

Introduced by Senators Steinberg and Leno

February 21, 2013

An act to amend Section 11362.7 of the Health and Safety Code, relating to medical marijuana.

LEGISLATIVE COUNSEL'S DIGEST

SB 439, as introduced, Steinberg. Medical marijuana.

Existing law, the Compassionate Use Act of 1996, prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. The act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

This bill would make a technical, nonsubstantive change to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11362.7 of the Health and Safety Code
- 2 is amended to read:
- 3 11362.7. For purposes of this article, the following definitions
- 4 shall apply:
- 5 (a) "Attending physician" means an individual who possesses
- 6 a license in good standing to practice medicine or osteopathy issued
- 7 by the Medical Board of California or the Osteopathic Medical

1 Board of California and who has taken responsibility for an aspect
2 of the medical care, treatment, diagnosis, counseling, or referral
3 of a patient and who has conducted a medical examination of that
4 patient before recording in the patient’s medical record the
5 physician’s assessment of whether the patient has a serious medical
6 condition and whether the medical use of marijuana is appropriate.

7 (b) “Department” means the State Department of *Public Health*
8 *Services*.

9 (c) “Person with an identification card” means an individual
10 who is a qualified patient who has applied for and received a valid
11 identification card pursuant to this article.

12 (d) “Primary caregiver” means the individual, designated by a
13 qualified patient or by a person with an identification card, who
14 has consistently assumed responsibility for the housing, health, or
15 safety of that patient or person, and may include any of the
16 following:

17 (1) In any case in which a qualified patient or person with an
18 identification card receives medical care or supportive services,
19 or both, from a clinic licensed pursuant to Chapter 1 (commencing
20 with Section 1200) of Division 2, a health care facility licensed
21 pursuant to Chapter 2 (commencing with Section 1250) of Division
22 2, a residential care facility for persons with chronic life-threatening
23 illness licensed pursuant to Chapter 3.01 (commencing with Section
24 1568.01) of Division 2, a residential care facility for the elderly
25 licensed pursuant to Chapter 3.2 (commencing with Section 1569)
26 of Division 2, a hospice, or a home health agency licensed pursuant
27 to Chapter 8 (commencing with Section 1725) of Division 2, the
28 owner or operator, or no more than three employees who are
29 designated by the owner or operator, of the clinic, facility, hospice,
30 or home health agency, if designated as a primary caregiver by
31 that qualified patient or person with an identification card.

32 (2) An individual who has been designated as a primary
33 caregiver by more than one qualified patient or person with an
34 identification card, if every qualified patient or person with an
35 identification card who has designated that individual as a primary
36 caregiver resides in the same city or county as the primary
37 caregiver.

38 (3) An individual who has been designated as a primary
39 caregiver by a qualified patient or person with an identification
40 card who resides in a city or county other than that of the primary

1 caregiver, if the individual has not been designated as a primary
2 caregiver by any other qualified patient or person with an
3 identification card.

4 (e) A primary caregiver shall be at least 18 years of age, unless
5 the primary caregiver is the parent of a minor child who is a
6 qualified patient or a person with an identification card or the
7 primary caregiver is a person otherwise entitled to make medical
8 decisions under state law pursuant to Sections 6922, 7002, 7050,
9 or 7120 of the Family Code.

10 (f) “Qualified patient” means a person who is entitled to the
11 protections of Section 11362.5, but who does not have an
12 identification card issued pursuant to this article.

13 (g) “Identification card” means a document issued by the State
14 Department of Health Services that document identifies a person
15 authorized to engage in the medical use of marijuana and the
16 person’s designated primary caregiver, if any.

17 (h) “Serious medical condition” means all of the following
18 medical conditions:

19 (1) Acquired immune deficiency syndrome (AIDS).

20 (2) Anorexia.

21 (3) Arthritis.

22 (4) Cachexia.

23 (5) Cancer.

24 (6) Chronic pain.

25 (7) Glaucoma.

26 (8) Migraine.

27 (9) Persistent muscle spasms, including, but not limited to,
28 spasms associated with multiple sclerosis.

29 (10) Seizures, including, but not limited to, seizures associated
30 with epilepsy.

31 (11) Severe nausea.

32 (12) Any other chronic or persistent medical symptom that
33 either:

34 (A) Substantially limits the ability of the person to conduct one
35 or more major life activities as defined in the Americans with
36 Disabilities Act of 1990 (Public Law 101-336).

37 (B) If not alleviated, may cause serious harm to the patient’s
38 safety or physical or mental health.

39 (i) “Written documentation” means accurate reproductions of
40 those portions of a patient’s medical records that have been created

1 by the attending physician, that contain the information required
2 by paragraph (2) of subdivision (a) of Section 11362.715, and that
3 the patient may submit to a county health department or the
4 county's designee as part of an application for an identification
5 card.

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