

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 344

INTRODUCER: Senator Brodeur

SUBJECT: Physician Certifications for the Medical Use of Marijuana

DATE: March 24, 2023

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Looke   | Brown          | HP        | <b>Pre-meeting</b> |
| 2. |         |                | AHS       |                    |
| 3. |         |                | FP        |                    |

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**I. Summary:**

SB 344 amends s. 381.986, F.S., to allow a physician to conduct an examination for a renewal of a physician certification for medical marijuana by telehealth.

The bill provides an effective date of July 1, 2023.

**II. Present Situation:**

**Medical Marijuana General Background**

*Amendment 2 and Implementing Statutes*

On November 4, 2016, Amendment 2 was approved by the statewide electorate and established Article X, section 29 of the Florida Constitution. This section of the constitution became effective on January 3, 2017, and created several exemptions from criminal and civil liability for:

- Qualifying patients who medically use marijuana in compliance with the amendment;
- Physicians, solely for issuing physician certifications with reasonable care and in compliance with the amendment; and
- MMTCs and their agents and employees for actions or conduct under the amendment and in compliance with rules promulgated by the Department of Health (DOH).

Subsequently, the Legislature passed SB 8-A in Special Session A of 2017.<sup>1</sup> The bill revised the Compassionate Medical Cannabis Act of 2014<sup>2</sup> in s. 381.986, F.S., to implement Article X, section 29 of the State Constitution.

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<sup>1</sup> Chapter 2017-232, Laws of Fla.

<sup>2</sup> Chapter 2014-157, Laws of Fla.

### Physician Certifications for Medical Marijuana

Subsection (4) of s. 381.986, F.S., establishes the requirements for a qualified physician<sup>3</sup> to issue a physician certification for medical marijuana. A qualified physician may only issue a physician certification if he or she:

- Conducted a physical examination while physically present in the same room as the patient and a full assessment of the medical history of the patient.
- Diagnosed the patient with at least one qualifying medical condition.
- Determined that the medical use of marijuana would likely outweigh the potential health risks for the patient, and such determination must be documented in the patient's medical record. If a patient is younger than 18 years of age, a second physician must concur with this determination, and such concurrence must be documented in the patient's medical record.
- Determined whether the patient is pregnant and documented such determination in the patient's medical record.
- Reviewed the patient's controlled substance prescription history in the prescription drug monitoring program database established pursuant to s. 893.055, F.S.
- Reviews the medical marijuana use registry and confirms that the patient does not have an active physician certification from another qualified physician.
- Registers as the issuer of the physician certification for the named qualified patient on the medical marijuana use registry in an electronic manner determined by the DOH and maintains such registration as required by the section.
- Obtains the voluntary and informed written consent, on a form prescribed by the DOH of the patient for medical use of marijuana each time the qualified physician issues a physician certification for the patient.

The subsection also requires the qualified physician to submit specified documentation to the Board of Medicine related to issuing certifications for medical conditions of the same kind or class as the listed conditions and issuing certifications for smoking medical marijuana. A physician may only issue a physician certification for smoking to a minor patient if that patient has a terminal condition and meets other specified criteria.

A physician may issue a physician certification for up to three 70-day supply limits of marijuana or six 35-day supply limits of marijuana in a form for smoking. The DOH is required to establish daily dose limits by rule and a physician may request an exemption from the daily dose limits for a specified qualified patient by submitting a request form to the DOH.

A physician must evaluate an existing qualified patient at least once every 30 weeks before issuing a new physician certification. This evaluation must meet the criteria above for issuing a physician certification, including that the examination be conducted in person, and the physician must:

- Determine whether the patient still meets the criteria for a physician certification;
- Identify and document in the patient's medical record whether the patient has experienced adverse drug interactions with other medications or a reduction in the use of, or dependence on, other types of controlled substances; and

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<sup>3</sup> Defined as "a person who holds an active, unrestricted license as an allopathic physician under chapter 458 or as an osteopathic physician under chapter 459 and is in compliance with the physician education requirements" of the section.

- Submit a report to the DOH with such findings.

As of March 17, 2023, there are 2,540 qualified physicians in Florida and 800,356 qualified patients.<sup>4</sup> The average cost for an examination to obtain a physician certification varies from physician to physician. One website indicated that the cost can range from \$350-\$600 per year<sup>5</sup> while another indicated that the costs average around \$150 per visit.<sup>6</sup> Yet another site offered initial appointments at \$199, renewal appointments at \$169, and offered a membership plan for \$29 per month plus a \$50 application fee.<sup>7</sup> In addition to the cost of the physician's examination, a qualified patient is also required to pay a \$75 application fee to the DOH to obtain his or her medical marijuana use identification card.

## Telehealth

Telehealth is a mechanism for delivery of health care services. Health care professionals use telehealth as a platform to provide traditional health care services in a non-traditional manner. These services include, among others, preventative medicine and the treatment of chronic conditions.<sup>8</sup> Section 456.74, F.S., enacted in 2019, regulates the use of telehealth by Florida and out-of-state health care providers.

Current law broadly defines telehealth as the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to:<sup>9</sup>

- Assessment, diagnosis, consultation, treatment, and monitoring of a patient;
- Transfer of medical data;
- Patient and professional health-related education;
- Public health services; and
- Health administration.

A patient receiving telehealth services may be in any location at the time services are rendered and a telehealth provider may be in any location when providing telehealth services to a patient.

Health care services may be provided via telehealth by a Florida-licensed health care practitioner, a practitioner licensed under a multistate health care licensure compact of which Florida is a member,<sup>10</sup> or an out-of-state-health care provider who registers with the DOH.<sup>11</sup>

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<sup>4</sup> Office of Medical Marijuana Use Weekly Update, March 17, 2023, available at [https://knowthefactsmmj.com/wp-content/uploads/ommu\\_updates/2023/031723-OMMU-Update.pdf](https://knowthefactsmmj.com/wp-content/uploads/ommu_updates/2023/031723-OMMU-Update.pdf), (last visited Mar. 23, 2023).

<sup>5</sup> See <https://www.mmtcfl.com/florida-medical-marijuana-card-cost/>, (last visited Mar. 23, 2023).

<sup>6</sup> See <https://www.calmefect.com/how-much-does-it-cost-to-get-a-medical-marijuana-card-in-florida/#:~:text=What%20Do%20Doctors%20in%20Florida,need%20to%20see%20the%20doctor.,> (last visited March 23, 2023)/

<sup>7</sup> See <https://marijuanadoctor.com/pricing>, (last visited March 23, 2023).

<sup>8</sup> U.S. Department of Health and Human Services, *Report to Congress: E-Health and Telemedicine* (August 12, 2016), available at <https://aspe.hhs.gov/system/files/pdf/206751/TelemedicineE-HealthReport.pdf> (last visited Mar. 23, 2023).

<sup>9</sup> S. 456.47(1)(a), F.S.

<sup>10</sup> Florida is a member of the Nurse Licensure Compact. *See s. 464.0095, F.S.*

<sup>11</sup> S. 456.47(4), F.S.

Current law requires telehealth providers to meet the same standard of care required for in-person health care services to patients in this state. This ensures that a patient receives the same standard of care irrespective of the modality used by the health care professional to deliver the services.<sup>12</sup>

### **III. Effect of Proposed Changes:**

SB 344 amends s. 381.986, F.S., to specify that an initial examination for a physician certification for medical marijuana must be conducted in-person with the patient but that for a certification renewal, the examination may be conducted through telehealth as defined in s. 456.47, F.S.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

#### **D. State Tax or Fee Increases:**

None.

#### **E. Other Constitutional Issues:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

SB 344 may have an indeterminate positive fiscal impact on qualified patients who are able to have their physician certification renewal examinations conducted via telehealth and on the qualified physicians who are authorized to conduct such examinations via telehealth.

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<sup>12</sup> S. 456.47(2), F.S.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 381.986 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.