



Progress Report: New York's Medical Marijuana Program

Gov. Andrew Cuomo signed New York's Compassionate Care Act into law on July 5, 2014. Assembly Health Committee Chair Richard Gottfried championed the issue in the Assembly for many years, with Sen. Diane Savino sponsoring the Senate bill since 2012. MPP led the advocacy effort for several years, with Compassionate Care New York (supported by the Drug Policy Alliance) taking the lead beginning in spring 2012. In 2017, the Marijuana Policy Project Foundation led a successful advocacy campaign to add PTSD to the program.

The Compassionate Care Act protects certain seriously ill patients who use marijuana pursuant to their practitioners' advice and allows them to access medical cannabis from regulated entities. Unfortunately, modifications that were made at Gov. Cuomo's insistence before the bill was enacted resulted in an extremely restrictive program. For example, New York is one of only four states that do not allow patients to smoke medical cannabis. Until late 2017, whole plant cannabis and edibles were not allowed. Initially no more than five cultivators, called "registered organizations," were allowed with just four dispensary locations each. They began opening in January 2016, but have struggled, with many operating at a loss, due in part to onerous security and other regulations that pharmacies, which sell far more dangerous drugs, are not subject to.

Beginning in August 2016, the Department of Health began gradually expanding the program. Chronic pain was added as a qualifying condition, nurse practitioners and physicians' assistants are now allowed to recommend medical cannabis in addition to physicians, and, as of December 2017, five additional producers are in the process of being licensed. In December 2017, the health department approved regulations to make several improvements to the program, including to allow more cannabis preparations and to reduce the length of a continuing medical education course certifying practitioners must take from four hours to two.

Patients receive protections when the health department issues them ID cards. Patients must submit a valid application, a written certification from their medical practitioner, and a fee of \$50, which is waived for low-income patients. ID cards generally expire after a year, unless the patient has a terminal illness or the physician specified an earlier date. The written certification must specify that the patient has a qualifying condition and a qualifying symptom, is in the physician's continuing care for the qualifying condition, and is likely to receive therapeutic or palliative benefits from marijuana. The practitioner must consider what form of medical marijuana the patient should use and state any recommendations or limitations on the certification. Practitioners can only write certifications if they take a continuing medical

education course on medical cannabis, which has likely been one reason for the low rate of doctor participation.

Patients are allowed to designate up to two caregivers, who may pick up their medical marijuana for them. Home delivery is also permitted. Caregivers generally must be at least 21 years old and they may not serve more than five patients. Minors can qualify if an appropriate person who is 21 or older fills out their application. A minor's caregiver must be his or her parent, guardian, or — if neither is available — another appropriate person who is approved by the department.

Patients are allowed to possess a 30-day supply of medical marijuana, an amount that is determined either by the medical practitioner or the dispensary if no recommendation is made. Patients may refill their 30-day supply seven days before it runs out and can only make two purchases in the 30-day period. Medical marijuana may not be consumed in a public place and any form of medical marijuana not expressly approved by the health commissioner is prohibited. The law does not include protections for out-of-state patients. Health insurance is not required to cover medical marijuana.

Patients, caregivers, medical professionals, and staffers of state-legal medical marijuana organizations will not be subject to arrest or prosecution, or subject to any civil penalty, for the actions allowed under the act. In addition, in one of the more compassionate features of New York's law, being a medical marijuana patient is considered a disability, meaning that state anti-discrimination protections apply. The law also includes language to protect patients from discrimination in family law or domestic relations cases.

In a feature that is unique to New York's law, the health commissioner determines the price of marijuana, which is also subject to a 7% excise tax; 22.5% of the tax revenue goes to the county where the marijuana is sold and 22.5% to the county where the marijuana is manufactured. Five percent is directed to drug abuse prevention, counseling, and treatment, and five percent is directed to criminal justice services. As of December 2017, New York's medical marijuana prices are among the highest in the nation due to the onerous regulations and high costs of processing whole plant cannabis into permitted products. As a result, half of all patients who register for the program only visit a dispensary once.