

FEASIBILITY AND COST OF OUTSOURCING THE MEDICAL MARIHUANA PROGRAM

(FY2010 Appropriation Bill - Public Act 131 of 2009)

March 1, 2010

Section 727: By March 1 of the current fiscal year, the department shall report to the house and senate appropriations subcommittees on community health, the house and senate fiscal agencies, and the state budget director on the feasibility and cost of outsourcing the medical marihuana program. The report shall include the current projected annual cost of the program and the current projected annual fee revenue. If the report identifies privatization savings of 10% or greater and privatization is allowable under the Michigan medical marihuana act, 2008 IL 1, MCL 333.26421 to 333.26430, the department, in consultation with the department of management and budget, shall establish and implement a bid process to identify a private or public contractor to provide management of the medical marihuana program.

*Michigan Department
of Community Health*



Jennifer M. Granholm, Governor
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STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF COMMUNITY HEALTH

REPORT TO THE LEGISLATURE

PA 131 OF 2009
SECTION 727.

FEASIBILITY AND COST OF OUTSOURCING THE
MEDICAL MARIHUANA PROGRAM

March 1, 2010

I. Background

This report is submitted in response to boilerplate language in PA 131 of 2009, Sec. 727, which requires the Department of Community Health, by March 1 of the current fiscal year, to:

“report to the house and senate appropriations subcommittees on community health, the house and senate fiscal agencies, and the state budget director on the feasibility and cost of outsourcing the medical marihuana program. The report shall include the current projected annual cost of the program and the current projected annual fee revenue. If the report identifies privatization savings of 10% or greater and privatization is allowable under the Michigan medical marihuana act, 2008 IL 1, MCL 333.26421 to 333.26430, the department, in consultation with the department of management and budget, shall establish and implement a bid process to identify a private or public contractor to provide management of the medical marihuana program. “

II. Feasibility of Outsourcing the Medical Marihuana Program

The Michigan Medical Marihuana Act requires the Department of Community Health to establish and administer the Medical Marihuana Program (MMP). In assessing the feasibility of outsourcing the program, the Department evaluated whether it could enter into a contract with a private or public contractor to provide management of the MMP and specifically whether a private, non-governmental entity could process the applications for registry identification cards for qualifying patients and primary caregivers under the Michigan Medical Marihuana Act (MMA).¹ Although the Act does not expressly authorize the Department to outsource this work, the Department under the Public Health Code² may contract with a private vendor to process the applications.

Subsection (6)(c) of the MMA³ requires the Department to approve or deny applications for registry identification cards for qualifying patients and primary caregivers:

The department shall verify the information contained in an application or renewal submitted pursuant to this section, and shall approve or deny an application or renewal within 15 days of receiving it

Similarly, subsection (6)(d) of the MMA⁴ requires the Department to issue registry identification cards within 5 days of approving an application:

The department shall issue registry identification cards within 5 days of approving an application or renewal, which shall expire 1 year after the date of issuance. . . .

¹ MCL 333.26421 *et seq.*

² MCL 333.1101 *et seq.*

³ MCL 333.26426(6)(c).

⁴ MCL 333.26426(6)(d).

Neither one of these subsections expressly authorize anyone other than the Department to carry out these legal duties.

Even though the MMA does not expressly authorize anyone other than the Department to process the applications for registry identification cards, section 2226 of the PHC⁵ authorizes the Department to execute agreements with persons to assist the Department in carrying out its duties:

The department may:

* * *

(c) Enter into an agreement, contract, or arrangement with governmental entities or other persons necessary or appropriate to assist the department in carrying out its duties and functions.

Section 2226 of the PHC authorizes the Department to contract with a private entity to “assist the Department in carrying out its duties and functions.” Processing those applications is one of the Department’s “duties and functions,” and the Department may enter into an agreement with “governmental entities or other persons” to carry out those duties. If the Department were to find that it is “necessary or appropriate” to contract with a private entity to process the applications, then section 2226 of the PHC would authorize the Department to contract with a private entity.

The MMA requires the Department to perform the administrative duty of processing applications. It is the Department’s opinion that making the final determinations on whether an application is approved or denied should remain with the Department; it would be an improper delegation of the Department’s authority for a contractor to make the actual decision to grant or deny the application. There should not be an issue contracting with a private entity to review applications for background, form and content and making a recommendation to the Department. This could be satisfied by having a process where the Department reviews/approves the recommendations from the private contractor based on its application review. The contractor could perform functions to assist the Department in performing its duties and functions, but not completely assume those duties and functions. This would result in a more complicated process, reduce opportunities for efficiency, and require both the Department and the contractor to hire staff to handle their respective responsibilities. Under MCL 333.26426(c), the Department must approve or deny an application within 15 days. Having the Department retain final decision-making authority, there may be practical difficulties in completing the entire approval process within 15 days.

Even though the Department may delegate its duty to process applications and make recommendations for approval to a private contractor, the Department also has confidentiality obligations under the MMA.⁶ If the Department were to contract with a private contractor, then the Department would have to require the contractor to comply with those confidentiality obligations. The Department currently links its system with the state police’s Law Enforcement Information Network (LEIN), and it is not clear whether a private contractor would have access

⁶ See MCL 333.26426(h).

to LEIN. Subsection (6)(h) of the MMA⁷, however, only requires the Department to verify with law enforcement whether a registry identification card is valid. If the Department were to contract for the processing of the applications, it might require the contractor to provide the Department with a current list of valid registry identification cards. If the State Police would not or could not provide access to LEIN to a private contractor, then the Department might rely upon the information from the contractor to then directly report that information to the State Police upon request, and therefore fulfill its obligation. This assumes that under the terms of the contract with the private entity the Department no longer maintains the MMP registration database.

II. Cost of the Medical Marihuana Program

A. Program Statistics

As of February 22, 2010, the Michigan Medical Marihuana Registry has received 17,355 applications with 12,917 cards issued to 9,105 patients and 3,812 caregivers; there are currently 6,339 registrations pending due to lack of staff. Initially the Bureau of Health Professions received an average of 50 applications per day. By January 2010 the average number of applications received daily increased to 80 and February 2010 has seen an increase to 162 applications per day.

B. Medical Marihuana Program Fees

MCL 333.26425 gives the Department the authority to establish application and renewal fees that generate revenues sufficient to offset all expenses of implementing and administering the MMA through the promulgation of Administrative Rules. The Department reviewed the application and renewal fees established by those states with existing Medical Marihuana programs and established fees based on the average fees charged by other jurisdictions. Currently, the fee for a new or renewal application is \$100.00, unless a qualifying patient can demonstrate his or her current eligibility in the Medicaid program or receipt of current SSD or SSI benefits, in which case the application fee is \$25.00. Approximately 60% of the applicants qualify for the reduced fee.

C. First Year Anticipated Costs and Revenues

<u>Revenue</u>	
Actual revenue from April 2009 – January 2010	\$1,025,981
Estimated annual revenue – Year 1	\$1,231,177
<u>Program Costs</u>	
Estimated annual expenses	\$ 717,179
<u>Estimated Balance in Fund</u>	\$ 513,997

⁷ MCL 333.26426(h)(3).

D. Second Year Anticipated Costs and Revenue

Revenue

Estimated annual revenue – Year 2 \$1,100,385 to \$2,024,165*

** Based on estimates of 81 applications/renewals per day to 149 applications/renewals per day.*

Program Costs

Estimated annual expenses – Year 2 \$1,163,687*

** The department has determined that additional staff and resources will be necessary to comply with the required timeframes. Initial estimates are that a minimum of five additional full time staff will be necessary. Assumes 98% of the individuals who received a permit in Year 1 will reapply in year 2. It should be noted that the renewal process requires the same process as an initial application so resource demand is the same.*

III. Estimating Program Volume

One of the difficulties encountered in estimating revenue and expenses associated with the program, as well as estimating the cost of outsourcing, is the inability of the Department to accurately estimate the number of applications it will receive on an annual basis. Although the Department expects the volume of new applications to eventually taper off, there is no way to know when the Department might begin to see a significant decrease in the number of new applications. In addition to new applications, the Department estimates that approximately 96-98% of individuals holding a registration card will renew each year. For example, the Department estimates that in Year 2, approximately 14,000 renewal applications will be processed. In addition, the Department will continue to receive new applications on a daily basis. The Department assumes it will continue to receive an average of 80-100 applications daily for most of Year 2. It would be reasonable to assume that the Department could double the current number of permit holders by the end of Year 2, resulting in a total of 26,000-28,000 permit holders. This means that for Year 3, the Department would be renewing approximately 24,000-26,000 permits as well as approving new applications throughout the year.

IV. Cost of Privatizing the Medical Marijuana Program

The Department has requested informal information from two vendors regarding the possible cost of processing data-entry and creation of cards for the program.

- The National Medical Marijuana Foundation which is located in Sarasota, Florida has offered a pricing proposal based on a per unit cost. If the Department continues to receive the number of new applications it receives per month, for the next year, the cost for processing new patients or caregivers would total \$709,800. The Department also needs to process renewals for an anticipated 20,000 current patients and caregivers which would result in an additional cost of \$215,000. The total for these two functions would be \$924,800. There would be an additional charge for changes to records.

The Department would continue to incur expenses associated with approving or denying the applications as described in Section II, Feasibility of Outsourcing the Medical Marihuana Program. The estimated cost for processing approvals or denials, including contract administration and management of Department staff, would total \$451,049.

Based on the current information available to the Department, the estimated annual cost of outsourcing portions of the Medical Marihuana Program, including costs that would continue to be incurred by the Department, would be approximately \$1,375,849.

- The second vendor, Greenlife docs.com of Los Angeles, California, submitted a proposal based on a range of costs. Based on the information submitted by the vendor, the cost for processing new patients or caregivers could range from \$811,200 to \$1,216,800. There would be an additional cost of \$400,000 - \$600,000 for processing renewals. There would also be an annual service charge of \$60,000 - \$120,000. The total cost for providing their services could range from \$1,271,200 - \$1,936,800.

The estimated cost for this vendor, combined with the Department's ongoing costs, would be approximately \$1,722,249 to \$2,387, 849.

The estimated annual cost of outsourcing portions of the program to either vendor exceed the cost of retaining the program in the Department, based on an estimated cost to the Department of \$1,163,687.

No Michigan vendors were identified as having current capabilities for this specialized program although some have expressed an interest in developing a system.

V. Conclusion

- The Department would be prohibited from establishing and implementing a bid process to identify a private or public contractor to perform all functions of the medical marihuana program. The Department could establish a bid process to identify an entity to perform data-entry and create and distribute registration cards. The Department would retain the final decision-making authority regarding the issuance of a registration to a patient or caregiver. After obtaining the Department's authorization to approve or deny the application, the contractor could issue the registration card or denial letter. Such a process would be cumbersome, difficult to complete within the timeframes provided in MCL 333.26426(c), and would result in additional inefficiencies.
- Clarification should be sought from the Office of the Attorney General as to whether the confidentiality provisions in MCL 333.26426(h) would prevent the Department from entering into a contract with a private or public contractor for the purpose of administering the medical marihuana program.

- The application and renewal fees established in the Administrative Rules are reasonable compared to other states with medical marijuana programs and are sufficient to support the cost of managing the program. Based on the information the Department did obtain, outsourcing the program would be costlier and the Department would not realize a privatization savings of 10% or greater.