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*Delivered by email to: [deborah.thompson@idph.iowa.gov](mailto:deborah.thompson@idph.iowa.gov)*

**Re: Comments and Suggestions on Proposed Rules published as ARC 1571C to implement the Medical Cannabidiol Act, 2014 Iowa Acts, Senate File 2630**

Dear Ms. Thompson:

The enclosed comments and suggestions to proposed new Chapter 154, “Medical Cannabidiol Act Registration Card Program” are made on behalf of the American Civil Liberties Union of Iowa after consulting with impacted patients and caregivers. What follows are four important changes that the Department must make to bring the regulations into accord with the language and intent of the new Medical Cannabidiol Law, and to protect the rights of Iowans who are now qualified to obtain a medical cannabidiol registration card.

**1. The definition of “permanent resident” in the rules is not authorized by statute and conflicts with long-established law.**

**Specifically, this definition, which imposes a 90-day durational residency requirement and valid photo identification from the Iowa Department of Transportation, is an unlawful restriction on the right of medically qualified, bona fide Iowa residents to obtain a medical cannabis card under the new Iowa law.**

In proposed 641—154.1, the Department defines “Permanent resident” as “a natural person who has physically resided in Iowa as the person’s principal and primary residence for a period of not less than 90 consecutive days immediately before applying for a cannabidiol registration card and who has been issued a valid Iowa driver’s license or a valid Iowa nonoperator’s identification card.”

This definition is not included in the Medical Cannabidiol Act, 2014 Iowa Acts, Senate File 2360—nor is it found anywhere in existing Iowa law.

A person may be a bona fide permanent Iowa resident without having resided in the state for 90 days, and certainly without having obtained an identification card from the Iowa department of transportation.

The Medical Cannabidiol Act requires that the application form issued by the department require a copy of the patient's "valid photo identification" along with their full name, birth date, and "Iowa residence address." But it does not require that the required identification have been issued by the Iowa department of transportation. There are numerous other forms of valid photo identification, including U.S. passports, university-issued student IDs, visa documents, foreign consular documents, and others, that should be accepted from Iowa residents to prove identity and/or residency. Similarly, a host of alternative documents are already accepted to prove residence for other government functions in Iowa, and should remain available for Iowa patients who do not have a DOT driver's license or non-operator ID. Examples include pay stubs and utility bills. Not all Iowa residents possess a photo ID from the Iowa Department of Transportation or choose to obtain one, but are eligible for a cannabidiol registration card under the Medical Cannabidiol Act.

In determining where a person is a resident, the long-established legal question is: Where is his home to which he intends to return when absent, or when sick, or when his present engagement ends. *Harris v. Harris*, 205 Iowa 108, 215 N.W. 661, 663 (1927). "A residence once established continues until a new one is acquired. A change of residence does not consist solely in going to and living in another place, but it must be with the intent in making that place a permanent residence. The temporary absence from the state of one domiciled there will not be held a change of residence." *Id.*

Requiring a 90-day waiting period is thus inconsistent with the legal notion of Iowa residency. It is more restrictive than the requirements of Iowa residency for purposes of voting, eligibility for Medicaid, food assistance, and other governmental benefits requiring residency. For example, in the context of voting, a person's residence is the place that the person declares is the person's home with the intent to remain there permanently or for a definite, or indefinite or indeterminable length of time. Iowa Code § 48A.5(2)(b).

Because the Medical Cannabidiol Act creates a statutory right to a medical treatment option—cannabidiol—for medically qualified Iowans, that right cannot be conditioned on a durational residency requirement. A bona fide resident cannot be deprived of the right to receive basic medical services merely because he has not fulfilled durational residency requirements under *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974). In that case, the U.S. Supreme Court overturned an Arizona law that stated that an indigent person must be a resident of the county for a year before eligibility for benefits for non-emergency medical care coverage. The Court reasoned that medical care is a basic necessity of life to a poor person, comparable to welfare assistance. *Id.* See also *Shapiro v. Thompson*, 394 U.S. 618 (1969). Like in *Shapiro*, the Court in *Memorial Hospital* ruled that the residency requirement unconstitutionally restricted the right to travel. *Id.*

Accordingly, the definition of permanent resident, which is not consistent with the law generally or the Medical Cannabidiol Act specifically, should be eliminated from the proposed rules or re-written to be consistent with the law. An example of a definition that would be consistent with the law is:

“Permanent resident” means a natural person who is an Iowa resident.

**2. The limitation of acceptable identification to “a valid Iowa driver’s license, or valid Iowa non-operator identification card” is improper.**

For the reasons provided above, the limitation in proposed rule 641—154.3(1)(d)(2), 641—154.3(3)(a), 641—154.4(1)(d)(2), and 641—154.4(3)(a) that a patient or their caregiver provide one of only two options of valid photo identification should be struck or re-written and expanded to provide for other forms of valid photo identification that Iowans who qualify for a medical cannabidiol card might possess. Examples include but are not limited to a valid U.S. passport, university identification card, and immigration documents issued by or recognized as valid by the United States government.

**3. The requirement that a neurologist has physically examined a patient is not required by the statute and may be inconsistent with the practice and standard of care.**

Proposed 641—154.2 (1) requires that recommendations be limited to “a neurologist who has physically examined” a patient. By contrast, the Medical Cannabidiol Act requires that a neurologist have treated the patient for intractable epilepsy for at least six months, has tried alternative treatment options that have not alleviated the patient’s symptoms, determines the risks of recommending medical cannabidiol are reasonable, and maintains a patient treatment plan. However, a physical exam is not required by the statute. Drafting the regulations to include the requirement of a physical exam may have the unintended consequence of foreclosing the ability of doctors to use nursing and other skilled staff to perform a physical exam, the use of telemedicine technology, or other methods conforming to the standard of practice of neurologists. It is simply outside the scope and authority of the department to add a requirement of a physical exam to the standard of care in the practice of neurology in the treatment of intractable epilepsy.

This language should be eliminated.

**4. The current regulations fail to assure access to non-confidential public information.**

Proposed rule 641—154.10 provides for the maintenance of a confidential file of names of each patient to or for whom the department approves the issuance of a cannabidiol registration card and the name of each primary caregiver to whom the

department issues a cannabidiol registration card. Appropriately, the rule provides that personally identifiable information of patients and primary caregivers shall be maintained as confidential and is not accessible to the public. It also provides for circumstances under which personally identifiable information may be disclosed.

An important addition is needed. A third category of non-confidential, non-personally identifiable information should be provided for, which is public information. While *patient information* must be safeguarded, the public does have a right to know *non-confidential statistical information*. For example, the public has an interest in knowing how many cards are applied for, issued, and denied in a particular time frame and how many are renewed.

If you have any questions or would like to discuss the ACLU of Iowa's recommendations further, please don't hesitate to contact me by email at [rita.bettis@aclu-ia.org](mailto:rita.bettis@aclu-ia.org) or by phone at (515) 243-3988 x15.

Thank you,



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Rita Bettis  
Legal Director