

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 10-0353.03 Michael Dohr

SENATE BILL 10-109

SENATE SPONSORSHIP

Romer and Spence, Boyd, Bacon, Hodge, Hudak, Johnston, Tapia, Tochtrop

HOUSE SPONSORSHIP

Massey and McCann, Rice, Frangas, McFadyen

Senate Committees

Health and Human Services
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING REGULATION OF THE PHYSICIAN-PATIENT RELATIONSHIP**
102 **FOR MEDICAL MARIJUANA PATIENTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Under the bill, the department of public health and environment (department) will promulgate new rules related to standards for issuing registry identification cards, documentation for physicians who prescribe medical marijuana, and sanctions for physicians who violate the bill.

A physician who certifies that a patient can use medical marijuana

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
February 1, 2010

SENATE
Amended 2nd Reading
January 29, 2010

shall certify certain information to the department and maintain a separate record-keeping system for his or her medical marijuana patients. A physician who certifies that a patient can use medical marijuana shall not receive remuneration from or offer it to a primary caregiver, distributor, or any other provider of medical marijuana.

The bill creates a medical marijuana review board (board) that will consider requests by nonveteran patients under 21 years of age who want to be registered medical marijuana patients. For a patient who is under 21 years of age to become a registered medical marijuana patient, a majority of the board must determine that the patient has a debilitating medical condition and could benefit from the use of medical marijuana.

The bill adds the medical marijuana program to the list of statutes that involve medical records.

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

2 **SECTION 1.** 25-1.5-106, Colorado Revised Statutes, is amended
3 to read:

4 **25-1.5-106. Medical marijuana program - powers and duties**
5 **of state health agency - medical review board - repeal.**

6 (1) **Definitions.** IN ADDITION TO THE DEFINITIONS SET FORTH IN SECTION
7 14 (1) OF ARTICLE XVIII OF THE STATE CONSTITUTION, AS USED IN THIS
8 SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 (a) "BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP", FOR PURPOSES
10 OF THE MEDICAL MARIJUANA PROGRAM, MEANS:

11 (I) A PHYSICIAN AND A PATIENT HAVE A TREATMENT OR
12 COUNSELING RELATIONSHIP, IN THE COURSE OF WHICH THE PHYSICIAN HAS
13 COMPLETED A FULL ASSESSMENT OF THE PATIENT'S MEDICAL HISTORY AND
14 CURRENT MEDICAL CONDITION, INCLUDING A PERSONAL PHYSICAL
15 EXAMINATION;

16 (II) THE PHYSICIAN HAS CONSULTED WITH THE PATIENT WITH
17 RESPECT TO THE PATIENT'S DEBILITATING MEDICAL CONDITION BEFORE
18 THE PATIENT APPLIES FOR A REGISTRY IDENTIFICATION CARD; AND

1 (III) THE PHYSICIAN IS AVAILABLE TO OR OFFERS TO PROVIDE
2 FOLLOW-UP CARE AND TREATMENT TO THE PATIENT, INCLUDING BUT NOT
3 LIMITED TO PATIENT EXAMINATIONS, TO DETERMINE THE EFFICACY OF THE
4 USE OF MEDICAL MARIJUANA AS A TREATMENT OF THE PATIENT'S
5 DEBILITATING MEDICAL CONDITION.

6 (b) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF
7 THE STATE HEALTH AGENCY.

8 (c) "IN GOOD STANDING", WITH RESPECT TO A PHYSICIAN'S
9 LICENSE, MEANS:

10 (I) THE PHYSICIAN HOLDS A DOCTOR OF MEDICINE OR DOCTOR OF
11 OSTEOPATHIC MEDICINE DEGREE FROM AN ACCREDITED MEDICAL SCHOOL;

12 (II) THE PHYSICIAN HOLDS A VALID, UNRESTRICTED LICENSE TO
13 PRACTICE MEDICINE IN COLORADO; AND

14 (III) THE PHYSICIAN HAS A VALID AND UNRESTRICTED UNITED
15 STATES DEPARTMENT OF JUSTICE FEDERAL DRUG ENFORCEMENT
16 ADMINISTRATION CONTROLLED SUBSTANCES REGISTRATION.

17 (d) "MEDICAL MARIJUANA PROGRAM" MEANS THE PROGRAM
18 ESTABLISHED BY SECTION 14 OF ARTICLE XVIII OF THE STATE
19 CONSTITUTION AND THIS SECTION.

20 (e) "REGISTRY IDENTIFICATION CARD" MEANS THE
21 NONTRANSFERABLE CONFIDENTIAL REGISTRY IDENTIFICATION CARD
22 ISSUED BY THE STATE HEALTH AGENCY TO PATIENTS AND PRIMARY
23 CAREGIVERS PURSUANT TO THIS SECTION.

24 (f) "STATE HEALTH AGENCY" MEANS THE PUBLIC HEALTH RELATED
25 ENTITY OF STATE GOVERNMENT DESIGNATED BY THE GOVERNOR BY
26 EXECUTIVE ORDER PURSUANT TO SECTION 14 OF ARTICLE XVIII OF THE
27 STATE CONSTITUTION.

1 (†) (2) **Rulemaking.** The department STATE HEALTH AGENCY
2 shall, pursuant to section 14 of article XVIII of the state constitution,
3 promulgate rules of administration concerning the implementation of the
4 medical marijuana program ~~established by such section and that~~
5 specifically govern the following:

6 (a) The establishment and maintenance of a confidential registry
7 of patients who have applied for and are entitled to receive a registry
8 identification card. == THE CONFIDENTIAL REGISTRY OF PATIENTS MAY
9 BE USED TO DETERMINE WHETHER A PHYSICIAN SHOULD BE REFERRED TO
10 THE COLORADO BOARD OF MEDICAL EXAMINERS FOR A SUSPECTED
11 VIOLATION OF SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION,
12 PARAGRAPH (a), (b), OR (c) OF SUBSECTION (3) OF THIS SECTION, OR THE
13 RULES PROMULGATED BY THE STATE HEALTH AGENCY PURSUANT TO THIS
14 SUBSECTION (2). ==

15 (b) The development by the department STATE HEALTH AGENCY
16 of an application form and THE PROCESS FOR making ~~such~~ THE form
17 available to residents of this state seeking to be listed on the confidential
18 registry of patients who are entitled to receive a registry identification
19 card;

20 (c) The verification by the department STATE HEALTH AGENCY of
21 medical information concerning patients who have applied for a
22 ~~confidential~~ registry IDENTIFICATION card;

23 (d) THE DEVELOPMENT BY THE STATE HEALTH AGENCY OF A FORM
24 THAT CONSTITUTES "WRITTEN DOCUMENTATION" AS DEFINED AND USED
25 IN SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, WHICH
26 FORM A PHYSICIAN SHALL USE WHEN MAKING A MEDICAL MARIJUANA
27 RECOMMENDATION FOR A PATIENT;

1 ~~(d)~~ (e) The CONDITIONS FOR issuance, and THE form, of
2 ~~confidential~~ THE registry identification cards ISSUED TO PATIENTS,
3 INCLUDING BUT NOT LIMITED TO STANDARDS FOR ENSURING THAT THE
4 STATE HEALTH AGENCY ISSUES A REGISTRY IDENTIFICATION CARD TO A
5 PATIENT ONLY IF HE OR SHE HAS A BONA FIDE PHYSICIAN-PATIENT
6 RELATIONSHIP WITH A PHYSICIAN IN GOOD STANDING AND LICENSED TO
7 PRACTICE MEDICINE IN THE STATE OF COLORADO;

8 ~~(e)~~ (f) Communications with law enforcement officials about
9 ~~confidential~~ registry identification cards that have been suspended ~~where~~
10 WHEN a patient is no longer diagnosed as having a debilitating medical
11 condition; ~~and~~

12 ~~(f)~~ (g) The manner in which the ~~department~~ STATE HEALTH
13 AGENCY may consider adding debilitating medical conditions to the list
14 of debilitating medical conditions contained in section 14 of article XVIII
15 of the state constitution.

16 (3) **Physicians.** A PHYSICIAN WHO CERTIFIES A DEBILITATING
17 MEDICAL CONDITION FOR AN APPLICANT TO THE MEDICAL MARIJUANA
18 PROGRAM SHALL COMPLY WITH ALL OF THE FOLLOWING REQUIREMENTS:

19 (a) THE PHYSICIAN SHALL HAVE A VALID, UNRESTRICTED
20 COLORADO LICENSE TO PRACTICE MEDICINE, WHICH LICENSE IS IN GOOD
21 STANDING.

22 (b) THE PHYSICIAN SHALL CERTIFY TO THE STATE HEALTH AGENCY
23 THAT A PATIENT HAS A DEBILITATING MEDICAL CONDITION AND THAT THE
24 PATIENT MAY BENEFIT FROM THE USE OF MEDICAL MARIJUANA ONLY IF THE
25 PHYSICIAN HAS A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP WITH THE
26 PATIENT APPLYING FOR THE MEDICAL MARIJUANA PROGRAM.

27 (c) THE PHYSICIAN SHALL MAINTAIN A RECORD-KEEPING

1 SYSTEM FOR ALL PATIENTS FOR WHOM THE PHYSICIAN HAS RECOMMENDED
2 THE MEDICAL USE OF MARIJUANA, AND, PURSUANT TO AN INVESTIGATION
3 INITIATED PURSUANT TO SECTION 12-36-118, C.R.S., THE PHYSICIAN
4 SHALL PRODUCE SUCH MEDICAL RECORDS TO THE COLORADO STATE
5 BOARD OF MEDICAL EXAMINERS AFTER REDACTING ANY PATIENT OR
6 PRIMARY CAREGIVER IDENTIFYING INFORMATION.

7 (d) A PHYSICIAN SHALL NOT:

8 (I) ACCEPT, SOLICIT, OR OFFER ANY FORM OF PECUNIARY
9 REMUNERATION FROM A PRIMARY CAREGIVER, DISTRIBUTOR, OR ANY
10 OTHER PROVIDER OF MEDICAL MARIJUANA;

11 (II) OFFER A DISCOUNT OR ANY OTHER THING OF VALUE TO A
12 PATIENT WHO USES OR AGREES TO USE A PARTICULAR PRIMARY
13 CAREGIVER, DISTRIBUTOR, OR OTHER PROVIDER OF MEDICAL MARIJUANA
14 TO PROCURE MEDICAL MARIJUANA;

15 (III) EXAMINE A PATIENT FOR PURPOSES OF DIAGNOSING A
16 DEBILITATING MEDICAL CONDITION AT A LOCATION WHERE MEDICAL
17 MARIJUANA IS SOLD OR DISTRIBUTED; OR

18 (IV) HOLD AN ECONOMIC INTEREST IN AN ENTERPRISE THAT
19 PROVIDES OR DISTRIBUTES MEDICAL MARIJUANA IF THE PHYSICIAN
20 CERTIFIES THE DEBILITATING MEDICAL CONDITION OF A PATIENT FOR
21 PARTICIPATION IN THE MEDICAL MARIJUANA PROGRAM.

22 (4) Patients age eighteen to twenty-one. A PATIENT WHO IS
23 BETWEEN EIGHTEEN AND TWENTY-ONE YEARS OF AGE, UNLESS THE
24 PATIENT IS LEGALLY EMANCIPATED, WHO APPLIES TO BE PLACED ON THE
25 CONFIDENTIAL REGISTRY OF MEDICAL MARIJUANA PATIENTS SHALL
26 PROVIDE DOCUMENTATION FOR MEDICAL MARIJUANA USE FROM TWO
27 SEPARATE PHYSICIANS WHO ADVISED THE PATIENT AT SEPARATE

1 APPOINTMENTS. THE DOCUMENTATION SHALL PROVIDE THAT THE
2 PHYSICIANS DIAGNOSED THE PATIENT WITH A DEBILITATING MEDICAL
3 CONDITION AND ADVISED THE PATIENT THAT THE PATIENT MIGHT BENEFIT
4 FROM THE MEDICAL USE OF MARIJUANA IN CONNECTION WITH THE
5 DEBILITATING MEDICAL CONDITION.

6 (5) **Enforcement.** (a) IF THE STATE HEALTH AGENCY HAS
7 REASONABLE CAUSE TO BELIEVE THAT A PHYSICIAN HAS VIOLATED
8 SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, PARAGRAPH
9 (a), (b), OR (c) OF SUBSECTION (3) OF THIS SECTION, OR THE RULES
10 PROMULGATED BY THE STATE HEALTH AGENCY PURSUANT TO SUBSECTION
11 (2) OF THIS SECTION, THE STATE HEALTH AGENCY MAY REFER THE MATTER
12 TO THE STATE BOARD OF MEDICAL EXAMINERS CREATED IN SECTION
13 12-36-103, C.R.S., FOR AN INVESTIGATION AND DETERMINATION.

14 (b) IF THE STATE HEALTH AGENCY HAS REASONABLE CAUSE TO
15 BELIEVE THAT A PHYSICIAN HAS VIOLATED PARAGRAPH (d) OF SUBSECTION
16 (3) OF THIS SECTION, THE STATE HEALTH AGENCY SHALL CONDUCT A
17 HEARING PURSUANT TO SECTION 24-4-104, C.R.S., TO DETERMINE
18 WHETHER A VIOLATION HAS OCCURRED.

19 (c) UPON A FINDING OF UNPROFESSIONAL CONDUCT PURSUANT TO
20 SECTION 12-36-117 (1) (mm), C.R.S., BY THE STATE BOARD OF MEDICAL
21 EXAMINERS OR A FINDING OF A VIOLATION OF PARAGRAPH (d) OF
22 SUBSECTION (3) OF THIS SECTION BY THE STATE HEALTH AGENCY, THE
23 STATE HEALTH AGENCY SHALL RESTRICT A PHYSICIAN'S AUTHORITY TO
24 RECOMMEND THE USE OF MEDICAL MARIJUANA, WHICH RESTRICTIONS MAY
25 INCLUDE THE REVOCATION OR SUSPENSION OF A PHYSICIAN'S PRIVILEGE TO
26 RECOMMEND MEDICAL MARIJUANA. THE RESTRICTION SHALL BE IN
27 ADDITION TO ANY SANCTION IMPOSED BY THE STATE BOARD OF MEDICAL

1 EXAMINERS.

2 (d) WHEN THE STATE HEALTH AGENCY HAS OBJECTIVE AND
3 REASONABLE GROUNDS TO BELIEVE AND FINDS, UPON A FULL
4 INVESTIGATION, THAT A PHYSICIAN HAS BEEN GUILTY OF DELIBERATE AND
5 WILLFUL VIOLATION OF SECTION 14 OF ARTICLE XVIII OF THE STATE
6 CONSTITUTION, THIS SECTION, OR THE RULES PROMULGATED BY THE STATE
7 HEALTH AGENCY PURSUANT TO SUBSECTION (2) OF THIS SECTION OR THAT
8 THE PUBLIC HEALTH, SAFETY, OR WELFARE IMPERATIVELY REQUIRES
9 EMERGENCY ACTION, AND THE EXECUTIVE DIRECTOR INCORPORATES
10 THOSE FINDINGS INTO HIS OR HER ORDER, THE EXECUTIVE DIRECTOR MAY
11 ORDER THAT THE STATE HEALTH AGENCY SUMMARILY SUSPEND A
12 PHYSICIAN'S AUTHORITY TO RECOMMEND THE USE OF MEDICAL MARIJUANA
13 PENDING THE PROCEEDINGS SET FORTH IN PARAGRAPH (a) OR (b) OF THIS
14 SUBSECTION (4), WHICH SHALL BE PROPERLY INSTITUTED AND
15 DETERMINED. FOR PURPOSES OF THIS PARAGRAPH (d), "FULL
16 INVESTIGATION" MEANS A REASONABLE ASCERTAINMENT OF THE
17 UNDERLYING FACTS ON WHICH THE ACTION IS BASED.

18 (6) **Renewal of patient identification card upon criminal**
19 **conviction.** ANY PATIENT WHO IS CONVICTED OF A CRIMINAL OFFENSE
20 UNDER ARTICLE 18 OF TITLE 18, C.R.S., SENTENCED OR ORDERED BY A
21 COURT TO DRUG OR SUBSTANCE ABUSE TREATMENT, OR SENTENCED TO
22 THE DIVISION OF YOUTH CORRECTIONS, SHALL BE SUBJECT TO IMMEDIATE
23 RENEWAL OF HIS OR HER PATIENT REGISTRY IDENTIFICATION CARD, AND
24 THE PATIENT SHALL APPLY FOR THE RENEWAL BASED UPON A
25 RECOMMENDATION OF A COURT-APPOINTED PHYSICIAN. _____

26 (7) A PARENT WHO SUBMITS A MEDICAL MARIJUANA REGISTRY
27 APPLICATION FOR HIS OR HER CHILD SHALL HAVE HIS OR HER SIGNATURE

1 NOTARIZED ON THE APPLICATION.

2 ~~(2)~~ (8) Fees. The department STATE HEALTH AGENCY may
3 collect fees from patients who, pursuant to section 14 of article XVIII of
4 the state constitution, apply to the medical marijuana program ~~established~~
5 ~~by such section~~ for a marijuana registry identification CARD for the
6 purpose of offsetting the department's STATE HEALTH AGENCY'S direct and
7 indirect costs of administering the program, AND THE STATE BOARD OF
8 MEDICAL EXAMINERS' DIRECT AND INDIRECT COSTS ASSOCIATED WITH
9 INVESTIGATING AND PROSECUTING REFERRALS OF PHYSICIANS FROM THE
10 STATE HEALTH AGENCY IN RELATION TO THE MEDICAL MARIJUANA
11 PROGRAM. The amount of ~~such~~ THE fees shall be set by rule of the state
12 board of health EXECUTIVE DIRECTOR. THE STATE HEALTH AGENCY SHALL
13 PROMULGATE RULES THAT ALLOW A PATIENT TO CLAIM INDIGENCE AS IT
14 RELATES TO PAYING THE FEE APPROVED PURSUANT TO THIS SUBSECTION
15 (7) AND THAT ESTABLISH THE STANDARD FOR INDIGENCE, THE PROCESS
16 THE STATE HEALTH AGENCY SHALL USE TO DETERMINE WHETHER A
17 PERSON WHO CLAIMS INDIGENCE MEETS THE STANDARD FOR INDIGENCE,
18 AND THE PROCESS TO WAIVE THE FEE APPROVED PURSUANT TO THIS
19 SUBSECTION (7) IF THE STATE HEALTH AGENCY DETERMINES THAT THE
20 PATIENT MEETS THE STANDARD FOR INDIGENCE. All fees collected by the
21 department STATE HEALTH AGENCY through the medical marijuana
22 program shall be transferred to the state treasurer who shall credit the
23 same to the medical marijuana program cash fund, which fund is hereby
24 created.

25 ~~(3)~~ (9) Cash fund. (a) The medical marijuana program cash
26 fund shall be subject to annual appropriation by the general assembly to
27 the department STATE HEALTH AGENCY for the purpose of establishing,

1 operating, and maintaining the medical marijuana program. ~~established~~
2 ~~by section 14 of article XVIII of the state constitution.~~ THE STATE
3 HEALTH AGENCY SHALL TRANSFER FROM THE MEDICAL MARIJUANA
4 PROGRAM CASH FUND TO THE DEPARTMENT OF REGULATORY AGENCIES
5 FOR THE BENEFIT OF THE STATE BOARD OF MEDICAL EXAMINERS MONEYS
6 TO COVER THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH
7 INVESTIGATING AND PROSECUTING REFERRALS OF PHYSICIANS FROM THE
8 STATE HEALTH AGENCY IN RELATION TO THE MEDICAL MARIJUANA
9 PROGRAM. All moneys credited to the medical marijuana program cash
10 fund and all interest derived from the deposit of such moneys that are not
11 expended during the fiscal year shall be retained in the fund for future use
12 and shall not be credited or transferred to the general fund or any other
13 fund.

14 (b) Notwithstanding any provision of paragraph (a) of this
15 subsection ~~(3)~~ (8) to the contrary, on April 20, 2009, the state treasurer
16 shall deduct two hundred fifty-eight thousand seven hundred thirty-five
17 dollars from the medical marijuana program cash fund and transfer such
18 sum to the general fund.

19 ==
20 ==

21 **SECTION 2.** 25-1-1202 (1), Colorado Revised Statutes, is
22 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

23 **25-1-1202. Index of statutory sections regarding medical**
24 **record confidentiality and health information.** (1) Statutory
25 provisions concerning policies, procedures, and references to the release,
26 sharing, and use of medical records and health information include the
27 following:

1 (vv.5) SECTION 25-1.5-106, CONCERNING THE MEDICAL
2 MARIJUANA PROGRAM;

3 SECTION 3. 12-36-117 (1), Colorado Revised Statutes, is
4 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

5 12-36-117. Unprofessional conduct - repeal.

6 (1) "Unprofessional conduct" as used in this article means:

7 (mm) FAILURE TO COMPLY WITH THE REQUIREMENTS OF SECTION
8 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, SECTION 25-1.5-106,
9 C.R.S., OR THE RULES PROMULGATED BY THE STATE HEALTH AGENCY
10 PURSUANT TO SECTION 25-1.5-106 (2), C.R.S.

11 SECTION 4. 12-36-118 (5) (g), Colorado Revised Statutes, is
12 amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

13 12-36-118. Disciplinary action by board - immunity.

14 (5) (g) (X) IN ALL CASES INVOLVING ALLEGED VIOLATIONS OF SECTION
15 12-36-117(1)(mm), THE BOARD SHALL PROMPTLY NOTIFY THE EXECUTIVE
16 DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT OF
17 ITS FINDINGS, INCLUDING WHETHER IT FOUND THAT THE PHYSICIAN
18 VIOLATED SECTION 12-36-117(1)(mm) AND ANY RESTRICTIONS IT PLACED
19 ON THE PHYSICIAN WITH RESPECT TO RECOMMENDING THE USE OF
20 MEDICAL MARIJUANA.

21 SECTION 5. Safety clause. The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, and safety.