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## **Medical Marijuana Bills in Michigan's 2012 Legislative Session**

Several bills — no less than 16 — that would amend or affect the Michigan Medical Marijuana Act (MMMA) have been introduced in the state legislature. If passed, many of these bills would undermine Michigan's voter-approved law by preventing or discouraging patients from accessing their doctor-recommended medicine. The most alarming bills would essentially nullify the law's core protections in some or all of the state, such as by preventing municipalities from being sued for violating the MMMA; by making it illegal for patients and caregivers to obtain or provide others with even a first seed; and by forbidding patients who live near schools, churches, or day care centers to cultivate in their own homes. Below is a short description and impact analysis of each of the bills.

### **HB 5286 (Byrum-D) – Makes certain information available to law enforcement “for purposes of obtaining or executing a search warrant.”**

- Under current law, the Department of Licensing and Regulatory Affairs (LARA) must verify to law enforcement personnel whether a registry identification card is valid without disclosing any more information than is reasonably necessary. This legislation would require LARA to also verify to law enforcement personnel seeking to obtain or execute a search warrant (1) whether a named individual has been issued a registry ID card, and/or (2) whether an individual at a specific address has been issued a registry ID card.

POSITION: MPP understands the benefits to law enforcement as well as patients and caregivers of avoiding unnecessary raids and other enforcement actions. However, in its current form, this bill could be used as the basis for suspicionless “fishing expeditions.”

MPP would likely drop its opposition to this bill with some minor clarifications. First, registry information should not serve as the basis for *obtaining* a warrant, but rather, should be available *after a warrant has been obtained* in order to avoid unnecessary enforcement actions. Second, in the interest of disclosure and transparency, records of inquiries (redacting confidential information) should be maintained by the department. Finally, the bill should clarify that it applies only to state and local law enforcement, not federal agencies.

### **SB 17 & HB 4397 (Jones-R & Callton-R) – Prohibits the formation of “marihuana clubs” or “marijuana bars”**

- This legislation would make it a misdemeanor, punishable by a fine of up to \$500 and imprisonment of up to 90 days, to operate a marijuana club or bar, defined as a location in which one or more people are permitted to use marijuana in exchange for the payment

of a fee. This definition does not include hospices, nursing homes, or any place “where marijuana is legally dispensed under the Michigan Medical Marijuana Act.”

POSITION: MPP does not oppose prohibiting on-site consumption of marijuana at such locations due largely to concerns that such consumption could be followed by driving. While MPP supports efforts to recognize and regulate dispensaries, MPP is neutral on this bill.

**HB 4463 (Knollenberg-R) – Prohibits anyone with *any* felony conviction from becoming a caregiver**

- Under current law, individuals who have been convicted of a felony involving illegal drugs are ineligible to serve as a registered caregiver. If passed, HB 4463 would extend this prohibition to individuals with any felony conviction.

POSITION: MPP believes current safeguards on caregiver eligibility are sufficient, and this measure would be unreasonably burdensome for the seriously ill spouses or other loved ones of former felons who have already repaid their debt to society.

**HB 4661 (Darany-D) – Prohibits cultivation within 500 feet of a church, school, or daycare center**

- Sponsored by Rep. George Darany, this bill would prohibit patients and their caregivers from cultivating marijuana within 500 feet of a school. Violators would have their medical marijuana registry card revoked.

POSITION: No such restrictions apply to pharmacies, which dispense numerous drugs far more dangerous than marijuana. At the very least this should not apply to cultivation in patients’ and caregivers’ own residences.

**HB 4834 (Haines-R) – Requires photograph on registry cards; provides for sharing of patients identification information to law enforcement**

- One section of the bill would require applicants for registry ID cards to submit a passport-style 2x2 inch front-facing photograph of the applicant taken within the preceding six months. Separately, the bill would also allow the Department of Licensing and Regulatory Affairs to disclose patient information to state and local law enforcement officers who provide the Department with the individuals name and date of birth, or registry ID number.

POSITION: Requiring photographs may be burdensome for low-income applicants and exacerbate the already months-long delay patients are facing while waiting for their cards. As for sharing information with law enforcement, the Department can already verify the validity of patient and caregiver ID cards, so this provision is unnecessary. At the very least, if law enforcement officers do not have a patient’s ID card number, they should be required to prove that they have probable cause to believe the person is

cultivating marijuana to avoid fishing expeditions and unwarranted harassment of state-legal patients.

#### **HB 4850 (Walsh-R)– Prohibits patient-to-patient transfers**

- This bill would effectively prohibit patient-to-patient transfers by making the law’s affirmative defense unavailable to individuals who transfer marijuana to anyone if the transferor is not the primary caregiver and the transferee is not a patient to whom that caregiver is connected through the registry program. Transferors’ cards would be permanently revoked. Also patients (and other cardholders) couldn't obtain marijuana from anyone other than his/her own caregiver.

POSITION: MPP strongly opposes this bill. One of the most efficient and affordable ways for patients to obtain medical marijuana is from other patients who grow their own and have overages they can transfer to other patients. It takes months for a planted marijuana seed to turn into a plant producing usable marijuana, so this bill would force patients to suffer while they wait. Even more alarming, this bill may essentially nullify the MMMA by prohibiting patients and caregivers from obtaining seeds.

#### **HB 4851 (Cavanagh-D) – Defines and requires a “bona fide physician-patient relationship”**

- This bill would require patients seeking to register with the state to obtain a recommendation from a doctor with whom s/he has a long-standing relationship. In addition, the doctor must complete a full assessment of the patient’s medical history, conduct and in-person physical examination, treat the patient for a reason other than providing a recommendation, maintain records, have an expectation to provide follow-up care, and, if appropriate, notify the patient’s primary care physician.

POSITION: Patients, particularly those on low or fixed incomes, have a hard enough time finding a primary care physician, let alone another doctor with whom they must develop a long-standing relationship. Veterans likely turn primarily to their VA doctors, who are forbidden from recommending medical marijuana. Given the limited number and accessibility of doctors who are familiar with medical marijuana and comfortable providing recommendations, the burdens imposed by this bill are too onerous for patients.

#### **HB 4852 (Kowall-R) – Allow local zoning of marijuana cultivation**

- Simply put, this measure would allow local communities, through zoning ordinances, to determine whether, when, and where patients and caregivers could cultivate marijuana

POSITION: The ability of patients and their caregivers to cultivate marijuana is one of the core rights Michigan voters sought to protect in passing the MMMA. While communities should be free to regulate the time, place, and manner of operating dispensaries, localities should not be able to forbid patients and individual caregivers from cultivating in their own homes, thus denying thousands of patients access.

**HB 4853 (McBroom-R) – Makes it a class G felony to sell medical marijuana in violation of registry identification card restrictions.**

- If passed, this bill would make “selling marijuana in violation of registry identification card restrictions” a class G felony, punishable by up to 2 years in prison.

POSITION: Selling marijuana outside the confines of the MMMA is already a crime, so this bill is unnecessary. It is also vague in that the circumstances and terms – “in violation of registry identification card restrictions” – of the proscribed violation are undefined.

**HB 4854 (Haveman-R) – Prohibits advertising of caregiver services or other offers to sell, transfer, or make available marijuana.**

- This bill would make it a misdemeanor, subject to a fine of up to \$1,000 and imprisonment up to one year, to advertise caregiver services or other offers to “make available marijuana.” It would allow the Department to provide information to patients regarding caregivers or other sources to obtain marijuana plants.

POSITION: Free speech is a cornerstone of our democracy, and the United States Supreme Court has determined that even commercial speech is granted certain constitutional protections. While some restrictions on advertising may be warranted, a total ban goes too far.

**HB 4856 (Glardon-R) – Provides certain limitations for the transportation of marijuana by vehicle**

- The bill would prohibit the transportation of marijuana by vehicle unless it is enclosed in a case, carried in the trunk, or otherwise inaccessible from the passenger compartment. A violation would be a misdemeanor subject to a fine of up to \$100 or imprisonment of up to 90 days.

POSITION: MPP understands the need for some restrictions on transportation of marijuana and takes no position regarding this legislation.

**SB 321 (Jones-R) – Exempts medical marijuana from personal insurance coverage requirements.**

- Not only would this bill mean that insurance providers are not required to compensate policyholders for medical marijuana, it would actually prohibit them from doing so.

POSITION: Insurance carriers should not be required to cover medical marijuana, however, those who wish to should be free to do so. MPP opposes this legislation.

**SB 377 (Booher-R) – Makes patients’ registry information available to state police upon issuance of card.**

- If passed, SB 377 would require the Department of Licensing and Regulatory Affairs to forward information concerning issuance of medical marijuana registry cards to the Department of State Police within 48 hours. The bill would also delete a requirement that any information disclosed not be more than is reasonably necessary.

POSITION: Law enforcement agencies can already verify the validity of patients' ID cards through LARA. This bill would radically undermine patient privacy and treat patients similarly to sex offenders or other criminal suspects. MPP strongly opposes it.

**SB 418 (Jones-R) – Prohibits lawsuits against municipalities**

- This bill would add a provision to the MMMA stating, “nothing in this act shall be construed to create a private cause of action against this state or a political subdivision of this state.” In effect, it would bar patients and advocates from suing municipalities to challenge impermissibly restrictive ordinances.

POSITION: Some municipalities have passed ordinances completely prohibiting cultivation, including in patients' homes. Such ordinances plainly violate the MMMA, and patients should be free to challenge them in court. For this reason, MPP opposes this bill.

**SB 504 (Jones-R) – Prohibits transfers of marijuana within 1,000 feet of a school or church**

- As opposed to HB 4661, Jones' bill would not ban cultivation, but merely the transfer of marijuana within 1,000 feet of a clearly identified school or church. The bill makes an exception for transfers to registered patients within a residence.

POSITION: MPP takes no position on this legislation.

**SB 505 (Jones-R) – Eligibility to register as a primary caregiver.**

- Much like HB 4463, this bill would prohibit individuals with any felony conviction from serving as a primary caregiver.

POSITION: As with HB 4463, MPP opposes this legislation.

**SB 506 (Kahn-R) – Expands requirements to form “bona fide physician-patient relationship.**

- Similar to HB 4851, the bill aims to make it more difficult for patients to obtain a recommendation by requiring patient to have a long-standing relationship with the recommending physician. Specifically, the bill requires physicians to take a medical history, perform a physical examination, review prior treatment, obtain diagnostic test results, provide information on alternative treatments, monitor the patient in the future, create and maintain records, and notify the patient's primary care physician. If

recommending physicians do not do all of the above, patients would not only be ineligible to register, but would not be able to assert any affirmative defense and protections for doctors against civil or occupational sanctions would not apply.

POSITION: This bill is incredibly onerous for patients, particularly those on low or fixed incomes, and adds requirements for obtaining a recommendation for marijuana that don't exist for many far more dangerous prescribed narcotics. For these and other reasons, MPP strongly opposes the bill.