

DRAFT
STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY FOR
Proposed Amendments to Rules and Regulations Pertaining to
Medical Use of Marijuana (5 CCR 1006-2), Regulation 1: Establishment and
confidentiality of the registry for the medical use of marijuana; Regulation 2:
Application for a registry identification card; Regulation 12: Patient
Responsibilities; and Regulation 13: Subpoenas for Registry Information
Patients, Registry Confidentiality and Subpoenas
April 6, 2011

Basis and Purpose.

The Colorado Department of Public Health and Environment (department) is the state health agency responsible for the administration of the medical marijuana registry. Pursuant to Article XVIII, Section 14 of the Colorado Constitution, and C.R.S. § 25-1.5-106, the department must review and either approve or deny patient applications, maintain the confidentiality of the registry database, and respond to subpoenas relating to the registry.

Regulation 1

Regulation 1 is modified to allow the department to confirm information in the medical marijuana registry to law enforcement in the following situations:

- The department may confirm that a registry identification card has been suspended.
- The department may confirm that an individual is not on the medical marijuana registry.
- If an individual does not have his/her registry identification card to show to law enforcement, the department may confirm registry status if law enforcement provides the individual's name and date of birth.
- The department may confirm a transportation waiver for the primary care-giver of a homebound or minor patient.

Regulation 2

Regulation 2 is amended to clarify that the patient may identify a primary care-giver or a medical marijuana center on his/her application for the medical marijuana registry, and further that the application must include the application fee and be notarized. Patients are limited to changing their designated primary care-giver no more than one time per month.

The regulations further specify when applications will be rejected, when denied, and appeal rights for patients. If an application is rejected, the department returns the application to the applicant with instructions to correct the deficiency in the application and return it within (30) days of receipt. An application may be rejected if the application is illegible or incomplete, if the application is not notarized, or if the physician who signed the referral is not eligible to recommend medical marijuana. A denial of an application means that the applicant cannot reapply to the medical marijuana

registry for six months following the date of the denial pursuant to the Colorado Constitution. Considering the heft of the penalty, the rule narrows the reasons for denial to falsified application information including the physician recommendation, use of an identification document that does not belong to the applicant, or submission of an application by an individual who is not a Colorado resident.

In accord with the Colorado Constitution, the rule further authorizes the department to revoke a registry identification card for a one year period if the patient is found to have willfully violated the Colorado Constitution, statutes, or regulations concerning the medical marijuana program. Patients who have been convicted of a criminal drug offense, sentenced or ordered by a court to drug or substance abuse treatment, or sentenced to the Division of Youth Corrections must reapply for a registry identification card and obtain a new physician recommendation. C.R.S. § 25-1.5-106(10). The rule also allows patients to appeal any denial of an application, or suspension or revocation of a medical marijuana registry identification card.

Regulation 12

New Regulation 12 allows patients, when providing a primary care-giver with a copy of the patient's application, to redact the mailing address and social security number on the application. This regulation also imposes the requirements of C.R.S. § 25-1.5-106(12)(b) prohibiting the use or possession of medical marijuana in certain circumstances, such as using medical marijuana in plain view of or in a place open to the general public, or on school grounds. In accord with the Colorado Constitution, the rules require that a patient who no longer has a debilitating medical condition return his/her registry identification card to the department. Patients are also required to notify the department of a criminal drug conviction or sentencing to drug or substance abuse treatment or to the division of youth corrections, and further require that the patient remit his/her registry identification card at that time.

Regulation 13

Regulation 13 addresses the fees to be assessed when department staff is subpoenaed to answer registry questions by law enforcement or private parties. The fees are not applicable to governmental agencies.

Specific Statutory Authority.

These rules are promulgated pursuant to the following authority:
Colorado Constitution Article XVIII, Section 14 and C.R.S. § 25-1.5-106.

Major Factual and Policy Issues Encountered.

The proposed rules were adopted unanimously by the Medical Marijuana Advisory Committee (Committee), which is comprised of individuals representing disparate interests, including law enforcement, department staff, and medical marijuana patients, growers and advocates.

During its review of the proposed patient rules, the Committee considered whether to include language in the rules giving examples of information contained in the registry

that may be released. As rules are used to set requirements and do not typically contain examples, the Committee decided to remove the examples from the rule.

The Committee also debated whether the rules should set a timeframe for a patient to notify the department of a change of primary care-giver. It was decided to require a patient to submit the change within 10 days of the event in accord with the requirement set in the Colorado Constitution.

Much of what is in rule is almost verbatim taken from C.R.S. § 25-1.5-106 and elicited little debate. This includes much of Regulation 12 concerning the patient responsibilities and usage limitations. It was agreed to add to the rules that confidential information on the registry card may be redacted when given to the primary care-giver to use while transporting marijuana for a patient.

Regulation 13 provides for a subpoena fee to be assessed when a non-governmental party subpoenas registry staff.

Alternative Rules Considered and Why Rejected.

These regulations had very few changes beyond the items discussed above, and all changes were suggested by Medical Marijuana Advisory Committee members and were unanimously accepted.

STATE OF COLORADO

John W. Hickenlooper, Governor
Christopher E. Urbina, MD, MPH
Executive Director and Chief Medical Officer

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

NOTICE OF PUBLIC RULE-MAKING HEARING BEFORE THE COLORADO BOARD OF HEALTH

NOTICE is hereby given pursuant to the provisions of Section 24-4-103, C.R.S., and 25-1.5-106(4), C.R.S. that the Colorado Board of Health will conduct a public rule-making hearing on **June 15, 2011** in the Sabin-Cleere Conference Room of the Colorado Department of Public Health and Environment, Bldg. A, First Floor, 4300 Cherry Creek Drive, South, Denver, CO 80246, to consider the promulgation of proposed amendments to **Regulations 1, 2, 12 and 13, 5 CCR 1006-2, Rules and Regulations Pertaining to Medical Use of Marijuana-regarding patient rules.** The Board meeting commences in the morning. For the specific time this hearing is scheduled, please consult the meeting agenda on the Board's Web site at <http://www.cdphe.state.co.us/op/bh/index.html> on or after Friday, June 3, 2011 or call (303) 692-3464.

Hearing Subjects/Issues Involved

The purpose of the hearing is to receive public comment on proposed amendments to 5 CCR 1006-2, Medical Use of Marijuana that: 1) set forth under what circumstances the department may will confirm information on the medical marijuana registry; 2) clarify that a patient may identify a primary care-giver or a medical marijuana center on the application, that the application must include the applicable fee and be notarized, and that a patient is limited to changing designated primary care-giver to once a month; 3) specify when an application will be rejected, denied, revoked and what appeal rights are available to the patient; 4) allow a patient to redact certain information when providing the application to a primary care-giver; 5) prohibit the use of medical marijuana in certain circumstances; 6) set forth when a patient must notify the department of changed circumstances that require the patient to remit the registry identification card; and 7) establish fees that will be assessed when department staff is subpoenaed to testify regarding registry questions and when the fee will be assessed. The proposed amendments also make any necessary conforming amendments. The proposed rules have been developed by the Colorado Department of Public Health and Environment pursuant to Section 25-1.5-106, C.R.S. and Colorado Constitution, Article XVIII, Section 14.

Contact for more information and/or copies of the proposed rules: Colorado Department of Public Health and Environment, Center for Health and Environmental Information and Statistics Division, CHEIS-ADM-A1, 4300 Cherry Creek Drive S., Denver, CO 80246, (303) 692-2184. The proposed amendments will also be available on the Board's Web site at <http://www.cdphe.state.co.us/op/bh/index.html> under "Notices of Upcoming Public Rulemaking Hearings and Draft Proposed Rules."

Participation in Public Rule-Making Hearing

The Board encourages all interested persons to provide their opinions or recommendations regarding the matters to be addressed in this rulemaking hearing, either orally at the hearing or in writing prior to or at the hearing. The Board is establishing procedures regarding the taking of written and oral comment from interested persons and/or organizations. These procedures are intended to facilitate the rulemaking hearing by allowing participation by all interested persons in a fair and responsible manner. The hearing will include the Board's asking questions of interested persons and organizations.

Public Participation Through Written Comments Encouraged:

The Board STRONGLY encourages all interested persons and organizations to provide written data, views or comments regarding the proposed rules prior to the hearing. Information submitted by the deadline listed below will be distributed to the Board for review and consideration prior to the hearing. Submission of written comments prior to the rulemaking hearing will facilitate the Board members' identification of outstanding issues and allow for questioning of interested persons and organizations regarding written submissions.

Written comments shall be submitted by Tuesday, May 24, 2011 at 5:00 p.m. to:

Colorado Board of Health

C/O Jamie Thornton, Program Assistant
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South EDO-A5
Denver, CO 80246-1530
FAX: 303-691-7702
E-mail: cdphe.edobohcomments_patientrules@state.co.us

Oral Comment and Testimony May Be Limited

Persons appearing before the Board who wish to make oral comment are encouraged to make well-planned presentations that use clear and concise language to explain their points of view. Abusive tactics, misrepresentations, and personal attacks on the motivation of others will not be tolerated. The oral comment and testimony at the hearing may be limited as stated below.

Because of necessary time limitations, the **Board requires the following:**

1. Recognized organizations or entities that submit written comments as described above, may fax a request for a time allocation to address the Board regarding the proposed rule, not to exceed 10 minutes, to the Board of Health Administrator at 303-691-7702 **by 5:00 p.m., Tuesday, May 24, 2011.** The request must include the name of the organization, entity or person requesting a time allocation, a contact person, contact person's mailing address, phone number, fax number and email address, if available, and the amount of time requested. **The recognized organization or entity MUST submit written comments and its request for a time allocation by the May 24, 2011 deadline to receive a time allocation.** Depending upon the number of requests received, and in consultation with the Hearing Chair, the Administrator will notify the requestor of the amount of time allocated on or before Friday, June 3, 2011.
2. **Recognized organizations or entities that do not submit written comments by May 24, 2011, will be limited to the time restrictions described in paragraph 4 below.**
3. **Individuals that share the same perspective or position regarding the proposed rule that are not representatives of a recognized organization or entity are encouraged to identify one spokesperson to testify at the hearing.**
4. At the discretion of the Hearing Chair, persons or groups choosing not to request a time allocation as outlined in 1 above, may be limited. The time allocated for each such person or group to comment on the proposal will be based on the number of persons wishing to comment and the time allocated for the hearing. Additionally, the Chair shall limit duplicative or repetitive testimony.

The proposed rules, together with the proposed statement of basis and purpose, specific statutory authority and regulatory analysis, will be available for inspection at the above address by any person at least five working days prior to the hearing.

Dated this 26 day of April, 2011.



Christopher E. Urbina, M.D., M.P.H.
Executive Director and Chief Medical Officer