

PUBLIC HEALTH

Regulation of Medical Marijuana		
HB 11-1043 (Enacted) <i>Medical Marijuana</i>	HB 11-1250 (Enacted) <i>No Medical Marijuana in Ingestable Products</i>	HB 11-1261 (Postponed Indefinitely) <i>DUI Per Se for Excess of THC in Blood</i>
Health Care for Underserved Areas		
HB 11-1281 (Enacted) <i>Health Care Professional Loan Forgiveness</i>	HB 10-1217 (Deemed Lost) <i>Expand Access to Health Care</i>	
Wastewater Regulation		
HB 11-1179 (Postponed Indefinitely) <i>On-site Wastewater Treatment Systems</i>		
Air Quality		
SB 11-237 (Postponed Indefinitely) <i>Disapprove Hayden Emission Control SIP</i>	HB 11-1082 (Postponed Indefinitely) <i>Ozone Levels Larimer and Weld AIR Program</i>	HB 11-1291 (Enacted) <i>Approve Regional Haze Air Quality Plan</i>
Tobacco Settlement and Tax Programs		
SJR 11-009 (Enacted) <i>Declare Fiscal Emergency Tobacco Tax</i>	SB 11-211 (Enacted) <i>Tobacco Revenues Offset Medical Services</i>	SB 11-216 (Enacted) <i>Children's Basic Health Gen Fund Appropriation</i>
SB 11-219 (Enacted) <i>2011 Transfers for Health Care Services</i>	SB 11-224 (Enacted) <i>Suspend Nurse Home Visitor Program Fund Increase</i>	SB 11-225 (Enacted) <i>Innovative Health Program Grant Fund Transfers</i>
Other		
SB 11-248 (Deemed Lost) <i>Repeal Bedding Act</i>	HB 11-1183 (Enacted) <i>Death Certificate Indicate if Pregnant</i>	

During the 2011 legislative session, the General Assembly considered a variety of bills concerning public health. The legislature considered bills relating to the regulation of medical marijuana, on-site wastewater treatment systems, air quality, and access to health care for underserved and rural areas of the state. In addition, as a result of the budget shortfall, the General Assembly approved legislation transferring moneys from the tobacco tax and tobacco settlement that currently fund health care programs to the state's General Fund.

Regulation of Medical Marijuana

In 2000, Colorado voters approved Amendment 20 which legalized the use of marijuana for certain medical conditions. The Department of Public Health and Environment (CDPHE) administers the medical marijuana program.

Since voters approved Amendment 20 in 2000, the number of people in the state who are legally allowed to purchase marijuana has steadily increased. According to CPDHE, in 2007, 1,955 people had medical marijuana registration cards; in 2008, there were 4,720 on the department's medical marijuana registry; in 2009, the number grew to 41,107, and in 2010, the number increased to 88,937. Currently, there are about 123,000 people on the registry. According to the department, on an average day, there are about 400 requests submitted for medical marijuana cards. In 2010, the General Assembly approved legislation regarding caregivers, physicians, and medical marijuana centers. To date, approximately 818 medical marijuana centers or places where medical marijuana may be sold have applied for licensure through the Department of Revenue (DOR). The DOR, stated that of those 818 centers, 9 licenses were denied.

During the 2011 legislative session, the General Assembly considered further legislation related to the regulation of the medical marijuana program, the regulation of medical marijuana infused-products, and driving while under the influence of medical marijuana.

House Bill 11-1043 makes several changes to the Colorado Medical Marijuana Code concerning licensure, licensee operations, patients, physicians, funding, access to records, caregivers, research and development, and disposition of marijuana.

Licensure. The bill extends the moratorium on the issuance of new medical marijuana licenses to July 1, 2012, and allows a person whose application was submitted prior to August 1, 2010, but not acted upon by the state licensing board, to continue operating. It allows persons licensed prior to July 1, 2012, to apply for changes to a license or to apply for a new license if the business is being purchased. Applicants can appeal a state license denial to district court.

Current law imposes a two-year residency requirements for all medical marijuana applicants. The bill narrows the two-year residency requirement to apply to only owners.

Licensee operations. The bill adds several provisions related to licensee operations. It allows medical marijuana centers to sell no more than six immature plants to a patient, but to sell more immature plants to patients who have been recommended expanded plant counts by their physicians. Licensed medical marijuana centers must cultivate at least 70 percent of their on-hand inventory and are not permitted to purchase or sell more than 30 percent of their on-hand inventory to another center. The bill provides 90 days for a newly licensed center to cultivate the necessary medical marijuana to comply with the law. The bill allows for a temporary waiver to be issued to a newly licensed center to purchase more than 30 percent of its on-hand inventory from another center in cases where the center or applicant has suffered a catastrophic event related to its inventory.

The bill allows a medical marijuana center to sell below cost or donate medical marijuana, immature plants, or medical marijuana-infused products to state-designated indigent patients. Additionally, it allows an optional premises cultivation license to be used to provide medical marijuana to more than one center or manufacturer if all licenses are held by the same person.

The bill restricts a medical marijuana-infused products licensee to 500 plants unless the licensee is granted a waiver based on specific considerations. It specifies that property used solely for the cultivation of medical marijuana may not be classified as agricultural land.

Patients. The bill clarifies that if a patient has applied for, but not yet received, a registry identification card, he or she may present the application used to apply for a medical marijuana card, a copy of the certified mail receipt from the CDPHE showing they received the application, and a photo identification at the time of purchase in lieu of a registration card. The employee of a dispensary must call the CDPHE to verify the application status prior to selling the patient any medical marijuana products.

Physicians. The bill clarifies that a physician who holds a valid license to practice medicine in Colorado that does not contain a restriction or condition that prohibits the recommendation of medical marijuana or, for a license issued prior to July 1, 2011, holds a valid, unrestricted and unconditioned license, may provide medical marijuana recommendations.

Funding. The bill changes the way the revenue collected from sales and use tax from medical marijuana sales is distributed. It eliminates the funding for Behavioral Health Services for Juveniles and Adults at Risk or Involved in the Criminal Justice System and funds the Circle Program, an inpatient treatment facility for individuals with co-occurring mental health and substance use disorders who are involved with, or at risk of becoming involved with, the criminal justice system. The bill also waives an applicant's license fee if the applicant's income is at or below 185 percent of the federal poverty level.

Access to records. Under current law, the location of an optional premises cultivation operation is confidential and exempt from the Colorado Open Records Act. The bill makes this information public. It also provides local authorities access to criminal history records for applicants and licensees. The bill also clarifies that medical marijuana patient records are medical records; unauthorized release is a Class 1 misdemeanor and theft is a Class 6 felony. It authorizes the state licensing authority to adopt rules regarding licensing actions against a business that releases patient information. The bill also states that law enforcement cannot use patient identification records to make traffic stops.

Caregivers. Primary caregivers are required to register the location of their cultivation operation with the state licensing authority, and provide the registration identification number of each of their patients. The bill specifies that this information is confidential and can not be provided to the public. In addition, it requires the location of these cultivation operations to comply with applicable local laws, rules, and regulations.

Research and development. The bill allows medical marijuana centers and medical marijuana-infused products manufacturers to submit samples to an approved laboratory for testing and product development. The Department of Revenue (DOR) is directed to promulgate rules for testing and research practices.

Disposition of unauthorized marijuana. Under the bill, state and local license authorities are not required to cultivate or care for any marijuana or marijuana-infused products belonging to or seized from a licensee. The bill lays out the process for destroying unauthorized marijuana or marijuana-infused products.

New unlawful acts include burning or destroying marijuana to evade an investigation or to prevent seizure, and abandoning a licensed premises without notifying the state and local licensing authorities at least 48 hours in advance.

The General Assembly adopted an additional bill related to ingestible medical marijuana infused products. **House Bill 11-1250** directs the DOR to include requirements for special packaging and labeling for medical marijuana-infused products in its rulemaking for the regulation of medical marijuana. The packaging must be significantly difficult for children under the age of five to open, and not allow the product to be seen without opening the packaging material. The rules may also require the product to be labeled "Medicinal product - keep out of reach of children."

The General Assembly considered legislation concerning the establishment of a tetrahydrocannabinol (THC) blood content threshold for the purpose of charging a person with the criminal offense of driving under the influence of THC. Current law prohibits driving a motor vehicle under the influence of alcohol or drugs and defines "DUI per se" as driving with a blood alcohol content of 0.08 or more. As introduced, **House Bill 11-1261** would have expanded the definition of DUI per se to include driving with a THC blood content of five nanograms or more. Under the bill, it would have been a misdemeanor for a person to drive with a THC blood content of five nanograms or more at the time of driving or within two hours after driving. The bill was postponed indefinitely.

Health Care for Underserved Areas

The General Assembly considered two bills related to increasing access to health care services for rural and underserved areas of the state. **House Bill 11-1281** consolidates the Nursing Teacher Loan Forgiveness program and the Colorado Health Services Corp program in the Primary Care Office in the CDPHE. Currently, CollegeInvest administers the Nursing Teacher Loan Forgiveness program. The bill allows CollegeInvest to administer existing obligations, but removes its authority to enter into new ones. Currently, the CDPHE administers the Colorado Health Service Corps program. The bill combines the Nursing Teacher Loan Repayment program with the Colorado Health Service Corps program and authorizes the program to repay loans for both nursing faculty and other health care professional faculty who teach in institutions of higher education.

As introduced, **House Bill 11-1217** sought to expand access to health care services by allowing grant moneys to be awarded for rehabilitative services and extending eligibility for the Colorado Health Service Corps to health care providers in federally designated health professional shortage areas. The bill would also have directed the Department of Health Care Policy and Financing (DHCPF) to reimburse a health care provider for covered services regardless of the provider's location and extended governmental immunity to certain providers practicing in rural health clinics. The bill was postponed indefinitely.

Wastewater Regulation

As introduced, **House Bill 11-1179** would have updated several statutes related to the regulation of on-site wastewater treatment systems and allowed the Water Quality Control Division in the CDPHE to periodically advise the Water Quality Control Commission of changes in technology and practice that could warrant revision of pertinent rules. The bill would have removed criteria for on-site wastewater treatment systems permit variances from statute and authorized the commission to adopt variance criteria by rule.

The bill would have allowed local boards of health to authorize OWTS rules and practices appropriate to local conditions. The bill would have repealed certain uniform, statewide criteria, deferring to local rules and clarified that a permit variance complies with regulations.

In addition, the bill would have eliminated references to individual sewage disposal systems and sanitariums and defined on-site wastewater treatment systems, soil evaluation, and soil treatment area. The bill would have clarified that owners are under a duty to continue repairs when authorized to make emergency use of an OWTS. Finally, the bill would have clarified that the OWTS fee applies to new, repaired, and upgraded systems. The bill was postponed indefinitely.

Air Quality Regulation

The General Assembly considered two bills during the 2011 legislative session concerning air quality. **House Bill 11-1082** would have removed residents of Larimer and Weld counties living in an enhanced inspection area from vehicle emissions testing under the Automobile Inspection and Readjustment (AIR) program. The bill clarified that if test stations from either county exceeded a given threshold of ozone over a period of time, residents within the area would have been placed back into the emissions testing program. The bill was postponed indefinitely.

Under federal law, each state prepares a state implementation plan (SIP) to meet specific requirements of the national Clean Air Act. The SIP is submitted to the Environmental Protection Agency (EPA) for approval. In Colorado, the Air Quality Control Commission in the CDPHE is responsible for preparing and revising the SIP. In January 2011, the commission adopted a visibility and regional haze SIP. **House Bill 11-1291** approves the most recent SIP revisions, and eliminates the automatic expiration of the rules contained in the plan that, under current law, would otherwise expire automatically on May 15, 2012.

As introduced, **Senate Bill 11-237** would have approved a portion of the most recent SIP revisions, and eliminated the automatic expiration of the rules contained in the plan that, under current law, would otherwise expire automatically on May 15, 2012. The bill would have disapproved those portions of the SIP that relate to the requirement for emission controls for the Hayden electric generating units 1 and 2. The bill was postponed indefinitely.

Tobacco Settlement and Tax Programs

In Colorado, a variety of public health programs are funded through two tobacco-related funding sources: a tax on tobacco products implemented by Amendment 35, which was approved by voters in 2004, and the tobacco settlement agreement. The tobacco settlement agreement is a legal settlement under which states receive annual payments to compensate for the cost of caring for individuals with tobacco-related illnesses. During the 2011 legislative session, the General Assembly made adjustments to the programs funded by these tobacco moneys in response to the economic downturn.

When Amendment 35 was passed by voters, it contained a provision stating that the moneys generated by the new tax could be spent for purposes other than those outlined in the amendment if a state fiscal emergency was declared. **Senate Joint Resolution 11-009** declares a state fiscal emergency for FY 2011-12 and specifies that General Assembly intends to use the Amendment 35 revenue for any health-related purpose and to fund the Children's Basic Health Plan (CBHP) and Medicaid program.

Pursuant to the declaration of a state fiscal emergency in Senate Joint Resolution 11-009, as well as a similar declaration that was passed last year, **Senate Bill 11-211** and **Senate Bill 11-219** allow Amendment 35 moneys that were to be used for chronic disease prevention, for grants to reduce health disparities, for tobacco education and cessation programs, and to reimburse primary care providers who see a high number of uninsured and Medicaid patients to be used for any health-related purpose and to serve persons enrolled in both the CBHP and Medicaid in FY 2011-12.

Tobacco settlement. Revenue from the tobacco settlement is dispersed according to a statutory formula, with priority for funding going to Tier 1 programs, and if funding remains, to Tier 2 programs. **Senate Bill 11-224** suspends the 1 percent annual increase in allocation of tobacco settlement money to the Nurse Visitor Program (Tier 1 program) and redirects \$800,000 to the General Fund in FY 2011-12 and \$1.7 million in FY 2012-13. **Senate Bill 11-225** makes similar transfers to the General Fund from the Short-term Innovative Health Program Grant Fund (Tier 2 program) totaling \$1.7 million for FY 2011-12 and \$250,000 in FY 2012-13.

Senate Bill 11-216 changes the distribution of the tobacco settlement moneys to various Tier 1 and Tier 2 programs and redirects these moneys to the CBHP. The bill eliminates the Comprehensive Primary and Preventative Care Grant Program that provides grants to qualified health care providers who care for medically indigent patients and transfers \$2.7 million to the General Fund in FY 2011-12 and FY 2012-13. The bill also eliminates the Pediatric Specialty Hospital Fund and transfers \$1.5 million to the Children's Basic Health Plan Trust Fund to offset costs for the CBHP in FY 2011-12 and FY 2012-13.

Other

Two additional bills relating to public health were considered during the 2011 legislative session, one relating to medical certifications after death and one pertaining to inspections and enforcement activities around bedding.

Senate Bill 11-248 would have repealed the Bedding Act, which requires the CDPHE to conduct inspections and enforcement activities related to mattresses and other bedding-related products based on consumer complaints. The bill was postponed indefinitely.

House Bill 11-1183 requires medical professionals responsible for issuing a medical certification after a death to include information concerning whether or not the decedent was pregnant at the time of death if an autopsy is performed on the decedent. If available, the information is required to be reported on the death certificate.