PART IX. MEDICAL USE OF MARIJUANA

Note

Medical use of marijuana program: transfer of rights, powers, duties, etc. of department of public safety to department of health (no later than January 1, 2015); transfer of funds; reports, including a plan and timeline for the transfer, to 2014-2015 legislature. L 2013, c 177, §§4 to 11.

§329-121 Definitions. As used in this part:

"Adequate supply" [Definition effective until January 1, 2015. For definition effective January 2, 2015, see below.] means an amount of marijuana jointly possessed between the qualifying patient and the primary caregiver that is not more than is reasonably necessary to assure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition; provided that an "adequate supply" shall not exceed three mature marijuana plants, four immature marijuana plants, and one ounce of usable marijuana per each mature plant.

"Adequate supply" [Definition effective January 2, 2015. For definition effective until January 1, 2015, see above.] means an amount of marijuana jointly possessed between the qualifying patient and the primary caregiver that is not more than is reasonably necessary to assure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition; provided that an "adequate supply" shall not exceed seven marijuana plants, whether immature or mature, and four ounces of usable marijuana at any given time.

"Debilitating medical condition" means:

(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;

(2) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:

(A) Cachexia or wasting syndrome;

(B) Severe pain;

(C) Severe nausea;

(D) Seizures, including those characteristic of epilepsy; or

(E) Severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohn's disease; or
(3) Any other medical condition approved by the department of health pursuant to administrative rules in response to a request from a physician or potentially qualifying patient.

"Marijuana" shall have the same meaning as "marijuana" and "marijuana concentrate" as provided in sections 329-1 and 712-1240.

"Medical use" [Definition effective until January 1, 2015. For definition effective January 2, 2015, see below.] means the acquisition, possession, cultivation, use, distribution, or transportation of marijuana or paraphernalia relating to the administration of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition. For the purposes of "medical use", the term distribution is limited to the transfer of marijuana and paraphernalia from the primary caregiver to the qualifying patient.

"Medical use" [Definition effective January 2, 2015. For definition effective until January 1, 2015, see above.] means the acquisition, possession, cultivation, use, distribution, or transportation of marijuana or paraphernalia relating to the administration of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition. For the purposes of "medical use", the term distribution is limited to the transfer of marijuana and paraphernalia.

"Physician" means a person who is licensed to practice under chapter 453 and is licensed with authority to prescribe drugs and is registered under section 329-32. "Physician" does not include physician's assistant or advanced practice registered nurse with prescriptive authority as described in section 453-5.3 or 457-8.6.

"Primary caregiver" [Definition effective until January 1, 2015. For definition effective January 2, 2015, see below.] means a person, other than the qualifying patient and the qualifying patient's physician, who is eighteen years of age or older who has agreed to undertake responsibility for managing the well-being of the qualifying patient with respect to the medical use of marijuana. In the case of a minor or an adult lacking legal capacity, the primary caregiver shall be a parent, guardian, or person having legal custody.

"Primary caregiver" [Definition effective January 2, 2015. For definition effective until January 1, 2015, see above.] means a person eighteen years of age or older, other than the qualifying patient and the qualifying patient's physician, who has agreed to undertake responsibility for managing the well-being of the qualifying patient with respect to the medical use of marijuana. In the case of a minor or an adult lacking legal capacity, the primary caregiver shall be a parent, guardian, or person having legal custody.

"Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

"Usable marijuana" [Definition effective until January 1, 2015. For definition effective January 2, 2015, see below.] means the dried leaves and flowers of the plant Cannabis family.
Moraceae, and any mixture [or] preparation thereof, that are appropriate for the medical use of marijuana. "Usable marijuana" does not include the seeds, stalks, and roots of the plant.

"Usable marijuana" [Definition effective January 2, 2015. For definition effective until January 1, 2015, see above.] means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for the medical use of marijuana. "Usable marijuana" does not include the seeds, stalks, and roots of the plant.

"Written certification" [Definition effective until January 1, 2015. For definition effective January 2, 2015, see below.] means the qualifying patient's medical records or a statement signed by a qualifying patient's physician, stating that in the physician's professional opinion, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient. The department of public safety may require, through its rulemaking authority, that all written certifications comply with a designated form. "Written certifications" are valid for only one year from the time of signing.

§329-122 Medical use of marijuana; conditions of use. [Subsection effective until January 1, 2015. For subsection effective January 2, 2015, see below.] (a) Notwithstanding any law to the contrary, the medical use of marijuana by a qualifying patient shall be permitted only if:

1. The qualifying patient has been diagnosed by a physician as having a debilitating medical condition;

2. The qualifying patient's physician has certified in writing that, in the physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the particular qualifying patient; and

3. The amount of marijuana does not exceed an adequate supply.

(a) [Subsection effective January 2, 2015. For subsection effective until January 1, 2015, see above.] Notwithstanding any law to the contrary, the medical use of marijuana by a qualifying patient shall be permitted only if:
(1) The qualifying patient has been diagnosed by a physician as having a debilitating medical condition;

(2) The qualifying patient's physician has certified in writing that, in the physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the particular qualifying patient; and

(3) The amount of marijuana possessed by the qualifying patient does not exceed an adequate supply.

(b) Subsection (a) shall not apply to a qualifying patient under the age of eighteen years, unless:

(1) The qualifying patient's physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian, or person having legal custody of the qualifying patient; and

(2) A parent, guardian, or person having legal custody consents in writing to:

(A) Allow the qualifying patient's medical use of marijuana;

(B) Serve as the qualifying patient's primary caregiver; and

(C) Control the acquisition of the marijuana, the dosage, and the frequency of the medical use of marijuana by the qualifying patient.

(c) The authorization for the medical use of marijuana in this section shall not apply to:

(1) The medical use of marijuana that endangers the health or well-being of another person;

(2) The medical use of marijuana:

(A) In a school bus, public bus, or any moving vehicle;

(B) In the workplace of one's employment;

(C) On any school grounds;

(D) At any public park, public beach, public recreation center, recreation or youth center; or

(E) Other place open to the public; and
(3) The use of marijuana by a qualifying patient, parent, or primary caregiver for purposes other than medical use permitted by this part. [L 2000, c 228, pt of §2; am L 2001, c 55, §15; am L 2013, c 178, §3]

§329-123 Registration requirements. [Section effective until January 1, 2015. For section effective January 2, 2015, see below.] (a) Physicians who issue written certifications shall register the names, addresses, patient identification numbers, and other identifying information of the patients issued written certifications with the department of public safety.

(b) Qualifying patients shall register with the department of public safety. The registration shall be effective until the expiration of the certificate issued by the department and signed by the physician. Every qualifying patient shall provide sufficient identifying information to establish the personal identities of the qualifying patient and the primary caregiver. Qualifying patients shall report changes in information within five working days. Every qualifying patient shall have only one primary caregiver at any given time. The department shall then issue to the qualifying patient a registration certificate, and may charge a reasonable fee not to exceed $35.

(c) Primary caregivers shall register with the department of public safety. Every primary caregiver shall be responsible for the care of only one qualifying patient at any given time.

(d) Upon an inquiry by a law enforcement agency, the department of public safety shall verify whether the particular qualifying patient has registered with the department and may provide reasonable access to the registry information for official law enforcement purposes. [L 2000, c 228, pt of §2; am L 2011, c 73, §6]

§329-123 Registration requirements. (a) [Section effective January 2, 2015. For section effective until January 1, 2015, see above.] Physicians who issue written certifications shall provide, in each written certification, the name, address, patient identification number, and other identifying information of the qualifying patient. The department of health shall require, in rules adopted pursuant to chapter 91, that all written certifications comply with a designated form completed by or on behalf of a qualifying patient. The form shall require information from the applicant, primary caregiver, and primary care physician as specifically required or permitted by this chapter. The form shall require the address of the location where the marijuana is grown and shall appear on the registry card issued by the department of health. The certifying physician shall be required to be the qualifying patient's primary care physician. All current active medical marijuana permits shall be honored through their expiration date.

(b) Qualifying patients shall register with the department of health. The registration shall be effective until the expiration of the certificate issued by the department of health and signed by the physician. Every qualifying patient shall provide sufficient identifying information to establish the personal identities of the qualifying patient and the primary caregiver. Qualifying patients shall report changes in information within ten working days. Every qualifying patient shall have only one primary caregiver at any given time. The department of health shall issue to the qualifying patient a registration certificate, and shall charge $35 per year.
(c) Primary caregivers shall register with the department of health. Every primary caregiver shall be responsible for the care of only one qualifying patient at any given time.

(d) Upon inquiry by a law enforcement agency, which inquiry may be made twenty-four hours a day, seven days a week, the department of health shall immediately verify whether the subject of the inquiry has registered with the department of health and may provide reasonable access to the registry information for official law enforcement purposes. [L 2000, c 228, pt of §2; am L 2011, c 73, §6; am L 2013, c 178, §4]

[§329-124] Insurance not applicable. This part shall not be construed to require insurance coverage for the medical use of marijuana. [L 2000, c 228, pt of §2]

[§329-125] Protections afforded to a qualifying patient or primary caregiver. (a) A qualifying patient or the primary caregiver may assert the medical use of marijuana as an affirmative defense to any prosecution involving marijuana under this [part] or chapter 712; provided that the qualifying patient or the primary caregiver strictly complied with the requirements of this part.

(b) Any qualifying patient or primary caregiver not complying with the permitted scope of the medical use of marijuana shall not be afforded the protections against searches and seizures pertaining to the misapplication of the medical use of marijuana.

(c) No person shall be subject to arrest or prosecution for simply being in the presence or vicinity of the medical use of marijuana as permitted under this part. [L 2000, c 228, pt of §2]

[§329-126] Protections afforded to a treating physician. No physician shall be subject to arrest or prosecution, penalized in any manner, or denied any right or privilege for providing written certification for the medical use of marijuana for a qualifying patient; provided that:

(1) The physician has diagnosed the patient as having a debilitating medical condition, as defined in section 329-121;

(2) The physician has explained the potential risks and benefits of the medical use of marijuana, as required under section 329-122;

(3) The written certification is based upon the physician's professional opinion after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship; and

(4) The physician has complied with the registration requirements of section 329-123. [L 2000, c 228, pt of §2]
§329-127 Protection of marijuana and other seized property. Marijuana, paraphernalia, or other property seized from a qualifying patient or primary caregiver in connection with a claimed medical use of marijuana under this part shall be returned immediately upon the determination by a court that the qualifying patient or primary caregiver is entitled to the protections of this part, as evidenced by a decision not to prosecute, dismissal of charges, or an acquittal; provided that law enforcement agencies seizing live plants as evidence shall not be responsible for the care and maintenance of such plants. [L 2000, c 228, pt of §2]

§329-128 Fraudulent misrepresentation; penalty. (a) Notwithstanding any law to the contrary, fraudulent misrepresentation to a law enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution under this part or chapter 712 shall be a petty misdemeanor and subject to a fine of $500.

(b) Notwithstanding any law to the contrary, fraudulent misrepresentation to a law enforcement official of any fact or circumstance relating to the issuance of a written certificate by a physician not covered under section 329-126 for the medical use of marijuana shall be a misdemeanor. This penalty shall be in addition to any other penalties that may apply for the non-medical use of marijuana. Nothing in this section is intended to preclude the conviction of any person under section 710-1060 or for any other offense under part V of chapter 710. [L 2000, c 228, pt of §2]