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Utah governor promises to call special session after the election to enact medical marijuana agreement, no matter how Prop 2 vote turns out



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No matter what voters decide on Proposition 2 this November, an alternate medical marijuana proposal hammered out by state lawmakers, faith leaders and advocates will be debated by Utah’s Legislature next month.

Utah Gov. Gary Herbert has pledged to call a special legislative session to take up a cannabis pact that flowed from weeks of behind-the-scenes negotiation between officials and both sides of the Prop 2 debate.

The deal, announced Thursday in the ornate Gold Room of the state Capitol, would allow for qualifying patients to obtain medical marijuana from their county health departments or at one of up to five “medical cannabis pharmacies.”

“The good news here is that whether [Prop 2] passes or fails, we’re going to arrive at the same point,” Herbert said.

Unlike the initiative, which allows for qualifying patients to purchase a variety of marijuana products from privately owned dispensaries, the state’s alternative will establish a centralized pharmacy to supply health departments with marijuana in “medicinal dosage form.”

The state-run operation is meant to increase safeguards and reduce the likelihood of medical marijuana reaching the black market.

Under the compromise, the Department of Health would also issue up to five licenses for privately owned cannabis pharmacies, a number that could increase to 10 if the state-run system fails to get off the ground. Although these private facilities would follow many of the state regulations that apply to regular pharmacies, they would dispense only medical cannabis.

“It is not a pharmacy like a Walgreens,” House Speaker Greg Hughes said, “but we do want to make sure the public understands that it is specialized and has those kinds of safeguards.”

Several other states — Connecticut, Pennsylvania, Minnesota, New York and Arkansas — have enacted medical marijuana programs that involve licensed pharmacists in the distribution of the substance.

But the state-run model outlined in the compromise documents would make Utah’s medical marijuana program unique in the nation, said Sen. Evan Vickers, R-Cedar City, one of the proposal’s architects.

Making medical marijuana available through Utah’s 13 local health departments was important to accommodate rural residents, since the compromise eliminated a Prop 2 provision that allowed qualifying patients in remote areas to grow their own cannabis.

“The health department is the pickup [site], and then they would be able to have access to this medication without having to drive all the way to Salt Lake City,” he said.

Connor Boyack, president of the Libertas Institute, said the centralized fill plan was a sticking point in negotiations between lawmakers and medical marijuana advocates. He and others eventually went along with the idea so long as the compromise also provided for privately-owned pharmacies.

Still, he said tasking the state with distribution of the medicinal plant will risk disapproval from the federal government, which still classifies marijuana as a Schedule 1 substance along with LSD, heroin and other illegal drugs.

The list of qualifying conditions is also changed by the agreement, particularly the removal of “chronic pain.” Instead, the new proposal allows for patients to access medical marijuana if they experience “pain lasting longer than two weeks, under certain conditions.”

Boyack said most of the marijuana varieties allowed under Proposition 2 — such as gummies, lozenges, tinctures, topicals, resins and waxes — would still be available under the new proposal, albeit with greater restriction on variety to provide dosage controls.

Boyack said patients will still be able to access marijuana in flower form, as long as it is distributed in a blister pack, similar to some types of chewing gum.

“That way it’s tamper resistant,” Boyack said. “It’s evident when a cop finds flower. If it’s not in a blister pack they’ll know that this is recreational marijuana.”

But he said it would likely be “technically” illegal for a person to convert their medical marijuana into a butter or other ingredient for making their own edibles, like cookies or brownies.

“That’s an unresolved question,” Boyack said. “The patients are few and far between who also want to process their own flower. It’s more designed for if you’re going to be juicing it or vaping it.”

Christine Stenquist, president of the patient and marijuana advocacy group TRUCE, said the blister pack requirement for flower is “absurd, ridiculous and convoluted.” That type of unnecessary overregulation may calm the fears of critics, she said, but also serves to drive patient demand back to illegal or out-of-state cannabis.

“Patients are not going to want to buy product that has been overly packaged,” she said, “because it drives up cost.”

She was critical of the agreement, calling it an “October surprise” reached in the final weeks of the election season and full of promises that may or may not be kept.

“This is another promise that we can’t trust,” she said. “We still need to vote [on Prop 2]. That is something that will hold them to the fire.”

Herbert said he’s confident the Legislature will act on the medical marijuana deal.

“I cannot conceive ... of the Legislature not following in suit with what’s been compromised on here today and pass legislation that reflects that,” he said.

A spokesman for the governor said a specific date hasn’t been set for the special session. The most likely date is Nov. 14, when lawmakers are scheduled to hold interim hearings.

The announcement of the deal included Senate President Wayne Niederhauser, R-Sandy; House Speaker Greg Hughes, R-Draper; former Sen. Mark Madsen; Utah Medical Association CEO Michelle McOmer; Utah Patients Coalition director DJ Schanz; Elder Jack Gerard of The Church of Jesus Christ of Latter-day Saints; and Bishop Scott B. Hayashi of the Episcopal Diocese of Utah.

In light of the accord, the Utah Patients Coalition will wind down its advertising campaign for Prop 2, and the LDS Church will de-escalate its opposition efforts, representatives said Thursday.

But Drug Safe Utah president Michelle McOmber said her group had not yet determined whether it would de-escalate its attacks on Proposition 2. Members of the anti-initiative coalition, she said, are still digesting the proposal and weighing their response.

“They’ll have to make their own decision on that,” McOmber said.

The deal comes after repeated reports of negotiations between backers of Proposition 2 and the opposition group, Drug Safe Utah. Critics had chafed at key provisions of Prop 2, such as the so-called “grow-your-own” and “affirmative defense” portions, which allow qualifying patients to cultivate their own cannabis plants under certain circumstances and avoid prosecution for marijuana possession prior to the establishment of licensed dispensaries.

Schanz, director of the initiative campaign, said the agreement provides certainty to Utah patients, who could otherwise face the threat of a protracted battle over medical marijuana if the initiative is successful.

By working with opponents and lawmakers, he said, the state will have a working medical cannabis program in the very near future that ceases to place legal hurdles before patients in search of relief.

“You aren’t criminals,” he said. “You’re our brothers and sisters.”

While speakers at the news conference celebrated the deal as an all-around win, Rep. Angela Romero, D-Salt Lake City, left uneasy about the message it sends to voters, especially those who signed the petition to put the medical marijuana initiative on the ballot.


“My concern is this is a way of killing Proposition 2,” she said, “and ... maybe that’s not the intent, but we have to look at how it’s perceived.”

And Madsen, whose unsuccessful attempts to legalize medical marijuana as a state senator catalyzed discussion on the issue, said he was “dumbfounded and thrilled” by Thursday show of support by Utah power brokers. But he also criticized the “deplorable methods and tactics” of marijuana opponents in the past, whose efforts against legalization delayed access for patients.

“The best insurance policy,” he said, “is an overwhelming ‘yes’ vote on Proposition 2.”



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