AmericansFor SafeAccess
Advancing Legal Medical Marijuana Therapeutics and Research

Ohio's HB 523 Gets Qualifying Conditions Issue Right, but Substantial Improvements Should Still be Made

Introduction

Americans for Safe Access (ASA) is encouraged by the introduction of Ohio HB 523. While the bill has certain components that meet ASA's model language for patient centric medical cannabis legislation, there are far too many question marks left before ASA can actively support the bill. We look forward to working with Representative Huffman and the Ohio Legislature to help craft language that best serves the needs of Ohio's patient population.

The most laudable feature of HB 523 is that is allows physicians to recommend medical cannabis for any condition for which the potential benefits outweigh the potential harms. This should always be the standard of care, as all medical procedures (pharmaceutical, surgery, etc.) have potential benefits and risks that physicians and patients must weigh.

However, the bill does not seem to clearly articulate that patients are protected from arrest. Arrest protection is the cornerstone of any successful medical cannabis program and it is critical to ASA's eventual support of this bill.

Below is ASA's analysis of the bill using the same system we used in our *Medical Marijuana Access in the U.S.* report.[1] ASA did not issue a grade to HB 523 because there are not accompanying regulations, and therefore there is no way to give the bill a grade that is truly reflective. However, the lack of patient cultivation, no explicit right to dried flowers, and no civil discrimination protections in the areas of housing, employment, child custody, and organ transplants would like drive down the potential Ohio score by several letter grades even if the regulations developed by the Commission were of the most patient-focused quality.

Chart Analysis

Components	Bill text from OH HB 523	Additional Comments
Patients Rights		
Arrest Protection	Unaddressed	It's unclear how patients would be legally protected by this bill. Presumably registration would

[1] Available at: http://www.safeaccessnow.org/medical_marijuana_access_in_the_usa.

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		create a legal right to acquire, possess, and use medicine, but that's not clearly defined
Affirmative Defense	None	
Child Custody	None	Parents who patients can lose custody of their children due to the lack of protections
DUID Proctions	None	
Employment	Sec. 3796.28 (pages 37-38)	This is the most anti-patient employee language in the country.
Explicit Privacy Standards	None	The registry is open to abuse by law enforcement and other state emplyees, leaving patients open to harrassment for legal activity. Then again, the arrest protection for patients isn't clearly defined
Housing Protections	None	Patients can lose their housing simply for the medical cannabis patient status
Does Not Create New Criminal Penalties For Patients	None that are apparent	
Organ Transplants	None	Without explicit protections, patients can be kicked off the organ transplant list simply for being a medical cannabis patient
Reciprocity	None	
Access		
Allows Access to Dried Flowers	TBD - Sec. 3796.04(B)(9)	While this is better than a complete ban on dried flowers, this is problematic for several reasons. First and foremost, it means that patients are not granted the explicit right to access dried flowers, which is by far the preferred medical cannabis product of most patients.

Allows Delivery	Unaddressed	
No Sales Tax or Reasonable Sales Tax	Section 4. The General Assembly hereby declares that it intends to enact law levying an excise tax on each transaction by which medical marijuana is dispensed to a patient in accordance with Chapter 3796. of the Revised Code, as enacted by this act. In addition to levying the tax, the law shall subject persons dispensing medical marijuana to all customary nondiscriminatory fees, taxes, and other charges that are applied to, levied against, or otherwise imposed generally upon other Ohio businesses, their gross or net revenues, their operations, their owners, and their property.	In addition to imposing sales tax upon patients (as retail dispensaries must adhere to all tax laws) is already burdensome for patients because health insurance does not cover the costs of their medical cannabis therapy. Adding an excise tax above the sales tax is harmful, particularly to the most financially vulnerable patients. Patients already face enough financial challenges due to lost wages, job discrimination, and out of pocket health care costs. Adding additional expenses for patients is bad policy.
Allows for a Reasonable Number of Dispensing Facilities	(4) Establish, in accordance with section 3796.05 of the Revised Code, the number of cultivator and retail dispensary licenses that will be permitted at any one time;	This is OK in theory, but there should be a bare minimum number and efforts should be made to ensure geographic diversity
Does Not Require Vertical Integration	No	
Ownership/Employment Restrictions	Disqualifying offenses TBD by Commission	

Provisions for Labor Standards	Not explicit, but labor has a seat at the Commission	
Environmental Impact Regulations	No, but could be addressed through the Commission	
Choice of Dispensary Without Restrictions	Not addressed in the bill, could be addressed by the Commission	
Personal Cultivation	No	The lack of patient cultivation means that there will be a minimum of 18 months (and more realistically, 24-36 months) before patients will have access to medicine. At the risk of sounding over dramatic, patients who could benefit from medical cannabis who are alive when the bill gets signed will die before dispensaries open up.
Collective Gardening	No	
Explicit Right to Edibles/Concentrates/Other Forms	Same as dried flowers, only a restriction on products that appear attractive to children	The prohibition of prducts that are marketed attractive to children is sensible policy. However, this should be limited to packaging and marketing, as patients should have access to whatever products work best for them. Requirements for relatively plain packaging is the best way to achieve all desirable goals here.
Does Not Impose Limits or Bans on THC	Given that the Commission has wide discretion on the types of forms, they could concevably impose a cap on THC	Every juridiction that has placed caps on THC concentration are severely broken programs. This is universally the case in every CBD state. Only NJ imposes caps on whole plant, and has one of the most disfunctional dispensary programs in the country.

Does Not Impose Minimum CBD Requirements	Given that the Commission has wide discretion on the types of forms, they could concevably impose a floor on CBD	Floors on CBD concentration deny patients to obtain products that work best for their endocannabinoid system. One patient with Dravet symdrome might react wonderfully to a 30:1 CBD:THC extract, while another won't recieve benefit until the ratio is 1:2 CBD:THC. Placing artificial caps and floors on cannabinoid profiles are harmful to patients because we're not letting them find the medicine that works best for their individualized endocannabinoid system. This is general flaw with HB 523 as a whole.
Municipal Bans/Zoning	Sec. 3796.29. The legislative authority of a municipal corporation may adopt an ordinance, or a board of township trustees may adopt a resolution, to prohibit, or limit the number of, retail dispensaries of medical marijuana licensed under this chapter within the municipal corporation or within the unincorporated territory of the township, respectively.	If one town can ban, all towns can ban. This can be devistating for patient access, and could mean that some patients will have to travel several hours each way in order to obtain their medicine that is legal under state law. If a locality wishes to ban, it should be on a local ball referendum. Additionally, patients in local jurisdictions that have imposed bans should have the right to have their medicine delivered to them directly.
Navigation		
Comprehensive Qualifying Conditions	No arbitrary restictions imposed on physicians.	This is the best thing about this bill.
Law/regs allows for new conditions	Unnecessary due to the lack of a restrictive qualifying conditions list	
System works for adding new	Unnecessary due to the	

conditons	lack of a restrictive qualifying conditions list	
Reasonable Access For Minors	(2) In the case of a patient who is a minor, the qualifying physician may recommend treatment with medical marijuana only after obtaining the consent of the patient's parent or other person responsible for providing consent to treatment.	
Reasonable Caregiver Background Check Requirements	No caregivers	Patients need to have caregivers to help them acquire and administer their medicine. This is particularly true of the most seriously ill patients.
Number of Caregivers	No caregivers	
Patient/Practitioner-Focused Task Force or Advisory Board	(1) A member who is a practicing physician; (2) A member who represents the law enforcement community; (3) A member who represents employers; (4) A member who represents labor; (5) A member who represents persons involved in the treatment of alcohol and drug addiction; (6) A member who represents persons involved in mental health treatment; (7) A member who is a pharmacist; (8) A member who represents persons	Not enough doctors and no nurses seems problematic. I can see this Commission making a lot of 5-4 decisions and if the physician harbors any bias against medical cannabis, the result will be regulations that are bad for patient access.

	supporting the legalization of marijuana use for medical purposes; (9) A member who represents the general public	
Reasonable Fees for Patients & Caregivers	TBD	
Allows Multiple-Year Registrations	No, in fact, must be renewed every 90 days	Should only require 1 in person exam per year.
Reasonable Physician Requirements	Requires fairly basic reporting information and requires physicians to state the form of medical cannabis, the method of administration, and the amount of cannabis to be used on each recommendation	This goes beyond what is allowed by Conant v. Walters and will have tremendous chilling effect upon physicians willing to participate. Good information on dosage and optimal forms simply to not exist yet, so you're asking doctors to do the impossible. This will have the unintended effect of denying patients access to medicine.
Does not classify cannabis as medicine of last resort	No	Allows physcians to use cannabis as a frontline medical option. This is great!
Functionailty		
Patients Able to Obtain Medicine at Dispensaries or via Cultivation	Dispenaries only	No medicine can be expected in OH for 18 -36 months after signage. Patient cultivation is the best way to mitigate this reality.
No Significant Administrative or Supply Problems	TBD	Developement of regulations under this law will be a substantial undertaking
Legal Protections within Reasonable Time Frame	It's unclear if there are legal protections. Surely they're intended, but they are not made clear.	
Reasonable Possession Limit	TBD	See comment on "Reasonable Physician Requirements." ASA recommends that patients have access to a 90-day supply of medicine and that the

		commission developes a default possession limit for a 90-day supply (at least 4 grams of dried flower per day). Additionally, the commission should great a waiver for patients who need an even great amount.
Reasonable Purchase Limit	TBD	
Allow Patients to Medicate Where They Choose	No restrictions imposed	This is good!
Covered by insurance/state health aide	No	
Financial Hardship (Fee Waivers/Discount Medicine)	TBD	
Product Safety		
Dispensary		
Dispensary Training	(12) Establish training requirements for employees of retail dispensaries	
Facility sanitary conditions	TBD	
storage protocols	TBD	
Reasonable Security Protocols	TBD	
Inventory Control	TBD	
Recall protocol and adverse event reporting	TBD	
Labeling - Product contents including source material identification	(10) Establish standards for medical marijuana packaging that is tamper-resistant; (11) Establish labeling requirements for medical marijuana packages;	TBD by regulation
Labeling - Allergens	TBD	
Labeling -Potency/compound identification	TBD	

Testing - i Active ingredient identification	TBD	
Testing - ii) contaminants	TBD	
Testing - iii) potency	TBD	
Cultivation		
Cultivation Training	TBD	
Facility and equipment sanitary conditions	TBD	
Workforce Safety Protocols	TBD	
Storage protocols (short term and long term storage)	TBD	
Reasonable Security protocols	TBD	
Batch and lot tracking	TBD	
Disposal / waste	TBD	
Water management	TBD	
Pesticide Guidance	TBD	
Pesticide Product labeling	TBD	
Testing - i) Active ingredient identification	TBD	
Testing - ii) contaminants	TBD	
Testing - iii) potency	TBD	
Testing - sample retention	TBD	
Recall protocol and adverse event reporting	TBD	
Manufacturing		
Manufacturing training	TBD	
Facility and equipment sanitary conditions	TBD	
Workforce Safety Protocols	TBD	
Storage protocols	TBD	
Reasonable Security protocols	TBD	
Batch and lot tracking	TBD	

Labeling - Product contents including source material identification	TBD	
Labeling - Allergens	TBD	
Labeling -Potency/compound identification	TBD	
Testing - i) Active ingredient identification	TBD	
Testing - ii) contaminants	TBD	
Testing - iii) potency	TBD	
Shelf life testing	TBD	
Sample retention	TBD	
Recall protocol and adverse event reporting	TBD	
Labs		
Lab Operations Training	TBD	
Method validation in accordance with AHP guidelines	TBD	
Result reporting - disclose the type of testing used.	TBD	
Independent or third party: certification	(13) Specify when testing of medical marijuana must be conducted by a laboratory licensed under this chapter;	
Equipment and Instrument Calibration	TBD	
Sample tracking	TBD	
Facility and equipment sanitary conditions	TBD	
Disposal / Waste Protocols	TBD	
Storage protocols	TBD	
Workforce Safety Protocols	TBD	