

Suggested Amendments to Improve HB 881 and HB 1321 to Work Better for Maryland Patients

Summary

Americans for Safe Access (ASA) is the nation's largest organization working exclusively on advancing safe and legal to access to marijuana for therapeutic and research purposes. ASA has been actively working to bring a viable medical marijuana program to Maryland for several years. When HB 1101 was passed and signed into law in 2013 to create the Natalie M. LaPrade Medical Marijuana Commission (Commission), ASA felt the bill fell short of achieving the goal of providing safe and legal access to medical marijuana because we assessed that the distribution locations, Academic Medical Centers (AMCs), would not participate in the program. To date, this assessment has unfortunately proven to be true, and the likelihood of AMCs participating in the program does not appear to be any greater under the present federal law. Even if AMCs become willing to participate, there are serious questions as to how practical the approach would be, as no state has utilized this model before. This is of major concern to ASA, and we urge the state to adopt the proven distribution method of allowing patients who have a bona fide recommendation from their physician to purchase their medical marijuana at retail locations. This proven approach has successfully been implemented in many medical marijuana states.

Both HB 881 and HB 1321 would fix the fatal flaws of last year's bill; however, we think that HB 1321 creates the stronger of the two potential programs for Maryland patients. The primary advantages to HB 1321 are: 1) it creates strong but reasonable protections for patients against civil discrimination in areas of housing, employment, education, organ transplants, and child custody, 2) it does not impose burdensome requirements upon physicians, as requirements similar to those in HB 881 have limited patient access in other states, and 3) provides a stronger framework for the Commission to implement the program so that patients can obtain their medicine.

For these reasons, ASA supports HB 1321 with amendments. The following are suggested amendments to improve both HB 1321 and HB 881.

HB 881

13-3301(C)

"CERTIFYING PHYSICIAN" MEANS AN INDIVIDUAL WHO:

(1) IS LICENSED BY THE STATE BOARD OF PHYSICIANS UNDER
TITLE 14 OF THE HEALTH OCCUPATIONS ARTICLE TO PRACTICE

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MEDICINE;

(2) IS ON STAFF AT A HOSPITAL OR WITH A HOSPICE PROGRAM IN THE STATE; AND

(3) REGISTERS WITH THE COMMISSION TO MAKE MARIJUANA AVAILABLE TO PATIENTS FOR MEDICAL USE.

Issue: Requiring physicians to register with the state simply to be able to recommend medical marijuana to patients with a qualifying condition will have a chilling effect on the number of physicians who will be willing to participate in the program. As a result, this will make it more difficult for patients to obtain a recommendation from physicians with whom they have a long-standing bona fide patient-physician relationship. Medical marijuana jurisdictions such as New Jersey and the District of Columbia have had programs that were approved several years ago, but because they contain similar requirements, alarmingly few physicians are participating in the program. For example, at the District's Medical Marijuana Advisory Committee meeting on January 31, 2014, the D.C. Department of Health stated that approximately 80 physicians had obtained recommendation forms, and that only approximately 150 patients had been enrolled in the program, meaning fewer than 1% of the District's population living with positive status for H.I.V. have been able to obtain a recommendation. Unnecessary burdens on physicians harm potential qualifying patients by preventing them from being able to access medical marijuana.

Solution: Strike 13-3301(C)(2)-(3). Additionally, strike other provisions in the bill that call for or reference the registration of physicians 13-3302(c)(5), and strike and replace "CERTIFIED" in 13-3308(2) with "AUTHORIZED."

13-3301(H)

(H) "WRITTEN CERTIFICATION" MEANS A CERTIFICATION THAT:

(1) IS ISSUED BY A CERTIFYING PHYSICIAN TO A QUALIFYING PATIENT WITH WHOM THE PHYSICIAN HAS A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP; AND

(2) INCLUDES A WRITTEN STATEMENT CERTIFYING THAT, IN THE PHYSICIAN'S PROFESSIONAL OPINION, AFTER HAVING COMPLETED A FULL ASSESSMENT OF THE PATIENT'S MEDICAL HISTORY AND CURRENT MEDICAL CONDITION, THE PATIENT HAS A CONDITION:

(I) THAT MEETS THE INCLUSION CRITERIA AND DOES NOT

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MEET THE EXCLUSION CRITERIA OF THE CERTIFYING PHYSICIAN'S APPLICATION; AND

(II) FOR WHICH:

1. RECOGNIZED DRUGS OR TREATMENT WOULD NOT BE EFFECTIVE OR OTHER TREATMENT OPTIONS HAVE MORE SERIOUS SIDE EFFECTS OR A GREATER RISK OF ADDICTION; AND

2. THE POTENTIAL BENEFITS OF THE MEDICAL USE OF MARIJUANA WOULD LIKELY OUTWEIGH THE HEALTH RISKS FOR THE PATIENT.

Issue: Again, provisions that impose unnecessary burdens on physicians will restrict patient access. In the definition for "Written Certification," the burden comes by requiring physicians to establish rigid exclusion criteria. The requirement is redundant to the requirement that physicians must determine that the benefits of medical marijuana use would outweigh any health risks. However, the benefit/risk clause is more flexible and if it were to stand free of the exclusion criteria provision, it would allow physicians to determine qualifying patients on a case-by-case basis without being encumbered by exclusion criteria that might not fit a particular patient's needs.

Solution: Strike 13-3301(H)(2)(I).

13-3307 - Full Section

Issue: This section would create numerous burdens for physicians to overcome in order to recommend medical marijuana to their patients, including registration with the state, reporting paperwork, and developing rigid exclusion criteria that a physician may not deviate from even if it goes against the best interest of a particular patient. An additional burden is that physicians would have to apply annually to have the right to recommend medical marijuana, which could jeopardize their patient's ability to maintain a consistent supply of medicine for a chronic condition.

Solution: We suggest modifying this section to the following so that it will allow physicians to recommend medical marijuana for certain conditions. We also suggest preserving that clause that provides physicians with protection from criminal and civil penalties for conduct authorized by the law.

(a) A CERTIFYING PHYSICIAN MAY RECOMMEND MEDICAL MARIJUANA FOR THE FOLLOWING MEDICAL CONDITIONS:

(1) A CHRONIC OR DEBILITATING DISEASE OR MEDICAL

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CONDITION THAT RESULTS IN A PATIENT BEING ADMITTED INTO HOSPICE OR RECEIVING PALLIATIVE CARE; OR

(2) A CHRONIC OR DEBILITATING DISEASE OR MEDICAL CONDITION OR THE TREATMENT OF A CHRONIC OR DEBILITATING DISEASE OR MEDICAL CONDITION THAT PRODUCES:

(I) CACHEXIA, ANOREXIA, OR WASTING SYNDROME;

(II) SEVERE OR CHRONIC PAIN;

(III) SEVERE NAUSEA;

(IV) SEIZURES; OR

(V) SEVERE OR PERSISTENT MUSCLE SPASMS.

(B) THE COMMISSION MAY APPROVE ON A CASE BY CASE BASIS A RECOMMENDATION FOR A CHRONIC OR DEBILITATING DISEASE OR MEDICAL CONDITION THAT PRODUCES ANY OTHER CONDITION NOT LIST IN SUBSECTION (A) OF THIS SECTION IF IT IS SEVERE AND RESISTANT TO CONVENTIONAL MEDICINE IF THE SYMPTOMS REASONABLY CAN BE EXPECTED TO BE RELIEVED BY THE MEDICAL USE OF MARIJUANA.

(C) A CERTIFYING PHYSICIAN SHALL BE PROTECTED FROM CIVIL AND CRIMINAL PENALTIES UNDER STATE AND LOCAL LAW FOR ACTIONS AUTHORIZED UNDER THIS SUBTITLE, INCLUDING THE ISSUANCE OF WRITTEN CERTIFICATIONS AND THE COLLECTION AND ANALYSIS OF DATA.

13-3313.

THE COMMISSION SHALL ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SUBTITLE.

Issue: While this language is sufficient to authorize the Commission to create a program to allow qualifying patients with a physician's recommendation to purchase medical marijuana from a state-authorized supplier, there is no framework for how this program would be established. Additionally, there are no requirements for the the Commission to implement the program in a timely manner so that patients are further denied access to medical marijuana.

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Solution: This issue cannot be overcome with a single provision. The lack of a statutory foundation in HB 881 is why ASA favors the HB 1321 approach.

No Civil Discrimination Protection

Issue: A major flaw with HB 881 is that it does not contain civil discrimination protection for patients. This means that landlords can deny housing to patients simply because of the patient status. It means employers can fire employees without any other justification other than their patient status even if they were not intoxicated from their medicine on the job. It means that hospital can deny a patient an organ transplant simply because of their patient status, even if medical marijuana would not harm the transplant. It means that patients with children can be denied custody and visitation simply due to their patient status, without any negligent or abusive parenting.

Solution: ASA urges Maryland to adopt the civil discrimination protection contained in 13-3322(D) of HB 1321, as these address all areas of discrimination concerning patients. These protections would be limited so that employers, landlords, and educational institutions who must comply with federal law are not prevented from doing so.

HB 1321

13-3311

(C) (1) IN THE FIRST YEAR AFTER OCTOBER 1, 2014, THE COMMISSION MAY ISSUE REGISTRATIONS FOR UP TO 20 MEDICAL MARIJUANA TREATMENT CENTERS.

(2) A MAXIMUM OF FIVE MEDICAL MARIJUANA TREATMENT CENTERS MAY BE LOCATED IN ANY ONE COUNTY OR BALTIMORE CITY.

(3) IF THE COMMISSION DETERMINES ON OR AFTER OCTOBER 1, 2016, THAT THE NUMBER OF MEDICAL MARIJUANA TREATMENT CENTERS IS INSUFFICIENT TO MEET PATIENT NEEDS, THE COMMISSION MAY INCREASE OR MODIFY THE NUMBER OF REGISTERED MEDICAL MARIJUANA TREATMENT CENTERS.

Issue: For the most part, this language authorizing the Commission to license and register medical marijuana treatment centers (treatment centers) is sufficient enough to establish a workable program. However, patients have no safeguards in place that guarantee treatment centers will open in a timely manner. Additionally, patients should have some assurance that there will be reasonable geographic coverage so that patients or designated caregivers will not have to travel too great a distance in order to maintain a consistent supply of medicine.

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Suggestion: We urge the inclusion of the following provisions to ensure timely implementation and reasonable geographic coverage of treatment centers for Maryland patients.

(5) No later than one year after the effective date of this article, provided that at least ten applications have been submitted, the Commission shall issue medical marijuana treatment center registrations to the ten highest-scoring applicants, except that the Commission may divide the state into geographical areas and grant a registration to the highest scoring applicant in each geographical area.

(6) No later than two years after the effective date of this article, the Commission shall issue registration to at least twenty medical marijuana treatment center registration to the next highest-scoring applicants, except that the Commission may divide the state into geographical areas and grant a registration to the highest scoring applicant in each geographical area.

13-3301

(Q) "QUALIFYING PATIENT" MEANS A RESIDENT OF THE STATE WHO IS AT LEAST 21 YEARS OLD, UNLESS THE COMMISSION GRANTS AN EXCEPTION AT THE RECOMMENDATION OF THE PATIENT'S CERTIFYING PHYSICIAN...

and

13-3319

THE COMMISSION MAY NOT ISSUE A REGISTRATION CARD TO A QUALIFYING PATIENT WHO IS UNDER 21 YEARS OLD UNLESS...

Issue: Patients who have reached the age of majority should not be restricted from accessing medical marijuana in the same manner that minors should. Many Maryland adults between the ages of 18 and 20 are responsible for their own well-being, and these adults may not have relationships with their parents that would allow them to have access if recommended by a physician.

Solution: Strike "21" and replace with "18," in conformity with the age of majority in Maryland.

13-3313 and 13-3315

page 14, lines 23 and 26; page 15, lines 4 and 16; and page 18, line 20

Issue: There are numerous references in these sections to the "Department" that likely were intended to be for the "Commission" instead. If the references to the "Department were kept" in these provisions, it would create conflicting authority.

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Solution: Strike "Department" and replace with "Commission" at: page 14, lines 23 and 26; page 15, lines 4 and 16; and page 18, line 20.

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