

THE FLORIDA SENATE
2017-A SUMMARY OF LEGISLATION PASSED
Committee on Health Policy

SB 6-A — Public Records/Medical Marijuana Use Registry/Physician Certification for Marijuana and Dispensing/Department of Health

by Senators Bradley and Young

SB 6-A expands the public records exemption for the medical marijuana use registry (registry), formerly the compassionate use registry, to conform its provisions to changes being made to s. 381.986, F.S., regarding the medical use of marijuana by SB 8-A. The bill also protects certain personal identifying information that is held by the Department of Health outside of the registry.

Specifically, the bill makes a qualifying patient's and a caregiver's personal identifying information and all personal identifying information pertaining to the physician certification for marijuana held by the department confidential and exempt from public records laws; restricts access to a patient's diagnosis when a law enforcement agency or medical marijuana treatment center accesses the registry to verify a qualifying patient's or caregiver's authorization under s. 381.986, F.S., to use or possess marijuana; and expands access to this confidential information to:

- Practitioners licensed to prescribe prescription drugs for purposes of patient care;
- Department employees for approval of exceptions to marijuana daily dosage limits; and
- The Coalition for Medical Marijuana Research and Education established in s. 1004.4351, F.S.

The bill also extends the open government sunset review date to October 2, 2022, includes the constitutionally required public necessity statement, and makes other conforming changes to provisions amended by SB 8-A.

If approved by the Governor, these provisions take effect on the same date as SB 8-A becomes a law.

Vote: Senate 36-0; House 109-3

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SB 8-A — Medical Use of Marijuana

by Senators Bradley and Young

The bill implements the provisions of Art. X, s. 29, of the State Constitution. The bill builds on the existing compassionate use of low-THC and medical cannabis program with additional provisions to implement the Constitutional Amendment passed by Florida voters in the 2016 General Election.

Provisions in the bill relating to patients:

- Exempt marijuana and marijuana delivery devices from sales and use tax that would otherwise be imposed under ch. 212, F.S.
- Establish procedures for physicians to issue physician certifications to patients who have qualifying medical conditions. The bill includes all debilitating medical conditions listed in the State Constitution as a qualifying medical condition: cancer, epilepsy, glaucoma, HIV, AIDS, PTSD, ALS, Crohn’s disease, Parkinson’s disease, multiple sclerosis, or other debilitating medical condition of the same kind or class as or comparable to those enumerated. The bill also includes as a qualifying medical condition:
 - o Chronic nonmalignant pain, which is defined as pain that is caused by or that originates from a qualifying medical condition and persists beyond the usual course of the qualifying medical condition.
 - o A terminal condition.
- Eliminate the 90-day waiting period before the qualified physician may register a patient as qualified to receive low-THC cannabis or medical marijuana.
- Ensure that qualified patients can receive low-THC cannabis as well as full-THC marijuana.
- Allow marijuana edibles and vaping, but prohibit the smoking of marijuana.
- Establish residency requirements for patients to be issued a Medical Marijuana Use Registry Identification Card (ID card). The bill specifies documentation that must be provided to document residency, including documentation required for a seasonal resident.
- Grandfather in existing patients from the low-THC and “right to try” programs registered in the compassionate use registry so that they may continue receiving their medication ordered through those programs.

Provisions in the bill relating to caregivers:

- Establish qualifications to become a caregiver, which include:
 - o Being at least 21 years of age and a resident of this state.
 - o Agreeing in writing to assist the qualified patient and serve as the patient’s caregiver.
 - o Passing a 2-hour caregiver course that is administered by the Department of Health (DOH).
 - o Passing a background screening unless the patient is a close relative of the caregiver.

- Limit the number of caregivers each patient may have and the number of patients each caregiver may assist.
- Require a caregiver to be registered on the medical marijuana use registry and possess a caregiver identification card. The caregiver must be in immediate possession of his or her medical marijuana use registry ID card when in possession of marijuana or a marijuana delivery device and present the ID card upon the request of a law enforcement officer.
- Require a caregiver to purchase or administer marijuana for medical use by a qualified patient who is younger than 18 years of age.
- Prohibit a caregiver from receiving compensation, other than the actual expenses incurred, for any services provided to the qualified patient.

Provisions in the bill relating to qualified physicians and physician certifications:

- Require a physician to complete a 2-hour course and examination relating to the requirements of this law for approval as a qualified physician. A qualified physician must also comply with a 2-hour continuing education requirement for licensure renewal.
- Prohibit a qualified physician from being employed by, or having a direct or indirect economic interest in, a medical marijuana treatment center or marijuana testing laboratory.
- Establish standards for a qualified physician to issue a physician certification to include:
 - o Conducting a physical examination while physically present in the same room as the patient and a full assessment of the patient's medical history.
 - o Diagnosing the patient with at least one qualifying medical condition.
 - o Determining, and documenting in the patient's medical record, that the medical use of marijuana would likely outweigh the potential health risks for the patient. If a patient is younger than 18, a second physician must concur with this determination and this determination must be documented in the patient's medical record.
 - o Determining, and documenting in the patient's medical record, whether the patient is pregnant. A physician may issue a physician certification for low-THC cannabis only, to a patient who is pregnant.
 - o Reviewing the patient's controlled drug prescription history in the prescription drug monitoring program database.
 - o Reviewing the medical marijuana use registry to confirm that the patient does not have an active physician certification from another qualified physician.
 - o Registering as the issuer of the physician certification for the named qualified patient on the medical marijuana use registry.
 - o Updating the registry with specified relevant information concerning the physician's certification for the patient's medical use of marijuana.
- Limit certifications to no more than three 70-day supply limits of marijuana.
- Require a qualified physician to evaluate an existing qualified patient at least once every 30 weeks before issuing a new physician certification for that patient.

Provisions in the bill relating to Medical Marijuana Treatment Centers (MMTCs):

- Require the DOH to license the seven existing dispensing organizations as MMTCs. These MMTCs may begin dispensing marijuana pursuant to this law on July 3, 2017.

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- Require the DOH to license as MMTCs 10 applicants by October 3, 2017.
 - o The first group of licensees, which are to be licensed as MMTCs by August 1, 2017, include applicants that submitted an application under the compassionate use law in 2014, which was reviewed, evaluated, and scored by the DOH; which had an administrative or judicial challenge pending as of January 1, 2017, or had a final ranking within one point of the highest final ranking in its region; which meets the requirements of this law; and can document that it has the ability to begin cultivating marijuana within 30 days after registration as an MMTC.
 - o The next group of licenses must be licensed by October 3, 2017. These applicants must submit an application to be reviewed, evaluated, and scored for selection to be licensed as an MMTC. Within this group, one license must be awarded to an applicant that is a recognized class member of specified litigation and a member of the Black Farmers and Agriculturalists Association-Florida Chapter. All applicants must meet the requirements of this law. In the scoring of applications, the DOH is directed to give preference for up to two of these new licenses to applicants that demonstrate in their applications that they own and will use or convert a facility or facilities that are, or were, used for the processing of citrus fruit or citrus molasses for the processing of marijuana.
- Require the DOH to license four additional MMTCs within 6 months after the medical marijuana use registry contains 100,000 active qualified patients, and upon each additional 100,000 active qualified patient registrations.
- Limit MMTCs to 25 dispensing facilities statewide until the medical marijuana use registry contains 100,000 active qualified patients. When that occurs, an additional five dispensing facilities are authorized for each licensed MMTC.
 - o Upon each additional 100,000 active qualified patient registrations, an additional five dispensing facilities are authorized for each licensed MMTC.
 - o The bill also requires each MMTC to locate its authorized dispensing facilities within five regions statewide according to county population estimates for the counties within each region.
 - o An MMTC that chooses not to establish a dispensing facility within a region as authorized, may sell that regional slot to another MMTC.
 - o These limitations on dispensing facilities expire on April 1, 2020.
- Detail requirements for MMTC applicants and standards that each MMTC must meet to obtain and maintain licensure; including a diversity plan that promotes and ensures the involvement of minority persons, minority business enterprises, or veteran business enterprises.
- Authorize alternate forms of assets to satisfy the performance bond requirements.
- Require an MMTC to perform all functions of cultivating, processing, transporting, and dispensing marijuana for medical use; including ensuring that low-THC is available for the medical use of qualified patients.
- Require MMTC processing facilities to pass a Food Safety Good Manufacturing Practices inspection by a nationally recognized certifying body.
- Require laboratory testing of MMTC products and create a certification program for medical marijuana testing laboratories.

- Establish standards for advertising and requirements for a professional appearance and operation of dispensing facilities.
- Require background screening of MMTC owners, officers, board members, managers, and employees, and of medical marijuana testing laboratory owners and managers.
- Authorize a change of ownership for an MMTC under specified parameters and prohibit ownership in multiple MMTCs or certain profit-sharing arrangements.
- Preempt the regulation of cultivation and processing of marijuana to the state.
- Authorize local governments to ban MMTC dispensing facilities within their borders. However, if a local government does not ban dispensing facilities, it may not place any restrictions on the number of dispensing facilities allowed within its jurisdiction. Also, it may not adopt any regulations or fees for dispensing facilities that are more restrictive than its ordinances regulating pharmacies.

Additional provisions in the bill:

- Establish administrative, disciplinary, or criminal penalties for prohibited acts by physicians, patients, caregivers, MMTCs, medical marijuana testing laboratories, and other persons. These prohibited acts include, but are not limited to:
 - A qualified patient or caregiver cultivating marijuana or acquiring marijuana from anyone other than an MMTC.
 - A qualified patient or caregiver in possession of marijuana or a marijuana delivery device who fails or refuses to present his or her marijuana use registry identification card upon the request of a law enforcement officer. However the bill includes certain mitigating actions that may enable a patient or caregiver to avoid prosecution.
 - An MMTC providing kickbacks to a qualified physician.
 - Unlicensed activity.
 - Counterfeiting marijuana or a marijuana delivery device purporting it to be from a licensed MMTC.
 - Possessing or making a counterfeit or otherwise unlawfully issued medical marijuana use registry identification card.
- Authorize the DOH to pursue certain enforcement action for violations of this law.
- Specify that this act does not limit an employer's ability regarding a drug-free workplace program or policy, does not require an employer to accommodate the medical use of marijuana in the workplace or an employee working while under the influence of marijuana, does not create a cause of action against an employer for wrongful discharge or discrimination, and that marijuana is not reimbursable under ch. 440, F.S., relating to workers' compensation.
- Require the DOH and the Department of Highway Safety and Motor Vehicles to establish public educational campaigns related to the medical use of marijuana.
- Require the Department of Law Enforcement to develop initial training and continuing education for law enforcement agencies relating to activities governed by this law and criminal laws governing marijuana.
- Create the Coalition for Medicinal Cannabis Research and Education (Coalition) to conduct rigorous scientific research, provide education, disseminate research, and to

guide policy development for the adoption of a statewide policy on ordering and dosing practices for the medicinal use of cannabis.

- Include rulemaking and other provisions to aid the DOH in adopting rules and implementing the provisions of Amendment 2 within the time frame specified in the amendment.
- Require each district school board to adopt a policy and procedure for allowing a student who is a qualified patient to use marijuana obtained pursuant to this law.
- Rename the Office of Compassionate Use in the DOH, the Office of Medical Marijuana Use.
- Rename the compassionate use registry, the medical marijuana use registry.
- Provide a severability clause so that if any provision of the act or its application is held invalid, the invalidity does not affect other provisions or applications which can still be given effect.
- Include appropriations for the state 2017-2018 fiscal year for the DOH, the education programs, and the Coalition.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 29-6; House 103-9