



COLORADO

Department of Public
Health & Environment

To: Members of the State Board of Health
From: Natalie Riggins, Medical Marijuana Registry Program Manager, Center for Health and Environmental Data *NAR*
Through: Chris Wells, Director, Center for Health and Environmental Data *CSU*
Date: July 17, 2019
Subject: Emergency Rulemaking Hearing concerning 5 CCR 1006-2, Medical Use of Marijuana

The Medical Marijuana Registry (MMR) is proposing modifications to the Medical Use of Marijuana regulations to align with legislation passed in the 2019 session. The vast majority of the changes must occur for the rule to remain in alignment with statute. The substantive change over which the Board of Health has discretion is that Section 25-1.5-106(3)(d), C.R.S., requires the state health agency to promulgate rules related to the length of time a registry identification card issued to a patient with a disabling medical condition is valid. The proposed rule states that a registry identification card issued to a patient with a disabling medical condition will be valid for a minimum of sixty days and no longer than one year. Within that timeframe, the recommending physician can determine the length of time for which the card will be valid.

STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY
for Amendments to
5 CCR 1006-2, Medical Use of Marijuana

Basis and Purpose.

Revisions proposed to Regulations 1, 2, 3, 6, 8, 9, and 12 are necessary to ensure that rule language remains in alignment with current law. A summary of the changes by regulation are:

Regulation 1

- The rules have been placed in alphabetical order and two definitions found in Regulation 8 were relocated to the definitions at 1.C.
- SB 19-218 clarified the definition of “bona fide physician-patient relationship” to indicate that if the patient is a minor, the physician is to consult with the minor patient’s parents and explain to the patient and the patient’s parents the possible risks and benefits of medical marijuana for treatment. The Colorado Constitution indicates that for minors, one of the two physicians that diagnosed the patient as having a debilitating medical condition is required to explain the possible risks and benefits of medical marijuana for treatment to the patient and the patient’s parents *residing in Colorado*. To align the statute with the constitution and have the practice the same for physicians regardless of whether medical marijuana is recommended for treatment of a debilitating medical condition or a disabling medical condition, the rule indicates that the physician is to explain the possible risks and benefits to the patient and each of the patient’s parents *residing in Colorado*. A minor patient may have multiple parents. Under the statute, each parent in Colorado is to receive an explanation.
- SB 19-218 expands the definition of physician for disabling medical conditions. Doctors of medicine may recommend medical marijuana for debilitating or disabling medical conditions. Under SB 19-218, dentists and advanced practice practitioners with prescriptive authority, acting within the scope of their practice may recommend medical marijuana for disabling medical conditions. To be “in good standing:”
 - The physician must hold a doctor of medicine or doctor of osteopathic medicine degree from an accredited medical school; hold a valid license to practice medicine in Colorado; and hold a valid and unrestricted US Department of Justice Federal Drug Enforcement Administrative Controlled Substances Registration.
 - The dentist or advanced practice practitioner must hold a degree in a medical field within his or her scope of practice; hold a license to practice within his or her scope of practice in Colorado; and hold a valid and unrestricted US Department of Justice Federal Drug Enforcement Administrative Controlled Substances Registration.

A definition of physician was added and the definition of “in good standing” was expanded to include the requirements for dentists and advanced practice practitioners. The Department of Regulatory Agencies has indicated that at this time

advanced practice practitioners with prescriptive authority includes physician assistants, dentists, podiatrists, optometrists, and advanced nurse practitioners with prescriptive authority.

Regulation 2

- HB 19-1028 and SB 19-013 modify the physician requirements for minor patients with a disabling medical condition. The bills removed the requirement that one of the two physicians be a board certified pediatrician, a board certified family physician or a board certified child and adolescent psychiatrist that is part of the minor's primary care provider team, and replaced this with the requirements that when the physician, which now includes a dentist or advanced practice practitioner with prescriptive authority, is not the minor's primary care physician, the recommending physician is to review the diagnosing physician or licensed mental health provider records. Regulation 2.B.2.b updates the application requirements to align with current statute.
- Regulation 2.B.5 was updated to align with SB 19-218; however, the rule already applied to minors. As such, this is not a substantive change.
- The word "renewal" is replaced with "revocation" at Regulation 2(H). Medical marijuana registry identification cards are subject to immediate revocation when a patient violates the Uniform Controlled Substances Act of 2013. This aligns language outlined in Senate Bill 19-218 and implements feedback staff received from the Board of Health at the March 2018 rulemaking hearing.

Regulation 3

- A medical marijuana registry identification card issued for patients with a debilitating medical condition continues to be valid for one year as this is a requirement in the constitution. SB 19-218 requires the Board of Health to establish the time period for which a medical marijuana registry identification card issued for patients with a disabling medical condition will be valid. The Department recommends that the recommending physician, which may include a dentist or advanced practice practitioner with prescriptive authority, have discretion based upon the needs of the patient with the minimum being sixty days and the maximum issuance period being one year. This is consistent with the definition of bona fide physician-patient relationship which is intended to ensure that patients have regular contact with the recommending physician. Permitting varied registration between sixty days and one year for patients with disabling medical conditions allows physicians to determine the patient's medical necessity and the appropriateness of treatment with medical marijuana. The Department does not have a role in determining a patient's medical necessity.

Regulation 6

- Language was added to clarify that the term "physician" as used for the petition process to add debilitating medical conditions means a doctor of medicine, which includes a doctor of osteopathic medicine. This creates internal consistency for debilitating medical conditions, honors the definition of "physician" relied upon when the petition process rule was updated by the Board of Health in the spring of 2019 and

ensures the petitioner has the skills and experience needed to meet the petition requirements.

Regulation 8

- The definition of “in good standing” and “bona fide physician-patient relationship” found at Regulation 8.A.1 and 8.A.2 have been relocated to the definitions in Regulation 1.C. so the terms are defined in advance of their use.
- Doctors of medicine may recommend medical marijuana for debilitating or disabling medical conditions. Under SB 19-218, dentists and advanced practice practitioners with prescriptive authority, acting within the scope of their practice may recommend medical marijuana for disabling medical conditions.

Regulation 9

- HB 19-1031 allows multiple parents or legal guardians to formally serve as the minor patient’s primary caregiver beginning on December 1, 2020. This language is incorporated into Regulation 9.F.

Regulation 12

- The word “renewal” is replaced with “revocation” at Regulation 12(E). Medical marijuana registry identification cards are subject to immediate revocation when a patient violates the Uniform Controlled Substances Act of 2013. This aligns language outlined in Senate Bill 19-218 and implements feedback staff received from the Board of Health at the March 2018 rulemaking hearing.

Technical revisions

- Minor, technical edits to improve readability are seen throughout the proposed rule.

Emergency Rulemaking Justification.

An emergency rule-making, which waives the initial Administrative Procedure Act noticing requirements, is necessary to comply with state law. Emergency rulemaking is authorized pursuant to Section 24-4-103(6), C.R.S.

The following bills passed and have been signed by Governor Polis:

- HB 19-1028, Concerning the conditions for medical marijuana use for disabling medical conditions, and, in connection therewith, adding autism spectrum disorders to the list of disabling medical conditions for medical marijuana use. Effective April 2, 2019.
- HB 19-1031, Concerning allowing each parental guardian to serve as a minor medical marijuana patient's primary caregiver, and, in connection therewith, making an appropriation. Effective August 2, 2019.
- SB 19-013, Concerning the conditions for medical marijuana use for disabling medical conditions, and, in connection therewith, adding a condition for which a physician could prescribe an opioid to the list of disabling medical conditions for medical marijuana use. Effective August 2, 2019.
- SB 19-218, Concerning the continuation of the medical marijuana program, and, in connection therewith, implementing the recommendations contained in the 2018

sunset report by the Department of Regulatory Agencies and making an appropriation.
Effective August 2, 2019.

This emergency rule, if adopted, shall become effective on August 2, 2019 to align with the effective date of the legislation. It will be effective for no more than 120 days after its adoption unless made permanent through a rulemaking that satisfies the Administrative Procedure Act noticing requirements.

Specific Statutory Authority.

Statutes that require or authorize rulemaking: Colorado Constitution, Article XVIII, Section 14 and § 25-1.5-106, C.R.S.

Is this rulemaking due to a change in state statute?

Yes, the bill numbers are: HB 19-1028, HB 19-1031, SB 19-013, and SB 19-218. Rules are authorized required.
 No

Does this rulemaking include proposed rule language that incorporate materials by reference?

Yes URL
 No

Does this rulemaking include proposed rule language to create or modify fines or fees?

Yes
 No

Does the proposed rule language create (or increase) a state mandate on local government?

No.

- The proposed rule does not require a local government to perform or increase a specific activity for which the local government will not be reimbursed;
- The proposed rule requires a local government to perform or increase a specific activity because the local government has opted to perform an activity, or;
- The proposed rule reduces or eliminates a state mandate on local government.

REGULATORY ANALYSIS
for Amendments to
5 CCR 1006-2, Medical Use of Marijuana

1. A description of the classes of persons affected by the proposed rule, including the classes that will bear the costs and the classes that will benefit from the proposed rule.

Group of persons/entities Affected by the Proposed Rule	Size of the Group	Relationship to the Proposed Rule Select category: C/S/B
Current and potential medical marijuana patients.	100,000	C, B
Parents and legal guardians of patients and prospective patients under age eighteen.	1,000	C, B
Doctors of medicine and doctors of osteopathic medicine that currently recommend medical marijuana.	500	C
Other medical practitioners with prescriptive authority who are now able to recommend medical marijuana for disabling medical conditions.	Unknown	C

While all are stakeholders, groups of persons/entities connect to the rule and the problem being solved by the rule in different ways. To better understand those different relationships, please use this relationship categorization key:

- C = individuals/entities that implement or apply the rule.
- S = individuals/entities that do not implement or apply the rule but are interested in others applying the rule.
- B = the individuals that are ultimately served, including the customers of our customers. These individuals may benefit, be harmed by or be at-risk because of the standard communicated in the rule or the manner in which the rule is implemented.

More than one category may be appropriate for some stakeholders.

2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

Economic outcomes

Summarize the financial costs and benefits, include a description of costs that must be incurred, costs that may be incurred, any Department measures taken to reduce or eliminate these costs, any financial benefits.

Please describe any anticipated financial costs or benefits to these individuals/entities.

Medical marijuana patients and prospective patients (Categories C and B)

If physicians choose to recommend medical marijuana for a period shorter than one year patients will have to bear the costs of applying for a registry identification card multiple times per year in order to maintain a valid registry identification card. These costs include the \$25 application processing fee required by the Registry.

Patients will also incur any fees charged by the patient's medical provider. The MMR does not have an influence on the fees medical providers charge patients.

Parents and legal guardians of patients under age eighteen. (Categories C and B)

No economic impacts are anticipated.

Doctors of medicine and doctors of osteopathic medicine and other practitioners authorized to recommend medical marijuana for disabling medical conditions. (Category C)

The economic outcome to this group is unknown. Previously, only doctors of medicine and doctors of osteopathic medicine were able to recommend medical marijuana, and physicians were able to establish businesses specializing in recommending medical marijuana for patients. The changes to statute that are incorporated into the rule may result in more medical professionals choosing to recommend medical marijuana. This may enable existing medical practices to grow their practices or increase competition between businesses specializing in medical marijuana examinations. MMR has no regulatory oversight over how medical providers administer businesses.

Newly eligible practitioners that choose to recommend medical marijuana will need to register for an account with the MMR. Completing and submitting registration information takes approximately 15 minutes for a physician to finish. Once submitted to the Registry it will take MMR staff approximately 5-7 business days to process and verify the practitioner's information. Once a practitioner's registration is approved by MMR and their account has been set up, practitioners can submit changes as needed within their secure online account.

Non-economic outcomes

Summarize the anticipated favorable and non-favorable non-economic outcomes (short-term and long-term), and, if known, the likelihood of the outcomes for each affected class of persons by the relationship category.

Medical marijuana patients and prospective patients (Categories C and B)

The full impact of these rule changes are still unknown. However, the changes will allow more provider types to recommend medical marijuana. While it is unclear how many newly eligible providers will choose to recommend medical marijuana, it is possible that an increase in providers could result in more patients applying for a medical marijuana registry identification card which would result in more patients having access to medical marijuana, especially in rural areas where there are currently limited medical providers. As a result, patients may have a greater choice of providers.

Parents and legal guardians of patients under age eighteen. (Categories C and B)

Allowing each parent or legal guardian to serve as a minor patient's primary caregiver will result in added convenience and legal protection for parents and legal guardians.

Doctors of medicine and doctors of osteopathic medicine and other practitioners authorized to recommend medical marijuana for disabling medical conditions. (Categories C)

Physicians and newly eligible practitioners now have the flexibility to recommend medical marijuana as a therapeutic option for less than one year to patients with disabling medical conditions. Physicians should also be familiar with the different rules and regulations surrounding debilitating and disabling medical conditions and how they apply to their medical practice.

3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

A. Anticipated CDPHE personal services, operating costs or other expenditures:

MMR is a fee based program that is funded solely by the application processing fee that is collected at the time a patient applies. The fee has been as high as \$150 dollars and as low as \$15. Fees are consistently evaluated to ensure that the revenue MMR is generating is sufficient to cover the expenses of administering the program, and does not carry over excess revenue from year-to-year. In 2018 the application processing fee was set at \$25, and all revenue generated from the fee is held in the Medical Marijuana Cash Fund.

Although these changes are expected to result in some expenditures, some of the costs incurred will be absorbed by the program. The MMR costs that cannot be absorbed are summarized below.

SB 19-218		
Cash Expenditures	Year 1	Year 2
Personal Services	\$14,007 (0.2 FTE)	\$84,160
Operating Expenses and Capital Outlay		\$10,736
Computer programming	\$100,000	\$20,000
<i>Total Appropriation from Medical Marijuana Cash fund</i>	<i>\$114,007</i>	<i>\$114,896</i>

HB 19-1031		
Cash Expenditures	Year 1	Year 2
Personal Services	Registry will absorb these costs within existing resources	
Computer programming	\$0	\$95,831
<i>Total Appropriation from Medical Marijuana Cash fund</i>	<i>\$0</i>	<i>\$95,831</i>

Anticipated CDPHE Revenues:

During the 2019 legislative session the General Assembly appropriated funds from the Medical Marijuana Cash Fund, created in Section 25-1.5-106 (17)(a), C.R.S., in the amounts identified in the tables above to implement the legislation.

Based on the department's FY 2019-20 budget request, the department is expected to have revenue of \$2.2 million and expenditures of \$1.9 million to administer the Medical Marijuana program. This continuing revenue is subject to TABOR; however under the March 2019 Legislative Council Staff forecast, a TABOR surplus is not expected in FY 2019-20 or FY 2020-21.

The fee is currently set at \$25 per application. The 2019 legislation may increase the number of patient applications being submitted to MMR, though the amount of additional patients that may register as a result of these proposed changes is unknown. Therefore, the department is not able to accurately project future revenue at this time. Since MMR is a self-sustaining cash based program, fees are continually assessed based on changing patient counts in order to appropriately staff and to maintain revenue and expenses balanced within appropriations. If projections identify a need for a fee increase, MMR will initiate a request for rulemaking hearing for the Board of Health's approval to adjust the fee.

B. Anticipated personal services, operating costs or other expenditures by another state agency:

The Department of Regulatory Agencies (DORA) is expected to see the following increase in costs as a result of implementing legislation and this rule change.

HOUSE BILL 19-1031: N/A

SENATE BILL 19-218:

1. Department of Regulatory Agencies - \$560,143
 - Appropriated from the Division of Professions and Occupations Cash Fund (*Not funded by the Medical Marijuana Cash Fund*).
2. Department of Law - \$535,456
 - Re-Appropriated from the Department of Regulatory Agencies Division of Professions and Occupations Cash Fund \$560,143 shown above (*Not funded by the Medical Marijuana Cash Fund*).

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Along with the costs and benefits discussed above, the proposed revisions:

- Comply with a statutory mandate to promulgate rules.
- Comply with federal or state statutory mandates, federal or state regulations, and department funding obligations.
- Maintain alignment with other states or national standards.
- Implement a Regulatory Efficiency Review (rule review) result
- Improve public and environmental health practice.
- Implement stakeholder feedback.
- Advance the following CDPHE Strategic Plan priorities:

Goal 1, Implement public health and environmental priorities Goal 2, Increase Efficiency, Effectiveness and Elegance Goal 3, Improve Employee Engagement Goal 4, Promote health equity and environmental justice Goal 5, Prepare and respond to emerging issues, and Comply with statutory mandates and funding obligations
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Strategies to support these goals:

- Substance Abuse (Goal 1)
- Mental Health (Goal 1, 2, 3 and 4)
- Obesity (Goal 1)
- Immunization (Goal 1)
- Air Quality (Goal 1)
- Water Quality (Goal 1)
- Data collection and dissemination (Goal 1, 2, 3, 4, 5)
- Implement quality improvement/a quality improvement project (Goal 1, 2, 3, 5)
- Employee Engagement (Goal 1, 2, 3)
- Decisions incorporate health equity and environmental justice (Goal 1, 3, 4)
- Detect, prepare and respond to emerging issues (Goal 1, 2, 3, 4, 5)

X Advance CDPHE Division-level strategic priorities.

- Collaboration with stakeholders as a trusted and neutral partner, act on opportunities for innovation, continual process improvement, exceptional customer service.

The costs and benefits of the proposed rule will not be incurred if inaction was chosen. Costs and benefits of inaction not previously discussed include:

Failure to incorporate these changes will result in the rule being out of alignment with the statute.

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There is no less costly or less intrusive method. Aligning the rule with the enacted/soon to be enacted HB 19-1028, HB 19-1031, SB 19-013 and SB-218 ensures consistent processing and service to Medical Marijuana Registry patients and customers. The proposed revisions provide the most benefit for the least amount of cost and are the minimum necessary or are the most feasible manner to achieve compliance with statute.

6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.

No other alternatives were considered. Rulemaking is the statutorily required mechanism to implement these changes for the reasons described in the Statement of Basis and Purpose.

7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.

All projections are based on continuing revenue and expense data, which are re-assessed and updated on a monthly basis as monthly fund balance and accounting data is updated. Projections, to the extent possible, are updated through the subsequent four years.

STAKEHOLDER ENGAGEMENT
for Amendments to
5 CCR 1006-2, Medical Use of Marijuana

State law requires agencies to establish a representative group of participants when considering to adopt or modify new and existing rules. This is commonly referred to as a stakeholder group.

Early Stakeholder Engagement:

The Department distributed information about the proposed changes to the Medical Marijuana Registry (MMR) voluntary stakeholder email groups of physicians, caregivers, and general stakeholders. Stakeholder feedback was collected through an online form beginning in late May, 2019. Along with the online form, stakeholders were invited to provide comments via U.S. mail and email. Although feedback was collected anonymously, some respondents chose to provide their name and organization. MMR staff reviewed each piece of feedback that was submitted.

Due to the expedited nature of the emergency rulemaking hearing, the Department was not able to share a completed requested packet or proposed rule changes at the time of the initial stakeholder email, so stakeholders were invited to provide feedback related to the legislative changes that the Department is incorporating into the rule. Once the packet was developed it was sent to stakeholders.

Information about the 2019 emergency rulemaking and about how to submit feedback to the Department has been publicized on the Medical Marijuana Registry website. The Medical Marijuana Registry will continue to collect feedback for the permanent rulemaking hearing in September.

Stakeholder Group Notification

The stakeholder group was provided notice of the rulemaking hearing and provided a copy of the proposed rules or the internet location where the rules may be viewed. Notice was provided prior to the date the notice of rulemaking was published in the Colorado Register (typically, the 10th of the month following the Request for Rulemaking).

Not applicable. This is an Emergency Rulemaking. If adopted, notification will occur if the Board of Health for the permanent rulemaking hearing.

Yes.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

Statutory language

Stakeholders provided feedback about statutory language. Feedback was mixed as some respondents were in agreement with the changes while others had concerns. Although some stakeholders had concerns with some of the statutory language, the Department is

required to implement the statutes passed by the General Assembly, ensure the rules align with statute, and the rules are within the scope of the statutory authorization. The proposed language is necessary to align the rule with 2019 legislation. Though the stakeholder feedback was outside the scope of the rulemaking, it has been summarized below so the board is aware.

HB 19-1031

Stakeholders requested that the implementation of HB 19-1031 allow both parents of a minor applicant register as a primary caregiver by mail if they choose. The Department will be able to honor this feedback and incorporate this into processes.

SB 19-013

Feedback showed that stakeholders were concerned that there is a lack of evidence showing that marijuana is an effective opioid substitute, and that the conditions for which a physician could prescribe an opioid are too vague. Other feedback demonstrated that some stakeholders are supportive of the statutory change language.

SB 19-218

Expanded definition of physician

Feedback showed that stakeholders are concerned that allowing more advanced practice practitioner types to recommend medical marijuana could lead to abuse of medical marijuana, and that the different practitioner types could cause confusion for patients since these professionals complete different training.

The Department has consulted with the Department of Regulatory Agencies who can offer constituents information as to which professionals constitute an advance practice practitioner with prescriptive authority. Additionally, the Department of Regulatory Agencies was appropriated additional funds to implement the changes related to the legislation.

Length of registration period for disabling medical conditions

Some feedback suggested that registry identification cards issued for disabling medical conditions should be valid for one year just as cards issued for debilitating medical conditions are. Other feedback expressed concerns about aligning medical marijuana recommendations with opioid prescribing guidelines in the event that a physician chooses to recommend medical marijuana in lieu of an opioid. The proposed registration period for recommendations for disabling medical conditions of no shorter than sixty days and no more than one year will give physicians flexibility in determining medical necessity while also aligning with the current one year registration period for treatment of debilitating medical conditions.

Other 2019 legislation

The Department also received feedback related to legislation regarding public consumption clubs, availability of medical product, and parts of SB 19-224 that are outside of the Department's scope. Because this feedback is outside of the scope of the rulemaking, changes

were not incorporated. Further, the Department has determined that no changes to the rule are needed to align with SB 19-224.

Research

Multiple stakeholders provided feedback about research, and some specifically requested that more emphasis be placed on researching the effects of medical marijuana on adults diagnosed with Autism Spectrum Disorder. Feedback regarding research was sent to the Medical Marijuana Research Grant Program.

Physician requirements

The Department received feedback regarding physician requirements. Stakeholders expressed concern that physicians are not properly engaging in bona-fide physician-patient relationship and suggested that more education should be available to physicians and practitioners. The Department is not able to incorporate this feedback as the Department of Regulatory Agencies oversees medical providers. Additionally, the Department received feedback about the provider registration and identity verification process. As part of this process, the Registry collects a copy of the provider's driver's license or identification card. This allows MMR staff to verify the provider's identity and maintain the confidentiality of registry information while protecting the licenses and credentials of providers recommending medical marijuana.

Caregiver mail registration process

Stakeholder feedback suggested that a caregiver registration process be available by mail for both new and renewing caregivers who do not have access to Internet resources. Though this process is outside of the scope of the rulemaking, the program instituted a mail registration process for caregivers which was made available on June 26th, 2019.

Fee waiver

One stakeholder requested that there be a path for low-income individuals to obtain medical marijuana registry identification cards at a discount. There is currently an indigence fee waiver process available to applicants. This is outlined in Regulation 7.B. of the rule.

Access to medical marijuana for minors

One stakeholder expressed that they believe children under 18 should be able to use medical marijuana to treat qualifying medical conditions. There is currently a process established through Colorado Constitution, Statute, and Board of Health rules that allows individuals under age 18 to obtain medical marijuana registry identification cards.

An Act

SENATE BILL 19-218

BY SENATOR(S) Gonzales, Tate;
also REPRESENTATIVE(S) Jaquez Lewis, Arndt, Bird, Buckner, Duran,
Esgar, Galindo, Gray, Hansen, Herod, Hooton, Melton, Mullica, Snyder,
Valdez A., Valdez D.

CONCERNING THE CONTINUATION OF THE MEDICAL MARIJUANA PROGRAM,
AND, IN CONNECTION THEREWITH, IMPLEMENTING THE
RECOMMENDATIONS CONTAINED IN THE 2018 SUNSET REPORT BY THE
DEPARTMENT OF REGULATORY AGENCIES AND MAKING AN
APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 25-1.5-106, **amend** (2)(a.5)(II), (2)(c), (2)(d.5)(I), (3)(b)(II), (3.5)(d), (5)(a), (5)(c), (6)(a), (6)(c), (7)(d), (9)(c), (10), and (18)(a); **repeal** (3)(b)(III), (3.7), and (3.8)(b); and **add** (2)(d.4), (3)(d), and (5)(e) as follows:

25-1.5-106. Medical marijuana program - powers and duties of state health agency - rules - medical review board - medical marijuana program cash fund - subaccount - created - definitions - repeal.
(2) Definitions. In addition to the definitions set forth in section 14 (1) of

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

article XVIII of the state constitution, as used in this section, unless the context otherwise requires:

(a.5) "Bona fide physician-patient relationship", for purposes of the medical marijuana program, means:

(II) The physician has consulted with the patient, AND IF THE PATIENT IS A MINOR, WITH THE PATIENT'S PARENTS, with respect to the patient's debilitating medical condition or disabling medical condition AND HAS EXPLAINED THE POSSIBLE RISKS AND BENEFITS OF USE OF MEDICAL MARIJUANA TO THE PATIENT, AND THE PATIENT'S PARENTS IF THE PATIENT IS A MINOR, before the patient applies for a registry identification card; and

(c) "In good standing", with respect to a physician's OR DENTIST OR ADVANCED PRACTICE PRACTITIONER license, means:

(I) The physician holds a doctor of medicine or doctor of osteopathic medicine degree from an accredited medical school, OR THE DENTIST OR ADVANCED PRACTICE PRACTITIONER HOLDS A DEGREE IN A MEDICAL FIELD WITHIN HIS OR HER SCOPE OF PRACTICE;

(II) The physician holds a valid license to practice medicine, OR THE DENTIST OR ADVANCED PRACTICE PRACTITIONER HOLDS A VALID LICENSE TO PRACTICE WITHIN HIS OR HER SCOPE OF PRACTICE, in Colorado that does not contain a restriction or condition that prohibits the recommendation of medical marijuana or for a license issued prior to July 1, 2011, a valid, unrestricted and unconditioned license; and

(III) The physician OR DENTIST OR ADVANCED PRACTICE PRACTITIONER has a valid and unrestricted United States department of justice federal drug enforcement administration controlled substances registration.

(d.4) "PHYSICIAN", WHEN MAKING MEDICAL MARIJUANA RECOMMENDATIONS FOR A DISABLING MEDICAL CONDITION, INCLUDES A DENTIST OR ADVANCED PRACTICE PRACTITIONER WITH PRESCRIPTIVE AUTHORITY ACTING WITHIN THE SCOPE OF HIS OR HER PRACTICE.

(d.5) "Primary caregiver" means a natural person, other than the patient or the patient's physician, who is eighteen years of age or older and

has significant responsibility for managing the well-being of a patient who has a debilitating medical condition or disabling medical condition. A primary caregiver may have one or more of the following relationships:

(I) A parent of a child as described by subsection (6)(e) of section 14 of article XVIII of the ~~Colorado~~ STATE constitution OR A PARENT OF A CHILD WITH A DISABLING MEDICAL CONDITION and anyone who assists that parent with caregiver responsibilities, including cultivation and transportation;

(3) **Rule-making.** (b) The state health agency may promulgate rules regarding the following:

(II) The development of a form for a primary caregiver to use in applying to the registry, which form shall require, at a minimum, that the applicant provide his or her full name, home address, date of birth, and an attestation that the applicant has a significant responsibility for managing the well-being of the patient for whom he or she is designated as the primary caregiver and that he or she understands and will abide by section 14 of article XVIII of the state constitution, this section, and the rules promulgated by the state health agency pursuant to this section; AND

~~(III) The development of a form that constitutes "written documentation", as defined and used in section 14 of article XVIII of the state constitution, which form a physician shall use when making a medical marijuana recommendation for a patient; and~~

(d) THE STATE HEALTH AGENCY SHALL PROMULGATE RULES RELATED TO THE LENGTH OF TIME A REGISTRY IDENTIFICATION CARD ISSUED TO A PATIENT WITH A DISABLING MEDICAL CONDITION IS VALID.

(3.5) **Marijuana laboratory testing reference library.** (d) The state health agency shall make reference library materials, including the methodologies, publicly available ~~no later than December 31, 2015~~, and may continuously update the reference library as new materials become available.

~~(3.7) The state health agency shall convene a group of interested parties including representatives from the state licensing authority, primary caregivers, patients, marijuana testing laboratory licensees, and any other~~

~~interested persons to explore laboratory testing options for medical marijuana not produced by someone licensed pursuant to article 11 of title 44.~~

~~(3.8)(b) The state health agency shall convene a stakeholder process to discuss proposed models for sampling and proficiency testing. The stakeholder process shall be completed by September 1, 2015.~~

(5) **Physicians.** A physician who certifies a debilitating medical condition or disabling medical condition for an applicant to the medical marijuana program shall comply with all of the following requirements:

(a) The physician ~~shall have~~ HAS a valid and active license to practice medicine, which license is in good standing, OR THE DENTIST OR ADVANCED PRACTICE PRACTITIONER HOLDS A VALID LICENSE TO PRACTICE WITHIN HIS OR HER SCOPE OF PRACTICE, WHICH LICENSE IS IN GOOD STANDING.

(c) The physician shall maintain a record-keeping system for all patients for whom the physician has recommended the medical use of marijuana, and, pursuant to an investigation initiated pursuant to section 12-36-118, ~~C.R.S.~~, the physician shall produce such medical records to the Colorado ~~state board of medical examiners~~ MEDICAL BOARD after redacting any patient or primary caregiver identifying information.

(e) ONLY A PHYSICIAN CAN MAKE A MEDICAL MARIJUANA RECOMMENDATION; EXCEPT WHEN MAKING A MEDICAL MARIJUANA RECOMMENDATION FOR A PATIENT WITH A DISABLING MEDICAL CONDITION, THE RECOMMENDATION MAY BE MADE BY A MEDICAL DOCTOR, DENTIST, OR ADVANCED PRACTICE PRACTITIONER WITH PRESCRIPTIVE AUTHORITY ACTING WITHIN THE SCOPE OF HIS OR HER PRACTICE.

(6) **Enforcement.** (a) If the state health agency has reasonable cause to believe that a physician has violated section 14 of article XVIII of the state constitution, ~~paragraph (a), (b), or (c) of subsection (5)~~ SUBSECTION (5)(a), (5)(b), OR (5)(c) of this section, or the rules promulgated by the state health agency pursuant to ~~subsection (2)~~ SUBSECTION (3) of this section, the state health agency may refer the matter to the ~~state board of medical examiners~~ COLORADO MEDICAL BOARD created in section 12-36-103 ~~C.R.S.~~, for an investigation and determination.

(c) Upon a finding of unprofessional conduct pursuant to section 12-36-117 (1)(mm) ~~C.R.S.~~, by the ~~state board of medical examiners~~ COLORADO MEDICAL BOARD or a finding of a violation of ~~paragraph (d) of subsection (5)~~ SUBSECTION (5)(d) of this section by the state health agency, the state health agency shall restrict a physician's authority to recommend the use of medical marijuana, which restrictions may include the revocation or suspension of a physician's privilege to recommend medical marijuana. The restriction shall be in addition to any sanction imposed by the ~~state board of medical examiners~~ COLORADO MEDICAL BOARD.

(7) Primary caregivers. (d) A primary caregiver shall provide to a law enforcement agency, upon inquiry, the registry identification card number of each of his or her patients. The state health agency shall maintain a registry of this information and make it available twenty-four hours per day and seven days a week to law enforcement for verification purposes. Upon inquiry by a law enforcement officer as to an individual's status as a patient or primary caregiver, the state health agency shall check the registry. If the individual is not registered as a patient or primary caregiver, the state health agency may provide that response to law enforcement. If the person is a registered patient or primary caregiver FOR A PATIENT WITH A DEBILITATING MEDICAL CONDITION OR A DISABLING MEDICAL CONDITION, the state health agency may not release information unless consistent with section 14 of article XVIII of the state constitution. The state health agency may promulgate rules to provide for the efficient administration of this ~~paragraph (d)~~ SUBSECTION (7)(d).

(9) Registry identification card required - denial - revocation - renewal. (c) A patient or primary caregiver registry identification card ~~shall be~~ IS valid for one year UNLESS THE STATE HEALTH AGENCY CHANGES THE LENGTH OF VALIDITY PURSUANT TO ITS AUTHORITY IN SUBSECTION (3)(d) OF THIS SECTION and ~~shall~~ MUST contain a unique identification number. It ~~shall be~~ IS the responsibility of the patient or primary caregiver to apply to renew his or her registry identification card prior to the date on which the card expires. The state health agency shall develop a form for a patient or primary caregiver to use in renewing his or her registry identification card.

(10) Renewal of patient identification card upon criminal conviction. Any patient who is convicted of a criminal offense under article 18 of title 18 who is sentenced or ordered by a court to treatment for a

substance use disorder or sentenced to the division of youth services is subject to immediate ~~renewal~~ REVOCATION of his or her patient registry identification card, and the patient ~~shall~~ MAY apply for the renewal based upon a recommendation from a physician with whom the patient has a bona fide physician-patient relationship.

(18) (a) This section is repealed, effective September 1, ~~2019~~ 2028.

SECTION 2. In Colorado Revised Statutes, 25-1.5-110, **amend** (2) and (3) as follows:

25-1.5-110. Monitor health effects of marijuana - report.

(2) (a) The department shall appoint a panel of health care professionals with expertise in, ~~cannabinoid physiology to monitor the relevant information~~ BUT NOT LIMITED TO, NEUROSCIENCE, EPIDEMIOLOGY, TOXICOLOGY, CANNABIS PHYSIOLOGY, AND CANNABIS QUALITY CONTROL TO FURTHER DIRECT POLICY. Notwithstanding section 24-1-136 (11)(a)(I), the panel shall provide a report by January 31, 2015, and every two years thereafter to the state board of health, the department of revenue, and the general assembly. The department shall make the report available on its website. The panel shall establish criteria for studies to be reviewed, reviewing studies and other data, and making recommendations, as appropriate, for policies intended to protect consumers of marijuana or marijuana products and the general public.

(b) IN ORDER TO ALLOW THE PUBLIC TO EVALUATE ANY CONFLICT OF INTEREST AMONG THE PANEL, EACH PANELIST SHALL DISCLOSE ALL FINANCIAL INTERESTS THE PANELIST HAS RELATED TO THE HEALTH CARE INDUSTRY AND THE REGULATED MARIJUANA INDUSTRY. THE DISCLOSURES MUST BE INCLUDED IN THE REPORT REQUIRED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION.

(3) The department may ~~collect Colorado-specific data that reports adverse health events involving marijuana use from the all-payer claims database, hospital discharge data, and behavioral risk factors~~ COLLECT COLORADO-SPECIFIC DATA THAT INVOLVES HEALTH OUTCOMES ASSOCIATED WITH CANNABIS FROM, BUT NOT LIMITED TO, ALL-PAYER CLAIMS DATA, HOSPITAL DISCHARGE DATA, AND AVAILABLE PEER-REVIEWED RESEARCH STUDIES.

SECTION 3. In Colorado Revised Statutes, 24-34-104, **repeal** (17)(a)(XIV); and **add** (29)(a)(IX) as follows:

24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal. (17) (a) The following agencies, functions, or both, are scheduled for repeal on September 1, 2019:

(XIV) ~~The medical marijuana program created in section 25-1.5-106, C.R.S.;~~

(29) (a) The following agencies, functions, or both, are scheduled for repeal on September 1, 2028:

(IX) THE MEDICAL MARIJUANA PROGRAM CREATED IN SECTION 25-1.5-106.

SECTION 4. In Colorado Revised Statutes, 25-1.5-106, **amend as amended by House Bill 19-1028** (2)(a.7) as follows:

25-1.5-106. Medical marijuana program - powers and duties of state health agency - rules - medical review board - medical marijuana program cash fund - subaccount - created - repeal. (2) **Definitions.** In addition to the definitions set forth in section 14 (1) of article XVIII of the state constitution, as used in this section, unless the context otherwise requires:

(a.7) "Disabling medical condition" means:

(I) Post-traumatic stress disorder as diagnosed by a licensed mental health provider or physician; ~~and~~ OR

(II) An autism spectrum disorder as diagnosed by a primary care physician, physician with experience in autism spectrum disorder, or licensed mental health provider acting within his or her scope of practice.

SECTION 5. Appropriation. (1) For the 2019-20 state fiscal year, \$114,007 is appropriated to the department of public health and environment for use by the center for health and environmental information. This appropriation is from the medical marijuana program cash fund created

in section 25-1.5-106 (16)(a), C.R.S. To implement this act, the center may use this appropriation as follows:

(a) \$14,007 for personal services related to the medical marijuana registry, which amount is based on an assumption that the department will require an additional 0.2 FTE; and

(b) \$100,000 for operating expenses related to the medical marijuana registry.

(2) For the 2019-20 state fiscal year, \$560,143 is appropriated to the department of regulatory agencies. This appropriation is from the division of professions and occupations cash fund created in section 24-34-105 (2)(b)(I), C.R.S. To implement this act, the department may use this appropriation as follows:


(a) \$24,687 for use by the division of professions and occupations for personal services, which amount is based on an assumption that the division will require an additional 0.4 FTE; and


(b) \$535,456 for the purchase of legal services.


(3) For the 2019-20 state fiscal year, \$535,456 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of regulatory agencies under subsection (2)(b) of this section and is based on an assumption that the department of law will require an additional 2.9 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of regulatory agencies.


SECTION 6. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

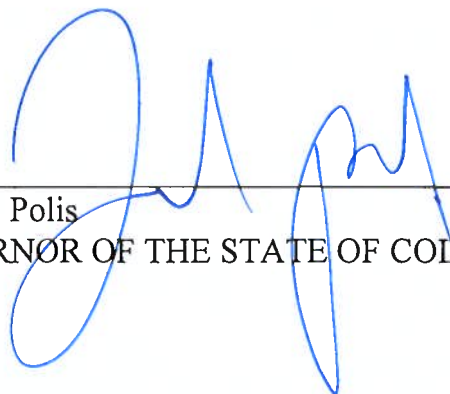

Leroy M. Garcia
PRESIDENT OF
THE SENATE


KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES


Cindi L. Markwell
SECRETARY OF
THE SENATE


Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED May 29, 2019 at 3:45 p.m.
(Date and Time)


Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

An Act

HOUSE BILL 19-1028

BY REPRESENTATIVE(S) Hooton and Ransom, Baisley, Van Winkle, Bird, Bockenfeld, Buckner, Buentello, Duran, Esgar, Exum, Froelich, Galindo, Garnett, Geitner, Gray, Jaquez Lewis, Kennedy, Kipp, Kraft-Tharp, Lontine, McCluskie, Melton, Mullica, Neville, Roberts, Saine, Singer, Snyder, Sullivan, Titone, Valdez A., Wilson, Becker;
also SENATOR(S) Coram and Fenberg, Marble, Crowder, Fields, Gonzales, Moreno, Tate, Todd.

CONCERNING THE CONDITIONS FOR MEDICAL MARIJUANA USE FOR
DISABLING MEDICAL CONDITIONS, AND, IN CONNECTION THEREWITH,
ADDING AUTISM SPECTRUM DISORDERS TO THE LIST OF DISABLING
MEDICAL CONDITIONS FOR MEDICAL MARIJUANA USE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 25-1.5-106, amend (2)(a.7) and (2.5)(i)(I) as follows:

25-1.5-106. Medical marijuana program - powers and duties of state health agency - rules - medical review board - medical marijuana program cash fund - subaccount - created - repeal. (2) Definitions. In addition to the definitions set forth in section 14 (1) of article XVIII of the

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

state constitution, as used in this section, unless the context otherwise requires:

(a.7) "Disabling medical condition" means:

(I) Post-traumatic stress disorder as diagnosed by a licensed mental health provider or physician; AND

(II) AN AUTISM SPECTRUM DISORDER AS DIAGNOSED BY A PRIMARY CARE PHYSICIAN, PHYSICIAN WITH EXPERIENCE IN AUTISM SPECTRUM DISORDER, OR LICENSED MENTAL HEALTH PROVIDER ACTING WITHIN HIS OR HER SCOPE OF PRACTICE.

(2.5) (i) Notwithstanding the provisions of this subsection (2.5), no patient with a disabling medical condition who is under eighteen years of age shall engage in the medical use of marijuana unless:


(I) Two physicians ~~one of whom must be a board-certified pediatrician, a board-certified family physician, or a board-certified child and adolescent psychiatrist and attest that he or she is part of the patient's primary care provider team, have diagnosed the patient as having a disabling medical condition~~ HAVE DIAGNOSED THE PATIENT AS HAVING A DISABLING MEDICAL CONDITION. IF THE RECOMMENDING PHYSICIAN IS NOT THE PATIENT'S PRIMARY CARE PHYSICIAN, THE RECOMMENDING PHYSICIAN SHALL REVIEW THE RECORDS OF A DIAGNOSING PHYSICIAN OR A LICENSED MENTAL HEALTH PROVIDER ACTING WITHIN HIS OR HER SCOPE OF PRACTICE.

SECTION 2. In Colorado Revised Statutes, 25-1.5-106.5, **amend** (3)(b)(I) as follows:

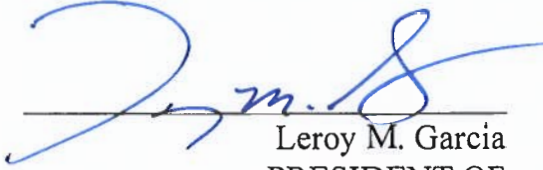
25-1.5-106.5. Medical marijuana health research grant program.
(3) Review of applications. (b) Grant approval. (I) The council shall submit recommendations for grants to the state board of health. The state board of health shall approve or disapprove of grants submitted by the council. THE STATE BOARD OF HEALTH IS ENCOURAGED TO PRIORITIZE GRANTS TO GATHER OBJECTIVE SCIENTIFIC RESEARCH REGARDING THE EFFICACY AND THE SAFETY OF ADMINISTERING MEDICAL MARIJUANA FOR OVARIAN CANCER; DEMENTIA; PEDIATRIC CONDITIONS, INCLUDING BUT NOT LIMITED TO AUTISM SPECTRUM DISORDER; AND OTHER CONDITIONS THAT THE STATE BOARD DEEMS SUITABLE. If the state board of health disapproves a

recommendation, the council may submit a replacement recommendation within thirty days.


SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.




KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Leroy M. Garcia
PRESIDENT OF
THE SENATE

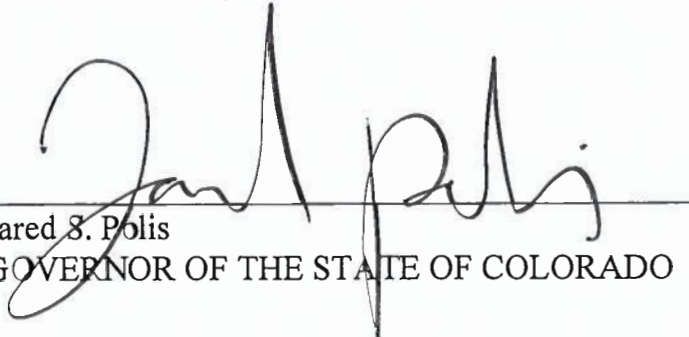


Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED April 2, 2019 at 2:25 p.m.
(Date and Time)



Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

An Act

SENATE BILL 19-013

BY SENATOR(S) Marble and Ginal, Coram, Crowder, Fenberg, Gonzales, Moreno, Tate, Todd;
also REPRESENTATIVE(S) Hooton and Ransom, Bird, Duran, Esgar, Gray, Herod, Jaquez Lewis, Kennedy, Kraft-Tharp, Melton, Roberts, Singer, Snyder, Valdez A.

CONCERNING THE CONDITIONS FOR MEDICAL MARIJUANA USE FOR
DISABLING MEDICAL CONDITIONS, AND, IN CONNECTION THEREWITH,
ADDING A CONDITION FOR WHICH A PHYSICIAN COULD PRESCRIBE AN
OPIOID TO THE LIST OF DISABLING MEDICAL CONDITIONS FOR MEDICAL
MARIJUANA USE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 25-1.5-106, **amend** (2)(a.7) and (2.5)(i)(I); and **add** (2.5)(j) as follows:

25-1.5-106. Medical marijuana program - powers and duties of state health agency - rules - medical review board - medical marijuana program cash fund - subaccount - created - repeal. (2) **Definitions.** In addition to the definitions set forth in section 14 (1) of article XVIII of the state constitution, as used in this section, unless the context otherwise

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

requires:

(a.7) "Disabling medical condition" means:

(I) Post-traumatic stress disorder as diagnosed by a licensed mental health provider or physician; OR

(II) A CONDITION FOR WHICH A PHYSICIAN COULD PRESCRIBE AN OPIOID.

(2.5) (i) Notwithstanding the provisions of this subsection (2.5), no patient with a disabling medical condition who is under eighteen years of age shall engage in the medical use of marijuana unless:

(I) ~~Two physicians one of whom must be a board-certified pediatrician, a board-certified family physician, or a board-certified child and adolescent psychiatrist and attest that he or she is part of the patient's primary care provider team, have diagnosed the patient as having a disabling medical condition~~ HAVE DIAGNOSED THE PATIENT AS HAVING A DISABLING MEDICAL CONDITION. IF THE RECOMMENDING PHYSICIAN IS NOT THE PATIENT'S PRIMARY CARE PHYSICIAN, THE RECOMMENDING PHYSICIAN SHALL REVIEW THE RECORDS OF A DIAGNOSING PHYSICIAN OR A LICENSED MENTAL HEALTH PROVIDER ACTING WITHIN THEIR SCOPE OF PRACTICE.

(j) A PATIENT WITH A DISABLING MEDICAL CONDITION WHO IS UNDER EIGHTEEN YEARS OF AGE SHALL USE MEDICAL MARIJUANA ONLY IN A NONSMOKEABLE FORM WHEN USING MEDICAL MARIJUANA UPON THE GROUNDS OF THE PRESCHOOL OR PRIMARY OR SECONDARY SCHOOL IN WHICH THE STUDENT IS ENROLLED, OR UPON A SCHOOL BUS OR AT A SCHOOL-SPONSORED EVENT.

SECTION 2. In Colorado Revised Statutes, 25-1.5-106, **amend as amended by House Bill 19-1028 (2)(a.7)** as follows:

25-1.5-106. Medical marijuana program - powers and duties of state health agency - rules - medical review board - medical marijuana program cash fund - subaccount - created - repeal. (2) **Definitions.** In addition to the definitions set forth in section 14 (1) of article XVIII of the state constitution, as used in this section, unless the context otherwise requires:

(a.7) "Disabling medical condition" means:

(I) Post-traumatic stress disorder as diagnosed by a licensed mental health provider or physician; ~~and~~ OR

(II) An autism spectrum disorder as diagnosed by a primary care physician, physician with experience in autism spectrum disorder, or licensed mental health provider acting within their scope of practice.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.



Leroy M. Garcia
PRESIDENT OF
THE SENATE



KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

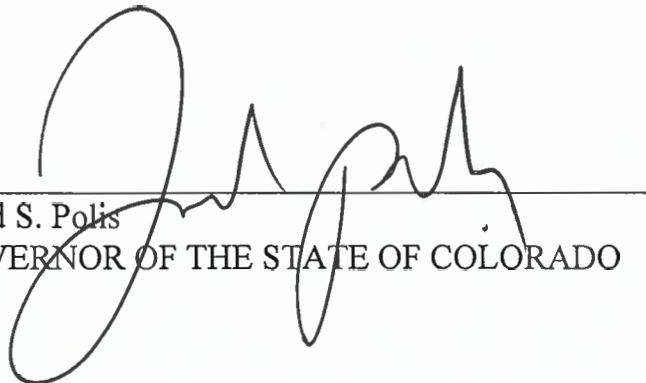


Cindi L. Markwell
SECRETARY OF
THE SENATE



Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED May 23, 2019 at 5:44 p.m.
(Date and Time)



Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

An Act

HOUSE BILL 19-1031

BY REPRESENTATIVE(S) Gray, Arndt, Bird, Bockenfeld, Buckner, Buentello, Cutter, Exum, Froelich, Galindo, Herod, Hooton, Jaquez Lewis, Kennedy, Kipp, Kraft-Tharp, Melton, Michaelson Jenet, Mullica, Roberts, Saine, Snyder, Titone, Valdez A., Weissman, Duran, Esgar, Humphrey, Lontine, McCluskie, Singer, Sirota, Tipper, Valdez D.;
also SENATOR(S) Gonzales, Moreno, Tate, Winter.

CONCERNING ALLOWING EACH PARENTAL GUARDIAN TO SERVE AS A MINOR MEDICAL MARIJUANA PATIENT'S PRIMARY CAREGIVER, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 25-1.5-106, **amend** (8)(b) as follows:

25-1.5-106. Medical marijuana program - powers and duties of state health agency - rules - medical review board - medical marijuana program cash fund - subaccount - created - "Ethan's Law" - repeal. (8) **Patient - primary caregiver relationship.** (b) (I) A patient ~~shall~~ MAY have only one primary caregiver at any given time; EXCEPT THAT, ON OR AFTER DECEMBER 1, 2020, A PATIENT WHO IS UNDER EIGHTEEN YEARS OF

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

AGE MAY HAVE EACH PARENT OR GUARDIAN TO ACT AS A PRIMARY CAREGIVER OR, IF THE PATIENT IS UNDER THE JURISDICTION OF THE JUVENILE COURT, THE JUDGE PRESIDING OVER THE CASE MAY DETERMINE WHO IS THE PRIMARY CAREGIVER.

(II) THE SHORT TITLE OF THIS SUBSECTION (8)(b) IS "ETHAN'S LAW".

SECTION 2. Appropriation. For the 2019-20 state fiscal year, \$95,831 is appropriated to the department of public health and environment for use by the center for health and environmental information. This appropriation is from the medical marijuana program cash fund created in section 25-1.5-106 (16)(a), C.R.S. To implement this act, the center may use this appropriation for the medical marijuana registry.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.




KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Leroy M. Garcia
PRESIDENT OF
THE SENATE



Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED May 23, 2019 at 5:26 p.m.
(Date and Time)



Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

1 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

2 **Center for Health and Environmental Data**

3 **MEDICAL USE OF MARIJUANA**

4 **5 CCR 1006-2**

5

6 **Adopted by the Board of Health on ~~March-July 1720~~, 2019, effective ~~May-August -215~~, 2019.**

7 **Regulation 1: Establishment and confidentiality of the registry for the medical use of marijuana**

8 A. The Colorado Department of Public Health and Environment (“the department”) shall create and
9 maintain a confidential registry (“the registry”) of patients who have applied for and are entitled to
10 receive a registry identification card.

11 1. All personal medical records and personal identifying information held by the department
12 in compliance with these regulations shall be confidential information.

13 2. No person shall be permitted to gain access to any information about patients in this
14 registry, or any information otherwise maintained in the registry by the department about
15 physicians and primary care-givers of patients in the registry, except for authorized
16 employees of the department in the course of their official duties and authorized
17 employees of state and local law enforcement agencies which have stopped or arrested
18 a person who claims to be engaged in the medical use of marijuana and in possession of
19 a registry identification card issued pursuant to regulations two and three, or the
20 functional equivalent of the registry identification card.

21 a. Department employees may, upon receipt of an inquiry from a state or local law
22 enforcement agency, confirm that a registry identification card has been
23 suspended when a patient is no longer diagnosed as having a debilitating or
24 disabling medical condition.

25 b. Authorized department employees may respond to an inquiry from state or local
26 law enforcement regarding the registry status of a patient or primary care-giver
27 by confirming that the person is or is not registered. The information released to
28 state and local law enforcement must be the minimum necessary to confirm
29 registry status.

30 c. Authorized state and local law enforcement employees shall validate their inquiry
31 of a patient or primary care-giver by producing the registry identification card
32 number of a patient, or name, date of birth, and last four digits of the individual's
33 social security number of the individual under inquiry if the person does not have
34 a registry identification card.

35 d. Authorized department employees may confirm a waiver for homebound or minor
36 patients' transportation of medical marijuana from a medical marijuana center or
37 a waiver for a primary care-giver serving more than five patients, upon state or
38 local law enforcement inquiry. The minimum necessary information shall be
39 communicated to confirm or deny a waiver.

40 3. The department may release information concerning a specific patient to that patient with
41 the written authorization of such patient.

42 4. Primary care-givers and potential primary care-givers may authorize the inclusion of their
43 contact information in the voluntary caregiver registry maintained by the department to
44 allow authorized department staff to release their contact information to new registry
45 patients only in accordance with Regulation 9(~~e~~C) below.

46 B. Any officer or employee or agent of the department who violates this regulation by releasing or
47 making public confidential information in the registry shall be subject to any existing statutory
48 penalties for a breach of confidentiality of the registry.

49 C. Definitions

50 1. ~~A~~ A "adult applicant" is defined as a patient eighteen years of age or older.

51 2. "Bona fide physician-patient relationship", for purposes of the medical marijuana
52 program, means:

53 a. A physician and a patient have a treatment or counseling relationship, in the
54 course of which the physician has completed a full assessment of the patient's
55 medical history, including reviewing a previous diagnosis for a debilitating or
56 disabling medical condition, and current medical condition, including an
57 appropriate personal physical examination. "Appropriate personal physical
58 examination" may not be performed by remote means, including telemedicine;

59 b. The physician has consulted with the patient and if the patient is a minor, with the
60 patient's parents, with respect to the patient's debilitating or disabling medical
61 condition and has explained the possible risks and benefits of use of medical
62 marijuana to the patient, and each of the minor patient's parents residing in
63 Colorado, before the patient applies for a registry identification card; and

64 c. The physician is available to or offers to provide follow-up care and treatment to
65 the patient, including but not limited to patient examinations, to determine the
66 efficacy of the use of medical marijuana as a treatment of the patient's
67 debilitating or disabling medical condition.

68 ~~A "minor applicant" is defined as a patient less than eighteen years of age.~~

69 3. "Council" means the medical marijuana scientific advisory council appointed by the
70 executive director of the Colorado ~~department~~ Department of ~~public~~ Public ~~health~~ Health
71 and ~~environment~~ Environment per requirements established in § 25-1.5-106.5, C.R.S.

72 4. "Grant program" means the Colorado medical marijuana research grant program created
73 in § 25-1.5-106.5, C.R.S. to fund research intended to ascertain the efficacy of
74 administering marijuana and its component parts as part of medical treatment.

75 5. "In good standing" with respect to a physician's or dentist or advanced practice
76 practitioner license means:

77 a. The physician holds a doctor of medicine or doctor of osteopathic medicine
78 degree from an accredited medical school or the dentist or advanced practice
79 practitioner holds a degree in a medical field within his or her scope of practice.

80 b. The physician holds a valid license to practice medicine, or the dentist or
81 advanced practice practitioner holds a valid license to practice within his or her
82 scope of practice, in Colorado that does not contain a restriction or condition that
83 prohibits the recommendation of medical marijuana or for a license issued prior
84 to July 1, 2011, a valid, unrestricted and unconditioned; and

85 c. The physician or dentist or advanced practice practitioner has a valid and
86 unrestricted United States Department of Justice federal Drug Enforcement
87 Administration controlled substances registration.

88 6. "Minor applicant" is defined as a patient less than eighteen years of age.

89 7. "Patient" means a person who has a debilitating medical condition or disabling medical
90 condition, § 25-1.5-106(2)(d.3), C.R.S.

91 68. "Physician" means a doctor of medicine, including a doctor of osteopathic medicine, who
92 maintains, in good standing, a license to practice medicine issued by the state of
93 Colorado, Section (1)(e) of Section 14 of Article XVIII; however, when a physician is
94 making a medical marijuana recommendation for a disabling medical condition,
95 "physician" also includes a dentist or advanced practice practitioner with prescriptive
96 authority (physician assistant, advanced nurse practitioner, podiatrist, or optometrist) who
97 holds a valid license, and is in good standing. § 25-1.5-106.5 (2)(d.4), C.R.S.

98 9. "Primary care-giver" or "primary caregiver" means a person other than the patient and the
99 patient's physician, who is eighteen years of age or older and has significant
100 responsibility for managing the well-being of a patient who has a debilitating or disabling
101 medical condition. A primary caregiver may have one or more of the following
102 relationships:

103 a. A parent of a child as described by Section (6) (e) of Section 14 of Article XVIII of
104 the Colorado Constitution or a parent of a child with a disabling medical condition
105 § 25-1.5-106.5, C.R.S., and anyone who assists that parent with caregiver
106 responsibilities, including cultivation and transportation;

107 b. An advising caregiver who advises a patient on which medical marijuana
108 products to use and how to dose them and does not possess, provide, cultivate,
109 or transport marijuana on behalf of the patient;

110 c. A transporting caregiver who purchases and transports marijuana to a patient
111 who is homebound; or

112 d. A cultivating caregiver who grows marijuana for a patient.

113 **710.** "Significant responsibility for managing the well-being of a patient" means that the
114 caregiver is involved in basic or instrumental activities of daily living. Cultivating or
115 transporting marijuana and the act of advising a patient on which medical marijuana
116 products to use and how to dose them constitutes a "significant responsibility."

117 **Regulation 2: Application for a registry identification card**

118 *****

119 B. In order for a minor applicant to be placed in the registry and to receive a registry identification
120 card, the minor applicant must reside in Colorado and a parent residing in Colorado must consent
121 in writing to serve as the minor applicant's primary care-giver. Such parent must complete an
122 application supplied by the department, and have such application signed and include fee
123 payment. The parent of the minor applicant must provide the following information with the
124 application:

125 1. The applicant's name, address, date of birth, and social security number;

- 126 2. a. For minor applicants with a debilitating medical condition, written documentation
127 from two of the applicant's physicians that the applicant has been diagnosed with
128 a debilitating medical condition as defined in Regulation 6; or,
- 129 b. For minor applicants with a disabling medical condition, written documentation
130 from two physicians, ~~one of whom must be a board-certified pediatrician, a~~
131 ~~board-certified family physician, or a board-certified child and adolescent~~
132 ~~psychiatrist who attests that he or she is part of the patient's primary care~~
133 ~~provider team, that the patient has been that have~~ diagnosed the patient as
134 having with a disabling medical condition as defined at § 25-1.5-106(2)(a.7),
135 C.R.S. If the recommending physician is not the patient's primary care physician,
136 the recommending physician shall review the records of a diagnosing physician
137 or a licensed mental health provider acting within his or her scope of practice;
- 138 3. The name, address, and telephone number of the two physicians identified in subsection
139 B.2 of this Regulation 2;
- 140 4. Consent from each of the applicant's parents residing in Colorado that the applicant may
141 engage in the medical use of marijuana;
- 142 5. Documentation that at least one of the physicians referred to in subsection B.2 of this
143 Regulation 2 has concluded that the patient might benefit from the medical use of
144 marijuana and has explained the possible risks and benefits of medical use of marijuana
145 to the applicant, and each of the applicant's parents residing in Colorado if the applicant
146 is a minor; and
- 147 6. Indicate if a medical marijuana center has been designated to grow for the patient.
- 148 C. To maintain an effective registry identification card, a patient must annually resubmit to the
149 department, at least thirty days prior to the expiration date, but no sooner than sixty days prior to
150 the expiration date, updated written documentation of the information required in paragraphs A
151 and B of this regulation.

152 *****

- 153 H. A patient who has been convicted of a criminal offense under Article 18 of Title 18, C.R.S.,
154 sentenced or ordered by a court to drug or substance abuse treatment, or sentenced to the
155 division of youth corrections shall be subject to immediate ~~renewal~~revocation of his/her registry
156 identification card. Such patient may only reapply with a new physician recommendation from a
157 physician with whom the patient has a bona fide physician-patient relationship.
- 158 1. The patient shall remit the registry card to the department within 24 hours of the
159 conviction/sentence/court order.
- 160 2. The patient may complete and submit a renewal application for a registry card including a
161 new recommendation from a physician with a bona fide physician-patient relationship.

162 *****

163 **Regulation 3: Verification of medical information; issuance, denial, revocation, and form of**
164 **registry identification cards**

- 165 A. The department shall verify medical information contained in the patient's application within thirty
166 days of receiving the application. Verification of medical information shall consist of determining
167 that there is documentation stating the applicant has a current diagnosis with a debilitating or
168 disabling medical condition as defined in Regulation 6, by a physician who has a current active,

169 unrestricted and unconditioned license ~~as defined in Regulation 8~~ to practice medicine issued by
170 the State of Colorado, which license is in good standing, and who has a bona fide physician-
171 patient relationship with the patient ~~as defined in Regulation 8~~.

172 B. No more than five days after verifying medical information of the applicant, the department shall
173 issue a serially numbered registry identification card to the patient. The card shall state the
174 following:

175 ~~i)1.~~ The patient's name, address, date of birth, and social security number;

176 ~~ii)2.~~ That the patient's name has been certified to the department as a person with a
177 debilitating or disabling medical condition, whereby the person may address such
178 condition with the medical use of marijuana;

179 ~~iii)3.~~ The date of issuance of such card and the date of expiration.

180 a. A registry identification card issued for treatment of a debilitating medical
181 condition shall be valid for~~which shall be~~ one year from the date of issuance, and

182 b. A registry identification card issued for treatment of a disabling medical condition
183 shall be valid for no less than 60 days and no more than one year as determined
184 by the recommending physician;

185 ~~iv)4.~~ The name and address of the patient's primary care-giver, if any is designated at the time
186 of application;

187 ~~v)5.~~ How to notify the department of any change in name, address, medical status, physician,
188 or primary care-giver.

189 C. Except for minor applicants with a debilitating medical condition, where the department fails within
190 thirty-five days of receipt of application to issue a registry identification card or fails to issue verbal
191 or written notice of denial of such application, the patient's application for such card will be
192 deemed to have been approved. "Receipt" shall be deemed to have occurred upon delivery to the
193 department or deposit in the United States mail. ~~No application shall be deemed received prior to~~
194 ~~June 1, 2001.~~

195 *****

196 **Regulation 6: Debilitating medical conditions and the process for adding new debilitating**
197 **medical conditions**

198 *****

199 D. **Department review of petitions to add debilitating medical conditions.** Upon receipt of a
200 petition that contains all of the information required in Section C, the Department shall review
201 petitions according to the following:

202 1. Petitioner requirements. Petitions must be filed by a patient residing in Colorado or a
203 physician who is authorized under these rules ~~meets the physician requirements to~~
204 recommend medical marijuana for a debilitating medical condition ~~defined in Regulation~~
205 8(a)(1) and Regulation 8(a)(4) of this rule. The petitioner must provide their name,
206 address, email address, and telephone number.

207 *****

208 **Regulation 8: Physician requirements; reasonable cause for referrals of physicians to the**
209 **Colorado Medical Board; reasonable cause for department adverse action**
210 **concerning physicians; appeal rights**

211 A. **Physician Requirements.** A physician who certifies a debilitating or disabling medical condition
212 for an applicant to the medical marijuana program shall comply with all of the following
213 requirements:

214 1. **Colorado license to practice ~~medicine.~~** The physician shall have a valid, unrestricted
215 Colorado license to practice ~~medicine, which licensethat~~ is in good standing.

216 a. ~~for the purposes of certifying a debilitating or disabling medical condition of an~~
217 ~~applicant and recommending the use of medical marijuana for the medical~~
218 ~~marijuana program, "in good standing" means:~~

219 i. ~~The physician holds a doctor of medicine or doctor of osteopathic~~
220 ~~medicine degree from an accredited medical school.~~

221 ii. ~~The physician holds a valid license to practice medicine in Colorado that~~
222 ~~does not contain a restriction or condition that prohibits the~~
223 ~~recommendation of medical marijuana or for a license issued prior to~~
224 ~~July 1, 2011, a valid, unrestricted and unconditioned; and~~

225 iii. ~~The physician has a valid and unrestricted United States Department of~~
226 ~~Justice federal drug enforcement administration controlled substances~~
227 ~~registration.~~

228 2. **Bona fide physician-patient relationship.** A physician ~~who meets the requirements in~~
229 ~~subsection A.1 of this Regulation 8 and~~ who has a bona fide physician-patient
230 relationship with a particular patient may certify to the state health agency that the patient
231 has a debilitating or disabling medical condition and that the patient may benefit from the
232 use of medical marijuana. If the physician certifies that the patient would benefit from the
233 use of medical marijuana based on a chronic or debilitating disease or medical condition,
234 or a disabling medical condition, the physician shall specify the chronic or debilitating
235 disease or medical condition, or disabling medical condition, and, if known, the cause or
236 source of the chronic or debilitating disease or medical condition, or disabling medical
237 condition.

238 a. ~~"Bona fide physician-patient relationship", for purposes of the medical marijuana~~
239 ~~program, means:~~

240 i. ~~A physician and a patient have a treatment or counseling relationship, in~~
241 ~~the course of which the physician has completed a full assessment of the~~
242 ~~patient's medical history, including reviewing a previous diagnosis for a~~
243 ~~debilitating or disabling medical condition, and current medical condition,~~
244 ~~including an appropriate personal physical examination;~~

245 ii. ~~The physician has consulted with the patient with respect to the patient's~~
246 ~~debilitating or disabling medical condition before the patient applies for a~~
247 ~~registry identification card; and~~

248 iii. ~~The physician is available to or offers to provide follow-up care and~~
249 ~~treatment to the patient, including but not limited to patient examinations,~~
250 ~~to determine the efficacy of the use of medical marijuana as a treatment~~
251 ~~of the patient's debilitating or disabling medical condition.~~

252 ~~b.~~ i. A physician making medical marijuana recommendations for a
253 debilitating or disabling medical condition shall comply with generally
254 accepted standards of medical practice, the provisions of the medical
255 practice act, § 12-36-101 *et seq.*, C.R.S, and all Colorado Medical Board
256 rules.

257 ii. When making medical marijuana recommendations for a disabling
258 medical condition, if the physician is a dentist or advanced practice
259 practitioner with prescriptive authority, the dentist or advance practice
260 practitioner will act within the scope of his or her practice and hold a valid
261 license in good standing.

262 ~~c.~~ The “appropriate personal physical examination” required by paragraph A.2.a.i of
263 this Regulation 8 may not be performed by remote means, including
264 telemedicine.

265 3. **Medical records.** The physician shall maintain a record-keeping system for all patients
266 for whom the physician has recommended the medical use of marijuana. Pursuant to an
267 investigation initiated by the Colorado medical board, the physician shall produce such
268 medical records to the Colorado Medical Board after redacting any patient or primary
269 caregiver identifying information.

270 4. **Financial prohibitions.** A physician shall not:

271 a. Accept, solicit, or offer any form of pecuniary remuneration from or to a primary
272 caregiver, distributor, or any other provider of medical marijuana;

273 b. Offer a discount or any other thing of value to a patient who uses or agrees to
274 use a particular primary caregiver, distributor, or other provider of medical
275 marijuana to procure medical marijuana;

276 c. Examine a patient for purposes of diagnosing a debilitating or disabling medical
277 condition at a location where medical marijuana is sold or distributed; or

278 d. Hold an economic interest in an enterprise that provides or distributes medical
279 marijuana if the physician certifies the debilitating or disabling medical condition
280 of a patient for participation in the medical marijuana program.

281 B. **Reasonable cause for referral of a physician to the Colorado Medical Board.** For reasonable
282 cause, the department may refer a physician who has certified a debilitating or disabling medical
283 condition of an applicant to the medical marijuana registry to the Colorado Medical Board or a
284 dentist or advance practice practitioner with prescriptive authority to the applicable licensing
285 authority, for potential violations ~~of sub-paragraphs 1, 2, and 3 of paragraph A~~ of this rule.

286 *****

287 **Regulation 9: Primary care-giver-patient relationship and primary care-giver rules**

288 *****

289 F. A patient may only have one primary care-giver at a time; except that, on or after December 1,
290 2020, a patient who is under eighteen years of age may have each parent or guardian to act as a
291 primary caregiver or, if the patient is under the jurisdiction of the juvenile court, the judge
292 presiding over the case may determine who is the primary caregiver.

293 *****

294 **Regulation 12: Patient Responsibilities.**

295 *****

296 E. A patient shall notify the department if convicted of a criminal offense under Article 18 of Title 18,
297 C.R.S., sentenced or ordered by a court to drug or substance abuse treatment, or sentenced to
298 the division of youth corrections. The patient shall be subject to immediate ~~renewal~~ revocation of
299 his/her registry identification card. Such patient may only reapply with a new physician
300 recommendation from a physician with whom the patient has a bona fide relationship.

301 1. The patient shall remit the registry card to the department within 24 hours of the
302 conviction/sentence/court order.

303 2. The patient may complete and submit a new application for a registry card including a
304 new recommendation from a physician with a bona fide relationship.

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