

CHAPTER 347

HEALTH AND ENVIRONMENT

SENATE BILL 17-017

BY SENATOR(S) Aguilar, Coram, Crowder, Donovan, Fenberg, Garcia, Guzman, Holbert, Jahn, Jones, Kagan, Kefalas, Kerr, Lundberg, Marble, Merrifield, Moreno, Neville T., Priola, Sonnenberg, Todd, Williams A.;
also REPRESENTATIVE(S) Singer, Ginal, Herod, Hooton, Kennedy, Lebsack, Lontine, Melton, Rosenthal.

AN ACT

CONCERNING ADDING STRESS DISORDERS TO THE LIST OF DEBILITATING MEDICAL CONDITIONS FOR THE PURPOSES OF THE USE OF MEDICAL MARIJUANA.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 25-1.5-106, **amend** (2)(a.5), (2)(d.5) introductory portion, (3)(a)(VI), (5) introductory portion, (5)(b), (5)(d)(III), (5)(d)(IV), (9)(a), (9)(b), (12)(b)(VII), (14), and (16)(a); and **add** (2)(a.7), (2)(d.3), and (2.5) as follows:

25-1.5-106. Medical marijuana program - powers and duties of state health agency - rules - medical review board - medical marijuana program cash fund - subaccount - created - repeal. (2) Definitions. In addition to the definitions set forth in section 14 (1) of article XVIII of the state constitution, as used in this section, unless the context otherwise requires:

(a.5) "Bona fide physician-patient relationship", for purposes of the medical marijuana program, means:

(I) A physician and a 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, INCLUDING REVIEWING A PREVIOUS DIAGNOSIS FOR A DEBILITATING OR DISABLING MEDICAL CONDITION, and current medical condition, including an appropriate personal physical examination;

(II) The physician has consulted with the patient with respect to the patient's debilitating medical condition OR DISABLING MEDICAL CONDITION before the patient applies for a registry identification card; and

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(III) The physician is available to or offers to provide follow-up care and treatment to the patient, including patient examinations, to determine the efficacy of the use of medical marijuana as a treatment of the patient's debilitating medical condition OR DISABLING MEDICAL CONDITION.

(a.7) "DISABLING MEDICAL CONDITION" MEANS POST-TRAUMATIC STRESS DISORDER AS DIAGNOSED BY A LICENSED MENTAL HEALTH PROVIDER OR PHYSICIAN.

(d.3) "PATIENT" MEANS A PERSON WHO HAS A DEBILITATING MEDICAL CONDITION OR DISABLING MEDICAL CONDITION.

(d.5) "Primary caregiver" means a natural person, other than the patient or the patient's physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition OR DISABLING MEDICAL CONDITION. A primary caregiver may have one or more of the following relationships:

(2.5) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (2.5)(h) AND (2.5)(i) OF THIS SECTION AND SECTION 18-18-406.3, A PATIENT WITH A DISABLING MEDICAL CONDITION OR HIS OR HER PRIMARY CAREGIVER CHARGED WITH A VIOLATION OF THE STATE'S CRIMINAL LAWS RELATED TO THE PATIENT'S MEDICAL USE OF MARIJUANA WILL BE DEEMED TO HAVE ESTABLISHED AN AFFIRMATIVE DEFENSE TO SUCH ALLEGATION WHERE:

(I) THE PATIENT WAS PREVIOUSLY DIAGNOSED BY A PHYSICIAN AS HAVING A DISABLING MEDICAL CONDITION;

(II) THE PATIENT WAS ADVISED BY HIS OR HER PHYSICIAN, IN THE CONTEXT OF A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP, THAT THE PATIENT MIGHT BENEFIT FROM THE MEDICAL USE OF MARIJUANA IN CONNECTION WITH A DISABLING MEDICAL CONDITION; AND

(III) THE PATIENT AND HIS OR HER PRIMARY CAREGIVER WERE COLLECTIVELY IN POSSESSION OF AMOUNTS OF MARIJUANA ONLY AS PERMITTED UNDER THIS SECTION.

(b) THE AFFIRMATIVE DEFENSE IN SUBSECTION (2.5)(a) OF THIS SECTION DOES NOT EXCLUDE THE ASSERTION OF ANY OTHER DEFENSE WHERE A PATIENT OR PRIMARY CAREGIVER IS CHARGED WITH A VIOLATION OF STATE LAW RELATED TO THE PATIENT'S MEDICAL USE OF MARIJUANA.

(c) IT IS AN EXCEPTION FROM THE STATE'S CRIMINAL LAWS FOR ANY PATIENT WITH A DISABLING MEDICAL CONDITION OR HIS OR HER PRIMARY CAREGIVER IN LAWFUL POSSESSION OF A REGISTRY IDENTIFICATION CARD TO ENGAGE OR ASSIST IN THE MEDICAL USE OF MARIJUANA, EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2.5)(h) OF THIS SECTION OR SECTION 18-18-406.3.

(d) IT IS AN EXCEPTION FROM THE STATE'S CRIMINAL LAWS FOR ANY PHYSICIAN TO:

(I) ADVISE A PATIENT WHOM THE PHYSICIAN HAS DIAGNOSED AS HAVING A

DISABLING MEDICAL CONDITION ABOUT THE RISKS AND BENEFITS OF THE MEDICAL USE OF MARIJUANA OR THAT HE OR SHE MIGHT BENEFIT FROM THE MEDICAL USE OF MARIJUANA, PROVIDED THAT SUCH ADVICE IS BASED UPON THE PHYSICIAN'S CONTEMPORANEOUS ASSESSMENT OF THE PATIENT'S MEDICAL HISTORY AND CURRENT MEDICAL CONDITION AND A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP; OR

(II) PROVIDE A PATIENT WITH WRITTEN DOCUMENTATION, BASED UPON THE PHYSICIAN'S CONTEMPORANEOUS ASSESSMENT OF THE PATIENT'S MEDICAL HISTORY AND CURRENT MEDICAL CONDITION AND A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP, STATING THAT THE PATIENT HAS A DISABLING MEDICAL CONDITION AND MIGHT BENEFIT FROM THE MEDICAL USE OF MARIJUANA. NO PHYSICIAN SHALL BE DENIED ANY RIGHTS OR PRIVILEGES FOR THE ACTS AUTHORIZED BY THIS SECTION.

(e) NOTWITHSTANDING THE FOREGOING PROVISIONS, NO PERSON, INCLUDING A PATIENT WITH A DISABLING MEDICAL CONDITION OR HIS OR HER PRIMARY CAREGIVER, IS ENTITLED TO THE PROTECTION OF THIS SECTION FOR HIS OR HER ACQUISITION, POSSESSION, MANUFACTURE, PRODUCTION, USE, SALE, DISTRIBUTION, DISPENSING, OR TRANSPORTATION OF MARIJUANA FOR ANY USE OTHER THAN MEDICAL USE.

(f) ANY PROPERTY INTEREST THAT IS POSSESSED, OWNED, OR USED BY A PATIENT WITH A DISABLING MEDICAL CONDITION OR HIS OR HER PRIMARY CAREGIVER IN CONNECTION WITH THE MEDICAL USE OF MARIJUANA OR ACTS INCIDENTAL TO SUCH USE SHALL NOT BE HARMED, NEGLECTED, INJURED, OR DESTROYED WHILE IN THE POSSESSION OF STATE OR LOCAL LAW ENFORCEMENT OFFICIALS WHERE SUCH PROPERTY HAS BEEN SEIZED IN CONNECTION WITH THE CLAIMED MEDICAL USE OF MARIJUANA. ANY SUCH PROPERTY INTEREST SHALL NOT BE FORFEITED UNDER ANY PROVISION OF STATE LAW PROVIDING FOR THE FORFEITURE OF PROPERTY OTHER THAN AS A SENTENCE IMPOSED AFTER CONVICTION OF A CRIMINAL OFFENSE OR ENTRY OF A PLEA OF GUILTY TO SUCH OFFENSE.

(g) (I) A PATIENT WITH A DISABLING MEDICAL CONDITION MAY ENGAGE IN THE MEDICAL USE OF MARIJUANA, WITH NO MORE MARIJUANA THAN IS MEDICALLY NECESSARY TO ADDRESS A DISABLING MEDICAL CONDITION. THE MEDICAL USE OF MARIJUANA BY A PATIENT WITH A DISABLING MEDICAL CONDITION IS LAWFUL WITHIN THE FOLLOWING LIMITS:

(A) NO MORE THAN TWO OUNCES OF A USABLE FORM OF MARIJUANA; AND

(B) NO MORE THAN SIX MARIJUANA PLANTS, WITH THREE OR FEWER BEING MATURE, FLOWERING PLANTS THAT ARE PRODUCING A USABLE FORM OF MARIJUANA.

(II) FOR QUANTITIES OF MARIJUANA IN EXCESS OF THESE AMOUNTS, A PATIENT OR HIS OR HER PRIMARY CAREGIVER MAY RAISE AS AN AFFIRMATIVE DEFENSE TO CHARGES OF VIOLATION OF STATE LAW THAT SUCH GREATER AMOUNTS WERE MEDICALLY NECESSARY TO ADDRESS THE PATIENT'S DISABLING MEDICAL CONDITION.

(h) (I) NO PATIENT WITH A DISABLING MEDICAL CONDITION SHALL:

(A) ENGAGE IN THE MEDICAL USE OF MARIJUANA IN A WAY THAT ENDANGERS THE

HEALTH OR WELL-BEING OF ANY PERSON; OR

(B) ENGAGE IN THE MEDICAL USE OF MARIJUANA IN PLAIN VIEW OF, OR IN A PLACE OPEN TO, THE GENERAL PUBLIC.

(II) IN ADDITION TO ANY OTHER PENALTIES PROVIDED BY LAW, THE STATE HEALTH AGENCY SHALL REVOKE FOR A PERIOD OF ONE YEAR THE REGISTRY IDENTIFICATION CARD OF ANY PATIENT FOUND TO HAVE WILLFULLY VIOLATED THE PROVISIONS OF THIS SECTION.

(i) NOTWITHSTANDING THE PROVISIONS OF THIS SUBSECTION (2.5), NO PATIENT WITH A DISABLING MEDICAL CONDITION UNDER EIGHTEEN YEARS OF AGE SHALL ENGAGE IN THE MEDICAL USE OF MARIJUANA UNLESS:

(I) TWO PHYSICIANS, ONE OF WHOM MUST BE A BOARD-CERTIFIED PEDIATRICIAN, A BOARD-CERTIFIED FAMILY PHYSICIAN, OR A BOARD-CERTIFIED CHILD AND ADOLESCENT PSYCHIATRIST AND ATTEST THAT HE OR SHE IS PART OF THE PATIENT'S PRIMARY CARE PROVIDER TEAM, HAVE DIAGNOSED THE PATIENT AS HAVING A DISABLING MEDICAL CONDITION;

(II) ONE OF THE PHYSICIANS REFERRED TO IN SUBSECTION (2.5)(i)(I) OF THIS SECTION HAS EXPLAINED THE POSSIBLE RISKS AND BENEFITS OF THE MEDICAL USE OF MARIJUANA TO THE PATIENT AND EACH OF THE PATIENT'S PARENTS RESIDING IN COLORADO;

(III) THE PHYSICIAN REFERRED TO IN SUBSECTION (2.5)(i)(II) OF THIS SECTION HAS PROVIDED THE PATIENT WITH THE WRITTEN DOCUMENTATION SPECIFYING THAT THE PATIENT HAS BEEN DIAGNOSED WITH A DISABLING MEDICAL CONDITION AND THE PHYSICIAN HAS CONCLUDED THAT THE PATIENT MIGHT BENEFIT FROM THE MEDICAL USE OF MARIJUANA;

(IV) EACH OF THE PATIENT'S PARENTS RESIDING IN COLORADO CONSENT IN WRITING TO THE STATE HEALTH AGENCY TO PERMIT THE PATIENT TO ENGAGE IN THE MEDICAL USE OF MARIJUANA;

(V) A PARENT RESIDING IN COLORADO CONSENTS IN WRITING TO SERVE AS THE PATIENT'S PRIMARY CAREGIVER;

(VI) A PARENT SERVING AS A PRIMARY CAREGIVER COMPLETES AND SUBMITS AN APPLICATION FOR A REGISTRY IDENTIFICATION CARD AND THE WRITTEN CONSENTS REFERRED TO IN SUBSECTIONS (2.5)(i)(IV) AND (2.5)(i)(V) OF THIS SECTION TO THE STATE HEALTH AGENCY;

(VII) THE STATE HEALTH AGENCY APPROVES THE PATIENT'S APPLICATION AND TRANSMITS THE PATIENT'S REGISTRY IDENTIFICATION CARD TO THE PARENT DESIGNATED AS A PRIMARY CAREGIVER;

(VIII) THE PATIENT AND PRIMARY CAREGIVER COLLECTIVELY POSSESS AMOUNTS OF MARIJUANA NO GREATER THAN THOSE SPECIFIED IN SUBSECTION (2.5)(g) OF THIS SECTION; AND

(IX) THE PRIMARY CAREGIVER CONTROLS THE ACQUISITION OF SUCH MARIJUANA AND THE DOSAGE AND FREQUENCY OF ITS USE BY THE PATIENT WITH A DISABLING MEDICAL CONDITION.

(3) **Rule-making.** (a) The state health agency shall, pursuant to section 14 of article XVIII of the state constitution, promulgate rules of administration concerning the implementation of the medical marijuana program that specifically govern the following:

(VI) Communications with law enforcement officials about registry identification cards that have been suspended when a patient is no longer diagnosed as having a debilitating medical condition OR DISABLING MEDICAL CONDITION;

(5) **Physicians.** A physician who certifies a debilitating medical condition OR DISABLING MEDICAL CONDITION for an applicant to the medical marijuana program shall comply with all of the following requirements:

(b) After a physician, who has a bona fide physician-patient relationship with the patient applying for the medical marijuana program, determines, for the purposes of making a recommendation, that the patient has a debilitating medical condition OR DISABLING MEDICAL CONDITION and that the patient may benefit from the use of medical marijuana, the physician shall certify to the state health agency that the patient has a debilitating medical condition OR DISABLING MEDICAL CONDITION and that the patient may benefit from the use of medical marijuana. If the physician certifies that the patient would benefit from the use of medical marijuana based on a chronic or debilitating disease or medical condition OR DISABLING MEDICAL CONDITION, the physician shall specify the chronic or debilitating disease or medical condition OR DISABLING MEDICAL CONDITION and, if known, the cause or source of the chronic or debilitating disease or medical condition OR DISABLING MEDICAL CONDITION.

(d) A physician shall not:

(III) Examine a patient for purposes of diagnosing a debilitating medical condition OR A DISABLING MEDICAL CONDITION at a location where medical marijuana is sold or distributed; or

(IV) Hold an economic interest in an enterprise that provides or distributes medical marijuana if the physician certifies the debilitating medical condition OR DISABLING MEDICAL CONDITION of a patient for participation in the medical marijuana program.

(9) **Registry identification card required - denial - revocation - renewal.**

(a) A PERSON WITH A DISABLING MEDICAL CONDITION MAY APPLY TO THE STATE HEALTH AGENCY FOR A REGISTRY IDENTIFICATION CARD. To be considered in compliance with the provisions of section 14 of article XVIII of the state constitution, this section, and the rules of the state health agency, a patient or primary caregiver shall have his or her registry identification card in his or her possession at all times that he or she is in possession of any form of medical marijuana and produce the same upon request of a law enforcement officer to demonstrate that the patient or primary caregiver is not in violation of the law;

except that, if more than thirty-five days have passed since the date the patient or primary caregiver filed his or her medical marijuana program application and the state health agency has not yet issued or denied a registry identification card, a copy of the patient's or primary caregiver's application along with proof of the date of submission shall be in the patient's or primary caregiver's possession at all times that he or she is in possession of any form of medical marijuana until the state health agency issues or denies the registry identification card. A person who violates section 14 of article XVIII of the state constitution, this section, or the rules promulgated by the state health agency may be subject to criminal prosecution for violations of section 18-18-406. ~~C.R.S.~~

(b) The state health agency may deny a patient's or primary caregiver's application for a registry identification card or revoke the card if the state health agency, in accordance with article 4 of title 24, ~~C.R.S.~~, determines that the physician who diagnosed the patient's debilitating medical condition OR DISABLING MEDICAL CONDITION, the patient, or the primary caregiver violated section 14 of article XVIII of the state constitution, this section, or the rules promulgated by the state health agency pursuant to this section; except that, when a physician's violation is the basis for adverse action, the state health agency may only deny or revoke a patient's application or registry identification card when the physician's violation is related to the issuance of a medical marijuana recommendation.

(12) **Use of medical marijuana.** (b) A patient or primary caregiver shall not:

(VII) Use medical marijuana if the person does not have a debilitating medical condition OR DISABLING MEDICAL CONDITION as diagnosed by the person's physician in the course of a bona fide physician-patient relationship and for which the physician has recommended the use of medical marijuana.

(14) **Affirmative defense.** If a patient or primary caregiver raises an affirmative defense as provided in section 14 (4)(b) of article XVIII of the state constitution OR SUBSECTION (2.5)(g)(II) OF THIS SECTION, the patient's physician shall certify the specific amounts in excess of two ounces that are necessary to address the patient's debilitating medical condition OR DISABLING MEDICAL CONDITION and why such amounts are necessary. A patient who asserts this affirmative defense shall waive confidentiality privileges related to the condition or conditions that were the basis for the recommendation. If a patient, primary caregiver, or physician raises an exception to the state criminal laws as provided in section 14 (2)(b) or (2)(c) of article XVIII of the state constitution OR SUBSECTION (2.5)(c) OR (2.5)(d) OF THIS SECTION, the patient, primary caregiver, or physician waives the confidentiality of his or her records related to the condition or conditions that were the basis for the recommendation maintained by the state health agency for the medical marijuana program. Upon request of a law enforcement agency for such records, the state health agency shall only provide records pertaining to the individual raising the exception, and shall redact all other patient, primary caregiver, or physician identifying information.

(16) **Fees.** (a) The state health agency may collect fees from patients who, pursuant to section 14 of article XVIII of the state constitution OR SUBSECTION (9) OF THIS SECTION, apply to the medical marijuana program for a registry identification card for the purpose of offsetting the state health agency's direct and

indirect costs of administering the program. The amount of the fees shall be set by rule of the state health agency. The amount of the fees set pursuant to this section shall reflect the actual direct and indirect costs of the state licensing authority in the administration and enforcement of this article so that the fees avoid exceeding the statutory limit on uncommitted reserves in administrative agency cash funds as set forth in section 24-75-402 (3). ~~C.R.S.~~ The state health agency shall not assess a medical marijuana registry application fee to an applicant 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 one hundred eighty-five percent of the federal poverty line, adjusted for family size. All fees collected by the state health agency through the medical marijuana program shall be transferred to the state treasurer who shall credit the same to the medical marijuana program cash fund, which fund is hereby created.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 5, 2017