

AMENDED IN ASSEMBLY JANUARY 19, 2016

AMENDED IN ASSEMBLY JULY 7, 2015

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 435

Introduced by Senator Pan

(Principal coauthor: Assembly Member Wood)

February 25, 2015

An act to ~~add Chapter 3.5 (commencing with Section 24300) to Division 20 of the Health and Safety Code, relating to health care. amend Section 11362.777 of the Health and Safety Code, relating to medical marijuana.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 435, as amended, Pan. ~~Medical home: health care delivery model.~~
Medical Marijuana: personal cultivation.

Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law, enacted by the Legislature, provides for the licensing and regulation by both state and local entities of medical marijuana and its cultivation.

Existing law requires the Department of Food and Agriculture to establish a Medical Cannabis Cultivation Program. The program prohibits a person from cultivating medical marijuana without first obtaining a state license issued by the department and a license, permit, or other entitlement specifically permitting cultivation pursuant to the program from the city, county, or city and county in which the cultivation

will occur, as specified. Existing law exempts certain persons from these licensure requirements under specified conditions, but authorizes a city, county, or city and county to regulate or ban the cultivation, storage, manufacture, transport, provision, or other activity by the exempt person.

This bill would instead provide that an exemption from these licensure requirements does not limit or prevent a city, county, or city and county from exercising its police power authority under a specified provision of the California Constitution.

~~Existing law requires the Office of Statewide Health Planning and Development to perform various functions and duties with respect to health policy and planning and health professions development. Existing law states the Legislature's finding that there is a need to improve the effectiveness of health care delivery systems. Existing law generally defines a medical home as a single provider, facility, or team that coordinates an individual's health care services.~~

~~This bill would require the Secretary of California Health and Human Services to convene a working group of public payers, private health insurance carriers, 3rd-party purchasers, health care providers, and health care consumer representatives to identify appropriate payment methods to align incentives in support of patient centered medical homes. The bill would prescribe the powers and duties of the working group, including consulting with, and providing recommendations to, the Legislature and relevant state agencies on matters relating to the implementation of the patient centered medical home care model. The bill would require the secretary to convene the working group only after making a determination that sufficient nonstate funds have been received to pay for all costs of implementing the bill.~~

~~This bill would make legislative findings and declarations regarding the intent of the Legislature to exempt and immunize activities undertaken in connection with patient centered medical homes from state and federal antitrust laws, as specified.~~

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

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

- 1 *SECTION 1. Section 11362.777 of the Health and Safety Code*
- 2 *is amended to read:*

1 11362.777. (a) The Department of Food and Agriculture shall
2 establish a Medical Cannabis Cultivation Program to be
3 administered by the ~~secretary~~, *secretary and*, except as specified
4 in subdivision (c), shall administer this section as it pertains to the
5 cultivation of medical marijuana. For purposes of this section and
6 Chapter 3.5 (commencing with Section 19300) of *Division 8* of
7 the Business and Professions Code, medical cannabis is an
8 agricultural product.

9 (b) (1) A person or entity shall not cultivate medical marijuana
10 without first obtaining both of the following:

11 (A) A license, permit, or other entitlement, specifically
12 permitting cultivation pursuant to these provisions, from the city,
13 county, or city and county in which the cultivation will occur.

14 (B) A state license issued by the department pursuant to this
15 section.

16 (2) A person or entity shall not submit an application for a state
17 license issued by the department pursuant to this section unless
18 that person or entity has received a license, permit, or other
19 entitlement, specifically permitting cultivation pursuant to these
20 provisions, from the city, county, or city and county in which the
21 cultivation will occur.

22 (3) A person or entity shall not submit an application for a state
23 license issued by the department pursuant to this section if the
24 proposed cultivation of marijuana will violate the provisions of
25 any local ordinance or regulation, or if medical marijuana is
26 prohibited by the city, county, or city and county in which the
27 cultivation is proposed to occur, either expressly or otherwise
28 under principles of permissive zoning.

29 (c) (1) Except as otherwise specified in this subdivision, and
30 without limiting any other local regulation, a city, county, or city
31 and county, through its current or future land use regulations or
32 ordinance, may issue or deny a permit to cultivate medical
33 marijuana pursuant to this section. A city, county, or city and
34 county may inspect the intended cultivation site for suitability ~~prior~~
35 ~~to~~ *before* issuing a permit. After the city, county, or city and county
36 has approved a permit, the applicant shall apply for a state medical
37 marijuana cultivation license from the department. A locally issued
38 cultivation permit shall only become active upon licensing by the
39 department and receiving final local approval. A person shall not
40 cultivate medical marijuana ~~prior to~~ *before* obtaining both a permit

1 from the city, county, or city and county and a state medical
2 marijuana cultivation license from the department.

3 (2) A city, county, or city and county that issues or denies
4 conditional licenses to cultivate medical marijuana pursuant to this
5 section shall notify the department in a manner prescribed by the
6 secretary.

7 (3) A city, county, or city and county's locally issued conditional
8 permit requirements must be at least as stringent as the
9 department's state licensing requirements.

10 (4) If a city, county, or city and county does not have land use
11 regulations or ordinances regulating or prohibiting the cultivation
12 of marijuana, either expressly or otherwise under principles of
13 permissive zoning, or chooses not to administer a conditional
14 permit program pursuant to this section, then commencing March
15 1, 2016, the division shall be the sole licensing authority for
16 medical marijuana cultivation applicants in that city, county, or
17 city and county.

18 (d) (1) The secretary may prescribe, adopt, and enforce
19 regulations relating to the implementation, administration, and
20 enforcement of this part, including, but not limited to, applicant
21 requirements, collections, reporting, refunds, and appeals.

22 (2) The secretary may prescribe, adopt, and enforce any
23 emergency regulations as necessary to implement this part. Any
24 emergency regulation prescribed, adopted, or enforced pursuant
25 to this section shall be adopted in accordance with Chapter 3.5
26 (commencing with Section 11340) of Part 1 of Division 3 of Title
27 2 of the Government Code, and, for purposes of that chapter,
28 including Section 11349.6 of the Government Code, the adoption
29 of the regulation is an emergency and shall be considered by the
30 Office of Administrative Law as necessary for the immediate
31 preservation of the public peace, health and safety, and general
32 welfare.

33 (3) The secretary may enter into a cooperative agreement with
34 a county agricultural commissioner to carry out the provisions of
35 this chapter, including, but not limited to, administration,
36 investigations, inspections, licensing and assistance pertaining to
37 the cultivation of medical marijuana. Compensation under the
38 cooperative agreement shall be paid from assessments and fees
39 collected and deposited pursuant to this chapter and shall provide

1 reimbursement to the county agricultural commissioner for
2 associated costs.

3 (e) (1) The department, in consultation with, but not limited
4 to, the Bureau of Medical Marijuana Regulation, the State Water
5 Resources Control Board, and the Department of Fish and Wildlife,
6 shall implement a unique identification program for medical
7 marijuana. In implementing the program, the department shall
8 consider issues, including, but not limited to, water use and
9 environmental impacts. In implementing the program, the
10 department shall ensure that:

11 (A) Individual and cumulative effects of water diversion and
12 discharge associated with cultivation do not affect the instream
13 flows needed for fish spawning, migration, and rearing, and the
14 flows needed to maintain natural flow variability.

15 (B) Cultivation will not negatively impact springs, riparian
16 wetlands, and aquatic habitats.

17 (2) The department shall establish a program for the
18 identification of permitted medical marijuana plants at a cultivation
19 site during the cultivation period. The unique identifier shall be
20 attached at the base of each plant. A unique identifier, such as, but
21 not limited to, a zip tie, shall be issued for each medical marijuana
22 plant.

23 (A) Unique identifiers will only be issued to those persons
24 appropriately licensed by this section.

25 (B) Information associated with the assigned unique identifier
26 and licensee shall be included in the trace and track program
27 specified in Section 19335 of the Business and Professions Code.

28 (C) The department may charge a fee to cover the reasonable
29 costs of issuing the unique identifier and monitoring, tracking, and
30 inspecting each medical marijuana plant.

31 (D) The department may promulgate regulations to implement
32 this section.

33 (3) The department shall take adequate steps to establish
34 protections against fraudulent unique identifiers and limit illegal
35 diversion of unique identifiers to unlicensed persons.

36 (f) (1) A city, county, or city and county that issues or denies
37 licenses to cultivate medical marijuana pursuant to this section
38 shall notify the department in a manner prescribed by the secretary.

39 (2) Unique identifiers and associated identifying information
40 administered by a city or county shall adhere to the requirements

1 set by the department and be the equivalent to those administered
2 by the department.

3 (g) This section does not apply to a qualified patient cultivating
4 marijuana pursuant to Section 11362.5 if the area he or she uses
5 to cultivate marijuana does not exceed 100 square feet and he or
6 she cultivates marijuana for his or her personal medical use and
7 does not sell, distribute, donate, or provide marijuana to any other
8 person or entity. This section does not apply to a primary caregiver
9 cultivating marijuana pursuant to Section 11362.5 if the area he
10 or she uses to cultivate marijuana does not exceed 500 square feet
11 and he or she cultivates marijuana exclusively for the personal
12 medical use of no more than five specified qualified patients for
13 whom he or she is the primary caregiver within the meaning of
14 Section 11362.7 and does not receive remuneration for these
15 activities, except for compensation provided in full compliance
16 with subdivision (c) of Section 11362.765. For purposes of this
17 section, the area used to cultivate marijuana shall be measured by
18 the aggregate area of vegetative growth of live marijuana plants
19 on the premises. Exemption from the requirements of this section
20 does not limit or prevent a city, county, or city and county from
21 ~~regulating or banning the cultivation, storage, manufacture,~~
22 ~~transport, provision, or other activity by the exempt person, or~~
23 ~~impair the enforcement of that regulation or ban.~~ *exercising its*
24 *police power authority under Section 7 of Article XI of the*
25 *California Constitution.*

26 **SECTION 1.** ~~The Legislature finds and declares as follows:~~

27 (a) ~~It is the intent of the Legislature in enacting this act to~~
28 ~~provide for collaboration among public payers, private health~~
29 ~~insurance carriers, third-party purchasers, health care providers,~~
30 ~~and health care consumer representatives, as necessary, to identify~~
31 ~~consistent appropriate payment methods to support chronic care~~
32 ~~management in, and to align incentives in support of, patient~~
33 ~~centered medical homes.~~

34 (b) ~~It is the intent of the Legislature to exempt from state~~
35 ~~antitrust laws and to provide immunity from federal antitrust laws,~~
36 ~~pursuant to the state action doctrine for, any activities undertaken~~
37 ~~pursuant to this act that otherwise might be constrained by those~~
38 ~~laws. It is not the intent of the Legislature to authorize any person~~
39 ~~or entity to engage in or conspire to engage in any activity that~~
40 ~~would constitute a per se violation of state or federal antitrust laws,~~

1 including, but not limited to, an agreement among competing health
2 care providers or health insurance carriers as to the price or specific
3 level of payment for a health care service.

4 (e) It is the intent of the Legislature that the state shall articulate
5 a clear and affirmative policy describing its intent to displace
6 competition with respect to the implementation of this act, and
7 shall actively supervise anticompetitive conduct and its results
8 with ongoing oversight.

9 SEC. 2. Chapter 3.5 (commencing with Section 24300) is added
10 to Division 20 of the Health and Safety Code, to read:

11
12 CHAPTER 3.5. PATIENT-CENTERED MEDICAL HOME HEALTH
13 CARE DELIVERY MODEL
14

15 24300. The Secretary of California Health and Human Services
16 shall convene a working group of public payers, private health
17 insurance carriers, third-party purchasers, health care providers,
18 and health care consumer representatives to identify appropriate
19 payment methods to align incentives in support of patient centered
20 medical homes.

21 24301. (a) The working group convened pursuant to this
22 chapter shall consult with, and provide recommendations to, the
23 Legislature and relevant state agencies on all matters relating to
24 the implementation of a patient centered medical home care model.

25 (b) The working group shall have the authority to do all of the
26 following:

27 (1) Develop consensus on strategies for implementing the patient
28 centered medical home care model and service delivery change at
29 the practice, community, and health care system level.

30 (2) Identify ways to create alignment regarding payment,
31 reporting, and infrastructure investments.

32 (3) Identify ways to utilize public and private purchasing power
33 and ways to enable competing payers to work collaboratively to
34 establish common patient centered medical home initiatives.

35 (4) Propose participation in relevant federally funded pilot and
36 demonstration projects.

37 24302. The secretary shall convene the working group only
38 after he or she makes a determination that sufficient nonstate funds

- 1 ~~have been received to pay for all costs of implementing this~~
- 2 ~~chapter.~~

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