

From: Governor's Office of Legal Counsel  
Department of Public Health and Environment  
Date: December 14, 2009  
Re: Medical Marijuana: Proposed Statutory Language for  
Regulating the Physician-Patient Relationship



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**25-1.5-106. Medical marijuana program - powers and duties of department.**

(1) **Definitions.** In addition to the definitions set forth in subsection 1 of section 14 of article XVIII of the state constitution, as used in this section, the following definitions apply:

(a) "Bona fide physician-patient relationship" means the following:

(I) A treating or counseling relationship in the course of which a physician has completed a full assessment of the patient's medical history and current medical condition, including a 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 provides 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 as treatment of the patient's debilitating medical condition.

(b) "In good standing" with respect to a physician's license means the following:

(I) The physician holds a doctor of medicine or doctor of osteopathic medicine degree from an accredited medical school;

(II) The physician currently holds a valid, unrestricted license to practice medicine in Colorado; and

(III) The physician has not had his or her department of justice federal drug enforcement administration registration for controlled substances suspended or revoked at any time.

(4) (2) **Rulemaking.** The department 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, which shall include the identity of the physician making the certification of a debilitating medical condition and which may be used to determine whether a physician should be referred to the board of medical examiners, as authorized in subparagraph (h) of this subsection;

(b) The development by the department of an application form and making such 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 of medical information concerning patients who have applied for a confidential registry card;

(d) The development 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 must use when making a medical marijuana recommendation for a patient;

~~(d)~~ (e) The conditions for issuance and form of confidential registry identification cards issued to patients, including but not limited to standards for ensuring that registry identification cards are issued by the department only to patients who have 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 a patient is no longer diagnosed as having a debilitating medical condition; and

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

(h) Sanctions for physicians who violate section 14 of article XVIII of the state constitution, this section, and the rules promulgated by the state board pursuant to this section, which sanctions shall include, but not be limited to, referring the physician to the board of medical examiners for further investigation.

(3) **Physicians.** A physician certifying a debilitating medical condition for any applicant for the medical marijuana program shall comply with the following requirements:

(a) A physician may only certify to the department that a patient has a debilitating medical condition and that the physician has recommended that the patient might benefit from the use of medicinal marijuana if there is a bona fide physician-patient relationship between the physician and the applicant.

(b) A physician shall not accept or solicit any form of pecuniary remuneration from a primary care-giver or any other distributor or provider of medical marijuana related in any way to the medical certification of a debilitating medical condition for any applicant for the medical marijuana program, nor may a physician offer any discount or other thing of value to any patient who uses or agrees to use a particular primary care-giver or any other distributor or provider of medical marijuana to procure medical marijuana.

(c) Any physician who recommends medical marijuana for a patient shall maintain a separate recordkeeping system for all patients for whom the physician has recommended the medical use of marijuana. Upon a request or request or investigation initiated pursuant to section 12-36-118, a physician shall produce the redacted medical records for such patients to the board of medical examiners, redacting any patient or primary care-giver identifying information.

(d) A physician may not conduct an examination of any patient for the purpose of diagnosing or certifying a debilitating medical condition on any premises where medical marijuana is sold or distributed.

(e) A physician certifying a debilitating medical condition for any applicant for the medical marijuana may not have any economic interest in any enterprise that provides or distributes medical marijuana.

(4) **Registration identification card required.** When in possession of any usable form of marijuana for medicinal use, patients [and primary caregivers]<sup>1</sup> must have in their possession their medical marijuana registration identification card or, if more than thirty-five days have passed since the date of filing their medical marijuana program application and no registry identification card has yet been issued, a copy of their application along with proof of the date of submission.

~~(2)~~ **(5) Fees.** The department 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 for the purpose of offsetting the department's direct and indirect costs of administering the program. The amount of such fees shall be set by rule of the state board of health. All fees collected by the department 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.

~~(3)~~ **(6) Cash fund.** (a) The medical marijuana program cash fund shall be subject to annual appropriation by the general assembly to the department 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)~~ **(6)** 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.

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

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(vv.5) Section 25-1.5-106, concerning the medical marijuana program;

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<sup>1</sup> "Primary caregivers" should be included if this language is used in a bill that includes a requirement that primary caregivers obtain a registry identification card.