

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 177

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

AN ACT

RELATING TO HEALTH; AMENDING AND ENACTING SECTIONS OF THE LYNN  
AND ERIN COMPASSIONATE USE ACT TO EXPAND ELIGIBILITY AND TO  
PROVIDE FOR PRESUMPTIVE ELIGIBILITY AND THREE-YEAR  
CERTIFICATION AND TO ESTABLISH NEW QUALIFYING MEDICAL  
CONDITIONS, ADEQUATE SUPPLY LIMITS, LICENSED PRODUCER FEES,  
INTERSTATE RECIPROCITY AND CONTENT AND POSSESSION STANDARDS;  
AMENDING A SECTION OF THE JONATHAN SPRADLING REVISED UNIFORM  
ANATOMICAL GIFT ACT; ENACTING A NEW SECTION OF THE NMSA 1978 TO  
REMOVE PARTICIPATION IN THE STATE'S MEDICAL CANNABIS PROGRAM AS  
GROUNDS FOR CHILD PROTECTIVE SERVICES INTERVENTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 24-6B-11 NMSA 1978 (being Laws 2007,  
Chapter 323, Section 11) is amended to read:

"24-6B-11. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT--

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1 PURPOSE OF ANATOMICAL GIFT.--

2 A. An anatomical gift may be made to the following  
3 persons named in the document of gift:

4 (1) a hospital; accredited medical school,  
5 dental school, college or university; organ procurement  
6 organization; or other appropriate person, for research or  
7 education;

8 (2) subject to the provisions of Subsection B  
9 of this section, an individual designated by the person making  
10 the anatomical gift if the individual is the recipient of the  
11 part; and

12 (3) an eye bank or tissue bank.

13 B. If an anatomical gift to an individual pursuant  
14 to Paragraph (2) of Subsection A of this section cannot be  
15 transplanted into the individual, the part passes in accordance  
16 with Subsection G of this section in the absence of an express,  
17 contrary indication by the person making the anatomical gift.

18 C. If an anatomical gift of one or more specific  
19 parts or of all parts is made in a document of gift that does  
20 not name a person described in Subsection A of this section but  
21 identifies the purpose for which an anatomical gift may be  
22 used, the following rules apply:

23 (1) if the part is an eye and the gift is for  
24 the purpose of transplantation or therapy, the gift passes to  
25 the appropriate eye bank;

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1                   (2) if the part is tissue and the gift is for  
2 the purpose of transplantation or therapy, the gift passes to  
3 the appropriate tissue bank;

4                   (3) if the part is an organ and the gift is  
5 for the purpose of transplantation or therapy, the gift passes  
6 to the appropriate organ procurement organization as custodian  
7 of the organ; and

8                   (4) if the part is an organ, an eye or tissue  
9 and the gift is for the purpose of research or education, the  
10 gift passes to the appropriate procurement organization.

11                   D. For the purpose of Subsection C of this section,  
12 if there is more than one purpose of an anatomical gift set  
13 forth in the document of gift but the purposes are not set  
14 forth in any priority, the gift shall be used for  
15 transplantation or therapy, if suitable. If the gift cannot be  
16 used for transplantation or therapy, the gift may be used for  
17 research or education.

18                   E. If an anatomical gift of one or more specific  
19 parts is made in a document of gift that does not name a person  
20 described in Subsection A of this section and does not identify  
21 the purpose of the gift, the gift may be used only for  
22 transplantation or therapy, and the gift passes in accordance  
23 with Subsection G of this section.

24                   F. If a document of gift specifies only a general  
25 intent to make an anatomical gift by words such as "donor",

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1 "organ donor" or "body donor", or by a symbol or statement of  
2 similar import, the gift may be used only for transplantation  
3 or therapy and the gift passes in accordance with Subsection G  
4 of this section.

5 G. For purposes of Subsections B, E and F of this  
6 section the following rules apply:

7 (1) if the part is an eye, the gift passes to  
8 the appropriate eye bank;

9 (2) if the part is tissue, the gift passes to  
10 the appropriate tissue bank; and

11 (3) if the part is an organ, the gift passes  
12 to the appropriate organ procurement organization as custodian  
13 of the organ.

14 H. An anatomical gift of an organ for  
15 transplantation or therapy, other than an anatomical gift  
16 pursuant to Paragraph (2) of Subsection A of this section,  
17 passes to the organ procurement organization as custodian of  
18 the organ.

19 I. If an anatomical gift does not pass pursuant to  
20 Subsections A through H of this section or the decedent's body  
21 or part is not used for transplantation, therapy, research or  
22 education, custody of the body or part passes to the person  
23 under obligation to dispose of the body or part.

24 J. A person may not accept an anatomical gift if  
25 the person knows that the gift was not effectively made

1 pursuant to Section [~~5 or 10 of the Jonathan Spradling Revised~~  
 2 ~~Uniform Anatomical Gift Act~~] 24-6B-5 or 24-6B-10 NMSA 1978 or  
 3 if the person knows that the decedent made a refusal pursuant  
 4 to Section [~~7 of that act~~] 24-6B-7 NMSA 1978 that was not  
 5 revoked. For purposes of this subsection, if a person knows  
 6 that an anatomical gift was made on a document of gift, the  
 7 person is deemed to know of any amendment or revocation of the  
 8 gift or any refusal to make an anatomical gift on the same  
 9 document of gift.

10 K. Except as otherwise provided in Paragraph (2) of  
 11 Subsection A of this section, nothing in the Jonathan Spradling  
 12 Revised Uniform Anatomical Gift Act affects the allocation of  
 13 organs for transplantation or therapy.

14 L. An individual's participation in the state's  
 15 medical cannabis program established pursuant to the Lynn and  
 16 Erin Compassionate Use Act shall not in itself constitute  
 17 grounds for refusing to allow that individual to receive an  
 18 anatomical gift."

19 SECTION 2. Section 26-2B-1 NMSA 1978 (being Laws 2007,  
 20 Chapter 210, Section 1) is amended to read:

21 "26-2B-1. SHORT TITLE.--~~[Sections 1 through 7 of this~~  
 22 ~~act]~~ Chapter 26, Article 2B NMSA 1978 may be cited as the "Lynn  
 23 and Erin Compassionate Use Act" in honor of Lynn Pierson and  
 24 Erin Armstrong."

25 SECTION 3. Section 26-2B-3 NMSA 1978 (being Laws 2007,

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1 Chapter 210, Section 3) is amended to read:

2 "26-2B-3. DEFINITIONS.--As used in the Lynn and Erin  
3 Compassionate Use Act:

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

13 B. "chronic condition" means a condition that, in  
14 the opinion of a patient's practitioner, lasts or is expected  
15 to last three months or longer;

16 [~~B.~~] C. "debilitating medical condition" means:

- 17 (1) cancer;  
18 (2) glaucoma;  
19 (3) multiple sclerosis;  
20 (4) damage to the nervous tissue of the spinal  
21 cord, with objective neurological indication of intractable  
22 spasticity;  
23 (5) epilepsy;  
24 (6) positive status for human immunodeficiency  
25 virus or acquired immune deficiency syndrome;

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1 (7) admitted into hospice care in accordance  
2 with rules promulgated by the department; [~~8~~]

3 (8) amyotrophic lateral sclerosis;

4 (9) Crohn's disease;

5 (10) hepatitis C infection, for which the  
6 applicant or qualified patient is currently receiving antiviral  
7 treatment;

8 (11) Huntington's disease;

9 (12) inclusion body myositis;

10 (13) inflammatory autoimmune-mediated  
11 arthritis;

12 (14) painful peripheral neuropathy;

13 (15) Parkinson's disease;

14 (16) posttraumatic stress disorder;

15 (17) severe chronic pain;

16 (18) severe anorexia or cachexia;

17 (19) spasmodic torticollis;

18 (20) ulcerative colitis;

19 (21) substance use disorder, for which the  
20 applicant or qualified patient is currently undergoing  
21 treatment for the applicant's or qualified patient's condition;

22 or

23 [~~8~~] (22) any other medical condition,  
24 medical treatment or disease as approved by the department;

25 [~~6~~] D. "department" means the department of

1 health;

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

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

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

16           ~~[G.]~~ H. "qualified patient" means a resident of New  
17 Mexico who has been ~~[diagnosed by a practitioner as having a~~  
18 ~~debilitating medical condition and has received written~~  
19 ~~certification and] issued~~ a registry identification card  
20 ~~[issued]~~ pursuant to the Lynn and Erin Compassionate Use Act  
21 ~~[and]~~ on the basis of:

22                   (1) having been diagnosed by a practitioner as  
23 having a debilitating medical condition; or

24                   (2) status as a veteran;

25           I. "personal production license" means a license

1 issued to a qualified patient or to a qualified patient's  
2 primary caregiver participating in the medical cannabis program  
3 to permit the qualified patient or the qualified patient's  
4 primary caregiver to produce medical cannabis for the qualified  
5 patient's use in accordance with the provisions of the Lynn and  
6 Erin Compassionate Use Act and department rules;

7 J. "registry identification card" means a document  
8 that the department issues:

9 (1) to a qualified patient that identifies the  
10 bearer as a qualified patient and authorizes the qualified  
11 patient to use cannabis for a debilitating medical condition;

12 or

13 (2) to a primary caregiver that identifies the  
14 bearer as a primary caregiver authorized to engage in the  
15 intrastate possession, cultivation and administration of  
16 cannabis for the sole use of a qualified patient who is  
17 identified on the document;

18 K. "THC" means tetrahydrocannabinol, a substance  
19 that is the primary psychoactive ingredient in cannabis;

20 L. "veteran" means a person who served in the  
21 uniformed services, who was discharged or released from the  
22 uniformed services and who submits a copy of the person's  
23 United States department of defense form 214, also known as "DD  
24 214", discharge papers and separation document or equivalent  
25 report of separation to the department; and

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1           ~~[H.]~~ M. "written certification" means a statement  
2 in a patient's medical records or a statement signed by a  
3 patient's practitioner that indicates, in the practitioner's  
4 professional opinion, that the patient has a debilitating  
5 medical condition and the practitioner believes that the  
6 potential health benefits of the medical use of cannabis would  
7 likely outweigh the health risks for the patient [~~A written~~  
8 ~~certification is not valid for more than one year from the date~~  
9 ~~of issuance]."~~

10           SECTION 4. Section 26-2B-7 NMSA 1978 (being Laws 2007,  
11 Chapter 210, Section 7) is amended to read:

12           "26-2B-7. REGISTRY IDENTIFICATION CARDS--DEPARTMENT  
13 RULES--DUTIES--PRESUMPTIVE ELIGIBILITY--RECIPROCITY.--

14           A. [~~No later than October 1, 2007, and~~] After  
15 consultation with the advisory board, the department shall  
16 promulgate rules in accordance with the State Rules Act to  
17 implement the purpose of the Lynn and Erin Compassionate Use  
18 Act. The rules shall:

19                   (1) govern the manner in which the department  
20 will consider applications for registry identification cards  
21 and for the renewal of identification cards for qualified  
22 patients and primary caregivers;

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

1                   ~~(3)~~ (2) identify criteria and set forth  
2 procedures for including additional medical conditions, medical  
3 treatments or diseases to the list of debilitating medical  
4 conditions that qualify for the medical use of cannabis.

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

7                   ~~(4)~~ (3) set forth additional medical  
8 conditions, medical treatments or diseases to the list of  
9 debilitating medical conditions that qualify for the medical  
10 use of cannabis as recommended by the advisory board;

11                   ~~(5)~~ (4) identify requirements for the  
12 licensure of producers and cannabis production facilities and  
13 set forth procedures to obtain licenses;

14                   ~~(6)~~ (5) develop a distribution system for  
15 medical cannabis that provides for:

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

19                   (b) distribution of medical cannabis to  
20 qualified patients or their primary caregivers to take place at  
21 locations that are designated by the department and that are  
22 not within three hundred feet of any school, church or daycare  
23 center;

24                   ~~(7)~~ (6) determine additional duties and  
25 responsibilities of the advisory board; and

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1                    [~~(8)~~] (7) be revised and updated as necessary.

2                    B. The department shall issue registry  
3 identification cards to a patient and to the primary caregiver  
4 for that patient, if any, who submit the following, in  
5 accordance with the department's rules:

- 6                    (1) a written certification or proof of  
7 veteran status;
- 8                    (2) the name, address and date of birth of the  
9 patient;
- 10                   (3) the name, address and telephone number of  
11 the patient's practitioner; and
- 12                   (4) the name, address and date of birth of the  
13 patient's primary caregiver, if any.

14                   C. The department shall presume eligible and issue,  
15 within twenty-four hours of receipt of application completed in  
16 accordance with Subsection B of this section and department  
17 rules, a registry identification card to any person who applies  
18 for a registry identification card. Within thirty days of  
19 receipt of an application, the department shall verify the  
20 information contained in an application submitted pursuant to  
21 Subsection B of this section [~~and shall approve or deny an~~  
22 ~~application within thirty days of receipt~~]. The department may  
23 deny an application only if the applicant did not provide the  
24 information required pursuant to Subsection B of this section  
25 or if the department determines that the information provided

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1 is false. A person whose application has been denied shall not  
2 reapply for six months from the date of the denial unless  
3 otherwise authorized by the department.

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

8 (1) the name ~~[address and date of birth]~~ of  
9 the qualified patient and primary caregiver, if any;

10 (2) the date of issuance and expiration date  
11 of the registry identification card; and

12 (3) other information that the department may  
13 require by rule.

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

20 F. Possession of or application for a registry  
21 identification card shall not constitute probable cause or give  
22 rise to reasonable suspicion for a governmental agency to  
23 search the person or property of the person possessing or  
24 applying for the card.

25 G. The department shall maintain a confidential

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1 file containing the names and addresses of the persons who have  
2 either applied for or received a registry identification card.  
3 Individual names on the list shall be confidential and not  
4 subject to disclosure, except:

5 (1) to authorized employees or agents of the  
6 department as necessary to perform the duties of the department  
7 pursuant to the provisions of the Lynn and Erin Compassionate  
8 Use Act;

9 (2) to authorized employees of state or local  
10 law enforcement agencies, but only for the purpose of verifying  
11 that a person is lawfully in possession of a registry  
12 identification card; or

13 (3) as provided in the federal Health  
14 Insurance Portability and Accountability Act of 1996.

15 H. By July 1, 2017 and each month thereafter, the  
16 department shall:

17 (1) publish on its website in a publicly  
18 accessible manner a current census of qualified patients; and

19 (2) notify all licensed producers of the  
20 current census of qualified patients.

21 I. An individual who holds proof of authorization  
22 to participate in the medical cannabis program of another state  
23 of the United States, the District of Columbia or a territory  
24 of the United States:

25 (1) may participate in the medical cannabis

1 program; and

2 (2) shall not be required to comply with the  
3 registry identification card application and renewal  
4 requirements established pursuant to this section and  
5 department rules."

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

8 "[NEW MATERIAL] REGISTRY IDENTIFICATION CARD--  
9 REGISTRATION--RENEWAL--WRITTEN CERTIFICATION.--The department  
10 shall require a qualified patient to reapply for a registry  
11 identification card as follows:

12 A. for a qualified patient who is a veteran or  
13 whose certification of a debilitating medical condition  
14 indicates that the patient's debilitating medical condition is  
15 a chronic condition, no sooner than three years from the date  
16 the patient's current registry identification card is issued;  
17 and

18 B. for a qualified patient whose certification of a  
19 debilitating medical condition does not indicate that the  
20 patient's debilitating medical condition is a chronic  
21 condition, no sooner than three years from the date the  
22 patient's current registry identification card is issued;  
23 provided that, in order to remain eligible for participation in  
24 the medical cannabis program established pursuant to the Lynn  
25 and Erin Compassionate Use Act, a qualified patient whose

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1 debilitating medical condition is not a chronic condition shall  
2 submit annually to the department a statement from the  
3 qualified patient's practitioner indicating that:

4 (1) the practitioner has examined the  
5 qualified patient during the preceding twelve months;

6 (2) the qualified patient continues to have a  
7 debilitating medical condition; and

8 (3) the practitioner believes that the  
9 potential health benefits of the medical use of cannabis would  
10 likely outweigh the health risks for the qualified patient."

11 SECTION 6. A new section of the Lynn and Erin  
12 Compassionate Use Act is enacted to read:

13 "[NEW MATERIAL] ADEQUATE SUPPLY.--

14 A. The department shall not limit the amount of THC  
15 concentration in a cannabis-derived product.

16 B. A qualified patient who does not have a personal  
17 production license or a primary caregiver shall possess no more  
18 than five ounces of cannabis.

19 C. A qualified patient who has a personal  
20 production license shall possess no more than eighteen  
21 marijuana plants; provided that a qualified patient who has a  
22 personal production license may possess that qualified  
23 patient's entire harvest of cannabis.

24 D. In accordance with census numbers published in  
25 accordance with Subsection H of Section 26-2B-7 NMSA 1978, a

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1 licensed producer shall possess no more than the following  
2 amounts:

3 (1) when the current census is thirty-five  
4 thousand qualified patients, a licensed producer shall possess  
5 no more than five hundred cannabis plants;

6 (2) when the current census is forty thousand  
7 qualified patients, a licensed producer shall possess no more  
8 than six hundred cannabis plants;

9 (3) when the current census is forty-five  
10 thousand qualified patients, a licensed producer shall possess  
11 no more than seven hundred cannabis plants;

12 (4) when the current census is fifty thousand  
13 qualified patients, a licensed producer shall possess no more  
14 than eight hundred cannabis plants;

15 (5) when the current census is fifty-five  
16 thousand qualified patients, a licensed producer shall possess  
17 no more than nine hundred cannabis plants;

18 (6) when the current census is sixty thousand  
19 qualified patients, a licensed producer shall possess no more  
20 than one thousand cannabis plants; and

21 (7) when the current census is sixty-five  
22 thousand qualified patients, and for every census increase of  
23 five thousand qualified patients, the department shall increase  
24 the total allowable plant count by one hundred additional  
25 cannabis plants.

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1           E. After a plant count has been increased in  
2 accordance with the provisions of Subsection D of this section,  
3 the department shall not reduce a licensed producer's allowable  
4 plant count even in the event of a decrease in the census of  
5 qualified patients."

6           **SECTION 7.** A new section of the Lynn and Erin  
7 Compassionate Use Act is enacted to read:

8           "[NEW MATERIAL] LICENSED PRODUCERS--LICENSE FEES.--

9           A. A licensed producer shall submit to the  
10 department a nonrefundable licensure fee before beginning  
11 operations, no earlier than July 1 of each renewal year and no  
12 later than August 1 of each renewal year, of:

13                   (1) thirty thousand dollars (\$30,000) for the  
14 first one hundred fifty cannabis plants to be possessed by the  
15 licensed producer; and

16                   (2) ten thousand dollars (\$10,000) for each  
17 additional quantity of fifty plants in excess of the one  
18 hundred fifty plants to be possessed by the licensed producer.

19           B. Regardless of the number of cannabis plants that  
20 a licensed producer possesses, the department shall not charge  
21 any licensed producer more than ninety thousand dollars  
22 (\$90,000) in licensure fees:

23                   (1) before the licensed producer begins  
24 operations; or

25                   (2) when the licensed producer renews its

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1 license each year."

2 SECTION 8. [NEW MATERIAL] MEDICAL CANNABIS PROGRAM--  
3 REMOVAL OF CHILDREN--FAMILY SERVICES INTERVENTION.--An  
4 individual's participation in the state's medical cannabis  
5 program established pursuant to the Lynn and Erin Compassionate  
6 Use Act shall not in itself constitute grounds for:

7 A. removal and placement into state custody of a  
8 child in that individual's care pursuant to the Abuse and  
9 Neglect Act; or

10 B. the provision of state prevention, diversion or  
11 intervention services to that individual's family pursuant to  
12 the Family Services Act.

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