

## Summary of Medical Marijuana Work Group Session June 2, 2010

The Medical Marijuana Work Group formed at the direction of the Children, Families, Health, and Human Services Interim Committee met for a second time on June 2. The work group is reviewing the Medical Marijuana Act and developing recommendations for consideration by the legislative committee.

The following topics were covered during the June 2 meeting.

### **Continued Discussion of the Affirmative Defense**

- Law enforcement and prosecutors generally see 53-46-206, MCA, as almost an “absolute bar” to prosecution of many marijuana offenses because people can use this section of the law as a defense if they have a debilitating medical condition or are providing marijuana for medical use.
- Advocates of the affirmative defense say it’s designed to allow someone to at least raise in court the possibility that their marijuana possession or sale could be covered by the Medical Marijuana Act -- even if they are slightly outside of the law in terms of possession limits or having a registry card -- because the possession or sale involved medical use. They stressed that this section of the law was intended to allow a limited defense, but not override other provisions of the law.

### **Issues Related to 50-46-205, MCA – Limitations**

- Local options for more stringent limits: Local officials discussed the various options their governments were considering to limit smoking of medical marijuana in public and to limit the exposure of non-medical marijuana users to marijuana smoke. They also discussed ways to potentially give local governments without self-governing powers the ability to set some limits in this area.
- Public Smoking/Involuntary Exposure to Marijuana Smoke: Patients and caregivers discussed the difficulties that patients face if they are traveling and staying in a hotel. They noted that smoking outside and in public may be the best option available to them. Other participants said patients could smoke in non-moving cars or use marijuana in another form if they are unable to use it in the privacy of their home. They maintained that patients bear the responsibility for determining how they can be in a place where they can use medical marijuana appropriately when they’re in need of doing so.

Some local governments are looking at ways to limit public smoking and/or limit the exposure of other people to marijuana smoke at public events, in living areas such as apartment buildings, or other venues. Some are considering making it a misdemeanor offense to expose a person to marijuana smoke. This would put the burden of proof on law enforcement and prosecutors. They noted that local governments may want to handle this differently from city to city, so the Legislature may want to consider giving local governments the authority to enact laws in this area, without specifically enacting a statewide law. However, some participants said statewide laws would give law enforcement, prosecutors, and patients more reliable guidance on what is allowed and not allowed, in terms of public smoking or exposing others to smoke.

- School Issues: School districts are concerned about any use by a patient on school grounds. Currently, the law only prohibits smoking on school grounds and in school buses. Schools would like to prohibit any use or possession on school grounds and possession on a school bus, so the provisions comply with federal laws and regulations regarding drug-free school zones. In addition, a better definition of school grounds would be useful. Some

participants questioned why medical marijuana should be treated differently from any other medication used by a student in school and whether it could be kept in the school nurse's office, with the nurse overseeing its use during the school day. They also noted that no school district in a medical marijuana state appears to have lost federal funding. Other participants stressed the importance to schools of remaining within federal law so they can receive federal funds and also suggested that parents could take their child home during recesses or lunch hours to oversee the use of medical marijuana, if needed during the day.

### **Physician Issues**

The group discussed issues relating to physicians and whether any additional requirements should be placed on the examinations provided by physicians who are willing to provide written certification. Some participants suggested that mass screening clinics be prohibited or closely monitored. Other participants defended these clinics, saying many people would not otherwise have access to doctors who could write the certification. They also said suggestions that physicians should spend a designated amount of time with patients don't reflect the fact that some patients, such as glaucoma patients, have a condition that is not going to change and that does not require a physical examination.

Some participants expressed frustration with the recent decision by the Board of Medical Examiners to discipline a doctor who had participated in the screening clinics, while others supported it. Jean Branscum of the Board of Medical Examiners discussed how the board reviews complaints involving unprofessional conduct, which often involve questions of whether the physician met the generally accepted standard of care. She said the board's new position paper on a physician's written certification for medical marijuana makes it clear that the standard of care expected from a physician providing written certification is the same as the standard of care expected for any other medical decision. The paper also cautions physicians to be mindful of that standard of care if they participate in a mass screening for any type of medical care.

Some participants suggested that physicians or the facilities that employ them should be sanctioned if they are prevented by the employing facility from issuing a written certification. Others suggested that a doctor can choose to practice independently if such a contract provision exists and the doctor does not want to accept it.

### **Regulatory Boards**

Participants reviewed information related to the operation of professional and occupational licensing boards that are under the Department of Labor and Industry, including information describing how board appointments are made, the authority given to boards to regulate licensees, and the ways in which license fees are set to cover the costs of operating the board. In addition, Jean Branscum of the Board of Medical Examiners and Ron Klein of the Board of Pharmacy provided details about how those boards operate.

Participants discussed a number of regulatory and training functions that a board could provide beyond inspections, including handling of complaints and scheduling or accreditation of continuing education sessions on topics such as business practices, ethics, legal issues, and fire and safety issues. Some members suggested that continuing education should be mandatory for caregivers.

There was some discussion about whether a board involving medical marijuana should be placed in the Department of Agriculture, which regulates nurseries, or the Department of Labor. Some participants noted that the Department of Labor boards are charged with monitoring the practice of professions where public health, safety, and welfare have been determined to be in need of heightened protection.

Participants also discussed whether the patient registry should remain with the Department of Public Health and Human Services.

### **Proposed Recommendations**

The group began discussing and acting on a list of recommendations developed from issues raised during the work group meetings, legislative staff discussions with state agencies, and staff review of public comment. Only limited time was available for this activity, so the review will continue at a meeting to be scheduled for the week of June 7.

The group agreed that unless the full group decided against an idea, all of the issues raised by the group should be forwarded to the Children and Families Committee with an indication of whether the idea was supported by the full group, supported by a majority of the group, or supported by a minority of the group.

Recommendations reviewed and voted on at the June 2 meeting were:

- Create a state regulatory board for caregivers. Full support.
- Use a tiered system of regulation and licensing for caregivers, based on the number of patients a caregiver has. Full support.
- Create a process that would allow someone to petition the appropriate state regulatory agency to add a debilitating medical condition to the list of allowable conditions. This would trigger a review process that would result in a decision by the state agency. Full support.
- Have the Children and Families Committee work with physicians on issues relating to physician requirements and the definition of “chronic pain” or requirements for the diagnosis of chronic pain. Majority support.
- Create a new definition for a person who is allowed to handle medical marijuana, perhaps as an employee of a caregiver, but is not a caregiver or patient and would have a more limited role under the Medical Marijuana Act. Full support.
- Improve the definition of qualifying patient because the current definition creates situations elsewhere in the law (other than the affirmative defense) that may allow a person who has never obtained a written certification or applied for a card to use or obtain medical marijuana. Majority support for the idea, but disagreement on how best to address the situation. Some participants feel a written certification or application for a registry card would be sufficient to be a qualifying patient, while others believe it’s important that a person actually have the card to be considered a qualifying patient.

### **Participants**

#### Industry

Rick Rosio, Montana Pain Management  
Jason Christ, Ardyce Taylor, and John Phillips, Montana Caregivers Network  
Tom Daubert, Patients & Families United  
Chris Lindsey, attorney  
Jim Gingery, Montana Medical Growers Association  
Rebecca Gross, A Kinder Caregiver, Inc.  
Kenney Lindeman

#### Law Enforcement/Local Government

Kris Hansen, Deputy Hill County Attorney  
Jim Smith, Montana Sheriffs and Peace Officers Association/Montana County Attorneys Association  
Pat Brinkman, Great Falls Police Department  
Greg Sullivan, Bozeman City Attorney

#### Schools

Aaron Bouschor, Montana School Boards Association