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F I S C A L I M P A C T R E P O R T



SPONSOR: Maes DATE TYPED: 01/22/02 HB _____

SHORT TITLE: Compassionate Use Medical Cannabis Act SB 8

ANALYST: Esquibel

APPROPRIATION

Appropriation Contained		Estimated Additional Im- pact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
	N/A				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From

- LFC Files
- Department of Health (DOH)
- Public Defender Department (PDD)
- Attorney General (AG)
- Administrative Office of the Courts (AOC)

SUMMARY

Senate Bill 8 proposes to enact the Compassionate Use Medical Cannabis 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 Cannabis Act*," the purpose of the act being to allow the beneficial use of marijuana in treating certain medical conditions based on findings that:
 - Marijuana is a medically valuable treatment for a variety of medical conditions.
 - State law should make a distinction between medical and non-medical use of marijuana.
 - Practitioners should not be penalized for including marijuana as a treatment option for patients
 - 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 Cannabis Act*. Provisions of the program include the promulgation of rules by the Secretary of Health, the establishment of requirements and procedures for program qualification and participation including certification of patients and requirements of other participants, and creates a picture identification card for all persons certified to participate in any aspect of the medical cannabis program.
3. Section 3, Definitions, defines “debilitating medical condition” to mean:
 - Cancer
 - Human immunodeficiency virus or acquired immune deficiency syndrome
 - Glaucoma
 - Neuromuscular conditions that include spasticity or seizures
 - Other debilitating illnesses or conditions for which marijuana has a therapeutic benefit *and that the department designates by adopted rule as being a debilitating medical condition.*
4. Relieves patients and their caregivers certified with the program or other persons from arrest or criminal prosecution for possession (but does not include distributing, cultivation or selling) of marijuana in amounts not in excess of what *is reasonably necessary* for *uninterrupted* medical treatment. Includes prohibitions, restrictions and limitations on the medical use of marijuana that do not relieve the certified patient, or primary caregiver from liability or criminal prosecution for activities not authorized the *Compassionate Use Medical Cannabis Act*.
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. 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 Cannabis Act*. In all other circumstances, marijuana remains a Schedule I substance under the act.
9. Specifies the Department of Health as the regulatory authority for methadone use in rehabilitation programs.

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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:
 - 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.
 - It is difficult to compare marijuana with products that have received regulatory approval under more rigorous experimental conditions than those previously conducted on marijuana.
 - 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, naphtalene, 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.

TECHNICAL ISSUES

- HPC indicates Section 6, 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 provisional reference under which the sale of marijuana is legal, necessary, conditional or regulated. Nor does the bill specify that DOH or any other authority shall establish rules and regulations under which persons approved by DOH may legally produce, possess, distribute, cultivate or sell marijuana for the purposes of the Compassionate Use Medical Cannabis Act.
- The Act does not make provisions for the establishment of rules or regulations by DOH or any other regulatory authority regarding production, possession, distribution, cultivation or sale of marijuana for the purposes of the Compassionate Use Medical Cannabis Act.

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- The Act does not make provisions for the taxation of marijuana distributors.
- The Act does not make provisions for obtaining or distributing marijuana to patients for use in the program beyond decriminalizing producing 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:
 - Receiving it from the National Institute on Drug Abuse (NIDA);
 - Importing it from specific sources with permission from the DEA;
 - DEA permission to cultivate it; and
 - 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.
 5. 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.

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:

- 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

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marijuana for medical purposes, but did not address the issue of patients cultivating marijuana for their own use.

- Laws in Arizona and Louisiana allow physicians to prescribe Schedule I controlled substances under rules promulgated by the state.
- 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.
- 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.
- 9 states including Oregon, Nevada, Colorado, Alaska and Florida have repealed medical marijuana laws.
- 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?
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.
5. During the 2001 Legislature, the Senate Floor four times amended the Senate Public Affairs Committee substitute for Senate Bill 319 (Compassionate Use of Medical Marijuana Act) as amended by Senate Judiciary Committee to do the following:

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- Stipulate that DOH's rulemaking for the program be in accordance with federal law and regulations.
- Allow for the issuance of temporary certification to participate in the medical cannabis program between July 1, 2001 and the effective date of the promulgation of the program's rules by DOH. This section is repealed 30 days after the program's rules are promulgated by DOH.
- Stipulate that if a person approved to participate in any aspect of the program conveys or transfers cannabis to an uncertified person, they shall be not be able to participate in the program and be subject to arrest, prosecution and civil or criminal penalties as allowed for under the law.
- Specify that DOH must ensure the production of the cannabis is secure, and that the producer provide a regular inventory of the product.

Why does SB8 not provide for any of these provisions?

6. During the 2001 Legislature, the Senate Judiciary Committee amendments to the Senate Public Affairs Committee substitute for Senate Bill 319 (Compassionate Use of Medical Marijuana Act) defined "cannabis" to mean any derivative of the marijuana plant; and had provisions for an advisory board composed of nine practitioners nominated by the NM Medical Society and submitted to the Secretary of Health for approval by the NM Senate. Why were none of these provisions included in SB8?

RAE/ar