

Colorado Legislative Council Staff Fiscal Note

**FINAL
FISCAL NOTE**

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| Drafting Number: LLS 10-0353 | Date: June 28, 2010 |
| Prime Sponsor(s): Sen. Romer; Spence | Bill Status: Signed into Law |
| Rep. Massey; McCann | Fiscal Analyst: Sara McPhee (303-866-4782) |

TITLE: CONCERNING REGULATION OF THE PHYSICIAN-PATIENT RELATIONSHIP FOR MEDICAL MARIJUANA PATIENTS, AND MAKING APPROPRIATIONS IN CONNECTION THEREWITH.

| Fiscal Impact Summary | FY 2010-2011 | FY 2011-2012 |
|--|---------------------|---------------------|
| State Revenue | | |
| Cash Funds | | |
| Medical Marijuana Program Cash Fund | (\$90,000) | (\$90,000) |
| State Expenditures | | |
| Cash Funds | | |
| Medical Marijuana Program Cash Fund | \$815,224 | \$240,773 |
| FTE Position Change | 8.5 | 3.0 |
| Effective Date: The bill was signed by the Governor and became law on June 7, 2010. | | |
| Appropriation Summary for FY 2010-2011: See State Appropriations section. | | |
| Local Government Impact: None. | | |

Summary of Legislation

The bill amends the statute concerning the medical marijuana program to regulate the role of physicians in certifying that an individual may benefit from medical marijuana as follows:

- A physician and a patient must have a "bona fide" relationship before a physician may certify that a patient would benefit from medical marijuana;
- the physician is available or offers to provide follow-up care and treatment to the patient after he or she begins using medical marijuana;
- the physician is to maintain a record-keeping system for all patients certified by the registry;
- the physician is not to offer a discount to a patient who uses a particular dispensary or caregiver or diagnose a patient for a debilitating medical condition at a place where medical marijuana is sold or distributed;
- the physician is not to accept payment from any provider of medical marijuana or hold an economic interest in any marijuana dispensary; and

- the physician must hold a doctor of medicine or doctor of osteopathic medicine from an accredited medical school, have a valid, unrestricted license to practice medicine, and a valid, unrestricted U.S. Drug Enforcement Administration (DEA) controlled substances registration.

The Department of Public Health and Environment (DPHE) is responsible for maintaining the medical marijuana registry. The bill specifies that the department has the following duties concerning the registry:

- develop a form to meet the requirement of "written documentation" as defined in the constitution;
- issue registry identification cards to patients and primary caregivers;
- ensure that an individual receives a registry card only if he or she has a bona fide relationship with a physician;
- develop procedures that allow patients to have the registry fee waived if they are indigent; and
- develop procedures for enforcement, including the process for referring a physician to the board of medical examiners for investigation.

An individual convicted of a criminal offense must renew his or her card immediately and have a recommendation from a physician who has a bona fide relationship with the individual. The costs of the bill are to be paid from the Medical Marijuana Program Cash Fund.

Background

In the 2000 general election, Colorado passed a constitutional amendment making it legal for individuals to use medical marijuana to alleviate the symptoms of several debilitating conditions. The DPHE was charged with implementing and administering the program. As of September 30, 2009, there were 17,356 people on the registry. The majority of the growth in the people on the registry has occurred since 2007. Due to increased demand, the DPHE currently has a backlog of people who have applied for the registry. Based on current application rates, it is estimated that 40,000 people will apply for the registry in FY 2010-11. The DPHE is requesting supplemental cash funds spending authority to hire staff to process the backlog of applications.

Currently, the department collects a fee of \$90 per registry applicant to fund the registry. It is estimated that the DPHE will collect about \$3.6 million in fees with 40,000 people applying for the registry each year. The fees are deposited into the Medical Marijuana Program Cash Fund.

State Revenue

This bill decreases projected revenue to the Medical Marijuana Program Cash Fund by \$90,000 beginning in FY 2010-11. The DPHE is required to establish rules to determine if a person is indigent and to waive the registry fee accordingly. The fiscal note estimates that 2.5 percent of applicants will be considered indigent.

State Expenditures

This bill increases cash fund expenditures by \$815,224 and 8.5 FTE in FY 2010-11 and \$240,773 and 3.0 FTE in FY 2011-12. The costs will be divided among the DPHE, the Department of Regulatory Agencies (DORA), and the Department of Law as described below.

Department of Public Health and Environment. The DPHE requires \$221,891 and 2.1 FTE in FY 2010-11 and \$118,967 and 1.6 FTE in FY 2011-12 to implement this bill. The specific costs to the department are provided in Table 1.

| Cost Components | FY 2010-11 | FY 2011-12 |
|---------------------------------------|-------------------|-------------------|
| Personal Services | \$94,837 | \$68,756 |
| FTE | 2.1 | 1.6 |
| Operating Expenses and Capital Outlay | 11,802 | 1,520 |
| Legal Services | 99,879 | 33,318 |
| Caregiver cards | 15,373 | 15,373 |
| TOTAL | \$221,891 | \$118,967 |

Checking a physician's U.S. DEA status. The bill requires the DPHE to determine if a physician who certifies a medical marijuana applicant has a valid DEA registration. This work will be conducted by DPHE staff on a quarterly basis and will require 0.4 FTE to perform the checks.

Providing registry cards to caregivers. Currently, only medical marijuana patients receive a registry card. Under the bill, if a patient designates a caregiver on the application, the caregiver also will receive a card. The fiscal note estimates that about 75 percent of applicants will designate a caregiver. This requires 0.7 FTE to process and mail the cards and resources to print and mail the cards.

Enforcement hearings. The bill provides the DPHE with the authority to investigate physicians who accept any payment from a medical marijuana provider, offer a discount to a patient who uses a particular medical marijuana provider, or examine a patient at a dispensary. The fiscal note estimates 25 complaints against physicians in the first year with half of those escalating to a full investigation. This work requires 1.0 FTE in FY 2010-11. In subsequent years, it is expected that there will be a reduction in these investigations as compliance increases.

Department of Regulatory Agencies (DORA). The DORA will see an increase in expenditures of \$593,333 and 1.2 FTE in FY 2010-11 and \$121,766 and 0.5 FTE in FY 2011-12. The specific costs to the department are provided in Table 2. The DORA requires resources to investigate any physicians referred to the Board of Medical Examiners (BME) for possible violations of the medical marijuana program. The fiscal note estimates that the DPHE will refer five physicians to the BME for investigation and potential license revocation in the first year.

The BME may use a variety of sanctions to ensure compliance with the program, including admonition, suspension, and revocation of a physician's license. In future years, it is estimated that 10 cases will be referred to the BME from DPHE as well as the public, but that, on average, only one of those will result in a license revocation or suspension.

| Table 2. Expenditures Under SB 10-109 for DORA | | |
|---|-------------------|-------------------|
| Cost Components | FY 2010-11 | FY 2011-12 |
| Personal Services | \$74,005 | \$30,835 |
| FTE | 1.2 | 0.5 |
| Operating Expenses and Capital Outlay | 6,744 | 475 |
| Legal Services | 512,584 | 90,456 |
| TOTAL | \$593,333 | \$121,766 |

Department of Law. The department requires \$612,463 and 5.2 FTE in FY 2010-11 and \$123,773 and 0.9 FTE in 2011-12 for legal proceedings against physicians who are violating the medical marijuana laws. These costs are reappropriated from the DPHE and DORA and are identified in the legal services expenses for those departments. In FY 2010-11, it is estimated that the BME in DORA will initiate five revocation cases against physicians with one case annually in subsequent years. The DPHE will have three cases in FY 2010-11 for physicians who violate the provisions concerning receiving monetary compensation and one case each year in FY 2011-12 and thereafter.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 3.

| Table 3. Expenditures Not Included Under SB 10-109* | | |
|--|-------------------|-------------------|
| Cost Components | FY 2010-11 | FY 2011-12 |
| Employee Insurance (Health, Life, Dental, and Short-term Disability) | \$23,430 | \$14,910 |
| Supplemental Employee Retirement Payments | 6,279 | 4,506 |
| Indirect Costs - Postage | 12,600 | 12,600 |
| TOTAL | \$42,309 | \$32,016 |

*More information is available at: <http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536133924>

Departmental Differences

It is the position of DORA that the BME will have three additional cases of medical revocations referred to it by individuals outside of the DPHE referral process. These three additional cases would require 3,600 hours of legal services and \$271,368 in reappropriated funds for the Department of Law. The fiscal note assumes that the primary referral mechanism for the BME will be from the DPHE identifying physicians for investigation. The DORA reports that the BME is already hearing about potential cases for referral; however, it is likely that these cases overlap with the physicians that will be identified by the DPHE. Furthermore, given the fact that licensure restrictions could affect a person's livelihood, physicians are likely to comply with the law. This bill may cause some physicians to correct their behavior before an investigation would be necessary. These costs have not been included in the fiscal note.

State Appropriations

In FY 2010-11, the following appropriations are required:

- The Department of Public Health and Environment requires \$221,891 and 2.1 FTE from the Medical Marijuana Program Cash Fund. Of that, \$99,879 and 0.8 FTE should be reappropriated to the Department of Law;
- The Department of Regulatory Agencies requires \$593,333 and 1.2 FTE from the Medical Marijuana Program Cash Fund. Of that, \$512,584 and 4.4 FTE should be reappropriated to the Department of Law.

Departments Contacted

Public Health and Environment

Law

Regulatory Agencies