AmericansFor SafeAccess
Advancing Legal Medical Marijuana Therapeutics and Research

LEGISLATIVE MEMORANDUM

TO: D.C CITY COUNCILMEMBERS AND STAFF

FROM: AMERICANS FOR SAFE ACCESS
STEPH SHERER, STEPH@SAFEACCESSNOW.ORG or 510.872.7822
CAREN WOODSON, CAREN@SAFEACCESSNOW.ORG or 202.857.4272

RE: LEGALIZATION OF MARIJUANA FOR MEDICAL TREATMENT, ACT OF 2010
COMMENTS RE: DRAFT COMMITTEE PRINT, COMMITTEE ON HEALTH B-18-622

DATE: APRIL 27, 2010

On behalf of the local chapter of Americans for Safe Access (ASA), we would like to acknowledge the Committee on Health for their hard work on drafting medical marijuana legislation designed to fully implement I-59 and appropriately meet the needs of bona-fide patients and the community. Like the Council, we believe DC residents who use cannabis in accordance with their physician's recommendation should no longer be subjected to arrest and prosecution by state authorities or left without a safe, secure way to access medical cannabis.

After careful review of the draft bill (Committee Print; Apr 20, 2010), we are concerned the Committee has included arbitrary and unnecessary restrictions that will fall short of meeting the legitimate needs of patients, and in some cases may even force patients to the underground market, potentially jeopardizing both health and safety. To that end, we would like to share our concerns with the committee draft.

This memo is intended to detail a few of our most serious concerns and provide recommendations for the Council staff to consider as amendments as the legislative process moves forward. For clarity we have divided our concerns into one of three categories: Patient Protections and Rights, Safe Access, and Programmatic Concerns.

Moving forward, ASA offers to you our passion, expertise, focus, and a commitment to work together with all parties to bring effective solutions to the issues highlighted below. When you call on us for assistance in the District as you engage in the necessary dialogue to develop effective regulation, I can assure you we will be eager and constructive partners.

To follow up on these items, please don't hesitate to contact our office, 202-857-4272.

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Patient Protections and Rights

1. *Strengthen I-59 Protections*

SEC 9: ADD THE FOLLOWING:

(a) Any person authorized to manufactures, cultivates, possesses, administers, or dispenses marijuana in a manner authorized by this act shall not be subject to arrest, prosecution, or denied any right or privilege, including but not limited to employment, education, child visitation and custody, and housing, or subject to civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau.

- Reasoning: When I-59 was adopted by voters compassionate use laws were in their infancy. Since then we've learned that patients need strong legal and *civil* protections to protect against stigma and discrimination. No qualified patient should be denied access to housing, employment, or the like because of a medical treatment decision. Moreover, Sec 4(e) and 4(f) specifically ensure that the use of marijuana in accordance with the act shall not be a defense for any crime. Likewise, the use of marijuana in accordance with the act should not be used to deny a patient or qualified caregiver any right or privilege.

2. *Eliminate Restrictions on Felony Convictions*

SEC 7: AMEND 7(j)(1) and 7(j)(2) TO READ:

(l) A felony conviction, unless the conviction occurred at least five years prior to the date of application or more than three years have passed from the date of termination of a penalty for such conviction to the date of the application.

(2) A misdemeanor conviction for a drug related offense, unless the conviction occurred at least five years prior to the date of application or more than three years have passed from the date of termination of a penalty for such conviction to the date of the application.

- Reasoning: Medical cannabis patients and the individuals who have provided them with access to cannabis may have felony and misdemeanor drug convictions. Moreover, those with the greatest expertise on the cultivation, use, and distribution of cannabis also probably have felony convictions and misdemeanor drug convictions. Patients should benefit from the experience of knowledgeable growers and providers. Individuals (including patients) who have completed their court-imposed debts should not be subject to employment or licensure discrimination, particularly when their criminal behavior does not specifically jeopardize the health or safety of registered patients and their caregivers.

3. *Enhance Privacy Protections*

SEC 6: AMEND SEC 6(3) TO READ:

(3) Issue nontransferable registration identification cards that include unique alpha-numeric registration identification codes and that expire annually to registered persons and entities which may be presented to and used by law enforcement to confirm whether a person or entity is authorized to administer, cultivate, dispense, distribute or possess medical marijuana, or manufacture, possesses, or distribute paraphernalia.

AMEND SEC 6 (4)(a)(ii)(III) and 5(a) TO READ:

4(a)(III) The unique alpha-numeric registration identification code of the recipient of the medical marijuana

5(a) The unique alpha-numeric registration identification code of the qualifying patient authorized to obtain the medical marijuana

Headquarters
1322 Webster St, Suite 402, Oakland, CA 94612
PHONE: 510.251.1856 **FAX:** 510.251.2036

National Office
1730 M Street NW, Washington DC 20036
PHONE: 202.857.4272 **FAX:** 202.857.4273

General Information
WEB: www.AmericansForSafeAccess.org
TOLL FREE: 1.888.939.4367

- Reasoning: In order to protect the privacy of all patients, their designated caregivers and the employees of cultivation and dispensary centers, it is advised that the registration and documentation of patient and caregiver information be confidential and incorporate a unique alpha-numeric ID number to be used in all transactions that require verification.

4. *Remove Unnecessary Board of Medicine Review*
   SEC 8: ELIMINATE 8(b)

- Reasoning: Sec. 8(a) provides the Board of Medicine the power to audit which sufficiently clarifies the Board's oversight authority. We are very concerned that 8(b) may have a chilling effect on physicians in an effort to remain beneath this arbitrary threshold, which may compromise public health. Physicians who recommend chemotherapy or any other drug regiment are not subjected to a similar review.

Ensure Safe Access

5. *Authorize Patient Cultivation*
   Eliminating patient cultivation inflates prices, reduces quality and choice, subjects authorized cultivators to lengthy federal sentencing guidelines, and could jeopardize safe access in the event of federal enforcement action. While the vast majority of patients may choose not to cultivate their own cannabis, for some knowledgeable patients who live on tight budgets or who suffer the effects of a chronic debilitating condition, personal cultivation enhances choice and guarantees reliable, affordable access.

   RECOMMENDATION: ASA recommends registered patients and their designated caregiver(s) be granted the option to cultivate a small, personal amount of cannabis individually or in small groups so long as they comport with reasonable standards and restrictions set by the Department of Health.

6. *Reconcile Possession & Acquisition Limits*
   SEC 7: AMEND 7(e)(1) TO READ
   (1) A dispensary may not dispense more than 2 ounces of medical marijuana at any one time to a qualifying patient, either directly through the qualifying patient's registered caregiver provided that the Mayor, through rulemaking, may increase the quantity of marijuana that may be dispensed to up to 2.5 ounces.

- Reasoning: Sec 4 authorizes patients to possess 2 ounces of medical marijuana at any time, with a stipulation that the Mayor may increase to 2.5 ounces. In order to reconcile these two sections, it is necessary to strike the 30-day provision from Sec 7. Moreover, trained physicians not elected policymakers have traditionally decided how much of a particular medication is right for an individual patient. When in doubt, physicians are instructed to follow a set of *guidelines* to determine appropriate patient need. For many patients, 2-ounces (about 57 grams) per 30-days may be more than enough to address their symptoms and provide relief. For patients who prefer safer alternatives to smoking, like vaporizing or cooking, however, 2-ounces in 30-days will probably not be enough to address their legitimate need, particularly where drug tolerance has developed over time.

- For instance, an individual living with HIV/AIDS who requires approximately five 1-gram cannabis cigarettes a day to stimulate appetite and to control the nausea and vomiting associated with the HAART therapy requires about 150-grams (or about 5 ounces) in a 30-day period. Under the provisions of this bill, this individual would be at some point relegated to the underground market, forced to ration their medicine, or go without access to the medicine recommended by his or her physician.

7. *Ensure Patients Have a Safe Space to Administer Medical Marijuana*
   SEC 4: AMEND 4(b)(1) TO READ:
   (b)(1) Medical marijuana shall not be smoked by a qualifying patient anywhere other than a residence, if permitted, or at a medical treatment facility when receiving medical care for a qualifying medical condition, if permitted. A qualifying patient may not use medical marijuana at a dispensary or cultivation center.

   - Reason: Restrictions on smoking are acceptable. However, restricting patients from discreetly ingesting non-invasive forms of a medicine recommended by their physician is far too restrictive and may compromise the health of individual patients. This is especially true for patients receiving or residing with individuals who receive public housing benefits. Moreover, protections against use that may lead to negligence or professional malpractice are already provided for later on this section.

8. *Modify Physician Language to Reflect Medical Care in DC-Metro Area*
   SEC 1: AMEND 15 TO READ:
   (15) "Physician" means an individual who is licensed and in good standing to practice medicine or osteopathy in the District of Columbia, or the states of Maryland or Virginia.

   - Reasoning: District residents who see physicians outside of the District of Columbia should not be forced to change doctors in order to qualify for the program.

Programmatic Concerns

9. *Eliminate For-Profit Ventures*
   SEC 7: AMEND 7(h)(1) TO READ:
   (1) Be a nonprofit corporation incorporated within the District.

   - Reasoning: Patients want the businesses that operate the medical marijuana industry in the District of Columbia to serve only the needs of patients, not the interests of public shareholders. The Council has gone on record stating they intend to follow the best practices from other states. Yet only Colorado has for-profit corporations and there is current legislation pending before that state's legislature which will force these corporations to change to non-profit corporations. Authorizing for-profit corporations may bring about Congressional interference as a result of the profit motive of these corporations.

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10. *Medical Marijuana Advisory Committee.*

SEC 10: ADD THE FOLLOWING:

(c) Medical Marijuana Advisory Committee shall be composed of twenty-one (21) District residents:

1) One physician appointed by the Department with a specialty in neuropathy, HIV, or oncology.
2) One physician appointed by the Department who has issued at least 10 medical marijuana recommendations
3) One patient from each Ward selected by their Councilmember (8)
4) One caregiver from each Ward selected by their Councilmember (8)
5) One non-profit corporation operating as a dispensary
6) One non-profit corporation operating as a cultivation center
7) One Chairman appointed by the Department

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