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SB 19-218

**REVISED
FISCAL NOTE**

(replaces fiscal note dated April 3, 2019)

Drafting Number: LLS 19-0366
Prime Sponsors: Sen. Gonzales
 Rep. Jaquez Lewis
Date: April 18, 2019
Bill Status: Senate Second Reading
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Bill Topic: SUNSET MEDICAL MARIJUANA PROGRAM

Summary of Fiscal Impact:

<input checked="" 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

Sunset bill. This bill continues the Medical Marijuana Program in the Department of Public Health and Environment, which is scheduled to repeal on September 1, 2019. State fiscal impacts under the bill include both increased revenue and expenditures from changes to the program under the bill, as well as the continuation of the program's current revenue and expenditures. The program is continued through September 1, 2028.

Appropriation Summary: For FY 2019-20, the bill requires an appropriation of \$674,150 to several agencies.

Fiscal Note Status: The fiscal note reflects the introduced bill as amended by the Senate Finance Committee.

**Table 1
State Fiscal Impacts Under SB-218***

New Impacts		FY 2019-20	FY 2020-21
Revenue	Cash Funds	\$674,593	\$1,059,541
	Total	\$674,593	\$1,059,541
Expenditures	Cash Funds	\$674,150	\$1,059,782
	Centrally Appropriated	\$32,393	\$50,242
	Total	\$706,543	\$1,110,024
	FTE	3.5 FTE	6.5 FTE
Continuing Program Impacts		FY 2019-20	FY 2020-21
Revenue	Cash Funds	-	\$2,331,720
Expenditures	Cash Funds	-	\$2,022,719
	FTE	-	18.6 FTE
TABOR Refund		-	-

* Table 1 shows the new impacts resulting from changes to the program under the bill, and the continuing impacts from extending the program beyond its current repeal date.

Summary of Legislation

This bill extends the Medical Marijuana Program in the Department of Public Health and Environment (CDPHE) until September 1, 2028, implements recommendations from the Department of Regulatory Agencies sunset review, and makes a number of other changes. Specifically, the bill clarifies that:

- only a physician can make a medical marijuana recommendation and if the patient is a minor, the physician must consult with the patient and the patient's parents;
- a parent can serve as a primary caregiver for a child with a disabling medical condition;
- caregivers for patients with debilitating medical conditions are extended the same confidentiality protections as caregivers for patients with disabling medical conditions; and
- medical marijuana registry cards are subject to revocation if a patient is convicted of a drug crime.

In addition, the bill:

- provides the authority to recommend medical marijuana to any medical professional with a valid and unrestricted federal controlled substances registration acting within his or her scope of practice;
- directs the CDPHE to change the length of time that a medical marijuana registry card is valid through rulemaking;
- requires financial disclosures from members of the Retail Marijuana Public Health Advisory Committee and expands the expertise that must be represented on the committee; and
- allows the CDPHE to inquire about collecting Colorado-specific data from the All-Payer Claims Database, hospital discharge data, and available peer-reviewed research studies.

Background

Amendment 20. Coloradans initiated and approved a constitutional amendment, Amendment 20, to legalize medical marijuana in 2000. Amendment 20 legalized the acquisition, use, possession, production, and transportation of medical marijuana for patients and caregivers by creating an affirmative defense to the state's criminal marijuana laws. A registry identification card issued by the state health agency identifies a patient authorized to use medical marijuana and is valid for one year under the Constitution.

The CDPHE maintains the confidential medical marijuana patient registry. As of February 2019, the registry includes 86,832 patients and 1,904 caregivers. In order to make an application to be placed on the medical marijuana patient registry and to receive a registry identification card, a patient must reside in Colorado and possess written documentation from a licensed physician stating that the patient has been diagnosed with a debilitating medical condition and may benefit from the medical use of marijuana. Medical marijuana may be used to treat the following debilitating medical conditions: cancer; glaucoma; HIV/AIDS; and chronic or debilitating diseases or medical conditions such as cachexia, severe pain, severe nausea, seizures, and persistent muscle spasms.

The CDPHE may also approve other medical conditions that may be treated with medical marijuana but to date has not added any conditions. The General Assembly has made statutory changes to add disabling medical conditions that may be treated with medical marijuana to include Post-Traumatic Stress Disorder (2017) and Autism Spectrum Disorders (2019).

Marijuana taxes. Persons purchasing retail marijuana pay a 15 percent excise tax on the wholesale price of marijuana, and a 15 percent special sales tax. Provided a person has been diagnosed with a qualifying debilitating or disabling medical condition, he or she may choose to enroll on the medical marijuana registry. After paying a \$25 fee to become registered and receive a "red card," medical marijuana patients can purchase medical marijuana, which is exempt from the excise and special sales taxes but subject to the 2.9 percent state sales tax. Excise taxes collected on the sale of retail marijuana are transferred from the General Fund to the Building Excellent Schools Today (BEST) Fund and the Public School Fund, while sales taxes collected are transferred to the Marijuana Tax Cash Fund and other cash funds.

Continuing Program Impacts

Based on the department's FY 2019-20 budget request, the CDPHE is expected to have revenue of \$2.3 million and expenditures of \$2.0 million to administer the Medical Marijuana program. If this bill is enacted, current revenue and expenditures will continue for the program starting in FY 2020-21. This continuing revenue is subject to TABOR; however under the March 2019 Legislative Council Staff forecast, a TABOR surplus is not expected in FY 2019-20 or FY 2020-21. If this bill is not enacted, the program as it exists in statute will end on September 1, 2020, following a wind-down period. Because the program is constitutionally required, the program will continue under the constitutional provisions.

State Revenue

This bill is expected to increase cash fund revenue by \$674,593 in FY 2019-20, and \$1,059,541 in FY 2020-21. This includes \$556,043 in FY 2019-20 and \$950,991 in FY 2020-21 for the Division of Professions and Occupations in the Department of Regulatory Agencies (DORA) and \$108,550 per year for the CDPHE. It may also both increase and decrease state tax revenue. This revenue is subject to TABOR and the impacts are described below.

Fee impact on medical marijuana users. The fiscal note assumes that the bill will increase the number of individuals applying for registry cards, but the increase will depend on a number of factors. The fiscal note assumes a five percent (4,342) increase in applicants, which will increase revenue to the Medical Marijuana Cash Fund by \$108,550 per year.

Fee impact on health care professionals. The bill authorizes the following prescribers to recommend medical marijuana:

- physician assistants;
- advanced nurse practitioners with prescriptive authority;
- dentists;
- podiatrists;
- optometrists; and
- veterinarians.

The fiscal note estimates that increased fee revenue of \$566,043 in FY 2019-20 and \$950,991 in FY 2020-21 are required to cover increased expenditures for enforcement under the bill. If a prescriber is subject to an enforcement action by one of the regulatory boards under the Division of Professions and Occupations in the DORA for a violation related to recommending medical marijuana, the costs for that action will be included in the formula for determining the licensing fees for members of that profession. If no members of a profession are subject to an enforcement action, then no additional costs will be included in their licensing fees. Because it is unknown which types of medical professionals will commit violations, estimates of specific fee increases are not included in the fiscal note.

Increases in sales tax revenue. To the extent that this bill increases the number of individuals who will be able to purchase medical marijuana with a registry card who are not currently using retail marijuana, state sales tax revenue deposited in the Marijuana Tax Cash Fund will increase. The amount is expected to be minimal.

Decreases in excise tax and special sales tax revenue. If persons who are over 21 years of age and who choose to enroll on the medical marijuana registry who are currently using retail marijuana and begin purchasing medical marijuana instead, excise tax and special sales tax revenue collected on retail marijuana will decrease. This analysis assumes that any change in revenue is marginal and the overall impact is minimal.

State Expenditures

This bill will increase state cash fund expenditures by \$706,543 and 3.5 FTE in FY2019-20 and \$1,110,024 and 6.5 FTE in FY 2020-21. These expenditures are shown in Table 2 and explained below.

**Table 2
 Expenditures Under SB 19-218**

Cost Components	FY 2019-20	FY 2020-21
Department of Regulatory Agencies		
Personal Services	\$24,687	\$26,931
Operating Expenses and Capital Outlay	-	-
Legal Services	\$535,456	\$917,955
Centrally Appropriated Costs*	\$5,900	\$6,105
FTE – Personal Services	0.4 FTE	1.4 FTE
FTE – Legal Services	2.9 FTE	4.9 FTE
DORA (Subtotal)	\$566,043	\$950,991

Table 2
Expenditures Under SB 19-218 (Cont.)

Department of Public Health and Environment		
Personal Services	\$14,007	\$84,160
Operating Expenses and Capital Outlay		\$10,736
Computer Programming	\$100,000	\$20,000
Centrally Appropriated Costs*	\$26,493	\$44,137
FTE – Personal Services	0.2 FTE	0.2 FTE
FTE – Legal Services	-	-
CDPHE (Subtotal)	\$140,500	\$159,033
Total	\$706,543	\$1,110,024
Total FTE	3.5 FTE	6.5 FTE

* Centrally appropriated costs are not included in the bill's appropriation.

DORA. Costs in DORA will increase by \$566,043 and 0.4 FTE in FY 2019-20 and \$950,991 and 0.4 FTE in FY2020-21, paid from the Professions and Occupations Cash Fund. These costs are to investigate and take enforcement action against providers violating the statutory requirements for recommending medical marijuana to a patient. The average cost to litigate a case against physicians is \$76,500.

The fiscal note assumes that same percentage of the health care providers covered by this bill will commit violations related to medical marijuana as physicians (0.06 percent) at the same cost per case, with a 10 percent settlement rate. This equates to 13 investigations, 12 cases litigated, and one case settling without litigation per year. For FY 2019-20, the division requires 5,167 hours of legal services and 2.9 FTE and 8,858 hours of legal services and 4.9 FTE in FY 2020-21. Funding for legal services hours will be reappropriated to the Department of Law.

Examples of violations include: not completing a full assessment of a patient's medical history; failure to maintain patient documentation; and fraud. The costs for FY 2019-20 are prorated to give new health care providers time to become acquainted with the rules and law on recommending medical marijuana, treatment information, and to register with the CDPHE. Should an adjustment be required to legal services hours based on the actual cases received, the division is expected to address that through the annual budget process.

CDPHE. Costs in the CDPHE will increase by \$140,500 and 0.2 FTE in FY 2019-20 and \$159,033 and 1.4 FTE in FY 2020-21, paid from the Medical Marijuana Cash Fund. The State Board of Health will promulgate rules regarding the length of time that a registry identification card is valid for patients with a disabling medical condition. The CDPHE will update its information technology workflow and medical marijuana registry system to implement such a change. The fiscal note assumes that registry applications will increase because of the increased number of providers and that additional registry staff will be required beginning in December 2020. Should registry applications increase at a higher or lower rate, the fiscal note expects that the CDPHE will request a funding adjustment through the annual budget process.

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 \$32,393 in FY 2019-20 and \$50,242 in FY 2020-21.

Effective Date

The bill takes effect August 2, 2019, if the General Assembly adjourns on May 3, 2019, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2019-20, the bill requires the following appropriations:

- \$560,143 and 0.4 FTE to the Department of Regulatory Agencies from the Division of Professions and Occupations Cash Fund;
- \$535,456 and 2.9 FTE to the Department of Law in reappropriated funds from DORA; and
- \$114,007 and 0.2 FTE to the Department of Public Health and Environment from the Medical Marijuana Cash Fund.

State and Local Government Contacts

Information Technology
Regulatory Agencies

Law
Revenue

Public Health and Environment