

**JBC STAFF FISCAL ANALYSIS
HOUSE APPROPRIATIONS COMMITTEE**

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

Prime Sponsors: Sens. Romer and Spence
Reps. Massey and McCann

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Summary of Amendments Made to the Bill After the 02/11/10 Legislative Council Staff Revised Fiscal Note Was Prepared

None.

JBC Staff Concurrence with Legislative Council Staff Fiscal Note

Concurs **Does Not Concur** **Updated Analysis**

Amendments/Appropriation Status

The bill requires but does not contain an appropriation clause. Staff has prepared amendment **J.002** (attached) to add a provision appropriating \$815,224 cash funds and 2.1 FTE to the Department of Public Health and Environment (DPHE) for FY 2010-11. The funding source is the Medical Marijuana Program Cash Fund. Of this amount, \$593,333 is then reappropriated to the Department of Regulatory Agencies (DORA) for the investigation and prosecution of physicians referred by DPHE to the Board of Medical Examiners for medical marijuana violations. Finally, \$99,879 of the appropriation to DPHE and \$512,584 of the appropriation to DORA is reappropriated to the Department of Law (LAW), along with 5.2 FTE, for the provision of legal services. The following table summarizes FY 2010-11 appropriations:

Agency	Cash Funds	Reappropriated Funds	Total Funds	FTE
DPHE	\$815,224	\$0	\$815,224	2.1
DORA	0	593,333	593,333	1.2
LAW	0	693,212	693,212	5.2
Total	\$815,224	\$1,286,545	\$2,101,769	8.5

Bill Sponsor Amendments

Staff is not aware of any sponsor amendments to be offered.

Points to Consider

1. The February 11, 2010 Revised Legislative Council Staff Fiscal Note for this bill may understate the costs of implementation. These costs could require future Long Bill appropriations. The bill adds to the Colorado Medical Practice Act a new form of unprofessional conduct: Failure to comply with the medical marijuana provisions contained in the state constitution, statute, and Department of Public Health and Environment (DPHE) rules. Note that the Medical Practice Act does not require the Board of Medical Examiners (BME) to take action on allegations of unprofessional conduct; action is up to the discretion of the BME. As described in the Fiscal Note, if the BME decides to investigate and prosecute a physician who is referred by DPHE for unprofessional conduct stemming from medical marijuana violations, the BME's costs would be paid from the Medical Marijuana Program Cash Fund, which is supported by fees paid by patients who apply for medical marijuana registry cards. On the other hand, if the BME decides to take action on a medical marijuana complaint received from sources other than DPHE, the costs of investigating and prosecuting the complaint would have to be paid out of the license fees paid by physicians who are regulated by the BME. The Fiscal Note assumes no significant increase in investigations of this type. If there is a significant increase, it would require an increase in physician licensing fees and an increase in the Long Bill's cash fund appropriation to the Department of Regulatory Agencies' Division of Registrations, where the BME is located. Article XVIII, Section 14 (3) (i) of the Colorado Constitution, which authorizes medical marijuana registry fees, states, "[t]he state health agency may determine and levy reasonable fees to pay for any direct or indirect administrative costs associated with its role in this program." This probably precludes using the Medical Marijuana Program Cash Fund to pay for BME medical marijuana cases that come from non-DPHE sources.
2. The February 10, 2010 Revised Legislative Council Staff Fiscal Note for this bill indicates that 8.5 FTE are needed for FY 2010-11 and 3.0 FTE for FY 2011-12. The FTE swing is most pronounced for the Department of Law, which requires 5.2 FTE in FY 2010-11 and 0.9 FTE in FY 2011-12. The Department of Law indicates that it would probably handle this swing by hiring temporary attorneys.