REGULATORY POWER AND THE PATH TO PASSAGE

What DCP Can Do Without the Legislature, What It Cannot, and How to Pass This Bill With Votes From Both Parties

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THE SENTENCE THAT EXPLAINS EVERYTHING

Conn. Gen. Stat. § 21a-421j(b), verbatim:

"**Notwithstanding the requirements of sections 4-168 to 4-172, inclusive**, in order to effectuate the purposes of RERACA and protect public health and safety, prior to adopting such regulations the commissioner shall issue policies and procedures to implement the provisions of RERACA that **shall have the force and effect of law**... at least **fifteen days** prior to the effective date of any policy or procedure."

Sections 4-168 through 4-172 are the Uniform Administrative Procedure Act — including § 4-170, the **Legislative Regulation Review Committee**. The General Assembly gave the Commissioner of Consumer Protection authority to make binding law on fifteen days' notice, with no public comment period, no Attorney General legal-sufficiency review, no small business impact analysis, no fiscal note, and **no legislative approval**.

Parallel provisions appear at § 21a-421k(b) and § 21a-420z(e). Duncan Markovich was describing this when he testified that handing all cannabis authority to DCP "is not a democratic check and balance we deserve." He was right about the mechanism, and the statute is more permissive than most legislators realize.

PART I — WHAT CAN AND CANNOT BE DONE BY REGULATION

1. The Two Tracks, Compared

	Chapter 54 regulation	RERACA policy & procedure
Public comment period	At least 30 days	**None required**
Attorney General legal review	Required (§ 4-169)	**Not required**
Small business impact analysis	Required (§ 4-168a)	**Not required**
Fiscal note	Required (§ 4-168(a)(6))	**Not required**
Legislative Regulation Review Committee approval	**Required** (§ 4-170)	**Bypassed**
Notice before taking effect	30+ days plus committee process	**15 days**
Force of law	Yes	**Yes**
How it ends	Repeal or amendment	On adoption as a final regulation, or on the statutory sunset

The Legislative Regulation Review Committee is the check that the policies-and-procedures track avoids. Under § 4-170(c) the LRRC — a bipartisan legislative committee — may approve, disapprove, or reject without prejudice any proposed regulation, in whole or in part. If it disapproves, the agency may not issue any regulation or directive implementing the disapproved provision unless the General Assembly reverses the committee. If the LRRC fails to act within sixty-five days, the regulation is deemed approved.

2. What DCP Could Do Tomorrow Without Any Legislation

Action	Authority	Assessment
Remove or relax the indoor-only requirement for qualifying patients	§ 21a-408m(4) — "the location of such plants"	**Clearly within existing authority.** The same power that created the rule can undo it.
Set or change security, screening and access requirements for patient home grows	§ 21a-408m(4) — "any other requirements necessary to protect public health or safety"	Clearly within authority
Change laboratory testing standards, action limits and methods	§ 21a-421j	Clearly within authority. This is how the yeast and mold limits move.
Change labeling, potency, serving size and product-form rules	§ 21a-421j	Clearly within authority
Adjust seedling rules operating inside the § 21a-420p(f) parameters	§ 21a-421j; § 21a-420p(f)	Within authority as to detail, not as to who may sell
Set delivery and transport requirements	§ 21a-420z(e)	Clearly within authority

3. What DCP Cannot Do — and Why the Bill Is Still Necessary

PLANT COUNTS ARE IN STATUTE, NOT REGULATION

Section 21a-278c and § 21a-408d(b) both fix the number in the statute itself: **three mature and three immature plants, twelve per household.** Those numbers were enacted by the General Assembly in June Sp. Sess. P.A. 21-1. An agency cannot raise them, and could not lower them without exceeding its delegation.

This is the answer to anyone who says "just ask DCP to fix it by regulation." DCP could move the plants outdoors. It cannot authorize a caregiver to grow for another person, cannot create a license type, cannot set a fee schedule, cannot change who may sell seedlings, and cannot change plant counts. Every one of those requires legislation.

Bill provision	Could DCP do it alone?
Outdoor cultivation for patients (Sec. 2)	**Yes** — § 21a-408m(4) already authorizes it
Outdoor cultivation for adults under § 21a-278c (Sec. 1)	**Unclear** — no comparable express delegation. See the pending OLR question.
Cultivating caregiver license (Sec. 4)	**No** — no statutory authority exists
Fee schedule (Sec. 5)	**No** — fees require statutory authorization
Subsidized testing with use immunity (Sec. 6)	**No** — immunity and appropriation require statute
Warrant requirement (Sec. 7(d))	**No**
Anti-discrimination protections (Sec. 8)	**No**
Expanding who may sell seeds and clones (Sec. 10)	**No** — § 21a-420p(f)(1) restricts it by statute
Patient and caregiver purchase of seedlings (Sec. 11)	**No** — the exclusion is statutory

4. The Trapdoor — Why Section 3 Is Not Optional

WITHOUT SECTION 3, DCP CAN UNDO SECTION 2 IN FIFTEEN DAYS

If the bill amends § 21a-408d(b) to permit outdoor cultivation but leaves § 21a-408m(4) intact, the Commissioner retains express authority over "the location of such plants." A policy or procedure reinstating indoor-only could issue on fifteen days' notice, with force of law, without legislative review.

Section 3 strikes that phrase and adds a proviso barring any requirement that prohibits compliant outdoor cultivation. **Section 1(c) does the same job on the adult-use side.** Anyone who proposes dropping these as "technical" should be shown this page.

5. The Parallel Track You Should Run Anyway

Because § 21a-408m(4) already authorizes DCP to set the location of patient plants, **a regulatory petition is available today and costs nothing.** Under the UAPA any interested person may petition an agency to adopt, amend or repeal a regulation. Run it in parallel with the bill:

- **If DCP grants it**, medical patients get outdoor cultivation without waiting for a session, and the bill's remaining sections get easier because the contested piece is already operating without incident.
- **If DCP denies it**, you have a written agency refusal to exercise authority it indisputably holds — which is powerful testimony and makes the legislative ask unavoidable.
- **Either way you generate a record.** A denial letter is the single most useful exhibit you could hand the General Law Committee.

SOMETHING I COULD NOT VERIFY — CHECK THIS FIRST

DCP adopted final cannabis regulations effective in January 2025. **I could not determine whether the indoor-only home-grow rule currently sits in a formally adopted regulation (which would have gone through the Attorney General and the LRRC) or remains in policies and procedures.** This matters enormously: if it went through the LRRC, the "the legislature never approved this" framing is weaker and must be adjusted.

The OLR request already recommended answers this. **Do not use the agency-overreach framing in public until you have that answer in writing.**

PART II — THE PATH TO BIPARTISAN PASSAGE

6. The Theory of the Case

This bill does not pass as a cannabis bill. It passes as three other bills wearing one title:

Frame	Audience	Core claim
Separation of powers	Republicans, institutionalists	The legislature never voted for the indoor rule. An agency wrote it with fifteen days' notice under a statute that bypasses the Regulation Review Committee. This returns the decision to the General Assembly.
Veterans and seniors	Both parties	PTSD is the largest qualifying condition at 59,205 approved certifications. 41.9% of patients are 55 or older. This is the same constituency that carried the psychedelic-therapy pilot.
Medical autonomy	Democrats	Connecticut protected medical privacy by statute in 2022 when the federal courts withdrew it. This is the same instrument. The federal government now places state-licensed medical cannabis in Schedule III.

7. The Twelve Things That Decide This

Before session

– **1. File the OLR request.** One legislator, three questions, no cost. If the answer is that the indoor rule sits in policies and procedures, the entire framing changes in your favor.

– **2. Get one Republican co-sponsor.** All nine sponsors of HB 5429 were Democrats. This is the highest-leverage single action available. Rutigliano is the natural target — he is General Law ranking member, he seconded the motion to hear your bill, and he opposed the MSO-favoring omnibus.

– **3. Co-develop with the Ombudsman's office.** A bill the Cannabis Ombudsman helped write is a bill DCP cannot call uninformed. She has already proposed a 500–1,000 sq ft medical grow concept and asked for subsidized testing by name.

– **4. Take the DCP meeting.** Cafferelli invited it on the record in 2025 and nobody followed up. Ask one question: what would this need to look like for the Department to testify “no position”?

– **5. Answer Rep. Sweet.** She asked on December 21, 2025 whether something could be scheduled in the new year. That thread is still open and unanswered.

– **6. Clean your own record.** Freeze one canonical CannaScope run and reconcile the version drift. Document the Alta Sci allegation or retire it. Both are unforced errors waiting to happen.

Structuring the ask

– **7. Narrow the beneficiary class.** The psilocybin pilot passed because it covered veterans, retired first responders and health care workers — not everyone. Consider leading with a veterans and seniors pilot.

– **8. Ask for a raised bill.** A proposed bill is a concept and dies as one, which is exactly what happened in 2025. A raised committee bill starts with text, a fiscal note and an OLR analysis.

– **9. Concede the ceilings first.** The bill recaptures roughly 18–28% of lost patients, not all of them. Say so before an opponent does and the number becomes a floor.

At the hearing

– **10. Veterans and seniors testify first**, not advocates. The psilocybin hearing was carried by personal testimony; Rep. Kennedy cited it explicitly in her vote.

– **11. Put a licensed retailer in the room.** Tirella supporting a bill that theoretically competes with him defeats “anti-industry” in one sentence, and 280E relief now gives him a business reason to be there.

– **12. Deliver the pre-buttal packet before the hearing, not at it.** Members read what arrives three days early. Nobody reads what is handed to them in the room.

8. Objection-Response Card

Keep this to one page and hand it to every member.

If they say	You say
“This is a cannabis expansion.”	Plant counts do not change. Adults and patients may already grow. The bill decides which wall the plant stands behind — and it returns that decision to you.
“Just let DCP handle it by regulation.”	DCP can move the plants outdoors. It cannot create a caregiver license, set fees, grant testing immunity, or change who may sell seedlings. Those are all statutory.
“DCP opposes it.”	DCP said the details had not been set forth and welcomed a conversation. Here is text, and here is what changed in response to each of their four concerns.
“It will cost the state money.”	The state collects zero from caregiver registration today. We modeled the offsetting tax exemption ourselves — it is net positive unless more than 81% of demand comes out of taxed retail.
“Contamination risk from home grows.”	Connecticut already requires seedlings sold to home growers to be tested for pesticides and heavy metals. Meanwhile the licensed indoor supply generated 1,942 published findings across 18,309 products.
“It is federally illegal.”	As of April 2026 the federal government places state-licensed medical cannabis in Schedule III — a classification for substances with accepted medical use. That was a Trump executive order.
“No other state does this.”	Maine has run a caregiver cultivation program for over a decade. It has 38% of our population and 3.7 times our patient count.
“Why not wait a year?”	We are losing roughly 214 patients a month and have lost 43.5% since 2021. Waiting is a decision with a body count attached to it.

9. What Would Make Me Doubt This Passes

You asked for a path, so here is the honest counter-case. These are the things that would actually stop it, and most are inside your control:

– **Filing as a proposed bill again.** It failed for this reason once already.

– **No Republican sponsor.** Without one, the separation-of-powers argument has no messenger and the bill reads as caucus legislation.

– **Fighting DCP instead of negotiating.** Agencies rarely kill bills outright; they raise concerns that give cautious members a reason to wait. Neutrality is achievable and is worth more than any witness.

– **Overclaiming.** If the recapture number, the revenue number, or the Ravin argument is overstated and someone checks, everything else you said becomes suspect. The strongest material in this packet is the material you can prove.

– **Micro-cultivator opposition on Sections 10–11.** They hold a statutory monopoly on seedling sales. Talk to several before filing; a surprised licensee testifying against you is worse than DCP.

– **Scope creep.** HB 5429 did four unrelated things and gave DCP four separate shots. If the bill grows again, it fails again.

10. Sources

Claim	Source	Status
§ 21a-421j(b) policies and procedures have force of law, bypass §§ 4-168–4-172, 15-day notice	Conn. Gen. Stat. § 21a-421j(b)	**Verified — quoted verbatim**
Parallel authority at §§ 21a-421k(b), 21a-420z(e)	Conn. Gen. Stat.	Verified
LRRC may approve, disapprove or reject without prejudice; 65-day deemed approval; disapproval bars implementation absent legislative reversal	§ 4-170(c)–(d); OLR 2019-R-0119	Verified
§ 21a-408m(4) delegates "location of such plants" for patients	Conn. Gen. Stat. § 21a-408m(4)	Verified
Plant counts fixed in statute at 3 mature / 3 immature, 12 per household	§§ 21a-278c, 21a-408d(b)	Verified — full text retrieved
§ 21a-420p(f)(1) restricts seedling sales by statute	Conn. Gen. Stat. § 21a-420p(f)(1)	Verified
Medical cannabis to Schedule III, effective April 28, 2026	DOJ order; 91 FR (Apr. 28, 2026)	Verified
Whether the indoor-only rule now sits in an adopted regulation or in policies and procedures	—	**UNVERIFIED — resolve before using the agency-overreach framing**
Whether a UAPA petition is the right procedural vehicle here	—	**Confirm with counsel.** Petition rights exist under chapter 54; the specifics should be checked.
Psilocybin precedent, floor quotes, committee votes	Contemporaneous reporting	Verified as reported — confirm against CGA transcripts before public use

Prepared August 9, 2026. Statutory quotations are from the current General Statutes and must be reconfirmed as of filing. Strategy is judgment, not fact. This is not legal advice and its author is not an attorney.