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

**SPONSOR** Candelaria/Ingle **ORIGINAL DATE** 2/21/17 **LAST UPDATED** 3/07/17 **HB**

**SHORT TITLE** Medical Marijuana Changes **SB** 371/aSPAC

**ANALYST** Chenier

## REVENUE (dollars in thousands)

| Estimated Revenue | | | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|
| FY17 | FY18 | FY19 | FY20 | | |
| | $0 | ($0-$2,760.0) | $0 | Recurring Biennially | Medical Cannabis if program did not stagger licensing years |
| | ($1,380.0) | ($1,380.0) | ($1,380.0) | Recurring | Medical Cannabis if program staggers licensing years |

(Parenthesis ( ) Indicate Revenue Decreases)

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

| | FY17 | FY18 | FY19 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| **Total** | | $15.0 | $15.0 | $30.0 | Recurring | Medical Cannabis |

(Parenthesis ( ) Indicate Expenditure Decreases)

Is similar to Senate Bill 8 and Senate Bill 177

**SOURCES OF INFORMATION**
LFC Files

Responses Received From
Workers' Compensation Administration (WCA)
Children Youth and Families Department (CYFD)
Department of Health (DOH)

## SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee Amendment to Senate Bill 371 would remove 'status as a veteran' as an automatic qualification for obtaining a registration identification card but would expedite the application process based on veteran status.

Synopsis of Bill

Senate Bill 371 allows for biennial producer licensing. The bill also adds 14 conditions to the definition of debilitating medical condition qualifying a person to obtain a medical cannabis registry identification card. Personal production license, registry identification card, tetrahydrocannabinol (THC), chronic condition, substance use disorder, and veteran are newly defined in the bill.

The bill would allow for interstate reciprocity for card holders and specifies the conditions under which reciprocity apply. The bill allows for presumptive eligibility except if the applicant is a veteran. If a patient is a veteran or if the patient's debilitating condition is considered chronic, then reapplication would be required no sooner than three years from the date of issuance. However, if the condition is not chronic, reapplication would be no sooner than three years but the patient would be required to submit a statement from a practitioner annually.

The bill sets licensure fees of $30 thousand for the first 150 plants and $10 thousand for each additional 50 plants. Also, based solely on an individual's participation in the medical cannabis program, the bill would not allow children to be removed and placed into state custody and would not allow someone to be precluded from receiving an anatomical gift.

Last the bill adds a provision requiring employers or insurers to pay for medical cannabis under several conditions including that a provider determine that use of medical cannabis is reasonable and necessary health care for the worker's injury.

## FISCAL IMPLICATIONS

Biennial licensure could have the effect of defunding the program every other year. The medical cannabis program reverts all excess revenue to the general fund each year and in FY16 reverted about $5 thousand. Unless the department was to stagger licensing years it is possible that on off years the program would have little to no revenue by which to operate. If the program staggered licensing years, revenue would likely be cut in half each year and may not be as stable depending on production fluctuations from year to year.

The department stated that writing new rules for the Medical Cannabis Program would have approximately $15 thousand fiscal impact.

Currently, Section 26-2B-1 NMSA 1978 provides the Department of Health with administrative flexibility to limit the number of licensed nonprofit producers (currently set at 35) and limit the number of cannabis plants a producer is allowed to possess (currently set at 450). Licensed producers are charged a fee of $200 per plant and at any given time as many as 15,750 plants are allowed to be in production. In FY18 licensed producers are expected to pay fees on about

13,800 plants amounting to $2.76 million. The sole source of revenue for the Medical Cannabis Program is licensing and fees.

Assuming the total statewide licensed producer plant count in FY18 will be 13,800 the program would be expected to generate $2.76 million, likely covering operating costs.
(13,800 plants ÷ 50) x $10,000 plant fee = $2.76 million

## SIGNIFICANT ISSUES

DOH provided the following:

> The bill would have significant impacts on NMDOH operations. Most significantly, it would require a 24-hour turnaround for issuance of an enrollment card (upon receipt of a completed application); would greatly increase the number of persons enrolled in the Medical Cannabis Program; would effectively defund the Medical Cannabis Program every other year; and would further increase administrative burdens by creation of reciprocity for persons enrolled in out-of-state medical cannabis programs.
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> If a patient qualified for the Medical Cannabis Program based on a non-chronic condition, and if that person did not timely submit a medical certification, it appears that the Department would be required to pursue revocation of the individual's enrollment, which would require the expenditure of agency resources to offer the individual an opportunity for a hearing, etc. Alternatively, if the patient submitted a medical certification that stated that the individual no longer had the qualifying diagnosis, or if the certification expressed concern that the individual was not likely to benefit from the use of cannabis, the Department would also have to pursue revocation, rather than denying an application, requiring expenditure of agency resources.
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> The bill would remove the existing text of the Compassionate Use Act which provides that medical certifications expire after one year. By removing the expiration period for medical certifications, the bill would create ambiguity regarding how long a certification may be applied to support an individual's application, particularly with respect to patients who do not have "chronic" conditions. Patients might attempt to qualify for the program using a diagnosis made more than one year in the past. For example, a patient might obtain a PTSD diagnosis from a medical practitioner, and then use paperwork documenting that diagnosis, eight years later to support their application. It is unclear whether this would satisfy eligibility requirements and require NMDOH to deem the patient eligible. Removal of this requirement would discourage patients from continuing to see medical practitioners once they obtain a qualifying diagnosis. This is inconsistent with ordinary standards of medical practice, such as in prescription medicine, in which practitioners issue prescriptions for periods not to exceed one year.
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> NMDOH received a petition in late 2016 for the addition of opioid dependence as a qualifying condition, and is currently in the process to determine whether to grant or deny the petition. The bill would add "substance use disorder" as a qualifying condition, but does not identify what this expression refers to, or how it is diagnosed. The Department is concerned that "substance use disorder" could refer to virtually any disorder related to the use of any substance. The Department is not aware of support in medical literature for the belief that the use of cannabis aids in preventing or treating every substance use disorder.

OAG in response to Senate Bill 8 stated that by providing a statutory presumption to an applicant's eligibility for a registry identification card in accordance with the Act, it could limit the Department from denying the application on other grounds, such as the Department's own analysis as to whether or not a physician's written certification of a patient's diagnosis of having a debilitating medical condition and the physician's opinion of the potential health benefits of medical cannabis satisfies the Department's own review. However, the language of SB8 still provides that the application must be completed in accordance with "department rules."

WCA provided the following:

> Medical cannabis became a part of New Mexico's worker's compensation system after the New Mexico Court of Appeals ruled in Vialpondo v. Ben's Automotive Services, 2014-NMCA-084, that medical cannabis can be a reasonable and necessary medical expense in a workers' compensation claim. The court ordered that in those instances, the employer reimburse the worker for his or her out of pocket expenses associated with his purchase and use of medical cannabis. Subsequent appellate rulings have affirmed the Vialpondo ruling. See Lewis v. American General, 2015-NMCA-090 and Maez v. Riley Indus., 2015-NMCA-049.
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> In 2015, the WCA passed regulations governing the process for reimbursement of medical cannabis in a workers' compensation claim. See 11.4.7.9 NMAC (10/01/2015). The bill provides that "employer or insurer shall pay for" a worker's medical cannabis when certain conditions are met. The proposed language appears to set up a direct payment system between insurers and licensed dispensaries dispensing the cannabis – the customary payment method for medical services is between insurer and health care provider. Such a direct pay system would be a significant shift from the current system of reimbursement. It is unclear how a direct payment system would work given that most cannabis dispensaries operate on a cash basis system and few banks are willing to conduct business with marijuana dispensaries.
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> Following the Court of Appeals' decisions, employers and carriers expressed numerous concerns about paying for medical cannabis. Those concerns included placing employers and insurers in the untenable position of choosing between violating federal law and complying with the Workers' Compensation Act. The concerns may be more valid if the bill intends to set up a direct pay system between payers and dispensaries. Opponents also expressed concern that allowing medical cannabis as a treatment method in workers' compensation would create a class of injured workers who cannot return to work, which is contrary to one of the Act's primary objectives. Concerns of fraud and increased crime related to trafficking medical cannabis have also been raised. It is anticipated these same concerns will be raised in response to the proposed legislation.

EC/sb/al/jle