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CS/CS/HB 387, Engrossed 1

2023 Legislature

1
 2 An act relating to the medical use of marijuana;
 3 amending s. 381.986, F.S.; requiring qualified
 4 physicians to perform in-person physical patient
 5 examinations before issuing initial physician
 6 certifications for the medical use of marijuana;
 7 authorizing such qualified physicians to perform
 8 patient examinations and evaluations through
 9 telehealth for renewals of physician certifications
 10 for the medical use of marijuana under certain
 11 circumstances; defining the term "in-person physical
 12 examination"; authorizing the Department of Health to
 13 suspend the registration of a qualified physician in
 14 the medical marijuana use registry for a specified
 15 timeframe under certain circumstances; requiring the
 16 department to issue medical marijuana treatment center
 17 licenses to certain applicants as soon as practicable;
 18 requiring the department to grant certain applicants a
 19 specified timeframe to cure cited deficiencies;
 20 requiring the department to issue a license to such
 21 applicants if the deficiencies are cured within the
 22 specified timeframe; requiring the department to issue
 23 such licenses to the estate of certain applicants
 24 under certain circumstances; requiring a specified
 25 number of available licenses to be reduced by the

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26 award of such licenses; providing effective dates.

27

28 Be It Enacted by the Legislature of the State of Florida:

29

30 Section 1. Paragraphs (a), (g), and (i) of subsection (4)
 31 of section 381.986, Florida Statutes, are amended to read:

32 381.986 Medical use of marijuana.—

33 (4) PHYSICIAN CERTIFICATION.—

34 (a) A qualified physician may issue a physician
 35 certification only if the qualified physician:

36 1. Conducted an ~~a physical~~ examination of ~~while physically~~
 37 ~~present in the same room as~~ the patient and a full assessment of
 38 the medical history of the patient. Before issuing an initial
 39 certification to a patient, the qualified physician must conduct
 40 an in-person physical examination of the patient. For
 41 certification renewals, a qualified physician who has issued a
 42 certification to a patient after conducting an in-person
 43 physical examination may conduct subsequent examinations of that
 44 patient through telehealth as defined in s. 456.47. For the
 45 purposes of this subparagraph, the term "in-person physical
 46 examination" means an examination conducted by a qualified
 47 physician while the physician is physically present in the same
 48 room as the patient.

49 2. Diagnosed the patient with at least one qualifying
 50 medical condition.

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51 3. Determined that the medical use of marijuana would
52 likely outweigh the potential health risks for the patient, and
53 such determination must be documented in the patient's medical
54 record. If a patient is younger than 18 years of age, a second
55 physician must concur with this determination, and such
56 concurrence must be documented in the patient's medical record.

57 4. Determined whether the patient is pregnant and
58 documented such determination in the patient's medical record. A
59 physician may not issue a physician certification, except for
60 low-THC cannabis, to a patient who is pregnant.

61 5. Reviewed the patient's controlled drug prescription
62 history in the prescription drug monitoring program database
63 established pursuant to s. 893.055.

64 6. Reviews the medical marijuana use registry and
65 confirmed that the patient does not have an active physician
66 certification from another qualified physician.

67 7. Registers as the issuer of the physician certification
68 for the named qualified patient on the medical marijuana use
69 registry in an electronic manner determined by the department,
70 and:

71 a. Enters into the registry the contents of the physician
72 certification, including the patient's qualifying condition and
73 the dosage not to exceed the daily dose amount determined by the
74 department, the amount and forms of marijuana authorized for the
75 patient, and any types of marijuana delivery devices needed by

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76 | the patient for the medical use of marijuana.

77 | b. Updates the registry within 7 days after any change is
78 | made to the original physician certification to reflect such
79 | change.

80 | c. Deactivates the registration of the qualified patient
81 | and the patient's caregiver when the physician no longer
82 | recommends the medical use of marijuana for the patient.

83 | 8. Obtains the voluntary and informed written consent of
84 | the patient for medical use of marijuana each time the qualified
85 | physician issues a physician certification for the patient,
86 | which shall be maintained in the patient's medical record. The
87 | patient, or the patient's parent or legal guardian if the
88 | patient is a minor, must sign the informed consent acknowledging
89 | that the qualified physician has sufficiently explained its
90 | content. The qualified physician must use a standardized
91 | informed consent form adopted in rule by the Board of Medicine
92 | and the Board of Osteopathic Medicine, which must include, at a
93 | minimum, information related to:

94 | a. The Federal Government's classification of marijuana as
95 | a Schedule I controlled substance.

96 | b. The approval and oversight status of marijuana by the
97 | Food and Drug Administration.

98 | c. The current state of research on the efficacy of
99 | marijuana to treat the qualifying conditions set forth in this
100 | section.

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- 101 d. The potential for addiction.
- 102 e. The potential effect that marijuana may have on a
 103 patient's coordination, motor skills, and cognition, including a
 104 warning against operating heavy machinery, operating a motor
 105 vehicle, or engaging in activities that require a person to be
 106 alert or respond quickly.
- 107 f. The potential side effects of marijuana use, including
 108 the negative health risks associated with smoking marijuana.
- 109 g. The risks, benefits, and drug interactions of
 110 marijuana.
- 111 h. That the patient's deidentified health information
 112 contained in the physician certification and medical marijuana
 113 use registry may be used for research purposes.
- 114 (g) A qualified physician must evaluate an existing
 115 qualified patient at least once every 30 weeks before issuing a
 116 new physician certification. A qualified physician who has
 117 issued a certification to the patient after conducting an in-
 118 person physical examination as defined in subparagraph (a)1. may
 119 conduct the evaluation through telehealth as defined in s.
 120 456.47. A physician must:
- 121 1. Determine if the patient still meets the requirements
 122 to be issued a physician certification under paragraph (a).
- 123 2. Identify and document in the qualified patient's
 124 medical records whether the qualified patient experienced either
 125 of the following related to the medical use of marijuana:

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126 a. An adverse drug interaction with any prescription or
 127 nonprescription medication; or

128 b. A reduction in the use of, or dependence on, other
 129 types of controlled substances as defined in s. 893.02.

130 3. Submit a report with the findings required pursuant to
 131 subparagraph 2. to the department. The department shall submit
 132 such reports to the Consortium for Medical Marijuana Clinical
 133 Outcomes Research established pursuant to s. 1004.4351.

134 (i) The department shall monitor physician registration in
 135 the medical marijuana use registry and the issuance of physician
 136 certifications for practices that could facilitate unlawful
 137 diversion or misuse of marijuana or a marijuana delivery device
 138 and shall take disciplinary action as appropriate. The
 139 department may suspend the registration of a qualified physician
 140 in the medical marijuana use registry for a period of up to 2
 141 years if the qualified physician:

142 1. Fails to comply with this section; or

143 2. Provides, advertises, or markets telehealth services
 144 before July 1, 2023.

145 Section 2. (1) Notwithstanding any provision of s.
 146 381.986(8) (a)2.b., Florida Statutes, to the contrary, the
 147 Department of Health shall, as soon as practicable, license all
 148 applicants that applied for licensure during the application
 149 window created by the department to accept applications for
 150 licensure pursuant to s. 381.986(8) (a)2.b., Florida Statutes,

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151 and received:

152 (a) A notice from the department regarding the applicant's
 153 application for licensure indicating the department's intent to
 154 approve or deny the application which did not cite any
 155 deficiencies with the application, regardless of the applicant's
 156 final score; or

157 (b) A final determination from the department as a result
 158 of a challenge to the application process, initiated pursuant to
 159 s. 120.569, Florida Statutes, determining that the applicant met
 160 all requirements for licensure pursuant to s. 381.986(8)(a)2.b.,
 161 Florida Statutes, and applicable rules, regardless of the
 162 applicant's final score.

163 (2) Upon this section becoming a law, the department shall
 164 grant each applicant referenced in subsection (1) 90 days to
 165 cure, pursuant to the errors and omissions process established
 166 in department Form DH8035-OMMU-10/2021 as incorporated by the
 167 department in Rule 64ER21-16, F.A.C., any deficiencies cited in
 168 a notice referenced in paragraph (1)(a). If such applicant cures
 169 the deficiencies within that 90-day timeframe, the department
 170 shall issue a license to the applicant.

171 (3) If an applicant who was alive at the time he or she
 172 received the notice referred to in paragraph (1)(a) dies during
 173 the challenge referred to in paragraph (1)(b), the death of the
 174 applicant may not be a reason to deny the challenge. In such a
 175 case and in the event of a successful challenge pursuant to

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176 paragraph (1)(b), the department must issue the license to the
177 estate of the applicant.

178 (4) The number of licenses made available for issuance
179 under s. 381.986(8)(a)4., Florida Statutes, must be reduced by
180 the number of licenses awarded under this section, except that
181 the number of licenses awarded under this section may not be
182 deducted from the number of licenses available for the
183 application window held between April 24, 2023, and April 28,
184 2023.

185 (5) This section shall take effect upon becoming a law.

186 Section 3. Except as otherwise expressly provided in this
187 act and except for this section, which shall take effect upon
188 this act becoming a law, this act shall take effect July 1,
189 2023.