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FISCAL IMPACT REPORT

SPONSOR Ortiz y Pino ORIGINAL DATE 02/03/20
LAST UPDATED 02/15/20 HB _____
SHORT TITLE Medical Marijuana "Qualified Patient" SB 139/ec
ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	No Fiscal Implications					

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
New Mexico Attorney General (NMAG)
Department of Health (DOH)
Aging and Long Term Services Department (ALTSO)

SUMMARY

Synopsis of Bill

Senate Bill 139 restores the definition of "qualified patient" (i.e. a person who is able to consume medical marijuana) in the Lynn and Erin Compassionate Use Act (LECUA) to what it was prior to 2019 amendment, which requires the patient be a resident of New Mexico.

This bill contains an emergency clause and would become effective immediately upon signature by the governor.

FISCAL IMPLICATIONS

DOH reports that SB139 would decrease the number of patient enrollment applications submitted to the medical cannabis program, which would in turn have a beneficial impact on the expenditure of resources and man hours within the program that otherwise would be expended on processing of nonresident applications for patient enrollment.

SIGNIFICANT ISSUES

This bill addresses an ambiguity in LECUA created by amendments to the Act in 2019 (SB 406), that allowed individuals residing outside of New Mexico to obtain registry identification cards that allow them to purchase and consume medical cannabis. SB 139 restores the New Mexico residency requirement that was in the “qualified patient” definition prior to 2019.

DOH advises that, as a consequence of the state residency requirement being removed from LECUA, the agency was the subject of a lawsuit in the Santa Fe district court in which plaintiffs associated with a licensed medical cannabis producer sought to compel it to process patient enrollment applications submitted by non-residents. The court ruled in the plaintiffs’ favor, finding that the removal of the residency requirement imposed upon the department a duty to enroll nonresidents. The Department reports it is currently appealing that decision to the New Mexico Court of Appeals. See Meyers v. Vigil, No. A-1-CA-38551.

As a result of the court decision, DOH reports, 501 nonresidents have enrolled as qualified patients in its medical cannabis program since January 17, 2020. Most of these individuals are residents of the state of Texas, although applications have been received from residents of other state, and at least one resident of Mexico. DOH expresses concern that allowing nonresidents to enroll as qualified patients in the medical cannabis program encourages the transport of cannabis across state and international boundaries, in violation of both state and federal law. This places nonresidents who live in states without legalized medical cannabis programs at risk of arrest and prosecution for possession of cannabis in their home state. It also may subject the DOH program to increased scrutiny from federal law enforcement.

In addition, DOH comments that allowing nonresidents to enroll (for a three-year enrollment period, under the statute) may have the effect of placing additional strains on the availability of medical cannabis supplies in New Mexico. The state of Texas does not currently have a legalized medical or recreational cannabis program, and enrollment from Texans along the eastern border of New Mexico creates the potential for an influx of thousands of new patients. DOH argues in favor of reinstating the state residency requirement to preserve the medical cannabis program for the benefit of New Mexicans.

ADMINISTRATIVE IMPLICATIONS

DOH comments that SB139 would result in fewer calls from non-residents inquiring about the medical cannabis program, as well as calls from out-of-state law enforcement officers (averaging 3 calls per week) who have stopped individuals enrolled in New Mexico’s program.

OTHER SUBSTANTIVE ISSUES

DOH reports that during the 2019 legislative session, several amendments to LECUA were enacted. One of these amendments was a revision to the definition of “qualified patient” which struck the New Mexico residency requirement from that definition. DOH believes this edit was originally drafted to enable persons from outside the state of New Mexico, who are enrolled in a medical cannabis program in another state, to participate reciprocally while visiting New Mexico, using their non-NM medical cannabis card. However, the statute was ultimately crafted to create the separate designation of “reciprocal participant” to identify those persons, and so the revision to the definition of “qualified patient” was unnecessary to enable reciprocity.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to ALTSO, because the medical cannabis program as it exists today extends to residents of all 50 states and even non-US residents, the demand could limit access to New Mexico's aging and disabled populations.

MD/rl/sb