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An Act To Amend the Maine Medical Use of Marijuana Act

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §2422, sub-§1-B is enacted to read:

1-B. Certified nurse practitioner. "Certified nurse practitioner" means a registered professional nurse licensed under Title 32, chapter 31 who has received postgraduate education designed to prepare the nurse for advanced practice registered nursing in a clinical specialty in nursing that has a defined scope of practice and who has been certified in the clinical specialty by a national certifying organization acceptable to the State Board of Nursing and who is a qualifying patient's primary care provider.

Sec. 2. 22 MRSA §2422, sub-§§4-C and 4-D are enacted to read:

4-C. Kief. "Kief" means the tetrahydrocannabinol crystals and hairs from cannabis plants that have been extracted by scraping or shaking or another method.

4-D. Medical provider. "Medical provider" means a physician or a certified nurse practitioner.

Sec. 3. 22 MRSA §2422, sub-§9, as amended by PL 2011, c. 407, Pt. B, §10, is further amended to read:

9. Qualifying patient. "Qualifying patient" or "patient" means a person who has been diagnosed by a ~~physician~~medical provider as having a debilitating medical condition and who possesses a valid written certification regarding medical use of marijuana in accordance with section 2423-B.

Sec. 4. 22 MRSA §2422, sub-§16, as amended by PL 2011, c. 407, Pt. B, §15, is further amended to read:

16. Written certification. "Written certification" means a document on tamper-resistant paper signed by a ~~physician~~medical provider, that expires ~~in~~within one year and that states that in the ~~physician's~~medical provider's professional opinion a patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition. A written certification may be made only in the course of a bona fide ~~physician-patient~~medical provider-patient relationship after the ~~physician~~medical provider has completed a full assessment of the qualifying patient's medical history.

Sec. 5. 22 MRSA §2423-A, sub-§2, ¶C, as enacted by PL 2009, c. 631, §21 and affected by §51, is amended to read:

C. Assist no more than a maximum of 5 patients at any one time with who have designated the primary caregiver to cultivate marijuana for their medical use of marijuana;

Sec. 6. 22 MRSA §2423-A, sub-§2, ¶G, as amended by PL 2013, c. 371, §1; c. 393, §1 and c. 396, §5, is further amended to read:

G. Prepare food as defined in section 2152, subsection 4 containing marijuana, including tinctures of marijuana, for medical use by a qualifying patient pursuant to section 2152, subsection 4-A and section 2167;

Sec. 7. 22 MRSA §2423-A, sub-§2, ¶J, as reallocated by RR 2013, c. 1, §39, is amended to read:

J. Use a pesticide in the cultivation of marijuana if the pesticide is exempt from the federal registration requirements pursuant to 7 United States Code, Section 136w(b), is registered with the Department of Agriculture, Conservation and Forestry, Board of Pesticides Control pursuant to Title 7, section 607 and is used consistent with best management practices approved by the Commissioner of ~~Agriculture, Conservation and Forestry~~Health and Human Services. A registered primary caregiver may not in the cultivation of marijuana use a pesticide exempt from the federal registration requirements and that is registered with the Board of Pesticides Control unless the registered primary caregiver or the registered primary caregiver's employee is certified in the application of the pesticide pursuant to section 1471-D and any employee who has direct contact with treated plants has completed safety training pursuant to 40 Code of Federal Regulations, ~~PartSection~~ 170.130. An employee of the registered primary caregiver who is not certified pursuant to section 1471-D and who is involved in the application of the pesticide or handling of the pesticide or equipment must first complete safety training described in 40 Code of Federal Regulations, ~~PartSection~~ 170.230.; and

Sec. 8. 22 MRSA §2423-B, as repealed and replaced by PL 2011, c. 407, Pt. B, §17, is amended to read:

§ 2423-B. Authorized conduct by a medical provider

A ~~physician~~medical provider may provide a written certification for the medical use of marijuana under this chapter and, after having done so, may otherwise state that in the ~~physician's~~medical provider's professional opinion a qualifying patient is likely to receive therapeutic benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition.

1. Adult qualifying patient. Prior to providing written certification for the medical use of marijuana under this section, a ~~physician~~medical provider shall inform an adult qualifying patient of the risks and benefits of the medical use of marijuana and that the patient may benefit from the medical use of marijuana.

2. Minor qualifying patient. Prior to providing written certification for the medical use of marijuana by a minor qualifying patient under this section, a ~~physician~~medical provider, referred to in this subsection as "the treating ~~physician~~medical provider," shall inform the minor qualifying patient and the parent or legal guardian of the patient of the risks and benefits of the medical use of marijuana and that the patient may benefit from the medical use of marijuana. Except with regard to a minor qualifying patient who is eligible for hospice care, prior to providing a written certification under this

section, the treating ~~physician~~medical provider shall consult with a qualified physician, referred to in this paragraph as "the consulting physician," from a list of physicians who may be willing to act as consulting physicians maintained by the department that is compiled by the department after consultation with statewide associations representing licensed medical professionals. The consultation between the treating ~~physician~~medical provider and the consulting physician may consist of examination of the patient or review of the patient's medical file. The consulting physician shall provide an advisory opinion to the treating ~~physician~~medical provider and the parent or legal guardian of the minor qualifying patient concerning whether the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition. If the department or the consulting physician does not respond to a request by ~~the~~ treating ~~physician~~medical provider within 10 days of receipt of the request, the treating ~~physician~~medical provider may provide written certification for treatment without consultation with ~~another~~a physician.

3. Expiration. A written certification form for the medical use of marijuana under this section expires within one year after issuance by the qualifying patient's ~~physician~~medical provider.

4. Form; content. A written certification under this section must be in the form required by rule adopted by the department and may not require a qualifying patient's ~~physician~~medical provider to state the patient's specific medical condition.

5. Possible sanctions. Nothing in this chapter prevents a professional licensing board from sanctioning a ~~physician~~medical provider for failing to properly evaluate or treat a patient's medical condition or otherwise violating the applicable standard of care for evaluating or treating medical conditions.

Sec. 9. 22 MRSA §2423-D, as amended by PL 2011, c. 407, Pt. B, §19, is further amended to read:

§ 2423-D. Authorized conduct by a visiting qualifying patient

A qualifying patient who is visiting the State from another jurisdiction that authorizes the medical use of marijuana pursuant to a law recognized by the department who possesses a valid written certification as described in section 2423-B from the patient's treating ~~physician~~medical provider and a valid medical marijuana certification from that other jurisdiction and photographic identification or a driver's license from that jurisdiction may engage in conduct authorized for a qualifying patient under this chapter.

Sec. 10. 22 MRSA §2425, sub-§1, ¶D, as enacted by IB 2009, c. 1, §5, is amended to read:

D. Name, address and telephone number of the qualifying patient's ~~physician~~medical provider;

Sec. 11. 22 MRSA §2425, sub-§2, ¶A, as amended by PL 2009, c. 631, §29 and affected by §51, is further amended to read:

A. The qualifying patient's ~~physician~~medical provider 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;

Sec. 12. 22 MRSA §2425, sub-§6, ¶B, as enacted by IB 2009, c. 1, §5, is amended to read:

B. A registered qualifying patient who fails to notify the department as required under paragraph A commits a civil violation for which a fine of not more than \$150 may be adjudged. If the registered qualifying patient's certifying physicianmedical provider notifies the department in writing that the registered qualifying patient has ceased to suffer from a debilitating medical condition, the registered qualifying patient's registry identification card becomes void upon notification by the department to the qualifying patient.

Sec. 13. 22 MRSA §2425, sub-§8, as amended by PL 2011, c. 691, Pt. A, §22, is further amended to read:

8. Confidentiality. This subsection governs confidentiality.

A. Applications and supporting information submitted by qualifying patients and registered patients under this chapter, including information regarding their primary caregivers and physiciansmedical providers, are confidential.

B. Applications and supporting information submitted by primary caregivers and physiciansmedical providers operating in compliance with this chapter are confidential.

C. The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list are confidential, exempt from the freedom of access laws, Title 1, chapter 13, and not subject to disclosure except as provided in this subsection and to authorized employees of the department as necessary to perform official duties of the department.

D. The department shall verify to law enforcement personnel whether a registry identification card is valid without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.

F. Applications, supporting information and other information regarding a registered dispensary are not confidential except that information that is contained within dispensary information that identifies a qualifying patient, a registered patient, the registered patient's physicianmedical provider and the primary caregiver of the qualifying patient or registered patient is confidential.

G. Records maintained by the department pursuant to this chapter that identify applicants for a registry identification card, registered patients, registered primary caregivers and registered patients' physiciansmedical providers are confidential and may not be disclosed except as provided in this subsection and as follows:

- (1) To department employees who are responsible for carrying out this chapter;
- (2) Pursuant to court order or subpoena issued by a court;

(3) With written permission of the registered patient or the patient's guardian, if the patient is under guardianship, or a parent, if the patient has not attained 18 years of age;

(4) As permitted or required for the disclosure of health care information pursuant to section 1711-C;

(5) To a law enforcement official for verification purposes. The records may not be disclosed further than necessary to achieve the limited goals of a specific investigation; and

(6) To a registered patient's treating ~~physician~~medical provider and to a registered patient's registered primary caregiver for the purpose of carrying out this chapter; and

(7) To the Department of Administrative and Financial Services, Maine Revenue Services for taxation compliance purposes. The records may not be disclosed further than necessary to achieve the needs of Maine Revenue Services.

H. This subsection does not prohibit a ~~physician~~medical provider from notifying the department if the ~~physician~~medical provider acquires information indicating that a registered patient or qualifying patient is no longer eligible to use marijuana for medical purposes or that a registered patient or qualifying patient falsified information that was the basis of the ~~physician's~~medical provider's certification of eligibility for use.

I. The department may disclose to an agency of State Government designated by the commissioner and employees of that agency any information necessary to produce registry identification cards or manage the identification card program and may disclose data for statistical or research purposes in such a manner that individuals cannot be identified.

J. A hearing concerning the revocation of a registry identification card under subsection 3-A is confidential.

K. Except as otherwise provided in this subsection, a person who knowingly violates the confidentiality of information protected under this chapter commits a civil violation for which a fine of up to \$1,000 may be imposed. This paragraph does not apply to a ~~physician~~medical provider or staff of a hospice provider or nursing facility named as a primary caregiver or any other person directly associated with a ~~physician~~medical provider or a hospice provider or nursing facility that provides services to a registered patient.

Sec. 14. 22 MRSA §2425, sub-§10, ¶E, as enacted by IB 2009, c. 1, §5, is amended to read:

E. The number of ~~physicians~~medical providers providing written certifications for qualifying patients;

Sec. 15. 22 MRSA §2426, sub-§1, ¶D, as amended by PL 2009, c. 631, §38 and affected by §51, is further amended to read:

D. Operate, navigate or be in actual physical control of any motor vehicle, aircraft, motorboat, snowmobile or all-terrain vehicle while under the influence of marijuana; or

Sec. 16. 22 MRSA §2426, sub-§1, ¶E, as amended by PL 2011, c. 407, Pt. B, §30, is further amended to read:

E. Use or possess marijuana if that person is not a qualifying patient, primary caregiver, registered dispensary or other person authorized to use or possess marijuana under this chapter; or

Sec. 17. 22 MRSA §2426, sub-§1, ¶F is enacted to read:

F. Use, possess or sell kief.

Sec. 18. 22 MRSA §2428, sub-§6, ¶J, as amended by PL 2011, c. 407, Pt. B, §32, is further amended to read:

J. A dispensary that is required to obtain a license for the preparation of food pursuant to section 2167 shall obtain the license prior to preparing goods containing marijuana, including tinctures of marijuana, for medical use by a qualifying patient.

Sec. 19. 22 MRSA §2428, sub-§9, ¶G, as enacted by PL 2013, c. 371, §4, is amended to read:

G. A registered dispensary may not use a pesticide on marijuana except a pesticide that is exempt from the federal registration requirements pursuant to 7 United States Code, Section 136w(b), is registered with the Department of Agriculture, Conservation and Forestry, Board of Pesticides Control pursuant to Title 7, section 607 and is used consistent with best management practices approved by the Commissioner of ~~Agriculture, Conservation and Forestry~~Health and Human Services. A registered dispensary may not in the cultivation of marijuana use a pesticide exempt from federal registration requirements and registered with the Board of Pesticides Control unless at least one registered dispensary employee involved in the application of the pesticide is certified pursuant to section 1471-D and all other registered dispensary employees who have direct contact with treated plants have completed safety training pursuant to 40 Code of Federal Regulations, ~~Part~~Section 170.130. A registered dispensary employee who is not certified pursuant to section 1471-D and who is involved in the application of the pesticide or handling of the pesticide or equipment must first complete safety training described in 40 Code of Federal Regulations, ~~Part~~Section 170.230.

Sec. 20. 22 MRSA §2430-A, as enacted by PL 2009, c. 631, §46 and affected by §51, is repealed and the following enacted in its place:

§ 2430-A. Compliance

The department may take action necessary to ensure compliance with this chapter.

1. Laboratory testing; evidence collection. The department may collect, possess, transport and perform laboratory testing on soil and marijuana plant samples and samples of products containing marijuana from registered primary caregivers and registered dispensaries to determine compliance with this chapter and for evidence purposes.

2. Complaint investigation. The department may investigate complaints against a registered primary caregiver or a registered dispensary to ensure compliance with this chapter.

3. Penalties; injunctive relief. The Office of the Attorney General may file a complaint with the District Court seeking civil fines or injunctive relief or both for a violation of this chapter by a registered primary caregiver or a registered dispensary.

When an injunction has been issued in accordance with this subsection, the District Court may order the registered primary caregiver or the registered dispensary subject to the injunction to pay to the General Fund the costs of the investigation incurred by the Office of the Attorney General and the costs of suit, including attorney's fees.

SUMMARY

During the First Regular Session of the 126th Legislature, the Legislature passed 6 separate laws that affected the Maine Medical Use of Marijuana Act in various ways. The purpose of this bill is to clarify and coordinate those changes, including doing the following:

1. Defining "medical provider" to mean a physician or a certified nurse practitioner and adding a definition of "certified nurse practitioner" in order to authorize a certified nurse practitioner who is a qualifying patient's primary care provider to issue a written certification for the qualifying patient's medical use of marijuana;

2. Defining and prohibiting the use, possession or sale of kief;

3. Clarifying that tinctures containing marijuana are considered food or goods containing marijuana;

4. Clarifying that a medical provider's written certification for the medical use of marijuana expires within one year after issuance;

5. Authorizing disclosure of registered primary caregiver and dispensary information to the Department of Administrative and Financial Services, Maine Revenue Services for taxation compliance purposes;

6. Enacting provisions regarding compliance, including collection of evidence, complaint investigation, penalty and injunctive relief provisions; and

7. Authorizing the Department of Health and Human Services to transport marijuana for laboratory testing and evidence collection purposes.