



MEDICAL MARIJUANA REGULATORY SYSTEM, PART I

Performance Audit, March 2013 Report Highlights



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PURPOSE

Assess how effectively the Medical Marijuana Enforcement Division (the Division) has licensed and regulated medical marijuana businesses.

BACKGROUND

- In 2000, Colorado voters approved Amendment 20, a constitutional amendment that legalized the medical use of marijuana for patients diagnosed with certain debilitating medical conditions.
- The Division was established in July 2010 to license and regulate businesses that grow, cultivate, and sell medical marijuana and products infused with marijuana.
- As of October 2012, the Division oversaw about 1,440 medical marijuana businesses.
- The Division's funding comes primarily from medical marijuana business application and licensing fees.
- Since the Division's inception, its funding has fluctuated significantly. From Fiscal Years 2011 through 2012, revenue declined by 56 percent from \$8.6 million to \$3.8 million, respectively. At the same time, expenditures increased by 11 percent from \$4.7 million to \$5.2 million.

OUR RECOMMENDATIONS

The Department of Revenue should ensure that the Division:

- Only licenses eligible medical marijuana business applicants and improves the timeliness of its licensing processes.
- Evaluates discontinuing its occupational licensing program.
- Improves its monitoring activities.
- Improves its processes for seizing and disposing of unauthorized marijuana from medical marijuana businesses.
- Improves its fee-setting practices.
- Improves controls over expenses and staff use of state vehicles.
- Develops a comprehensive strategic plan.

The Department agreed with all of our recommendations.

AUDIT CONCERN

The Division has not adequately defined the oversight activities it must perform or determined the resources it needs to implement the regulatory system envisioned by the General Assembly to oversee Colorado's emerging medical marijuana industry.

KEY FACTS AND FINDINGS

- The Division has taken an average of about 23 months to issue final licensing decisions on applications submitted by August 1, 2010, the effective date of a 2-year moratorium on new medical marijuana businesses. The shortest approval time was 436 days, while the longest approval time was 807 days.
- Of the original business license applications the Division received by August 1, 2010, 41 percent were still pending as of October 2012 and have not received final licensing decisions.
- For 13 (37 percent) of 35 new business application files we reviewed, we found evidence of potentially disqualifying information about the applicants. Ten licenses were issued, however four were questionable based on this evidence.
- At the time of our audit, the Division had not taken new occupational licensing appointments in the previous 6 months, which creates a burden because individuals cannot legally work at a medical marijuana business without a license.
- The envisioned "seed-to-sale" model for regulating Colorado's medical marijuana industry does not currently exist. The Division planned to develop a marijuana plant tracking system, spent about \$1.1 million in Fiscal Years 2011 and 2012, but was unable to pay the remaining \$400,000 and implement the system due to financial difficulties. The Division reports that it will implement the system by the end of Calendar Year 2013.
- The Division does not use the prescribed statutory process when taking marijuana related to disciplinary actions against medical marijuana businesses. Additionally, the Division has inadequate controls to ensure that seized marijuana is destroyed properly.
- The Division has not developed a systematic process for setting fees that correspond to its costs of providing regulatory oversight.
- The Division laid off a majority of its staff in Fiscal Year 2012 due to revenue shortfalls. Specifically, in Fiscal Years 2011 and 2012, the Division experienced 19 consecutive months of net losses, including a loss of about \$2.3 million in June 2011 because of large capital purchases, such as furniture, computer equipment, and software for a marijuana plant tracking system. Weaknesses in the Division's fee-setting, strategic planning, and expense controls contributed to its funding problems.
- The Department of Revenue did not identify all medical marijuana businesses in its sales tax system and underreported sales tax revenue generated by 56 dispensaries by about \$760,000 for Fiscal Years 2011 and 2012 combined.

For further information about this report, contact the Office of the State Auditor
303.869.2800 - www.state.co.us/auditor

Appendix A

Summary of Findings Related to the SMART Government Act Medical Marijuana Regulatory System, Part I Medical Marijuana Enforcement Division Department of Revenue March 2013

The SMART Government Act [Section 2-7-204(4), C.R.S.] requires the State Auditor to annually conduct performance audits of one or more specific programs or services in at least two departments so as to audit all departments in a 9-year cycle. These audits may include, but are not limited to, the review of:

- The integrity of the department's performance measures included in its strategic plan.
- The accuracy and validity of the department's reported results.
- The overall cost and effectiveness of the audited programs or services in achieving legislative intent and the department's goals.

The performance audit relating to Colorado's medical marijuana system was selected for focused audit work related to the SMART Government Act. This document outlines our findings related to the integrity and reliability of performance measurement for the Department of Revenue's Medical Marijuana Enforcement Division (the Division) and the Division's overall effectiveness. We have presented our findings as responses to six key questions that can assist legislators and the general public in assessing the value received for the public funds spent at the Division.

What is the purpose of this program/service?

The Medical Marijuana Enforcement Division is responsible for licensing and regulating medical marijuana businesses.

What are the costs to the taxpayer for this program/service?

In Fiscal Year 2012, medical marijuana businesses paid about \$3.8 million in fees to the Division. Division expenditures in Fiscal Year 2012 were about \$5.2 million.

How does the Department measure the performance of this program/service?

The Department of Revenue's Fiscal Year 2014 SMART Government Act strategic plan includes one performance measure related to the Medical Marijuana Enforcement Division, as outlined in the following table.

Medical Marijuana Enforcement Division Fiscal Year 2013 Performance Measure					
<i>Performance measure: Initiate final agency action¹ on license applications within 60 days of local approval.</i>					
Fiscal Year	2010	2011	2012	2013	2014
Benchmark	N/A	N/A	N/A	90%	90%
Actual	N/A	N/A	N/A	TBD	TBD
Source: Department of Revenue strategic plan for the Fiscal Year 2014 budget cycle.					
¹ Final agency action means licensed issued/renewed or license denied.					

Is the Department’s approach to performance measurement for this program/service meaningful?

As discussed in Chapter 3 of the report, we found that the Medical Marijuana Enforcement Division’s performance measure does not appear to align well with the Division’s actual practices. Specifically, the performance measure assumes that the local licensing process is wholly separate from the Division’s licensing process. However, the Division may perform at least part of its application review while the local licensing authority is also reviewing the application. Therefore, it would be more meaningful for the Division to measure timeliness of its review process from the date it receives the business’s application to the date that the Division issues a license or denies an application. Additionally, it is unclear what is meant by “initiate” final agency action and therefore what the time frame for performance is. Recommendation No. 11 of the report addresses these issues.

Are the data used to measure performance for this program/service reliable?

As discussed in Chapter 3 of the report, we found that the Division does not capture key data points needed to measure performance against this benchmark in its information system. Specifically, the Division’s information system does not capture the date the local license was approved, which is the starting point for the 60-day goal as currently written. Recommendation No. 12 of the report addresses this issue.

Is this program/service effective in achieving legislative intent and the Department’s goals?

This audit raised concerns about the Medical Marijuana Enforcement Division’s effectiveness in achieving legislative intent for regulating medical marijuana businesses. Included throughout the report are recommendations to improve processes for licensing and monitoring businesses, setting fees, and developing an overall strategic plan for the Division.