



## DEPARTMENT OF THE ATTORNEY GENERAL

### Legislative Brief

#### **An Act Relating to Food and Drugs – The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act**

- **Support** the use of marijuana for individuals who need it due to medical reasons and those who lawfully assist those patients.
- **Concerned** with the fraudulent use of the program and those who are attempting to take advantage of the privileges of our State's medical marijuana program for unlawful purposes.
- Put forward legislation to address both patient and public safety issues realized since its enactment and provide for additional safeguards to prevent improper use of the program.
- **PROTECT INTEGRITY OF PROGRAM FOR PATIENTS.**
- Twenty (20) states and the District of Columbia allow for the medical use of marijuana.
  - While many of the medical marijuana states' laws provide substantially similar protections for patients, they vary on the actual implementation of the program.

#### **GROWS**

- Based on New Mexico law, the act provides that for any cardholder, besides a compassion center, to cultivate marijuana they must first obtain a cultivation certificate from the Department of Health ("DOH").
  - A certificate may only be issued for cultivation to occur in the cardholder's residence or property owned by the cardholder.
    - No more than one certificate may be issued per residence unless evidence is shown that more than one cardholder resides at the location.

- Multiple cultivation certificates may be not be issued for non-residential locations.
  - Certificates are only valid for one year.
  - **Cardholders who are granted a cultivation certificate CANNOT collectively grow with other cardholder grated a cultivation certificate unless there is evidence that they reside at the same location.**
- Before a certificate is issued, DOH must receive documentation from the municipality where the cultivation is located that the location and the cultivation are in compliance with any applicable state or municipal housing and zoning codes.
- Currently, fourteen (14) of the medical marijuana states allow for home cultivation.
  - In four (4) of those states cultivations are subject to restrictions. Two (2) medical marijuana states provide that for a person to cultivate; the grow must be registered and subject to inspection. Two (2) medical marijuana states allow cultivation if the cardholder does not live in a specified radius of a dispensary.
- The emergence of marijuana grows has raised significant issues of **cardholder and public safety**.
  - From a cardholder safety standpoint, marijuana grows have created a new class of crime victim.
    - Grows have been the subject of burglary attempts throughout our state. The value of the marijuana contained in a grow lead them to be a clear target for criminal activity.
    - Due to the significant potential for theft, cardholders are left with decision to protect their grows with weapons and force, if necessary. As we have seen, that protection has resulted in violence, injury and even death.
- Not only have marijuana grows created public safety issues due to the potential criminal activity above, but also due to the **hazards of improperly regulated marijuana grows**.
  - Effectively maintaining a marijuana grow is a complex process that generally requires a enormous amount of electricity due to grow lights, fans, etc...

- In some instances, growers will adapt the grow location's electrical system to fit its needs, this leads to electrical systems that are not in compliance with municipal safety codes and can result in overwhelming an electrical system that can lead to fire.
- Not only does this present a safety issue to the grow location; it also puts the surrounding neighborhood at risk.
- Changes the amount of marijuana that cardholders, not including compassion centers, may legally possess.
  - Cardholders now may possess up to 2.5 ounces, 12 mature plants and 12 seedlings, legislation seeks to change to 5 ounces, 3 mature plants, and 3 seedlings.
  - For a primary caregiver cardholder who assists more than one patient, now they may possess no more than 5 ounces and 24 plants, legislation seeks to change to 10 ounces, 6 plants and 6 seedlings.
  - Only have plants if have cultivation certificate.
- Rhode Island and four (4) other states allow for the highest number of plant possession in the country.
- At least seven (7) of the medical marijuana states do not even allow for plant possession or cultivation.
- Due to the safety concerns addressed above, it may be appropriate to decrease the amount of plants cardholders are allowed to possess and increase the amount of ounces a cardholder can possess, so patient cardholders can receive the marijuana they need for their debilitating condition.
- Amends section to provide that landlords may have the discretion not to lease or continue to lease to a tenant who cultivates marijuana in the leased premises due to safety and welfare concerns for the other tenants and the property.
  - For the safety hazards addressed above, it is important that landlords have the ability to protect their property and themselves from liability.

**The legislation also seeks to enact additional safeguards throughout the program to prevent fraudulent use of the program and to ensure that those who are participating are doing so to help patients and not to take advantage of the program.**

- Requires a national criminal records check of primary caregiver applicants
  - A conviction for any felony drug offense, in any jurisdiction, would disqualify them from being a caregiver.
  - Currently, felony drug convictions serve as a disqualifier, but DOH may waive the disqualification.
- Provides that the DOH must revoke the identification card of any cardholder who is convicted of a felony drug offense.
  - Currently, DOH merely has the discretion to revoke an identification card.
- Provides that if a person exceeds the possession limits set forth in the chapter or cultivates without a cultivation certificate, they will be subject to prosecution under chapter 21-28.
- Repeals the ability of primary caregiver cardholders to assert the affirmative defense provided in the chapter.
  - Currently, the affirmative defense allows caregivers who have not registered with DOH, but are providing marijuana to a patient that has medical certification by their physician and are within the lawful possession amounts, to have the protections of the affirmative defense without having to take the affirmative steps of registering.
    - This allows for individuals to take advantage of the privileges of the program without registering.
  - Only five (5) of the medical marijuana states have an affirmative defense as broad as Rhode Island's affirmative defense.
- Mandate DOH to maintain a twenty four (24) hour automated verification system for law enforcement to verify whether a registry identification card is valid.
  - Both Arizona and California have similar systems.
  - Currently, law enforcement can only verify a registration card by calling DOH during business hours.
    - Providing twenty four (24) hour verification will increase cardholder and officer safety and provide for more effective use of law enforcement manpower.
    - Immediate verification will not only protect from cardholder arrest if in possession of a lawful quantity, it will also, in certain

circumstances, prevent the execution of search warrants on cardholders, which is in the best interests of cardholder and officer safety.

The State has the responsibility to ensure that this program is regulated in way that protects the safety of the entire community, especially the patients who are using the program for the benefit of their individual health, the amendments offered in this legislation provide the protections that are needed to ensure the integrity of program.