



Dear Mr. Gallagher:

This letter is in response to your inquiry submitted to the Marijuana Enforcement Division (“Division”) general inquiry email. The Division treats your inquiry as a request for Statement of Position pursuant to Rule 1-120(A), 1 CCR 212-3. Your inquiry asked the following question(s):

*Currently, there is confusion and conflict between statute and rule pertaining to whether a Medical Marijuana Store must verify a patient’s physician certification before each purchase or if this is only required to be reviewed by the patient’s primary Medical Marijuana Store.  
Section 44-10-501(4)(a), C.R.S. states:*

- (a) Prior to initiating a sale, the employee of the medical marijuana store making the sale shall verify:*
- (I) That the purchaser has a valid registry identification card issued pursuant to section 25-1.5-106 or a copy of a current and complete new application for the medical marijuana registry administered by the department of public health and environment that is documented by proof as having been submitted to the department of public health and environment within the preceding thirty-five days;*
  - (II) A valid picture identification card that matches the name on the registry identification card; and*
  - (III) That the patient’s or caregiver’s purchase will not exceed the patient’s daily authorized quantity limit or the amount listed on the patient’s certification, whichever is greater, and the purchase aligns with the purchase authority information in the seed-to-sale tracking system.*

*However, the only mention of a physician certification in 1 CCR 212-3 is in Rule 5-110(D), in which the rule states that the new primary Medical Marijuana Store must maintain a physician certification. Additionally, Industry Bulletin: 22-07 (posted 11/18/2022) states, “The revised rule specifically clarifies that a Medical Marijuana Store that is designated as a patient’s primary store must maintain both the physician certification [sic].” As in Rule 5-110(D), there is no mention that a Medical Marijuana Store is required to review the patient’s physician certification outside the scope of being the primary Medical Marijuana Store for the patient.*

*Therefore, there is a conflict between Section 44-10-501 (4), C.R.S., and Rule 5-110(D). Such conflict is not only confusing Medical Marijuana Stores on such requirements but also the patient community at large. We respectfully request the Division to make a formal position statement whether a Medical Marijuana Store is required to review the physician certification before each sale or if this is only necessary for the patient’s primary Medical Marijuana Store.*

### **Division Response:**

The Division understands your request to ask two questions. First, “whether a Medical Marijuana Store is required to review the physician certification before each purchase if a patient has designated it as their primary Medical Marijuana Store” The answer to this question is maybe. If the Medical Marijuana Store has a record of the THC potency authorization for the patient that it can verify without looking at the physician certification, then it does not need to verify the physician certification. See 44-10-501(1)(b)(I), C.R.S. If the THC potency authorization for the patient is only available by verifying the physician certification, then the Medical Marijuana Store must verify the THC authorization on the physician certification before completing the sale.

Please note the additional requirements if the sale is in excess of the statutory limits for Medical Marijuana. Unless the patient is homebound, sales of more than the statutory maximum sales limit can



only occur at the patient's primary Medical Marijuana Store. Any store that is designated as a patient's primary Medical Marijuana Store must maintain both the physician certification form and the uniform certification form. See Rules 3-905(25), 5-110, 5-125; see also 25-1.5-106(8)(f), C.R.S. For a patient purchasing over the statutory daily sales limit, the Medical Marijuana Store is required to confirm that the sale would not exceed the sales amount in the uniform certification form and the THC potency authorization, which is also usually available on the uniform certification form. If the THC potency maximum is not provided on the uniform certification form, then the Medical Marijuana Store must verify the THC potency maximum prior to each sale which likely requires reviewing the physician certification. If the Medical Marijuana Store is maintaining these records, and these records have not expired, the Medical Marijuana Store can review the records in their possession rather than requiring the patient to present either form. See 44-10-501(1)(b)(I), C.R.S.

The Division understands the second question to be "whether a Medical Marijuana Store is required to review the physician certification before each sale if it is not the primary designated store?" The answer to this question is yes. If a patient has not designated the Medical Marijuana Store as their primary Medical Marijuana Store, and the patient is purchasing up to the statutory daily sales limit, then the Medical Marijuana Store must review the physician certification prior to each sale to verify the THC potency authorization which is only available on the physician certification. See 44-10-501(1)(b)(I), C.R.S.

Further, subsection 44-10-501(4), C.R.S. is not in conflict with Rule 5-110(D). Subsection 44-10-501(4)(a)(III) requires that prior to a sale, an employee of a Medical Marijuana Store verifies (among other things) that "the patient's or caregiver's purchase will not exceed the patient's daily authorized quantity limit or the amount listed on the patient's certification, whichever is greater, and the purchase aligns with the purchase authority information in the seed-to-sale tracking system." This verification does not require the Medical Marijuana Store employee to verify the physician certification prior to each purchase, but instead requires a verification to confirm that the sale would not exceed the allowable daily amount of Medical Marijuana for the patient. This can be accomplished by confirming with the inventory tracking system (e.g. Metrc) that the patient has not purchased their allowable daily amount (either the statutory daily amount, or an amount set forth in the patient's uniform certification form).

A patient that is not homebound must designate a primary store if they are seeking to buy over the statutory sales limit. See Rule 5-125(A)(3)(a); see also Rule 5-125(A)(3)(a)(iv) (homebound patients are not required to designate a primary store). Rule 5-110(D)(4) requires that a Medical Marijuana Store designated by a patient must maintain business records, which includes but is not limited to, copies of written authorization from the patient, a copy of the patient's registry identification card, proof of identification and, importantly, the physician certification (used to register with CDPHE) and, if seeking to buy more than the statutory daily sales limit, the uniform certification form. The requirement for a designated primary store to maintain records is not a requirement for patients to present these records before every sale.

The Marijuana Code also allows the state licensing authority to "establish record-keeping requirements for medical marijuana stores engaging in sales transactions pursuant to any exemption to the sales limit." § 44-10-501(10), C.R.S. Rule 5-110(D)(4) falls within this authority and requires a primary Medical Marijuana Store to maintain the physician's certification and the uniform certification form for sales that exceed the daily sales limit.

If you have questions about this position statement, please direct them to me at [dominique.mendiola@state.co.us](mailto:dominique.mendiola@state.co.us) (copying Deputy Senior Director Kyle Lambert at



[kyle.lambert@state.co.us](mailto:kyle.lambert@state.co.us)). If you disagree with this position statement, as set forth in Rule 1-120, 1 CCR 212-3, you may petition the state licensing authority within 30 days for a declaratory order pursuant subsection 24-4-105(11), C.R.S. The process and requirements for such a petition are set forth in Rule 1-120(C), 1 CCR 212-3.

Sincerely,

Dominique Mendiola  
Senior Director  
Marijuana Enforcement Division