

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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.*

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 PROVIDES FOLLOW-UP CARE AND TREATMENT
2 TO THE PATIENT, INCLUDING BUT NOT LIMITED TO PATIENT EXAMINATIONS,
3 TO DETERMINE THE EFFICACY OF THE USE OF MEDICAL MARIJUANA AS A
4 TREATMENT OF THE PATIENT'S DEBILITATING MEDICAL CONDITION.

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

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

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

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

13 (III) THE PHYSICIAN HAS NOT HAD HIS OR HER UNITED STATES
14 DEPARTMENT OF JUSTICE FEDERAL DRUG ENFORCEMENT ADMINISTRATION
15 CONTROLLED SUBSTANCES REGISTRATION SUSPENDED OR REVOKED AT
16 ANY TIME.

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, WHICH CARD SHALL INCLUDE THE IDENTITY OF THE
9 PHYSICIAN MAKING THE CERTIFICATION OF A DEBILITATING MEDICAL
10 CONDITION. THE CONFIDENTIAL REGISTRY OF PATIENTS MAY BE USED TO
11 DETERMINE WHETHER A PHYSICIAN SHOULD BE REFERRED TO THE
12 COLORADO BOARD OF MEDICAL EXAMINERS FOR A SUSPECTED VIOLATION
13 OF SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION,
14 PARAGRAPH (a) OR (b) OF SUBSECTION (3) OF THIS SECTION, OR THE RULES
15 PROMULGATED BY THE STATE HEALTH AGENCY PURSUANT TO THIS
16 SUBSECTION (2). ==

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

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

25 (d) THE DEVELOPMENT BY THE STATE HEALTH AGENCY OF A FORM
26 THAT CONSTITUTES "WRITTEN DOCUMENTATION" AS DEFINED AND USED
27 IN SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, WHICH

1 FORM A PHYSICIAN SHALL USE WHEN MAKING A MEDICAL MARIJUANA
2 RECOMMENDATION FOR A PATIENT;

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

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

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

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

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

26 (b) THE PHYSICIAN SHALL MAINTAIN A SEPARATE RECORD-KEEPING
27 SYSTEM FOR ALL PATIENTS FOR WHOM THE PHYSICIAN HAS RECOMMENDED

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

6 (c) A PHYSICIAN SHALL NOT:

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

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

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

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

21

22 (4) Enforcement. (a) If the state health agency has
23 reasonable cause to believe that a physician has violated
24 section 14 of article XVIII of the state constitution, paragraph
25 (a) or (b) of subsection (3) of this section, or the rules
26 promulgated by the state health agency pursuant to subsection
27 (2) of this section, the state health agency may refer the matter

1 TO THE STATE BOARD OF MEDICAL EXAMINERS CREATED IN SECTION
2 12-36-103, C.R.S., FOR AN INVESTIGATION AND DETERMINATION.

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

8 (c) UPON A FINDING OF UNPROFESSIONAL CONDUCT PURSUANT TO
9 SECTION 12-36-117 (1) (mm), C.R.S., BY THE STATE BOARD OF MEDICAL
10 EXAMINERS OR A FINDING OF A VIOLATION OF PARAGRAPH (c) OF
11 SUBSECTION (3) OF THIS SECTION BY THE STATE HEALTH AGENCY, THE
12 STATE HEALTH AGENCY SHALL RESTRICT A PHYSICIAN'S AUTHORITY TO
13 RECOMMEND THE USE OF MEDICAL MARIJUANA, WHICH RESTRICTIONS MAY
14 INCLUDE THE REVOCATION OR SUSPENSION OF A PHYSICIAN'S PRIVILEGE TO
15 RECOMMEND MEDICAL MARIJUANA. THE RESTRICTION SHALL BE IN
16 ADDITION TO ANY SANCTION IMPOSED BY THE STATE BOARD OF MEDICAL
17 EXAMINERS.

18 (d) WHEN THE STATE HEALTH AGENCY HAS OBJECTIVE AND
19 REASONABLE GROUNDS TO BELIEVE AND FINDS, UPON A FULL
20 INVESTIGATION, THAT A PHYSICIAN HAS BEEN GUILTY OF DELIBERATE AND
21 WILLFUL VIOLATION OF SECTION 14 OF ARTICLE XVIII OF THE STATE
22 CONSTITUTION, THIS SECTION, OR THE RULES PROMULGATED BY THE STATE
23 HEALTH AGENCY PURSUANT TO SUBSECTION (2) OF THIS SECTION OR THAT
24 THE PUBLIC HEALTH, SAFETY, OR WELFARE IMPERATIVELY REQUIRES
25 EMERGENCY ACTION, AND THE EXECUTIVE DIRECTOR INCORPORATES
26 THOSE FINDINGS INTO HIS OR HER ORDER, THE EXECUTIVE DIRECTOR MAY
27 ORDER THAT THE STATE HEALTH AGENCY SUMMARILY SUSPEND A

1 PHYSICIAN'S AUTHORITY TO RECOMMEND THE USE OF MEDICAL MARIJUANA
2 PENDING THE PROCEEDINGS SET FORTH IN PARAGRAPH (a) OR (b) OF THIS
3 SUBSECTION (4), WHICH SHALL BE PROPERLY INSTITUTED AND
4 DETERMINED. FOR PURPOSES OF THIS PARAGRAPH (d), "FULL
5 INVESTIGATION" MEANS A REASONABLE ASCERTAINMENT OF THE
6 UNDERLYING FACTS ON WHICH THE ACTION IS BASED.

7 (5) **Revocation and surrender of patient identification card**
8 **upon criminal conviction.** ANY PATIENT WHO IS CONVICTED OF A
9 CRIMINAL OFFENSE UNDER ARTICLE 18 OF TITLE 18, C.R.S., SENTENCED OR
10 ORDERED BY A COURT TO DRUG OR SUBSTANCE ABUSE TREATMENT, OR
11 SENTENCED TO THE DIVISION OF YOUTH CORRECTIONS SHALL
12 IMMEDIATELY SURRENDER HIS OR HER PATIENT REGISTRY IDENTIFICATION
13 CARD TO THE COURT, WHICH CARD SHALL BE NULL AND VOID UPON
14 CONVICTION OR SENTENCING; HOWEVER, A PATIENT WHO SURRENDERS HIS
15 OR HER REGISTRY IDENTIFICATION CARD PURSUANT TO THIS SUBSECTION
16 (5) MAY APPLY TO THE COURT WITH JURISDICTION OVER THE CRIMINAL
17 MATTER, AND, UPON A FINDING BY THE COURT THAT IT IS IN THE PATIENT'S
18 BEST MEDICAL INTEREST AND THE INTEREST OF JUSTICE, THE COURT MAY
19 ORDER THAT A PATIENT'S REGISTRY IDENTIFICATION CARD BE REISSUED
20 AND REINSTATED.

21 (6) A PARENT WHO SUBMITS A MEDICAL MARIJUANA REGISTRY
22 APPLICATION FOR HIS OR HER CHILD SHALL HAVE HIS OR HER SIGNATURE
23 NOTARIZED ON THE APPLICATION.

24 ~~(2)~~ (7) Fees. The department STATE HEALTH AGENCY may
25 collect fees from patients who, pursuant to section 14 of article XVIII of
26 the state constitution, apply to the medical marijuana program established
27 by such section for a marijuana registry identification CARD for the

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

20 ~~(3)~~ (8) **Cash fund.** (a) The medical marijuana program cash
21 fund shall be subject to annual appropriation by the general assembly to
22 the department STATE HEALTH AGENCY for the purpose of establishing,
23 operating, and maintaining the medical marijuana program. ~~established~~
24 ~~by section 14 of article XVIII of the state constitution.~~ THE STATE
25 HEALTH AGENCY SHALL TRANSFER FROM THE MEDICAL MARIJUANA
26 PROGRAM CASH FUND TO THE DEPARTMENT OF REGULATORY AGENCIES
27 FOR THE BENEFIT OF THE STATE BOARD OF MEDICAL EXAMINERS MONEYS

1 TO COVER THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH
2 INVESTIGATING AND PROSECUTING REFERRALS OF PHYSICIANS FROM THE
3 STATE HEALTH AGENCY IN RELATION TO THE MEDICAL MARIJUANA
4 PROGRAM. All moneys credited to the medical marijuana program cash
5 fund and all interest derived from the deposit of such moneys that are not
6 expended during the fiscal year shall be retained in the fund for future use
7 and shall not be credited or transferred to the general fund or any other
8 fund.

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

14 ==
15 ==

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

18 **25-1-1202. Index of statutory sections regarding medical**
19 **record confidentiality and health information.** (1) Statutory
20 provisions concerning policies, procedures, and references to the release,
21 sharing, and use of medical records and health information include the
22 following:

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

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

27 **12-36-117. Unprofessional conduct - repeal.**

1 (1) "Unprofessional conduct" as used in this article means:
2 (mm) FAILURE TO COMPLY WITH THE REQUIREMENTS OF SECTION
3 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, SECTION 25-1.5-106,
4 C.R.S., OR THE RULES PROMULGATED BY THE STATE HEALTH AGENCY
5 PURSUANT TO SECTION 25-1.5-106 (2), C.R.S.

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

8 **12-36-118. Disciplinary action by board - immunity.**
9 (5) (g) (X) IN ALL CASES INVOLVING ALLEGED VIOLATIONS OF SECTION
10 12-36-117(1)(mm), THE BOARD SHALL PROMPTLY NOTIFY THE EXECUTIVE
11 DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT OF
12 ITS FINDINGS, INCLUDING WHETHER IT FOUND THAT THE PHYSICIAN
13 VIOLATED SECTION 12-36-117(1)(mm) AND ANY RESTRICTIONS IT PLACED
14 ON THE PHYSICIAN WITH RESPECT TO RECOMMENDING THE USE OF
15 MEDICAL MARIJUANA.

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