



Overview of MPP's Model State Medical Cannabis Bill

An explanation of MPP's model state medical marijuana bill

The relationship of the model bill and state law to federal law

Although the U.S. Supreme Court ruled on June 6, 2005 (*Gonzales v. Raich*) that the federal government can prosecute patients in states that removed their criminal penalties for the medical use of marijuana, the court did not question a state's ability to allow patients to grow, possess, and use medical marijuana under state law.

Indeed, the medical marijuana laws passed by voter initiatives in 19 states (plus the District of Columbia) and by 17 legislatures since 1996 continue to provide effective legal protection for patients and their primary caregivers because they are carefully worded. MPP's model bill is based on those laws — primarily Nevada's law, because its system for access — with separate dispensaries, infused product producers, cultivators, and labs — is among the most comprehensive. Moreover, it received majority support among Nevada state legislators.

Of course, the model bill only provides protection against arrest and prosecution by state or local authorities. State laws cannot offer protection against the possibility of arrest and prosecution by federal authorities. Even so, because 99% of all marijuana arrests are made by state and local — not federal — officials, properly worded state laws can effectively protect 99 out of every 100 medical marijuana users who would otherwise face prosecution at the state level.

In truth, changing state law is the key to protecting medical marijuana patients from arrest, as there has not been one documented case where a patient has been convicted in a federal court for a small quantity of marijuana in the 37 jurisdictions that have effective medical marijuana laws. In addition, in August 2013, the U.S. Deputy Attorney General James Cole wrote a memo to U.S. prosecutors advising against targeting those who are complying with state marijuana laws that include strict regulations, unless one of eight priority levels was implicated.

Four key principles for effective state medical marijuana laws

In order for a state law to provide effective protection for seriously ill people who engage in the medical use of marijuana, a state law must:

1. define what is a legitimate medical use of marijuana by requiring a person who seeks legal protection to (1) have a medical condition that is serious or debilitating, and (2) have the approval of

his or her medical practitioner;

2. avoid provisions that would require physicians or government employees to violate federal law in order for patients to legally use medical marijuana;
3. provide at least one of the following means of obtaining marijuana, preferably all three: (1) permit patients to cultivate their own marijuana; (2) permit primary caregivers to cultivate marijuana on behalf of patients; and (3) authorize nongovernmental organizations to cultivate and distribute marijuana to patients and their primary caregivers. In addition, it should permit patients or primary caregivers to purchase marijuana from the criminal market (which patients already do illegally); and
4. implement a series of sensible restrictions, such as prohibiting patients and providers from possessing large quantities of marijuana, prohibiting driving while under the influence of marijuana, and so forth.

In addition to those essential provisions, MPP's model bill and several of the more recent laws include anti-discrimination provisions, which are important because the Americans with Disabilities Act has not been interpreted to extend to the medical use of marijuana. These provisions extend similar protections from discrimination to seriously ill patients who use cannabis as they would have if they use pharmaceuticals, such as by ensuring they do not lose their jobs (unless there is a federal law requiring that to happen) or be denied organ transplants.

The importance of precisely worded state laws

Because federal law prohibits the medical use of marijuana, state medical marijuana legislation must be worded precisely in order to provide patients and providers with legal protection under state law. Even changing just one or two words in the model bill can make it symbolic, rather than truly effective.

For example, it is essential to avoid use of the word "**prescribe**" since federal law prohibits doctors from prescribing marijuana. Doctors risk losing their federally controlled license to prescribe all medications if they "prescribe" marijuana — which would be useless anyway because pharmacies are governed by the same regulations and cannot fill marijuana prescriptions. Physicians are, however, permitted under federal law to evaluate the relative risks and benefits of the medical use of marijuana. Thus, to establish a patient's legitimate medical marijuana use, the state law must contain language accepting a physician's statement that says, "the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana," or something similar.

The importance of this seemingly trivial distinction is made clear by the case of Arizona, which passed a ballot initiative (Proposition 200) by 65% of the vote in November 1996. Arizona's original law was dependent upon patients possessing marijuana "prescriptions." As a result, the initiative provided no legal protection to patients, and a new measure had to be voted on in 2010 to create an effective law.

In addition, relying on universities, pharmacies, hospitals, and other risk-averse institutions to openly break federal law by cultivating or distributing marijuana has rendered many well-intentioned bills merely symbolic.

There are numerous other important technical nuances that are impossible to anticipate without

having spent several years working on medical marijuana bills and initiatives nationwide. Consequently, it is crucial to discuss ideas and concerns with MPP before changing even one word of the model bill.
