KRIEG DEVAULT

Insights

Veterans Medical Marijuana Bills Introduced Ahead of Military Appreciation Month

May 7, 2021

By: Kendall A. Schnurpel and

May is National Military Appreciation Month in the U.S. and several members of Congress are trying to address a hurdle that many of our service men and women face in utilizing state-legal medical cannabis as a result of ongoing federal prohibition. First, on April 15, 2021, the Veterans Medical Marijuana Safe Harbor Act was reintroduced in the U.S. Senate by Senator Brian Schatz (D-HI), with companion legislation being introduced in the U.S. House of Representatives by Representatives Barbara Lee (D-CA) and Dave Joyce (R-OH). Next, the VA Medicinal Cannabis Research Act of 2021 was introduced in the Senate on April 29, 2021, with a companion bill introduced in the House on April 30th. Respectively, these bills would allow doctors at the U.S. Department of Veterans Affairs (VA) to prescribe cannabis to veterans in states that have established state-legal medical cannabis programs and would direct the VA to conduct research into the safety and efficacy of medicinal cannabis usage by veterans.

Background

In 1996, California voters approved Proposition 215, making California the first state to effectively legalize medical cannabis. As of May 1, 2021, the medicinal use of cannabis is legal in 36 states, the District of Columbia, and four of five permanently inhabited U.S. territories (Mississippi and South Dakota, most recently). However, that number seems to climb monthly. On Thursday, April 29, the Texas House of Representatives passed a medical cannabis bill, which now moves on to the Texas Senate. On Tuesday, May 4, 2021, a Kansas House committee approved a bill to legalize medical cannabis in that state. Finally, on May 6, 2021, the Alabama House of Representatives passed its own medical cannabis bill by a vote of 68-34, which now returns to the Alabama Senate, which had passed it earlier. Representatives had discussed the bill for over 8 hours on May 4, but the vote was delayed due to a Republican filibuster. If the Alabama Senate agrees with the changes made by the House, the bill will go to Alabama Governor Kay Ivey who could sign it into law.

Despite the steady climb in state legalization efforts over the past 25 years, cannabis remains federally illegal and is prohibited pursuant to the Controlled Substances Act of 1970, where it is classified as a Schedule 1 drug, determined to have a high potential for abuse and no accepted medical use. Notwithstanding this conflict between federal and state law, patients and state-legal medical cannabis programs have been protected from federal prosecutions since 2014 by the little-known Rohrabacher-Farr Amendment (RFA), which is renewed annually by Congress in spending bills. Under the RFA, the U.S. Justice Department is prohibited from spending appropriated federal funds to interfere with the implementation of state medical cannabis laws.

Despite the RFA, the continued listing of cannabis as a federally illegal Schedule 1 substance means that VA doctors cannot provide or recommend medical cannabis for veterans and the VA will not pay for medical cannabis prescriptions from any source.[1] As medical cannabis has been found to be an effective treatment for

chronic pain, PTSD, and other debilitating conditions such as fibromyalgia, and with such treatments now legal in nearly three-fourths of the U.S., calls for removing the restrictions on prescriptions of, and payment for, medicinal cannabis for veterans have been increasing.

The Veterans Medical Marijuana Safe Harbors Act

If passed into law, the Veterans Medical Marijuana Safe Harbor Act (Veterans Safe Harbor Act) would create a temporary, five-year safe harbor protection for veterans who use medical cannabis and their prescribing doctors. It would also direct the VA to research how medical cannabis could help veterans better manage chronic pain and reduce opioid abuse. In support of the bill, and medical cannabis treatment for veterans, Congressman Dave Joyce (R-OH) stated "if a state has made it legal, like Ohio has, the federal government should not be preventing a VA doctor from recommending medical cannabis if they believe that treatment is right for their patient."[2]

The VA Medicinal Cannabis Research Act of 2021

On April 29, 2021, a bipartisan bill to require the VA to conduct clinical trials into the therapeutic potential of cannabis for veterans was reintroduced in the U.S. Senate. The VA Medical Cannabis Research Act of 2021 (VA Research Act), sponsored by Senators Jon Tester (D-MT) and Dan Sullivan (R-AK), has been slightly modified since an earlier version that was introduced in 2019. The 2021 version of the bill explicitly requires the VA to launch a series of clinical trials and sets out specific guidelines for researching the effects of several cannabis varieties with various concentrations of Tetrahydrocannabinol (THC) and Cannabidiol (CBD). Representatives Lou Correa (D-CA) and Peter Meijer (R-MI) filed an identical House version of the bill the following day. Referring to the opioid crisis in the U.S. as a motivating factor in reintroducing the legislation, Correa stated "…it is imperative to the health and safety of our veterans that we find alternative treatments for chronic pain and service-related injuries."[3] The bill directs the VA to provide Congress with a report dictating its plan to conduct research and to periodically report their findings and progress while conducting the study.

Although the future of these bills is uncertain, the consensus seems to be that state-legal treatments should be made available to U.S. veterans without additional restrictions based on their veteran status. As efforts to resolve the ongoing conflict between federal and state cannabis laws continue, we anticipate further legislative action. If you have questions about the Veterans Safe Harbor Act, the VA Research Act, or any other legal issues related to medicinal cannabis, please contact **Kendall A. Schnurpel**, **Alexandria M. Foster**, or your regular Krieg DeVault LLP attorney.

Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have. In addition, marijuana remains a federally illegal Class I drug. All activities related to marijuana are currently illegal under the federal laws of the United States and nothing contained on this alert is intended to assist in any way with violation of applicable law.

[1] However, according to the Department of Veterans Affairs, veterans participating in a state-legal medical cannabis program will not be denied VA benefits and VA doctors are permitted to discuss cannabis use with veteran patients and adjust care and treatment plans as needed.
[2] See: https://lee.house.gov/news/press-releases/reps-lee-and-joyce-join-with-senator-schatz-to-introduce-legislation-to-protect-state-legal-medical-marijuana-programs-for-veterans
[3] https://correa.house.gov/news/press-releases/reps-lou-correa-and-peter-meijer-introduce-legislation-to-research-cannabis-for-veterans