

Summary of State Agency Meeting on Medical Marijuana May 24, 2010

Representatives of the Department of Public Health and Human Services, Department of Justice, Department of Corrections, Department of Agriculture, Board of Medical Examiners, and Board of Pharmacy met on May 24 to discuss potential changes to the Medical Marijuana Act. The meeting was arranged at the request of the Children, Families, Health, and Human Services Interim Committee, which in April asked its staff to work with state agencies and interested persons on proposed changes to the Act.

The group reviewed most sections of the law and made a number of observations, comments, and suggestions. The points below reflect the issues that were raised for consideration, but the group made no final determinations on any of the items listed. The conversation was designed to identify issues that should be discussed further by the state agency representatives and the Medical Marijuana Work Group of interested parties.

50-46-102 – Definitions

- In subsection (2)(a)(ii), there may be a need to define chronic pain more clearly.
- Amend subsection (7) to add a requirement that the physician be in good standing with the Board of Medical Examiners.
- Amend subsection (8) to indicate that the qualifying patient not only needs to have a debilitating medical condition but also must have an application pending for a registry card or hold a valid registry card.
- Amend subsection (11) to remove the term “bona-fide physician patient relationship” and instead insert language indicating that the relationship must meet the standard of care, which will be a new definition.
- Add a definition of “standard of care” that incorporates the standards adopted by the Board of Medical Examiners on May 21.
- A new definition of “plant” may be needed. **Note:** Further discussion would be needed to determine what the definition would be and the issue to be resolved by creating this definition.
- A question was raised about whether the language in subsection (1) creates a relationship that could make a caregiver liable for any problems caused by the medical use of marijuana.

50-46-103 – Procedures – minors – confidentiality – report to legislature

- In section (4)(a)(b), consider expanding the types of offenses that would prevent a person from becoming a caregiver. Suggestions included disqualifying individuals who had been convicted of any drug offense, any felony offense, a crime of moral turpitude, or multiple violent offenses. The group thought a range of options should be presented to the Committee for policy consideration.
- In subsection (6), amend the language to allow issuance of a patient card for *up to* 1 year. This change would give doctors the flexibility to issue a certification for a shorter time period and thus allow for closer monitoring of whether the use of medical marijuana was benefiting the patient. **Note:** This would create additional administrative issues for DPHHS.
- Revise subsection (8) to address concerns about law enforcement sharing information at task force meetings, to allow the Board of Medical Examiners to share information on physician status with DPHHS, and to address other possible issues related to sharing of information.

- Several other additions were suggested for this section or as new sections to be added to Part 1 of the Act. Not all of the suggestions were fully discussed. They included:
 - Requiring that a full 50-state background check be conducted for caregiver applicants;
 - Establishing a residency requirement for caregivers;
 - Requiring caregivers to pay a fee to obtain their registry card;
 - Requiring caregivers to post a copy of their registry card at their place of business;
 - Establishing different levels of caregivers, that may then involve different licensure/fee levels or regulatory levels;
 - Establishing that larger caregiver operations are agricultural operations, which could result in zoning and other regulatory implications;
 - Requiring patients and caregivers to have their cards in their possession, similar to the requirement to carry a driver's licenses in 61-5-116, MCA;
 - Establishing penalties for patients and caregivers who fail to follow various provisions of the law, particularly new provisions that may be added;
 - Allowing for inspections of some type for caregiver operations, possibly through the Department of Agriculture;
 - Allowing for revocation of a patient's or caregiver's registry card if a person is convicted of a drug crime involving the card;
 - Allowing physicians to revoke their written certification at any time and requiring them to notify DPHHS if they do. **Note:** This may require additional revisions, if DPHHS is to take any action based on the physician's revocation, such as revoking the card.
 - Establishing a time limit before a person whose card has been revoked can reapply;
 - Providing immunity to local governments when law enforcement officers have seized any medical marijuana or related items. **Note:** This would require a two-thirds vote of the Legislature.
 - Giving DPHHS the authority to take action on cards for patients who have received their written certification from a doctor who has been sanctioned by the Board of Medical Examiners for not following standards of care involving their care of medical marijuana patients. **Note:** The type of action was not specified, although both revocation of existing cards and the possibility of requiring the patients to see a different doctor to renew their card were discussed.

50-46-201 – Medical use of marijuana – legal protection – limits on amount – presumption of medical use

- Amend subsection (1) to clarify that a person could be subject to disciplinary action by a professional licensing board or the Department of Labor for unprofessional conduct related to their own medical use of marijuana.
- Amend subsection (2) to clarify different possession amounts for different types of marijuana products. Details were not discussed, but everyone agreed changes are needed in this subsection.
- Amend subsection (4) to clarify that the Board of Medical Examiners may discipline a physician for unprofessional conduct related to providing written certification.
- Possibly amend subsection (5) on forfeiture, after more discussion with the Department of Justice on the issues of concern in this subsection.
- Amend subsection (7) to allow the Department of Agriculture to inspect caregiver operations (under the definition of nursery). **Note:** The question also came up of whether the Department of Agriculture would have a duty to report any violations to law enforcement.
- Possibly amend subsection (8) to make it clear that cardholders from other medical marijuana states must abide by the requirements and limits of the Montana Medical Marijuana Act when using or providing medical marijuana in Montana.

50-46-202 – Disclosure of confidential information relating to medical use of marijuana – penalty

- Consider amending subsection (1) to avoid potential violations if local or state law enforcement officers discuss cases at drug task force meetings that include federal law enforcement officers. **Note:** To accomplish this and some of the other suggested revisions, some of the changes may actually need to be made in 50-46-103(8), and changes may need to include the sharing of information among other state agencies, such as Department of Ag, Board of Medical Examiners, and DPHHS.

50-46-205 – Limitations of the Medical Marijuana Act

The group had time to discuss this section only briefly. There was discussion of, and some agreement on, prohibiting smoking in public.

50-46-206 – Affirmative Defense

The group did not have time to discuss this section in depth, although many of the suggestions and issues raised during the meeting referenced concerns about the language in this section. A couple of issues that were discussed briefly:

- Subsection (1)(a) needs to be amended to include any new standard of care language, rather than the “bona fide physician-patient” language it currently contains.
- Is it the intent of this section to allow a person to use marijuana after receiving a doctor’s certification but before actually applying for and/or receiving a registry card? If not, the language needs to be clarified. If so, is that a policy the Legislature should review?

50-46-210 – Rulemaking – fees

Again, there was no real discussion of this section other than some discussion of whether the Department should be given additional rulemaking authority to correspond with any changes made in the Act and whether fees should be established in statute or by rule.

Next Steps

The ideas presented by the state agency representatives will be presented to members of the Medical Marijuana Work Group at a May 26 meeting, for continued discussion.

Staff also will work with the state agency representatives to either set up an additional meeting to finalize discussions or will talk as needed with individual representatives to obtain further information prior to developing a report for the Committee’s June 28 meeting.