

MEDICAL MARIHUANA ACT AMENDMENTS

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House Bill 4834 (Substitute H-4)
Sponsor: Rep. Gail Haines

House Bill 4853 (Substitute H-1)
Sponsor: Rep. Ed McBroom

House Bill 4851 (Substitute H-7)
Sponsor: Rep. Philip M. Cavanagh

House Bill 4856 (Substitute H-2)
Sponsor: Rep. Ben Glardon

Committee: Judiciary
Complete to 2-29-12

A SUMMARY OF HOUSE BILLS 4834, 4851, 4853, & 4856 AS REPORTED FROM COMMITTEE 5-2-12

The bills would amend various acts related to medical marihuana to:

- Require a patient registry identification card to contain a photo ID.
- Require registry identification cards to be valid for two years.
- Require LARA to privatize portions of the application process for a registry ID card.
- Revise confidentiality provisions to apply to private vendors.
- Create a panel to review petitions requesting the approval of medical conditions or treatments for addition to the list for which the use of medical marihuana would be approved, and provide for public input.
- Define "bona fide physician-patient relationship" to include an in-person, physical examination of the patient, and revise other definitions, as well.
- Place the penalty for selling marihuana in violation of registry identification card restrictions within the sentencing guidelines.
- Regulate the transportation of usable marihuana in a motor vehicle and prescribe penalties for a violation.

House Bill 4834

The bill would amend Section 6 of the Michigan Medical Marihuana Act, MMMA, (MCL 333.26426) to require a photo for both the patient and caregiver registry identification card, make the card valid for two years, require the privatization of some of the registry process, create a panel to review the appropriateness of adding other medical conditions and treatments to the list of debilitating conditions contained in departmental rules, require public meetings before recommending a new addition to the list, revise confidentiality provisions, and define "state or local law enforcement officer or official."

(Note: The Michigan Medical Marihuana Act defines "department" as the Department of Community Health, but Executive Order No. 2011-4 transferred the Bureau of Health Professions, which has oversight of the Medical Marihuana Program, from the

Department of Community Health to the Department of Licensing and Regulatory Affairs.)

Photo for patient or caregiver registry identification card

The bill would require an applicant, as part of the application for either a patient or a caregiver registry identification card, to submit two identical color photographs. The photograph must show the applicant's current appearance, comply with the size requirements specified in the bill, and be a full-face, front view against a plain, white or off-white background. In addition, the person's hair or hairline could not be obscured by a hat or headgear, nor could the person wear dark or nonprescription glasses unless medically necessary.

Currently, a photograph is required to be on a registry ID card only if required by departmental rule. The bill would instead require a patient or a caregiver registry ID card to contain a photo as described above.

Expiration date of registry identification card

The bill would require a patient or caregiver registry identification card to expire two years, instead of one year, after issuance.

Privatization

Not later than one year after the bill's effective date, LARA would be required to enter into a contract with a private contractor to assist it in performing its duties regarding issuing registry ID cards to qualifying patients and caregivers. The contract could provide for assistance in processing and issuing registry ID cards, but LARA would retain the authority to make the final determination as to issuing the registry ID card. The contract would also have to preserve the confidentiality of information in conformity with the bill's requirements.

Confidentiality

Currently, LARA must maintain a confidential list of the persons issued registry identification cards. LARA is required to verify to law enforcement personnel whether a registry ID card is valid but without disclosing more information than is reasonably necessary to verify the authenticity of the card. This requirement would be deleted and replaced with an expanded confidentiality requirement.

Under the bill, LARA could not allow any person access to any information about patients in the confidential list of persons to whom LARA issued registry ID cards or from whom an application had been received, or access to any information otherwise maintained by the LARA concerning physicians who provide written certification and primary caregivers.

The only exceptions would be for the following:

- Authorized LARA employees or of a subcontractor described above in the course of their official duties.

- State or local law enforcement officers or officials, but only if:
 - The officer or official provides a registry ID number, the officer or official is acting in the course of official duties, and LARA does not allow access to more information than is reasonably necessary to verify the authenticity of the registry ID card;
 - The officer or official provides a name and a date of birth for an individual or an address; has probable cause to believe a violation involving the possession, use, transfer, or transportation of marihuana has occurred; and LARA does not allow access to more information than is reasonably necessary to verify that the individual or an individual at the specified address has a valid registry ID card. This provision would not require a search warrant to obtain access to the registry information.

Currently, a person, including an employee or official of LARA or another state agency or local unit of government who violates the confidentiality provisions is subject to criminal penalties for disclosing information in violation of the act—a misdemeanor punishable by not more than six months in jail and/or a fine of not more than \$1,000. The bill would apply the provision also to contractors. Moreover, instead of prohibiting the disclosure of confidential information, the bill would instead prohibit accessing, using, or disclosing nonpublic information governed under the act for personal use or gain or in a manner not authorized by law.

[Note: Administrative Rule 333.121(2) provides that "[n]ames and other identifying information made confidential under subrule (1) of this rule may only be accessed or released to authorized employees of the department as necessary to perform official duties of the department pursuant to the act, including the production of any reports of non-identifying aggregate data or statistics."

According to Attorney General Opinion No. 7250 dated August 31, 2010, the rule precludes the department (at that time, the Department of Community Health) from giving a private vendor access to the necessary information. The attorney general suggested as a remedy that the department either promulgate a new rule or issue an emergency rule if appropriate, or that the Legislature amend or rescind the rule or specifically amend the MMA to allow the department to pursue contracts with outside vendors.]

Review panel and public hearing

Within six months after the bill's effective date, LARA would have to appoint a panel of not more than 15 members to review petitions to approve medical conditions or treatments for addition to the list of debilitating medical conditions under departmental rules. Petitions would have to be accepted from any person. The panel would provide recommendations to LARA regarding whether the petitions should be approved or denied. In order to be considered an official recommendation, a quorum of the panel would have to concur. Within 60 days of receiving a written petition from LARA, the panel would have to make a recommendation regarding approval or denial of the petition.

Once LARA received a recommendation from the review panel, LARA would have to post the panel's recommendations on its website for public comment for a period of 60 days; hold a public hearing within that 60-day time period; and give notice of the public hearing not less than 10 days before the date of the hearing.

Comments made during the hearing would be forwarded by LARA to the review panel for review. If the panel then determined that substantive changes should be made to its initial recommendation, the petition would have to be denied, the petitioner provided with a copy of the initial recommendation and an explanation of the substantive changes, and the petitioner allowed to resubmit the petition to LARA at any time.

If no changes are made to the initial recommendation - or if the changes are minor and do not affect the general content of the recommendation, LARA would have to forward the recommendation to the director of the department for a final determination on the petition. The director must make a final determination within 180 days of the date the petition was filed with the department. The director's approval or denial of the petition would be a final department action subject to judicial review.

If the petition were approved, LARA would have to create a document verifying the addition of the new medical condition or treatment to the list of debilitating medical conditions identified under departmental rules. In addition, LARA would have to develop a policy allowing the new medical condition to be used to qualify an individual for a registry ID card until such time that the statute was amended to officially recognize the new medical condition as a qualifying debilitating medical condition.

A majority of the panel members would have to be licensed physicians. Panel membership would have to include the Michigan Chief Medical Executive and seven appointed members of the Advisory Committee on Pain and Symptom Management (described in Section 16204a of the Public Health Code, MCL 333.16204a). Of these seven, four would have to be licensed physicians and three nonphysicians.

Staff support would be provided to the review panel by LARA to assist with scheduling meetings, conference calls, and disseminating petition-related materials as well as perform other administrative duties related to the performance of the panel's review.

Definition of "state or local law enforcement officer or official"

The term would mean any of the following individuals in this state:

- A county sheriff or deputy sheriff.
- An officer of a municipal police department.
- A marshal of a municipality.
- A constable of any local unit of government.
- An officer of the Michigan State Police.
- A security employee employed by this state and granted limited arrest authority under MCL 28.6c (i.e., Capitol Security officers).
- A motor carrier officer.

- A police officer or public safety officer of a community collect, college, or university authorized by the institution's governing board to enforce state law and the rules and ordinances of the institution.
- A park and recreation officer commissioned under Section 1606 of the Natural Resources and Environmental Protection Act (NREPA, MCL 324.1606).
- A state forest officer commissioned under Section 83107 of NREPA (MCL 324.83107).
- A judge of the district, circuit, or probate court.
- A parole or probation officer.

(Note: The bill does not appear to include a conservation officer with the Department of Natural Resources in the definition of the term.)

House Bill 4851

The bill would amend the MMMA (MCL 333.26423 and 333.26428) to add a definition of the term "bona fide physician-patient relationship" and revise the definitions of other terms. The bill would define "bona fide physician-patient relationship" to mean a treatment or counseling relationship between a physician and patient to which all of the following apply:

- The physician reviewed the patient's relevant medical records and completed a full assessment of the patient's medical history and current medical condition, including a relevant, in-person, medical examination of the patient.
- The physician created and maintains records of the patient's condition in accord with medically accepted standards.
- The physician has a reasonable expectation to provide follow-up care to monitor the efficacy of the use of medical marihuana as a treatment of the patient's debilitating medical condition.
- With permission by the patient, the physician notifies the primary care physician of the patient's debilitating medical condition and certification for the use of medical marihuana to treat that condition.

The bill would also revise the definition of "enclosed, locked facility" to mean a closet, room, or other comparable, stationary, and fully-enclosed area equipped with secured locks or other functioning security devices that permit access only by a registered primary caregiver or registered qualifying patient. (Underlining denotes changes.)

In addition, the definition of "written certification" means a document signed by a physician stating the patient's debilitating medical condition. The bill would also require the written certification to include a statement that "the physician has completed a full assessment of the patient's medical and psychological history and current medical and psychological condition, including a relevant, in-person, physical examination."

House Bill 4853

The bill would amend the Code of Criminal Procedure (MCL 777.13n) to place the penalty for a registered qualifying patient or caregiver who sells marihuana to an unauthorized person within the sentencing guidelines. The current penalty is a felony punishable by imprisonment for not more than two years or a fine of not more than \$2,000, or both, in addition to any other penalties for the distribution of marihuana. The person's registry identification card would also be revoked.

The bill would specify that selling marihuana in violation of registry identification card restrictions would be a Class G felony against the Public Trust with a maximum term of imprisonment of two years.

House Bill 4856

The bill would add a new section to the Michigan Penal Code (MCL 750.474). Under the bill, a person could not transport or possess usable marihuana in or upon a motor vehicle or any self-propelled vehicle designed for land travel unless the usable marihuana is one or more of the following:

- Enclosed in a case that is carried in the trunk of the vehicle.
- Enclosed in a case that is inaccessible from the interior of the vehicle, if the vehicle in which the person is traveling does not have a trunk.

A person who violated the bill's provision would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500, or both. "Usable marihuana" would mean that term as defined in the Public Health Code (MCL 333.26423). The term includes the dried leaves and flowers of the marihuana plant, and any mixture or preparation thereof, but does not include the seeds, stalk, and roots of the plant.

FISCAL IMPACT:

House Bill 4834 (H-4) would have the following fiscal impacts on the Bureau of Health Profession (BHP) in the administration of the Medical Marihuana Program (MMP).

- 1) The BHP has procured a high-volume printer (costing approximately \$800,000) that will be able to print registry identification cards with the photograph that, presumably, would be required on the cards under HB 4834 (H-4). However, HB 4834 (H-4) would create additional costs for the BHP in the digitization of photographs submitted. Further, the BHP is uncertain how to verify that a submitted photograph was taken within the past six months and anticipates that such verification could create additional costs.
- 2) By extending the period during which a registry identification card is valid from 1 year to 2 years, HB 4834 (H-4) would reduce both the annual revenue generated by and annual expenditures for the MMP by the BHP. Revenue would likely decline by about half from

an estimated \$7.5 million in FY 11-12. Expenditures would also likely decline by about half from an estimated \$3.9 million in FY 11-12. Thus, the extension of the renewal period for registry identification cards would likely have a neutral fiscal impact on the BHP as long as legal requirements for the MMP remain constant.

- 3) HB 4834 (H-4) requires the BHP to contract with a private entity to "assist the department in performing its duties under this section." The Department of Community Health issued a report on March 1, 2010, which estimated the costs of outsourcing the processing of data-entry and creation of registry identification cards. The outsourcing estimates were based on annual program cost projections from the BHP and informal information submitted by two private vendors. The report estimated that outsourcing portions of the MMP would exceed the cost of retaining the Program within the BHP by between \$212,162 and \$1,224,162 annually.
- 4) Finally, the formal petition process to add medical conditions to the list of "debilitative medical conditions" created by HB 4834 (H-4) would likely generate significant but indeterminate costs for the BHP in administratively supporting the Review Panel, accepting and submitting petitions, holding, publicizing, and documenting public hearings, disseminating the Review Panels recommendations, making and documenting final petition determinations, and potentially defending determinations in court.

House Bill 4851 (H-7) would not have a significant fiscal impact on the Bureau of Health Professions (BHP) in the administration of the Medical Marihuana Program (MMP) since the definitions which it amends do not substantively change the BHP's administration of the act.

House Bill 4853 adds the felony violation outlined in MCL 333.26424 related to the sale of medical marihuana to persons without valid identification cards to the sentencing guidelines statute. Since the violation already exists in current law, the bill would have no fiscal impact on the State or on local units of government.

House Bill 4856 creates a new misdemeanor offense for transporting or possessing medical marihuana in a vehicle under certain circumstances. To the extent that the bill leads to an increase in misdemeanor convictions, it could increase local corrections costs. The average cost of incarceration in local jails and of misdemeanor probation supervision varies by jurisdiction. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

POSITIONS:

The ACLU Michigan supports House Bill 4851 (H-7) and is neutral on the rest of the bills. (3-29-12)

The Prosecuting Attorneys Association of Michigan (PAAM) supports the bill package. (3-29-12)

The following organizations testified in or indicated support for the bills earlier in the committee process:

The Michigan State Police (3-8-12)
The Michigan State Medical Society (3-8-12)

The following organizations testified in or indicated opposition to the bills earlier in the committee process:

Newaygo County Compassion Club (3-8-12)
Clare County Compassion Club (3-8-12)
Michigan Medical Marijuana Association (3-1-12)

The following organizations submitted written testimony with concerns regarding the legislation but did not list a position on the bills:

The Cannabis Patients United (CPU) (3-29-12)
Genesee County Compassion Club (3-8-12)
Veterans for Freedom-MI, undated

Legislative Analyst: Susan Stutzky
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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.