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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/16

SPONSOR Candelaria LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Medical Cannabis User Discrimination SM 38

ANALYST Chilton

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	0	\$60.0	0	0	Non-recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Children, Youth and Families Department (CYFD)  
 Department of Health (DOH)  
 Workers' Compensation Administration (WCA)  
 Workforce Solutions Department (WSD)

### SUMMARY

#### Synopsis of Bill

This memorial, Medical Cannabis User Discrimination, asks the Workforce Solutions Department to work with the Department of Health, consulting with a wide variety of stakeholders, including medical cannabis users, the New Mexico Medical Cannabis Patient's Alliance, and the New Mexico Medical Cannabis Advisory Board, to identify means of identifying and alleviating discrimination against users of medical marijuana in employment, housing, obtaining parental custody, health care, education, and qualification for organ transportation. WSD is asked to recommend means whereby medical cannabis users and their employers, medical care providers, and landlords can avoid discrimination.

### FISCAL IMPLICATIONS

None for CYFD, WSD or WCA; other than staff time. DOH makes note of the \$60,000 cost of a previous survey of 900 enrollees in a 2012 study of the Medical Cannabis Program, and estimates that it might cost as much as that, with 60 hours of personnel time for that agency. This memorial can make no provision for these costs.

## SIGNIFICANT ISSUES

WCA makes note of the conflict between federal and state law regarding the use of cannabis in a medical setting:

Under the federal Controlled Substances Act, 21 U.S.C. § 812(b)(1), cannabis is a Schedule I controlled substance. As such, it cannot be used, possessed, manufactured, or distributed, even for medical purposes. New Mexico has passed the Lynn and Erin Compassionate Use Act, NMSA 1978, §§ 26-2B-1, which permits qualified patients to possess and use medical cannabis for treatment of qualifying, debilitating medical conditions.

A recent decision of the New Mexico District Federal Court, *Garcia v. Tractor Supply Co.*, \_\_\_ F. Supp. 3d \_\_\_ (January 7, 2016), 2016 WL 93717, may impact this memorial. That case upheld an employer's right to terminate an employee following a positive drug test for cannabis metabolites. Specifically, the court held that New Mexico's Compassionate Use Act combined with the New Mexico Human Rights Act do not require employers to accommodate an employee's medical cannabis use and thus, do not provide a cause of action for the terminated employee. The Federal Court reasoned there is a fundamental difference between requiring compensation for medical treatment under the workers' compensation system (*see Vialpondo v. Ben's Automotive Services*, 2014-NMCA-084; *Lewis v. American General*, 2015-NMCA-090; *Maez v. Riley Indus.*, 2015-NMCA-049) and affirmatively requiring an employer to accommodate an employee's use of a drug that is still illegal under federal law.

WCA also makes note of concern on the part of employers and insurance companies over the possibility of medical cannabis becoming part of benefits in the Worker's Compensation Program.

WSD is concerned that some requirements of SM 38 may conflict with the Lynn and Erin Compassionate Use [of Medical Cannabis] Act.

## TECHNICAL ISSUES

The memorial indicates that the Workforce Solutions Department and the Department of Health work together to "study the prevalence and severity of discrimination that medical cannabis patients encounter in various settings." It is unclear whether this would require a formal study; if so, DOH estimates a cost of \$60,000 based on the cost of a related 2012 questionnaire study of medical cannabis patients.

LAC/jo/al