

**Senate Bill 10-109 Pro/Con Analysis**  
For the Health District of Northern Larimer County Board of Directors  
February 17, 2010

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<b>Bill Title:</b>	Concerning Regulation of the Physician-Patient Relationship for Medical Marijuana Patients
<b>Issue Summary:</b>	CDPHE is directed to create regulations
<b>Sponsors:</b>	Senators Romer and Spence and Representatives Massey and McCann
<b>Bill History:</b>	01/20/2010 Introduced In Senate - Assigned to Health and Human Services 01/27/2010 Senate Health and Human Services Refer Amended to Appropriations 01/29/2010 Senate Appropriations Refer Unamended to Senate Committee of the Whole 01/29/2010 Senate Second Reading Special Order - Passed with Amendments 02/01/2010 Senate Third Reading Passed 02/02/2010 Introduced In House - Assigned to Judiciary + Appropriations 02/12/2010 House Appropriations Refer Amended to House Committee of the Whole 02/12/2010 House Second Reading Laid Over to 02/26/2010
<b>Date of Analysis:</b>	February 16, 2010
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#### **BILL SUMMARY**

Senate Bill 10-109 would regulate the physician-patient relationship for medical marijuana patients. The bill requires the Colorado Department of Public Health and Environment (the Department) to promulgate rules relating to

- Allowing the confidential patient registry to be used to determine whether a physician should be referred to the state Board of Medical Examiners if there is a suspicion said physician is violating Amendment 20 or the state statutes relative to the medical marijuana program.
- Developing a form for doctors to use when making a medical marijuana recommendation.
- Creating standards for ensuring that registry identification cards are only issued to if a patient has a bona fide physician patient relationship with a physician in good standing

#### **Physician – Patient Relationship**

SB 109 stipulates that a bona fide relationship between physician and patient exists when:

- A physician and patient have a treatment or counseling relationship through which the physician has completed a full assessment of the patient’s medical history and current medical condition, including a physical examination;
- The physician has consulted with the patient prior to the patient’s application for a registry card;
- The physician is available to or offers to provide follow-up care and treatment to the patient.

#### **Physician Responsibilities**

In order to make a recommendation for medical marijuana physicians must:

- Hold a Doctor of Medicine or Doctor of Osteopathic Medicine degree from an accredited medical school;
- Hold a valid, unrestricted license to practice medicine in Colorado, which is in good standing and have a valid and unrestricted US 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, within HIPAA requirements, 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 any 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.

### **Other Aspects of SB 109**

- A patient who is between the ages of 18 – 21 must have documentation from two separate physicians (who advised the patient at different appointments) stating that patient's need for medical marijuana.
- A patient who is convicted of a criminal offense or is ordered by a court to drug or substance abuse treatment must immediately renew their medical marijuana registry card. This renewal will be based upon the recommendation of a court-appointed physician.
- A medical marijuana application can be submitted for a minor by their parent(s) or legal guardian(s), who shall have their signature notarized.
- The State Health Agency may establish fees for registering for medical marijuana, but the fee schedule must allow for waiver of fees based upon patient indigence.
- As per constitutional amendment, medical marijuana cards are valid for one year.

### **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 certificate from the Colorado Department of Public Health and Environment (CDPHE) and is placed on a confidential registry of medical marijuana patients. The patient is then allowed to possess up to three immature and three mature plants and two ounces of marijuana for medicinal use. A physician can recommend that a patient needs more marijuana for his or her medical condition. The patient can designate a "primary care-giver" who has "significant responsibility for managing the well-being of the patient" to provide the marijuana for the patient.

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 issues its first sales-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 only 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.

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 certificate 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 the Fort Collins Police Department, 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, there is strong reason to suspect that the lax regulation around physician medical marijuana recommendations is allowing people without a legitimate need for medical marijuana to access it for recreational use. According to materials provided by the Fort Collins Police Department, 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.”

#### *Adverse Health Effects*

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 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 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 2009 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.

#### **REASONS TO SUPPORT BILL:**

- As implemented right now, the medical marijuana program is probably not conforming to the intention of voters when they passed Amendment 20, nor to the requirements of the Constitutional language. Amendment 20 clearly states that a physician must have a “bona fide physician-patient relationship” in order to make a recommendation for medical marijuana. SB 109 would ensure that all physicians were following the law. Regulations that ensure that such a doctor-patient relationship exists are needed to

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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.

keep marijuana from being widely accessed for recreational use through the state medical marijuana program.

- Supporters of the bill have argued that voters intended for the medical marijuana program to be available only to people with chronic, debilitating medical conditions upon the legitimate recommendation of their regular physician. Supporters cite as evidence of voter intention the rejection in 2006 of a ballot question that would have legalized possession of up to 1 ounce of marijuana by an adult.
- Supporters of the bill argue that the medical marijuana program is being exploited to allow people to gain access to marijuana for recreational use. Law enforcement personnel stated that they been put in an untenable situation because they are unable to verify who has a valid registry card and who does not. Supporters believe that the regulations proposed in the bill will help ensure that only those with a legitimate recommendation are accessing medical marijuana.

#### **QUESTIONS ABOUT THE BILL**

- Is the bill's definition of a "bona fide physician-patient relationship" clear enough, or might abuse still be possible?
- Would this definition of "bona fide physician-patient relationship" conflict with any other commonly used uses of the term?

#### **REASONS TO OPPOSE BILL:**

- 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.

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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.

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