

ARTICLE 2B
Lynn and Erin Compassionate Use Act

Section

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26-2B-1. Short title.

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

History: Laws 2007, ch. 210, § 1.

Effective dates. — Laws 2007, ch. 210, § 12 made the Lynn and Erin Compassionate Use Act effective July 1, 2007.

Severability. — Laws 2007, ch. 210, §11 provided for the severability of the Lynn and Erin Compassionate Use Act if any part or application thereof is held invalid.

26-2B-2. Purpose of act.

The purpose of the Lynn and Erin Compassionate Use Act is to allow the beneficial use of medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments.

History: Laws 2007, ch. 210, § 2.

Effective dates. — Laws 2007, ch. 210, § 12 made the Lynn and Erin Compassionate Use Act effective July 1, 2007.

Severability. — Laws 2007, ch. 210, §11 provided for the severability of the Lynn and Erin Compassionate Use Act if any part or application thereof is held invalid.

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;

B. "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) 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) 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;

E. "practitioner" means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978];

F. "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;

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

H. "written certification" means a statement in a patient's medical records or a statement signed by a patient's practitioner that, in the practitioner's professional opinion, 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.

History: Laws 2007, ch. 210, § 3.

Effective dates. — Laws 2007, ch. 210, § 12 made the Lynn and Erin Compassionate Use Act effective July 1, 2007.

Severability. — Laws 2007, ch. 210, §11 provided for the severability of the Lynn and Erin Compassionate Use Act if any part or application thereof is held invalid.

ANNOTATIONS

Written certification is the functional equivalent of a prescription. — Under the Lynn and Erin Compassionate Use Act, the written certification required by a person licensed in New Mexico to prescribe and administer controlled substances is the functional equivalent of a prescription as defined in the Worker's Compensation Act, 52-1-1 NMSA 1978 et seq. *Maez v. Riley Industrial*, 2015-NMCA-049.

26-2B-4. Exemption from criminal and civil penalties for the medical use of cannabis.

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

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 patient or 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 patient or 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 shall not be subject to arrest, prosecution or penalty, in any manner, for the production, possession, distribution or dispensing of cannabis pursuant to the Lynn and Erin Compassionate Use Act.

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 [31-27-1 through 31-27-8 NMSA 1978]. 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 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.

History: Laws 2007, ch. 210, § 4.

Effective dates. — Laws 2007, ch. 210, § 12 made the Lynn and Erin Compassionate Use Act effective July 1, 2007.

Severability. — Laws 2007, ch. 210, §11 provided for the severability of the Lynn and Erin Compassionate Use Act if any part or application thereof is held invalid.

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;
- (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 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 shall be subject to arrest, prosecution and civil or criminal penalties pursuant to state law.

History: Laws 2007, ch. 210, § 5.

Effective dates. — Laws 2007, ch. 210, § 12 made the Lynn and Erin Compassionate Use Act effective July 1, 2007.

Severability. — Laws 2007, ch. 210, §11 provided for the severability of the Lynn and Erin Compassionate Use Act if any part or application thereof is held invalid.

26-2B-6. Advisory board created; duties.

The secretary of health shall establish an advisory board consisting of eight 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. 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;

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.

History: Laws 2007, ch. 210, § 6.

Effective dates. — Laws 2007, ch. 210, § 12 made the Lynn and Erin Compassionate Use Act effective July 1, 2007.

Severability. — Laws 2007, ch. 210, §11 provided for the severability of the Lynn and Erin Compassionate Use Act if any part or application thereof is held invalid.

26-2B-7. Registry identification cards; department rules; duties.

A. No later than October 1, 2007, and after consultation with the advisory board, the department shall promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] 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 producers and cannabis production facilities and set forth procedures to obtain licenses;

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

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

(7) determine additional duties and responsibilities of the advisory board; and

(8) be revised and updated as necessary.

B. 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.

C. The department shall verify the information contained in an application submitted pursuant to Subsection B 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 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. 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.

E. 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.

F. 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.

G. 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.

History: Laws 2007, ch. 210, § 7.

Cross references. — For the Federal Health Insurance Portability and Accountability Act of 1996, see 42 U.S.C. § 300gg et seq.

Effective dates. — Laws 2007, ch. 210, § 12 made the Lynn and Erin Compassionate Use Act effective July 1, 2007.

Severability. — Laws 2007, ch. 210, §11 provided for the severability of the Lynn and Erin Compassionate Use Act if any part or application thereof is held invalid.

Temporary provisions. — Laws 2007, ch. 210, § 10, provided for the medical use of cannabis by an eligible person during the period between July 1, 2007 and thirty days after the effective date of rules promulgated by the department of health.
