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FISCAL IMPACT REPORT

ORIGINAL DATE 03/01/13

SPONSOR Wooley **LAST UPDATED** _____ **HB** 594

SHORT TITLE Medical Marijuana Photo ID & Background Check **SB** _____

ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY13 | FY14 | FY15 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|---------------|---------------|----------------------|------------------------------|----------------------|
| Total | | Indeterminate | Indeterminate | Indeterminate | Recurring | Other State Funds |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Bill 594 (HB 594) proposes to amend the state’s medical cannabis statute, the Lynn and Erin Compassionate Use Act, NMSA 26-2B-1 et seq., to require photo identification of participants, as well as criminal background checks of all persons affiliated with producer-applicants and existing licensed producers.

FISCAL IMPLICATIONS

The bill contains no appropriation.

The DOH indicates the bill’s proposed requirement for photo identification cards will have financial implications for the department’s Medical Cannabis Program, which currently lacks equipment with which to make such cards. Significant program resources would also be needed for the purpose of routinely photographing all participants in the program. The program has limited resources given that it operates solely on fees received from licensed non-profit producers, non-profit producer-applicants and the program’s patient fees.

SIGNIFICANT ISSUES

The DOH indicates HB 594 proposes to authorize the Department of Health (DOH) to utilize the National Crime Information Center (NCIC) criminal background screening system maintained by the FBI for conducting background checks of persons affiliated with producers and producer-applicants. Because state medical cannabis programs are deemed by federal law enforcement to violate federal statute, the FBI would not (and in all likelihood could not) authorize its use for this purpose. Federal agencies are generally prohibited from utilizing federal resources to further programs that are deemed to violate federal law.

The department requires submission of criminal background information from the Department of Public Safety (DPS) statewide system. However, that database is limited to convictions occurring within the state of New Mexico.

The bill proposes for the Department of Health to regulate advertising related to “prescribing” (i.e., certifications of patients to the program), but certifications of patients are made by medical practitioners who are otherwise licensed to prescribe controlled substances. Those individuals are not licensed by the Department of Health, but rather by licensing bodies such as the Medical Board. Because the Department of Health has no control over those persons’ licensure, the DOH would have no enforcement mechanism by which to enforce advertising restrictions related to those medical practitioners’ practice. For this reason, it is recommended that any advertising requirements concerning certifying practitioners be directed to pertinent licensing bodies.

TECHNICAL ISSUES

The Department of Health (DOH) indicates the bill proposes to require the DOH to regulate the content and manner of advertising related to “prescribing, sale or distribution of medical cannabis”. The DOH suggests that the word “prescribing,” be replaced with “patient certifications, and the”. Under the Compassionate Use Act, medical cannabis is not prescribed. Rather, medical practitioners authorized to prescribe controlled substances under their license are permitted to certify patients to the program.

RAE/blm