

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 406

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

AN ACT

RELATING TO HEALTH; AMENDING AND ENACTING SECTIONS OF THE LYNN
AND ERIN COMPASSIONATE USE ACT TO EXPAND ELIGIBILITY, TO
PROVIDE FOR A THREE-YEAR REGISTRY IDENTIFICATION CARD AND TO
ESTABLISH NEW QUALIFYING MEDICAL CONDITIONS, CIVIL PROTECTIONS
AND INTERSTATE AND TRIBAL RECIPROCITY; AMENDING PENALTIES;
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:

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

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

6 "26-2B-3. DEFINITIONS.--As used in the Lynn and Erin
7 Compassionate Use Act:

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

16 B. "cannabis":

17 (1) means all parts of the plant Cannabis
18 sativa L. containing a delta-9-tetrahydrocannabinol
19 concentration of more than three-tenths percent on a dry weight
20 basis, whether growing or not; the seeds of the plant; the
21 resin extracted from any part of the plant; and every compound,
22 manufacture, salt, derivative, mixture or preparation of the
23 plant, its seeds or its resin; and

24 (2) does not include the mature stalks of the
25 plant; fiber produced from the stalks; oil or cake made from

1 the seeds of the plant; any other compound, manufacture, salt,
 2 derivative, mixture or preparation of the mature stalks, fiber,
 3 oil or cake; the sterilized seed of the plant that is incapable
 4 of germination; the weight of any other ingredient combined
 5 with cannabis to prepare topical or oral administrations, food,
 6 drink or another product; or hemp;

7 C. "cannabis consumption area" means an area within
 8 a producer's licensed premises where cannabis may be consumed
 9 that complies with rule as established by the department;

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

14 (1) a qualified patient;

15 (2) a primary caregiver; or

16 (3) another cannabis establishment;

17 E. "cannabis establishment" means:

18 (1) a licensed cannabis courier;

19 (2) a licensed cannabis testing facility;

20 (3) a licensed cannabis manufacturer;

21 (4) a licensed cannabis producer; or

22 (5) such other person that the department may

23 by rule approve for participation in the medical cannabis
 24 program;

25 F. "cannabis manufacturer" means a person that is

1 licensed by the department to:

2 (1) manufacture cannabis products;

3 (2) package, transport or courier cannabis
4 products;

5 (3) have cannabis products tested by a
6 cannabis testing facility;

7 (4) sell and transport cannabis products to
8 other cannabis establishments; and

9 (5) prepare products for personal production
10 license holders;

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

16 H. "cannabis product":

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

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

24 I. "cannabis testing facility" means a person that
25 is licensed by the department to perform tests of cannabis

1 products to analyze the strength or purity of the items and to
2 collect cannabis samples and transport cannabis products to the
3 cannabis testing facility from cannabis establishments;

4 [~~B-~~] J. "debilitating medical condition" means:

5 (1) cancer;
6 (2) glaucoma;
7 (3) multiple sclerosis;
8 (4) damage to the nervous tissue of the spinal
9 cord, with objective neurological indication of intractable
10 spasticity;

11 (5) seizure disorder, including epilepsy;

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

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

16 (8) amyotrophic lateral sclerosis;

17 (9) Crohn's disease;

18 (10) hepatitis C infection;

19 (11) Huntington's disease;

20 (12) inclusion body myositis;

21 (13) inflammatory autoimmune-mediated
22 arthritis;

23 (14) intractable nausea or vomiting;

24 (15) obstructive sleep apnea;

25 (16) painful peripheral neuropathy;

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- 1 (17) Parkinson's disease;
- 2 (18) posttraumatic stress disorder;
- 3 (19) severe chronic pain;
- 4 (20) severe anorexia or cachexia;
- 5 (21) spasmodic torticollis;
- 6 (22) ulcerative colitis; or
- 7 ~~[(8)]~~ (23) any other medical condition,
- 8 medical treatment or disease as approved by the department;

9 ~~[G.]~~ K. "department" means the department of

10 health;

11 ~~[D. "licensed producer" means any person or~~

12 ~~association of persons within New Mexico that the department~~

13 ~~determines to be qualified to produce, possess, distribute and~~

14 ~~dispense cannabis pursuant to the Lynn and Erin Compassionate~~

15 ~~Use Act and that is licensed by the department;]~~

16 L. "hemp" means the plant cannabis sativa L. and

17 any part of the plant, whether growing or not, containing a

18 delta-9-tetrahydrocannabinol concentration of no more than

19 three-tenths percent on a dry weight basis;

20 M. "license" means a license issued pursuant to the

21 Lynn and Erin Compassionate Use Act;

22 N. "licensee" means a person that holds a license;

23 O. "licensee representative" means an owner,

24 director, officer, manager, employee, agent or other

25 representative of a licensee, to the extent that person acts in

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1 a representative capacity;

2 P. "manufacture" means to prepare a cannabis
3 product;

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

8 R. "personal production license" means a license
9 issued to a qualified patient or to a qualified patient's
10 primary caregiver participating in the medical cannabis program
11 to permit the qualified patient or the qualified patient's
12 primary caregiver to produce cannabis for the qualified
13 patient's use at an address approved by the department;

14 [~~E.~~] S. "practitioner" means a person licensed in
15 New Mexico to prescribe and administer drugs that are subject
16 to the Controlled Substances Act;

17 [~~F.~~] T. "primary caregiver" means a resident of New
18 Mexico who is at least eighteen years of age and who has been
19 designated by the patient's practitioner as being necessary to
20 take responsibility for managing the well-being of a qualified
21 patient with respect to the medical use of cannabis pursuant to
22 the provisions of the Lynn and Erin Compassionate Use Act;

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

25 [~~G.~~] V. "qualified patient" means a [~~resident of~~

1 ~~New Mexico~~] person who has been diagnosed by a practitioner as
2 having a debilitating medical condition and has received
3 written certification and a registry identification card
4 [~~issued~~] pursuant to the Lynn and Erin Compassionate Use Act
5 [~~and~~] on the basis of having been diagnosed, in person or via
6 telemedicine, by a practitioner as having a debilitating
7 medical condition; provided that a practitioner may only issue
8 a written certification on the basis of an evaluation conducted
9 via telemedicine if the practitioner has previously examined
10 the patient in person;

11 W. "reciprocal participant" means an individual who
12 holds proof of authorization to participate in the medical
13 cannabis program of another state of the United States, the
14 District of Columbia, a territory or commonwealth of the United
15 States or a New Mexico Indian nation, tribe or pueblo;

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

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

21 or

22 (2) to a primary caregiver that identifies the
23 bearer as a primary caregiver authorized to engage in the
24 intrastate possession and administration of cannabis for the
25 sole use of a qualified patient who is identified on the

1 document;

2 Y. "safety-sensitive position" means a position in
3 which performance by a person under the influence of drugs or
4 alcohol would constitute an immediate or direct threat of
5 injury or death to that person or another;

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

14 AA. "THC" means delta-9-tetrahydrocannabinol, a
15 substance that is the primary psychoactive ingredient in
16 cannabis; and

17 ~~[H.]~~ BB. "written certification" means a statement
18 ~~[in a patient's medical records or a statement]~~ made on a
19 department-approved form and signed by a patient's practitioner
20 that indicates, in the practitioner's professional opinion,
21 that the patient has a debilitating medical condition and the
22 practitioner believes that the potential health benefits of the
23 medical use of cannabis would likely outweigh the health risks
24 for the patient ~~[A written certification is not valid for more~~
25 ~~than one year from the date of issuance]."~~

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

3 "26-2B-4. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES FOR
4 THE MEDICAL USE OF CANNABIS.--

5 A. A qualified patient or a qualified patient's
6 primary caregiver shall not be subject to arrest, prosecution
7 or penalty in any manner for the possession of or the medical
8 use of cannabis if the quantity of cannabis does not exceed an
9 adequate supply;

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

17 B. A reciprocal participant shall not be subject to
18 arrest, prosecution or penalty in any manner for the possession
19 of or the medical use of cannabis if the quantity of cannabis
20 does not exceed the limit identified by department rule.

21 C. The following conduct is lawful and shall not
22 constitute grounds for detention, search or arrest of a person
23 or for a violation of probation or parole, and cannabis
24 products that relate to the conduct are not contraband or
25 subject to seizure or forfeiture pursuant to the Controlled

1 Substances Act or the Forfeiture Act:

2 (1) a qualified patient or primary caregiver
3 possessing or transporting not more than an adequate supply or
4 a reciprocal participant possessing or transporting not more
5 than the limit identified by department rule;

6 (2) a qualified patient or primary caregiver
7 purchasing or obtaining not more than an adequate supply from a
8 lawful source or a reciprocal participant purchasing or
9 obtaining not more than the limit identified by department
10 rule;

11 (3) a qualified patient using or being under
12 the influence of cannabis; provided that the qualified patient
13 is acting consistent with law;

14 (4) a qualified patient or primary caregiver
15 transferring, without financial consideration, to a qualified
16 patient or primary caregiver not more than two ounces of
17 cannabis; or

18 (5) with respect to cannabis cultivated under
19 a personal production license, a qualified patient or primary
20 caregiver possessing, planting, cultivating, harvesting,
21 drying, manufacturing or transporting not more than six mature
22 cannabis plants and twelve immature cannabis plants and
23 possessing no more than an adequate supply of that qualified
24 patient's harvest; provided that a qualified patient or primary
25 caregiver who possesses a personal production license shall not

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1 manufacture cannabis products using an oil extractor solvent
2 that is stored under pressure unless the qualified patient or
3 primary caregiver holds a separate license from the department
4 permitting the person to manufacture cannabis products using an
5 oil extractor solvent that is under pressure.

6 ~~[G.]~~ D. Subsection A of this section shall not
7 apply to a qualified patient under the age of eighteen years,
8 unless:

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

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

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

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

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

21 ~~[D.]~~ E. A qualified patient or a primary caregiver
22 shall be granted the full legal protections provided in this
23 section if the qualified patient or primary caregiver is in
24 possession of a registry identification card. If the qualified
25 patient or primary caregiver is not in possession of a registry

1 identification card, the qualified patient or primary caregiver
2 shall be given an opportunity to produce the registry
3 identification card before any arrest or criminal charges or
4 other penalties are initiated.

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

10 ~~[F.]~~ G. A ~~[licensed producer]~~ licensee or licensee
11 representative shall not be subject to arrest, prosecution or
12 penalty, in any manner, for the production, possession,
13 manufacture, distribution, ~~[or]~~ dispensing or testing of
14 cannabis pursuant to the Lynn and Erin Compassionate Use Act.
15 Conduct by a licensee or a licensee representative that is
16 allowed pursuant to a license and conduct by a person that
17 allows property to be used by a licensee or a licensee
18 representative for conduct allowed pursuant to a license is
19 lawful, is not a violation of state or local law and is not a
20 basis for seizure or forfeiture of property or assets under
21 state or local law.

22 ~~[G.]~~ H. Any property interest that is possessed,
23 owned or used in connection with the medical use of cannabis,
24 or acts incidental to such use, shall not be harmed, neglected,
25 injured or destroyed while in the possession of state or local

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1 law enforcement officials. Any such property interest shall
2 not be forfeited under any state or local law providing for the
3 forfeiture of property except as provided in the Forfeiture
4 Act. Cannabis, paraphernalia or other property seized from a
5 qualified patient or primary caregiver in connection with the
6 claimed medical use of cannabis shall be returned immediately
7 upon the determination by a court or prosecutor that the
8 qualified patient or primary caregiver is entitled to the
9 protections of the provisions of the Lynn and Erin
10 Compassionate Use Act, as may be evidenced by a failure to
11 actively investigate the case, a decision not to prosecute, the
12 dismissal of charges or acquittal.

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

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

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

25 "26-2B-5. PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON

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1 THE MEDICAL USE OF CANNABIS--CRIMINAL PENALTIES.--

2 A. Participation in a medical use of cannabis
3 program by a qualified patient or primary caregiver does not
4 relieve the qualified patient or primary caregiver from:

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

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

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

13 (a) in a school bus or public vehicle;

14 (b) on school grounds or property;

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

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

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

25 C. If a [~~licensed producer~~] licensee or the

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1 licensee's representative sells, distributes, dispenses or
2 transfers cannabis to a person not approved by the department
3 pursuant to the Lynn and Erin Compassionate Use Act or obtains
4 or transports cannabis outside New Mexico, [~~in violation of~~
5 ~~federal law, the licensed producer~~] the licensee or the
6 licensee's representative shall be subject to arrest,
7 prosecution and civil or criminal penalties pursuant to state
8 law."

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

11 "26-2B-6. ADVISORY BOARD CREATED--DUTIES.--The secretary
12 of health shall establish an advisory board consisting of
13 [~~eight~~] nine practitioners [~~representing the fields of~~
14 ~~neurology, pain management, medical oncology, psychiatry,~~
15 ~~infectious disease, family medicine and gynecology.~~ The
16 ~~practitioners shall be nationally board-certified in their area~~
17 ~~of specialty and~~] knowledgeable about the medical use of
18 cannabis. The members shall be chosen for appointment by the
19 secretary from a list proposed by the New Mexico medical
20 society, the New Mexico nurses association, the New Mexico
21 academy of family physicians, the New Mexico academy of
22 physician assistants, the New Mexico pharmacists association or
23 the New Mexico Hispanic medical association. A quorum of the
24 advisory board shall consist of [~~three~~] five members. The
25 advisory board shall:

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1 A. review and recommend to the department for
2 approval additional debilitating medical conditions that would
3 benefit from the medical use of cannabis;

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

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

14 D. issue recommendations concerning rules to be
15 promulgated for the issuance of the registry identification
16 cards; [~~and~~]

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

20 F. recommend formulation or preparations of
21 cannabis or cannabis products; and

22 G. recommend quantities of cannabis that a
23 reciprocal participant may obtain and possess."

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

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1 "26-2B-7. REGISTRY IDENTIFICATION CARDS--DEPARTMENT
2 RULES--DUTIES--RECIPROCITY.--

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

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

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

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

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

25 (5) identify requirements for the licensure of

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1 cannabis producers and cannabis production facilities, cannabis
2 couriers, cannabis manufacturers, cannabis testing facilities
3 and any other cannabis establishments that the department may
4 license and set forth procedures to obtain licenses;

5 (6) develop a distribution system for the
6 medical cannabis program that provides for:

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

10 (b) distribution of [~~medical~~] cannabis
11 to qualified patients or their primary caregivers to take place
12 at locations that are designated by the department and that are
13 not within three hundred feet of any school, church or daycare
14 center that were in existence in that location before the
15 licensee distributing medical cannabis nearby was licensed;
16 provided that this distance requirement shall not apply to
17 distribution at the home of the qualified patient or primary
18 caregiver;

19 (7) identify requirements for testing and
20 labeling of cannabis and cannabis products for quality
21 assurance. The department shall adopt and promulgate rules
22 pursuant to this paragraph by December 20, 2019;

23 [~~7~~] (8) determine additional duties and
24 responsibilities of the advisory board; and

25 [~~8~~] (9) be revised and updated as necessary.

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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;

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 verify the information
13 contained in an application submitted pursuant to Subsection B
14 of this section and shall approve or deny an application within
15 thirty days of receipt. The department may deny an application
16 only if the applicant did not provide the information required
17 pursuant to Subsection B of this section or if the department
18 determines that the information provided is false. A person
19 whose application has been denied shall not reapply for six
20 months from the date of the denial unless otherwise authorized
21 by the department.

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

1 E. A registry identification card shall contain:

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

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

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

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

14 ~~[F.]~~ G. Possession of or application for a registry
15 identification card shall not constitute probable cause or give
16 rise to reasonable suspicion for a governmental agency to
17 search the person or property of the person possessing or
18 applying for the card.

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

24 (1) to authorized employees or agents of the
25 department as necessary to perform the duties of the department

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1 pursuant to the provisions of the Lynn and Erin Compassionate
2 Use Act;

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

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

9 I. By March 1, 2020, the secretary of health shall
10 adopt and promulgate rules relating to medical cannabis program
11 reciprocity. The department may identify requirements for the
12 granting of reciprocity, including provisions limiting the
13 period of time in which a reciprocal participant may
14 participate in the medical cannabis program.

15 J. A reciprocal participant:

16 (1) may participate in the medical cannabis
17 program in accordance with department rules;

18 (2) shall not be required to comply with the
19 registry identification card application and renewal
20 requirements established pursuant to this section and
21 department rules;

22 (3) shall at all times possess proof of
23 authorization to participate in the medical cannabis program of
24 another state, the District of Columbia, a territory or
25 commonwealth of the United States or a New Mexico Indian

1 nation, tribe or pueblo and shall present proof of that
2 authorization when purchasing cannabis from a licensee; and
3 (4) shall register with a licensee for the
4 purpose of tracking sales to the reciprocal participant in an
5 electronic system that is accessible to the department."

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

8 "[NEW MATERIAL] PROGRAM REGULATION AND ADMINISTRATION--
9 FEES--LIMITATIONS--RULEMAKING--LICENSURE--ISSUANCE--
10 REPORTING.--

11 A. The department shall:

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

14 (2) collect fees from licensees; provided that
15 the department shall not charge a fee relating to the medical
16 cannabis registry.

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

23 C. The department shall establish application and
24 licensing fees applicable to licenses for activity related to
25 the medical cannabis program.

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

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

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

14 F. In consultation with qualified patients and
15 primary caregivers, the department shall produce an assessment
16 report annually, which shall be published to the public and
17 that includes at a minimum an evaluation of:

- 18 (1) the affordability of and accessibility to
19 medical cannabis pursuant to the Lynn and Erin Compassionate
20 Use Act; and
- 21 (2) the needs of qualified patients who live
22 in rural areas, federal subsidized housing or New Mexico Indian
23 nations, tribes or pueblos.

24 G. The department shall allow for the smoking,
25 vaporizing and ingesting of cannabis products within a cannabis

1 consumption area on the premises if:

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

4 (2) cannabis consumption is not visible from
5 any public place or from outside the cannabis consumption area;
6 and

7 (3) qualified patients who consume cannabis on
8 the premises have a designated driver or other means of
9 transportation consistent with current law."

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

12 "[NEW MATERIAL] REGISTRY IDENTIFICATION CARD--
13 REGISTRATION--RENEWAL--WRITTEN CERTIFICATION.--The department
14 shall require a qualified patient to reapply for a registry
15 identification card no sooner than two years and eleven months
16 from the date the patient's current registry identification
17 card is issued; provided that, in order to remain eligible for
18 participation in the medical cannabis program established
19 pursuant to the Lynn and Erin Compassionate Use Act, a
20 qualified patient shall submit annually to the department a
21 statement from a practitioner indicating that:

22 A. the practitioner has examined the qualified
23 patient during the preceding twelve months;

24 B. the qualified patient continues to have a
25 debilitating medical condition; and

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1 C. the practitioner believes that the potential
2 health benefits of the medical use of cannabis would likely
3 outweigh the health risks for the qualified patient."

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

6 "[NEW MATERIAL] THC CONTENT--NO LIMITATION.--The
7 department shall not limit the amount of THC concentration in a
8 cannabis product; provided that the department may by rule
9 adopt requirements for apportionment and packaging of cannabis
10 products."

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

13 "[NEW MATERIAL] EMPLOYMENT PROTECTIONS.--

14 A. Unless a failure to do so would cause the
15 employer to lose a monetary or licensing-related benefit under
16 federal law or federal regulations, it is unlawful to take an
17 adverse employment action against the employee based on any of
18 the following:

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

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

23 B. Nothing in this section shall:

24 (1) restrict an employer's ability to prohibit
25 or take adverse employment action against an employee for use

1 of intoxicating substances on the premises of the place of
2 employment or during the hours of employment; or

3 (2) apply to an employee who works in a
4 safety-sensitive position.

5 C. As used in this section, "adverse employment
6 action" means:

7 (1) refusing to hire or employ a person;

8 (2) barring or discharging a person from
9 employment;

10 (3) requiring a person to retire from
11 employment; or

12 (4) discriminating against an employee in
13 compensation or in terms, conditions or privileges of
14 employment."

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

17 "[NEW MATERIAL] PERSONS UNDER STATE SUPERVISION--
18 PROTECTIONS.--A person who is serving a period of probation or
19 parole or who is in the custody or under the supervision of the
20 state or a local government pending trial as part of a
21 community supervision program shall not be penalized for
22 conduct allowed under the Lynn and Erin Compassionate Use Act."

23 SECTION 12. Section 24-6B-11 NMSA 1978 (being Laws 2007,
24 Chapter 323, Section 11) is amended to read:

25 "24-6B-11. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT--

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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 13. A new section of the Family Services Act is
 20 enacted to read:

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

24 A. An individual's participation in the state's
 25 medical cannabis program established pursuant to the Lynn and

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1 Erin Compassionate Use Act shall not in itself constitute
2 grounds for:

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

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

9 B. A person shall not be denied custody of or
10 visitation or parenting time with a child, and there is no
11 presumption of neglect or child endangerment, for conduct
12 allowed under the Lynn and Erin Compassionate Use Act.

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

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