

1 SENATE BILL 406

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Gerald Ortiz y Pino

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10 AN ACT

11 RELATING TO HEALTH; AMENDING AND ENACTING SECTIONS OF THE LYNN
12 AND ERIN COMPASSIONATE USE ACT TO EXPAND ELIGIBILITY AND TO
13 PROVIDE FOR PRESUMPTIVE ELIGIBILITY AND THREE-YEAR
14 CERTIFICATION AND TO ESTABLISH NEW QUALIFYING MEDICAL
15 CONDITIONS, CIVIL PROTECTIONS AND INTERSTATE AND TRIBAL
16 RECIPROCITY; AMENDING PENALTIES; CREATING THE QUALIFIED PATIENT
17 AND PRIMARY CAREGIVER ADVISORY BOARD; AMENDING A SECTION OF THE
18 JONATHAN SPRADLING REVISED UNIFORM ANATOMICAL GIFT ACT;
19 ENACTING A NEW SECTION OF THE FAMILY SERVICES ACT TO REMOVE
20 PARTICIPATION IN THE STATE'S MEDICAL CANNABIS PROGRAM AS
21 GROUNDS FOR CHILD PROTECTIVE SERVICES INTERVENTION.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

5 SECTION 2. Section 26-2B-3 NMSA 1978 (being Laws 2007,
6 Chapter 210, Section 3) is amended to read:

7 "26-2B-3. DEFINITIONS.--As used in the Lynn and Erin
8 Compassionate Use Act:

9 A. "adequate supply" means an amount of cannabis,
10 in any form approved by the department, possessed by a
11 qualified patient or collectively possessed by a qualified
12 patient and the qualified patient's primary caregiver that is
13 determined by rule of the department to be no more than
14 reasonably necessary to ensure the uninterrupted availability
15 of cannabis for a period of three months and that is derived
16 solely from an intrastate source and is not less than one ounce
17 per day;

18 B. "cannabis":

19 (1) means all parts of the plant Cannabis
20 sativa L. containing a delta-9-tetrahydrocannabinol
21 concentration of more than three-tenths percent on a dry weight
22 basis, whether growing or not; the seeds of the plant; the
23 resin extracted from any part of the plant; and every compound,
24 manufacture, salt, derivative, mixture or preparation of the
25 plant, its seeds or its resin; and

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1 (2) does not include the mature stalks of the
2 plant; fiber produced from the stalks; oil or cake made from
3 the seeds of the plant; any other compound, manufacture, salt,
4 derivative, mixture or preparation of the mature stalks, fiber,
5 oil or cake; or the sterilized seed of the plant that is
6 incapable of germination; or the weight of any other ingredient
7 combined with cannabis to prepare topical or oral
8 administrations, food, drink or another product;

9 C. "cannabis consumption area" means an area within
10 a cannabis collective's or cannabis producer's licensed
11 premises where cannabis may be consumed;

12 D. "cannabis courier" means a person or entity that
13 is licensed by the department to transport usable cannabis and
14 cannabis products within the state from a cannabis
15 establishment to:

- 16 (1) a qualified patient;
- 17 (2) a primary caregiver; or
- 18 (3) another cannabis establishment;

19 E. "cannabis establishment" means:

- 20 (1) a licensed cannabis courier;
- 21 (2) a licensed cannabis testing facility;
- 22 (3) an approved cannabis manufacturer; or
- 23 (4) a licensed cannabis producer;

24 F. "cannabis manufacturer" means a business entity
25 that manufactures cannabis products and has been approved by

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1 the department;

2 G. "cannabis producer" means a person that is
3 licensed by the department to possess, produce, dispense,
4 distribute and manufacture cannabis and cannabis products
5 wholesale or by direct sale to qualified patients and primary
6 caregivers;

7 H. "cannabis product":

8 (1) means a product that contains cannabis,
9 including edible or topical products that may also contain
10 other ingredients; and

11 (2) does not include the weight of any other
12 ingredient combined with cannabis or cannabis extract to
13 prepare topical or oral administrations, food, drink or another
14 product;

15 I. "cannabis testing facility" means a person that
16 is licensed by the department to perform tests of cannabis
17 products to analyze the strength or purity of the items and to
18 transport cannabis products to the cannabis testing facility
19 from cannabis establishments;

20 J. "chronic condition" means a condition that, in
21 the opinion of a patient's practitioner, lasts or is expected
22 to last three months or longer;

23 ~~[B-]~~ K. "debilitating medical condition" means:

- 24 (1) cancer;
- 25 (2) glaucoma;

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- 1 (3) multiple sclerosis;
- 2 (4) damage to the nervous tissue of the spinal
- 3 cord, with objective neurological indication of intractable
- 4 spasticity;
- 5 (5) seizure disorder, including epilepsy;
- 6 (6) positive status for human immunodeficiency
- 7 virus or acquired immune deficiency syndrome;
- 8 (7) admitted into hospice care in accordance
- 9 with rules promulgated by the department; [ø]
- 10 (8) autism spectrum disorder;
- 11 (9) amyotrophic lateral sclerosis;
- 12 (10) Crohn's disease;
- 13 (11) hepatitis C infection;
- 14 (12) Huntington's disease;
- 15 (13) inclusion body myositis;
- 16 (14) inflammatory autoimmune-mediated
- 17 arthritis;
- 18 (15) intractable nausea or vomiting;
- 19 (16) neurodegenerative dementia;
- 20 (17) obstructive sleep apnea;
- 21 (18) painful peripheral neuropathy;
- 22 (19) Parkinson's disease;
- 23 (20) posttraumatic stress disorder;
- 24 (21) severe pain;
- 25 (22) severe anorexia or cachexia;

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- 1 (23) spasmodic torticollis;
2 (24) ulcerative colitis;
3 (25) substance use disorder;
4 (26) any other serious medical condition,

5 medical treatment or disease that a medical practitioner
6 believes would be alleviated by the use of cannabis; or
7 [~~(8)~~] (27) any other medical condition,
8 medical treatment or disease as approved by the department;

9 [~~G.~~] L. "department" means the department of
10 health;

11 [~~D. "licensed producer" means any person or~~
12 ~~association of persons within New Mexico that the department~~
13 ~~determines to be qualified to produce, possess, distribute and~~
14 ~~dispense cannabis pursuant to the Lynn and Erin Compassionate~~
15 ~~Use Act and that is licensed by the department;]~~

16 M. "financial consideration":

17 (1) means value that is given or received,
18 directly or indirectly, through sales, barter, trade, fees,
19 charges, dues, contributions or donations; and

20 (2) does not mean the value in cannabis
21 produced or cannabis products manufactured by a person under a
22 personal production license;

23 N. "license" means a license issued pursuant to the
24 Lynn and Erin Compassionate Use Act;

25 O. "licensee" means a person that holds a license;

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1 P. "licensee representative" means an owner,
2 director, officer, manager, employee, agent or other
3 representative of a licensee, to the extent that person acts in
4 a representative capacity;

5 Q. "manufacture":
6 (1) means to prepare a cannabis product; and
7 (2) does not include producing the cannabis
8 contained in a cannabis product;

9 R. "medical cannabis program" means the program
10 established pursuant to the Lynn and Erin Compassionate Use Act
11 for authorization and regulation of the medical use of cannabis
12 in the state;

13 S. "personal production license" means a license
14 issued to a qualified patient or to a qualified patient's
15 primary caregiver participating in the medical cannabis program
16 to permit the qualified patient or the qualified patient's
17 primary caregiver to produce cannabis for the qualified
18 patient's use at the qualified patient's or primary caregiver's
19 address or at an alternative address;

20 ~~[E-]~~ T. "practitioner" means a person licensed in
21 New Mexico to prescribe and administer drugs that are subject
22 to the Controlled Substances Act;

23 ~~[F-]~~ U. "primary caregiver" means a resident of New
24 Mexico who is at least eighteen years of age and who has been
25 designated by the patient's practitioner as being necessary to

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1 take responsibility for managing the well-being of a qualified
2 patient with respect to the medical use of cannabis pursuant to
3 the provisions of the Lynn and Erin Compassionate Use Act;

4 V. "produce" means to engage in any activity
5 related to the planting or cultivation of cannabis;

6 [~~G.~~] W. "qualified patient" means a [resident of
7 New Mexico] person who has been [diagnosed by a practitioner as
8 having a debilitating medical condition and has received
9 written certification and] issued a registry identification
10 card [issued] pursuant to the Lynn and Erin Compassionate Use
11 Act [and] on the basis of having been diagnosed, in person or
12 via telemedicine, by a practitioner as having a debilitating
13 medical condition;

14 X. "registry identification card" means a document
15 that the department issues:

16 (1) to a qualified patient that identifies the
17 bearer as a qualified patient and authorizes the qualified
18 patient to use cannabis for a debilitating medical condition;

19 or

20 (2) to a primary caregiver that identifies the
21 bearer as a primary caregiver authorized to engage in the
22 intrastate possession, cultivation and administration of
23 cannabis for the sole use of a qualified patient who is
24 identified on the document;

25 Y. "telemedicine" means the use of

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1 telecommunications and information technology to provide
2 clinical health care from a site apart from the site where the
3 patient is located, in real time or asynchronously, including
4 the use of interactive simultaneous audio and video or
5 store-and-forward technology, or off-site patient monitoring
6 and telecommunications in order to deliver health care
7 services;

8 Z. "THC" means tetrahydrocannabinol, a substance
9 that is the primary psychoactive ingredient in cannabis; and

10 [H.] AA. "written certification" means a statement
11 in a patient's medical records or a statement signed by a
12 patient's practitioner that indicates, in the practitioner's
13 professional opinion, that the patient has a debilitating
14 medical condition and the practitioner believes that the
15 potential health benefits of the medical use of cannabis would
16 likely outweigh the health risks for the patient [A written
17 certification is not valid for more than one year from the date
18 of issuance]."

19 SECTION 3. Section 26-2B-4 NMSA 1978 (being Laws 2007,
20 Chapter 210, Section 4) is amended to read:

21 "26-2B-4. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES FOR
22 THE MEDICAL USE OF CANNABIS.--

23 A. A qualified patient or a qualified patient's
24 primary caregiver shall not be subject to arrest, prosecution
25 or penalty in any manner for the possession of or the medical

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1 use of cannabis if the quantity of cannabis does not exceed an
2 adequate supply;

3 ~~[B. A qualified patient's primary caregiver shall~~
4 ~~not be subject to arrest, prosecution or penalty in any manner~~
5 ~~for the possession of cannabis for medical use by the qualified~~
6 ~~patient if the quantity of cannabis does not exceed an adequate~~
7 ~~supply]~~ provided that a qualified patient or the qualified
8 patient's primary caregiver may possess a maximum of twenty
9 pounds of that qualified patient's harvest of cannabis.

10 B. Notwithstanding any other provision of law, the
11 following conduct is lawful and shall not constitute grounds
12 for detention, search or arrest of a person or for a violation
13 of probation or parole, and cannabis products that relate to
14 the conduct are not contraband or subject to seizure or
15 forfeiture pursuant to the Controlled Substances Act or the
16 Forfeiture Act:

17 (1) a qualified patient or primary caregiver
18 possessing, displaying, purchasing, obtaining or transporting
19 not more than an adequate supply;

20 (2) a qualified patient using or being under
21 the influence of cannabis;

22 (3) a qualified patient or primary caregiver
23 transferring, without financial consideration, to a qualified
24 patient or primary caregiver not more than two ounces of
25 cannabis; or

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1 (4) with respect to cannabis cultivated under
2 a personal production license, a qualified patient or primary
3 caregiver possessing, planting, cultivating, harvesting,
4 drying, manufacturing or transporting not more than six mature
5 cannabis plants and twelve immature cannabis plants and
6 possessing the cannabis produced by the plants.

7 C. Subsection A of this section shall not apply to
8 a qualified patient under the age of eighteen years, unless:

9 (1) the qualified patient's practitioner has
10 explained the potential risks and benefits of the medical use
11 of cannabis to the qualified patient and to a parent, guardian
12 or person having legal custody of the qualified patient; and

13 (2) a parent, guardian or person having legal
14 custody consents in writing to:

15 (a) allow the qualified patient's
16 medical use of cannabis;

17 (b) serve as the qualified patient's
18 primary caregiver; and

19 (c) control the dosage and the frequency
20 of the medical use of cannabis by the qualified patient.

21 D. A qualified patient or a primary caregiver shall
22 be granted the full legal protections provided in this section
23 if the qualified patient or primary caregiver is in possession
24 of a registry identification card. If the qualified patient or
25 primary caregiver is not in possession of a registry

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1 identification card, the qualified patient or primary caregiver
2 shall be given an opportunity to produce the registry
3 identification card before any arrest or criminal charges or
4 other penalties are initiated.

5 E. A practitioner shall not be subject to arrest or
6 prosecution, penalized in any manner or denied any right or
7 privilege for recommending the medical use of cannabis or
8 providing written certification for the medical use of cannabis
9 pursuant to the Lynn and Erin Compassionate Use Act.

10 F. A [~~licensed producer~~] licensee or licensee
11 representative shall not be subject to arrest, prosecution or
12 penalty, in any manner, for the production, possession,
13 distribution, [~~or~~] dispensing or testing of cannabis pursuant
14 to the Lynn and Erin Compassionate Use Act. Conduct by a
15 licensee or a licensee representative that is allowed pursuant
16 to a license and conduct by a person that allows property to be
17 used by a licensee or a licensee representative for conduct
18 allowed pursuant to a license is lawful, is not a violation of
19 state or local law and is not a basis for seizure or forfeiture
20 of property or assets under state or local law.

21 G. Any property interest that is possessed, owned
22 or used in connection with the medical use of cannabis, or acts
23 incidental to such use, shall not be harmed, neglected, injured
24 or destroyed while in the possession of state or local law
25 enforcement officials. Any such property interest shall not be

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1 forfeited under any state or local law providing for the
2 forfeiture of property except as provided in the Forfeiture
3 Act. Cannabis, paraphernalia or other property seized from a
4 qualified patient or primary caregiver in connection with the
5 claimed medical use of cannabis shall be returned immediately
6 upon the determination by a court or prosecutor that the
7 qualified patient or primary caregiver is entitled to the
8 protections of the provisions of the Lynn and Erin
9 Compassionate Use Act, as may be evidenced by a failure to
10 actively investigate the case, a decision not to prosecute, the
11 dismissal of charges or acquittal.

12 H. A state or local government shall not impose a
13 criminal, civil or administrative penalty on a licensee or a
14 licensee representative, or on a person that allows property to
15 be used by a licensee or a licensee representative pursuant to
16 a license, solely for conduct that is allowed pursuant to a
17 license.

18 [~~H.~~] I. A person shall not be subject to arrest or
19 prosecution for a cannabis-related offense for simply being in
20 the presence of the medical use of cannabis as permitted under
21 the provisions of the Lynn and Erin Compassionate Use Act."

22 SECTION 4. Section 26-2B-5 NMSA 1978 (being Laws 2007,
23 Chapter 210, Section 5) is amended to read:

24 "26-2B-5. PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON
25 THE MEDICAL USE OF CANNABIS--CRIMINAL PENALTIES.--

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1 A. Participation in a medical use of cannabis
2 program by a qualified patient or primary caregiver does not
3 relieve the qualified patient or primary caregiver from:

4 (1) criminal prosecution or civil penalties
5 for activities not authorized in the Lynn and Erin
6 Compassionate Use Act; or

7 (2) liability for damages or criminal
8 prosecution arising out of the operation of a vehicle while
9 under the influence of cannabis [~~or~~

10 ~~(3) criminal prosecution or civil penalty for~~
11 ~~possession or use of cannabis:~~

12 ~~(a) in a school bus or public vehicle;~~

13 ~~(b) on school grounds or property;~~

14 ~~(c) in the workplace of the qualified~~
15 ~~patient's or primary caregiver's employment; or~~

16 ~~(d) at a public park, recreation center,~~
17 ~~youth center or other public place].~~

18 B. A person who makes a fraudulent representation
19 to a law enforcement officer about the person's participation
20 in a medical use of cannabis program to avoid arrest or
21 prosecution for a cannabis-related offense is guilty of a petty
22 misdemeanor and shall be sentenced in accordance with the
23 provisions of Section 31-19-1 NMSA 1978.

24 C. If a [~~licensed producer~~] licensee sells,
25 distributes, dispenses or transfers cannabis to a person not

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1 approved by the department pursuant to the Lynn and Erin
2 Compassionate Use Act or obtains or transports cannabis outside
3 New Mexico, [~~in violation of federal law, the licensed~~
4 ~~producer~~] the licensee shall be subject to arrest, prosecution
5 and civil or criminal penalties pursuant to state law."

6 SECTION 5. Section 26-2B-6 NMSA 1978 (being Laws 2007,
7 Chapter 210, Section 6) is amended to read:

8 "26-2B-6. ADVISORY BOARD CREATED--DUTIES.--The secretary
9 of health shall establish an advisory board consisting of
10 [~~eight~~] nine practitioners representing the fields of
11 neurology, pain management, medical oncology, psychiatry,
12 infectious disease, family medicine and gynecology. The
13 practitioners shall be nationally board-certified in their area
14 of specialty and knowledgeable about the medical use of
15 cannabis. The members shall be chosen for appointment by the
16 secretary from a list proposed by the New Mexico medical
17 society, the New Mexico nurses association, the New Mexico
18 academy of family physicians, the New Mexico academy of
19 physician assistants, the New Mexico pharmacists association or
20 the New Mexico Hispanic medical association. A quorum of the
21 advisory board shall consist of three members. The advisory
22 board shall:

23 A. review and recommend to the department for
24 approval additional debilitating medical conditions that would
25 benefit from the medical use of cannabis; provided that the

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1 department shall by rule add to the list of debilitating
2 medical conditions any condition that a majority of the
3 advisory board votes to recommend as a debilitating medical
4 condition;

5 B. accept and review petitions to add medical
6 conditions, medical treatments or diseases to the list of
7 debilitating medical conditions that qualify for the medical
8 use of cannabis;

9 C. convene at least twice per year to conduct
10 public hearings and to evaluate petitions, which shall be
11 maintained as confidential personal health information, to add
12 medical conditions, medical treatments or diseases to the list
13 of debilitating medical conditions that qualify for the medical
14 use of cannabis;

15 D. issue recommendations concerning rules to be
16 promulgated for the issuance of the registry identification
17 cards; and

18 E. recommend quantities of cannabis that are
19 necessary to constitute an adequate supply for qualified
20 patients and primary caregivers."

21 SECTION 6. Section 26-2B-7 NMSA 1978 (being Laws 2007,
22 Chapter 210, Section 7) is amended to read:

23 "26-2B-7. REGISTRY IDENTIFICATION CARDS--DEPARTMENT
24 RULES--DUTIES--PRESUMPTIVE ELIGIBILITY--RECIPROCITY.--

25 A. [~~No later than October 1, 2007, and~~] After

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1 consultation with the medical advisory board, the department
2 shall promulgate rules in accordance with the State Rules Act
3 to implement the purpose of the Lynn and Erin Compassionate Use
4 Act. The rules shall:

5 (1) govern the manner in which the department
6 will consider applications for registry identification cards
7 and for the renewal of identification cards for qualified
8 patients and primary caregivers;

9 (2) define the amount of cannabis that is
10 necessary to constitute an adequate supply, including amounts
11 for topical treatments;

12 (3) identify criteria and set forth procedures
13 for including additional medical conditions, medical treatments
14 or diseases to the list of debilitating medical conditions that
15 qualify for the medical use of cannabis. Procedures shall
16 include a petition process and shall allow for public comment
17 and public hearings before the advisory board;

18 (4) set forth additional medical conditions,
19 medical treatments or diseases to the list of debilitating
20 medical conditions that qualify for the medical use of cannabis
21 as recommended by the advisory board;

22 (5) identify requirements for the licensure of
23 cannabis producers and cannabis production facilities, cannabis
24 couriers, cannabis manufacturers and cannabis testing
25 facilities and set forth procedures to obtain licenses;

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1 (6) develop a distribution system for the
2 medical cannabis program that provides for:

3 (a) cannabis production facilities
4 within New Mexico housed on secured grounds and operated by
5 [~~licensed producers~~] licensees; and

6 (b) distribution of [~~medical~~] cannabis
7 to qualified patients or their primary caregivers to take place
8 at locations that are designated by the department and that are
9 not within three hundred feet of any school, church or daycare
10 center that were in existence in that location before the
11 licensee distributing medical cannabis nearby was licensed;

12 (7) identify requirements for consumer safety
13 for testing and labeling of cannabis and cannabis products that
14 align with medical cannabis industry best practices for quality
15 assurance. The department shall adopt and promulgate rules
16 pursuant to this paragraph by December 20, 2019;

17 [~~(7)~~] (8) determine additional duties and
18 responsibilities of the advisory board; and

19 [~~(8)~~] (9) be revised and updated as necessary.

20 B. By December 1, 2019, the department shall
21 develop, in consultation with the qualified patient and primary
22 caregiver advisory board, a plan for collective cultivation
23 among patients or primary caregivers to:

24 (1) provide space and support for cannabis
25 cultivation for qualified patients with personal production

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1 licenses by other qualified patients, their primary caregivers
2 or New Mexico Indian nations, tribes or pueblos;

3 (2) allow storage of cannabis and cannabis
4 products; and

5 (3) allow the consumption of cannabis.

6 [B-] C. The department shall issue registry
7 identification cards to a patient and to the primary caregiver
8 for that patient, if any, who submit the following, in
9 accordance with the department's rules:

10 (1) a written certification;

11 (2) the name, address and date of birth of the
12 patient;

13 (3) the name, address and telephone number of
14 the patient's practitioner; and

15 (4) the name, address and date of birth of the
16 patient's primary caregiver, if any.

17 [G-] D. The department shall presume eligible and
18 issue, within twenty-four hours of receipt of application
19 completed in accordance with Subsection C of this section and
20 department rules, a registry identification card to any person
21 who applies for a registry identification card. Within thirty
22 days of receipt of an application, the department shall verify
23 the information contained in an application submitted pursuant
24 to Subsection [B] C of this section [and shall approve or deny
25 an application within thirty days of receipt]. The department

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1 may deny an application only if the applicant did not provide
2 the information required pursuant to Subsection [B] C of this
3 section or if the department determines that the information
4 provided is false. A person whose application has been denied
5 shall not reapply for six months from the date of the denial
6 unless otherwise authorized by the department.

7 ~~[D. The department shall issue a registry~~
8 ~~identification card within five days of approving an~~
9 ~~application, and a card shall expire one year after the date of~~
10 ~~issuance.]~~

11 E. A registry identification card shall contain:

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

14 (2) the date of issuance and expiration date
15 of the registry identification card; and

16 (3) other information that the department may
17 require by rule.

18 ~~[E.]~~ F. A person who possesses a registry
19 identification card shall notify the department of any change
20 in the person's name, [~~address~~] qualified patient's
21 practitioner, qualified patient's primary caregiver or change
22 in status of the qualified patient's debilitating medical
23 condition within ten days of the change.

24 ~~[F.]~~ G. Possession of or application for a registry
25 identification card shall not constitute probable cause or give

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1 rise to reasonable suspicion for a governmental agency to
2 search the person or property of the person possessing or
3 applying for the card.

4 ~~[G.]~~ H. The department shall maintain a
5 confidential file containing the names and addresses of the
6 persons who have either applied for or received a registry
7 identification card. Individual names on the list shall be
8 confidential and not subject to disclosure, except:

9 (1) to authorized employees or agents of the
10 department as necessary to perform the duties of the department
11 pursuant to the provisions of the Lynn and Erin Compassionate
12 Use Act;

13 (2) to authorized employees of state or local
14 law enforcement agencies, but only for the purpose of verifying
15 that a person is lawfully in possession of a registry
16 identification card; or

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

19 I. By July 1, 2019 and each month thereafter, the
20 department shall:

21 (1) publish on its website in a publicly
22 accessible manner a current aggregate census of qualified
23 patients;

24 (2) notify all licensees of the current census
25 of qualified patients; and

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1 (3) notify local law enforcement of the
2 locations of cannabis establishments.

3 J. By December 20, 2019, the secretary of health
4 shall adopt and promulgate rules relating to medical cannabis
5 program reciprocity.

6 K. An individual who holds proof of authorization
7 to participate in the medical cannabis program of another state
8 of the United States, the District of Columbia or a territory
9 of the United States or a New Mexico Indian nation, tribe or
10 pueblo:

11 (1) may participate in the medical cannabis
12 program; and

13 (2) shall not be required to comply with the
14 registry identification card application and renewal
15 requirements established pursuant to this section and
16 department rules."

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

19 "[NEW MATERIAL] PROGRAM REGULATION AND ADMINISTRATION--
20 FEES--LIMITATION--RULEMAKING--LICENSURE--ISSUANCE--
21 LIMITATIONS--FEES.--

22 A. The department shall:

23 (1) regulate and administer the medical
24 cannabis program; and

25 (2) collect fees to cover the costs of

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1 administering and regulating the medical cannabis program;
2 provided that the department shall not charge a fee relating to
3 the medical cannabis registry.

4 B. By December 20, 2019, the secretary of health
5 shall adopt and promulgate rules to establish fees for licenses
6 for cannabis producers, cannabis manufacturers, cannabis
7 couriers, cannabis testing facilities or any other cannabis
8 establishments whose operations are authorized pursuant to the
9 Lynn and Erin Compassionate Use Act.

10 C. The department shall establish application and
11 licensing fees applicable to licenses for activity related to
12 the medical cannabis program. The fees shall be reasonably
13 calculated to cover the cost of administering and enforcing the
14 medical cannabis program established in the Lynn and Erin
15 Compassionate Use Act, including the administration of the
16 medical cannabis registry by the department; provided that the
17 fee shall be scaled to reflect the size of a business seeking
18 or renewing a license.

19 D. The department shall administer licensure for
20 medical cannabis program activity provided for in the Lynn and
21 Erin Compassionate Use Act, which shall include personal
22 production licenses and licenses for:

- 23 (1) cannabis couriers;
- 24 (2) cannabis manufacturers;
- 25 (3) cannabis producers;

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- 1 (4) cannabis testing facilities; and
2 (5) any other activity or person as deemed
3 necessary by the department.

4 E. The department shall not issue any other license
5 provided for in this section to a cannabis testing facility
6 licensee.

7 F. In carrying out its licensing duties, the
8 department shall:

9 (1) issue a license, or a written notice
10 detailing why an application was denied, no later than ninety
11 days following the day on which the application was submitted;
12 and

13 (2) by May 1, 2020, develop a plan to:

14 (a) ensure access to and affordability
15 of cannabis through the medical cannabis program;

16 (b) serve rural patients;

17 (c) encourage racial, ethnic, gender and
18 geographic diversity among licensees; and

19 (d) support license applicants
20 registered with the secretary of state as cooperative
21 businesses.

22 G. The department shall allow for the smoking,
23 vaporizing and ingesting of cannabis products within a cannabis
24 consumption area on the premises if:

25 (1) access is restricted to qualified patients

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1 and their primary caregivers; and

2 (2) cannabis consumption is not visible from
3 any public place or from outside the cannabis consumption
4 area."

5 SECTION 8. A new section of the Lynn and Erin
6 Compassionate Use Act is enacted to read:

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

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

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

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1 practitioner indicating that:

2 (1) the practitioner has examined the
3 qualified patient during the preceding twelve months;

4 (2) the qualified patient continues to have a
5 debilitating medical condition; and

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

9 SECTION 9. A new section of the Lynn and Erin
10 Compassionate Use Act is enacted to read:

11 "[NEW MATERIAL] QUALIFIED PATIENT AND PRIMARY CAREGIVER
12 ADVISORY BOARD CREATED--DUTIES.--

13 A. The "qualified patient and primary caregiver
14 advisory board" is created to advocate for the affordability
15 and accessibility of cannabis for all New Mexicans with
16 debilitating medical conditions. The advisory board consists
17 of eight members appointed by the secretary of health to
18 reflect geographic, age, gender, racial and ethnic and medical
19 condition diversity among qualified patients and primary
20 caregivers in the state. The members shall include qualified
21 patients and primary caregivers who:

22 (1) are veterans;

23 (2) are residents of rural areas;

24 (3) hold personal production licenses;

25 (4) are members of New Mexico Indian nations,

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1 tribes or pueblos; or

2 (5) work in medical cannabis program advocacy.

3 B. A quorum of the qualified patient and primary
4 caregiver advisory board shall consist of three members for
5 voting purposes.

6 C. The secretary of health shall convene the first
7 meeting of the qualified patient and primary caregiver advisory
8 board by August 1, 2019. At its initial meeting, the advisory
9 board shall elect a chair from among its members. The chair
10 shall serve a term of two years and shall serve no more than
11 two terms.

12 D. The qualified patient and primary caregiver
13 advisory board shall:

14 (1) meet with the department for consultation
15 at least twice per year to receive reports from the department
16 detailing qualified patient demographic data, including age,
17 race and ethnicity, which data shall be de-identified
18 purchasing data by county to assess qualified patients' ability
19 to access cannabis statewide;

20 (2) convene at least once per year to conduct
21 a public hearing to receive input on issues related to
22 accessibility and affordability of cannabis for all New
23 Mexicans, including qualified patients who live in rural
24 communities, who are members of a New Mexico Indian nation,
25 tribe or pueblo or who live in federally subsidized or

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1 federally owned housing;

2 (3) review and issue recommendations
3 concerning the approval or denial of applications for cannabis
4 establishment licensure; and

5 (4) issue recommendations for department
6 rulemaking concerning medical cannabis program licensing
7 requirements for cannabis establishments and quality and safety
8 testing."

9 SECTION 10. A new section of the Lynn and Erin
10 Compassionate Use Act is enacted to read:

11 "[NEW MATERIAL] THC CONTENT--NO LIMITATION.--The
12 department shall not limit the amount of THC concentration in a
13 cannabis product."

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

16 "[NEW MATERIAL] USE OF CANNABIS--PROTECTIONS.--A qualified
17 patient, primary caregiver, licensee or licensee representative
18 shall not be subject to arrest, prosecution, penalty, civil
19 liability or disciplinary action by a business or professional
20 licensing entity and shall not be denied any right or privilege
21 solely for conduct allowed pursuant to the Lynn and Erin
22 Compassionate Use Act. Except by court order, state and local
23 law enforcement agencies shall not cooperate with or provide
24 assistance to the United States government, or any federal
25 agency thereof, in enforcing the federal Controlled Substances

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1 Act solely for conduct that complies with the Lynn and Erin
2 Compassionate Use Act. The New Mexico supreme court and any
3 disciplinary or character and fitness committees established by
4 that court are considered business or professional licensing
5 entities for the purposes of this section."

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

8 "[NEW MATERIAL] EMPLOYMENT PROTECTIONS.--

9 A. Unless an employer establishes by a
10 preponderance of the evidence that an employee's lawful use of
11 cannabis has impaired the employee's ability to perform the
12 employee's job responsibilities, it is unlawful to take an
13 adverse employment action against the employee based on any of
14 the following:

15 (1) conduct allowed under the Lynn and Erin
16 Compassionate Use Act; or

17 (2) the employee's positive drug test for
18 cannabis components or metabolites.

19 B. For the purposes of this section, an employer
20 may consider an employee's ability to perform the employee's
21 job responsibilities to be impaired when the employee manifests
22 specific articulable symptoms while working that decrease or
23 reduce the employee's performance of the duties or tasks of the
24 employee's job.

25 C. Nothing in this section shall:

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1 (1) restrict an employer's ability to prohibit
2 or take adverse employment action against an employee for the
3 possession or use of intoxicating substances during work hours;
4 or

5 (2) require an employer to commit any act that
6 would cause the employer to be in violation of federal law or
7 that would result in the loss of a federal contract or federal
8 funding.

9 D. As used in this section, "adverse employment
10 action" means:

11 (1) refusing to hire or employ a person;

12 (2) barring or discharging a person from
13 employment;

14 (3) requiring a person to retire from
15 employment; or

16 (4) discriminating against an employee in
17 compensation or in terms, conditions or privileges of
18 employment."

19 SECTION 13. A new section of the Lynn and Erin
20 Compassionate Use Act is enacted to read:

21 "[NEW MATERIAL] PERSONS UNDER STATE SUPERVISION--
22 PROTECTIONS.--A person who is serving a period of probation or
23 parole or who is in the custody or under the supervision of the
24 state or a local government pending trial as part of a
25 community supervision program shall not be penalized for

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1 conduct allowed under the Lynn and Erin Compassionate Use Act."

2 SECTION 14. Section 24-6B-11 NMSA 1978 (being Laws 2007,
3 Chapter 323, Section 11) is amended to read:

4 "24-6B-11. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT--
5 PURPOSE OF ANATOMICAL GIFT.--

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

8 (1) a hospital; accredited medical school,
9 dental school, college or university; organ procurement
10 organization; or other appropriate person, for research or
11 education;

12 (2) subject to the provisions of Subsection B
13 of this section, an individual designated by the person making
14 the anatomical gift if the individual is the recipient of the
15 part; and

16 (3) an eye bank or tissue bank.

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

22 C. If an anatomical gift of one or more specific
23 parts or of all parts is made in a document of gift that does
24 not name a person described in Subsection A of this section but
25 identifies the purpose for which an anatomical gift may be

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1 used, the following rules apply:

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

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

8 (3) if the part is an organ and the gift is
9 for the purpose of transplantation or therapy, the gift passes
10 to the appropriate organ procurement organization as custodian
11 of the organ; and

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

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

22 E. If an anatomical gift of one or more specific
23 parts is made in a document of gift that does not name a person
24 described in Subsection A of this section and does not identify
25 the purpose of the gift, the gift may be used only for

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1 transplantation or therapy, and the gift passes in accordance
2 with Subsection G of this section.

3 F. If a document of gift specifies only a general
4 intent to make an anatomical gift by words such as "donor",
5 "organ donor" or "body donor", or by a symbol or statement of
6 similar import, the gift may be used only for transplantation
7 or therapy and the gift passes in accordance with Subsection G
8 of this section.

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

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

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

15 (3) if the part is an organ, the gift passes
16 to the appropriate organ procurement organization as custodian
17 of the organ.

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

23 I. If an anatomical gift does not pass pursuant to
24 Subsections A through H of this section or the decedent's body
25 or part is not used for transplantation, therapy, research or

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1 education, custody of the body or part passes to the person
2 under obligation to dispose of the body or part.

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

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

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

23 SECTION 15. A new section of the Family Services Act is
24 enacted to read:

25 "[NEW MATERIAL] MEDICAL CANNABIS PROGRAM--REMOVAL OF

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1 CHILDREN--FAMILY SERVICES INTERVENTION--SCHOOL ENROLLMENT--
2 MEDICAL CARE.--

3 A. An individual's participation in the state's
4 medical cannabis program established pursuant to the Lynn and
5 Erin Compassionate Use Act shall not in itself constitute
6 grounds for:

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

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

13 B. A person shall not be denied custody of or
14 visitation or parenting time with a child, and there is no
15 presumption of neglect or child endangerment, for conduct
16 allowed under the Lynn and Erin Compassionate Use Act, unless
17 the person's behavior creates an immediate danger to the safety
18 of the child as established by clear and convincing evidence.
19 For the purposes of this section, a determination that behavior
20 creates an "immediate danger" shall not be based solely on
21 whether, when or how often a person uses cannabis.

22 C. A school shall not refuse to enroll or otherwise
23 penalize a person solely for conduct allowed pursuant to the
24 Lynn and Erin Compassionate Use Act, unless failing to do so
25 would cause the school to lose a monetary or licensing-related

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benefit under federal law or regulation.

D. A landlord shall not refuse to lease property to, or otherwise penalize, a person solely for conduct allowed pursuant to the Lynn and Erin Compassionate Use Act, unless failing to do so would cause the landlord to lose a monetary or licensing-related benefit under federal law or regulation.

E. For the purposes of medical care, including an organ transplant, a qualified patient's use of cannabis pursuant to the Lynn and Erin Compassionate Use Act shall be considered the equivalent of the use of any other medication under the direction of a physician and shall not be considered to constitute the use of an illicit substance or otherwise disqualify a qualified patient from medical care."