

COLORADO DEPARTMENT OF REVENUE RECOMMENDATION STATUS REPORT

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

AUDIT NUMBER: #2194B

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(Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable)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>
3	Agree	July 2014	Not Implemented	
5a	Agree	July 2014	Not Implemented	
5b	Partially Agree	July 2014	Not Implemented	

DETAIL OF IMPLEMENTATION STATUS

Recommendation #: 3

Agency Addressed: Department of Revenue

Recommendation Text in Audit Report:

The Department of Public Health and Environment (Public Health) and the Department of Revenue should work together and with stakeholders, as appropriate, to determine if Public Health can discontinue maintaining information about which medical marijuana dispensary individuals on the Medical Marijuana Registry have designated as their provider. If the determination is that this information is not necessary, then Public Health should discontinue collecting this information, and both departments should work with the General Assembly, as necessary, to revise statute to implement this change of policy.

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

Agency's Written Response in Audit Report:

Agree. Implementation date: July 2014.

The Department of Revenue will work together with the Department of Public Health and Environment (Public Health) and stakeholders to determine if Public Health should discontinue maintaining information about which dispensary an individual has designated as their provider. If it is determined that this information should not be collected, the Department of Revenue will work with Public Health and the General Assembly to revise statute to implement the change.

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Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable): **Not Implemented**

The Colorado Department of Revenue has met with the Department of Public Health and Environment (Public Health) on several occasions to discuss a number of issues, but no final determinations have been made about maintaining this information. Both Departments will continue to collaborate and make a final decision prior to July 2014.

Recommendation #: 5

Agency Addressed: Department of Revenue

Original Recommendation in Audit Report:

The Department of Public Health and Environment (Public Health) and the Department of Revenue (Revenue) should work together with medical marijuana stakeholders to better define the role of caregivers in the State's medical marijuana system and improve the State's oversight of caregivers by:

- a. Evaluating the need to continue collecting information on which caregivers have been designated by individuals as their provider. If it is determined that Public Health should continue to collect this information, then Public Health should take steps to ensure that this information is updated and accurate.
- b. Determining whether Public Health or Revenue needs greater statutory authority to effectively regulate caregivers and, if so, present proposed changes to the regulation of caregivers to the appropriate interim Committee of Reference for consideration and work with the General Assembly as necessary to implement these changes.

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

- a. Agree
- b. Partially Agree

Agency's Written Response in Audit Report:

- a. Agree. Implementation date: July 2014.

The Department of Revenue will work together with the Department of Public Health and Environment (Public Health) to evaluate the value of Public Health continuing to collect information on which caregivers have been designated by individuals as their provider.

- b. Partially agree. Implementation date: July 2014.

The Department of Revenue will work together with the Department of Public Health and Environment (Public Health) to determine if greater statutory authority needs to be established to effectively regulate caregivers. Caregivers are akin to healthcare providers, which should be under the purview of Public Health, who has the expertise and experience to determine whether or not a caregiver is meeting established requirements to manage the well-being of a patient with a debilitating medical condition. The Department of Revenue is responsible for the regulation of marijuana businesses that cultivate, manufacture, and distribute marijuana as lawfully provided for by Colorado law. To be clear, the Department of Revenue does not currently have the authority or expertise to regulate caregivers, and we believe that Public Health has the information, resources, and expertise available to effectively oversee the caregiver model. The Department of Revenue is willing to assist Public Health by sharing our experience and expertise in an effort to establish sound public policy in this area, which includes discussing controls to ensure caregivers register their cultivation operations with Revenue.

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

5(a) The Colorado Department of Revenue has met with the Department of Public Health and Environment (Public Health) on several occasions to discuss a number of issues, but no final determinations have been made about maintaining this information. The Department of Revenue will continue act in an advisory capacity to Public Health so they can determine the appropriate relationship between caregivers and those individuals to which they provide care.

5(b) The Colorado Department of Revenue has met with the Department of Public Health and Environment (Public Health) on several occasions to discuss a number of issues including the regulation of caregivers. The Department of Revenue will continue to act in an advisory capacity by sharing its experience and expertise to develop effective public policy in this area. Both Departments are working in a collaborative way with other stakeholders to explore legislative and rule making options to develop solutions customized to the caregiver portion of the medical marijuana industry.

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 II Performance Audit

AUDIT NUMBER: #2194B

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

DATE: December 2013

SUMMARY INFORMATION

Recommendation Number	Agency's Response	Original Implementation Date <i>(as listed in the audit report)</i>	Implementation Status	Revised Implementation Date
1a	Agree	December 2013	Partially Implemented	March 2014
1b	Agree	January 2014	Implemented	August 2013
1c	Agree	March 2014	Partially Implemented	
1d	Agree	March 2014	Partially Implemented	
1e	Partially Agree	July 2014	Partially Implemented	
1f	Agree	July 2014	Partially Implemented	January 2015
2a	Agree	September 2013	Implemented	June 2013
2b	Agree	September 2013	Implemented	August 2013
2c	Agree	September 2013	Implemented	August 2013
2d	Agree	December 2013	Implemented	
2e	Agree	August 2013	Implemented	
3	Agree	May 2014	Not Implemented	
4a	Agree	January 2014	Partially Implemented	May 2015
4b	Agree	December 2013	Partially Implemented	March 2014
4c	Partially Agree	December 2013	Partially Implemented	March 2014
5a	Partially Agree	June 2013	Partially Implemented	May 2014
5b	Partially Agree	December 2013	Not Implemented	May 2014

Recommendation Number	Agency's Response	Original Implementation Date <i>(as listed in the audit report)</i>	Implementation Status	Revised Implementation Date
6a	Agree	June 2014	Partially Implemented	March 2014
6b	Agree	December 2013	Partially Implemented	March 2014
6c	Agree	December 2013	Partially Implemented	March 2014
6d	Agree	December 2013	Partially Implemented	March 2014
6e	Agree	December 2013	Implemented	July 2013
6f	Agree	September 2013	Partially Implemented	May 2014
7a	Partially Agree	May 2014	Partially Implemented	May 2014
7b	Partially Agree	May 2014	Partially Implemented	May 2014
7c	Partially Agree	May 2014	Partially Implemented	May 2014
7d	Agree	July 2013	Implemented and Ongoing	
7e	Agree	December 2013	Partially Implemented	May 2014
8a	Agree	January 2014	Implemented	December 2013
8b	Agree	October 2013	Implemented	December 2013
8c	Agree	December 2013	Implemented	August 2013
9a	Agree	December 2013	Implemented	October 2013
9b	Agree	July 2013	Implemented	December 2013
9c	Agree	September 2013	Implemented	

DETAIL OF IMPLEMENTATION STATUS

Recommendation #: 1

Agency Addressed: Department of Public Health and Environment

The Department of Public Health and Environment (Public Health) should improve its oversight of physician recommendations for medical marijuana by:

- a. Discontinuing its negative confirmation process for verifying physician recommendations and instead developing a risk-based approach for positively confirming physician recommendations periodically.
- b. Revising the physician certification form to require that physicians (i) complete the cause, if known, of the patient's qualifying medical condition; (ii) explain the reason why the physician is recommending increased marijuana above the standard counts (if applicable); and (iii) attest to not having financial ties with any medical marijuana business.
- c. Working with the Colorado Medical Board to determine risk factors that Public Health can use to identify potentially inappropriate physician recommendations and to establish guidelines for initiating investigation of physicians or making physician referrals to the Colorado Medical Board for further investigation.
- d. Establishing policies and procedures for routinely analyzing data from the Medical Marijuana Registry and conducting other research as appropriate to monitor the risk factors and guidelines identified in part "c" and to identify physicians who should be referred to the Colorado Medical Board for further investigation.
- e. Establishing policies and procedures for conducting research to identify physicians who should be investigated for having financial ties with medical marijuana businesses, conducting hearings pursuant to Section 25-1.5-106(6)(b), C.R.S., and seeking statutory change if more authority is needed for obtaining physicians' records pursuant to investigations.
- f. Creating a repository on its website for evidence-based studies and other information as it becomes available on appropriate dosing of marijuana for medical use.

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

- a. Agree
- b. Agree

- c. Agree
- d. Agree
- e. Partially Agree
- f. Agree

Agency's Written Response in Audit Report:

- a. Agree. Implementation date: December 2013.

The Department has discontinued its negative confirmation process. The Department will develop and implement a risk-based approach for positively confirming physician recommendations periodically.

- b. Agree. Implementation date: January 2014.

The Department will revise the physician certification form to require that physicians (i) complete the cause, if known, of the patient's qualifying medical condition; (ii) explain the reason why the physician is recommending increased marijuana above the standard counts; and (iii) attest to not having financial ties with any medical marijuana business.

- c. Agree. Implementation date: March 2014.

The Department will work with the Colorado Medical Board to determine risk factors that the Department can use to identify potentially inappropriate physician recommendations and to establish guidelines for initiating investigation of physicians and/or making physician referrals to the Colorado Medical Board for further investigation.

- d. Agree. Implementation date: March 2014.

The Department will establish policies and procedures for routinely analyzing data from the Medical Marijuana Registry and conducting other research, as appropriate, to monitor to the risk factors and guidelines identified in part c of this Recommendation 1, and to identify physicians who should be referred to the Colorado Medical Board for further investigation.

- e. Partially agree. Implementation date: July 2014.

It is unclear if the Department has the legal authority to compel physicians making medical marijuana recommendations to provide access to their records for purposes of an investigation into their purported financial ties with medical marijuana providers. Additionally, the Department does not currently have the capacity to conduct investigations into physicians' financial ties to

medical marijuana providers. However, the Department may seek legal advice on its authority to obtain records from physicians making medical marijuana recommendations, and will explore options to develop this physician financial investigation capacity. Based upon the advice received and the availability of resources, the Department will establish policies and procedures for conducting research to identify physicians who should be investigated for violations.

- f. Agree. Implementation date: July 2014.

Pursuant to Senate Bill 13-283, the Department is required to monitor “the emerging science and medical information relevant to the health effects associated with marijuana use,” and further to appoint a panel of health care professionals to review the information and create a report every 2 years starting in January 2015. The panel report is required to be posted on the Department’s website. The Department will create a repository on this website for evidence-based studies as they become available on appropriate dosing of marijuana for medical use.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable): a) Partially Implemented; b) Implemented; c-f) Partially Implemented

Agency’s Current Comments on Implementation Status of Recommendation:

- a. The negative-confirmation process has been discontinued. A risk-based, positive affirmation process requires modifications to the computer system which are in development.
- b. Forms released August 2013 require physicians to complete the cause for all qualifying medical conditions, explain the reason for increased marijuana above the standard counts, and an attestation to not having financial ties with any medical marijuana business.
- c. The Department is researching current data and seeking advice from the Department of Regulatory Affairs regarding standards associated with the bona-fide physician-patient relationship and patient caseloads.
- d. The Department is researching current data and seeking advice from the Department of Regulatory Affairs regarding standards associated with the bona-fide physician-patient relationship and patient caseloads.
- e. The Department has requested the Attorney General’s advice regarding statutory authority to investigate financial ties between physicians and medical marijuana businesses, and the potential need for statutory changes.

- f. The Department will create a repository on this website for evidence-based studies as they become available on appropriate dosing of marijuana for medical use. The Department has a budget request in to JBC for funding to staff and support this initiative. Further information will be available after the legislative session in May 2014.

Recommendation #: 2

Agency Addressed: Department of Public Health and Environment

The Department of Public Health and Environment should improve the timeliness of processing Medical Marijuana Registry applications by:

- a. Developing and implementing mechanisms for tracking the timeliness of individual applications, the reasons that “problem” applications need to be pulled out of daily batches, the number of applications that are pulled out of daily batches, and the amount of time it takes to resolve problem applications.
- b. Establishing clear criteria for the types of “problem” applications that are or are not subject to the 35-day constitutional deadline for the completion of processing and implementing alternative processing deadlines that apply in these “problem” cases.
- c. Using the data collected in part “a” to regularly monitor the timeliness of individual applications and analyze the causes for untimely processing.
- d. Monitoring whether the “lean” improvements are enhancing efficiency and undertaking additional “lean” projects related to application processing if inefficiencies remain.
- e. Developing and implementing a performance measure related to timely processing of applications and reporting on its performance to stakeholders.

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

Agency’s Written Response in Audit Report:

- a. Agree. Implementation date: September 2013.

The Department will develop and implement mechanisms for tracking the timeliness of individual applications, the reasons that “problem” applications need to be pulled out of daily batches, the number of applications that are pulled out of daily batches, and the amount of time it takes to resolve problem applications.

b. Agree. Implementation date: September 2013.

The Department will establish clear criteria for the types of “problem” applications that are or are not subject to the 35-day constitutional deadline for the completion of processing and implementing alternative processing deadlines that apply in these “problem” cases.

c. Agree. Implementation date: September 2013.

The Department will use the data collected in part a to regularly monitor the timeliness of individual applications and analyze the causes for untimely processing.

d. Agree. Implementation date: December 2013.

The Department will measure whether the “lean” improvements are enhancing efficiency and undertake additional “lean” projects related to application processing if inefficiencies remain. The Department will conduct at least two more “lean” events.

e. Agree. Implementation date: August 2013.

The Department will develop and implement a performance measure related to timely processing, and report on its performance to stakeholders.

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

Agency’s Comments on Implementation Status of Recommendation:

a. At the time of the audit, the Department had implemented a tracking code system for tracking specific types of activity for applications. Since July 2012, the tracking code for special circumstance applications has been in place. Since June 2013, custom reports have been developed to monitor the progress of applications by transaction code. In addition, each supervisor maintains a daily record of applications that have been referred for further verification or special handling.

- b. As of August 2013, detailed application procedures have been developed to identify reasons for which applications may require special handling. Written procedures include timelines for responding to applications with special circumstances. The time to resolve applications that require special handling will vary based on the level of research and verification required. Primarily applications become a special handling case for one of the following reason:
- Additional physician verification is required
 - Non-standard documents were submitted, requiring additional verification
 - Minor patients requiring Medical Officer review
 - Documents appear to be altered and require additional verification
- c. At the time of the audit, transaction codes and reporting mechanisms were in place to enable tracking timeliness of applications, including those requiring special handling. As of August 2013, the Department has enhanced this tracking system by creating a series of reports to pull specific data pertinent to each transaction code.
- d. A comprehensive LEAN Report Out was developed to itemize the assessments and modifications conducted since July 2011. An additional LEAN event was held on October 18, 2013 to identify methods for improving performance. Modifications identified as part of this event will be implemented by December 31, 2013.
- e. Registry performance is reported annually to the Board of Health and is available publicly through these meeting minutes. The most recent report was on August 21, 2013. Turnaround time for applications was added as an annually reportable item. Minutes are available on the Board's website for public notice.

Recommendation #: 3

Agency Addressed: Department of Public Health and Environment

The Department of Public Health and Environment (Public Health) and the Department of Revenue should work together and with stakeholders, as appropriate, to determine if Public Health can discontinue maintaining information about which medical marijuana dispensary individuals on the Medical Marijuana Registry have designated as their provider. If the determination is that this information is not necessary, then Public Health should discontinue collecting this information, and both departments should work with the General Assembly, as necessary, to revise statute to implement this change of policy.

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

Agency's Written Response in Audit Report:

Agree. Implementation date: May 2014.

The Department of Public Health and Environment (Public Health) has received requests from the Department of Revenue regarding which medical marijuana dispensary individuals on the Medical Marijuana Registry have designated as their provider. If the Department of Revenue determines this information is not necessary, then Public Health will discontinue collecting this information, and will work with the General Assembly, as necessary, to revise statute to implement this change of policy.

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

Agency's Comments on Implementation Status of Recommendation:

CDPHE and DOR are currently working to identify roles and responsibilities in recording and reporting information pertaining to medical marijuana centers (dispensaries).

Recommendation #: 4

Agency Addressed: Department of Public Health and Environment

The Department of Public Health and Environment should strengthen its oversight of caregiver activities by:

- a. Developing and implementing policies and procedures for ensuring that caregivers are meeting constitutional and regulatory requirements for caregivers, including the provision that caregivers provide services beyond just providing medical marijuana to their patients. This could include implementing (i) an application for caregivers to apply for placement on the Registry, (ii) a process to issue red cards to caregivers, and (iii) policies and procedures for denying a caregiver's application and revoking a caregiver's red card. Public Health could also revise the patient red card application to include an attestation that caregivers are assuming significant responsibility for managing the patient's well-being and a section for caregivers to indicate what services beyond growing and cultivating medical marijuana they will provide.
- b. Enhancing its policies and procedures for reviewing and approving waivers for caregivers to serve more than five patients to ensure that caregivers only serve additional patients when exceptional circumstances exist. These changes should include defining the term

“exceptional circumstances” in a manner that would prevent caregivers from using the waiver to avoid becoming a licensed medical marijuana business.

- c. Working with Revenue as appropriate to (i) determine whether additional criteria are needed (e.g., number of people served, number of plants cultivated, and/or amount of finished marijuana product possessed) to identify a clear threshold that would differentiate caregivers from licensed businesses in Colorado’s medical marijuana regulatory scheme, (ii) implement policies and procedures for determining whether an individual should be classified as a caregiver or should be required to obtain a business license, and (iii) work with the General Assembly as necessary to implement the proposed changes in criteria and policies and procedures.

Agency’s Response (i.e., agree, partially agree, disagree):

- a. Agree
- b. Agree
- c. Partially Agree

Agency’s Written Response in Audit Report:

- a. Agree. Implementation date: January 2014.

The Department will revise the patient red card application to include an attestation that caregivers are assuming significant responsibility for managing the patient’s well-being, and add a section for caregivers to indicate what services beyond growing and cultivating medical marijuana they will provide. The Department will also provide guidance for staff who review the forms to determine if the prospective caregiver is in compliance with statute. The Department will also consider the other suggestions in the recommendation to determine whether any of these actions will enhance the Registry.

- b. Agree. Implementation date: December 2013.

The Department will enhance its policies and procedures for reviewing and approving waivers for caregivers to serve more than five patients to ensure that caregivers only serve additional patients when exceptional circumstances exist. These changes will include defining the term “exceptional circumstances” in a manner that would prevent caregivers from using the waiver to avoid becoming a licensed medical marijuana business.

- c. Partially agree. Implementation date: December 2013.

The Department does not currently have statutory authority to deny a caregiver request based upon the fact that a licensing regime exists under Department of Revenue (Revenue) oversight. The Department will work with Revenue to determine the statutory authority needed to define the difference between caregivers and licensed medical marijuana centers.

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

Agency's Comments on Implementation Status of Recommendation:

- a. (i) Form #MMR1012 Caregiver Acknowledgement was developed to provide caregivers with an active-consent process for inclusion in the Registry database. (ii) The process by which caregivers may receive caregiver cards is being researched. Additional financial resources may need to be allocated in order to implement this process. (iii) Form #MMR1012 Caregiver Acknowledgement includes an attestation that the caregiver is assuming significant responsibility for the patient's well-being.
- b. Procedures have been written to include reasons for rejection that are explicitly in alignment with legislation. The Patient Limit Waiver form has been discontinued and a waiver has been included as part of the Caregiver Acknowledgment, which requires both the patient and caregiver to provide information regarding the care beyond that available through a medical marijuana center. The Department has requested the Department of Regulatory Affairs and the Attorney General's opinions regarding the establishment of criteria for 'exceptional circumstances' and reasons for rejection of limit waivers that are not explicitly contained within legislation.
- c. The Department is working with the DOR to identify standards for monitoring caregiver patient loads and grow sites monitoring. Additional legislative authority may be required.

Recommendation #: 5

Agency Addressed: Department of Public Health and Environment

The Department of Public Health and Environment (Public Health) and the Department of Revenue (Revenue) should work together with medical marijuana stakeholders to better define the role of caregivers in the State's medical marijuana system and improve the State's oversight of caregivers by:

- a. Evaluating the need to continue collecting information on which caregivers have been designated by individuals as their provider. If it is determined that Public Health should continue to collect this information, then Public Health should take steps to ensure that this information is updated and accurate.
- b. Determining whether Public Health or Revenue needs greater statutory authority to effectively regulate caregivers and, if so, present proposed changes to the regulation of caregivers to the appropriate interim Committee of Reference for consideration and work with the General Assembly as necessary to implement these changes.

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

Agency's Written Response in Audit Report:

- a. Partially agree. Implementation date: June 2013.

The Department believes that the constitution requires the Department to collect information on which caregivers have been designated by individuals as their providers. The Department has updated caregiver information so that it is up-to-date and accurate.

- b. Partially agree. Implementation date: December 2013.

The Department's existing resources for the Medical Marijuana Registry are fully utilized in the processing of applications from patients, and are insufficient to support a greater regulatory role with respect to approximately 5,400 individual primary caregivers. The Department will meet with representatives from the Department of Revenue to determine whether an effective regulatory model could be developed to strengthen the oversight over primary caregivers, and in so doing will work with the Attorney General's Office to determine whether greater statutory authority is needed to implement such a model.

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

Agency's Comments on Implementation Status of Recommendation:

- a. Form #MMR1013 Provider Information Update was released on August 1, 2013 to provide a mechanism for caregivers to update data within the Registry's system. Change of Patient Records are being processed within four weeks to ensure caregiver information is current with application data. The Registry is working with DOR to determine the level of information that needs to be maintained by the Registry for patient care purposes.

- b. The Department is working with DOR to establish roles and responsibilities for caregiver oversight. Additional legislative authority may be required.

Recommendation #: 6

Agency Addressed: Department of Public Health and Environment

The Department of Public Health and Environment (Public Health) should ensure the confidentiality of patient, physician, and caregiver information in the Medical Marijuana Registry (the Registry) by:

- a. Seeking guidance from the Attorney General on what constitutes an “authorized employee” of Public Health who can be given access to the Registry and, based on the Attorney General’s guidance, working with the General Assembly as necessary to define “authorized employee” in statute.
- b. Seeking guidance from the Attorney General on whether protected Registry information includes pending applications that patients have submitted to obtain a red card and, based on the Attorney General’s guidance, working with the General Assembly as necessary to clarify in statute what information is protected Registry information.
- c. Seeking guidance from the Attorney General on what confidential Registry information, including the amount of medical marijuana physicians recommend for specific patients (i.e., plant counts and ounce counts), Public Health has authority to provide to law enforcement agencies, including through the Registry’s interface with the Colorado Crime Information Center, and based on the Attorney General’s guidance, working with the General Assembly as necessary to clarify in statute what information can be shared with law enforcement and under what circumstances.
- d. Developing and implementing policies and procedures for ensuring that all contracts involving the Medical Marijuana Registry are complete, accurate, and up-to-date and reviewing and amending as appropriate the contracts with Denver Health and Hospital Authority. Contracts should also include provisions that outline requirements for individuals accessing Registry data, including requirements to sign confidentiality statements.
- e. Revising its policy for handling confidentiality breaches to allow the flexibility to inform the affected parties in a way that minimizes further compromise of confidentiality.
- f. Ensuring that staff take proper precautions to protect confidential data and follow policies as revised in part “e” when breaches of confidentiality occur.

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

Agency's Written Response in Audit Report:

- a. Agree. Implementation date: June 2014.

The Department will work with its attorneys to define what constitutes an “authorized employee” of Public Health who can be given access to the Registry and to provide clear guidance on permitting access to the Registry by individuals who do not meet the definition of an authorized employee of Public Health. The Department will also work with its attorneys to determine whether statutory or regulatory changes are needed to provide this clarity.

- b. Agree. Implementation date: December 2013.

The Department will seek an opinion from the Attorney General's Office as to whether protected Registry information includes pending applications and based on the guidance will work with the General Assembly as necessary to clarify in statute what information is protected Registry information.

- c. Agree. Implementation date: December 2013.

The Department will seek an opinion from the Attorney General's Office to clarify what confidential Registry information, including the amount of medical marijuana physicians recommend for specific patients (i.e., plants counts and ounce counts), the Department has authority to provide to law enforcement agencies, including through the Registry's interface with the Colorado Crime Information Center. Based on the opinion received from the Attorney General's Office, the Department will work with the General Assembly as necessary to clarify in statute what information can be shared with law enforcement.

- d. Agree. Implementation date: December 2013.

The Department will develop and implement policies and procedures for ensuring that contracts involving the Medical Marijuana Registry are complete, accurate, and up-to-date, and review and amend as appropriate the contracts with Denver Health and Hospital Authority. Contracts will include provisions that outline requirements for individuals accessing Registry data, including requirements to sign confidentiality statements.

- e. Agree. Implementation date: December 2013.

The Department will revise its policy for handling confidentiality breaches to allow the flexibility to inform the affected parties in a way that minimizes further compromise of confidentiality.

f. Agree. Implementation date: September 2013.

The Department will ensure that staff take proper precautions to protect confidential data and follow established procedures and policies, as revised in part e, when breaches of confidentiality occur.

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

Agency's Comments on Implementation Status of Recommendation:

- a. The Department has requested guidance from the Attorney General regarding what constitutes an “authorized employee.”
- b. The Department has requested guidance from the Attorney General regarding whether pending applications are considered protected information.
- c. The Department has requested guidance from the Attorney General regarding what confidential Registry information can be shared with law enforcement agencies and under what circumstances.
- d. All contractors are required to sign a confidentiality agreement prior to gaining any level of access to protected information at the Registry. Contracts have been reviewed to ensure the scope of work includes Registry specific tasks. The Denver Health and Hospital Authority contract is under review for renewal, a Registry-specific set of deliverables is included in the new contract.
- e. The Registry has developed its confidentiality procedures and handling of breaches in compliance with the Department’s information security standards. Additional language to address situations for which it is not considered required to report the release of confidential information as a breach was added in July 2013.
- f. The Registry leadership team is developing a systems and performance audit process to identify general error rates and trend to identify areas for staff development and training.

Recommendation #: 7

Agency Addressed: Department of Public Health and Environment

The Department of Public Health and Environment should improve the Medical Marijuana Registry's (the Registry) general computer controls by:

- a. Developing a system to capture and record which fields within a registrant's record were modified by a user within the Registry, and to provide historical information for key fields as identified by the business owner.
- b. Identifying fields that require data input controls and implementing those controls into the system.
- c. Developing a mechanism for identifying physicians that are no longer eligible to recommend medical marijuana.
- d. Creating a disaster recovery plan for the Registry so that it incorporates all critical components associated with the Registry and meets the requirements listed in Colorado Information Security Policies.
- e. Encrypting all backups of Registry data that contain any registrant records and sending encrypted Registry database backups to an off-site storage location.

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

- a. Partially Agree
- b. Partially Agree
- c. Partially Agree
- d. Agree
- e. Agree

Agency's Written Response in Audit Report:

- a. Partially agree. Implementation date: May 2014.

Modifying the current computer system to accommodate these changes is not feasible. The Department will explore options to obtain resources to procure a computer system that meets these requirements.

b. Partially agree. Implementation date: May 2014.

Modifying the current computer system to accommodate these changes is not feasible. The Department will explore options to obtain resources to procure a computer system that meets these requirements.

c. Partially agree. Implementation date: May 2014.

Modifying the current computer system to accommodate these changes is not feasible. The Department will explore options to obtain resources to procure a computer system that meets these requirements.

d. Agree. Implementation date: July 2013.

The Department has now created a disaster recovery plan that incorporates all critical Registry components and meets the requirements listed in the Colorado Information Security Policies.

e. Agree. Implementation date: December 2013.

The Department will work with OIT to encrypt backup data and send it to an off-site location.

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

Agency's Comments on Implementation Status of Recommendation:

a. System upgrades are in development to enhance the Registry's ability to capture and record which fields within a registrant's record have been modified and by whom. Upgrades are anticipated May 2014.

b. The Registry has identified fields that require data input controls. These controls are part of the system upgrade slated for May 2014.

c. Data input controls regarding physician eligibility are part of the system upgrade slated for May 2014.

- d. The Department is working with OIT to update the current disaster recovery plan. Based on findings from an internal information security audit, a system risk assessment has been recommended. The results of this assessment will further inform the disaster recovery plan.
- e. As part of the disaster recovery plan and the system risk assessment, encryption options are being discussed with OIT.

Recommendation #: 8

Agency Addressed: Department of Public Health and Environment

The Department of Public Health and Environment should improve its management of the Medical Marijuana Cash Fund (Cash Fund) by:

- a. Suspending or reducing the Medical Marijuana Registry application fee until the Cash Fund's excess reserve balance is in compliance with reserve requirements in Section 24-75-402, C.R.S.
- b. Developing a proposal for further reducing the Cash Fund's excess reserve balance and to include the proposal in its Fiscal Year 2015 budget request submitted to the Joint Budget Committee, and working with the General Assembly as needed to implement the proposal.
- c. Developing policies and procedures for annually reviewing the reasonableness of the Medical Marijuana Registry application fee, including in the analysis any excess reserves in the Medical Marijuana Cash Fund, and making timely recommendations for fee modifications to the Board of Health to ensure the fund balance remains within statutory limits based on the results of the annual analysis.

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

Agency's Written Response in Audit Report:

- a. Agree. Implementation date: January 2014.

The Department will go to the Board of Health to request a hearing to adjust or suspend the fee to reduce the excess reserve balance.

- b. Agree. Implementation date: October 2013.

The Department will seek an opinion from the Attorney General's Office on the appropriate uses of the fund balance. Based on this opinion, the Department will develop a proposal for reducing the Medical Marijuana Cash Fund's excess reserve balance.

c. Agree. Implementation date: December 2013.

The Department will develop policies and procedures for annually reviewing the reasonableness of the Medical Marijuana Registry application fee, including in the analysis any excess reserves in the Medical Marijuana Cash Fund, and making timely recommendations for fee modifications to the Board of Health to ensure the fund balance remains within statutory limits based on the results of the annual analysis.

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

Agency's Comments on Implementation Status of Recommendation:

- a. The Department submitted a proposal for a time-restricted reduction of the application fee to the Board of Health in December 2013 to reduce the excess reserve balance.
- b. The Department submitted a proposal for a time-restricted reduction of the application fee to the Board of Health. The actual fee will be included as part of the Fiscal Year 2015 budget that was approved by the Board of Health in December 2013.
- c. As of August 2013, written procedures are in place for the annual review of reasonableness of the Medical Marijuana Registry application fee.

Recommendation #: 9

Agency Addressed: Department of Public Health and Environment

The Department of Public Health and Environment should improve its controls over expenses from the Medical Marijuana Cash Fund by:

- a. Developing policies and procedures for the allocation of shared direct expenses.
- b. Following State Fiscal Rules, State Personnel Rules, and department policies and procedures when expending funds.
- c. Ensuring that all staff in a position to review, approve, and allocate expenses have received training on applicable policies and procedures.

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

Agency's Written Response in Audit Report:

- a. Agree. Implementation date: December 2013.

The Department will develop policies and procedures for allocating shared Medical Marijuana Cash Fund expenses.

- b. Agree. Implementation date: July 2013.

The Department will follow state rules and department policies when expending funds and will document those actions at the time of the expense.

- c. Agree. Implementation date: September 2013.

The Department will train those reviewing, approving and allocating expenses on the applicable policies and procedures.

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

Agency's Comments on Implementation Status of Recommendation:

- a. Procedures for allocating shared expenditures have been implemented by fiscal staff as of October 2013.
- b. The Registry's standard for financial management is based on State Fiscal and Personnel Rules as of December 2013.
- c. Training on state rules will be included as part of the hiring procedures and staff development strategies. Staff awareness will be evaluated as part of performance evaluations. As of September 2013, all fiscal staff are trained in the state rules.

Item No.	Audit/Department/Recommendation	Deputy/ Manager	Drafter	Sponsor/ Cosponsor	Comments
1	<p>Medical Marijuana Regulatory System, Part II Department of Public Health and Environment & Department of Revenue (Performance Audit, June 2013)</p> <p>Rec. 4c – Determine whether additional criteria are needed to differentiate a caregiver from a medical marijuana business and work with the General Assembly to implement any proposed changes.</p> <p>Rec. 5b – Determine whether Public Health or Revenue needs greater statutory authority to regulate caregivers, and if so, present proposed changes to the General Assembly as necessary.</p> <p>Rec. 6a – Seek guidance from the Attorney General on what constitutes an “authorized employee” of Public Health who can be given access to the Registry and work with the General Assembly as necessary to define.</p>	Bowers/ Frant			<p>Rec. 4c – CDPHE would like to have LAC assistance on legislation to clarify the number of patients a caregiver may have before he or she is classified as a business/dispensary.</p> <p>Rec. 6a - CDPHE would like to have LAC assistance on legislation regarding contract employee access to the medical marijuana registry.</p> <p>12/9/2013 – Discussion was tabled until a future LAC hearing. The LAC requested more information about what a caregiver is and does before setting the number of patients a caregiver can have.</p> <p>OSA will work with the Departments to provide the LAC with clarifying information on caregivers. The Departments will provide to the LAC the constitutional definition of caregivers and the Board of Health definition.</p>

Item No.	Audit/Department/Recommendation	Deputy/ Manager	Drafter	Sponsor/ Cosponsor	Comments
2	<p>Conservation Easement Tax Credit Division of Real Estate and Department of Revenue (Performance Audit, September 2012)</p> <p>Rec. 10 – The Division of Real Estate (DRE) and the Department of Revenue (DOR) should evaluate options for protecting the State’s investment of public resources in tax-credit-generating conservation easements when the conservation easement holder is no longer certified. <u>DRE and DOR should report back to the Legislative Audit Committee and the House and Senate Finance Committees by July 1, 2013</u>, on viable options and pursue statutory and/or regulatory change, as appropriate. At a minimum, options that should be considered include:</p> <p>a. Strengthening DRE’s ability to investigate complaints against conservation easement holders that hold tax-credit-generating conservation easements, regardless of whether or not the holder is certified.</p> <p>b. Utilizing assignment clauses in the deeds for tax-credit-generating conservation easements that reserve the State’s right to require the transfer of the easement to another certified conservation easement holder when the original holder ceases to exist; is no longer certified; or is unwilling, unable, or unqualified to enforce the terms and provisions of the easement.</p>	Bowers/ Fugate			<p>Rec. 10 – The Division of Real Estate (DRE) took the lead and prepared an analysis of different options that may be available for protecting the State’s investment in tax-credit-generating conservation easements when the conservation easement holder is no longer certified. DRE is committed to working with the legislature and industry as necessary to implement additional protections for tax-credit generating conservation easements. However, DRE does not believe legislation is needed at this point in time. DRE will continue to monitor the issue raised in Recommendation No. 10 of the audit report as the conservation easement tax credit program matures, as DRE works to implement the programmatic changes called for by Senate Bill 13-221, and as DRE staff review conservation easement holders’ policies and practices as part of its conservation easement holder certification program.</p> <p>12/9/2013 - Discussion was tabled until Representative Sonnenberg returns for the 1/14/2014 LAC hearing.</p>

Item No.	Audit/Department/Recommendation	Deputy/ Manager	Drafter	Sponsor/ Cosponsor	Comments
3	<p>Public School Capital Construction Assistance Program Department of Education (Performance Audit, September 2013)</p> <p>Rec. 3a – Evaluate whether statutory change is necessary to allow the Capital Construction Assistance Board to use remaining bonded indebtedness as a factor in determining the match percentage required from each school district for program grants and whether adjustments are needed to the other statutory factors to be considered when calculating the matching funds requirements.</p>	Bowers	Jason Gelender		<p>The Department is interested in working with the LAC on legislation to allow the Capital Construction Assistance Board to use additional factors, including available bonding capacity, in determining the match percentage required from each school district for BEST grants.</p> <p><u>12/9/2013</u> - The LAC voted 6-0 in favor of going forward with legislation. A bill draft was requested. Please see attached Bill Draft LLS NO. 14-0672.01.</p>

Item No.	Audit/Department/Recommendation	Deputy/ Manager	Drafter	Sponsor/ Cosponsor	Comments
4	<p>Outdoor Advertising Program Department of Transportation (Performance Audit, May 2013)</p> <p>Rec. 3a – Create and use a dedicated roadside advertising fund into which the revenues collected from permit application and renewal fees can be deposited and to which costs for operating the Program can be charged, or seek statutory change to remove the requirement.</p>	Devlin/ Colin	Jason Gelender		<p>Rec. 3a – The Department would like to pursue legislation with help from the LAC to create a cost recovery center within the State Highway Fund where all fees collected from the Outdoor Advertising Program shall be deposited. The Department would also like the legislation to require that all TODS and LOGOS revenue be expended on those programs’ administrative costs, if any, and that all remaining balances be credited to the State Highway Fund for transportation projects.</p> <p>12/9/2013 - The LAC voted 6-0 in favor of going forward with legislation for Recommendation 3a. Please see attached Bill Draft LLS NO. 14-0674.01.</p>
5	<p>Colorado Lottery (Performance Audit, August 2013)</p> <p>No related recommendation.</p>	Colin	Jason Gelender		<p>12/9/2013 - Senator King requested the LAC consider turning the Lottery back in to a Type 1 Commission. The LAC voted 6-0 in favor of going forward with legislation to turn the Lottery into a Type 1 Commission. Please see attached Bill Draft LLS NO. 14-0673.01.</p>