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Fiscal Note

Drafting Number: LLS 23-0485 **Date:** February 6, 2023
Prime Sponsors: Sen. Van Winkle; **Bill Status:** Senate Health & Human Services
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Bill Topic: **ACCESS TO MEDICAL MARIJUANA**

Summary of Fiscal Impact:

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill modifies medical marijuana requirements regarding physician certifications, daily sales limits, and tracking. The bill increases state expenditures in FY 2023-24.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of \$120,166 to the Department of Revenue.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SB 23-081

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	General Fund	\$120,166	-
	Total FTE	0.5 FTE	-
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$18,025	

Summary of Legislation

The bill modifies requirements for physicians issuing medical marijuana certifications, daily medical marijuana sales limits, and tracking provisions. It also changes references to a physician's medical marijuana "authorization" to instead refer to a "recommendation."

Physician recommendation. The bill makes it optional for a physician to include a maximum THC potency, specific product, daily quantity, or directions for use on a medical marijuana recommendation, and eliminates the requirement that the physician provide their federal drug enforcement agency number. The bill also repeals the requirement that the recommending physician review existing records of the patient's diagnosing physician or mental health provider.

Patient assessments. Under current law, a physician must conduct an in-person assessment of a patient prior to recommending medical marijuana. The bill modifies that requirement to allow an in-person or remote assessment for a patient under age 18, a patient aged 21 year or older, or a patient between 18 and 21 years old who is homebound, qualifies for a geographic hardship, or received a medical marijuana recommendation before turning 18.

Uniform certification form. Under current law, a uniform certification form is used by physicians to authorize more than statutorily allowed quantities of medical marijuana. The bill clarifies that a patient must only present a uniform certification form at a medical marijuana store if the patient needs to purchase more than current limits, and that a physician can consider whether a patient had a registry card prior to age 18 when determining whether to issue a uniform certification form.

Liability. The bill specifies that physicians and medical marijuana stores are not subject to any criminal, civil, or administrative penalties for issuing or accepting, respectively, a uniform certification form.

Sales limit. Under current law, a medical marijuana store may not sell more than 2 ounces of medical marijuana flower, products containing a combined total of 20,000 milligrams, and 8 grams of concentrate, or 2 grams for patients 18 to 20 years old, to a patient in a single business day. Exceptions to these limits vary by the type of product. The bill modifies these limits as follows:

- exempts nonedible, non-psychoactive products such as ointments, lotions, and other topical products, from the daily limit; and
- raises the limit on concentrate to 40 grams in a single day, or the equivalent of 8 grams per day within a 30 day period; and
- raises the limit on concentrate to 8 grams for patients between the ages of 18 and 21 who had a medical marijuana recommendation prior to age 18, unless the physician recommendation states the patient requires more.

Retail stores. The bill allows a retail marijuana store to sell retail products at the medical marijuana statutory limit to a patient if the patient or caregiver presents a valid registry card and is at least 21 years old.

Seed-to-sale tracking. The bill clarifies provisions for a medical marijuana store to handle sales in the event of an outage of the seed-to-sale tracking system.

Background

Medical marijuana registry. Under current law, a person may apply to the Colorado Department of Public Health and Environment (CDPHE) for a medical marijuana registry card, and must provide a physician certification that a patient has a debilitating or disabling medical condition that would benefit from the use of medical marijuana.

House Bill 21-1317 established requirements for physician certifications, including that an assessment be completed in-person, that specific information must be included on the certification, and that a physician must complete a uniform certification form in order to authorize more than statutorily allowed quantities of medical marijuana. It also established procedures for patients between the ages of 18 and 21 who did not have a registry card as a minor to obtain a registry card.

Sales limits and tracking. HB 21-1317 also established sales limits for medical marijuana concentrate, and required that a medical marijuana store record the transactions in the seed-to-sale tracking system and verify that a sale will not exceed the patient’s daily authorized quantity limits and THC potency authorization.

Under current law, patients and caregivers can only purchase medical marijuana above the sales limits, as authorized by a physician recommendation, at a medical marijuana store. A retail marijuana store may not sell above the statutory sales limits.

State Expenditures

The bill increases state expenditures in DOR by \$120,166 in FY 2023-24 only, paid from the General Fund, as the Marijuana Cash Fund cannot support these one-time expenditures. Expenditures are shown in Table 2 and detailed below. Workload will also increase in the CDPHE and the Department of Regulatory Agencies.

Table 2
Expenditures Under SB 23-081

	FY 2023-24	FY 2024-25
Department of Revenue		
Legal Services	\$95,166	-
Computer Programming	\$25,000	-
Total Cost	\$120,166	-
Total FTE – Legal Services	0.5 FTE	-

Department of Revenue. The Marijuana Enforcement Division in DOR requires 900 hours of legal services in FY 2023-24 only to conduct rulemaking and for general counsel on bill implementation—this equates to 0.5 FTE. Legal services are provided by the Department of Law at a rate of \$105.74 per hour. The DOR also requires one-time costs of \$25,000 in FY 2023-24 only to modify the METRC marijuana tracking system to reflect the new 30-day sales limit, and the ability for patients or caregivers to purchase medical marijuana sales limits at a retail marijuana store. Costs are for the contracted vendor to make the changes based on similar recent modifications.

Colorado Department of Public Health and Environment. In FY 2023-24 only, the bill increases workload for CDPHE to make certain fields in the medical marijuana registry system optional for physicians, instead of required under current law. No change in appropriations is required.

Department of Regulatory Agencies. In FY 2023-24 only, the bill minimally increases workload for the Division of Professions and Occupations to update materials to reflect the changes to physician requirements. No change in appropriations is required.

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 shown in Table 2.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2023-24, the bill requires an appropriation of \$120,166 from the General Fund to the Department of Revenue. Of this amount, \$95,166 is reappropriated to the Department of Law, with 0.5 FTE.

State and Local Government Contacts

Judicial	Law	Personnel
Public Health and Environment	Regulatory Agencies	Revenue