AMERICANS FOR SAFE ACCESS

PUBLIC COMMENT NEW YORK ~ AB 9016

General Provisions

Assembly bill 9016 provides practitioners (physicians with prescribing privileges) the ability to write a "certification" for a patient, which would include identifying information and a general phrase that says the patient has a serious condition that will likely be benefited by the use of marijuana. There is a provision in the bill that the Department of Public Health (DPH) can create a standard form; if enacted, a standard form would be beneficial for recommending practitioners. The patient then has to apply for a state ID card issued by DPH. The certification acts as legal protection for 60 days; in that time, the patient MUST apply for and receive her ID card in order to be protected from prosecution for possession of marijuana. Americans for Safe Access has, in the past, helped implement a similar program in California, and thinks this provision is reasonable.

When the patient applies for an ID card, she can appoint up to two caregivers, who will also be issued separate ID cards. Each caregiver is allowed to care for up to five patients. Caregivers are expressly allowed to be reimbursed for "legitimate expenses." The provisions allowing for reimbursement and more than one caregiver are useful to patients, and will help patients procure medicine more easily than in some states where only one primary caregiver is acceptable.

The certification and subsequent ID card are good for 12 months from the date issued by the physician. There are no exceptions. The renewal process is streamlined, which will be helpful to patients.

The legislation provides for comprehensive implementation. Pharmacies, the Department of Public Health, hospitals & other residential health care facilities, and not-for-profit organizations can "register" with DPH in order to process and dispense marijuana to patients. Producers (cultivators) are NOT allowed to dispense to patients, they are only allowed to cultivate and then sell marijuana to

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the above-listed entities ("dispensaries" for the sake of this analysis). The dispensary system outlined in the legislation, if implemented effectively, would provide patients with ready access to medicine, and would protect patients from having to participate in the gray- or black-markets. There are some implementation concerns addressed below.

Additional Provisions

Under the pending New York bill, patients cannot be refused employment, enrollment in school, or be denied housing based on their status as medical cannabis patients. The codification of these civil protections goes beyond the medical cannabis laws in several states. While there is no right to possess or consume marijuana at work, school, or home, the protection from being denied employment, education, or housing based solely on patient status is quite desirable and is the most that we can reasonably hope for until federal law is changed.

In addition, patients who are confined to hospitals will have the right to medicate on-campus in designated areas. Most states leave the question of whether inpatients can medicate while on campus up to the hospital, and the inclusion of this provision is laudable.

Finally, the fee for the state-issued ID card can be reduced or waived in cases of financial hardship, and the legislation has a provision for patients who are homebound and might not be able to travel to the DPH to have their photo taken. The drafters clearly took care to look after the well-being of prospective patients.

Causes for Concern

The Department of Public Health's ID card program is thoroughly outlined, and the information gathered about each patient is specified as confidential; however, the legislative language is not specific about the penalties for violations of confidentiality. In addition, the language relating to disclosure of information to law enforcement during the verification process is not specific, and may allow for more disclosure than is absolutely necessary to verify a patient's status during a law enforcement encounter. In contrast, Michigan's law criminalizes disclosure of any confidential information, which seems to provide patients with the most protection. The lack of detail relating to the penalties for disclosure of patients' confidential medical information will most likely require litigation and puts patients at risk.

Patients have no right to cultivate cannabis, which means that patients must utilize the state-registered dispensaries in order to access medicine. There's an additional concern discussed below that involves the bookkeeping requirements for the dispensaries. While ASA supports a system of regulated dispensaries, the New York bill resembles the model used by New Mexico's medical marijuana program. In New Mexico, the legislative scheme outlines a system of state-regulated producers and dispensaries, but the program is currently floundering, leaving patients in the lurch. Luckily, medical cannabis patients in New Mexico are able to cultivate their own medicine; under the New York system, if any issues arose in administering the medical marijuana program, patients would be without the medicine their practitioner recommended for them.

While several civil issues are dealt with by the pending New York legislation, there are no protections for parents from custody issues or Child Protective Services claims. There are also no provisions for insurance coverage or reimbursement for the cost of medication. ASA recognizes that medical cannabis patients across the country are dealing with CPS and insurance issues, and supports legislation that include these types of protections.

With respect to the pending New York legislation, Americans for Safe Access is largely concerned with the bookkeeping and tracking requirements for DPH-registered dispensaries. While the State of New York has an interest in regulating the activities of dispensaries, the legislation requires that receipts for sales be kept on-site for 12 months. The receipts must include the date, the quantity purchased, the patient's name (and caregiver, if appropriate), home address, and patient ID number. This record keeping requirement could be quite problematic in the event of a federal raid; federal agents would have instant access to the home addresses to all patients served in the past 12 months, and the quantities of medicine they purchased. These types of records, if required, should not include identifying information, and only need to include the patient ID number. The program run by DPH should be the only location with the ability to cross-check identifying information, thereby adding a layer of protection from the federal government.

Conclusion

Notwithstanding concerns regarding the legislation's bookkeeping requirements and implementing the state program, Americans for Safe Access supports Assembly bill 9016 and Senate companion bill S. 4041-b.