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

SPONSOR SPAC **ORIGINAL DATE** 2/13/19 **LAST UPDATED** 3/8/19 **HB**

SHORT TITLE Medical Marijuana Changes **SB** CS/406/aSJC/aSFl

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Uncertain	Uncertain	Uncertain	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 356, SB 204, SB 242, SB 323, SB 477

SOURCES OF INFORMATION

LFC Files

Responses Received From
Human Services Department (HSD)
Department of Health (DOH)
Children, Youth and Families Department (CYFD)
New Mexico Independent Community Colleges (NMICC)

SUMMARY

Synopsis of SFl#2 Amendment

The second Senator Floor Amendment revises the application of the Medical Marijuana Act to employers vis-à-vis medical marijuana users. Employers would now remain able to take action against medical marijuana users based on an "employee's positive drug test for cannabis components or metabolites."

Employers would also be able to take adverse employment action against medical marijuana users who used medical cannabis on the job site or were impaired by use of medical marijuana, or if the employee were deemed by the employer to be in a "safety-sensitive position."

The definition of "adverse employment action" is removed.

Synopsis of SFl#1 Amendment

The first Senator Floor Amendment adds to the definition of "cannabis manufacturer." It would now apply to those persons or entities that might "*purchase, obtain,* sell and transport cannabis

products to other cannabis establishments (emphasis added to new terms).

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to the Senate Public Affairs Committee Substitute for Senate Bill 406 adds a section to the bill and would add a section to the Public School Code (Section 22 NMSA 1978) allowing for the use of medical marijuana in schools. The new section states local school boards and charter school governing bodies must make rules to store and administer the substance. Rules would include provisions for the child's certification of eligibility for the use of medical cannabis and a release of liability for its use for the school; for safe storage, not in a student's possession at school; and for parents or school personnel would need to administer the cannabis product in a nondisruptive way.

The school board or governing body's rules could limit the types of school personnel to be involved in administering medical cannabis, the settings in which the cannabis could be used, and when students could or could not possess, distribute, sell, or be under the influence of marijuana. The school board or governing body could decide not to allow use of medical marijuana if it "reasonably determines" it might lose federal funding if it did so, as long as a parent could appeal this decision to the secretary of PED.
Schools could not deny a student the right to attend school or discipline a student for needing to use medical cannabis, but also could not discipline a school employee who refused to administer it.

There is an extensive list of definitions within this added section, which are similar to those in the remainder of the bill. Notable is the requirement that a medical practitioner's certification would be good for no more than one year.

The amendment changes the definition of "cannabis consumption area" to a department-approved and licensed place where cannabis could be consumed. The bill removes the restriction on authorized persons growing their own medical marijuana, but permits the Department of Health to establish a rule limiting the amount. The amendment also allows for prosecution of use of marijuana on school grounds, school buses, and other school property.

A new section 15 of the bill provides that a producer licensed under Lynn and Erin Compassionate Use (of medical marijuana) Act (LECUA), as of the date of the bill's enactment would be considered to be a "cannabis producer."

Synopsis of Original Bill

The Senate Public Affairs Committee substitute for Senate Bill 406 amends the LECUA, in general increasing the ease with which patients with medical conditions can qualify for the use of medical marijuana, and their caretakers can help them with its purchase and use and decreasing the frequency with which patients must recertify as still having a qualifying condition. The list of qualifying conditions is markedly lengthened and could be further lengthened by DOH.

Certification of patients for use of medical marijuana could be performed in person or via telehealth. Receipt of medical marijuana would not be a disqualifying condition for a transplanted organ, and would not constitute grounds for intervention as a criterion for child abuse or neglect. Employers could not keep employees with registry cards from using medical

marijuana at work unless the employer could prove a safety issue existed.

Changes in the Compassionate Use Act (Section 26-2B NMSA 1978) are many and are detailed in the table under Significant Impact below.

The last sentence of the act summarizes many provisions of the act: "A qualified patient's use of cannabis pursuant to the Lynn and Erin Compassionate Use Act shall be considered the equivalent of the use of any other medication under the supervision of a physician"

FISCAL IMPLICATIONS

DOH would absorb the additional duties specified under SB406, including rulemaking, advisory board creation and support, and enforcement. Because there is no appropriation, these costs would have to come for an appropriation or increasing fee collection, difficult to anticipate under terms of the bill. DOH comments:

> SB406 would have various significant fiscal implications for NMDOH. SB406 would reduce the amounts that NMDOH can charge for licensing fees in the Medical Cannabis Program and require that fees be lessened for "smaller" businesses. SB406 would create greater administrative burdens for the agency, requiring 24-hour turnaround on all enrollment applications. SB406 would require that NMDOH adopt various regulations, including regulations concerning reciprocity.

SIGNIFICANT ISSUES

Important changes in the Lynn and Erin Compassionate Use Act are summarized by section in the table below:

Section of amended bill	Section of SB 406 prior to amendment	Provision or Change
1		New section, added by amendment, adding a section to the Public School Act (see above)
2	1	Short title of bill
3	2	Definition changes and additions: • "Cannabis" defined as all parts of plants containing more than 0.3% THC but not the stalks, components of a product other than those made of the cannabis plant, or any hemp product • Cannabis consumption area, cannabis courier, cannabis manufacturer, cannabis establishment, cannabis producer, cannabis testing facility newly defined • "Chronic condition" includes 23 conditions, many more than in the current statute", • "Personal production license" as a license allowing a qualified patient or his/her primary caregiver to produce cannabis for the patient's use • "Qualified patient": certified by a practitioner as having a

		qualifying, debilitating condition and a registration card for the program. The practitioner must have initially examined the patient in person, but can later use telemedicine to evaluate the patient. • "Reciprocal participant" is someone registered in another state's medical marijuana program • "Registry identification card" as granting access for a patient and his/her primary caregiver to possess, grow, purchase, and administer cannabis • "Safety-sensitive position" being a type of employment in which persons using intoxicating substances might prove a threat to that person or other people. • "Telemedicine" as commonly defined elsewhere, and • "Written certification," as a statement on a DOH-approved form indicating the medical condition for which cannabis is prescribed and the practitioner's belief that the benefits of its use outweighed the dangers.
4	3	Adds the qualified person's caregiver as one who could not be prosecuted or penalized for cannabis-related offenses unless the quantity involved was greater than twenty pounds or 6-12 plants. Specifies that cannabis possession or growth as specified in Section 2 is not a violation of state or local law. Those producing marijuana for personal use under the act could not use a pressurized oil extractor unless holding a separate DOH-issued license to do so. Being under the influence of medical cannabis would not be a violation as long as the person is acting according to the law. Qualified patients or their primary caregivers, if not in possession of the registry card would be given an opportunity to produce one before an arrest.
5	4	Specifies that criminal prosecution or civil penalties for non-authorized activities could still occur, including use or possession of cannabis in a school, a school bus, or in public spaces like parks. Sale or transfer of cannabis products to an unauthorized person by a licensee or her/his representative could lead to arrest.
6	5	Changes specifics of the (medical) advisory board, adds other medical associations, as well as the New Mexico Medical Society, as being able to propose members of the board and specifies that five members constitute a quorum. Duties of the board would include • Recommending additional qualifying conditions • Holding public hearings at least twice per year • Recommending procedures for issuing registry identification cards • Recommending a definition for "adequate supply" • Recommending formulations of cannabis products • Recommending an amount of cannabis lawfully possessed by a reciprocal patient.
7	6	DOH is required to identify requirements for licensure of medical marijuana producers, couriers, manufacturers and testing facilities, and to identify methods for assuring safety of purchased products.

		Ascertains that cannabis distribution can be excluded in an area nearer to a school, church, or daycare only if that institution was in place before the dispensary and was not the home of a qualified patient or representative. The department must rule on an applicant's registry identification card request within five days; cards would be valid for three years. Provides that DOH issue rules allowing anyone with authorization in another state for medical marijuana can have the same privileges in New Mexico, and asks the DOH to specify rules for joining the other 20 states that have reciprocity in use of medical marijuana. Reciprocal participants would have to possess proof of authorization in the other state and would register with a licensed retailer who would keep track of purchases and make that information available to DOH.
8	7	DOH to collect fees from cannabis-related persons and enterprises to allow it to monitor the medical marijuana program, and to be certain that there are no disparities in access to the program. DOH to allow use of cannabis products in certain areas restricted to medical cannabis users and their representatives and not visible from any public place.
9	8	Makes the period of use of a cannabis registry authorization three years but patients must submit a provider's statement every 12 month, stating that the patient has been examined, continues to have a qualifying condition, and that the provider believes the benefits outweigh the risks.
10	9	DOH would not be permitted to regulate the THC concentration in a cannabis product but could regulate package size and other aspects of packaging of cannabis products.
11	10	Businesses and professional groups could not sanction a person for appropriate use of medical marijuana or for having a drug screen positive for marijuana. Employers could sanction an employee using intoxicating substances at work, and could identify a job as being "safety-sensitive," in which case sanctions could also be applied.
12	11	Persons under probation or parole, if using medical marijuana according to the act, could not be penalized for doing so.
13	12	A person's use of medical marijuana according to the act's provisions could not be denied an organ transplant on that basis.
14	13	A person's use of medical marijuana according to the act could not be used to impugn that person's right to be a parent or be the sole cause of intervention by family services.
15		New section to define "cannabis producer"; see synopsis of amendment, above.

DOH submits the following concerns:

> Section 3(C)(4) at page 11 would authorize a qualified patient or primary caregiver to transfer, without financial consideration, to a qualified patient or primary caregiver not more than two ounces of cannabis. This provision would, for example, permit a qualified patient to transfer to another patient contaminated cannabis that the patient had grown using a personal production license. Whereas licensed nonprofit producers are required

by Department of Health rule to sample and test batches of cannabis before selling or transferring it (for mold and other contaminants), personal production license holders are not bound by any such requirement. This provision would also permit primary caregivers to transfer cannabis to one another. Primary caregivers are only authorized to possess cannabis on behalf of a qualified patient. Allowing primary caregivers to freely transfer cannabis to one another would seem inconsistent with the intent of the existing statute and may contribute to the diversion of cannabis.

SB406PAS contains conflicting text regarding the quantity of cannabis that a personal production license (PPL) holder is allowed to retain from their harvest. Section 3(A) at page 10 states that "a qualified patient or the qualified patient's primary caregiver *may possess that qualified patient's harvest of cannabis*." However, Section 3(C) at page 11 identifies as lawful "a qualified patient or primary caregiver possessing or transporting *not more than an adequate supply*." In addition to the potential conflict, allowing PPL holders to keep all of the cannabis that they grow, regardless of whether it exceeds the "adequate supply" limit, may encourage over-production of cannabis and contribute to diversion.

Section 6(F) at page 21 would remove the existing requirement that qualified patients and primary caregivers notify the Department of Health of a change of their address within 10 days of the change. Having current address information on file for enrolled patients and caregivers is important not only for ensuring the agency's ability to communicate with enrolled persons, but also to ensure that the information on an enrolled individual's card is accurate.

Section 3 at (C)(5) on page 11 states that a PPL holder can possess 6 mature plants and 12 immature plants. Department of Health rule 7.34.4.8(A)(1) NMAC currently limits the number of plants that a PPL holder can possess to 4 mature plants and 12 immature plants. The Department of Health has found that 4 mature plants and 12 immature plants has been sufficient to meet the needs of qualified patients who hold a personal production license.

CYFD comments (relevant to Section 15) that "participation in the medical cannabis program is no different from the use of prescription opioids: so long as the use of pharmaceuticals does not significantly affect an individual's capacity to safely parent, CYFD has no concerns."

RELATIONSHIP to other bills having to do with marijuana regulation, including the following:

HB 356	CANNABIS REGULATION ACT
SB 204	MEDICAL MARIJUANA IN SCHOOLS
SB 242	MEDICAL CANNABIS GROSS RECEIPTS & DEDUCTIONS
SB 323	DECREASE MARIJUANA PENALTIES
SB 477	MEDICAL CANNABIS AND REMOVAL OF CHILDREN

Many of the provisions of Section 15 of SB 406 are found in SB 477, making very similar changes to the Family Services Act.

AMENDMENTS

DOH suggests that the language, "provided that a qualified patient or the qualified patient's primary caregiver may possess that qualified patient's harvest of cannabis" be stricken from Section 3 at (A) on page 10, lines 14-16.

OTHER SUBSTANTIVE ISSUES

HSD notes the conflict between state and federal law regarding marijuana, inasmuch as the federal government continues to consider marijuana as a forbidden drug (i.e., Controlled Substance Schedule I), despite the fact that many states have legalized medical marijuana, and a smaller number have legalized recreational marijuana. However, because of the federal prohibition of the use of cannabis products, Medicaid programs cannot pay for those products.

LAC/al/sb