

# STATE OF NEW YORK

4040

2021-2022 Regular Sessions

## IN SENATE

February 1, 2021

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

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

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

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

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

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

22 § 2. Subdivision 5 of section 3360 of the public health law, as added  
23 by chapter 90 of the laws of 2014, is amended and two new subdivisions  
24 20 and 21 are added to read as follows:

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

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1 5. "Designated caregiver" means the individual or facility caregiver  
2 designated by a certified patient in a registry application. A certified  
3 patient may designate up to two designated caregivers, not counting a  
4 facility caregiver or facility caregiver employee.

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

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

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

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

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

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

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

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

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

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

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

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

32 (l) a facility caregiver employee.

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

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

39 2. Notwithstanding subdivision one of this section:

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

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

48 3. The possession, acquisition, transportation, storage, or adminis-  
49 tration of medical marihuana by a facility caregiver, shall be lawful  
50 under this title; provided that:

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

53 (b) such possession, acquisition, transportation, storage, or adminis-  
54 tration is on behalf of a certified patient;

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

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

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

9 2. To obtain, amend or renew a registry identification card, a certi-  
10 fied patient or designated caregiver shall file a registry application  
11 with the department. The registry application or renewal application  
12 shall include:

13 (a) in the case of a certified patient:

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

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

17 (iii) the date of the certification;

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

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

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

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

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

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

34 (c) in the case of a designated caregiver:

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

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

39 (iii) other individual identifying information required by the depart-  
40 ment;

41 (d) in the case of a facility caregiver, the facility shall make an  
42 application under paragraph (c) of this subdivision for the facility;  
43 the commissioner shall appropriately modify the requirements for infor-  
44 mation to be provided in the application of a facility caregiver; and  
45 designation of facility caregiver employees shall not be required;

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

48 [~~(e)~~] (f) the date of the application and the signature of the certi-  
49 fied patient or designated caregiver, as the case may be;

50 [~~(f)~~] (g) a fifty dollar application fee, provided, that the depart-  
51 ment may waive or reduce the fee in cases of financial hardship; and

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

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

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

1 (b) The designated caregiver shall be (i) a parent or legal guardian  
2 of the certified patient, (ii) a person designated by a parent or legal  
3 guardian, ~~[or]~~ (iii) in the case of such a certified patient being cared  
4 for by a facility caregiver, the facility caregiver designated by the  
5 parent or legal guardian of the certified patient, or (iv) an appropri-  
6 ate person approved by the department upon a sufficient showing that no  
7 parent or legal guardian is appropriate or available.

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

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

13 3. Each registered organization shall contract with an independent  
14 laboratory to test the medical marihuana produced by the registered  
15 organization. The commissioner shall approve the laboratory and require  
16 that the laboratory report testing results in a manner determined by the  
17 commissioner. The commissioner is authorized to issue regulation requir-  
18 ing the laboratory to perform certain tests and services. Such laborato-  
19 ry shall not be required to be licensed by the federal drug enforcement  
20 administration.

21 § 6. Section 3364 of the public health law is amended by adding a new  
22 subdivision 14 to read as follows:

23 14. A registered organization may contract with a person or entity to  
24 provide facilities, equipment, or services that are part of or inci-  
25 idental to the registered organization's functions or activities under  
26 this section. All laws and regulations applicable to the facilities,  
27 equipment or services shall apply to the contractor. The registered  
28 organization and other parties to the contract shall each be responsible  
29 and accountable for compliance with such laws and regulations under the  
30 contract. Contracting under this subdivision shall be approved by the  
31 commissioner, unless the commissioner provides otherwise by regulation.  
32 The commissioner may make regulations consistent with this title relat-  
33 ing to contracts and parties to contracts under this subdivision.

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

36 9. The commissioner shall register ~~[no more than five]~~ registered  
37 organizations that manufacture medical marihuana with no more than  
38 ~~[four]~~ eight dispensing sites wholly owned and operated by each such  
39 registered organization. The commissioner shall ensure that such ~~[regis-~~  
40 ~~tered organizations and]~~ dispensing sites are geographically distributed  
41 across the state. ~~[The commission may register additional registered~~  
42 ~~organizations]~~ Each registered organization, given no dispensing site  
43 shall be located within one thousand feet of another dispensing site,  
44 shall be allowed to operate:

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

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

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

52 § 8. Subdivision 3 of section 3367 of the public health law is renum-  
53 bered subdivision 4 and a new subdivision 3 is added to read as follows:

54 3. The commissioner may make regulations authorizing the possession,  
55 acquisition, use, delivery, transfer, transportation, storage, or admin-  
56 istration of medical marihuana for research purposes.

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