

Chapter 77. Marijuana for Therapeutic Use by Patients Suffering from a Qualifying Debilitating Medical Condition

Subchapter A. General Provisions

§7701. Preamble, Warning, and Suggested Consultation, and Rational for Terminology

A. Preamble—State Law Pursuant to Act 261, R.S. 40:1046, of the 2015 Session of the Louisiana Legislature, as amended and supplemented by Act 96 of the 2016 Session of the Louisiana Legislature, the Louisiana State Board of Medical Examiners was directed to:

1. promulgate rules and regulations authorizing physicians licensed to practice in this state to recommend prescribe marijuana for therapeutic use by patients clinically diagnosed as suffering from a debilitating medical condition glaucoma, symptoms resulting from the administration of chemotherapy cancer treatment, and spastic quadriplegia; and

2.-C. . . .

~~D. Rational for Terminology. Under Louisiana law, R.S. 40:961(32), the word *prescribe* means “[T]o issue a written request or order for a controlled dangerous substance by a person licensed under this Part for a legitimate medical purpose. The act of prescribing must be in good faith and in the usual course of the licensee’s professional practice.” Because some other states that have authorized physicians to issue a *written request or recommendation or order* for marijuana for qualifying medical conditions may be viewed as not directly transcending the federal prohibition against dispensing (and prescribing) marijuana and considering the definition of the word *prescribe* which was used in Act 261, these rules shall utilize the term *written request or recommendation* when describing a physician’s direction to a licensed therapeutic marijuana pharmacy to provide marijuana for therapeutic use by patients who suffer from a qualifying medical condition. We do so with the caution that this attempt to minimize what may be viewed as a conflict between Act 261’s direction to the board with controlling federal law by the use of this term in these rules, and in rules and laws of other states that have utilized the same or similar terms for this purpose, nevertheless remain subject to criminal, civil and administrative prosecution by federal authorities in the exercise of their discretionary authority to enforce federal law and regulation.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health Hospitals, Board of Medical Examiners, LR 41:2631 (December 2015), amended, LR

§7703. Scope of Chapter

A. This Chapter is being adopted in order to comply with the obligations imposed upon the board by Act 261, R.S. 40:1046, of the 2015 Session of the Louisiana Legislature, as amended and supplemented by Act 96 of the 2016 Session of the Louisiana Legislature, and govern a physician’s ~~written request or recommendation~~ for the therapeutic use of marijuana for a patient suffering from a

qualifying debilitating medical condition with whom the physician has established a bona-fide physician-patient relationship.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health Hospitals, Board of Medical Examiners, LR 41:2632 (December 2015), amended, LR

§7705. Definitions

A. As used in this Chapter, the following terms and phrases shall have the meanings specified.

* * *

Conventional Treatment or Conventional Medicine—therapeutic modalities and medications of fered or employed by a physician in the treatment of a debilitating medical condition which are generally accepted and recognized as falling within the standard of care in the course of medical practice based upon medical training, experience and peer reviewed scientific literature.

Debilitating Medical Condition (also referred to in this Chapter as a *Qualifying Medical Condition*)—cancer, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, cachexia or wasting syndrome, seizure disorders, epilepsy, spasticity, Crohn’s disease, muscular dystrophy, or multiple sclerosis, and/or such other diseases or conditions that may subsequently be identified as a debilitating medical condition by amendment of R.S. 40:1046 or other state law.

* * *

Qualifying Medical Condition—a debilitating medical condition, as defined in this Section, glaucoma, symptoms resulting from the administration of chemotherapy cancer treatment, spastic quadriplegia, and/or such other diseases or conditions that may subsequently be identified as a qualifying medical condition by amendment of R.S. 40:1046 or other state law.

Recommend or Recommendation (also referred to in this Chapter as a *Written Request or Recommendation*)—a physician’s written direction transmitted in a form and manner specified in §7721 of this Chapter, to a licensed therapeutic marijuana pharmacy. The issuance of a written request or recommendation must be in good faith and in the usual course of the physician’s professional practice.

* * *

Step Therapy or Fail First Protocols—as used in this Chapter means that if the USFDA approves the use of therapeutic marijuana for a debilitating medication condition, in a form or derivative that is different than provided for in this Chapter, the USFDA form or derivative shall be used first. If the physician determines that such USFDA approved form or derivative has been ineffective in the treatment of the patient’s debilitating medical condition, the physician may then recommend a form of therapeutic marijuana provided in this Chapter for use by the patient as medically necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2632 (December 2015), amended, LR.

Subchapter B. Prohibitions and Exceptions

§7709. Exceptions

A. This Chapter is subject to the following exceptions:

1. The rules of this Chapter shall not apply to a physician's prescription of cannabinoid derived pharmaceuticals that are approved by the USFDA for administration to patients.

2. If the USFDA approves the use of therapeutic marijuana:

a. in the same form provided for in this Chapter for a debilitating medical condition, identified in §7705A, that medical condition shall no longer be covered by this Chapter;

b. in a form or derivative different than provided for in this Chapter for a debilitating medical condition, identified in §7705A, that disease state shall remain covered by this Chapter. However, the patient shall first be treated through utilization of step therapy or fail first protocols..

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2632 (December 2015), amended LR.

Subchapter C. Registration

§7711. Registration, Physician Eligibility

A. To be eligible for registration under this Chapter a physician shall, as of the date of the application:

1.-2. ...

3. be domiciled in and practice at a physical practice location in this state; and

4.-D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2633 (December 2015), amended, LR.

Subchapter D. Marijuana for Therapeutic Purposes, Limitations, Access to Records

§7717. Use of Marijuana for Therapeutic Purposes, Limitations

A. ...

1. Medical Diagnosis. A medical diagnosis of a qualifying debilitating medical condition shall be clinically established and clearly documented in the patient's medical record, based on an in-person physical examination. The diagnosis shall be supported by an assessment of the patient, which, at a minimum, shall include a review of the patient's

present illness, medical and surgical history, social history, alcohol and substance use history (including addiction, mental illness and psychotic disorders), prescription history, and an assessment of current coexisting illnesses, diseases, or conditions, and an in-person physical examination.

2. ...

3. Independent Medical Judgment. A physician's decision to utilize marijuana in the treatment of a patient must be based on the physician's independent medical judgment. The indication, appropriateness, and safety of the recommendation shall be evaluated in accordance with current standards of practice and in compliance with the laws of this state and the rules of this Chapter that the drug is likely to provide a therapeutic benefit in the treatment of the patient's qualifying medical condition and that such use would likely outweigh the health risks of other options that could be used for the patient.

4. Treatment Plan. An individualized treatment plan shall be formulated and documented in the patient's medical record which includes medical justification for the use of marijuana. In addition, the plan shall include documentation:

a. that other medically reasonable alternative conventional treatments for the patient's qualifying debilitating medical condition have been considered, are being undertaken or have been attempted without adequate or reasonable success or a statement that the patient has refused such methods;

b. whether therapeutic marijuana could interfere with any ongoing conventional treatment; and

c. the intended role of therapeutic marijuana within the overall plan.

5. Informed Consent. A physician shall explain the potential risks and benefits of both the therapeutic use of marijuana and any alternative conventional treatments to the patient. Among other items, informed consent should caution against driving, operating machinery or performing any task that requires the patient to be alert or react when under the influence of the drug and the need for secure storage to reduce the risk of exposure to children or diversion by others. Unless approved by the USFDA for treatment of the patient's debilitating medical condition, a physician shall also advise patients that therapeutic marijuana is experimental, unconventional, and has not been approved by the USFDA for the treatment of any medical the patient's condition, debilitating medical condition, and that possession may be viewed as illegal under federal law and subject to federal (and workplace) enforcement action. Discussion of the risks and benefits should be clearly noted in the patient's record. If the patient is a minor a custodial parent or legal guardian shall be fully informed of the risks and benefits and consent to such use.

6.-B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health Hospitals, Board of Medical Examiners, LR 41:2633 (December 2015), amended, LR.

§7721. Form of-Written Request or Recommendation

A. Required Contents. A written request or recommendation for therapeutic marijuana shall include:

1.-3. ...

4. the form, amount, dosage and instructions for use of therapeutic marijuana in an amount which is not greater than that necessary to constitute an adequate supply to ensure uninterrupted availability for a period of one month, including amounts for topical treatment; and

5.-C. . .

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health Hospitals, Board of Medical Examiners, LR 41:2634 (December 2015), amended, LR.

Subchapter E. Sanctions, ~~Effective Date, Severability~~

~~§7725. Effective Date [Reserved]~~

~~[Repealed]~~

~~A. The effective date of the rules of this Chapter shall be November 20, 2016, or such earlier date on which final rules have been published in the *Louisiana Register* by the Louisiana Board of Pharmacy and the Louisiana Department of Agriculture and Forestry, in accordance with R.S. 40:1046.~~

~~AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.~~

~~HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2635 (December 2015), repealed, LR.~~

§7729. Appendix—Form of ~~Written Request or~~ For Recommendation for Therapeutic Marijuana

—THIS IS NOT A PRESCRIPTION—
PHYSICIAN WRITTEN REQUEST
OR RECOMMENDATION FORM

Section A.-B. . . .

Section C. Patient's Qualifying Debilitating Medical Condition(s) (Required)

This patient has been diagnosed with the following qualifying debilitating medical condition:
(A minimum of one condition must be checked)

- ~~Glaucoma~~
- ~~Symptoms from chemotherapy cancer treatment~~
- ~~Spastic quadriplegia~~
- Acquired Immune Deficiency Syndrome
- Cachexia or Wasting Syndrome
- Cancer
- Crohn's Disease
- Epilepsy
- Multiple Sclerosis
- Muscular Dystrophy
- Positive Status for Human Immunodeficiency Virus
- Spasticity
- Seizure Disorders

Section D. . . .

Section E. Certification, Signature and Date (Required)

By signing below, I attest that the information entered on this ~~written request or~~ recommendation is true and accurate. I further attest that the above-named individual is my patient, who suffers from a qualifying debilitating medical condition and that this ~~written request or~~ recommendation is submitted by and in conformity with Louisiana Law, R.S. 40:1046, and administrative rules promulgated by the Louisiana State Board of Medical Examiners, LAC 46:XLV.Chapter 77.

Signature of Physician: X _____
Date: _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, and R.S. 40:1046.
HISTORICAL NOTE: Promulgated by the Department of Health Hospitals, Board of Medical Examiners, LR 41:2635 (December 2015), amended, LR