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

SPONSOR: Martinez DATE TYPED: 03/07/03 HB 242/aHJC/aHFL#1/aHFL#2

SHORT TITLE: Lynn Pierson Compassionate Use Act SB

ANALYST: Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	**FY04**	**FY03**	**FY04**		
			See Narrative		

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From

Department of Health (DOH)
Health Policy Commission (HPC)

SUMMARY

Synopsis of HFL Amendment # 2:

The House Floor Amendment # 2

- Strikes HJC amendment # 3 which included multiple sclerosis and spinal cord injury to the list of "debilitating medical conditions.
- Re-defines damage to the spinal cord by adding "with objective neurological indication of intractable spasticity" and includes multiple sclerosis to the list of "debilitating medical conditions.

Synopsis of HFL Amendment # 1

The House Floor Amendment # 1:

- Strikes HJC amendment # 1 which was integrated in the language deleted (see next bullet).
- Deletes language pertaining to legislative findings/purpose.

Synopsis of HJC Amendment

The House Judiciary Committee amends the bill as follows:

- Provides for the acquisition of cannabis from an intrastate source.
- Adds multiple sclerosis and spinal cord injury to the list of "debilitating medical conditions".
- Defines "primary caregiver" as a resident of N M.
- Provides for the DOH Secretary to establish an advisory board that includes health education and educational experts and parents to develop and disseminate information for parents, youth and patients for the purpose of preventing cannabis misuse.
- Clarifies language.

Synopsis of Original Bill

House Bill 242 provides for the regulated use of medical cannabis by individuals suffering from specific debilitating illnesses including cancer, HIV/AIDS, glaucoma and epilepsy. The Lynn Pierson Compassionate Use Program would be administered by the Department of Health. Physicians would make application to the program on behalf of patients who suffer from the defined debilitating illnesses and who might benefit from medical cannabis. Patients enrolled in the medical cannabis program would not be subject to arrest, prosecution or penalty for the possession of an amount of cannabis that was adequate to meet their medical needs. Their private physician would supervise the use of medical cannabis.

Oversight of the program would be provided by an advisory board of five practitioners designated by the Secretary of Health and nominated by the New Mexico Medical Society who would define debilitating medical conditions eligible for enrollment, issue recommendations concerning rules for enrollment, and recommend quantities of cannabis that constitute an adequate supply to meet medical needs.

HB 242 would also amend the New Mexico Controlled Substances Act, Schedules I and II to except the use of cannabis for purposes of the Lynn Pierson Compassionate Use Act.

Significant Issues

According to DOH, some people living with cancer, HIV/AIDS, neuromuscular diseases, multiple sclerosis and spinal cord injury also suffer from chronic pain or anorexia or spasticity. In some instances, using available prescription medications cannot adequately control the suffering associated with those symptoms. Many patients have found that these symptoms are well controlled by the use of medical cannabis, and scientific evidence provides reasonable support for the contention that cannabis can play a therapeutic role in the treatment of these serious medical conditions.

HPC provided the following information relative to positions in support of medical use of cannabis:

- There is a wealth of literature available concerning medical conditions that may respond to a therapeutic use of marijuana under controlled circumstances. Such conditions include: "wasting syndrome," nausea, and other side effects of AIDS and chemotherapy; glaucoma, multiple sclerosis, and Chron's disease.
- Glaucoma is among the most thoroughly researched conditions for which medical use of marijuana applies and was one of the two conditions for which the therapeutic research program was originally established in New Mexico.
- The National Institute of Health has issued a report reviewing the scientific data concerning the potential therapeutic uses for marijuana and the need for, and feasibility of, additional research.
- Marijuana has potential therapeutic efficacy in the following clinical medical conditions:

    - Analgesia
    - Neurological and movement disorders
    - Nausea and vomiting associated with cancer chemotherapy
    - Glaucoma
    - Cachexia and appetite stimulation in patients with AIDS or cancer

<u>The following positions against the medical use of cannabis were provided by HPC</u>:

- An article published in the British Medical Journal July 7, 2001, *"Are cannabinoids and effective and safe treatment option in the management of pain? A qualitative systematic review,"* concluded that "cannabinoids are no more effective than codeine in controlling pain and have depressant effects on the central nervous system that limit their use… widespread introduction into clinical practice for pain management is therefore undesirable." Marijuana is not a pure substance, but is an unstable, varying and complex mixture of over 400 chemicals.
- When smoked, marijuana produces over 2,000 chemicals, including hydrogen cyanide, ammonia, carbon monoxide, acetaldehyde, acetone, phenol, cresol, naphtalene, and other well-known carcinogens, many in higher concentrations than found in tobacco smoke.
- Smoking marijuana causes cancer of the lungs, mouth, lip and tongue.
- The National Institute of Allergy and Infectious Disease reported that the many carcinogens in marijuana smoke would be a health hazard for patients with compromised immune systems.
- Marijuana is a Schedule I controlled substance determined by the FDA to be highly addictive with no medicinal value.
- Studies have shown that HIV positive smokers progress to full-blown AIDS twice as fast as nonsmokers, (AIDS Weekly).
- According to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM IV), marijuana causes mental disorders such as schizophrenia and other psychoses, depression, panic attacks, hallucinations, paranoia, hostility, depersonalization, flashbacks, decreased cognitive performance, disconnected thought, delusions and impaired memory.

FISCAL IMPLICATIONS

The bill does not contain an appropriation and DOH indicates that the program will be difficult to administer without proper funding. DOH acknowledges the need for funds for staff, space, materials and support services.

ADMINISTRATIVE IMPLICATIONS

DOH anticipates that program enrollment will be in the range of 50 to 200 patients. The following activities were noted by DOH as significantly increasing program workload.

- The advisory board, consisting of five practitioners, would make recommendations to the Department regarding the rules and regulations governing the Program.

- The Medical Director of the Infectious Diseases Bureau would review all applications made to the program for appropriate medical indications for the use of cannabis.

- The program would review and approve applications, issue registry identification cards to qualifying patients, maintain a registry of enrolled patients, and be available to verify patient enrollment to law enforcement agencies if an individual patient's enrollment is in question.

- Administration of the program would require a full-time medical care administrator.

- The Office of the General Counsel, Department of Health, would be responsible for promulgating program rules and regulations.

In addition, DOH expresses concerns around the full implementation of HIPPA regulations and requirements both at the federal and state level. Application of HIPPA regulations to this program may significantly impact upon the data collected and the Department's legal responsibilities. .

The Department of Public Safety anticipates that there would be an administrative and fiscal impact on all law enforcement and the criminal justice system because a new crime involving false reporting of participation in the Act would have been created. Creation of new crimes creates a fiscal impact on all aspects of the criminal justice system. Additionally, the legislation as proposed exempts certain people from prosecution, which could entail training law enforcement officers and prosecutors as to how to apply the provisions of the Act in making decisions as to whether individuals should be arrested and/or prosecuted.

TECHNICAL ISSUES

HB242 makes no provision for the acquisition of cannabis by patients under the *Lynn Pierson Compassionate Use Act*, nor does the bill provide regulation of persons who may legally distribute marijuana to registered patients, including relief from arrest or prosecution. Without a means to legally acquire cannabis for treatment, patients would be unable to benefit from the Act

Federal regulation of therapeutic research programs is very specific as to where and how marijuana may be obtained and distributed for use in a state program. Issues of distributing marijuana to be used for medicinal purposes to be considered are:

1. Legal sources of marijuana for research purposes include:
   - Receiving it from the National Institute on Drug Abuse (NIDA);
   - Importing it from specific sources with permission from the DEA;
   - DEA permission to cultivate it; and
   - Using confiscated marijuana supplied by the state police.

2. Using marijuana confiscated by state police for the purposes of a medicinal use of marijuana program requires that the marijuana must be tested to meet federal requirements on impurity, which is cost prohibitive.

3. The state of Washington has appropriated funds for the purpose of researching tamper-free means of cultivating marijuana for medicinal purposes with the intent of applying to the federal government to become an alternative source of marijuana for research purposes.

The definition of "practitioner" in HB242 is limited to physicians. Other practitioners licensed to prescribe controlled substances who may be treating patients with the defined "debilitating medical conditions" may therefore be prohibited from prescribing cannabis as a legal and viable treatment for their patients under the Act.

OTHER SUBSTANTIVE ISSUES

DOH states that the medical use of cannabis is entirely analogous to the therapeutic use of other powerful medicines (including Morphine and Valium) in the relief of pain and suffering. As is the case with those powerful prescription medications, a clear distinction should be drawn between the proper medical therapeutic use of cannabis and its illegal recreational use. As is the case with any medication, the benefits of medical cannabis must be weighed against its potential adverse effects in thorough discussions between a patient and their physician.

Those states that have passed laws related to the medical use of marijuana have done so with the same intent and findings provided in this bill. HPC reports that sufficient scientific evidence exists to cause 35 states to enact favorable laws addressing the medical use of marijuana. Issues from the experiences of these states that should be noted are:

- California, Arizona, Montana, Louisiana, Tennessee, Virginia, Ohio, Iowa, Wisconsin Vermont and the District of Columbia have passed laws providing for medical use of marijuana outside of the federally approved therapeutic research program.
- Laws in Arizona and Louisiana allow physicians to prescribe Schedule I controlled substances under rules promulgated by the state.
- Montana and District of Columbia laws would automatically reschedule THC and marijuana to Schedule II if the federal government authorizes the prescription or administration of these substances.
- 5 states, including California, Michigan, Missouri, New Hampshire and New Mexico, have passed non-binding resolutions urging the federal government to allow doctors to prescribe marijuana.
- 9 states, including Oregon, Nevada, Colorado, Alaska and Florida, have repealed medical marijuana laws.

- 15 states, among them Hawaii, Idaho, Utah, Wyoming, and Mississippi, have never had medical use laws of any kind.

AMENDMENTS

DOH recommends the following amendments to the bill:

Section 3, paragraph B. definition of "debilitating medical conditions". Review of the medical literature about medical cannabis in the Institute of Medicine report does not support its use in glaucoma or epilepsy. Therefore, these conditions should be removed from the list of qualifying debilitating medical conditions. Under HB242, the Program advisory board could review these conditions for inclusion at a later time, if additional information becomes available to support benefit from the use of medical cannabis.

Section 3, paragraph B. definition of "debilitating medical conditions". The Institute of Medicine report supports the use of medical cannabis for the treatment of spasticity associated with neuromuscular conditions, including multiple sclerosis and spinal cord injury. "Neuromuscular conditions with intractable spasticity" should be included in the list of "debilitating medical conditions" in HB242.

Section 6, paragraph D states, "the department may deny an application only if the applicant did not provide the information required pursuant to Subsection C of this section, or if the department determines that the information provided is false." The Medical Director of the Program should be given the authority to review applications by private physicians on behalf of their patients seeking enrollment in the program. The Medical Director of the Program should have the option to reject the application if the Medical Director judges that there is insufficient evidence to support the potential benefit of medical cannabis in that patient's case. The advisory board of patient enrollment should review acceptances and rejections of individual applications by the Medical Director of the program quarterly.

<u>Section 3.</u> Definitions

On page 4, line 1, change "person" to "resident of New Mexico"

On page 4, line 7, change "person" to "resident of New Mexico"

Rationale: This is in accordance with a letter from the NM Attorney General's Office last year on SB 8, suggesting that a New Mexico residency requirement would lessen potential conflict with federal law under the US Constitution's Interstate Commerce Clause.

<u>Section 6.</u> Registry Identification Cards – Advisory Board Created

On page 8, line 6, change "October 1, 2003" to "January 1, 2004".

On page 9, lines 5 – 9; Add as grounds for Department of Health denial of a registry card that the applicant does not demonstrate that he or she has a "debilitating medical condition" as defined in Section 3.B. of the bill.

POSSIBLE QUESTIONS

1. Could passage of the bill necessitate the need for stronger substance abuse education, including the potential for abuse by program participants and for those who are dispensing the marijuana?

2. Will the program address the potential for victimization of an individual with a developmental disability or dual diagnosis participating in the program?

3. Does the bill need language that clearly prohibits the compassionate use of medical marijuana at all school-sponsored activities, including those events that may occur in a non-public place such as booster club pre-game events?

BD/prr/sb