

September 23, 2015

ASA Supports S. 672, but Seeks Improvements to Best Serve Patients

Americans for Safe Access (ASA) thanks the South Carolina Senate Medical Affairs Subcommittee for their consideration of S. 672, which would create the South Carolina Medical Marijuana Program. Generally speaking, the program that S. 672 would create would be a strong, patient-focused program that should help bring wellness to a substantial number of South Carolina residents for whom medical marijuana would be beneficial.

We are particularly pleased to see a robust qualifying conditions list and civil discrimination protection for patients in the areas of child custody and organ transplants. However, even within these areas, improvements could be made to better serve patients.

'Qualifying medical condition'

The list of proposed qualifying conditions is fairly comprehensive and would certainly help benefit a large number of patients, but it still suffers from the same flaw the bogs down less inclusive qualifying condition lists. Physicians should be empowered to determine which patients should use medical marijuana as part of their therapeutic regimen. While not completely arbitrary, qualifying condition lists are inconsistent with the principle that allows physicians to authorize powerful and potentially fatal prescription medication for any condition. Physicians may write off-label prescriptions (meaning for conditions not approved by the Federal Food and Drug Administration) for any medication that they can write prescriptions for. Doctors should be able incorporate medical marijuana in the same manner, especially considering how relatively benign marijuana is a substance.

Additionally, the nature of qualifying condition list has a chilling effect on doctors from participating in the program. Experience showed that when physicians in the District of Columbia were limited, physicians were unwilling to participate in the program even for those conditions. When the District government granted physicians to write medical marijuana recommendations in the same manner as prescriptions, participating in the program by physicians grew substantially. Fears that such a system will open up floodgates appear to be unfounded, as in the year following the adoption of this provision

National Office

1806 Vernon St. NW, Suite 100, Washington DC 20009
PHONE: 202.857.4272 FAX: 202.857.4273

California Office

770 L Street, Suite 950, Sacramento, CA 95814
PHONE: 916.449.3975

General Information

WEB: www.AmericansForSafeAccess.org
TOLLFREE: 888-929-4367

the physician-controlled qualifying conditions language has resulted in about 4,200 patients being in the program, or less than 0.7% of the District's total population.¹

Possession Limits

The proposal of allowing up to two ounces of dried flowers is on the lower end of what state programs allow for. While concerns about diversion should be taken into account, patients should be able to maintain a 90-day supply of medicine, as to ensure that their therapeutic regimen not be disrupted. ASA suggests raising the possession limit to meet the actual needs of patients. Patients who possess more than two ounces should not face harsh penalties. At the very least, patients who are in possession over the two ounce limit should be allowed and affirmative defense in court to explain why the two ounce limit is suboptimal for their therapy. If prosecutors and law enforcement can rebut the presumption that a patient's use is medical, patients should be able to rebut the presumption that two ounces is sufficient to treat their condition.

ASA appreciates that the bill takes into account that cannabis oil possession limits should not be identical the limits for the dried flower form of the medication. However, we are concerned that the terms "cannabis oil concentrate" and "diluted cannabis oil" are left undefined and will create confused if left without definition.

Civil Discrimination Protection

As previously stated, ASA strongly supports the provisions in 44-53-2050 and 2060 to prevent decimation against patients in child custody cases and medical care, such as organ transplants. However, patients can still face discrimination in other areas, such as housing and employment. Landlords should not be able to deny housing or evict tenants simply for the patient status. Similarly, a patient should not be subject to termination of their employment simply due to their medical use. ASA suggests adding the following language from Arizona's medical marijuana law.

36-2813. Discrimination prohibited

A. No school or landlord may refuse to enroll or lease to and may not otherwise penalize a person solely for his status as a cardholder, unless failing to do so would cause the school or landlord to lose a monetary or licensing related benefit under federal law or regulations.

B. Unless a failure to do so would cause an employer to lose a monetary or licensing related benefit under federal law or regulations, an employer may not

¹ "MEDICAL MARIJUANA PROGRAM UPDATE 09/14/2015," D.C. Dept. of Health, available at: <http://doh.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/MMPPProgramUpdateMemo115914docx.pdf>

discriminate against a person in hiring, termination or imposing any term or condition of employment or otherwise penalize a person based upon either:

1. The person's status as a cardholder.

2. A registered qualifying patient's positive drug test for marijuana components or metabolites, unless the patient used, possessed or was impaired by marijuana on the premises of the place of employment or during the hours of employment.

Patient Registry

Generally speaking, the patient registry proposed in S. 672 is solid, especially in terms of protecting a patient's privacy. The bill contains some of the strongest privacy protection language of any state medical marijuana law. However, the requirement of criminal background checks and the possibility excluding persons with a criminal drug history in the past five years is bad public policy. Health care access should not be determined by an individual's prior criminal history, especially for individuals who are no longer under state supervision. Additionally, evidence is pointing towards marijuana being an "exit drug," meaning that marijuana can help people who are dealing with substance abuse issues.² Moreover, medical marijuana states have been shown to have a decrease in opioid overdoses, therefore, public officials should be looking at how marijuana can help with substance abuse rather than trying to prevent people with these issues from having safe and legal access.³

Dispensary, Cultivation, and Laboratory Operations

With respect to Sections 44-53-2165 and 2200 through 2300, ASA recommends that the subcommittee consider language would facilitate incorporation of the guidelines of the American Herbal Products Association (AHPA) for Cannabis Operations.⁴ These guidelines were developed utilizing the best practices of the existing herbal products industry and two decades of state medical marijuana programs. The AHPA guidelines were developed to help ensure that patients have access to safe and reliable medical marijuana.

² See: Lucas, Philippe, et al. "Cannabis as a substitute for alcohol and other drugs: A dispensary-based survey of substitution effect in Canadian medical cannabis patients." *Addiction Research & Theory* Vol. 21, Issue 5, 2013, available at: <http://www.tandfonline.com/doi/abs/10.3109/16066359.2012.733465> and Reiman, Amanda. "Cannabis as a substitute for alcohol and other drugs." *Harm Reduction Journal* 2009. Available at <http://www.harmreductionjournal.com/content/6/1/35>.

³ "Lower Opioid Overdose Death Rates Associated with State Medical Marijuana Laws," The JAMA Network, August 25, 2014, available at: <http://media.jamanetwork.com/news-item/lower-opioid-overdose-death-rates-associated-with-state-medical-marijuana-laws/>

⁴ Available at: <http://www.ahpa.org/Default.aspx?tabid=267>

National Office

1806 Vernon St. NW, Suite 100, Washington DC 20009
PHONE: 202.857.4272 FAX: 202.857.4273

California Office

770 L Street, Suite 950, Sacramento, CA 95814
PHONE: 916.449.3975

General Information

WEB: www.AmericansForSafeAccess.org
TOLLFREE: 888-929-4367