



COLORADANS
FOR
MEDICAL MARIJUANA
REGULATION

Analysis of New MMJ Regulations

HB1284 & SB109

LETTER FROM YOUR EXECUTIVE DIRECTOR



May 20, 2010

To all CMMR Supporters,

It has been my extreme pleasure to serve all of you over the past 7 months as our state legislature has shaped the future of Medical Marijuana in Colorado. CMMR was founded on the idea that Colorado's Medical Marijuana providers were ready to become a legitimate part of our state's economy and we deserved the same treatment as any other industry. Since then, our entire state has joined in the conversation of how to best regulate and shape the future of Colorado Medical Marijuana.

HB1284 and SB109 are by no means perfect, and a number of their provisions are certain to be immediately challenged in court. This is the proper role of our judicial branch, and I support those efforts wholeheartedly. However, our legislature has acted and our Governor is about to sign these new bills into law. Now is the time for all of our state's providers to get educated on these new rules and the questions that still remain to be answered.

Please use this guide as a starting point to determine how your business fits into these new regulations. I am not a lawyer, and THIS IS NOT LEGAL ADVICE. The questions in this guide should direct you to important parts of these two bills and should be discussed with your lawyer before making any decisions!

As you will see, many of the details of these new laws still need to be worked out. Over the coming months, the Department of Revenue will be making many important decisions on the future of our industry and CMMR has a voice in this process. If the information in this guide is helpful, please support CMMR so we can continue this important work.

Sincerely,

Matt Brown

Executive Director
Coloradans for Medical Marijuana Regulation
matt@commr.org

Useful Documents

** The page and line numbers in the attached document refer to these bills, as adopted on 3rd reading by the Second house. These are the final versions of each bill before they were sent to the Governor to be signed into law.*

Final Text of HB1284:

<http://bit.ly/FinalHB1284>

Final Text of SB109:

<http://bit.ly/SB109Final>

Full-Text of Amendment 20

<http://bit.ly/Amend20>

Joint Budget Committee Report on HB1284

<http://bit.ly/JBCHB1284>

Chronology of Proposed MMJ Provider Regulations (Oct '09 – Apr '10)

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New Patient Rights in HB1284

Q1: Can a patient grow their own medicine AND name a primary caregiver or MMJ Center to grow for them?

Yes! Despite what has often become common practice, Section 2(a)(III) of Amendment 20 says “The patient and his or her primary-caregiver were collectively in possession of amounts of marijuana only as permitted under this section.”¹ The word “collectively” prohibits both the patient and primary caregiver from growing medical marijuana. Section 2(6)(f) of HB1284 says that a patient may register with the Department of Health that they wish to “both cultivate his or her own medical marijuana and obtain it from either a primary caregiver or licensed medical marijuana center [...]”²

Q2: Can patients shop at any licensed dispensary or just the one named as their primary MMJ Center?

Yes, patients will be able to shop at any licensed MMJ Center. Section 2(6)(f)³ of HB1284 says, “If a patient elects to use a licensed medical marijuana center, the patient shall register the primary center he or she intends to use.” Note, this does not say “exclusive” or “only” center they intend to use. Since the MMJ Center will be able to grow plants for each patient who names them a “primary center” the Department of Health will need to record this information. HB1284 does NOT say anything to the effect of “a patient may shop only at the primary Medical Marijuana Center listed on their card.”

Q3: Will the Dept of Health recognize plant count recommendations over the 3 flowering/3 veg limits outlined in Amendment 20?

Yes! Previously, the Department of Health only recognized the “3 flowering, 3 veg and 2 oz” limits outlined in Section 4(a) of Amendment 20. Section 4(b) of Amendment 20 grants the “affirmative defense” to patients needing more than 6 plants and 2 oz, but not the “exception” from marijuana laws given by inclusion on the Department of Health’s registry. HB1284 instructs the Department of Health to begin recognizing these higher plant count recommendations as a part of the patient’s MMJ license.⁴ Also, HB1284 says that a MMJ Center may exceed the 6 plant limit if they are cultivating for “patients that are authorized to have more than six plants and two ounces of product.”⁵

¹ Amendment 20: www.cdphe.state.co.us/hs/medicalmarijuana/amendment.html

² HB1284: Page 62 lines 1-9

³ HB1284: Page 62 lines 1-9

⁴ HB1284: Section 2(10) – Page 65 line 25 – Page 66 line 17

⁵ HB1284: Section 1 Part 9 12-43.3-901(4)(e) – Page 53 lines 5-12

Q4: What are the new fees to get or renew a MMJ card?

The fees for a MMJ card have not changed yet, although SB109 and HB1284 make changes to the way the MMJ fund is administered.⁶ The new rules prohibit any excess money from being spent on other state programs so if the fees generate large surpluses of money the Department of Health is forced to reduce the fees.⁷ The government isn't allowed to "earn a profit" off high fees, so the Department of Health will have to reduce the fees charged to patients if they run an excessive surplus.

Q5: What are the determining factors for a patient to apply for the "indigent patient fee and tax waiver" included in HB1284?

Section 14 of HB1284 says that the Department of Health will mark patient cards who are determined to be indigent and those patients will be exempt from annual MMJ license fees and all sales tax on their medicine.⁸ HB1284 does not include any specific rulemaking guidance on how to define "indigent,"⁹ so we will have to wait and see how the Department of Health defines this new classification.

Q6: Are patients allowed to sell or trade medicine with other patients?

HB1284 doesn't include any language specifically allowing patient-to-patient transfers of medicine, and Amendment 20 doesn't include any language specifically allowing this. Since both parties would be licensed patients it may well be within both of their licenses to exchange medicine, but this transfer isn't specifically authorized by any existing laws.

⁶ SB109: Section 1 (7-8) – Page 9 lines 5-24

⁷ HB1284: Section 2(12) – Page 67 lines 7-23

⁸ HB1284: Page 74 lines 1-8

⁹ HB1284: Section 2(3) - Page 56 line 19 – Page 59 line 9

Medical Marijuana Center License

Q1: Is a Medical Marijuana Center the same as a Primary Caregiver?

No. Section 2(2) of HB1284 defines the term “Primary Caregiver” as “a natural person, other than the patient or the patient’s physician [...]”¹⁰ “Medical Marijuana Center”¹¹ is the name given to a person or business licensed under the terms of HB1284,¹² which is entirely separate from the “Primary Caregiver” authorized by Amendment 20. The definition of “Medical Marijuana Center” in HB1284 specifically includes the phrase “but is not a Primary Caregiver.”¹³

Q2: Do the “5 patient per caregiver” limits on Primary Caregivers apply to MMJ Centers?

No. Section 2(6)¹⁴ of HB1284 restricts individual Primary Caregivers to 5 patients, unless they are granted a waiver for “exceptional circumstances.” Since the definition of “Medical Marijuana Center” includes the phrase “is not a Primary Caregiver,”¹⁵ these restrictions do not apply to Medical Marijuana Centers.

Q3: Are there limits on the number of patients a MMJ Center can serve?

No. Early drafts of HB1284 included various limits on patients a MMJ Center can serve but those limits were removed. A MMJ Center can serve as many patients as possible, and may grow whatever number of plants are authorized by the patients naming the MMJ Center as their “primary” MMJ center.

Q4: Are MMJ Centers required to offer wellness and caregiving services?

No. Section 2(3)(b) of HB1284 says that the Department of Health may write new rules regarding “what constitutes ‘significant responsibility for managing the well-being of a patient.’” These rules would apply to the Primary Caregivers outlined in Amendment 20. Since Medical Marijuana Centers are an “extraconstitutional”¹⁶ entity created by the legislature, the restrictions on Primary Caregivers do not apply. Nowhere else in HB1284 are wellness services mentioned in relation to MMJ Centers.

¹⁰ HB1284: Page 56 lines 12-18

¹¹ HB1284: Section 1 Part 1 12-43.3-104(8) - Page 7 lines 9-13

¹² HB1284: Section 1 Part 1 12-43.3-104(13) - Page 8 lines 7-10

¹³ HB1284 Section 1 Part 1 12-43.3-104(8) – Page 7 line 13

¹⁴ HB1284: Page 60 lines 12-22

¹⁵ HB1284: Section 1 Part 1 12-43.3-104(8) – Page 7 line 13

¹⁶ <http://www.examiner.com/x-30936-Denver-Medical-Marijuana-Examiner~y2010m4d29-Questioning-Colorado-HB1284-on-medical-marijuana>

Q5: Does HB1284 allow for “warrantless searches” of the MMJ Center by any local law enforcement official?

No. HB1284 grants the Department of Revenue the right to audit the books and records kept by the business during normal business hours.¹⁷ HB1284 also states, “nothing in this article shall be construed to limit a law enforcement agency’s ability to investigate unlawful activity in relation to a medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer.”¹⁸ This section doesn’t say, “law enforcement gets to shred all existing laws on warrants, searches or seizures.” It specifically says “unlawful activity”, which would not include medical marijuana provider activities allowed by Amendment 20 and HB1284.

Q6: How is “open before July 1, 2010” defined?

HB1284 defines “established,” for the purpose of determining if a business was open prior to July 1, 2010, as “meaning owning or leasing a space with a storefront and remitting sales taxes in a timely manner on retail sales of the business [...], as well as any applicable local sales taxes.”¹⁹ This does not mention Infused Products Manufacturers, which may not have a fixed storefront and would not be liable for sales taxes if they only sell wholesale. We will have to wait for the Department of Revenue to issue further clarification on how to prove an Infused Products Manufacturer is “established” before July 1, 2010.

Q7: Do MMJ Centers have to be compliant with ADA disability rules?

Yes. The Senate added a clause to HB1284 stating, “A licensed Medical Marijuana Center shall comply with all provisions of Article 34 of Title 24, C.R.S.,²⁰ as the provisions relate to persons with disabilities.”²¹

Q8: Does the “70/30 vertical integration” rule apply to infused products?

No. Section 1 Part 4(3) of HB1284 says that vertical integration restrictions do not apply to infused products.²²

Q9: Why are MMJ Centers required to grow 70% of their product?

Politics. The concept of mandated “vertical integration” doesn’t make any sense from an economist’s point of view. While it is certainly more profitable to sell medicine grown in-house, no other industry has a restriction even close to this.

¹⁷ HB1284: Section 1 Part 7 12-43.3-701 - Page 49 line 13 – Page 50 line 15

¹⁸ HB1284: Section 1 Part 2 12-43.3-202(2)(c) - Page 15 lines 19-27

¹⁹ HB1284: Section 1 Part 1 12-43.3-103(1)(a) – Page 4 lines 1-5

²⁰ Title 24, Article 34, C.R.S. -

http://www.michie.com/colorado/lpext.dll/cocode/2/3b808/3d1e6/3eccb?f=templates&fn=document-frame.htm&2.0#JD_t24art34

²¹ HB1284: Section 1 Part 4 12-43.3-402(8) – Page 40 lines 13-15

²² HB1284: Section 1 Part 4 12-43.3-402(3) – Page 39 lines 13-17

This ultimately remained in the bill because a large number of Republicans in the House and Senate refused to support any bill without some sort of mandated integration of grow and dispensary. The initial ratio proposed was 90/10 and an amendment to go down to 50/50 was narrowly defeated before the legislature ultimately settled on 70/30. This is one area of HB1284 where we should plan to have bills ready to change this restriction in the next General Assembly.

Q10: How will dispensaries and growers transfer their patients from individuals' names to the new licensed MMJ Center?

The Department of Revenue has not yet determined how exactly this process will work. They are currently working with the Department of Health to figure out how to merge the two departments' systems. In the meantime, Matt Cook of the Department of Revenue told several dispensary owners after the Senate appropriations hearing on April 30, 2010 to begin verifying the patients listing those owners as Primary Caregiver with the Department of Health.

Q11: Can a Medical Marijuana Center have more than one Optional Premises Cultivation location?

Yes. HB1284 does not mention any limits on how many Optional Premises Cultivation licenses could be held by a Medical Marijuana Center.

Q12: When do the restrictions on hours of operation (from 8am-7pm) go into effect?

This is not 100% clear. It appears that the hours of operation would go into effect on July 1, 2010²³ since Section 18 of HB1284 states "this act shall take effect July 1, 2010."²⁴ However, HB1284 also says that "on and after July 1, 2011" all businesses "shall be subject to the terms and conditions of this article and any rules promulgated pursuant to this article."²⁵ We will have to wait for the Department of Revenue to officially determine when the new hours of operation will go into effect.

Q13: Is a MMJ Center allowed to deliver to patients?

No. HB1284 states it is prohibited to "make delivery to any premises other than the specific licensed premises where the medical marijuana is to be sold."²⁶ HB1284 does make allowances for a homebound patient to name a primary caregiver who is authorized to acquire and transport medical marijuana for the patient.²⁷ It's unclear how the Department of Health will interpret this new allowance and if they will consider "home health delivery-only caregivers" under

²³ HB1284: Section 1 Part 9 (4)(m) - Page 54 lines 2-4

²⁴ HB1284: Page 77 lines 19-26

²⁵ HB1284: Section 1 Part 1 12-43.3-104(2)(c) - Page 5 lines 21-25

²⁶ HB1284: Section 1 Part 9 (4)(k) – Page 53 line 25 – Page 54 line 1

²⁷ HB1284: Section 2 25-1.5-106(3)(a)(VII) – Page 57 lines 16-19

the “exceptional circumstances” provisions granting more than 5 patients per primary caregiver.²⁸ If all delivery to patients is banned under these new rules, this is an issue that will need to come before the legislature next session.

Q14: Are patients between 18-20 years old banned from MMJ Centers?

No. Senator Romer made multiple attempts to add this type of restriction but he never had the support to get it passed.

Q15: How do dispensaries deal with patients that are under 18?

HB1284 makes no mention of any special rules for these patients. Section 6(e) of Amendment 20 requires that “No patient under eighteen years of age shall engage in the medical use of marijuana unless:” “A parent residing in Colorado consents in writing to serve as a patient's primary care-giver.”²⁹ Section 6(i) of Amendment 20 also requires “The primary care-giver controls the acquisition of such marijuana and the dosage and frequency of its use by the patient.” Without direct guidance from the Department of Revenue, it would appear that the minor’s parents could come to the MMJ Center to get the medicine but that the minor child couldn’t visit the MMJ Center unsupervised.

Q16: Does a MMJ Center that produces their own infused products also need the Infused Products Manufacturer License?

HB1284 says “medical marijuana-infused products shall be prepared on a licensed premises that is used exclusively for the manufacture and preparation of medical marijuana-infused products and using equipment that is used exclusively for the manufacture and preparation of medical marijuana-infused products.”³⁰ This seems to indicate that an Infused Products Manufacturer license would be required of a MMJ Center that wished to produce their own infused products.

Q17: What is the “Medical Marijuana License Bond”?

HB1284 requires that all MMJ Center applicants procure a surety bond for \$5,000.³¹ Corporate surety bonds are used in a number of industries as an insurance policy against a business disappearing without paying their bills. This surety bond is held specifically as insurance against closing without paying back-due sales taxes. This does not mean that every applicant needs to pay \$5,000 into a savings account held by the state. Surety bonding companies will issue a \$5,000 bond for as little as 1-3% (\$50-\$150/yr) or higher rates depending on the applicant’s credit. HB1284 specifically says “before the state licensing authority

²⁸ HB1284: Section 2 25-1.5-106(5)(a) - Page 60 lines 12-22

²⁹ Amendment 20: www.cdphe.state.co.us/hs/medicalmarijuana/amendment.html

³⁰ HB1284: Section 1 Part 4 12-43.3-404(2) – Page 41 lines 2-7

³¹ HB1284: Section 1 Part 3 12-43.3-304(1) – Page 21 lines 12-21

issues a state license to an applicant”³² and does NOT say “before submitting an application...” This would seem to indicate that the bond may not be required before the August 1, 2010 application date but rather later on in the application review process. Currently, there are no bonding companies that offer this type of surety bond. At a minimum, the Department of Revenue will have to allow enough time for these bonding companies to create this new program.

Q18: What sort of restrictions on advertising and signage will be made by the Department of Revenue?

The Department of Revenue is not given authority over exterior signs at your MMJ Center. Exterior signage is handled by local governments in every other industry, and HB1284 specifically delegates signage to “local laws or regulations.”³³ The same part of HB1284 grants the Department of Revenue power to regulate “advertising material that is misleading, deceptive, or false, or that is designed to appeal to minors.” It could be quite a while before we know more specifics, since this isn’t likely to be at the top of the agenda for the Department of Revenue’s rulemaking.

Q19: Are MMJ Center licenses good for 1 or 2 years?

HB1284 states “All licenses granted pursuant to this article shall be valid for a period not to exceed two years from the date of issuance...”³⁴ Matt Cook has also made several public statements that the Department of Revenue intends to make these licenses valid for 2 years like most other Department of Revenue licenses (sales tax, wholesale, etc).

Q20: Is the privacy of patient records kept by a MMJ Center violated by the new rules in HB1284?

No, HB1284 continues to protect the privacy of patient records. HB1284 requires the Department of Revenue to “maintain the confidentiality of reports obtained from a licensee showing the sales volume or quantity of medical marijuana sold or any other records that are exempt from public inspection pursuant to state law.”³⁵

Q21: What are the security requirements for a Medical Marijuana Center?

HB1284 authorizes the Department of Revenue to determine what minimum security measures are required for each of the new licenses. These include “lighting, physical security, video, alarm requirements, and other minimum

³² HB1284: Section 1 Part 3 12-43.3-304(1) – Page 21 lines 12-21

³³ HB1284: Section 1 Part 9 12-43.3-901(4) - Page 52 lines 1-16

³⁴ HB1284: Section 1 Part 3 12-43.3-310(6) - Page 31 lines 9-19

³⁵ HB1284: Section 1 Part 2 12-43.3-202(1)(d) - Page 12 lines 15-18

procedures for internal control [...].”³⁶ No further details are given on the specific security requirements that will be required.

³⁶ HB1284: Section 1 Part 2 12-43.3-202(2)(a)(X) – Page 14 lines 10-16

Optional Premises Cultivation License

Q1: Will a licensed MMJ Center need an Optional Premises Cultivation license for plants grown on-site at the licensed MMJ Center?

HB1284 does seem to require the Optional Premises Cultivation license for any location growing plants, even if it is on-site at a licensed MMJ Center. HB1284 says “A medical marijuana center license shall be issued only to a person selling medical marijuana pursuant to the terms and conditions of this article.”³⁷ This doesn’t make any statement on cultivation related to that MMJ Center. HB1284 also states that the MMJ Center may only sell “medical marijuana grown in its medical marijuana optional premises”³⁸ and allows for the purchase and sale of up to 30% of the MMJ Center’s inventory from another licensed MMJ Center.³⁹ HB1284 also states that “each license issued under this article is separate and distinct. [...] A separate license shall be required for each specific business or business entity and each geographic location.”⁴⁰ Together, this all seems to indicate that an Optional Premises Cultivation license will also be required even if the grow is on-site at the Medical Marijuana Center licensed premises.

Q2: Are there any plant count limits on an Optional Premises Cultivation license?

The Optional Premises Cultivation license does not have any cap on the number of plants that can be grown at a particular facility, provided the MMJ Center has the appropriate number of patients to cover those plants. Since the Department of Health will now record “higher plant count” recommendations for a patient,⁴¹ the MMJ Center named by that patient will be able to grow more than the typical 6 plants.⁴² Earlier drafts of this bill had a limit of 3,000 plants per Optional Premises Cultivation license but any reference to this sort of limit has been removed from the final bill.

Q3: Can multiple Medical Marijuana Centers share a single Optional Premises Cultivation license?

This does not seem likely. HB1284 defines “Premises” as “a distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.”⁴³ HB1284 also creates “limited access areas” which

³⁷ HB1284: Section 1 Part 4 12-43.3-402(1) - Page 38 lines 22-25

³⁸ HB1284: Section 1 Part 4 12-43.3-402(3) - Page 39 lines 13-17

³⁹ HB1284: Section 1 Part 4 12-43.3-402(4) - Page 39 lines 18-24

⁴⁰ HB1284: Section 1 Part 3 12-43.3-310(8)(a) – Page 32 lines 6-12

⁴¹ HB1284: Section 2 25-1.5-106(10) – Page 65 line 25 – Page 66 line 17

⁴² HB1284: Section 1 Part 9 12-43.3-901(4)(e) – Page 53 lines 5-12

⁴³ HB1284: Section 1 Part 1 12-43.3-104(14) – Page 8 lines 11-13

are only open to employees of the business owning that license.⁴⁴ It does not seem possible to create multiple “limited access areas” within a single grow room by marking the floor or individual plants. If multiple rooms or other distinctly separated areas were under a single roof, it does seem possible that each of those rooms could be licensed individually. However, it does not seem that a single grow room could receive multiple Optional Premises Cultivation licenses owned by different Medical Marijuana Centers.

Q4: Is the address of an Optional Premises Cultivation license public?

No. The House considered removing the privacy protection granted to Optional Premises Cultivation License locations, but ultimately did not vote to do so. HB1284 states that the address of an optional premises cultivation operation “shall be exempt from the Colorado open records act. State and local licensing authorities shall keep the location of an optional premises cultivation operation confidential and shall redact the location from all public records.”⁴⁵

Q5: How will marijuana be transported from an Optional Premises Cultivation location to another MMJ Center?

HB1284 directs the Department of Revenue to issue clear rules on how to store and transport medical marijuana between MMJ Centers and Optional Premises Cultivation locations.⁴⁶ HB1284 states that it is against the law to “make delivery to any premises other than the specific licensed premises where the medical marijuana will be sold.”⁴⁷ This would seem to allow the transportation from a licensed Optional Premises Cultivation location to an unaffiliated MMJ Center as a part of the 70/30 transfer rules, since that unaffiliated MMJ Center would be the final point of sale to patients.

Q6: Is there any way to have an Optional Premises Cultivation license by contracting with Medical Marijuana Centers for patients?

No. HB1284 requires that the Optional Premises Cultivation license be owned only by a Medical Marijuana Center or Infused Products Manufacturer license.⁴⁸ There is no way for an independent ownership group to own an Optional Premises without either the MMJ Center or Infused Products Manufacturer license.

⁴⁴ HB1284: Section 1 Part 1 12-43.3-105 – Page 8 line 21 – Page 9 line 2

⁴⁵ HB1284: Section 1 Part 3 12-43.3-310(14) - Page 34 lines 7-16

⁴⁶ HB1284: Section 1 Part 2 12-43.3-202(2)(a)(XI) - Page 14 lines 18-18

⁴⁷ HB1284: Section 1 Part 9 12-43.3-901(4)(k) - Page 53 line 25 – Page 54 line 1

⁴⁸ HB1284: Section 1 Part 4 12-43.3-403 – Page 40 lines 16-23

Infused Products Manufacturing License

Q1: Can an Infused Products Manufacturer grow their own medicine to use in an infused product?

Yes! Senator Romer introduced an amendment at the very end of the Senate debate on HB1284 that allows Infused Products Manufacturers to grow their own medicine. HB1284 says “An optional premises cultivation license may be issued only to [...] the person’s medical marijuana-infused products manufacturer license.”⁴⁹

Q2: Are there any plant count restrictions placed on an Infused Products Manufacturer?

No. The “Infused Products Manufacturer” license was originally created as a “chain of custody” license. This granted the licensee the right to procure medical marijuana from any licensed MMJ Center and to make marijuana-infused products that could be sold at any other licensed MMJ Center.⁵⁰ At the end of the Senate debate on HB1284, Senator Romer added amendment L.150 which added the ability for an Infused Products Manufacturer to also qualify for an Optional Premises Cultivation license. The Infused Products Manufacturer License has never had patients associated to it and there have never been plant restrictions placed on this license. When Sen. Romer added the ability for these licensees to grow, no further clarification or details were added to HB1284 that would seem to limit the quantity of medical marijuana that can be grown under this license.

Q3: Can an Infused Products Manufacturer also sell “smokable” marijuana to licensed MMJ Centers?

One big restriction on an Infused Products Manufacturer is that they cannot “sell any of the medical marijuana that it cultivates.”⁵¹ Unfortunately more clarification is not given on this point, but it seems to prohibit selling “smokable bud” to any MMJ Center for resale to their patients. The medical marijuana grown under an Infused Products Manufacturer’s Optional Premises Cultivation license can only be used to produce infused products for resale at licensed MMJ Centers.

Q4: Can multiple Infused Products Manufacturers share a commercial kitchen that is used exclusively for MMJ edibles?

This is not clearly defined in HB1284. HB1284 says that all “Medical marijuana-infused products shall be prepared on a licensed premises that is used exclusively for the manufacture and preparation of medical marijuana-infused

⁴⁹ HB1284: Section 1 Part 4 12-43.3-403 - Page 40 lines 16-23

⁵⁰ HB1284: Section 1 Part 4 12-43.3-404(3) – Page 41 lines 19-21

⁵¹ HB1284: Section 1 Part 4 12-43.3-404(8) – Page 42 lines 8-10

products and using equipment that is used exclusively for the manufacture and preparation of medical marijuana-infused products.”⁵² However, HB1284 also says that “each license issued under this article is separate and distinct. [...] A separate license shall be required for each specific business or business entity and each geographic location.”⁵³ It would make sense to allow multiple licensees to share a commercial-grade kitchen, but we will have to wait for the Department of Revenue to write clear guidelines regarding shared kitchens.

Q5: What are the labeling requirements for edibles?

HB1284 sets minimum labeling standards on edibles including “that the product contains medical marijuana; that the product is manufactured without any regulatory oversight for health, safety, or efficacy; and that there may be health risks associated with the consumption or use of the product.”⁵⁴

Q6: Will infused products also have to label any non-organic ingredients used in their products?

This is not clear. HB1284 states that “all medical marijuana sold at a licensed medical marijuana center shall be labeled with a list of all chemical additives, including but not limited to nonorganic pesticides, herbicides, and fertilizers, that were used in the cultivation and the production of the medical marijuana.”⁵⁵ The definitions given in HB1284 define “medical marijuana” and “medical marijuana-infused product” differently,⁵⁶ which may exempt infused products from this labeling requirement. We will have to wait for the Department of Revenue to determine if this labeling requirement applies to infused products.

Q7: Can an Infused Products Manufacturer buy or trade marijuana with another licensee to make their products?

Yes. HB1284 outlines the process to transfer marijuana from a licensed MMJ Center to an Infused Products Manufacturer.⁵⁷ This section does not make any allowance for transfers between two Infused Products Manufacturers.

⁵² HB1284: Section 1 Part 4 12-43.3-404(2) – Page 41 lines 2-7

⁵³ HB1284: Section 1 Part 3 12-43.3-310(8)(a) – Page 32 lines 6-12

⁵⁴ HB1284: Section 1 Part 4 12-43.3-402(2)(a) – Page 39 lines 3-7

⁵⁵ HB1284: Section 1 Part 4 12-43.3-402(7) - Page 40 lines 8-12

⁵⁶ HB1284: Section 1 Part 1 12-43.3-104 - Page 7 lines 5-8 & lines 14-21

⁵⁷ HB1284: Section 1 Part 4 12-43.3-404(3) - Page 41 lines 8-21

Individual (non-business) Primary Caregivers

Q1: Can a Primary Caregiver grow in a residence?

Yes. This seems to be about the only place where a non-business Primary Caregiver can grow. Local governments are given the power to regulate locations and zoning of licensed Optional Premises Cultivation business licenses, but not given any power over non-business Primary Caregivers.

Q2: Can a Primary Caregiver sell their excess products to a MMJ Center?

No. HB1284 says that a MMJ Center “may purchase not more than 30% of its total on-hand inventory of medical marijuana from another licensed Medical Marijuana Center in Colorado.”⁵⁸ Since a Primary Caregiver is not issued an Optional Premises Cultivation license for their grow site, the medical marijuana produced for that Primary Caregiver’s patients cannot be resold into the MMJ Center system.

Q3: What are examples of the “other caregiving services” that Primary Caregivers may charge for?

HB1284 states that “A primary caregiver may not charge a patient more than the cost of cultivating or purchasing the medical marijuana, but may charge for caregiver services.”⁵⁹ Unfortunately, this is the only time that these “caregiver services” are mentioned in the bill and no further clarification about these services are available right now.

Q4: Does HB1284 prevent a Primary Caregiver from growing a small number of very large plants to stay within plant count limits?

No. Neither HB1284 or SB109 mention anything about the type or size of marijuana plants that may be grown for a Primary Caregiver’s patients.

Q5: What is the maximum plant count for a Primary Caregiver?

There is not a maximum plant count for Primary Caregivers. HB1284 creates a new cap of 5 patients per Primary Caregiver under normal circumstances.⁶⁰ However, since the Department of Health will now be recording plant count recommendations above the standard 6 plants,⁶¹ there is no cap on the number of plants that a Primary Caregiver may grow. If one Primary Caregiver has 5 patients with the standard recommendation, the Primary Caregiver would be limited to 15 flowering and 15 non-flowering plants and 10oz of finished product. If the same Primary Caregiver had 5 patients with a recommendation

⁵⁸ HB1284: Section 1 Part 4 12-43.3-402(4) - Page 39 lines 18-24

⁵⁹ HB1284: Section 2 25-1.5-106(6)(d) – Page 61 lines 1-3

⁶⁰ HB1284: Section 2 25-1.5-106(6) - Page 60 lines 12-22

⁶¹ HB1284: Section 2 25-1.5-106(10) – Page 65 line 25 – Page 66 line 17

for 25 plants each then the Primary Caregiver would be allowed to grow 125 plants. No maximum number is placed on the plants a doctor can recommend to a patient.

Q4: May a husband and wife each be a Primary Caregiver for 5 patients if they have separate grow rooms?

HB1284 isn't very specific on how husband/wife caregiver teams may work together. HB1284 clearly states "two or more primary caregivers shall not join together for the purpose of cultivating medical marijuana."⁶² If a husband and wife are each Primary Caregivers and they have separate growing facilities within the house, this may not be a violation of the "shall not join together" clause. Ultimately, we will have to wait for Department of Health to write clear rules regarding this new restriction.

Q5: If I am limited to 5 patients, can I drop a patient who isn't actively buying in order to have 5 "active" patients?

HB1284 does not give clear guidance on how to "drop" a patient to remain under the 5 patients per Primary Caregiver limitation. A patient can't force a Primary Caregiver to be listed on that patient's registry card, so there will have to be some mechanism for a Primary Caregiver to be removed from a patient's record.

⁶² HB1284: Section 2 25-1.5-106(5)(b) - Page 59 lines 15-16

Local Government Issues

Q1: Does the Optional Premises Cultivation license have to be issued to a commercial property or will a residence be allowed?

HB1284 does not say where an Optional Premises Cultivation license (or any of the other classes of state-issued license) can be located since this is left entirely up to the local government. HB1284 instructs local governments to adopt an ordinance or resolution “containing the specific standards for license issuance” prior to July 1, 2011.⁶³ Some counties don’t have property zoning and every city and county have slightly different allowed uses for different types of property.

Q2: Can an Optional Premises Cultivation license be issued to a house if the property is agriculturally zoned?

This is similar to the last question. If the city or county with jurisdiction over the property allows an Optional Premises Cultivation License in any agriculturally zoned property or building, then it may be ok. As a general rule of thumb, however, residential grow operations will be limited almost exclusively to Primary Caregivers and it is not advisable for any licensed MMJ Center to plan on applying for an Optional Premises Cultivation license for a residence.

Q3: Does HB1284 ban existing dispensaries that are within 1000’ of a school, daycare, etc?

No. HB1284 makes a statewide rule that all MMJ Centers must be >1,000’ from a school, rehab facility, college or residential child care facility.⁶⁴ The same section then continues “The local licensing authority [...] may vary the distance restrictions imposed by this subparagraph (I) for a license or may eliminate one or more types of schools, campuses or facilities from the application of a distance restriction [...]”⁶⁵ So, if the local government does nothing, then the 1000’ buffer zones apply. But, the local government has the ability to change or remove any of these buffer zones to fit whatever they feel is most appropriate for their jurisdiction.

Q4: Can a local government impose buffer zones greater than 1,000’ around schools, daycare, etc?

Yes. HB1284 says “the local licensing authority [...] may vary the distance restrictions imposed by this subparagraph (I) for a license or may eliminate one or more types of schools, campuses, or facilities from the application of a distance restriction established by or pursuant to this subparagraph (I).”⁶⁶ The

⁶³ HB1284: Section 1 Part 3 12-43.3-301(2)(a) - Page 16 lines 12-20

⁶⁴ HB1284: Section 1 Part 3 12-43.3-308(d) - Page 27 lines 20-23

⁶⁵ HB1284: Page 28 lines 3-10

⁶⁶ HB1284: Section 1 Part 3 12-43.3-308(1)(d)(I) – Page 28 lines 3-10

same power that allows local governments to remove any or all of these buffer zones also allows them to increase the buffer beyond 1,000’.

Q5: How are the distances measured between prohibited locations?

HB1284 says “the distances [...] are to be computed by direct measurement from the nearest property line of the land used for a school or campus to the nearest portion of the building in which medical marijuana is to be sold, using a route of direct pedestrian access.”⁶⁷

Q6: If my local government has a moratorium, how long can they extend the current moratorium?

HB1284 says that “prior to July 1, 2011, a county, city and county, or municipality may adopt and enforce a resolution or ordinance licensing, regulating, or prohibiting the cultivation or sale of medical marijuana.”⁶⁸ HB1284 also says that a local government may “vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses” permanently.⁶⁹ It seems that a temporary moratorium can be extended through June 30, 2011 and the local government may vote to make the moratorium permanent before July 1, 2011. If a local government with a moratorium does not create licensing rules or vote to permanently ban these licenses, the moratorium ends and the minimum state standards will apply on July 1, 2011.⁷⁰

Q7: Are public hearings required to get the new licenses?

No. HB1284 says that “a local licensing authority may schedule a public hearing [...]”⁷¹ This language was changed from earlier drafts that required public hearing regardless of what the local government wanted. Most cities that have enacted MMJ regulations do not require this sort of public hearing, it is only authorized in case local governments wish to go through the public hearing process before granting an MMJ license.

Effective Dates

Q1: What goes into effect on July 1, 2010?

Section 18 of HB1284 states that everything in the bill except Sections 9, 10, 15 & 16 go into effect on July 1, 2010.⁷² Sections 9 & 10 direct the first \$2 million in

⁶⁷ HB1284: Section 1 Part 3 12-43.3-308(1)(d)(II) – Page 28 lines 11-15

⁶⁸ HB1284: Section 1 Part 1 12-43.3-103(2)(a) – Page 5 lines 6-17

⁶⁹ HB1284: Section 1 Part 1 12-43.3-106 – Page 9 lines 3-15

⁷⁰ HB1284: Section 1 Part 3 12-43.3-301(2)(a) – Page 16 lines 17-20

⁷¹ HB1284: Section 1 Part 3 12-43.3-302 - Page 17 line 25 – Page 18 line 11

⁷² HB1284: Page 77 lines 19-26

annual sales taxes from medical marijuana to be paid towards substance abuse treatment and prevention.⁷³ Sections 15 & 16 cover appropriations to the Department of Revenue and Department of Health to cover the costs of this new program.⁷⁴ These sections will go into effect as soon as the Governor signs HB1284 or HB1033 (the bill creating the new substance abuse treatment programs funded by this \$2M of sales taxes).

It is important to note that these new rules don't seem to apply to any existing dispensary until July 1, 2011 as long as the dispensary files an application to the Department of Revenue by August 1 of this year.⁷⁵ Any new business that opens up after August 1, 2010⁷⁶ (with local approval) has 30 days to complete an application to the state.

Q2: What goes into effect on August 1, 2010?

Everyone currently operating a medical marijuana caregiver business that intends to continue operation must submit an application and application fee to the Department of Revenue by Aug 1, 2010.⁷⁷ Anyone opening a new MMJ Center or Infused Products Manufacturer after August 1, 2010 must first get local approval and then has 30 days to submit an application to the Department of Revenue.

Q3: What goes into effect on September 1, 2010?

By September 1, 2010 all Medical Marijuana Center applicants must certify they are "cultivating at least seventy percent of the medical marijuana necessary for its operation."⁷⁸ There isn't more detail given on how exactly applicants will have to certify this amount, but it is likely to be tied with the MMJ Center's Optional Premises Cultivation application(s). Unfortunately, we will not know more detail about this process until after the Department of Revenue writes the new rules.

Q4: What goes into effect on July 1, 2011?

HB1284 states "on and after July 1, 2011, all businesses for the purpose of cultivation, manufacture, or sale of medical marijuana or medical marijuana-infused products, as defined in this article, shall be subject to the terms and conditions of this article and any rules promulgated pursuant to this article."⁷⁹ The Department of Revenue does have emergency rulemaking authority, so it is unclear which, if any, of the new regulations will go into effect before July 1, 2011. The Department of Revenue and Department of Health are required to

⁷³ HB1284: Page 70 line 17 – Page 72 line 21

⁷⁴ HB1284: Page 74 line 9 – Page 77 line 12

⁷⁵ HB1284: Section 1 Part 1 12-43.3-103(1)(b) – Page 4 lines 6-26

⁷⁶ HB1284: Section 1 Part 1 12-43.3-103(1)(b) – Page 4 lines 17-19

⁷⁷ HB1284: Section 1 Part 1 12-43.3-103(1)(b) – Page 4 lines 6-11

⁷⁸ HB1284: Section 1 Part 1 12-43.3-103(2)(a) – Page 5 lines 18-20

⁷⁹ HB1284: Section 1 Part 1 12-43.3-103(2)(c) - Page 5 lines 21-25

hold a public hearing on any emergency rules by September 1, 2010 to communicate all proposed emergency rules to the public.⁸⁰

Q5: Is there still a statewide 1-year moratorium on new businesses?

No. In the final versions of the bill, the legislature chose to move forward the application date to August 1, 2010 and then require anyone opening after that date to file the state application within 30 days of receiving local approval.⁸¹

⁸⁰ HB1284: Section 1 Part 2 12-43.3-202(1)(b)(II)(A) - Page 11 lines 19-26

⁸¹ HB1284: Section 1 Part 1 12-43.3-103(1)(b) - Page 4 line 6-26

Fees

Q1: How much are the fees for each license?

The exact amount of the fees has not yet been set, and currently the Department of Revenue is unable to accurately determine how much the program will cost the first year. The problem is that the Department of Revenue is instructed to divide the total cost to administer this program by the total number of applicants. Since there are no accurate records of how many people will apply for the MMJ Center, Optional Premises Cultivation and Infused Products Manufacturer licenses; the Department of Revenue doesn't know how much to charge each applicant. At the Senate Appropriations hearing on April 30, Matt Cook of the Department of Revenue testified that he expected to need 3 tiers of application fees based on the size of each applicant. At that time, they estimated MMJ Centers with <100 patients would pay \$7,000, MMJ Centers with 100-300 red card patients would pay \$12,500 and MMJ Centers with >300 patients would pay \$18,000. There was no mention of application fees for the Optional Premises and Infused Products Manufacturer licenses.

It is also important to note that the Department of Revenue is authorized for up to 110 full-time employees to handle all the new applications.⁸² This is not the same as forcing them to hire 110 employees, and therefore allows the Department of Revenue to set staffing levels (and therefore the total cost of the program) that are appropriate for whatever applications are received. By comparison, the Liquor Enforcement Division at the Department of Revenue manages 10,000 liquor licenses statewide with 21 full-time employees. This is a ratio of 1 Department of Revenue employee per 476 liquor licenses.⁸³ HB1284 authorizes "no more than 1 full time equivalent employee for each ten medical marijuana centers licensed by or making application with the authority."⁸⁴

Q2: When will the fees be set?

The fees will have to be set before the August 1, 2010 deadline,⁸⁵ but unfortunately no more information is available about what the Department of Revenue intends to charge for these initial application fees.

⁸² HB1284: Section 15 (2) – Page 74 lines 17-24

⁸³ Joint Budget Committee Report on HB1284 – Page 3 - [http://www.leg.state.co.us/clics/clics2010a/csl.nsf/billcontainers/0C6B6577EC6DB1E8872576A80029D7E2/\\$FILE/HB1284_hse.pdf](http://www.leg.state.co.us/clics/clics2010a/csl.nsf/billcontainers/0C6B6577EC6DB1E8872576A80029D7E2/$FILE/HB1284_hse.pdf)

⁸⁴ HB1284: Section 1 Part 2 12-43.3-201(2) – Page 10 lines 3-7

⁸⁵ HB1284: Section 1 Part 1 12-43.3-103(1)(b) – Page 4 lines 6-26

Q3: Are there any provisions for fee discounts for dispensaries in underserved and/or low-income areas?

No. This is not something the legislature discussed.

Q4: Are the fees one-time or annual?

The fee that is due by August 1, 2010 is a one-time application fee to begin processing an application for a MMJ Center, Optional Premises Cultivation or Infused Products Manufacturer license. Once the application is processed and all the rules are written, you will have to pay the annual license fee (2 years at a time) for the actual license. The fees for this annual license have also not been set, but are expected to be much lower than the application fees.

Q5: How much are the employee licenses?

The exact cost for these licenses has not been set yet. The most recent estimates were for “keyholder” licenses for managers and owners to be \$125-150/year and regular employee licenses to be <\$30/year. The exact price of these licenses will also be set in the coming months during the Department of Revenue’s rulemaking process.

Disciplinary Actions

Q1: What are the penalties for breaking any of the new regulations in HB1284?

HB1284 says “a person who commits any acts that are unlawful pursuant to this section commits a class 2 misdemeanor and shall be punished as provided in Section 18-1.3-501 C.R.S., except for violations that would also constitute a violation of Title 18, C.R.S., which violation shall be charged and prosecuted pursuant to Title 18, C.R.S.”⁸⁶ Title 18 of Colorado Revised Statutes is the section of our state’s law covering drug crimes.⁸⁷

Q2: If I break any of the new regulations, do I face felony charges?

HB1284 seems to say that a violation of the new MMJ rules would be a class 2 misdemeanor, unless you are violating other drug laws using the MMJ business as a front.⁸⁸ Violations of drug laws outside of what’s allowed by Amendment 20, SB109 & HB1284 would still be punishable like normal.

Q3: Is there a cap on the fines that can be charged?

HB1284 mentions a range of fines which says “the fine accepted shall not be less than five hundred dollars nor more than one hundred thousand dollars.”⁸⁹ The rest of this section seems to refer to paying a fine in lieu of a suspension for violations of the rules,⁹⁰ so this may not be the final range of fees. This is the only place in the bill where minimum and maximum fees are discussed for any purpose.

⁸⁶ HB1284: Section 1 Part 9 12-43.3-901(7) - Page 55 lines 3-8

⁸⁷ Title 18: Uniform Controlled Substances Act of 1992 - www.dora.state.co.us/pharmacy/Title18.pdf

⁸⁸ HB1284: Section 1 Part 9 12-43.3-901(7) – Page 55 lines 3-8

⁸⁹ HB1284: Section 1 Part 6 12-43.3-601(3)(b) - Page 47 lines 25-26

⁹⁰ HB1284: Page 47 lines 1-24

Prohibited Licensees

Q1: Who is prohibited from being a “keyholder” licensee?

Section 1 Part 3 12-43.3-307 of HB1284 outlines the restrictions placed on applicants for the owner & manager “keyholder” license. The following criteria exclude an applicant from the “keyholder” license:

- Anyone not of “good moral character”⁹¹
- A licensed physician making patient recommendations⁹²
- Anyone under 21 years old⁹³
- Anyone currently in default on taxes, judgments to government agencies, government-insured student loans, or child support⁹⁴
- Anyone who discharged a felony sentence (any felony) within the past 5 years⁹⁵
- Law enforcement officers⁹⁶
- Employees of the state or local licensing authority⁹⁷
- Anyone whose ability to be a primary caregiver has been revoked by the state⁹⁸
- Anyone who was not a resident of Colorado by December 15, 2009 (or >2 years if applying after December 15, 2010)⁹⁹
- Anyone who has a felony controlled substances conviction in any state or federal court ever¹⁰⁰

Q2: Who is prohibited from being an employee of these licensees?

HB1284 prohibits anyone under 21 from being employed to “sell or dispense medical marijuana at a Medical Marijuana Center or grow or cultivate medical marijuana at an Optional Premises Cultivation operation.”¹⁰¹ HB1284 also requires that employees submit to a “fingerprint-based criminal history record check as may be required by the state licensing authority prior to issuing a card.”¹⁰² It is likely the Department of Revenue may also choose to add some

⁹¹ HB1284: Page 23 lines 14-15

⁹² HB1284: Page 23 lines 19-20

⁹³ HB1284: Page 23 line 25

⁹⁴ HB1284: Page 24 lines 4-12

⁹⁵ HB1284: Page 24 lines 13-15

⁹⁶ HB1284: Page 24 line 22

⁹⁷ HB1284: Page 24 lines 23-24

⁹⁸ HB1284: Page 24 lines 25-27

⁹⁹ HB1284: Page 25 lines 4-9

¹⁰⁰ HB1284: Page 24 lines 15-18

¹⁰¹ HB1284: Section 1 Part 9 12-43.3-901(4)(d)(I) – Page 52 lines 13-16

¹⁰² HB1284: Section 1 Part 2 12-43.3-202(2)(a)(VIII-IX) - Page 14 lines 2-9

“good moral character” guidelines to employee licenses, but the lifetime ban for any drug felony doesn’t seem to apply to employees.

Q3: If someone is currently paying a negotiated settlement for back taxes, are they prohibited from being a licensee?

No. HB1284 prohibits someone who has not remedied “an outstanding delinquency for taxes owed, an outstanding delinquency for judgments owed to a government agency, or an outstanding delinquency for child support.”¹⁰³ This section was added to clarify that the prohibition is on people who aren’t current in whatever negotiated payment plan has been agreed upon.

Q4: Can a MMJ Center hire an off-duty police officer to work security?

This isn’t directly addressed by HB1284. The bill does ban any law enforcement officer from being an owner or manager of any MMJ license,¹⁰⁴ but it does not directly address hiring off-duty officers as security guards.

Q5: How long do you have to be a resident of Colorado to be an employee or owner/manager?

HB1284 requires that all employees of any MMJ licensee must be residents of Colorado to receive their license to work in a MMJ Center, Optional Premises or Infused Products Manufacturer.¹⁰⁵ HB1284 also requires that any licensee (owners and managers) must have “been a resident of Colorado for at least two years prior to the date of the person’s application; except that for a person who submits an application for licensure pursuant to this article by December 15, 2010, this requirement shall not apply to that person if the person was a resident of the state of Colorado on December 15, 2009.”¹⁰⁶

¹⁰³ HB1284: Section 1 Part 3 12-43.3-307(1)(a)(VII)(F) - Page 24 lines 9-12

¹⁰⁴ HB1284: Section 1 Part 3 12-43.3-307(1)(a)(X) – Page 24 lines 22-24

¹⁰⁵ HB1284: Section 1 Part 3 12-43.3-310(6) – Page 31 lines 9-12

¹⁰⁶ HB1284: Section 1 Part 3 12-43.3-307(1)(a)(XIII) – Page 25 lines 4-9

Changes Related to Department of Health

Q1: Will the Department of Health create a new 24-hour access line to the registry?

Yes. HB1284 states that “The state health agency shall maintain a registry of this information and make it available twenty-four hours per day and seven days per week to law enforcement for verification purposes.”¹⁰⁷

Q2: How much notification will be given of the proposed new rules before the September 1 public hearing?

HB1284 requires that the Department of Health and the Department of Revenue hold a public hearing on any proposed emergency rules by September 1, 2010. This hearing requires that the agencies provide at least 5 days notice before scheduling this hearing.¹⁰⁸ HB1284 also requires that the Department of Health provide 45 days notice of future proposed rules.¹⁰⁹

Q3: Can the Dept. of Health authorize new medical conditions, not mentioned in Amendment 20, to qualify for a medical marijuana card?

Yes. Both SB109 and HB1284 include instructions for the Department of Health to create and publish formal guidelines for adding new conditions to the MMJ registry. SB109 instructs the Department of Health to write rules for “the manner in which the state health agency may consider adding debilitating medical conditions to the list of debilitating medical conditions contained in Section 14 of Article XVIII of the state constitution.”¹¹⁰ HB1284 uses the exact same language in Section 2 25-1.5-106(3)(a)(VI).¹¹¹

¹⁰⁷ HB1284: Section 2 25-1.5-106(5)(d) - Page 59 line 25 – Page 60 line 11

¹⁰⁸ HB1284: Section 2 25-1.5-106(3)(c)(I) – Page 58 lines 18-25

¹⁰⁹ HB1284: Section 2 25-1.5-106(4) – Page 58 line 27 – Page 59 line 9

¹¹⁰ SB109: Section 1 25-1.5-106(2)(g) – Page 5 lines 18-23

¹¹¹ HB1284: Page 57 lines 12-15

Details on SB109

Q1: When does SB109 go into effect?

SB109 does not contain an effective date in the future, so it will go into effect whenever it is signed by the Governor. Section 1(2) of SB109¹¹² covers the areas where the Department of Health will have to write new rules to cover the changes in this bill. Obviously these rules won't be written overnight, but we don't have any more guidance on how quickly these rules will be written. In particular, Section 1(2)(e) of SB109¹¹³ authorizes the Department of Health to upgrade the current registry cards and HB1284 also directs the Department of Health to upgrade the cards and the process to issue these cards.¹¹⁴ This process will take several weeks or months to finalize.

Q2: Can a doctor's office be next door to a MMJ Center?

Yes. SB109 says that "A physician shall not: Examine a patient for purposes of diagnosing a debilitating medical condition at a location where medical marijuana is sold or distributed."¹¹⁵ The licenses created by HB1284 are all tied to a specific location. So, if a Medical Marijuana Center is licensed for Suite 101 in a building, SB109 doesn't prohibit a MMJ doctor's clinic from opening a totally independent business in Suite 102 in the same building.

Q3: What constitutes "suspicious activity" to refer a doctor to the Medical Board of Examiners?

SB109 doesn't include a concrete definition of what would constitute "suspicious activity." Instead, the Department of Health is instructed to create these new guidelines during the rulemaking mandated by Section 1(2)(a) of SB109.¹¹⁶ This rulemaking authority is limited to the content of Amendment 20 and the new restrictions on doctors in SB109.¹¹⁷

¹¹² SB109: Page 4 line 2 – Page 5 line 17

¹¹³ SB109: Page 5 lines 3-9 – "The conditions for issuance and renewal, and the form, of the registry identification cards issued to patients..."

¹¹⁴ HB1284: Part 10 Section 2(3)(a)(IV) – Page 57 lines 6-7 – "The issuance and form of confidential registry identification cards;"

¹¹⁵ SB109: Section 1(3)(d)(III) - Page 6 line 26 – Page 7 line 1

¹¹⁶ SB109: Page 4 lines 7-15

¹¹⁷ SB109: Section 1(3)(a-c) - Page 5 line 18 – Page 6 line 10

Q4: Can a MMJ Center have a doctor on-site one day a week if the Dr. has a full-time clinic elsewhere?

No. SB109 says that a doctor may not “examine a patient for purposes of diagnosing a debilitating medical condition”¹¹⁸ at any licensed MMJ Center. SB109 does not contain a definition of “diagnosing,” so there may be some opportunity for a MMJ Center to allow a doctor to rent space temporarily to renew the recommendations of patients whom they have previously diagnosed for an MMJ registry card.

Q5: Can I own a clinic that hires doctors to write recommendations and own a totally independent MMJ center?

All the restrictions outlined in SB109 are applied specifically to the physicians making MMJ recommendations and there is no mention of a non-physician clinic owner. Doctors are specifically prohibited from receiving “any form of pecuniary remuneration from or to a primary caregiver, distributor, or any other provider of medical marijuana”¹¹⁹ and are prohibited from holding “an economic interest in an enterprise that provides or distributes medical marijuana if the physician certifies the debilitating condition of a patient for the purposes of participation in the medical marijuana program.”¹²⁰ A business owner that owns a medical clinic and independently owns a MMJ Center seems to be fine as long as the doctors aren’t paid or instructed to name a specific caregiver for the patient.

Q6: What are the details of the “physical examination” required by SB109?

SB109 does not define this “personal physical examination.”¹²¹ This part of the bill was written in response to reports of video conference doctor visits and doctors signing referrals for patients they had never actually met. Each patient has slightly different conditions and therefore the degree of “physical examination” needed to adequately diagnose each patient will differ. For example, a patient with AIDS may not require much beyond a review of blood test records showing a positive HIV/AIDS status. Another patient with generalized back pain may require more physical examination to properly diagnose the condition.

Q7: If the patient has a permanent disability, do they still have to revisit the doctor each year for a new recommendation?

Yes. The legislature discussed the possibility of creating lifetime recommendations, but ultimately decided not to add this type of license.

¹¹⁸ SB109: Section 1(3)(d)(III) - Page 6 line 26 – Page 7 line 1

¹¹⁹ SB109: Section 1(3)(d)(I) - Page 6 lines 19-21

¹²⁰ SB109: Section 1(3)(d)(III) - Page 6 line 26 – Page 7 line 1

¹²¹ SB109: Section 1(1)(a)(I) - Page 2 lines 11-15

Q8: Do patients have to request to be on the confidential registry or is it automatic?

No, all patient records held by the Department of Health are confidential as required by Amendment 20. The phrase “request to be placed on the confidential registry”¹²² refers to a patient who chooses to send their doctor recommendation to the Department of Health for inclusion in the medical marijuana registry. This is the process outlined in Section 2(b) of Amendment 20.¹²³ A patient who chooses to only seek the “affirmative defense” protection outlined in Section 2(a) of Amendment 20 doesn’t send anything to the Department of Health and therefore doesn’t “request to be placed” on the registry.

Q9: How is a “bona fide doctor-patient relationship” defined?

This definition is covered in parts I-III of Section 1(1)(a) of SB109.¹²⁴ It includes a “full assessment of the patient’s medical history,” a “personal physical examination,” and the physician must be “available to or offers to provide follow-up care and treatment [...]”

Q10: Do doctors have to offer follow-up visits for free to anyone they issue a MMJ recommendation?

No. SB109 just says that the doctor has to be available for a visit,¹²⁵ but doesn’t say anything about what the doctor can or must charge for the visit or any other follow-up care. Just as there are no rules requiring any other doctor to offer free follow-up visits to any patient with questions, it doesn’t make any sense to require doctors writing MMJ recommendations to offer free follow-up care.

Q11: What kinds of doctors can write MMJ recommendations?

SB109 says that the doctor must hold “a Doctor of Medicine or Doctor of Osteopathic Medicine,” “a valid, unrestricted license to practice medicine in Colorado,” and a valid DEA license to prescribe controlled substances.¹²⁶

¹²² SB109: Section 1 (2)(b) - Page 4 lines 16-20

¹²³ Amendment 20: www.cdphe.state.co.us/hs/medicalmarijuana/amendment.html

¹²⁴ SB109: Page 2 line 11 – Page 3 line 6

¹²⁵ SB109: Section 1 (1)(a)(III) - Page 3 lines 2-6 – “The physician is available to or offers to provide follow-up care and treatment to the patient, including but not limited to patient examinations, to determine the efficacy of the use of medical marijuana as a treatment of the patient’s debilitating medical condition.”

¹²⁶ SB109: Section 1 (1)(c)(I-III) - Page 3 lines 9-17

Local Option to Ban Permanently

Q1: What can be done to overturn a local government ban on MMJ Centers, Optional Premises Cultivation or Infused Products licenses?

Citizens have the power to put anything on the ballot or to contest a decision of their local government by referring that decision to the ballot before it goes into effect. Colorado Revised Statutes Title 31 Article 11 Section 105¹²⁷ states that citizens may contest any action taken by their local government by putting the issue to a vote of the people. If a local government chooses to ban MMJ Centers or other classes of license, the citizens have 30 days to collect signatures from at least 5% of the registered voters in that district. Once the signatures are certified, the proposed ban is stopped and placed on the ballot for the voters to decide. When CMMR ran polls in November, our research suggested that well-regulated medical marijuana had 64% statewide approval, with over 50% support from Republicans, Independents, Democrats and virtually every age group. Given such widespread support, it is unlikely that many of these bans would pass if put to a public vote.

The same process applies to put a proposal allowing medical marijuana businesses on a local ballot. If a particular city or county council is dragging their feet on creating dispensary regulations, the citizens have the power to put their own proposal directly on the ballot. Contact your city or county's election office to find out how many signatures would be needed to overturn a moratorium in your area.

¹²⁷ www.michie.com/colorado/lpext.dll/cocode/2/51fe1/5271d/52ebc/52f00



COLORADANS
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MEDICAL MARIJUANA
REGULATION

“Federalism promotes innovation by allowing for the possibility that ‘a single courageous State, may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country...”

~ Justice O’Connor, dissenting opinion in *Gonzales v Raich*