

North Dakota Department of Health Fiscal Note

Measure No. 5 Medical Use of Marijuana

September 22, 2016

Summary of Measure

The measure creates an Act providing for the medical use of marijuana by *registered qualified patients* for defined debilitating medical conditions through *registered designated caregivers* and *compassion centers*, or by growing their own marijuana. A qualified patient who does not grow their own could be dispensed up to three ounces of usable marijuana. Qualified patients and designated caregivers are allowed to have up to eight marijuana plants and compassion centers are allowed 1,000 plants. Depending on growing conditions, the amount of usable marijuana obtained from each plant varies greatly.

The Act would create procedures for monitoring, inventorying, dispensing, cultivating and growing marijuana, all of which would be regulated and enforced by the Department of Health (DoH). The Act provides for the registration of qualified patients, designated caregivers and compassion centers by DoH and requires revenue to be deposited into the compassionate care fund administered by the DoH.

Qualified patients and designated caregivers are required to give local law enforcement officials notice of intent to grow marijuana. Compassion Centers are required to conduct comprehensive inventories of all medical marijuana and monthly inventories of stored, usable marijuana and must notify the DoH and appropriate local law enforcement authorities within twenty-four hours of discovery of any inventory discrepancy.

Fiscal Impact Sections of the Measure

Below is a brief description of the sections of the measure which have fiscal impact, and assumptions and comments related to the fiscal impact. Three characteristics significantly impact the cost to implement the measure.

- The measure does not limit the total number of qualified patients, designated caregivers or compassion centers that would be allowed to use, grow, cultivate, dispense, and sell medical marijuana in the state. This affects the number of permits that will have to be issued and tracked, the number of inspections that will need to be done, and the amount of testing that will be needed, all of which have to be done by the NDDoH. Some medical marijuana laws in other states significantly limit the number of allowed dispensaries/sellers, or allow none at all and require users to purchase the product out of state, thus reducing their costs.
- The measure allows for numerous methods to introduce medical marijuana into the human body (19-24-02(12)); legal methods of medical marijuana will include inhalation, including both smoking and vaporizing, edibles, oils, tinctures and so forth. Each of these methods and any future methods will need to be regulated by the NDDoH. Some medical marijuana laws in other states significantly limit the methods

of consumption that are allowed. For example, some states allow only cannabidiol oil, which significantly decreases the implementation costs.

- The measure allows medical marijuana to be used to treat a broad range of symptoms and diseases, such as chronic back pain and intractable, or hard to treat, nausea. Some states limit use to only one or a few diseases, thereby limiting the number of patients that qualify for medical marijuana. This means that, relative to other states, the NDDoH will be processing more applications, issuing and managing more permits, conducting more compliance checks of growers, and so forth.

19-24-03. Qualifying patient identification card application requirements.

This section requires issuance of a registry identification card to applicants for the purpose of participating in the medical marijuana program and collection of an unspecified non-refundable application fee paid by personal check or cashier's check to DoH. Patient eligibility is based on submission of various documents, including physician certification of patient's debilitating medical condition and length of time the applicant has been under the care of the physician, release of medical information, physician's licensure, and information regarding the applicant's designated caregiver.

Assumptions: 1) Since the application fee amount is not stated and no other funding source is identified, fees are set to cover all costs of registration, regulation and enforcement. 2) An annual renewal process is described but a fee is not stated; revenue estimates assume the renewal fee is equal to the application fee. 3) 19-24-03 (2.g) requires information on applicant's "primary caregiver(s)" which is not defined in the measure and has other legal definitions; considering the measure in total it appears that, and we made the assumption that, "primary caregiver" means the designated caregiver which is defined in the measure. 4) Administrative overhead costs are allocated equally to qualified patient/designated caregiver processes and the compassion center processes.

Based on statistics from Colorado when their laws allowed medical marijuana only, we estimated North Dakota would have 16,500 qualified patients. The annual registration fee would be set at \$117 for both qualified patients and designated caregivers to cover costs at the estimated number of participants (qualified patients and designated caregivers). If the actual number of participants is less than estimated, an additional funding source will be needed to cover fixed costs.

19-24-04. Designated caregiver registry identification card application requirements.

This section provides for issuance of a registry identification card to applicants for the purpose of managing the well-being of one to five qualified patients, including themselves, and collection of an unspecified non-refundable application fee paid by personal check or cashier's check to DoH. Eligibility is based on the submission of a certified copy of birth record, copy of driver's license or comparable state or federal issued photo identification card, approval of the qualified patient authorizing responsibility for managing their well-being with respect to use of marijuana, criminal history screening background check and other information.

Assumptions: 1) Since the application fee amount is not stated and no other funding source is identified, fees are set to cover all costs of registration, regulation and enforcement. 2) An annual renewal process is described but a fee is not stated; revenue estimates assume the renewal fee is equal to the application fee. 3) While the title of section 19-24-04 relates to designated caregiver registry application, throughout the section the term “primary caregiver” is used, which is not defined in the measure and has other legal definitions; considering the measure in total and this section, it appears that, and we made the assumption that, “primary caregiver” means the designated caregiver which is defined in the measure. 4) Administrative overhead costs are allocated equally to qualified patient/designated caregiver processes and the compassion center processes.

Based on statistics from Colorado when their laws allowed medical marijuana only, we estimated North Dakota would have 8,300 designated caregivers. The annual registration fee would be set at \$117 for both qualified patients and designated caregivers to cover costs at the estimated number of participants (qualified patients and designated caregivers). If the actual number of participants is less than estimated, an additional funding source will be needed to cover fixed costs.

19-24-06. Addition of debilitating medical conditions.

A citizen may petition the DoH to add conditions or treatments to the list of debilitating medical conditions listed in subsection 7 of section 19-24-02, where debilitating medical condition is defined. The process to consider additional conditions will require considerable staff and legal resources.

19-24-07. Registration and operation of compassion centers.

This section consists of sixteen pages of criteria for operation of a compassion center, which must be reviewed by the DoH before a compassion center may operate. Requirements include criminal history screening background checks for principal officers, board members, agents, volunteers, and employees, collection of \$125 non-refundable application or renewal fee, collection of a compassion center application fee of \$5,000 and a certification fee of \$25,000 after DoH has reviewed and approved them as having met the requirements.

Additional significant cost drivers are the DoH’s responsibility in subsection 2.g.(2) to ensure center’s compliance with requirements contained in subsections 2 and 3. These include compliance checks for conducting inventory, requirements for an operations manual, security, operating as a not-for-profit entity, training, packaging that indicates the marijuana is free of contaminants and the levels of active ingredients in the product within plus or minus error of five percentage points, along with additional requirements.

Assumptions: 1) The revenue provided in this section is not sufficient to cover the costs related to the licensure and regulation of compassion centers and no alternative source is provided, so a general fund appropriation would be needed to comply with this section. 2) Administrative overhead costs are allocated equally to qualified patient/designated caregiver processes and the compassion center processes.

Based on the numerous requirements to become a certified compassion center, DoH estimates only two centers would operate in the first full biennium.

19-24-09. On-site visits/interviews.

DoH may perform on-site visits and interviews to determine qualified patient or designated caregiver eligibility for the program. Additional responsibilities include reporting, referral and corrective action related to violations and involvement in suspension, revocation and appeal and hearing processes.

Financial Impact Summary

See Attached.

Other Fiscal Impacts

- **Tax Revenue:** The Office of the State Tax Commissioner has indicated that the revenue from sales of medical marijuana under this measure would be taxable because the revenue is not from prescribed drugs. The role of the physician is only to certify that the individual has one of the qualifying medical conditions and how long the individual has been under the physician's care.

The official statement from the Office of the State Tax Commissioner is "The initiated measure does not impose any state taxes. However, under existing law, the state sales tax of 5% would apply to the retail purchase price of all medical marijuana products sold in the state, including seeds and plants for "grow your own" usage, as well as products sold in final form. An estimate of the potential sales tax revenue from medical marijuana sales in North Dakota cannot be determined, as consumption estimates vary widely, making an assumption of the taxable value of the products likely to be sold in North Dakota unknown."

- **Implementation Start-up:** By law, measures passed by voters must be implemented within 30 days from approval by the voters, which in this instance would be December 8, 2016. Significant funding and FTE are needed to implement the measure. **The NDDoH does not have the funding, appropriation authority or authorized FTE to implement the measure in the current biennium.** Funding from the measure will come in as qualifying patients and designated caregivers apply for registration. However, before this occurs, staff need to be hired and an information technology system needs to be developed to process and track the registrations. In one state it took 18 months to implement a similar law. **One-time start-up costs, such as equipment, facility remodel and an IT system, are estimated at \$1,372,931. In addition, salary and operating costs during start-up are estimated at \$100,000 to \$200,000 per month.**

Other State Agency Impacts

- *North Dakota Department of Human Services*

The North Dakota Department of Human Services estimates no fiscal impact as a result of the initiated measure for legalized medical marijuana. Although there could be a fiscal impact to the broad field resulting from an increase for assessments of potential addictions, one could also argue it may decrease the request for assessment of potential addictions. This is because we would expect a decrease in referrals in situations where someone would be using marijuana for medical reasons as they would no longer be referred (through courts or CPS) for an assessment.

- ***North Dakota Attorney General***

The Attorney General’s Office is not able to accurately estimate the fiscal impact because the measure is so broad. According to the Attorney General’s office, the measure likely will result in a significant increase in workload for the Crime Laboratory division, Criminal & Regulatory division and also its Licensing section, the Fire Marshal division, the Bureau of Criminal Investigation (BCI) and its Criminal History Record section and State & Local Intelligence Center (SLIC).

The agency provided the following example of a potential fiscal impact to its BCI division, based on Colorado’s model and using DoH estimates:

One criminal history FTE can process approximately 2,000 record checks per year. Based on the Health Department’s estimates, the BCI will need **5 additional FTE positions** to process the required criminal history record checks. **The cost of a criminal history FTE is \$149,311. The measure provides that the applicant must pay for the background check, so this amount will be billable to the applicants.**

If the BCI will be tasked with conducting compliance checks, additional BCI agent FTEs will be required, including a Chief Agent and a Supervisory Agent. The number of agent FTEs needed would depend on the number of growers, distribution points, compassion care centers and medical cards issued or allowed by legislation and/or admin rules. Adding agent FTEs will require an increase in information processing staff. For every six additional agents, the BCI estimates 1 FTE position for Information Processing (IP). **One BCI agent FTE salary/benefits is \$278,040.** An increase in FTE positions at BCI will necessitate increased office space, which is worked into the cost of the new FTEs.

Based on the estimates:

6 new BCI agent FTEs	\$1,668,240	
1 Chief Agent	\$29,000	(Difference between Special Agent and Chief Agent salary/benefits)
1 Supervisory Agent	\$12,000	(Difference between Special Agent and Supervisory Agent)
1 IP FTE	\$144,512	
5 Criminal History FTEs	\$746,555	
1 SLIC analyst	\$186,278	

**Estimated cost/biennium
for the BCI division \$2,786,585**

This estimated cost does not take into account current BCI staffing shortages as a result of the required 2.5% budget reduction, or the cost of additional FTEs for the other divisions within the agency that may be required as a result of the measure.

- ***North Dakota Highway Patrol***

The North Dakota Highway Patrol estimates no fiscal impact at this time. If a law passed and marijuana-related criminal activity or crashes noticeably increased as a result, it could potentially lead to our agency requesting additional sworn officers, but the offense of driving under the influence of alcohol/drugs is something the NDHP works hard to enforce every day. The NDHP may also have some training-related costs for canines and drug recognition officers as a result of legalizing marijuana, but those costs would be fairly minimal.

- ***North Dakota Workforce Safety Insurance***

Should this initiated measure pass, there will most certainly be effects felt within WSI.

While WSI pays medical expenses related to workplace injuries, we pay pharmaceuticals within our adopted formularies as priced within our fee schedules. For the foreseeable future it seems highly unlikely marijuana will meet the guidelines to make our formulary.

The foreseeable fiscal impact for us is anticipated as increased claim costs and administrative expenses generated by injured workers securing prescriptions for medical marijuana, using, and then testing positive, thereby preventing return to work after a work related injury. Many employers in North Dakota have mandatory drug testing. These positions would likely be eliminated as return to work options for our Vocational Rehabilitation team. Should the measure pass, additional legislation would likely be necessary to provide further clarification.

We are unable to complete a full actuarial analysis within the time constraints proposed, but even within the rather vague parameters, it is possible the impact may become material, depending on the pervasiveness of use.

We anticipate numerous injured workers to qualify for treatment under the conditions of

1. Fibromyalgia;
2. Spinal stenosis or chronic back pain including neuropathy or damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity;
3. Severe debilitating pain that has not responded to previously prescribed medication or surgical measures for more than three months or for which other treatment options produced serious side effects.

We know the analysis is not as complete as we would like, but, again, we anticipate economic effects, both administratively as well as in the amount of benefits paid.

- *North Dakota Department of Corrections*
None

Local Agency Impacts

Only one response was received from local agencies.

- *West Fargo Police*
The West Fargo Police Department is unable to provide a reliable estimate as the most comprehensive data regarding impacts related to medical marijuana (obtained from Colorado) does not distinguish marijuana-only operators of a motor vehicle from alcohol and other drug-operators, prior to legalization of recreational marijuana.

Additional costs will be associated with the following:

- DUI arrests and motor vehicle crashes, including investigation and reconstruction of more serious accidents, providing additional safety at the scene, and time spent in court
- Medical first response related to accidental ingestion, poisoning, or mental health related issues
- Response to alarms at Compassion Care Centers
- Administrative tracking of notification of intent to grow
- Investigation into reports of lost inventory
- Assisting or escorting Department of Health inspectors
- Investigation of violations of this chapter

Qualifying Statement:

Because of the many assumptions that had to be made and the limited reliable data on which to base estimates, the department's confidence in the numbers is not high and the state could have additional or less financial risk and impact.

For additional legal analysis of this measure see

<https://www.ndhealth.gov/publications/Memo%20Medical%20Marijuana%20Measure%207-13-2016.pdf?v=2>.

Fiscal Note

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**Department of Health
Ballot Measure - Medical Marijuana
Fiscal Impact Summary**

Description	One-time Costs			Biennial Costs		
	Qualified Providers / Designated Caregivers	Compassion Centers (assuming 2 Centers)	Combined Total	Qualified Providers / Designated Caregivers	Compassion Centers (assuming 2 Centers)	Combined Total
Expenditures:						
Salaries	\$ -	\$ -	\$ -	\$ 3,439,215	\$ 1,317,130	\$ 4,756,345
Operating	1,218,542	154,389	1,372,931	1,308,788	1,287,699	2,596,487
Total Expenditures	\$ 1,218,542	\$ 154,389	\$ 1,372,931	\$ 4,748,003	\$ 2,604,829	\$ 7,352,832
FTE				25	7	32
Revenue:						
Replacement cards	\$ -	\$ -	\$ -	\$ 150,000	\$ -	\$ 150,000
Charges for failure to notify DoH of changes	-	-	-	30,000	-	30,000
Annual Registration fees @ \$117 per QP and DC	1,218,542	-	1,218,542	4,568,003	-	4,568,003
Application / Registration / Renewal fees	-	-	-	-	70,000	70,000
Total Revenue	\$ 1,218,542	\$ -	\$ 1,218,542	\$ 4,748,003	\$ 70,000	\$ 4,818,003
Unidentified Revenue Source (Gap)	\$ -	\$ 154,389	\$ 154,389	\$ -	\$ 2,534,829	\$ 2,534,829