SENATE BILL 406

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Gerald Ortiz y Pino

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, CIVIL PROTECTIONS AND INTERSTATE AND TRIBAL
RECIprocity; AMENDING PENALTIES; CREATING THE QUALIFIED PATIENT
AND PRIMARY CAREGIVER ADVISORY BOARD; AMENDING A SECTION OF THE
JONATHAN SPRADLING REVISED UNIFORM ANATOMICAL GIFT ACT;
ENACTING A NEW SECTION OF THE FAMILY SERVICES ACT 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 26-2B-1 NMSA 1978 (being Laws 2007,
Chapter 210, Section 1) is amended to read:

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

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

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

A. "adequate supply" means an amount of cannabis, in any form approved by the department, possessed by a qualified patient or collectively possessed by a qualified patient and the qualified patient's primary caregiver that is determined by rule of the department to be no more than reasonably necessary to ensure the uninterrupted availability of cannabis for a period of three months and that is derived solely from an intrastate source and is not less than one ounce per day;

B. "cannabis":

(1) means all parts of the plant Cannabis sativa L. containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and
(2) does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the sterilized seed of the plant that is incapable of germination; or the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink or another product;

C. "cannabis consumption area" means an area within a cannabis collective's or cannabis producer's licensed premises where cannabis may be consumed;

D. "cannabis courier" means a person or entity that is licensed by the department to transport usable cannabis and cannabis products within the state from a cannabis establishment to:

(1) a qualified patient;
(2) a primary caregiver; or
(3) another cannabis establishment;

E. "cannabis establishment" means:

(1) a licensed cannabis courier;
(2) a licensed cannabis testing facility;
(3) an approved cannabis manufacturer; or
(4) a licensed cannabis producer;

F. "cannabis manufacturer" means a business entity that manufactures cannabis products and has been approved by .211391.8
the department;

G. "cannabis producer" means a person that is licensed by the department to possess, produce, dispense, distribute and manufacture cannabis and cannabis products wholesale or by direct sale to qualified patients and primary caregivers;

H. "cannabis product":

(1) means a product that contains cannabis, including edible or topical products that may also contain other ingredients; and

(2) does not include the weight of any other ingredient combined with cannabis or cannabis extract to prepare topical or oral administrations, food, drink or another product;

I. "cannabis testing facility" means a person that is licensed by the department to perform tests of cannabis products to analyze the strength or purity of the items and to transport cannabis products to the cannabis testing facility from cannabis establishments;

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

K. "debilitating medical condition" means:

(1) cancer;

(2) glaucoma;
(3) multiple sclerosis;

(4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;

(5) seizure disorder, including epilepsy;

(6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;

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

(8) autism spectrum disorder;

(9) amyotrophic lateral sclerosis;

(10) Crohn's disease;

(11) hepatitis C infection;

(12) Huntington's disease;

(13) inclusion body myositis;

(14) inflammatory autoimmune-mediated arthritis;

(15) intractable nausea or vomiting;

(16) neurodegenerative dementia;

(17) obstructive sleep apnea;

(18) painful peripheral neuropathy;

(19) Parkinson's disease;

(20) posttraumatic stress disorder;

(21) severe pain;

(22) severe anorexia or cachexia;
(23) spasmodic torticollis;
(24) ulcerative colitis;
(25) substance use disorder;
(26) any other serious medical condition,
medical treatment or disease that a medical practitioner
believes would be alleviated by the use of cannabis; or

(27) any other medical condition,
medical treatment or disease as approved by the department;

[C.] "department" means the department of
health;

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

M. "financial consideration":

(1) means value that is given or received,
directly or indirectly, through sales, barter, trade, fees,
charges, dues, contributions or donations; and

(2) does not mean the value in cannabis
produced or cannabis products manufactured by a person under a
personal production license;

N. "license" means a license issued pursuant to the
Lynn and Erin Compassionate Use Act;

O. "licensee" means a person that holds a license;
P. "licensee representative" means an owner, director, officer, manager, employee, agent or other representative of a licensee, to the extent that person acts in a representative capacity;

Q. "manufacture":
(1) means to prepare a cannabis product; and
(2) does not include producing the cannabis contained in a cannabis product;

R. "medical cannabis program" means the program established pursuant to the Lynn and Erin Compassionate Use Act for authorization and regulation of the medical use of cannabis in the state;

S. "personal production license" means a license issued to a qualified patient or to a qualified patient's primary caregiver participating in the medical cannabis program to permit the qualified patient or the qualified patient's primary caregiver to produce cannabis for the qualified patient's use at the qualified patient's or primary caregiver's address or at an alternative address;

[T.] "practitioner" means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act;

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

V. "produce" means to engage in any activity related to the planting or cultivation of cannabis;

[G-] W. "qualified patient" means a [resident of New Mexico] person who has been [diagnosed by a practitioner as having a debilitating medical condition and has received written certification and] issued a registry identification card [issued] pursuant to the Lynn and Erin Compassionate Use Act [and] on the basis of having been diagnosed, in person or via telemedicine, by a practitioner as having a debilitating medical condition;

X. "registry identification card" means a document that the department issues:

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

or

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

Y. "telemedicine" means the use of...
telecommunications and information technology to provide
clinical health care from a site apart from the site where the
patient is located, in real time or asynchronously, including
the use of interactive simultaneous audio and video or
store-and-forward technology, or off-site patient monitoring
and telecommunications in order to deliver health care
services;

Z. "THC" means tetrahydrocannabinol, a substance
that is the primary psychoactive ingredient in cannabis; and

[H-] AA. "written certification" means a statement
in a patient's medical records or a statement signed by a
patient's practitioner that indicates, in the practitioner's
professional opinion, that the patient has a debilitating
medical condition and the practitioner believes that the
potential health benefits of the medical use of cannabis would
likely outweigh the health risks for the patient [A written
certification is not valid for more than one year from the date
of issuance]."

SECTION 3. Section 26-2B-4 NMSA 1978 (being Laws 2007,
Chapter 210, Section 4) is amended to read:

"26-2B-4. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES FOR
THE MEDICAL USE OF CANNABIS.--

A. A qualified patient or a qualified patient's
primary caregiver shall not be subject to arrest, prosecution
or penalty in any manner for the possession of or the medical

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use of cannabis if the quantity of cannabis does not exceed an adequate supply;

    [B. A qualified patient's primary caregiver shall not be subject to arrest, prosecution or penalty in any manner for the possession of cannabis for medical use by the qualified patient if the quantity of cannabis does not exceed an adequate supply] provided that a qualified patient or the qualified patient's primary caregiver may possess a maximum of twenty pounds of that qualified patient's harvest of cannabis.

    B. Notwithstanding any other provision of law, the following conduct is lawful and shall not constitute grounds for detention, search or arrest of a person or for a violation of probation or parole, and cannabis products that relate to the conduct are not contraband or subject to seizure or forfeiture pursuant to the Controlled Substances Act or the Forfeiture Act:

        (1) a qualified patient or primary caregiver possessing, displaying, purchasing, obtaining or transporting not more than an adequate supply;

        (2) a qualified patient using or being under the influence of cannabis;

        (3) a qualified patient or primary caregiver transferring, without financial consideration, to a qualified patient or primary caregiver not more than two ounces of cannabis; or
(4) with respect to cannabis cultivated under
a personal production license, a qualified patient or primary
caregiver possessing, planting, cultivating, harvesting,
drying, manufacturing or transporting not more than six mature
cannabis plants and twelve immature cannabis plants and
possessing the cannabis produced by the plants.

C. Subsection A of this section shall not apply to
a qualified patient under the age of eighteen years, unless:

   (1) the qualified patient's practitioner has
explained the potential risks and benefits of the medical use
of cannabis to the qualified patient and to a parent, guardian
or person having legal custody of the qualified patient; and

   (2) a parent, guardian or person having legal
custody consents in writing to:

         (a) allow the qualified patient's
medical use of cannabis;

         (b) serve as the qualified patient's
primary caregiver; and

         (c) control the dosage and the frequency
of the medical use of cannabis by the qualified patient.

D. A qualified patient or a primary caregiver shall
be granted the full legal protections provided in this section
if the qualified patient or primary caregiver is in possession
of a registry identification card. If the qualified patient or
primary caregiver is not in possession of a registry
identification card, the **qualified** patient or **primary** caregiver shall be given an opportunity to produce the registry identification card before any arrest or criminal charges or other penalties are initiated.

E. A practitioner shall not be subject to arrest or prosecution, penalized in any manner or denied any right or privilege for recommending the medical use of cannabis or providing written certification for the medical use of cannabis pursuant to the Lynn and Erin Compassionate Use Act.

F. A **[licensed producer]** licensee or licensee representative shall not be subject to arrest, prosecution or penalty, in any manner, for the production, possession, distribution, [or] dispensing or testing of cannabis pursuant to the Lynn and Erin Compassionate Use Act. **Conduct by a licensee or a licensee representative that is allowed pursuant to a license and conduct by a person that allows property to be used by a licensee or a licensee representative for conduct allowed pursuant to a license is lawful, is not a violation of state or local law and is not a basis for seizure or forfeiture of property or assets under state or local law.**

G. Any property interest that is possessed, owned or used in connection with the medical use of cannabis, or acts incidental to such use, shall not be harmed, neglected, injured or destroyed while in the possession of state or local law enforcement officials. Any such property interest shall not be
forfeited under any state or local law providing for the
forfeiture of property except as provided in the Forfeiture
Act. Cannabis, paraphernalia or other property seized from a
qualified patient or primary caregiver in connection with the
claimed medical use of cannabis shall be returned immediately
upon the determination by a court or prosecutor that the
qualified patient or primary caregiver is entitled to the
protections of the provisions of the Lynn and Erin
Compassionate Use Act, as may be evidenced by a failure to
actively investigate the case, a decision not to prosecute, the
dismissal of charges or acquittal.

H. A state or local government shall not impose a
criminal, civil or administrative penalty on a licensee or a
licensee representative, or on a person that allows property to
be used by a licensee or a licensee representative pursuant to
a license, solely for conduct that is allowed pursuant to a
license.

[H. I. A person shall not be subject to arrest or
prosecution for a cannabis-related offense for simply being in
the presence of the medical use of cannabis as permitted under
the provisions of the Lynn and Erin Compassionate Use Act."

SECTION 4. Section 26-2B-5 NMSA 1978 (being Laws 2007,
Chapter 210, Section 5) is amended to read:

"26-2B-5. PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON
THE MEDICAL USE OF CANNABIS--CRIMINAL PENALTIES."
A. Participation in a medical use of cannabis program by a qualified patient or primary caregiver does not relieve the qualified patient or primary caregiver from:

(1) criminal prosecution or civil penalties for activities not authorized in the Lynn and Erin Compassionate Use Act; or

(2) liability for damages or criminal prosecution arising out of the operation of a vehicle while under the influence of cannabis or

(3) criminal prosecution or civil penalty for possession or use of cannabis:

(a) in a school bus or public vehicle;

(b) on school grounds or property;

(c) in the workplace of the qualified patient's or primary caregiver's employment; or

(d) at a public park, recreation center, youth center or other public place).

B. A person who makes a fraudulent representation to a law enforcement officer about the person's participation in a medical use of cannabis program to avoid arrest or prosecution for a cannabis-related offense is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

C. If a [licensed producer] licensee sells, distributes, dispenses or transfers cannabis to a person not
approved by the department pursuant to the Lynn and Erin
Compassionate Use Act or obtains or transports cannabis outside
New Mexico, [in violation of federal law, the licensed
producer] the licensee shall be subject to arrest, prosecution
and civil or criminal penalties pursuant to state law."

SECTION 5. Section 26-2B-6 NMSA 1978 (being Laws 2007,
Chapter 210, Section 6) is amended to read:

"26-2B-6. ADVISORY BOARD CREATED--DUTIES.--The secretary
of health shall establish an advisory board consisting of
[eight] nine practitioners representing the fields of
neurology, pain management, medical oncology, psychiatry,
infectious disease, family medicine and gynecology. The
practitioners shall be nationally board-certified in their area
of specialty and knowledgeable about the medical use of
cannabis. The members shall be chosen for appointment by the
secretary from a list proposed by the New Mexico medical
society, the New Mexico nurses association, the New Mexico
academy of family physicians, the New Mexico academy of
physician assistants, the New Mexico pharmacists association or
the New Mexico Hispanic medical association. A quorum of the
advisory board shall consist of three members. The advisory
board shall:

A. review and recommend to the department for
approval additional debilitating medical conditions that would
benefit from the medical use of cannabis; provided that the
department shall by rule add to the list of debilitating medical conditions any condition that a majority of the advisory board votes to recommend as a debilitating medical condition;

B. accept and review petitions to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis;

C. convene at least twice per year to conduct public hearings and to evaluate petitions, which shall be maintained as confidential personal health information, to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis;

D. issue recommendations concerning rules to be promulgated for the issuance of the registry identification cards; and

E. recommend quantities of cannabis that are necessary to constitute an adequate supply for qualified patients and primary caregivers."

SECTION 6. Section 26-2B-7 NMSA 1978 (being Laws 2007, Chapter 210, Section 7) is amended to read:

"26-2B-7. REGISTRY IDENTIFICATION CARDS--DEPARTMENT RULES--DUTIES--PRESumptive ELigibility--RECIPROCITY.--

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

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

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

(3) identify criteria and set forth procedures for including additional medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis. Procedures shall include a petition process and shall allow for public comment and public hearings before the advisory board;

(4) set forth additional medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis as recommended by the advisory board;

(5) identify requirements for the licensure of cannabis producers and cannabis production facilities, cannabis couriers, cannabis manufacturers and cannabis testing facilities and set forth procedures to obtain licenses;
(6) develop a distribution system for the medical cannabis program that provides for:

(a) cannabis production facilities within New Mexico housed on secured grounds and operated by [licensed producers] licensees; and

(b) distribution of [medical] cannabis to qualified patients or their primary caregivers to take place at locations that are designated by the department and that are not within three hundred feet of any school, church or daycare center that were in existence in that location before the licensee distributing medical cannabis nearby was licensed;

(7) identify requirements for consumer safety for testing and labeling of cannabis and cannabis products that align with medical cannabis industry best practices for quality assurance. The department shall adopt and promulgate rules pursuant to this paragraph by December 20, 2019;

[(6)] (8) determine additional duties and responsibilities of the advisory board; and

[(7)] (9) be revised and updated as necessary.

B. By December 1, 2019, the department shall develop, in consultation with the qualified patient and primary caregiver advisory board, a plan for collective cultivation among patients or primary caregivers to:

(1) provide space and support for cannabis cultivation for qualified patients with personal production
licenses by other qualified patients, their primary caregivers
or New Mexico Indian nations, tribes or pueblos;

(2) allow storage of cannabis and cannabis
products; and

(3) allow the consumption of cannabis.

[C] The department shall issue registry
identification cards to a patient and to the primary caregiver
for that patient, if any, who submit the following, in
accordance with the department's rules:

(1) a written certification;

(2) the name, address and date of birth of the
patient;

(3) the name, address and telephone number of
the patient's practitioner; and

(4) the name, address and date of birth of the
patient's primary caregiver, if any.

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

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

E. A registry identification card shall contain:

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

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

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

[F. A person who possesses a registry
identification card shall notify the department of any change
in the person's name, [address] qualified patient's
practitioner, qualified patient's primary caregiver or change
in status of the qualified patient's debilitating medical
condition within ten days of the change.

[G. Possession of or application for a registry
identification card shall not constitute probable cause or give
rise to reasonable suspicion for a governmental agency to search the person or property of the person possessing or applying for the card.

[H.] The department shall maintain a confidential file containing the names and addresses of the persons who have either applied for or received a registry identification card. Individual names on the list shall be confidential and not subject to disclosure, except:

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

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

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

I. By July 1, 2019 and each month thereafter, the department shall:

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

(2) notify all licensees of the current census of qualified patients; and
(3) notify local law enforcement of the locations of cannabis establishments.

J. By December 20, 2019, the secretary of health shall adopt and promulgate rules relating to medical cannabis program reciprocity.

K. An individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia or a territory of the United States or a New Mexico Indian nation, tribe or pueblo:

(1) may participate in the medical cannabis program; and

(2) shall not be required to comply with the registry identification card application and renewal requirements established pursuant to this section and department rules."

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

"[NEW MATERIAL] PROGRAM REGULATION AND ADMINISTRATION--FEES--LIMITATION--RULEMAKING--LICENSURE--ISSUANCE--LIMITATIONS--FEES.--

A. The department shall:

(1) regulate and administer the medical cannabis program; and

(2) collect fees to cover the costs of
administering and regulating the medical cannabis program;
provided that the department shall not charge a fee relating to
the medical cannabis registry.

B. By December 20, 2019, the secretary of health
shall adopt and promulgate rules to establish fees for licenses
for cannabis producers, cannabis manufacturers, cannabis
couriers, cannabis testing facilities or any other cannabis
establishments whose operations are authorized pursuant to the
Lynn and Erin Compassionate Use Act.

C. The department shall establish application and
licensing fees applicable to licenses for activity related to
the medical cannabis program. The fees shall be reasonably
calculated to cover the cost of administering and enforcing the
medical cannabis program established in the Lynn and Erin
Compassionate Use Act, including the administration of the
medical cannabis registry by the department; provided that the
fee shall be scaled to reflect the size of a business seeking
or renewing a license.

D. The department shall administer licensure for
medical cannabis program activity provided for in the Lynn and
Erin Compassionate Use Act, which shall include personal
production licenses and licenses for:

(1) cannabis couriers;
(2) cannabis manufacturers;
(3) cannabis producers;
(4) cannabis testing facilities; and
(5) any other activity or person as deemed necessary by the department.

E. The department shall not issue any other license provided for in this section to a cannabis testing facility licensee.

F. In carrying out its licensing duties, the department shall:

(1) issue a license, or a written notice detailing why an application was denied, no later than ninety days following the day on which the application was submitted; and

(2) by May 1, 2020, develop a plan to:
   (a) ensure access to and affordability of cannabis through the medical cannabis program;
   (b) serve rural patients;
   (c) encourage racial, ethnic, gender and geographic diversity among licensees; and
   (d) support license applicants registered with the secretary of state as cooperative businesses.

G. The department shall allow for the smoking, vaporizing and ingesting of cannabis products within a cannabis consumption area on the premises if:

(1) access is restricted to qualified patients
and their primary caregivers; and

(2) cannabis consumption is not visible from any public place or from outside the cannabis consumption area."

SECTION 8. A new section of the Lynn and Erin Compassionate Use Act is enacted to read:

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

A. for a qualified patient whose certification of a debilitating medical condition indicates that the patient's debilitating medical condition is a chronic condition, no sooner than three years from the date the patient's current registry identification card is issued; and

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

(1) the practitioner has examined the qualified patient during the preceding twelve months;
(2) the qualified patient continues to have a debilitating medical condition; and
(3) the practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the qualified patient."

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

"[NEW MATERIAL] QUALIFIED PATIENT AND PRIMARY CAREGIVER ADVISORY BOARD CREATED--DUTIES.--

A. The "qualified patient and primary caregiver advisory board" is created to advocate for the affordability and accessibility of cannabis for all New Mexicans with debilitating medical conditions. The advisory board consists of eight members appointed by the secretary of health to reflect geographic, age, gender, racial and ethnic and medical condition diversity among qualified patients and primary caregivers in the state. The members shall include qualified patients and primary caregivers who:

(1) are veterans;
(2) are residents of rural areas;
(3) hold personal production licenses;
(4) are members of New Mexico Indian nations,
tribes or pueblos; or

(5) work in medical cannabis program advocacy.

B. A quorum of the qualified patient and primary
caregiver advisory board shall consist of three members for
voting purposes.

C. The secretary of health shall convene the first
meeting of the qualified patient and primary caregiver advisory
board by August 1, 2019. At its initial meeting, the advisory
board shall elect a chair from among its members. The chair
shall serve a term of two years and shall serve no more than
two terms.

D. The qualified patient and primary caregiver
advisory board shall:

(1) meet with the department for consultation
at least twice per year to receive reports from the department
detailing qualified patient demographic data, including age,
race and ethnicity, which data shall be de-identified
purchasing data by county to assess qualified patients' ability
to access cannabis statewide;

(2) convene at least once per year to conduct
a public hearing to receive input on issues related to
accessibility and affordability of cannabis for all New
Mexicans, including qualified patients who live in rural
communities, who are members of a New Mexico Indian nation,
tribe or pueblo or who live in federally subsidized or
federally owned housing;

(3) review and issue recommendations concerning the approval or denial of applications for cannabis establishment licensure; and

(4) issue recommendations for department rulemaking concerning medical cannabis program licensing requirements for cannabis establishments and quality and safety testing."

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

"[NEW MATERIAL] THC CONTENT--NO LIMITATION.--The department shall not limit the amount of THC concentration in a cannabis product."

SECTION 11. A new section of the Lynn and Erin Compassionate Use Act is enacted to read:

"[NEW MATERIAL] USE OF CANNABIS--PROTECTIONS.--A qualified patient, primary caregiver, licensee or licensee representative shall not be subject to arrest, prosecution, penalty, civil liability or disciplinary action by a business or professional licensing entity and shall not be denied any right or privilege solely for conduct allowed pursuant to the Lynn and Erin Compassionate Use Act. Except by court order, state and local law enforcement agencies shall not cooperate with or provide assistance to the United States government, or any federal agency thereof, in enforcing the federal Controlled Substances Act.
Act solely for conduct that complies with the Lynn and Erin Compassionate Use Act. The New Mexico supreme court and any disciplinary or character and fitness committees established by that court are considered business or professional licensing entities for the purposes of this section."

SECTION 12. A new section of the Lynn and Erin Compassionate Use Act is enacted to read:

"[NEW MATERIAL] EMPLOYMENT PROTECTIONS.--

A. Unless an employer establishes by a preponderance of the evidence that an employee's lawful use of cannabis has impaired the employee's ability to perform the employee's job responsibilities, it is unlawful to take an adverse employment action against the employee based on any of the following:

(1) conduct allowed under the Lynn and Erin Compassionate Use Act; or

(2) the employee's positive drug test for cannabis components or metabolites.

B. For the purposes of this section, an employer may consider an employee's ability to perform the employee's job responsibilities to be impaired when the employee manifests specific articulable symptoms while working that decrease or reduce the employee's performance of the duties or tasks of the employee's job.

C. Nothing in this section shall:
(1) restrict an employer's ability to prohibit or take adverse employment action against an employee for the possession or use of intoxicating substances during work hours; or
(2) require an employer to commit any act that would cause the employer to be in violation of federal law or that would result in the loss of a federal contract or federal funding.

D. As used in this section, "adverse employment action" means:
(1) refusing to hire or employ a person;
(2) barring or discharging a person from employment;
(3) requiring a person to retire from employment; or
(4) discriminating against an employee in compensation or in terms, conditions or privileges of employment.

SECTION 13. A new section of the Lynn and Erin Compassionate Use Act is enacted to read:

"[NEW MATERIAL] PERSONS UNDER STATE SUPERVISION--PROTECTIONS.--A person who is serving a period of probation or parole or who is in the custody or under the supervision of the state or a local government pending trial as part of a community supervision program shall not be penalized for
SECTION 14. 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--
PURPOSE OF ANATOMICAL GIFT.--

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

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

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

(3) an eye bank or tissue bank.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 15. A new section of the Family Services Act is
enacted to read:

"[NEW MATERIAL] MEDICAL CANNABIS PROGRAM--REMOVAL OF
CHILDREN--FAMILY SERVICES INTERVENTION--SCHOOL ENROLLMENT--
MEDICAL CARE.--

A. An individual's participation in the state's medical cannabis program established pursuant to the Lynn and Erin Compassionate Use Act shall not in itself constitute grounds for:

(1) removal and placement into state custody of a child in that individual's care pursuant to the Abuse and Neglect Act; or

(2) the provision of state prevention, diversion or intervention services to that individual's family pursuant to the Family Services Act.

B. A person shall not be denied custody of or visitation or parenting time with a child, and there is no presumption of neglect or child endangerment, for conduct allowed under the Lynn and Erin Compassionate Use Act, unless the person's behavior creates an immediate danger to the safety of the child as established by clear and convincing evidence. For the purposes of this section, a determination that behavior creates an "immediate danger" shall not be based solely on whether, when or how often a person uses cannabis.

C. A school shall not refuse to enroll or otherwise penalize a person solely for conduct allowed pursuant to the Lynn and Erin Compassionate Use Act, unless failing to do so would cause the school to lose a monetary or licensing-related
benefit under federal law or regulation.

D. A landlord shall not refuse to lease property to, or otherwise penalize, a person solely for conduct allowed pursuant to the Lynn and Erin Compassionate Use Act, unless failing to do so would cause the landlord to lose a monetary or licensing-related benefit under federal law or regulation.

E. For the purposes of medical care, including an organ transplant, a qualified patient's use of cannabis pursuant to the Lynn and Erin Compassionate Use Act shall be considered the equivalent of the use of any other medication under the direction of a physician and shall not be considered to constitute the use of an illicit substance or otherwise disqualify a qualified patient from medical care."