

RULE ADOPTIONS
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LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
OFFICE OF THE DIRECTOR

Adopted New Rules: N.J.A.C. 13:45A-33

Compassionate Use Medical Marijuana

Proposed: November 15, 2010 at 42 N.J.R. 2743(a).

Adopted: October 12, 2011 by Thomas R. Calcagni, Director, Division of Consumer Affairs.

Filed: November 7, 2011 as R.2011 d.293, **without change**.

Authority: N.J.S.A. 24:6I-1 et seq. (P.L. 2009, c. 307) and 45:1-45.1 (Section 11 of P.L. 2009, c. 307).

Effective Date: December 5, 2011.

Expiration Date: September 17, 2013.

Summary of Public Comments and Agency Responses:

The Division of Consumer Affairs (Division) received comments from the following individuals:

1. Lawrence Downs, Esq., General Counsel, Medical Society of New Jersey
2. Justin Escher Alpert.

1. COMMENT: Mr. Downs, on behalf of the Medical Society of New Jersey (MSNJ), expressed support for the proposed new rules, which will require physicians to report weekly on patients for whom written instructions have been issued for medicinal marijuana. The commenter noted that MSNJ agrees that reporting is necessary to ensure that marijuana is used for medicinal purposes only, and not diverted for criminal use. The commenter also noted that MSNJ supports the provision in the new rules, which will allow physicians to seek a waiver of the electronic filing requirement, since some physician practices may not currently be able to satisfy this requirement.

RESPONSE: The Division thanks the Medical Society of New Jersey for its support of the proposed new rules.

2. COMMENT: Mr. Downs noted that the Department of Health and Senior Services proposed regulations implementing the Compassionate Use Medical Marijuana Act contain a provision ensuring the confidentiality of patient information and also ensuring that such records are not considered public records. The commenter suggests that the same rules of confidentiality should apply to the reports required under the Division's proposed new rules.

RESPONSE: Proposed new rule N.J.A.C. 13:45A-33.5 requires that physicians and alternative treatment centers transmit required information to the Division in a manner that ensures the confidentiality of patient information, consistent with all applicable Federal and State laws, rules, and regulations, including the Federal Health Insurance Portability and Accountability Act of 1996. Moreover, the Division notes that records related to an individual's medical history, diagnosis, treatment, or evaluation are not government records subject to public access under the Open Public Records Act. The Division, therefore, does not believe that the commenter's suggested amendment is necessary.

3. COMMENT: Mr. Alpert expressed concern regarding various aspects of proposed new N.J.A.C. 8:64, promulgated by the Department of Health and Senior Services to implement the Compassionate Use Medical Marijuana Act.

RESPONSE: The commenter's concerns are more appropriately directed to the Department of Health and Senior Services as they relate to the Department's proposed new rules at N.J.A.C. 8:64. The Division notes that the commenter did not raise any objections to the Division's proposed new rules at N.J.A.C. 13:45A-33.

Federal Standards Statement

A Federal standards analysis is not required because the adopted new rules are being implemented pursuant to the New

Jersey Compassionate Use Medical Marijuana Act, N.J.S.A. 24:6I-1 et seq. Under existing Federal law, the manufacture, possession, sale or distribution of marijuana is prohibited. See 21 U.S.C. §§ 841 et seq. States, however, are not required to enforce Federal law. In enacting the New Jersey Compassionate Use Medical Marijuana Act, the New Jersey Legislature found that compliance with the Act does not put the State of New Jersey in violation of Federal law. See N.J.S.A. 24:6I-2. Although the new rules are adopted under the authority of the New Jersey Compassionate Use Medical Marijuana Act, the Division notes that physicians and alternative treatment centers submitting information under the new rules are required to do so consistent with Federal privacy protection requirements, including the requirements imposed under the Federal Health Insurance Portability and Accountability Act of 1996.

Full text of the adopted new rules follows:

SUBCHAPTER 33. COMPASSIONATE USE MEDICAL MARIJUANA

13:45A-33.1 Purpose and scope

(a) The rules in this subchapter implement the provisions of N.J.S.A. 45:1-45.1 (Section 11 of P.L. 2009, c. 307), which require the Division of Consumer Affairs to collect information concerning the dispensing of medical marijuana pursuant to the New Jersey Compassionate Use Medical Marijuana Act.

(b) The rules in this subchapter shall apply to physicians and alternative treatment centers authorized to participate in the distribution of medical marijuana pursuant to rules adopted by the State Board of Medical Examiners and by the Department of Health and Senior Services.

13:45A-33.2 Physician reporting requirements

(a) A physician who provides certifications and written instructions for patient use of medical marijuana shall electronically transmit the following information to the Division of Consumer Affairs within one week of issuing written instructions to a patient and/or caregiver:

- [page=3195] 1. Physician name, address and telephone number;
2. Physician license number and CDS registration number;
3. Patient name, address, telephone number and date of birth;
4. If applicable, caregiver name, address, telephone number and date of birth;
5. Patient or, if applicable, caregiver registry identification number;
6. Alternative treatment center designated in the written instructions;
7. Date written instructions issued;
8. Patient diagnosis; and
9. Quantity of marijuana authorized under the written instructions.

13:45A-33.3 Alternative treatment center reporting requirements

(a) An alternative treatment center permitted by the Department of Health and Senior Services shall electronically transmit the following information to the Division of Consumer Affairs within one week of dispensing medical marijuana to a qualifying patient or caregiver:

1. Alternative treatment center permit number;

2. Patient name, address, telephone number and date of birth;
3. If applicable, caregiver name, address, telephone number and date of birth;
4. Physician name, address and telephone number;
5. Physician license number and CDS registration number;
6. Patient or, if applicable, caregiver registry identification number;
7. Quantity of marijuana dispensed;
8. Date dispensed; and
9. Source of payment.

13:45A-33.4 Electronic format required for the transmission of information; exemption

- (a) Physicians and alternative treatment centers shall transmit the information required by N.J.A.C. 13:45A-33.2 and 33.3 electronically in a format specified by Division of Consumer Affairs (Division).
- (b) In the event that a physician or alternative treatment center cannot electronically transmit the required information to the Division, the physician or alternative treatment center shall request a waiver of the electronic transmission requirements of this subchapter from the Division. The waiver request shall be in writing and shall document the reasons for the inability to electronically transmit the required information. The waiver request shall also specify the format the physician or alternative treatment center requests permission to use for submission of required information to the Division.

13:45A-33.5 Frequency requirements for transmitting information; confidentiality

- (a) Physicians and alternative treatment centers shall transmit required information to the Division of Consumer Affairs (Division) at least once a week on the day and at the time specified by the Division.
- (b) If a physician or alternative treatment center discovers an omission or error in the transmitted information, the physician or alternative treatment center shall immediately notify the Division and shall submit the omitted or corrected information to the Division during the next scheduled reporting period after the discovery.
- (c) Physicians and alternative treatment centers shall transmit required information in such a manner as to ensure the confidentiality of patient information in compliance with all Federal and State laws, rules and regulations, including the Federal Health Insurance Portability and Accountability Act of 1996, PL 104-191.

13:45A-33.6 Waiver

The Division of Consumer Affairs (Division) may waive the reporting requirements for physicians and/or alternative treatment centers imposed under this subchapter if the Division is able to obtain the requested information from the Department of Health and Senior Services in an electronic format.