

## Pro/Con Analysis of HB 10-1284

For the Health District of Northern Larimer County Board of Directors

March 1, 2010

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<b>Bill Title:</b>	Concerning Regulation of Medical Marijuana
<b>Issue Summary:</b>	The bill creates a licensing authority to oversee medical marijuana dispensaries and regulates the physician-patient relationship
<b>Bill Sponsors:</b>	Rep. Massey and Senator Romer
<b>Bill History:</b>	02/05/2010 Introduced In House - Assigned to Judiciary
<b>Date of Analysis:</b>	March 1, 2010
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### Bill Summary

#### Medical Marijuana Licensing Authority

HB 1284 creates the Medical Marijuana Licensing Authority (Licensing Authority) within the Department of Revenue for the purpose of “regulating and controlling the licensing of the cultivation, distribution, and sale of medical marijuana.”

#### Duties of the Licensing Authority

- Grant, refuse or renew a medical marijuana center license and revoke or suspend the license upon violation of the statute or department rules
- Hear all complaints against a medical marijuana center and issue subpoenas to compel persons to appear and produce records
- Request that the Federal Drug Enforcement Administration consider rescheduling, for pharmaceutical purposes, marijuana from a Schedule I to a Schedule II controlled substance.
- Promulgate rules, including rules related to:
  - Instructions for local licensing authorities and law enforcement
  - Regulation of storage, warehouses and transportation
  - Health and sanitary requirements
  - Practices designed to avoid an undue increase in the consumption of medical marijuana
  - Record-keeping and audit requirements for medical marijuana centers
  - Security requirements for medical marijuana centers
  - What constitutes good moral character pursuant to the new statute created in the bill

Licenses granted by the Authority will be valid for 2 years from date of issuance.

#### Local License Approval

Prior to applying to the Licensing Authority, medical marijuana centers are required to obtain local approval and HB 1284 creates rules for the local licensing process. Under the bill, centers will apply for a local license and the local licensing authority will schedule a public hearing. The parties allowed to present evidence and cross-examine witnesses include: 1) The applicant; 2) An adult resident of the neighborhood in which the dispensary is located; 3) An owner or manager of a business in the neighborhood; 4) The principal or representative of a school or day care center located within the neighborhood and within 1,000 feet of the dispensary; 5) A representative of an organized neighborhood group; and 6) A representative of a local law enforcement agency.

Five days before the date of a hearing the local licensing authority will release its findings, based on the information in the application, to the applicant and a party in interest. Before approving or denying a license, the local licensing authority shall consider: 1) the facts and evidence adduced as a result of its investigation; 2) the reasonable requirements of the neighborhood for the type of license that has been applied for; 3) the desires

of the adult inhabitants of the neighborhood; and 4) the number, type and availability of medical marijuana outlets located in or near the neighborhood under consideration. Thirty days after the hearing, the local licensing authority makes a decision to approve or deny the license. **The local licensing authority can approve a license but limit the number of patients a center may serve.** Local licensing authorities may not approve an application for a medical marijuana center until the building it will be housed in is ready for occupancy and has been inspected by the local licensing authority.

The Licensing Authority may deny a license for a number of reasons including:

- The character of the applicant is such that violations of this article would likely result if a license were granted.
- The Licensing Authority determines the licenses already granted for the particular locality are adequate for the reasonable needs of the community.

The bill delineates persons who are prohibited from obtaining a license to operate a medical marijuana center. They are:

- A person not of good moral character
- A person under 21
- A license physician
- A peace officer or family member of a peace officer
- A person delinquent in paying taxes
- A person who has been convicted of any felony or a misdemeanor under the Controlled Substances Act
- A person who employs a person at the medical marijuana center who has not passed a criminal history record check

#### **Requirements for Medical Marijuana Centers**

- A medical marijuana center shall not be located within 1,000 feet of a public or private elementary or secondary school, preschool or day care center that existed at the location prior to the establishment of the operation although the local licensing authority may issue a variance.
- Political subdivisions may limit the number of medical marijuana centers that may operate within the political subdivision or enact reasonable zoning regulations based on local government zoning, health, and safety laws.
- A criminal background check is required for anyone who works at a dispensary or applies for a license to operate a dispensary.
- Medical marijuana centers must be nonprofit.
- Medical marijuana centers may only operate between the hours of 8am and 7pm, Monday through Sunday. Smoking or consumption of marijuana will not be permitted on the premises.
- Medical marijuana centers can possess no more than 6 medical marijuana plants and 2 oz. of medical marijuana for each patient who has registered with the center as his or her primary center.
- A center may have a total of no more than 3,000 plants and no more than 1,000 ounces of medical marijuana in its inventory at one time.
- A medical marijuana center may cultivate its own marijuana or purchase it from another licensed center. A medical marijuana center may purchase marijuana in an amount that is ten percent or less of the center's total inventory of marijuana. A center may sell no more than ten percent of its inventory to other licensed medical marijuana centers

#### **Duties of the State Health Agency**

The state health agency shall promulgate rules regarding:

- Establishment and maintenance of a registry of patients who have applied for and are entitled to receive a registry identification card.

- Allowing the registry to be used to determine whether a physician should be referred to the Colorado State Board of Medical Examiners for a suspected violation of the medical marijuana provisions of the state constitution or state statute or state health agency rules.
- Verification by the state health agency of medical information concerning patients who have applied for a registry card.
- Development of a form for physicians to use when making a medical marijuana recommendation.
- Conditions for issuance and renewal and the form of the registry identification cards issued to patients including standards for ensuring that the state health agency issues a registration 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 in the state of Colorado.
- What constitutes “significant responsibility for managing the well-being of a patient” except that the act of supplying medical marijuana or medical paraphernalia by itself is insufficient to constitute “significant responsibility for managing the well-being of a patient.”

## **Physician Requirements**

### *Physician – Patient Relationship*

A “bona fide physician – patient relationship” means:

- A physician and 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 a personal physical examination;
- The physician has consulted with the patient with respect to the patient’s debilitating medical condition prior to the patient’s application for a registry identification card;
- 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 as a treatment of the patient’s debilitating medical condition.

### *Physician Responsibilities*

A physician who certifies a debilitating medical condition for an applicant to the medical marijuana program shall comply with all the following requirements:

- Hold a valid, unrestricted license to practice medicine in Colorado, which is in good standing;
  - Good standing means:
    - The physician holds an MD or DO from an accredited medical school.
    - The physician holds a valid, unrestricted license to practice medicine in Colorado.
    - The physician has a valid and unrestricted United States Department of Justice Federal Drug Enforcement Administration Controlled Substances Registration.
- Certify to the State Health Agency that a bona fide physician – patient relationship exists and that the patient has a debilitating medical condition that could benefit from the use of medical marijuana;
- Maintain a record-keeping system for all patients the physician certifies and be able to produce those records, after redacting any patient or primary caregiver identifying information, to the Colorado Board of Medical Examiners

### *Physicians Are Prohibited From:*

- Accepting, soliciting, or offering any form of financial compensation from a primary caregiver, distributor, or any other provider of medical marijuana;
- Offering a discount or any other thing of value to a patient who agrees to use a particular caregiver, distributor, or provider of medical marijuana;
- Examining a patient at a location where medical marijuana is sold or distributed;

- Holding an economic interest in an enterprise that provides or distributes medical marijuana to one of their patients.

### *Penalties for Noncompliance*

If reasonable cause exists that a physician has violated any aspect of their responsibilities under SB 109, a hearing may be conducted by either the State Board of Medical Examiners (for violations pertaining to physician requirements) or the State Health Agency (for violations pertaining to physician prohibitions). Upon the finding of proper evidence, either the State Board of Medical Examiners or the State Health Agency may restrict the physician's authority to recommend the use of medical marijuana or revoke, entirely, their privilege to do so.

### **Further Bill Provisions**

#### *Patients age eighteen to twenty-one years*

- A patient who is between the ages of 18 and 21, unless legally emancipated, must have documentation from two separate physicians (who advised the patient at different appointments) stating that patient's need for medical marijuana.

#### *Communication with Law Enforcement*

- A primary caregiver is required to provide the registry identification card numbers of each of his or her patients. The state health agency is required to maintain a registry of this information and have it available to law enforcement 24 hours per day, 7 days per week.
- Upon inquiry by a law enforcement officer as to an individual's status as a patient or primary caregiver, the state health agency shall check the registry. If the individual is not registered as a patient or primary caregiver, the state health agency may give that information to law enforcement.

#### *Regulations for Primary Caregivers*

- A primary caregiver is defined as a person other than the patient or patient's physician who is 18 or older and has significant responsibility for managing the well-being of a patient. A primary caregiver cannot delegate to any other person his or her authority to provide medical marijuana to a patient nor can a primary caregiver engage others to assist in providing medical marijuana to a patient. Two or more primary caregivers cannot join together to cultivate marijuana.
- Only a medical marijuana center or a patient or a primary caregiver can cultivate marijuana and only for medical use.
- A primary caregiver is required to give law enforcement, upon inquiry, the registry identification card number for each of his or her patients. The state health agency shall maintain a registry of this information and make it available to law enforcement 24 hours a day, 7 days a week.

#### *Other Bill Provisions*

- Upon application for a registry identification card, a patient will indicate whether he or she intends to cultivate his or her own medical marijuana or intends to obtain it from a primary caregiver or a medical marijuana center. If he or she will obtain marijuana from a medical marijuana center, he or she must indicate the primary center he or she will use.

### **BACKGROUND**

Amendment 20 was passed by the Colorado voters in 2000. The Amendment allows people suffering from debilitating medical conditions to obtain a doctor's recommendation indicating that they might benefit from the medical use of marijuana. After receiving this recommendation, the patient applies for a registry identification card from the Colorado Department of Public Health and Environment (CDPHE) and is placed on a confidential registry of medical marijuana patients. The patient can designate a "primary caregiver" who has "significant responsibility for managing the well-being of the patient" to provide the marijuana for the patient. The patient is then allowed to possess up to three immature and three mature plants and two ounces of marijuana for

medicinal use or more if greater amounts are “medically necessary to address the patient’s debilitating medical condition. According to the language of the amendment, a patient or care-giver determines that a greater amount of marijuana is medically necessary.

In June of 2001, CDPHE started accepting applications to the registry. In November of 2004 the Health Department issued a guideline allowing a primary caregiver to provide marijuana for up to five patients. A Denver District Court judge overruled the five-patient guideline in 2007 based on the lack of public process in developing the rule. Fort Collins issued its first sales and use tax license for a medical marijuana dispensary, or MMD in February of 2008. In July of 2009 the state Board of Health established rules regarding the medical marijuana program. The Board decided not to re-establish the 5 patient rule and defined “significant responsibility for managing the well-being of a patient” to include simply providing medical marijuana. In October 2009 the Colorado Court of Appeals ruled that a primary caregiver must do more to manage the well-being of a patient than simply supply marijuana. In November 2009 the state Board of Health changed its definition of a caregiver's responsibilities to reflect the Court of Appeals ruling; the Denver District Court overruled the change. At this point, there is not one accepted definition of what “significant responsibility for managing the well-being of a patient” means. Right now retail medical marijuana dispensaries can claim to be the primary caregiver for all the patients purchasing marijuana there and there are some growers of marijuana who are claiming to be primary caregivers.

As of December 2009 the medical marijuana registry surpassed 21, 000 patients. The Colorado Department of Public Health and Environment is currently receiving about 600-1000 applications per day for medical marijuana certificates, more than the Department can process in a timely manner. Amendment 20 stipulated that if applicants do not receive their registry card within 35 days, the application is deemed to be approved. Right now, it is not possible for law enforcement to verify the validity of these patients’ status since no numbered identification card has been issued.

#### **WHY IS THIS ISSUE IMPORTANT?**

In the city of Fort Collins, 98 sales tax licenses have been given out for marijuana dispensaries. According to information provided by Fort Collins Police Services, a very small number of physicians are writing the majority of recommendations and 90% of the patients on the registry have a recommendation based on “chronic pain.” In Fort Collins, and throughout the state, people without a legitimate need for medical marijuana are accessing it for recreational use. According to materials provided by Fort Collins Police Services, some physicians are being compensated by marijuana dispensaries and are “conducting medical examinations at the dispensaries with money back guarantees if the patient doesn’t receive a card.” Retail marijuana dispensaries are not a part of the constitutional amendment or state statute or regulation. Without clear laws and regulations, the current medical marijuana program is being abused and exploited by recreational drug users and police are in an untenable position where enforcement of laws against recreational marijuana sale and possession are difficult or impossible to enforce.

#### *Adverse Health Effects*

Fort Collins Police Services has indicated that in this community and throughout the state, large amounts of marijuana are being grown and some of that crop is being sold illegally on the street. The abuse of marijuana is a public health concern because of the numerous adverse health effects of use and the possibility of users becoming dependent on the drug. A 2009 review in the journal *Lancet* of the adverse health effects on non-medical use of marijuana found that “cannabis dependence is the most common type of drug dependence after that of on alcohol and tobacco.”<sup>1</sup> The lifetime risk of dependence in cannabis users has been estimated at about 9%, rising to one in six in those who initiate use in adolescence. Certain risk factors such as a parental history of drug and alcohol problems and poor academic achievement increase the risk for dependence.<sup>2</sup> Most of the research on the adverse effects of cannabis use apply to heavy or regular users, meaning people using marijuana

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<sup>1</sup> Hall, W. and Degenhardt, L, Adverse health effects of non-medical cannabis use, *Lancet*, October 17, 2009, Vol. 374, 1383-91

<sup>2</sup> Ibid.

every day or almost every day. Chronic use in some studies is defined as every day for a period of years. Heavy and chronic users are likely to experience impaired respiratory function, cardiovascular disease and, possibly, some cognitive impairment. At this point, research does not provide a clear picture of the negative health effects of light, recreational use that does not continue for a prolonged period of time.

### *Is Marijuana a Gateway Drug?*

According to the *Lancet* review, cannabis users are more likely to later use heroin and cocaine. There is some evidence that shared genetic vulnerability to marijuana and other drugs explains the association between marijuana use and other drug use. There has been some investigation into the hypothesis that marijuana users are more likely to use other drugs for reasons unrelated to their marijuana use (the common cause hypothesis). The *Lancet* review cited evidence from longitudinal studies that, even after controlling for confounders, the association between marijuana and other drug use remains.

### Intentions of Amendment 20

It's appropriate and important to take a broader view of the medical marijuana program and the intent of both the Amendment's sponsors and the voters. Anecdotally, most voters who supported Amendment 20 intended to make a limited amount of marijuana available to patients with serious, debilitating conditions who have not been able to find relief using doctor-prescribed pharmaceuticals. Voters likely did not envision large scale grow operations supplying a proliferation of for-profit retail dispensaries and widespread abuse of the medical marijuana program by enthusiastic recreational users. It appears to staff that the implementation of HB 1284 would require significant funding and investment of government agency time. Even with the strictest regulation, a medical marijuana program in as limited a scope as the voters intended may not be workable. It is possible that given the large investment of time and funding stringent regulation would take, voters might not instead choose to support a ballot measure legalizing marijuana for all users.

### **Potential Bill Amendments**

According to a February 26, 2010 Denver Post article, one of the bill's sponsors, Senator Chris Romer, is proposing an amendment to the bill that would impose an excise tax on medical marijuana. The revenue raised from the tax would fund drug education programs, substance abuse treatment and medical care for veterans and low-income people. The excise tax provision would need voter approval to comply with TABOR.

### **Reasons to Support the Bill:**

- It's clear that right now, people are accessing medical marijuana for recreational use by receiving recommendations from physicians who stand to gain financially and who are not practicing medicine in a way that meets norms of medical ethics and practice. Dispensaries are operating outside the intent, if not the letter, of the law by stating that they are the "primary caregiver" for people with a recommendation for medical marijuana. Taken as a whole, the measures in HB 1284 could be seen as a significant step toward substantial regulation of medical marijuana to bring the program into line with what many perceive as the intent of the voters when they approved Amendment 20.
- One of the key issues is the definition of "primary caregiver." Many, if not most, dispensaries are operating by having people identify the dispensary as their "primary caregiver." HB 1284 would put into statute a significantly tightened definition of "primary caregiver." The bill stipulates that the Department promulgate rules regarding "what constitutes 'significant responsibility for managing the well-being of a patient'; except that the act of supplying medical marijuana or marijuana paraphernalia, by itself, is insufficient to constitute 'significant responsibility for managing the well-being of a patient'". This provision would stop retail medical marijuana dispensaries from operating as primary care-givers.
- The bill gives both the state licensing authority and local licensing authorities wide latitude to deny issuing a license to a medical marijuana center. The state authority can deny an application if it determines that a locality already has centers that can adequately meet the need of the locality for

medical marijuana. Further, local licensing authorities can license a medical marijuana center but restrict the number of patients the center can serve. While it is unclear how well these provisions can be enforced, supporters of the bill would argue this is a first step toward reining in the proliferation of medical marijuana dispensaries, giving localities more and better control over dispensaries and beginning to reduce the availability of marijuana for recreational use.

- [The bill prohibits any financial remuneration from medical marijuana centers to physicians. This is a critical provision because it eliminates an incentive a physician might have to write a recommendation strictly for financial gain.](#)
- The bill makes clear that marijuana can only be cultivated by registered patients, licensed primary caregivers, and licensed medical marijuana centers and all marijuana dispensed by centers must be grown in Colorado. According to Fort Collins Police Services, “Marijuana is being produced in large quantity by illegal underground growers or being imported into the state by criminals who provide the drug to dispensaries...” These stipulations in the bill address the problem of large grow operations that are providing marijuana to dispensaries or providing marijuana for illegal sale.

### **Reasons to Oppose the Bill:**

- Opponents might argue that the bill’s regulations of the doctor-patient relationship are not strong enough to prevent doctors from writing unwarranted recommendations. A physician could comply with the requirements of the law, keeping the appropriate records, having patients fill out a medical history, doing a physical exam (which is undefined in the bill), and still be able to write inappropriate recommendations. ~~While physicians would not be able to take any kind of compensation or remuneration from dispensaries under the bill, they would still be able to charge patients for the physical exam that is needed to get a recommendation thereby continuing to make money by offering illegitimate, unwarranted recommendations.~~ [There is currently no standard of care around marijuana recommendations. Doctors need better rules around what constitutes an appropriate marijuana recommendation. The bill doesn’t give doctors guidance and leaves the door open to doctors writing what they might consider to be legitimate recommendations but that we as a community might find inappropriate.](#)
- Opponents of the bill, including some segments of law enforcement, argue that allowing for retail medical marijuana centers at all conflicts with the language and intent of Amendment 20 and therefore the bill should eliminate the dispensary/medical marijuana center model entirely.
- Some patients have testified at bill hearings that the regulations for the doctor-patient relationship would effectively prevent them from being able to access medical marijuana. For example, a patient of the Veterans Administration testified at the Senate hearing that because his VA doctor cannot provide a recommendation, he would be forced to see another doctor at his own expense. If he was unable to pay out of pocket to see physician outside the VA, he wouldn’t be able to access medical marijuana.

### **Remaining Areas of Uncertainty or Concern:**

- It could be argued the voters who supported Amendment 20 did not envision the proliferation of for-profit marijuana dispensaries. The legislature could eliminate dispensaries entirely and allow people with a registration card to grow their own medical marijuana or designate someone to grow it for them. The bill seems to be trying to find a middle ground – dispensaries wouldn’t be allowed to claim that they are the “primary caregivers” for hundreds or thousands of customers because the definition of primary caregiver is restricted and a primary caregiver can be responsible for no more than 5 patients, yet the bill allows for a dispensaries to exist.
- The bill requires the Licensing Authority to promulgate rules related to “health and sanitary requirements.” It’s not clear what sort of health and sanitary requirements the Authority might choose to regulate but one area of concern that has come up is dispensaries producing food products that contain

marijuana. It seems more reasonable to have CDPHE promulgate health and sanitary rules and specifically address the issue of food safety.

- The state licensing authority could deny a license if the licenses already granted for a locality are “adequate to meet the reasonable needs of the community”. The bill specifies that the authority shall make the finding based on testimony and evidence of the medical needs and necessity of the potential customers. However, staff is unclear on exactly how the authority could determine what the community’s “reasonable needs” are.

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#### **About this Analysis**

This analysis was prepared by Health District of Northern Larimer County staff to assist the Health District Board of Directors in determining whether to take an official stand on various health-related issues. Analyses are based on bills or issues at the time of their consideration by the Board and are accurate to the best of staff knowledge. It is suggested that people check to see that a bill has not changed during the course of a legislative session by visiting the Colorado General Assembly web page at [www.state.co.us/gov\\_dir/stateleg.html](http://www.state.co.us/gov_dir/stateleg.html). To see whether the Health District Board of Directors took a position on this or other policy issues, please visit [www.healthdistrict.org/policy](http://www.healthdistrict.org/policy).

#### **About the Health District**

The Health District is a special district of the northern two-thirds of Larimer County, Colorado, supported by local property tax dollars and governed by a publicly elected five-member board. The Health District provides medical, mental health, dental, preventive and health planning services to the communities it serves.

For more information about this analysis or the Health District, please contact Carrie Cortiglio, Policy Coordinator, at (970) 224-5209, or e-mail at [ccortiglio@healthdistrict.org](mailto:ccortiglio@healthdistrict.org)