COLORADO
Department of Public Health & Environment

To: Members of the State Board of Health

From: Natalie Riggins, Program Manager, Medical Marijuana Registry, Center for Health and Environmental data *NAR*

Through: Chris Wells, Division Director, Center for Health and Environmental Data Division Director *CSW*

Date: March 20, 2024

Subject: Request for a Rulemaking Hearing concerning 5 CCR 1006-2

The Department requests a rulemaking hearing for the Board of Health (Board) to consider changes to 5 CCR 1006-2 Medical Use of Marijuana.

The Department proposes to increase medical marijuana patient application processing fees in Regulation 7 which will bring the fee from $29.50 to $52 beginning July 2024. The MMR Program is exclusively fee funded by the application processing fee and does not receive funding from any other sources. The Department is requesting the fee increase for the following reasons:

- The current fee does not generate enough revenue to sustain the program.
- The MMR Program needs to begin building revenue now to replace and modernize the Medical Marijuana Registry System (MMRS), which patients use to apply for medical marijuana registry cards, by 2030 or 2031.

MMR Program fees changed most recently in February 2022, increasing from $25 to $29.50. At that time, the Department emphasized that a $29.50 fee would not sustain operations long term, but would sustain the program in the short term while minimizing the financial burden to stakeholders during the COVID-19 pandemic recovery. The Department has determined that another fee increase is necessary now to sustain the program and begin building revenue to cover the costs of replacing the MMR's aging online registration system in the coming years. If the Department does not implement a fee increase, the program is projected to become insolvent by spring of 2026. While the Department is requesting this fee increase now, it continues to explore potential supplemental funding options.

Additionally, the Department is proposing technical edits to Regulations 2.B.2, 2.D, 7, and 9.B. The Department identified the need for these changes during a rule review. The changes update formatting, punctuation, and capitalization to add consistency and clarity for readers.

STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY
for Amendments to 5 CCR 1006-2, Medical Use of Marijuana

Basis and Purpose.

The Colorado Constitution, Article XVIII, Section 14, paragraph 9 directs the Board of Health (Board) to enact rules for the administration of the program. Colorado Revised Statute (C.R.S.) §25-1.5-106(16) authorizes the Board to set fees sufficient to meet the direct and indirect costs of administering the Medical Marijuana Registry program (MMR Program). The Medical Use of Marijuana Regulations, 5 CCR 1006-2, Regulation 7.A requires the MMR Program to evaluate annually the amount of the fees charged to applicants and to propose fee modifications to the Board as appropriate.

Fee increase

The Department is proposing an application processing fee increase of $22.50, which will raise the fee from $29.50 to $52 effective July 15, 2024. The MMR Program is funded solely by the funds generated from the application processing fee; it does not receive any taxes, grants, or other funding. The MMR Program regularly analyzes the fee, revenue, and expenses to determine if the fee meets the actual expenses of the MMR Program and ensure that the program remains solvent. The Department proposes fee changes to the Board based on these ongoing projections.

Current projections indicate that a fee increase is necessary to cover direct and indirect costs of administering the MMR Program and replace the aging online registration system. The process to develop, test and implement a new system takes several years. For context, with funding already dedicated to the development of the system, it took the MMR Program approximately 3 years to develop, test and implement the current Medical Marijuana Registry System (MMRS). This time, the MMR Program needs to build the revenue prior to starting the procurement and development processes. With the proposed fee increase, the program estimates having adequate time to first build revenue by June 2028 and then begin the procurement process in 2029 with the goal of going live sometime in 2030 or 2031.

MMR applicants submit this processing fee each time they apply to the registry, and their registration is valid for a year unless a provider recommends a shorter registration period or the MMR Program revokes it sooner. The vast majority of patients pay the application processing fee annually, as only about 100 patients currently have a recommended registration period shorter than a year.

Fee history

The MMR Program's application processing fee has been as high as $140 and as low as $15 over the course of the program's 22-year history. The Board has adjusted the fee based on the number of patients, revenue, and expenses.

Summary of the Medical Marijuana Registry's fee history

Fee Change Date	Original fee	New fee	Average number of monthly patients while fee was in place	Reason for Adjustment
June 2001	N/A	$140	Not available	Original rules
July 2007	$110	$90	72,983*	Estimated that a lower fee would cover the costs of administering the program
December 2011	$90	$35	104,054	Reduce revenues to spend down fund balance
February 2014	$35	$15	103,862	Reduce revenues to spend down fund balance
May 2018	$15	$25	85,623	Set fee to sustain program
Feb 2022	$25	$29.50	72,292 (as of Nov. 2023 data)	Generate revenues to implement HB 21-1317 and sustain program

*This average is calculated on data from January 2009-November 2011. Monthly data is not available before January 2009.

While the MMR Program has had to raise fees in the past to fund updates and modifications to the existing MMRS and sustain the program, this will be the first time that the MMR Program must increase the fee to generate funds to cover the costs of developing a new online registration system. In 2013, the Office of the State auditor conducted a routine audit of the MMR Program. The audit noted that the MMR Program could improve its application processing times and data security, and suggested the development of an online registration system to replace the paper-based application process used at that time. As the MMR Program also had a surplus of funding, the Colorado Legislature granted the spending authority to put the money toward developing the current Medical Marijuana Registry System (MMRS). Procurement for the MMRS began in 2014 and the system went live in 2017. The MMR Program will have to begin to build revenue now, in order to update and replace the MMRS by 2030 or 2031.

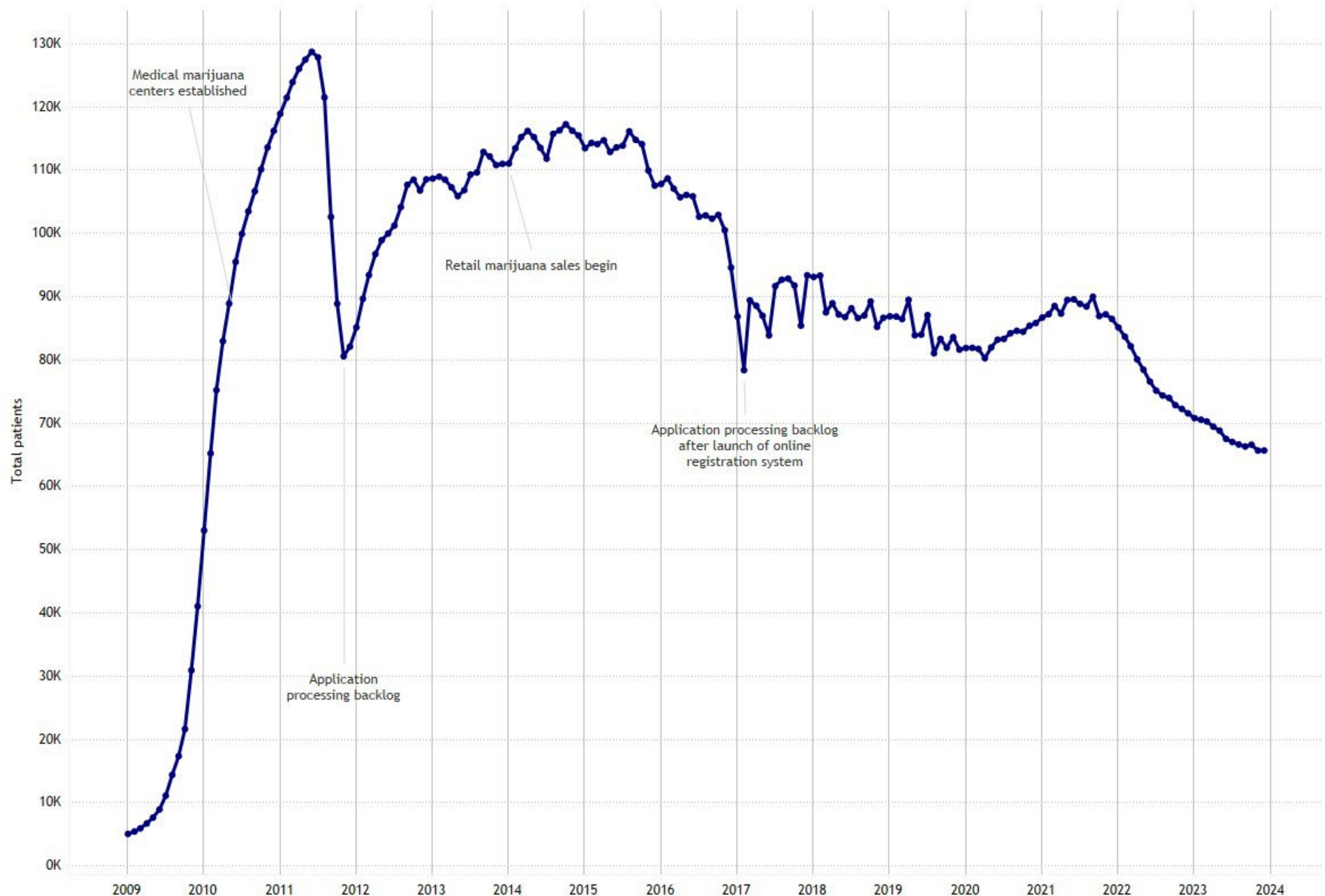
The proposed fee of $52 is roughly the average of the previous fees charged to MMR applicants over the past decade. Further, the fee is line with what other state medical marijuana programs charge, which ranges between $0 and $200.

Patient enrollment

The number of registered patients has been declining steadily for the past couple of years, with enrollment peaking in June 2011 at about 128,000 patients. After the start of adult use marijuana recreational sales in 2014, MMR enrollment declined slightly before stabilizing. The number of registered patients fluctuated between 80,000 and 93,000 patients between 2017 and 2020, with most months being somewhere around 85,000 patients. In 2020, patient registration began to increase again, peaking at

89,978 patients in September 2021. Since then patient enrollment has been declining. If registry participation continues to shrink at the current rate, the MMR Program projects that the Registry will have about 58,000 patients enrolled in June 2024.

Medical Marijuana Patients over time



Data before 2009 is not available.

Sustaining the program

The MMR Program is a constitutionally mandated program that the Department must continue to support. Current projections show that the MMR Program will need a fee increase to cover the costs of sustaining the program, or it is expected to become insolvent in the spring of 2026. Funds generated by the fee increase will sustain existing operations including customer support, application processing, and the current system maintenance. MMR continues monitor workload to ensure staffing needs are optimized. In recent years, the program has reduced staff by managing through attrition and is actively reducing programmatic costs.

Although the Board approved a fee increase in 2022 to generate funds to cover the implementation of HB 21-1317, the MMR Program has not yet been able to build enough revenue to make these required changes to the system. To fully comply with the bill the MMRS must be updated to:

- Add functionality to indicate whether or not a patient was on the registry before age 18. Individuals that obtained a medical marijuana registry identification card before age 18 do not have to provide the same amount of documentation as an individual that applies to the registry for the first time between ages 18 and 20.
- Add functionality to collect newly required information and certifications for first-time applicants aged 18 to 20.
- Add additional fields to the provider certification form.

For now, the MMR has implemented work arounds and is working toward full compliance.

Replacing the Medical Marijuana Registry System

In addition to sustaining the program and meeting existing statutory requirements, the MMR Program is starting the process of replacing the aging MMRS, which is currently 7 years old. The process of developing a new system takes several years. If the MMR Program starts building revenue to pay for a system replacement now, a new system could go live in approximately 2030 or 2031, pending all appropriate approvals and the ability to generate sufficient funds to pay for the system. Unlike in 2013, the MMR Program does not have a surplus cash fund balance sufficient to purchase and implement a new MMRS without raising fees.

Rationale for replacing the system

The MMR Program must prepare to replace the MMRS for these reasons:

Technology modernization and alignment with strategic goals

The MMR Program is constitutionally required to operate, and due to the highly confidential nature of the information in the MMR, the Department must maintain a secure method for both Coloradans to apply for their medical marijuana registry card and for the Department to maintain their application information.

If the MMR Program starts generating the funds for a new MMRS now, a new system could be available sometime in 2030 or 2031. By the time the current system is replaced it will be at least 13 years old. While the MMRS currently meets all state required security standards, it will need to be updated over the years to ensure that it stays compliant with evolving security and technology standards. As the MMRS ages, support and updates will be discontinued, resulting in the risk of compromising the security of MMR data. Further, updating the system aligns with the Department’s strategic goals and the Governor’s Office of Information Technology’s Wildly Important Goals (WIGs) related to technology modernization. It is critical that the MMR Program offers a system that is secure, compliant, and meets the needs of Coloradans.

Limitations with existing features

The biggest deficiencies of the current the MMRS is its limited options for improving usability to meet the needs of users and implement system updates that are necessary to comply with changing legislation.

Since January 2019, the MMR Program has been collecting customer satisfaction feedback about the MMRS. In October 2023, the MMR Program conducted user interviews and focus groups to gain a deeper understanding into user experiences with the MMRS. Results from this research show that users appreciate the faster processing times and increased efficiencies the MMRS provides. However, many users cite frustrations with system navigation and usability. Most of the usability issues are related to the current platform's core design, and cannot be changed. Further, there are usability issues specifically related to changes due to HB 21-1317. MMR has not been able to retain sufficient funds to pay for changes to the system to align with HB 21-1317. This has resulted in MMR implementing inefficient manual workarounds that impact processing times and customer satisfaction. System updates that provide automated functionalities and more efficient processes require costly contractor enhancements, contract amendments, and several months to implement.

Technical edits

Regulation 2.B.2

The proposed changes add "minor applicant" as an individual item in Regulation 2.B.2. Regulations 2.B.2.a and 2.B.2.b have been placed into their own paragraph on their own lines. These changes mirror the formatting of other regulations throughout the rule.

Regulation 2.D

The proposed changes capitalize the name of agencies and divisions, and are consistent with how capitalization is used throughout other regulations.

Regulation 7

The proposed changes bold the first item of each paragraph to match the formatting of other regulations in the rule.

Regulation 9.B

The proposed regulations change "ten" spelled out to the number 10. These changes are consistent with how other regulations are listed throughout the rule.

Specific Statutory Authority.

Statutes that require or authorize rulemaking: These rules are promulgated pursuant to the following statutes: Section 25-1.5-106, C.R.S.

Is this rulemaking due to a change in state statute?

Yes, the bill number is ______. Rules are ___ authorized ___ required.

X No

Does this rulemaking include proposed rule language that incorporate materials by reference?

______ Yes ___ URL

X No

Does this rulemaking include proposed rule language to create or modify fines or fees?

X Yes

______ No

Does the proposed rule language create (or increase) a state mandate on local government?

X No.

- The proposed rule does not require a local government to perform or increase a specific activity for which the local government will not be reimbursed;
- The proposed rule requires a local government to perform or increase a specific activity because the local government has opted to perform an activity, or;
- The proposed rule reduces or eliminates a state mandate on local government.

REGULATORY ANALYSIS
for Amendments to 5 CCR 1006-2, Medical Use of Marijuana

1. **A description of the classes of persons affected by the proposed rule, including the classes that will bear the costs and the classes that will benefit from the proposed rule.**

Group of persons/entities Affected by the Proposed Rule	Size of the Group	Relationship to the Proposed Rule Select category: C/CLG/S/B
Medical marijuana registry patients, prospective patients, and their parents or legal representatives	65,000 approximately	C, B
Health care providers that recommend medical marijuana	400 approximately	C, B
Caregivers that grow, transport, or advise on medical marijuana	1,100 approximately	C, B

While all are stakeholders, groups of persons/entities connect to the rule and the problem being solved by the rule in different ways. To better understand those different relationships, please use this relationship categorization key:

C = individuals/entities that implement or apply the rule.
S = individuals/entities that do not implement or apply the rule but are interested in others applying the rule.
B = the individuals that are ultimately served, including the customers of our customers. These individuals may benefit, be harmed by or be at-risk because of the standard communicated in the rule or the manner in which the rule is implemented.

More than one category may be appropriate for some stakeholders.

2. **To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.**

Non-economic outcomes

Summarize the anticipated favorable and non-favorable non-economic outcomes (short-term and long-term), and, if known, the likelihood of the outcomes for each affected class of persons by the relationship category.

Medical marijuana registry patients and prospective patients. (C, B)
This group will be able to continue to access the MMR program and will benefit

from customer support resources that the revenue from the fee will fund. Eventually, this group will also benefit from the improved online registration system that will replace the existing system.

Health care providers that recommend medical marijuana (C, B)
Eventually, this group will also benefit from the improved online registration system that will replace the existing system, since this group uses the online registration system to write medical marijuana recommendations.

Caregivers that grow, transport, or advise on medical marijuana (C, B)
Eventually, this group will benefit from the improved online registration system that will replace the existing system, since this group uses the online registration system to register their demographic information with MMR.

Economic outcomes

Summarize the financial costs and benefits, include a description of costs that must be incurred, costs that may be incurred, any Department measures taken to reduce or eliminate these costs, any financial benefits.

Medical marijuana registry patients, prospective patients, and their parents or legal representatives (C, B)
This group will experience a greater financial cost to apply for their MMR identification card. The proposed changes will place an additional $22.50 charge per application on individuals in this group. Applicants who have a household income of 185% or less than the federal poverty guidelines may apply for a fee waiver and tax exempt status.

Health care providers that recommend medical marijuana (C, B)
This group is not expected to experience economic outcomes as a result of these changes because there is no cost to health care providers to register to recommend medical marijuana.

Caregivers that grow, transport, or advise on medical marijuana (C, B)
This group is not expected experience economic outcomes as a result of these changes as there because there is no cost to register as a caregiver.

3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

A. Anticipated CDPHE personal services, operating costs or other expenditures:

Anticipated CDPHE Expenditures

Program Expenses	FY 2024-25	FY 2025-26	Future Year
Personal Services (18.6 FTE)	$1,797,391	$1,851,312	$1,906,852
Division Administrative Expenses	$69,166	$69,166	$69,166
Direct Operating Expenses	$180,147	$180,147	$180,147
CDPHE Indirect Costs (CDPHE Overhead)	$280,398	$287,786	$295,395
Total Expenses	$2,327,102	$2,388,411	$2,451,560

Anticipated CDPHE Revenues

Projected Revenue	FY 2024-25	FY 2025-26	Future Year
Average Registry Patient Count (June)	65,500	60,000	55,000
Projected Revenue generated by current fee ($29.50)	$1,659,670	$1,609,880	$1,561,584
New Revenue generated by fee increase (effective date 7/15/2024)	$1,305,000	$1,265,850	$1,227,875
Projected interest earning on generated revenue	$10,000	$10,000	$10,000
Total Revenue projected from fee adjustment	$2,974,670	$2,885,730	$2,799,459

If the fee does not pass, the MMR Program revenue is expected to follow the declining trend in the third row, labeled “Projected Revenue generated by the current fee.” This information, along with more details about expense, cash flow, and year-

end fund balances for each of these fiscal years is outlined in the project calculations section below.

This rulemaking modifies fees – below are the historical fees for the MMR Program.

Historical Medical Marijuana Registry Application Processing Fees

Fee Change Date	Original fee	New fee	$ Increase or Decrease	% Increase or Decrease	Reason for Adjustment
June 2001	N/A	$140	N/A	N/A	Original fee
July 2007	$110	$90	$30	▼ 27%	Estimated that a lower fee would cover
December 2011	$90	$35	($55)	▼ 61%	Reduce revenues to spend down fund
February 2014	$35	$15	($20)	▼ 57%	Reduce revenues to spend down fund balance
May 2018	$15	$25	$10	▲ 67%	Set fee to sustain program
February 2022	$25	$29.50	$4.50	▲ 18%	Generate revenues to implement HB 21-1317

The proposed fee increase raises the fee by $22.50, which represents a 76% increase. The proposed fee is line with what other state medical marijuana programs charge, which ranges between $0 and $200.

B. **Anticipated personal services, operating costs or other expenditures by another state agency:**

   Anticipated Revenues for another state agency:

   N/A

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Along with the costs and benefits discussed above, the proposed revisions:

X Comply with a statutory mandate to promulgate rules.
X Comply with federal or state statutory mandates, federal or state regulations, and department funding obligations.
___ Maintain alignment with other states or national standards.
X Implement a Regulatory Efficiency Review (rule review) result
___ Improve public and environmental health practice.
___ Implement stakeholder feedback.

Advance the following CDPHE Strategic Plan priorities (select all that apply):

Advance the following CDPHE Strategic Plan priorities (select all that apply):

- Improve outcomes in public health and environmental protection for all people of Colorado.
- **X Accomplish bold and Wildly Important Goals (WIGs) with an annual focus on a few key issues.**
- Realize a human-first, progress-forward culture.
- **X Continuously pursue excellence in the operational support of our programs.**
- Strengthen Colorado's governmental public health system and promote effective public health practice.
- **X Advance CDPHE Division-level strategic priorities.**
    - Priority: Optimize customer experience

The costs and benefits of the proposed rule will not be incurred if inaction was chosen. Costs and benefits of inaction not previously discussed include:

If the MMR Program maintains the $29.50 application processing fee, it is expected to become insolvent by the spring of 2026. The fee increase is necessary to ensure the MMR Program has the funds to remain operational while also building revenue now to pay for the eventual replacement of the existing MMRS. It is already projected to take until approximately 2030 or 2031 for the current MMRS to be replaced, at which point it will be at least 13 years old.

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There is no less costly or less intrusive method. The Medical Marijuana Registry is a fee-based program. Therefore, increasing the fee is the only viable method to generate the revenue necessary to sustain the program and purchase systems and materials for the program.

6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.

No other alternatives to rulemaking were considered as Colorado Revised Statute §25-1.5-106 (16) authorizes the Board to set fees sufficient to meet the direct and indirect costs of administering the MMR Program. The Medical Use of Marijuana Regulations, 5 CCR 1006-2, Regulation 7.A requires an annual evaluation of the amount of the fees to be charged to applicants and to propose fee modifications to the Board as appropriate

7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.

If this fee increase is not approved and there is no other source of funding, the MMR Program is expected to be insolvent by July 2026, and the Department would be out of constitutional compliance if we do not have the resources to administer the Medical Marijuana Registry for eligible Coloradans. The Department has determined that a fee increase will be required no later than July 15, 2024 to sustain the MMR Program and to build a fund balance over the next few years to procure a replacement to the aging MMRS. The Department utilized the FY 2024-25 Schedule 9 Cash Fund Report analysis in conjunction with a projection of current, average patient count of 65,000. Based on this analysis, a $29.50 application processing fee alone is insufficient to sustain the program.

To help estimate the cost of a new online registration system, the Department opened a Request for Information (RFI). Vendors were able to submit information throughout the month of November 2023. Based on the responses, a new MMRS is estimated to cost around two million dollars ($2,000,000). This amount has been included in the current projections for a fee adjustment request, and based on these projections the Department expects to have generated these funds by June 2028. There are also statewide cost of living (COLA) changes that are going into effect that impact the salaries of all MMR staff, which the MMR funds must be prepared to cover.

Including Fee Increase

Program Expenses	FY 2024-25	FY 2025-26	Future Year
Personal Services (18.6 FTE)	$1,797,391	$1,851,312	$1,906,852
Division Administrative Expenses	$69,166	$69,166	$69,166
Direct Operating Expenses	$180,147	$180,147	$180,147
CDPHE Indirect Costs (CDPHE Overhead)	$280,398	$287,786	$295,395
Total Expenses	$2,327,102	$2,388,411	$2,451,560
Program Revenue	**FY 2024-25**	**FY 2025-26**	**Future Year**
Fee Income - Current Fee, $29.50	$1,659,670	$1,609,880	$1,561,584
New Revenue generated by $22.50 increase (effective date 7/01/2024)	$1,305,000	$1,265,850	$1,227,875
Interest Income	$10,000	$10,000	$10,000
Total Revenue	$2,974,670	$2,885,730	$2,799,459
Net Cash Flow:	$647,568	$497,319	$347,899
Year End Fund Balance	$818,998	$1,341,151	$1,713,605

If Fee Increase is not approved

Program Expenses	FY 2024-25	FY 2025-26	Future Year
Personal Services (18.6 FTE)	$1,797,391	$1,851,312	$1,906,852
Division Administrative Expenses	$69,166	$69,166	$69,166
Direct Operating Expenses	$180,147	$180,147	$180,147
CDPHE Indirect Costs (CDPHE Overhead)	$280,398	$287,786	$295,395
Total Expenses	$2,327,102	$2,388,411	$2,451,560
Program Revenue	**FY 2024-25**	**FY 2025-26**	**Future Year**
Fee Income - Current Fee, $29.50	$1,659,670	$1,609,880	$1,561,584
Interest Income	$10,000	$10,000	$10,000
Total Revenue	$1,669,670	$1,619,880	$1,571,584
Net Cash Flow:	-$657,432	-$768,531	-$879,976
Year End Fund Balance	$129,828	-$239,644	-$723,105

STAKEHOLDER ENGAGEMENT
for Amendments to 5 CCR 1006-2

State law requires agencies to establish a representative group of participants when considering to adopt or modify new and existing rules. This is commonly referred to as a stakeholder group.

Early Stakeholder Engagement:

The following individuals and/or entities were invited to provide input and included in the development of these proposed rules

- Medical marijuana registry general stakeholders list (voluntary list serve open to anyone)
- Medical marijuana registry health care providers stakeholder list
- Medical marijuana registry caregivers stakeholder list

The Department collected feedback about proposed fee increase, rule review, and ongoing users experience and satisfaction with the MMRS. Stakeholders were notified through the MMR Program's stakeholder emails lists, and information was publicized on the MMR Program's website.

Fee increase

- **Notification date:** January 16, 2024
- **Notification method**: email to all three stakeholder lists, publicized on the MMR program's website
- **Method of feedback collection:** Online form

Rule review

- **Notification date**: Dec. 4, 2023
- **Notification method**: email to all three stakeholder lists, publicized on the MMR program's website
- **Method of feedback collection:** Online form

General system and customer satisfactions survey

- **Notification date**: Ongoing since January, 2019. Opportunities to participate in user interviews were announced on Sept. 20, 2023.
- **Notification method**: email to all three stakeholder lists. The online survey is also publicized on the MMR Program's website, and linked in automated emails from the MMRS and email responses from the MMR Program's customer support team.
- **Method of feedback collection**: Online survey and user interviews. The online survey is continually available and user interviews were conducted via Zoom in October, 2023.

The responses to these survey and user interviews allow the MMR Program to continually learn about how users interact with the system and helps the MMR Program prioritize updates and changes. All feedback about the system will be

considered as the MMR Program moves forward with developing a new registration system.

Stakeholder Group Notification
The stakeholder group was provided notice of the rulemaking hearing and provided a copy of the proposed rules or the internet location where the rules may be viewed. Notice was provided prior to the date the notice of rulemaking was published in the Colorado Register (typically, the 10th of the month following the Request for Rulemaking).

__X__ Not applicable. This is a Request for Rulemaking Packet. Notification will occur if the Board of Health sets this matter for rulemaking

____ Yes.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

Most of the feedback the Department received was in response to the proposed fee increase. The Department also received feedback about the MMRS, rule review, and topics outside the scope of this rulemaking request.

Fee increase

Not in support of the fee increase

The majority of stakeholders are not in support the fee increase, and express concerns that it is unfair for patients, especially when they may also have to pay a fee to see their recommending providers. The Department understands and acknowledges that the annual MMR application processing fee is in addition to what providers charge patients for an exam. The Department does not oversee medical providers. Exam fees are set by recommending providers as a part of their private practices.

Stakeholders also noted that increasing the fee may become so burdensome that patients will stop registering, which would prevent patients from being able to access their medicine legally. Stakeholders expressed concerns that patients would turn to alternative markets where the product may be contaminated or laced with other dangerous substances. Many respondents noted that they or people they know are struggling with the higher costs of daily living expenses due to inflation, while others acknowledged that medical marijuana patients may live on a fixed income or experience economic hardships. Additionally, stakeholders are concerned that the higher fee could lead to fewer patients being on the registry, which might lead the MMR Program to raise fees again in the future. The Department appreciates this concern and is continuing to explore supplemental funding sources.

Although the vast majority of respondents stated that they did not support the fee increase, they also expressed frustration with the existing online registration system and the lack of system functionality and ease of use. Only a few patients stated that they are happy with the online registration system as it is.

In favor of a gradual or smaller fee increase

Some respondents stated that they understood a need for a fee increase, but requested that it be raised more gradually. Others requested that the increase be smaller. The Department appreciates these alternative position and the effort to identify a middle ground. Calculations suggest that the program will need a $52 fee to sustain the program and start to building revenue to replace the online registration system.

Alternative funding sources

There continues to be a misperception that the MMR Program receives funding or revenue from sources such as marijuana taxes, business licensing fees, growers or sellers fees. The MMR program is currently only legally authorized to be funded through the application processing fee. The program does not receive funding from marijuana sales, business licensing fees or taxes of any kind. The Department continues to explore other possible opportunities for supplemental funding.

Respondents also suggested that rules be updated to incentivize more people to apply to the registry to help generate more funds without raising the fee. One respondent suggested that purchase limits be increased to incentivize more people to apply, and another suggested that telemedicine be available for renewal patients to minimize the other burdens to patients as they obtain a medical marijuana registry card. The Department is not able to incorporate either of these pieces of feedback, as purchasing limits and the requirement for in-person medical exams are codified in C.R.S. 25-1.5-106.

Reduced fees for low-income groups

Several respondents suggested that there be a discount for people of certain ages, incomes, and disabilities. Currently, individuals who earn 185% or less than the federal poverty levels are eligible to apply for an application processing fee waiver and tax exempt medical marijuana purchases by submitting a certified copy of their Colorado state tax return.

MMR Budget and programmatic adjustments

Some stakeholders raised concerns about the MMR budget, or money being allocated to other programs. The MMR Program is fully self-sustaining and all funds generated from the fee support the MMR Program and are not shared with other programs. The MMR Program regularly monitors fees, revenue, and patient counts to ensure that the Medical Marijuana Registry Cash Fund stays within statutory account limits.

The Department received feedback asking that the MMR Program adjust the program staffing, budget, and expenditures since the patient counts have been declining. MMR

continues to monitor program workloads to ensure staffing needs are optimized. In recent years, the program has reduced staff by managing through attrition and is actively reducing programmatic costs.

System and replacement

General

Many users, both internal and external, report that they generally appreciate the conveniences that the MMRS has to offer compared to sending their applications in the mail, but still find the MMRS hard to use. Specifically, they have cited challenges with uploading information, using the system on a mobile device, navigating the system, and printing their card. These issues are part of the core design of the system, and cannot be updated within the current platform. Some respondents also felt that the Department has not done enough to update the current system. The MMRS provides limited functionality to make changes to meet new legislative requirements and user feedback requests. Many updates require costly contractor enhancements, contract amendments, and take months to implement. While the Department understands why stakeholders would request that the existing system be updated, most updates would require additional funding to implement. A new system with improved usability and features to make changes more easily will allow the MMR Program to become compliant more quickly and respond to user feedback more efficiently.

MMRS replacement timeline

Some respondents felt that the timeline was too far out and that it would not be accurate in the future. Others expressed frustration with the fact that they would be paying a higher cost for a system that they would not benefit from for several years. The Department recognizes that the timeline is subject to change. The procurement and development processes take several years to complete. Current estimates suggest that it will take until June 2028 to build the necessary revenue, and the Department will not be able to begin engaging with contractors until the program has enough money to pay for the system. The Department will communicate with stakeholders if this timeline changes.

Rule review feedback

Telemedicine

Three respondents provided feedback requesting that the rule be updated to allow telemedicine for medical marijuana recommendations. While the Department understands and appreciates this feedback, statute requires that exams for medical marijuana recommendations be conducted in person. During the pandemic, Governor Polis issued an executive order suspending the requirement for in person exams so patients could have medical marijuana exams by telemedicine. The executive order expired in July 2021. Because the requirement for exams for medical marijuana recommendations to be in person is in statute, the Department is unable to incorporate this feedback.

Visits with health care providers

One respondent stated that they did not think that they should be required to see a doctor that does not know them who will charge them an “astronomical fee.” The Department does not require patients to see providers who they do not know; however, not all providers recommend medical marijuana as part of their practice. Therefore, patients may have to locate medical marijuana recommending providers that are not in their healthcare network. Additionally, the Department does not set or oversee medical providers or the fees they charge patients for obtaining a medical marijuana recommendation.

Nurse practitioners able to recommend for all qualifying conditions

One respondent suggested that it is appropriate for nurse practitioners and advanced practice practitioners to have the authority to recommend medical marijuana to treat all diagnoses. Pursuant to C.R.S. §25-1.5-106(2)(d.4), advanced practice practitioners may recommend only for disabling conditions, which include Post-Traumatic Stress Disorder, Autism Spectrum Disorder, and any condition for which a physician could prescribe an opioid. Pursuant to the Colorado Constitution Article XVIII, Section 14, only physicians may recommend medical marijuana to treat debilitating conditions, which include cancer, glaucoma, HIV/AIDS, cachexia, persistent muscle spasms, seizures, severe nausea, severe pain, and any other debilitating medical condition approved by the Board. While the Department appreciates and understands this feedback, it is unable to amend the rule to incorporate this feedback as these are statutory and constitutional requirements.

Bona-fide physician patient relationship

One respondent expressed concern that recommending providers are not maintaining a bona-fide physician-patient relationship with their patients. Specifically, they noted that they have not been able to obtain medical records from other recommending providers, that patients cannot recall the name of their previous providers, and that they have not been able to file a complaint regarding recommending providers who do not provide medical records because the patient does not remember their providers’ names. The respondent asked that the Department do more to enforce the bona-fide physician-patient relationship and ensure that recommending providers produce medical records when requested.

The Department appreciates this feedback and understands the respondent’s frustration. Pursuant to C.R.S. 25-1.5-106, recommending providers are required to maintain medical records and respond to a treating provider’s request for those records.
When a recommending provider completes a certification for a medical marijuana patient, they attest that they have a bona-fide relationship with the patient and that they are complying with all rules, laws, and regulations.

If the Department receives information that a provider is not complying with the rules or laws, the Department will encourage the individual to file a complaint against the provider with the Department of Regulatory Agencies, which has licensing authority

over health care providers. Additionally, the Department may submit a referral to the Department of Regulatory Agencies.

No changes requested

Two respondents gave feedback stating that the rule was fair, standard, and that there are currently no changes needed to the rule as part of a rule review.

Feedback unrelated to this rulemaking request

Stakeholders also offered feedback about topics that are outside the scope of this rulemaking request and the Department's authority. Although the Department cannot incorporate the feedback, the concerns are summarized below.

HB 21-1317

Stakeholders expressed general frustrations with HB 21-1317, and feel that the bill's implementation has been eroding patient access to medical marijuana. The bill made many changes including:

- Requiring recommending providers to include information like the provider's DEA number, THC potency, directions for use, daily authorized quantity, and recommended product on medical marijuana recommendations.
- More requirements for patients age 18-20.
- Stricter product purchasing limits.

Some stakeholders have expressed that they believe the implementation of HB 21-1317 is negatively affecting the MMR Program and contributing to lower patient counts and fewer health care providers recommending medical marijuana.

Stakeholders suggested that one of the reason fewer providers are writing medical marijuana recommendations is because the information that providers are required to list on a medical marijuana recommendation could constitute a prescription. The Department, in collaboration with the Department of Regulatory Agencies, sent information to health care providers in Colorado after the law went into effect that clarified the difference between a medical marijuana recommendation and a prescription for an FDA authorized drug.

The Department recognizes these concerns and acknowledges that both patient enrollment and the number of providers that have recommended medical marijuana have been decreasing since 2021. While the Department understands these stakeholder concerns with the law, it is obligated to align its rule with statue.

Concerns about reduced benefits for medical marijuana patients

Stakeholders are frustrated with the fact that medical marijuana dispensaries are closing, manufacturers are moving out of state, and there are fewer medical marijuana products available for patients. Stakeholders suggested that medical patients be allowed to purchase medical marijuana at adult use retail centers while still being able to pay the lower tax rate imposed on medical marijuana. While the

Department recognizes these challenges, the Department does not have authority over business licensing or marijuana sales, and is unable to incorporate this feedback related to products and sales.

Length of registration period

Several respondents suggested that if the fee must be increased, they would prefer to have a longer registration period. While the Department understands this perspective, the Department cannot amend the registration period as Colorado Constitution Article XVIII requires that cards issued to treat debilitating medical conditions be valid for only one year.

Please identify the determinants of health or other health equity and environmental justice considerations, values or outcomes related to this rulemaking.

Overall, after considering the benefits, risks and costs, the proposed rule:

Select all that apply.

	Improves behavioral health and mental health; or, reduces substance abuse or suicide risk.	X	**Reduces or eliminates health care costs, improves access to health care or the system of care; stabilizes individual participation; or, improves the quality of care for unserved or underserved populations.**
	Improves housing, land use, neighborhoods, local infrastructure, community services, built environment, safe physical spaces or transportation.		Reduces occupational hazards; improves an individual's ability to secure or maintain employment; or, increases stability in an employer's workforce.
	Improves access to food and healthy food options.		Reduces exposure to toxins, pollutants, contaminants or hazardous substances; or ensures the safe application of radioactive material or chemicals.
X	**Improves access to public and environmental health information; improves the readability of the rule; or, increases the shared understanding of roles and responsibilities, or what occurs under a rule.**		Supports community partnerships; community planning efforts; community needs for data to inform decisions; community needs to evaluate the effectiveness of its efforts and outcomes.

	Increases a child's ability to participate in early education and educational opportunities through prevention efforts that increase protective factors and decrease risk factors, or stabilizes individual participation in the opportunity.		Considers the value of different lived experiences and the increased opportunity to be effective when services are culturally responsive.
	Monitors, diagnoses and investigates health problems, and health or environmental hazards in the community.		Ensures a competent public and environmental health workforce or health care workforce.
	Other:______________________________ ______________________________________		Other:______________________________ ______________________________________

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Center for Health and Environmental Data

MEDICAL USE OF MARIJUANA

5 CCR 1006-2

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Adopted by the Board of Health on _______________, effective _______________.

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Regulation 2: Application for a registry identification card

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B. 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 complete an application supplied by the department, and have such application signed and include fee payment. The parent of the minor applicant must provide the following information with the application:

1. The applicant's name, address, date of birth, and social security number;

2. Minor applicants

   a. For minor applicants with a debilitating medical condition, written documentation, outlined in Regulation 2.A.3.a, from two ~~of the applicant's~~ physicians that the applicant has been diagnosed with a debilitating medical condition as defined in Regulation 6; or,

   b. For minor applicants with a disabling medical condition, written documentation, as outlined in Regulation 2.A.3.a. from two physicians that have diagnosed the patient as having a disabling medical condition as defined at § 25-1.5-106(2)(a.7), C.R.S. If the recommending physician is not the patient's primary care physician, the recommending physician shall review the records of a diagnosing physician or a licensed mental health provider acting within his or her scope of practice;

3. The name, address, and telephone number of the two physicians identified in subsection B.2 of this Regulation 2;

4. Consent from each of the applicant's parents residing in Colorado that the applicant may engage in the medical use of marijuana;

5. Documentation that at least one of the physicians referred to in subsection B.2 of this Regulation 2 has concluded that the patient might benefit from the medical use of marijuana and 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 if the applicant is a minor; and

6. Indicate if a medical marijuana center has been designated to grow for the patient.

C. To maintain an effective registry identification card, a patient must annually resubmit to the department, at least thirty days prior to the expiration date, but no sooner than sixty days prior to the expiration date, updated written documentation of the information required in paragraphs A and B of this regulation.

D. A patient may change his or her primary care-giver by submitting such information, in the manner determined by the department, within ten days of the change occurring. The department does not process patient requests to change his or her designated medical marijuana center; a patient wishing to change his or her designated medical marijuana center should reference the requirements established by the ~~department~~ Department of ~~revenue's~~ Revenue's ~~marijuana~~ Marijuana ~~enforcement~~ Enforcement ~~division~~Division.

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Regulation 7: Determination of fees to pay for administrative costs of the medical use of marijuana program

A. **Application fee**. Effective ~~February~~ July ~~14~~15, ~~2022~~2024, the Department shall collect ~~twenty-nine~~fifty-two dollars ~~and fifty cents~~ from each applicant at the time of application to pay for the direct and indirect costs to administer the medical use of marijuana program, unless the applicant meets the criteria set forth in section (b) of this Regulation (7) establishing indigence. Such fee shall not be refundable to the applicant if the application is denied or revoked or if the patient no longer has a debilitating or disabling medical condition. The amount of the fee shall be evaluated annually by the department to ensure compliance with the applicable statutes and the fee meets the actual Medical Marijuana Registry expenses. The department shall propose modifications to the board, as appropriate. If the patient provides updated information at any time during the effective period of the registry identification card, the department shall not charge a fee to modify the registry information concerning the patient.

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Regulation 9: Primary care-giver-patient relationship and primary care-giver rules

A. A patient who designates a primary care-giver for him or herself cannot also be a primary care-giver to another patient.

B. A cultivating or transporting caregiver shall be listed as a primary caregiver for no more than five patients in the medical marijuana registry at any given time unless a waiver as set forth in Regulation ~~Ten~~ 10 has been granted for exceptional circumstances.

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