STATE OF NEW YORK

2566--B

2023-2024 Regular Sessions

IN SENATE

January 23, 2023

Introduced by Sen. COONEY -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the cannabis law, in relation to medical use cannabis; to repeal certain provisions of the cannabis law relating to the prescription monitoring program; and to repeal article 33-A of the public health law relating to the controlled substances therapeutic research act

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

Section 1. Subdivisions 44 and 45 of section 3 of the cannabis law are amended to read as follows:

44. [~~"Registry application" means an application properly completed and filed with the board by a certified patient under article three of this chapter.~~

~~45. "Registry identification card"~~] "Registration" means [~~a document that identifies~~] identifying information of a certified patient or designated caregiver that is electronically filed by a practitioner and confirmed by a registered organization or designated caregiver facility, as provided under this chapter and as determined by the board in regulation.

45. "Registry application" means an application properly completed and filed with the office by a designated caregiver under article three of this chapter.

§ 2. Subdivision 4 of section 30 of the cannabis law is REPEALED.

§ 3. Subdivisions 5, 6, 7, 8, 9 and 10 of section 30 of the cannabis law are amended to read as follows:

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

LBD06534-03-4

[~~5.~~] 4. The practitioner shall give the certification to the certified patient or the certified patient's designated caregiver, and place a copy in the patient's health care record. Such certification shall include information sufficient for a registered organization to confirm that the certification is valid in accordance with section thirty-two of this article and as determined by the board in regulation. The board may, by rules and regulations, establish a code, including but not limited to quick response (QR) code, for each practitioner to provide a certified patient or their designated caregiver with, to present to a registered organization to obtain medical cannabis or medical cannabis products from a registered organization.

[~~6.~~] 5. No practitioner shall issue a certification under this section for themselves.

[~~7.~~] 6. A [~~registry identification card based on a~~] certification shall expire [~~one year~~] two years after the date the certification is signed by the practitioner, except as provided for in subdivision eight of this section.

[~~8.~~] 7. (a) If the practitioner states in the certification that, in the practitioner's professional opinion, the patient would benefit from medical cannabis only until a specified earlier date, then the [~~registry identification card~~] certification shall expire on that date; (b) if the practitioner states in the certification that in the practitioner's professional opinion the patient is terminally ill and that the certification shall not expire until the patient dies, then the [~~registry identification card~~] certification shall [~~state~~] include a statement that the patient is terminally ill and that the [~~registration card~~] certification shall not expire until the patient dies; (c) if the practitioner re-issues the certification to terminate the certification on an earlier date, then the [~~registry identification card~~] certification shall expire on that date and such practitioner shall [~~be~~] promptly [~~destroyed by the certified patient~~] cancel the patient's certification; (d) if the certification so provides, the [~~registry identification card~~] certification shall state any recommendation or limitation by the practitioner as to the form or forms of medical cannabis or dosage for the certified patient; [~~and~~] (e) a practitioner may extend the expiration date of a certification prior to the certification's expiration; (f) in the case where a certification has expired and the practitioner determines that the patient would benefit from medical cannabis, the certification must be re-issued; and (g) the board shall make regulations to implement this subdivision.

9. [~~(a) A certification may be a special certification if, in addition to the other requirements for a certification, the practitioner certifies in the certification that the patient's condition is progressive and degenerative or that delay in the patient's certified medical use of cannabis poses a risk to the patient's life or health.~~

~~(b) The office shall create the form to be used for a special certification and shall make that form available to be downloaded from the office's website.~~

~~10.~~] Prior to issuing a certification a practitioner must complete[~~, at a minimum, a two-hour course~~] appropriate training as determined by the board in regulation. For the purposes of this article a person's status as a practitioner is deemed to be a "license" for the purposes of section thirty-three hundred ninety of the public health law and shall be subject to the same revocation process.

§ 4. Subdivisions 1 and 2 of section 31 of the cannabis law are amended to read as follows:

1. the cannabis or concentrated cannabis that may be possessed by a certified patient shall not exceed the quantities authorized in section 222.05 of the penal law or a sixty-day supply [~~of the dosage determined by the practitioner~~], whichever is greater, consistent with any guidance and regulations issued by the board[~~, provided that during the last seven days of any sixty-day period, the certified patient may also possess up to such amount for the next sixty-day period~~];

2. the cannabis or concentrated cannabis that may be possessed by a designated [~~caregivers does~~] caregiver shall not exceed the quantities [~~referred to in subdivision one of this section for each certified patient for whom the caregiver possesses a valid registry identification card, up to four certified patients~~] authorized in section 222.05 of the penal law or a sixty-day supply for the certified patient, whichever is greater;

§ 5. Section 32 of the cannabis law is amended to read as follows:

§ 32. [~~Registry identification cards~~] Validating medical cannabis certifications. 1. [~~Upon approval of the~~] When presented with a certification from a practitioner, [~~the office~~] registered organizations shall [~~issue registry identification cards for~~] confirm certifications and government-issued photo identifications, pursuant to subdivision four of section thirty of this article, of certified patients and designated caregivers upon the production of such documentation by the certified patient or designated caregiver as determined by the board in regulation. [~~A registry identification card shall expire as provided in this article or as otherwise provided in this section. The office shall begin issuing registry identification cards as soon as practicable after the certifications required by this chapter are granted. The office may specify a form for a registry application, in which case the office shall provide the form on request, reproductions of the form may be used, and the form shall be available for downloading from the board's or office's website.~~]

2. [~~To obtain, amend or renew a registry identification card, a certified patient or designated caregiver shall file a registry application with the office, unless otherwise exempted by the board in regulation. 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 if required by the office;~~

~~(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 cannabis, if the certification states such a date;~~

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

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

~~(viii) if the certified patient designates a designated caregiver, the name, address, and date of birth of the designated caregiver, and other individual identifying information required by the board;~~

~~(ix) if the designated caregiver is a cannabis research license holder under this chapter, the name of the organization conducting the research, the address, phone number, name of the individual leading the~~

~~research or appropriate designee, and other identifying information required by the board; and~~

~~(x) other individual identifying information required by the office;~~

~~(b) 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 office;~~

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

~~(d) the date of the application and the signature of the certified patient or designated caregiver, as the case may be;~~

~~(e) any other requirements determined by the board.~~] Registered organizations shall validate patient certifications and designated caregiver registrations in a manner determined by the office. The authorized representative of a registered organization shall designate and authorize specific employees to conduct the validation.

(a) When dispensing medical cannabis, authorized registered organization employees shall not dispense any medical cannabis to a certified patient or a designated caregiver unless the certified patient or designated caregiver presents to the authorized registered organization employee a valid certification from a practitioner and a valid government-issued photo identification, which the authorized registered organization employee shall use to validate that such person is eighteen years of age or older and capable of consent as documented on the certification, provided that such valid government-issued photo identification is issued by the commissioner of motor vehicles, a local government agency within the state, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States, or is a valid passport issued by the United States government or any other country, or is an identification card issued by the armed forces of the United States.

(b) The authorized representative of the registered organization shall promptly notify the office if at any time any unauthorized person accesses patient certification or designated caregiver data, if there is evidence of tampering or fraud, or any other circumstances as determined by the board in regulation.

2-a. A certified patient may designate a caregiver. The designation of the caregiver and registration of the caregiver shall be determined by the board in regulation. The designated caregiver application or renewal application shall include:

(a) the name, address, and date of birth of the designated caregiver, and other individual identifying information required by the board;

(b) the name and date of birth for each certified patient the designated caregiver is designated to care for;

(c) if the designated caregiver is a cannabis research license holder under this chapter, the name of the organization conducting the research, the address, phone number, name of the individual leading the research or appropriate designee, and other identifying information required by the board;

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

(e) the date of the application and the signature, which may be electronic, of the designated caregiver; and

(f) upon approval of the designated caregiver application, the office shall provide the designated caregiver with a code, including but not limited to a quick response (QR) code, that the designated caregiver must present to the registered organization when obtaining medical cannabis product or products.

3. Where a certified patient is under the age of eighteen or otherwise incapable of consent:

(a) The [~~application for a registry identification card shall be made by~~] **certifying practitioner must obtain consent from** the person [~~responsible for making~~] **legally authorized to make** health care decisions [~~for~~] **on behalf of** the patient **for the use of medical cannabis product or products and any device used for its administration**.

(b) **At least one designated caregiver is required to be provided upon certification of the patient.** 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; (iii) an employee of a designated caregiver facility, including a cannabis research license holder; or (iv) an appropriate person approved by the office upon a sufficient showing that no parent or legal guardian is appropriate or available.

4. No person may be a designated caregiver if the person is under [~~twenty-one~~] **eighteen** years of age unless a sufficient showing is made to the office that the person should be permitted to serve as a designated caregiver. The requirements for such a showing shall be determined by the board.

5. No person may be a designated caregiver for more than four certified patients at one time; provided, however, that this limitation shall not apply to a designated caregiver facility, or cannabis research license holder as defined by this chapter.

6. If a certified patient wishes to change or terminate [~~his or her~~] **their** designated caregiver, for whatever reason, the certified patient shall notify the office as soon as practicable. The office shall issue a notification **in a manner determined by the office** to the designated caregiver that their registration [~~card~~] is invalid and [~~must be~~] **shall** promptly [~~destroyed~~] **remove such designated caregiver's registration from the registry**. The newly designated caregiver must comply with all requirements set forth in this section.

7. [~~If the certification so provides, the registry identification card shall contain any recommendation or limitation by the practitioner as to the form or forms of medical cannabis or dosage for the certified patient.~~

~~8. The office shall issue separate registry identification cards for certified patients and designated caregivers as soon as reasonably practicable after receiving a complete application under this section, unless it determines that the application is incomplete or factually inaccurate, in which case it shall promptly notify the applicant.~~

~~9. If the application of a certified patient designates an individual as a designated caregiver who is not authorized to be a designated caregiver, that portion of the application shall be denied by the office but that shall not affect the approval of the balance of the application.~~

~~10. A registry identification card shall:~~

~~(a) contain the name of the certified patient or the designated caregiver as the case may be;~~

~~(b) contain the date of issuance and expiration date of the registry identification card;~~

~~(c) contain a registry identification number for the certified patient or designated caregiver, as the case may be and a registry identification number;~~

~~(d) contain a photograph of the individual to whom the registry identification card is being issued, which shall be obtained by the office in a manner specified by the board in regulations; provided, however, that if the office requires certified patients to submit photographs for this purpose, there shall be a reasonable accommodation of certified patients who are confined to their homes due to their medical conditions and may therefore have difficulty procuring photographs;~~

~~(e) be a secure document as determined by the board;~~

~~(f) plainly state any recommendation or limitation by the practitioner as to the form or forms of medical cannabis or dosage for the certified patient; and~~

~~(g) any other requirements determined by the board.~~

~~11.~~] A certified patient [~~or designated caregiver who has been issued a registry identification card shall notify the office of any change in his or her name or address or, with respect to the patient, if he or she ceases to have the condition noted on the certification within ten days of such change. The certified patient's or designated caregiver's registry identification card shall be deemed invalid and shall be promptly destroyed~~] shall notify their practitioner of any change in their name or address and the practitioner shall update the certification accordingly.

[~~12. If a certified patient or designated caregiver loses his or her registry identification card, he or she shall notify the office within ten days of losing the card. The office shall issue a new registry identification card as soon as practicable, which may contain a new registry identification number, to the certified patient or designated caregiver, as the case may be.~~

~~13. The office shall maintain a confidential list of the persons to whom it has issued registry identification cards. Individual identifying information obtained by the office under this article shall be confidential and exempt from disclosure under article six of the public officers law.~~

~~14. The board shall verify to law enforcement personnel in an appropriate case whether a registry identification card is valid and any other relevant information necessary to protect patients' rights to medical cannabis by confirming compliance with this article.~~

~~15.~~] 8. A designated caregiver who has been issued a registration shall notify the office of any change in their name or address in a manner determined by the office.

9. If a certified patient or designated caregiver willfully violates any provision of this article as determined by the board, [~~his or her~~] their certification, and [~~registry identification card~~] in the case of the designated caregiver, their registration may be suspended or revoked. This [~~is~~] may be in addition to any other penalty that [~~may~~] would apply.

[~~16. The board shall make regulations for special certifications, which shall include expedited procedures and which may require the applicant to submit additional documentation establishing the clinical basis for the special certification. If the board has not established and made available a form for a registry application or renewal application, then in the case of a special certification, a registry application or renewal application that otherwise conforms with the requirements of this section shall not require the use of a form.~~]

10. Information obtained by the office under this article shall be confidential and exempt from disclosure under article six of the public officers law.

11. Any practitioner or registered organization authorized representative or employee who is found to have knowingly and fraudulently manipulated certified patient or designated caregiver information, or whose knowing and negligent behavior or knowing actions directly related to their duties pursuant to this section results in a serious threat to the health and safety of a certified patient or patients, is guilty of a class A misdemeanor. In the case that this misdemeanor complaint has been filed against a practitioner, the board or office may additionally refer any relevant internal findings to the department of health or the state education department if the board or office concludes the violation may warrant professional disciplinary intervention.

§ 6. The cannabis law is amended by adding a new section 32-a to read as follows:

§ 32-a. Medical cannabis patient reciprocity. 1. Subject to the provisions of this article and the rules and regulations of the board promulgated thereunder, medical cannabis patients from other states within the United States, United States territories, commonwealths or possessions, or the District of Columbia are authorized to obtain medical cannabis or medical cannabis products from a registered organization, provided such patient is deemed a certified patient or is registered as a medical cannabis patient in their home state or jurisdiction and presents proof of such certification or registration and a valid government-issued photo identification to a registered organization. Such registered organization shall then validate such patient and dispense medical cannabis pursuant to the procedures determined by the board in regulation.

2. Medical cannabis patients from other states or jurisdictions of the United States who obtain medical cannabis from a registered organization in this state pursuant to subdivision one of this section shall comply with:

(a) all provisions of this chapter and all rules and regulations promulgated thereunder; and

(b) articles one hundred seventy-nine and two hundred twenty-two of the penal law.

3. Certified patients in New York shall be authorized to obtain medical cannabis or medical cannabis products from other states and jurisdictions of the United States in accordance with the requirements set forth by such state or other United States jurisdiction.

§ 7. Subdivision 4 of section 34 of the cannabis law is amended to read as follows:

4. (a) A registered organization may lawfully, in good faith, sell, deliver, distribute or dispense medical cannabis to a certified patient or designated caregiver upon presentation to the registered organization of a valid [~~registry identification card~~] **certification and valid government-issued photo identification** for that certified patient or designated caregiver**, pursuant to section thirty-two of this article**. When presented with the [~~registry identification card~~] **certification**, the registered organization shall provide to the certified patient or designated caregiver a receipt**, which may be electronic**, which shall state: the name, address, and registry identification number of the registered organization; the name and registry identification number of the certified patient and the designated caregiver, if any; the date the cannabis was sold; [~~any recommendation or limitation by the practitioner~~

~~as to the form or forms of medical cannabis or dosage for the certified patient;~~] and the form and the quantity of medical cannabis sold. The registered organization shall retain [~~a copy~~] **any copies** of [~~the~~] registry identification [~~card~~] **cards used by certified patients or designated caregivers prior to the effective date of the chapter of the laws of two thousand twenty-four that amended this paragraph** and the receipt for six years **following the effective date of the chapter of the laws of two thousand twenty-four that amended this paragraph** and shall make such records available to the office **upon request**.

(b) The proprietor of a registered organization shall file or cause to be filed any **dispensing** receipt and certification information with the office by electronic means on a real-time basis as the board shall require by regulation. When filing **dispensing** receipt and certification information electronically pursuant to this paragraph, the proprietor of the registered organization shall dispose of any electronically recorded [~~prescription~~] information in such manner as the board shall by regulation require.

§ 8. Paragraph (b) of subdivision 5 of section 34 of the cannabis law is amended to read as follows:

(b) When dispensing medical cannabis to a certified patient or designated caregiver, the registered organization[~~: (i)~~] shall not dispense an amount greater than [~~a sixty-day supply to a certified patient until the certified patient has exhausted all but a seven-day supply provided pursuant to a previously issued certification; and (ii) shall verify the information in subparagraph (i) of this paragraph by consulting the prescription monitoring program registry under~~] **the amounts authorized in section thirty-one of** this article.

§ 9. Subdivision 3 of section 37 of the cannabis law is amended to read as follows:

3. The board shall [~~report every two years, beginning two years after the effective date of this article, to the governor and the legislature on~~] **collect data and publish information related to** the medical use of cannabis under this article and make appropriate recommendations **in its annual report**.

§ 10. Section 41 of the cannabis law is amended to read as follows:

§ 41. Home cultivation of medical cannabis. **1.** Certified patients [~~twenty-one~~] **eighteen** years of age or older may cultivate cannabis for personal **medical** use. Designated caregivers twenty-one years of age or older, caring for certified patients either younger than twenty-one years of age or whose physical or cognitive impairments prevent them from cultivating cannabis, may cultivate cannabis for use by such patients, provided that no other caregiver is growing for said patient or patients. [~~All cultivation~~] **Cultivation** under this section shall be in accordance with section 222.15 of the penal law and any regulations made by the board, provided that the maximum number of cannabis plants a designated caregiver is authorized to grow is proportionately increased for each patient they are growing for.

2. Nothing in this section shall be construed to permit any certified patient or designated caregiver to sell any cultivated cannabis produced by any cannabis plant which is or was cultivated for a certified patient pursuant to this section to any other person, even if the certified patient no longer needs or wants such cannabis; provided however, a certified patient or designated caregiver shall be authorized to give such cultivated cannabis to another certified patient in the amounts authorized by section thirty-one of this article. Any certified patient or designated caregiver who is found to be selling such cultivated

cannabis for compensation or other remuneration may be subject to any relevant penalties in this chapter, the penal law, and the tax law.

§ 11. Subdivision 4 of section 42 of the cannabis law is amended to read as follows:

4. (a) [~~Certification applications~~] Certifications, certification forms[~~,~~] and any certified patient or designated caregiver information contained within a database[~~, and copies of registry identification cards~~] shall be deemed exempt from public disclosure under sections eighty-seven and eighty-nine of the public officers law. Upon specific request by a certified patient to the office, the office shall verify the requesting patient's status as a valid certified patient to the patient's school or employer or other designated party, to ensure compliance with the protections afforded by this section.

(b) The name, contact information, and other information relating to practitioners [~~registered with the board~~] certifying patients under this article shall be public information and shall be maintained on the board's website accessible to the public in searchable form. However, if a practitioner notifies the board in writing that [~~he or she does~~] they do not want [~~his or her~~] their name and other information disclosed, that practitioner's name and other information shall thereafter not be public information or maintained on the board's website, unless the practitioner cancels the request.

§ 12. Article 33-A of the public health law is REPEALED.

§ 13. The commissioner of health, the executive director of the office of cannabis management and the commissioner of education, or their designees, shall work in conjunction to expeditiously transfer any records, documents and papers of the controlled substances therapeutic research act and the Antonio G. Olivieri controlled substances therapeutic research program repealed by section twelve of this act, from the department of health to the office of cannabis management and the state archives prior to such repeal.

§ 14. This act shall take effect immediately; provided, however that sections one, three, four, five, six, seven and ten of this act shall take effect on the ninetieth day after it shall have become a law; and provided, further, that section twelve of this act shall take effect on the one hundred eightieth day after it shall have become a law; and provided, further, that sections two and eight of this act shall take effect eighteen months after it shall have become a law.