

Marijuana Use for Medical Conditions (Measure 5) July 13, 2016 (Updated)

An initiated measure sponsored by a group of citizens proposes legislation to legalize the use of marijuana for medical conditions. State law prevents the Department of Health (DoH) from supporting or opposing an initiated measure. The DoH is able to provide factual information regarding the measure and its implementation, should it be approved by the voters. This memo provides an analysis of the measure as it relates to the DoH and identifies some of the additional legislation and rulemaking that would be required in order to implement the measure.

MEDICAL MARIJUANA

Marijuana is a psychoactive drug produced by the Cannabis sativa plant that contains over 400 chemicals. At least two active ingredients are of interest from a medical perspective; tetrahydrocannabinol (THC) and cannabidiol. THC is the substance that contains psychoactive properties. Medications containing THC have been approved by the Federal Drug Administration (FDA) for specified conditions and are currently available in North Dakota by prescription. Cannabidiol is currently undergoing FDA testing and is expected to be available by prescription later this year.

Despite the legalization of marijuana by states, both recreational and medicinal marijuana remain illegal under the federal Controlled Substances Act. Marijuana in plant form has not been through the FDA process.

INITIATED MEASURE

The initiated measure would add a new chapter to Title 19 of the North Dakota Century Code providing for the use of marijuana for defined debilitating medical conditions. The initiated measure does not provide a delayed implementation date. If approved by the voters in November, the initiated measure will take effect 30 days after it passes. Although the DoH will make every reasonable effort to comply with the law if passed, the need for additional funding and legislative clarifications, along with the necessity to create sophisticated databases and hire additional staff, will make implementation within 30 days extremely difficult to achieve.

STATUTORY LANGUAGE

The language of the act provides:

- All forms of marijuana can be used for medical purposes. Consumption methods include smoking, vaporizing, edibles and topicals.
- Individuals of any age, including children, are able to obtain a referral for marijuana for medical use in any form.
- The measure identifies a list of conditions eligible for obtaining a marijuana referral for medical use.
- Compassionate care centers can possess up to 1,000 marijuana plants.
- Designated caregivers can possess up to eight marijuana plants.

- Qualified individuals who live more than 40 miles from a compassionate care center are able to possess up to eight marijuana plants.
- Qualified individuals who do not grow their own marijuana plants are able to obtain a usable amount of medical marijuana every 14 days. A usable amount of marijuana is defined as three ounces or less of usable marijuana. Usable marijuana means parts of the plant and any mixture or preparation of the plant.

FINANCIAL

- The cost to administer the measure in the first biennium would be \$8.7 million dollars; this would include ongoing costs of \$7.3 million and one-time costs of \$1.4 million (the DoH assumed two compassion centers when preparing these calculations).
 - Ongoing costs of \$7.3 million include overall program administration; registration processes; and program compliance, which includes enforcement, onsite reviews and random inspections of designated caregivers/qualified patients and two compassionate care centers.
 - One-time costs of \$1.4 million include office equipment, office space, security, and establishment and maintenance of an electronic registration system.
- The measure will require the addition of 32 full time employees.
- The incremental net cost for two additional compassion centers is \$1.2 million and requires three additional full time employees.
- Revenue generated from registration and fees is not sufficient to cover the ongoing costs to implement the measure.
- The measure does not provide a source of revenue for the start-up implementation costs. A revenue source, appropriation authority, and FTE are needed to implement the law should it be passed. DoH estimates it will need a \$2.5 million appropriation from the general fund in order to implement the measure.
- The measure provides for a continuing appropriation but does not identify the details relevant to the appropriation. Additional legislation would be necessary to identify the specifics.
- Three characteristics significantly impact the cost to implement the measure:
 - The measure does not limit the total number of qualified patients, designated caregivers or compassion centers that can use, grow, cultivate, dispense, and sell marijuana for medical use in the state. This affects the number of permits that will have to be issued and tracked, the number of inspections that will need to be done, and the amount of testing that will be needed, all of which have to be done by the DoH. Laws in some states limit the number of dispensaries/sellers, or do not allow any and require users to purchase the product out of state, thus significantly reducing the state's costs.
 - The measure allows for numerous methods to introduce marijuana into the human body (19-24-02(12)); legal methods of marijuana will include inhalation, including both smoking and vaporizing, edibles, oils, tinctures and so forth. Each of these methods and any future methods need to be regulated by the DoH. Laws in some states significantly limit the methods of consumption that are allowed. As an example, some states only allow cannabidiol oil, which significantly decreases implementation costs.
 - The measure allows marijuana to be used to treat a broad range of symptoms and diseases, including chronic back pain and intractable, or hard to treat, nausea. Laws

in some states limit use to only one or a few select diseases, thereby limiting the number of patients who qualify to use marijuana for medical purposes. This means, relative to other states, the DoH will be processing more applications, issuing and managing more permits, conducting more compliance checks of growers, and so forth.

ADDITIONAL LEGISLATION AND RULEMAKING

- Portions of the measure conflict with the Administrative Agencies Procedures Act.
 - Additional legislation is necessary to address the conflicts.
- The measure provides each individual with access to the same amount of marijuana. The chemical properties in the plant form of marijuana differ dramatically.
 - Additional legislation would be necessary to provide variance in dosage consistent with future scientific testing results.
- The measure does not provide requirements for safe packaging.
 - Additional legislation would be necessary to ensure packaging meets safety standards.
 - Additional legislation would also be necessary to address inconsistencies pertaining to packaging requirements throughout the measure.
- The measure does not provide any limitations on where marijuana for medical purposes can be used.
 - Additional legislation would be necessary to address restrictions on the use of marijuana for medical purposes within various establishments.
 - Additional legislation would be necessary to address student use of marijuana for medical purposes on school property.
- The measure references and defines designated caregivers. Designated caregivers are individuals who “manag[e] the well-being of one to five qualified patients...”
 - Additional legislation would be necessary to identify the legal responsibilities of designated caregivers.
 - Additional legislation would be necessary to identify the qualifications for becoming a designated caregiver.
 - Additional legislation would be necessary to ensure designated caregivers are not participating in the unauthorized practice of medicine.
- The measure references a number of terms, which are not specifically defined. Additional legislation would be necessary to define:
 - Quality Testing
 - Primary Caregiver
 - Excluded Felony
 - Administrative Withdrawal
- The measure provides standards for the DoH to follow when adding to the list of conditions for which marijuana for medical use can be obtained. The standard allows the DoH to add a condition to the list if “marijuana is more likely than not to have the potential to be beneficial to treat or alleviate the debilitation associated with the medical condition or treatment.”
 - Additional legislation would be necessary to create an objective legal standard for adding conditions to the list of eligible conditions.

- The measure provides that decisions by the DoH regarding the addition of eligible conditions are subject to judicial review, but does not identify which district court has jurisdiction.
 - Additional legislation would be necessary to address jurisdictional issues.
- The measure requires testing and sampling of marijuana.
 - Additional legislation would be necessary to establish standards or baselines against which marijuana properties are tested.
- The measure requires compassion centers to inform patients of “safe smoking techniques.”
 - Additional legislation would be necessary to develop standard language and a legal basis for compassion centers to communicate and identify “safe smoking techniques” and potential side effects.
- The measure provides liability for driving under the influence of marijuana.
 - Additional legislation would be required to address the legal standard for both how intoxication is measured and what level of intoxication is considered the limit for driving.
- The measure provides confidentiality provisions for records and client information.
 - Additional legislation would be necessary to provide the DoH with the authority to share confidential information with the appropriate licensing boards, Attorney General’s Office and law enforcement.
- The measure requires compassion centers to be non-profit entities, but also references potential investors.
 - Additional legislation would be necessary to address this conflicting language.
- The measure does not allow designated caregivers who have committed an “excluded felony” to obtain a registration card.
 - Additional legislation would be necessary to determine which felony convictions prevent an individual from becoming a designated caregiver.
- The measure requires the DoH to notify caregivers when a patient is no longer eligible to receive services. Prior to the DoH notifying the caregiver, the patient must notify the department that they are no longer eligible. Eligibility information is only available to the department through the patient.
 - Additional legislation would be necessary to limit the legal liability on the DoH if the patient fails to notify the department of ineligibility.
 - Additional legislation would be necessary to address penalties for patients who fail to notify the department of ineligibility.
- The measure requires inventory discrepancies be reported to the DoH and law enforcement.
 - Additional legislation would be necessary to address penalties for failure to report discrepancies and what would be done with the reported discrepancies.
 - Additional legislation would be necessary to provide a variance in dosage consistent with future scientific testing results.
- The measure requires application fees be paid by either cashier or personal check.
 - Additional legislation would be necessary to address banking regulations.

LEGAL IMPLICATIONS

- Both recreational and medical marijuana remain illegal under the federal Controlled Substances Act. Additional research would be necessary to identify potential legal implications.