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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
54th Legislature, 1st Session, 2019

Bill Number SB477 **Sponsor** Sedillo Lopez
Tracking Number .213236.1 **Committee Referrals** SPAC/SJC
Short Title Medical Cannabis & Removal of Children
Analyst Force **Original Date** 2/14/19
Last Updated _____

BILL SUMMARY

Synopsis of Bill

Senate Bill 477 (SB477) proposes a new section of law be added to the Abuse and Neglect Act, the Family Services Act, and the Public School Code. The proposed section of the Abuse and Neglect Act would indicate that a person's participation in the state's medical cannabis program shall not constitute grounds for intervening, removing, or placing their child into state custody. In the proposed amendment to the Family Services Act, a person's participation in the medical cannabis program should not establish grounds for provision of prevention, diversion, or intervention services to that person's family. The proposed section of the Public School Code would provide that no employee of a school shall report or threaten to report a parent for alleged child abuse or neglect only due to the parent's or child's participation in the medical cannabis program.

FISCAL IMPACT

SB477 does not contain an appropriation.

SUBSTANTIVE ISSUES

New Mexico has a medical marijuana program, under the Lynn and Erin Compassionate Use Act, which allows the use of marijuana for medicinal purposes for a limited range of health problems, including Huntington's disease, treatment for Hepatitis C, Parkinson's disease, cancer, Epilepsy, and severe chronic pain. Recreational use of marijuana is still prohibited in all instances in New Mexico.

The recent enactment of the federal Farm Act has not changed the federal status of Tetrahydrocannabinol (THC), which remains a Schedule I drug under the federal Controlled Substances Act (CSA), the most serious category of illegal substances, or drugs "with no currently accepted medical use and a high potential for abuse." The status of cannabidiol oil (CBD), which is usually derived from low-THC hemp plants, does not cause intoxication, and which many medical practitioners maintain has beneficial health applications, is more complicated. The federal

Farm Act authorizes the agricultural and industrial use of hemp and sets the stage for allowing states to decide whether they want to authorize the sale and use of CBD-derived products, as it redefines hemp to include hemp-derived products such as CBD, removing it from the federal CSA. While CBD is no longer a federally scheduled substance, the federal Food and Drug Administration (FDA) recently approved a CBD-derived anti-seizure medication, Epidiolex, in 2018. However, from a regulatory standpoint, the commissioner of the FDA has stated the interstate commerce of foods and supplements that contain CBD is still banned, regardless of whether they are hemp-derived, because federal regulation disallows the use of active prescription medication ingredients in food or supplements.

The New Mexico Attorney General's office (AG) suggests Section 3 of the bill, a new section of the Public School Code prohibiting school personnel from reporting or threatening to report a parent for abuse or neglect on the sole basis of the parent's or child's participation in the medical marijuana program, may be problematic. The AG indicates the requirements of Section 3 may have a chilling effect upon good faith reports of abuse and neglect related to marijuana use. Further, the AG notes the operation of Sections 1 and 2 may obviate the necessity of Section 3, marijuana use by persons in the medical marijuana program would not invoke intervention by the state to protect a child. However, the report of alleged abuse may still involve considerable inconvenience and a perception of wrongdoing, even if the person would not otherwise be prosecuted or invocative of state intervention.

Similarly the Children, Youth and Families Department (CYFD) suggests that, because it is in the best interests of children that all suspicion of child abuse and neglect be reported, any statutory language purporting to discourage or limit reporting is not advisable. However, the language in the bill explicates that state intervention on behalf of a child who participates or whose parent participates in the medical marijuana program is not *solely* enough to invoke state intervention. There is a considerable stigma attached to allegations of child abuse or neglect that would be inappropriate to invoke merely due to the medical cannabis program. Yet if other potentially abusive factors are allegedly present, reporting may certainly result in intervention.

ADMINISTRATIVE IMPLICATIONS

The Public Education Department (PED) notes Part 1 of 6.29 NMAC states school districts and charter schools must adopt written policies establishing a process for tracking child abuse and neglect reports made by school personnel. All licensed personnel are to complete training on the detection and reporting of abuse and neglect in their first year of employment, for which PED offers an e-learning opportunity, which may be adapted to include the provisions of SB477.

PED also indicates it would need to update current online training offerings to include required training practices in Part 1 of 6.29 NMAC.

The Department of Health notes SB477 may require the promulgation of new rules by CYFD and PED.

RELATED BILLS

HB356, Cannabis Regulation Act, provides for the regulation and taxation of cannabis.

SB204, Medical Marijuana in Schools, would permit the use, storage, and possession of medical cannabis in schools under certain conditions.

SB242, Medical Cannabis Gross Receipts & Deductions, would enact a gross receipts tax and governmental gross receipt tax deduction for medical cannabis.

SB323, Decrease Medical Marijuana Penalties, would lower criminal penalties for possession of marijuana and drug paraphernalia.

SB406, Medical Marijuana Changes, expands eligibility under the Lynn and Erin Compassionate Use Act, amends penalties, and creates the Qualified Patient and Primary Caregiver Advisory Board.

SOURCES OF INFORMATION

- LESC files
- Public Education Department (PED)
- Children, Youth and Families Department (CYFD)
- Department of Health (DOH)
- New Mexico Attorney General (AG)

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