The Honorable Phil Mendelson, Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 402
Washington, D.C. 20004

Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council is the second proposed rulemaking to adopt amendments to implement and govern the participation of nonresident qualifying patients in the District’s Medical Marijuana Program (District of Columbia Municipal Regulations, Title 22, Subtitle C, Chapters 5 and 99), and the accompanying approval resolution. This rulemaking submission replaces the withdrawn PR22-526 and will supersede the rulemaking that was published in the D.C. Register for public comment on October 20, 2017.

This second proposed rulemaking is necessary to implement the reciprocity provision of The Medical Marijuana Omnibus Amendment Act of 2016, effective February 18, 2017 (“Reciprocity Law”). This second proposed rulemaking also addresses the issue of which patients from other jurisdictions are eligible to purchase medical marijuana in the District of Columbia. The Reciprocity Law was written to allow the medical marijuana patients from every state to purchase medical marijuana in the District of Columbia regardless of whether the District’s patients are allowed to purchase or possess medical marijuana in those other states. Further, the Reciprocity Law does not require that the medical marijuana programs in other states have the same or similar standards for enrollment as are required in the District’s program. As a result, a patient from a program that does not require the recommending practitioner to perform an in-person physical exam, such as California or New York, would be allowed to purchase medical marijuana in the District of Columbia. However, a D.C. resident would not be allowed to purchase medical marijuana in the District under those same conditions. Moreover, that D.C. resident would also not be allowed to purchase or possess medical marijuana in California or New York.
To address this disparity and ensure that non-residents are held to the same standard as District residents enrolled in the District’s medical marijuana program, this second proposed rulemaking includes a “functional equivalent” requirement. Through this provision, the District will recognize for participation in the District’s program a nonresident qualifying patient from any state that has the same minimal standards as the District’s program. However, this second proposed rulemaking no longer requires that a nonresident qualifying patient be from a state that offers full reciprocity to the District’s medical marijuana patients, because most states do not have reciprocity. Further, while the Department always sought to recognize Maryland patients, the Department understands that a strict interpretation of “full reciprocity” would not have included Maryland residents. This second proposed rulemaking will now clearly allow Maryland patients to participate in the District’s program. Additionally, the second proposed rulemaking will now allow nonresident qualifying patients to present either a card or state-issued document to a dispensary as proof of enrollment in another state’s medical marijuana program further increasing access.

The second proposed rulemaking also adds a requirement for dispensaries to conspicuously post a sign notifying the public that it is illegal to transport medical marijuana across state lines. This provision is included as part of the District’s continuing efforts to comply with the U.S. Department of Justice Deputy Attorney General James M. Cole memo (“Cole memo”) dated August 29, 2013.

This second proposed rulemaking maintains the integrity of the program while allowing nonresident qualifying patients from most states, including Maryland, access to the District’s medical marijuana program.

I urge the Council to take prompt and favorable action on the enclosed legislation.

Sincerely,

[Signature]

Muriel Bowser
A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Phil Mendelson, at the request of the Mayor, introduced the following resolution, which was referred to the Committee on ____________.

To approve proposed rules adopted by the Department of Health governing the participation of nonresident qualifying patients in the District's Medical Marijuana Program.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this resolution may be cited as the "Medical Marijuana Reciprocity Second Proposed Rulemaking Approval Resolution of 2018."

Sec. 2. Pursuant to section 14(b) 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(b)), the Council approves the proposed rulemaking adopted by the Department of Health adding a new section 503 to Chapter 5 and amending section 9900 of Title 22-C of the District of Columbia Municipal Regulations to implement and govern the participation of nonresident qualifying patients in the District's Medical Marijuana Program.

Sec. 3. Fiscal impact.
The Council adopts the fiscal impact statement in the committee report of the
Chief Financial Officer as the fiscal impact statement required by section 4(a) of the
General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038;
D.C. Official Code § 1-301.47(a)).

Sec. 4. The Council shall transmit a copy of this resolution, upon its adoption, to
the Mayor, the Director of the Department of Health, and the Administrator of the Office
of Documents and Administrative Issuances.

Sec. 5. This resolution shall take effect immediately.
DEPARTMENT OF HEALTH

NOTICE OF SECOND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to Section 14 of the Legalization of Marijuana for Medical Treatment Initiative of 1999 ("Act"), effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.13 (2012 Repl. & 2017 Supp.)); Section 4902(d) of the Department of Health Functions Clarification Act of 2001, effective October 3, 2001 (D.C. Law 14–28; D.C. Official Code § 7–731(d) (2012 Repl. & 2013 Supp.)); Sections 2 and 3 of the Act, effective February 25, 2010 (D.C. Law 13-315; D.C. Official Code §§ 7-1671.01(19) and 7-1671.02(c)(2) (2012 Repl. & 2017 Supp.)); and Mayor’s Order 2011-71, dated April 13, 2011, hereby gives notice of the intent to adopt the following amendments to Chapters 5 (Qualifying Patients) and 99 (Definitions) of Title 22 (Health), Subtitle C (Medical Marijuana), of the District of Columbia Municipal Regulations ("DCMR"), in final, in not less than thirty (30) days from the date of publication of this notice in the D.C. Register, and upon completion of the thirty (30) day Council period of review if the Council does not act earlier to adopt a resolution approving the rules.

The first notice of this proposed rulemaking was published in the D.C. Register on October 20, 2017, at 64 DCR 10558. The Department subsequently withdrew the rulemaking to make substantive revisions. This second proposed rulemaking supersedes the rulemaking published in the D.C. Register for public comment on October 20, 2017.

The purpose of this rulemaking is to implement regulations governing the participation of nonresident qualifying patients in the District’s Medical Marijuana Program.

Chapter 5, QUALIFYING PATIENTS, of Title 22-C DCMR, MEDICAL MARIJUANA, is amended as follows:

A new Section 503, NONRESIDENT QUALIFYING PATIENTS, is added to read as follows:

503 NONRESIDENT QUALIFYING PATIENTS

503.1 Before dispensing medical marijuana to a nonresident qualifying patient, a registered dispensary shall:

(a) Verify the nonresident qualifying patient’s identity through comparison of his/her unexpired government-issued identification card and his/her valid, unexpired nonresident card; and

(b) Confirm through the electronic records data system that the nonresident qualifying patient has not reached the allowable limit for the thirty (30) day period.
503.2 A registered dispensary shall not dispense medical marijuana to a nonresident qualifying patient who is unable to present his/her unexpired government-issued identification card and his/her valid, unexpired nonresident card.

503.3 A registered dispensary shall not dispense medical marijuana to a nonresident qualifying patient who has received four (4) ounces of medical marijuana within thirty (30) days.

503.4 A registered dispensary shall not dispense medical marijuana to a nonresident qualifying patient if the Department has determined that there is a shortage of medical marijuana, or the real-time electronic records system is inactive.

503.5 The dispensary shall retain a copy of the nonresident card or state-issued document, and a copy of the government-issued identification card.

503.6 The dispensary shall conspicuously post a sign which shall be not less than twelve (12) inches wide and twelve (12) inches long in an area that will be easily viewed and read by the public stating, “It is illegal to transport medical marijuana across state lines.”

Chapter 99, DEFINITIONS, is amended as follows:

Section 9900, DEFINITIONS, Subsection 9900.1, is amended by adding the following new definitions to appear in alphabetical order:

**Functional Equivalent** - a medical marijuana program that issues either a card or state-issued document evidencing the patient’s participation in the program, and that requires that a recommendation for the use of medical marijuana be made by a licensed healthcare provider that:

(a) Is in a bonafide patient-practitioner relationship with the qualifying patient;

(b) Performs a personal physical examination or dental examination of the qualifying patient; and

(c) Has responsibility for the ongoing care and treatment of the qualifying patient.

**Nonresident Card** - a medical marijuana patient card or document issued by a state that has an active medical marijuana program and is the functional equivalent of the District of Columbia medical marijuana program, as determined by the Mayor.

**Nonresident Qualifying Patient** - a person that is not a resident of the District of Columbia who is enrolled in another jurisdiction’s medical marijuana program, unless the Department has determined that there is a shortage of
medical marijuana or the real-time electronic records system referenced in the Act is inactive.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the D.C. Register, to Phillip Husband, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 6th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m. at the address listed above, or by contacting Angli Black, Paralegal Specialist, at Angli.Black@dc.gov, (202) 442-5977.
MEMORANDUM

TO: Alana Intrieri  
Executive Director  
Office of Policy and Legislative Affairs

FROM: Janet M. Robins  
Deputy Attorney General  
Legal Counsel Division

DATE: November 17, 2017

SUBJECT: Legal Sufficiency Review of the “Medical Marijuana Reciprocity Second Proposed Rulemaking Approval Resolution of 2017”

This is to Certify that this Office has reviewed the above-referenced proposed resolution and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.

Janet M. Robins