

SENATE BILL NO. 170

INTRODUCED BY J. ESSMANN

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REQUIREMENTS FOR ISSUING A MEDICAL MARIJUANA REGISTRY IDENTIFICATION CARD FOR A DIAGNOSIS INVOLVING SEVERE AND CHRONIC PAIN; REQUIRING DOCUMENTATION OF THE DIAGNOSIS; REQUIRING A REVIEW PANEL TO EVALUATE AND CONFIRM THE DIAGNOSIS; REVISING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 50-46-102, 50-46-103, AND 50-46-210, MCA."

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

Section 1. Section 50-46-102, MCA, is amended to read:

"50-46-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Caregiver" means an individual, 18 years of age or older who has agreed to undertake responsibility for managing the well-being of a person with respect to the medical use of marijuana. A qualifying patient may have only one caregiver at any one time.

(b) The term does not include the qualifying patient's physician.

(2) "Debilitating medical condition" means:

(a) cancer, glaucoma, or positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;

(b) a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:

(i) cachexia or wasting syndrome;

(ii) severe ~~or~~ and chronic pain that is:

(A) severe, persistent, and intractable;

(B) unrelieved by standard medical treatments or medications that have been attempted over a reasonable amount of time without success; and

(C) documented, reviewed, and confirmed as provided in [section 3];

(iii) severe nausea;

(iv) seizures, including but not limited to seizures caused by epilepsy; or

- 1 (v) severe or persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis
2 or Crohn's disease; or
- 3 (c) any other medical condition or treatment for a medical condition adopted by the department by rule.
- 4 (3) "Department" means the department of public health and human services.
- 5 (4) "Marijuana" has the meaning provided in 50-32-101.
- 6 (5) "Medical use" means:
- 7 (a) the acquisition, possession, cultivation, manufacture, delivery, transfer, or transportation of marijuana
8 or paraphernalia by a qualifying patient or a caregiver relating to the consumption of marijuana to alleviate the
9 symptoms or effects of a qualifying patient's debilitating medical condition;
- 10 (b) the use of marijuana or paraphernalia by a qualifying patient to alleviate the symptoms or effects of
11 the patient's debilitating medical condition; or
- 12 (c) the use of paraphernalia by a caregiver for the cultivation, manufacture, delivery, transfer, or
13 transportation of marijuana for use by a qualifying patient.
- 14 (6) "Paraphernalia" has the meaning provided in 45-10-101.
- 15 (7) "Physician" means a person who is licensed under Title 37, chapter 3.
- 16 (8) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating
17 medical condition.
- 18 (9) "Registry identification card" means a document issued by the department that identifies a person
19 as a qualifying patient or caregiver.
- 20 (10) (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or
21 preparation of marijuana.
- 22 (b) The term does not include the seeds, stalks, and roots of the plant.
- 23 (11) "Written certification" means a qualifying patient's medical records or a statement signed by a
24 physician stating that in the physician's professional opinion, after having completed a full assessment of the
25 qualifying patient's medical history and current medical condition made in the course of a bona fide
26 physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits
27 of the medical use of marijuana would likely outweigh the health risks for the qualifying patient."

28

29 **Section 2.** Section 50-46-103, MCA, is amended to read:

30 **"50-46-103. Procedures -- minors -- confidentiality -- report to legislature.** (1) The department shall

1 establish and maintain a program for the issuance of registry identification cards to persons who meet the
2 requirements of this chapter.

3 (2) Except as provided in subsection (3) and [section 3], the department shall issue a registry
4 identification card to a qualifying patient who submits the following, in accordance with department rules:

- 5 (a) written certification that the person is a qualifying patient;
6 (b) an application or renewal fee;
7 (c) the name, address, and date of birth of the qualifying patient;
8 (d) the name, address, and telephone number of the qualifying patient's physician; and
9 (e) the name, address, and date of birth of the qualifying patient's caregiver, if any.

10 (3) The department shall issue a registry identification card to a minor if the materials required under
11 subsection (2) and, if applicable, [section 3] are submitted and the minor's custodial parent or legal guardian with
12 responsibility for health care decisions signs and submits a written statement that:

- 13 (a) the minor's physician has explained to the minor and to the minor's custodial parent or legal guardian
14 with responsibility for health care decisions the potential risks and benefits of the medical use of marijuana; and
15 (b) the minor's custodial parent or legal guardian with responsibility for health care decisions:
16 (i) consents to the medical use of marijuana by the minor;
17 (ii) agrees to serve as the minor's caregiver; and
18 (iii) agrees to control the acquisition of marijuana and the dosage and frequency of the medical use of
19 marijuana by the minor.

20 (4) (a) The department shall issue a registry identification card to the caregiver who is named in a
21 qualifying patient's approved application if the caregiver signs a statement:

22 (i) agreeing to provide marijuana only to qualifying patients who have named the applicant as caregiver;

23 and

24 (ii) acknowledging that possession of the registry identification card does not allow the caregiver to
25 engage in the use of marijuana or to use paraphernalia for any purpose other than cultivating, manufacturing,
26 delivering, transferring, or transporting marijuana for medical use by a qualifying patient.

27 (b) The department may not issue a registry identification card to a proposed caregiver who has
28 previously been convicted of a felony drug offense.

29 (c) A caregiver may receive reasonable compensation for services provided to assist with a qualifying
30 patient's medical use of marijuana.

1 (5) (a) The department shall verify the information contained in an application or renewal submitted
2 pursuant to this section and shall approve or deny an application or renewal. Except for applications that must
3 be reviewed in accordance with [section 3], the department shall act on an application or renewal within 15 days
4 of receipt of the application or renewal.

5 (b) (i) The department may deny an application or renewal ~~only~~ if the applicant did not provide the
6 information required pursuant to this section, the department determines that the information was falsified, or the
7 applicant is not qualified to receive a registry identification card under the provisions of this chapter.

8 (ii) The department shall deny an application if the review panel provided for in [section 3] recommends
9 denial of an application involving a debilitating medical condition that consists of or includes severe and chronic
10 pain.

11 (c) Rejection of an application or renewal is considered a final department action, subject to judicial
12 review.

13 (6) The department shall issue a registry identification card within 5 days of approving an application or
14 renewal. Registry identification cards expire 1 year after the date of issuance. Registry identification cards must
15 state:

- 16 (a) the name, address, and date of birth of the qualifying patient;
17 (b) the name, address, and date of birth of the qualifying patient's caregiver, if any;
18 (c) the date of issuance and expiration date of the registry identification card; and
19 (d) other information that the department may specify by rule.

20 (7) A person who has been issued a registry identification card shall notify the department of any change
21 in the qualifying patient's name, address, physician, or caregiver or change in status of the qualifying patient's
22 debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the
23 department, the registry identification card is void.

24 (8) The department shall maintain a confidential list of the persons to whom the department has issued
25 registry identification cards. Individual names and other identifying information on the list must be confidential and
26 are not subject to disclosure, except to:

- 27 (a) authorized employees of the department as necessary to perform official duties of the department;
28 or
29 (b) authorized employees of state or local law enforcement agencies, only as necessary to verify that
30 a person is a lawful possessor of a registry identification card.

- 1 (9) (a) The department shall report annually to the legislature;
- 2 (i) the number of applications for registry identification cards;
- 3 (ii) the number of qualifying patients and caregivers approved;
- 4 (iii) the nature of the debilitating medical conditions of the qualifying patients;
- 5 (iv) the number of applications involving severe and chronic pain that were considered by the review
- 6 panel, including how many applications were approved and how many were denied;
- 7 (v) the number of registry identification cards revoked; and
- 8 (vi) the number of physicians providing written certification for qualifying patients, including the number
- 9 of physicians submitting written certifications for a diagnosis that includes severe and chronic pain and the review
- 10 panel's approval and denial determinations for each of those physicians.
- 11 (b) The department may not provide any identifying information of qualifying patients, caregivers, or
- 12 physicians."

13

14 NEW SECTION. Section 3. Issuance of registry identification card for severe and chronic pain

15 -- review panel -- physician fee. (1) The department may not issue a registry identification card to a person

16 whose debilitating medical condition consists of or includes severe and chronic pain unless the application and

17 supporting documentation are evaluated and confirmed by a review panel.

18 (2) A physician providing a written certification for a person whose diagnosis consists of or includes

19 severe and chronic pain shall submit information as required by the department to document the basis for the

20 diagnosis and for the written certification.

21 (3) (a) The department shall submit the documentation to a review panel for evaluation and confirmation

22 of the diagnosis and for a recommendation on whether the department should approve or deny the application.

23 (b) The review panel shall provide a written record of the reasons for its recommendation.

24 (4) The department may not issue a registry identification card if the review panel recommends denial

25 of the application.

26 (5) The review panel must be made up of three physicians with experience in pain management or

27 palliative care.

28 (6) Members of the review panel:

29 (a) shall conduct their meetings by teleconference or other available electronic means; and

30 (b) are entitled to a stipend as set by the department in rule.

1 (7) A physician who provides written certification for a person whose debilitating medical condition
 2 consists of or includes severe and chronic pain shall pay a fee established by the department to cover the
 3 department's costs of administering this section.

4 (8) The department shall establish by rule:

5 (a) the information to be submitted by the physician providing the written certification;

6 (b) the process for appointing the review panel, including but not limited to qualifications of members and
 7 the length of term to be served by members; and

8 (c) operating procedures for the review panel, including but not limited to the number and frequency of
 9 meetings.

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11 **Section 4.** Section 50-46-210, MCA, is amended to read:

12 **"50-46-210. Rulemaking -- fees.** (1) The department shall adopt rules necessary for the implementation
 13 and administration of this chapter. The rules ~~must address~~ may include but are not limited to:

14 (a) the manner in which the department will consider application for and renewals of registry identification
 15 cards for qualifying patients and caregivers. ~~The department's rules must establish;~~

16 (b) the operating procedures for the review panel provided for in [section 3];

17 (c) application and renewal fees ~~that~~ for persons who submit applications for registry identification cards;

18 and

19 (d) the fee for a physician providing a written certification for a person whose debilitating medical
 20 condition consists of or includes severe and chronic pain.

21 (2) Fees established pursuant to this section must generate revenue sufficient to offset all the expenses
 22 of implementing and administering this chapter.

23 (3) The department may vary the application and renewal fees for an application for a registry
 24 identification card along a sliding scale that accounts for a qualifying patient's income."

25

26 **NEW SECTION. Section 5. Codification instruction.** [Section 3] is intended to be codified as an
 27 integral part of Title 50, chapter 46, part 1, and the provisions of Title 50, chapter 46, apply to [section 3].

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