
1 **A BILL FOR AN ACT (Revised 12/9/09)**

101 2 **Concerning regulation of medical marijuana.**

3
4 **Bill Summary**

5 *(Note: This summary applies to this bill as introduced and does not necessarily reflect*
6*any amendments that may be subsequently adopted.)*

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8 Where currently the department of public health and environment (department) has rule-
9making authority for the medical marijuana program, the bill gives that authority to the executive
10director of the department. The executive director will promulgate new rules related to the
11standards for issuing registry identification cards and standards for a criminal history record
12check for primary caregivers. The executive director may also adopt rules setting procedures for
13primary caregiver applicants and sanctions for doctors who violate the act.

14 A primary caregiver may serve no more than 5 patients on the registry at one time. A
15primary caregiver may not delegate a patient to another caregiver or join with another caregiver
16to grow marijuana. The department of health shall establish a registry of available caregivers for
17those patients who need a caregiver to provide medical marijuana.

18 An individual who is permitted to use medical marijuana must have in his or her
19possession a registry identification card when possessing a usable form of marijuana.

20 The bill lists various places and situations in which the patient or primary caregiver may
21not use or possess medical marijuana. A physician who certifies that a patient can use medical
22marijuana may not receive remuneration from a primary caregiver related to medical marijuana.

23 Local governments may enact zoning requirements related to medical marijuana. The
24bill clarifies that marijuana is not a food.

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 to read:

3 **25-1.5-106. Medical marijuana program – powers and duties of executive director.**

4(1) **Legislative declaration.** (a) The general assembly hereby declares that it is necessary to
5 implement rules to ensure that patients suffering from a debilitating medical condition are able to
6 safely gain access to medical marijuana without being subject to criminal prosecution for their
7 use of medical marijuana in accordance with section 14 of article XVIII of the state constitution,
8 this section, and the rules of the executive director.

9 (b) The general assembly hereby declares that it is necessary to implement rules to
10 prevent persons who do not suffer from legitimate debilitating medical conditions from using
11 section 14 of article XVIII of the state constitution as a means to sell, acquire, possess, produce,
12 use or transport marijuana in violation of state and federal laws.

13 (c) The general assembly hereby declares that it is necessary to implement rules to guide
14 law enforcement officers as to the proper enforcement of section 14 of article XVIII of the state
15 constitution, as well as state and federal law, with respect to the acquisition, possession,
16 production, use, or transportation of marijuana.

17 (2) **Definitions.** In addition to the definitions set forth in subsection (1) of section 14 of
18 article XVIII of the state constitution, as used in this section, unless the context otherwise
19 requires:

20 (a) “Bona fide physician-patient relationship” means a documented treating or
21 counseling relationship _____, in the course of which a physician has completed a full
22 assessment of the registered patient’s medical history and current medical condition, including a
23 personal physical examination. A bona fide physician-patient relationship shall exist only if a

1 patient's physician provides to the department documentation that the physician 1) has consulted
2 with the patient with respect to the patient's debilitating medical condition and 2) the physician
3 must have discussed with the patient the possible health risks and side effects from the use of
4 marijuana before the patient has applied for a registry identification card.

5 (b) "Executive director" means the executive director of the department of public health
6 and environment.

7 (c) "In good standing", as it applies to a physician's license, means that the physician
8 holds a valid doctor of medicine (M.D.) or doctor of osteopathic medicine (D.O.) degree and a
9 valid, unrestricted license to practice medicine in Colorado and has not had his or her department
10 of justice federal drug enforcement administration registration for controlled substances
11 suspended or revoked.

12 (d) "Medical marijuana program" means the program established by section 14 of article
13 XVIII of the state constitution and this section.

14 (e) "Primary caregiver" means a natural person, other than the patient or the patient's
15 physician, who is eighteen years of age or older and has significant responsibility for managing
16 the well-being of a patient who has a debilitating medical condition.

17 (3) **Primary caregivers.** (a) The executive director shall have authority to promulgate
18 rules in accordance with the "State Administrative Procedure Act", Article 4 of Title 24, C.R.S.,
19 in connection with the policies, procedures, and administration of the medical marijuana
20 program.

21 (b) No later than <{specify a date}>, the executive director shall, pursuant to section 14
22 of article XVIII of the state constitution, promulgate rules of administration concerning the
23 implementation of the medical marijuana program and that specifically govern the following:

1 (I) The establishment and maintenance of a confidential registry of patients who have
2 applied for and are entitled to receive a registry identification card;

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

6 (III) The verification by the department of medical information concerning patients who
7 have applied for a registry identification card;

8 (IV) The conditions for issuance and the form of registry identification cards issued to
9 patients and primary caregivers. Patients' and primary caregivers' cards will contain an
10 identification number. The patient's card will contain the identification number of his or her
11 caregiver. The caregiver will be responsible to provide law enforcement, upon inquiry, the
12 identification card number of his or her patients. The department of health shall maintain a
13 registry to verify this information and make it available to law enforcement. In order to be
14 considered in compliance with the provisions of section 14 of article XVIII of the state
15 constitution, this section and the rules of the executive director, the patient and/or caregiver must
16 have his or her registry identification card in possession and produce same upon request of law
17 enforcement to demonstrate the patient or caregiver is not in violation of the law. Any person
18 who violates section 14 of article XVIII of the state constitution and this section may be subject
19 to criminal prosecution for violations of C.R.S. 18-18-406.

20 (V) The standards for ensuring that registry identification cards are issued by the
21 department only to patients who have a bona fide physician-patient relationship with a physician
22 in good standing and licensed to practice medicine in the state of Colorado; except that the
23 executive director may promulgate rules related to a bona fide physician-patient relationship to

1 allow a patient to receive a registry identification card under exceptional circumstances when the
2 patient has not established a bona fide physician-patient relationship.

3 (VI) Upon inquiry by law enforcement as to an individual's status as a patient or
4 caregiver, the department of health will check its records. If the individual is not registered as a
5 patient or caregiver, the department may provide that response to law enforcement. If the person
6 is a registered patient or caregiver, the department may not release information unless consistent
7 with section 14 of article XVIII of the state constitution. The communications with law
8 enforcement officials about registry identification cards that have been suspended where a
9 patient is no longer diagnosed as having a debilitating medical condition;

10 (VII) The manner in which the department may consider adding debilitating medical
11 conditions to the list of debilitating medical conditions contained in section 14 of article XVIII of
12 the state constitution; and

13 (VIII) The requirements and standards for passing a criminal history record check for all
14 primary caregivers. Passing a criminal history check includes no felony convictions, no
15 misdemeanor drug convictions within the last year, no multiple misdemeanors or petty offense
16 drug convictions within the last five years ~~no two or more DUIs in the last ten years~~ and any
17 other information that would indicate the individual is a danger to himself/herself or others. The
18 rules shall set forth the criminal history that, in the interest of public health and safety, shall be
19 grounds for the department to deny the issuance of a registry identification card to a primary
20 caregiver.

21 (c) A primary caregiver may not delegate to any other person his or her authority to
22 provide medical marijuana to a patient nor may a primary caregiver engage others to assist in
23 providing medical marijuana to a patient.

1 (d) Two or more primary caregivers may not join together for the purpose of growing or
2cultivating medical marijuana.

3 (e) Only a primary caregiver or a patient may cultivate marijuana, and then only for
4medical use.

5 (f) If a primary caregiver is providing medical marijuana to a patient, then a patient
6cannot also grow and provide his/her own medical marijuana.

7 (g) The executive director may promulgate rules regarding the following:

8 (I) What constitutes “significant responsibility for managing the well-being of a patient”;
9except that the act of supplying medical marijuana or marijuana paraphernalia, by itself, is
10insufficient to constitute “significant responsibility for managing the well-being of a patient”;

11 (II) The development of a form for a qualified individual to apply to become a primary
12caregiver, which form shall require, at a minimum, that the applicant provide his or her full
13name, home address, date of birth, list of criminal convictions, if any, and an attestation that the
14primary caregiver has a significant responsibility for managing the well-being of the patient for
15whom he or she is designated as the primary caregiver and that he or she understands and will
16abide by section 14 of article XVIII of the state constitution, this section, and the rules
17promulgated by the executive director pursuant to this section.

18 (III) The development of a form that constitutes “written documentation”, as defined and
19used in section 14 of article XVIII of the state constitution, which form a physician must use
20when making a medical marijuana recommendation for a patient;

21 (IV) Sanctions for physicians who violate section 14 of article XVIII of the state
22constitution, this section, and the rules promulgated by the executive director pursuant to this

1section, which sanctions shall include rejecting their recommendation for issuing a registry card
2to a patient;

3 (V) The grounds and procedures for a patient to change his or her designated primary
4caregiver.

5 (g) On the effective date of the rules promulgated pursuant to this subsection (3), the
6medical marijuana program rules adopted by the state board of health are repealed.

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8 (4) **Limitations on number of patients per primary caregiver.** (a) A person shall be
9listed as a primary caregiver for no more than five patients on the medical marijuana program
10registry at any given time.

11 (b) A patient shall have only one primary caregiver at any given time. ~~The executive~~
12~~director may promulgate rules for a patient to petition the department to change his or her~~
13~~primary caregiver.~~ (Note: already covered in (V) above.)

14 (c) A patient who has designated a primary caregiver for himself or herself may not be
15designated as a primary caregiver for another patient.

16 (d) The department of health will maintain a secure and confidential registry of available
17caregivers for those unable to secure the services of a caregiver.

18 (I) Existing caregivers may indicate at the time of licensing whether they would be
19willing to handle additional patients and waive confidentiality to allow release of their contact
20information to doctors or registered patients only;

21 (II) Individuals who are not registered but willing to provide care giving services may
22submit his or her contact information to be placed on the caregiver registry after they have
23passed a criminal background check;

1 (III) A registered patient seeking a caregiver could access this secure and confidential
2caregiver roster to help him or her find a suitable caregiver. These arrangements are strictly
3between the patient and potential caregiver. The department of health will make it clear it is not
4endorsing or vouching for any of the caregivers except that they passed a criminal background
5check;

6 (IV) The executive director may on a case-by-case basis make exceptions to the five
7patients per caregiver ratio based on a request from the patient.

8 (5) **Registry identification card required – denial – revocation.** (a) When in
9possession of any usable form of marijuana for medical use, a patient or primary caregiver shall
10have in his or her possession his or her medical marijuana registry identification card or, if more
11than thirty-five days have passed since the date of filing his or her medical marijuana program
12application and the department has not yet issued a registry identification card, a copy of his or
13her application along with proof of the date of submission.

14 (b) The executive director may deny a patient’s or primary caregiver’s application for a
15registry identification card or revoke the same if the executive director, in accordance with
16article 4 of title 24, C.R.S., determines that the physician, patient, or primary caregiver violated
17section 14 of article XVIII of the state constitution, this section, or the rules promulgated by the
18executive director pursuant to this section.

19 (c) A primary caregiver registry identification card shall be valid for one year. It shall be
20the responsibility of the primary caregiver to apply to renew his or her registry identification card
21prior to the date on which the card expires. The executive director shall develop a form for a
22primary caregiver to renew his or her registry identification card.

1 **(6) Use of medical marijuana.** (a) The use of medical marijuana is allowed under state
2law to the extent that it is carried out in accordance with the provisions of section 14 of article
3XVIII of the state constitution, this section, and the rules of the executive director.

4 (b) A patient or primary caregiver shall not do any of the following:

5 (I) Engage in the medical use of marijuana in a way that endangers the health and well
6being of a person; or

7 (II) Engage in the medical use of marijuana in plain view of or in a place open to the
8general public;

9 (III) Undertake any task under the influence of marijuana, when doing so would
10constitute negligence or professional malpractice;

11 (IV) Possess marijuana, or otherwise engage in the use of medical marijuana, in the
12following locations:

13 (A) In a school bus; or

14 (B) On the grounds of or within one thousand feet of any daycare, preschool, or school;

15 (V) Engage in the use of medical marijuana while:

16 (A) In a correctional facility or a community corrections facility;

17 (B) Subject to a sentence to incarceration or on probation or parole, unless otherwise
18provided by court order; or

19 (C) While in a vehicle, aircraft, or motorboat;

20 (IV) Operate, navigate, or be in actual physical control of any vehicle, aircraft, or
21motorboat while under the influence of marijuana;

1 (V) Use marijuana if the person does not have a debilitating medical condition as
2diagnosed by the person’s physician in the course of a bona fide physician-patient relationship
3and for which the physician has recommended the use of medical marijuana.

4 (7) **Limitations on remuneration for medical certifications.** A physician certifying a
5debilitating medical condition for an applicant for the medical marijuana program shall not
6accept any form of pecuniary remuneration from a primary caregiver in any way related to the
7medical certification of a debilitating medical condition for any applicant for the medical
8marijuana program, nor may a primary caregiver offer any pecuniary remuneration, directly or
9indirectly, to a physician in any way related to the medical certification of a debilitating medical
10condition for any applicant for the medical marijuana program.

11 (8) **Local zoning.** Nothing in this section shall prohibit a municipality or other
12jurisdiction from enacting zoning requirements regarding manufacturing, producing, selling,
13cultivating, distributing, dispensing, transporting or storing medical marijuana.

14 (9) **Inapplicability of food definitions.** Any substance containing marijuana used for
15medical purposes is not a food, as defined in section 25-4-1602 (4), nor is it a food, as defined in
16section 25-5-402 (11), or a drug, as defined in section 25-5-402 (9).

17 (10) **Fees.** The department may collect fees from patients who, pursuant to section 14 of
18article XVIII of the state constitution, apply to the medical marijuana program for a registry
19identification card for the purpose of offsetting the department’s direct and indirect costs of
20administering the program. The amount of the fees shall be set by rule of the executive director.
21All fees collected by the department through the medical marijuana program shall be transferred
22to the state treasurer who shall credit the same to the medical marijuana program cash fund,
23which fund is hereby created.

1 (11) **Cash fund.** (a) The medical marijuana program cash fund shall be subject to
2annual appropriation by the general assembly to the department for the purpose of establishing,
3operating, and maintaining the medical marijuana program. All moneys credited to the medical
4marijuana program cash fund and all interest derived from the deposit of such moneys that are
5not expended during the fiscal year shall be retained in the fund for future use and shall not be
6credited or transferred to the general fund or any other fund.

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

11 **SECTION 2. Safety clause.** The general assembly hereby finds, determines, and
12declares that this act is necessary for the immediate preservation of the public peace, health, and
13safety.

14

15**OTHER:**

16 **(1) A mechanism to levy and collect a fee to cover a full and rigorous regulatory**
17**process for the entire system.**

18 **(2) A fee for drug treatment/marijuana addiction.**

19 **(3) There shall be no establishment of either public or private business for the**
20**purpose of allowing individuals or patients to gather to smoke marijuana for any reason.**

21 **(4) In addition to the patient or caregiver, in order to raise an affirmative defense to**
22**possess amounts greater than authorized in section 14 of article XVIII of the state**
23**constitution, the physician must also certify what specific amounts are necessary and why**

**1to address the debilitating medical condition. The patient who asserts this affirmative
2defense must waive confidentiality privileges.**