

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 804

STATE OF NEW JERSEY
213th LEGISLATURE

ADOPTED JUNE 4, 2009

Sponsored by:

Assemblyman REED GUSCIORA

District 15 (Mercer)

Assemblyman MICHAEL PATRICK CARROLL

District 25 (Morris)

Assemblywoman JOAN M. VOSS

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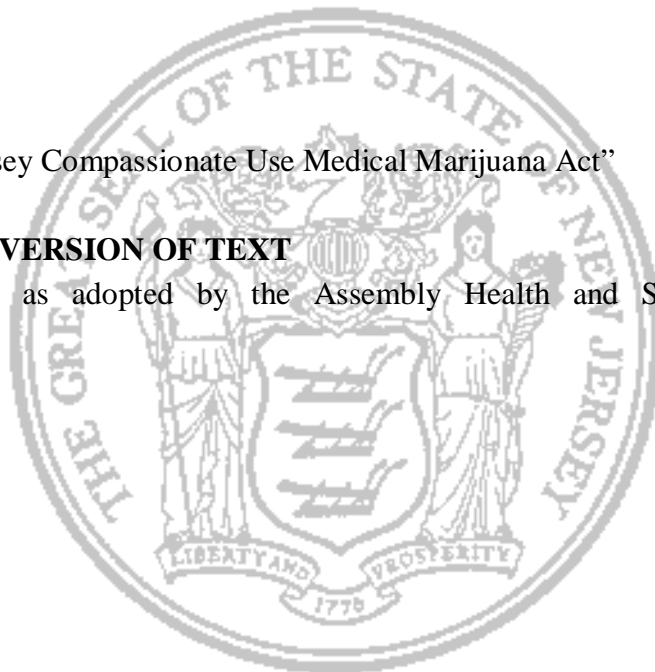
Assemblywoman Vainieri Huttle, Assemblyman Giblin, Assemblywomen Wagner, Oliver, Assemblyman Prieto, Assemblywoman Tucker, Assemblyman Johnson and Assemblywoman Jasey

SYNOPSIS

“New Jersey Compassionate Use Medical Marijuana Act”

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Health and Senior Services Committee.



(Sponsorship Updated As Of: 6/12/2009)

1 **AN ACT** concerning the medical use of marijuana, and revising
2 parts of statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. (New section) This act shall be known and may be cited as
8 the “New Jersey Compassionate Use Medical Marijuana Act.”

9

10 2. (New section) The Legislature finds and declares that:

11 a. Modern medical research has discovered a beneficial use for
12 marijuana in treating or alleviating the pain or other symptoms
13 associated with certain debilitating medical conditions, as found by
14 the National Academy of Sciences’ Institute of Medicine in March
15 1999;

16 b. According to the U.S. Sentencing Commission and the
17 Federal Bureau of Investigation, 99 out of every 100 marijuana
18 arrests in the country are made under state law, rather than under
19 federal law. Consequently, changing state law will have the
20 practical effect of protecting from arrest the vast majority of
21 seriously ill people who have a medical need to use marijuana;

22 c. Although federal law currently prohibits the use of marijuana,
23 the laws of Alaska, California, Colorado, Hawaii, Maine, Michigan,
24 Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont,
25 and Washington permit the use of marijuana for medical purposes,
26 and in Arizona doctors are permitted to prescribe marijuana. New
27 Jersey joins this effort for the health and welfare of its citizens;

28 d. States are not required to enforce federal law or prosecute
29 people for engaging in activities prohibited by federal law;
30 therefore, compliance with this act does not put the State of New
31 Jersey in violation of federal law; and

32 e. Compassion dictates that a distinction be made between
33 medical and non-medical uses of marijuana. Hence, the purpose of
34 this act is to protect from arrest, prosecution, property forfeiture,
35 and criminal and other penalties, those patients who use marijuana
36 to alleviate suffering from debilitating medical conditions, as well
37 as their physicians and those who are authorized to produce
38 marijuana for medical purposes.

39

40 3. (New section) As used in this act:

41 “Bona fide physician-patient relationship” means a relationship
42 in which the physician has the ongoing primary responsibility for
43 the assessment, care and treatment of a patient’s debilitating
44 medical condition.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 “Commissioner” means the Commissioner of Health and Senior
2 Services.

3 “Debilitating medical condition” means:

4 (1) seizure disorder, including epilepsy, intractable skeletal
5 muscular spasticity or glaucoma that is resistant to conventional
6 medical therapy;

7 (2) positive status for human immunodeficiency virus, acquired
8 immune deficiency syndrome, or cancer that results in severe or
9 chronic pain, severe nausea or vomiting, cachexia, or wasting
10 syndrome;

11 (3) amyotrophic lateral sclerosis, multiple sclerosis, terminal
12 cancer; or

13 (4) any other medical condition or its treatment that is approved
14 by the department by regulation.

15 “Department” means the Department of Health and Senior
16 Services.

17 “Marijuana” has the meaning given in section 2 of the “New
18 Jersey Controlled Dangerous Substances Act,” P.L.1970, c.226
19 (C.24:21-2).

20 “Medical marijuana alternative treatment center” or “alternative
21 treatment center” means a nonprofit organization approved by the
22 department to perform activities necessary to provide registered
23 qualifying patients with usable marijuana and related paraphernalia
24 in accordance with the provisions of this act. This term shall
25 include the organization’s officers, directors, board members, and
26 employees.

27 “Medical use of marijuana” means the acquisition, possession, or
28 use of marijuana or paraphernalia by a registered qualifying patient
29 as authorized by this act.

30 “Minor” means a person who is under 18 years of age and who
31 has not been married or previously declared by a court or an
32 administrative agency to be emancipated.

33 “Paraphernalia” has the meaning given in N.J.S.2C:36-1.

34 “Physician” means a person licensed to practice medicine and
35 surgery pursuant to Title 45 of the Revised Statutes with whom the
36 patient has a bona fide physician-patient relationship and who is the
37 physician responsible for the ongoing primary treatment of a
38 patient’s debilitating medical condition.

39 “Qualifying patient” or “patient” means a person who has been
40 provided with a written certification by a physician pursuant to a
41 bona fide physician-patient relationship.

42 “Registry identification card” means a document issued by the
43 department that identifies a person as a registered qualifying
44 patient.

45 “Usable marijuana” means the dried leaves and flowers of
46 marijuana, and any mixture or preparation thereof, and does not
47 include the seeds, stems, stalks or roots of the plant.

1 “Written certification” means a statement signed by a physician
2 with whom a qualifying patient has a bona fide physician-patient
3 relationship, which attests to the physician’s authorization for the
4 patient to apply for registration for the medical use of marijuana.

5
6 4. (New section) a. The department shall establish a registry of
7 qualifying patients and shall issue a registry identification card that
8 shall be valid for one year to a qualifying patient who submits the
9 following, in accordance with regulations adopted by the
10 department:

11 (1) a written certification that meets the requirements of section
12 5 of P.L. , c. (C.)(pending before the Legislature as this bill);

13 (2) an application or renewal fee, which may be based on a
14 sliding scale as determined by the commissioner;

15 (3) the name, address and date of birth of the patient;

16 (4) the name, address and telephone number of the patient’s
17 physician.

18 b. Before issuing a registry identification card, the department
19 shall verify the information contained in the application or renewal
20 form submitted pursuant to this section. The department shall
21 approve or deny an application or renewal within 30 days of receipt
22 of the application or renewal, and shall issue a registry
23 identification card within five days of approving the application or
24 renewal. The department may deny an application or renewal only
25 if the applicant fails to provide the information required pursuant to
26 this section, or if the department determines that the information
27 was incorrect or falsified or does not meet the requirements of this
28 act. Denial of an application shall be a final agency decision,
29 subject to review by the Superior Court, Appellate Division.

30 c. A registry identification card shall contain the following
31 information:

32 (1) the name, address and date of birth of the patient;

33 (2) the date of expiration date of the registry identification card;

34 (3) photo identification of the cardholder; and

35 (4) such other information that the department may specify by
36 regulation.

37 A patient who has been issued a registry identification card shall
38 notify the department of any change in the patient’s name, address,
39 or physician or change in status of the patient’s debilitating medical
40 condition, within 10 days of such change, or the registry
41 identification card shall be deemed null and void.

42 d. The department shall maintain a confidential list of the
43 persons to whom it has issued registry identification cards.
44 Individual names and other identifying information on the list, and
45 information contained in any application form, or accompanying or
46 supporting document shall be confidential, and shall not be
47 considered a public record under P.L.1963, c.73 (C.47:1A-1 et seq.)

1 or P.L.2001, c.404 (C.47:1A-5 et al.), and shall not be disclosed
2 except to:

3 (1) authorized employees of the department and the Division of
4 Consumer Affairs in the Department of Law and Public Safety as
5 necessary to perform official duties of the department and the
6 division, as applicable; and

7 (2) authorized employees of State or local law enforcement
8 agencies, only as necessary to verify that a person who is engaged
9 in the suspected or alleged medical use of marijuana is lawfully in
10 possession of a registry identification card.

11 e. Applying for or receiving a registry card does not constitute a
12 waiver of the qualifying patient's patient-physician privilege.

13

14 5. (New section) a. Medical use of marijuana by a qualifying
15 patient may be authorized pursuant to a written certification which
16 meets the requirements of this act. In order to provide such a
17 written certification, a physician shall be licensed and in good
18 standing to practice in the State and be board-certified, if available,
19 in the specialty appropriate for the assessment, care, and ongoing
20 primary treatment of the debilitating medical condition for which
21 the medical use of marijuana is being considered.

22 The written certification shall attest that the above criteria have
23 been met.

24 b. The provisions of subsection a. of this section shall not apply
25 to a qualifying patient who is a minor unless the custodial parent,
26 guardian, or person who has legal custody of the minor, consents in
27 writing that the minor patient has that person's permission for the
28 medical use of marijuana and that the person will control the
29 acquisition and possession of the medical marijuana and any related
30 paraphernalia from the alternative treatment center.

31

32 6. (New section) a. The provisions of N.J.S.2C:35-18 shall apply
33 to any qualifying patient, alternative treatment center, physician, or
34 any other person acting in accordance with the provisions of this
35 act.

36 b. A qualifying patient, alternative treatment center, physician,
37 or any other person acting in accordance with the provisions of this
38 act shall not be subject to any civil or administrative penalty, or
39 denied any right or privilege, including, but not limited to, civil
40 penalty or disciplinary action by a professional licensing board,
41 related to the medical use of marijuana as authorized under this act.

42 c. Possession of, or application for, a registry identification card
43 shall not alone constitute probable cause to search the person or the
44 property of the person possessing or applying for the registry
45 identification card, or otherwise subject the person or his property
46 to inspection by any governmental agency.

1 d. The provisions of section 2 of P.L.1939, c.248 (C.26:2-82),
2 relating to destruction of marijuana determined to exist by the
3 department, shall not apply if a qualifying patient has in his
4 possession a registry identification card and no more than the
5 maximum amount of usable marijuana that may be obtained in
6 accordance with section 10 of P.L. , c. (C.)(pending before the
7 Legislature as this bill).

8 e. No person shall be subject to arrest or prosecution for
9 constructive possession, conspiracy or any other offense for simply
10 being in the presence or vicinity of the medical use of marijuana as
11 authorized under this act.

12 f. No custodial parent, guardian, or person who has legal
13 custody of a qualifying patient who is a minor shall be subject to
14 arrest or prosecution for constructive possession, conspiracy or any
15 other offense for assisting the minor in the medical use of marijuana
16 as authorized under this act.

17
18 7. (New section) a. The department shall accept applications
19 from nonprofit entities to operate as alternative treatment centers,
20 and may charge a reasonable fee for the issuance of a permit under
21 this section. The department shall seek to ensure the availability of
22 alternative treatment centers throughout the State, including, to the
23 maximum extent practicable, at least two each in the northern,
24 central, and southern regions of the State. An alternative treatment
25 center shall be authorized to acquire marijuana seeds or seedlings
26 and paraphernalia, possess, cultivate, plant, grow, harvest, process,
27 display, manufacture, deliver, transfer, transport, distribute, supply,
28 sell, or dispense marijuana, or related supplies to registered
29 qualifying patients who are registered with the department pursuant
30 to section 4 of P.L. , c. (C.)(pending before the Legislature as
31 this bill). Applicants for authorization as an alternative treatment
32 center shall be subject to all applicable State laws governing
33 nonprofit entities, but need not be recognized as a 501(c)(3)
34 organization by the federal Internal Revenue Service.

35 b. The department shall require that an applicant provide such
36 information as the department determines to be necessary pursuant
37 to regulations adopted pursuant to this act.

38 c. A person who has been convicted of possession or sale of a
39 controlled dangerous substance shall not be issued a permit to
40 operate as a alternative treatment center or be a director, officer, or
41 employee of an alternative treatment center, unless such conviction
42 was for a violation of federal law relating to possession or sale of
43 marijuana for conduct that is authorized under this act.

44 d. Each applicant and each director, officer and employee of an
45 alternative treatment center shall be required to undergo a criminal
46 history record background check from the Division of State Police
47 in the Department of Law and Public Safety and the Federal Bureau

1 of Investigation. Each applicant shall submit to the department the
2 name, address, fingerprints and written consent for a criminal
3 history record background check to be performed for the applicant
4 and any director, officer, and employee of the alternative treatment
5 center. The applicant shall bear the cost for the criminal history
6 record background check, including all costs of administering and
7 processing the check.

8 e. The department shall issue a permit to a person to operate as
9 an alternative treatment center if the department finds that issuing
10 such a permit would be consistent with the purposes of this act and
11 the requirements of this section are met and the department has
12 verified the information contained in the application. The
13 department shall approve or deny an application within 60 days
14 after receipt of a completed application. The denial of an application
15 shall be considered a final agency decision, subject to review by the
16 Appellate Division of the Superior Court. The department may
17 suspend or revoke a permit to operate as an alternative treatment
18 center for cause, which shall be subject to review by the Appellate
19 Division of the Superior Court.

20 f. A person who has been issued a permit pursuant to this
21 section shall display the permit at the premises of the alternative
22 treatment center at all times when marijuana is being produced, or
23 dispensed to a registered qualifying patient.

24 g. An alternative treatment center shall report any change in
25 information to the department not later than 10 days after such
26 change, or the permit shall be deemed null and void.

27 h. An alternative treatment center may charge a registered
28 qualifying patient for the reasonable costs associated with the
29 production and distribution of marijuana for the cardholder.

30 i. The commissioner shall adopt regulations to:

31 (1) provide for the use by a registered qualifying patient of a
32 designated individual in an emergency situation to transport
33 marijuana to the patient who is otherwise unable to obtain
34 marijuana from an alternative treatment center; and

35 (2) require such written documentation of each delivery of
36 marijuana to, and pickup of marijuana for, a registered qualifying
37 patient, including the date and amount dispensed, to be maintained
38 in the records of the alternative treatment center, as the
39 commissioner determines necessary to ensure effective
40 documentation of the operations of each alternative treatment
41 center.

42

43 8. (New section) The provisions of this act shall not be
44 construed to permit a person to:

45 a. operate, navigate, or be in actual physical control of any
46 vehicle, aircraft, railroad train, stationary heavy equipment or vessel
47 while under the influence of marijuana; or

1 b. smoke marijuana in a school bus or other form of public
2 transportation, in a private vehicle unless the vehicle is not in
3 operation, on any school grounds, in any correctional facility, at any
4 public park or beach, at any recreation center, or in any place where
5 smoking is prohibited pursuant to N.J.S.2C:33-13.

6 A person who commits an act as provided in this section shall be
7 subject to such penalties as are provided by law.

8

9 9. (New section) A person who knowingly sells, offers, or
10 exposes for sale, or otherwise transfers, or possesses with the intent
11 to sell, offer or expose for sale or transfer a document that falsely
12 purports to be a registration card issued pursuant to this act, or a
13 registration card issued pursuant to this act that has been altered, is
14 guilty of a crime of the third degree. A person who knowingly
15 presents to a law enforcement officer a document that falsely
16 purports to be registration card issued pursuant to this act, or a
17 registration card that has been issued pursuant to this act that has
18 been altered, is guilty of a crime of the fourth degree. The
19 provisions of this section are intended to supplement current law
20 and shall not limit prosecution or conviction for any other offense.

21

22 10. (New section) a. A physician shall provide written
23 instructions for a registered patient to present to an alternative
24 treatment center, at the time of pickup or delivery, concerning the
25 total amount of usable marijuana that a patient may be dispensed, in
26 weight, in a 30-day period, which amount shall not exceed one
27 ounce. If no amount is noted, the maximum amount that may be
28 dispensed at one time is one ounce.

29 b. A physician may issue multiple written instructions at one
30 time authorizing the patient to receive a total of up to a 90-day
31 supply, provided that the following conditions are met:

32 (1) Each separate set of instructions shall be issued for a
33 legitimate medical purpose by the physician, as provided in this act;

34 (2) The physician shall provide written instructions for each
35 dispensation, other than the first dispensation if it is to be filled
36 immediately, indicating the earliest date on which a center may
37 dispense the marijuana; and

38 (3) The physician has determined that providing the patient with
39 multiple instructions in this manner does not create an undue risk of
40 diversion or abuse.

41 c. A registered qualifying patient shall present the patient's
42 registry identification card and these written instructions at the time
43 of pickup or delivery, and the alternative treatment center shall
44 verify and log the documentation presented. The dispensation of
45 marijuana pursuant to any written instructions shall occur within
46 one month of the date that the instructions were written or the
47 instructions are void.

48 d. A patient may be registered at only one alternative treatment

1 center at any time.

2

3 11. (New section) a. A physician who provides written certification
4 or written instruction for the medical use of marijuana to a qualifying
5 patient pursuant to P.L. , c. (C.)(pending before the Legislature as
6 this bill) and any alternative treatment center shall furnish to the
7 Director of the Division of Consumer Affairs in the Department of
8 Law and Public Safety such information, in such a format and at such
9 intervals, as the director shall prescribe by regulation, for inclusion in
10 a system established to monitor the dispensation of marijuana in this
11 State for medical use as authorized by the provisions of P.L. , c. (C.)(pending before the Legislature as this bill), which system shall
12 serve the same purpose as the electronic system for monitoring
13 controlled dangerous substances established pursuant to section 25 of
14 P.L.2007, c.244 (C.45:1-45).

15
16 b. The Director of the Division of Consumer Affairs, pursuant to
17 the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1
18 et seq.), in consultation with the Commissioner of Health and
19 Senior Services, shall adopt rules and regulations to effectuate the
20 purposes of subsection a. of this section.

21 c. Notwithstanding any provision of P.L.1968, c.410 to the
22 contrary, the Director of the Division of Consumer Affairs shall
23 adopt, immediately upon filing with the Office of Administrative
24 Law and no later than the 90th day after the effective date of this
25 act, such regulations as the director deems necessary to implement
26 the provisions of subsection a. of this section. Regulations adopted
27 pursuant to this subsection shall be effective until the adoption of
28 rules and regulations pursuant to subsection b. of this section and
29 may be amended, adopted, or readopted by the director in
30 accordance with the requirements of P.L.1968, c.410.

31

32 12. N.J.S.2C:35-18 is amended to read as follows:

33 2C:35-18. Exemption; Burden of Proof. a. If conduct is
34 authorized by the provisions of P.L. 1970, c. 226 (C. 24:21-1 et
35 seq.) or P.L. , c. (C.)(pending before the Legislature as this
36 bill), that authorization shall, subject to the provisions of this
37 section, constitute an exemption from criminal liability under this
38 chapter or chapter 36, and the absence of such authorization shall
39 not be construed to be an element of any offense in this chapter or
40 chapter 36. It is an affirmative defense to any criminal action
41 arising under this chapter or chapter 36 that the defendant is the
42 authorized holder of an appropriate registration, permit or order
43 form or is otherwise exempted or excepted from criminal liability
44 by virtue of any provision of P.L. 1970, c. 226 (C. 24:21-1 et seq.)
45 or P.L. , c. (C.)(pending before the Legislature as this bill).
46 The affirmative defense established herein shall be proved by the
47 defendant by a preponderance of the evidence. It shall not be

1 necessary for the State to negate any exemption set forth in this act
2 or in any provision of Title 24 of the Revised Statutes in any
3 complaint, information, indictment or other pleading or in any trial,
4 hearing or other proceeding under this act.

5 b. No liability shall be imposed by virtue of this chapter or
6 chapter 36 upon any duly authorized State officer, engaged in the
7 enforcement of any law or municipal ordinance relating to
8 controlled dangerous substances or controlled substance analogs.
9 (cf: P.L.1988, c.44, s.8)

10

11 13. (New section) a. The commissioner may accept from any
12 governmental department or agency, public or private body or any
13 other source grants or contributions to be used in carrying out the
14 purposes of this act.

15 b. All fees collected pursuant to this act, including those from
16 qualifying patients and alternative treatment centers' initial,
17 modification and renewal applications, shall be used to offset the
18 cost of the department's administration of the provisions of this act.

19

20 14. (New section) a. The commissioner shall report to the
21 Governor, and to the Legislature pursuant to section 2 of P.L.1991,
22 c.164 (C.52:14-19.1):

23 (1) no later than one year after the effective date of this act, on
24 the actions taken to implement the provisions of this act; and

25 (2) annually thereafter on the number of applications for registry
26 identification cards, the number of qualifying patients registered,
27 the nature of the debilitating medical conditions of the patients, the
28 number of registry identification cards revoked, and the number of
29 physicians providing written certifications for patients.

30 b. The reports shall not contain any identifying information of
31 patients or physicians.

32

33 15. (New section) a. The Department of Health and Senior
34 Services is authorized to exchange fingerprint data with, and
35 receive information from, the Division of State Police in the
36 Department of Law and Public Safety and the Federal Bureau of
37 Investigation for use in reviewing applications for a permit to
38 operate as, or to be a director, officer or employee of, an alternative
39 treatment center pursuant to section 7 of P.L. , c. (C.)(pending
40 before the Legislature as this bill).

41 b. The Division of State Police shall promptly notify the
42 Department of Health and Senior Services in the event an applicant
43 for a permit to operate as, or to be a director, officer or employee
44 of, an alternative treatment center who was the subject of a criminal
45 history record background check conducted pursuant to subsection
46 a. of this section, is convicted of a crime involving possession or
47 sale of a controlled dangerous substance.

1 16. (New section) Nothing in this act shall be construed to
2 require a government medical assistance program or private health
3 insurer to reimburse a person for costs associated with the medical
4 use of marijuana, or an employer to accommodate the medical use
5 of marijuana in any workplace.

6
7 17. (New section) In addition to any immunity or defense
8 provided by law, the State and any employee or agent of the State
9 shall not be held liable for any actions taken in accordance with this
10 act or for any deleterious outcomes from the medical use of
11 marijuana by any registered qualifying patient.

12
13 18. (New section) a. Pursuant to the “Administrative Procedure
14 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), the commissioner shall
15 promulgate rules and regulations to effectuate the purposes of this
16 act, in consultation with the Department of Law and Public Safety.

17 The regulations shall establish: the form, process and fee
18 schedule for initial, modification and renewal applications for
19 qualifying patients and alternative treatment centers that are
20 complete and accurate; the considerations to be used to determine
21 whether to approve an application for an alternative treatment
22 center, including its operational procedures; the form and manner in
23 which the department will function, including the consideration and
24 approval of petitions to add new debilitating medical conditions to
25 those included in this act; validating written certifications and other
26 information contained in applications received from prospective and
27 current qualifying patients and alternative treatment centers;
28 protections for ensuring the confidentiality of the information
29 submitted by prospective and current qualifying patients and
30 alternative treatment centers, and that contained in the registry;
31 monitoring, oversight and investigation of physicians who issue
32 written certifications, with authority to refer physicians in violation
33 of provisions of this act to the State Board of Medical Examiners;
34 procedures for the revocation or suspension of a qualifying patient’s
35 registry identification card; monitoring, oversight and investigation
36 of all activities performed by an alternative treatment center; the
37 methods for testing, authenticating and guaranteeing the quality,
38 safety and quantity of marijuana sold to registered qualifying
39 patients; which strains of marijuana shall be sold by an alternative
40 treatment center; procedures to guarantee the quality and safety of
41 paraphernalia sold to registered qualifying patients; standards to
42 ensure adequate security of all facilities, including production and
43 retail locations, and security of all delivery methods to registered
44 qualifying patients; and the authority and process for the
45 department to assume control of an alternative treatment center’s
46 facilities, equipment, inventory and other items necessary for the
47 department to serve as an alternative treatment center in the event

1 an alternative treatment center is no longer able to operate or meet
2 its requirements.

3 b. Notwithstanding any provision of P.L.1968, c.410 to the
4 contrary, the commissioner shall adopt, immediately upon filing
5 with the Office of Administrative Law and no later than the 90th
6 day after the effective date of this act, such regulations as the
7 commissioner deems necessary to implement the provisions of this
8 act. Regulations adopted pursuant to this subsection shall be
9 effective until the adoption of rules and regulations pursuant to
10 subsection a. of this section and may be amended, adopted, or
11 readopted by the commissioner in accordance with the requirements
12 of P.L.1968, c.410.

13

14 19. This act shall take effect on the first day of the 12th month
15 after enactment, but the commissioner may take such anticipatory
16 administrative action in advance thereof as may be necessary to
17 effectuate the provisions of this act.