

Regulation 2: Application for a registry identification card

A. DEFINITIONS

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- iii) ~~“Significant responsibility for managing the well-being of a patient” means assisting a patient with daily activities, including but not limited to transportation or housekeeping or meal preparation or shopping or making any necessary arrangement for access to medical care or services or provision of medical marijuana.~~

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**EMERGENCY FINDINGS AND JUSTIFICATION
FOR**

Proposed Amendments to Rules and Regulations Pertaining to Medical Use of Marijuana
(5 CCR 1006-2), Regulation 2-Definitions
November 3, 2009

Findings and Statement of Reason for Action

The Department finds that immediate adoption of these amendments to Medical Use of Marijuana is imperatively necessary to comply with state law and the Colorado Constitution and for the preservation of public health, safety, and welfare, and that compliance with the requirements of C.R.S. section 24-4-103, would be contrary to the public interest.

These amendments are needed to avoid conflict with the Colorado Court of Appeals decision People v. Clendenin, No. 08CA0624 (Colo. Ct. App., October 29, 2009) which ruled that in order for a person to be a “primary care-giver” as defined under Colorado Constitution Article XVIII, Section 14, the person must do more than simply provide medical marijuana to the patient with a debilitating medical condition. The rules adopted by the Board of Health that became effective August 30, 2009, define a primary care-giver as “a 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.” This definition is identical to that contained in the Colorado Constitution. Regulation 2 A (iii), 5 CCR 1006-2, however, further defines the phrase “significant responsibility for managing the well-being of a patient” to include only the provision of medical marijuana. The Court of Appeals’ decision in Clendenin did not directly address the Board’s rule, which was adopted after the defendant’s criminal trial. However, the definition of “significant responsibility” in Regulation 2A(iii) conflicts with the Court of Appeals’ interpretation of the constitutional definition of “primary care-giver”. The Court of Appeals specifically ruled that “the act of supplying marijuana for medical use, by itself, is insufficient to constitute significant management responsibility for a patient’s well-being, and consequently is insufficient to constitutionally qualify a person doing so as a “primary care-giver.” By adopting this emergency repeal of the definition of “significant responsibility”, the rules will avoid any conflict with the Court of Appeals ruling regarding the constitutional provisions. This action is imperatively necessary to eliminate confusion for persons attempting to comply with state law, and is needed for the preservation of public health, safety, and welfare.

These amendments to the Medical Use of Marijuana rules are promulgated pursuant to C.R.S. Section 25-1.5-106, and Colorado Constitution Article XVIII, Section 14.