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To: Members of the State Board of Health

From: Natalie Riggins, Medical Marijuana Program Manager, Center for Health and Environmental Data (CHED)

Through: Dana Erpelding, Director, CHED *DE*

Date: September 16, 2015

Subject: Request for Rulemaking Hearing
Proposed Amendments to 5 CCR 1006-2, Medical Use of Marijuana, with a request for the rulemaking hearing to occur in November of 2015

The Medical Marijuana Registry (MMR) is proposing modifications and technical clean up to the Medical Use of Marijuana regulations. The Medical Marijuana Registry respectfully requests that the Board of Health amend regulation 1C-5 and 1C-6 to align with the caregiver and significant responsibility definitions in SB 15-014, remove the reference to notary in Regulation 2 part E 2. The notary requirements were removed by the Board of Health earlier this year and this provision was not included in error. The Medical Marijuana Registry also requests that the Board of Health modify Regulation 9 parts B and D to recognize the role of cultivating or transporting caregivers as delineated in SB 15-014 and align Regulation 9 part F and Regulation 9 part L with the new definitions of caregiver and significant responsibilities.

STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY
for Amendments to
5 CCR 1006-2, Medical Use of Marijuana

Basis and Purpose.

Modifications to Board of Health Regulation 1 and 9 align rule language with the statutory definitions of “primary caregiver” and “significant responsibility.” Resulting from the passage of Senate Bill 15-014.

Modifications to the Board of Health Regulation 2 will remove reference to notarized applications which were intended to be removed during the last Board of Health rulemaking concerning the Medical Use of Marijuana.

The revisions proposed in this rulemaking are necessary for the rules to not conflict with statute. The Medical Marijuana Registry anticipates that future rulemaking will be needed to establish guidelines for primary caregivers to give informed consent to patients that the products they cultivate or produce may contain contaminants and that the cannabinoid levels may not be verified and implement other portions of SB 15-014. The Department will work with stakeholders to determine next steps for these portions of SB 15-014.

Specific Statutory Authority.

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

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

Yes in part, the bill number is SB15-14; rules are authorized
 required.
 No

Is this rulemaking due to a federal statutory or regulatory change?

Yes
 No

Does this rule incorporate materials by reference?

Yes
 No

Does this rule create or modify fines or fees?

Yes
 No

REGULATORY ANALYSIS
for Amendments to
5 CCR 1006-2, Medical Use of Marijuana

1. A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

Aligning with newly enacted SB 15-014

Aligning Board of Health Regulations 1 and 9 with the caregiver and significant responsibility definitions established in SB 15-014 will benefit Medical Marijuana registry stakeholders when reviewing the rules.

Technical Clean-up of Regulation 2

The Board of Health recently removed the notary requirements from these rules. Upon further review, staff found an additional notary reference. This proposal repeals that language to ensure consistency throughout the rule.

2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

Aligning with newly enacted SB 15-014

This alignment assists Medical Marijuana stakeholders when reviewing the rules.

3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

None

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Aligning with newly enacted SB 15-014

The proposed alignment of Board of Health Regulation and Statute is necessary to provide clarity and consistence.

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

Aligning with newly enacted SB 15-014

No. The proposed alignment of Board of Health Regulation and statute is necessary to provide clarity and consistence.

6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.

Aligning with newly enacted SB 15-014

No alternatives to rulemaking were considered as the proposed alignment of Board of Health Regulation and Statute is necessary to provide clarity and consistence.

7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.

Aligning with newly enacted SB 15-014

This alignment assists Medical Marijuana stakeholders when reviewing the rules.

STAKEHOLDER COMMENTS
for Amendments to
5 CCR 1006-2, Medical Use of Marijuana

The following individuals and/or entities were included in the development of these proposed rules: (Please be specific. Identify your stakeholders with enough specificity the Board has context for the extent of the outreach.)

The Department has worked with the Office of Attorney General to determine what is needed for the rules to not conflict with statute. The Department will distribute this proposal to the Medical Marijuana Registry (MMR) Stakeholders Lists and Department of Revenue and publicize this rulemaking on the MMR website prior to the request for rulemaking hearing. The Department will review and incorporate feedback as appropriate.

The following individuals and or/entities were notified that this rule-making was proposed for consideration by the Board of Health:

See above.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

The Department will begin receiving feedback in September. Because these revisions are strictly to align the rules with statute and remove a dangling reference to the notary requirements, we are not anticipating any major factual or policy issues. The Department is open to feedback and will continue to study SB 15-014 to ensure all necessary changes have been included.

Please identify health equity and environmental justice (HEEJ) impacts. Does this proposal impact Coloradoans equally or equitably? Does this proposal provide an opportunity to advance HEEJ? Are there other factors that influenced these rules?

The propose changes impact Coloradoans equally. There are no HEEJ impacts.

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Center for Health and Environmental Data

MEDICAL USE OF MARIJUANA

5 CCR 1006-2

Regulation 1: Establishment and confidentiality of the registry for the medical use of marijuana

A. The Colorado Department of Public Health and Environment ("the department") shall create and maintain a confidential registry ("the registry") of patients who have applied for and are entitled to receive a registry identification card.

C. Definitions

5. "Primary care-giver" or "primary caregiver" means a **NATURAL** person other than the patient and 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. **A PRIMARY CAREGIVER MAY HAVE ONE OR MORE OF THE FOLLOWING RELATIONSHIPS:**

- a. **A PARENT OF A CHILD AS DESCRIBED BY SECTION (6) (e) OF SECTION 14 OF ARTICLE XVIII OF THE COLORADO CONSTITUTION AND ANYONE WHO ASSISTS THAT PARENT WITH CAREGIVER RESPONSIBILITIES, INCLUDING CULTIVATION AND TRANSPORTATION;**
- b. **AN ADVISING CAREGIVER WHO ADVISES A PATIENT ON WHICH MEDICAL MARIJUANA PRODUCTS TO USE AND HOW TO DOSE THEM AND DOES NOT POSSESS, PROVIDE, CULTIVATE, OR TRANSPORT MARIJUANA ON BEHALF OF THE PATIENT;**
- c. **A TRANSPORTING CAREGIVER WHO PURCHASES AND TRANSPORTS MARIJUANA TO A PATIENT WHO IS HOMEBOUND; AND**
- d. **A CULTIVATING CAREGIVER WHO GROWS MARIJUANA FOR A PATIENT.**

6. "Significant responsibility for managing the well-being of a patient" means, **THAT THE CAREGIVER IS INVOLVED IN BASIC OR INSTRUMENTAL ACTIVITIES OF DAILY LIVING. CULTIVATING OR TRANSPORTING MARIJUANA AND THE ACT OF ADVISING A PATIENT ON WHICH MEDICAL MARIJUANA PRODUCTS TO USE AND HOW TO DOSE THEM** **PAGE 3-SENATE BILL 15-014 CONSTITUTES A "SIGNIFICANT RESPONSIBILITY".** ~~in addition to the ability to provide medical marijuana, regularly assisting a patient with activities of daily living, including but not limited to transportation or housekeeping or meal preparation or shopping or making any necessary arrangement for access to medical care or other services unrelated to medical marijuana. The act of supplying medical marijuana or marijuana paraphernalia, by itself, is insufficient to constitute "significant responsibility for managing the well-being of a patient."~~

Regulation 2: Application for a registry identification card

- E. Rejected applications. Rejected applications shall not be considered pending applications, and shall not be subject to the requirement in the Constitution that applications be deemed approved after thirty-five days. The department may reject as incomplete any patient application for any of the following reasons:

2. ~~If the application is not notarized; or~~

[Renumber subsequent provisions.]

Regulation 9: Primary care-giver-patient relationship and primary care-giver rules

- B. ~~A CULTIVATING OR TRANSPORTING CAREGIVER SHALL BE LISTED AS A PRIMARY CAREGIVER~~ person shall be listed as a primary care-giver for no more than five patients in the medical marijuana registry at any given time unless a waiver as set forth in Regulation Ten has been granted for exceptional circumstances.

- D. A primary care-giver if asked by law enforcement shall provide a list of registry identification numbers for each patient. If a waiver has been granted for A CULTIVATING OR TRANSPORTING CAREGIVER ~~the primary care-giver~~ to serve more than five patients, this will be noted on the department record of CULTIVATING AND TRANSPORTING primary care-givers and will be available for verification to law enforcement upon inquiry to the department.

- F. A patient may only have one primary care-giver at a time. ~~If a patient does not require care-giver services other than the provision of medical marijuana, then the patient shall not designate a primary care-giver.~~

- L. A primary care-giver shall have significant responsibility for managing the well-being of a patient with a debilitating condition. ~~The relationship between a primary care-giver and patient is to be a significant relationship that is more than provision of medical marijuana or medical marijuana paraphernalia. Services beyond the provision of medical marijuana that may be provided by the primary care-giver include, but shall not be limited to, transportation or housekeeping or meal preparation or shopping or making arrangements for access to medical care or other services unrelated to medical marijuana. If patients do not require care-giver service other than the provision of medical marijuana, then the patients shall not designate a primary care-giver.~~
