

## Insights

### Senate Appropriations Committee Votes to Expand Vet Access to Medicinal Cannabis

August 9, 2021

By: Kendall A. Schnurpel and

On Wednesday, August 4, 2021, the Senate Appropriations Committee approved an amendment to the Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2022 (“2022 VA Appropriations Bill”) that would allow doctors with the Department of Veterans Affairs (“VA”) to recommend cannabis treatments for veterans in states with legal medical cannabis programs. The amendment to the bill would prohibit the VA from using appropriated funds to interfere with the ability of veterans to participate in state-legal medical marijuana programs or to deny medical services to such veterans.

#### Background

Medical cannabis has been found to be an effective treatment for chronic pain, PTSD, and other debilitating conditions. As of August 1, 2021, the medicinal use of cannabis is legal in 37 states and the District of Columbia.<sup>1</sup> Despite a majority of U.S. states establishing medicinal cannabis programs, cannabis remains federally illegal and is prohibited pursuant to the Controlled Substances Act of 1970 (“CSA”), where it is classified as a Schedule 1 drug (determined to have a high potential for abuse and no accepted medical use). As a result of this conflict between federal and state law, VA doctors cannot provide or recommend medical cannabis for veterans and the VA will not pay for medical cannabis prescriptions from any source.<sup>2</sup> Earlier this year, legislation was introduced that would allow VA doctors to prescribe cannabis to veterans in states with legal medicinal programs and would direct the VA to conduct research into the safety and effectiveness of medicinal cannabis. **See our prior alert here.** However, neither bill has been fully approved as of the date of this alert.

#### 2022 VA Appropriations Bill

The amendment providing for expanded medical marijuana access for veterans was sponsored by Senator Jeff Merkley (D-OR), who introduced a similar proposal in 2018. That amendment also cleared the Appropriations Committee but was not included in final Fiscal Year 2019 spending legislation for the VA due to Republican opposition in the House Appropriations Committee. The full text of Senator Merkley’s successful amendment to the 2022 VA Appropriations Bill provides:

SEC. \_\_\_\_ None of the funds appropriated or otherwise made available to the Department of Veterans Affairs in this Act may be used in a manner that would—

- (1) interfere with the ability of a veteran to participate in a medicinal marijuana program approved by a State;
- (2) deny any services from the Department to a veteran who is participating in such a program;

or (3) limit or interfere with the ability of a health care provider of the Department to make appropriate recommendations, fill out forms, or take steps to comply with such a program.

The amendment is the latest in a flurry of VA cannabis related activity in the current session of Congress, which has also seen the introduction of the Veterans Medical Marijuana Safe Harbor Act, the VA Medicinal Cannabis Research Act of 2021, and the Veterans Cannabis Analysis, Research, and Effectiveness Act. These VA focused proposals have been overshadowed by the much more ambitious Marijuana Opportunity, Reinvestment and Expungement (MORE) Act and the more recent Cannabis Administration and Opportunity Act (proposed by Senate Majority Leader, Chuck Schumer (D-NY), either of which would decriminalize cannabis at the federal level by removing it from the CSA. However, when the dust settles, these more narrowly focused VA cannabis initiatives may prove to be the easier sell for Congressional Democrats who will most certainly experience a greater sense of urgency the closer we get to the 2022 midterm elections.

If you have questions about the 2022 VA Appropriations Bill, 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 in this alert is intended to assist in any way with violation of applicable law.*

[1] A constitutional amendment allowing the use of medical marijuana in Mississippi was approved by voters in the November 2020 election and would bring the total to 38 medically legal states. The initiative was invalidated by the Mississippi Supreme Court in May of 2021 and Mississippi Governor Tate Reeves has now asked state legislators to establish a medical cannabis program through the legislative process.

[2] 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.