



An Overview of New York's Compassionate Care Act

New York's medical cannabis law — the Compassionate Care Act — was signed into law on July 5, 2014, after Gov. Andrew Cuomo (D) insisted on several amendments making the program more restrictive. As a result of his revisions, patients aren't allowed to smoke medical cannabis, raw cannabis was initially banned, qualifying conditions were extremely limited, the law includes a 2021 sunset, and only five manufacturers — with a total of up to 20 locations — were allowed in the entire state.

Since then, a number of improvements have been made, both by the Department of Health and the legislature. More qualifying conditions were added, onerous requirements for physicians were relaxed somewhat, nurse practitioners can certify patients, and a modest number of additional “registered organizations” were approved. Still, the program remains one of the more restrictive in the country.

Here are key features of the law, as of June 2020:

Patient certifications: To qualify, a patient must have a written certification from a qualifying physician, physician assistant, or nurse practitioner. Certifying practitioners must first register with the health department and take a two-to-four hour course. A certification must specify that the patient is in the practitioner's continuing care for the condition, that the patient is likely to receive therapeutic or palliative benefits from marijuana, and that he or she has a qualifying condition. The practitioner must consider what form of medical marijuana the patient should use and state any recommendations or limitations on the certification.

Qualifying conditions: The initial qualifying conditions were: cancer, HIV/AIDS, ALS, Parkinson's disease, multiple sclerosis, spinal cord damage causing spasticity, epilepsy, inflammatory bowel disease, neuropathies, and Huntington's disease. The health commissioner and legislature may also add or delete conditions. Since original passage, these conditions have been added to the program: **PTSD**, **opiate use disorder**, and chronic pain — which is restrictively defined. In addition, the qualifying condition must also be accompanied by one or more of the following: cachexia or wasting syndrome, severe or chronic pain, severe nausea, seizures, or severe or persistent muscle spasms, PTSD, or opioid use disorder.

Registry identification cards: The [health department](#) issues registry identification cards to patients and caregivers who submit valid applications, written certifications, and fees of up to \$50. (As of June 12, 2020, the fees are being waived.) Patients have no legal protection until they have an ID card. Registry identification cards generally expire after one year, unless the patient has a terminal illness or the physician specifies an earlier date. If police are presented with an ID card, the department verifies the card's validity.

Caregivers: Patients may designate up to two caregivers, who may pick up their medical marijuana for them. Caregivers generally must be at least 21 and they may not serve more than five patients.

Minor patients: An appropriate person who is 21 or older must fill out an application for a minor patient. 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.

Possession limits: Patients may possess a 30-day supply of medical marijuana, an amount that will be determined either by the health commissioner during rulemaking or by the practitioner. They may refill their 30-day supply seven days before it runs out.

Protections: Registered patients, caregivers, physicians, and staffers of state-legal medical marijuana organizations are not be subject to arrest or prosecution, or subject to any civil penalty, for the actions allowed under the act. In addition, being a medical marijuana patient is considered a disability for purposes of the state’s anti-discrimination laws. The law also includes language to protect patients from discrimination in family law or domestic relations cases.

Limitations: Medical marijuana may not be smoked. It also may not be consumed in a public place. Any form of medical marijuana not expressly approved by the health commissioner is prohibited. Initially, any cannabis in its natural, flower form was prohibited. Since fall 2017, the department has allowed flower cannabis but only if it is “metered ground plant preparations.”

Out-of-state patients: The law does not include protections for out-of-state patients.

Accessing cannabis: Home cultivation is not allowed. Patients can buy cannabis from one of 40 approved dispensing locations. Initially, the health department selected five registered organizations (R.O.s) to manufacture medical marijuana and to dispense it from up to four dispensing locations each. Subsequently, it approved five more R.O.s, with four locations each. This brings the total to 10 vertically integrated R.O.s, with 40 total dispensing locations. They are listed [here](#). The health department was required to consider factors including whether applicants are of good moral character and if they can prevent diversion and maintain security. Each registered organization must be unionized and its staff is not permitted to strike.

Registered organization restrictions and regulations: Registered organizations need to consult the prescription monitoring program database to ensure they are not dispensing more than a 30-day supply to a patient. They are required to provide a safety insert, which includes information on potential dangers, with the medical marijuana. Registered organizations submit marijuana to labs for testing and must provide information about the products' potency and safety. Marijuana must be grown in secure, enclosed, indoor facilities. In most cases, R.O.s' staff members may not have had felony drug convictions within the past 10 years. The department issued additional regulations, including those related to advertising, security, tracking, and surveillance. A registration may be suspended or terminated for violations of the law.

Pricing: The health commissioner determines the maximum price of marijuana.

Insurance: Health insurance is not required to cover medical marijuana.

Misconduct by practitioners: The law creates a new felony for practitioners who issue a certification with reasonable grounds to know a person has no medical need for it or the person will not be using it to treat a qualifying serious medical condition.

Misconduct by others: The act also creates a new misdemeanor for any person who delivers medical marijuana to someone with reasonable grounds to believe the person is not registered. Another misdemeanor is created for a patient or caregiver who keeps more marijuana than they are allowed to have.

Excise tax: Medical marijuana is subject to a 7% excise taxes; 22.5% of the tax revenue goes to the county where the marijuana was sold and 22.5% to the county where the marijuana was manufactured. Five percent is directed to drug abuse prevention, counseling, and treatment, and five percent is directed to criminal justice services.

Effective date: The Compassionate Care Act went into effect immediately, on July 5, 2014. Registry identification cards or registered organizations' registrations became effective 18 months after enactment.

Suspension of the program: The governor is authorized to immediately terminate all registered organizations' licenses based on a recommendation from the head of the state police that there is a risk to public health or safety.

Sunset: The act will be repealed after seven years — in 2021 — if it has not been renewed before then.
