



## Children, Families, Health, and Human Services Interim Committee

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### 61st Montana Legislature

#### SENATE MEMBERS

RICK LAIBLE--Vice Chair  
ROY BROWN  
CHRISTINE KAUFMANN  
TRUDI SCHMIDT

#### HOUSE MEMBERS

DIANE SANDS--Chair  
MARY CAFERRO  
GARY MACLAREN  
PENNY MORGAN

#### COMMITTEE STAFF

SUE O'CONNELL, Research Analyst  
LISA JACKSON, Staff Attorney  
FONG HOM, Secretary

# MINUTES

## Medical Marijuana Subcommittee

August 12, 2010

Room 137, Capitol Building  
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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### **SUBCOMMITTEE MEMBERS PRESENT**

REP. DIANE SANDS, Chair  
SEN. TRUDI SCHMIDT

REP. GARY MACLAREN  
REP. PENNY MORGAN

### **COMMITTEE MEMBERS INVITED**

SEN. RICK LAIBLE

### **STAFF PRESENT**

SUE O'CONNELL, Research Analyst  
LISA JACKSON, Staff Attorney  
FONG HOM, Secretary

### **Visitors**

Visitors' list, Attachment 1  
Agenda, Attachment 2

## **COMMITTEE ACTION**

- The June 28, 2010, minutes were approved.
- The subcommittee approved several motions: if an individual is a cardholder, they can grow in their own residence; accept the Chamber of Commerce's proposal for language to be included in subsection (d) as stated by staff; allow the authority of local governments to provide an amortization period; incorporate the model from Colorado's bill for the medical marijuana laws into LC MM01 for consideration.

## **AGENDA**

### **• CALL TO ORDER -- APPROVAL OF MINUTES**

00:00:03 REP. SANDS called the meeting to order at 10:02 a.m. The secretary noted roll visually.

00:04:48 SEN. LAIBLE moved to accept the June 28, 2010, minutes as written. The motion passed.

### **• LOCAL GOVERNMENT/WORKPLACE ISSUES**

#### **▶ Review of Staff Materials on Local Government Authority - Sue O'Connell, Research Analyst, LSD**

00:05:16 Ms. O'Connell discussed the materials that were given to members of the committee: the revised agenda; a document prepared by Megan Moore, Research Analyst, on the number of people registered as caregivers or patients from other states; public comment; document on local government issues; and a legal memo prepared by Helen Thigpen, Staff Attorney.

00:18:30 REP. MORGAN asked Alec Hansen, Montana League of Cities and Towns, and Brent Brooks, City of Attorney for Billings, about local governments and zoning regulations. **Alec Hansen** talked about cities having self-government powers and have the ability to regulation zoning in residential areas. **Brent Brooks** said that they would like some overriding global authority to address that issue. They have a zoning ordinance that restricts home occupations to certain designated occupations.

00:25:32 REP. SANDS asked Mr. Brooks to address the issue of amortization and the protection of local governments from lawsuits. **Mr. Brooks** said that Billings has about 70 to 80 medical marijuana licenses and depending on how restrictive the zoning may be in the future, at least a dozen or more would eventually have to move if the city were to adopt a restrictive zoning ordinance that says you can do this kind of operation only in certain designated zones.

#### **▶ Public Comment**

00:37:25 **Stonewall Thomas, Honest Johns Pharmacy, Belgrade**, commented on the issue of Belgrade no longer allowing for new caregiver operations.

- 00:38:55 **Jon Bennion, Montana Chamber of Commerce**, commented on provisions in the Medical Marijuana Act and focusing on workplace safety.
- 00:40:37 **Dave Galt, Executive Director, Montana Petroleum Association**, supported the proposed legislation.
- 00:41:20 **Tom Daubert, Patients and Families United**, commented on a case concerning California's medical marijuana law.
- 00:43:18 **Riley Johnson, State Director for National Federation of Independent Business**, supported the proposed amendments that Mr. Bennion had put forth.
- 00:44:30 **Heidi Handford, Montana Connect Magazine**, commented on understanding the nontoxicity of marijuana to decrease the fear.
- 00:46:42 **Rick Rosio, Pain Management, Missoula**, urged the committee to read the Congressional Record.
- 00:48:23 **Bruce Spencer, Property Casualty Insurers Association and the Montana Auto Dealers**, said that he agreed with the changes that Mr. Bennion has outlined in the proposed legislation.
- 00:49:04 **Beth Regennitter, a patient**, asked the subcommittee to not prohibit her from receiving her medical marijuana.
- 00:50:10 **Tayln Lang, Director, Operations for Sweet Water Patient Services**, commented on businesses who have concerns about the Medical Marijuana Act.
- 00:51:30 **Brent Brooks, City of Billings**, commented on local government control and zoning.

▶ **Committee Action/Direction to staff**

- 00:54:22 REP. MORGAN said that the growth of cannabis should not be done in a home for any other than use of a person who lives within that home that has the card. That means a maximum number of plants that would be allowed in a home is six and if they are going to have more than that, then they have to have a retail business. She said that they should not have to have a business license to do that but they should be registered with the state so that local law enforcement knows what is going on in that residence.

**Motion by Rep. Morgan**

Rep. Morgan **moved** that the growth of cannabis be allowed in a home for the use by a person who lives within that home that has the card, have no more than six plants, and should register with the state so that local law enforcement knows that medical marijuana is being grown at that residence.

### **Discussion**

- 00:55:26 The members of the subcommittee discussed whether or not to put that under the authority of local governments to regulate. SEN. LAIBLE suggested that this be better placed when the committee takes up the review of the options for regulation and can get more comprehensive ideas to tie everything together.
- 00:59:12 REP. SANDS asked Rep. Morgan if she would be agreeable to hold off her motion. REP. MORGAN said that the problem with that is that we will not see this picture in all perfect outline form and that is why she referenced to staff that they are going to have to figure out at what point to come up with a bill.
- 01:00:12 REP. SANDS said that she finds Rep. Morgan's motion to be overly broad and touches on too many areas; i.e., the requirement of reporting to the police. She said that in this section where we are talking specifically about getting authority to local governments, that is what we need to address in this discussion.
- 01:01:11 REP. MORGAN said that she will modify her motion to that to simplify it.
- 01:01:21 SEN. SCHMIDT said that Rep. Morgan also mentioned that that person would have to register with the state. REP. SANDS said that if they are already a cardholder and is in their own home for only their own use, they are registered for the purpose of that, she sees no reason why they would need to tell local government again that they are individually doing it in their home.
- 01:02:23 MS. O'CONNELL asked if a general limitation in the Medical Marijuana Act might go in the section that contains other prohibitions on what you can do. She asked if Rep. Morgan's intent was to give local governments the authority to enact an ordinance that would put that restriction on place in their own community or county. REP. MORGAN said that it should go in the state part and then local governments would have the authority to enforce it.
- 01:03:29 The motion for limiting it to the individual in their own residence if they are a cardholder can grow whatever the limit is that the state says for that individual **passed**.
- 01:03:58 **Motion by Sen. Laible**  
SEN. LAIBLE **moved** to accept the Chamber of Commerce's proposal to us for language to be included within the legislation that the committee is working on.
- 01:04:35 REP. SANDS asked Sen. Laible if he meant all the language that the Chamber has included. SEN. LAIBLE said all language that is included into existing statute. REP. SANDS asked about the ramifications in the second section having to do with discrimination prohibited for use of a lawful product during non-working hours.
- 01:06:06 Jon Bennion said that the intent of this language is to limit kinds of wrongful discharge lawsuits, and in connection with somebody who is actually within the course and scope of their employment. If somebody brings a lawsuit in connection with the Medical Marijuana Act, they did not have the right to do so if

the employer acted as such because the employee was within the course and scope of their employment.

01:07:16 REP. SANDS asked why add "who uses, possesses, acquires, cultivates, manufactures, delivers, transfers, or transports" that is not in the scope or course of their employment. Mr. Bennion said that if there are clarifications needed to make sure that that portion of "within the course and scope of employment" also ties in with the first part of the sentence that says "uses, possesses, acquires..." because that language also mirrors what was done in Section 1. Right now the law just says "use". The Chamber's concern is that use in the workplace is limited and a judge could take that to say that the only thing that an employer can prohibit is an employee who actually sits at their desk and is smoking marijuana.

01:09:10 MS. O'CONNELL said that if Mr. Bennion changes that language in subsection (d) so that it says "an individual, who in the course and scope of employment, is..." and then do more subsections. What you would want to use is the reference to the statutory definition "medical use" in the Medical Marijuana Act, which covers the language that Mr. Bennion has, but just to reorder it, but whether that gets away from the concern that you are trying to also govern activity and nonwork hours, that it would make it clear that it is only during their course and scope of employment. If a change like that might address the issue, and if so, that is what she would propose to do if you approve the motion.

01:09:57 Mr. Bennion said that that would be fine. The only part of that is if somebody uses medical marijuana, is under the influence at their workplace, then that is where a lawful use outside of work is actually coming into the workplace.

01:11:05 SEN. LABILE **amended** his motion for a draft bill with the changes in language in subsection (d) as stated by Ms. O'Connell. The motion **passed**.

**Motion by Rep. MacLaren**

01:11:52 REP. MACLAREN moved to include in the draft bill to grant broad authority and power to local governments to regulate marijuana as outlined in Ms. Thigpen's memo under Section E. Options.

**Discussion**

01:13:32 REP. MACLAREN said that the intent is to grant to local governments, cities, and counties the ability to pass such regulations if they choose to.

01:13:52 REP. MORGAN asked the sponsor about the third option, to restrict the number of registered patients that a caregiver may serve.

01:15:29 REP. SANDS asked Rep. MacLaren to withdraw his motion. She thinks there is a broader way to put it without getting into the laundry list in this section which is to say that we would authorize local governments, both county, city and towns, to adopt regulations related to medical marijuana for the purposes of health, safety, morales, and public welfare, that they may adopt those regulations.

REP. MACLAREN said he would amend his motion to that.

01:16:44 REP. MORGAN asked if it be prudent to say "granting authority in areas not already covered by statute".

01:17:53 Ms. Thigpen said she would have to look more closely at that authority to determine how broad of authority would be needed to address the concerns that the committee is looking at.

01:18:51 Ms. Mecklenberg Jackson said that if you look at number 5 of the options contained in Ms. Thigpen's memo, that might be some wording that you might want to go with.

01:21:03 REP. MORGAN asked Rep. Sands, if we enacted the ability for local governments to say, no not here. What was the objective when they did this and why this is still occurring. REP. SANDS said that they are holdovers from the prohibition mentality. The one thing that she would add is that she did ask the tribes of Montana and the Montana Wyoming Tribal Leaders Association for their views on their territory. The state does not have the right to regulate on sovereign nations.

01:22:47 REP. MACLAREN said that he is in favor of giving local governments the ability to regulate, including prohibition.

01:24:15 SEN. LAIBLE said that we should not include "can authorize or ban commercial establishment". From a state perspective, the voters of the state said that they want medical marijuana. We have to give counties the ability to regulate it but we can't give them the ability to ban it entirely. Sen. Laible said that he is supportive of including these options except for that one. The voters have said that they want it and it is our job to find a way to regulate it and to put some side boards on it.

01:25:25 Ms. O'Connell said that you can give global authority but there is the policy question of whether or not the authority is so broad that they could prohibit it. She would like more direction on that for bill drafting purposes.

01:26:38 REP. SANDS asked how many members on the committee would want to include language to prohibit. REP. MACLAREN voted yes.

REP. SANDS asked how many thinks we should not provide authority to prohibit or regulate. SEN. SCHMIDT, SEN. LIABLE, AND REP. MORGAN voted yes.

REP. SANDS asked staff to draft some language on that for the committee to look at.

► **Amortization Issue**

01:27:22 REP. MORGAN said that there should be amortization. When these people went in and said okay, they will put the outlay to do this, they knew at the time that it was still a violation of federal law. Any time you start doing that kind of thing, you

are taking a risk. Any time you start a business, you are taking a risk. She said that there should not be any amortization in short of maybe getting four years to move out of the city, she disagrees, or to move into a location, or that they should be grandfathered in, she disagrees with that too. She believes that where these places are put to dispense or sell to people who have cards, it should be run much like how liquor stores are run. The people who want to dispense medical marijuana need to apply for a license from the state, the state needs to review it and determine whether or not it is a viable option for this person to get a license. Then it is noticed for a hearing and public comment.

01:30:16 SEN. LAIBLE said that he likes the amortization component because when these individuals opened a business, they did it based on the existing statutes we had in law. If we change the statutes, we should give them some timeframe to adjust. REP. SANDS asked if we want to expressly say that we are giving local government, as part of the process of regulation, the authority to adopt some version of this without setting what it is.

01:32:53 REP. MACLAREN said that he would support two years. SEN. SCHMIDT likes the idea that local governments would have a guideline. REP. MORGAN said she could support two years.

**Motion by Rep. Sands**

01:34:02 REP. SANDS **moved** to allow local governments, as part of their authority, to provide for an amortization period of up to two years. The motion **passed**.

► **Options for Regulation**

01:34:48 Ms. O'Connell discussed the document on *Dispensary States vs. Caregiver States (Exhibit 4)*, and the document on Alcohol and Gambling Regulation in Montana (**Exhibit 5**).

**Discussion**

01:39:11 REP. SANDS advocates going with a dispensary model. REP. MORGAN agrees with Rep. Sands. She thinks that a lot of people are getting cards that should not and this is not normal with what is going on with the rest of the country. SEN. LAIBLE also agrees that the dispensary system is the way to go.

**Motion by Sen. Laible**

01:47:30 SEN. LAIBLE **moved** to limit caregivers to having no more than five patients.

01:47:54 REP. SANDS asked hold off on making motions until after public comment. SEN. LAIBLE **withdrew** his motion.

01:48:10 There was a discussion regarding where to place the monitoring of medical marijuana. Should it be with the Department of Justice because it is medical marijuana or with the Department of Revenue because it could be considered a business.

01:51:17 REP. MORGAN asked Ms. O'Connell to what departments did other states give

the administrative authority to. Ms. O'Connell said that Colorado was the first state to give it to the Department of Revenue. Most states leave it in the Department of Health because they don't have the dispensaries.

► **Public Comment on dispensaries and caregiver models**

- 01:52:33 **Dr. Art Morales, retired psychiatrist**, distributed a summary of his recommendations (**Exhibit 6**).
- 01:55:58 **Robby Regennitter**, a caregiver, explained why he started his business.
- 01:57:34 **Bill Boast, Rocky Mountain Grasshopper**, commented on his list of clients.
- 01:59:11 **Valerie Sigler**, commented on medical marijuana.
- 02:01:44 **Dr. Michael Geci, Montana Botanical Analysis**, commented on medical marijuana.
- 02:03:33 **Pam Birchard, patient and caregiver**, commented on the medical marijuana being a cottage industry.
- 02:06:26 **Stonewall Thomas, Honest John's Pharmacy**, commented on caregiver vs. dispensaries.
- 02:06:58 **Rick Roseo, Pain Management**, commented on the proposal to limit the number of patients.
- 02:09:57 **Ali Bovingdon, Department of Justice**, commented on the concept of the civil regulatory role for the Department of Justice.
- 02:13:20 **Jim Gingery, Ex. Dir., Montana Medical Growers Association**, commented on the consensus from the work group on regulation.
- 02:17:11 **Chris Lindsey** commented on the need for accountability and oversight of caregivers.
- 02:19:46 **Jill Demers, Director of M2C2**, commented that limiting the number of patients per caregiver will compromise the quality of care given to patients.
- 02:20:49 **Rose Habib, chemist**, commented on her service. She provided a Medible Preparation Log for the committee to review (**Exhibit 7**).
- 02:25:05 **Ed Docter, Whitefish**, commented on a poll that was conducted regarding the current Medical Marijuana Act (**Exhibit 8**).
- 02:25:47 **Brent Brooks, City Attorney, City of Billings**, supports a regulatory framework similar to alcohol and gaming regulations.



## LUNCH BREAK

- 03:13:13 The committee reconvened at 1:15 p.m.
- 03:13:36 Ms. O'Connell discussed the issue of limiting the number of patients that a caregiver can have and the ability for a patient to determine whether they are going to grow the marijuana, or whether the caregiver is going to grow it, or whether the dispensary will.
- 03:14:37 REP. SANDS said that this is the other side of it, how do they get it, how can they access it regardless of where they might live so that we are not saying it's only available to certain people who can walk into a store front or live in an urban area.
- 03:15:39 REP. MORGAN asked for clarification about having to be a resident of Montana as part of the requirement to be a cardholder.
- 03:16:49 SEN. LAIBLE said that it would be good to take the information that Ms. O'Connell has provided as well as the components from Colorado's law and engross that with that legislation.
- 03:17:58 REP. SANDS reviewed the four types of licenses in the Colorado bill (**Exhibit 9**).
- 03:20:18 REP. MACLAREN asked about the optional premises cultivation license and if there are any licensing for regulation for that. Ms. O'Connell said that patients can still grow and if they choose to grow for themselves, caregivers can grow for a small number of patients.
- Motion by Sen. Laible**
- 03:24:54 SEN. LAIBLE **moved** to incorporate the model and structure from Colorado's bill for the medical marijuana laws into LC MM01 for consideration. The motion **passed**.
- 03:27:14 Ms. O'Connell requested some guidelines into drafting the bill; i.e., requirements for obtaining dispensary licenses in terms of felony convictions and how long that time period would be.

### • FOLLOWUP TOPICS FROM JULY MEETING

- ▶ **Adding Medical Conditions**

03:29:45 Ms. O'Connell discussed the document "Variations Among State Laws" (**Exhibit 10**). She said that 11 states have a formal process that they set out in law that requires the department to take public petitions and review them. The committee decided to wait on the issue of adding medical conditions.
- ▶ **Chronic Pain**

03:33:28 Ms. O'Connell said that some states had additional requirements on chronic pain. She listed five states that seem to have additional requirements for determining or allowing a card for chronic pain by putting in time limits or limiting it to certain

chronic pain that is related to only certain medical conditions. She did look at the meris mono policy projects model state legislation because they have been instrumental in getting these laws passed in a number of states.

03:35:27 SEN. LAIBLE said that if we look at page 3, New Jersey has addressed that by talking about doctors having an ongoing responsibility for assessment care and treatment of the patient's debilitating medical condition. REP. SANDS said that that language is what is in the Board of Medical Examiners standard of care for all the conditions.

▶ **Length of Registrations**

03:36:27 Ms. O'Connell said that the work group recommended that cards could be issued for varying amounts of time, either less than one year, which is the current standard. The Board of Medical Examiners has also asked that the law be changed in that respect. The work group suggested that the committee should allow longer registrations for certain conditions. REP. SANDS said that we have amended our proposed language so that it could be for a period of less than a year.

▶ **Minors**

03:37:29 Ms. O'Connell said that three states had put in additional requirements for minors: Colorado and Michigan require two physicians to certify minors, and Maine requires that applications for minors who are not in Hospice care be approved by the Commissioner of Health and Human Services based on a review of their medical records for an actual physical exam by a pediatrician and a psychiatrist.

▶ **Physician Requirements**

03:40:44 Ms. O'Connell listed Alaska, Colorado, Maine, New Jersey, Oregon and Vermont have taken a look at physician requirements in order to write certifications. Alaska requires that the physical exam must occur within 16 months. Colorado and Maine require that physicians have a valid drug enforcement administration license. Oregon has not adopted the proposed rules if you certify more than 450 people that they were posted on the website.

▶ **Plant Definitions and Amounts**

03:42:17 Ms. O'Connell said that the committee received through the work group several recommendations to define plant or put a different definition of plant in statute, especially with some of the work group members stressing that not all marijuana plants will yield marijuana based on the gender of the plant. REP. SANDS said that law enforcement specifically requested that we define what a plant is.

▶ **Usable Marijuana Definitions and Amounts**

03:45:47 Ms. O'Connell said that the work group recommended that the definition of usable marijuana be looked at. There have been requests that you change the word "dried marijuana" to "cured marijuana". There were concerns about whether or not the one ounce allowance for usable marijuana be applied uniformly no matter what type of marijuana you have. She found that most all states have the

same definition as Montana has.

03:46:58 SEN. LAIBLE said that he is leaning towards the 2 ounces over a 30-day period.

▶ **Reciprocity Provisions**

03:49:18 Ms. O'Connell said that Montana is one of four states that recognizes cards issued in other states. The work group and law enforcement asked that it be made clear in our statute, that if you are a cardholder from another state and use medical marijuana in Montana, you are subject to Montana's limits. The second part of that is that the people on the work group wanted the ability of Montana caregivers to provide marijuana to the out of state patients while they are in Montana. She did not find any state that allows that.

▶ **Smoking in Public**

03:50:59 Ms. O'Connell said that in state law, Montana is one of three states that has no specific prohibition on smoking marijuana in a place that is generally used by the public. REP. SANDS said that we have proposed to include smoking in the Clean Air Act.

▶ **Other Provisions of the Model Legislation**

03:52:25 Ms. O'Connell said that she included some provisions of the model legislation so the committee could see some of the areas that it is trying to address. There is a section entitled Discrimination Prohibited that says a school cannot enroll and a landlord cannot refuse to lease to someone based solely on their status as a patient or caregiver unless it would be a violation of the federal law or put their federal funds in jeopardy. It also requires a health care facility consider the medical marijuana to be the equivalent of an authorized use of any other medication, prevents some discrimination in hiring, termination, etc., and cannot be used as a reason to deny a person custody or visitation of a child unless the marijuana use puts the child in danger.

• **BOARD OF MEDICAL EXAMINERS**

03:54:05 Ms. O'Connell distributed the Board of Medical Examiners' response to the committee's questions (**Exhibit 11**).

03:54:46 REP. MACLAREN asked what does a DEA license do for physicians. **Jean Branscum, Board of Medical Examiners**, said that their laws give authority for individuals to prescribe and with a DEA license permits allows Schedule II which is for narcotics.

03:55:33 REP. SANDS asked about physicians prescribing specific drugs who are taking gifts or incentives to prescribe a certain drug. Is that currently not allowed under federal law? Ms. Branscum said that the Board discussed that and they didn't think there was a law that prevents that from happening. They indicated that there was an informal agreement in place between the pharmaceutical companies and the those that can prescribe that does not permit that.

• **REVIEW OF CURRENT BILL DRAFT PROVISIONS**

03:59:17 Ms. O'Connell reviewed current bill draft provisions (**Exhibit 12**) and Decision Points (**Exhibit 13**).

► **Public comment on bill draft provisions**

04:22:12 **Talyn Lang** requested that PTSD be added to the list of conditions.

04:23:00 **Valerie Sigler** commented on the card application timeframe, ounces allowed per patient, and smoking in public.

04:25:11 **Dr. Michael Geci** commented on federal guidelines of 8 ounces per month for federal patients.

04:34:03 **Roxanne Settera, independent moving specialist**, commented on the bill.

04:39:22 **Matt Kuntz, Ex. Dir., National Alliance on Mental Illness (NAMI) for Montana**, commented on having a warning label on registration cards (**Exhibit 14**).

04:42:27 **Ryan Willmore, Montana Hospital Association**, said that the MHA would like to prevent all forms of use of medical marijuana in health care facility premises.

04:44:04 **Mark Murphy, Montana County Attorneys Association**, asked that the committee refer to existing penalty legislation currently available in the Dangerous Drug section, 45-9-109, MCA. There is also a section on furnishing false information in the application process, 45-7-208, MCA.

04:46:05 **Bill Boast** commented on convicted felons being a caregiver, limiting the ounce requirements.

04:48:55 **Arduice Taylor** commented on the bill draft.

04:50:27 **Jill Demers** addressed concerns of definition of standard of care for patients.

04:53:12 **Robby Regennitter** commented on the guidelines of medical marijuana.

04:55:05 **Mark Long, Ex. Dir., Montana Narcotics Officers Association**, commented on the progress of the bill draft.

04:56:16 **Jason Christ, Montana Caregivers Network**, commented on the legal remedies, filing lawsuits, and legitimacy.

04:59:11 **Brent Brooks, City of Billings**, said that the committee should address the need for clarification about how the Medical Marijuana Act relates to 45-9-109, MCA, that says you cannot distribute or possess marijuana within a thousand feet of schools.

05:00:05 **Mike Langston, Certified Insurance Counselor**, commented on his area of expertise, insurance for caregivers (**Exhibit 14**).

## BREAK

05:23:50 The committee reconvened at 3:26 p.m.

- **Decision Points for Draft Legislation (Exhibit 13)**

- ▶ **Section 2**

- 05:29:03 Rename/redefine caregiver, create definition for employee who is not a caregiver, create definition for a grower  
Ms. O'Connell said that the employee and the grower issues would be addressed with Colorado law. REP. MACLAREN said that he didn't see in the Colorado law anything on the regulation or licensing of growers. Ms. O'Connell said that essentially they are the growing operation.
- 05:29:46 REP. SANDS said that it is important to regulate labs because they will at some point have possession of medical marijuana. She asked Ms. O'Connell to check on that.
- 05:30:12 SEN. LAIBLE said that he would like to make sure that growers can only sell to the dispensaries. People making edibles could purchase the cannabis from the dispensaries.
- 05:34:27 The committee members decided to change the definition to provider. Ms. O'Connell said that in the model the state legislation now being proposed by the Marijuana Policy Project, they have changed the language from having responsibility for the well-being of a patient to just somebody who assist a person with medical use of marijuana. If you want to change the term, would you also like to change the definition? REP. SANDS said she would like to change the definition.
- 05:34:56 Consider additional requirements for physician definition  
Ms. O'Connell said that she put in the definition that you also could not be located in a business that is involved with medical marijuana. That is language that she was not sure the committee wanted to include, but based on the Colorado provisions, you might want to consider similar language. REP. MORGAN said that when Ms. Branscum spoke, she questioned the fact that what you thought was federal law that a physician cannot have a vested interested is something that needs to be addressed in this bill. She said that the physicians should also not have any monetary interest in the business. REP. SANDS said that language in the Colorado bill addresses that issue. She referred to the committee members to page 3 in the Colorado bill.
- 05:39:31 Definition of a plant  
Ms. O'Connell said that most states defines a plant either as an immature, a mature plant, or as a plant and a seedling. That is one issue that law enforcement and others are interested in having addressed and some clarity on how many plants an individual can possess, and what constitutes a plant.

05:45:58 SEN. SCHMIDT said the language defining mature and immature plants that is found on page 4 of Exhibit 10 should be included and then decide on the number of plants. Ms. O'Connell said the recommendation from the Montana Medical Growers was six mature plants and then whatever number of immature, but keep the six that is currently in law as the mature plants.

05:46:30 REP. SANDS asked if the committee was willing to adopt what other states have decided is a plant for the purpose of counting. There was a discussion on the number of mature plants and the number of immature plants and the total number of plants a caregiver can have. SEN. SCHMIDT suggested having 3 mature and 6 immature plants and see how that shakes out, then we can hear from people involved.

05:50:59 Change definition of usable marijuana  
Ms. O'Connell said that was the question of whether dried should be changed to cured and none of the states she looked at had that definition. REP. SANDS said that she has not heard any compelling arguments of why that should be changed.

05:51:44 One ounce or more issue  
It was suggested having it be 2 ounces, 30-day period. REP. MORGAN asked if a caregiver doesn't have a card, can they still have an ounce each under current law. Ms. O'Connell said that if a caregiver doesn't have a card, they would be violating a law. She said that if you are registered as a caregiver, you have a card that identifies you as a caregiver and also who the patient is. If you are a patient, you also have a card as a patient. If you are both a caregiver and a patient, you should have two cards.

05:57:15 SEN. SCHMIDT asked about the importance of knowing the location of where the plants are grown. Ms. O'Connell said that once she incorporates Colorado language, that will be covered, and if it is not, she will put it in.

05:57:49 Change definition of written certification  
Ms. O'Connell said that is on the bill draft on pages 6 and 7. She wanted to make sure that the committee is comfortable to the changes she made to written certification, which was deleting the reference to a qualifying patient's medical records so that they actually have to have a statement signed by a physician, removing the reference to the bona fide position patient relationship which was the Board of Medical Examiners recommendation, and then adding that the written certification has to be provided in a manner that meets the standard of care.

05:59:45 Require that a cardholder be a Montana resident  
REP. SANDS asked if it was agreeable that that remain in the bill.

► **Section 3**

06:00:14 Establish acceptable forms of proof for Montana residency or allow the department to define in rule

Ms. O'Connell said that the first question to consider is whether the requirements for what constitutes proof of residency should be established in statute, or whether that is something you would like to delegate to the Department to establish in rule. REP. SANDS said to let the Department adopt that.

06:00:58 Require 6-month delay before reapplication for a card if card is denied because of false information

Ms. O'Connell said that this was her effort to put in some penalties as was requested and is for the committee's consideration and does not need to be included. REP. MORGAN asked if Mr. Murphy had asked the committee to take into consideration the penalties that are in other areas of the law. She would ask Ms. O'Connell look those up and bring those to the attention of the committee to determine whether or not they are adequate.

06:02:26 Allow physician to certify use of medical marijuana for less than one year  
REP. SANDS asked if the committee was in agreement to include that in the bill.

06:02:40 Revoke card for failure to notify DPHHS of changes  
After some discussion, it was decided that this is not something important enough to be included in the bill.

▶ **Section 4**

06:05:34 Ms. O'Connell said that Section 4 would license caregivers. Subsection (1)(a) includes new requirements for the fingerprint background check and a licensing fee that would be determined by the Department but could be set in statute.

06:05:38 REP. MORGAN asked how to define provider because if a person is going to apply for a license for dispensing, we need to determine what this provider covers. She said that we need to incorporate the same procedure for those who are applying for a liquor license to those who are applying for a license to be a caregiver. Ms. O'Connell asked if she could work on the language and bring it back in bill draft form for the committee to review.

06:12:10 SEN. LAIBLE said that he does not want a tiered system where one person has 20 patients or more. That is what the role of the dispensary will be. If we are going to have a system, we need to limit how many patients a caregiver can have.

▶ **Section 5**

06:16:11 Prohibitions on physicians, caregiver affiliations, and sanctions  
REP. SANDS said that regarding severing physicians from their economic interest and recommending solely medical marijuana. This is language that is out of the Colorado bill. She asked if the committee agreed with this.

REP. MACLAREN said that the reason we are addressing this issue is because misuse of marijuana has gotten out of hand. He would like to put in the limitation on how many cards a physician can write at any given time.

06:19:37 SEN. LAIBLE said that he disagrees because as this thing rolls out there will be physicians who may have more expertise and they might get more patients that come to them. As long as we have the requirements in place, it is an ongoing relationship. He is concerned with limiting doctors to having only a limited amount of cards.

▶ **Section 6**

06:25:42 Time period of revocations for various violations  
Ms. O'Connell said that last month the committee thought that there should be some permanent revocations and the instances you specified were conviction of a drug offense, use of the card, allowing somebody else to use your card or license, and if you have violated any other provisions. She said she could go through and look at penalties that are similar to what is already in law. She asked the committee if they wanted to require permanent revocation for the other two offenses, or would the committee want to take another look at this issue the next go around. REP. MORGAN said she wants to wait.

▶ **Section 7**

06:28:10 Revise allowable amount of usable marijuana  
Ms. O'Connell said that the committee has already looked at this issue.

Allow Montana caregivers to sell to out-of-state cardholders and limit the amount of time during which an out-of-state cardholder may use medical marijuana in Montana

Ms. O'Connell said that these deal with the reciprocity provisions, whether or not to allow Montana caregivers to sell to out-of-state cardholders while in Montana and whether to limit the amount of time during which an out-of-state cardholder's card would be valid in Montana before they have to obtain a card in Montana.

SEN. LAIBLE said that on the first question, no. On the second question, since the first answer was no, he thinks we would just be opening Pandora's box. He asked how law enforcement going to address this issue. Ms. O'Connell said that right now it would be legal for an out-of-state person to have their marijuana. The one clarification she had included was that the out-of-state cardholder can only have as much as Montana law allowed.

▶ **Section 9**

06:30:47 Decide whether to include new provision (4)(b)  
Ms. O'Connell said the major change is to add the word "solely" in the areas where the law prevents disciplinary action against someone because of their medical use.

06:32:48 REP. MORGAN said that we already passed a motion to blend in what the Chamber of Commerce had proposed. How does that relate to this? Ms. O'Connell said that the Chamber did not address this particular section of law. REP. MORGAN said that if they go out on their break or noon hour, use



marijuana, return to the workplace, does someone have to accuse them of being impaired, or if you smell marijuana on them, where does that fall under this protection? Ms. O'Connell said that the professional licensing boards generally investigate complaints of unprofessional conduct as it relates to their board. If somebody's behavior at work was such that it may constitutes unprofessional conduct, that is when a board would become involved with the disciplinary action.

▶ **Section 10**

06:34:15 Penalty for failure to carry card or license  
It was decided that the committee wait on this section.

06:34:22 Ms. O'Connell provided more information on Section 9. She said that subsection (4)(b) was the new section she put in. If somebody is in the vicinity of a person using medical marijuana legally but they happen to also be in possession and was not a cardholder, they could be arrested or prosecuted. Members of the committee wanted to include that in Section 9.

▶ **Section 11**

06:35:30 Review exception for smoking of medical marijuana in licensed hospice  
REP. SANDS asked if this was the section where we should accommodate the interest of the hospital association to specifically say that they have the authority to restrict or prohibit any type of use of medical marijuana. SEN. LAIBLE said Hospice as well because the testimony that we had was that because Hospice does receive federal funding, their concern was the storage of the product, etc.

06:37:31 Prohibit public smoking and/or use  
SEN. SCHMIDT asked if this was using any form of marijuana in a smoke-free facility.

06:37:53 REP. SANDS said we dealt with the issue of smoking of marijuana by a registered cardholder in schools, the issue of public parks, beaches, recreation centers or youth centers wanting to expand, perhaps look at the language that other states were using that would generally say in a public place. She likes the language in the Rhode Island that says, when exposure to the marijuana smoke, significantly, adversely affects the health, safety, or welfare of children. Ms. O'Connell asked if it would be both, general public and the Rhode Island language? The committee agreed it was both.

06:39:35 Review new language related to DUI offenses  
Ms. O'Connell said that if a person violates the DUI laws and is found to be using marijuana, then there would be a penalty for them that revokes their card similar to a license revocation under the driver's license statutes. SEN. LAIBLE said that Ms. O'Connell should work with staff from the Law and Justice Committee in making sure that we are coordinated in what we are trying to accomplish here.

▶ **Section 12**

06:40:40 Consider penalty for fraudulent use  
REP. SANDS suggested taking that up later.

► **Other**

06:40:55 Establish a procedure for adding to the list of debilitating medical conditions  
REP. SANDS wanted to know what the committee wanted to do. SEN. LAIBLE said that the Board of Medical Examiners is not interested in this issue, the committee might want to bring this issue up at the next interim.

06:43:49 Preamble discussing reasons for bill draft  
Ms. O'Connell asked if the committee would be interested in adding a preamble to the bill with WHEREAS clauses that provides some reason for introducing the bill.

06:44:01 Add purpose statement to 509-46-101  
Ms. O'Connell asked if the committee wanted to add a purpose statement in the statute since the WHEREAS clauses are not incorporated as actual statutory language.

Consider effective dates

Ms. O'Connell also asked if the committee wanted to consider effective dates for the whole act or portions of the act that would go into effect sooner than October 1, 2011.

06:44:51 SEN. LAIBLE said that some of them should be upon passage. Because a new card will be issued that cannot be duplicated on a copy machine, he feels that as of October 1, all the old cards are no longer valid. REP. SANDS said her concern for that would be putting an undue burden of having all the cards become due at the same time. It was suggested to do it as they come up for renewal for the one year.

• **NEXT MEETING -- OTHER TOPICS**

06:47:34 There was a discussion regarding having another meeting. REP. SANDS said that the next Children & Families meeting is a two-day meeting. The question is, should we convene the Monday morning session specifically on Medical Marijuana as the subcommittee to address any further issues that we want to bring to the full committee, or we could consider the committee of the whole and only do Medical Marijuana. That would be a working session. Ms. O'Connell said that would allow additional revisions to be made if the full committee wanted or the subcommittee wanted before final action on Tuesday.

06:49:18 REP. SANDS said that departments have to present reports to this committee. Ms. O'Connell discussed the bill draft request from Sen. Esp. He had decided to pursue a bill draft on his own. She said that this committee had already approved one minor HB 130 change on the admissions versus the commitment. The remaining bill draft that is out there is to change the commitment laws for people with developmental disabilities.

06:50:59 SEN. LAIBLE gave compliments to Ms. O'Connell for her excellent work.

**ADJOURNMENT**

06:51:28 With no further business before the committee, REP. SANDS adjourned the meeting at 4:53 p.m.

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O'Rourke