

STATE OF COLORADO

DEPARTMENT OF REVENUE

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Barbara J. Brohl
Executive Director

June 24, 2013

Dianne E. Ray, CPA
State Auditor
Colorado Office of the State Auditor
200 East 14th Avenue, 2nd Floor
Denver, CO 80203

Dear Ms. Ray:

In response to your request, we have prepared an updated status report regarding the implementation of audit recommendations contained in the Medical Marijuana Regulatory System, Part I Performance Audit. The attached report provides a brief explanation of the actions taken by the Department of Revenue to implement each recommendation.

Below is the summary of actions taken by Department of Revenue (Department) to address the challenges encountered by the Medical Marijuana Enforcement Division (MMED; Division). We also provided similar information to the Joint Select Committee members' at a hearing on HB 13-1317 in March 2013:

- Laura Harris was appointed to the role of Division Director, who is a highly qualified professional with 25 years of experience in Liquor Enforcement. Laura Harris received criminal investigator training at the Federal Law Enforcement Training Center.
- Ron Kammerzell was appointed into the leadership position overseeing the entire Enforcement Division. Ron has 20 years of experience with the Division of Gaming and extensive background in complex criminal and financial investigations, auditing, internal controls, gaming regulation and public administration. Ron is a Colorado POST certified peace officer and served as a sworn agent of CBI on a year-long assignment to investigate government corruption.
- The Department identified opportunities for decreasing expenditures of the Division and curtailing operations in the wake of a shortage of revenues being collected, and evaluated methods for increasing revenues.

- The Department pursued legislation in the 2012 session to de-couple the state and local licensing approval process in the hopes of improving the ability of the Division to approve licenses and renewals to establish a predictable revenue stream to support operations. The legislation also contemplated using some of the funds collected by the Colorado Department of Public Health and Environment (CDPHE) as emergency funding to keep the Division operating at the level of 37 FTE. As this legislation was not successful, the Division immediately initiated measures to reduce its costs, including the implementation of a layoff plan, freezing or eliminating contract obligations and the elimination of discretionary expenditures. All of these measures were necessary to keep the Division operating.

- The Division also eliminated its excess vehicle fleet and specifically targeted vehicles that had the most costly lease payments. We contacted State Fleet Management in April 2012, and within 60 days, the Division eliminated 25 vehicles by transferring them to other state agencies. The Division also identified other recurring costs that could be eliminated, such as contract obligations, and quickly acted to control these expenses. Most notably, the Division had to place the contract for the development of an inventory system on hold. The Division has continued to extend this contract and is now in negotiations with the vendor to finalize contract amendments and to complete the development of this system for the implementation of Amendment 64.

- The Division initiated its layoff plan beginning in May 2012 and the Department worked diligently to transfer 20 employees to other Department agencies. Additionally, an operating budget of \$2.4 million was established with the assistance of the Department's Office of Budget and Financial Services. The Division has operated within that budget since the beginning of FY 2013 (July 2012).

- The original management team made a policy decision to not collect license fees at the time of application for licensure. This practice has been abandoned and license fees are now collected at the time of application along with application fees. The Division has since collected approximately \$4.8 million from these applications. This influx of license fees has permitted the Division to continue operations and remain solvent.

- Since the beginning of the third quarter of FY 2012 (April 2012), the Department has instituted additional accounting and budgetary controls to include monthly budget meetings involving the Senior Director of Enforcement, the Department's Chief Financial Officer, the Director and other staff. The Division has also implemented strict expenditure controls for all expenses of the Division. Further, the Department created a controller position for the Enforcement Business Group and filled the position in the second quarter of FY 2013 (Fall of 2012). All of these measures were undertaken to ensure that the Department and the Division meet their fiduciary duties to the State.

- The Division has performed a critical assessment of its licensing process for medical marijuana businesses and has streamlined its procedures. This includes developing procedures

for the processing, reviewing and approval of these licenses. This has resulted in a dramatic reduction in the time it takes the Division to conduct a background investigation of a business and conduct a pre-license inspection. The Division has also taken immediate steps to implement a risk-based approach for determining the need for pre-license inspections, as recommended by the Office of the State Auditor (OSA). All of these corrective measures taken by the Division will also improve the licensing process for Amendment 64 implementation.

- The Division has closely worked with local government licensing authorities to improve the collaboration and communication between them and the state regarding licensing approvals. While this has resulted in some improvement in local licensing authority approval notifications, this continues to be an area that delays the issuance of licenses by the state licensing authority. As a result, the Department has worked diligently and been successful in obtaining legislation this session to de-couple the state and local government licensing processes (HB-1238). The Division is actively working on establishing many of the recommendations contained in the OSA Performance Audit Report of the Division. As previously mentioned, the Division is already implementing a risk-based approach for assessing whether or not a pending business requires a pre-licensing inspection prior to receiving licensing approval from the state licensing authority. Additionally, the Division is planning to develop written procedures and policies for critical areas highlighted in the audit report. Furthermore, the Division is actively engaged in the development of a strategic plan and appropriate performance measures to assess our effectiveness in regulating the industry.

- The Division is actively working toward the elimination of its backlog of pending MMED business license applications by the end of the current fiscal year. We have received additional resources from the Attorney General's office that will permit us to resolve the 138 problem applications. Because the Division was successful in getting the abovementioned legislation passed, the Division will move forward with issuing conditional licenses, pending local authority approval. All of these measures will permit the Division to eliminate the MMED licensing backlog and allow the Division to focus on implementation of Amendment 64.

- The Division has developed a comprehensive business and staffing plan for the implementation of Amendment 64. This includes the identification of critical action items, timelines and resources needed for effective implementation. Additionally, the Department has assembled an Amendment 64 Implementation Team comprised of key Divisions within the Department to ensure proper support and resources are allocated for successful implementation. Some of the critical tasks that have been incorporated into this plan include:

- Fee Setting for both MMED and Amendment 64
- Fiscal Resource Analysis
- Implementation of Inventory Tracking System
- Promulgation of Amendment 64 Regulations
- Revision of MMED Regulations
- Augmentation of Licensing System for Amendment 64 and MMED
- Implementation of OSA Audit Recommendations

- Policy and Procedure Development
- Development of Infrastructure
- Licensing Strategies
- Enforcement Strategies
- Law Enforcement Interaction Strategies
- Local Licensing Authority Interaction Strategies
- Identification of Constitutional and Statutory Mandates

At the LAC Committee hearing in March 2013, LAC members raised several specific questions to which we provide the following responses:

The number of repeat applicants that have applied for licenses with the Division. There are twenty-one (21) repeat applications, in that the application was originally filed in August 2010 but not issued, and then re-submitted after July 1, 2012. Nineteen (19) applications are within the City of Fort Collins where a local ban of medical marijuana businesses caused the withdrawal of a 2010 application, and subsequent submission after the ban had been lifted in 2012. Two (2) applications are within the City of Northglenn.

The number of renewal applications that have been received by the Division. From September 1, 2012 (the first date that a renewal could have been filed) through March 31, 2013, the Division has received one-hundred (100) medical marijuana business renewal applications.

The Division's comprehensive strategic plan. The Division advised the Committee that it would be developing a comprehensive strategic plan as described above. The Division has provided the LAC with a copy of this strategic plan along with our other responses to the audit.

If you have any questions, please do not hesitate to contact me at 303-866-5610 or by email at Barbara.Brohl@state.co.us.

Sincerely,



Barbara J. Brohl
Executive Director
Department of Revenue

AUDIT RECOMMENDATION STATUS REPORT

AUDIT NAME: Medical Marijuana Regulatory System, Part I Performance Audit

AUDIT NUMBER: #2194A

DEPARTMENT/AGENCY/ENTITY: Department of Revenue

DATE: June 2013

SUMMARY INFORMATION

| Recommendation Number <i>(e.g., 1a, 1b, 2, etc.)</i> | Agency's Response <i>(i.e., agree, partially agree, disagree)</i> | Original Implementation Date <i>(as listed in the audit report)</i> | Implementation Status <i>(Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable)</i> | Revised Implementation Date <i>(Complete only if agency is revising the original implementation date.)</i> |
|--|---|---|--|--|
| 1a | Agree | March 2014 | Partially Implemented | October 2013 |
| 1b | Agree | March 2014 | Partially Implemented | October 2013 |
| 1c | Agree | March 2014 | Partially Implemented | October 2013 |
| 1d | Agree | March 2014 | Partially Implemented | October 2013 |
| 1e | Agree | May 2013 | Implemented | |
| 2a | Agree | March 2014 | Partially Implemented | October 2013 |
| 2b | Agree | March 2014 | Partially Implemented | October 2013 |
| 2c | Agree | March 2014 | Partially Implemented | October 2013 |
| 3a | Agree | March 2014 | Not Implemented | October 2013 |
| 3b | Agree | March 2014 | Not Implemented | October 2013 |
| 3c | Agree | March 2014 | Not Implemented | October 2013 |
| 4a | Agree | March 2014 | Partially Implemented | October 2013 |
| 4b | Agree | March 2014 | Not Implemented | October 2013 |
| 4c | Agree | March 2014 | Not Implemented | October 2013 |
| 4d | Agree | March 2014 | Not Implemented | October 2013 |
| 5a | Agree | March 2014 | Not Implemented | October 2013 |

| Recommendation Number <i>(e.g., 1a, 1b, 2, etc.)</i> | Agency's Response <i>(i.e., agree, partially agree, disagree)</i> | Original Implementation Date <i>(as listed in the audit report)</i> | Implementation Status <i>(Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable)</i> | Revised Implementation Date <i>(Complete only if agency is revising the original implementation date.)</i> |
|--|---|---|--|--|
| 5b | Agree | March 2014 | Not Implemented | October 2013 |
| 5c | Agree | March 2014 | Not Implemented | October 2013 |
| 5d | Agree | March 2014 | Not Implemented | October 2013 |
| 6a | Agree | March 2014 | Partially Implemented | |
| 6b | Agree | June 2013 | Implemented | |
| 6c | Agree | June 2013 | Implemented | |
| 6d | Agree | March 2014 | Partially Implemented | |
| 7a | Agree | June 2014 | Not Implemented | |
| 7b | Agree | June 2014 | Not Implemented | |
| 7c | Agree | June 2014 | Not Implemented | |
| 7d | Agree | June 2014 | Implemented | |
| 8a | Agree | June 2013 | Implemented | |
| 8b | Agree | October 2013 | Partially Implemented | |
| 8c | Agree | June 2013 | Implemented | |
| 9a | Agree | June 2013 | Implemented and ongoing | |
| 9b | Agree | June 2013 | Implemented and ongoing | |
| 9c | Agree | June 2013 | Implemented | |
| 9d | Agree | June 2013 | Partially Implemented | March 2014 |
| 10 | Agree | July 2013 | Implemented and ongoing | |
| 11a | Agree | July 2013 | Implemented | |
| 11b | Agree | July 2013 | No Longer Applicable | |
| 11c | Agree | July 2013 | Partially Implemented | |

| Recommendation Number <i>(e.g., 1a, 1b, 2, etc.)</i> | Agency's Response <i>(i.e., agree, partially agree, disagree)</i> | Original Implementation Date <i>(as listed in the audit report)</i> | Implementation Status <i>(Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable)</i> | Revised Implementation Date <i>(Complete only if agency is revising the original implementation date.)</i> |
|--|---|---|--|--|
| 12a | Agree | July 2013 | Implemented | |
| 12b | Agree | July 2013 | Implemented and ongoing | |
| 12c | Agree | July 2013 | Partially Implemented | |
| 13 | Agree | July 2013 | Partially Implemented | Unknown |

DETAIL OF IMPLEMENTATION STATUS

Recommendation #: 1

Agency Addressed: Department of Revenue

Recommendation Text in Audit Report:

The Department of Revenue should ensure that the Medical Marijuana Enforcement Division (the Division) only licenses eligible medical marijuana business applicants by:

- a. Including steps in the Division's application review process to confirm that the local licensing authority has verified that the business is within an allowable distance from any school.
- b. Including steps in the Division's license renewal process to conduct criminal background checks of applicants, as required by statute, and to verify that the applicant has a valid local license.
- c. Establishing policies and procedures for determining the types of concerns raised in criminal history and financial background check investigations that are grounds for denial and for clearly documenting dispositions on background checks when concerns have been raised.
- d. Establishing a well-documented supervisory review process to ensure that all minimum requirements are met prior to the Division issuing the license.
- e. Following up on the four cases identified during the audit in which auditors questioned whether the Division should have issued a license to the business, and determining the appropriate course of action.

Agency's Response: Agree

Agency's Written Response in Audit Report:

- a. Agree. Implementation date: March 2014.

To ensure that proposed businesses locations are not within 1000 feet of any school, unless the local licensing authority has waived the distance restriction, the Division will enhance and improve its application review process as follows: (1) finalizing business licensing policies and procedure that specify the manner in which the Division will verify this statutory requirement with the local licensing authority, (2) amending the business application form as needed to comport with any new procedures, and (3) training staff to ensure that proper evidence of any distance waiver is maintained as part of the business file. Section 12-43.3-308(1)(d), C.R.S, authorizes local governments to pass ordinances to vary the 1,000 foot distance restriction. In those instances in which a local government has passed an ordinance varying the distance requirements, the license approval by the local authority is in effect the specific finding of fact that the license applicant has met all local requirements.

- b. Agree. Implementation date: March 2014.

To ensure that criminal background checks of applicants are conducted upon annual license renewal and that the applicant has a valid local license at the time of renewal, the Division will enhance and improve its renewal application review process as follows: (1) finalizing business licensing policies and procedures that specify the manner in which the Division will conduct review of renewal applications to ensure compliance with statutory requirements, (2) amending the business renewal application form as needed to comport with any new procedures, and (3) training staff to ensure that proper evidence of criminal background investigation and local license approval are maintained in the business file.

- c. Agree. Implementation date: March 2014.

To ensure that disqualifying criteria for business licensure is clarified for investigative staff and applicants and that any resulting disqualifying criminal history or financial background information is adequately documented, the Division will enhance and improve its business application review process as follows: (1) finalizing business licensing policies and procedures that specify the manner in which the Division will conduct review of business applications to ensure compliance with statutory requirements, (2) promulgating rules that clarify those criteria that constitute unsuitability or a lack of good moral character, and (3) training staff as to the appropriate statutory and regulatory disqualifying criteria and the manner for recommending license denial.

- d. Agree. Implementation date: March 2014.

To ensure that final supervisory review of business applications is complete and well-documented, the Division will finalize business licensing policies and procedures that will specify the supervisory review process.

- e. Agree. Implementation date: May 2013.

To ensure that the four business licenses identified by the State Auditor are re-reviewed for statutory compliance, either for the distance restriction from a school or for local approval, the Division will contact each respective local licensing authority for verification. If verified, the Division will complete its business file with the necessary documentation, including documentation such as a copy of the local ordinance varying the distance restriction or a copy of the local license issued by the local licensing authority. If there remains an issue of statutory non-compliance, the Division will make the appropriate administrative notice to the licensee.

Current Implementation Status of Recommendation:

- 1a - Partially Implemented
- 1b - Partially Implemented
- 1c - Partially Implemented
- 1d - Partially Implemented
- 1e - Implemented

Agency's Current Comments on Implementation Status of Recommendation:

1a - 1d

The department is in the process of hiring a technical writer on a contract basis for the purpose of drafting policies and procedures for the division. The scope of the project will include a global approach to all division operations; however, a priority will be the licensing policy and procedures that will implement the manner in which the division will verify that: local authorities have approved applications that comply with the distance restriction or that the local authority has waived the distance restriction in the manner prescribed by the law, criminal background checks of applicants are conducted upon annual license renewal and that the applicant has a valid local license at the time of renewal, disqualifying criteria is clarified for investigative staff, and that final supervisory review of business applications is complete and well-documented. Once those policies and procedures are finalized, the division will amend the business application form and related report formats, as needed, to comport with any new procedures. As a result of the audit findings that drove the recommendations, the

division has advised licensing and investigative staff that: verification of the local authorities findings must be part of the division's business file, background checks of applicants must be conducted on as part of the renewal process, and that final supervisory review is complete and well-documented. As the division brings on more licensing staff, more formalized training will be developed and documented. As rules related to disqualifying criteria for business licensure are developed, background investigations staff will be trained in accordance with those criteria. The division is currently engaged in the rule making process for medical and retail use marijuana. All rules are tentatively scheduled for final adoption before October 31, 2013.

1e

The division has contacted each respective local licensing authority for verification. Regarding the two cases where it appeared that the local license expired prior to the division's approval, the division verified with the City and County of Denver that the both establishments held current local licenses at the time the state licenses were issued. Regarding the two cases where it appeared that the division issued a state license in violation of 12-43.3-308(1)(d)(I) [proximity to a school], the division verified that the local authority approved by ordinance a variance of the distance restriction (City of Alma), or considered the location grandfathered prior to the enactment of the legal restriction (City of Denver). The division completed its business file in each case to include a letter of confirmation from the local authority, or a copy of the local ordinance varying the distance restriction or written verification of a grandfathered establishment. There are no issues of statutory non-compliance that require further action with the licensee.

Recommendation #: 2

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve the timeliness of the Medical Marijuana Enforcement Division's processes for licensing medical marijuana businesses by:

- a. Discontinuing pre-licensing on-site inspections as part of the initial licensing process and instead conducting risk-based on-site inspections as part of ongoing monitoring of licensed businesses, as discussed in Recommendation No. 4.
- b. Aligning license issuance with statutory requirements to only issue a state license once the local license has been issued or seeking statutory change, and clarifying in regulations, and policies and procedures as appropriate, the process for confirming and documenting local approval.
- c. Developing policies and procedures around the use of application denials and withdrawals.

Agency's Response: Agree

Agency's Written Response in Audit Report:

The Medical Marijuana Division will continue to focus its efforts on improving the processes by which it administers business licensing so that it is able to approve or deny applications on a timely basis.

Agree. Implementation date: March 2014.

- a. The Division agrees to evaluate the effectiveness of discontinuing the on-site pre-licensing inspection as a precursor to licensure. That evaluation will include developing a set of risk-based criteria by which to assess current and future applicants. Those determined to be of low risk, as it relates to statutory noncompliance, will be approved without the pre-license inspection, and will be scheduled for inspection in the first license year. Those found to be of higher risk will still be subject to the pre-licensing inspection. The Division will also implement a random pre-licensing inspection program to test the efficacy of the established risk criteria.

- b. The Division agrees to clarify in its rules and policies and procedures, as appropriate, the process for confirming and documenting local approval. Rules will provide better instruction to local authorities as to the time and manner of reporting local license approval of new and renewal applications. The Department will explore statutory changes concerning the interaction of state and local licensing authorities to improve the efficiency and effectiveness of the licensing process for medical marijuana establishments.
- c. The Division agrees to develop policies and procedures related to the manner in which it proposes application denial and also the manner in which it accepts application withdrawals.

Current Implementation Status of Recommendation:

2a - Implemented, as it relates to conducting the evaluation.

Partially Implemented, as it relates to conducting pre-licensing inspections based on new risk-based criteria.

2b - Partially Implemented

2c - Partially Implemented

Agency's Comments on Implementation Status of Recommendation:

2a

The division has evaluated the effectiveness of discontinuing the on-site pre-licensing inspection as a precursor to licensure for *every* medical marijuana license to be issued by developing a set of risk-based criteria by which to assess current and future applicants. Those determined to be of low risk, as it relates to statutory noncompliance, will be approved without the pre-license inspection, and will be scheduled for inspection in the first license year. Those found to be of higher risk will still be subject to the pre-licensing inspection. The division has started applying the risk-based model to the remaining 2010 applicants and those new applicants that have applied after July 1, 2012, where little or no pre-licensing inspection activity has taken place.

2b - 2c

In furtherance of the response to Recommendation #1, which indicates that the division is in the process of selecting a technical writer to draft policies and procedures, the division will include the process for confirming and documenting local approval of business license applications, the manner in which it proposes application denial, and the manner in which it accept application withdrawals. The division sought and achieved legislative change (House Bill 13-1238) that removed the requirement that a local application be approved and a local license issued before a state license could be issued. The state may now issue its license without local approval, but only on a conditional basis. That condition being final local approval. While this allows the division to issue state licenses in a timely manner, the division recognizes that tracking local licensing activity remains essential in order to confirm final local approval and to move the license out of

conditional status. Rules that govern the process for confirming and documenting local approval, and that provide guidance to local authorities, are tentatively scheduled for final adoption before October 31, 2013.

Recommendation #: 3

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve the Medical Marijuana Enforcement Division's (the Division) process for ensuring that employees of medical marijuana businesses pass fingerprint-based criminal history checks before beginning work at medical marijuana businesses by:

- a. Evaluating discontinuation of its occupational licensing program.
- b. Determining how to best ensure that prospective employees have passed a fingerprint-based criminal history check prior to working in the medical marijuana industry, as required by Section 12-43.3-310(4), C.R.S., including defining what it means to "pass" a criminal history check and revising regulations to reflect those practices. The Department of Revenue should also work with the General Assembly as necessary to revise statute to reflect the Division's new process.
- c. Monitoring through audits, on-site inspections, or other means to ensure that medical marijuana businesses are complying with requirements established through part "b."

Agency's Response: Agree

Agency's Written Response in Audit Report:

The Medical Marijuana Division will continue to focus its efforts on improving the processes by which it administers occupational licensing so that licensing functions are efficient and effective and that only eligible applicants obtain licenses.

Agree. Implementation date: March 2014.

- a. To ensure that the Division's occupational licensing program is efficient and effective in achieving the policy objectives established by the Colorado General Assembly, the Division will work with stakeholders and policymakers to determine the best course of action for the program. While the Division believes that occupational licensing is foundational to the

program's enforcement integrity, the Division will include exploring the option of discontinuing the program in its discussion with stakeholders.

- b. To ensure that prospective employees of business licensees have passed a fingerprint-based criminal history check prior to working in the medical marijuana industry and to better define what it means to "pass" a criminal history check, the Division will enhance and review the application review process as follows: (1) finalizing occupational licensing policies and procedure that specify the manner in which the Division will conduct the appropriate investigation of applicants to ensure compliance with statutory requirements, (2) amending the occupational license application form to comport with any new procedures, (3) training staff to ensure that proper evidence of criminal background investigation approval are maintained in the occupational file, and (4) promulgating rules that clarify those criteria that constitute unsuitability or a lack of good moral character.
- c. To ensure that medical marijuana businesses are complying with requirements established through part "3b", above, the Division will enhance its monitoring activities of licensed businesses during inspections and audits by including a review of employees working in the establishments.

Current Implementation Status of Recommendation:

- 3a - Not Implemented
- 3b - Not Implemented
- 3c - Not Implemented

Agency's Comments on Implementation Status of Recommendation:

3a
During the audit, the division had started communication with law enforcement groups about the continuance of the occupational licensing program. In August of 2013, during stakeholder workgroups for permanent rule making for medical marijuana, the division will acquire additional feedback.

3b - 3c
In furtherance of the response to Recommendation #1, which indicates that the division is in the process of selecting a technical writer to draft policies and procedures, the division will include the manner in which staff will conduct the appropriate investigation of applicants that ensures compliance with statutory requirements. Once those policies and procedures are finalized, the division will amend the occupational

application form and related report formats, as needed, to comport with any new procedures. As a result of the audit findings that drove the recommendations, the division has advised licensing and investigative staff that: proper evidence of criminal background investigation approval is to be maintained in the division's files. As the division brings on additional licensing staff, more formalized training will be developed and documented. As rules related to disqualifying criteria for occupational licensure are developed, background investigations staff will be trained in accordance with those criteria. The division is currently engaged in the rule making process for medical and retail use marijuana. All rules are tentatively scheduled for final adoption before October 31, 2013.

Recommendation #: 4

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve the effectiveness of the Medical Marijuana Enforcement Division's (the Division) monitoring activities by:

- a. Developing a comprehensive, risk-based compliance program that identifies which statutory and regulatory requirements will be tested for compliance at medical marijuana businesses.
- b. Providing guidance to medical marijuana businesses on the documentation required to demonstrate compliance with the key requirements identified in part "a."
- c. Developing a risk-based methodology for selecting medical marijuana businesses to monitor.
- d. Developing procedures for conducting the compliance reviews and/or requiring medical marijuana businesses to hire an independent firm to conduct audits of the business.

Agency's Response: Agree

Agency's Written Response in Audit Report:

Agree. Implementation date: March 2014.

- a. The Division has already laid some of the groundwork for developing a risk-based compliance program by creating some of the compliance programs to be utilized for assessing compliance with statutory and regulatory compliance. The Division will incorporate our compliance program into an overall strategic plan for the Division that will also include written policies and procedures.

- b. The Division has initiated the regulatory reform process with existing medical marijuana regulations. The Division anticipates revising its regulations to simplify them and ensure that licensees clearly understand requirements. Additionally, the Division will explore other ways to share information with licensees that will enhance their level of compliance with both statutory and regulatory requirements.
- c. The Division will develop a risk-based approach for the selection of medical marijuana businesses to receive compliance based inspections or reviews from the Division. This methodology and appropriate performance measures will be incorporated into the Division's overall strategic plan and written procedures. Division resources available for compliance related activities will help determine the number of compliance inspections to be completed during an established period and the risk-based methodology will assist the Division in determining which licensees to examine.
- d. The Division will establish written procedures for conducting compliance reviews on medical marijuana businesses and will explore the feasibility of establishing requirements for medical marijuana businesses to contract with independent firms to perform agreed upon procedures reviews to determine compliance. There are many factors to consider in determining the feasibility of instituting such a requirement including the cost to licensees, the resources necessary to implement such a program and review reports and the need based on the level of resources available at the Division to conduct the appropriate level of compliance reviews.

Current Implementation Status of Recommendation:

- 4a - Partially Implemented
- 4b - Not Implemented
- 4c - Not Implemented
- 4d - Not Implemented

Agency's Comments on Implementation Status of Recommendation:

4a
The division has established a comprehensive strategic plan that includes strategic goals, business objectives and success indicators involving the establishment of a comprehensive enforcement program that ensures material compliance with marijuana laws and regulations. Some of the considerations in implementing a robust enforcement program include written procedures, adequate staffing, field offices,

mechanisms to monitor compliance and detect violations, and assessing risks. All of these factors have been addressed within the strategic plan and will be implemented in phase II or the Monitoring & Enforcement phase (October 1, 2013 through June 30, 2014).

4b

Regulatory reform for Medical Marijuana rules (1 CCR 212-1) will commence in July 2013, moving toward final promulgation before October 31, 2013. Stakeholder workgroups will facilitate the objectives and will be hosted by the division in July and August of 2013.

4c

The division has established a comprehensive strategic plan that includes strategic goals, business objectives and success indicators involving the establishment of a comprehensive enforcement program that ensures material compliance with marijuana laws and regulations. Some of the considerations in implementing a robust enforcement program include written procedures, adequate staffing, field offices, mechanisms to monitor compliance and detect violations, and assessing risks. All of these factors have been addressed within the strategic plan and will be implemented in phase II or the Monitoring and Enforcement phase (October 1, 2013 through June 30, 2014).

4d

During stakeholder meetings and rulemaking in July and August of 2013, the division will explore the feasibility of establishing requirements for medical marijuana businesses to contract with independent firms to perform agreed upon procedures reviews to determine compliance. In furtherance of the response to Recommendation #1, which indicates that the division is in the process of selecting a technical writer to draft policies and procedures, the division will establish written procedures for conducting compliance reviews of medical marijuana businesses.

Recommendation #: 5

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve the Medical Marijuana Enforcement Division's (the Division) processes for seizing and disposing of unauthorized marijuana by:

- a. Ensuring that Division staff take and destroy unauthorized marijuana plants and products found at medical marijuana businesses only in connection with a disciplinary action against the business, as outlined in statute.
- b. Promulgating rules providing guidance to staff on how to take and destroy marijuana plants and products and to determine whether medical marijuana businesses have unauthorized marijuana.
- c. Establishing an inventory control system to track marijuana from the time it is taken until it is destroyed.
- d. Strengthening the security of the facility used to store seized marijuana.

Agency's Response: Agree

Agency's Written Response in Audit Report:

Agree. Implementation date: March 2014.

The Medical Marijuana Enforcement Division will continue to improve and refine its processes for the taking and disposing of medical marijuana in the following two instances:

- (1) The Division's discovery of unauthorized medical marijuana in licensed premises, and
 - (2) A licensee's voluntary surrender of medical marijuana.
- a. In those instances where medical marijuana is found at medical marijuana businesses in violation of statutory or regulatory provisions (e.g. "excess" medical marijuana that cannot be verified through licensee patient records), the Division will establish clear policies and procedures to ensure that Division staff take the product only in conjunction with the disciplinary process

contemplated in Section 12-43.3-602, C.R.S. Further, that upon final disposition of any disciplinary action, destruction of the medical marijuana taken only occurs upon final order of the state licensing authority.

- b. In furtherance of the response in part 5a. above, the Division will promulgate rules to address the specific implementation of the provision in Section 12-43.3-602, C.R.S., thereby clarifying the requirements with staff and the regulated community. To assist staff in determining if there is excess medical marijuana on the premises, and how to take and destroy such marijuana, the Division will improve its enforcement training and enforcement policies and procedures so that staff have clarity as to how to make such determinations when conducting inspections and investigations, and the manner in which to take excess marijuana as part of the final recommendation for disciplinary action.
- c. As part of implementing enforcement policies and procedures described in part 5b. above, the Division will develop and maintain an internal evidence inventory control system to track marijuana evidence from the time that it is taken to the time it is destroyed.
- d. As part of implementing enforcement policies and procedures described in part 5b above, the Division will strengthen the security of the facility it uses to store medical marijuana that was seized or voluntarily surrendered.

Current Implementation Status of Recommendation:

- 5a - Not Implemented
- 5b - Not Implemented
- 5c - Not Implemented
- 5d - Not Implemented

Agency's Comments on Implementation Status of Recommendation:

5a – 5d

In furtherance of the response to Recommendation #1, which indicates that the division is in the process of selecting a technical writer to draft policies and procedures, the division will establish clear policies and procedures to ensure that division staff take the product only in conjunction with the disciplinary process contemplated in Section 12-43.3-602, C.R.S., that upon final disposition of any disciplinary action, destruction of the medical marijuana taken only occurs upon final order of the state licensing authority, and that the enforcement section develops and maintains an internal evidence inventory control system. Furthermore, once investigative staffing levels increase, the division will improve its enforcement training so that staff has clarity as to how to make such determinations when conducting inspections and investigations and the manner in which to take excess marijuana as part of the final recommendation for disciplinary action.

The division has been discussing changes with vendors to explore enhancement to the security features employed in its evidence room. The division is at minimum planning the change in locking mechanisms prior to securing any additional evidence.

Regulatory reform for Medical Marijuana rules (1 CCR 212-1) will commence in July 2013, moving toward final promulgation before October 31, 2013. Stakeholder workgroups will facilitate the objectives and will be hosted by the division in July and August of 2013.

Recommendation #: 6

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should ensure that it can accurately determine the amount of sales tax revenue generated annually from medical marijuana businesses by:

- a. Ensuring that medical marijuana businesses are properly flagged in the Gentax system for the purposes of reporting medical marijuana sales tax figures.
- b. Including a question on its sales tax application to identify medical marijuana businesses and then entering that information into the Gentax system up front.
- c. Following up on the 56 businesses that were not correctly identified in Gentax, the 16 businesses we identified with no evidence of a state sales tax license, and the 23 businesses we identified that did not file or pay sales taxes in Fiscal Year 2011 and 2012 to determine if taxes should have been paid.
- d. Implementing a process to periodically review the Medical Marijuana Enforcement Division's list of medical marijuana businesses for the purposes of ensuring that all have a sales tax number, are in the Gentax system, and that businesses the Division understands to be operating are filing sales taxes.

Agency's Response: Agree

Agency's Written Response in Audit Report:

- a. Agree. Implementation date: March 2014.

The Department agrees with this recommendation and will immediately begin evaluating alternatives within the GenTax system to implement this recommendation. The Taxation Line of Business will coordinate its efforts with the Medical Marijuana Enforcement Division to ensure that all known businesses engaged in the retail sale of medical marijuana or marijuana-infused products are properly classified within the GenTax system.

- b. Agree. Implementation date: June 2013.

The Department agrees with this recommendation and will revise the current sales tax application form, asking the applicant to self-report whether or not they sell medical marijuana, adult-usage marijuana or marijuana-infused products.

- c. Agree. Implementation date: June 2013.

The Department agrees with this recommendation and will immediately begin its follow up on the 56 businesses identified by the State Auditor as not being properly categorized within GenTax, the 16 businesses for which the State Auditor found no evidence of a state sales tax license, and the 23 businesses the State Auditor identified as not having filed or paid sales taxes in Fiscal Years 2011 and 2012. The objective of our efforts is to ensure these accounts are properly sales tax licensed; determine if the business is a going concern, and if it is to bring them into voluntary compliance with filing and remittance obligations, or to take enforced compliance actions which could include audits of books and records or seizure of assets to satisfy liabilities.

- d. Agree. Implementation date: March 2014.

The Department agrees with this recommendation. The Medical Marijuana Enforcement Division and the Taxation Line of Business will develop a process and a procedure to perform periodic reviews focused on ensuring synchronization between the accounts contained in My License Office and GenTax.

Current Implementation Status of Recommendation:

- 6a - Partially Implemented
- 6b - Implemented
- 6c - Implemented
- 6d - Partially Implemented

Agency's Comments on Implementation Status of Recommendation:

6a

The enforcement controller is reviewing both MyLO and GenTax accounts to verify the accounts are marked correctly in GenTax. Review is expected to be completed July 31, 2013. A review and reconciliation will be completed monthly going forward by the enforcement controller.

6b

The department implemented the recommendation by adding three check boxes for medical marijuana, adult use marijuana, and marijuana infused products. The form was made available to the public via www.taxcolorado.com on June 7, 2013.

6c

The exceptions noted in the recommendations were reviewed by the Department with the following results:

"56 Dispensaries Not Correctly Identified as Medical Marijuana Businesses in GenTax."

- 31 accounts were properly licensed for sales tax collection and current in their sales tax filings and payments
- 24 accounts are ceased in the GenTax system. 14 of the 24 since created new accounts and were current in their filings and payments. The other 10 of the 24 are entirely out of business.
- 1 account never actually opened for business and thus never acquired a sales tax license
- Of the 45 dispensaries currently in business, 38 were not correctly identified in GenTax. These were immediately corrected.

"16 No Evidence of Sales Tax License"

- 13 accounts were properly licensed for sales tax collection and current in their sales tax filings and payments
- 2 accounts were ceased and no longer in business
- 1 account never actually opened for business and thus never acquired a sales tax license

"11 Have Not Filed Sales Tax and MMED's records show business is operating"

- 10 accounts were properly licensed for sales tax collection and current in their sales tax filings and payments
- 1 account is ceased and no longer in business

"12 Have Not Paid Sales Tax and MMED's records show business is operating"

- 7 accounts were properly licensed for sales tax collection and current in their sales tax filings and payments
- 2 accounts only recently opened - no tax was yet due at the time of review
- 3 accounts are ceased and no longer in business

"7 Listed as Out of Business by Gentax but have pending applications at MMED"

- 3 accounts were properly licensed for sales tax collection and current in their sales tax filings and payments
- 4 accounts are ceased and no longer in business

6d

Medical marijuana licensing staff have been trained on how to flag and review medical marijuana businesses in GenTax and have been assigned the responsibility to ensure the flag is set going forward. The enforcement controller, along with medical marijuana staff, is developing a monthly reconciliation process to ensure synchronization between the MyLO and GenTax accounts.

Recommendation #: 7

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve the Medical Marijuana Enforcement Division's (the Division) fee-setting by:

- a. Determining the specific licensing and monitoring activities that will be supported by each fee it charges.
- b. Establishing an ongoing systematic mechanism for collecting and analyzing data on the amount of time it takes to complete each of the licensing and monitoring activities identified in part "a" and on the associated costs of completing these activities.
- c. Using the analysis completed in part "b" as the basis for setting the Division's fees annually.
- d. Establishing an annual target reserve amount for the Medical Marijuana License Cash Fund.

Agency's Response: Agree

Agency's Written Response in Audit Report:

Agree. Implementation date: June 2014.

- a. Depending upon the statutory provisions adopted to implement Amendment 64, the Department intends to establish fees to support the regulatory and enforcement activities of the new Marijuana Enforcement Division.
- b. At this time, the Department does not have an automated time management system by which to track and report time spent on specific activities and the associated costs. The Department is exploring such a system for future implementation Department-wide. In the short term, the Department will consider performing time management studies once licensing and monitoring processes and procedures are in place after the implementation of Amendment 64 legislation.
- c. The Department intends to use the data compiled from time management studies to establish fees to fully cover the direct and indirect costs of the new Marijuana Enforcement Division's regulatory and enforcement activities.

- d. The Amendment 64 Task Force made a recommendation to fund the new Marijuana Enforcement Division with General Fund for the first five years. If this recommendation is included in the enabling legislation, any funds unspent at the end of each fiscal year will revert to the General Fund. However, at the time when the new Division becomes fully supported by cash funds, the Department would plan to establish a reserve requirement similar to other cash funds.

Current Implementation Status of Recommendation:

7a – Not Implemented

7b – Not Implemented

7c – Not Implemented

7d – Implemented

Agency's Comments on Implementation Status of Recommendation:

7a

The Department is undergoing emergency rulemaking to implement the Marijuana legislation by June 30, 2013. The Department intends to utilize the same license and application fee structure for both Medical Marijuana and Retail Marijuana in the short term. The Department intends to revisit the fee structure next year when application and licensing processes and procedures are in place and workload data is known. Applicants will begin filing Notice of Intent in January and February, which will drive workload and costs for the division. The division plans to analyze different fee setting models to determine the most appropriate model based on the funding structure approved by the General Assembly.

7b

Per #7a above, the Department intends to perform a fee setting analysis after application and licensing processes and procedures are in place and workload data is known. This will include an analysis of specific activities and associated costs.

7c

Per #7a above, the Department intends to perform a fee setting analysis after application and licensing processes and procedures are in place and workload data is known. The division plans to analyze different fee setting models to determine the most appropriate model to recover costs. Unlike the Medical Marijuana Enforcement Division, the Marijuana Enforcement Division is funded not only with application and license fees, but also with sales tax revenue. Consequently, any model will need to take this into consideration when setting fees.

7d

The Department has established an annual target reserve amount for the new Marijuana Cash Fund at 16.5% of total expenditures.

Recommendation #: 8

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve the Medical Marijuana Enforcement Division's (the Division) controls over its expenses by:

- a. Conducting price comparisons and requesting a waiver to use a competitive bidding process when appropriate and warranted.
- b. Conducting a thorough analysis of the Division's current and future equipment needs and eliminating any excess equipment if it is cost-effective to do so.
- c. Ensuring that all expenses comply with State Fiscal Rules related to the reasonability, appropriateness, and approval of the expenses.

Agency's Response: Agree

Agency's Written Response in Audit Report:

- a. Agree. Implementation date: June 2013.

The Department followed all appropriate procurement statutes, codes, and rules when purchasing furniture and equipment. The Department utilized Colorado Correctional Industries (CCI) to purchase furniture per Section 17-24-111, C.R.S., which requires the Department to purchase office furniture and office systems from CCI. The Department will conduct price comparisons and request waivers to use a competitive bidding process when appropriate and warranted.

- b. Agree. Implementation date: October 2013.

The Division will continue to closely monitor its existing furniture and equipment inventory, ensuring the safeguarding of all of the Division's assets. On a semi-annual basis, the Division will review the status of active personnel in relation to its furniture and equipment inventory, and will determine whether any items should be subject to the Department's surplus procedure.

- c. Agree. Implementation date: June 2013.

The Department of Revenue (DOR) Accounting and Financial Services (AFS) will review the Department Procurement Card Policy to ensure compliance with the State Fiscal Rules and communicate to cardholders, reviewers and Division Liaisons any changes. AFS currently has processes in place to review cardholder statements on a monthly basis and will strengthen the review of these transactions. AFS will meet with departmental budget and accounting staff to review internal travel procedures to ensure knowledge and compliance with State Fiscal Rules. AFS will review the travel computer-based training to ensure travelers are knowledgeable of DOR travel policies and State Fiscal Rules.

Current Implementation Status of Recommendation:

- 8a - Implemented
- 8b - Partially Implemented
- 8c - Implemented

Agency's Comments on Implementation Status of Recommendation:

8a
The Department will conduct price comparisons and request waivers to use a competitive bidding process when appropriate and warranted.

8b
On an ongoing semi-annual basis, the division will review the status of active personnel in relation to its furniture and equipment inventory, and will determine whether any items should be subject to the Department's surplus procedure. The first date of management review is planned for September 30, 2013. The second semi-annual review (March 31, 2014) will coincide with the anticipated completion of the division's planned hiring and phase-in of staff at a level that meets the annual appropriation. The division will then be better suited to determine its equipment and furniture needs.

8c
Accounting and Financial Services (AFS) accounting staff review all payment vouchers and expenditures to ensure compliance with State fiscal and procurement rules.

Recommendation #: 9

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve the Medical Marijuana Enforcement Division's (the Division) use of state vehicles by:

- a. Evaluating the use of the current fleet to determine whether the Division can eliminate some fleet vehicles altogether and/or weight the fleet toward more economical vehicles.
- b. Reviewing the commuting arrangements for the three staff that currently have them and discontinuing these arrangements unless the Division can demonstrate that it is in the best interest of the State for these staff to have these arrangements.
- c. Determining whether the commuting arrangements have been properly classified and reported with respect to tax treatment for employees. If commuting arrangements were improperly reported as tax-exempt benefits, the information should be reported to State Fleet Management and the State's Central Payroll. The Department should ensure that either prior years' employee income reporting to the IRS is corrected or employees reimburse the Division for all taxable commuting.
- d. Establishing controls to ensure that all future commuting arrangements are in the best interest of the State and are properly classified for tax purposes.

Agency's Response: Agree

Agency's Written Response in Audit Report:

Agree. Implementation date: June 2013.

- a. When the Division acquired its fleet vehicles in Fiscal Year 2011, it was determined that a larger SUV would allow the Division to transport marijuana plants and derivatives seized or voluntarily surrendered by licensees. Additionally, the span of coverage for regulation of medical marijuana was virtually statewide with licensees in every area of the state, including rural and mountainous areas. The Division identified a need for vehicles with 4-wheel drive to travel around the state during inclement weather, through the mountains and in rural areas. The acquisition of 33 fleet vehicles in the early stages of the Division was intended for the purpose of meeting the needs of a fully staffed Division at 55 FTE. When the Division recognized that funding shortages would require a reduction in staffing, the Division took measures to eliminate or transfer approximately 25 vehicles to other state agencies. The Division will evaluate its current fleet of eight vehicles to determine

an appropriate level to meet current needs and increased needs in the very near future due to the implementation of Amendment 64. This assessment will include an evaluation of the types of vehicles that are the most appropriate for the Division based on work assignments, vehicle use and fuel efficiency.

- b. The Division will evaluate current commuting arrangements for existing staff to ensure they are appropriate. The Division will develop written policies and procedures establishing when it is appropriate to execute a commuting agreement for an employee based on established guidance, from both the state and federal level, and the business needs of the agency. The Division will also clearly document on all commuting authorization forms the purpose for commuting and how it is in the best interests of the State.
- c. The Division will consult with the Department of Personnel & Administration, Department accounting staff, and will also carefully review all existing guidelines at both the state and federal level to ensure that commuting arrangements for staff have been properly classified for the taxing purposes. Any commuting arrangements that have not been properly classified will be reported to State Fleet Management and Central Payroll and appropriate adjustments will be made.
- d. The Division will establish written policies and procedures for determining when it is appropriate to execute a commuting agreement for an employee based on established guidance, at both the state and federal level, and the business needs of the agency. The Division will also clearly document on all commuting authorization forms the purpose for commuting and how it is in the best interests of the State.

Current Implementation Status of Recommendation:

- 9a - Implemented and ongoing
- 9b - Implemented and ongoing
- 9c - Implemented
- 9d - Partially Implemented

Agency's Comments on Implementation Status of Recommendation:

9a
The division has evaluated its current fleet of vehicles and determined that the eight vehicles currently in our fleet are adequate for our immediate needs to regulate the industry. Seven of these vehicles are SUV's and one vehicle is a sedan. As the division begins to staff up for the implementation of Amendment 64, particularly during the second phase of our staffing plan, we will transition our fleet cars to use

by the criminal investigator I and II positions specifically assigned to field enforcement. As the division continues to increase its staffing levels, we will obtain additional fleet vehicles from State Fleet Services based on a needs assessment and any vehicles obtained will be sedans that are more fuel efficient. SUV vehicles will be assigned to field offices for use by field enforcement personnel that regularly travel in rural and mountainous areas during winter months.

9b

The division suspended the commuting authorizations for all existing criminal investigators effective April 30, 2013. This was done until the division can establish a formal written policy concerning granting commuting authorizations. The division will re-evaluate commuting as we begin to staff up for the implementation of Amendment 64. As a general rule, commuting authorizations will only be granted to field enforcement staff responsible for field enforcement activities. No command staff will be assigned a commuting vehicle and no criminal investigators assigned to the background investigation unit will be assigned a commuting vehicle. Finally, the division will not authorize commuting in a state vehicle unless there is a documented benefit to the division and is within the best interests of the State.

9c

The division has carefully reviewed the status of the two tax exempt commuting agreements that were established by the division and identified during the audit as questionable. First, both of the commuting agreements in question have been terminated, not because of their improper tax status, but because it was determined that they were not in the best interests of the State from the perspective of Department's executive management. Both agreements involved the former and current Director of the Division. The propriety of granting these positions tax exempt status was based on a thorough analysis involving existing statutes and underlying legislative intent. Section 16-2.5-124.5, C.R.S., is entitled "Director of marijuana enforcement and medical marijuana enforcement investigator". The title is clear in that it lists the Director as a peace officer, however, the narrative only discusses a medical marijuana enforcement investigator. It is believed that it was intended to mirror similar peace officer statutes contained in Title 16, Article 2.5 of the Colorado Revised Statutes. The Attorney General's office performed some research and found that the section title only referred to investigators, and not the director, until the revised version (4th version), at which point the director was included in the title, but the text was never changed. Reading the history, it seems apparent that the general assembly intended to include the director because it amended the title mid-way through the drafting process. In addition, section 16-2.5-121, C.R.S., was amended in the HB 10-1284 drafting process to identify the executive director of revenue and the senior director of enforcement as peace officer. It is reasonable to assert that treating the director as a peace officer is consistent with the intent of the statute. Further, the director ultimately supervises the investigators and the enforcement activities of the division. Therefore, part of the director's duties, then, are implied to include investigatory duties. Further, during the 2013 legislative session, HB 13-1317 included a technical amendment to Section 16-2.5-124.5 to clearly include the director of the new Marijuana Enforcement Division, which includes the medical marijuana, as a peace officer in both the title and the narrative. The division has concluded, based on our analysis that the director was and is a peace officer and also complies with all DPA and Federal guidelines for a peace officer. As a result, the division

and the Department believe that treating the Director as tax exempt for purposes of the commuting authorization form is in compliance with established guidelines. No further action is warranted.

9d

The division suspended the commuting authorizations for all existing criminal investigators effective April 30, 2013. This was done until the division can establish a formal written policy concerning granting commuting authorizations. The division will re-evaluate commuting as we begin to staff up for the implementation of Amendment 64. As a general rule, commuting authorizations will only be granted to field enforcement staff responsible for field enforcement activities. No command staff will be assigned a commuting vehicle and no criminal investigators assigned to the background investigation unit will be assigned a commuting vehicle. Finally, the division will not authorize commuting in a state vehicle unless there is a documented benefit to the division and is within the best interests of the State. The Enforcement Business Group has informally established a procedure for issuing commuting authorizations through a written directive from the Senior Director that was issued in April 2013 establishing that only criminal investigator positions within the Enforcement Business Group that are specifically assigned to field enforcement duties may be eligible for commuting and that all commuting authorization forms submitted will include a letter signed by the division director justifying why such commuting authorization is within the best interests of the state and how it meets the tax exempt status. Additionally, the directive states that command staff will be generally prohibited from commuting unless a special circumstance dictates the need for such commuting and it is established that such authorization is within the best interests of the State. Further, all commuter authorization forms are required to be approved by the Senior Director. As the Marijuana Enforcement Division begins to hire field enforcement criminal investigators, it will establish a written policy that is consistent with the written directive of the Senior Director.

Recommendation #: 10

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve the effectiveness of the Medical Marijuana Enforcement Division's oversight of medical marijuana businesses in Colorado by developing a comprehensive strategic plan that (1) identifies the licensing, monitoring, and enforcement activities required to effectively regulate these businesses and (2) determines the staffing and operational resources needed to perform these activities. The plan should consider different scenarios to account for the uncertain future of the medical marijuana industry in Colorado.

Agency's Response: Agree

Agency's Written Response in Audit Report:

Agree. Implementation date: July 2013.

The Department of Revenue is currently in the process of developing a comprehensive strategic plan, including staffing and business operations, for the regulation of marijuana (both medical and adult-use). The Amendment 64 Task Force has recommended that the General Assembly create one agency within the Department to regulate both medical and adult-use marijuana in the state. The Department is therefore proceeding with the development of a comprehensive strategic plan that encompasses a staffing plan, business operations plan, and specific objectives and goals related to both the licensing and regulation of marijuana businesses in the State of Colorado, as well as the implementation of Amendment 64. While medical marijuana and adult-use marijuana each have their own unique regulatory requirements, there are more similarities between them than there are differences. As part of this process, the Department is attempting to forecast the number of medical marijuana and adult-use marijuana licenses expected upon implementation of Amendment 64. This critical factor, along with clearly identified statutory and regulatory requirements for each business type, will assist the Department in defining key objectives and resource needs moving forward.

Current Implementation Status of Recommendation:

10 – Implemented and ongoing

Agency's Comments on Implementation Status of Recommendation:

The division has completed a preliminary draft of its strategic plan which includes the implementation of Amendment 64. This plan highlights specific objectives to address concerns raised in the performance audit, as well as objectives related to the implementation of Amendment 64. Important areas of this strategic plan include critical objectives and timelines, a staffing plan, performance objectives, an analysis of strengths, weaknesses, opportunities and threats, identification of critical stakeholders and development of the division's mission and vision statements. It is important to note that this strategic plan is dynamic and will be refined over time and will be reviewed periodically as the division evolves.

A copy of this strategic plan has been provided to the Legislative Audit Committee.

Recommendation #: 11

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve its method for assessing the Medical Marijuana Enforcement Division's (the Division) performance by:

- a. Aligning the performance measure with the Division's actual practices to better capture the timeliness of the Division's complete business application process.
- b. Clarifying what is meant when the Division "initiates" final agency action.
- c. Making improvements to the Division's My License Office system to ensure that key data points related to the Division's performance measures are captured.

Agency's Response: Agree

Agency's Written Response in Audit Report:

Agree. Implementation date: July 2013.

- a. The Department will add a performance measure(s) that measures duration from the date the application is received by the Division to the date work is completed by Division staff. We will also measure from the date work is completed by the Division to the date we receive local agency approval. We will then continue to measure from the date of local agency approval to date final action is initiated by MMED.
- b. The Department will footnote the definition of "initiate."
- c. The Department of Revenue will work with the Office of Information Technology to identify and capture the appropriate key data points related to the Division's performance measures. We anticipate that, with the passing of Amendment 64 and changes within the medical marijuana industry itself (i.e. consolidation, competition, etc.), the data points themselves in need

of tracking may change. We agree that tracking the appropriate data points, once identified, is an important step in the success of the Division.

Current Implementation Status of Recommendation:

- 11a - Implemented
- 11b - No Longer Applicable
- 11c - Partially Implemented

Agency's Comments on Implementation Status of Recommendation:

11a - 11b

HB 13-1238 passed which decoupled the local and state process. The state process is no longer dependent on local approval, thereby making the original performance objective inapplicable. The new performance objective has been amended to: "The Marijuana Enforcement Division will approve and issue/ renew business licenses, or issue a notice of proposed denial for 100% of completed business license applications within 90 days of receipt."

11c

With the statutory changes to medical marijuana (HB 1238) and adult-use marijuana (HB 1317) the division is currently reevaluating what key data points will be needed to achieve its new performance objectives. The division is preparing new business requirements for enhancements to the My License Office licensing software to achieve the recommendation, overall. The division believes that completion of those business requirements and the execution of new contracts with the software vendor will occur within the stated audit deadline.

Recommendation #: 12

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve the Medical Marijuana Enforcement Division's (the Division) access to management data by:

- a. Identifying and working to capture in the Division's My License Office system the data points the Division needs to effectively track and manage medical marijuana applicants and licensees.
- b. Working with the Office of Information Technology to ensure that Division staff have the access permissions and training they need to run system reports.
- c. Developing system reports to better track the status of applications and monitoring and enforcement efforts.

Agency's Response: Agree

Agency's Written Response in Audit Report:

Agree. Implementation date: July 2013.

- a. The Department of Revenue will work with the Office of Information Technology (OIT) to identify and capture the appropriate data points to effectively track and manage medical marijuana applicants and licensees. In particular, the Department will create a "user defined" field in MyLO to capture the date of local approval for post-moratorium medical marijuana applicants and any new medical marijuana applicants for which local licensing is required.

We anticipate that, with the passing of Amendment 64 and changes within the medical marijuana industry itself (i.e. consolidation, competition, etc.), that the data points themselves in need of tracking may change.

We agree that tracking the appropriate data points, once identified, is an important step in the success of the Division.

- b. The Department of Revenue will work with the Office of Information Technology (OIT) to ensure that Division staff have the access permissions and training they need to run system reports, as needed and as developed.

MyLO does have a significant amount of reports that are in use by the Division for tracking applications and licensees already. To the extent that ad hoc reports need to be developed, OIT has recently provided the appropriate Division personnel the software needed, and those personnel are currently training on the use of the software for developing the ad hoc reports from the MyLO system. Once developed, the reports will be either made available to other users in the Division or provided to them, upon request, by the Division personnel above.

We anticipate that, with the passing of Amendment 64 and changes within the medical marijuana industry itself (i.e. consolidation, competition, etc.), that the reporting requirements within the Division may change.

We agree that developing the appropriate reports and training the appropriate individuals, once determined, is an important step in the success of the Division.

- c. The Department of Revenue will work with the Office of Information Technology (OIT) to ensure that Division staff have the access permissions and training they need to run system reports, as needed and as developed.

MyLO does have a significant amount of reports that are in use by the Division for tracking applications and licensees already. To the extent that ad hoc reports need to be developed, OIT has recently provided the appropriate Division personnel the software needed, and those personnel are currently training on the use of the software for developing the ad hoc reports from the MyLO system. Once developed, the reports will be either made available to other users in the Division or provided to them, upon request, by the Division personnel above.

We anticipate that, with the passing of Amendment 64 and changes within the MMED Industry itself (i.e. consolidation, competition, etc.), that the reporting requirements within the Division may change.

We agree that developing the appropriate reports and training the appropriate individuals, once determined, is an important step in the success of the Division.

Current Implementation Status of Recommendation:

- 12a – Implemented
- 12b - Implemented and ongoing
- 12c – Partially Implemented

Agency’s Comments on Implementation Status of Recommendation:

12a

The division has created a “user defined” field in MyLO to capture the date of local approval for post-moratorium medical marijuana applicants and any new medical marijuana applicants for which local licensing is required. The division is now able to produce a newly created report, “Days to Complete Report” which identifies the number of days division approval was granted after local authority approval, when applicable for post-moratorium medical marijuana applicants and any new medical marijuana applicants.

12b

The Medical Marijuana Enforcement Division currently has access to canned reports in SQL Server Reporting Services (SSRS) and Report Builder to create their own reports via Data Models created in cooperation with the business. The business super users were provided training last fiscal year on SSRS and Reporting Building. Additionally a number of ad hoc reports have been developed to assist the Division in its licensing and reconciling efforts. The appropriate Division personnel have had the Crystal Reporting software deployed to their desktops and those personnel have completed self-training on the use of the software for developing the ad hoc reports from the MyLO system. The reports are being made available to other users in the Division upon request.

12c

Project 4180 was submitted by the Medical Marijuana Enforcement Division (MMED) requesting several new reports and also requesting changes to several existing reports. These reports will assist in the licensing and reconciliation processes. Three of the existing (MMED) reports have been modified per the business user’s request and are in testing with the assigned developer. One new report has been developed and is also in testing. OIT continues working to complete the needed report changes for MMED and the current project completion date is July 31, 2013.

Recommendation #: 13

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue and the Department of Public Health and Environment should work with the Governor's Office and the Attorney General to seek clarification from the federal government about potential risks to state employees involved with administering and regulating Colorado's medical marijuana system and should then communicate this information to their state employees working in the medical marijuana system.

Agency's Response: Agree

Agency's Written Response in Audit Report:

Agree. Implementation date: July 2013.

On November 13, 2012, Governor Hickenlooper and State Attorney General Suthers sent a joint letter to Eric Holder, United States Attorney General. The primary focus of this letter was to seek clarity from the U.S. Department of Justice on their position concerning the passage of Amendment 64 by the people of Colorado. The letter specifically asked if "the federal government will take legal action to block implementation of Amendment 64, or whether it will seek to prosecute grow and retail operations." This letter also sought clarification from the U.S. Department of Justice as to "whether the federal government will regard Colorado State employees who regulate and oversee the growing and distribution of marijuana as acting in violation of federal law." This question directly goes to the heart of the recommendation. Recently, at the end of February, Attorney General Holder indicated publicly that the U.S. Department of Justice is in the process of reviewing both the Colorado and Washington initiatives. He further indicated that the people of Colorado and Washington state deserve an answer concerning the federal government's position and that an answer would be forthcoming "relatively soon." Once we receive guidance from the federal government, this information will be shared with all employees involved in the regulation of marijuana with the Department of Revenue.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable):

13 – Partially Implemented

Agency's Comments on Implementation Status of Recommendation:

As stated in our original response to the performance audit report, the Governor and the State Attorney General sent a letter to United States Attorney General Holder in November 2012. This letter sought clarification from the U.S. Department of Justice as to “whether the federal government will regard Colorado State employees who regulate and oversee the growing and distribution of marijuana as acting in violation of federal law.” The Governor’s office remains in contact with the United States Department of Justice on this matter with no clear guidance or response to the question highlighted in the November 2012 letter. As the Department stated in our original response to the performance audit report, “Once we receive guidance from the federal government, this information will be shared with all employees involved in the regulation of marijuana with the Department of Revenue”.

STATE OF COLORADO

John W. Hickenlooper, Governor
Christopher E. Urbina, MD, MPH
Executive Director and Chief Medical Officer

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Colorado Department
of Public Health
and Environment

June 24, 2013

Dianne E. Ray, CPA
State Auditor
Colorado Office of the State Auditor
200 East 14th Avenue, 2nd Floor
Denver, CO 80203

Dear Ms. Ray:

In response to your request, we have prepared an updated status report regarding the implementation of Recommendation #13 contained in the Medical Marijuana Regulatory System, Part I Performance Audit. The attached report provides a brief explanation of the actions taken by the Department of Public Health and Environment to implement this recommendation.

If you have any questions, please do not hesitate to contact Patricia Theriot at 303-692-2143 or by email at patricia.theriot@state.co.us

Sincerely,

Christopher E. Urbina, MD, MPH
Executive Director and Chief Medical Officer

AUDIT RECOMMENDATION STATUS REPORT

AUDIT NAME: Medical Marijuana Regulatory System, Part I Performance Audit

AUDIT NUMBER: #2194A

DEPARTMENT/AGENCY/ENTITY: Department of Public Health and Environment

DATE: June 2013

SUMMARY INFORMATION

Please complete the table below with summary information for all audit recommendations. For multi-part recommendations, list each part of the recommendation SEPARATELY. (For example, if Recommendation 1 has three parts, list each part separately in the table.)

| Recommendation Number <i>(e.g., 1a, 1b, 2, etc.)</i> | Agency's Response <i>(i.e., agree, partially agree, disagree)</i> | Original Implementation Date <i>(as listed in the audit report)</i> | Implementation Status <i>(Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable)</i> <i>Please refer to the attached sheet for definitions of each implementation status option.</i> | Revised Implementation Date <i>(Complete only if agency is revising the original implementation date.)</i> |
|--|---|---|---|--|
| 13 | Agree | June 2013 | Partially Implemented | October 2013 |

DETAIL OF IMPLEMENTATION STATUS

Recommendation #: 13

Agency Addressed: Department of Public Health and Environment

Recommendation Text in Audit Report:

The Department of Revenue and the Department of Public Health and Environment should work with the Governor's Office and the Attorney General to seek clarification from the federal government about potential risks to state employees involved with administering and regulating Colorado's medical marijuana system and should then communicate this information to their state employees working in the medical marijuana system.

Agency's Response (i.e., Agree, Partially Agree, or Disagree): **Agree**

Agency's Written Response in Audit Report:

Agree. Implementation date: June 2013.

The Department of Public Health and Environment (Department) agrees to work with the Governor's Office and the State Attorney General's (AG) office to determine how to best obtain clarification concerning the risk of federal prosecution for state employees who administer the Medical Marijuana program. The Department has worked closely with the AG's office on multiple legal issues concerning the implementation and administration of the medical marijuana registry, and continues to work with the AG's office on issues related to medical marijuana as they arise. The United States Attorney for the District of Colorado sent the Colorado Attorney General a letter dated April 26, 2011, in which the United States Attorney General for the District of Colorado identified several ongoing or proposed activities related to medical marijuana that were considered to be in violation of federal law. No reference is made in this letter to state employees administering the registry as being in violation of federal law. The results of the Department's inquiry to the federal government will be shared with our employees who administer the Medical Marijuana program.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable): Partially implemented.

Agency's Current Comments on Implementation Status of Recommendation: The Department is in the process of working with the AG's office to determine how best to obtain clarification concerning the risk of federal prosecution for state employees who administer the Medical Marijuana program.

COLORADO DEPARTMENT OF REVENUE RECOMMENDATION STATUS REPORT

AUDIT NAME: Medical Marijuana Regulatory System, Part I Performance Audit

AUDIT NUMBER: #2194A

DEPARTMENT/AGENCY/ENTITY: Department of Revenue

DATE: December 2013

SUMMARY INFORMATION

Please complete the table below with summary information for all audit recommendations. **For multi-part recommendations, list each part of the recommendation SEPARATELY.** (For example, if Recommendation 1 has three parts, list each part separately in the table.)

| Recommendation Number <i>(e.g., 1a, 1b, 2, etc.)</i> | Agency's Response <i>(i.e., agree, partially agree, disagree)</i> | Original Implementation Date <i>(as listed in the audit report)</i> | Implementation Status <i>(Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable)</i> Please refer to the attached sheet for definitions of each implementation status option. | Revised Implementation Date <i>(Complete only if agency is revising the original implementation date.)</i> |
|--|---|---|--|--|
| 1a | Agree | March 2014 | Partially Implemented | January 2014 |
| 1b | Agree | March 2014 | Partially Implemented | January 2014 |
| 1c | Agree | March 2014 | Partially Implemented | January 2014 |
| 1d | Agree | March 2014 | Partially Implemented | January 2014 |
| 1e | Agree | May 2013 | Implemented | |
| 2a | Agree | March 2014 | Implemented and Ongoing | June 2013 |
| 2b | Agree | March 2014 | Partially Implemented | January 2014 |
| 2c | Agree | March 2014 | Partially Implemented | January 2014 |
| 3a | Agree | March 2014 | Implemented | August 2013 |
| 3b | Agree | March 2014 | Partially Implemented | January 2014 |
| 3c | Agree | March 2014 | Partially Implemented | January 2014 |
| 4a | Agree | March 2014 | Partially Implemented | March 2014 |

| Recommendation Number (e.g., 1a, 1b, 2, etc.) | Agency's Response (i.e., agree, partially agree, disagree) | Original Implementation Date (as listed in the audit report) | Implementation Status (Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable) Please refer to the attached sheet for definitions of each implementation status option. | Revised Implementation Date (Complete only if agency is revising the original implementation date.) |
|---|--|--|---|---|
| 4b | Agree | March 2014 | Implemented | October 2013 |
| 4c | Agree | March 2014 | Partially Implemented | March 2014 |
| 4d | Agree | March 2014 | Partially Implemented | March 2014 |
| 5a | Agree | March 2014 | Partially Implemented | March 2014 |
| 5b | Agree | March 2014 | Partially Implemented | March 2014 |
| 5c | Agree | March 2014 | Partially Implemented | March 2014 |
| 5d | Agree | March 2014 | Implemented | October 2013 |
| 6a | Agree | March 2014 | Implemented and Ongoing | July 2013 |
| 6b | Agree | June 2013 | Implemented | |
| 6c | Agree | June 2013 | Implemented | |
| 6d | Agree | March 2014 | Implemented and Ongoing | July 2013 |
| 7a | Agree | June 2014 | Not Implemented | |
| 7b | Agree | June 2014 | Not Implemented | |
| 7c | Agree | June 2014 | Not Implemented | |
| 7d | Agree | June 2014 | Implemented | June 2013 |
| 8a | Agree | June 2013 | Implemented | |
| 8b | Agree | October 2013 | Implemented | September 2013 |
| 8c | Agree | June 2013 | Implemented | |
| 9a | Agree | June 2013 | Implemented and ongoing | |
| 9b | Agree | June 2013 | Implemented and ongoing | April 2013 |
| 9c | Agree | June 2013 | Implemented | |

| Recommendation Number <i>(e.g., 1a, 1b, 2, etc.)</i> | Agency's Response <i>(i.e., agree, partially agree, disagree)</i> | Original Implementation Date <i>(as listed in the audit report)</i> | Implementation Status <i>(Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable)</i> Please refer to the attached sheet for definitions of each implementation status option. | Revised Implementation Date <i>(Complete only if agency is revising the original implementation date.)</i> |
|--|---|---|--|--|
| 9d | Agree | June 2013 | Implemented | November 2013 |
| 10 | Agree | July 2013 | Implemented and ongoing | June 2013 |
| 11a | Agree | July 2013 | Implemented | June 2013 |
| 11b | Agree | July 2013 | No Longer Applicable | |
| 11c | Agree | July 2013 | Partially Implemented | January 2014 |
| 12a | Agree | July 2013 | Implemented | June 2013 |
| 12b | Agree | July 2013 | Implemented and ongoing | June 2013 |
| 12c | Agree | July 2013 | Partially Implemented | January 2014 |
| 13 | Agree | July 2013 | Implemented | October 2013 |

DETAIL OF IMPLEMENTATION STATUS

Recommendation #: 1

Agency Addressed: Department of Revenue

Recommendation Text in Audit Report:

The Department of Revenue should ensure that the Medical Marijuana Enforcement Division (the Division) only licenses eligible medical marijuana business applicants by:

- a. Including steps in the Division's application review process to confirm that the local licensing authority has verified that the business is within an allowable distance from any school.
- b. Including steps in the Division's license renewal process to conduct criminal background checks of applicants, as required by statute, and to verify that the applicant has a valid local license.
- c. Establishing policies and procedures for determining the types of concerns raised in criminal history and financial background check investigations that are grounds for denial and for clearly documenting dispositions on background checks when concerns have been raised.
- d. Establishing a well-documented supervisory review process to ensure that all minimum requirements are met prior to the Division issuing the license.
- e. Following up on the four cases identified during the audit in which auditors questioned whether the Division should have issued a license to the business, and determining the appropriate course of action.

Agency's Response (i.e., Agree, Partially Agree, or Disagree): Agree

Agency's Written Response in Audit Report:

- a. Agree. Implementation date: March 2014.

To ensure that proposed businesses locations are not within 1000 feet of any school, unless the local licensing authority has waived the distance restriction, the Division will enhance and improve its application review process as follows: (1) finalizing business licensing policies and procedure that specify the manner in which the Division will verify this statutory requirement with the local licensing authority, (2) amending the business application form as needed to comport with any new procedures, and (3) training staff to ensure that proper evidence of any distance waiver is maintained as part of the business file. Section 12-43.3-308(1)(d), C.R.S, authorizes local governments to pass ordinances to vary the 1,000 foot distance restriction. In those instances in which a local government has passed an ordinance varying the distance requirements, the license approval by the local authority is in effect the specific finding of fact that the license applicant has met all local requirements.

- b. Agree. Implementation date: March 2014.

To ensure that criminal background checks of applicants are conducted upon annual license renewal and that the applicant has a valid local license at the time of renewal, the Division will enhance and improve its renewal application review process as follows: (1) finalizing business licensing policies and procedures that specify the manner in which the Division will conduct review of renewal applications to ensure compliance with statutory requirements, (2) amending the business renewal application form as needed to comport with any new procedures, and (3) training staff to ensure that proper evidence of criminal background investigation and local license approval are maintained in the business file.

- c. Agree. Implementation date: March 2014.

To ensure that disqualifying criteria for business licensure is clarified for investigative staff and applicants and that any resulting disqualifying criminal history or financial background information is adequately documented, the Division will enhance and improve its business application review process as follows: (1) finalizing business licensing policies and procedures that specify the manner in which the Division will conduct review of business applications to ensure compliance with statutory requirements, (2) promulgating rules that clarify those criteria that constitute unsuitability or a lack of good moral character, and (3) training staff as to the appropriate statutory and regulatory disqualifying criteria and the manner for recommending license denial.

- d. Agree. Implementation date: March 2014.

To ensure that final supervisory review of business applications is complete and well-documented, the Division will finalize business licensing policies and procedures that will specify the supervisory review process.

- e. Agree. Implementation date: May 2013.

To ensure that the four business licenses identified by the State Auditor are re-reviewed for statutory compliance, either for the distance restriction from a school or for local approval, the Division will contact each respective local licensing authority for verification. If verified, the Division will complete its business file with the necessary documentation, including documentation such as a copy of the local ordinance varying the distance restriction or a copy of the local license issued by the local licensing authority. If there remains an issue of statutory non-compliance, the Division will make the appropriate administrative notice to the licensee.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable):

- 1a. - Partially Implemented
- 1b. - Partially Implemented
- 1c. - Partially Implemented
- 1d. - Partially Implemented
- 1e. - Implemented

Agency's Current Comments on Implementation Status of Recommendation:

1a - 1d.

The Division adopted revised medical marijuana regulations that became effective October 15, 2013. The Division also hired a technical writer in September 2013 to assist in drafting operational procedures harmonized with the newly adopted revised regulations. The licensing procedures are nearly finalized and include staff guidance related to marijuana business distance from schools, annual fingerprinting of owner applicants, supervisor review of licensing reports and criteria by which individual applicants meet the good moral character standard from statute in the Medical Marijuana Code. During review of the applications and prior to acceptance by the Division, the distance requirement is discussed with the applicant. If the applicant answers "Yes" that it is within 1000' of a school, then the applicant is required to provide the Division proof that it has received all necessary waivers with the Local Licensing Authority. The applicant may also provide the Division with an ordinance or county resolution that reduces the distance requirement. If the applicant does not meet these standards, then the application is returned as incomplete, which is a process grounded in an updated regulation that gives the Division authority to return lacking applications (M201). This Division's process

has been memorialized in a draft procedure. Effective November 2013, renewal application review was reassigned from the Licensing Unit to the Background Unit. All renewals require an appointment with a background investigator where the renewal application is reviewed and all owners are fingerprinted. Incomplete applications are not accepted. All documents and fingerprint results are then reviewed prior to approval of the renewal. The renewal procedure is in draft form. MED draft procedures have been modified to include Supervisor Review, which is done for all business and background investigations. This is tracked in MLO where the designated reviewer enters "Supervisor Review" in the Activity section of the Investigation after a thorough review of the investigative reports and attachments. This procedure is in the final phase of completion. All of the procedures noted in this section will be implemented by January 31, 2014.

1e. (implemented as of June 2013 status report)

The division has contacted each respective local licensing authority for verification. Regarding the two cases where it appeared that the local license expired prior to the division's approval, the division verified with the City and County of Denver that the both establishments held current local licenses at the time the state licenses were issued. Regarding the two cases where it appeared that the division issued a state license in violation of 12-43.3-308(1)(d)(I) [proximity to a school], the division verified that the local authority approved by ordinance a variance of the distance restriction (City of Alma), or considered the location grandfathered prior to the enactment of the legal restriction (City of Denver). The division completed its business file in each case to include a letter of confirmation from the local authority, or a copy of the local ordinance varying the distance restriction or written verification of a grandfathered establishment. There are no issues of statutory non-compliance that require further action with the licensee.

Recommendation #: 2

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve the timeliness of the Medical Marijuana Enforcement Division's processes for licensing medical marijuana businesses by:

- a. Discontinuing pre-licensing on-site inspections as part of the initial licensing process and instead conducting risk-based on-site inspections as part of ongoing monitoring of licensed businesses, as discussed in Recommendation No. 4.
- b. Aligning license issuance with statutory requirements to only issue a state license once the local license has been issued or seeking statutory change, and clarifying in regulations, and policies and procedures as appropriate, the process for confirming and documenting local approval.
- c. Developing policies and procedures around the use of application denials and withdrawals.

Agency's Response (i.e., agree, partially agree, disagree): **Agree**

Agency's Written Response in Audit Report:

The Medical Marijuana Division will continue to focus its efforts on improving the processes by which it administers business licensing so that it is able to approve or deny applications on a timely basis.

Agree. Implementation date: March 2014.

- a. The Division agrees to evaluate the effectiveness of discontinuing the on-site pre-licensing inspection as a precursor to licensure. That evaluation will include developing a set of risk-based criteria by which to assess current and future applicants. Those determined to be of low risk, as it relates to statutory noncompliance, will be approved without the pre-license inspection, and will be scheduled for inspection in the first license year. Those found to be of higher risk will still be subject to the pre-licensing inspection. The Division will also implement a random pre-licensing inspection program to test the efficacy of the established risk criteria.

- b. The Division agrees to clarify in its rules and policies and procedures, as appropriate, the process for confirming and documenting local approval. Rules will provide better instruction to local authorities as to the time and manner of reporting local license approval of new and renewal applications. The Department will explore statutory changes concerning the interaction of state and local licensing authorities to improve the efficiency and effectiveness of the licensing process for medical marijuana establishments.
- c. The Division agrees to develop policies and procedures related to the manner in which it proposes application denial and also the manner in which it accepts application withdrawals.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable):

- 2a. - Implemented, as it relates to conducting the evaluation.
Implemented and ongoing, as it relates to conducting pre-licensing inspections based on new risk-based criteria.
- 2b. - Partially Implemented
- 2c. - Partially Implemented

Agency's Comments on Implementation Status of Recommendation:

2a. Implemented and ongoing – June 2013

The Division developed a set of risk criteria that were applied to business applications received in August 2010. Since that time, MED has incorporated some of the same concepts into a more thorough risk based investigations draft procedure that can be used more broadly to assess the risk of new applicant businesses and licensed businesses that change locations or modify premises. New business applicants found to be high risk that are suitable for licensing are scheduled for an inspection within 120 days of approval. New business applicants found to be low risk will be inspected within a year of licensing. The Division is also developing additional factors to assess risk by using the Marijuana Inventory Tracking Solution notification feature that has the capability of alerting the Division should material compliance violations occur. Based on the severity and number of notifications, the Division will identify high risk licensed premises in real time or over extended periods and commit more resources to businesses most likely to be out of material compliance.

2b.- 2c.

House Bill 1238 allowed the Division to license a business prior to a local licensing authority. The Division began doing so on a routine basis for Medical Marijuana business licenses, but the licenses have been conditioned on the licensees meeting all local requirements prior to exercising the privileges of the state license. The Division has developed a number a safeguards to ensure that

businesses renewing have local approval. The Division configured MYLO to account for local licensing information that includes key licensing and expiration dates on a licensee by licensee basis. This data is being updated as licensees renew annually. The Division also created a local authority database within MYLO that tracks each local jurisdiction, its position on medical and retail marijuana, important correspondence with the Division and associates local authorities with licensees located in respective jurisdictions. The Division also adopted a regulation that became effective October 15, 2013 and provided instructions to local jurisdictions on administrative matters related to licensing and denials of applications (M 1401). The Division also adopted rules (M 251 and R 251) for both medical and retail applications that address the process for denial and withdrawal of applications. The Division is developing procedures to address the internal steps for both denials and withdrawals that will coordinate the efforts of the Division, the Attorney General's Office, the Department's Hearings Division and the State Licensing Authority. All of the procedures relevant to this recommendation are in final draft form with a revised implementation date of January 31, 2014.

Recommendation #: 3

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve the Medical Marijuana Enforcement Division's (the Division) process for ensuring that employees of medical marijuana businesses pass fingerprint-based criminal history checks before beginning work at medical marijuana businesses by:

- a. Evaluating discontinuation of its occupational licensing program.
- b. Determining how to best ensure that prospective employees have passed a fingerprint-based criminal history check prior to working in the medical marijuana industry, as required by Section 12-43.3-310(4), C.R.S., including defining what it means to "pass" a criminal history check and revising regulations to reflect those practices. The Department of Revenue should also work with the General Assembly as necessary to revise statute to reflect the Division's new process.
- c. Monitoring through audits, on-site inspections, or other means to ensure that medical marijuana businesses are complying with requirements established through part "b."

Agency's Response (i.e., agree, partially agree, disagree): **Agree**

Agency's Written Response in Audit Report:

The Medical Marijuana Division will continue to focus its efforts on improving the processes by which it administers occupational licensing so that licensing functions are efficient and effective and that only eligible applicants obtain licenses.

Agree. Implementation date: March 2014.

- a. To ensure that the Division's occupational licensing program is efficient and effective in achieving the policy objectives established by the Colorado General Assembly, the Division will work with stakeholders and policymakers to determine the best course of action for the program. While the Division believes that occupational licensing is foundational to the

program's enforcement integrity, the Division will include exploring the option of discontinuing the program in its discussion with stakeholders.

- b. To ensure that prospective employees of business licensees have passed a fingerprint-based criminal history check prior to working in the medical marijuana industry and to better define what it means to "pass" a criminal history check, the Division will enhance and review the application review process as follows: (1) finalizing occupational licensing policies and procedure that specify the manner in which the Division will conduct the appropriate investigation of applicants to ensure compliance with statutory requirements, (2) amending the occupational license application form to comport with any new procedures, (3) training staff to ensure that proper evidence of criminal background investigation approval are maintained in the occupational file, and (4) promulgating rules that clarify those criteria that constitute unsuitability or a lack of good moral character.
- c. To ensure that medical marijuana businesses are complying with requirements established through part "3b", above, the Division will enhance its monitoring activities of licensed businesses during inspections and audits by including a review of employees working in the establishments.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable):

- 3a. - Implemented
- 3b. - Partially Implemented
- 3c. - Partially Implemented

Agency's Comments on Implementation Status of Recommendation:

3a. Implemented - August 2013

The Division engaged in a comprehensive rule making process and hosted nearly 20 different stakeholder workshops that focused on a variety of policy issues and statutory mandates for regulations. During the stakeholder workshops, the concept of occupational licensing was discussed frequently. The general sentiment was that occupational licensing was important. There was general support especially from law enforcement and concerned citizens who strongly supported the notion of keeping occupational licensing. Based on the feedback received from stakeholders, the Division elected to continue occupational licensing.

3b. - 3c.

The Division adopted revised medical marijuana regulations that became effective October 15, 2013 related to the processing of occupational licenses that clarifies the expectations for complete applications and the qualifications for licensure. The rules also require occupational licensees to submit complete applications, make truthful statements and cooperate with Division requests for additional information. The Division has developed a draft procedure that defines the occupational badge process and clarified for staff how to determine if an applicant passes the good moral character requirement. A review of occupational badges will be included as part of the inspection process. Once procedures are finalized, the MED will conduct formal training during in service meetings with staff. All of the procedures relevant to this recommendation are in final draft form with a revised implementation date of January 31, 2014.

Recommendation #: 4

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve the effectiveness of the Medical Marijuana Enforcement Division's (the Division) monitoring activities by:

- a. Developing a comprehensive, risk-based compliance program that identifies which statutory and regulatory requirements will be tested for compliance at medical marijuana businesses.
- b. Providing guidance to medical marijuana businesses on the documentation required to demonstrate compliance with the key requirements identified in part "a."
- c. Developing a risk-based methodology for selecting medical marijuana businesses to monitor.
- d. Developing procedures for conducting the compliance reviews and/or requiring medical marijuana businesses to hire an independent firm to conduct audits of the business.

Agency's Response (i.e., agree, partially agree, disagree): **Agree**

Agency's Written Response in Audit Report:

Agree. Implementation date: March 2014.

- a. The Division has already laid some of the groundwork for developing a risk-based compliance program by creating some of the compliance programs to be utilized for assessing compliance with statutory and regulatory compliance. The Division will incorporate our compliance program into an overall strategic plan for the Division that will also include written policies and procedures.

- b. The Division has initiated the regulatory reform process with existing medical marijuana regulations. The Division anticipates revising its regulations to simplify them and ensure that licensees clearly understand requirements. Additionally, the Division will explore other ways to share information with licensees that will enhance their level of compliance with both statutory and regulatory requirements.
- c. The Division will develop a risk-based approach for the selection of medical marijuana businesses to receive compliance based inspections or reviews from the Division. This methodology and appropriate performance measures will be incorporated into the Division's overall strategic plan and written procedures. Division resources available for compliance related activities will help determine the number of compliance inspections to be completed during an established period and the risk-based methodology will assist the Division in determining which licensees to examine.
- d. The Division will establish written procedures for conducting compliance reviews on medical marijuana businesses and will explore the feasibility of establishing requirements for medical marijuana businesses to contract with independent firms to perform agreed upon procedures reviews to determine compliance. There are many factors to consider in determining the feasibility of instituting such a requirement including the cost to licensees, the resources necessary to implement such a program and review reports and the need based on the level of resources available at the Division to conduct the appropriate level of compliance reviews.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable):

- 4a. - Partially Implemented
- 4b. - Implemented
- 4c. – Partially Implemented
- 4d. – Partially Implemented

Agency's Comments on Implementation Status of Recommendation:

- 4a.
The Division has begun Phase II of its strategic plan that is dedicated to further developing the Division's enforcement and monitoring program. Risk assessments are conducted at the time of licensing and continue throughout the duration of the licensing cycle. The pre-licensing risk assessment was described earlier in this update so the balance of this section will be dedicated to

updating progress made on developing the monitoring program. The Division has been developing a comprehensive risk based approach to the inspection and monitoring of business licensees. This approach has been adopted in several areas of the procedures project. A draft procedure which details factors that differentiate a business as high risk or low risk has been sent to the technical writer. A draft procedure has been completed for the intake and assessment of complaints using risk and solvability factors to identify where the Division's resources would best be utilized in the subsequent follow up and investigation of these complaints. The Division has developed a draft procedure for conducting compliance checks on licensees and the laws prohibiting the sale of marijuana to underage and non-qualified persons. Businesses can be selected for these checks randomly or by using risk-based criteria. The Division is also developing additional factors to assess risk by using the Marijuana Inventory Tracking Solution notification feature that has the capability of alerting the Division should material compliance violations occur. Based on the severity and number of notifications, the Division will be able to identify high risk licensed premises in real time or over extended periods and commit more resources to businesses most likely to be out of material compliance. All of the procedures relevant to this recommendation are in draft form with a revised implementation date of March 31, 2014.

4b. Implemented – October 2013

The Division engaged in a comprehensive rule making process that included nearly 20 different stakeholder workshops that focused on a variety of policy issues and statutory mandates for regulations. This process included the adoption of new retail marijuana regulations and a comprehensive revision of the medical marijuana rules. During the meetings, the Division worked closely with industry members, law enforcement officials, concerned citizens, patient activists and experts in the fields of healthcare, laboratory testing, legal matters and business management. The diverse background of participants aided the Division in promulgating a set of regulations that equipped the Division to strictly enforce regulations in an operable, transparent and defensible manner. For example, the Division developed regulations that addressed what is mandated of licensees with respect to application requirements, record keeping, inventory tracking, transportation, administrative holds, licensee privileges, labeling, health and safety inspections, laboratory testing, and advertising. The stakeholder workgroup concept allowed these different interests groups to share their thoughts and concerns about different approaches the Division could take in drafting the regulations. The new retail rules and the revised medical rules became effective October 15, 2013.

4c.

The Division continues to implement its staffing plan that coincided with the phased approach taken in its strategic plan. The Division has begun Phase II of implementing the hiring plan. The Division staffing levels have increased to 27 full time permanent employees. This included the addition of 4 more personnel to the Denver field enforcement unit. The Division anticipates having the Colorado Springs office opened early in 2014 with two more field offices opening in later spring or early summer 2014. Many of the Division's open positions are close to being posted or being filled. The Division still anticipates building up staffing levels to 55 full time employees. Once fully staffed, the Division will have 36 staff members dedicated to applying the Division's risk based program. See 4a.

4d.

The Division included a provision in the regulations it adopted and became effective October 15, 2013, that allows the Division to order an independent audit of licensed premises when it deems necessary (M 903 and R 903). The Division might deem an audit is necessary when a licensee is not able to produce adequate books and records to account for inventory or sales. MED also has a proposed rule that gives the Division the authority to require a health and safety inspection conducted by an agreed upon third party vendor that specializes in food safety inspections when deemed necessary. The regulations require that the costs of independent audits or safety inspections required by the Division be borne by the licensee. The Division anticipates adopting the health and safety inspection regulation in January 2014. All of the procedures relevant to this recommendation are in draft form with a revised implementation and effective date of March 31, 2014.

The MED continues to work closely with CDPHE on the certification standards and the process for laboratory certification.

Recommendation #: 5

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve the Medical Marijuana Enforcement Division's (the Division) processes for seizing and disposing of unauthorized marijuana by:

- a. Ensuring that Division staff take and destroy unauthorized marijuana plants and products found at medical marijuana businesses only in connection with a disciplinary action against the business, as outlined in statute.
- b. Promulgating rules providing guidance to staff on how to take and destroy marijuana plants and products and to determine whether medical marijuana businesses have unauthorized marijuana.
- c. Establishing an inventory control system to track marijuana from the time it is taken until it is destroyed.
- d. Strengthening the security of the facility used to store seized marijuana.

Agency's Response (i.e., agree, partially agree, disagree): **Agree**

Agency's Written Response in Audit Report:

Agree. Implementation date: March 2014.

The Medical Marijuana Enforcement Division will continue to improve and refine its processes for the taking and disposing of medical marijuana in the following two instances:

- (1) The Division's discovery of unauthorized medical marijuana in licensed premises, and
 - (2) A licensee's voluntary surrender of medical marijuana.
- a. In those instances where medical marijuana is found at medical marijuana businesses in violation of statutory or regulatory provisions (e.g. "excess" medical marijuana that cannot be verified through licensee patient records), the Division will establish clear policies and procedures to ensure that Division staff take the product only in conjunction with the disciplinary process

contemplated in Section 12-43.3-602, C.R.S. Further, that upon final disposition of any disciplinary action, destruction of the medical marijuana taken only occurs upon final order of the state licensing authority.

- b. In furtherance of the response in part 5a. above, the Division will promulgate rules to address the specific implementation of the provision in Section 12-43.3-602, C.R.S., thereby clarifying the requirements with staff and the regulated community. To assist staff in determining if there is excess medical marijuana on the premises, and how to take and destroy such marijuana, the Division will improve its enforcement training and enforcement policies and procedures so that staff have clarity as to how to make such determinations when conducting inspections and investigations, and the manner in which to take excess marijuana as part of the final recommendation for disciplinary action.
- c. As part of implementing enforcement policies and procedures described in part 5b. above, the Division will develop and maintain an internal evidence inventory control system to track marijuana evidence from the time that it is taken to the time it is destroyed.
- d. As part of implementing enforcement policies and procedures described in part 5b above, the Division will strengthen the security of the facility it uses to store medical marijuana that was seized or voluntarily surrendered.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable):

- 5a. – Partially Implemented
- 5b. – Partially Implemented
- 5c. – Partially Implemented
- 5d. – Implemented

Agency's Comments on Implementation Status of Recommendation:

5a. – 5c.

The Division designed new regulations aligned with statute that became effective October 15, 2013 that give the Division guidance on the taking and destruction of marijuana products. Regulation M 1202(B) and R 1202(B) give the Division the ability to place an administrative hold on product when it has reason to believe that marijuana might be out of compliance with statute or regulations. The Division can place a hold on that product until such time as the investigation is completed and a final determination can be made. This may result in a final agency action that requires destruction of the product Regulation M 1202(C) and R 1202 (C) describe circumstances where a licensee may voluntarily surrender marijuana to the Division. Regulation M 1203(A) and R 1203(A) describe the disposition of unauthorized marijuana. The field enforcement section is continuing to develop .procedures that will

coincide with the new regulations and the launch of MITS. These procedures will be grounded in the functionality and data available within that system which will include inventory of unauthorized marijuana. This grouping of Division procedures will include determining appropriate levels of production, evidence handling, and procedures for destroying surrendered or seized product. All of the procedures relevant to this recommendation are in draft form with a revised implementation date of March 31, 2014.

5d. Implemented - October 2013

The Division assessed the security of its onsite storage facility located in Denver and added a commercial lock to the building to increase its security.

Recommendation #: 6

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should ensure that it can accurately determine the amount of sales tax revenue generated annually from medical marijuana businesses by:

- a. Ensuring that medical marijuana businesses are properly flagged in the Gentax system for the purposes of reporting medical marijuana sales tax figures.
- b. Including a question on its sales tax application to identify medical marijuana businesses and then entering that information into the Gentax system up front.
- c. Following up on the 56 businesses that were not correctly identified in Gentax, the 16 businesses we identified with no evidence of a state sales tax license, and the 23 businesses we identified that did not file or pay sales taxes in Fiscal Year 2011 and 2012 to determine if taxes should have been paid.
- d. Implementing a process to periodically review the Medical Marijuana Enforcement Division's list of medical marijuana businesses for the purposes of ensuring that all have a sales tax number, are in the Gentax system, and that businesses the Division understands to be operating are filing sales taxes.

Agency's Response (i.e., agree, partially agree, disagree): **Agree**

Agency's Written Response in Audit Report:

- a. Agree. Implementation date: March 2014.

The Department agrees with this recommendation and will immediately begin evaluating alternatives within the GenTax system to implement this recommendation. The Taxation Line of Business will coordinate its efforts with the Medical Marijuana Enforcement Division to ensure that all known businesses engaged in the retail sale of medical marijuana or marijuana-infused products are properly classified within the GenTax system.

- b. Agree. Implementation date: June 2013.

The Department agrees with this recommendation and will revise the current sales tax application form, asking the applicant to self-report whether or not they sell medical marijuana, adult-usage marijuana or marijuana-infused products.

- c. Agree. Implementation date: June 2013.

The Department agrees with this recommendation and will immediately begin its follow up on the 56 businesses identified by the State Auditor as not being properly categorized within GenTax, the 16 businesses for which the State Auditor found no evidence of a state sales tax license, and the 23 businesses the State Auditor identified as not having filed or paid sales taxes in Fiscal Years 2011 and 2012. The objective of our efforts is to ensure these accounts are properly sales tax licensed; determine if the business is a going concern, and if it is to bring them into voluntary compliance with filing and remittance obligations, or to take enforced compliance actions which could include audits of books and records or seizure of assets to satisfy liabilities.

- d. Agree. Implementation date: March 2014.

The Department agrees with this recommendation. The Medical Marijuana Enforcement Division and the Taxation Line of Business will develop a process and a procedure to perform periodic reviews focused on ensuring synchronization between the accounts contained in My License Office and GenTax.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable):

- 6a. – Implemented and Ongoing
- 6b. - Implemented
- 6c. - Implemented
- 6d. – Implemented and Ongoing

Agency's Comments on Implementation Status of Recommendation:

6a. Implemented and ongoing - July 2013

The enforcement controller has reviewed both MyLO and GenTax accounts to verify the accounts were marked correctly in GenTax. Review was completed July 31, 2013. A review and reconciliation have been completed monthly by the enforcement controller. The controller recently discovered some additional steps to be performed relative to the reconciliation of the sales taxes for the tax division and updated the processes. The Division will continue working with the taxation group to refine this process.

We are also considering an automated interface to expedite the reconciliation.

6b. *(implemented as of June 2013 status report)*

The department implemented the recommendation by adding three check boxes for medical marijuana, adult use marijuana, and marijuana infused products. The form was made available to the public via www.taxcolorado.com on June 7, 2013.

6c. *(implemented as of June 2013 status report)*

The exceptions noted in the recommendations were reviewed by the Department with the following results:

"56 Dispensaries Not Correctly Identified as Medical Marijuana Businesses in GenTax."

- 31 accounts were properly licensed for sales tax collection and current in their sales tax filings and payments
- 24 accounts are ceased in the GenTax system. 14 of the 24 since created new accounts and were current in their filings and payments. The other 10 of the 24 are entirely out of business.
- 1 account never actually opened for business and thus never acquired a sales tax license
- Of the 45 dispensaries currently in business, 38 were not correctly identified in GenTax. These were immediately corrected.

"16 No Evidence of Sales Tax License"

- 13 accounts were properly licensed for sales tax collection and current in their sales tax filings and payments
- 2 accounts were ceased and no longer in business
- 1 account never actually opened for business and thus never acquired a sales tax license

"11 Have Not Filed Sales Tax and MMED's records show business is operating"

- 10 accounts were properly licensed for sales tax collection and current in their sales tax filings and payments
- 1 account is ceased and no longer in business

"12 Have Not Paid Sales Tax and MMED's records show business is operating"

- 7 accounts were properly licensed for sales tax collection and current in their sales tax filings and payments
- 2 accounts only recently opened - no tax was yet due at the time of review
- 3 accounts are ceased and no longer in business

"7 Listed as Out of Business by Gentax but have pending applications at MMED"

- 3 accounts were properly licensed for sales tax collection and current in their sales tax filings and payments
- 4 accounts are ceased and no longer in business

6d. Implemented and ongoing - July 2013

Medical marijuana licensing staff members have been shown how to flag and review medical marijuana businesses in GenTax and have been assigned the responsibility to ensure the flag is set going forward. The enforcement controller, along with medical marijuana staff, have developed a monthly reconciliation process to ensure synchronization between the MyLO and GenTax accounts. The Division and the Taxation section are working together in a collaborative way to formalize training for Division staff. The Division will ensure that this process is captured in its licensing procedures.

Recommendation #: 7

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve the Medical Marijuana Enforcement Division's (the Division) fee-setting by:

- a. Determining the specific licensing and monitoring activities that will be supported by each fee it charges.
- b. Establishing an ongoing systematic mechanism for collecting and analyzing data on the amount of time it takes to complete each of the licensing and monitoring activities identified in part "a" and on the associated costs of completing these activities.
- c. Using the analysis completed in part "b" as the basis for setting the Division's fees annually.
- d. Establishing an annual target reserve amount for the Medical Marijuana License Cash Fund.

Agency's Response (i.e., agree, partially agree, disagree): **Agree**

Agency's Written Response in Audit Report:

Agree. Implementation date: June 2014.

- a. Depending upon the statutory provisions adopted to implement Amendment 64, the Department intends to establish fees to support the regulatory and enforcement activities of the new Marijuana Enforcement Division.
- b. At this time, the Department does not have an automated time management system by which to track and report time spent on specific activities and the associated costs. The Department is exploring such a system for future implementation Department-wide. In the short term, the Department will consider performing time management studies once licensing and monitoring processes and procedures are in place after the implementation of Amendment 64 legislation.
- c. The Department intends to use the data compiled from time management studies to establish fees to fully cover the direct and indirect costs of the new Marijuana Enforcement Division's regulatory and enforcement activities.

- d. The Amendment 64 Task Force made a recommendation to fund the new Marijuana Enforcement Division with General Fund for the first five years. If this recommendation is included in the enabling legislation, any funds unspent at the end of each fiscal year will revert to the General Fund. However, at the time when the new Division becomes fully supported by cash funds, the Department would plan to establish a reserve requirement similar to other cash funds.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable):

- 7a. – Not Implemented
- 7b. – Not Implemented
- 7c. – Not Implemented
- 7d. – Implemented

Agency's Comments on Implementation Status of Recommendation:

7a.-7c.

The Division maintained the same fee structure during the 2013 rule making process. The Department is currently analyzing several fee setting models that it will continue to refine after retail marijuana licenses become effective January 1, 2014. The Division plans to analyze different fee setting models to determine the most appropriate model to recover the direct and indirect costs based on the funding structure approved by the General Assembly. Unlike the Medical Marijuana Enforcement Division, the Marijuana Enforcement Division is funded not only with application and license fees, but also with sales tax revenue. Consequently, any model will need to take this into consideration when setting fees. The Department intends to introduce the fee model for both medical and retail marijuana businesses during rule making in March 2014 to be effective July 1, 2014.

7d. (*implemented as of June 2013 status report*)

The Department has established an annual target reserve amount for the new Marijuana Cash Fund at 16.5% of total expenditures.

Recommendation #: 8

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve the Medical Marijuana Enforcement Division's (the Division) controls over its expenses by:

- a. Conducting price comparisons and requesting a waiver to use a competitive bidding process when appropriate and warranted.
- b. Conducting a thorough analysis of the Division's current and future equipment needs and eliminating any excess equipment if it is cost-effective to do so.
- c. Ensuring that all expenses comply with State Fiscal Rules related to the reasonability, appropriateness, and approval of the expenses.

Agency's Response (i.e., agree, partially agree, disagree): **Agree**

Agency's Written Response in Audit Report:

- a. Agree. Implementation date: June 2013.

The Department followed all appropriate procurement statutes, codes, and rules when purchasing furniture and equipment. The Department utilized Colorado Correctional Industries (CCI) to purchase furniture per Section 17-24-111, C.R.S., which requires the Department to purchase office furniture and office systems from CCI. The Department will conduct price comparisons and request waivers to use a competitive bidding process when appropriate and warranted.

- b. Agree. Implementation date: October 2013.

The Division will continue to closely monitor its existing furniture and equipment inventory, ensuring the safeguarding of all of the Division's assets. On a semi-annual basis, the Division will review the status of active personnel in relation to its furniture and equipment inventory, and will determine whether any items should be subject to the Department's surplus procedure.

- c. Agree. Implementation date: June 2013.

The Department of Revenue (DOR) Accounting and Financial Services (AFS) will review the Department Procurement Card Policy to ensure compliance with the State Fiscal Rules and communicate to cardholders, reviewers and Division Liaisons any changes. AFS currently has processes in place to review cardholder statements on a monthly basis and will strengthen the review of these transactions. AFS will meet with departmental budget and accounting staff to review internal travel procedures to ensure knowledge and compliance with State Fiscal Rules. AFS will review the travel computer-based training to ensure travelers are knowledgeable of DOR travel policies and State Fiscal Rules.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable):

- 8a. - Implemented
- 8b. - Implemented
- 8c. - Implemented

Agency's Comments on Implementation Status of Recommendation:

8a. *(implemented as of June 2013 status report)*

The Department will conduct price comparisons and request waivers to use a competitive bidding process when appropriate and warranted.

8b. Implemented - September 2013

Division management reviewed its equipment needs as planned for September 30, 2013. The Division decided to keep its additional equipment based on its strategic objectives that called for adding three additional offices statewide and commensurate staffing levels. In November 2013, the Division conducted a comprehensive review of its computer requirements and found 10 computers that are due for replacement that will not be needed going forward. The Division will surplus the extra computers as soon as possible and ensure they are not replaced after being turned into surplus. The second semi-annual review (March 31, 2014) will coincide with the anticipated completion of the Division's planned hiring and phase-in of staff at a level that meets the annual appropriation. The Division will then be better suited to determine its equipment and furniture needs.

8c. *(implemented as of June 2013 status report)*

Accounting and Financial Services (AFS) accounting staff review all payment vouchers and expenditures to ensure compliance with State fiscal and procurement rules.

Recommendation #: 9

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve the Medical Marijuana Enforcement Division's (the Division) use of state vehicles by:

- a. Evaluating the use of the current fleet to determine whether the Division can eliminate some fleet vehicles altogether and/or weight the fleet toward more economical vehicles.
- b. Reviewing the commuting arrangements for the three staff that currently have them and discontinuing these arrangements unless the Division can demonstrate that it is in the best interest of the State for these staff to have these arrangements.
- c. Determining whether the commuting arrangements have been properly classified and reported with respect to tax treatment for employees. If commuting arrangements were improperly reported as tax-exempt benefits, the information should be reported to State Fleet Management and the State's Central Payroll. The Department should ensure that either prior years' employee income reporting to the IRS is corrected or employees reimburse the Division for all taxable commuting.
- d. Establishing controls to ensure that all future commuting arrangements are in the best interest of the State and are properly classified for tax purposes.

Agency's Response (i.e., agree, partially agree, disagree): **Agree**

Agency's Written Response in Audit Report:

Agree. Implementation date: June 2013.

- a. When the Division acquired its fleet vehicles in Fiscal Year 2011, it was determined that a larger SUV would allow the Division to transport marijuana plants and derivatives seized or voluntarily surrendered by licensees. Additionally, the span of coverage for regulation of medical marijuana was virtually statewide with licensees in every area of the state, including rural and mountainous areas. The Division identified a need for vehicles with 4-wheel drive to travel around the state during inclement weather, through the mountains and in rural areas. The acquisition of 33 fleet vehicles in the early stages of the Division was intended for the purpose of meeting the needs of a fully staffed Division at 55 FTE. When the Division recognized that funding shortages would require a reduction in staffing, the Division took measures to eliminate or transfer approximately 25 vehicles to other state agencies. The Division will evaluate its current fleet of eight vehicles to determine

an appropriate level to meet current needs and increased needs in the very near future due to the implementation of Amendment 64. This assessment will include an evaluation of the types of vehicles that are the most appropriate for the Division based on work assignments, vehicle use and fuel efficiency.

- b. The Division will evaluate current commuting arrangements for existing staff to ensure they are appropriate. The Division will develop written policies and procedures establishing when it is appropriate to execute a commuting agreement for an employee based on established guidance, from both the state and federal level, and the business needs of the agency. The Division will also clearly document on all commuting authorization forms the purpose for commuting and how it is in the best interests of the State.
- c. The Division will consult with the Department of Personnel & Administration, Department accounting staff, and will also carefully review all existing guidelines at both the state and federal level to ensure that commuting arrangements for staff have been properly classified for the taxing purposes. Any commuting arrangements that have not been properly classified will be reported to State Fleet Management and Central Payroll and appropriate adjustments will be made.
- d. The Division will establish written policies and procedures for determining when it is appropriate to execute a commuting agreement for an employee based on established guidance, at both the state and federal level, and the business needs of the agency. The Division will also clearly document on all commuting authorization forms the purpose for commuting and how it is in the best interests of the State.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable):

- 9a. - Implemented and ongoing
- 9b. - Implemented and ongoing
- 9c. - Implemented
- 9d. - Implemented

Agency's Comments on Implementation Status of Recommendation:

9a. *(implemented as of June 2013 status report)*

The division has evaluated its current fleet of vehicles and determined that the eight vehicles currently in our fleet are adequate for our immediate needs to regulate the industry. Seven of these vehicles are SUV's and one vehicle is a sedan. As the division begins

to staff up for the implementation of Amendment 64, particularly during the second phase of our staffing plan, we will transition our fleet cars to use by the criminal investigator I and II positions specifically assigned to field enforcement. As the division continues to increase its staffing levels, we will obtain additional fleet vehicles from State Fleet Services based on a needs assessment and any vehicles obtained will be sedans that are more fuel efficient. SUV vehicles will be assigned to field offices for use by field enforcement personnel that regularly travel in rural and mountainous areas during winter months.

9b. (implemented as of June 2013 status report)

The division suspended the commuting authorizations for all existing criminal investigators effective April 30, 2013. This was done until the division can establish a formal written policy concerning granting commuting authorizations. The division will re-evaluate commuting as we begin to staff up for the implementation of Amendment 64. As a general rule, commuting authorizations will only be granted to field enforcement staff responsible for field enforcement activities. No command staff will be assigned a commuting vehicle and no criminal investigators assigned to the background investigation unit will be assigned a commuting vehicle. Finally, the division will not authorize commuting in a state vehicle unless there is a documented benefit to the division and is within the best interests of the State.

9c. (implemented as of June 2013 status report)

The division has carefully reviewed the status of the two tax exempt commuting agreements that were established by the division and identified during the audit as questionable. First, both of the commuting agreements in question have been terminated, not because of their improper tax status, but because it was determined that they were not in the best interests of the State from the perspective of Department's executive management. Both agreements involved the former and current Director of the Division. The propriety of granting these positions tax exempt status was based on a thorough analysis involving existing statutes and underlying legislative intent. Section 16-2.5-124.5, C.R.S., is entitled "Director of marijuana enforcement and medical marijuana enforcement investigator". The title is clear in that it lists the Director as a peace officer, however, the narrative only discusses a medical marijuana enforcement investigator. It is believed that it was intended to mirror similar peace officer statutes contained in Title 16, Article 2.5 of the Colorado Revised Statutes. The Attorney General's office performed some research and found that the section title only referred to investigators, and not the director, until the revised version (4th version), at which point the director was included in the title, but the text was never changed. Reading the history, it seems apparent that the general assembly intended to include the director because it amended the title mid-way through the drafting process. In addition, section 16-2.5-121, C.R.S., was amended in the HB 10-1284 drafting process to identify the executive director of revenue and the senior director of enforcement as peace officer. It is reasonable to assert that treating the director as a peace officer is consistent with the intent of the statute. Further, the director ultimately supervises the investigators and the enforcement activities of the division. Therefore, part of the director's duties, then, are implied to include investigatory duties. Further, during the 2013 legislative session, HB 13-1317 included a technical

amendment to Section 16-2.5-124.5 to clearly include the director of the new Marijuana Enforcement Division, which includes the medical marijuana, as a peace officer in both the title and the narrative. The division has concluded, based on our analysis that the director was and is a peace officer and also complies with all DPA and Federal guidelines for a peace officer. As a result, the division and the Department believe that treating the Director as tax exempt for purposes of the commuting authorization form is in compliance with established guidelines. No further action is warranted.

9d. Implemented – November 2013

The division suspended the commuting authorizations for all existing criminal investigators effective April 30, 2013 and as of November 30, 2013, the Division still has no commuter authorizations. Should the Division decide to authorize commuter authorizations in the future, it will establish a formal written policy concerning granting them. The Division will re-evaluate commuting as we continue to build staffing levels during the balance of FY 2014. As a general rule, commuting authorizations will only be granted to field enforcement staff responsible for field enforcement activities. Finally, the Division will not authorize commuting in a state vehicle unless there is a documented benefit to the division and is within the best interests of the State. The Enforcement Business Group has informally established a procedure for issuing commuting authorizations through a written directive from the Senior Director that was issued in April 2013 establishing that only criminal investigator positions within the Enforcement Business Group that are specifically assigned to field enforcement duties may be eligible for commuting and that all commuting authorization forms submitted will include a letter signed by the division director justifying why such commuting authorization is within the best interests of the state and how it meets the tax exempt status. Additionally, the directive states that command staff will be generally prohibited from commuting unless a special circumstance dictates the need for such commuting and it is established that such authorization is within the best interests of the State. Further, all commuter authorization forms are required to be approved by the Senior Director. As the Marijuana Enforcement Division begins to hire field enforcement criminal investigators, it will establish a written policy that is consistent with the written directive of the Senior Director.

Recommendation #: 10

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve the effectiveness of the Medical Marijuana Enforcement Division's oversight of medical marijuana businesses in Colorado by developing a comprehensive strategic plan that (1) identifies the licensing, monitoring, and enforcement activities required to effectively regulate these businesses and (2) determines the staffing and operational resources needed to perform these activities. The plan should consider different scenarios to account for the uncertain future of the medical marijuana industry in Colorado.

Agency's Response (i.e., agree, partially agree, disagree): **Agree**

Agency's Written Response in Audit Report:

Agree. Implementation date: July 2013.

The Department of Revenue is currently in the process of developing a comprehensive strategic plan, including staffing and business operations, for the regulation of marijuana (both medical and adult-use). The Amendment 64 Task Force has recommended that the General Assembly create one agency within the Department to regulate both medical and adult-use marijuana in the state. The Department is therefore proceeding with the development of a comprehensive strategic plan that encompasses a staffing plan, business operations plan, and specific objectives and goals related to both the licensing and regulation of marijuana businesses in the State of Colorado, as well as the implementation of Amendment 64. While medical marijuana and adult-use marijuana each have their own unique regulatory requirements, there are more similarities between them than there are differences. As part of this process, the Department is attempting to forecast the number of medical marijuana and adult-use marijuana licenses expected upon implementation of Amendment 64. This critical factor, along with clearly identified statutory and regulatory requirements for each business type, will assist the Department in defining key objectives and resource needs moving forward.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable):

10. – Implemented and ongoing

Agency's Comments on Implementation Status of Recommendation:

10. *(implemented as of June 2013 status report)*

The division has completed a final draft of its strategic plan which includes the implementation of Amendment 64. This plan highlights specific objectives to address concerns raised in the performance audit, as well as objectives related to the implementation of Amendment 64. Important areas of this strategic plan include critical objectives and timelines, a staffing plan, performance objectives, an analysis of strengths, weaknesses, opportunities and threats, identification of critical stakeholders and development of the division's mission and vision statements. It is important to note that this strategic plan is dynamic and will be refined over time and will be reviewed periodically as the division evolves.

A copy of this strategic plan has been provided to the Legislative Audit Committee.

The strategic plan was finalized July 1, 2013.

Recommendation #: 11

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve its method for assessing the Medical Marijuana Enforcement Division's (the Division) performance by:

- a. Aligning the performance measure with the Division's actual practices to better capture the timeliness of the Division's complete business application process.
- b. Clarifying what is meant when the Division "initiates" final agency action.
- c. Making improvements to the Division's My License Office system to ensure that key data points related to the Division's performance measures are captured.

Agency's Response (i.e., agree, partially agree, disagree): **Agree**

Agency's Written Response in Audit Report:

Agree. Implementation date: July 2013.

- a. The Department will add a performance measure(s) that measures duration from the date the application is received by the Division to the date work is completed by Division staff. We will also measure from the date work is completed by the Division to the date we receive local agency approval. We will then continue to measure from the date of local agency approval to date final action is initiated by MMED.
- b. The Department will footnote the definition of "initiate."
- c. The Department of Revenue will work with the Office of Information Technology to identify and capture the appropriate key data points related to the Division's performance measures. We anticipate that, with the passing of Amendment 64 and changes within the medical marijuana industry itself (i.e. consolidation, competition, etc.), the data points themselves in need

of tracking may change. We agree that tracking the appropriate data points, once identified, is an important step in the success of the Division.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable):

- 11a. - Implemented
- 11b. - No Longer Applicable
- 11c. - Partially Implemented

Agency's Comments on Implementation Status of Recommendation:

11a. - 11b. (*implemented as of June 2013 status report*)

HB 13-1238 passed which decoupled the local and state process. The state process is no longer dependent on local approval, thereby making the original performance objective inapplicable. The new performance objective has been amended to: "The Marijuana Enforcement Division will approve and issue/ renew business licenses, or issue a notice of proposed denial for 100% of completed business license applications within 90 days of receipt."

11c.

The Division recommended an updated performance measure that is applicable to both Medical and Retail Business applicants. The performance measure is as follows: The Marijuana Enforcement Division will approve and issue/renew business licenses, or issue a notice of proposed denial for 100% of completed business license applications within 90 days of receipt on an annual basis beginning in FY 2013-2014. The Division has implemented two system reports to track these applications. Those reports are as follows: 1) Pending Application Aging Report- Calculates how many days a business license application has been pending (Management tool to prioritize cases and ensure MED does not go over 90 days from data in MYLO's licensing data); 2) Final Agency Action Report- How many days MED needed to initiate final agency action (approve or deny) on all business license applications (Management tool to demonstrate compliance the performance measure from data in MYLO's licensing module). The Division is developing a third report that will calculate the time it takes to process renewal applications.

Recommendation #: 12

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue should improve the Medical Marijuana Enforcement Division's (the Division) access to management data by:

- a. Identifying and working to capture in the Division's My License Office system the data points the Division needs to effectively track and manage medical marijuana applicants and licensees.
- b. Working with the Office of Information Technology to ensure that Division staff have the access permissions and training they need to run system reports.
- c. Developing system reports to better track the status of applications and monitoring and enforcement efforts.

Agency's Response (i.e., agree, partially agree, disagree): **Agree**

Agency's Written Response in Audit Report:

Agree. Implementation date: July 2013.

- a. The Department of Revenue will work with the Office of Information Technology (OIT) to identify and capture the appropriate data points to effectively track and manage medical marijuana applicants and licensees. In particular, the Department will create a "user defined" field in MyLO to capture the date of local approval for post-moratorium medical marijuana applicants and any new medical marijuana applicants for which local licensing is required.

We anticipate that, with the passing of Amendment 64 and changes within the medical marijuana industry itself (i.e. consolidation, competition, etc.), that the data points themselves in need of tracking may change.

We agree that tracking the appropriate data points, once identified, is an important step in the success of the Division.

- b. The Department of Revenue will work with the Office of Information Technology (OIT) to ensure that Division staff have the access permissions and training they need to run system reports, as needed and as developed.

MyLO does have a significant amount of reports that are in use by the Division for tracking applications and licensees already. To the extent that ad hoc reports need to be developed, OIT has recently provided the appropriate Division personnel the software needed, and those personnel are currently training on the use of the software for developing the ad hoc reports from the MyLO system. Once developed, the reports will be either made available to other users in the Division or provided to them, upon request, by the Division personnel above.

We anticipate that, with the passing of Amendment 64 and changes within the medical marijuana industry itself (i.e. consolidation, competition, etc.), that the reporting requirements within the Division may change.

We agree that developing the appropriate reports and training the appropriate individuals, once determined, is an important step in the success of the Division.

- c. The Department of Revenue will work with the Office of Information Technology (OIT) to ensure that Division staff have the access permissions and training they need to run system reports, as needed and as developed.

MyLO does have a significant amount of reports that are in use by the Division for tracking applications and licensees already. To the extent that ad hoc reports need to be developed, OIT has recently provided the appropriate Division personnel the software needed, and those personnel are currently training on the use of the software for developing the ad hoc reports from the MyLO system. Once developed, the reports will be either made available to other users in the Division or provided to them, upon request, by the Division personnel above.

We anticipate that, with the passing of Amendment 64 and changes within the MMED Industry itself (i.e. consolidation, competition, etc.), that the reporting requirements within the Division may change.

We agree that developing the appropriate reports and training the appropriate individuals, once determined, is an important step in the success of the Division.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable):

12a. – Implemented

12b. - Implemented and ongoing

12c. – Partially Implemented

Agency's Comments on Implementation Status of Recommendation:

12a. *(implemented as of June 2013 status report)*

The division has created a “user defined” field in MyLO to capture the date of local approval for post-moratorium medical marijuana applicants and any new medical marijuana applicants for which local licensing is required. The division is now able to produce a newly created report, “Days to Complete Report” which identifies the number of days division approval was granted after local authority approval, when applicable for post-moratorium medical marijuana applicants and any new medical marijuana applicants.

12b. *(implemented as of June 2013 status report)*

The Medical Marijuana Enforcement Division currently has access to canned reports in SQL Server Reporting Services (SSRS) and Report Builder to create their own reports via Data Models created in cooperation with the business. The business super users were provided training last fiscal year on SSRS and Reporting Building. Additionally a number of ad hoc reports have been developed to assist the Division in its licensing and reconciling efforts. The appropriate Division personnel have had the Crystal Reporting software deployed to their desktops and those personnel have completed self-training on the use of the software for developing the ad hoc reports from the MyLO system. The reports are being made available to other users in the Division upon request.

12c.

Project 4180 was submitted by the Division requesting several new reports and also requesting changes to several existing reports. These reports will assist in licensing and case management processing. Three of the existing (MMED) reports have been modified per the business user's request and have been placed into production. The new reports requested in Project 4180 have all been developed and are either in the final stages of being approved or been finalized and reside in production. The Division will continue to collaborate with OIT and ensure these reports are refined over time and that proper access and training is made available to Division staff.

Recommendation #: 13

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Revenue and the Department of Public Health and Environment should work with the Governor's Office and the Attorney General to seek clarification from the federal government about potential risks to state employees involved with administering and regulating Colorado's medical marijuana system and should then communicate this information to their state employees working in the medical marijuana system.

Agency's Response (i.e., agree, partially agree, disagree): **Agree**

Agency's Written Response in Audit Report:

Agree. Implementation date: July 2013.

On November 13, 2012, Governor Hickenlooper and State Attorney General Suthers sent a joint letter to Eric Holder, United States Attorney General. The primary focus of this letter was to seek clarity from the U.S. Department of Justice on their position concerning the passage of Amendment 64 by the people of Colorado. The letter specifically asked if "the federal government will take legal action to block implementation of Amendment 64, or whether it will seek to prosecute grow and retail operations." This letter also sought clarification from the U.S. Department of Justice as to "whether the federal government will regard Colorado State employees who regulate and oversee the growing and distribution of marijuana as acting in violation of federal law." This question directly goes to the heart of the recommendation. Recently, at the end of February, Attorney General Holder indicated publicly that the U.S. Department of Justice is in the process of reviewing both the Colorado and Washington initiatives. He further indicated that the people of Colorado and Washington state deserve an answer concerning the federal government's position and that an answer would be forthcoming "relatively soon." Once we receive guidance from the federal government, this information will be shared with all employees involved in the regulation of marijuana with the Department of Revenue.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable):

13. –Implemented

Agency's Comments on Implementation Status of Recommendation:

13. Implemented - October 2013

On August 29, 2013, the United States Department of Justice (USDOJ) provided guidance to Colorado and Washington that it would not make participants in the marijuana industry in these two states investigative priorities as long as certain criteria was met. Those criteria were detailed in the correspondence from the USDOJ. Subsequent to this guidance, the Division distributed the information to staff. Staff was required to read the information and respond back with any questions they had regarding the USDOJ guidance.

STATE OF COLORADO

John W. Hickenlooper, Governor
Larry Wolk, MD, MSPH
Executive Director and Chief Medical Officer

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

December 18, 2013

Dianne E. Ray, CPA
State Auditor
Colorado Office of the State Auditor
200 East 14th Avenue, 2nd Floor
Denver, CO 80203

Dear Ms. Ray:

In response to your request, we have prepared a status report regarding the implementation of audit recommendations contained in the Medical Marijuana Regulatory System Part I and Part II performance audits. The attached report provides a brief explanation of the actions taken by the Department of Public Health and Environment to implement each recommendation directed to our department.

If you have any questions, please do not hesitate to contact Patricia Theriot at 303-692-2143 or by email at patricia.theriot@state.co.us

Sincerely,

Larry Wolk, MD, MSPH
Executive Director

AUDIT RECOMMENDATION STATUS REPORT

AUDIT NAME: Medical Marijuana Regulatory System, Part I Performance Audit

AUDIT NUMBER: #2194A

DEPARTMENT/AGENCY/ENTITY: Department of Public Health and Environment

DATE: December 2013

SUMMARY INFORMATION

Please complete the table below with summary information for all audit recommendations. **For multi-part recommendations, list each part of the recommendation SEPARATELY.** (For example, if Recommendation 1 has three parts, list each part separately in the table.)

| Recommendation Number <i>(e.g., 1a, 1b, 2, etc.)</i> | Agency's Response <i>(i.e., agree, partially agree, disagree)</i> | Original Implementation Date <i>(as listed in the audit report)</i> | Implementation Status <i>(Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable)</i> Please refer to the attached sheet for definitions of each implementation status option. | Revised Implementation Date <i>(Complete only if agency is revising the original implementation date.)</i> |
|--|---|---|--|--|
| 13 | Agree | June 2013 | Implemented | |

DETAIL OF IMPLEMENTATION STATUS

Recommendation #: 13

Agency Addressed: Department of Public Health and Environment

Recommendation Text in Audit Report:

The Department of Revenue and the Department of Public Health and Environment should work with the Governor's Office and the Attorney General to seek clarification from the federal government about potential risks to state employees involved with administering and regulating Colorado's medical marijuana system and should then communicate this information to their state employees working in the medical marijuana system.

Agency's Response (*i.e., Agree, Partially Agree, or Disagree*): **Agree**

Agency's Written Response in Audit Report:

Agree. Implementation date: June 2013.

The Department of Public Health and Environment (Department) agrees to work with the Governor's Office and the State Attorney General's (AG) office to determine how to best obtain clarification concerning the risk of federal prosecution for state employees who administer the Medical Marijuana program. The Department has worked closely with the AG's office on multiple legal issues concerning the implementation and administration of the medical marijuana registry, and continues to work with the AG's office on issues related to medical marijuana as they arise. The United States Attorney for the District of Colorado sent the Colorado Attorney General a letter dated April 26, 2011, in which the United States Attorney General for the District of Colorado identified several ongoing or proposed activities related to medical marijuana that were considered to be in violation of federal law. No reference is made in this letter to state employees administering the registry as being in violation of federal law. The results of the Department's inquiry to the federal government will be shared with our employees who administer the Medical Marijuana program.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable): Implemented.

Agency's Current Comments on Implementation Status of Recommendation:

After the passage of Amendment 64 in Colorado authorizing the possession and use of retail marijuana, Governor Hickenlooper and Attorney General Suthers sent a letter to the United States Department of Justice questioning the federal government's position on retail marijuana. U.S. Attorney General Eric Holder responded in writing on August 29, 2013, providing guidance on the federal government's enforcement priorities regarding marijuana. Compliance with these priorities by the State should reduce or eliminate the potential for concerns to be raised by the federal government regarding this state employee work.