

Summary of New York's New Medical Marijuana Law (S7923/A6357-E)

On July 7, 2014, Governor Cuomo signed a medical marijuana bill into law. Many of the details regarding the implementation of New York's medical marijuana program have been left to the discretion of the New York State Commissioner of Health. The most recent regulations can be found on the website of the New York State Department of Health (DOH). Under New York's new medical marijuana law, a patient who has been certified by a healthcare provider to use medical marijuana can register with the New York State Department of Health and receive a patient identification card. Specifically approved organizations – such as hospitals or community health centers – will dispense the medical marijuana to registered patients, under DOH supervision.

How Do Patients Qualify to be Part of the Program?

- Must be resident of NY or is being treated in NY.
- Must be being treated in NY for the condition for which you are seeking medical marijuana.
- Must be certified by a NY physician who has registered with DOH to recommend medical marijuana (means that the doctor has completed a 4 hour training course and filed paperwork with the DOH).
- Must be under that doctor's care for the condition for which you are seeking medical marijuana.
- Your doctor must believe and be willing to certify that you will receive some therapeutic or palliative benefit from medical marijuana.
- Must have a "serious condition," as defined by the law.
- Must obtain a registry identification card from the Department of Health (DOH) and carry your patient registry card at all times that you are in possession of medical marijuana.

What Medical Conditions Make a Patient Eligible for Medical Marijuana in New York?

- A serious condition is defined as: "having one of the following severe debilitating or life-threatening conditions: cancer, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, amyotrophic lateral sclerosis, Parkinson's disease, multiple sclerosis, damage to the nervous tissue of the spinal cord with objective neurological indication or intractable spasticity, epilepsy, inflammatory bowel disease, neuropathies, Huntington's disease, or as added by the commissioner; and (ii) any of the following conditions where it is clinically associated with, or a complication of, a condition under this paragraph or its treatment: cachexia or wasting syndrome; severe or chronic pain; severe nausea; seizures; severe or persistent muscle spasms; or such conditions as are added by the commissioner."
- Any other condition can be added by the Commissioner at any time

What's the Process for a Patient to Become Certified to Receive Medical Marijuana Under the Program?

- Patients apply to DOH to become a certified patient.
- The application (which DOH will develop) must include:
 - Name
 - Date of birth
 - Doctor's certification, which includes a statement that patient has a serious condition and is under doctor's care for that condition
 - Dates for which the certification is valid
 - Photo
 - Name, address, Federal registration number, phone number and original signature of practitioner

- Certification expires after one year from the date the doctor signs it, or the doctor can specify an earlier termination date.
- If the patient is terminally ill (as certified by their doctor), the registration doesn't expire until patient's death.
- If the patient is under 21, a parent or legal guardian can make the application as the designated caregivers.
- Patients must pay \$50 fee which can be reduced or waived if s/he is experiencing financial hardship.
- If the application is approved, DOH will issue the patients registry card that will include any limitations regarding forms or dosage made by the certifying doctor.

What Kind and How Much Medical Marijuana Can a Certified Patient Obtain?

- All allowable forms (e.g., extracts, tinctures, oils) of medical marijuana, including methods of consumption and strain, variety, and strength, are determined by the Commissioner and must be approved by the Commissioner before they can be sold.
 - Smoking as a method of consumption of the only form not left to the Commissioner and specifically excluded from 'certified medical use' in the statute.
 - Through regulation, the Commissioner prohibited all forms except oils, tinctures and pills (i.e., no edibles)
- No patients or caregiver can legally possess more than a 30 day supply as determined by the practitioner and consistent with any DOH regulations.
- Patients can get a refill of their medical marijuana during the last 7 days of their 30 day supply.
- Medical marijuana must be kept in its original packaging.
- Medical marijuana cannot be consumed in a public place.

How Do Medical Practitioners Get Involved in Recommending Medical Marijuana to Patients?

- Only physicians are allowed to recommend medical marijuana, although the Commissioner has the option of including nurse practitioners based on patient need and access
- Recommending physicians must:
 - Be licensed and practicing in New York
 - Be qualified to treat the serious condition
 - Have completed a 2-4 hour training course
 - Have registered with the DOH
 - Must be caring for the patients for whom they are making recommendation, meaning that they have done a full assessment of patient's medical history and current medical condition, and believe that the patient will benefit from the use of medical marijuana.
 - Must consult the prescription drug monitoring program and review the patient's control substances history before issuing a recommendation
- Physicians cannot issue a certification to him/herself

What are the Dosing Guidelines?

- Practitioners must consider the form and dosage and include any such recommendations in the certification.
- If the practitioner has determined a specific dose or any limitations, these must be included on the patient's certification.

- For ingestible forms, a single dose cannot exceed 10 mg of THC.

What Do Caregivers Need to Do to be Able to Help a Certified Patients?

- A patient can designate up to two caregivers
 - If the patient is under 21, not allowed caregivers other than a legal guardian or parent unless a case is made to DOH that no legal guardian or parent is available
- No one can be a caregiver to more than 5 certified patients at one time.
- Caregivers must register with DOH to obtain a registry identification card.
- Caregivers can legally possess up to 30 day supply if registered with DOH (has to be right form and dose for the specified patient).
- Any changes to or terminations of caregivers must be conveyed to DOH immediately.

Are Patients, Caregivers, and People in the Industry Protected from Discrimination?

- Patients, caregivers, practitioners, or employees of registered organizations “shall not be denied any right or privilege, including but not limited to, they shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, solely for the certified medical use or manufacture of marijuana, or for any other action or conduct in accordance with this title.”
- Patients, practitioners and employees of registered organizations are also protected under the human rights law (housing, employment, public accommodations).
- Patients, practitioners and employees of registered organizations are protected in custody and family law proceedings.
- Registry information is not subject to public disclosure laws (i.e., it must be kept confidential).

What are the Rules for People Who Want to Be Part of the Industry of Producing or Dispensing Medical Marijuana?

- Registered organizations or “RO’s” are entities that the state licenses to produce and dispense medical marijuana.
- RO’s:
 - Can be for-profit or not-for-profit organizations
 - Must contract with an independent laboratory approved by the Commissioner of Health for product testing
 - Cannot be managed by or employ anyone, who comes in direct contact with the marijuana, who has been convicted of felony drug charge within 10 years (unless they received a certificate of relief or good conduct)
- Growing must be done indoors (which may include a greenhouse) in a secure facility.
- The Commissioner will not license more than 5 RO’s, which can each operate 4 dispensaries (for a total of 20 dispensaries).
 - Commissioner can add more RO’s if s/he determines a need
- DOH will issue regulations for RO’s, including regulation governing security and tracking.

How Do I Become a Registered Organization (RO)?

- To apply to be an RO, the organizations must meet a range of criteria, including that they:
 - Have sufficient facilities and land or a bond of \$2 million
 - Can maintain good security
 - Has entered into a labor peace agreement

- Able to comply with all state laws
- In determining who can be an RO, the Commissioner should consider the public interest – including regional access.
- The fee for RO's is to be determined by the Commissioner.
- Licenses are valid for 2 years and then must be renewed.
- Licenses can be immediately suspended or terminated if the RO is not adequately controlling diversion or otherwise violating the statute or regulations.

What are the Fees for Participating?

- \$50 for patient or caregiver card.
- \$25 for lost card.
- Fees for producers and dispensaries are to be determined by the Health Commissioner.

What are the Requirements about Labelling, Packaging & Advertising?

- Must be sold in a secure, properly labeled package.
- Safety insert and warning label is required that includes methods of administration, clarity about individual dose, risks and dangers.
- RO's must determine and provide information to DOH, patients and practitioners about the quality, safety, and clinical strength of marijuana.
- Commissioner is authorized to make rules about advertising – consistent with those for prescription drugs.
- Patients and caregivers must keep medical marijuana in the original packaging.

How Much Will Medical Marijuana Cost?

- Commissioner determines the price of all sales.
- Commissioner shall set a per dose price for each form of marijuana.

How Will Medical Marijuana Be Taxed?

- Medical marijuana is taxed through an excise tax, which means that the RO pays the tax directly to the state.
- The law established a medical marijuana trust fund – 100% of revenue is to be deposited there
- Excise tax of 7% will be levied on gross receipts and paid by the RO.
 - 22.5% goes to county where the medical marijuana was produced
 - 22.5% goes to county where the medical marijuana was dispensed
 - 5% goes to Office of Alcohol and Substance Abuse Services for prevention, counseling and treatment services
 - 5% goes to the Department Criminal Justice Services for discretionary grant program related to enforcement of the this title