

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 177

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

RELATING TO HEALTH; AMENDING AND ENACTING SECTIONS OF THE LYNN
AND ERIN COMPASSIONATE USE ACT TO EXPAND ELIGIBILITY AND TO
PROVIDE FOR PRESUMPTIVE ELIGIBILITY AND THREE-YEAR
CERTIFICATION AND TO ESTABLISH NEW QUALIFYING MEDICAL
CONDITIONS, LICENSED PRODUCER FEES, INTERSTATE RECIPROCITY AND
CONTENT AND POSSESSION STANDARDS; AMENDING A SECTION OF THE
JONATHAN SPRADLING REVISED UNIFORM ANATOMICAL GIFT ACT;
ENACTING A NEW SECTION OF THE NMSA 1978 TO REMOVE PARTICIPATION
IN THE STATE'S MEDICAL CANNABIS PROGRAM AS GROUNDS FOR CHILD
PROTECTIVE SERVICES INTERVENTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 24-6B-11 NMSA 1978 (being Laws 2007,
Chapter 323, Section 11) is amended to read:

"24-6B-11. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT--

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underscored material = new
[bracketed material] = delete

1 PURPOSE OF ANATOMICAL GIFT.--

2 A. An anatomical gift may be made to the following
3 persons named in the document of gift:

4 (1) a hospital; accredited medical school,
5 dental school, college or university; organ procurement
6 organization; or other appropriate person, for research or
7 education;

8 (2) subject to the provisions of Subsection B
9 of this section, an individual designated by the person making
10 the anatomical gift if the individual is the recipient of the
11 part; and

12 (3) an eye bank or tissue bank.

13 B. If an anatomical gift to an individual pursuant
14 to Paragraph (2) of Subsection A of this section cannot be
15 transplanted into the individual, the part passes in accordance
16 with Subsection G of this section in the absence of an express,
17 contrary indication by the person making the anatomical gift.

18 C. If an anatomical gift of one or more specific
19 parts or of all parts is made in a document of gift that does
20 not name a person described in Subsection A of this section but
21 identifies the purpose for which an anatomical gift may be
22 used, the following rules apply:

23 (1) if the part is an eye and the gift is for
24 the purpose of transplantation or therapy, the gift passes to
25 the appropriate eye bank;

1 (2) if the part is tissue and the gift is for
2 the purpose of transplantation or therapy, the gift passes to
3 the appropriate tissue bank;

4 (3) if the part is an organ and the gift is
5 for the purpose of transplantation or therapy, the gift passes
6 to the appropriate organ procurement organization as custodian
7 of the organ; and

8 (4) if the part is an organ, an eye or tissue
9 and the gift is for the purpose of research or education, the
10 gift passes to the appropriate procurement organization.

11 D. For the purpose of Subsection C of this section,
12 if there is more than one purpose of an anatomical gift set
13 forth in the document of gift but the purposes are not set
14 forth in any priority, the gift shall be used for
15 transplantation or therapy, if suitable. If the gift cannot be
16 used for transplantation or therapy, the gift may be used for
17 research or education.

18 E. If an anatomical gift of one or more specific
19 parts is made in a document of gift that does not name a person
20 described in Subsection A of this section and does not identify
21 the purpose of the gift, the gift may be used only for
22 transplantation or therapy, and the gift passes in accordance
23 with Subsection G of this section.

24 F. If a document of gift specifies only a general
25 intent to make an anatomical gift by words such as "donor",

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1 "organ donor" or "body donor", or by a symbol or statement of
2 similar import, the gift may be used only for transplantation
3 or therapy and the gift passes in accordance with Subsection G
4 of this section.

5 G. For purposes of Subsections B, E and F of this
6 section the following rules apply:

7 (1) if the part is an eye, the gift passes to
8 the appropriate eye bank;

9 (2) if the part is tissue, the gift passes to
10 the appropriate tissue bank; and

11 (3) if the part is an organ, the gift passes
12 to the appropriate organ procurement organization as custodian
13 of the organ.

14 H. An anatomical gift of an organ for
15 transplantation or therapy, other than an anatomical gift
16 pursuant to Paragraph (2) of Subsection A of this section,
17 passes to the organ procurement organization as custodian of
18 the organ.

19 I. If an anatomical gift does not pass pursuant to
20 Subsections A through H of this section or the decedent's body
21 or part is not used for transplantation, therapy, research or
22 education, custody of the body or part passes to the person
23 under obligation to dispose of the body or part.

24 J. A person may not accept an anatomical gift if
25 the person knows that the gift was not effectively made

1 pursuant to Section [~~5 or 10 of the Jonathan Spradling Revised~~
 2 ~~Uniform Anatomical Gift Act~~] 24-6B-5 or 24-6B-10 NMSA 1978 or
 3 if the person knows that the decedent made a refusal pursuant
 4 to Section [~~7 of that act~~] 24-6B-7 NMSA 1978 that was not
 5 revoked. For purposes of this subsection, if a person knows
 6 that an anatomical gift was made on a document of gift, the
 7 person is deemed to know of any amendment or revocation of the
 8 gift or any refusal to make an anatomical gift on the same
 9 document of gift.

10 K. Except as otherwise provided in Paragraph (2) of
 11 Subsection A of this section, nothing in the Jonathan Spradling
 12 Revised Uniform Anatomical Gift Act affects the allocation of
 13 organs for transplantation or therapy.

14 L. An individual's participation in the state's
 15 medical cannabis program established pursuant to the Lynn and
 16 Erin Compassionate Use Act shall not in itself constitute
 17 grounds for refusing to allow that individual to receive an
 18 anatomical gift."

19 SECTION 2. Section 26-2B-1 NMSA 1978 (being Laws 2007,
 20 Chapter 210, Section 1) is amended to read:

21 "26-2B-1. SHORT TITLE.--~~[Sections 1 through 7 of this~~
 22 ~~act]~~ Chapter 26, Article 2B NMSA 1978 may be cited as the "Lynn
 23 and Erin Compassionate Use Act" in honor of Lynn Pierson and
 24 Erin Armstrong."

25 SECTION 3. Section 26-2B-3 NMSA 1978 (being Laws 2007,

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1 Chapter 210, Section 3) is amended to read:

2 "26-2B-3. DEFINITIONS.--As used in the Lynn and Erin
3 Compassionate Use Act:

4 A. "adequate supply" means an amount of cannabis,
5 in any form approved by the department, possessed by a
6 qualified patient or collectively possessed by a qualified
7 patient and the qualified patient's primary caregiver [~~that is~~
8 ~~determined by rule of the department to be no more than~~
9 ~~reasonably necessary to ensure the uninterrupted availability~~
10 ~~of cannabis for a period of three months]~~ in accordance with
11 Section 6 of this 2017 act and that is derived solely from an
12 intrastate source;

13 B. "chronic condition" means a condition that, in
14 the opinion of a patient's practitioner, lasts or is expected
15 to last three months or longer;

16 [~~B.~~] C. "debilitating medical condition" means:

- 17 (1) cancer;
18 (2) glaucoma;
19 (3) multiple sclerosis;
20 (4) damage to the nervous tissue of the spinal
21 cord, with objective neurological indication of intractable
22 spasticity;
23 (5) epilepsy;
24 (6) positive status for human immunodeficiency
25 virus or acquired immune deficiency syndrome;

1 (7) admitted into hospice care in accordance
2 with rules promulgated by the department; [~~or~~]

3 (8) amyotrophic lateral sclerosis;

4 (9) Crohn's disease;

5 (10) hepatitis C infection, for which the
6 applicant or qualified patient is currently receiving antiviral
7 treatment;

8 (11) Huntington's disease;

9 (12) inclusion body myositis;

10 (13) inflammatory autoimmune-mediated
11 arthritis;

12 (14) painful peripheral neuropathy;

13 (15) Parkinson's disease;

14 (16) posttraumatic stress disorder;

15 (17) severe chronic pain;

16 (18) severe anorexia or cachexia;

17 (19) spasmodic torticollis;

18 (20) ulcerative colitis;

19 (21) substance use disorder, for which the
20 applicant or qualified patient is currently undergoing
21 treatment for the applicant's or qualified patient's condition;

22 or

23 [~~(8)~~] (22) any other medical condition,
24 medical treatment or disease as approved by the department;

25 [~~(6)~~] D. "department" means the department of

1 health;

2 ~~[D.]~~ E. "licensed producer" means any person or
3 association of persons within New Mexico that the department
4 determines to be qualified to produce, possess, distribute and
5 dispense cannabis pursuant to the Lynn and Erin Compassionate
6 Use Act and that is licensed by the department;

7 ~~[E.]~~ F. "practitioner" means a person licensed in
8 New Mexico to prescribe and administer drugs that are subject
9 to the Controlled Substances Act;

10 ~~[F.]~~ G. "primary caregiver" means a resident of New
11 Mexico who is at least eighteen years of age and who has been
12 designated by the patient's practitioner as being necessary to
13 take responsibility for managing the well-being of a qualified
14 patient with respect to the medical use of cannabis pursuant to
15 the provisions of the Lynn and Erin Compassionate Use Act;

16 ~~[G.]~~ H. "qualified patient" means a resident of New
17 Mexico who has been ~~[diagnosed by a practitioner as having a~~
18 ~~debilitating medical condition and has received written~~
19 ~~certification and] issued a registry identification card~~
20 ~~[issued] pursuant to the Lynn and Erin Compassionate Use Act~~
21 ~~[and] on the basis of:~~

22 (1) having been diagnosed by a practitioner as
23 having a debilitating medical condition for which the
24 practitioner has issued written certification; or

25 (2) status as a veteran;

1 I. "personal production license" means a license
2 issued to a qualified patient participating in the medical
3 cannabis program to permit the qualified patient to produce
4 medical cannabis for the qualified patient's own personal use
5 in accordance with the provisions of the Lynn and Erin
6 Compassionate Use Act and department rules;

7 J. "registry identification card" means a document
8 that the department issues:

9 (1) to a qualified patient that identifies the
10 bearer as a qualified patient and authorizes the qualified
11 patient to use cannabis for a debilitating medical condition;
12 or

13 (2) to a primary caregiver that identifies the
14 bearer as a primary caregiver authorized to engage in the
15 intrastate possession and administration of cannabis for the
16 sole use of a qualified patient who is identified on the
17 document;

18 K. "THC" means tetrahydrocannabinol, a substance
19 that is the primary psychoactive ingredient in cannabis;

20 L. "veteran" means a person who served in the
21 uniformed services and who was discharged or released from the
22 uniformed services under conditions other than dishonorable;
23 and

24 [H.] M. "written certification" means a statement
25 in a patient's medical records or a statement signed by a

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1 patient's practitioner that indicates, in the practitioner's
2 professional opinion, that the patient has a debilitating
3 medical condition and the practitioner believes that the
4 potential health benefits of the medical use of cannabis would
5 likely outweigh the health risks for the patient [~~A written~~
6 ~~certification is not valid for more than one year from the date~~
7 ~~of issuance]."~~

8 SECTION 4. Section 26-2B-7 NMSA 1978 (being Laws 2007,
9 Chapter 210, Section 7) is amended to read:

10 "26-2B-7. REGISTRY IDENTIFICATION CARDS--DEPARTMENT
11 RULES--DUTIES--PRESUMPTIVE ELIGIBILITY--RECIPROCITY.--

12 A. [~~No later than October 1, 2007, and~~] After
13 consultation with the advisory board, the department shall
14 promulgate rules in accordance with the State Rules Act to
15 implement the purpose of the Lynn and Erin Compassionate Use
16 Act. The rules shall:

17 (1) govern the manner in which the department
18 will consider applications for registry identification cards
19 and for the renewal of identification cards for qualified
20 patients and primary caregivers;

21 [~~(2) define the amount of cannabis that is~~
22 ~~necessary to constitute an adequate supply, including amounts~~
23 ~~for topical treatments;~~

24 ~~(3)]~~ (2) identify criteria and set forth
25 procedures for including additional medical conditions, medical

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1 treatments or diseases to the list of debilitating medical
2 conditions that qualify for the medical use of cannabis.
3 Procedures shall include a petition process and shall allow for
4 public comment and public hearings before the advisory board;

5 ~~[(4)]~~ (3) set forth additional medical
6 conditions, medical treatments or diseases to the list of
7 debilitating medical conditions that qualify for the medical
8 use of cannabis as recommended by the advisory board;

9 ~~[(5)]~~ (4) identify requirements for the
10 licensure of producers and cannabis production facilities and
11 set forth procedures to obtain licenses;

12 ~~[(6)]~~ (5) develop a distribution system for
13 medical cannabis that provides for:

14 (a) cannabis production facilities
15 within New Mexico housed on secured grounds and operated by
16 licensed producers; and

17 (b) distribution of medical cannabis to
18 qualified patients or their primary caregivers to take place at
19 locations that are designated by the department and that are
20 not within three hundred feet of any school, church or daycare
21 center;

22 ~~[(7)]~~ (6) determine additional duties and
23 responsibilities of the advisory board; and

24 ~~[(8)]~~ (7) be revised and updated as necessary.

25 B. The department shall issue registry

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1 identification cards to a patient and to the primary caregiver
2 for that patient, if any, who submit the following, in
3 accordance with the department's rules:

- 4 (1) a written certification or proof of
5 veteran status;
- 6 (2) the name, address and date of birth of the
7 patient;
- 8 (3) the name, address and telephone number of
9 the patient's practitioner; and
- 10 (4) the name, address and date of birth of the
11 patient's primary caregiver, if any.

12 C. The department shall presume eligible and issue,
13 within twenty-four hours of receipt of application completed in
14 accordance with Subsection B of this section and department
15 rules, a registry identification card to any person who applies
16 for a registry identification card. Within thirty days of
17 receipt of an application, the department shall verify the
18 information contained in an application submitted pursuant to
19 Subsection B of this section [~~and shall approve or deny an~~
20 ~~application within thirty days of receipt~~]. The department may
21 deny an application only if the applicant did not provide the
22 information required pursuant to Subsection B of this section
23 or if the department determines that the information provided
24 is false. A person whose application has been denied shall not
25 reapply for six months from the date of the denial unless

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1 otherwise authorized by the department.

2 D. ~~[The department shall issue a registry~~
3 ~~identification card within five days of approving an~~
4 ~~application, and a card shall expire one year after the date of~~
5 ~~issuance.]~~ A registry identification card shall contain:

6 (1) the name, address and date of birth of the
7 qualified patient and primary caregiver, if any;

8 (2) the date of issuance and expiration date
9 of the registry identification card; and

10 (3) other information that the department may
11 require by rule.

12 E. A person who possesses a registry identification
13 card shall notify the department of any change in the person's
14 name, address, qualified patient's practitioner, qualified
15 patient's primary caregiver or change in status of the
16 qualified patient's debilitating medical condition within ten
17 days of the change.

18 F. Possession of or application for a registry
19 identification card shall not constitute probable cause or give
20 rise to reasonable suspicion for a governmental agency to
21 search the person or property of the person possessing or
22 applying for the card.

23 G. The department shall maintain a confidential
24 file containing the names and addresses of the persons who have
25 either applied for or received a registry identification card.

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1 Individual names on the list shall be confidential and not
2 subject to disclosure, except:

3 (1) to authorized employees or agents of the
4 department as necessary to perform the duties of the department
5 pursuant to the provisions of the Lynn and Erin Compassionate
6 Use Act;

7 (2) to authorized employees of state or local
8 law enforcement agencies, but only for the purpose of verifying
9 that a person is lawfully in possession of a registry
10 identification card; or

11 (3) as provided in the federal Health
12 Insurance Portability and Accountability Act of 1996.

13 H. By July 1, 2017, January 1, 2018 and each
14 January 1 thereafter, the department shall:

15 (1) publish on its website in a publicly
16 accessible manner a current census of qualified patients; and

17 (2) notify all licensed producers of the
18 current census of qualified patients.

19 I. An individual who holds proof of authorization
20 to participate in the medical cannabis program of another state
21 of the United States:

22 (1) may participate in the medical cannabis
23 program pursuant to the Lynn and Erin Compassionate Use Act in
24 accordance with that act and department rules; and

25 (2) shall not be required to comply with the

1 registry identification card application and renewal
2 requirements established pursuant to this section and
3 department rules."

4 SECTION 5. A new section of the Lynn and Erin
5 Compassionate Use Act is enacted to read:

6 "[NEW MATERIAL] REGISTRY IDENTIFICATION CARD--RENEWAL--
7 WRITTEN CERTIFICATION.--The department shall require a
8 qualified patient to reapply for a registry identification card
9 as follows:

10 A. for a qualified patient who is a veteran or
11 whose certification of a debilitating medical condition
12 indicates that the patient's debilitating medical condition is
13 a chronic condition, no sooner than three years from the date
14 the patient's current registry identification card is issued;
15 and

16 B. for a qualified patient whose certification of a
17 debilitating medical condition does not indicate that the
18 patient's debilitating medical condition is a chronic
19 condition, no sooner than three years from the date the
20 patient's current registry identification card is issued;
21 provided that, in order to remain eligible for participation in
22 the medical cannabis program established pursuant to the Lynn
23 and Erin Compassionate Use Act, a qualified patient whose
24 debilitating medical condition is not a chronic condition shall
25 submit annually to the department a statement from the

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1 qualified patient's practitioner indicating that:

2 (1) the practitioner has examined the
3 qualified patient during the preceding twelve months;

4 (2) the qualified patient continues to have a
5 debilitating medical condition; and

6 (3) the practitioner believes that the
7 potential health benefits of the medical use of cannabis would
8 likely outweigh the health risks for the qualified patient."

9 SECTION 6. A new section of the Lynn and Erin
10 Compassionate Use Act is enacted to read:

11 "[NEW MATERIAL] ADEQUATE SUPPLY--LIMITATION ON THC
12 CONTENT.--

13 A. A qualified patient who does not have a personal
14 production license or a primary caregiver shall possess no more
15 than five ounces of cannabis.

16 B. A qualified patient who has a personal
17 production license shall possess no more than twelve marijuana
18 plants, with six or fewer being mature, flowering plants that
19 are producing a usable form of cannabis; provided that a
20 qualified patient who has a personal production license may
21 possess that qualified patient's entire harvest of cannabis.

22 C. In accordance with census numbers published in
23 accordance with Subsection H of Section 26-2B-7 NMSA 1978, a
24 licensed producer shall possess no more than the following
25 amounts:

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1 (1) when the current census is thirty-five
2 thousand qualified patients, a licensed producer shall possess
3 no more than five hundred cannabis plants;

4 (2) when the current census is forty thousand
5 qualified patients, a licensed producer shall possess no more
6 than six hundred cannabis plants;

7 (3) when the current census is forty-five
8 thousand qualified patients, a licensed producer shall possess
9 no more than seven hundred cannabis plants;

10 (4) when the current census is fifty thousand
11 qualified patients, a licensed producer shall possess no more
12 than eight hundred cannabis plants;

13 (5) when the current census is fifty-five
14 thousand qualified patients, a licensed producer shall possess
15 no more than nine hundred cannabis plants; and

16 (6) when the current census is sixty thousand
17 or more qualified patients, a licensed producer shall possess
18 no more than one thousand cannabis plants.

19 D. The department shall not limit the amount of THC
20 concentration in a cannabis-derived product."

21 SECTION 7. A new section of the Lynn and Erin
22 Compassionate Use Act is enacted to read:

23 "[NEW MATERIAL] LICENSED PRODUCERS--LICENSE FEES.--

24 A. A licensed producer shall submit to the
25 department a nonrefundable licensure fee before beginning

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1 operations, no earlier than July 1 of each renewal year and no
2 later than August 1 of each renewal year, of:

3 (1) thirty thousand dollars (\$30,000) for the
4 first one hundred fifty cannabis plants to be possessed by the
5 licensed producer; and

6 (2) ten thousand dollars (\$10,000) for each
7 additional quantity of fifty plants in excess of the one
8 hundred fifty plants to be possessed by the licensed producer.

9 B. Regardless of the number of cannabis plants that
10 a licensed producer possesses, the department shall not charge
11 any licensed producer more than ninety thousand dollars
12 (\$90,000) in licensure fees:

13 (1) before the licensed producer begins
14 operations; or

15 (2) when the licensed producer renews its
16 license each year."

17 SECTION 8. [NEW MATERIAL] MEDICAL CANNABIS PROGRAM--
18 REMOVAL OF CHILDREN--FAMILY SERVICES INTERVENTION.--An
19 individual's participation in the state's medical cannabis
20 program established pursuant to the Lynn and Erin Compassionate
21 Use Act shall not in itself constitute grounds for:

22 A. removal and placement into state custody of a
23 child in that individual's care pursuant to the Abuse and
24 Neglect Act; or

25 B. the provision of state prevention, diversion or

1 intervention services to that individual's family pursuant to
2 the Family Services Act.

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underscoring material = new
~~[bracketed material] = delete~~