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DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 59

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO MEDICAL MARIJUANA.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 4902A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows by redesignating Delaware Code provisions and internal references accordingly:

§ 4902A. Definitions.

In this chapter, unless the context otherwise requires, the following definitions shall apply:

() "Health-care practitioner" means an individual who is licensed and authorized to write medical orders under Title 24 as a physician, certified nurse practitioner, or physician assistant.

(12) "Physician" means a properly licensed physician subject to Chapter 17 of Title 24 ~~except as otherwise provided in this paragraph. If the qualifying patient is younger than 18 years of age, the physician must be a pediatric neurologist, pediatric gastroenterologist, pediatric oncologist or pediatric palliative care specialist. Title 24.~~

(13) "Qualifying patient" means a person who has been diagnosed by a ~~physician~~ health-care practitioner as having a debilitating medical condition.

(21) "Written certification" means a document dated and signed by a ~~physician~~ health-care practitioner, stating that in the ~~physician's~~ health-care practitioner's professional opinion 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 or symptoms associated with the debilitating medical condition. A written certification shall be made only in the course of a bona fide ~~physician-patient~~ health-care practitioner-patient relationship where the qualifying patient is under the ~~physician's~~ health-care practitioner's care for ~~her or his~~ the patient's primary care or for ~~her or his~~ the patient's debilitating medical condition after the ~~physician~~ health-care practitioner has completed an assessment of the qualifying patient's medical history and current medical condition. The bona fide ~~physician-patient~~ health-care practitioner-patient relationship may not be limited to authorization for the patient to use medical marijuana or

consultation for that purpose. The written certification ~~shall~~ must specify the qualifying patient's debilitating medical condition.

Section 2. Amend § 4903A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4903A. Protections for the medical use of marijuana.

(g) A ~~physician~~ health-care practitioner is not ~~be~~ subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including ~~but not limited to~~ a civil penalty or disciplinary action by the Delaware Medical Board or by any other occupational or professional licensing board or bureau, solely for providing written certifications or for otherwise stating that, in the ~~physician's~~ health-care practitioner'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 serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition or for refusing to provide such written certifications or statements, provided that nothing in this chapter ~~shall be~~ is deemed to release a ~~physician~~ health-care practitioner from the duty to exercise a professional standard of care for evaluating or treating a patient's medical condition.

Section 3. Amend § 4905A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4905A. Discrimination prohibited.

(a)(1) No school or landlord may refuse to enroll or lease to, or otherwise penalize, a person solely for his or her status as a registered qualifying patient or a registered designated caregiver, unless failing to do so would cause the school or landlord to lose a monetary or licensing-related benefit under federal law or regulations.

(2) For the purposes of medical care, including organ transplants, a registered qualifying patient's authorized use of marijuana in accordance with this chapter shall be considered the equivalent of the authorized use of any other medication used at the direction of a ~~physician~~ health-care practitioner and ~~shall~~ does not constitute the use of an illicit substance or otherwise disqualify a qualifying patient from needed medical care.

Section 4. Amend § 4907A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4907A. Acts not required, acts not prohibited.

(a) Nothing in this chapter requires:

(4) A ~~physician~~ health-care practitioner to provide a written certification or otherwise recommend marijuana to a patient.

Section 5. Amend § 4908A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4908A. Registration of qualifying patients and designated caregivers.

(a) The Department shall issue registry identification cards to qualifying patients who submit all of the following, in accordance with the Department's final regulations:

(1) A written certification issued by a ~~physician~~ health-care practitioner within 90 days immediately preceding the date of an ~~application~~; application.

(2) The application or renewal ~~fee~~; fee.

(3) The name, address, and date of birth of the qualifying patient, except that if the applicant is homeless no address is ~~required~~; required.

(4) The name, address, and telephone number of the qualifying patient's ~~physician~~; and health-care practitioner.

(5) The name, address, and date of birth of the designated caregiver, if any, chosen by the qualifying ~~patient~~; patient.

(6) The name of the registered compassion center the qualifying patient designates, if ~~any~~; any.

(7) A statement signed by the qualifying patient, pledging not to divert marijuana to anyone who is not allowed to possess marijuana pursuant to this ~~chapter~~; and chapter.

(8) A signed statement from the designated caregiver, if any, agreeing to be designated as the patient's designated caregiver and pledging not to divert marijuana to anyone who is not allowed to possess marijuana pursuant to this chapter.

Section 6. Amend § 4911A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4911A. Registry identification cards.

(b)(1) Except as provided in this subsection, the expiration date shall be 1 year after the date of issuance.

(2) If the ~~physician~~ health-care practitioner stated in the written certification that the qualifying patient would benefit from marijuana until a specified earlier date, then the registry identification card shall expire on that date.

(3) [Repealed.]

Section 7. Amend § 4912A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4912A. Notifications to Department and responses; civil penalty.

(f) If the registered qualifying patient's certifying ~~physician~~ health-care practitioner notifies the Department in writing that either the registered qualifying patient has ceased to suffer from a debilitating medical condition or that the ~~physician~~ health-care practitioner no longer believes the patient would receive therapeutic or palliative benefit from the medical use of marijuana, the card shall become null and void. However, the registered qualifying patient shall have 15 days to dispose of his or her marijuana or give it to a registered compassion center where nothing of value is transferred in return.

Section 8. Amend § 4913A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4913A. Affirmative defense and dismissal for medical marijuana.

(a) Except as provided in § 4904A of this title and this section, an individual may assert a medical purpose for using marijuana as a defense to any prosecution of an offense involving marijuana intended for the patient's medical use, and this defense shall be presumed valid and the prosecution shall be dismissed where the evidence shows ~~that~~ all of the following:

(1) A ~~physician~~ health-care practitioner states that, in the physician's professional opinion, after having completed a full assessment of the individual's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the patient is likely to receive therapeutic or palliative benefit from marijuana to treat or alleviate the individual's serious or debilitating medical condition or symptoms associated with the individual's serious or debilitating medical ~~condition~~; and condition.

(2) The individual was in possession of no more than 6 ounces of usable ~~marijuana~~; and marijuana.

(3) The individual was engaged in the acquisition, possession, use, or transportation of marijuana, paraphernalia, or both, relating to the administration of marijuana to treat or alleviate the individual's serious or debilitating medical condition or symptoms associated with the individual's serious or debilitating medical condition.

Section 9. Amend § 4919A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4919A. Requirements, prohibitions, penalties.

(l) A registered compassion center shall not share office space with nor refer patients to a ~~physician~~ health-care practitioner.

(m) A ~~physician shall~~ health-care practitioner shall ~~may~~ not refer patients to a registered compassion center or registered designated caregiver, advertise in a registered compassion center, or, if the ~~physician~~ health-care practitioner issues written certifications, hold any financial interest in a registered compassion center.

Section 10. Amend § 4920A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4920A. Confidentiality.

(a) The following information received and records kept by the Department for purposes of administering this chapter are confidential and exempt from the Delaware Freedom of Information Act [Chapter 100 of Title 29], and not subject to disclosure to any individual or public or private entity, except as necessary for authorized employees of the State of Delaware to perform official duties pursuant to this chapter:

(1) Applications and renewals, their contents, and supporting information submitted by qualifying patients and designated caregivers, including information regarding their designated caregivers and ~~physicians~~ health-care practitioners.

Section 11. Amend § 4922A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4922A. Oversight Committee; annual report by Department.

(b) The Department shall submit to the Governor and the General Assembly an annual report that does not disclose any identifying information about cardholders, registered compassion centers, or ~~physicians~~ health-care practitioners but does contain, at a minimum, all of the following information:

(1) The number of applications and renewals filed for registry identification cards.

(2) The number of qualifying patients and designated caregivers approved in each county.

(3) The nature of the debilitating medical conditions of the qualifying patients.

(4) The number of registry identification cards revoked for misconduct.

(5) The number of ~~physicians~~ health-care practitioners providing written certifications for qualifying patients.

(6) The number of registered compassion centers.

(7) Specific accounting of fees and costs.

SYNOPSIS

This Act allows nurse practitioners and physician assistants to recommend medical marijuana for patients.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Delcollo