

CHAPTER 356

HEALTH AND ENVIRONMENT

SENATE BILL 10-109

BY SENATOR(S) Romer and Spence, Boyd, Bacon, Hodge, Hudak, Johnston, Tapia, Tochtrop, Foster, Newell, Williams;
also REPRESENTATIVE(S) Massey and McCann, Rice, Frangas, McFadyen, Casso, Fischer, Labuda, Miklosi, Soper, Summers,
Todd, Vigil, Kagan, Looper, Waller.

AN ACT

CONCERNING REGULATION OF THE PHYSICIAN-PATIENT RELATIONSHIP FOR MEDICAL MARIJUANA PATIENTS, AND MAKING APPROPRIATIONS IN CONNECTION THEREWITH.

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

SECTION 1. 25-1.5-106, Colorado Revised Statutes, is amended to read:

25-1.5-106. Medical marijuana program - powers and duties of state health agency - medical review board - repeal. (1) **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) "BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP", FOR PURPOSES OF THE MEDICAL MARIJUANA PROGRAM, MEANS:

(I) A PHYSICIAN AND A PATIENT HAVE A TREATMENT OR COUNSELING RELATIONSHIP, IN THE COURSE OF WHICH THE PHYSICIAN HAS COMPLETED A FULL ASSESSMENT OF THE PATIENT'S MEDICAL HISTORY AND CURRENT MEDICAL CONDITION, INCLUDING AN APPROPRIATE PERSONAL PHYSICAL EXAMINATION;

(II) THE PHYSICIAN HAS CONSULTED WITH THE PATIENT WITH RESPECT TO THE PATIENT'S DEBILITATING MEDICAL CONDITION BEFORE THE PATIENT APPLIES FOR A REGISTRY IDENTIFICATION CARD; AND

(III) THE PHYSICIAN IS AVAILABLE TO OR OFFERS TO PROVIDE FOLLOW-UP CARE AND TREATMENT TO THE PATIENT, INCLUDING BUT NOT LIMITED TO PATIENT EXAMINATIONS, TO DETERMINE THE EFFICACY OF THE USE OF MEDICAL MARIJUANA

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

AS A TREATMENT OF THE PATIENT'S DEBILITATING MEDICAL CONDITION.

(b) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE STATE HEALTH AGENCY.

(c) "IN GOOD STANDING", WITH RESPECT TO A PHYSICIAN'S LICENSE, MEANS:

(I) THE PHYSICIAN HOLDS A DOCTOR OF MEDICINE OR DOCTOR OF OSTEOPATHIC MEDICINE DEGREE FROM AN ACCREDITED MEDICAL SCHOOL;

(II) THE PHYSICIAN HOLDS A VALID, UNRESTRICTED LICENSE TO PRACTICE MEDICINE IN COLORADO; AND

(III) THE PHYSICIAN HAS A VALID AND UNRESTRICTED UNITED STATES DEPARTMENT OF JUSTICE FEDERAL DRUG ENFORCEMENT ADMINISTRATION CONTROLLED SUBSTANCES REGISTRATION.

(d) "MEDICAL MARIJUANA PROGRAM" MEANS THE PROGRAM ESTABLISHED BY SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION AND THIS SECTION.

(e) "REGISTRY IDENTIFICATION CARD" MEANS THE NONTRANSFERABLE CONFIDENTIAL REGISTRY IDENTIFICATION CARD ISSUED BY THE STATE HEALTH AGENCY TO PATIENTS AND PRIMARY CAREGIVERS PURSUANT TO THIS SECTION.

(f) "STATE HEALTH AGENCY" MEANS THE PUBLIC HEALTH RELATED ENTITY OF STATE GOVERNMENT DESIGNATED BY THE GOVERNOR BY EXECUTIVE ORDER PURSUANT TO SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION.

~~(1)~~ (2) **Rule-making.** The ~~department~~ STATE HEALTH AGENCY shall, pursuant to section 14 of article XVIII of the state constitution, promulgate rules of administration concerning the implementation of the medical marijuana program ~~established by such section and~~ that specifically govern the following:

(a) The establishment and maintenance of a confidential registry of patients who have applied for and are entitled to receive a registry identification card. THE CONFIDENTIAL REGISTRY OF PATIENTS MAY BE USED TO DETERMINE WHETHER A PHYSICIAN SHOULD BE REFERRED TO THE COLORADO BOARD OF MEDICAL EXAMINERS FOR A SUSPECTED VIOLATION OF SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, PARAGRAPH (a), (b), OR (c) OF SUBSECTION (3) OF THIS SECTION, OR THE RULES PROMULGATED BY THE STATE HEALTH AGENCY PURSUANT TO THIS SUBSECTION (2).

(b) The development by the ~~department~~ STATE HEALTH AGENCY of an application form and THE PROCESS FOR making ~~such~~ THE form available to residents of this state seeking to be listed on the confidential registry of patients who are entitled to receive a registry identification card;

(c) The verification by the ~~department~~ STATE HEALTH AGENCY of medical information concerning patients who have applied for a ~~confidential~~ registry IDENTIFICATION card OR FOR RENEWAL OF A REGISTRY IDENTIFICATION CARD;

(d) THE DEVELOPMENT BY THE STATE HEALTH AGENCY 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;

~~(d)~~ (e) The CONDITIONS FOR issuance AND RENEWAL, and THE form, of ~~confidential~~ THE registry identification cards ISSUED TO PATIENTS, INCLUDING BUT NOT LIMITED TO STANDARDS FOR ENSURING THAT THE STATE HEALTH AGENCY ISSUES A REGISTRY IDENTIFICATION CARD TO A PATIENT ONLY IF HE OR SHE HAS A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP WITH A PHYSICIAN IN GOOD STANDING AND LICENSED TO PRACTICE MEDICINE IN THE STATE OF COLORADO;

~~(e)~~ (f) Communications with law enforcement officials about ~~confidential~~ registry identification cards that have been suspended ~~where~~ WHEN a patient is no longer diagnosed as having a debilitating medical condition; ~~and~~

~~(f)~~ (g) The manner in which the ~~department~~ STATE HEALTH AGENCY may consider adding debilitating medical conditions to the list of debilitating medical conditions contained in section 14 of article XVIII of the state constitution.

(3) **Physicians.** A PHYSICIAN WHO CERTIFIES A DEBILITATING MEDICAL CONDITION FOR AN APPLICANT TO THE MEDICAL MARIJUANA PROGRAM SHALL COMPLY WITH ALL OF THE FOLLOWING REQUIREMENTS:

(a) THE PHYSICIAN SHALL HAVE A VALID, UNRESTRICTED COLORADO LICENSE TO PRACTICE MEDICINE, WHICH LICENSE IS IN GOOD STANDING.

(b) AFTER A PHYSICIAN, WHO HAS A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP WITH THE PATIENT APPLYING FOR THE MEDICAL MARIJUANA PROGRAM, DETERMINES, FOR THE PURPOSES OF MAKING A RECOMMENDATION, THAT THE PATIENT HAS A DEBILITATING MEDICAL CONDITION AND THAT THE PATIENT MAY BENEFIT FROM THE USE OF MEDICAL MARIJUANA, THE PHYSICIAN SHALL CERTIFY TO THE STATE HEALTH AGENCY THAT THE PATIENT HAS A DEBILITATING MEDICAL CONDITION AND THAT THE PATIENT MAY BENEFIT FROM THE USE OF MEDICAL MARIJUANA. IF THE PHYSICIAN CERTIFIES THAT THE PATIENT WOULD BENEFIT FROM THE USE OF MEDICAL MARIJUANA BASED ON A CHRONIC OR DEBILITATING DISEASE OR MEDICAL CONDITION, THE PHYSICIAN SHALL SPECIFY THE CHRONIC OR DEBILITATING DISEASE OR MEDICAL CONDITION AND, IF KNOWN, THE CAUSE OR SOURCE OF THE CHRONIC OR DEBILITATING DISEASE OR MEDICAL CONDITION.

(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 AFTER REDACTING ANY PATIENT OR PRIMARY CAREGIVER IDENTIFYING INFORMATION.

(d) A PHYSICIAN SHALL NOT:

(I) ACCEPT, SOLICIT, OR OFFER ANY FORM OF PECUNIARY REMUNERATION FROM OR TO A PRIMARY CAREGIVER, DISTRIBUTOR, OR ANY OTHER PROVIDER OF MEDICAL

MARIJUANA;

(II) OFFER A DISCOUNT OR ANY OTHER THING OF VALUE TO A PATIENT WHO USES OR AGREES TO USE A PARTICULAR PRIMARY CAREGIVER, DISTRIBUTOR, OR OTHER PROVIDER OF MEDICAL MARIJUANA TO PROCURE MEDICAL MARIJUANA;

(III) EXAMINE A PATIENT FOR PURPOSES OF DIAGNOSING A DEBILITATING MEDICAL CONDITION AT A LOCATION WHERE MEDICAL MARIJUANA IS SOLD OR DISTRIBUTED; OR

(IV) HOLD AN ECONOMIC INTEREST IN AN ENTERPRISE THAT PROVIDES OR DISTRIBUTES MEDICAL MARIJUANA IF THE PHYSICIAN CERTIFIES THE DEBILITATING MEDICAL CONDITION OF A PATIENT FOR PARTICIPATION IN THE MEDICAL MARIJUANA PROGRAM.

(4) **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 (3) OF THIS SECTION, OR THE RULES PROMULGATED BY THE STATE HEALTH AGENCY PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE STATE HEALTH AGENCY MAY REFER THE MATTER TO THE STATE BOARD OF MEDICAL EXAMINERS CREATED IN SECTION 12-36-103, C.R.S., FOR AN INVESTIGATION AND DETERMINATION.

(b) IF THE STATE HEALTH AGENCY HAS REASONABLE CAUSE TO BELIEVE THAT A PHYSICIAN HAS VIOLATED PARAGRAPH (d) OF SUBSECTION (3) OF THIS SECTION, THE STATE HEALTH AGENCY SHALL CONDUCT A HEARING PURSUANT TO SECTION 24-4-104, C.R.S., TO DETERMINE WHETHER A VIOLATION HAS OCCURRED.

(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 OR A FINDING OF A VIOLATION OF PARAGRAPH (d) OF SUBSECTION (3) 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.

(d) WHEN THE STATE HEALTH AGENCY HAS OBJECTIVE AND REASONABLE GROUNDS TO BELIEVE AND FINDS, UPON A FULL INVESTIGATION, THAT A PHYSICIAN HAS DELIBERATELY AND WILLFULLY VIOLATED SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION OR THIS SECTION AND THAT THE PUBLIC HEALTH, SAFETY, OR WELFARE IMPERATIVELY REQUIRES EMERGENCY ACTION, AND THE STATE HEALTH AGENCY INCORPORATES THOSE FINDINGS INTO AN ORDER, THE STATE HEALTH AGENCY MAY SUMMARILY SUSPEND THE PHYSICIAN'S AUTHORITY TO RECOMMEND THE USE OF MEDICAL MARIJUANA PENDING THE PROCEEDINGS SET FORTH IN PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (4). A HEARING ON THE ORDER OF SUMMARY SUSPENSION SHALL BE HELD NO LATER THAN THIRTY DAYS AFTER THE ISSUANCE OF THE ORDER OF SUMMARY SUSPENSION, UNLESS A LONGER TIME IS AGREED TO BY THE PARTIES, AND AN INITIAL DECISION IN ACCORDANCE WITH SECTION 24-4-105 (14), C.R.S., SHALL BE RENDERED NO LATER THAN THIRTY DAYS

AFTER THE CONCLUSION OF THE HEARING CONCERNING THE ORDER OF SUMMARY SUSPENSION.

(5) **Renewal of patient identification card upon criminal conviction.** ANY PATIENT WHO IS CONVICTED OF A CRIMINAL OFFENSE UNDER ARTICLE 18 OF TITLE 18, C.R.S., SENTENCED OR ORDERED BY A COURT TO DRUG OR SUBSTANCE ABUSE TREATMENT, OR SENTENCED TO THE DIVISION OF YOUTH CORRECTIONS, SHALL BE SUBJECT TO IMMEDIATE RENEWAL OF HIS OR HER PATIENT REGISTRY IDENTIFICATION CARD, AND THE PATIENT SHALL APPLY FOR THE RENEWAL BASED UPON A RECOMMENDATION FROM A PHYSICIAN WITH WHOM THE PATIENT HAS A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP.

(6) A PARENT WHO SUBMITS A MEDICAL MARIJUANA REGISTRY APPLICATION FOR HIS OR HER CHILD SHALL HAVE HIS OR HER SIGNATURE NOTARIZED ON THE APPLICATION.

~~(7)~~ (7) **Fees - repeal.** (a) The ~~department~~ STATE HEALTH AGENCY may collect fees from patients who, pursuant to section 14 of article XVIII of the state constitution, apply to the medical marijuana program ~~established by such section~~ for a ~~marijuana~~ registry identification CARD for the purpose of offsetting the ~~department's~~ STATE HEALTH AGENCY'S direct and indirect costs of administering the program. The amount of ~~such~~ THE fees shall be set by rule of the ~~state board of health~~ STATE HEALTH AGENCY. THE STATE HEALTH AGENCY SHALL ALSO PROMULGATE RULES THAT ALLOW A PATIENT TO CLAIM INDIGENCE AS IT RELATES TO PAYING THE FEE APPROVED PURSUANT TO THIS SUBSECTION (7). THE RULES SHALL ESTABLISH THE STANDARD FOR INDIGENCE, THE PROCESS THE STATE HEALTH AGENCY SHALL USE TO DETERMINE WHETHER A PATIENT WHO CLAIMS INDIGENCE MEETS THE STANDARD FOR INDIGENCE, AND THE PROCESS FOR GRANTING A WAIVER IF THE STATE HEALTH AGENCY DETERMINES THAT THE PATIENT MEETS THE STANDARD FOR INDIGENCE. All fees collected by the ~~department~~ STATE HEALTH AGENCY through the medical marijuana program shall be transferred to the state treasurer who shall credit the same to the medical marijuana program cash fund, which fund is hereby created.

(b) (I) THE FEES COLLECTED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (7) MAY BE USED FOR THE DIRECT AND INDIRECT COSTS TO THE STATE BOARD OF MEDICAL EXAMINERS ASSOCIATED WITH INVESTIGATING AND PROSECUTING UP TO FIVE OF THE REFERRALS OF PHYSICIANS RECEIVED PER YEAR FROM THE STATE HEALTH AGENCY IN RELATION TO THE MEDICAL MARIJUANA PROGRAM.

(II) THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE JULY 1, 2012.

~~(8)~~ (8) **Cash fund - repeal.** (a) The medical marijuana program cash fund shall be subject to annual appropriation by the general assembly to the ~~department~~ STATE HEALTH AGENCY for the purpose of establishing, operating, and maintaining the medical marijuana program. ~~established by section 14 of article XVIII of the state constitution.~~ All moneys credited to the medical marijuana program cash fund and all interest derived from the deposit of such moneys that are not expended during the fiscal year shall be retained in the fund for future use and shall not be credited or transferred to the general fund or any other fund.

(b) Notwithstanding any provision of paragraph (a) of this subsection (~~3~~) (8) to the contrary, on April 20, 2009, the state treasurer shall deduct two hundred fifty-eight thousand seven hundred thirty-five dollars from the medical marijuana program cash fund and transfer such sum to the general fund.

(c) (I) THE STATE HEALTH AGENCY SHALL TRANSFER FROM THE MEDICAL MARIJUANA PROGRAM CASH FUND TO THE DEPARTMENT OF REGULATORY AGENCIES FOR ALLOCATION TO THE STATE BOARD OF MEDICAL EXAMINERS MONEYS TO COVER THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH INVESTIGATING AND PROSECUTING UP TO FIVE OF THE REFERRALS OF PHYSICIANS RECEIVED PER YEAR FROM THE STATE HEALTH AGENCY IN RELATION TO THE MEDICAL MARIJUANA PROGRAM.

(II) THIS PARAGRAPH (c) IS REPEALED, EFFECTIVE JULY 1, 2012.

(9) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2019.

SECTION 2. 25-1-1202 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

25-1-1202. Index of statutory sections regarding medical record confidentiality and health information. (1) Statutory provisions concerning policies, procedures, and references to the release, sharing, and use of medical records and health information include the following:

(vv.5) SECTION 25-1.5-106, CONCERNING THE MEDICAL MARIJUANA PROGRAM;

SECTION 3. 12-36-117 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

12-36-117. Unprofessional conduct - repeal. (1) "Unprofessional conduct" as used in this article means:

(mm) FAILURE TO COMPLY WITH THE REQUIREMENTS OF SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, SECTION 25-1.5-106, C.R.S., OR THE RULES PROMULGATED BY THE STATE HEALTH AGENCY PURSUANT TO SECTION 25-1.5-106 (2), C.R.S.

SECTION 4. 12-36-118 (5) (g), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

12-36-118. Disciplinary action by board - immunity. (5) (g) (X) IN ALL CASES INVOLVING ALLEGED VIOLATIONS OF SECTION 12-36-117 (1) (mm), THE BOARD SHALL PROMPTLY NOTIFY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT OF ITS FINDINGS, INCLUDING WHETHER IT FOUND THAT THE PHYSICIAN VIOLATED SECTION 12-36-117 (1) (mm) AND ANY RESTRICTIONS IT PLACED ON THE PHYSICIAN WITH RESPECT TO RECOMMENDING THE USE OF MEDICAL MARIJUANA.

SECTION 5. 12-36-103 (6) (a), Colorado Revised Statutes, is amended to read:

12-36-103. State board of medical examiners - immunity - subject to termination - repeal of article. (6) (a) (I) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the Colorado state board of medical examiners created by this section.

(II) THE REVIEW REQUIRED BY THIS SUBSECTION (6) SHALL INCLUDE AN ANALYSIS OF PHYSICIAN RESPONSIBILITIES RELATED TO RECOMMENDATIONS FOR MEDICAL MARIJUANA AND THE PROVISIONS OF SECTION 25-1.5-106, C.R.S.

SECTION 6. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the medical marijuana program cash fund created in section 25-1.5-106 (8), Colorado Revised Statutes, not otherwise appropriated, to the department of public health and environment, for the fiscal year beginning July 1, 2010, the sum of eight hundred fifteen thousand two hundred twenty-four dollars (\$815,224) cash funds and 2.1 FTE, or so much thereof as may be necessary, for the implementation of this act. Of said appropriation, ninety-nine thousand eight hundred seventy-nine dollars (\$99,879) shall be allocated to the administration and support division and seven hundred fifteen thousand three hundred forty-five dollars (\$715,345) and 2.1 FTE shall be allocated to the center for health and environmental information.

(2) In addition to any other appropriation, there is hereby appropriated to the department of regulatory agencies, for the fiscal year beginning July 1, 2010, the sum of five hundred ninety-three thousand three hundred thirty-three dollars (\$593,333) and 1.2 FTE, for the investigation and prosecution of physicians referred to the board of medical examiners pursuant to section 25-1.5-106 (5), Colorado Revised Statutes, or so much thereof as may be necessary for the implementation of this act. Said appropriation shall be from reappropriated funds received from the department of public health and environment out of the appropriation made in subsection (1) of this section to the center for health and environmental information. Of said appropriation, five hundred twelve thousand five hundred eighty-four dollars (\$512,584) shall be allocated to the executive director's office and eighty thousand seven hundred forty-nine dollars (\$80,749) and 1.2 FTE shall be allocated to the division of registrations.

(3) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2010, the sum of six hundred twelve thousand four hundred sixty-three dollars (\$612,463) and 5.2 FTE, or so much thereof as may be necessary, for the provision of legal services to the department of public health and environment and the department of regulatory agencies related to the implementation of this act. Of said appropriation, ninety-nine thousand eight hundred seventy-nine dollars (\$99,879) shall be from reappropriated funds received from the department of public health and environment out of the appropriation made in subsection (1) of this section to the administration and support division and five hundred twelve thousand five hundred eighty-four dollars (\$512,584) shall be from reappropriated funds received from the department of regulatory agencies out of the appropriation made in subsection (2) of this section to the executive director's office.

SECTION 7. Severability. If any provision of this act or the application thereof

to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 8. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 7, 2010