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Iowa Medical Marijuana

The Problem.

News reports consistently cite key legislators claiming federal scheduling prohibits a medical marijuana program in Iowa.

Among state lawmakers, opponents of expansion or the program in general say the state should not pass a law that conflicts with federal law and they should not be making decisions that are better left to medical experts.

One key state legislator, who is drafting the medical cannabis bill that will be considered in the Iowa House, said he thinks it is important the program be extended but he is uncertain whether it will be expanded.

“We have to extend the current program. I don’t think there’s any question about that,” said Rep. Clel Baudler, R-Greenfield, chairman of the House Public Safety Committee. “Expansion? There’s a question. ... I think I can safely say that the (expiration) date of July 1, 2017, will be eliminated and the present program can continue.”

Baudler said approval of program expansion would require “time, education and want from my (House Republican) caucus.”

House Speaker Linda Upmeyer of Clear Lake said that before proceeding with new state legislation, she wants to hear the intentions of the federal government and the new administration regarding medical marijuana.

"I don't know where we'll land," Upmeyer said. "We are breaking federal law no matter what we do. I would appreciate the federal government to make a decision on how they want this to be approached, and then the state can take the appropriate action. So I think that's kind of Step One, knowing that."

"Families wait as lawmakers consider future of Iowa's medical marijuana program", Quad City Times, Sunday, January 29, 2017

The Solution.

Grinspoon v. DEA, 828 F.2d 881, 886 (1st Cir. 1987) ("Congress did not intend 'accepted medical use in treatment in the United States' to require a finding of recognized medical use in every state or, as the Administrator contends, approval for interstate marketing of the substance.")

Gonzales v. Oregon, 546 U.S. 243, 258 (2006) ("The Attorney General has rulemaking power to fulfill his duties under the CSA. The specific respects in which he is authorized to make rules, however, instruct us that he is not authorized to make a rule declaring illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law.")

Wish List for an Iowa Medical Marijuana Program.

1. Addition of medical conditions added and regulated by administrative rule (Iowa Department of Public Health).
2. Addition of cannabinoids added and regulated by administrative rule (Iowa Department of Public Health).
3. Cultivation regulated by administrative rule (Iowa Department of Agriculture).
4. Removal of marijuana from state schedule 1.
5. Inclusion of a legal argument explaining why federal schedule 1 does not apply to a state medical marijuana program (see below).
6. Sovereign Immunity - users assume the risk and cannot sue the state for bad reactions - state is not obligated or prevented from defending users from federal prosecution (see below).

Administrative Regulation

Both federal and uniform acts make scheduling a formal rule making process. Iowa does not.

However, you can still appeal from an Iowa scheduling decision under the Iowa Administrative Procedures Act.

Whether Iowa regulations are formal or informal, the administrative rulings will be appealable under the Iowa Administrative Procedures Act.

Sovereign Immunity

If the federal government tries to prosecute someone in full compliance with our state medical marijuana program, the state should neither be obligated to defend, nor prohibited from defending, that person or entity.

The example would be the city of Oakland, California, suing the federal government for trying to shut down the Harborside Health Care medical marijuana dispensary. The revenue the city was collecting from that dispensary was a significant chunk of the city's budget.

[Video of oral argument in Oakland v. Lynch](#)

The federal government dropped the case after the ruling in [U.S. v. McIntosh](#)

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Marijuana Leaf

