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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:

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

4 § 4902A. Definitions.

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

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

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

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

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

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

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

26 § 4903A. Protections for the medical use of marijuana.

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

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

38 § 4905A. Discrimination prohibited.

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

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

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

48 § 4907A. Acts not required, acts not prohibited.

49 (a) Nothing in this chapter requires:

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

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

54 § 4908A. Registration of qualifying patients and designated caregivers.

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

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

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

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

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

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

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

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

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

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

74 § 4911A. Registry identification cards.

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

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

78 (3) [Repealed.]

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

81 § 4912A. Notifications to Department and responses; civil penalty.

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

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

90 § 4913A. Affirmative defense and dismissal for medical marijuana.

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

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

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

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

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

106 § 4919A. Requirements, prohibitions, penalties.

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

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

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

114 § 4920A. Confidentiality.

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

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

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

124 § 4922A. Oversight Committee; annual report by Department.

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

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

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

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

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

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

133 (6) The number of registered compassion centers.

134 (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