

# PUBLIC HEALTH

<b>Regulation of Medical Marijuana</b>		
<p><b>SB 12-075</b> <i>(Postponed Indefinitely)</i>  <i>Medical Marijuana Financial            Cooperative</i></p>	<p><b>SB 12-154</b> <i>(Postponed Indefinitely)</i>  <i>Responsible Medical Marijuana            Vendor Standards</i></p>	<p><b>HB 12-1358</b> <i>(Deemed Lost)</i>  <i>Medical Marijuana Fund Transfer            License Deadline</i></p>
<b>Regulation of Health Care Facilities</b>		
<p><b>HB 12-1268</b> <i>(Enacted)</i>  <i>Health Facility Safety Inspection            Transfer to Department of            Public Safety</i></p>	<p><b>HB 12-1294</b> <i>(Enacted)</i>  <i>Department of Public Health            Authority Health Care Facilities</i></p>	
<b>Air and Water Quality</b>		
<p><b>SB 12-132</b> <i>(Postponed Indefinitely)</i>  <i>Issue Air &amp; Water Quality            Permits Within 12 Months</i></p>	<p><b>HB 12-1103</b> <i>(Postponed Indefinitely)</i>  <i>Exclude Clean Counties from            Enhanced Emission Area</i></p>	<p><b>HB 12-1119</b> <i>(Enacted)</i>  <i>Success Act to Limit State Agency            Fines</i></p>
<p><b>HB 12-1126</b> <i>(Enacted)</i>  <i>On-site Wastewater Treatment            Systems</i></p>		
<b>Other</b>		
<p><b>HB 12-1041</b> <i>(Enacted)</i>  <i>Electronic Death Registration System</i></p>	<p><b>HB 12-1034</b> <i>(Enacted)</i>  <i>Waste Tire Processor End            User Fund</i></p>	<p><b>HB 12-1058</b> <i>(Enacted)</i>  <i>Health Department Infant Eye            Prophylaxis</i></p>

During the 2012 legislative session, the General Assembly considered a variety of bills concerning public health. The legislature considered bills relating to the regulation of medical marijuana, the licensing and regulation of health care facilities, and air and water quality.

## 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 (DPHE) administers the medical marijuana patient registry, and the Medical Marijuana Enforcement Division in the Department of Revenue (DOR) inspects and licenses medical marijuana businesses. The General Assembly considered three bills related to medical marijuana businesses during the 2012 legislative session.

**Senate Bill 12-075** would have permitted the establishment of financial cooperatives by medical marijuana patients or licensed medical marijuana businesses. A financial cooperative established under the bill would have been subject to the same regulatory provisions that exist for credit unions, but would not have been permitted to be known as a "credit union." Financial cooperatives would have been required to maintain insurance or self-insurance, and the Commissioner of Financial Services within the Department of Regulatory Agencies would have been required to promulgate rules to provide notice to members and prospective members regarding the differences

between a financial cooperative and other state financial institutions. The bill was postponed indefinitely.

**Senate Bill 12-154** would have created the Responsible Medical Marijuana Vendor Server and Seller Designation for licensed medical marijuana businesses and set standards for a training program for achieving the designation. The DOR was to consult with the DPHE prior to approving or disapproving a training program.

To receive the designation, all employees selling and handling marijuana, all managers, and all resident on-site owners would have been required to successfully complete an approved training program. A designation would have been valid for two years, and new staff and owners would have been required to have been trained within 90 days of employment in order to maintain the designation. If a state or local licensing authority initiated an administrative action against a licensee who had the designation, the authority would have been required to consider the designation as a mitigating factor when imposing sanctions or penalties on the licensee. The bill was postponed indefinitely.

**House Bill 12-1358**, as introduced, would have authorized two transfers of moneys from the Medical Marijuana Cash Fund, which is funded through patient registry fees. Specifically, the bill would have transferred \$7.7 million from the Medical Marijuana Program Cash Fund to the Medical Marijuana License Cash Fund in the DOR for medical marijuana enforcement and licensing, and \$2.0 million from the Medical Marijuana Program Cash Fund to the Tony Grampsas Youth Services Program. In addition, the bill would have provided \$93,600 for the Department of Public Safety (DPS) for expenses related to coordination of the medical marijuana data in the Colorado Crime Information Center.

The bill also would have made various changes to the application and licensing process for medical marijuana businesses. The bill required the DOR to collect the application and licensing fee from an applicant at the time of application, but the department would have been required to refund the fee if the applicant's local license was not granted or if the applicant withdrew the application before the local licensing authority acted upon the application. Finally, the bill would have required, by October 31, 2012, the DOR, in consultation with the Colorado Bureau of Investigation and each local licensing authority for medical marijuana, to publish a report showing specific information about applications, inspections, compliance, and enforcement. The bill was deemed lost in the Senate. A similar bill introduced in the 2012 special session, House Bill 12S-1004, was postponed indefinitely.

## **Regulation of Health Care Facilities**

The General Assembly adopted two bills in 2012 to streamline the inspection and licensing process for health care facilities.

Currently, the Division of Fire Safety in the DPS conducts construction plan reviews and performs inspections of public school buildings to determine compliance with building and fire safety codes. The DPHE is responsible for such reviews and inspections for health facility buildings.

**House Bill 12-1268** transfers the responsibility of inspections of health care facilities for compliance with building and fire codes standards from the DPHE to the Division of Fire Safety in DPS. This transfer is triggered when the Division of Fire Safety notifies the Revisor of Statutes in the Office of Legislative Legal Services that the current agreement between the federal Department of Health and Human Services and the Department of Health Care Policy and Financing has been modified to permit the Division of Fire Safety in the DPS to perform building and fire safety code inspections pursuant to federal requirements set forth by the federal Centers for Medicare and Medicaid Services. This transfer includes all personnel deemed necessary to carry out the inspection program and all related property.

Upon the request of a local fire authority, the Division of Fire Safety is required to provide technical assistance in the review of health facility plans and, if appropriate, conduct inspections on behalf of the local fire authorities. In the absence of a local building or fire department, or when necessary for facilities certified or seeking certification by the federal Centers for Medicare and Medicaid Services, the division is required to conduct necessary plan reviews, issue building permits, perform necessary inspections, and issue certificates of compliance to assure health facility building adherence to applicable codes.

**House Bill 12-1294** modifies DPHE's authority concerning the licensing of health facilities. Under current law, the DPHE licenses and establishes and enforces standards for the operation of health facilities in the state. Facilities that must be licensed include rehabilitation centers, community mental health centers, acute treatment units, facilities for persons with developmental disabilities, nursing care facilities, hospice care, assisted living residences, and home care agencies. Both DPHE and the Department of Human Services (DHS) jointly regulate community residential homes for persons with developmental disabilities. In this instance, DPHE is responsible for health, life safety, and fire and building code surveys; DHS has primary responsibility for program approval.

The bill eliminates several facility types from licensure and requires the DPHE:

- to establish, by rule, a schedule for an extended survey cycle or a tiered inspection or survey system with a minimum goal of reducing the time needed and cost of licensure inspections; to reduce the number, frequency, and duration of on-site inspections; to reduce the scope of information that health facilities are required to submit; to reduce the amount and scope of duplicative data, reports, and information required; and to be based on facility size;
- to apply the extended survey cycle or tiered inspection for health facilities that have been licensed for at least three years and that have not been the subject of any enforcement activity or complaints within the past three years; and
- to institute, by rule, a performance incentive system to reduce renewal license fees for health facilities that have no specific deficiencies.

The bill also:

- requires DPHE to conduct a fitness review when a health facility changes ownership;
- establishes criteria for deeming that licensing requirements have been satisfied, including the circumstances under which a facility's deemed satisfactory status may be revoked, and the authority to conduct validation surveys in instances where state standards are more stringent than the standards for national accreditation;

- permits the State Board of Health to increase provisional license and other fees by no more than the annual percentage change in the Denver-Boulder-Greeley Consumer Price Index;
- clarifies that home care placement agencies are not licensed or certified by DPHE and subjects facilities who make such a claim to a civil penalty;
- creates the Health Care Facility Stakeholder Forum, consisting of representatives from various types of provider facilities, consumers, consumer advocates, ombudsmen, and other interested parties;
- requires DPHE and DHS to work jointly to resolve differing requirements for the regulation of any Program of All-inclusive Care for the Elderly (PACE) facility consistent with federal requirements; and
- requires DPHE, DHS, and the Department of Health Care Policy and Financing, in consultation with industry representatives, to resolve differing requirements for the regulation of community residential homes.

The definition of "community clinic" is expanded to mean a health care facility that provides health care services on an ambulatory basis, is neither licensed as an on-campus department or service of a hospital nor as an off-campus location under a hospital's license, so long as the facility operates inpatient beds at the facility, or provides emergency services at the facility. Excluded from the definition is any facility that functions only as an office for the practice of medicine or the delivery of primary care services by other licensed or certified practitioners. A health care facility is not required to be licensed as a community clinic solely due to the facility's ownership status, corporate structure, or engagement of outside vendors to perform nonclinical management services. Physician offices may be regulated only to the extent that the office qualifies as a community clinic.

## **Air and Water Quality**

The General Assembly considered several bills during the 2012 legislative session related to air and water quality and permits.

Under current law, renewable operating permits for air emissions must be approved or denied by the Air Pollution Control Division of the DPHE within 18 months after receipt of a complete application. For water quality permits in the Colorado Discharge Permit System, administered by the Water Quality Control Division of DPHE, an application must be approved or denied within 180 days of receipt of the application. However, the deadline for discharge permit action may be extended for specified reasons.

**Senate Bill 12-132** would have required the Air Pollution Control Division and the Water Quality Control Division within the DPHE to take final action on air emissions permits and discharge permits, other than renewals, within 12 months after an application was deemed complete. The Air Quality Control Commission would have been authorized to adopt rules to increase fees for air emissions permitting up to a specified level. If the Water Quality Control Division experienced a backlog in processing permit applications, the bill would have authorized applicants to have their application reviewed by a private contractor approved by Water Quality Control Division. The bill was postponed indefinitely.

**House Bill 12-1119** limits the ability of the DPHE to take enforcement action for minor inspection- or paperwork-related violations related to storm water discharges. Specifically, the DPHE may not begin action unless it has notified the violator and the violator fails to cure the violation within a reasonable time period to be determined by the department. The prohibition is in effect through July 1, 2013.

The bill also directs the DPHE to collaborate with the construction industry and other stakeholders to develop processes to prevent violations. The DPHE is required to make a report to the General Assembly by December 1, 2012, on the results of its collaboration, implementation plans, and legislative recommendations.

**House Bill 12-1126** updates statutes related to the regulation of on-site wastewater treatment systems (OWTS). The bill eliminates references to individual sewage disposal systems and sanitarians and defines OWTS, soil evaluation, and soil treatment area.

Local boards of health are authorized to adopt certain OWTS rules and practices appropriate to local conditions. The bill repeals uniform, statewide criteria regarding the presumed density of OWTS installation, deferring to local rules. The bill clarifies that a permit variance complies with regulations. The bill removes criteria for local OWTS permit variances from statute and requires the Water Quality Control Commission to adopt minimum variance criteria by rule.

The bill clarifies that owners are under a duty to continue repairs when authorized to make emergency use of an OWTS. Finally, the bill clarifies that the OWTS fee applies to new, repaired, and upgraded systems.

**House Bill 12-1103** would have allowed counties, or parts of counties, to be exempt from vehicle emissions testing, provided the exempted area was not in violation of national carbon monoxide limits or ozone limits established by the Environmental Protection Agency. The board of county commissioners would have been authorized to designate the exemption from the Automobile Inspection and Readjustment (AIR) program after it was determined that the exempted area was in compliance with ambient air quality standards. The bill was postponed indefinitely.

## **Other**

Three additional bills relating to public health were considered during the 2012 legislative session, one relating to the creation of an electronic death certificate, one relating to waste tires, and one relating to eye prophylactics administered to infants.

**House Bill 12-1041** requires the DPHE to create an electronic death registration system to allow persons responsible for reporting death information to the Office of the State Registrar of Vital Statistics to do so electronically. The proposed system is an alternative to the current paper-based system that relies on the hand delivery of death certificates to required locations, and that requires families to travel to the county in which a death occurs for purposes of obtaining copies of death certificates.

The Processors and End Users Fund provides reimbursement payments to processors and end users of waste tires to assist new and existing waste tire recycling technologies in becoming economically feasible and to thereby encourage the use of waste tires and reduce the storage of waste tires in Colorado. **House Bill 12-1034** extends the Processors and End Users Fund repeal date from July 1, 2012 to July 1, 2020. The bill also requires the DPHE to identify other markets in the state that are able, without taxpayer or moneys from the fund, to eliminate illegal tire dumping and to recycle or reuse waste tires in newer technologies. Finally, it prevents the state from reimbursing a tire processor if the tire processor is not an end user, or if the tire product has been sold and moved off site.

Currently, the DPHE is required to name, approve, and provide, free of charge, a prophylaxis to be used in treating the eyes of newly born infants. **House Bill 12-1058** deletes these requirements and requires the health care provider in charge of the birth to treat an infant with a prophylaxis that is in accordance with the current standard of care.