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Guidance for Healthcare Providers Regarding the Medical Use of Marijuana

Revised – December 1, 2017

Chapter 369 of the Acts of 2012, *An Act for the Humanitarian Medical Use of Marijuana* (“the Act”), allows a qualifying patient who suffers from a debilitating medical condition to possess a 60-day supply of marijuana if the patient has a written certification from a Massachusetts licensed healthcare provider and is registered with the Massachusetts Department of Public Health (“DPH”). DPH amended the regulation on December 1, 2017.

DPH offers the following guidance for licensed physicians and certified nurse practitioners (CNP) in Massachusetts who may have patients who would benefit from the medical use of marijuana.

DPH strongly encourages physicians and CNPs to consult with their own legal counsel and/or legal counsel for any health care facility with which the physician or CNP is affiliated regarding compliance with all applicable laws and regulations.

Who is eligible to become a certifying healthcare provider?

A certifying healthcare provider must be one of the following:

- Massachusetts-licensed physician (Medical Doctor or Doctor of Osteopathy) who holds:
 - an active full license with no prescribing restrictions;
 - a Massachusetts Controlled Substances Registration (MCSR), and
 - has at least one established place of practice in Massachusetts.
- Massachusetts-licensed certified nurse practitioner (CNP) who holds:
 - an active full license with no prescribing restrictions to practice nursing in Massachusetts;
 - a board authorization by the Massachusetts Board of Registration in Nursing to practice as a CNP in Massachusetts;
 - a MCSR; and
 - has at least one established place of practice in Massachusetts.

Are healthcare providers required to complete Professional Development Credits before issuing written certifications for the medical use of marijuana?

Yes, as of July 1, 2014, healthcare providers must have completed a minimum of 2.0 Category 1 continuing professional development credits prior to issuing certifications for the medical use of marijuana. The continuing education program must explain the proper use of marijuana, including side effects, dosage, and contraindications, including with psychotropic drugs, as well as on substance abuse recognition, diagnosis, and treatment related to marijuana.

How can I register as a certifying healthcare provider?

In order to issue a certification to a qualifying patient, a healthcare provider must register with DPH via the Medical Use of Marijuana Online System (“MMJ Online System”). To learn how to register, please read the document titled “Healthcare Provider Step-by-Step Registration Information” located at the following link:

<http://www.mass.gov/eohhs/gov/departments/dph/programs/hcg/medical-marijuana/info-for-physicians.html>

How long will a certifying healthcare provider’s registration be valid?

Once registered in the MMJ Online System, the healthcare provider remains registered and retains the ability to certify a patient indefinitely, unless the:

- healthcare provider’s license or Board Authorization to practice medicine or nursing in Massachusetts is suspended, revoked, or restricted with regard to prescribing;
- healthcare provider has voluntarily agreed not to practice medicine or nursing in Massachusetts;
- healthcare provider’s MCSR is revoked or suspended;
- healthcare provider has fraudulently issued a written certification;
- healthcare provider surrenders his/her registration; or
- healthcare provider has certified a qualifying patient without completing the required professional development credits, as described in the regulations.

Who is eligible to become a qualifying patient?

Massachusetts residents at least 18 years of age:

A Massachusetts resident 18 years of age or older who has been diagnosed by a certifying physician as having a debilitating medical condition may become a qualifying patient.

Massachusetts residents under the age of 18 will only qualify under limited circumstances and with an elevated standard.

Two Massachusetts licensed certifying healthcare providers (at least one of whom is a board-certified pediatrician or board-certified pediatric subspecialist) must diagnose the qualifying patient as having a debilitating life-limiting illness (one that does not respond to curative treatments, where reasonable estimates of prognosis suggests death may occur within two years).

If the debilitating medical condition is not life-limiting, both certifying healthcare providers must determine that the benefits of the medical use of marijuana outweigh the risks. There must be a discussion of the potential negative impacts on neurological development with the parent or legal guardian of the qualifying patient, written consent of the parent or legal guardian, and documentation of the rationale in the medical record and the certification.

What is a “debilitating medical condition”?

As described in the Act, a debilitating medical condition includes “cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS),

hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, and multiple sclerosis (when such diseases are debilitating), and other debilitating conditions as determined in writing by a qualifying patient's certifying healthcare provider."

"Debilitating" is defined in the Regulations as "causing weakness, cachexia, wasting syndrome, intractable pain, or nausea, or impairing strength or ability, and progressing to such an extent that one or more of a patient's major life activities is substantially limited."

If a patient has had a diagnosis of a debilitating medical condition in the past, but does not have an active condition (unless the symptoms related to such condition are mitigated by the medical use of marijuana), and is not undergoing treatment for such a condition, the patient is not to be considered to be suffering from a debilitating medical condition.

What is a certification?

A certification is an electronic document completed and signed by the certifying healthcare provider in the MMJ Online System, which states that in the healthcare provider's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient.

The certification must specify the qualifying patient's debilitating medical condition and must indicate the time period for which the certification is valid (not less than 15 calendar days, and not longer than one year).

How can I issue a certification for a qualifying patient?

In order to issue a certification to a qualifying patient, a healthcare provider must register with the Medical Use of Marijuana Program via the MMJ Online System. To learn how to register with the Program, please read the document titled "Healthcare Provider Step-by-Step Registration Information" located at the following link:

<http://www.mass.gov/eohhs/gov/departments/dph/programs/hcq/medical-marijuana/info-for-physicians.html>

Can I certify anyone who walks into my office?

A certification can only be made in the course of a bona fide healthcare provider-patient relationship.

A bona fide healthcare provider-patient relationship is defined in the Regulations as a relationship between a certifying healthcare provider (acting in the usual course of professional practice) and a patient, in which the healthcare provider has conducted a clinical visit, completed and documented a full assessment of the patient's medical history and current medical condition, has explained the potential risks and benefits of the marijuana use, and has a role in the patient's ongoing care and treatment.

A certifying healthcare provider cannot delegate to any other healthcare professional or other person the authority to diagnose the qualifying patient as having a debilitating medical condition.

A healthcare provider may not issue a written certification for himself/herself or for his/her immediate family members, but may issue a written certification for his/her employees or coworkers.

Can a healthcare provider serve as a qualifying patient's personal caregiver?

A healthcare provider may not serve as a qualifying patient's personal caregiver if he or she has issued a written certification to that patient for marijuana for medical use.

Are there restrictions on healthcare provider's involvement with a Registered Marijuana Dispensary (RMD)?

Yes. The restrictions apply to the certifying healthcare providers, his/her co-workers, employees, and immediate family members. These individuals may not:

- directly or indirectly accept from, ask for or offer anything of value to a personal caregiver, RMD, or anyone associated with the RMD in any manner;
- offer a discount or anything of value to a qualifying patient based on the patient's agreement or decision to use a particular personal caregiver or RMD;
- examine or counsel a patient at a RMD;
- issue a certification at a RMD;
- have a direct or indirect financial interest in a RMD; or
- directly or indirectly benefit from a patient obtaining a certification, which shall not prohibit the healthcare provider from charging an appropriate fee for the clinical visit.

Can I be punished pursuant to state or federal law for my involvement with recommending/certifying medical use of marijuana to a qualifying patient?

The Act states that a healthcare provider and other health care professionals under the healthcare provider's supervision shall not be penalized or prosecuted under Massachusetts law for advising a qualifying patient about the risks and benefits of medical use of marijuana or by providing a qualifying patient with a certification based on a full assessment of the qualifying patient's medical history and condition.

Any decision as to whether to recommend or certify medical use of marijuana should be made in consultation with the healthcare provider's own legal counsel and/or legal counsel for any health care facility with which the healthcare provider is affiliated.