

SPONSOR: Rep. Baumbach & Rep. Ramone & Sen. Henry & Sen. Lopez
Reps. Keeley, Kowalko, Paradee, Spiegelman, K. Williams;
Sen. Townsend

HOUSE OF REPRESENTATIVES

148th GENERAL ASSEMBLY

HOUSE BILL NO. 400
AS AMENDED BY
HOUSE AMENDMENT NO. 1
AND
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 § 4902A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4902A. Definitions.

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

(2) “Compassion center agent”" means a principal officer, board member, employee, or agent of a registered compassion center who is 21 years of age or older and has not been convicted of an excluded felony offense ~~for~~ or drug misdemeanor within 5 years.

(3) “Debilitating medical condition” means 1 or more of the following:

a. ~~Cancer~~ 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, or the treatment of these conditions;

(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's debilitating medical condition is post-traumatic stress disorder, the physician must also be a licensed psychiatrist. ~~In relation to a visiting qualifying patient, "physician" means a person who is licensed with authority to prescribe drugs to humans and who may issue a written certifications or its equivalent in the state of the patient's~~

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~~residence.~~ 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.

(18) “Terminal illness” means any disease, illness or condition sustained by any human being:

a. For which there is no reasonable medical expectation of recovery;

b. Which, as a medical probability, will result in the death of such human being regardless of the use or discontinuance of medical treatment implemented for the purpose of sustaining life or the life processes; and

c. As a result of which, the human being’s health-care practitioner would not be surprised if death were to occur within 12 months.

~~(20) "Visiting qualifying patient" means a person who:~~

~~a. Has been diagnosed with a debilitating medical condition;~~

~~b. Possesses a valid registry identification card, or its equivalent, that was issued pursuant to the laws of another state, district, territory, commonwealth, insular possession of the United States or country recognized by the United States that allows the person to use marijuana for medical purposes in the jurisdiction of issuance; and~~

~~c. Is not a resident of Delaware or who has been a resident of Delaware for less than 30 days.~~

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.

~~(c) A visiting qualifying patient shall not be subject to arrest, prosecution, or denial of any right or privilege, including but not limited to civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for the medical use of marijuana pursuant to this chapter if the visiting qualifying patient does not possess more than 6 ounces of usable marijuana.~~

(d) A registered qualifying patient~~, visiting qualifying patient,~~ or registered designated caregiver shall not be subject to prosecution, or denial of any right or privilege, including but not limited to civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau for possession of seeds and stalks.

(e) A registered qualifying patient~~, visiting qualifying patient,~~ or registered designated caregiver shall not be subject to arrest, prosecution, or denial of any right or privilege, including but not limited to civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau for giving marijuana to a registered qualifying patient, a registered compassion center, or a registered designated caregiver for a registered qualifying patient's medical use where nothing of value is transferred in return, or for offering to do the same, if the person giving the marijuana does not knowingly cause the recipient to possess more marijuana than is permitted by this section.

(i) A registered compassion center shall not be subject to prosecution; search or inspection, except by the Department pursuant to § 4919A(u) of this title; seizure; or penalty in any manner, or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a court or business licensing board or entity, for:

(1) Acting pursuant to this chapter and Department regulations to acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, sell, or dispense marijuana or related supplies and educational materials to registered qualifying patients ~~and visiting qualifying patients~~ who have designated the compassion center to provide for them, to registered designated caregivers on behalf of the registered qualifying patients who have designated the registered compassion center, or to other registered compassion centers;

(m) ~~A visiting qualifying patient or an~~ An entity that is registered to dispense marijuana for medical use in other jurisdictions shall not be subject to prosecution; search or inspection, except by the Department pursuant to § 4919A(u) of this title; seizure; or penalty in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a court or business licensing board or entity, for providing marijuana seeds to registered compassion centers.

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.

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:

(4) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana, except that a registered qualifying patient ~~or visiting qualifying patient~~ shall not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana.

Section 4. 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 the following, in accordance with the Department's final regulations:

(1) A written certification issued by a physician within 90 days immediately preceding the date of an application~~, except that in the case of a visiting qualifying patient, the visiting qualifying patient shall submit a copy of the visiting qualifying patient's registry identification card or its equivalent that was issued pursuant to the laws of the jurisdiction of the person's residence, proof of residency in the jurisdiction where the registry identification card or its equivalent was issued; and a certification by the visiting qualifying patient's physician that he or she has a debilitating qualifying condition~~;

(5) The name, address, and date of birth of the designated caregiver, if any, chosen by the qualifying patient~~, except that a visiting qualifying patient shall not have a designated caregiver~~;

Section 5. 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.

(b) The Department shall not issue a registry identification card to a qualifying patient who is younger than 18 years of age, except as follows:

(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; or

~~(2)~~(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.

~~(3)~~(4) A qualifying patient who is younger than 18 years of age may only receive marijuana oil.

Section 6. Amend § 4910A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(c) A prospective designated caregiver shall obtain a background check in compliance with § 4927A of this title to enable the Department to comply with subsection (b) of this section. Once a prospective designated caregiver has been granted a registry identification card, the designated caregiver must obtain a background check in compliance with § 4927A of this title every ~~year~~ 3 years.

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.

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

~~(3) If the cardholder is a visiting qualifying patient, a designation as such, including the state of the patient's residence;~~

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

~~(3) If the patient is a visiting qualifying patient whose permission to use medical marijuana in the person's home jurisdiction would expire sooner than 1 year after the issuance date, then the registry identification card shall expire on the date their home jurisdiction documentation would expire.~~

Section 8. Amend § 4912A(e), Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(e) ~~A registered qualifying patient shall notify the Department before changing his or her designated registered compassion center and pay a $20 fee. The Department must, within 30 business days of receiving the notification, update the registered qualifying patient's entry in the identification registry system to reflect the change in designation and notify the patient that the change has been processed~~ The Department shall administer a real-time Statewide patient registry to facilitate patient choice in purchasing medical marijuana from any properly licensed Delaware Compassion Centers. The registry shall track patient purchases to comply with § 4919A(i) of this title.

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.

~~(j) A registered compassion center or compassion center agent shall only dispense marijuana to a visiting qualifying patient if he or she possesses a valid Delaware registry identification card and if the procedures in subsections (h) and (i) of this section are followed.~~

Section 10. This Act shall take effect 90 days after its enactment into law.

Section 11. This Act shall be known as “Bob’s Bill.”

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