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FISCAL IMPACT REPORT

SPONSOR Komadina DATE TYPED 3/2/05 HB _____

SHORT TITLE Medical Cannabis Act SB 891/aSJC

ANALYST Hanika-Ortiz

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	None		\$150.0	Recurring	General Fund

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Health Policy Commission (HPC)
 New Mexico Department of Health (DOH)
 New Mexico Public Education Department (PED)
 Administrative Office of the Courts (AOC)
 New Mexico Public Defender Department (PDD)
 New Mexico Corrections Department (NMCD)
 The New Mexico Board of Pharmacy
 Office of the Attorney General (AGO)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment clarifies that only a New Mexico entity can be determined to be a qualified “contracted producer” of pharmaceutical grade cannabis. The amendment also changes the term “physician” to “person” allowing for New Mexico licensed practitioners in addition to physicians subject to the Controlled Substances Act, to prescribe pharmaceutical grade cannabis as subject to the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act. Language is added to clarify a primary caregiver responsible for managing the well-being of a qualified patient must be in New Mexico. The amendment also adds a neurologist to the advisory board that reports to the DOH.

Synopsis of Original Bill

SB 891 enacts the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act allowing

persons suffering from certain medical conditions to possess and use certain quantities of cannabis. Patients, caregivers, and physicians are protected from arrest or prosecution for respectively using, providing, or certifying the need to use cannabis for various conditions, including cancer, glaucoma, multiple sclerosis, spinal cord injuries, HIV, and epilepsy. Patients and their primary caregivers must be registered by the DOH in order to qualify to use cannabis. The DOH will adopt rules to identify cannabis production facilities, and to develop a distribution program for medical cannabis. Qualified cannabis producers identified by the DOH would also be immune from arrest or prosecution. The bill provides civil and criminal penalties for a producer, patient or caregiver who sells, distributes, dispenses or transfer cannabis to a person not approved pursuant to the Act or who obtains or transports cannabis outside New Mexico.

Oversight of the program will be provided to the DOH by an advisory board who would define debilitating medical conditions eligible for enrollment, convene monthly to conduct public hearings and evaluate petitions, issue recommendations concerning rules for enrollment and recommend quantities of cannabis that constitute an adequate supply to meet medical needs.

Significant Issues

The PED notes the act will not relieve the qualified patient or primary caregiver from criminal prosecution or civil liability for activities not authorized in the act; liability for damages or criminal prosecution arising out of the operation of a vehicle while under the influence of cannabis; criminal prosecution or civil penalty for the possession or use of cannabis in a school bus or public vehicle; or on school grounds or property; in the workplace of the qualified patient's or primary caregiver's employment; or at a public park, recreation center, youth center or other public place. The DOH is required to establish rules for the implementation of the act, including developing a distribution system for medical cannabis.

Cannabis is a schedule I controlled substance (schedule I means it does not have any accepted medical use in the U.S.A.). It should be rescheduled if it is determined there is recognized medicinal use in this state. There is no provision within federal law to allow the distribution of cannabis unless through a registered controlled substance researcher.

The HPC notes the Supreme Court has ruled that federal law makes no exceptions for growing or distributing cannabis, even if the goal is to help seriously ill patients using cannabis as a medicine. Thirty six states and the District of Columbia have passed legislation recognizing the medicinal value of cannabis and ten states have laws allowing patients legal access to cannabis despite the Supreme Court rule.

The AGO notes the United States Supreme Court is considering the case of Ashcroft v. Raich, which challenges the federal Controlled Substances Act as it relates to the medical use of cannabis. A decision in that case could impact the enforceability of federal laws regarding the cultivation and use of cannabis for medical purposes in states which have legalized such use.

The DOH notes in U.S. versus Oakland Cannabis Buyers' Cooperative, the Supreme Court ruled unanimously that the Oakland Buyers' Cooperative could not use a medical necessity argument as a defense against federal drug laws.

The federal government has licensed facilities to grow cannabis and to conduct research with the University of California San Diego on smoked cannabis.

PERFORMANCE IMPLICATIONS

Eighty one percent of New Mexico voters support making medicinal cannabis available to seriously ill or terminally ill patients in order to reduce their pain and suffering (NM Drug Policy Reform Study, 2001).

The Board of Pharmacy has security and record keeping requirements for all controlled substance registrants. The growing and distribution centers would be in violation of federal laws and any employees could be subject to federal prosecution should the DEA enforce their laws and regulations.

The NMCD reports additional impact if registered users are convicted on other charges and request medical cannabis while in custody.

FISCAL IMPLICATIONS

The NMCD notes that a limited decriminalization of marijuana may reduce caseloads for probation officers and possibly the number of inmates housed but this impact is likely to be negligible.

The PDD notes that any additional fiscal impact of the judiciary is proportional to the enforcement of the law and commenced prosecutions.

This Act does not include an appropriation to DOH to staff, develop and implement its provisions. DOH reports it cannot administer this Act without additional funds for staff, space, materials and support services. Costs are estimated at \$150 thousand annually.

It is unclear if patients or third party payors will purchase the medical marijuana from the DOH and if payment received, to what extent those funds will be used for the enforcement of the provisions of the Act.

ADMINISTRATIVE IMPLICATIONS

The Food and Drug Administration and Drug Enforcement Agency are the only organizations that have the authority to regulate the production and distribution of drugs. SB 891 does not propose to conduct research, therefore it is unlikely the DOH would be granted licensure to grow and distribute cannabis.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Similar to SB 795, Lynn Pierson Compassionate Use Act, has differences in regulation, authorizes licenses for one year, and requires that rules promulgated be subjected to public comment.

Relates to SB 492, which adds new language to The Compassionate Use Medical Marijuana Act, amends the Controlled Substances Act and repeals the Controlled Substances Therapeutic Research Act. The focus is on the topical use of marijuana that does not involve ingesting or inhaling cannabis.

TECHNICAL ISSUES

Suggest adding the definitions for “cannabis” and “pharmaceutical grade”.

The Board of Pharmacy may need to be included in the bill as providing regulatory oversight to the DOH if allowed to grow and distribute medical cannabis. The Board of Pharmacy also has issues with regard to use of the term “dispensing” of cannabis. Dispensing is a professional function limited to licensed practitioners and requires a label be attached to the product.

OTHER SUBSTANTIVE ISSUES

The DOH notes that because cannabis can provide relief from pain and suffering among people with serious or terminal medical conditions, the therapeutic uses of the drug should be clearly distinguished from the illegal recreational uses of the drug. For example, we distinguish the appropriate medical uses of morphine and diazepam (for pain and anxiety relief, respectively) from their illegal recreational uses. In medical practice, it would not be considered acceptable to deny cancer patients access to opioid analgesics such as morphine simply because morphine has a potential for abuse as a recreational drug.

In 1997, the White House Office of National Drug Control Policy (ONDCP) commissioned the Institute of Medicine of the National Academy of Sciences to review the scientific evidence regarding the medical use of marijuana. The following are quotes from the Executive Summary of that report:

“The accumulated data indicate a potential therapeutic value for cannabinoid drugs, particularly for symptoms such as pain relief, control of nausea and vomiting, and appetite stimulation.... people vary in their responses to medications, and there will likely always be a subpopulation of patients who do not respond well to other medication. The combination of cannabinoid drug effects (anxiety reduction, appetite stimulation, nausea reduction, and pain relief) suggests that cannabinoids would be moderately well suited for particular conditions, such as chemotherapy-induced nausea and vomiting and AIDS wasting.”

The HPC note positions against the medical use of cannabis include:

- Cannabis produces over 2,000 chemical when smoked, some of which are well-known carcinogens, many in higher concentrations than in tobacco smoke.
- Smoking Cannabis causes cancer of the lungs, mouth, lip and tongue.
- The National Institute of Allergy and Infectious Disease report that the many carcinogens in cannabis smoke are a health hazard for patients with compromised immune systems.
- The quality control of cannabis may be difficult to standardize and regulate.

ALTERNATIVE

The DOH believes medical cannabis research programs could provide reasonable access to cannabis for a restricted number of patients. The Controlled Substances Therapeutic Research Act of 1978 mandated the establishment of a clinical research program (the Lynn Pierson Therapeutic Research Program) to study smoked cannabis as a therapeutic agent in certain debilitating medical conditions, including cancer and glaucoma. Medical cannabis clinical research was conducted at UNM between 1978 and 1986, but then discontinued. Quoting from the *Report of the*

Lynn Pierson Therapeutic Research Program, “Results acquired under the State of New Mexico’s Controlled Substances Therapeutic Research Act indicate that oral THC (Marinol) and inhaled cannabis are both effective anti-emetics and anti-nauseants. This conclusion is based on data gathered at the time of the initial dose. The efficacy of the inhaled form is superior to the oral form (Marinol), but this difference is statistically significant for vomiting only.” In the past, the New Mexico DOH has had discussions with UNM Health Sciences Center and the HIV service provider Southwest CARE Center about reinitiating medical cannabis research. The investigators felt that the relatively small number of potential study participants and the difficulty of acquiring approvals required by federal government made it unlikely such a research program could be sustained.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

New Mexicans with serious chronic, debilitating diseases and conditions may have to go without medication that would be beneficial to improving their symptoms, or will self medicate at the risk of prosecution.

AHO/lg