant must submit an application for a Safe Harbor Letter under these rules on a form provided by the bureau, and must include the following information and any other information deemed necessary by the bureau:

4.1.a. The name, address and date of birth of the applicant.

4.1.b. The name, address, and date of birth of a caregiver, if applicable;

4.1.c. The applicant's proof of residency by submitting one of the following:

4.1.c.1. A West Virginia driver's license.

4.1.c.2. Department of Motor Vehicles-issued identification card.

4.1.c.3. Another form of identification that contains a photo and is approved by the bureau in the application.

4.1.d. The caregiver's criminal history record information obtained from the West Virginia State Police or its authorized agent, if applicable.

4.1.e. A written statement from a licensed physician in this state confirming that the applicant is a terminally ill cancer patient, the physician's name, address of practice, telephone number, and state license number.

4.1.f. An applicant must verify that the applicant will obtain the medical cannabis lawfully in another state.

4.2. The applicant must complete every required section of the application before it will be considered by the bureau.

4.2.a. If the bureau deems an application submitted by an applicant to be incomplete, the bureau will notify the applicant in writing of the factors for which further documentation is required.

4.2.b. An applicant must have 30 days from the mailing date of the notification to submit the additional material to the bureau or the bureau will deem the application as denied and the applicant will be required to submit a new application.

4.3. The applicant must certify as part of the application that the applicant understands the following:

4.3.a. Cannabis is a prohibited Schedule I controlled substance under federal law.

4.3.b. Participation in the Medical Cannabis Program is permitted only to the extent provided by the Act and these rules.

4.3.c. An activity not sanctioned by the Act or rules promulgated under the Act is a violation of state law.

4.3.d. Growing, distributing, or possessing cannabis in any capacity, except through a federally approved research program, is a violation of federal law.

4.3.e. Improper use or acquisition of medical cannabis may be a violation of state or federal law.

4.3.f. Participation in the Medical Cannabis Program does not authorize a person to violate federal or state law and does not provide immunity from or affirmative defense to arrest or prosecution under federal or state law except as provided under the Act.

4.3.g. Notwithstanding anything herein to the contrary, that civil or criminal penalties may result from the applicant's participation in the Medical Cannabis Program, including obtaining medical cannabis from outside this state as set forth in W. Va. Code §16A-3-5.

4.4. An application for a Safe Harbor Letter must be obtained and submitted as required by the bureau, which shall include notice that a false statement by the applicant is punishable under the applicable provisions of the Uniform Controlled Substances Act, W. Va. Code §60A-1-101 *et seq.*

§64-113-5. Validity of Safe Harbor Letter.

5.1. The Safe Harbor Letter will be valid from the date of issuance by the bureau until August 1, 2022, or unless any of the following occurs:

5.1.a. The applicant dies.

5.1.b. The applicant changes physicians.

5.1.c. The applicant's physician knows or has reason to know that the applicant no longer suffers from terminal cancer and that use of medical cannabis would not be medically indicated.

5.1.d. The applicant's residency in another state.

5.1.e. The applicant receives notice under subsection 5.6.

5.2. The applicant or physician, or both, must notify the bureau in writing immediately upon

knowledge of any change in the information in the original application and upon the occurrence of an event listed in subsection 5.1. The applicant must return the invalid Safe Harbor Letter to the bureau.

5.3. A new application must be submitted to the bureau under the following circumstances:

5.3.a. The applicant changes physicians. The application must include a written statement from the new physician that the applicant is a terminally ill cancer patient.

5.3.b. The applicant has not submitted information within 30 days under subdivision 4.2.b (relating to application).

5.4. The new application must be submitted to the bureau within a reasonable time period of the occurrence of the triggering event.

5.5. The submission of a new application will not be considered to be effective notice under subsection 5.2.

5.6. In the event that the Medical Cannabis Program becomes effective prior to the expiration of Safe Harbor Letters, the bureau will publish notice in the State Register that Safe Harbor Letters will be invalid as of a certain date. Individuals wishing to participate in the Medical Cannabis Program must obtain the requisite identification cards and registrations under the Act and these rules.

§64-113-6. Penalties and sanctions.

6.1. In addition to the penalties in W. Va. Code §16A-12-1 *et seq.*, the bureau may deny, revoke, or suspend a Safe Harbor Letter if the Bureau has evidence of the following:

6.1.a. Falsified information on the application.

6.1.b. An intentional, knowing, or reckless violation of a provision of the Act or rules promulgated to implement the Act.

6.2. Any person adversely affected by the enforcement of this rule shall seek relief in the manner prescribed by 64CSR1.

§64-113-7. Confidentiality.

7.1. Information obtained by the bureau regarding an applicant under these rules is confidential and not subject to public disclosure, including disclosure under the West Virginia Freedom of Information Act (W. Va. Code §29A-1-1 *et seq.*), including the following:

7.1.a. Individual identifying information of applicant.

7.1.b. Information regarding the applicant's medical condition, including the physician's written statements.