



MEDICAL MARIJUANA REGULATORY SYSTEM, PART II

Performance Audit, June 2013 Report Highlights



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PURPOSE

Assess the Department of Public Health and Environment's (Public Health) process for issuing red cards, which give individuals access to medical marijuana, the reasonableness of fees charged to patients, and the State's regulation of caregivers.

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.
- As of March 2013, about 108,000 patients in Colorado had valid red cards.
- Public Health maintains the confidential Medical Marijuana Registry (Registry) containing information related to medical marijuana patients.
- Primary caregivers supply marijuana to a patient but must also assume significant responsibility for managing the patient's well-being. As of December 2012, about 5,400 caregivers were serving about 8,500 patients.
- Public Health's funding to administer the medical marijuana program comes primarily from red card application fees.

OUR RECOMMENDATIONS

The Department of Public Health and Environment should:

- Improve its oversight of physicians recommending medical marijuana.
- Improve the timeliness of processing red card applications.
- Work with the Department of Revenue to strengthen oversight of caregiver activities.
- Ensure the confidentiality of the Registry.
- Improve its management of the Medical Marijuana Cash Fund.
- Improve its controls over expenses.

The Department of Revenue should:

- Work with Public Health to strengthen oversight of caregiver activities.

The departments generally agreed with all of our recommendations.

AUDIT CONCERN

Public Health's controls over access to medical marijuana do not provide assurance that only qualified individuals receive red cards. Public Health has also set its fees too high, resulting in a fund balance that far exceeds the program's needs. In addition, the State has not developed an effective mechanism to oversee caregivers.

KEY FACTS AND FINDINGS

- Public Health does not sufficiently oversee physicians who make medical marijuana recommendations. We found evidence suggesting that some physicians may be making inappropriate recommendations.
 - As of October 2012, a total of 903 physicians had recommended medical marijuana for the 108,000 patients holding valid red cards. Twelve physicians recommended medical marijuana for 50 percent of those patients, including one physician with more than 8,400 patients on the Registry.
 - Some physicians have recommended what appear to be higher-than-reasonable amounts of medical marijuana. In one case, a physician recommended 501 plants for a patient. In another case, a physician recommended 75 ounces of useable marijuana for the patient.
- Public Health has not established a process for caregivers to indicate the significant responsibilities they are assuming for managing the well-being of their patients or for documenting exceptional circumstances that require a caregiver to take on more than five patients.
- Public Health failed to issue red cards within the constitutionally required 35-day time frame for more than one-third of red cards that were valid as of December 2012. However, by May 2013 the process had improved to 99 percent of applications processed within the 35-day time frame.
- It is not clear whether Public Health was adhering to the Colorado Constitution when it allowed staff of contract firms and other state agencies to access the confidential Registry.
- Legal restrictions on Registry access create barriers for law enforcement agencies to effectively and efficiently enforce the State's medical marijuana laws.
- The Medical Marijuana Cash Fund has been out of compliance with a statutory limit on cash fund uncommitted reserves every year since Fiscal Year 2004. At the end of Fiscal Year 2012, the fund had excess uncommitted reserves of more than \$11.3 million, the highest amount of excess uncommitted reserves of any cash fund in the State subject to the requirement.

Appendix A

Office of the State Auditor
Summary of Findings Related to the SMART Government Act
Medical Marijuana Regulatory System, Part II
Department of Public Health and Environment
June 2013

The SMART Government Act [Section 2-7-204(5)(a), 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. These audits may include, but are not limited to, the review of:

- The integrity of the department's audited performance measures.
- 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 regulatory 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 Public Health and Environment's (Public Health) medical marijuana program. 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 by Public Health in administering the program.

What is the purpose of this program/service?

Public Health is responsible for reviewing and approving applications for "red cards" and maintaining a confidential registry (the Registry) of information related to patients who have been issued red cards. Red cards allow individuals whose physicians have diagnosed them with a qualifying medical condition and have recommended the medical use of marijuana to obtain access to medical marijuana.

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

In Fiscal Year 2012, patients paid about \$6.3 million in application fees, and the cash fund earned about \$150,000 in interest income. Medical marijuana program expenses in Fiscal Year 2012 were about \$2.6 million.

How does Public Health measure the performance of this program/service?

Public Health's Fiscal Year 2014 SMART Government Act strategic plan includes no performance measure related to the medical marijuana program. Public Health has not otherwise measured the performance of the program, such as through its monthly publication of program statistics published on Public Health's website.

Is Public Health’s approach to performance measurement for this program/service meaningful?

As discussed in Chapter 2 of the report, we recommend that Public Health measure and report on the medical marijuana program’s timeliness in processing red card applications within the constitutionally required 35-day time frame. During our initial testing of data through December 2012, we found that Public Health did not process about 29 percent of valid red cards within the 35-day time frame. At Public Health’s request, we conducted subsequent testing on applications from January 2013 through April 2013 and found that timeliness had improved significantly with 99 percent of applications being processed within the 35-day time frame. Recommendation No. 2 of the report addresses these issues.

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

As discussed in Chapters 2 and 3 of the report, Public Health generally has the information it needs to report on timeliness of application processing and its compliance with the requirement to process applications within 35 days. From the review we were able to complete of non-personally-identifiable processing dates in the Registry, we found that Public Health could improve data input controls to ensure the accuracy of processing dates captured in the database. Recommendation No. 7 of the report addresses this issue. However, we note that our ability to fully assess the reliability of data in the Registry was limited because of the constitutional protections on Registry data, which do not allow the State Auditor to access any personally identifiable data from the Registry.

Is this program/service effective in achieving legislative intent and Public Health’s goals?

This audit raised concerns about the program’s effectiveness in achieving legislative intent for issuing red cards to patients with qualifying medical conditions, protecting confidential data, and setting reasonable fees. Included throughout the report are recommendations to improve oversight over physicians and caregivers, achieve timely processing of applications, better protect confidential data, set fees at a reasonable level, and ensure funds are spent appropriately.