



## Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

# Final Fiscal Note

<b>Drafting Number:</b>	LLS 21-0914	<b>Date:</b>	September 16, 2021
<b>Prime Sponsors:</b>	Rep. Garnett; Caraveo Sen. Hansen; Lundeen	<b>Bill Status:</b>	Signed into Law
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**Bill Topic:** **REGULATING MARIJUANA CONCENTRATES**

<b>Summary of Fiscal Impact:</b>	<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill requires a study of high-potency marijuana concentrates, and makes changes to state law related to physician recommendations for medical marijuana, the sale of medical marijuana, and the sale of marijuana concentrate. The bill increases state revenue and expenditures and local government costs on an ongoing basis.

**Appropriation Summary:** In FY 2021-22, the bill requires an appropriation of \$6.8 million to multiple state agencies.

**Fiscal Note Status:** This fiscal note reflects the enacted bill.

**Table 1  
State Fiscal Impacts Under HB 21-1317**

		<b>Budget Year FY 2021-22</b>	<b>Out Year FY 2022-23</b>
<b>Revenue</b>	Cash Funds	\$620,567	\$260,780
	<b>Total</b>	<b>\$620,567</b>	<b>\$260,780</b>
<b>Expenditures</b>	General Fund	\$315,656	\$387,489
	Cash Funds	\$531,337	\$242,224
	Marijuana Tax Cash Fund	\$4,000,000	\$1,000,000
	Highway Users Tax Fund*	\$2,000,000	-
	Centrally Appropriated	\$150,125	\$84,044
	<b>Total Expenditures</b>	<b>\$6,997,118</b>	<b>\$1,713,756</b>
	<b>Total FTE</b>	<b>6.5 FTE</b>	<b>5.4 FTE</b>
<b>Transfers</b>	Marijuana Tax Cash Fund	(\$2,000,000)	-
	Highway Users Tax Fund*	\$2,000,000	-
	<b>Total Transfers</b>	<b>\$0</b>	<b>-</b>
<b>TABOR Refund</b>		-	-

\*First Time Drunk Driving Offender Account within the Highway Users Tax Fund.

## **Summary of Legislation**

The bill requires a study of high-potency marijuana concentrates, defines retail and medical marijuana concentrates, and makes changes to state law related to physician recommendations for medical marijuana, the sale of medical marijuana, and the sale of marijuana concentrate, among other changes.

**Physician certification of medical marijuana.** The bill adds additional requirements for a physician certifying that the patient has a debilitating or disabling medical condition that would benefit from the use of medical marijuana. Specifically, the bill requires that a physician:

- complete an in-person assessment;
- review the patient’s mental health history, and determine whether a health issue could be exacerbated by the use of medical marijuana;
- not charge a fee to patients for recommending an extended plant count or for making a recommendation that exceeds requirements in state law;
- take a continuing education course on the topic that is at least five hours every two years; and
- include certain information on a patient’s medical marijuana certification, including the patient and physician’s names and addresses, the maximum THC potency level recommended, the recommended product, if any, the patient’s daily authorized quantity if it exceeds the statutory limits, and directions for use.

**Patients ages 18 to 20.** Except for patients that had a medical marijuana registry card prior to the age of 18, the bill specifies that patients ages 18 to 20 are not eligible for a registry card unless the following conditions are met:

- two physicians from separate medical practices have diagnosed the patient with a disabling or debilitating medical condition after an in-person consultation, unless the patient is homebound;
- one of the physicians has explained the risks and benefits of medical marijuana use and has provided written documentation of the diagnosis and recommendation; and
- the patient attends follow up appointments every six months with one of the physicians.

**Study of high-potency THC marijuana concentrates.** The bill requires that the Colorado School of Public Health (SPH) review and report on available evidence-based research on the possible physical and mental health effects of high-potency THC marijuana concentrates, and convene a scientific review council to review the report and make recommendations to the General Assembly.

The SPH must report on any research gaps, as well as the funding and timeline needed to complete necessary studies, by January 1, 2022, and produce an initial report by July 1, 2022. Subject to available appropriations, the SPH may conduct and must report on any additional research. The bill appropriates \$1.0 million per year for three years to conduct the required research. The SPH may not accept gifts, grants, and donations for this research.

**Public information campaign.** The SPH must produce a public information campaign, approved by the scientific review council, on the effect of high-potency THC marijuana on the brain and on physical and mental health.

**Sale limits.** Under the bill, a medical marijuana store may not sell more than eight grams of medical marijuana concentrate to a patient in a single day, or no more than two grams to a patient in a single day if the patient is between 18 and 20 years old. These limits do not apply if the patient is homebound and has physician authorization for a higher amount, if it would be a significant physical or geographic hardship to make a daily purchase, or if the patient had a medical marijuana registry card prior to the age of 18. A retail marijuana store may not sell more than eight grams of retail marijuana concentrate to a person in a single day.

**Tracking system.** When completing a patient sales transaction, a medical marijuana store must immediately record the transaction into the seed-to-sale tracking system in order to allow for:

- continuous monitoring of patient data to identify discrepancies with daily authorized quantity limits and THC potency authorizations;
- access and retrieval of real-time sales data based on the patient identification number; and
- responding with a user error message if a sale will exceed the patient's daily quantity limit or THC potency authorization.

**Verification of medical marijuana purchase.** Employees of the store must verify that the purchase will not exceed the patient's daily authorized quantity limit or amount listed on the physician certification in the seed-to-sale tracking system. The patient must present the physician certification at the time of purchase if the recommendation exceeds the statutory limit, and the store must provide the educational resources created by the state licensing authority to the patient.

**Rulemaking.** The bill requires that the Department of Revenue (DOR) conduct rulemaking on the following:

- the definition of physical or geographic hardship for the purposes of sales limits;
- a prohibition on medical marijuana advertising aimed at people under age 21;
- new inventory tracking system requirements; and
- a requirement that advertising for a product with marijuana concentrate include a notice of potential risks of overconsumption.

By January 31, 2023, the DOR must promulgate rules related to requirements for marijuana concentrate, including a recommended serving size, labeling requirements, and visual representation of one recommended serving. The rules may require a measuring device that may be used to measure one recommended serving.

**Stakeholder working group.** The bill requires that the DOR convene a working group to develop a uniform certification form to be used by physicians when authorizing more than the statutorily allowed quantities of medical marijuana, and an educational resource regarding the use of marijuana concentrate.

**Coroner toxicology screens.** Beginning January 1, 2022, for each case of a non-natural death, excluding homicide, of a person under age 25, the bill requires that coroners order a toxicology screen, including testing for THC, alcohol, and scheduled drugs. Hospitals must complete the screen if the death occurs in the hospital. Results must reported through the Colorado Violent Death Reporting

System or the Health Information Exchange, and are not subject to the Colorado Open Records Act, with limited exceptions.

At the request of a county, the Colorado Department of Public Health and Environment (CDPHE) must reimburse the county for the costs of the screen, and may provide training and supplies. In addition, an association representing coroners must establish a working group to study methods to test for THC and all scheduled drugs for non-natural deaths of people under age 25, and make recommendations related to THC by July 1, 2022, and recommendations related to prescription drugs by November 1, 2022.

**CDPHE reports.** The CDPHE must prepare two annual reports: one with hospital and emergency room discharge data of patients presenting with conditions or diagnosis that reflect marijuana use, beginning at its 2022 SMART Act hearing, and one by January 2, 2023, that includes the results of toxicology screens conducted by coroners.

In addition, by January 31 of each year, CDPHE must report on the number of physicians who made medical marijuana recommendations in the prior year, the number of recommendations each physician made, and the number of homebound patients in the registry who are ages 18 to 20.

## Background

**Sales limits.** Under current law, medical marijuana stores may not sell more than 40 grams of marijuana concentrate to a patient in a single day, with exceptions for a patient with a physician exemption from the limits and who registers with the medical marijuana store. A retail marijuana store may not sell more than one ounce retail marijuana, or its equivalent in concentrate, during a single transaction.

## State Transfers

In FY 2021-22, the bill transfers \$2.0 million from the Marijuana Tax Cash Fund to the First Time Drunk Driving Offender Account in the Highway Users Tax Fund. This transfer is for the enforcement of driving under the influence of drugs.

## State Revenue

The bill increases state revenue by \$620,567 in FY 2021-22 and \$260,780 in FY 2022-23 to cover certain expenditures in the CDPHE and DOR made from the affected cash funds.

**Fee impact on marijuana patients and licensees.** Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by the CDPHE and the DOR based on cash fund balance, estimated program costs, and the estimated number of applications subject to the fee. The table below identifies the fee impact of this bill. Fee revenue to DOR is based solely on the projected costs, and a breakdown of the potential fee increase for any given license type cannot be estimated.

**Table 2  
Fee Impact of HB 21-1317**

<b>Fiscal Year</b>	<b>Type of Fee</b>	<b>Number Affected</b>	<b>Fee Increase*</b>	<b>Total Fee Impact</b>
<b>FY 2021-22</b>	Medical Marijuana Registry Fees (CDPHE)	87,000	\$4.20	\$365,400
	Med Marijuana Store License Fee - new (DOR)	424	\$601.81	\$255,167
	<b>Total</b>			<b>\$620,567</b>
<b>FY 2022-23</b>	Medical Marijuana Registry Fees (CDPHE)	87,000	\$0.62	\$53,940
	Med Marijuana Store License Fee – new (DOR)	12	\$601.00	\$7,212
	Med Marijuana Store License Fee – renewal (DOR)	424	\$470.82	\$199,628
	<b>Total</b>			<b>\$260,780</b>

*\*The current fee for the medical marijuana registry is \$25.00 with waivers for patients with income at or below 185 percent of the federal poverty level. For a new medical marijuana store, the application fee is currently \$5,000. For medical marijuana store license renewals, the application fee is currently \$300.*

## State Expenditures

The bill increases state expenditures by \$7.0 million and 6.5 FTE in FY 2021-22 and \$1.7 million and 5.4 FTE in FY 2022-23. Costs are for the DOR, the CDPHE, the School of Public Health, and the Department of Transportation, and are paid from various cash funds and the General Fund. Costs are listed in Table 3 and discussed below.

**Table 3  
Expenditures Under HB 21-1317**

<b>Cost Components</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>
<b>School of Public Health<sup>2</sup></b>		
High Potency THC Research & Report	\$1,000,000	\$1,000,000
Public Information Campaign	\$3,000,000	-
<b>SPH Subtotal</b>	<b>\$4,000,000</b>	<b>\$1,000,000</b>
<b>Department of Public Health &amp; Environment</b>		
Personal Services	\$262,456	\$199,234
Operating Expenses	\$6,345	\$4,590
Capital Outlay Costs	\$31,000	-
Computer Programming	\$150,000	-
Coroner Reimbursement & Support	\$82,025	\$159,050
Data & Reporting Costs	\$60,000	\$60,000
Centrally Appropriated Costs <sup>1</sup>	\$125,362	\$59,281
FTE - Personal Services	4.5 FTE	3.4 FTE
<b>CDPHE Subtotal</b>	<b>\$717,188</b>	<b>\$482,155</b>

**Table 3  
Expenditures Under HB 21-1317 (Cont.)**

<b>Cost Components</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>
<b>Department of Revenue</b>		
Personal Services	\$107,904	\$107,904
Operating Expenses	\$2,025	\$2,025
Capital Outlay Costs	\$12,400	\$0
Computer Programming	\$30,000	\$0
Legal Services	\$95,706	\$95,706
Compliance Investigator Equipment	\$7,132	\$1,203
Centrally Appropriated Costs <sup>1</sup>	\$24,763	\$24,763
FTE - Personal Services	1.5 FTE	1.5 FTE
FTE - Legal Services	0.5 FTE	0.5 FTE
<b>DOR Subtotal</b>	<b>\$279,930</b>	<b>\$231,601</b>
<b>Department of Transportation</b>		
DUI Enforcement	\$2,000,000	-
<b>CDOT Subtotal</b>	<b>\$2,000,000</b>	<b>-</b>
<b>Total</b>	<b>\$6,997,118</b>	<b>\$1,713,756</b>
<b>Total FTE</b>	<b>6.5 FTE</b>	<b>5.4 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

<sup>2</sup> Funding allocated to the School of Public Health in FY 2021-22 may also be spent in FY 2022-23.

### School of Public Health

The bill increases state expenditures by \$4.0 million in FY 2021-22 and \$1.0 million per year in FY 2022-23, and FY 2023-24 for the SPH from the Marijuana Tax Cash Fund. In FY 2021-22, \$3.0 million is expected to be used for the public information campaign and \$1.0 million per year through FY 2023-24 will be used for to review existing research, support the scientific review council, and conduct the required research. Funding for FY 2021-22 that is not expended may be used in FY 2022-23. The SPH is a collaboration between the University of Colorado, Colorado State University, and the University of Northern Colorado.

### Department of Public Health and Environment

**Staffing.** The CDPHE requires an estimated 4.4 FTE in FY 2021-22 and 3.3 FTE in FY 2022-23 in the Medical Marijuana Registry program and Health Statistics and Vital Records Division to make changes to the medical marijuana registry system, modify physician materials and rules, provide training for physicians and patients, handle questions, perform outreach, compile data and prepare the required reports. These costs will be split between the General Fund and the Medical Marijuana Program Cash Fund.

**Computer programming.** The CDPHE requires an estimated \$150,000 in FY 2021-22 to add fields to the medical marijuana registry for physicians to submit the information required by the bill, including potency, quantity, and product recommendations and data tracking. These costs will be paid from the Medical Marijuana Program Cash Fund.

**Coroner reimbursement and support.** The CDPHE requires \$82,025 in FY 2021-22 and \$159,050 in FY 2022-23 to reimburse coroners for the cost of additional toxicology screens and to provide supplies upon request. The cost is based on an estimated 476 additional screens conducted by coroners, at a cost of \$325 per screen, and \$5,000 to provide supplies for coroners. The FY 2021-22 cost reflects a half year impact. In addition, the CDPHE requires an estimated 0.1 FTE to provide training for coroners as requested. These costs will be paid from the General Fund.

**Data costs.** The CDPHE also requires an estimated \$60,000 per year to purchase the necessary emergency room and discharge data, and generate the statistical analyses and required reports. These costs will be paid with \$40,000 of General Fund and \$20,000 from the Medical Marijuana Program Cash Fund.

## Department of Revenue

**Staffing.** The Marijuana Enforcement Division requires an estimated 1.5 FTE beginning in FY 2021-22, including 1.0 FTE for a compliance investigator to support enforcement of the new requirements related to the seed-to-sale tracking system and sales limits; and 0.5 FTE for a legal assistant to support rulemaking and handle additional administrative actions related to the compliance investigations. Costs include standard equipment for the compliance investigator. Costs for the Marijuana Enforcement Division will be paid from the Marijuana Cash Fund.

**Computer programming.** The department requires \$30,000 to modify the METRC seed-to-sale tracking system to include daily purchase limits, patient quantity limits or potency recommendations, and the required user error message if limits are exceeded. The system is maintained by a third-party vendor, and costs include development, programming, and reporting.

**Legal services.** The DOR requires an estimated 900 hours of legal services in FY 2021-22 to conduct rulemaking and ensure that the changes to the tracking system abide by state law and privacy requirements. Legal services are provided by the Department of Law.

## Department of Regulatory Agencies

The bill increases workload for the Department of Regulatory Agencies to update rules and materials, and conduct outreach to physicians regarding the new requirements in order to recommend medical marijuana. Additionally, should physicians violate certain provisions of the bill related to recommending medical marijuana, workload may increase for the Medical Board to handle complaints or discipline. No change in appropriations is required.

## Department of Transportation

The bill provides \$2.0 million in FY 2021-22 to the Department of Transportation to be used for enforcement of driving under the influence. This is paid from the Highway Users Tax Fund.

## Centrally Appropriated Costs

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. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$150,125 in FY 2021-22 and \$84,044 in FY 2022-23.

## Local Government

The bill increases workload and costs for county coroners to conduct a toxicology screen on non-natural deaths of people under the age of 25. The cost of a toxicology screen is about \$325 and will be reimbursed by the CDPHE at the request of the county. The cost of supplies and training may be covered by the CDPHE at the request of the county.

## Effective Date

The bill was signed into law by the Governor and took effect on June 24, 2021.

## State Appropriations

In FY 2021-22, the bill requires and includes the following appropriations:

- \$4,000,000 from the Marijuana Tax Cash Fund to the Board of Regents of the University of Colorado for the School of Public Health;
- \$276,170 from the Medical Marijuana Program Cash Fund to the Colorado Department of Public Health and Environment and 2.1 FTE;
- \$315,656 from the General Fund to the Colorado Department of Public Health and Environment, and 2.4 FTE;
- \$2,000,000 from the First Time Drunk Driving Offender Account within the Highway Users Tax Fund to the Colorado Department of Transportation; and
- \$255,167 from the Marijuana Cash Fund to the Department of Revenue, and 1.5 FTE. Of this amount, \$95,706 is reappropriated to the Department of Law, with an additional 0.5 FTE.

## Departmental Difference

In addition to the costs identified in the fiscal note, CDPHE estimates that an additional 5.0 FTE and about \$477,000 are required. Of that amount, 3.0 FTE required to implement the changes to the physician certification form, including a uniform description of weight and potency, and to handle a sizable increase in the number of questions and complaints from physicians and patients navigating the changes. The fiscal note includes 1.3 FTE for this work, including physician training, updating training materials, instructions, and customer service. CDPHE estimates that 2.0 additional FTE are required for record keeping and requests from family or researchers related to coroner's data. The fiscal note includes 2.0 FTE to manage the data submission and compilation related to coroners and hospital data, which is estimated to accommodate work related to record requests.



**State and Local Government Contacts**

Health Care Policy and Financing  
Public Health and Environment

Higher Education  
Regulatory Agencies

Law  
Revenue