

**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 7: Determination of fees to pay for**  
**administrative costs of the medical use of marijuana program and Regulation 8: Physician**  
**requirements; reasonable cause for referrals of physicians to the Colorado Medical Board;**  
**reasonable cause for department adverse action concerning physicians; appeal rights**

September 21, 2011

**Basis and Purpose.**

1. **Fee Reduction.** The Colorado Constitution, Article XVIII, Section 14 requires the state health agency administering the medical marijuana registry (MMR), the Colorado Department of Public Health and Environment (department), to set fees to cover the direct and indirect costs of administering the program. Regulation 7.A of 5 CCR 1006-2 directs the department to evaluate the fee and propose appropriate amendments. With registered patients totaling approximately 127,000, which constitutes a significant increase in patients in the past two years that has only recently stabilized, the department has calculated a reduced fee to cover the direct and indirect costs of the MMR.

2. **House Bill 11-1043 Amendments.** Additionally, the passage of House Bill 11-1043 requires two changes to the existing MMR rules.

a. **Indigence Standard.** First, the indigence rule must be amended to require applicants to provide proof of income at or below 185% of the federal poverty line, adjusted for family size, by providing a certified state tax return from the Department of Revenue.

b. **Physician Licensure Requirements.** Second, the definition of “in good standing” with respect to a physician’s license must be modified to comply with the bill’s requirement that physicians who have a currently conditioned or restricted license issued prior to July 1, 2011 are prohibited from recommending medical marijuana, and physicians whose medical license is restricted or conditioned specifically regarding the recommendation of medical marijuana effective July 1, 2011 forward are prohibited from recommending medical marijuana.

**Specific Statutory Authority.** These rules are promulgated pursuant to the following statutes:

1. **Fee reduction.** The Colorado Constitution, Article XVIII, Section 14, paragraph 3(i) and C.R.S. § 25-1.5-106(16)(a) provide that the state health agency may determine and levy reasonable fees to pay for any direct or indirect administrative costs associated with its role in this program.

2. **House Bill 11-1043 Amendments**

a. **Indigence Standard.** C.R.S. § 25-1.5-106(16)(a) requires the department to waive the application fee for any patient who demonstrates, pursuant to a copy of the applicant’s state tax return certified by the Department of Revenue, that the applicant’s income does not exceed 185% of the federal poverty line, adjusted for family size.

b. Physician Licensure Requirements. C.R.S. § 25-1.5-106 (2)(c)(II) requires that for a licensed physician to be able to recommend medical marijuana for purposes of the MMR, prior to July 1, 2011 that physician's license must have been unconditioned and unrestricted at the time of recommendation, and from July 1, 2011 forward the physician's license must not contain a condition or restriction that prohibits the recommendation of medical marijuana.

## **Major Factual and Policy Issues Encountered.**

1. Fee reduction. The volume of medical marijuana registry applications has increased substantially since the last adjustment to fees in 2007. The rapidly increasing number of applications from 2008 through 2010 made it very difficult for the department to predict with any accuracy what amount of fee would be sufficient to cover the costs of the program. Since the applications have somewhat leveled out in the mid 120,000s, the department is able to propose a fee that we feel with some certainty will be sufficient to meet the needs of the MMR.

The projected volume of applications and anticipated costs for operations were reviewed to determine the appropriate fee recommendation sufficient to cover the direct and indirect costs. It is estimated that the thirty-five dollar application fee will adequately cover the projected program costs of \$3,367,726 for fiscal year 2011-12. Reducing the fee from \$90 to \$35 is a reduction of \$55 per applicant. Through the end of July 2011, 295, or 5.5%, of the MMR patients have proven their indigent status and have had their fees waived, although this number appears to be increasing in August. The proposed fee assumes 20% of patients will meet the indigence standard, and sets the fee for paying patients accordingly.

## 2. House Bill 11-1043 Amendments

a. Indigence Standard. The Colorado General Assembly required in House Bill 11-1043 that indigence for the MMR be established through the submission of a state tax return certified by the Department of Revenue showing individual income at or below 185% of the federal poverty line, adjusted for family size. Individuals who have not previously filed a state tax return may submit a late filing to the Department of Revenue in order to comply with this requirement.

b. Physician Licensure Requirements. Current MMR rules require that a physician have an unrestricted and unconditioned license in order to make recommendations for medical marijuana for purposes of the MMR. With the clarification in statute added by House Bill 11-1043, the MMR rules need to be amended to accept recommendations from physicians after July 1, 2011 unless the physician has a condition or restriction that specifically prohibits the physician from recommending medical marijuana.

## **Alternative Rules Considered and Why Rejected.**

No alternative rules were considered. The department calculated the proposed fee based upon the number of patients in the registry and the direct and indirect costs of the program, factoring in assumptions regarding the percentage of patients who may qualify as indigent and receive a fee waiver. The proposed amendments regarding indigence and physician licensure requirements are both required by Colorado state statute.