

ASSEMBLY HEALTH AND SENIOR SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 3740 and 3437

STATE OF NEW JERSEY

DATED: MARCH 22, 2018

The Assembly Health and Senior Services Committee reports favorably an Assembly committee substitute for Assembly Bill Nos. 3740 and 3474.

This substitute makes various revisions to the requirements of the “Compassionate Use Medical Marijuana Act,” P.L.2009, c.307 (C.24:6I-1 et al.), including allowing medical marijuana to be authorized for any condition, revising the application, ownership, and operational requirements for alternative treatment centers (ATCs), revising the requirements for physicians to authorize patients for the medical use of marijuana, and revising certain requirements concerning patients and primary caregivers.

Patient Registration and Certification and Dispensing Requirements

The substitute provides that medical marijuana may be authorized for the treatment of any medical condition diagnosed by a physician, including the symptoms of the medical condition and the symptoms resulting from any treatment for the medical condition, rather than the list of enumerated conditions as provided under current law.

The substitute provides that no application or renewal fee will apply for qualifying patients or in the case of an immediate family member of a qualifying patient who serves as primary caregiver to the patient; in all other cases, the maximum fee will be \$10 for an individual who is indigent and \$50 for all other cardholders. The current application fee is \$200, with a reduced fee of \$20 for low-income applicants. In addition, an immediate family member of a patient will not be required to undergo a criminal history record background check. The substitute bill provides that a person may serve as primary caregiver for up to two patients at one time; under current law, primary caregivers are restricted to serving as primary caregiver for no more than one patient at a time.

The substitute provides that physicians will not be required to enroll in a physician registry as a condition of authorizing qualifying patients for the medical use of marijuana and removes the requirement that physicians certify a patient for medical marijuana.

The substitute provides that, in order to authorize a qualifying patient who is a minor for medical marijuana, the certifying physician will be required to either: (1) be trained in the care of pediatric patients; or (2) obtain written confirmation from a physician trained in the care of pediatric patients establishing that, following examination of the patient or a review of the patient's record, the minor patient is likely to receive therapeutic or palliative benefits from the medical use of marijuana to treat or alleviate symptoms associated with the patient's debilitating medical condition.

The substitute increases the maximum amount of medical marijuana that may be dispensed to a patient for a 30-day period from two ounces to four ounces, or the equivalent amount of medical marijuana in any other form according to a list of equivalent dosage amounts to be established by the Commissioner of Health by regulation. The substitute bill removes a provision that limited distribution of edible forms of medical marijuana to qualifying patients who are minors, and specifies that medical marijuana may be distributed in transdermal, sublingual, and tincture forms, as well as in the forms authorized under current law. When authorizing a qualifying patient for the medical use of marijuana, a physician is to note the form of medical marijuana that is to be dispensed. If no form is noted, the instructions are to be returned to the physician in order to specify the form.

The substitute provides that medical marijuana may be dispensed to a patient by any medical marijuana dispensary in the State; under current law, patients are to be registered with, and may only be dispensed medical marijuana from, a single alternative treatment center where the patient is registered. The substitute bill requires that, prior to dispensing medical marijuana to a patient, a medical marijuana dispensary will be required to access a system currently maintained by the Division of Consumer Affairs in the Department of Law and Public Safety that tracks medical marijuana dispensations in the State, in order to ascertain whether any medical marijuana was dispensed to the patient or the patient's primary caregiver within the preceding 30 days. Upon dispensing medical marijuana to a patient, the medical marijuana dispensary will be required to transmit to the authorizing physician information concerning the amount, form, and strain of medical marijuana that was dispensed.

The substitute provides that a physician or an immediate family member of a physician who authorizes patients for medical marijuana may not hold any profit or ownership interest in an ATC. A physician or the immediate family member of a physician who applies for an ATC identification card is to certify that the physician has not authorized any patients for medical marijuana in the preceding 90 days. A violation of this prohibition will constitute a crime of the fourth degree, which is punishable by imprisonment for up to 18 months, up to a \$10,000 fine, or both. The substitute bill specifies that

nothing in the prohibition will prohibit any physician from serving on the medical advisory board of an ATC, provided the physician receives no special compensation or remuneration from the ATC, including payments based on patient volumes or the number of certifications issued by the physician.

ATC Application and Operational Requirements

With regard to ATCs, the substitute bill differentiates between two different types of ATC: medical marijuana cultivator-processors and medical marijuana dispensaries. Medical marijuana cultivator-processors are facilities that will be authorized to cultivate and process marijuana and marijuana-infused and marijuana-derived products, which it may supply to medical marijuana dispensaries. Medical marijuana dispensaries will be authorized to dispense marijuana and marijuana products to qualifying patients. An ATC holding a permit as of the effective date of the substitute bill will be deemed to hold both a cultivator-processor permit and a dispensary permit. The substitute bill limits the ability of a person or entity holding a direct or indirect interest in an ATC that is issued a new permit under the substitute bill. Specifically:

- A person or entity holding an interest in an ATC issued a permit prior to the effective date of the substitute bill may simultaneously hold up to a 15 percent interest in up to one other ATC issued a permit prior to the effective date of the substitute bill, medical marijuana cultivator-processor, or medical marijuana dispensary;
- A person or entity holding an interest in a medical marijuana cultivator-processor may simultaneously hold up to a 15 percent interest in up to one other medical marijuana cultivator-processor or in an ATC that was issued a permit prior to the effective date of the substitute bill; and
- A person or entity holding an interest in a medical marijuana dispensary may simultaneously hold up to a 15 percent interest in up to one other medical marijuana dispensary or in an ATC that was issued a permit prior to the effective date of the substitute.

No person or entity will be permitted to simultaneously hold any other interest in any other ATC. These ownership restrictions do not apply in the case of a person or entity holding an ownership interest of less than one percent of the total capitalization of a publicly traded company, provided the stockholder is not an employee, officer, or director of the publicly traded company. ATCs may, but are not required to be, nonprofit entities.

To ensure adequate access to ATCs throughout the State, the substitute bill requires the Department of Health (DOH) to issue a request for applications for six additional medical marijuana

cultivator-processors and 34 additional medical marijuana dispensary permits within 90 days after the effective date of the substitute bill; these new facilities, along with the six ATCs currently operating in the State, will result in a total of 12 medical marijuana cultivator-processors and 40 total medical marijuana dispensaries.

The substitute adds specific requirements for DOH to review and score initial permit applications for new medical marijuana cultivator-processors and medical marijuana dispensaries based on a 100-point scale, which includes evaluations of the applicant's operational plan, environmental impact plan, safety and security plan, business experience, proposed location, record of social responsibility, philanthropy, involvement in research concerning the medical efficacy and adverse effects of medical marijuana, workforce development and job creation plan, and business and financial plan. In evaluating an application, DOH is to limit its review to the controlling owners, officers, directors, and employees, and is not to consider responses pertaining to consultants, independent contractors, or prospective or part-time employees. To the extent possible, DOH is to seek to ensure that at least 15 percent of the new medical marijuana dispensary permits issued under the substitute bill are awarded to entities certified as a minority business, a women's business, a veteran-owned business, or a disabled-veteran business, with higher preference going to entities that are certified in up to two such categories. Application materials submitted to DOH will not constitute a public record subject to the statutory or common laws concerning access to public records.

Applicants are to submit a separate application for each proposed medical marijuana cultivator-processor or medical marijuana dispensary location. If an applicant scores sufficiently high on multiple applications to be awarded more than one permit, the applicant is to notify DOH within seven business days as to which permit it will accept; for any permit declined by an applicant, DOH will award the permit to the next highest-scoring applicant. If an applicant fails to provide notice as to which permit it will accept within seven business days, DOH will have the discretion to determine which permit to award the applicant, based on its determination of Statewide need and the scores awarded to other applicants in the relevant locations.

The substitute prohibits DOH employees from holding any financial interest in an ATC or receiving anything of value from an ATC in connection with reviewing, processing, or making recommendations with respect to an ATC permit application.

The substitute provides that an initial ATC permit will be valid for three years and will thereafter be renewable on a biennial basis.

The substitute provides that DOH may require ATC permit applicants to submit a personal history disclosure and may conduct financial due diligence on any person or entity providing \$100,000 or more in financial backing to an applicant.

The substitute clarifies that the officers, directors, board members, owners, and employees of an ATC will be issued “ATC identification cards” upon approval of the ATC’s permit application.

The substitute sets forth certain requirements for the sale or transfer of an ATC permit, which include completing a criminal history record background check of the entity purchasing or receiving the permit, as well as certain requirements specific to nonprofit ATCs, which will be required to comply with the requirements of the “New Jersey Nonprofit Corporation Act,” N.J.S.15A:1-1 et seq. If the debts and liabilities of a nonprofit ATC exceed the value of all assets of the ATC other than the permit, the ATC may pay \$300,000 to DOH and sell its permit for a sum that satisfies all outstanding obligations. The substitute bill provides that, with DOH approval, medical marijuana cultivator-processors may relocate within the same region and medical marijuana dispensaries may relocate within the same county.

The substitute provides that the maximum fee for initial issuance or renewal of an ATC permit will be \$40,000; the maximum fee for relocation of an ATC will be \$20,000; and the maximum fee to sell or transfer an ATC permit will be \$150,000.

The substitute provides that ATCs will be permitted to establish a medical advisory board to advise the ATC on all aspects of its business. A medical advisory board is to comprise five members: three healthcare professionals, including at least one physician; one qualifying patient; and one business owner from the same region as the ATC. If the ATC is a medical marijuana dispensary, the qualifying patient member is to be registered with the dispensary; if the ATC is a medical marijuana cultivator-processor, the qualifying patient member is to be registered at a medical marijuana dispensary located in the same region as the medical marijuana cultivator-processor. No ATC identification card holder may serve on an ATC medical advisory board. Medical advisory boards are to meet at least two times per year.