

APPENDIX A

Recommended Statutory Changes – Updated 1/20/2010

(Changes considered and or recommended by the Task Force are in italics. In situations where there was no consensus regarding the change in language, the results of the poll taken of the membership is shown. Commissioner Harvey abstained from each poll. In all cases where no poll results are shown, the Task Force agreed to recommend the change. Parts of the statute to which no changes are being recommended do not appear here.)

§ 2422. Definitions

Section 2422 (2) - **2. Debilitating medical condition.** "Debilitating medical condition" means:

A. Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail-patella syndrome, *Post Traumatic Stress Disorder (PTSD)*, *Peripheral Neuropathy* or the treatment of these conditions;

The Task Force voted 2-10 not to consider any additions.

Section 2422 (4) – **4. Felony drug offense.**

A. "Felony drug offense" means a violation of a state or federal controlled substance law *that is a crime punishable by imprisonment for one year or more*. It does not include:

1. An offense for which the sentence, including any term of probation, incarceration or supervised release, was completed 10 or more years earlier; or
2. An offense that consisted of conduct that would have been permitted under this chapter.

B. *Anyone who has been convicted of committing or found not criminally responsible by reason of insanity of committing:*

1. *A crime in this State that is punishable by imprisonment for a term of one year or more;*
2. *A crime under the laws of the United States that is punishable by imprisonment for a term exceeding one year;*
3. *A crime under the laws of any other state that, in accordance with the laws of that jurisdiction, is punishable by a term of imprisonment exceeding one year. This subparagraph does not include a crime under the laws of another state that is classified by the laws of that state as a misdemeanor and is punishable by a term of imprisonment of 2 years or less;*

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4. *A crime under the laws of any other state that, in accordance with the laws of that jurisdiction, does not come within subparagraph (3) but is elementally substantially similar to a crime in this State that is punishable by a term of imprisonment for one year or more.” Title 15, section 393, subsection 1.*

The Task Force members discussed whether this section should refer to all felony convictions or only drug related felonies. No consensus was reached and the straw poll vote was evenly split (6 to 6).

Section 2422 (6) – **Nonprofit dispensary** - “Nonprofit dispensary” means a not-for-profit entity registered under section 2428 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to cardholders. *(Task Force recommends deleting the sentence “A nonprofit dispensary is a primary caregiver.”)*

Section 2422 (7) – **Physician** - "Physician" means a person licensed as an osteopathic physician by the Board of Osteopathic Licensure pursuant to Title 32, chapter 36 or a person licensed as a physician or surgeon by the Board of Licensure in Medicine pursuant to Title 32, chapter 48 *who holds a valid DEA license and complies with the Rules of the Board of Licensure in Medicine and the Board of Osteopathic Medicine, 02-0373 CMR ch.11.*

Section 2423. **Protections for the medical use of marijuana**

1. Qualifying patient. Add at the end –

Twenty-four hours notice will be provided to producers who are qualified patients prior to an onsite assessment except when the Department has reasonable suspicion to believe that providing notice will result in the destruction of evidence or that providing such notice will impede the Department’s ability to enforce this law or regulations.

There was no consensus on this provision. 4 Task Force members voted to maintain this provision, 8 voted to require 24 hour notice under all circumstances.

Section 2423 (2) - . **2. Primary caregiver.** *A primary caregiver, including staff of an inpatient hospice provider, who has been issued and possesses a registry identification card may not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for assisting a qualifying patient to whom the primary caregiver is connected through the department's registration process with the medical use of marijuana in accordance with this chapter as long as the primary caregiver possesses an amount of marijuana that:*

A. Is not more than 2 1/2 ounces of usable marijuana for each qualifying patient to whom the primary caregiver is connected through the department’s registration process; and

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B. For each qualifying patient who has specified that the primary caregiver is allowed under state law to cultivate marijuana for the qualifying patient, does not exceed 6 marijuana plants, which must be kept in an enclosed, locked facility unless they are being transported because the primary caregiver is moving.

Twenty-four hours notice will be provided to producers who are registered caregivers prior to an onsite assessment.

Section 2423 (6) – **School, employer or landlord may not discriminate** - A school, employer or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person solely for that person's status as a registered qualifying patient or a registered primary caregiver unless failing to do so would put the school, employer or landlord in violation of federal law or cause it to lose a federal contract or funding.

The foregoing shall not prohibit a restriction on the use or cultivation of marijuana on premises where such would be inconsistent with the general use of the premises.

There is concern about this provision and recommendations ranged from removal of the provision to no change at all. There was no consensus. 4 members voted to delete this provision and 8 voted to retain in its current form. There was also no consensus regarding the additional language, with the Task Force voting 9-3 to add the language.

Section 2423 (7) – **Person may not be denied parental rights and responsibilities or contact with a minor** – *“A person may not be denied parental rights and responsibilities of, or contact with, a minor child as a result of acting in accordance with this chapter, unless the person’s behavior is contrary to the best interests of the minor child as outlined in Title 19-A Section 1653(3).”*

2 members of the Task Force wanted this provision deleted; the remaining 10 were comfortable with the language as redrafted.

Section 2423 (8) – **Registered primary caregiver may receive reasonable monetary compensation for costs** - A registered primary caregiver may receive reasonable monetary compensation for costs associated with assisting a registered qualifying patient's medical use of marijuana as long as the registered primary caregiver is connected to the registered qualifying patient through the department's registration process. Any such compensation does not constitute the sale of controlled substances.

Section 2423 (9) – **Physician not subject to penalty** A physician may not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by the Board of Licensure in Medicine or the Board of Osteopathic Licensure or by any other business or occupational or professional licensing board or bureau, solely for providing written certifications or for otherwise stating that, in the physician's professional opinion, a patient is likely to receive therapeutic benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition except that nothing prevents a professional licensing board from sanctioning a physician for failing to properly evaluate or treat a patient's medical

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condition or otherwise violating the applicable standard of care for evaluating or treating medical conditions.

Section 2423 (13) – **Effect of registry identification card issued by another jurisdiction** - A registry identification card, or its equivalent, that is issued under the laws of another state, district, territory, commonwealth or insular possession of the United States that allows the medical use of marijuana by a visiting qualifying patient has the same force and effect as a registry identification card issued by the department.

Need to revise to allow possession and use by a visiting patient but procurement only if the individual registers with the State of Maine. That process will be described in the rules.

Section 2424 (2) - **Adding debilitating medical conditions** - *The Commissioner of the Department of Health and Human services shall establish an advisory board consisting of at least eight (8) practitioners representing various fields of practice including but not limited to neurology ,gastroenterology, pain management, medical oncology, psychiatry, infectious disease ,hospice medicine, family medicine and gynecology. The practitioners shall be nationally board-certified in their area of specialty and knowledgeable about the medical use of cannabis. Additionally, not fewer than two (2) members of the public shall serve on this advisory board, at least one of whom is currently certified to use medical marijuana. The members shall be chosen for appointment by the Commissioner from a list proposed by the Maine Medical Association and the Maine Osteopathic Association and from a list of individuals who have volunteered to serve on this board. The advisory board shall:*

A. review and recommend to the department for approval additional debilitating medical conditions that would benefit from the medical use of cannabis;

B. accept and review petitions to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis;

C. convene at least once per year to conduct public hearings and to evaluate petitions, which shall be maintained as confidential personal health information, to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis; (There was discussion regarding the clause and no consensus was achieved. The vote was 10 to retain it and 2 to remove it.)

D. issue recommendations concerning rules to be promulgated for the issuance of the registry identification cards; and

E. recommend quantities of cannabis that are necessary to constitute an adequate supply for qualified patients and primary caregivers. (changes in italics)

Section 2425 (8) – **Confidentiality** - Replace the current language in E. with:

E. Except as provided below, any person who knowingly violates the confidentiality of information obtained pursuant to this chapter commits a civil violation for which a civil penalty up to \$1,000.00 maybe imposed. This section shall not apply to physicians, hospice personnel or any other person directly associated with physician or hospice services to a qualifying patient; except to the

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extent that such conduct may be subject to penalties or discipline under a separate provision of law, rule or regulation.

And add the following provisions:

- F. Records maintained pursuant to this chapter which identify patients are confidential and may not be disclosed except as follows:*
- 1. To department employees designated by the commissioner for the purpose of carrying out the responsibilities of this chapter;*
 - 2. Pursuant to court order based on reasonable cause demonstrated;*
 - 3. With written permission of the patient or the patient's guardian, if the patient is under guardianship, or a parent, if the patient has not attained the age of eighteen;*
 - 4. As permitted for the disclosure of "health care information" by 22 MRSA § 1711-C;*
 - 5. To a member of law enforcement for legitimate law enforcement purposes, such information not to be disseminated further than necessary to achieve the limited goals of a specific investigation.*
 - 6. To a patient's treating physician and to a patient's caregiver for the purpose of carrying out the responsibilities of this chapter.*
(Note that nonidentifying data may be disseminated for any other purpose, e.g., statistical, evaluation or medical or sociological research, etc.)
- G. Nothing in the section shall prohibit a physician from notifying the Department if the physician acquires information that a patient is no longer eligible to use medical marijuana or that the patient falsified information that was the basis of the physician's certification of eligibility for use.*
- H. Cardholder revocation hearings shall be confidential. However, if a card is revoked, the findings of the hearing and the revocation shall be made public.*
- I. Nothing in this section shall prohibit the Office of the Secretary of State and employees thereof from receiving any necessary information to produce and manage the "card" program.*

Section 2425 (9) - Cardholder who sells, furnishes or gives marijuana to person not allowed to possess – Any cardholder who sells, furnishes or gives marijuana to a person who is not allowed to possess marijuana for medical purposes under this chapter must have that cardholder's registry identification card revoked and is liable for any other penalties for the sale of marijuana. The department may revoke the registry identification card of any cardholder who violates this chapter, and the cardholder is liable for any other penalties for the violation.

Section 2426 (1)(A) - Limitations - A. Undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice would violate professional standards;

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2426 (1) (D) – Operate, navigate or be in actual physical control of any motor vehicle, aircraft, motorboat, *snowmobile or ATV* while under the influence of marijuana;

Section 2428 (2) (B) – **Nonprofit dispensaries**

D. The department may not issue a registry identification card to any principal officer, board member, agent or employee of a nonprofit dispensary who has been convicted of a felony drug offense. The department may conduct a background check of each principal officer, board member, agent or employee in order to carry out this provision. The department shall notify the nonprofit dispensary in writing of the purpose for denying the registry identification card.

There was no consensus regarding whether this should apply only to felony drug offenses or all felonies.

2428 (5) – **Inspection** - A nonprofit dispensary is subject to reasonable inspection by the department. The department *may enter a facility at any time to assess or monitor.*

2428 (6) (A) – **Nonprofit dispensary requirements** –

A. A nonprofit dispensary must be operated on a not-for-profit basis for the mutual benefit of its members and patrons. The bylaws of a nonprofit dispensary and its contracts with patrons must contain such provisions relative to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its nonprofit character. A nonprofit dispensary need not be recognized as a tax-exempt organization under 26 United States Code, Section 501(c)(3) *but is required to incorporate pursuant to Title 13-B.*