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## The Council of the City of New York

# **COMMITTEE REPORT OF THE HUMAN SERVICES Division**

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**COMMITTEE ON HEALTH**

Hon. Mark Levine*, Chair*

#### April 10, 2019

**Res. No. 221:** By Council Member Levine

**Title:** Resolution calling upon the New York State Legislature and the Governor to expand the Compassionate Care Act, which legalized the medicinal use of marijuana.

**Res. No. 765:** By Council Member Rivera

**Title:** Resolution calling on the New York State Legislature to pass, and the Governor to sign, legislation rectifying any conflicts between the state’s medical marijuana regulations and recreational marijuana regulations.

**Introduction**

 On April 10, 2019, the Committee on Health, chaired by Council Member Mark Levine, will hold a hearing on resolutions relating to the State’s medical marijuana program and its intersection with a recreational marijuana program. The Committee will hear Resolution Number 221 (Res. 221), calling upon the New York State Legislature and the Governor to expand the Compassionate Care Act, which legalized the medicinal use of marijuana, and Resolution Number 765, (Res. 765), calling on the New York State Legislature to pass, and the Governor to sign, legislation rectifying any conflicts between the State’s medical marijuana regulations and recreational marijuana regulations. Among those invited to testify are representatives from the New York City Department of Health and Mental Hygiene (DOHMH), advocates, and other interested parties.

**Background**

The Compassionate Care Act, signed by Governor Cuomo in 2014, created legal protections for patients and caregivers and authorized the State to license and regulate the cultivation and sale of medical marijuana to patients.[[1]](#footnote-1) Under the Act, physicians wishing to certify patients for use of medical marijuana are required to have medical expertise in the qualifying condition for which they are recommending cannabis, and are required to undergo a New York State Department of Health-approved education course before registering with the program.[[2]](#footnote-2) The patients receive a 30-day supply of medicine, with the “dosage” set by the physician.[[3]](#footnote-3) The law prohibits patients from smoking marijuana, and the Commissioner of the New York State Department of Health (NYSDOH) must approve all forms of medical marijuana that are made available to patients.[[4]](#footnote-4) Initially, the State was authorized to license a maximum of five registered organizations –with up to four retail locations each – to distribute marijuana to patients,[[5]](#footnote-5) and only patients with severe debilitating or life-threatening illnesses for which cannabis is likely to have a therapeutic benefit were certifiable under the program.[[6]](#footnote-6)

Since 2014, the Act has been expanded and access to medical marijuana has improved. Nurse practitioners and physician assistants are now authorized to certify patients for medical marijuana, which has contributed to a 33.2 percent increase in available practitioners statewide.[[7]](#footnote-7) Nurse practitioners and physician assistants effectively comprised 21.6 percent of all practitioners in the program as of June 30, 2018. [[8]](#footnote-8)

The number of organizations registered to manufacture and dispense medical marijuana has also increased, and these organizations are now allowed to deliver medical marijuana products to the homes of patients or their caregivers.[[9]](#footnote-9) Moreover, the list of qualifying conditions was expanded to include chronic pain, post-traumatic stress disorder, and any condition for which an opioid may be prescribed.[[10]](#footnote-10) In addition to one of these conditions, patients must have a clinically associated or complicating condition, such as cachexia or wasting syndrome, severe or chronic pain resulting in substantial limitation of function, severe nausea, seizures, severe or persistent muscle spasms, PTSD, or opioid disorder, but only if enrolled in a State-certified treatment program.[[11]](#footnote-11) Chronic pain is the most common severe debilitating or life-threatening condition (53.13 percent), as well as the most common clinically associated or complicating condition (72.9 percent). Patients above the age of 51 made up 56.43 percent of all certifications, while patients younger than 31 represented only 9.34 percent of all certifications.[[12]](#footnote-12)

*Potential Impact of Recreational Marijuana Legalization*

In July 2018, NYSDOH released a report assessing the potential impact of regulated recreational marijuana in the state, and concluded that its benefits outweighed any potential negative impacts.[[13]](#footnote-13) In December 2018, Governor Cuomo announced that he would push to legalize recreational marijuana in 2019.[[14]](#footnote-14) The legalization of recreational marijuana may have a significant impact on the State’s medical marijuana program by bringing down the cost of medical marijuana by expanding supply.[[15]](#footnote-15) Medical marijuana is currently not covered by any insurer, because it is still listed as a dangerous drug with no medical purpose under Federal law,[[16]](#footnote-16) so certified patients are currently required to pay out of pocket.[[17]](#footnote-17) Although recreational marijuana may end up being more affordable than medical marijuana, many patients have no interest in recreational use, and specifically wish to avoid getting high when using medical marijuana.[[18]](#footnote-18)

In addition, the legalization of recreational marijuana could lead to confusion and conflicting legal requirements with existing medical marijuana regulations. When Vermont, which had an existing medical marijuana program, legalized recreational marijuana use in July 2018, it did not make changes to its medical marijuana program, which resulted in two conflicting sets of marijuana regulations. Different rules applied for those certified for medical marijuana and those who obtained marijuana for recreational purposes, and there were inconsistencies regarding how much cannabis a person is legally allowed to carry, how many plants they can grow, and how much can be harvested from each plant.[[19]](#footnote-19)

While medical marijuana is legal in New York, the law prohibits smoking cannabis products.[[20]](#footnote-20) Medical marijuana must be consumed through vaporization, pills, or other methods,[[21]](#footnote-21) and individuals over the age of 18 can be certified for medical marijuana use.[[22]](#footnote-22) Legislation to legalize recreational marijuana use that was considered in previous state Legislative Sessions, however, did not include restrictions on method of use, and most proposals would restrict use to individuals 21 and older.[[23]](#footnote-23) Proper coordination and consideration of existing medical marijuana laws, including the potential need to make changes to these laws, will likely be an important factor in ensuring that any recreational marijuana market established in New York functions seamlessly alongside its medical marijuana program, as it does in Colorado.[[24]](#footnote-24)

**CONCLUSION**

During the hearing, the Committee will examine New York’s medical marijuana program, and the potential impact of recreational marijuana legalization on current medical marijuana users. The committee will hear two resolutions that call on the State to expand the existing medical marijuana program, and to ensure there is a mechanism in place to rectify any conflicts between the state’s medical marijuana regulations and future recreational marijuana regulations.

Res. No. 221

Resolution calling upon the New York State Legislature and the Governor to expand the Compassionate Care Act, which legalized the medicinal use of marijuana.

By Council Member Levine

                     Whereas, On July 7, 2014, New York Governor Andrew Cuomo signed into law the Compassionate Care Act (CCA), making New York the 23rd state to legalize medicinal marijuana; and

Whereas, This law recognizes and affirms progress in the medical community concerning the therapeutic value of medicinal marijuana; and

Whereas, The CCA is a historic step forward in providing vital medical assistance to New Yorkers suffering from debilitating and life-threatening medical conditions, such as cancer, HIV/AIDS, amyotrophic lateral sclerosis (ALS), Parkinson’s Disease, multiple sclerosis, spinal cord damage, inflammatory bowel disease (Crohn’s Disease), neuropathies, and Huntington’s Disease; and

Whereas, However, the CCA has several restrictions that unnecessarily burden those in the most need from obtaining and using medicinal marijuana in an effective and timely way; and

Whereas, The CCA prohibits patients from choosing to administer their medicinal marijuana through smoking, leaving options such as edibles, oils, and vaporization up to the discretion of the New York State Department of Health (DOH); and

Whereas, DOH announced new regulations in December 2017 that would allow for the manufacturing and distribution of additional products including topicals such as ointments, lotions and patches; solid and semi-solid products, including chewable and effervescent tablets and lozenges; and certain non-smokable forms of ground plant material; and

Whereas, Administering medicinal marijuana through vapor requires the purchase of a vaporizer unit, which can cost hundreds of dollars, and thus be prohibitively expensive for patients desperately in need; and

Whereas, Smoking medicinal marijuana provides rapid and efficient delivery, according to a 2012 report authored by researchers at the Center for Medicinal Cannabis Research, University of California, San Diego, published in The Open Neurological Journal; and

Whereas, Smoking medicinal marijuana has not been proven to impair lung function, according to the Coronary Artery Risk Development in Young Adults (CARDIA) report, a twenty-year longitudinal study published in the Journal of the American Medical Association in January 2012; and

Whereas, Of the 28 other states that have legalized medicinal marijuana, Minnesota and West Virginia are the only other states to have banned smoking; and

Whereas, Based on evidence of its effectiveness and cost considerations, the CCA should be amended to allow physicians the ability to choose the method of administering medicinal marijuana, including the option of smoking it; and

Whereas, The CCA originally did not include debilitating and severe medical conditions such as post-traumatic stress disorder, Alzheimer’s Disease, muscular dystrophy, dystonia, and rheumatoid arthritis, that are among the top medical conditions for which medicinal marijuana is prescribed; and

Whereas, The CCA gave DOH an 18-month period of consideration for the admission of these diseases but DOH has only added post-traumatic stress disorder from the list of reviewed conditions; and

Whereas, In 2017, chronic pain was also added to the list of conditions to qualify for medicinal marijuana; and

Whereas, While this is a positive step in the right direction, the Compassionate Care Act should be expanded immediately to include Alzheimer’s Disease, muscular dystrophy, dystonia, and rheumatoid arthritis; and

Whereas,  DOH originally permitted only five organizations a total of 20 dispensaries (four each) to produce and dispense medicinal marijuana to the entire geographic region of New York State, which is among the nation’s largest, most densely populated state; and

Whereas, In 2017, the number of organizations and dispensaries permitted to produce and dispense medicinal marijuana was doubled, but these are being phased in over a lengthy two year period; and

Whereas, Acknowledging New York State’s geographic size and population, the New York State Department of Health should increase the dispensary limit; and

Whereas, According to New York Physicians for Compassionate Care, a coalition of over 600 New York physicians, medicinal marijuana is more tightly regulated than any other medication, including more dangerous medications that are routinely prescribed; and

Whereas, Expanding the CCA will ensure patients find the relief they need by removing hurdles to obtaining a necessary medicine prescribed by their doctor; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature and the Governor to expand the Compassionate Care Act, which legalized the medicinal use of marijuana.

MGL/CP

LS# 2369/Res. 418/2014

LS# 1172

1/5/18

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| Res. No. 765Resolution calling on the New York State Legislature to pass, and the Governor to sign, legislation rectifying any conflicts between the state’s medical marijuana regulations and recreational marijuana regulations. By Council Member Rivera                       Whereas, On July 7, 2014, New York Governor Andrew Cuomo signed into law the Compassionate Care Act (CCA), making New York the 23rd state to legalize medicinal marijuana; andWhereas, Within the New York State Public Health Law, medical marijuana is defined as all parts of the plant of the genus Cannabis, including the seeds, resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, intended for medical use; andWhereas, According to the New York Times, studies have documented positive medical outcomes when one uses medical marijuana, including the complete resolution of nausea and vomiting due to chemotherapy; andWhereas, New Yorkers can obtain medical marijuana if they have certain debilitating or life-threatening conditions, such as cancer, HIV or AIDS, amyotrophic lateral sclerosis (ALS), Parkinson’s disease, multiple sclerosis, chronic pain, or post-traumatic stress disorder; andWhereas, As of June 30, 2018, a total of 61,198 patients in New York State had active certifications to use medical marijuana; andWhereas, Governor Cuomo has announced his intention to legalize recreational marijuana throughout the state, which raises concerns for those enrolled in the medical marijuana program; andWhereas, According to the Burlington Free Press, Vermont had two conflicting sets of marijuana laws on the books once recreational marijuana was legalized, such as different possession laws, and this caused confusion and concerns for those who used medical marijuana; andWhereas, According to City & State, the Governor’s current proposal to legalize recreational marijuana mostly transfers the program intact to a new office, the Office of Cannabis Management; andWhereas, Despite the program mostly remaining intact, there is a risk the medical marijuana program would suffer because registered patients may turn to recreational marijuana use, since it is significantly cheaper, unless the addition of recreational marijuana drives down the medical marijuana prices, the Times Union points out; andWhereas, City & State notes that many patients would still benefit from consultations with doctors who can recommend the best course of action, even if they have access to recreational marijuana; andWhereas, The creation of a recreational marijuana program should not hinder the use of medical marijuana in our communities, which, with a guardian or caregiver’s support, a person of any age can obtain; andWhereas, Currently individuals who receive medical marijuana can receive up to a 30 day supply of the dosage they are prescribed and must follow strict guidelines to transport and carry their medical marijuana, and the legalization of recreational marijuana should mirror these protocols as closely as possible; andWhereas, The Times Union points out the concerns over who can cultivate and distribute recreational marijuana, a topic which must be taken seriously and pursued cautiously to ensure that communities that have been the prime targets of marijuana criminal enforcement for decades, largely communities of color with high poverty levels, share in the benefits; and Whereas, The State should ensure the medical marijuana program continues to grow, for example, by increasing advertising and instituting further patient protections, such as ensuring providers within all medical facilities can prescribe medical marijuana; andWhereas, To ensure the medical marijuana program stays intact and available to those who utilize it, and to ensure it keeps improving and becomes even more accessible to the public, the state should examine the impacts the legalization of recreational marijuana could have on the program; now, therefore, be itResolved, That the Council of the City of New York calls upon the New York State Legislature to pass, and the Governor to sign, legislation rectifying any conflicts between the state’s medical marijuana regulations and recreational marijuana regulations.EBLS 986202/11/2019 |

1. Americans for Safe Access, New York Medical Marijuana Laws and Regulations, <https://www.safeaccessnow.org/new_york_medical_marijuana_laws_and_regulations>. [↑](#footnote-ref-1)
2. *See* Americans for Safe Access, New York Medical Marijuana Laws and Regulations, <https://www.safeaccessnow.org/new_york_medical_marijuana_laws_and_regulations>. See also New York State Department of Health, Medical Use of Marijuana Under the Compassionate Care Act 3, <https://www.health.ny.gov/regulations/medical_marijuana/docs/two_year_report_2016-2018.pdf>. [↑](#footnote-ref-2)
3. Americans for Safe Access, New York Medical Marijuana Laws and Regulations, <https://www.safeaccessnow.org/new_york_medical_marijuana_laws_and_regulations>. [↑](#footnote-ref-3)
4. *Id*. [↑](#footnote-ref-4)
5. *Id*. [↑](#footnote-ref-5)
6. *Id*. [↑](#footnote-ref-6)
7. New York State Department of Health, Medical Use of Marijuana Under the Compassionate Care Act (“NYSDOH Report”) 2, <https://www.health.ny.gov/regulations/medical_marijuana/docs/two_year_report_2016-2018.pdf>. [↑](#footnote-ref-7)
8. *Id*. [↑](#footnote-ref-8)
9. *Id*.. [↑](#footnote-ref-9)
10. *Id*. *See also* NYSDOH Report at 6 (“Medical marijuana is available in New York for patients with the following severe debilitating or life-threatening conditions: cancer, HIV infection or Aids, amyotrophic lateral sclerosis (ALS), Parkinson’s disease, multiple sclerosis, damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, epilepsy, inflammatory bowel disease, neuropathies, Huntington’s disease, chronic pain, Post-Traumatic Stress Disorder (PTSD), and as a replacement to prescription opioids.”). [↑](#footnote-ref-10)
11. NYSDOH Report at 6, <https://www.health.ny.gov/regulations/medical_marijuana/docs/two_year_report_2016-2018.pdf>. [↑](#footnote-ref-11)
12. NYSDOH Report at 6–7, <https://www.health.ny.gov/regulations/medical_marijuana/docs/two_year_report_2016-2018.pdf>. [↑](#footnote-ref-12)
13. NYSDOH Report at 2, <https://www.health.ny.gov/regulations/medical_marijuana/docs/two_year_report_2016-2018.pdf>. [↑](#footnote-ref-13)
14. New York Times, Cuomo Moves to Legalize Recreational Marijuana in New York Within Months, Dec. 17, 2018, <https://www.nytimes.com/2018/12/17/nyregion/marijuana-legalization-cuomo.html>. [↑](#footnote-ref-14)
15. City & State, If New York legalizes pot, what happens to its medical marijuana program?, Oct. 14, 2018, <https://www.cityandstateny.com/articles/policy/health-care/new-york-legalizes-weed-medical-marijuana-program>. [↑](#footnote-ref-15)
16. Cannabis is currently listed under Schedule I of the Controlled Substances Act, the most tightly restricted category reserved for drugs that have no currently accepted medical use. [↑](#footnote-ref-16)
17. City & State, If New York legalizes pot, what happens to its medical marijuana program?, Oct. 14, 2018, <https://www.cityandstateny.com/articles/policy/health-care/new-york-legalizes-weed-medical-marijuana-program>. [↑](#footnote-ref-17)
18. *Id*. [↑](#footnote-ref-18)
19. *Id*. [↑](#footnote-ref-19)
20. Americans for Safe Access, Becoming a Patient in New York, <https://www.safeaccessnow.org/becoming_a_patient_in_new_york>. [↑](#footnote-ref-20)
21. These include effervescent tablets and lozenges, ointments and lotions, transdermal patches and other methods. *See* HelloMD, New York Allows Cannabis Topicals, Edibles & Ground Flower, <https://www.hellomd.com/health-wellness/5a46cb76100a820006562f44/new-york-allows-cannabis-topicals-edibles-and-ground-flower>. [↑](#footnote-ref-21)
22. Children under the age of 18 can be certified patients, but an adult over the age of 21 must apply on their behalf. *See* New York State Department of Health, Medical Marijuana Program Certified Patient/Caregover FAQs, <https://www.health.ny.gov/regulations/medical_marijuana/patients/faq.htm>. [↑](#footnote-ref-22)
23. City & State, If New York legalizes pot, what happens to its medical marijuana program?, Oct. 14, 2018, <https://www.cityandstateny.com/articles/policy/health-care/new-york-legalizes-weed-medical-marijuana-program>. [↑](#footnote-ref-23)
24. *Id*. [↑](#footnote-ref-24)