

Proposed NM MCP Rule Changes – Will they Undermine the Purpose & Intent of the Lynn and Erin Compassionate Use Act?

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DPA is committed to the continuing efficacy of the LECUA consistent with the original intents and purposes of that law.

- DPA has assisted in the drafting, passage, and implementation of medical marijuana legislation in a number of jurisdictions nationwide.
- DPA's New Mexico office was deeply involved in the drafting, passage, and implementation of the Lynn and Erin Compassionate Use Act (LECUA) enacted by the New Mexico legislature in 2007 establishing the New Mexico Medical Cannabis Program (NMMCP).

Questions for DOH

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Questions for DOH.

- ★ • Could the proposed changes lead to a reduction in product?
- Could the proposed changes increase the price of medical cannabis?
- Will fees for all non-profit producers increase under the proposed rules?
- Does the DOH have evidence to back up the allegation that significant diversion is occurring from patients with personal production licenses?
- ★ • Why is the DOH proposing to require criminal history screening for persons who apply for personal production licensure?
 - Will a person who is dying from cancer be denied a PPL if they were convicted with possessing a few grams of marijuana 20 years ago?

Questions for DOH.

- How will a patient know what THC concentration they need for their particular illness? How will they ask for an exemption?
- Can any NM labs meet the testing requirements outlined in the proposed regulations? If not, wouldn't this completely dismantle the program?
- Why did the DOH eliminate the requirement for the Department to conduct an annual assessment of the program?
- ★ Why is DOH proposing to allow a single medical provider to override the considered judgments of each and every other medical provider of a patient regarding medical cannabis?
- ★ Did the DOH return funds raised through existing fees to the general fund? If so, why were these funds not spent?

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Questions for DOH.

- What specifically will the DOH use the new/increased patient and provider fees for?
- ★ Did the DOH consult with the MAB on proposed changes? Did the DOH consult with the MAB specifically on changing the measurement of "adequate supply"?
- Did the DOH consult with producers and other stakeholders?
 - If not, who specifically was consulted and when?

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A Selection of DPA's Concerns

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Will the proposed changes lead to a reduction in product?

- DOH's Answer: **No.** (Source: DOH FAQ)
- DPA's Concerns/Analysis:
 - The question should not be whether the proposed changes are *meant* to lead to a reduction in product, but whether proposed changes *could* lead to a reduction. The following rules changes will absolutely lead to a reduction in medical cannabis:
 - reducing the amount of plants patients with personal product licenses can grow.
 - eliminating a patient's primary caregiver's ability to grow medicine.
 - limiting the concentration of THC in cannabis derived products.

Why is the DOH proposing to decrease the plant count for PPL's?

- DOH's Answer:
 - Personal production licenses (PPL) are the one area where the Department most often encounters law enforcement concerns regarding diversion of cannabis.
 - This plant count proposed is consistent with the number of plants allowed in medical cannabis programs in other states.

Why is the DOH proposing to decrease the plant count for PPL's?

- DPA's Concerns/Analysis/Questions:
 - Does the DOH have evidence to back up the allegation that significant diversion is occurring from patients with personal production licenses?
 - The number of plants currently allowed is already low and does not take into account the high potential for crop failure due to pests or other contaminants.

Why is the DOH proposing to decrease the plant count for PPL's?

- DPA's Concerns/Analysis/Questions Cont.:
 - The proposed plant count is NOT consistent with other states that allow personal cultivation.
 - The most common number of plants allowed is six (6) (AK, CA, CO, ME).
 - Michigan, similar to New Mexico in having a single growing season allows 12 plants. Rhode Island also allows up to 12 plants (or a caregiver can cultivate collectively for patients up to 24 plants for two or more patients).
 - Of the 15 states that allow home cultivation, the only state to limit patients to 2 plants, as DOH proposes is Vermont.

Why is the DOH eliminating the rule that caregivers can grow medicine for patients?

- DOH's Answer: **Unknown.**
- DPA's Concerns/Analysis:
 - Under the current rules parents, spouses, and other caregivers are allowed to grow medicine for the very sick and homebound.
 - DOH's proposed change would eliminate the possibility for caregivers to grow medicine for their sick children, family members, patients, etc..
 - There is a child in Las Cruces who is currently a medical cannabis patient and has severe epilepsy. Their family cannot afford to pay for the medicine their child needs and grow the medicine for their child.

Why is DOH Proposing to Give a Lone, Non-certifying Practitioner the Power to Veto a Patient Application?

- DOH's Answer: **Unknown.**
- DPA's Concerns/Analysis:
 - Under current regulations, a patient's application can be denied by the Dept. if the certifying doctor determines that medical cannabis use would be detrimental to the patient's health.
 - The Dept.'s proposed regulations allow *any* medical provider, not just a patient's certifying practitioner, to make this determination.
 - The proposed regulations also empower the Dept. to contact any and all medical providers identified in the patient's medical paperwork and solicit objections to medical cannabis from those practitioners, without the knowledge of the patient.

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Why is DOH Proposing to Give a Lone, Non-certifying Practitioner the Power to Veto a Patient Application?

- DPA's Concerns/Analysis Cont.:
 - This creates a system in which one medical provider could have absolute veto power over the professional opinions of medical practitioners who support medical cannabis as a treatment for approved debilitating medical conditions.
 - This system is in direct opposition to a fundamental concept in medical ethics: respect for patient autonomy. Patients have the right to make decisions about their medical care, and health care providers cannot make these decisions for their patient.

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Did DOH Consult with Producers, Stakeholders, Medical Advisory Board?

- DOH's Answer: **Yes.** (Source: DOH FAQ)
- DPA's Concerns/Analysis:
 - No prominent medical cannabis advocacy groups in New Mexico were consulted. The following groups communicate regularly with the Department on behalf of medical cannabis patients and none were asked for input: Drug Policy Alliance, New Mexico Medical Cannabis Patients' Alliance, South East New Mexico Cannabis Patients Alliance, nor the NM Producers' Guild.

Did DOH Consult with Producers, Stakeholders, Medical Advisory Board?

- DPA's Concerns/Analysis Cont.:
 - The Medical Advisory Board, consisting of eight physicians, appointed by the Governor and tasked with recommending what amount of medical cannabis constitutes an "adequate supply" of medicine and with making other recommendations about the regulation of the program was not consulted in a formal manner.
 - In a response to an IPRA dated 05/27/14, DOH states that the MAB "was not consulted regarding the regulation changes."

Why is the DOH Proposing to Increase Fees?

- DOH's Answer (FAQ):
 - The Department of Health has to balance its duty to effectively and responsibly carry out its statutory duties of oversight and implementation of the program and the needs of patients along with the concerns of the producers and other interested parties.
 - The Program is unable at this time to continue to meet increased administrative burdens without additional funding.
 - The proposed fees would be used to hire staff to support the administrative and oversight responsibilities of the program, ensure that patients have access to safe product and improve the outreach and education components of the program.

Why is the DOH Proposing to Increase Fees?

- DPA's Concerns/Analysis/Questions:
 - Instituting annual patient registry fees punishes the most vulnerable patients in the program, and will likely lead to a significant decrease in the number of program applicants.
 - Proposed rules already include substantial increases in fees for producers, which should be plenty to effectively run the program.
 - In 2013 the MCP *returned* excess revenue to the New Mexico General Fund. In written communication dated June 13, 2013 the Department confirms that the medical cannabis program gave \$162,992 in unused funds collected from producers back to the New Mexico General Fund.

Why did DOH eliminate the Dept.'s requirement to conduct an annual assessment of the program?

- DOH's Answer: **Unknown.**
- DPA's Concerns/Analysis:
 - By removing the requirement for regularly-issued assessment reports, the proposed regulations relieve the Department of its duty to properly and timely evaluate the medical cannabis program that it runs, and deprives taxpayers and the broader public the information necessary to determine whether this program operates consistently with the Act and the health and safety needs of New Mexicans.

Why did DOH eliminate the Dept.'s requirement to conduct an annual assessment of the program?

- DOH's Answer: **Unknown.**
- DPA's Concerns/Analysis:
 - The elimination of the annual assessment does not align with the Department's statement that the proposed fees "would be used to hire staff to support the administrative and oversight responsibilities of the program, ensure that patients have access to safe product and improve the outreach and education components of the program."

Overall Concern: The majority of proposed changes, if enacted, would violate the purpose & intent of Act.

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