



September 28, 2021

DCRB CIRCULAR NO. 1003

To All Members of the DCRB:

Re: APPROVAL OF DCRB FILING NO. 2106
CLASSIFICATION PROCEDURAL REVISION
CLASSIFICATION APPLICABLE TO MEDICAL MARIJUANA DISPENSARIES
BASIC MANUAL – SECTION 2
EFFECTIVE DECEMBER 1, 2021

The Delaware Insurance Commissioner has approved DCRB Filing No. 2106, which proposed to revise the classification procedure for medical marijuana dispensaries for policies effective 12:01 a.m., December 1, 2021 or later. This effective date implementation aligns concurrently with the DCRB's normal voluntary market loss cost and residual market rate revision filing, which was filed with the Commissioner on August 19, 2021 (see DCRB Filing No. 2104, which may be accessed on the DCRB's website: <http://www.dcrb.com> under the main menu's "Filings" tab, for reference). This coordination will consolidate necessary changes that members and other constituents must make to policies, forms, and systems.

The Delaware Workers' Compensation Manual of Rules, Classifications and Rating Values for Workers' Compensation and for Employers Liability Insurance (Basic Manual) presently classifies payroll developed in the operation of a medical marijuana dispensary to Code 928, Retail Store, N.O.C. Payroll developed in the operation of a marijuana growing facility is classified to Code 0011, Flower Raising. Filing No. 2106 proposed that medical marijuana dispensaries be reclassified from Code 928 to Code 927, Pharmacy, for policies with effective dates on or after December 1, 2021.

Governor Jack Markell signed Senate Bill 17 into law on May 13, 2011, establishing the Delaware Medical Marijuana Act (DMMA) (Title 16, Chapter 49A of the Delaware Code). The Office of Medical Marijuana (OMM), housed in the Delaware Division of Public Health, is responsible for monitoring and enforcing the DMMA. Delaware's first medical marijuana dispensary (also known as a compassion center) opened on June 26, 2015. In early 2017, the DCRB's classification staff began receiving telephone calls questioning the classification assignment of medical marijuana dispensaries and growing facilities. Internal DCRB staff discussions and review – which included both an analysis of information available online regarding the DMMA and a staff field survey of Delaware's first compassion center – lead staff to recommend to constituents that Code 928, Retail Store, N.O.C., be applied to payroll developed in the operation of a compassion center, and Code 0011, Flower Raising, be applied to payroll developed in the operation of medical

marijuana growing facilities. Recognizing at that time that this was a nascent industry with no statistical data for the DCRB to analyze or evaluate in determination of this assignment, staff noted that these classification recommendations would likely be subject to further DCRB review as warranted and as additional information and data emerged regarding these business operations.

Staff noted that the Workers' Compensation Insurance Rating Board of California (WCIRB) classifies medical marijuana dispensaries to WCIRB Code 8017 (1), Stores – Retail, which is equivalent to DCRB Code 928 except that WCIRB Code 8017 (1) also includes operations classified in Delaware to DCRB Code 927. Staff also noted that the WCIRB classifies medical marijuana raising to WCIRB Code 0035, Florists, California's equivalent to DCRB Code 0011. As a result of staff's initial review and discussions, the DCRB proposed the creation of Underwriting Guide entries for "Medical Marijuana Dispensaries" (Code 928) and "Medical Marijuana Growing" (Code 0011) as part of the DCRB's December 1, 2018 Housekeeping Revisions Filing, which was approved by the Delaware Insurance Commissioner.

As staff continued to analyze the classification procedure for this industry, the Pennsylvania Compensation Rating Bureau (PCRB) received correspondence from the Pennsylvania Department of Labor and Industry (L & I) (dated February 3, 2020) which questioned the assignment of Code 928 to Pennsylvania medical marijuana dispensaries. The request for review by L & I led to important insights into medical marijuana dispensary operations and processes. PCRB was provided with detailed information from PA's Department of Health (DOH), clarifying the dispensary operations. With the benefit of these additional details and clarification provided by the DOH, staff reconsidered the classification assignment of medical marijuana dispensaries and found that such were reasonably analogous to "traditional" pharmacies. This resulted in the PCRB proposing that Pennsylvania medical marijuana dispensaries be reclassified from Code 928 to Code 927 for policies with effective dates of April 1, 2020 and later. The Pennsylvania Insurance Commissioner approved the PCRB medical marijuana dispensary filing proposal.

Staff endeavors to align the DCRB and PCRB uniform classification plans when feasible and as such revisited the classification assignment of Delaware compassion centers. There are operational similarities between Delaware compassion centers and Pennsylvania dispensaries as well as some minor differences. Staff concluded that overall Delaware compassion centers are sufficiently similar to Pennsylvania medical marijuana dispensaries to warrant a similar classification approach and proposed that Delaware compassion centers be reclassified from Code 928 to Code 927. This also aligns Delaware classification procedure with the national perspective for this industry. Staff notes that Code 927 is designated 'all employees, including office' and as such does not permit a division of payroll with either standard exception classification (i.e., Code 953, Office, and Code 951, Salesperson – Outside). The DCRB will notify employers impacted by this change and those employers' workers' compensation insurers

by individual notice. The filed (but not yet approved) December 1, 2021 DCRB loss costs for Codes 927 and 928 are \$0.74 and \$1.89, respectively.

There is no revision to the current procedure of classifying medical marijuana growing facilities to Code 0011.

Please refer to Filing No. 2106, available on the DCRB's website (<http://www.pcrb.com>) under the "Filings" tab, for additional details and information on this revision. Please contact Robert Ferrante, Senior Classification Analyst – Technical Services, at (215) 320-4584 or at rferrante@dcrb.com for any questions regarding this Circular. The changes associated with this Circular are noted on the Basic Manual pages provided below. The Basic Manual will be updated on the DCRB's website at a later date.

William V. Taylor
President

**DELAWARE WORKERS COMPENSATION MANUAL OF RULES, CLASSIFICATIONS AND
RATING VALUES FOR WORKERS COMPENSATION AND FOR EMPLOYERS LIABILITY
INSURANCE**

Approved Effective December 1, 2021

SECTION 2

RATING VALUES through **DEFINITIONS** remain unchanged.

DEFINITIONS

CLASSIFICATIONS

No change to Classification Code 005 – **TREE PRUNING, SPRAYING, REPAIRING OR FUMIGATING** through
Classification Code 926 – **HARDWARE STORE – WHOLESALE**

927 PHARMACY – ALL EMPLOYEES INCLUDING OFFICE

UNDERWRITING GUIDE

[Compassion Center \(Medical Marijuana\)](#)

[Medical Marijuana Dispensary](#)

928 RETAIL STORE, N.O.C.

UNDERWRITING GUIDE

~~Medical Marijuana Dispensary~~

No change to Classification Code 932 – **COPYING OR DUPLICATING SERVICE – ALL EMPLOYEES INCLUDING
OFFICE** through Classification Code 9741 – **CATASTROPHE (OTHER THAN CERTIFIED ACTS OF TERRORISM)**

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