

ESHB 1094 - S COMM AMD
By Committee on Labor & Commerce

ADOPTED 04/15/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 69.51A.030 and 2015 c 70 s 18 are each amended to
4 read as follows:

5 (1) The following acts do not constitute crimes under state law
6 or unprofessional conduct under chapter 18.130 RCW, and a health care
7 professional may not be arrested, searched, prosecuted, disciplined,
8 or subject to other criminal sanctions or civil consequences or
9 liability under state law, or have real or personal property
10 searched, seized, or forfeited pursuant to state law, notwithstanding
11 any other provision of law as long as the health care professional
12 complies with subsection (2) of this section:

13 (a) Advising a patient about the risks and benefits of medical
14 use of marijuana or that the patient may benefit from the medical use
15 of marijuana; or

16 (b) Providing a patient or designated provider meeting the
17 criteria established under RCW 69.51A.010 with an authorization,
18 based upon the health care professional's assessment of the patient's
19 medical history and current medical condition, if the health care
20 professional has complied with this chapter and he or she determines
21 within a professional standard of care or in the individual health
22 care professional's medical judgment the qualifying patient may
23 benefit from the medical use of marijuana.

24 (2)(a) A health care professional may provide a qualifying
25 patient or that patient's designated provider with an authorization
26 for the medical use of marijuana in accordance with this section.

27 (b) In order to authorize for the medical use of marijuana under
28 (a) of this subsection, the health care professional must:

29 (i) Have a documented relationship with the patient, as a
30 principal care provider or a specialist, relating to the diagnosis

1 and ongoing treatment or monitoring of the patient's terminal or
2 debilitating medical condition;

3 (ii) Complete an in-person physical examination of the patient or
4 a remote physical examination of the patient if one is determined to
5 be appropriate under (c) (iii) of this subsection;

6 (iii) Document the terminal or debilitating medical condition of
7 the patient in the patient's medical record and that the patient may
8 benefit from treatment of this condition or its symptoms with medical
9 use of marijuana;

10 (iv) Inform the patient of other options for treating the
11 terminal or debilitating medical condition and documenting in the
12 patient's medical record that the patient has received this
13 information;

14 (v) Document in the patient's medical record other measures
15 attempted to treat the terminal or debilitating medical condition
16 that do not involve the medical use of marijuana; and

17 (vi) Complete an authorization on forms developed by the
18 department, in accordance with subsection (3) of this section.

19 (c) (i) For a qualifying patient eighteen years of age or older,
20 an authorization expires one year after its issuance. For a
21 qualifying patient less than eighteen years of age, an authorization
22 expires six months after its issuance.

23 (ii) An authorization may be renewed upon completion of an in-
24 person physical examination ~~((and))~~ or a remote physical examination
25 of the patient if one is determined to be appropriate under (c) (iii)
26 of this subsection and, in compliance with the other requirements of
27 (b) of this subsection.

28 (iii) Following an in-person physical examination to authorize
29 the use of marijuana for medical purposes, the health care
30 professional may determine and note in the patient's medical record
31 that subsequent physical examinations for the purposes of renewing an
32 authorization may occur through the use of telemedicine technology if
33 the health care professional determines that requiring the qualifying
34 patient to attend a physical examination in person to renew an
35 authorization would likely result in severe hardship to the
36 qualifying patient because of the qualifying patient's physical or
37 emotional condition.

38 (iv) When renewing a qualifying patient's authorization for the
39 medical use of marijuana on or after the effective date of this
40 section, the health care professional may indicate that the

1 qualifying patient qualifies for a compassionate care renewal of his
2 or her registration in the medical marijuana authorization database
3 and recognition card if the health care professional determines that
4 requiring the qualifying patient to renew a registration in person
5 would likely result in severe hardship to the qualifying patient
6 because of the qualifying patient's physical or emotional condition.
7 A compassionate care renewal of a qualifying patient's registration
8 and recognition card allows the qualifying patient to receive
9 renewals without the need to be physically present at a retailer and
10 without the requirement to have a photograph taken.

11 (d) A health care professional shall not:

12 (i) Accept, solicit, or offer any form of pecuniary remuneration
13 from or to a marijuana retailer, marijuana processor, or marijuana
14 producer;

15 (ii) Offer a discount or any other thing of value to a qualifying
16 patient who is a customer of, or agrees to be a customer of, a
17 particular marijuana retailer;

18 (iii) Examine or offer to examine a patient for purposes of
19 diagnosing a terminal or debilitating medical condition at a location
20 where marijuana is produced, processed, or sold;

21 (iv) Have a business or practice which consists primarily of
22 authorizing the medical use of marijuana or authorize the medical use
23 of marijuana at any location other than his or her practice's
24 permanent physical location;

25 (v) Except as provided in RCW 69.51A.280, sell, or provide at no
26 charge, marijuana concentrates, marijuana-infused products, or
27 useable marijuana to a qualifying patient or designated provider; or

28 (vi) Hold an economic interest in an enterprise that produces,
29 processes, or sells marijuana if the health care professional
30 authorizes the medical use of marijuana.

31 (3) The department shall develop the form for the health care
32 professional to use as an authorization for qualifying patients and
33 designated providers. The form shall include the qualifying patient's
34 or designated provider's name, address, and date of birth; the health
35 care professional's name, address, and license number; the amount of
36 marijuana recommended for the qualifying patient; a telephone number
37 where the authorization can be verified during normal business hours;
38 the dates of issuance and expiration; and a statement that an
39 authorization does not provide protection from arrest unless the
40 qualifying patient or designated provider is also entered in the

1 medical marijuana authorization database and holds a recognition
2 card.

3 ~~(4) ((Until July 1, 2016, a health care professional who, within~~
4 ~~a single calendar month, authorizes the medical use of marijuana to~~
5 ~~more than thirty patients must report the number of authorizations~~
6 ~~issued.~~

7 ~~(5))~~) The appropriate health professions disciplining authority
8 may inspect or request patient records to confirm compliance with
9 this section. The health care professional must provide access to or
10 produce documents, records, or other items that are within his or her
11 possession or control within twenty-one calendar days of service of a
12 request by the health professions disciplining authority. If the
13 twenty-one calendar day limit results in a hardship upon the health
14 care professional, he or she may request, for good cause, an
15 extension not to exceed thirty additional calendar days. Failure to
16 produce the documents, records, or other items shall result in
17 citations and fines issued consistent with RCW 18.130.230. Failure to
18 otherwise comply with the requirements of this section shall be
19 considered unprofessional conduct and subject to sanctions under
20 chapter 18.130 RCW.

21 ~~((+6))~~ (5) After a health care professional authorizes a
22 qualifying patient for the medical use of marijuana, he or she may
23 discuss with the qualifying patient how to use marijuana and the
24 types of products the qualifying patient should seek from a retail
25 outlet.

26 **Sec. 2.** RCW 69.51A.230 and 2015 c 70 s 21 are each amended to
27 read as follows:

28 (1) The department must contract with an entity to create,
29 administer, and maintain a secure and confidential medical marijuana
30 authorization database that, beginning July 1, 2016, allows:

31 (a) A marijuana retailer with a medical marijuana endorsement to
32 add a qualifying patient or designated provider and include the
33 amount of marijuana concentrates, useable marijuana, marijuana-
34 infused products, or plants for which the qualifying patient is
35 authorized under RCW 69.51A.210;

36 (b) Persons authorized to prescribe or dispense controlled
37 substances to access health care information on their patients for
38 the purpose of providing medical or pharmaceutical care for their
39 patients;

1 (c) A qualifying patient or designated provider to request and
2 receive his or her own health care information or information on any
3 person or entity that has queried their name or information;

4 (d) Appropriate local, state, tribal, and federal law enforcement
5 or prosecutorial officials who are engaged in a bona fide specific
6 investigation of suspected marijuana-related activity that may be
7 illegal under Washington state law to confirm the validity of the
8 recognition card of a qualifying patient or designated provider;

9 (e) A marijuana retailer holding a medical marijuana endorsement
10 to confirm the validity of the recognition card of a qualifying
11 patient or designated provider;

12 (f) The department of revenue to verify tax exemptions under
13 chapters 82.08 and 82.12 RCW;

14 (g) The department and the health care professional's
15 disciplining authorities to monitor authorizations and ensure
16 compliance with this chapter and chapter 18.130 RCW by their
17 licensees; and

18 (h) Authorizations to expire six months or one year after entry
19 into the medical marijuana authorization database, depending on
20 whether the authorization is for a minor or an adult.

21 (2) A qualifying patient and his or her designated provider, if
22 any, may be placed in the medical marijuana authorization database at
23 a marijuana retailer with a medical marijuana endorsement. After a
24 qualifying patient or designated provider is placed in the medical
25 marijuana authorization database, he or she must be provided with a
26 recognition card that contains identifiers required in subsection (3)
27 of this section.

28 (3) The recognition card requirements must be developed by the
29 department in rule and include:

30 (a) A randomly generated and unique identifying number;

31 (b) For designated providers, the unique identifying number of
32 the qualifying patient whom the provider is assisting;

33 (c) A photograph of the qualifying patient's or designated
34 provider's face taken by an employee of the marijuana retailer with a
35 medical marijuana endorsement at the same time that the qualifying
36 patient or designated provider is being placed in the medical
37 marijuana authorization database in accordance with rules adopted by
38 the department;

1 (d) The amount of marijuana concentrates, useable marijuana,
2 marijuana-infused products, or plants for which the qualifying
3 patient is authorized under RCW 69.51A.210;

4 (e) The effective date and expiration date of the recognition
5 card;

6 (f) The name of the health care professional who authorized the
7 qualifying patient or designated provider; and

8 (g) For the recognition card, additional security features as
9 necessary to ensure its validity.

10 (4) (a) For qualifying patients who are eighteen years of age or
11 older and their designated providers, recognition cards are valid for
12 one year from the date the health care professional issued the
13 authorization. For qualifying patients who are under the age of
14 eighteen and their designated providers, recognition cards are valid
15 for six months from the date the health care professional issued the
16 authorization. Qualifying patients may not be reentered into the
17 medical marijuana authorization database until they have been
18 reexamined by a health care professional and determined to meet the
19 definition of qualifying patient. After reexamination, a marijuana
20 retailer with a medical marijuana endorsement must reenter the
21 qualifying patient or designated provider into the medical marijuana
22 authorization database and a new recognition card will then be issued
23 in accordance with department rules.

24 (b) Beginning on the effective date of this section, a qualifying
25 patient's registration in the medical marijuana authorization
26 database and his or her recognition card may be renewed by a
27 qualifying patient's designated provider without the physical
28 presence of the qualifying patient at the retailer if the
29 authorization from the health care professional indicates that the
30 qualifying patient qualifies for a compassionate care renewal, as
31 provided in RCW 69.51A.030. A qualifying patient receiving renewals
32 under the compassionate care renewal provisions is exempt from the
33 photograph requirements under subsection (3)(c) of this section.

34 (5) If a recognition card is lost or stolen, a marijuana retailer
35 with a medical marijuana endorsement, in conjunction with the
36 database administrator, may issue a new card that will be valid for
37 six months to one year if the patient is reexamined by a health care
38 professional and determined to meet the definition of qualifying
39 patient and depending on whether the patient is under the age of
40 eighteen or eighteen years of age or older as provided in subsection

1 (4) of this section. If a reexamination is not performed, the
2 expiration date of the replacement recognition card must be the same
3 as the lost or stolen recognition card.

4 (6) The database administrator must remove qualifying patients
5 and designated providers from the medical marijuana authorization
6 database upon expiration of the recognition card. Qualifying patients
7 and designated providers may request to remove themselves from the
8 medical marijuana authorization database before expiration of a
9 recognition card and health care professionals may request to remove
10 qualifying patients and designated providers from the medical
11 marijuana authorization database if the patient or provider no longer
12 qualifies for the medical use of marijuana. The database
13 administrator must retain database records for at least five calendar
14 years to permit the state liquor and cannabis board and the
15 department of revenue to verify eligibility for tax exemptions.

16 (7) During development of the medical marijuana authorization
17 database, the database administrator must consult with the
18 department, stakeholders, and persons with relevant expertise to
19 include, but not be limited to, qualifying patients, designated
20 providers, health care professionals, state and local law enforcement
21 agencies, and the University of Washington computer science and
22 engineering security and privacy research lab or a certified
23 cybersecurity firm, vendor, or service.

24 (8) The medical marijuana authorization database must meet the
25 following requirements:

26 (a) Any personally identifiable information included in the
27 database must be nonreversible, pursuant to definitions and standards
28 set forth by the national institute of standards and technology;

29 (b) Any personally identifiable information included in the
30 database must not be susceptible to linkage by use of data external
31 to the database;

32 (c) The database must incorporate current best differential
33 privacy practices, allowing for maximum accuracy of database queries
34 while minimizing the chances of identifying the personally
35 identifiable information included therein; and

36 (d) The database must be upgradable and updated in a timely
37 fashion to keep current with state of the art privacy and security
38 standards and practices.

39 (9)(a) Personally identifiable information of qualifying patients
40 and designated providers included in the medical marijuana

1 authorization database is confidential and exempt from public
2 disclosure, inspection, or copying under chapter 42.56 RCW.

3 (b) Information contained in the medical marijuana authorization
4 database may be released in aggregate form, with all personally
5 (~~identifying~~ [~~identifiable~~]) identifiable information redacted, for
6 the purpose of statistical analysis and oversight of agency
7 performance and actions.

8 (c) Information contained in the medical marijuana authorization
9 database shall not be shared with the federal government or its
10 agents unless the particular (~~qualifying~~) qualifying patient or
11 designated provider is convicted in state court for violating this
12 chapter or chapter 69.50 RCW.

13 (10) (~~(a)~~) The department must charge a one dollar fee for each
14 initial and renewal recognition card issued by a marijuana retailer
15 with a medical marijuana endorsement. The marijuana retailer with a
16 medical marijuana endorsement shall collect the fee from the
17 qualifying patient or designated provider at the time that he or she
18 is entered into the database and issued a recognition card. The
19 department shall establish a schedule for marijuana retailers with a
20 medical marijuana endorsement to remit the fees collected. Fees
21 collected under this subsection shall be deposited into the health
22 professions account created under RCW 43.70.320.

23 (~~(b) By November 1, 2016, the department shall report to the~~
24 ~~governor and the fiscal committees of both the house of~~
25 ~~representatives and the senate regarding the cost of implementation~~
26 ~~and administration of the medical marijuana authorization database.~~
27 ~~The report must specify amounts from the health professions account~~
28 ~~used to finance the establishment and administration of the medical~~
29 ~~marijuana authorization database as well as estimates of the~~
30 ~~continuing costs associated with operating the medical marijuana~~
31 ~~[authorization] database. The report must also provide initial~~
32 ~~enrollment figures in the medical marijuana authorization database~~
33 ~~and estimates of expected future enrollment.))~~

34 (11) If the database administrator fails to comply with this
35 section, the department may cancel any contracts with the database
36 administrator and contract with another database administrator to
37 continue administration of the database. A database administrator who
38 fails to comply with this section is subject to a fine of up to five
39 thousand dollars in addition to any penalties established in the

1 contract. Fines collected under this section must be deposited into
2 the health professions account created under RCW 43.70.320.

3 (12) The department may adopt rules to implement this section.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 69.51A
5 RCW to read as follows:

6 The compassionate care renewals permitted in RCW 69.51A.030 and
7 69.51A.230 take effect November 1, 2019. The department may adopt
8 rules to implement these renewals and to streamline administrative
9 functions. However, the policy established in these sections may not
10 be delayed until the rules are adopted."

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ADOPTED 04/15/2019

11 On page 1, line 2 of the title, after "patients;" strike the
12 remainder of the title and insert "amending RCW 69.51A.030 and
13 69.51A.230; and adding a new section to chapter 69.51A RCW."

EFFECT: Restores the provisions of the original bill that allowed
a qualifying patient to be exempt from the requirement to have an in-
person physical examination when seeking to renew a medical marijuana
authorization if a health care professional finds that an in-person
examination would likely result in a severe hardship to the
qualifying patient and a physical examination is performed with
telemedicine technology. Allows the compassionate care renewals to
take effect on November 1, 2019.

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