

PROGRAM BILL #57

GOVERNOR'S PROGRAM BILL

2014

MEMORANDUM

AN ACT to amend the public health law, the tax law, the state finance law, the general business law, the penal law and the criminal procedure law, in relation to medical use of marihuana and providing for the repeal of such provisions upon expiration thereof

Purpose:

This bill would comprehensively regulate the manufacture, sale and use of medical marihuana. It would strike the right balance between potentially relieving the pain and suffering of those in desperate need of a treatment and protecting the public against risks to its health and safety. The balance would be maintained by granting discretion to physicians to prescribe in accordance with regulatory requirements and medical norms, empowering the Department of Health to oversee the regimen of medical marihuana usage and leaving to the Governor, the final say in seeing that the public's safety and health are protected by authorizing him to discontinue the program, in whole or in part, should risks to the public so warrant.

Summary of Provisions:

The bill would create a new Title V-A in Article 33 of the Public Health Law entitled "Medical Use of Marihuana," a comprehensive regulatory structure governing every aspect of the medical use of marihuana.

Certification: A patient would have to be certified by a practitioner in order to obtain medical marihuana. A practitioner would be a physician, trained by and registered with the Department of Health (DOH), licensed by the State and qualified to treat the serious condition for which the patient is seeking treatment. A certification could be issued only to a patient with a serious condition, which is limited to a defined list of conditions. The Commissioner of Health (Commissioner) may add additional conditions or symptoms to the list. The patient would have to be under the practitioner's continuing care for the serious condition.

The bill would establish the form of the certification. In making the certification, the practitioner must consider the appropriate form and dosage of medical marihuana. Any form of medical marihuana not approved by the Commissioner would be prohibited, and smoking would be prohibited. The dosage must be consistent with guidance issued by the Commissioner, and the patient would not be allowed to possess an amount of medical marihuana in excess of a 30 day supply of the dosage. Additionally, the patient would be required to keep the medical marihuana in the original packaging in which it was dispensed.

Registry Identification Cards: Upon approval of the certification, DOH would issue registration identification cards. Patients or designated caregivers would have to apply to DOH for a card, on an application determined by the Commissioner. If a patient wishes to change or terminate a certified caregiver, the patient would be required to notify the Department, which would notify the caregiver that the caregiver's card is invalid and must be returned to the Department.

The registry identification card would expire one year after the date the certification is signed. The card would contain any recommendation or limitation on form or dosage imposed by the practitioner as well as other information. A patient or caregiver would have to notify the Department of any change in name or address or if the patient ceases to have the serious condition noted on the certification, at which point the card would have to be returned to the Department. A patient would be required to carry his or her registration card when in possession of the medical marihuana.

The Department would maintain a confidential list of persons issued a registry identification card, and individual identifying information obtained by the Department would be exempt from disclosure under Article Six of the Public Officers Law. The Department would be able to suspend or revoke the card of a patient or caregiver who willfully violates any provision of the new Title.

Registered Organizations: A registered organization would be a for-profit business entity or not-for-profit corporation that would acquire, possess, manufacture, sell, deliver, transport, distribute, or dispense medical marihuana. Registered organizations would be able to dispense medical marihuana to individuals who present a registry identification card and would provide the patient or caregiver with a receipt, which would also be provided to the Department. A safety insert would also be provided to the patient or caregiver. The organization would not be able to dispense an amount greater than a thirty day supply to a patient. The medical marihuana would be dispensed in a sealed and properly labeled package. All manufacturing and dispensing of medical marihuana by registered organizations would take place in New York State. The Commissioner is authorized to promulgate regulations restricting the advertising and marketing of medical marihuana.

Registered organizations would register with the Department on a form determined by the Commissioner. Registered organizations would also be under a continuing obligation to report any changes in facts or circumstances reflected in the application either during the application process or once registration has been granted. The Commissioner would grant applications only when the Commissioner is satisfied that the applicant would be able to conform to a delineated list of requirements. Registrations would be valid for two years at a time and would be renewable. A registration will be suspended or revoked if the organization fails to comply with applicable state laws. The Commissioner would be able to register up to five organizations that each operate four dispensaries, and would be able to allow additional registered organizations and dispensaries.

Registered organizations would be required to file reports with the Department and would have to comply with security and record keeping requirements determined through regulation by the Commissioner.

Other Provisions:

- Health insurers would not be required to provide coverage for medical marihuana.
- The Commissioner would have authority to issue any necessary regulations to implement the Title's provisions and would also set a price for medical marihuana.
- Registration identifications and registrations for organizations would be issued 18 months after the effective date of the bill, unless the Commissioner certifies that the Title could not be implemented in accordance with public health and safety interests. The Governor would also be allowed to suspend or terminate any provisions of the Title based on the recommendations of the Commissioner or Superintendent.
- The medical marihuana program would be integrated into the successful existing I-STOP program.
- There would be a new article in the Tax Law, Article 20-B, which would impose an excise tax on every sale of medical marihuana by a registered organization to a certified patient or designated caregiver. The excise tax, which would be charged against and paid by the organization, would equal 7% of the gross receipts attributable to the sale of the medical marihuana to the certified patient or designated caregiver. The provisions in proposed new Article 20-B also include the procedural rules necessary to administer and enforce the excise new tax.
- The bill would establish the Medical Marihuana Trust Fund -- in Section 89-h of the State Finance Law that would consist of the proceeds of the excise tax. The moneys of the medical marihuana trust fund, following appropriation by the Legislature, would be allocated as follows: 22.5% to the counties in New York in which the medical marihuana was manufactured; 22.5% to the counties in New York in which the medical marihuana was dispensed; 5% to the Office of Alcoholism and Substance Abuse Services to be used for additional drug abuse prevention, counseling and treatment services; and 5% to the Division of Criminal Justice Services to be used for a program of discretionary grants to state and local law enforcement agencies that demonstrate a need relating to Title V-A of Article 33 of the Public Health Law.
- The Penal Law would be amended to create a class E felony for a practitioner to issue a certification when the practitioner knows or has reason to know that the patient has no medical need for the certification, or that the certification was requested for a purpose other than to treat a serious condition. It would be a class B misdemeanor for a person to transfer medical marihuana to an individual who the person knows or has reasonable grounds to know is not authorized to possess medical marihuana. It would be a class A

misdemeanor for patients or caregivers to retain an amount of marihuana in excess of the amount they are authorized to possess.

Existing Law:

Article 221 of the Penal Law governs the possession and sale of marihuana.

Justification:

Medical marihuana has the potential to alleviate the pain and suffering of New Yorkers afflicted with serious illnesses. Numerous other states have recognized the therapeutic and palliative benefits of medical marihuana. Any system allowing medical marihuana, however, must be strictly regulated to avoid any undue risks or negative consequences to the public health and public safety. This bill would create a comprehensive, regulated framework for providing medical marihuana to individuals who stand to benefit most from its use.

The bill would regulate practitioners, patients and organizations that participate in the medical marihuana system. It would also provide that the program would not begin until the Commissioner and the Superintendent of State Police certify that the system can be administered consistent with public health and safety interests. It would also provide the Commissioner substantial regulatory authority to ensure the system is administered safely.

Notably, this bill prohibits smoking medical marihuana. The negative health consequences of smoking of marihuana are well-established. As the National Institute for Drug Abuse notes, "The smoke of marijuana, like that of tobacco, consists of a toxic mixture of gases and particulates, many of which are known to be harmful to the lungs." In addition to its direct negative effects on users' health, the widespread smoking of medical marihuana has the potential to undermine New York State's decades-long and successful effort to decrease smoking more broadly. However well-intentioned, any effort that reduces the stigma associated with smoking, and that has the potential to lead to an increase in smoking rates among New Yorkers, especially young New Yorkers, presents an unwarranted public health risk. This legislation would avoid that risk.

Legislative History:

This is a new bill.

Budget Implications:

Any State Fiscal Year 2014-2015 expenses associated with this bill would be paid for by existing state resources, and ongoing expenses would be funded through the excise tax revenues and application fees.

Effective Date:

This bill would take effect immediately, subject to the necessary certifications by the Commissioner and Superintendent. This bill would sunset in 7 years.