

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/07  
 LAST UPDATED 02/09/07

SPONSOR Ortiz y Pino HB \_\_\_\_\_

SHORT TITLE Lynn and Erin Compassionate Use Act SB 238/aSJC/aSFI/aHF1

ANALYST Hanika Ortiz

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$115.0			Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Health (DOH)  
 Regulation and Licensing Department (RLD)  
 Attorney General's Office (AGO)  
 Public Defender's Department (PDD)  
 Corrections Department (CD)  
 Health Policy Commission (HPC)  
 Aging and Long Term Services Department (ALTSD)

### SUMMARY

#### Synopsis of HF1 Amendment

The House Floor Amendment provides that locations for medical cannabis distribution are not to be located within three hundred feet of any school, church or day care center.

#### Synopsis of SFI Amendment

The Senate Floor Amendment clarifies that any admission into hospice care in accordance with DOH rules will qualify for the medicinal use of marijuana to alleviate symptoms.

#### Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment allows the patient or caregiver not in possession of a registry identification card, be given an opportunity to produce such card before any arrest is made. The Amendment also removes the requirement that a practitioner is not required to ensure a patient or caregiver is holding a temporary certificate prior to recommending the medical use

of cannabis pursuant to the Act.

Synopsis of Original Bill

Senate Bill 238 enacts the new Lynn and Erin Compassionate Use Act which authorizes the use of marijuana by New Mexico adult residents in the treatment of various “debilitating medical conditions” that are certified by a physician and approved by an advisory board appointed by the Secretary of Health. DOH is required to establish rules by October 1, 2007 for the medical use of marijuana and the issuance of appropriate identification cards.

The bill permits prosecution of a certified patient who is driving while under the influence of marijuana, using marijuana in a school bus or on school grounds, at a place of employment or and in public parks and recreation areas, etc.

The bill exempts patients, patients’ primary caregivers, licensed physicians and licensed producers from arrest or prosecution under state law for manufacturing or possession of marijuana if acting within the program.

The bill exempts any property used in connection with the medical use of marijuana from civil forfeiture. The bill permits both civil and criminal prosecution of licensed producers under state law who sell, distribute, dispense or transfer marijuana to uncertified persons or who obtain or transport marijuana outside of New Mexico.

Senate Bill 238 also amends provisions within 30-31-6 Schedule I and 30-31-7 Schedule II of the Controlled Substances Act by expanding on the exclusion criteria for qualified patients under the Lyn and Erin Compassionate Use Act.

**FISCAL IMPLICATIONS**

There is no appropriation associated with this bill. However, there would be an estimated \$115,000 in costs to DOH to implement this program. Estimated costs for the administration of the program include 1) Advisory Board per diem and travel, \$5,000; 2) Program Manager and Clerk salary and benefits, \$100,000; and 3) Annual Operating Overhead for 2 staff, \$10,000.

The courts report there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

**SIGNIFICANT ISSUES**

The growing, distribution and use of cannabis will still be subject to federal laws and code. AGO states it is clear that any state statute permitting the use of marijuana for medical purposes authorizes acts that are clearly unlawful under the federal Controlled Substances Act. Given past enforcement by the federal government, it seems very likely that persons acting under a program adopted pursuant to this bill will be subject to federal prosecution.

Ago further comments that until such time as the U. S. Attorney General or the Congress make

possession of medical marijuana lawful under federal law, a contrary state law gambles with the personal liberty of those who use medical marijuana as authorized by state law but that still subjects them to criminal prosecution under federal law.

### **PERFORMANCE IMPLICATIONS**

The AGO further reports that the bill fails to address the issue of interstate transport of marijuana by certified patients or their primary caregivers.

The Board of Pharmacy will not be involved in the licensure of the producer or the distribution settings designated by DOH. Board of Pharmacy laws and rules are tied specifically to the federal requirements for licensure.

The Courts report that preventing the introduction of marijuana for inmates into the institution by visitors who may legally have it in their possession may strain the resources of prisons. This bill places a substantial burden on the staff of correctional institutions to determine which visitors who may test positive with an ion scan are legally able to possess marijuana.

### **ADMINISTRATIVE IMPLICATIONS**

The bill does not limit the use of marijuana by qualified individuals except for public areas, work place of the patient or caregiver, school bus, public vehicle, and school grounds. The Act allows primary caregivers to care for qualified patients and possess the patient's adequate supply. Qualified patients may be residing in Licensed Nursing Homes, Boarding Homes, Residential Care Facilities, Hospice, Home Health Care Agencies, and even Correctional/Detention Facilities.

### **TECHNICAL ISSUES**

RLD reports that the term dispensing is used in context with "licensed producer" in the bill. Dispense is defined in the Pharmacy Act as: "dispense" means the evaluation and implementation of a prescription, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to or use by a patient. The Compassionate Use Act does not include the requirement for a prescription. The licensed producers, licensed by D.O.H., will actually be distributing the marijuana to qualified individuals upon the "written certification" of a licensed practitioner which is a signed statement in the patient's record that, in the practitioner's professional opinion, the patient has a debilitating medical condition.

### **OTHER SUBSTANTIVE ISSUES**

DOH reports severe chronic pain, anorexia, and spasticity cause significant suffering among certain people living with cancer, HIV/AIDS, and neuromuscular diseases, including multiple sclerosis and spinal cord injury. There are approximately 6,553 New Mexicans are diagnosed with cancer each year, approximately 2,775 cancer patients die each year, and approximately 4,550 New Mexicans are currently living with HIV/AIDS. In some instances, the suffering associated with symptoms cannot be adequately controlled by the use of available prescription medications or the side effects of the prescription medications are intolerable. Many patients have found that these symptoms are well controlled by the use of medical cannabis when relief is not provided by prescription medications, and scientific evidence provides reasonable support for

the contention that cannabis can play a therapeutic role in the treatment of these serious medical conditions.

ALTSD reports that the American Association of Retired Persons (AARP) conducted a national medical marijuana poll in November 2004. The results of this poll indicate that nearly 75% of older Americans support providing access to medical marijuana.

A New Mexico Policy Reform Study conducted in 2001 found that 81% of New Mexico voters support making medical marijuana available to seriously or terminally ill patients in order to alleviate their pain and suffering from illnesses such as cancer, AIDS, and multiple sclerosis.

HPC reports that since 1996, eleven states have legalized medical marijuana use: Alaska, Arizona, California, Colorado, Hawaii, Maine, Nevada, Oregon, Rhode Island, Vermont, and Washington. Eight of the eleven did so through the initiative process, Hawaii's law was enacted by the legislature and signed by the governor in 2000, Vermont's was enacted by the legislature and passed into law without the governor's signature in May 2004, and Rhode Island's was enacted overriding the governor's veto in January 2006.

The most frequently specified illnesses covered in other states under medical marijuana laws are: cancer (21 states), glaucoma (19 states), pain/chronic illness (8 states), and HIV/AIDS (7 states). Seven states enacted laws that apply to all conditions and four states enacted their laws after a 1999 Institute of Medicine report advocated the efficacy of medicinal cannabis to relieve some symptoms for some people. Four states do not specify any illnesses or symptoms to which their statutes apply. (RAND Drug Policy Center, 2003)

Despite state legalization of medical marijuana, on June 6, 2005, the US Supreme Court ruled 6 to 3 that the federal government can continue arresting patients who use medical marijuana legally under their state laws.

## **ALTERNATIVES**

RLD suggests reenacting the Controlled Substances Therapeutic Research Act. The Drug Enforcement Administration typically has allowed/licensed practitioners (including facilities) conduct research with any substance listed in Schedule I through V of the Federal Act. The University of NM Health Sciences at one time was licensed by the DEA and the NM Board of Pharmacy to conduct therapeutic research under the Controlled Substances Therapeutic Research Act. That program was discontinued. This new Act will not qualify as research under the federal code and the possession or distribution of the cannabis would be subject to federal law. Conviction under federal law could subject the practitioner to disciplinary action in this state and others where they are licensed.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

State laws that make possession, use or distribution of marijuana a crime will remain in effect, permitting state prosecution for such acts regardless of medical use.

**AMENDMENTS**

DOH believes more time is needed to promulgate program rules and regulations to implement this Act. On Page 9, line 1 after “No later than” delete the words “October 1, 2007” and replace with, “January 1, 2008”.

On Page 7, Section 6, include “a representative of the New Mexico Board of Pharmacy.”  
Page 7, under Section 5, add the following to A. (3)(e) “on the grounds of any state prison, and at any publicly-operated and privately-operated correctional facility where the corrections department is housing any of its prisoners”. The Courts believe this amendment is needed to prevent visitors and members of the public from possessing or using cannabis when they enter the grounds of any state owned and operated prison, any privately-operated prison (such as in Santa Rosa and Hobbs) where the Department houses its prisoners, and any publicly-operated correctional facility (such as the Santa Fe County Detention Center) where the Department houses its prisoners.

AHO/nt