

1 SENATE BILL 371

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Jacob R. Candelaria and Stuart Ingle

5
6
7
8
9
10 AN ACT

11 RELATING TO HEALTH; AMENDING AND ENACTING SECTIONS OF THE LYNN
12 AND ERIN COMPASSIONATE USE ACT TO MAKE CHANGES TO ELIGIBILITY
13 PROVISIONS AND ESTABLISH THREE-YEAR CERTIFICATION AND NEW
14 QUALIFYING MEDICAL CONDITIONS, LICENSED PRODUCER LICENSING
15 PROVISIONS AND INTERSTATE RECIPROCITY; AMENDING A SECTION OF
16 THE JONATHAN SPRADLING REVISED UNIFORM ANATOMICAL GIFT ACT;
17 ENACTING A NEW SECTION OF THE NMSA 1978 TO REMOVE PARTICIPATION
18 IN THE STATE'S MEDICAL CANNABIS PROGRAM AS GROUNDS FOR CHILD
19 PROTECTIVE SERVICES INTERVENTION; ALLOWING EMPLOYER OR INSURER
20 PAYMENT FOR THE REASONABLE AND NECESSARY USE OF MEDICAL
21 CANNABIS PURSUANT TO THE WORKERS' COMPENSATION ACT.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

.206921.1

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 "24-6B-11. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT--
2 PURPOSE OF ANATOMICAL GIFT.--

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

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

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

13 (3) an eye bank or tissue bank.

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

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

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

.206921.1

1 the appropriate eye bank;

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

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

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

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

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

25 F. If a document of gift specifies only a general

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

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

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

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

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

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

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

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

25 J. A person may not accept an anatomical gift if

.206921.1

underscored material = new
[bracketed material] = delete

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

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

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

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

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

.206921.1

underscored material = new
[bracketed material] = delete

1 SECTION 3. Section 26-2B-3 NMSA 1978 (being Laws 2007,
2 Chapter 210, Section 3) is amended to read:

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

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

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

17 [~~B-~~] C. "debilitating medical condition" means:
18 (1) cancer;
19 (2) glaucoma;
20 (3) multiple sclerosis;
21 (4) damage to the nervous tissue of the spinal
22 cord, with objective neurological indication of intractable
23 spasticity;
24 (5) epilepsy;
25 (6) positive status for human immunodeficiency

underscored material = new
[bracketed material] = delete

1 virus or acquired immune deficiency syndrome;

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

4 (8) amyotrophic lateral sclerosis;

5 (9) Crohn's disease;

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

9 (11) Huntington's disease;

10 (12) inclusion body myositis;

11 (13) inflammatory autoimmune-mediated
12 arthritis;

13 (14) painful peripheral neuropathy;

14 (15) Parkinson's disease;

15 (16) posttraumatic stress disorder;

16 (17) severe chronic pain;

17 (18) severe anorexia or cachexia;

18 (19) spasmodic torticollis;

19 (20) ulcerative colitis;

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

23 or

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

.206921.1

underscored material = new
[bracketed material] = delete

1 [~~G.~~] D. "department" means the department of
2 health;

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

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

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

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

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

.206921.1

underscored material = new
[bracketed material] = delete

1 (2) status as a veteran;

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

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

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

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

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

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

25 [~~H.~~] M. "written certification" means a statement

underscored material = new
[bracketed material] = delete

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

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

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

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

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

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

25 ~~(3)] (2) identify criteria and set forth~~

.206921.1

underscoring material = new
[bracketed material] = delete

1 procedures for including additional medical conditions, medical
2 treatments or diseases to the list of debilitating medical
3 conditions that qualify for the medical use of cannabis.

4 Procedures shall include a petition process and shall allow for
5 public comment and public hearings before the advisory board;

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

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

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

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

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

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

25 ~~[(8)]~~ (7) be revised and updated as necessary.

.206921.1

underscored material = new
[bracketed material] = delete

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

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

13 C. For a patient who applies for a registry
14 identification card and has submitted written certification,
15 the department shall presume the applicant eligible and issue,
16 within twenty-four hours of receipt of application completed in
17 accordance with Subsection B of this section and department
18 rules, a registry identification card. Within thirty days of
19 receipt of an application, the department shall verify the
20 information contained in an application submitted with written
21 certification pursuant to Subsection B of this section [~~and~~
22 ~~shall approve or deny an application within thirty days of~~
23 ~~receipt~~].

24 D. For a patient who applies for a registry
25 identification card and has submitted proof of veteran status,

underscored material = new
[bracketed material] = delete

1 the department shall not presume that applicant eligible but
2 shall expedite verification of that applicant's application for
3 a registry identification card in accordance with department
4 rules.

5 E. The department may deny an application only if
6 the applicant did not provide the information required pursuant
7 to Subsection B of this section or if the department determines
8 that the information provided is false. A person whose
9 application has been denied shall not reapply for six months
10 from the date of the denial unless otherwise authorized by the
11 department.

12 [~~D.~~ ~~The department shall issue a registry~~
13 ~~identification card within five days of approving an~~
14 ~~application, and a card shall expire one year after the date of~~
15 ~~issuance.~~]

16 F. A registry identification card shall contain:

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

19 (2) the date of issuance and expiration date
20 of the registry identification card; and

21 (3) other information that the department may
22 require by rule.

23 [~~E.~~] G. A person who possesses a registry
24 identification card shall notify the department of any change
25 in the person's name, address, qualified patient's

.206921.1

underscored material = new
[bracketed material] = delete

1 practitioner, qualified patient's primary caregiver or change
2 in status of the qualified patient's debilitating medical
3 condition within ten days of the change.

4 ~~[F-]~~ H. Possession of or application for a registry
5 identification card shall not constitute probable cause or give
6 rise to reasonable suspicion for a governmental agency to
7 search the person or property of the person possessing or
8 applying for the card.

9 ~~[G-]~~ I. The department shall maintain a
10 confidential file containing the names and addresses of the
11 persons who have either applied for or received a registry
12 identification card. Individual names on the list shall be
13 confidential and not subject to disclosure, except:

14 (1) to authorized employees or agents of the
15 department as necessary to perform the duties of the department
16 pursuant to the provisions of the Lynn and Erin Compassionate
17 Use Act;

18 (2) to authorized employees of state or local
19 law enforcement agencies, but only for the purpose of verifying
20 that a person is lawfully in possession of a registry
21 identification card; or

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

24 J. By July 1, 2017, January 1, 2018 and each
25 January 1 thereafter, the department shall:

.206921.1

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

3 (2) notify all licensed producers of the
4 current census of qualified patients."

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

7 "[NEW MATERIAL] NONRESIDENT RECIPROCITY.--

8 A. For the purposes of using, possessing and
9 dispensing medical cannabis, the state and licensed nonprofit
10 producers shall recognize and honor a nonresident card under
11 the following circumstances:

12 (1) the state or the jurisdiction that issued
13 the nonresident card grants an exemption from criminal
14 prosecution
15 for the medical use of cannabis;

16 (2) the state or the jurisdiction that issued
17 the nonresident card requires, as a prerequisite to the
18 issuance of such a card, that a physician advise the person
19 that the medical use of cannabis may mitigate the symptoms or
20 effects of the person's medical condition;

21 (3) the nonresident card has an expiration
22 date and has not yet expired; and

23 (4) the person issued the nonresident card
24 agrees to, and abides by, the prohibitions, restrictions and
25 limitations on the medical use of cannabis in this state.

.206921.1

underscored material = new
[bracketed material] = delete

1 B. For the purposes of the reciprocity described in
2 this section:

3 (1) the amount of medical cannabis that the
4 person issued a nonresident card is entitled to possess in the
5 person's state or jurisdiction of residence is not relevant;

6 and

7 (2) the person issued a nonresident card shall
8 not, while the person is present in this state, possess
9 cannabis for medical purposes in excess of the limits set forth
10 by the department.

11 C. As used in this section, "nonresident card"
12 means a card or other identification that:

13 (1) is issued by a state or jurisdiction other
14 than New Mexico; and

15 (2) is the functional equivalent of a registry
16 identification card as determined by the department."

17 **SECTION 6.** A new section of the Lynn and Erin
18 Compassionate Use Act is enacted to read:

19 "[NEW MATERIAL] REGISTRY IDENTIFICATION CARD--RENEWAL--
20 WRITTEN CERTIFICATION.--The department shall require a
21 qualified patient to reapply for a registry identification card
22 as follows:

23 A. for a qualified patient who is a veteran or
24 whose certification of a debilitating medical condition
25 indicates that the patient's debilitating medical condition is

.206921.1

underscored material = new
[bracketed material] = delete

1 a chronic condition, no sooner than three years from the date
2 the patient's current registry identification card is issued;
3 and

4 B. for a qualified patient whose certification of a
5 debilitating medical condition does not indicate that the
6 patient's debilitating medical condition is a chronic
7 condition, no sooner than three years from the date the
8 patient's current registry identification card is issued;
9 provided that, in order to remain eligible for participation in
10 the medical cannabis program established pursuant to the Lynn
11 and Erin Compassionate Use Act, a qualified patient whose
12 debilitating medical condition is not a chronic condition shall
13 submit annually to the department a statement from the
14 qualified patient's practitioner indicating that:

15 (1) the practitioner has examined the
16 qualified patient during the preceding twelve months;

17 (2) the qualified patient continues to have a
18 debilitating medical condition; and

19 (3) the practitioner believes that the
20 potential health benefits of the medical use of cannabis would
21 likely outweigh the health risks for the qualified patient."

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

24 "[NEW MATERIAL] LICENSED PRODUCERS--BIENNIAL LICENSURE--
25 LICENSE FEES.--The department shall provide for biennial

.206921.1

underscored material = new
[bracketed material] = delete

1 licensure of licensed producers. A licensed producer shall
2 submit to the department a nonrefundable licensure fee before
3 beginning operations, no earlier than July 1 of each renewal
4 year and no later than August 1 of each renewal year, of:

5 A. thirty thousand dollars (\$30,000) for the first
6 one hundred fifty cannabis plants to be possessed by the
7 licensed producer; and

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

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

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

19 B. the provision of state prevention, diversion or
20 intervention services to that individual's family pursuant to
21 the Family Services Act.

22 SECTION 9. A new section of the Workers' Compensation Act
23 is enacted to read:

24 "[NEW MATERIAL] WORKERS' COMPENSATION PAYMENT FOR MEDICAL
25 CANNABIS.--An employer or insurer shall pay for medical

.206921.1

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

1 cannabis for a worker when:

2 A. an authorized health care provider determines
3 that the use of medical cannabis is reasonable and necessary
4 health care for the worker's injury;

5 B. the authorized health care provider is
6 authorized by law to prescribe and administer drugs that are
7 subject to the Controlled Substances Act;

8 C. the treatment or services being provided to the
9 worker by the health care provider are within the health care
10 provider's scope of practice as determined by the health care
11 provider's license; and

12 D. the worker has a valid registry identification
13 card issued by the department of health pursuant to the Lynn
14 and Erin Compassionate Use Act."

15 - 19 -