



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number: LLS 21-0914 **Date:** May 17, 2021
Prime Sponsors: Rep. Garnett; Caraveo **Bill Status:** House HHS
 Sen. Hansen; Lundeen **Fiscal Analyst:** Anna Gerstle | 303-866-4375
 Anna.Gerstle@state.co.us

Bill Topic: **REGULATING MARIJUANA CONCENTRATES**

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill requires a study of high-potency marijuana concentrates, and makes changes to state law related to physician recommendations for medical marijuana, the sale of medical marijuana, and the sale of marijuana concentrate. The bill increases state revenue and expenditures and local government costs on an ongoing basis.

Appropriation Summary: In FY 2021-22, the bill requires an appropriation of \$1.7 million to multiple state agencies.

Fiscal Note Status: This fiscal note reflects the introduced bill. Due to time constraints, this analysis is preliminary and will be updated following further review and any additional information received.

**Table 1
State Fiscal Impacts Under HB 21-1317**

		Budget Year FY 2021-22	Out Year FY 2022-23
Revenue	Cash Funds	\$491,366	\$183,047
	Total	\$491,366	\$183,047
Expenditures	General Fund	\$242,233	\$224,253
	Cash Funds	\$491,366	\$183,047
	Marijuana Tax Cash Fund	\$1,000,000	\$1,000,000
	Centrally Appropriated	\$188,491	\$142,406
	Total Expenditures	\$1,922,090	\$1,549,706
	Total FTE	5.4 FTE	5.1 FTE
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

The bill requires a study of high-potency marijuana concentrates, and makes changes to state law related to physician recommendations for medical marijuana, the sale of medical marijuana, and the sale of marijuana concentrate, among other changes.

Physician certification of medical marijuana. The bill adds additional requirements for a physician certifying that the patient has a debilitating or disabling medical condition that would benefit from the use of medical marijuana. Specifically, the bill requires that a physician:

- complete an in-person assessment
- review the patient's mental health history, and determine whether a health issue could be exacerbated by the use of medical marijuana;
- only authorize medical marijuana within the scope of their practice or specialty;
- not charge a fee to patients for recommending an extended plant count or for making a recommendation that exceeds requirements in state law;
- take a continuing education course on the topic that is at least five hours every two years, or eight hours every three years, if regularly making medical marijuana recommendations; and
- include certain information on a patient's medical marijuana certification, including the patient and physician's names and addresses, the THC potency level or medical marijuana being recommended, the dosage form, the patient's daily authorized quantity, and directions for use.

Patients ages 18 to 20. The bill specifies that patients ages 18 to 21 are not eligible for medical marijuana unless the following conditions are met:

- two physicians from separate medical practices have diagnosed the patient with a disabling or debilitating medical condition after an in-person consultation, unless the patient is homebound or had a medical marijuana card before age 18;
- one of the physicians has explained the risks and benefits of medical marijuana use and has provided written documentation of the diagnosis and recommendation; and
- the patient attends follow up appointments every six months with one of the physicians.

Study of high-potency THC marijuana concentrates. The bill requires that the Colorado School of Public Health (SPH) review and report on available evidence-based research on the physical and mental health effects of high-potency THC marijuana concentrates, and convene a scientific review council to review the report and make recommendations to the General Assembly. The SPH must report on any gaps in the research by January 1, 2022, produce an initial report by July 1, 2022, and may conduct additional research subject to available appropriations. The bill appropriates \$1.0 million per year for three years to conduct the required research.

Public information campaign. The SPH must produce a public information campaign, approved by the scientific review council, on the effect of high-potency THC marijuana on the brain and mental health. The council must also create a pamphlet describing possible risks of marijuana concentrate overconsumption.

Sale limits. Under the bill, a medical marijuana store may not sell more than eight grams of medical marijuana concentrate to a patient in a single day, or no more than two grams to a patient in a single day if the patient is between 18 and 20 years old. These limits do not apply if the patient is homebound and has physician authorization for a higher amount, or if it would be a significant physical or geographic hardship to make a daily purchase. A retail marijuana store may not sell more than eight grams of retail concentrate to a person in a single day.

Tracking system. When completing a patient sales transaction, a medical marijuana store must immediately record the transaction into the seed-to-sale tracking system in order to allow for:

- continuous monitoring of patient data to identify discrepancies with daily authorized quantity limits and THC potency authorizations;
- access and retrieval of real-time sales data based on the patient identification number; and
- responding with a user error message if a sale will exceed the patient's daily quantity limit or THC potency authorization.

Verification of medical marijuana purchase. Employees of the store must verify that the purchase will not exceed the patient's daily authorized quantity limit in the seed-to-sale tracking system. The patient must present the physician certification at the time of purchase and a medical or retail marijuana store must provide the patient with a notice regarding the criminal penalties of marijuana diversion and the pamphlet developed by the scientific advisory council.

Packaging requirements. Beginning January 1, 2023, a medical or retail marijuana store must sell medical marijuana concentrate in packaging that separates each gram into at least 10 separately portioned amounts. It does not apply to concentrate in liquid form.

Rulemaking. The bill requires that the Department of Revenue (DOR) conduct rulemaking to establish a notice describing the penalties for marijuana diversion; the definition of physical or geographic hardship for the purposes of sales limits; a standard certification form for physicians and medical marijuana stores; a prohibition on medical marijuana advertising aimed at people under age 21; and a requirement that advertising for a product with marijuana concentrate include a notice of potential risks of overconsumption.

Coroner toxicology screens. For each case of a non-natural death of a person under age 21, the bill requires that coroners order a toxicology screen to test for the presence and quantity of THC and whether it was present in conjunction with alcohol or other drugs. The results of the screen must be reported in the Colorado Violent Death Reporting System.

Colorado Department of Public Health and Environment (CDPHE) reports. The CDPHE must prepare two annual reports: one with hospital and emergency room discharge data of patients presenting with conditions or diagnosis that reflect marijuana use, and one by January 2, 2022, that includes the results of toxicology screens conducted by coroners.

Background

Sales limits. Under current law, medical marijuana stores may not sell more than 40 grams of marijuana concentrate to a patient in a single day, with exceptions for a patient with a physician exemption from the limits and who registers with the medical marijuana store. A retail marijuana store may not sell more than one ounce retail marijuana, or its equivalent in concentrate, during a single transaction.

State Revenue

The bill increases state revenue by \$516,129 in FY 2021-22 and \$207,810 in FY 2022-23 to cover certain expenditures in the CDPHE and DOR made from the affected cash funds.

Fee impact on marijuana patients and licensees. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by the CDPHE and the DOR based on cash fund balance, estimated program costs, and the estimated number of applications subject to the fee. The table below identifies the fee impact of this bill. Fee revenue to DOR is based solely on the projected costs, and a breakdown of the potential fee increase for any given license type cannot be estimated.

**Table 2
 Fee Impact of HB 21-1317**

Fiscal Year	Type of Fee	Number Affected	Fee Increase	Total Fee Impact
	Medical Marijuana Registry Fees (CDPHE)*	87,000	\$3.20	\$278,735
FY 2021-22	Marijuana Licensing-related Fees (DOR)	N/A	N/A	\$237,394
			Total	\$516,129
	Medical Marijuana Registry Fees (CDPHE)	87,000	\$0.83	\$71,915
FY 2022-23	Marijuana Licensing-related Fees (DOR)	N/A	N/A	\$135,895
			Total	\$207,810

**products may not align due to rounding*

State Expenditures

The bill increases state expenditures by \$1.9 million and 5.4 FTE in FY 2021-22 and \$1.5 million and 5.1 FTE in FY 2022-23. Costs are for the DOR, the CDPHE, and the School of Public Health and are paid from various cash funds and the General Fund. Costs are listed in Table 3 and discussed below.

**Table 3
 Expenditures Under HB 21-1317**

Cost Components	FY 2021-22	FY 2022-23
School of Public Health		
High Potency THC Research & Report	\$1,000,000	\$1,000,000
Subtotal	\$1,000,000	\$1,000,000
Department of Public Health & Environment		
Personal Services	\$231,308	\$231,308
Operating Expenses	\$4,860	\$4,860
Capital Outlay Costs	\$24,800	-
Computer Programming	\$200,000	-
Data & Reporting Costs	\$60,000	\$60,000
Centrally Appropriated Costs ¹	\$163,727	\$117,643
FTE - Personal Services	3.6 FTE	3.6 FTE
CDPHE Subtotal	\$684,696	\$413,812
Department of Revenue		
Personal Services	\$107,904	\$107,904
Operating Expenses	\$2,025	\$2,025
Capital Outlay Costs	\$12,400	-
Computer Programming	\$30,000	-
Legal Services	\$53,170	-
Compliance Investigator Equipment	\$7,132	\$1,203
Centrally Appropriated Costs ¹	\$24,763	\$24,763
FTE - Personal Services	1.5 FTE	1.5 FTE
FTE - Legal Services	0.3 FTE	-
DOR Subtotal	\$237,394	\$135,895
Total	\$1,922,090	\$1,549,707
Total FTE	5.4 FTE	5.1 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Revenue

The Marijuana Enforcement Division requires an estimated 1.5 FTE beginning in FY 2021-22, including 1.0 FTE for a compliance investigator to support enforcement of the new requirements related to the seed-to-sale tracking system and sales limits; and 0.5 FTE for a legal assistant to support rulemaking and handle additional administrative actions related to the compliance investigations. Costs include standard equipment for the compliance investigator.

Computer programming. The department requires \$30,000 to modify the METRC seed-to-sale tracking system to include daily purchase limits, patient quantity limits or potency recommendations, and the required user error message if limits are exceeded. The system is maintained by a third-party vendor, and costs include development, programming, and reporting.

Legal services. DOR requires an estimated 500 hours of legal services in FY 2021-22 to conduct rulemaking and ensure that the changes to the tracking system abide by state law and privacy requirements. Legal services are provided by the Department of Law.

Colorado Department of Public Health and Environment

The CDPHE requires an estimated 3.6 FTE beginning in FY 2021-22 to make changes to the medical marijuana registry, modify physician materials provide training, compile data and prepare the required reports.

Computer programming. The CDPHE requires an estimated \$200,000 to add additional fields to the medical marijuana registry for physicians to submit the information required by the bill, and to connect systems with DOR for the changes to the seed-to-sale tracking system.

Data costs. The CDPHE also requires an estimated \$60,000 per year to purchase the necessary emergency room data and generate the statistical analyses and required reports.

School of Public Health

The bill increases state expenditures by \$1.0 million per year in FY 2021-22, FY 2022-23, and FY 2023-24 for the SPH. Costs include conducting the review of existing research, supporting the scientific review council, compiling the required public education campaign and pamphlet, and conducting additional research. The SPH is a collaboration between the University of Colorado, Colorado State University, and the University of Northern Colorado.

Department of Regulatory Agencies

The bill increases workload for the Department of Regulatory Agencies to update rules and materials, and conduct outreach to physicians regarding the new requirements in order to recommend medical marijuana. Additionally, should physicians violate certain provisions of the bill related to recommending medical marijuana, workload may increase for the Medical Board to handle complaints or discipline. No change in appropriations is required.

Centrally Appropriated Costs

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$188,490 in FY 2021-22 and \$142,406 in FY 2022-23.

Local Government

The bill increases costs for county coroners to conduct a toxicology screen on every non-natural death of someone under the age of 25. The cost of a toxicology screen is about \$325, via a private lab. Coroners may also request that the Colorado Bureau of Investigation complete toxicology screens at no cost to the county, but with a longer turnaround time and an increased state cost. In addition, the bill may also increase training and equipment costs, as well as postage to send samples to private labs.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

In FY 2021-22, the bill requires the following appropriations:

- \$1,000,000 from the Marijuana Tax Cash Fund to the Board of Regents of the University of Colorado for the School of Public Health;
- \$278,735 from the Medical Marijuana Program Cash Fund to the Colorado Department of Public Health and Environment and 1.1 FTE;
- \$242,233 from the General Fund to the Colorado Department of Public Health and Environment, and 2.5 FTE; and
- \$212,631 from the Marijuana Cash Fund to the Department of Revenue, and 1.5 FTE. Of this amount, \$53,170 is reappropriated to the Department of Law, with an additional 0.3 FTE.

State and Local Government Contacts

Health Care Policy and Financing
Law
Public Health and Environment
Revenue

Higher Education
Office of Public Guardianship
Regulatory Agencies