

Emerging Issue: Medical Marijuana

Key Changes to Colorado's Medical Marijuana Laws

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Background

Colorado voters approved an initiative authorizing the medical use of marijuana in 2000. In 2010, the Colorado Legislature approved two bills that substantially amended the original law:

- House Bill 1284, regulating the way in which medical marijuana is produced and distributed; and
- Senate Bill 109, regulating the physician-patient relationship.

This briefing paper provides an overview of some of the key provisions of the two bills.

House Bill 1284, Concerning Regulation of Medical Marijuana

The initiative passed by Colorado voters in 2000 mirrored in most respects the initiative approved in Montana in 2004. In particular, it created a system of patients and caregivers similar to the system now in place in Montana.

However, Colorado lawmakers set the stage for significant revisions to this system with passage this year of HB 1284. The bill created an entire new article of the Colorado Revised Statutes to put in place a system for regulating the production and distribution of medical marijuana. Some of the key provisions of HB 1284 are listed below.

- The bill creates four types of licenses for individuals or entities involved in growing or selling medical marijuana:
 - ▶ medical marijuana center licenses, for selling medical marijuana to registered patients or caregivers;
 - ▶ medical marijuana-infused products manufacturing licenses, for making products that are infused with medical marijuana and are intended to be consumed in a manner other than smoking;
 - ▶ optional premises cultivation licenses, for growing and cultivating medical marijuana at a location that may or may not be contiguous with a licensee's medical marijuana center or infused products manufacturing location;
 - ▶ occupational licenses and registrations for owners, managers, operators, employees, contractors, and other support staff employed by, working in, or having access to restricted areas of licensed premises.
- Caregivers, who are defined in Colorado law in essentially the same way they are in Montana law, are limited to having 5 patients. A caregiver may not also have a medical marijuana center license.
- A patient who has designated someone as a caregiver for the patient may not be designated as a primary caregiver for another patient.

- The Colorado Department of Revenue is the designated licensing and regulatory authority for medical marijuana centers, optional premises cultivation licensees, and infused products manufacturers. The Department will grant, refuse, or renew licenses for those licensees and may also suspend, restrict, or revoke licenses or fine licensees for violations of the law or any administrative rule.
- The Department is to adopt rules that, among other things:
 - ▶ establish requirements for inspections, investigations, searches, and seizures;
 - ▶ create penalties;
 - ▶ establish the records to be kept by licensees.
 - ▶ prohibit unfair practices; and
 - ▶ establish security and sanitary requirements for licensed premises.
- To obtain a license, an applicant must provide the names and addresses of the officers, directors, and managers of the business. Licenses may be denied if the applicant:
 - ▶ is a physician making patient recommendations;
 - ▶ is under 21 years of age;
 - ▶ is a law enforcement officer, prosecutor, or an officer or employee of the state or a local licensing authority;
 - ▶ has ever been convicted of a felony involving a federal or state drug law or has fulfilled, in the five years preceding the application, a sentence for any felony conviction;
 - ▶ has a criminal history — including the criminal history of any officer, director or stockholder — indicating that the applicant is not of good moral character;
 - ▶ employs, is assisted by, or is financed in any way by a person whose criminal history indicates the person is not of good character;
 - ▶ has, during a time of licensure or at the time of application, failed to pay any taxes, child support, or judgments due to a government agency or has defaulted on a government-issued student loan;
 - ▶ has employed someone who has not passed a criminal background check;
 - ▶ has had his or her authority to be a caregiver revoked by the state; or
 - ▶ has not been a Colorado resident for 2 years.
- License applicants must submit fingerprints for a fingerprint-based criminal background check and must post a \$5,000 bond with the state to ensure that they will pay all taxes due to the state.
- A medical marijuana center, optional premises cultivator, or infused products manufacturer may obtain a local license only if the local governing body has adopted an ordinance or resolution that contains licensing standards. Local governments may adopt

additional standards for licensing, including distance limits between licensed locations and restrictions on the size of licensed premises.

- Medical marijuana facilities may not be within 1,000 feet of a school, an alcohol or drug treatment facility, the principal campus of a college, or a residential child care facility.

The fiscal note for the final version of the bill estimated that about 1,900 medical marijuana centers, cultivation premises, and infused products manufacturers will be licensed annually. License fees must cover the cost of regulation, which was estimated at \$2.7 million in the first year.

The fiscal note estimated that license fees initially may be set as follows: \$1,800 for medical marijuana centers; \$500 for optional premises cultivation; \$500 for infused products manufacturers; and a range of \$10 to \$125 for employees, depending on their role in the operation. It estimated that 1,100 medical marijuana centers would employ about 6,600 people.

The fiscal note estimated that the Department of Revenue would require 23 new staff members for its regulatory role — 12 criminal investigators, 3.5 auditors, and 7.7 administrative and other support staff, including employees to process license applications. The Department itself estimated that regulation would require 31.6 employees.

Senate Bill 109, Concerning Regulation of the Physician-Patient Relationship

Until SB 109 passed this year, the Colorado law allowed the Department of Public Health and Environment to establish rules for a number of items involving the medical marijuana registry and the application process for people seeking a medical marijuana card.

SB 109 amended this general rulemaking authority to add the following items:

- The term "bona fide physician-patient relationship" is defined as one that includes a personal physical examination, requires the doctor to have consulted with the patient about the debilitating medical condition before the patient applies for a card, and requires the doctor to be available for follow-up care and treatment. The definition applies only for the purposes of the medical marijuana program.
- A physician making a medical marijuana recommendation must have a valid, unrestricted license to practice medicine in the state and a valid and unrestricted registration with the Drug Enforcement Administration.
- Physicians who provide written recommendations for medical marijuana are prohibited from:
 - ▶ accepting, soliciting or offering any form of remuneration from or to a caregiver, distributor, or other provider of medical marijuana;
 - ▶ offering a discount or any other item of value to a patient who uses or agrees to use a particular caregiver, distributor, or other provider;
 - ▶ examining a patient for purposes of diagnosing a debilitating medical condition at a location where medical marijuana is sold or distributed; or

- ▶ holding an economic interest in an entity that provides or distributes medical marijuana.
- The Department of Health may notify the Board of Medical Examiners if it has reasonable cause to believe a physician is violating any provision of the law and may suspend the physician's authority to recommend the use of medical marijuana while an investigation is conducted.
- Patients who are convicted of a criminal offense involving the state's drug laws or who are ordered by a court to undergo drug or substance abuse treatment must immediately apply for renewal of their card and have a recommendation from a physician with whom they have a bona fide physician-patient relationship.
- Parents who apply for a medical marijuana card on behalf of their child must have their signatures notarized.

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