

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

—
S.P. 256 - L.D. 726

An Act To Increase Patient Safety in Maine's Medical Marijuana Program

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §2422, sub-§1, as amended by PL 2009, c. 631, §8 and affected by §51, is further amended to read:

1. Cardholder. "Cardholder" means a ~~registered~~ qualifying patient, a registered primary caregiver, an employee of a registered primary caregiver or a principal officer, board member or employee of a registered dispensary or a marijuana testing facility who has been issued and possesses a valid registry identification card.

Sec. 2. 22 MRSA §2422, sub-§4-A, as enacted by PL 2011, c. 407, Pt. B, §4, is amended to read:

4-A. Incidental amount of marijuana. "Incidental amount of marijuana" means an amount of nonflowering marijuana plants ~~and~~ marijuana seeds, stalks and roots; and harvested, dried unprepared marijuana defined by rules adopted by the department.

Sec. 3. 22 MRSA §2422, sub-§5-C is enacted to read:

5-C. Marijuana testing facility. "Marijuana testing facility" means a public or private laboratory that:

A. Is licensed, certified or otherwise approved by the department in accordance with rules adopted by the department under section 2423-A, subsection 10, paragraph D to analyze contaminants in and the potency and cannabinoid profile of samples; and

B. Is accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization by a 3rd-party accrediting body or is certified, registered or accredited by an organization approved by the department.

Sec. 4. 22 MRSA §2422, sub-§13, as amended by PL 2009, c. 631, §18 and affected by §51, is further amended to read:

13. Registry identification card. "Registry identification card" means a document issued by the department that identifies a person as a ~~registered patient~~, registered primary caregiver, an employee of a registered primary caregiver or a principal officer, board member or employee of a dispensary or a marijuana testing facility.

Sec. 5. 22 MRSA §2422, sub-§14-A is enacted to read:

14-A. Sample. "Sample" means any marijuana or product containing marijuana regulated under this chapter that is provided for testing or research purposes to a marijuana testing facility by a qualifying patient, designated primary caregiver or dispensary.

Sec. 6. 22 MRSA §2423-A, sub-§1, ¶G, as amended by PL 2013, c. 396, §3, is further amended to read:

G. Be in the presence or vicinity of the medical use of marijuana and assist any qualifying patient with using or administering marijuana; ~~and~~

Sec. 7. 22 MRSA §2423-A, sub-§1, ¶H, as enacted by PL 2013, c. 396, §4, is amended to read:

H. Accept excess prepared marijuana from a primary caregiver in accordance with subsection 2, paragraph H if nothing of value is provided to the primary caregiver; and

Sec. 8. 22 MRSA §2423-A, sub-§1, ¶I is enacted to read:

I. Provide samples to a marijuana testing facility for testing and research purposes.

Sec. 9. 22 MRSA §2423-A, sub-§2, ¶J, as amended by PL 2013, c. 588, Pt. D, §3, is further amended to read:

J. Use a pesticide in the cultivation of marijuana if the pesticide is used consistent with federal labeling requirements, is registered with the Department of Agriculture, Conservation and Forestry, Board of Pesticides Control pursuant to Title 7, section 607 and is used consistent with best management practices for pest management approved by the Commissioner of Agriculture, Conservation and Forestry. A registered primary caregiver may not in the cultivation of marijuana use a pesticide unless the registered primary caregiver or the registered primary caregiver's employee is certified in the application of the pesticide pursuant to section 1471-D and any employee who has direct contact with treated plants has completed safety training pursuant to 40 Code of Federal Regulations, Section 170.130. An employee of the registered primary caregiver who is not certified pursuant to section 1471-D and who is involved in the application of the pesticide or handling of the pesticide or equipment must first complete safety training described in 40 Code of Federal Regulations, Section 170.230; ~~and~~

Sec. 10. 22 MRSA §2423-A, sub-§2, ¶K, as reallocated by RR 2013, c. 1, §40, is amended to read:

K. For the purpose of disposing of excess prepared marijuana, transfer prepared marijuana to a registered dispensary for reasonable compensation. The transfer of prepared marijuana by a primary caregiver to one or more dispensaries under this paragraph is limited to a registered primary caregiver. A registered primary caregiver may not transfer more than 2 pounds of excess prepared marijuana for reasonable compensation under this paragraph in a calendar year. A primary caregiver who transfers prepared marijuana pursuant to this paragraph does not by virtue of only that transfer qualify as a member of a collective;

Sec. 11. 22 MRSA §2423-A, sub-§2, ¶¶L and M are enacted to read:

L. If the primary caregiver is a registered primary caregiver, provide samples to a marijuana testing facility for testing and research purposes; and

M. If the primary caregiver is a registered primary caregiver, conduct marijuana testing at the request of anyone authorized to possess marijuana under this chapter for research and development purposes only.

Sec. 12. 22 MRSA §2423-A, sub-§3, ¶A, as amended by PL 2013, c. 374, §1, is further amended to read:

A. A patient who elects to cultivate marijuana plants must keep the plants in an enclosed, locked facility unless the plants are being transported because the patient is moving or taking the plants to the patient's own property in order to cultivate them. Access to the cultivation facility is limited to the patient, except that emergency services personnel, an employee of a marijuana testing facility or a person who needs to gain access to the cultivation facility in order to perform repairs or maintenance or to do construction may access the cultivation facility to provide those professional services while under the direct supervision of the patient.

Sec. 13. 22 MRSA §2423-A, sub-§3, ¶B, as amended by PL 2013, c. 501, §1, is further amended to read:

B. A primary caregiver who has been designated by a patient to cultivate marijuana for the patient's medical use must keep all plants in an enclosed, locked facility unless the plants are being transported because the primary caregiver is moving or taking the plants to the primary caregiver's own property in order to cultivate them. The primary caregiver shall use a numerical identification system to enable the primary caregiver to identify marijuana plants cultivated for a patient. Access to the cultivation facility is limited to the primary caregiver, except that an elected official invited by the primary caregiver for the purpose of providing education to the elected official on cultivation by the primary caregiver, emergency services personnel, an employee of a marijuana testing facility or a person who needs to gain access to the cultivation facility in order to perform repairs or maintenance or to do construction may access the cultivation facility to provide those professional services while under the direct supervision of the primary caregiver.

Sec. 14. 22 MRSA §2423-A, sub-§§10, 11 and 12 are enacted to read:

10. Marijuana testing facility. The following provisions apply to a marijuana testing facility.

A. A marijuana testing facility may receive and possess samples from qualifying patients, designated primary caregivers and dispensaries to provide testing for the cannabinoid profile and potency of the samples and for contaminants in the samples, including but not limited to mold, mildew, heavy metals, plant regulators and illegal pesticides. For the purposes of this paragraph, "plant regulator" has the same meaning as in Title 7, section 604, subsection 26.

B. An employee of a marijuana testing facility may have access to cultivation facilities pursuant to subsection 3, paragraphs A and B and section 2428, subsection 6, paragraph I.

C. A marijuana testing facility shall:

(1) Properly dispose of marijuana residue in compliance with department rules;

(2) House and store marijuana in the facility's possession or control during the process of testing, transport or analysis in a manner to prevent diversion, theft or loss;

(3) Label marijuana being transported to and from the facility with the following statement: "For Testing Purposes Only";

(4) Maintain testing results as part of the facility's business books and records; and

(5) Operate in accordance with rules adopted by the department.

D. The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A governing marijuana testing facilities, including but not limited to:

(1) Marijuana testing facility director qualification requirements;

(2) Required security for marijuana testing facilities; and

(3) Requirements for the licensing, certifying or other approval of marijuana testing facilities.

11. Immunity. The immunity provisions in this subsection apply to a marijuana testing facility's principal officers, board members, agents and employees. Any immunity provision in this chapter in conflict with this subsection does not apply to a marijuana testing facility.

A. A marijuana testing facility is not subject to prosecution, search, seizure or penalty in any manner, including but not limited to a civil penalty or disciplinary action by a business or an occupational or professional licensing board or entity, and may not be denied any right or privilege solely for acting in accordance with this chapter.

B. A principal officer, board member, agent or employee of a marijuana testing facility is not subject to arrest, prosecution, search, seizure or penalty in any manner, including but not limited to a civil penalty or disciplinary action by a business or an occupational or professional licensing board or entity, and may not be denied any right or privilege solely for working for or with a marijuana testing facility to test

marijuana provided by a qualifying patient, registered primary caregiver or dispensary.

12. Interest. A principal officer, board member or employee of a registered dispensary or primary caregiver may not have a financial or other interest in a marijuana testing facility providing services associated with product labeling for that dispensary or primary caregiver.

Sec. 15. 22 MRSA §2423-B, sub-§§6 and 7 are enacted to read:

6. Certification issued based on debilitating condition. A medical provider may not condition the issuance of a certification for the medical use of marijuana on any requirements other than the patient's debilitating medical condition. Nothing in this section may be construed to prevent a medical provider from exercising professional judgment in declining to issue a certification for the medical use of marijuana.

7. Patient referral disclosure of interest. Prior to providing a referral to a qualifying patient for goods and services associated with a certification for the medical use of marijuana to an entity in which the medical provider has a direct or indirect financial interest, a medical provider shall provide written disclosure to the qualifying patient regarding any direct or indirect financial interest the medical provider has or may have in the resulting referral and shall maintain a copy of this disclosure in the qualifying patient's record.

Sec. 16. 22 MRSA §2423-E, sub-§1-A is enacted to read:

1-A. Legal protection for hospitals. The immunity provisions in this subsection apply to a hospital licensed under chapter 405 and to principal officers, board members, agents and employees of the hospital. Any immunity provision in this chapter in conflict with this subsection does not apply to a hospital. The legal protection for hospitals applies in accordance with the following.

A. If the use of forms of prepared marijuana that are not smoked or vaporized, including but not limited to edible marijuana and tinctures and salves of marijuana, by admitted patients who have been certified under section 2423-B occurs in a hospital, that hospital is not subject to prosecution, search, seizure or penalty in any manner, including but not limited to a civil penalty or disciplinary action by an occupational or professional licensing board or entity, and may not be denied any license, registration, right or privilege solely because the admitted patient lawfully engages in conduct involving the medical use of marijuana authorized under this chapter.

B. A principal officer, board member or employee of a hospital where the use of forms of prepared marijuana that are not smoked or vaporized, including but not limited to edible marijuana and tinctures and salves of marijuana, by admitted patients who have been certified under section 2423-B occurs is not subject to arrest, prosecution, search, seizure or penalty in any manner, including but not limited to a civil penalty or disciplinary action by an occupational or professional licensing board or entity, and may not be denied any license, registration, right or privilege solely

because the admitted patient lawfully engages in conduct involving the medical use of marijuana authorized under this chapter.

Sec. 17. 22 MRSA §2423-E, sub-§4, as enacted by PL 2011, c. 407, Pt. B, §20, is amended to read:

4. Prohibition on seizure and retention. Except when necessary for an ongoing criminal or civil investigation, a law enforcement officer may not seize marijuana that is in the possession of a qualifying patient, primary caregiver, marijuana testing facility or registered dispensary as authorized by this chapter. A law enforcement officer in possession of marijuana in violation of this subsection must return the marijuana within 7 days after receiving a written request for return by the owner of the marijuana. Notwithstanding the provisions of Title 14, chapter 741, if the law enforcement officer fails to return marijuana possessed in violation of this subsection within 7 days of receiving a written request for return of the marijuana under this subsection, the owner of the marijuana may file a claim in the District Court in the district where the owner lives or where the law enforcement officer is employed.

Sec. 18. 22 MRSA §2423-E, sub-§9 is enacted to read:

9. Labels. If a registered primary caregiver affixes a label on the packaging of any marijuana or product containing marijuana provided to a qualifying patient and that label includes information about contaminants, the cannabinoid profile or potency of the marijuana or product containing marijuana, the label must be verified by a marijuana testing facility that is not owned by the caregiver if there is a marijuana testing facility licensed, certified or approved in accordance with this chapter.

Sec. 19. 22 MRSA §2425, sub-§1-A, as enacted by PL 2013, c. 394, §3, is amended to read:

1-A. Criminal history record check. An applicant for a registry identification card who is a primary caregiver or an employee of a primary caregiver or who is a principal officer, board member or employee of a registered dispensary or a marijuana testing facility must undergo a criminal history record check annually.

Sec. 20. 22 MRSA §2425, sub-§4-A is enacted to read:

4-A. Marijuana testing facility identification card. The department shall issue registry identification cards to principal officers, board members and employees of a marijuana testing facility within 5 business days of approving an application or renewal under this section in accordance with department rules. Registry identification cards expire one year after the date of issuance. Registry identification cards must contain:

- A. The name of the cardholder;
- B. The date of issuance and expiration date of the registry identification card; and
- C. A random identification number that is unique to the cardholder.

Sec. 21. 22 MRSA §2425, sub-§12, ¶G, as enacted by PL 2013, c. 394, §6, is amended to read:

G. There is a fee for laboratory testing of marijuana that is cultivated, harvested, processed, prepared or provided by a registered primary caregiver or registered dispensary of not less than \$50 and not more than \$300 per test sample specimen.

Sec. 22. 22 MRSA §2428, sub-§6, ¶I, as amended by PL 2013, c. 501, §2, is further amended to read:

I. All cultivation of marijuana must take place in an enclosed, locked facility unless the marijuana plants are being transported between the dispensary and a location at which the dispensary cultivates the marijuana plants, as disclosed to the department in subsection 2, paragraph A, subparagraph (3). The dispensary shall use a numerical identification system to enable the dispensary to track marijuana plants from cultivation to sale and to track prepared marijuana obtained pursuant to section 2423-A, subsection 2, paragraph H from acquisition to sale. Access to the cultivation facility is limited to a cardholder who is a principal officer, board member or employee of the dispensary when acting in that cardholder's official capacity, except that an elected official invited by a principal officer, board member or employee for the purpose of providing education to the elected official on cultivation by the dispensary, emergency services personnel, an employee of a marijuana testing facility or a person who needs to gain access to the cultivation facility in order to perform repairs or maintenance or to do construction may access the cultivation facility to provide professional services while under the direct supervision of a cardholder who is a principal officer, board member or employee of the dispensary.

Sec. 23. 22 MRSA §2428, sub-§6, ¶¶M and N are enacted to read:

M. A dispensary may provide samples to a marijuana testing facility for testing and research purposes.

N. A dispensary may conduct marijuana testing at the request of anyone authorized to possess marijuana under this chapter for research and development purposes only.

Sec. 24. 22 MRSA §2428, sub-§12 is enacted to read:

12. Labels. If a dispensary affixes a label on the packaging of any marijuana or product containing marijuana provided to a qualifying patient and that label includes information about contaminants, the cannabinoid profile or potency of the marijuana or product containing marijuana, the label must be verified by a marijuana testing facility that is not owned by the dispensary if there is a marijuana testing facility licensed, certified or approved in accordance with this chapter.

Sec. 25. 22 MRSA §2430, sub-§2, ¶B, as enacted by PL 2009, c. 631, §45 and affected by §51, is amended to read:

B. All money received as a result of applications and reapplications for registry identification cards for registered patients, primary caregivers and dispensaries and board members, officers and employees of dispensaries or marijuana testing facilities;

Sec. 26. 22 MRSA §2430-A, first ¶, as enacted by PL 2013, c. 516, §16, is amended to read:

The department may take action necessary to ensure compliance with this chapter, including, but not limited to, collecting, possessing, transporting and performing laboratory testing on soil and marijuana plant ~~samples~~ specimens and ~~samples~~ portions of products containing marijuana from registered primary caregivers and registered dispensaries to determine compliance with this chapter and for evidence purposes.

Sec. 27. Rules. By December 31, 2017, the Department of Health and Human Services shall adopt routine technical rules pursuant to the Maine Revised Statutes, Title 22, section 2423-A, subsection 10, paragraph D.