

Emerging Issue: Medical Marijuana

Summary of Medical Marijuana Draft Legislation

Prepared for the Children, Families, Health, and Human Services Interim Committee
August 2010

Background

The Children, Families, Health, and Human Services Interim Committee's Subcommittee on Medical Marijuana met three times from June 29 to Aug. 12, 2010. The subcommittee's meetings generally were held as work sessions in which members determined what legislative proposals to recommend to the full committee. During these meetings, the subcommittee:

- reviewed recommendations from the Medical Marijuana Work Group, the medical marijuana industry, law enforcement, local government, schools, and the business community;
- reviewed information on how laws in other states handle several issues of concern to subcommittee members, including physician certifications, public smoking, limits on allowable amounts of marijuana, and use for chronic pain;
- looked at the dispensary systems created in Colorado, Maine, New Mexico, and Rhode Island;
- discussed options for regulating the industry and tracking the growth and distribution of medical marijuana; and
- took public comment at several points in each of its meetings.

The subcommittee authorized the drafting of legislation to make numerous changes to the current Medical Marijuana Act, incorporate the dispensary and regulatory system adopted by the Colorado Legislature earlier this year, and include proposals by the business community.

Overview of Draft Legislation

Staff has prepared three bill drafts for the committee's consideration, as follows:

- LC MM01, which contains revisions to the existing Medical Marijuana Act and creates the new regulatory system;
- LC MM02, which contains business community proposals for changes involving employer-employee issues related to medical marijuana; and
- LC MM03, which clarifies that the Clean Indoor Air Act prohibitions on smoking apply to the smoking of medical marijuana.

The committee could adopt some or all of these bills. Committee members also could decide to meld two or more bills together into a single bill draft.

Summary of LC MM02

LC MM02 reflects the proposals developed by a work group of businesses that has been discussing issues related to medical marijuana in the workplace. The subcommittee invited the work group to submit its proposals and agreed to have legislation drafted to reflect the recommendations.

The table below summarizes the proposed changes, by section

Section #	Key Changes
1	<ul style="list-style-type: none">▸ Places additional employees under the provisions of the Workforce Drug and Alcohol Testing Act
2	<ul style="list-style-type: none">▸ Exempts a person who engages in the medical use of marijuana in the course and scope of employment from the protections of 39-2-313, MCA, which prohibits discrimination against employees or job applicants who use a lawful product when the employee is off of the employer's premises during nonworking hours
3	<ul style="list-style-type: none">▸ Provides an exception to the legal protections granted to people engaged in the medical use of marijuana; the exception is contained in Section 4 of the bill draft as subsection (3)
4	<ul style="list-style-type: none">▸ Clarifies that workers' compensation insurers are not required to reimburse a person for the costs of medical marijuana▸ Clarifies the types of health insurers who are not required to reimburse the costs of medical marijuana▸ Clarifies that an employer does not have to accommodate an employee's medical use in the course and scope of employment or accommodate an employee who is under the influence because of medical use of marijuana▸ Clarifies that a workers' compensation insurer does not have to cover the costs of benefits related to an injured worker's medical use of use of marijuana▸ Allows an employer to include in a contract a prohibition on medical use of marijuana▸ Protects an employer from wrongful discharge or discrimination complaints if an employee engaged in medical use in the course or scope of employment
5	<ul style="list-style-type: none">▸ Provides an immediate effective date

Summary of LC MM01

LC MM01 reflects the bulk of the recommendations from the subcommittee. It revises the existing Medical Marijuana Act in a number of ways and also creates a new dispensary and regulatory system for medical marijuana. The bill incorporates numerous provisions from recently adopted Colorado legislation.

In addition to summarizing the provisions of each section of the bill, the table on the following pages indicates provisions that the committee may want to review closely. These provisions generally are based on the Colorado law but may differ from the approach committee members want to take in enacting a new regulatory structure. **THESE PROVISIONS ARE SET APART IN THE TABLE AND IN THE BILL DRAFT THROUGH THE USE OF CAPITALIZED TEXT.**

Section #	Key Changes
1	<ul style="list-style-type: none"> ▶ Adds language to indicate legislative purpose
2	<ul style="list-style-type: none"> ▶ Revises caregiver definition and changes the term to "provider" ▶ Revises list of debilitating medical conditions ▶ Requires two physician certifications for chronic pain ▶ Requires a cardholder to be a Montana resident ▶ Adds definitions for plants ▶ Adds definitions related to dispensary/regulatory system ▶ Adds definition for standard of care to be used by physicians
3	<ul style="list-style-type: none"> ▶ Revises this section of existing law so that it applies only to registered cardholders; caregiver requirements are moved to Section 17 ▶ Requires cardholder to indicate who will grow medical marijuana for the cardholder ▶ Prohibits a person on probation or parole from being a cardholder ▶ Allows sharing of information with the Department of Revenue
4	<ul style="list-style-type: none"> ▶ ALLOWS PERMANENT REVOCATION OF A REGISTRY CARD
5	<ul style="list-style-type: none"> ▶ Prohibits a physician from having any financial affiliation with a provider or dispensary ▶ Prohibits a physician from examining patients at a location where medical marijuana is grown, manufactured, sold, or distributed ▶ Allows DPHHS or the Board of Medical Examiners to investigate and take action against physicians who violation the prohibitions
6	<ul style="list-style-type: none"> ▶ Allows local governments to establish regulations for, but not ban, medical marijuana businesses or providers ▶ Allows licensees 2 years to come into compliance
7	<ul style="list-style-type: none"> ▶ Specifies the individuals or entities that may grow medical marijuana ▶ Changes limits on allowable amounts and creates a monthly ceiling on purchases ▶ REQUIRES RECORDKEEPING BY A PROVIDER ▶ Requires that medical marijuana be grown in Montana ▶ Clarifies reciprocity provisions for cardholders from other states
8	<ul style="list-style-type: none"> ▶ Moves confidentiality requirements from 50-46-103, MCA, to 50-46-202, MCA, which contains the penalties for violation of confidentiality requirements
9	<ul style="list-style-type: none"> ▶ Moves legal protections contained in 50-46-201, MCA, into this new section ▶ Clarifies that individuals may be penalized under certain circumstances for actions related to medical use of marijuana ▶ Clarifies that a person without a registry card may be arrested or prosecuted for possession of use even if they're in the vicinity of a person with a registry card
10	<ul style="list-style-type: none"> ▶ Requires a cardholder or licensee to carry the card or license and provide it, along with photo identification, upon request of law enforcement ▶ PROVIDES A PENALTY
11	<ul style="list-style-type: none"> ▶ Clarifies that a cardholder may not drive under the influence of medical marijuana ▶ PROVIDES A PENALTY ▶ Prohibits medical use of marijuana in K-12 and postsecondary schools and related property and in health care facilities, except for hospices ▶ Prohibits smoking in public or where children would be adversely affected ▶ Prohibits growing marijuana in a residence unless it's grown only for personal use
11b	<ul style="list-style-type: none"> ▶ Makes licensees subject to existing law and penalties for fraudulent representation
13	<ul style="list-style-type: none"> ▶ Extends DPHHS rulemaking authority to cover forms of proof of Montana residency

Section #	Key Changes
14	<ul style="list-style-type: none"> ▶ Establishes the Department of Revenue as the state licensing authority for people growing, manufacturing, delivering, or selling medical marijuana ▶ Requires costs of state regulation to be covered by licensing fees
15	<ul style="list-style-type: none"> ▶ Establishes the powers, duties, and rulemaking authority of the licensing authority ▶ REQUIRES LICENSING AUTHORITY TO ASK THE DEA TO RESCHEDULE MARIJUANA AS A CLASS II CONTROLLED SUBSTANCE
16	<ul style="list-style-type: none"> ▶ Establishes classes of licensure ▶ Allows for medical marijuana dispensaries and businesses that make products containing medical marijuana ▶ Requires that medical marijuana growers have a dispensary or manufacturer license
17	<ul style="list-style-type: none"> ▶ Establishes licensing requirements and allowable activities for providers (formerly called caregivers) ▶ GENERALLY LIMITS PROVIDERS TO HAVING FIVE OR FEWER PATIENTS ▶ REQUIRES STATE LICENSING AUTHORITY TO KEEP A LIST OF PEOPLE INTERESTED IN BEING PROVIDERS AND GIVE NAMES TO CARDHOLDERS
18	<ul style="list-style-type: none"> ▶ Establishes allowable activities for medical marijuana dispensaries ▶ ALLOWS SALES AMONG LICENSEES ▶ Requires dispensaries to obtain proof of identity before a sale
19	<ul style="list-style-type: none"> ▶ Allows a medical marijuana dispensary or infused products manufacturer to also obtain a license to grow marijuana
20	<ul style="list-style-type: none"> ▶ Establishes allowable activities for medical marijuana-infused products manufacturers
21	<ul style="list-style-type: none"> ▶ Establishes licensing procedures for all classes of licenses ▶ Requires fingerprint background checks
22	<ul style="list-style-type: none"> ▶ Lists circumstances that disqualify a person from licensure ▶ ALLOWS LICENSURE FOR PEOPLE CONVICTED OF FELONIES IF THEY COMPLETED THEIR SENTENCES MORE THAN FIVE YEARS AGO ▶ ALLOWS DENIAL IF A PERSON IS NOT OF GOOD MORAL CHARACTER OR IS ASSOCIATED WITH A PERSON NOT OF GOOD MORAL CHARACTER ▶ REQUIRES APPLICANT TO BE A MONTANA RESIDENT FOR AT LEAST 2 YEARS ▶ EXEMPTS A PROVIDER FROM DISQUALIFICATION FOR FAILURE TO PAY TAXES, CHILD SUPPORT, OR STUDENT LOANS
23	<ul style="list-style-type: none"> ▶ Establishes when a license may be denied
24	<ul style="list-style-type: none"> ▶ Places certain restrictions on approval of new licenses, including distance restrictions ▶ ALLOWS A LOCAL GOVERNMENT TO VARY THE DISTANCE RESTRICTIONS
25	<ul style="list-style-type: none"> ▶ Requires that a licensee display the license on the premises
26	<ul style="list-style-type: none"> ▶ Requires that the state licensing authority be notified of transfers of ownership, location, or management
27	<ul style="list-style-type: none"> ▶ Requires that names of all people with a financial interest be disclosed ▶ Generally requires fingerprint background checks of people with a financial interest
28	<ul style="list-style-type: none"> ▶ Establishes procedures for license renewal ▶ Allows for late renewals
29	<ul style="list-style-type: none"> ▶ Allows the state licensing authority to revoke or not renew an inactive license

Section #	Key Changes
30	<ul style="list-style-type: none"> ▶ Establishes the acts that constitute unlawful conduct by a licensee ▶ PREVENTS SALE OF MEDICAL MARIJUANA BETWEEN 7 P.M. AND 8 A.M.
31	<ul style="list-style-type: none"> ▶ Establishes inspection procedures for records and premises ▶ Allows for audits of records ▶ REQUIRES QUARTERLY REPORTING OF SALES AND INVENTORY ON HAND
32	<ul style="list-style-type: none"> ▶ Establishes penalties for license violations
33	<ul style="list-style-type: none"> ▶ Creates a special revenue account made up of licensing fees and fines ▶ REQUIRES EXCESS COSTS TO BE TRANSFERRED TO THE GENERAL FUND
34	<ul style="list-style-type: none"> ▶ Repeals 50-46-206, MCA, the affirmative defense
35	<ul style="list-style-type: none"> ▶ TRANSFERS FUNDS FROM THE CURRENT MEDICAL MARIJUANA SPECIAL REVENUE ACCOUNT TO COVER START-UP COSTS FOR THE STATE LICENSING AUTHORITY
36	<ul style="list-style-type: none"> ▶ APPROPRIATES FUNDS FOR OPERATION OF THE LICENSING AUTHORITY
37	<ul style="list-style-type: none"> ▶ Codifies all new material in the Medical Marijuana Act (Title 50, chapter 46)
38	<ul style="list-style-type: none"> ▶ Provides for severability of any part of the law found to be invalid
39	<ul style="list-style-type: none"> ▶ Provides differing effective dates, with regulatory changes generally going into effect Oct. 1, 2011, and most other sections having an immediate effective date
40	<ul style="list-style-type: none"> ▶ Requires that people currently growing, manufacturing, distributing, or selling marijuana come into compliance with the provisions of the law by Oct. 1, 2011
41	<ul style="list-style-type: none"> ▶ PROVIDES A TERMINATION DATE TO ALLOW FOR SUNSET REVIEW

PROPOSED LIST OF DEBILITATING MEDICAL CONDITIONS

As currently drafted, the list of debilitating medical conditions would read as follows:

- cancer;
- glaucoma;
- positive status for HIV or AIDS;
- severe anorexia* or cachexia;
- severe chronic pain documented by written certification from two physicians;
- intractable nausea or vomiting;
- epilepsy;
- multiple sclerosis;
- Crohn's disease;
- painful peripheral neuropathy;*
- amyotrophic lateral sclerosis (Lou Gehrig's disease);*
- damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity;*
- hepatitis C infection currently receiving antiviral treatment;*
- inflammatory autoimmune-mediated arthritis;*
- admittance into hospice care;* or
- any other medical condition adopted by DPHHS by rule.

* denotes condition new to the list

