A BILL FOR AN ACT

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

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 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) (2) Rulemaking. The department of health shall, pursuant to section 14 of article XVIII of the state constitution, promulgate rules of administration concerning the implementation of the medical marijuana program established by such section and that specifically govern the following:

(a) The establishment and maintenance of a confidential registry of patients who have applied for and are entitled to receive a registry identification card. The confidential registry of patients may be used to determine whether a physician should be referred to the Colorado board of medical examiners for a suspected violation of section 14 of article XVIII of the state constitution, paragraph (a), (b), or (c) of subsection (3) of this section, or the rules promulgated by the state health agency pursuant to this subsection (2).

(b) The development by the department of an application form and the process for making such the form available to residents of this state seeking to be listed on the confidential registry of patients who are entitled to receive a registry identification card;

(c) The verification by the department of medical information concerning patients who have applied for a confidential registry identification card or for renewal of a registry identification card;

(d) The development by the state health agency 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;

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

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

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

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

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

(b) AFTER A PHYSICIAN, WHO HAS A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP WITH THE PATIENT APPLYING FOR THE MEDICAL MARIJUANA PROGRAM, DETERMINES, FOR THE PURPOSES OF MAKING A RECOMMENDATION, THAT THE PATIENT HAS A DEBILITATING CONDITION.
CONDITION AND THAT THE PATIENT MAY BENEFIT FROM THE USE OF
MEDICAL MARIJUANA, THE PHYSICIAN SHALL CERTIFY TO THE STATE
HEALTH AGENCY THAT THE PATIENT HAS A DEBILITATING MEDICAL
CONDITION AND THAT THE PATIENT MAY BENEFIT FROM THE USE OF
MEDICAL MARIJUANA. IF THE PHYSICIAN CERTIFIES THAT THE PATIENT
WOULD BENEFIT FROM THE USE OF MEDICAL MARIJUANA BASED ON A
CHRONIC OR DEBILITATING DISEASE OR MEDICAL CONDITION, THE
PHYSICIAN SHALL SPECIFY THE CHRONIC OR DEBILITATING DISEASE OR
MEDICAL CONDITION AND, IF KNOWN, THE CAUSE OR SOURCE OF THE
CHRONIC OR DEBILITATING DISEASE OR MEDICAL CONDITION.

(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 after redacting any patient or
primary caregiver identifying information.

(d) A physician shall not:

(I) accept, solicit, or offer any form of pecuniary
remuneration from or to a primary caregiver, distributor, or
any other provider of medical marijuana;

(II) offer a discount or any other thing of value to a
patient who uses or agrees to use a particular primary
caregiver, distributor, or other provider of medical marijuana
to procure medical marijuana;

(III) examine a patient for purposes of diagnosing a
debilitating medical condition at a location where medical
MARIJUANA IS SOLD OR DISTRIBUTED; OR

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

(4) **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 (3) OF THIS SECTION, OR THE RULES PROMULGATED BY THE STATE HEALTH AGENCY PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE STATE HEALTH AGENCY MAY REFER THE MATTER TO THE STATE BOARD OF MEDICAL EXAMINERS CREATED IN SECTION 12-36-103, C.R.S., FOR AN INVESTIGATION AND DETERMINATION.

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

(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 OR A FINDING OF A VIOLATION OF PARAGRAPH (d) OF SUBSECTION (3) 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.

(d) WHEN THE STATE HEALTH AGENCY HAS OBJECTIVE AND REASONABLE GROUNDS TO BELIEVE AND FINDS, UPON A FULL INVESTIGATION, THAT A PHYSICIAN HAS DELIBERATELY AND WILLFULLY VIOLATED SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION OR THIS SECTION AND THAT THE PUBLIC HEALTH, SAFETY, OR WELFARE IMPERATIVELY REQUIRES EMERGENCY ACTION, AND THE STATE HEALTH AGENCY INCORPORATES THOSE FINDINGS INTO AN ORDER, THE STATE HEALTH AGENCY MAY SUMMARILY SUSPEND THE PHYSICIAN'S AUTHORITY TO RECOMMEND THE USE OF MEDICAL MARIJUANA PENDING THE PROCEEDINGS SET FORTH IN PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (5). A HEARING ON THE ORDER OF SUMMARY SUSPENSION SHALL BE HELD NO LATER THAN THIRTY DAYS AFTER THE ISSUANCE OF THE ORDER OF SUMMARY SUSPENSION, UNLESS A LONGER TIME IS AGREED TO BY THE PARTIES, AND AN INITIAL DECISION IN ACCORDANCE WITH SECTION 24-4-105 (14), C.R.S., SHALL BE RENDERED NO LATER THAN THIRTY DAYS AFTER THE CONCLUSION OF THE HEARING CONCERNING THE ORDER OF SUMMARY SUSPENSION.

(5) Renewal of patient identification card upon criminal conviction. ANY PATIENT WHO IS CONVICTED OF A CRIMINAL OFFENSE UNDER ARTICLE 18 OF TITLE 18, C.R.S., SENTENCED OR ORDERED BY A COURT TO DRUG OR SUBSTANCE ABUSE TREATMENT, OR SENTENCED TO THE DIVISION OF YOUTH CORRECTIONS, SHALL BE SUBJECT TO IMMEDIATE RENEWAL OF HIS OR HER PATIENT REGISTRY IDENTIFICATION CARD, AND THE PATIENT SHALL APPLY FOR THE RENEWAL BASED UPON A RECOMMENDATION FROM A PHYSICIAN WITH WHOM THE PATIENT HAS A
BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP.

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

(2) (7) The department STATE HEALTH AGENCY may collect fees from patients who, pursuant to section 14 of article XVIII of the state constitution, apply to the medical marijuana program established by such section for a marijuana registry identification CARD for the purpose of offsetting the department's STATE HEALTH AGENCY's direct and indirect costs of administering the program. The amount of such THE fees shall be set by rule of the state board of health STATE HEALTH AGENCY. All fees collected by the department STATE HEALTH AGENCY through the medical marijuana program shall be transferred to the state treasurer who shall credit the same to the medical marijuana program cash fund, which fund is hereby created.

(3) (8) Cash fund. (a) The medical marijuana program cash fund shall be subject to annual appropriation by the general assembly to the department STATE HEALTH AGENCY for the purpose of establishing, operating, and maintaining the medical marijuana program. established by section 14 of article XVIII of the state constitution. All moneys credited to the medical marijuana program cash fund and all interest derived from the deposit of such moneys that are not expended during the fiscal year shall be retained in the fund for future use and shall not be credited or transferred to the general fund or any other fund.

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

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

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

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

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

12-36-117. Unprofessional conduct - repeal.

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

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

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

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

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

SECTION 5. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the medical marijuana program cash fund created in section 25-1.5-106 (8), Colorado Revised Statutes, not otherwise appropriated, to the department of public health and environment, for the fiscal year beginning July 1, 2010, the sum of eight hundred fifteen thousand two hundred twenty-four dollars ($815,224) cash funds and 2.1 FTE, or so much thereof as may be necessary, for the implementation of this act. Of said appropriation, ninety-nine thousand eight hundred seventy-nine dollars ($99,879) shall be allocated to the administration and support division and seven hundred fifteen thousand three hundred forty-five dollars ($715,345) and 2.1 FTE shall be allocated to the center for health and environmental information.

(2) In addition to any other appropriation, there is hereby appropriated to the department of regulatory agencies, for the fiscal year beginning July 1, 2010, the sum of five hundred ninety-three thousand three hundred thirty-three dollars ($593,333) and 1.2 FTE, for the investigation and prosecution of physicians referred to the board of medical examiners pursuant to section 25-1.5-106 (5), Colorado Revised Statutes, or so much thereof as may be necessary for the implementation of this act. Said appropriation shall be from reappropriated funds received from the department of public health and environment out of the appropriation made in subsection (1) of this section to the center for health and environmental information. Of said appropriation, five
hundred twelve thousand five hundred eighty-four dollars ($512,584) shall be allocated to the executive director's office and eighty thousand seven hundred forty-nine dollars ($80,749) and 1.2 FTE shall be allocated to the division of registrations.

(3) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2010, the sum of six hundred twelve thousand four hundred sixty-three dollars ($612,463) and 5.2 FTE, or so much thereof as may be necessary, for the provision of legal services to the department of public health and environment and the department of regulatory agencies related to the implementation of this act. Of said appropriation, ninety-nine thousand eight hundred seventy-nine dollars ($99,879) shall be from reappropriated funds received from the department of public health and environment out of the appropriation made in subsection (1) of this section to the administration and support division and five hundred twelve thousand five hundred eighty-four dollars ($512,584) shall be from reappropriated funds received from the department of regulatory agencies out of the appropriation made in subsection (2) of this section to the executive director's office.

SECTION 6. 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.