SPONSOR: Sen. Lopez & Sen. S. McBride & Rep. Dorsey Walker & Rep. Minor-Brown & Rep. Ramone
Sens. Ennis, Hansen, Paradee, Pettyjohn, Pinkney, Sokola, Sturgeon, Walsh, Wilson; Reps. Baumbach, Brady, Heffernan, K. Johnson, Lambert, Morrison, Osienski, Schwartzkopf, Michael Smith, Spiegelman, K. Williams

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 60
AS AMENDED BY
SENATE AMENDMENT NO. 1

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 § 4901A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4901A. Findings.

(g) State law should make a distinction between the medical and nonmedical uses of marijuana. Hence, the purpose of this chapter is to protect patients with debilitating medical conditions, as well as their ~~physicians~~ health-care practitioners and providers, from arrest and prosecution, criminal and other penalties, and property forfeiture if such patients engage in the medical use of marijuana.

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

§ 4902A. Definitions.

For purposes of this chapter:

( ) "Health-care practitioner" means an individual who is licensed and authorized to write medical orders under Title 24 as a physician, advanced practice registered nurse, or physician assistant, except as otherwise provided in this paragraph. If the qualifying patient is younger than 18 years of age, the health-care practitioner must be a physician who is a pediatric neurologist, pediatric gastroenterologist, pediatric oncologist, pediatric psychiatrist, developmental pediatrician, or pediatric palliative care specialist.

(22) "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

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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 3. 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 shall~~ health-care practitioner may 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 4. 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)(2) For the purposes of medical care, including organ transplants, a registered qualifying patient's authorized use of marijuana ~~in accordance with~~ under this chapter ~~shall be~~ is 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 5. 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:~~ requires any of the following:

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

Section 6. 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.

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

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

(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 ~~physician~~ health-care practitioner that includes statements attesting to all of the following:

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

(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 ~~physician~~ 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.

Section 7. 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~~ of a registry identification card is 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~~ expires on that date.

(3) If the ~~physician~~ 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.

Section 8. 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~~ becomes null and void. However, the registered qualifying patient ~~shall have~~ has 15 days to dispose of ~~his or her~~ their marijuana or give it to a registered compassion center where nothing of value is transferred in return.

Section 9. 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~~ 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 ~~physician-patient~~ 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; and~~ condition.

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

Section 10. 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~~ may 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 11. 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 12. 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:

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

Section 13. 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.

The Department shall promulgate regulations regarding all of the following:

(2)b. For compassionate use cards, governing the intervals at which a ~~physician~~ 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.