
A BILL FOR AN ACT

RELATING TO MEDICAL MARIJUANA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the State's medical
2 marijuana program, enacted into law in 2000, is a public health
3 program conceived out of concern for the health and welfare of
4 the seriously ill. Registration for the program is currently
5 administered by the narcotics enforcement division of the
6 department of public safety.

7 Since the mission of the department of health is "to
8 provide leadership to monitor, promote, protect, and enhance the
9 health and environmental well-being of all of Hawaii's people",
10 and since the use of medical marijuana is properly regarded as
11 an health issue, not simply as an exception to the State's laws
12 on controlled substances, the legislature finds that the State's
13 medical marijuana program would more properly be administered by
14 the department of health rather than by the department of public
15 safety.

16 The purpose of this Act is to transfer the administration
17 of the State's program for the medical use of marijuana from the
18 department of public safety to the department of health and to



1 change certain procedures and definitions to make the program
2 more efficient and more user-friendly to the seriously ill
3 patients who register with the program. This Act also places
4 the burden of proceeding to register on patients and their
5 caregivers, those who are most directly interested in
6 ameliorating the adverse effects of the patients' debilitating
7 conditions.

8 Existing law confers upon the department of health the
9 power to add new debilitating conditions to those which would
10 permit medical marijuana use. Although research indicates that
11 new conditions may benefit from the medical use of marijuana,
12 the department of health has never exercised its power to extend
13 the medical use of marijuana to those new conditions. This Act
14 provides with greater specificity for an administrative body
15 within the department of health to determine, as required by
16 existing law, whether to add new debilitating conditions to
17 those already listed under the definition of "debilitating
18 medical condition" in section 329-121, Hawaii Revised Statutes.

19 The legislature finds that the number of patients who are
20 seeking to ameliorate their debilitating conditions with medical
21 marijuana on Oahu has declined, strongly suggesting that
22 physicians are refusing to certify medical marijuana use because



1 of fear of possible prosecution under the federal Controlled
2 Substances Act. Experience in California and cases decided by
3 the Ninth Circuit of the United States Court of Appeals, which
4 are applicable in Hawaii, make very clear that physicians may
5 not be prosecuted for recommending the medical use of marijuana
6 or enabling patients to acquire marijuana for medical use if the
7 role of physician is properly limited to certifying that:

- 8 (1) The patient has a debilitating condition; and
- 9 (2) In the physician's opinion, the benefits of using
10 marijuana for medical purposes outweigh the risk for
11 the particular patient.

12 This Act limits the role of the physician to these two
13 functions.

14 It is also possible that declining registration in the
15 program may be a result of physicians' certifications
16 automatically expiring after one year, as the law now requires.
17 This Act extends the period of certification to two years unless
18 the physician recommends a shorter period, and includes a
19 requirement that patients be given mailed notice of expiration
20 of their registration and the need for renewal at least thirty
21 days before their registration expires.



1 This Act also promotes safety by prohibiting the use by
2 qualifying patients of stationary heavy equipment. In addition,
3 this Act simplifies program implementation for patients and
4 better describes the role of the certifying physician by
5 allowing use in the workplace if the workplace is the patient's
6 own residence, eliminating ambiguity in the description of the
7 quantity of marijuana that may be possessed, making the
8 registration applications readily available on the department of
9 health's website, and sharply limiting the role of the
10 certifying physician in securing certification. Because persons
11 with debilitating conditions often share the same residence,
12 administration of the program will be improved by increasing to
13 three the number of patients that may be served by a single
14 caregiver. In addition, to ensure that patients' privacy rights
15 are protected, the physician's certification shall attest that
16 the patient has a debilitating condition but shall not identify
17 the patient's specific diagnosis.

18 SECTION 2. Chapter 329, Hawaii Revised Statutes, is
19 amended by adding a new section to part IX to be appropriately
20 designated and to read as follows:

21 "§329- Additional debilitating medical conditions;
22 standing committee; procedure. (a) The director of health



1 shall convene a debilitating medical condition standing
2 committee consisting of two practicing physicians, two
3 representatives of qualifying patients certified to use
4 marijuana under this part, and one representative from the
5 department of health, who shall be the chairperson of the
6 standing committee. The director of health shall select the
7 members of the standing committee. Members shall not be
8 compensated but shall be reimbursed for necessary expenses,
9 including travel expenses, incurred in the routine performance
10 of their duties.

11 (b) The standing committee shall meet semiannually to
12 consider petitions submitted by physicians, qualifying patients,
13 or potential qualifying patients to add other medical conditions
14 to the definition of "debilitating medical condition" in section
15 329-121. In considering the petitions, the standing committee
16 shall provide public notice of, and an opportunity to comment in
17 a public hearing upon, the petitions. The standing committee
18 shall approve or deny the petitions within thirty days after the
19 hearing. If approved, the director shall adopt rules, exempt
20 from the public notice and public hearing and gubernatorial
21 approval requirements under chapter 91 and the small business
22 regulatory review board rule review requirement under chapter



1 201M, to include the approved medical conditions to the list of
2 debilitating conditions covered by this part."

3 SECTION 3. Section 329-121, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By adding a new definition of "registration" to read:

6 "Registration" means filing by a qualifying patient or a
7 prospective qualifying patient with the department of health all
8 information required by this chapter, including written
9 certification."

10 2. By amending the definitions of "adequate supply" and
11 "debilitating medical condition" to read:

12 "Adequate supply" means an amount of marijuana jointly
13 possessed between the qualifying patient and the primary
14 caregiver that is not more than is reasonably necessary to
15 assure the uninterrupted availability of marijuana for the
16 purpose of alleviating the symptoms or effects of a qualifying
17 patient's debilitating medical condition; provided that an
18 "adequate supply" shall not exceed [~~three mature~~] seven
19 marijuana plants[~~, four immature marijuana plants, and one~~
20 ounce] and three ounces of usable marijuana [~~per each mature~~
21 plant.] at each given time."

22 "Debilitating medical condition" means:



- 1 (1) Cancer, glaucoma, positive status for human
2 immunodeficiency virus, acquired immune deficiency
3 syndrome, or the treatment of these conditions;
- 4 (2) A chronic or debilitating disease or medical condition
5 or its treatment that produces one or more of the
6 following:
- 7 (A) Cachexia or wasting syndrome;
 - 8 (B) Severe pain;
 - 9 (C) Severe nausea;
 - 10 (D) Seizures, including those characteristic of
11 epilepsy; or
 - 12 (E) Severe and persistent muscle spasms, including
13 those characteristic of multiple sclerosis or
14 Crohn's disease; or
- 15 (3) Any other medical condition approved by the department
16 of health pursuant to the expedited adoption of
17 administrative rules in response to a request from a
18 physician, qualifying patient, or potentially
19 qualifying patient [-] pursuant to section 329- ."
- 20 3. By amending the definition of "written certification"
21 to read:



1 ""Written certification" means the qualifying patient's
2 medical records or a statement signed by a qualifying patient's
3 physician, provided in response to a request for the information
4 from the qualifying patient, stating that in the physician's
5 professional opinion, the qualifying patient has a debilitating
6 medical condition and the potential benefits of the medical use
7 of marijuana would likely outweigh the health risks for the
8 qualifying patient. The department of [~~public safety~~] health
9 may require, through its rulemaking authority, that all written
10 certifications comply with a designated form. If a form is
11 required by the department of health, the department shall make
12 the form readily available for reproduction by posting on the
13 department's website or by mailing a copy to any person
14 requesting it. "Written certifications" are valid for [~~only one~~
15 ~~year~~] two years from the [~~time~~] date of signing unless the
16 physician specifies a shorter duration. The department of
17 health shall give the patient and primary caregiver, if any,
18 written notice of the pending expiration of a patient's
19 certification not less than thirty days before the certification
20 expires.""

21 SECTION 4. Section 329-122, Hawaii Revised Statutes, is
22 amended as follows:



1 1. By amending subsection (a) to read:

2 "(a) Notwithstanding any law to the contrary, the medical
3 use of marijuana by a qualifying patient shall be permitted only
4 if:

5 (1) The qualifying patient has been diagnosed by a
6 physician as having a debilitating medical condition;

7 (2) The qualifying patient's physician, in response to a
8 request for information from the qualifying patient or
9 potentially qualifying patient, has certified in
10 writing that, in the physician's professional opinion,
11 after having completed a medical examination and
12 assessment of the patient's medical history and
13 current medical condition in the course of a bona fide
14 physician-patient relationship, the potential benefits
15 of the medical use of marijuana would likely outweigh
16 the health risks for the particular qualifying
17 patient; and

18 (3) The amount of marijuana possessed by the qualifying
19 patient does not exceed an adequate supply."

20 2. By amending subsection (c) to read:

21 "(c) The authorization for the medical use of marijuana in
22 this section shall not apply to:



1 (1) The medical use of marijuana that endangers the health
2 or well-being of another person;

3 (2) The medical use of marijuana:

4 (A) In a school bus, public bus, or any moving
5 vehicle~~[+]~~ or while using stationary heavy
6 equipment;

7 (B) In the workplace of one's employment~~[+]~~ except if
8 working in one's own residence;

9 (C) On any school grounds;

10 (D) At any public park, public beach, public
11 recreation center, [~~recreation~~] or youth center;
12 or

13 (E) Other [~~place~~] places open to the public; and

14 (3) The use of marijuana by a qualifying patient, parent,
15 or primary caregiver for purposes other than medical
16 use permitted by this part."

17 SECTION 5. Section 329-123, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[+]§329-123[+] **Registration requirements.** (a)

20 Physicians who issue written certifications shall [~~register the~~
21 ~~names, addresses, patient identification numbers,~~] provide, in
22 each certification, the name, address, patient identification



1 number, and other identifying information of the qualifying
 2 patients [~~issued written certifications with the department of~~
 3 ~~public safety~~]. The information shall include the physician's
 4 attestation that the patient has one of the debilitating medical
 5 conditions defined in section 329-121.

6 (b) Qualifying patients shall register with the department
 7 of [~~public safety. Such~~] health. The registration shall be
 8 effective until the expiration of the certificate issued by the
 9 physician. Every qualifying patient shall provide sufficient
 10 identifying information to establish the personal identity of
 11 the qualifying patient and the primary caregiver. Qualifying
 12 patients shall report changes in information within [~~five~~] ten
 13 working days. Every qualifying patient shall have only one
 14 primary caregiver at any given time. The department shall
 15 [~~then~~] issue to the qualifying patient a registration
 16 certificate[~~7~~] and may charge a reasonable fee not to exceed
 17 \$25[~~7~~] per year. The certificate may state that the patient has
 18 a "debilitating condition" but may not include the patient's
 19 specific medical diagnosis.

20 (c) Primary caregivers shall register with the department
 21 of [~~public safety. Every~~] health. No primary caregiver shall



1 be responsible for the care of [~~only one~~] more than three
2 qualifying [~~patient~~] patients at any given time.

3 (d) The department of health may require, in rules adopted
4 under chapter 91, that all registrations comply with a
5 designated form. The department shall make registration forms
6 readily available for reproduction by the public by posting on
7 the department's website or by mailing a copy to any person
8 requesting it.

9 [~~(d)~~] (e) Upon [~~an~~] inquiry by a law enforcement agency,
10 the department of [~~public safety~~] health shall verify whether
11 the [~~particular qualifying patient~~] subject of the inquiry has
12 registered with the department and may provide reasonable access
13 to the registry information for official law enforcement
14 purposes."

15 SECTION 6. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun, before its effective date.

18 SECTION 7. All appropriations, records, equipment,
19 machines, files, supplies, contracts, books, papers, documents,
20 maps, and other personal property heretofore made, used,
21 acquired, or held by the department of public safety relating to



1 the functions transferred to the department of health shall be
2 transferred with the functions to which they relate.

3 SECTION 8. All rules or other documents executed or
4 entered into by or on behalf of the department of public safety
5 pursuant to the provisions of part IX of chapter 329, Hawaii
6 Revised Statutes, which are reenacted or made applicable to the
7 department of health by this Act, shall remain in full force and
8 effect until amended or repealed by the department of health
9 pursuant to chapter 91, Hawaii Revised Statutes.

10 SECTION 9. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 10. This Act shall take effect upon its approval.

13

INTRODUCED BY:



JAN 1 8 2007



Report Title:

Marijuana; Transfer Medical Marijuana Program to DOH

Description:

Transfers medical marijuana program from department of public safety to department of health and requires it to consider new debilitating conditions for marijuana use. Clarifies amount of marijuana that may be possessed. Reduces role of physicians to ensure that they will not be subject to federal charges.

