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Legislative Document

No. 1928

H.P. 1435

House of Representatives, January 20, 2022

**An Act To Update and Clarify the Maine Medical Use of Marijuana
Act and Provide for Greater Transparency**

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on January 18, 2022. Referred to the Committee on Veterans and Legal Affairs pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in black ink that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative WILLIAMS of Bar Harbor.
Cosponsored by Senator HICKMAN of Kennebec and
Representatives: DUNPHY of Old Town, FAULKINGHAM of Winter Harbor, SUPICA of
Bangor, TALBOT ROSS of Portland, Senators: CURRY of Waldo, FARRIN of Somerset,
President JACKSON of Aroostook, MOORE of Washington.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** Public Law 2021, chapter 387 requires the Department of Administrative
4 and Financial Services to adopt major substantive rules relating to the Maine Medical Use
5 of Marijuana Act; and

6 **Whereas,** any rules adopted by the department will have significant effects on Maine's
7 medical marijuana patients and thousands of registered medical marijuana caregivers and
8 associated businesses across the State; and

9 **Whereas,** this warrants meaningful legislative oversight and approval; and

10 **Whereas,** the department has authority to adopt rules prior to the expiration of the 90-
11 day period; and

12 **Whereas,** the Maine Medical Use of Marijuana Act also requires amendments that
13 cannot be delayed; and

14 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
15 the meaning of the Constitution of Maine and require the following legislation as
16 immediately necessary for the preservation of the public peace, health and safety; now,
17 therefore,

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

19 **Sec. 1. 22 MRSA §2422, sub-§14-C** is enacted to read:

20 **14-C. Telehealth services.** "Telehealth services" means health care services delivered
21 through the use of information technology and includes synchronous encounters,
22 asynchronous encounters, store and forward transfers and telemonitoring.

23 **Sec. 2. 22 MRSA §2422-A, sub-§2,** as amended by PL 2021, c. 387, §1, is further
24 amended to read:

25 **2. Rulemaking.** The department, after consultation with the Department of Health
26 and Human Services, may adopt rules as necessary to administer and enforce this chapter
27 or amend rules previously adopted pursuant to this chapter. Rules adopted pursuant to this
28 subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A,
29 except that, beginning July 1, 2021, rules adopted pursuant to this subsection are major
30 substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Notwithstanding Title
31 5, section 8072, subsection 11 or any other provision of law to the contrary, rules
32 provisionally adopted by the department in accordance with this subsection and submitted
33 for legislative review may not be finally adopted by the department unless legislation
34 authorizing final adoption of those rules is enacted into law. Before adopting rules pursuant
35 to this subsection, the department shall consult with caregivers, registered caregivers,
36 patients and medical providers with significant knowledge and experience certifying
37 patients under this chapter. The department shall develop a process to use when hiring
38 consultants to advise on rule changes related to this chapter and shall report any subsequent
39 changes to that process to the joint standing committee of the Legislature having
40 jurisdiction over medical use of marijuana matters.

41 **Sec. 3. 22 MRSA §2422-A, sub-§3** is enacted to read:

1 **3. Economic impact report.** The department shall evaluate how its provisionally
2 adopted rules submitted for legislative review in accordance with subsection 2 sought to
3 minimize economic burdens on small businesses in accordance with Title 5, section 8052,
4 subsection 5-A. The department shall include with its rules submitted for legislative review
5 a copy of the evaluation required pursuant to this subsection.

6 **Sec. 4. 22 MRSA §2423-B, sub-§9** is enacted to read:

7 **9. Telehealth.** A medical provider providing a written certification pursuant to this
8 section may consult with a patient seeking a written certification using telehealth services.

9 **Sec. 5. 22 MRSA §2423-C**, as amended by PL 2017, c. 452, §6, is further amended
10 to read:

11 **§2423-C. Authorized conduct**

12 A Notwithstanding chapter 262-A, a person may provide a qualifying patient who is
13 18 years of age or older or a caregiver with marijuana paraphernalia for purposes of the
14 qualifying patient's medical use of marijuana in accordance with this chapter and. A person
15 may be in the presence or vicinity of the medical use of marijuana as allowed under this
16 chapter.

17 **Sec. 6. 22 MRSA §2424, sub-§1-A**, as amended by PL 2021, c. 387, §6, is further
18 amended to read:

19 **1-A. Rulemaking.** The department may adopt rules to carry out the purposes of this
20 chapter in accordance with section 2422-A, subsection 2. Rules adopted pursuant to this
21 subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A,
22 except that, beginning July 1, 2021, rules adopted pursuant to this subsection are major
23 substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

24 **Sec. 7. 22 MRSA §2424, sub-§4, ¶A**, as enacted by PL 2017, c. 452, §10, is
25 amended to read:

26 A. Minimum oversight requirements for dispensaries and registered caregivers and the
27 one permitted additional location at which a dispensary cultivates marijuana plants for
28 medical use by qualifying patients; ~~and~~

29 **Sec. 8. 22 MRSA §2424, sub-§4, ¶B**, as amended by PL 2019, c. 217, §4, is further
30 amended to read:

31 B. Minimum security requirements for registered caregivers operating caregiver retail
32 stores pursuant to section 2423-A, subsection 2, paragraph P and registered
33 dispensaries and any additional location at which a dispensary cultivates marijuana
34 plants for medical use by qualifying patients; ~~and~~

35 **Sec. 9. 22 MRSA §2424, sub-§4, ¶C** is enacted to read:

36 C. A graduated enforcement plan for violations of this chapter or rules adopted under
37 this chapter that are proportional to the seriousness of the violation and reasonable in
38 comparison to similar violations in other industries, including, but not limited to,
39 warnings, plans of correction, fines and suspensions and revocations of registry
40 identification cards or registration certificates.

1 **Sec. 10. 22 MRSA §2425-A, sub-§4, ¶C**, as enacted by PL 2017, c. 452, §12, is
2 amended to read:

3 C. The department shall notify the applicant and, if the applicant is an officer or
4 director ~~or assistant~~ of a registered dispensary, the registered dispensary, in writing of
5 the reason for denying the registry identification card.

6 **Sec. 11. 22 MRSA §2425-A, sub-§4**, as enacted by PL 2017, c. 452, §12, is
7 amended by amending the 2nd blocked paragraph to read:

8 If the department fails to issue or deny a valid registry identification card for a qualifying
9 patient, a visiting qualifying patient, a caregiver, an officer or director of a dispensary or a
10 caregiver or an assistant of a dispensary in response to a valid application for a card or for
11 renewal of a card submitted pursuant to subsection 3 within 45 days of its submission, the
12 registry identification card is deemed granted and a copy of the application for a registry
13 identification card or for renewal of the card is deemed a valid registry identification card.
14 If the department fails to issue or deny a valid registry identification card for an assistant
15 of a caregiver in response to a valid application for a card or for renewal of a card submitted
16 pursuant to subsection 3 within 14 days of its submission, the registry identification card is
17 provisionally granted and a copy of the application for a registry identification card or for
18 renewal of the card is deemed a valid registry identification card until the department makes
19 a determination about the application.

20 **Sec. 12. 22 MRSA §2425-A, sub-§5, ¶C**, as enacted by PL 2017, c. 452, §12, is
21 amended to read:

22 C. Registry identification cards issued to an officer or director ~~or assistant~~ of a
23 registered dispensary must also contain:

- 24 (1) The legal name of the registered dispensary with which the officer or director
25 ~~or assistant~~ is affiliated;
- 26 (2) The address and date of birth of the officer or director ~~or assistant~~; and
- 27 (3) A photograph of the officer or director ~~or assistant~~, if required by the
28 department.

29 **Sec. 13. 22 MRSA §2425-A, sub-§5, ¶C-1** is enacted to read:

30 C-1. Registry identification cards issued to an assistant of a caregiver or registered
31 dispensary must also contain:

- 32 (1) The address and date of birth of the assistant; and
- 33 (2) A photograph of the assistant, if required by the department.

34 **Sec. 14. 22 MRSA §2425-A, sub-§5, ¶D**, as enacted by PL 2017, c. 452, §12, is
35 amended to read:

36 D. The registry identification card of an officer or director ~~or assistant~~ of a registered
37 dispensary expires 10 days after notification is given to the department by the registered
38 dispensary that the person has ceased to work at the dispensary.

39 **Sec. 15. 22 MRSA §2425-A, sub-§5**, as amended by PL 2021, c. 367, §12, is
40 further amended by enacting at the end a new blocked paragraph to read:

1 An assistant of a caregiver or registered dispensary may work for any caregiver or
2 registered dispensary as long as the assistant obtains a registry identification card.

3 **Sec. 16. 22 MRSA §2425-A, sub-§12, ¶M** is enacted to read:

4 M. A caregiver, dispensary, manufacturing facility or marijuana testing facility or an
5 officer or director or assistant of a dispensary, caregiver, manufacturing facility or
6 marijuana testing facility may not be required to disclose to a law enforcement officer
7 information that could reasonably identify an individual patient's identity without a
8 warrant requiring the disclosure.

9 **Sec. 17. 22 MRSA §2425-A, sub-§12, ¶N** is enacted to read:

10 N. A person who accompanies a patient to obtain marijuana plants or harvested
11 marijuana may not be required to disclose to a law enforcement officer information
12 that could reasonably identify an individual patient's identity without a warrant
13 requiring the disclosure.

14 **Sec. 18. 22 MRSA §2429-A**, as amended by PL 2019, c. 331, §28, is further
15 amended by amending the section headnote to read:

16 **§2429-A. Packaging and labeling and testing requirements**

17 **Sec. 19. 22 MRSA §2429-A, sub-§4**, as amended by PL 2019, c. 331, §28, is
18 further amended to read:

19 **4. Educational materials.** A person that provides harvested marijuana to a qualifying
20 patient ~~must~~ shall make educational materials about the use of harvested marijuana
21 available to the qualifying patient at the time of the transaction. Educational materials
22 provided pursuant to this subsection may be provided to a qualifying patient electronically.
23 The department shall develop the minimum content of the educational materials provided
24 under this subsection and make that content available publicly.

25 **Sec. 20. 22 MRSA §2429-A, sub-§5** is enacted to read:

26 **5. Required testing prohibited.** The department may not require testing of harvested
27 marijuana unless the Legislature approves a testing standard that is reliable, consistent and
28 science-based and provides useful information to qualifying patients or medical providers.

29 **Sec. 21. 22 MRSA §2430-C, sub-§10** is enacted to read:

30 **10. Restrictions on law enforcement access.** A caregiver, dispensary, manufacturing
31 facility or marijuana testing facility may not be required to allow a law enforcement officer
32 to access any location in which the caregiver, dispensary, manufacturing facility or
33 marijuana testing facility operates unless the law enforcement officer:

34 A. Has a warrant requiring access;

35 B. Is responding to immediate health or safety concerns; or

36 C. Is providing emergency services.

37 **Sec. 22. 22 MRSA §2430-G, sub-§1, ¶A-1** is enacted to read:

38 A-1. The department may not require a registered caregiver, registered dispensary,
39 marijuana testing facility or manufacturing facility to submit its standard operating
40 procedures to the department.

- 1 3. It limits the circumstances under which a law enforcement officer may access a
2 location in which a caregiver, dispensary, manufacturing facility or marijuana testing
3 facility operates.
- 4 4. It limits disclosure to a law enforcement officer of information that could reasonably
5 identify an individual patient's identity without a warrant requiring the disclosure.
- 6 5. It authorizes the use of telehealth services for medical providers to meet with patients
7 seeking a written certification for the medical use of marijuana.
- 8 6. It provides that educational materials required to be given to qualifying patients may
9 be provided electronically.
- 10 7. It prohibits the department from requiring a registered caregiver, registered
11 dispensary, marijuana testing facility or manufacturing facility to use a particular electronic
12 system for tracking marijuana plants and harvested marijuana.
- 13 8. It requires the department to compile and make publicly available a monthly report
14 of sales tax data for all wholesale and retail transactions reported under the Maine Medical
15 Use of Marijuana Act.
- 16 9. It provides that if the department fails to issue or deny a valid registry identification
17 card for an assistant of a caregiver within 14 days of the submission of an application for
18 issuance or renewal, the registry identification card is provisionally granted.
- 19 10. It prohibits the department from requiring testing of harvested marijuana unless the
20 Legislature approves a testing standard that is reliable, consistent and science-based and
21 provides useful information to qualifying patients or medical providers.
- 22 11. It provides that an assistant of a caregiver or registered dispensary may work for
23 any caregiver or registered dispensary as long as the assistant obtains a registry
24 identification card.
- 25 12. It prohibits the department from requiring a caregiver, registered dispensary,
26 marijuana testing facility or manufacturing facility to submit its standard operating
27 procedures to the department.
- 28 13. It clarifies that a person may provide a qualifying patient who is 18 years of age or
29 older with marijuana paraphernalia for purposes of the qualifying patient's medical use of
30 marijuana, notwithstanding the requirements of Title 22, chapter 262-A, which, among
31 other provisions, requires licensure for certain tobacco retailers and prohibits the sale of
32 tobacco products to a person who has not attained 21 years of age.
- 33 14. It directs the department's office of marijuana policy to adopt rules to develop a
34 graduated enforcement plan for violations of the Maine Medical Use of Marijuana Act or
35 rules adopted under the Act, to develop requirements for a caregiver, dispensary,
36 manufacturing facility or marijuana testing facility in order that harvested marijuana or
37 marijuana products can be traced in the event of a product recall and to define and clarify
38 certain terms.