

1 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

2
3 **Health and Environmental Information and Statistics Division**

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5 **MEDICAL USE OF MARIJUANA**

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7 **5 CCR 1006-2**

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9 **Regulation 1: Establishment and confidentiality of the registry for the medical use of**
10 **marijuana**

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- 12 A. The Colorado Department of Public Health and Environment (“the department”) shall
13 create and maintain a confidential registry (“the registry”) of patients who have applied
14 for and are entitled to receive a registry identification card. All personal medical records
15 and personal identifying information held by the department in compliance with these
16 regulations shall be confidential information. No person shall be permitted to gain access
17 to any information about patients in this registry, or any information otherwise maintained
18 in the registry by the department about physicians and primary care-givers of patients in
19 the registry, except for authorized employees of the department in the course of their
20 official duties and authorized employees of state and local law enforcement agencies
21 which have stopped or arrested a person who claims to be engaged in the medical use of
22 marijuana and in possession of a registry identification card issued pursuant to
23 regulations two and three. The department may release information concerning a specific
24 patient to that patient with the written authorization of such patient.
- 25
- 26 B. Any officer or employee or agent of the department who violates this regulation by
27 releasing or making public confidential information in the registry shall be subject to any
28 existing statutory penalties for a breach of confidentiality of the registry.
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30 **Regulation 2: Application for a registry identification card**

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- 32 A. DEFINITIONS
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- 34 i) An “adult applicant” is defined as a patient eighteen years of age or older. A
35 “minor applicant” is defined as a patient less than eighteen years of age.
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- 37 ii) “PRIMARY CARE-GIVER” MEANS A PERSON OTHER THAN THE PATIENT
38 AND THE PATIENT’S PHYSICIAN, WHO IS EIGHTEEN YEARS OF AGE OR
39 OLDER AND HAS SIGNIFICANT RESPONSIBILITY FOR MANAGING THE
40 WELL-BEING OF A PATIENT WHO HAS A DEBILITATING MEDICAL
41 CONDITION.
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- 43 iii) “SIGNIFICANT RESPONSIBILITY FOR MANAGING THE WELL-BEING OF A
44 PATIENT” MEANS ASSISTING A PATIENT WITH DAILY ACTIVITIES,
45 INCLUDING BUT NOT LIMITED TO TRANSPORTATION, HOUSEKEEPING,
46 MEAL PREPARATION, AND SHOPPING, AND MAKING ANY NECESSARY
47 ARRANGEMENT FOR ACCESS TO MEDICAL CARE AND/OR SERVICES.
- 48
- 49 B. In order to be placed in the registry and to receive a registry identification card, an adult
50 applicant must reside in Colorado and submit an application form supplied by the
51 department, COMPLETED AND NOTARIZED. The adult applicant must provide the
52 following information with the application:
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- 54 i) The applicant’s name, address, date of birth, and social security number;

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- ii) The name and address of the applicant's primary care-giver, if one is designated at the time of application; HOWEVER, NO INDIVIDUAL SHALL BE LISTED AS A PRIMARY CARE-GIVER FOR MORE THAN FIVE PATIENTS AT ANY GIVEN TIME;
- iii) Written documentation from the applicant's physician that the applicant has been diagnosed with a debilitating medical condition as defined in regulation six and the physician's conclusion that the applicant might benefit from the medical use of marijuana; and
- iv) The name, address, and telephone number of the physician who has concluded the applicant might benefit from the medical use of marijuana; AND
- v) A COPY OF A SECURE AND VERIFIABLE IDENTITY DOCUMENT, IN COMPLIANCE WITH THE SECURE AND VERIFIABLE IDENTITY DOCUMENT ACT, C.R.S. § 24-72.1-101 ET SEQ., FOR THE PATIENT AND PRIMARY CARE-GIVER, IF ANY IS DESIGNATED.

C. In order for a minor applicant to be placed in the registry and to receive a registry identification card, the minor applicant must reside in Colorado and a parent residing in Colorado must consent in writing to serve as the minor applicant's primary care-giver. Such parent must submit an application form supplied by the department. The parent of the minor applicant must provide the following information with the application:

- i) The applicant's name, address, date of birth, and social security number,
- ii) Written documentation from two of the applicant's physicians that the applicant has been diagnosed with a debilitating medical condition as defined in regulation six and each physician's conclusion that the applicant might benefit from the medical use of marijuana;
- iii) The name, address, and telephone number of the two physicians who have concluded the applicant might benefit from the medical use of marijuana;
- iv) Consent from each of the applicant's parents residing in Colorado that the applicant may engage in the medical use of marijuana; and
- v) Documentation that one of the physicians referred to in (iii) has explained the possible risks and benefits of medical use of marijuana to the applicant and each of the applicant's parents residing in Colorado.

D. To maintain an effective registry identification card, a patient must annually resubmit to the department, at least thirty days prior to the expiration date, updated written documentation of the information required in paragraphs B and C of this regulation. In addition, the patient must provide the name and address of the primary care-giver, if any is designated at such time.

Regulation 3: Verification of medical information; issuance, denial, revocation, and form of registry identification cards

A. The department shall verify medical information contained in the patient's application within thirty days of receiving the application. Verification of medical information shall consist of determining that there is documentation stating the applicant has a current diagnosis with a debilitating medical condition as defined in regulation six by a physician who has a current license to practice medicine issued by the State of Colorado.

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2 B. No more than five days after verifying medical information of the applicant, the
3 department shall issue a serially numbered registry identification care to the patient. The
4 card shall state the following:
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6 i) The patient’s name, address, date of birth, and social security number;
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8 ii) That the patient’s name has been certified to the department as a person with a
9 debilitating medical condition, whereby the person may address such condition
10 with the medical use of marijuana;
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12 iii) The date of issuance of such card and the date of expiration, which shall be one
13 year from the date of issuance;
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15 iv) The name and address of the patient’s primary care-giver, if any is designated at
16 the time of application;
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18 v) How to notify the department of any change in name, address, medical status,
19 physician, or primary care-giver.
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21 C. Except for minor applicants, where the department fails within thirty-five days of receipt of
22 application to issue a registry identification card or fails to issue verbal or written notice of
23 denial of such application, the patient’s application for such card will be deemed to have
24 been approved. “Receipt” shall be deemed to have occurred upon delivery to the
25 department or deposit in the ~~u~~United ~~s~~States mails. No application shall be deemed
26 received prior to June 1, 2001.
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28 D. The department shall deny the application if it determines that information has been
29 falsified or it cannot verify the medical information as provided in paragraph A of this
30 regulation. A patient whose application has been denied by the department may not
31 reapply during the six months following the date of denial. The denial of a registry
32 identification card shall be considered a final agency action.
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34 E. In addition to any other penalties provided by law, the department shall revoke for a
35 period of one year the registry identification card of any patient found to have willfully
36 violated the provisions of Section 14 of Amendment 20 of the Colorado Constitution or
37 the implementing legislation of Section 14.
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39 **Regulation 4: Change in applicant information**
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- 41 A. When there has been a change in the name, address, physician or primary care-giver of
42 a patient who has been issued a registry identification card, that patient must notify the
43 department within ten days BY SUBMITTING A COMPLETED AND NOTARIZED
44 CHANGE OF ADDRESS OR CAREGIVER FORM AS PROSCRIBED BY THE
45 DEPARTMENT. A patient who has not designated a primary care-giver at the time of
46 application to the department may do so in writing at any time during the effective period
47 of the registry identification card, and the primary care-giver may act in this capacity after
48 such designation. THE DEPARTMENT SHALL NOT ISSUE A NEW REGISTRY
49 IDENTIFICATION CARD TO THE PATIENT ON THE SOLE BASIS OF A NEW OR
50 CHANGE OF PRIMARY CARE-GIVER.
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52 B. A patient who no longer has a debilitating medical condition as defined in regulation six
53 shall return his registry identification card to the department within twenty-four hours of
54 receiving such information by his or her physician.
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1 **Regulation 5: Communications with law enforcement officials about patients in the**
2 **registry**
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- 4 A. Authorized employees of state or local law enforcement agencies shall be granted
5 access to the information contained within the department's registry only for the purpose
6 of verifying that an individual who has presented a registry identification card to a state or
7 local law enforcement official is lawfully in possession of such card. The department shall
8 report to authorized state or local law enforcement officials whether a patient's registry
9 identification card has been suspended because the patient no longer has a debilitating
10 medical condition.
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- 12 B. Authorized employees of state or local law enforcement agencies shall immediately notify
13 the department when any person in possession of a registry identification card has been
14 determined by a court of law to have willfully violated the provisions of this section 14 of
15 the Colorado constitution or its implementing legislation, or has pled guilty to such
16 offense.
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18 **Regulation 6: Debilitating medical conditions and the process for adding new debilitating**
19 **medical conditions**
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- 21 A. Debilitating medical conditions are defined as cancer, glaucoma, and infection with or
22 positive status for human immunodeficiency virus. Patients undergoing treatment for such
23 conditions are defined as having a debilitating medical condition.
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- 25 B. Debilitating medical condition also includes a chronic or debilitating disease or medical
26 condition other than HIV infection, cancer or glaucoma; or treatment for such conditions,
27 which produces for a specific patient one or more of the following, and for which, in the
28 professional opinion of the patient's physician, such condition or conditions may
29 reasonably be alleviated by the medical use of marijuana: cachexia; severe pain; severe
30 nausea; seizures, including those that are characteristic of epilepsy; or persistent muscle
31 spasms, including those that are characteristic of multiple sclerosis.
32
- 33 C. Patients who have had a diagnosis of a debilitating medical condition in the past but do
34 not have active disease and are not undergoing treatment for such condition are not
35 suffering from a debilitating medical condition for which the medical use of marijuana is
36 authorized.
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- 38 D. Beginning June 1, 2001, the department shall accept physician or patient petitions to add
39 debilitating medical conditions to the list provided in paragraphs A and B of this
40 regulation. The department shall determine if a public rulemaking hearing to modify this
41 regulation is appropriate, and if so, shall petition the Board of Health to set a date for
42 such hearing within one hundred twenty days of receipt of the patient or physician
43 petition. If the department determines that a public rulemaking hearing is not appropriate,
44 it shall notify the petitioner of its action within one hundred eighty days of receipt of
45 submission of the petition. In making its determination, the department will consider
46 whether there is information that the proposed condition is chronic, debilitating, and may
47 be specifically diagnosed, and whether there is scientific evidence that treatment with
48 marijuana may have a beneficial effect.
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50 **Regulation 7: Determination of fees to pay for administrative costs of the medical use of**
51 **marijuana program**
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53 The department shall provide each applicant with information concerning the medical use of
54 marijuana program. The department shall collect ninety dollars from each applicant at the time of
55 application to pay for the direct and indirect costs to administer the medical use of marijuana
56 program. Such fee shall not be refundable to the applicant if the application is denied or revoked

1 or if the patient no longer has a debilitating medical condition. The amount of the fee shall be
2 evaluated annually by the department, and the department shall propose modifications to the
3 board, as appropriate. If the patient provides updated information at any time during the effective
4 period of the registry identification card, the department shall not charge a fee to modify the
5 registry information concerning the patient.

DRAFT
STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY FOR

**Proposed Amendments to Rules and Regulations Pertaining to
Medical Use of Marijuana (5 CCR 1006-2), Regulation 2 - Definitions and
Regulation 4 - Change in applicant information**

April 30, 2009
(same as January 21, 2009 version)

Basis and Purpose.

The Department is proposing further definition of a primary care-giver to ensure that the requirements of the constitution are met in that the care-giver is providing more assistance than simply providing medical marijuana to the patient.

The Department is proposing that signatures on application and related forms be notarized to insure authenticity and that the patient's rights be protected.

The Department is proposing that the number of patients per care-giver be limited to five to insure each patient is receiving the significant care the law provides for them.

The Department is proposing that application and related forms be accompanied by a verifiable identification document to comply with the recommendations of the Office of the State Auditor and to protect the integrity of the program.

The Department is proposing not issuing a new registry card to the patient after addition or change of care-giver. Continued issuance of new registry identification cards increases administrative costs, which cannot be covered by the program.

Specific Statutory Authority.

These rules are promulgated pursuant to the following statutes:

Section 25-1.5-106, CRS. Medical marijuana program – powers and duties of the department.

Major Factual and Policy Issues Encountered.

- The definition of a care-giver provides clarity regarding the role of this individual in the care of the patient.
- Applications and forms with forged signatures have been detected. Notarization is a step towards prevention of forgery and assisting with the integrity of the program.
- The number of patients per care-giver was initially addressed via agency policy, but this was held invalid by a district court in part because it had not been promulgated through a rule-making procedure in accordance with the Administrative Procedures Act.
- The number of change forms naming new care-givers has increased dramatically.
- An audit by the Office of the State Auditor recommended adherence to the Secure and Verifiable Documents Act.
- Continued issuance of change forms drives increased administrative costs that are beyond the appropriation for the Medical Marijuana Registry.

Alternative Rules Considered and Why Rejected.

The rules proposed are rules of administration authorized by C.R.S. § 25-1.5-106(1).