

## HB 1: The Compassionate Use of Medical Cannabis Pilot Program Act

HB 1 would create a highly regulated, very limited four-year medical cannabis pilot program. Patients with specified debilitating conditions and a Department of Public Health-issued registry identification card could possess a limited amount of cannabis for their medical use. Patients could also designate someone to pick up their medicine for them, a caregiver who would also have to register with the state and pass a background check. Patients and caregivers could not cultivate the cannabis, and instead would obtain it from one of up to 60 highly regulated dispensing organizations. Those dispensaries would in turn obtain the cannabis and edible products with cannabis from one of up to 22 cultivation centers. Medical cannabis would be subject to what may be the strictest regulations in the country, including strict seed-to-sale tracking and monitoring.

### How a Person Qualifies As a Patient

To qualify, a patient *must*:

- be over 18
- have a debilitating medical condition that is specifically listed in the bill
- have a written certification from a physician with whom the patient has an ongoing relationship and is treating the patient's debilitating condition

A person *cannot* qualify as a patient if they:

- are active duty law enforcement, an emergency medical technician, a correctional officer, a probation officer, or a firefighter
- have a commercial driver's license or school bus permit
- have a felony drug conviction (including for medical cannabis)

### Qualifying Conditions

*Qualifying Conditions.* Only specifically enumerated, debilitating physical ailments qualify under HB 1. There is no general qualifying condition for severe pain or nausea, and psychological problems do not qualify. The qualifying debilitating conditions are:

Cancer, glaucoma, HIV/AIDS, hepatitis C, ALS, Crohn's, Alzheimer's, cachexia/wasting, muscular dystrophy, severe fibromyalgia, spinal cord disease, Tarlov cysts, hydromyelia, syringomyelia, rheumatoid arthritis, fibrous dysplasia, spinal cord injury, traumatic brain injury and post-concussion syndrome, multiple sclerosis, Arnold-Chiari malformation and Spinocerebellar Ataxia (SCA), Parkinson's, Tourette's, Myoclonus, Dystonia, Reflex Sympathetic Dystrophy, residual limb pain, Causalgia, CRPS, Neurofibromatosis, Chronic Inflammatory Demyelinating, Polyneuropathy, Sjogren's syndrome, Lupus, Interstitial Cystitis, Myasthenia Gravis, Hydrocephalus, nail-patella syndrome, or the treatment of these conditions.

*Adding Conditions.* Petitions can be filed requesting the Department of Public Health add medical conditions, and the department may approve them.

*Patients Who Recover.* Doctors may notify the department when the patient recovers or if the doctor no longer believes the patient will benefit from medical cannabis. If that happens, the patient then

has 15 days to dispose of his or her cannabis. A patient also has an obligation to notify the department if he or she recovers.

### **Requirements for Certifying Physicians**

Physicians who recommend cannabis *must*:

- be an MD or DO, not a dentist or other prescriber
- be responsible for care for the patient's qualifying condition
- comply with all generally accepted standards of practice
- keep records on all patients to whom they recommend medical cannabis. Those records are subject to review by the public health and financial and professional regulation departments.

Physicians who recommend cannabis may *not*:

- perform physical examinations over the internet
- receive any compensation from caregivers, patients, or medical cannabis businesses other than being paid by a patient for the exam
- serve on the board of a cultivation center or dispensary
- hold an economic interest in a medical cannabis business
- refer patients to a caregiver or dispensary
- advertise in a dispensary

The Department of Public Health may refer physicians to the Department of Financial and Professional Regulation for potential violations of the law.

### **Caregiver Requirements**

Caregivers:

- can assist only one patient
- must be 21 or older
- must have been designated by the patient
- must undergo a background check after submitting their fingerprints
- cannot have any convictions for drug or violent felonies

### **Patient and Caregiver Identification Cards**

To be protected from arrest, a patient or caregiver must have their Department of Public Health-issued registry identification card on them. Patients must reapply each year, 45 days before the card expires. The department will notify them that the expiration is coming up 90 days before it expires.

To qualify for an identification card, the patient must submit an application including:

- a written certification signed within the past 90 days by a physician recommending medical cannabis and confirming that they have a qualifying condition
- medical records and documentation showing a bona fide patient-physician relationship and that the patient is in the doctor's care for the condition
- the patient's and caregiver's (if any) name, address, date of birth, and social security number
- fingerprints for the patient and caregiver (if any), except that the patient's fingerprint requirement may be waived based on the severity of their illness and their ability to get them done; either way a background check will be performed

- a fee, in an amount set by the Department of Public Health

Patients must notify the department if:

- they recover from their condition
- they wish to change caregivers
- they want to designate a different dispensary
- their name or address changes (this also applies to caregivers)
- they lose their card (this also applies to caregivers)

Failing to make a notification is punishable by a \$150 fine.

### **Failure to Issue identification Cards**

If the department fails to issue an identification card in response to a valid application (or to reject the application), it shall be deemed granted, and the application will serve as the identification card. In the case of patients, they must also have a written certification.

### **Verification System**

A verification system for registry identification cards must be available to Department of Agriculture, Department of Public Health, and Department of Financial and Professional Regulation personnel, as well as dispensary agents and law enforcement. The staffer can type in the number on the identification card they are shown, and then the system will disclose if the identification card is valid, if the person is a patient or a caregiver, and which dispensary the patient designated.

### **Patient and Caregiver Possession Limits**

Patients are limited to possessing 2.5 ounces, which they can acquire every 14 days, unless the patient's certifying physician signs a waiver explaining that the patient needs a greater quantity. The limit also applies to caregivers who pick up patients' medicine for them.

### **Limitations On Where Cannabis Can Be Used or Possessed**

Cannabis cannot be *possessed* in any of the following locations:

- in a school bus
- on the grounds of a primary or secondary school or preschool
- in a correctional facility
- in a vehicle, unless the cannabis is in a secured and sealed container that is reasonably inaccessible while the car is moving
- in a residence that's used for licensed child care or similar social services' care

Cannabis cannot be *used* in any of the above places or:

- in close physical proximity to someone who is under 18
- in a private residence that is used for child care or similar services
- in a public place, including where the person could reasonably expect to be observed by others (this does not count private residences, unless they are used for child care, foster care, or a similar service)

- in any building owned or leased in whole or in part by a state or local government (this does not count private residences, unless they are used for child care, foster care, or a similar service)

Cannabis cannot be *smoked* in any of the above places or:

- in a health care facility
- anywhere smoking is banned under Illinois law
- where it is prohibited by the landlord

### Driving Restrictions and Implied Consent to Field Sobriety Tests

- *Possession and Use In Vehicles.* Patients, caregivers, cultivation center agents, and dispensary agents cannot possess cannabis in a vehicle on a highway unless it is in a sealed, tamper-evident container and reasonably inaccessible while the car is moving. Drivers cannot use medical cannabis in the passenger area of a vehicle. Violating these provisions is a Class A misdemeanor and will require the person's medical cannabis card to be revoked for two years.
- *Driving Record Notation.* The Secretary of State will make a notation in a patient's driving record that he or she is a registered patient.
- *Implied Consent.* A registered patient who drives is deemed to have given consent to a standardized field sobriety test. To administer the test, the officer must have an independent, cannabis-related factual basis, not merely the fact that the person is a registered patient. The reason must be included on the test results and any influence reports by an arresting officer. A patient who refuses to submit to the test will have his or her card revoked and face a 12-month suspension of his or her driver's license.
- *Driving Under the Influence Forbidden.* Patients who drive while they are impaired by cannabis will face the same penalties as patients who drive while impaired by prescription or over-the-counter drugs.

### Patient Protections

HB 1 includes the following protections for patients, most of which also apply to caregivers:

- *Criminal Law:* Patients and caregivers cannot be arrested or prosecuted for possessing a permissible amount of cannabis, as long as they comply with the law.
- *Child Custody:* A person cannot be denied child custody or visitation solely for actions allowed by the law, unless his or her actions created an unreasonable danger to the minor's safety.
- *Medical Care:* Medical cannabis will be considered the same as other medications for purposes of organ transplants and medical care. In other words, a patient couldn't be denied a transplant simply for using medical cannabis, as has happened in other states, unless there is a medical reason for doing so.
- *Employment, Housing, and Education:* Patients cannot be denied employment, housing, or an education based on their status as a patient, unless a failure to do so would cause the employer, school, or landlord to lose a federal benefit.
  - Note: Patients and others can still be punished for violating a workplace drug policy, including a zero-tolerance policy, for using or possessing cannabis in the workplace, or for being impaired in the workplace. Also, landlords may ban medical cannabis smoking in rental properties.

## Cultivation Centers

The Department of Agriculture will register 22 cultivation centers (one per State Police district) unless there are not enough qualified applicants. These centers will sell cannabis to regulated dispensaries, not directly to patients. Cultivation center registrations may be renewed annually. They can be revoked or suspended for violating the law or rules.

Applications to operate cultivation centers must include:

- where they would operate
- a description of the enclosed, locked facility where they will grow cannabis
- the application fee, which will be set by the Department of Agriculture by rule
- the names, addresses, and dates of birth of each principal officer and board member
- the applicants' experience with agricultural cultivation and industry standards
- the applicants' relevant degrees, certification, and experience in related businesses
- the identity of person, corporation, or trust with a pecuniary interest in the center
- any disciplinary history for businesses the applicants managed or served on the board of
- plans for cultivation, inventory, and packaging
- planned bylaws, including:
  - plans for a plant-monitoring and container tracking system
  - plans for record keeping
  - staffing plans
  - security plans, which must be reviewed by the State Police
- other information required by the Department of Agriculture

Cultivation centers must:

- implement a cannabis monitoring system, including a weekly physical inventory
- employ a cannabis container tracking system
- have an accurate record keeping plan
- develop and implement a security plan approved by State Police, including access controls, detection of intrusion, and personnel identification
- have 24-hour surveillance inside and outside of the facility; the footage must be accessible to the Department of Financial and Professional Regulation and law enforcement in real-time
- be located more than 2,500 feet from any preschool, primary school, secondary school, day care center or home, or area zoned for residential use
- comply with all state and federal laws about pesticides
- abide by Department of Agriculture rules, including on oversight, record keeping, transportation, security, testing, and quality of cannabis
- abide by local zoning rules
- must notify local law enforcement, State Police, and the Department of Agriculture within 24 hours of any loss or theft
- limit access to the enclosed, locked facility where cannabis is grown to staffers who registered with the Department of Agriculture, department staff performing inspections, emergency personnel, and contractors working on jobs unrelated to cannabis (such as electrical wiring)
- package all cannabis in labeled containers that are entered into the data tracking system
- destroy any cannabis according to state law, after notifying the Department of Agriculture; records on destroyed cannabis must be kept for five years

- renew their registration annually, and pay a registration renewal fee in an amount determined by the Department of Agriculture

## Dispensing Organizations

The Department of Financial and Professional Regulation will register 60 dispensing organizations, unless there are not enough qualified applicants. They must be geographically dispersed throughout the state. Dispensaries are subject to random inspection by the Department of Financial and Professional Regulation and State Police. Patients can only go to a single dispensary, which they must designate. (They could change the designation after notifying the Department of Public Health.)

Applications to operate dispensing organizations must include:

- where they would operate
- the application fee, which will be set by the department by rule
- the names, addresses, and dates of birth of each principal officer and board member
- any disciplinary history for businesses or not-for-profits they managed or served on the board of
- proposed bylaws, including for oversight, record keeping, and security, including for the enclosed, locked location where cannabis will be stored
- other information required by the Department of Financial and Professional Regulation

Dispensing organizations may *not*:

- be located within 1,000 feet of a preschool, primary school, secondary school, day care center or day care home
- be located in an area zoned for residential use or a house, apartment, or condominium
- dispense cannabis to anyone other than a registered patient or caregiver

Dispensing organizations must:

- maintain operating documents including procedures for oversight and accurate record keeping
- implement appropriate security measures to deter and prevent theft
- abide by Department of Financial and Professional Regulation rules, including on agent-in-charge oversight requirements, record keeping requirements, and security requirements (including an alarm system)
- abide by local zoning requirements
- verify the person is a patient or caregiver who designated the dispensary before dispensing cannabis
- ensure patients and caregivers are dispensed no more than 2.5 ounces every 14 days (unless the patient has a Department of Public Health-approved waiver)
- keep records based on the identification number on patients'/caregivers' registry identification cards
- submit to testing of cannabis by the department
- store cannabis in a location that can only be accessed by staffers who registered with the Department of Financial and Professional Regulation, department staff performing inspections, emergency personnel, and contractors working on jobs unrelated to cannabis (such as installing security devices)
- destroy any cannabis according to state law, after notifying the Department of Financial and Professional Regulation; records on destroyed cannabis must be kept for five years

- renew their registration annually, and pay a registration renewal fee in an amount determined by the Department of Financial and Professional Regulation

### **Dispensing Organization and Cultivation Center Agents**

Principal officers, board members, and staff of cultivation centers and dispensaries must:

- be 21 years old or older
- submit fingerprints for a background check
- not have convictions for drug or violent felonies, except that medical cannabis convictions that were not violations of the medical cannabis act (i.e. federal convictions for complying with state law) can be waived
- get photo identification cards from the Department of Agriculture (for cultivation centers) or the Department of Financial and Professional Regulation (for dispensary agents)
- wear their department-issued identification at all times when on the cultivation center or dispensary property; cultivation center agents must also display their identification while transporting cannabis

The identification cards will be issued within 49-51 days of the applications being filed.

### **Edibles, Tinctures, and Other Cannabis- Infused Products**

Cultivation centers can make baked goods, tinctures, and similar products that include cannabis for sale to patients via dispensaries, but not any edibles or similar products requiring refrigeration or hot-holding. These products must be individually wrapped. The Department of Public Health will adopt rules for the manufacture of these products and can inspect the premises, including the machinery and utensils used to prepare them.

Labels on edibles and other infused products must:

- conform to state law requirements
- include where the product was prepared
- list all ingredients (including preservatives) in descending order
- include a warning that the centers are not subject to public health inspection and that they may process food allergens
- include a clear warning that the product includes cannabis
- include a use by and manufacture date

### **Paraphernalia**

Cannabis paraphernalia may be sold to a patient or caregiver.

### **Penalties**

- Lying to a police officer related to medical cannabis is punishable by a fine of up to \$1,000, in addition to all other penalties for making a false statement/the non-medical use of cannabis.
- Lying to a physician to get a recommendation is punishable by a fine of up to \$1,000, in addition to penalties for the non-medical use of cannabis.

- A caregiver or patient selling cannabis is punishable by a card revocation and other penalties.
- A registered patient who refuses to submit to a field sobriety test when there is cause to request one would have his or her driver's license suspended for 12 months. A patient who fails a field sobriety test would have his or her driver's license suspended for six months, in addition to standard penalties for driving under the influence.
- Possible punishments for dispensing organizations and staff include: their registrations may be suspended or revoked, and they may be fined up to \$10,000 for each violation.
- Breaking the law's confidentiality provisions (including by a state employee) is punishable by a Class B misdemeanor with a \$1,000 fine.

### **Political Contributions**

Cultivation centers and dispensaries cannot make campaign contributions.

### **Private Businesses, Employers, Colleges, and Insurance**

- Businesses can prohibit or restrict the use of cannabis. Those in lawful possession of property do not have to allow a guest, client, customer, or visitor to use cannabis.
- Employers may enforce drug testing and zero tolerance laws, including disciplining patients for violating the drug testing policy. They may also consider a patient impaired if they manifest symptoms that decrease or lessen their performance including their speech, agility, et cetera.
- Colleges may restrict or ban cannabis on campus.
- Neither private insurance nor governmental programs have to cover medical cannabis.

### **Local Regulations**

Localities can impose zoning ordinances, but cannot enact unreasonable ordinances restricting cultivation centers, dispensing organizations, or patients' use.

### **Taxes and Fees**

- *Excise tax.* Medical cannabis grown by cultivation centers to dispensaries will be subject to a 7% excise tax.
- *Sales tax.* Medical cannabis sold to patients or caregivers by dispensaries will be subject to a 1% sales tax (the same rate as other medications).
- *Fees.* The departments of financial and professional regulation and agriculture will set fees for applications, registrations, and annual renewals for dispensaries and cultivation centers. The Department of Public Health will set fees for patient and caregiver identification cards and annual renewals. The fees will be used to administer the act.

### **Education on Abuse**

The Department of Public Health is required to disseminate educational materials on the health risks associated with the abuse of cannabis and prescription drugs. The education will be funded by an additional fee on registry identification cards.

### **Four-Year Sunset**

The bill is a pilot program. It would be automatically repealed four years after its effective date.

### **Annual Report**

Each year, the Department of Public Health will issue a report to the General Assembly, including the number of patients, the nature of their conditions, the number of certifying physicians, how many registry identification cards were revoked, the number of cultivation centers, and the number of dispensing organizations.

### **Effective Date, Rule-making, and Implementation Dates**

HB 1 would go into effect on January 1, 2014.

Rules shall be filed with the Joint Committee on Administrative Rules within 120 days of the effective date of the act. The departments shall consult with stakeholders, including patients, when working on rule-making.

The verification system must be up and running by 180 days after the effective date.