SPONSOR: Rep. Osienski & Rep. K. Williams & Rep. Heffernan & Sen. Hoffner & Sen. Paradee & Sen. Sturgeon & Sen. S. McBride
Reps. Baumbach, Bolden, Bush, Chukwuocha, Harris, K. Johnson, Lambert, Morrison, Neal, Romer; Sens. Buckson, Sokola

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 285

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 and redesignating as follows:

§ 4902A. Definitions [For application of this section, see 82 Del. Laws, c. 246, § 5].

For purposes of this chapter:

~~(1) "Cannabidiol-rich medical marijuana" or "CBD-rich" means a marijuana strain or product formulization that has elevated levels of cannabidiol ("CBD") and contains the profile of CBD and tetrahydrocannabinol ("THC") concentrations approved by the Department.~~

~~(4) "Debilitating medical~~ ( ) "Medical condition" means 1 or more of the following:

a. Terminal illness, cancer, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, decompensated cirrhosis, amyotrophic lateral sclerosis, agitation of Alzheimer's disease, post-traumatic stress disorder, intractable epilepsy, seizure disorder, glaucoma, chronic debilitating migraines, new daily persistent headache, or the treatment of these conditions.

b. A chronic or debilitating disease or medical condition or its treatment that produces 1 or more of the following: cachexia or wasting syndrome; severe, debilitating pain that has not responded to previously prescribed medication or surgical measures for more than 3 months or for which other treatment options produced serious side effects; intractable nausea; seizures; severe and persistent muscle spasms, including those characteristic of multiple sclerosis.

c. Any other ~~medical condition or its treatment added by the Department, as provided for in § 4906A of this title.~~ diagnosed medical condition or disease for which a health-care practitioner determines a patient would receive palliative or therapeutic benefit from the use of medical marijuana.

~~(15)~~ ( ) "Medical use" means the acquisition; administration; delivery; possession; transportation; transfer; transportation; or use of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered qualifying patient's ~~debilitating~~ medical condition or symptoms associated with the patient's ~~debilitating~~ medical condition.

(20) "Registry identification card" means a document issued by the Department that identifies a person as 1 of the following:

a. A registered qualifying adult patient.

b. A registered designated caregiver for a qualifying adult patient.

c. A registered designated caregiver for a pediatric patient.

~~d. A registered compassionate use adult patient.~~

~~e. A registered designated caregiver for an adult compassionate use patient.~~

~~f. A registered designated caregiver for a pediatric compassionate use patient.~~

~~g. A registered CBD-rich patient.~~

~~h. A registered designated caregiver for a CBD-rich patient.~~

~~(25)~~ ( ) "Written certification'' means a document dated and signed by a health-care practitioner, stating that in the 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 health-care practitioner-patient relationship where the qualifying patient is under the health-care practitioner's care for the patient's primary care or for the patient's ~~debilitating~~ medical condition after the health-care practitioner has completed an assessment of the qualifying patient's medical history and current medical condition. The bona fide 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 must specify the qualifying patient's ~~debilitating~~ medical ~~condition.~~ condition, and, if applicable, that the medical condition is a terminal illness.

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.

(f) (1) There shall be a presumption that a qualifying patient is engaged in, or a designated caregiver is assisting with, the medical use of marijuana in accordance with this chapter if the qualifying patient or designated caregiver:

a. Is in possession of a valid registry identification card; and

b. Is in possession of an amount of marijuana that does not exceed the amount allowed under subsections (a), (b) and (c) [repealed] of this section.

(2) The presumption may be rebutted by evidence that conduct related to marijuana was not for the purpose of treating or alleviating the qualifying patient's ~~debilitating~~ medical condition or symptoms associated with the ~~debilitating~~ medical condition in compliance with this chapter.

(g) A health-care practitioner may not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including 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 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 is deemed to release a 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 § 4904A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4904A. Limitations.

(a) This chapter does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for engaging in, the following conduct:

(5) Using marijuana if that person does not have a ~~serious or debilitating~~ medical condition.

Section 4. Amend § 4906A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4906A. ~~Addition of debilitating medical conditions.~~ [Repealed].

~~Once the regulations have been adopted pursuant to this chapter, any citizen may petition the Department to add conditions or treatments to the list of debilitating medical conditions listed in § 4902A(4) of this title. The Department shall consider petitions in the manner required by Department regulation, including public notice and hearing, as provided by § 4923A of this title. The Department shall approve or deny a petition within 180 days of its submission. The approval or denial of any petition is a final decision of the Department subject to judicial review. Jurisdiction and venue are vested in the Superior Court.~~

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 [For application of this section, see 82 Del. Laws, c. 246, § 5].

(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) Either of the following:

a. A written certification issued by a health-care practitioner within 90 days immediately preceding the date of an application. The written certification must specify the qualifying patient's medical condition and, if applicable, that the medical condition is a terminal illness.

b. If the qualifying patient is 65 years of age or older, a self-certification on a form to be provided by the Department that the patient is using marijuana for medical purposes.

(2) The application or renewal fee.

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

(4) The name, address, and telephone number of the qualifying patient's health-care ~~practitioner.~~ practitioner, unless the qualifying patient is 65 years of age or older and self-certifies the patient's eligibility under paragraph (a)(1) of this section.

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

(6) ~~For a compassionate use card, the patient's informed consent and health-care practitioner verification under subsection (c) of this section.~~ [Repealed].

(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.

(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.

(b) Registry identification card applications shall be available no later than the day the Department publishes final regulations.

(c) ~~The Department shall issue a compassionate use card to an individual who is eligible for a compassionate use card and who submits all of the following, in accordance with the Department's final regulations, in addition to the requirements under subsection (a) of this section:~~

~~(1) A signed statement from the patient's health-care practitioner that includes statements attesting to all of the following:~~

~~a. The patient has a severe and debilitating condition.~~

~~b. All current standard care practices and treatments have been exhausted and have been ineffective or the side effects are prohibitive with continued use.~~

~~c. The health-care practitioner will re-evaluate and document the efficacy of medical marijuana treatment.~~

~~d. There are grounds supporting the potential for the patient to benefit from using medical marijuana.~~

~~(2) a. If the patient is an adult, a signed statement from the patient acknowledging the patient's informed consent to treatment with medical marijuana and that the patient knows that there is limited or no evidence associated with medical marijuana's effectiveness in treating a condition that is not a debilitating medical condition under this chapter.~~

~~b. If the patient is under 18 years of age, a signed statement from the patient's parent or legal guardian acknowledging the patient's informed consent to treatment with medical marijuana and that the patient's parent or legal guardian knows that there is limited or no evidence associated with medical marijuana's effectiveness in treating a condition that is not a debilitating medical condition under this chapter.~~ [Repealed].

(d) ~~(1) An adult is eligible for a CBD-rich card if the individual complies with subsection (a) of this section and the written certification from the patient's health-care practitioner recommends medical marijuana for the treatment of anxiety or other condition approved by the Department for treatment with cannabidiol-rich medical marijuana.~~

~~(2) A patient who qualifies for a CBD-rich card may only receive cannabidiol-rich medical marijuana products.~~ [Repealed].

Section 6. Amend § 4909A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4909A. Issuance of registry identification cards [For application of this section, see 82 Del. Laws, c. 213, § 7].

(a) ~~Except as provided in subsection (b) of this section, the~~ The Department shall:

(1) Verify the information contained in an application or renewal submitted pursuant to this chapter, and shall approve or deny an application or renewal within 45 days of receiving a completed application or renewal application.

(2) Issue registry identification cards to a qualifying patient and his or her designated caregiver, if any, within 30 days of approving the application or renewal. A designated caregiver must have a registry identification card for each of his or her qualifying patients.

(3) Enter the registry identification number of the registered compassion center the patient designates into the verification system.

~~(b) The Department may not issue a registry identification card to a qualifying patient who is under 18 years of age, except if any of the following apply:~~

~~(1) The qualifying patient has any of the following related to a terminal illness:~~

~~a. Pain.~~

~~b. Anxiety.~~

~~c. Depression.~~

~~(2) The qualifying patient has intractable epilepsy or seizure disorder.~~

~~(3) The qualifying patient has a chronic or debilitating disease or medical condition where the patient has failed treatment involving 1 or more of the following symptoms: cachexia or wasting syndrome; intractable nausea; severe, painful and persistent muscle spasms; chronic debilitating migraines and new daily persistent headache that are refractory to conventional treatment and interventions.~~

~~(4) Any other medical condition or its treatment added by the Department, as provided for in § 4906A of this title.~~

~~(5) The qualifying patient is eligible for a compassionate use card under § 4908A(c) of this title.~~ [Repealed].

(c) A qualifying patient who is under 18 years of age may only receive marijuana oil.

Section 7. Amend § 4910A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4910A. Denial of registry identification cards [For application of this section, see 82 Del. Laws, c. 213, § 7].

(e) (1) Denial of an application or renewal is considered a final Department action.

(2) A denial of an application or renewal for a registry identification card for a registered qualifying patient, pediatric patient, or registered designated caregiver is subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.

(3) ~~A denial of an application or renewal for a compassionate use registry identification card is not subject to judicial review.~~ [Repealed].

Section 8. 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 [For application of this section, see 82 Del. Laws, c. 246, § 5].

(a) Registry identification cards must contain all of the following:

(1) The name of the cardholder.

(2) A designation of whether the cardholder is a designated caregiver or qualifying patient.

(3) That the registered cardholder is 1 of the following:

a. A qualifying adult patient.

b. A designated caregiver for a qualifying adult patient.

c. A designated caregiver for a pediatric patient.

~~d. An adult compassionate use patient.~~

~~e. A designated caregiver for an adult compassionate use patient.~~

~~f. A designated caregiver for a pediatric compassionate use patient.~~

~~g. A CBD-rich patient.~~

~~h. A designated caregiver for a CBD-rich patient.~~

(4) The date of issuance and either of the following:

a. The expiration date of the registry identification card.

b. If the written certification states that the qualifying patient's medical condition is a terminal illness, a statement that the registry identification card has an indefinite expiration date.

(5) A random 10-digit alphanumeric identification number, that is unique to the cardholder.

(6) If the cardholder is a designated caregiver, the random 10-digit alphanumeric identification number of the qualifying patient the designated caregiver is receiving the registry identification card to assist.

(b) (1) Except as provided in this subsection, the expiration date of a registry identification card is 1 year after the date of issuance.

(2) If the 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 expires on that date.

(3) ~~If the health-care practitioner stated in the written certification that the compassionate use patient would benefit from a trial period using marijuana until a specified earlier date, then the registry identification card expires on that date.~~ [Repealed].

(4) If the written certification states that the qualifying patient's medical condition is a terminal illness, the expiration date of a registry identification card is indefinite.

(5) The Department may issue a registry identification card to a qualifying patient or caregiver with an expiration date of 2 or 3 years after the date of issuance upon payment of a fee to be established by regulation under § 4923A of this title.

(c) The Department may, at its discretion, electronically store in the card all of the information listed in subsection (a) of this section, along with the address and date of birth of the cardholder, to allow it to be read by law-enforcement agents.

Section 9. 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.

(a) The following notifications and Department responses are required:

(1) A registered qualifying patient shall notify the Department of any change in his or her name or address, or if the registered qualifying patient ceases to have ~~his or her debilitating~~ a medical condition, within 10 days of the change.

(2) A registered designated caregiver shall notify the Department of any change in his or her name or address, or if the designated caregiver becomes aware the qualifying patient passed away, within 10 days of the change.

(3) Before a registered qualifying patient changes his or her designated caregiver, the qualifying patient must notify the Department.

(4) If a cardholder loses his or her registry identification card, he or she shall notify the Department within 10 days of becoming aware the card has been lost.

(f) If the registered qualifying patient's certifying 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 health-care practitioner no longer believes the patient would receive therapeutic or palliative benefit from the medical use of marijuana, the card becomes null and void. However, the registered qualifying patient has 15 days to dispose of their marijuana or give it to a registered compassion center where nothing of value is transferred in return.

Section 10. 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 all of the following:

(1) A health-care practitioner states that, in the health-care practitioner'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 health-care practitioner-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.

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

(b) The defense and motion to dismiss shall not prevail if the prosecution proves that

(1) The individual had a registry identification card revoked for misconduct; or

(2) The purposes for the possession of marijuana were not solely for palliative or therapeutic use by the individual with a ~~serious or debilitating~~ medical condition who raised the defense.

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. Annual report by Department.

(a) [Repealed.]

(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 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 health-care practitioners providing written certifications for qualifying patients.

(6) The number of registered compassion centers.

(7) Specific accounting of fees and costs.

Section 12. Amend § 4923A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4923A. Department to issue regulations [For application of this section, see 82 Del. Laws, c. 246, § 5].

The Department shall promulgate regulations regarding all of the following:

(1) ~~Governing the manner in which the Department shall consider petitions from the public to add debilitating medical conditions or treatments to the list of debilitating medical conditions under § 4902A(4) of this title, including public notice of and an opportunity to comment in public hearings on the petitions.~~ [Repealed].

(2) ~~a.~~ Establishing the form and content of registration and renewal applications submitted under this chapter.

~~b. For compassionate use cards, governing the intervals at which a health care practitioner must re-evaluate the efficacy of medical marijuana treatment and the documentation of the re-evaluations, and may include intervals of different lengths for the conditions for which a patient receives a compassionate use registry identification card.~~

(3) Governing the manner in which it shall consider applications for and renewals of registry identification cards.

(4) Governing all of the following matters related to registered compassion centers and security compliance facilities, with the goal of protecting against diversion and theft, without imposing an undue burden on the registered compassion centers or compromising the confidentiality of cardholders:

a. Minimum oversight requirements for registered compassion centers.

b. Minimum recordkeeping requirements for registered compassion centers.

c. Minimum security requirements for registered compassion centers, which shall include that each registered compassion center location must be protected by a fully operational security alarm system.

d. The competitive scoring process addressed in §§ 4914A and 4915A of this title.

e. Procedures for suspending or terminating the registration certificates or registry identification cards of cardholders, registered compassion centers, and registered safety compliance facilities that commit multiple or serious violations of the provisions of this chapter or the regulations promulgated pursuant to this section.

f. The design and security features of medical marijuana containers to be provided by the compassion centers.

(5) Requiring application and renewal fees for registry identification cards, and registered compassion center registration certificates, according to all of the following:

a. The total fees collected must generate revenues sufficient to offset all expenses of implementing and administering this chapter, except that fee revenue may be offset or supplemented by private donations.

b. The total amount of revenue from application, renewal, and registration fees for compassion centers and security compliance facilities must be sufficient to implement and administer the compassion center and safety compliance facility provisions of this chapter.

c. The Department may establish a sliding scale of patient application and renewal fees based upon a qualifying patient's household income.

d. The Department may accept donations from private sources to reduce application and renewal fees.

e. The total amount of revenue from application, renewal, and registration fees for compassion centers, security compliance facilities, and registry identification cards will be deposited to a special account within the Department for the operation of the program created by this chapter and shall be used as necessary to support program operations and growth.

(6) ~~Establishing requirements for cannabidiol-rich medical marijuana profile concentrations.~~ [Repealed].

Section 13. Amend Chapter 49A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4949A. Reciprocity.

A person with a medical condition who possesses a registry identification card or equivalent certification from another state or territory of the U.S. and who would otherwise qualify to obtain a registry identification card in this State may use the out-of-state registry identification card or equivalent certification for any purpose for which the person would be authorized to use a registry identification card issued under this chapter.

SYNOPSIS

This Act amends the Delaware Medical Marijuana Act by removing the requirement that a patient have a debilitating medical condition to qualify for a registry identification card, instead allowing health-care providers to make the determination of whether a patient has a diagnosed medical condition for which the patient would receive therapeutic or palliative benefit from the use of medical marijuana. As a result, this Act removes the CBD-rich and compassionate use programs, which previously allowed for the use of marijuana for the treatment of conditions that otherwise did not qualify a patient for a registry identification card.

This Act allows patients aged 65 and older to self-certify their qualification for a registry identification card without a written certification from a health-care provider.

This Act authorizes the Department to issue registry identification cards with 1-, 2-, or 3-year expiration dates. It also requires the issuance of a registry identification card with an indefinite expiration date where the qualifying patient has a terminal illness.

This Act allows individuals with out-of-state registry identification cards or equivalent certifications who would qualify for a registry identification card in this State to use those cards or certifications for any purpose for which the person would be authorized to use a registry identification card issued under this chapter.