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SENATE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO HEALTH; AMENDING AND ENACTING SECTIONS OF THE LYNN AND ERIN COMPASSIONATE USE ACT TO PROVIDE FOR PRESUMPTIVE ELIGIBILITY AND THREE-YEAR CERTIFICATION AND TO ESTABLISH NEW CONTENT AND POSSESSION STANDARDS.

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 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

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1 Compassionate Use Act:

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

11 B. "debilitating medical condition" means:
12 (1) cancer;
13 (2) glaucoma;
14 (3) multiple sclerosis;
15 (4) damage to the nervous tissue of the spinal
16 cord, with objective neurological indication of intractable
17 spasticity;
18 (5) epilepsy;
19 (6) positive status for human immunodeficiency
20 virus or acquired immune deficiency syndrome;
21 (7) admitted into hospice care in accordance
22 with rules promulgated by the department; or
23 (8) any other medical condition, medical
24 treatment or disease as approved by the department;

25 C. "department" means the department of health;

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

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

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

15 G. "qualified patient" means a resident of New
16 Mexico who has been diagnosed by a practitioner as having a
17 debilitating medical condition and has received written
18 certification and a registry identification card issued
19 pursuant to the Lynn and Erin Compassionate Use Act;

20 H. "registry identification card" means a document
21 that the department issues:

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

25 or

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

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

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

16 SECTION 3. Section 26-2B-7 NMSA 1978 (being Laws 2007,
17 Chapter 210, Section 7) is amended to read:

18 "26-2B-7. REGISTRY IDENTIFICATION CARDS--DEPARTMENT
19 RULES--DUTIES--PRESUMPTIVE ELIGIBILITY.--

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

25 (1) govern the manner in which the department

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1 will consider applications for registry identification cards
2 and for the renewal of identification cards for qualified
3 patients and primary caregivers;

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

7 ~~(3)]~~ (2) identify criteria and set forth
8 procedures for including additional medical conditions, medical
9 treatments or diseases to the list of debilitating medical
10 conditions that qualify for the medical use of cannabis.

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

13 ~~[(4)]~~ (3) set forth additional medical
14 conditions, medical treatments or diseases to the list of
15 debilitating medical conditions that qualify for the medical
16 use of cannabis as recommended by the advisory board;

17 ~~[(5)]~~ (4) identify requirements for the
18 licensure of producers and cannabis production facilities and
19 set forth procedures to obtain licenses;

20 ~~[(6)]~~ (5) develop a distribution system for
21 medical cannabis that provides for:

22 (a) cannabis production facilities
23 within New Mexico housed on secured grounds and operated by
24 licensed producers; and

25 (b) distribution of medical cannabis to

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1 qualified patients or their primary caregivers to take place at
2 locations that are designated by the department and that are
3 not within three hundred feet of any school, church or daycare
4 center;

5 [~~(7)~~] (6) determine additional duties and
6 responsibilities of the advisory board; and

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

8 B. The department shall issue registry
9 identification cards to a patient and to the primary caregiver
10 for that patient, if any, who submit the following, in
11 accordance with the department's rules:

12 (1) a written certification;

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

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

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

19 C. The department shall presume eligible and issue,
20 within thirty days of receipt of application completed in
21 accordance with Subsection B of this section and department
22 rules, a registry identification card to any person who applies
23 for a registry identification card. The department shall
24 verify the information contained in an application submitted
25 pursuant to Subsection B of this section [~~and shall approve or~~

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1 ~~deny an application within thirty days of receipt~~. The
2 department may deny an application only if the applicant did
3 not provide the information required pursuant to Subsection B
4 of this section or if the department determines that the
5 information provided is false. A person whose application has
6 been denied shall not reapply for six months from the date of
7 the denial unless otherwise authorized by the department.

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

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

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

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

18 E. A person who possesses a registry identification
19 card shall notify the department of any change in the person's
20 name, address, qualified patient's practitioner, qualified
21 patient's primary caregiver or change in status of the
22 qualified patient's debilitating medical condition within ten
23 days of the change.

24 F. Possession of or application for a registry
25 identification card shall not constitute probable cause or give

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1 rise to reasonable suspicion for a governmental agency to
2 search the person or property of the person possessing or
3 applying for the card.

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

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

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

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

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

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

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

5 B. for a qualified patient whose certification of a
6 debilitating medical condition does not indicate that the
7 patient's debilitating medical condition is a chronic
8 condition, no sooner than one year from the date the patient's
9 current registry identification card is issued."

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

12 "[NEW MATERIAL] ADEQUATE SUPPLY--BAN ON RESTRICTION OF THC
13 CONTENT.--

14 A. A qualified patient or a primary caregiver shall
15 possess no more than five ounces of cannabis during any thirty-
16 day period.

17 B. A licensed producer shall possess no more than
18 one thousand cannabis plants during any three-month period.

19 C. The department shall not limit the amount of THC
20 concentration in a cannabis-derived product that a qualified
21 patient or a primary caregiver possesses."