

**ASSEMBLY CONCURRENT
RESOLUTION No. 224**

**STATE OF NEW JERSEY
216th LEGISLATURE**

INTRODUCED MARCH 9, 2015

Sponsored by:

Assemblyman REED GUSCIORA

District 15 (Hunterdon and Mercer)

Assemblyman TIM EUSTACE

District 38 (Bergen and Passaic)

Assemblywoman CLEOPATRA G. TUCKER

District 28 (Essex)

Assemblyman THOMAS P. GIBLIN

District 34 (Essex and Passaic)

Co-Sponsored by:

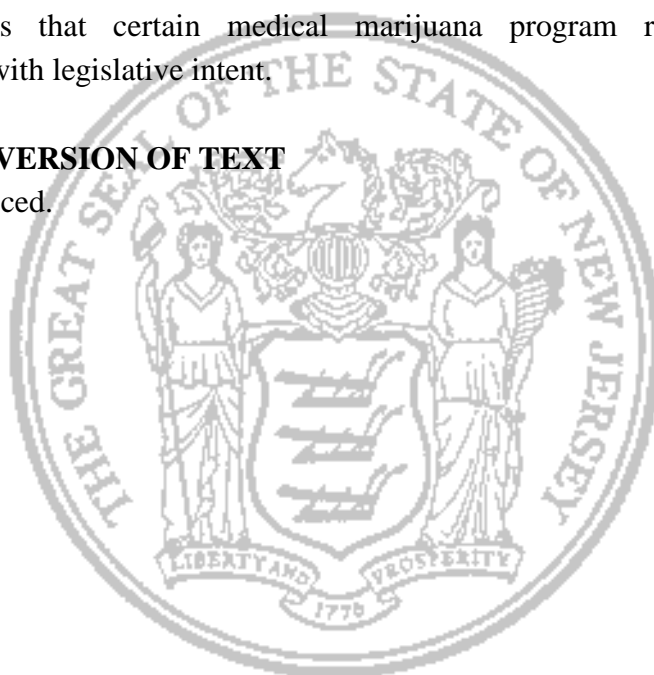
Assemblyman Caputo

SYNOPSIS

Determines that certain medical marijuana program regulations are inconsistent with legislative intent.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/20/2015)

1 **A CONCURRENT RESOLUTION** concerning legislative review of
2 Department of Health regulations implementing the “New Jersey
3 Compassionate Use Medical Marijuana Act” pursuant to Article
4 V, Section IV, paragraph 6 of the Constitution of the State of
5 New Jersey.
6
7 **WHEREAS**, Pursuant to Article V, Section IV, paragraph 6 of the
8 Constitution of the State of New Jersey, the Legislature may review
9 any rule or regulation adopted or proposed by an administrative
10 agency to determine if the rule or regulation is consistent with the
11 intent of the Legislature as expressed in the language of the statute
12 which the rule or regulation is intended to implement; and
13 **WHEREAS**, In 2010, the Legislature enacted the “New Jersey
14 Compassionate Use Medical Marijuana Act,” P.L.2009, c.307
15 (C.24:6I-1 et al.); and
16 **WHEREAS**, Effective December 19, 2011, the Department of Health
17 (DOH) promulgated the Medicinal Marijuana Program Rules,
18 codified at N.J.A.C.8:64-1.1 et seq.; and
19 **WHEREAS**, Under N.J.A.C.8:64-2.4 physicians are required to register
20 with the Department of Health before they may authorize medical
21 marijuana for qualified patients. Because this list is made available
22 to the general public, many physicians have expressed reluctance to
23 register, resulting in a shortage of physicians able to authorize
24 medical marijuana and unnecessarily restricting patient access to
25 the medication; and
26 **WHEREAS**, N.J.A.C.8:64-2.5 requires the approval of up to three
27 physicians, including a psychiatrist, to authorize medical marijuana
28 for a patient who is a minor. No other medication requires the
29 approval of three licensed practitioners before it may be issued to a
30 patient, and this requirement represents an undue restriction on
31 access to medical marijuana for qualifying patients who are minors;
32 and
33 **WHEREAS**, N.J.A.C.8:64-5.2 provides that the Commissioner of
34 Health must appoint a panel of up to 15 health care professionals to
35 review, and make recommendations to the commissioner regarding,
36 petitions for approval of new medical conditions for medical
37 marijuana. The size and additional regulatory restrictions on the
38 composition of the panel may cause significant and unnecessary
39 delays in the approval of new qualifying medical conditions; and
40 **WHEREAS**, N.J.A.C.8:64-7.9 prohibits alternative treatment centers
41 from dispensing medical marijuana through a satellite location,
42 arbitrarily restricting the scope of alternative treatment center
43 operations and unnecessarily limiting patient access to convenient
44 distribution facilities; and
45 **WHEREAS**, N.J.A.C.8:64-10.6 and N.J.A.C.8:64-10.7 limit the
46 permissible level of delta-9-tetrahydrocannabinol (THC) in medical
47 marijuana to 10%. No other state with a medical marijuana
48 program has imposed such a limit, and this limit restricts the ability

1 of physicians to authorize medical marijuana in a form and strength
2 appropriate to each patient's unique treatment needs; and

3 **WHEREAS**, N.J.A.C.8:64-10.7 provides that alternative treatment
4 centers may cultivate no more than three strains of medical
5 marijuana; this restriction violates section 7 of P.L.2009, c.307
6 (C.24:6I-7), which expressly provides: "An alternative treatment
7 center shall not be limited in the number of strains of medical
8 marijuana cultivated;" and

9 **WHEREAS**, N.J.A.C.8:64-10.12 prohibits delivery of medical
10 marijuana to the home or residence of a patient or primary
11 caregiver. This prohibition arbitrarily restricts a key form of access
12 to medical marijuana for patients with debilitating medical
13 conditions; and

14 **WHEREAS**, N.J.A.C.8:64-10.8 and N.J.A.C.8:64-11.5 prohibit
15 alternative treatment centers from producing and dispensing
16 medical marijuana in edible form; this restriction is in direct
17 contradiction of section 2 of P.L.2013, c.160, which amended
18 section 7 of P.L.2009, c.307 (C.24:6I-7) to expressly authorize
19 edible forms of medical marijuana for patients who are minors; and

20 **WHEREAS**, The regulations referenced above are not consistent with
21 the plain language of the "New Jersey Compassionate Use Medical
22 Marijuana Act" and undermine the Legislature's intent to establish
23 a viable medical marijuana program that assures patients have
24 access to this palliative and therapeutic form of treatment; now,
25 therefore,

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27 **BE IT RESOLVED** by the General Assembly of the State of New
28 Jersey (the Senate concurring):

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30 1. The Legislature declares that N.J.A.C.8:64-2.4,
31 N.J.A.C.8:64-2.5, N.J.A.C.8:64-5.2, N.J.A.C.8:64-7.9,
32 N.J.A.C.8:64-10.6, N.J.A.C.8:64-10.7, N.J.A.C.8:64-10.8,
33 N.J.A.C.8:64-10.12, and N.J.A.C.8:64-11.5 are not consistent with
34 the intent of the Legislature as expressed in the language of the
35 "New Jersey Compassionate Use Medical Marijuana Act,"
36 P.L.2009, c.307 (C.24:6I-1 et al.).

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38 2. Copies of this resolution, as filed with the Secretary of State,
39 shall be transmitted by the Clerk of the General Assembly or the
40 Secretary of the Senate to the Governor and the Commissioner of
41 Health.

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43 3. Pursuant to Article V, Section IV, paragraph 6 of the
44 Constitution of the State of New Jersey, the Commissioner of
45 Health shall have 30 days following transmittal of this resolution to
46 amend or withdraw the regulations, or the Legislature may, by
47 passage of another concurrent resolution, exercise its authority

1 under the Constitution to invalidate the regulations in whole or in
2 part.

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STATEMENT

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7 This concurrent resolution embodies the finding of the
8 Legislature that certain regulations promulgated by the Department
9 of Health (DOH) to implement the “New Jersey Compassionate Use
10 Medical Marijuana Act,” P.L.2009, c.307 (C.24:6I-1 et al.), are not
11 consistent with the intent of the Legislature as expressed in the
12 language of the act as enacted and amended.

13 Specifically, N.J.A.C.8:64-2.4 requires physicians to register
14 with the DOH, and the department currently makes the list of
15 registered physicians available to the general public. This
16 requirement has resulted in a shortage of physicians available to
17 authorize medical marijuana, as many physicians are reluctant to
18 have their names appear on a public registry, and so unnecessarily
19 restricts access to medical marijuana for patients.

20 N.J.A.C.8:64-2.5 requires the approval of up to three physicians,
21 including a psychiatrist, to authorize medical marijuana for a patient
22 who is a minor. No other medication requires the approval of three
23 health care practitioners to be authorized for a patient, and this
24 requirement unduly restricts access to medical marijuana for
25 patients who are minors. Further, although the Legislature amended
26 the act in 2013 to authorize edible forms of medical marijuana for
27 patients who are minors, N.J.A.C.8:64-10.8 and N.J.A.C.8:64-11.5
28 directly contradict this by prohibiting alternative treatment centers
29 from producing and dispensing medical marijuana in edible form.

30 N.J.A.C.8:64-10.6 and N.J.A.C.8:64-10.7 limit the permissible
31 levels of delta-9-tetrahydrocannabinol (THC) that medical
32 marijuana may contain to 10%. No other state with a medical
33 marijuana program has imposed such a limit. Similarly, although
34 section 7 of P.L.2009, c.307 (C.24:6I-7) expressly provides: “An
35 alternative treatment center shall not be limited in the number of
36 strains of medical marijuana cultivated,” N.J.A.C.8:64-10.7 directly
37 contravenes this by providing that alternative treatment centers may
38 cultivate no more than three strains of medical marijuana. Taken
39 together, these provisions arbitrarily restrict the ability of
40 physicians to authorize medical marijuana in a form and strength
41 appropriate to each patient’s unique treatment needs.

42 N.J.A.C.8:64-7.9 and N.J.A.C.8:64-10.12 limit access to medical
43 marijuana for patients by prohibiting alternative treatment centers
44 from dispensing medical marijuana through satellite locations and
45 by prohibiting delivery of medical marijuana to the home or
46 residence of a patient or primary caregiver.

47 Finally, N.J.A.C.8:64-5.2 provides that the Commissioner of
48 Health must appoint a panel of up to 15 health care professionals to

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1 review and make recommendations to the commissioner on
2 petitions for approval of new medical conditions for medical
3 marijuana. The size and additional restrictions on the composition
4 of the panel may cause significant and unnecessary delays in the
5 approval of new medical conditions.

6 These regulations place arbitrary and unnecessary restrictions on
7 the medical marijuana program that limit a physician's ability to
8 authorize medical marijuana in a form and strength appropriate to
9 each patient's condition, and limit access to medical marijuana for
10 those patients suffering from debilitating medical conditions the act
11 was intended to benefit.

12 The resolution provides that the Commissioner of Health will
13 have 30 days from the date of transmittal of this resolution to
14 amend or withdraw the regulations, or the Legislature may, by
15 passage of another concurrent resolution, exercise its authority
16 under the Constitution to invalidate the rules and regulations in
17 whole or in part.