

SB 423 Monitoring: Montana Marijuana Act

When the 2011 Legislature passed Senate Bill 423 to repeal the former Medical Marijuana Act and replace it with stricter guidelines on the use of marijuana for debilitating medical conditions, it also required that the Children and Families Committee continue to monitor the new law, identify issues that may need legislative attention, and develop legislative proposals as needed.

As in past interims since the law was implemented, the committee had only minimal monitoring tasks because key provisions of the law remained tied up in court throughout the interim in a legal challenge that was filed the day that the law went into effect in 2011.

Although the Montana Supreme Court upheld most of the challenged provisions in February 2016 and ordered that they go into effect on Aug. 31, 2016, the plaintiffs in the suit appealed that decision to the U.S. Supreme Court and also asked a Helena District Court judge to delay implementation of the challenged elements until the high court ruled on the appeal or until Montana voters had a chance to change the provisions at issue by passing an initiative in November 2016.

On June 27, the U.S. Supreme Court declined to hear the appeal. However, Initiative 182 qualified for the November ballot on July 13. But on Aug. 17, District Judge Jim Reynolds denied the motion for a stay on Aug. 17, saying he was bound by the Montana Supreme Court's decision on the Aug. 31 effective date.

"Our system of government mandates that this Court, as a subsidiary district court, must follow the decisions of our Supreme Court," he wrote in his order denying the stay, adding: "The undersigned fully subscribes to this judicial structure."

Challenged Provisions

The provisions of SB 423 that have been on hold since 2011 would:

- limit the number of patients for whom a provider may grow or manufacture marijuana or marijuana-infused products;
- prohibit payment for marijuana or marijuana-related products;
- prohibit advertising of marijuana and related products by providers or cardholders;
- allow law enforcement to conduct unannounced inspections of properties where marijuana is grown; and

- require the Department of Public Health and Human Services (DPHHS) to report to the Board of Medical Examiners the names of doctors who provide written certification for more than 25 patients in a 12-month period, so the board may review their practices.

The Montana Supreme Court upheld all of those provisions except the ban on payment.

DPHHS Response to Court Ruling

As the legal moves related to the Montana Supreme Court decision continued into the summer of 2016, DPHHS took steps to carry out the court's ruling. The agency began notifying cardholders and providers in July that they needed to make plans for adjusting to the limit of three patients per provider by Aug. 31.

DPHHS sent providers a form for naming the three patients they would continue to serve and reminded the providers that if they were also registered cardholders, they could only grow marijuana or manufacture marijuana-infused products for two other people. The department also warned providers that if they did not fill out the form by Aug. 1, DPHHS would assume that they no longer want to be a provider and would revoke their registration as of Aug. 31.

Patients were notified that they should prepare for the possibility of being dropped from a provider's list by either finding another eligible provider or becoming their own provider. For either option, the patients must submit a Registered Cardholder Information Change Form. Patients also were cautioned that if they choose to become their own provider, they must submit a Landlord Permission Form if they will be growing marijuana at a rental property.

DPHHS also determined that it will put the physician notification requirements into effect for physician statements signed after Aug. 31. As soon as a doctor reaches 25 certifications, DPHHS will notify the Board of Medical Examiners of the doctor's name and the date the physician certified debilitating medical conditions for 25 patients.

Registry Statistics

Throughout the interim, the committee received regular updates on the number of patients, providers, and physicians listed in the marijuana registry.

At the time SB 423 was passed in 2011, about 31,500 people were registered as medical marijuana patients. That number fell significantly during the first year that the more stringent patient requirements were in effect. The number of registered patients reached a low of 7,099 in May 2013.

From June 2013 through early 2016, the number of patients increased fairly steadily before starting to fall off again in recent months. In March 2016, the registry listed 13,668 patients. By July, the number had dropped to 13,170. So by the end of the interim, the number of registered patients was

about 86% higher than at the low point of May 2013 but still 58% lower than when SB 423 went into effect.

The number of providers actually increased between the start and end of the interim, going from 442 providers in June 2015 to 488 in July 2016, as people were being notified of the impending change in provider requirements. Sixty-five percent of the providers had 10 or fewer patients at that point, while 26 providers — or 5% — were growing or manufacturing marijuana for more than 100 cardholders each. Those 26 providers were serving at least 5,096 of the cardholders, or 39%.

In July 2016, 205 doctors had provided written certifications for patients in the previous year, down 43% from the 362 doctors who were doing so in May 2011 when SB 423 went into effect. Of those, 182 provided certification to 20 or fewer patients each, while 23 had provided certification for more than 20 patients. Eleven of the doctors had more than 100 patients each and had provided certifications for at least 11,981 — or 91% — of the patients.

Ballot Measures

The use of marijuana was also the subject of three proposed ballot measures during the interim — one to legalize marijuana, one to make all marijuana use illegal, and one to modify some of the provisions of SB 423. Only the latter initiative qualified for the ballot; it will go before voters this fall as Initiative 182.

Among other things, I-182 would:

- lift the limit on the number of patients each provider could have;
- eliminate unannounced inspections by law enforcement;
- remove the requirement for DPHHS to report to the Board of Medical Examiners on doctors who provide more than 25 written certifications in a year;
- remove the requirement for independent proof of chronic pain or confirmation by a second physician;
- allow providers to operate dispensaries and hire employees; and
- require the licensing of providers and testing laboratories. The initiative sets maximum licensing fees of \$1,200 for testing labs, \$1,000 for a provider with 10 or fewer patients, and \$5,000 for a provider with more than 10 patients.