STATE OF NEW YORK

9113

IN SENATE

June 18, 2018

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public health law, in relation to allowing for facility caregivers to possess medical marihuana in a similar manner to that of a designated caregiver; and in relation to medical marihuana dispensing sites

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 12 of section 3360 of the public health law, as added by chapter 90 of the laws of 2014, is amended and a new subdivision 19 is added to read as follows:

12. "Practitioner" means a practitioner who (i) is [~~a physician~~] **authorized by this article to prescribe a controlled substance, is** licensed [~~by New York state and practicing within the state~~] **or otherwise authorized to practice under title eight of the education law, and is acting within his or her lawful scope of practice**, (ii) [~~who~~] by training or experience is qualified to treat a serious condition as defined in subdivision seven of this section; and (iii) has completed a two to four hour course as determined by the commissioner in regulation and registered with the department; provided however, a registration shall not be denied without cause. Such course may count toward board certification requirements. [~~The commissioner shall consider the inclusion of nurse practitioners under this title based upon considerations including access and availability. After such consideration the commissioner is authorized to deem nurse practitioners as practitioners under this title.~~]

19. "Medical marihuana research program" means a medical marihuana research program under subdivision three of section thirty-three hundred sixty-seven of this title.

§ 2. Subdivision 5 of section 3360 of the public health law, as added by chapter 90 of the laws of 2014, is amended and two new subdivisions 20 and 21 are added to read as follows:

5. "Designated caregiver" means the individual **or facility caregiver** designated by a certified patient in a registry application. A certified

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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patient may designate up to two designated caregivers, not counting a facility caregiver or facility caregiver employee.

20. "Facility caregiver" means any of the following that is caring for the certified patient:

(a) a general hospital or residential health care facility operating pursuant to article twenty-eight of this chapter;

(b) an adult care facility operating pursuant to title two of article seven of the social services law;

(c) a community mental health residence established pursuant to section 41.44 of the mental hygiene law;

(d) a hospital operating pursuant to section 7.17 of the mental hygiene law;

(e) a mental hygiene facility operating pursuant to article thirty-one of the mental hygiene law;

(f) an inpatient or residential treatment program certified pursuant to article thirty-two of the mental hygiene law;

(g) a residential facility for the care and treatment of persons with developmental disabilities operating pursuant to article sixteen of the mental hygiene law;

(h) a residential treatment facility for children and youth operating pursuant to article thirty-one of the mental hygiene law;

(i) a private or public primary or secondary school charted by the New York state board of regents pursuant to section two hundred sixteen of the education law;

(j) an entity conducting or participating in a medical marihuana research program under subdivision three of section thirty-three hundred sixty-seven of this title, with respect to a certified patient enrolled in the program;

(k) any other facility deemed appropriate by the commissioner; or

(l) a facility caregiver employee.

21. "Facility caregiver employee" means an employee of a facility caregiver who performs the services of a designated caregiver for the facility caregiver.

§ 3. Subdivision 2 of section 3362 of the public health law, as added by chapter 90 of the laws of 2014, is amended and a new subdivision 3 is added to read as follows:

2. Notwithstanding subdivision one of this section:

(a) possession of medical marihuana shall not be lawful under this title if it is smoked, consumed, vaporized, or grown in a public place, regardless of the form of medical marihuana stated in the patient's certification.

(b) a [~~person~~] certified patient or designated caregiver possessing medical marihuana under this title shall possess his or her registry identification card at all times when in immediate possession of medical marihuana.

3. The possession, acquisition, transportation, storage, or administration of medical marihuana by a facility caregiver, shall be lawful under this title; provided that:

(a) the facility caregiver first registers with the department, on a form prescribed by the commissioner;

(b) such possession, acquisition, transportation, storage, or administration is on behalf of a certified patient;

(c) the facility caregiver maintains a copy of the registry identification card of each certified patient for which it possesses, acquires, transports, stores or administers medical marihuana; and

(d) a facility caregiver employee shall be identified as an employee when necessary, as provided by the commissioner.

§ 4. Subdivisions 2, 3 and 5 of section 3363 of the public health law, as added by chapter 90 of the laws of 2014, are amended to read as follows:

2. To obtain, amend or renew a registry identification card, a certified patient or designated caregiver shall file a registry application with the department. The registry application or renewal application shall include:

(a) in the case of a certified patient:

(i) the patient's certification (a new written certification shall be provided with a renewal application);

(ii) the name, address, and date of birth of the patient;

(iii) the date of the certification;

(iv) if the patient has a registry identification card based on a current valid certification, the registry identification number and expiration date of that registry identification card;

(v) the specified date until which the patient would benefit from medical marihuana, if the certification states such a date;

(vi) the name, address, federal registration number, and telephone number of the certifying practitioner;

(vii) any recommendation or limitation by the practitioner as to the form or forms of medical marihuana or dosage for the certified patient; and

(viii) other individual identifying information required by the department;

(b) in the case of a certified patient, if the patient designates a designated caregiver, the name, address, and date of birth of the designated caregiver, and other individual identifying information required by the department;

(c) in the case of a designated caregiver:

(i) the name, address, and date of birth of the designated caregiver;

(ii) if the designated caregiver has a registry identification card, the registry identification number and expiration date of that registry identification card; and

(iii) other individual identifying information required by the department;

(d) **in the case of a facility caregiver, the facility shall make an application under paragraph (c) of this subdivision for the facility; the commissioner shall appropriately modify the requirements for information to be provided in the application of a facility caregiver; and designation of facility caregiver employees shall not be required;**

(e) a statement that a false statement made in the application is punishable under section 210.45 of the penal law;

[~~(e)~~] **(f)** the date of the application and the signature of the certified patient or designated caregiver, as the case may be;

[~~(f)~~] **(g)** a fifty dollar application fee, provided, that the department may waive or reduce the fee in cases of financial hardship; and

[~~(g)~~] **(h)** any other requirements determined by the commissioner.

3. Where a certified patient is under the age of eighteen:

(a) The application for a registry identification card shall be made by an appropriate person over twenty-one years of age. The application shall state facts demonstrating that the person is appropriate.

(b) The designated caregiver shall be (i) a parent or legal guardian of the certified patient, (ii) a person designated by a parent or legal guardian, [~~or~~] (iii) **in the case of such a certified patient being cared**

for by a facility caregiver, the facility caregiver designated by the parent or legal guardian of the certified patient, or (iv) an appropriate person approved by the department upon a sufficient showing that no parent or legal guardian is appropriate or available.

5. No person may be a designated caregiver for more than five certified patients at one time; provided that this limitation shall not apply to a facility caregiver or facility caregiver employee.

§ 5. Subdivision 3 of section 3364 of the public health law, as added by chapter 90 of the laws of 2014, is amended to read as follows:

3. Each registered organization shall contract with an independent laboratory to test the medical marihuana produced by the registered organization. The commissioner shall approve the laboratory and require that the laboratory report testing results in a manner determined by the commissioner. The commissioner is authorized to issue regulation requiring the laboratory to perform certain tests and services. Such laboratory shall not be required to be licensed by the federal drug enforcement administration.

§ 6. Subdivision 9 of section 3365 of the public health law, as added by chapter 90 of the laws of 2014, is amended to read as follows:

9. The commissioner shall register [~~no more than five~~] ten registered organizations that manufacture medical marihuana with no more than [~~four~~] fourteen dispensing sites wholly owned and operated by each such registered organization. The commissioner shall ensure that such [~~registered organizations and~~] dispensing sites are geographically distributed across the state. [~~The commission may register additional registered organizations~~] Each registered organization, given that no dispensing site shall be located within two thousand five hundred feet of another dispensing site, shall be allowed to operate:

(a) no more than six dispensing sites in total in the counties of New York, Kings, Queens, Bronx, and Richmond;

(b) no more than four dispensing sites in total in the counties of Nassau, Suffolk, and Westchester; and

(c) no more than four dispensing sites in total in the counties other than the counties of New York, Kings, Queens, Bronx, Richmond, Nassau, Suffolk, and Westchester.

§ 7. Subdivision 3 of section 3367 of the public health law is renumbered subdivision 4 and a new subdivision 3 is added to read as follows:

3. The commissioner may make regulations authorizing the possession, acquisition, use, delivery, transfer, transportation, storage, or administration of medical marihuana for research purposes.

§ 8. This act shall take effect immediately; provided, however, that the amendments to title 5-A of article 33 of the public health law made by sections one, two, three, four, five, six and seven of this act shall not affect the repeal of such title and shall be deemed repealed therewith; and provided further, however, that sections two, three and four of this act shall take effect on the ninetieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.