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## FISCAL IMPACT REPORT

SPONSOR: Thompson DATE TYPED: 2/15/01 HB 431  
 SHORT TITLE: Compassionate Use Medical Marijuana Act SB \_\_\_\_\_  
 ANALYST: Esquibel

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
N/A					

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB319; Relates to HB355, SB315, SB317, SB2; Conflicts with HB412 \_\_\_\_\_

### SOURCES OF INFORMATION

- Department of Public Safety (DPS)
- Department of Health (DOH)
- State Department of Education (SDE)
- NM Commission on Higher Education (CHE)
- Children, Youth and Families Department (CYFD)
- Economic Development Department (EDD)
- Attorney General’s Office (AG)
- Developmental Disabilities Planning Council (DDPC)
- Tourism Department (TD)
- State Agency on Aging (SAOA)
- Board of Nursing
- NM Health Policy Commission (HPC)

### SUMMARY

#### Synopsis of Bill

House Bill 431 proposes to enact the Compassionate Use Medical Marijuana Act, and amends and repeals certain provisions of the Controlled Substances Act. Key provisions of the bill include:

1. The establishment of the “*Compassionate Use Medical Marijuana Act*,” the purpose of the act to allow the beneficial use of Marijuana in treating certain medical conditions based on findings that:
  - c Marijuana is a medically valuable treatment for a variety of medical conditions.
  - c State Law should make a distinction between medical and non-medical use of Marijuana.

- c Practitioners should not be penalized for including marijuana as a treatment option for patients
- c Patients should not be penalized for acting on a practitioner's advice to use marijuana as a treatment option.
- 2. The act establishes a program within the Department of Health to administer a medical use of marijuana program pursuant to the *Compassionate Use Medical Marijuana Act*. Provisions of the program include the promulgation of rules by the Secretary of Health, the establishment of an advisory board, the establishment of requirements and procedures for program qualification and participation including certification of patients and requirements of other participants including individuals who dispense, administer and distribute marijuana for medical use.
- 3. Relieves patients and their caregivers certified with the program or other persons from arrest or criminal prosecution for possession of marijuana in amounts not in excess of what *is reasonably necessary* for *uninterrupted* medical treatment or for possessing or administering marijuana for certification purposes.
- 4. Relieves registered participants in the program from arrest or prosecution for possessing, distributing, cultivation or selling marijuana for purposes of the program.
- 5. Allows participation of a minor under the age of eighteen (18) in the program with parental consent.
- 6. Places prohibitions, restrictions and limitations on the medical use of marijuana that do not relieve the certified patient from liability or criminal prosecution including operation of a vehicle while under the influence of marijuana and possession in certain public places.
- 7. Establishes fraudulent representation to law enforcement about participation in the program as a crime punishable as a petty misdemeanor.
- 8. Establishes the medical use of marijuana as a defense to a prosecution involving marijuana.
- 9. Amends the Controlled Substances Act considers and moves marijuana, tetrahydrocannabinols or their chemical derivatives from Schedule I to Schedule II substances only for the purposes of the medical use of marijuana program pursuant to the *Compassionate Use of Medical Marijuana Act*. In all other circumstances, marijuana remains a Schedule I substance under the act.
- 10. Specifies the Department of Health as the regulatory authority for methadone use in rehabilitation programs.
- 11. Repeals the Sections 26-2A-1 through 26-2A-7 NMSA 1978, the Lynn Pierson Therapeutic Research Program.

### Significant Issues

Arguments for the medical use of marijuana include:

- 1. There is a wealth of literature available concerning medical conditions that may respond to the therapeutic use of marijuana under controlled circumstances. Such conditions include "wasting syndrome", nausea, and other side effects of AIDS and chemotherapy; glaucoma, multiple sclerosis, and Chron's disease.
- 2. The National Institutes of Health has issued a report reviewing the scientific data concerning the potential therapeutic uses for marijuana and the need for and feasibility of, additional research. The findings of this report include:
  - c Marijuana has potential therapeutic efficacy in the following clinical medical conditions: analgesia, neurological and movement disorders, nausea and vomiting associated with cancer chemotherapy, glaucoma, cachexia, and appetite stimulation in patients with AIDS or cancer.
  - c It is difficult to compare marijuana with products that have received regulatory approval under more rigorous experimental conditions than those previously conducted on marijuana.
  - c More and better clinical trials and studies would be needed.

Arguments against the medical use of marijuana include:

1. Marijuana is not a pure substance, is unstable, and is a varying and complex mixture of over 400 chemicals.
2. When smoked, marijuana produces over 2,000 chemicals including, hydrogen cyanide, ammonia, carbon monoxide, acetaldehyde, acetone, phenol, cresol, naphthalene, and other well known carcinogens, many in higher concentrations than in tobacco smoke.
3. Marijuana causes cancer of the lungs, mouth, lip and tongue.
4. The National Institute of Allergy and Infectious Disease reports that the many carcinogens in marijuana smoke would be a health hazard for patients with compromised immune systems.
5. Marijuana is a Schedule I controlled substance determined by the FDA to be highly addictive with no medicinal value.
6. Studies have shown that HIV positive smokers progress to full blown AIDS twice as fast as nonsmokers. (AIDS Weekly)
7. According to the American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (DSM IV), marijuana causes mental disorders such as schizophrenia and other psychoses, depression, panic attacks, hallucinations, paranoia, hostility, depersonalization, flashbacks, decreased cognitive performance, disconnected thought delusions and impaired memory.
8. The main psychoactive ingredient in marijuana (THC) is already legally available as a Schedule II controlled substance.
9. The quality control of marijuana is difficult to standardize and regulate.

### **FISCAL IMPLICATIONS**

The Department of Public Safety anticipates that there would be an administrative and fiscal impact on all law enforcement and the criminal justice system because a new crime involving false reporting of participation in the Act would have been created. Creation of new crimes creates a fiscal impact on all aspects of the criminal justice system. Additionally, the legislation as proposed exempts certain people from prosecution which could entail training law enforcement officers and prosecutors as to how to apply the provisions of the Act in making decisions as to whether individuals should be arrested and/or prosecuted.

The Board of Nursing indicates that the bill could increase the cost of care if all practitioners who have prescriptive authority are not included in the provisions of the bill. This would include not just physicians are currently prescribed in the bill, but also doctors of oriental medicine, dentists, physician assistants, certified nurse practitioners, clinical nurse specialists and certified nurse midwives.

### **ADMINISTRATIVE IMPLICATIONS**

The bill includes no appropriation to DOH to allow it to implement the medical use of marijuana program.

Repealing the state laws criminalizing marijuana places the enforcement burden entirely on the federal government.

It may be necessary to amend certain sections of the Medical Practice Act in order to fully offer physicians or other providers prescribing marijuana for therapeutic use the protections offered under the Act.

### **CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP**

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House Bill 431:

Duplicates SB319, Compassion Use of Medical Marijuana Act

Relates to HB355, providing for the control of methamphetamine

Relates to SB315, decriminalizing possession of one ounce or less of marijuana

Relates to SB317, amending penalties for possession of a controlled substance

Relates to SB2, amending sections of the Pain Relief Act

Conflicts with HB412, increasing penalties for controlled substances

### TECHNICAL ISSUES

Section 2, Part B, defining “debilitating medical condition” does not include glaucoma in the list of chronic or debilitating diseases, although the statute being repealed does.

Section 7, Lawful Activities, Part C, includes relief from arrest or prosecution for persons registered by the program who may be “selling” marijuana. The bill makes no other provision under which the sale of marijuana is legal, nor does federal regulation.

The act does not make provisions for obtaining or distributing marijuana to patients for use in the program beyond decriminalizing cultivation for patients or others registered with the program. Federal regulation of therapeutic research programs is very specific as to where and how marijuana may be obtained and distributed for use in a state program. Issues of distributing marijuana to be used for medicinal purposes to be considered are:

1. Legal sources of marijuana for research purposes include:
  - c Receiving it from the National Institute on Drug Abuse (NIDA);
  - c Importing it from specific sources with permission from the DEA;
  - c DEA permission to cultivate it; and
  - c Using confiscated marijuana supplied by the state police.
2. Using marijuana confiscated by state police for the purposes of a medicinal use of marijuana program requires that the marijuana must be tested to meet federal requirements on impurity, which is cost prohibitive.
3. Obtaining or distributing marijuana outside of the currently approved therapeutic research program puts NM in violation of federal law.
4. The state of Washington has appropriated funds for the purpose of researching tamper-free means of cultivating marijuana for medicinal purposes with the intent of applying to the federal government to become an alternative source of marijuana for research purposes.

The State Department of Education recommends including language in Section 8B that clearly prohibits the compassionate use of medical marijuana at all school-sponsored activities, including those events that may occur in a non-public place such as booster club pre-game events.

The Department of Health suggests the following amendments:

- c On page 4, line 6, strike “establish” and insert in lieu thereof “recommend”.
- c On page 4, line 11, after “patients” insert “and primary caregivers”.
- c On page 4, line 13, after “patients” insert “and primary caregivers”.
- c On page 4, line 14, after “who” strike “dispense, administer and distribute” and insert in lieu thereof “cultivate, possess, distribute, dispense or sell”.

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- c On page 5, line 14, after the word “A” strike “person” and insert in lieu thereof “practitioner”.
- c One page 5, line 16, strike “for possessing or administering marijuana or”.
- c One page 5, line 23, after “for” strike “possessing, distributing, cultivating or selling” and insert in lieu thereof “cultivating, possessing, distributing, dispensing or selling”.
- c On page 17, after line 10, insert the following new section to read:

“Section 15. [NEW MATERIAL] EFFECTIVE DATE.—The effective date of the provisions of this act is July 1, 2001.”

Explanation for the recommended amendment: Although this is not an appropriations bill, the Department believes that it would be useful to specify an effective date to simplify determinations of when the legal defenses enacted by HB 431 would be available.

### OTHER SUBSTANTIVE ISSUES

Medical marijuana use laws in other states vary. Those states that have passed laws related to the medical use of marijuana have done so with the same intent and findings provided in this bill. Sufficient scientific evidence exists to cause 35 states to enact favorable laws addressing the medical use of marijuana. Issues from the experiences of these states that should be noted are:

- c California, Arizona, Montana, Louisiana, Tennessee, Virginia, Ohio, Iowa, Wisconsin, Vermont, and the District of Columbia have passed laws providing for medical use of marijuana outside of the federally approved therapeutic research program. While upheld by a U.S. District Court in California, the U.S. Supreme Court has effectively overturned California’s 1996 passed ballot initiative, Proposition 215, barring the distribution of marijuana for medical purposes, but did not address the issue of patients cultivating marijuana for their own use.
- c Laws in Arizona and Louisiana allow physicians to prescribe Schedule I controlled substances under rules promulgated by the state.
- c Montana and District of Columbia laws would automatically reschedule THC and marijuana to Schedule II if the federal government authorizes the prescription or administration of these substances.
- c 5 states including California, Michigan, Missouri, New Hampshire and New Mexico have passed non-binding resolutions urging the federal government to allow doctors to prescribe marijuana.
- c 9 states including Oregon, Nevada, Colorado, Alaska and Florida have repealed medical marijuana laws.
- c 15 states, among them Hawaii, Idaho, Utah, Wyoming, and Mississippi have never had medical use laws of any kind.

### POSSIBLE QUESTIONS

1. Will legal medical use of marijuana impact the perception of the state as a tourism destination?

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2. Would passage of the bill necessitate the need for stronger substance abuse education, including the potential for abuse by program participants and for those who are dispensing the marijuana?

3. Will the program address the potential for victimization of an individual with a developmental disability or dual diagnosis participating in the program?

4. Why dismantle the Lynn Pierson Therapeutic Research Program currently allowed for under the Controlled Substances Therapeutic Act given that this program has already met federal regulations and secured required permissions from the Drug Enforcement Agency and the Food and Drug Administration for prescription and distribution of marijuana for therapeutic research? Repealing the Controlled Substances Therapeutic Act rather than amending provisions of the existing program may require new application for the required permits and licenses.

RAE/njw