

CHAPTER 343

REVENUE - ACTIVITIES REGULATION

SENATE BILL 19-218

BY SENATOR(S) Gonzales, Tate;
 also REPRESENTATIVE(S) Jaquez Lewis, Arndt, Bird, Buckner, Duran, Esgar, Galindo, Gray, Hansen, Herod, Hooton, Melton,
 Mullica, Snyder, Valdez A., Valdez D.

AN ACT

CONCERNING THE CONTINUATION OF THE MEDICAL MARIJUANA PROGRAM, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE RECOMMENDATIONS CONTAINED IN THE 2018 SUNSET REPORT BY THE DEPARTMENT OF REGULATORY AGENCIES AND MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 25-1.5-106, **amend** (2)(a.5)(II), (2)(c), (2)(d.5)(I), (3)(b)(II), (3.5)(d), (5)(a), (5)(c), (6)(a), (6)(c), (7)(d), (9)(c), (10), and (18)(a); **repeal** (3)(b)(III), (3.7), and (3.8)(b); and **add** (2)(d.4), (3)(d), and (5)(e) as follows:

25-1.5-106. Medical marijuana program - powers and duties of state health agency - rules - medical review board - medical marijuana program cash fund - subaccount - created - definitions - repeal. (2) **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.5) "Bona fide physician-patient relationship", for purposes of the medical marijuana program, means:

(II) The physician has consulted with the patient, AND IF THE PATIENT IS A MINOR, WITH THE PATIENT'S PARENTS, with respect to the patient's debilitating medical condition or disabling medical condition AND HAS EXPLAINED THE POSSIBLE RISKS AND BENEFITS OF USE OF MEDICAL MARIJUANA TO THE PATIENT, AND THE PATIENT'S PARENTS IF THE PATIENT IS A MINOR, before the patient applies for a registry identification card; and

(c) "In good standing", with respect to a physician's OR DENTIST OR ADVANCED

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

PRACTICE PRACTITIONER license, means:

(I) The physician holds a doctor of medicine or doctor of osteopathic medicine degree from an accredited medical school, OR THE DENTIST OR ADVANCED PRACTICE PRACTITIONER HOLDS A DEGREE IN A MEDICAL FIELD WITHIN HIS OR HER SCOPE OF PRACTICE;

(II) The physician holds a valid license to practice medicine, OR THE DENTIST OR ADVANCED PRACTICE PRACTITIONER HOLDS A VALID LICENSE TO PRACTICE WITHIN HIS OR HER SCOPE OF PRACTICE, in Colorado that does not contain a restriction or condition that prohibits the recommendation of medical marijuana or for a license issued prior to July 1, 2011, a valid, unrestricted and unconditioned license; and

(III) The physician OR DENTIST OR ADVANCED PRACTICE PRACTITIONER has a valid and unrestricted United States department of justice federal drug enforcement administration controlled substances registration.

(d.4) "PHYSICIAN", WHEN MAKING MEDICAL MARIJUANA RECOMMENDATIONS FOR A DISABLING MEDICAL CONDITION, INCLUDES A DENTIST OR ADVANCED PRACTICE PRACTITIONER WITH PRESCRIPTIVE AUTHORITY ACTING WITHIN THE SCOPE OF HIS OR HER PRACTICE.

(d.5) "Primary caregiver" means a natural person, other than the patient or the patient's physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition or disabling medical condition. A primary caregiver may have one or more of the following relationships:

(I) A parent of a child as described by subsection (6)(e) of section 14 of article XVIII of the ~~Colorado~~ STATE constitution OR A PARENT OF A CHILD WITH A DISABLING MEDICAL CONDITION and anyone who assists that parent with caregiver responsibilities, including cultivation and transportation;

(3) **Rule-making.** (b) The state health agency may promulgate rules regarding the following:

(II) The development of a form for a primary caregiver to use in applying to the registry, which form shall require, at a minimum, that the applicant provide his or her full name, home address, date of birth, and an attestation that the applicant has a significant responsibility for managing the well-being of the patient for whom he or she is designated as the primary caregiver and that he or she understands and will abide by section 14 of article XVIII of the state constitution, this section, and the rules promulgated by the state health agency pursuant to this section; AND

(III) ~~The development 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; and~~

(d) THE STATE HEALTH AGENCY SHALL PROMULGATE RULES RELATED TO THE LENGTH OF TIME A REGISTRY IDENTIFICATION CARD ISSUED TO A PATIENT WITH A

DISABLING MEDICAL CONDITION IS VALID.

(3.5) **Marijuana laboratory testing reference library.** (d) The state health agency shall make reference library materials, including the methodologies, publicly available ~~no later than December 31, 2015~~, and may continuously update the reference library as new materials become available.

~~(3.7) The state health agency shall convene a group of interested parties including representatives from the state licensing authority, primary caregivers, patients, marijuana testing laboratory licensees, and any other interested persons to explore laboratory testing options for medical marijuana not produced by someone licensed pursuant to article 11 of title 44.~~

~~(3.8) (b) The state health agency shall convene a stakeholder process to discuss proposed models for sampling and proficiency testing. The stakeholder process shall be completed by September 1, 2015.~~

(5) **Physicians.** A physician who certifies a debilitating medical condition or disabling medical condition for an applicant to the medical marijuana program shall comply with all of the following requirements:

(a) The physician ~~shall have~~ HAS a valid and active license to practice medicine, which license is in good standing, OR THE DENTIST OR ADVANCED PRACTICE PRACTITIONER HOLDS A VALID LICENSE TO PRACTICE WITHIN HIS OR HER SCOPE OF PRACTICE, WHICH LICENSE IS IN GOOD STANDING.

(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~~ MEDICAL BOARD after redacting any patient or primary caregiver identifying information.

(e) ONLY A PHYSICIAN CAN MAKE A MEDICAL MARIJUANA RECOMMENDATION; EXCEPT WHEN MAKING A MEDICAL MARIJUANA RECOMMENDATION FOR A PATIENT WITH A DISABLING MEDICAL CONDITION, THE RECOMMENDATION MAY BE MADE BY A MEDICAL DOCTOR, DENTIST, OR ADVANCED PRACTICE PRACTITIONER WITH PRESCRIPTIVE AUTHORITY ACTING WITHIN THE SCOPE OF HIS OR HER PRACTICE.

(6) **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 (5)~~ SUBSECTION (5)(a), (5)(b), OR (5)(c) of this section, or the rules promulgated by the state health agency pursuant to ~~subsection (2)~~ SUBSECTION (3) of this section, the state health agency may refer the matter to the ~~state board of medical examiners~~ COLORADO MEDICAL BOARD created in section 12-36-103 ~~C.R.S.~~, for an investigation and determination.

(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~~ COLORADO MEDICAL BOARD or a finding of a violation of ~~paragraph (d) of subsection (5)~~ SUBSECTION (5)(d) 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~~ COLORADO MEDICAL BOARD.

(7) **Primary caregivers.** (d) A primary caregiver shall provide to a law enforcement agency, upon inquiry, the registry identification card number of each of his or her patients. The state health agency shall maintain a registry of this information and make it available twenty-four hours per day and seven days a week to law enforcement for verification purposes. Upon inquiry by a law enforcement officer as to an individual's status as a patient or primary caregiver, the state health agency shall check the registry. If the individual is not registered as a patient or primary caregiver, the state health agency may provide that response to law enforcement. If the person is a registered patient or primary caregiver FOR A PATIENT WITH A DEBILITATING MEDICAL CONDITION OR A DISABLING MEDICAL CONDITION, the state health agency may not release information unless consistent with section 14 of article XVIII of the state constitution. The state health agency may promulgate rules to provide for the efficient administration of this ~~paragraph (d)~~ SUBSECTION (7)(d).

(9) **Registry identification card required - denial - revocation - renewal.** (c) A patient or primary caregiver registry identification card ~~shall be~~ IS valid for one year UNLESS THE STATE HEALTH AGENCY CHANGES THE LENGTH OF VALIDITY PURSUANT TO ITS AUTHORITY IN SUBSECTION (3)(d) OF THIS SECTION and ~~shall~~ MUST contain a unique identification number. It ~~shall be~~ IS the responsibility of the patient or primary caregiver to apply to renew his or her registry identification card prior to the date on which the card expires. The state health agency shall develop a form for a patient or primary caregiver to use in renewing his or her registry identification card.

(10) **Renewal of patient identification card upon criminal conviction.** Any patient who is convicted of a criminal offense under article 18 of title 18 who is sentenced or ordered by a court to treatment for a substance use disorder or sentenced to the division of youth services is subject to immediate ~~renewal~~ REVOCATION of his or her patient registry identification card, and the patient ~~shall~~ MAY apply for the renewal based upon a recommendation from a physician with whom the patient has a bona fide physician-patient relationship.

(18) (a) This section is repealed, effective September 1, ~~2019~~ 2028.

SECTION 2. In Colorado Revised Statutes, 25-1.5-110, **amend** (2) and (3) as follows:

25-1.5-110. Monitor health effects of marijuana - report. (2) (a) The department shall appoint a panel of health care professionals with expertise in, ~~cannabinoid physiology to monitor the relevant information~~ BUT NOT LIMITED TO, NEUROSCIENCE, EPIDEMIOLOGY, TOXICOLOGY, CANNABIS PHYSIOLOGY, AND CANNABIS QUALITY CONTROL TO FURTHER DIRECT POLICY. Notwithstanding section 24-1-136 (1)(a)(I), the panel shall provide a report by January 31, 2015, and every two years thereafter to the state board of health, the department of revenue, and the general assembly. The department shall make the report available on its website.

The panel shall establish criteria for studies to be reviewed, reviewing studies and other data, and making recommendations, as appropriate, for policies intended to protect consumers of marijuana or marijuana products and the general public.

(b) IN ORDER TO ALLOW THE PUBLIC TO EVALUATE ANY CONFLICT OF INTEREST AMONG THE PANEL, EACH PANELIST SHALL DISCLOSE ALL FINANCIAL INTERESTS THE PANELIST HAS RELATED TO THE HEALTH CARE INDUSTRY AND THE REGULATED MARIJUANA INDUSTRY. THE DISCLOSURES MUST BE INCLUDED IN THE REPORT REQUIRED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION.

(3) ~~The department may collect Colorado-specific data that reports adverse health events involving marijuana use from the all-payer claims database, hospital discharge data, and behavioral risk factors~~ COLLECT COLORADO-SPECIFIC DATA THAT INVOLVES HEALTH OUTCOMES ASSOCIATED WITH CANNABIS FROM, BUT NOT LIMITED TO, ALL-PAYER CLAIMS DATA, HOSPITAL DISCHARGE DATA, AND AVAILABLE PEER-REVIEWED RESEARCH STUDIES.

SECTION 3. In Colorado Revised Statutes, 24-34-104, **repeal** (17)(a)(XIV); and **add** (29)(a)(IX) as follows:

24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal. (17) (a) The following agencies, functions, or both, are scheduled for repeal on September 1, 2019:

(XIV) ~~The medical marijuana program created in section 25-1.5-106, C.R.S.;~~

(29) (a) The following agencies, functions, or both, are scheduled for repeal on September 1, 2028:

(IX) THE MEDICAL MARIJUANA PROGRAM CREATED IN SECTION 25-1.5-106.

SECTION 4. In Colorado Revised Statutes, 25-1.5-106, **amend as amended by House Bill 19-1028** (2)(a.7) as follows:

25-1.5-106. Medical marijuana program - powers and duties of state health agency - rules - medical review board - medical marijuana program cash fund - subaccount - created - repeal. (2) **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.7) "Disabling medical condition" means:

(I) Post-traumatic stress disorder as diagnosed by a licensed mental health provider or physician; ~~and~~ OR

(II) An autism spectrum disorder as diagnosed by a primary care physician, physician with experience in autism spectrum disorder, or licensed mental health provider acting within his or her scope of practice.

SECTION 5. Appropriation. (1) For the 2019-20 state fiscal year, \$114,007

is appropriated to the department of public health and environment for use by the center for health and environmental information. This appropriation is from the medical marijuana program cash fund created in section 25-1.5-106 (16)(a), C.R.S. To implement this act, the center may use this appropriation as follows:

(a) \$14,007 for personal services related to the medical marijuana registry, which amount is based on an assumption that the department will require an additional 0.2 FTE; and

(b) \$100,000 for operating expenses related to the medical marijuana registry.

(2) For the 2019-20 state fiscal year, \$560,143 is appropriated to the department of regulatory agencies. This appropriation is from the division of professions and occupations cash fund created in section 24-34-105 (2)(b)(I), C.R.S. To implement this act, the department may use this appropriation as follows:

(a) \$24,687 for use by the division of professions and occupations for personal services, which amount is based on an assumption that the division will require an additional 0.4 FTE; and

(b) \$535,456 for the purchase of legal services.

(3) For the 2019-20 state fiscal year, \$535,456 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of regulatory agencies under subsection (2)(b) of this section and is based on an assumption that the department of law will require an additional 2.9 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of regulatory agencies.

SECTION 6. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 29, 2019