

# THE COST OF “Compassionate Care”

Since New York’s first dispensaries opened in January 2016, patients have faced numerous challenges accessing medical marijuana in this state.<sup>1</sup> The “Compassionate Care Act” (“Act”), signed by Governor Cuomo in July 2014, legalizes the use of medical marijuana for qualifying conditions and provides the State Department of Health (“DOH”) authority to grant medical marijuana dispensary licenses for the provision of medical marijuana products to patients. The Act’s intent is to provide patients with debilitating conditions access to alternative forms of treatment while maintaining public health and safety.<sup>2</sup> Under the Act, licensed dispensaries may manufacture and sell pharmaceutical oils, capsules, tinctures, ointments and patches containing a variety of combinations of THC and CBD, the principal drugs in cannabis.<sup>3</sup> The program started small with only 150 physicians certified to suggest medical marijuana as treatment, and an even smaller number of patients approved to purchase marijuana products.<sup>4</sup>

In order to receive a registration ID to purchase medical marijuana, prospective patients require a referral from a state certified physician based upon presenting one of the DOH pre-approved conditions or chronic symptoms. A patient may then submit his or her referral to DOH, and upon approval, DOH will provide the patient a medical marijuana ID card. Patients may present the ID at dispensaries to demonstrate their registration with the program. Patients pay anywhere from \$300-\$1,200 per month for medical marijuana, and must pay in cash. Dispensaries cannot utilize credit card financing due to federal restrictions that designate marijuana as a Schedule 1 Controlled Substance – the same class of illegal substances as heroin.<sup>5</sup> In addition, virtually no New York State insurers currently provide coverage for medical marijuana. Although, recent decisions of the State’s Workers’ Compensation Board do provide for reimbursement of the cost of medical marijuana if certain established criteria are met.<sup>6</sup>

Despite these restrictions, participation in the program has grown rapidly. In an attempt to expand patient access, DOH rules now allow nurse practitioners and physician assistants to write medical marijuana referrals. From 2017 to 2018, the number of certified health care providers increased to over 1,700,<sup>7</sup>



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and there are now over 60,000 active registered patients – a number that is nearly doubling every quarter.<sup>8</sup> One cause of the rapid increase in patients is likely DOH’s expansion of treatable conditions to include chronic pain, ALS, Parkinson’s, neuropathy and PTSD.<sup>9</sup>

Currently, dispensaries are primarily concentrated in and around New York City. As of July 2018, the ratio of certified practitioners to patients remains significantly lower outside the State’s larger metro areas.<sup>10</sup> So while the aggregate number of certified physicians and registered patients in the program is increasing, access is still limited. This has naturally resulted in higher costs for those in less populated regions.<sup>11</sup>

The unwillingness of practitioners in these areas to be DOH certified may be related to marijuana’s stigma as a controlled substance and the lack of research-backed clinical guidelines for its use. Moreover, while providers have the option of being included on DOH’s public list of providers who can write medical marijuana referrals, it is estimated only 32 percent of certified participants choose to be listed.<sup>12</sup>

Providers only certify patients to obtain medical marijuana registration. Dispensaries actually write and fill prescriptions based on the information they receive from patients’ medical marijuana ID cards. As such, providers cannot be certain what type and dosage of medical marijuana their patients receive.

At the end of its biannual report, DOH made several recommendations for how it seeks to expand the program. These in-

cluded certifying *all* health care providers who may prescribe controlled substances to authorize patients to participate in the medical marijuana program, developing a pilot study to demonstrate the effects on consumption and costs in registered patients, and educating the public and providers on medical use.<sup>13</sup>

While the program continues to grow, the high cost of medical marijuana apparently has encouraged some patients to choose lower-cost, lower-grade illegal marijuana to self-prescribe and self-medicate.<sup>14</sup> Self-prescribing exposes patients to improper dosing, undesirable side effects, less therapeutic effect and criminal penalties. Changes in the current regulations on the state and federal level to decriminalize marijuana could have a number of positive effects, including facilitating new laws to regulate and tax recreational use of marijuana – thereby providing a funding source to lower the patient cost of medical marijuana, destigmatizing the clinical use of medical marijuana to increase insurance coverage for medical marijuana, and allowing for clinical trials to provide research to improve the quality and efficacy of prescribing medical marijuana.

Until further legal reforms provide avenues for wider availability, lower patient cost and significant clinical research, the current high price point will continue to significantly limit the number of New Yorkers able to obtain the compassionate care the Act promises.

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<sup>1</sup> Kassie Parisi, *Medical Marijuana Dispensary to Open in Halfmoon*, The Daily Gazette, November 22, 2018, <<https://dailygazette.com/article/2018/11/22/medical-marijuana-dispensary-to-open-in-halfmoon>>.

<sup>2</sup> New York State Department of Health, *Medical Use of Marijuana Under the Compassionate Care Act: Two Year Report*, July 2018, <[https://www.health.ny.gov/regulations/medical\\_marijuana/docs/two\\_year\\_report\\_2016-2018.pdf](https://www.health.ny.gov/regulations/medical_marijuana/docs/two_year_report_2016-2018.pdf)>.

<sup>3</sup> Chris Simunek, *The New York State of Kind: Everything You Need to Know About Weed in NYC*, Thrillist, April 19, 2018, <<https://www.thrillist.com/lifestyle/new-york/nyc-medical-marijuana-legal-weed#>>.

<sup>4</sup> Matthew Hamilton, *Medical Marijuana Goes on Sale in New York, But Few Were Buying*, Times Union, January 8, 2016, <<https://www.timesunion.com/tuplus-local/article/Medical-marijuana-goes-on-sale-in-New-York-but-6744405.php>>.

<sup>5</sup> Id.

<sup>6</sup> New York State Department of Health, *Two Year Report*.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Parisi.

<sup>10</sup> New York State Department of Health, *Two Year Report*.

<sup>11</sup> Simunek.

<sup>12</sup> Claire Hughes, *N.Y. Health Department Releases Medical Marijuana Provider List*, Times Union, May 7, 2017, <<https://www.timesunion.com/local/article/N-Y-Health-Department-releases-medical-marijuana-11128431.php>>.

<sup>13</sup> New York State Department of Health, *Two Year Report*.

<sup>14</sup> Id.