

State Notes

TOPICS OF LEGISLATIVE INTEREST

Spring 2018



Overview: Michigan's Medical Marihuana Laws and Funding **By Elizabeth Raczkowski, Fiscal Analyst**

Introduction

Two laws currently govern the use and distribution of medical marihuana in Michigan. In 2008, voters approved an initiative known as the Michigan Medical Marihuana Act (MMMA), which has since undergone several amendments. This Act permits Michigan residents with debilitating medical conditions to use marihuana for medicinal purposes. The Michigan Medical Marihuana Facilities Licensing Act, enacted in 2016, establishes a regulatory framework for licensing medical marihuana facilities.

This article provides an overview of both statutes, their appropriations history, current revenue and expenditures, and participation data for the registry program under the MMMA.

Michigan Medical Marihuana Act

The Michigan Medical Marihuana Act permits qualifying patients (individuals diagnosed with a debilitating medical condition) to use marihuana for medicinal purposes. Patients are required to apply for and receive a medical marihuana registry identification card in order to possess, use, or grow marihuana. They may select a caregiver to assist them in handling and administering their treatments, but are not required to do so. Amendments to the Act in 2012 and 2016 created additional requirements and provided for marihuana-infused products.

Administration of the Act initially was the responsibility of the Bureau of Health Professions in the Department of Community Health. In 2011, the Bureau was moved to the Department of Licensing and Regulatory Affairs (LARA) by Executive Order 2011-4. The registry program is now administered by the Bureau of Medical Marihuana Regulation (BMMR). Patients are required to pay a \$60 fee for a new or renewal application, and the application form requires the patient to include a \$25 fee if he or she is designating a caregiver. Active registered patients are charged a \$35 fee to add or change a caregiver. An additional fee of \$10 is imposed for actions such as terminating a caregiver's association with a patient. The Act requires caregivers to pay a \$25 processing fee each time their eligibility must be verified.

Patient Requirements

Under the MMMA, a qualifying patient who has a registry ID card is not subject to arrest, prosecution, civil penalty, or disciplinary action for the medical use of marihuana. In order to obtain an ID card, patients must be certified by a physician as having a serious or debilitating medical condition that is likely to be alleviated by the use of marihuana. The Act's definition of "debilitating medical condition" identifies nine diseases or conditions, as well as a chronic or debilitating disease or medical condition or its treatment that produces one or more of the five symptoms listed in the definition, which include severe nausea, seizures, and severe and chronic pain. In addition, the Department has approved post-traumatic stress disorder as a debilitating condition. In effect, 15 conditions are currently approved for treatment. Many

patients report more than one of these conditions. Severe and chronic pain is the most commonly cited ailment. The BMMR may consider allowing additional conditions to be treated with marihuana at its discretion, subject to final approval of the LARA Director.

Physicians recommending patients for approval under the MMMA are required to have thoroughly reviewed the patient's medical history and conducted an informed examination. In order to obtain an ID card, patients must have this physician certification.

Patient possession is limited to 2.5 ounces of useable marihuana and useable marihuana equivalents (useable marihuana in a marihuana-infused product, such as an edible substance). Patients who have not designated a caregiver also may cultivate up to 12 marihuana plants.

Caregiver Requirements

A primary caregiver may obtain a registry ID card under the MMMA and assist up to five patients with the medical use of marihuana. A primary caregiver who has a registry ID card is not subject to arrest, prosecution, civil penalty, or disciplinary action for assisting a qualified patient.

Caregivers must be at least 21 years old and have no violent felony convictions within the past 10 years and have never been convicted of a drug-related felony. Caregivers may be paid for their services and may cultivate up to 60 plants total, provided they are registered to assist five patients. A caregiver also may possess a total of 2.5 ounces of usable marihuana and useable marihuana equivalents per patient.

Regulations on Cultivation and Transportation

Marihuana plants are required to be kept in a locked, enclosed facility, which may include a vehicle under limited circumstances. Patients and caregivers transporting a marihuana product in a vehicle must keep the product in a sealed, labeled container that is not readily accessible to the driver or passengers.

Registry Program Participation, Revenue, and Expenditures

Participation in the Michigan Medical Marihuana Program has exceeded initial estimates. By fiscal year (FY) 2010-11, nearly 120,000 patients had been approved, along with more than 45,000 caregivers. The program has seen continual annual growth in both patient and caregiver numbers since FY 2013-14, as shown in Table 1.



Table 1

| Registry Program Participation Trends | | | | | | |
|--|-----------------|---------------|-------------------|---------------|---------------------------|---------------|
| Fiscal Year | Patients | Change | Caregivers | Change | Total Participants | Change |
| 2010-11 | 119,470 | - | 45,289 | - | 164,759 | - |
| 2011-12 | 124,131 | 3.9% | 50,188 | 10.8% | 174,319 | 5.8% |
| 2012-13 | 118,368 | (4.6%) | 27,046 | (46.1%) | 145,414 | (16.6%) |
| 2013-14 | 96,408 | (18.6%) | 22,966 | (15.1%) | 119,374 | (17.9%) |
| 2014-15 | 182,091 | 88.9% | 34,269 | 49.2% | 216,360 | 81.2% |
| 2015-16 | 218,556 | 20.0% | 38,107 | 11.2% | 256,663 | 18.6% |
| 2016-17 | 269,553 | 23.3% | 43,183 | 13.3% | 312,736 | 21.8% |

Source: Department of Licensing and Regulatory Affairs. Boilerplate reports for each fiscal year are available on LARA's website.

As of February 2018, the total number of active approved patients was 279,925. From FY 2012-13 to FY 2016-17, the denial rate for new patient applications averaged 19.6%, while renewal application denials averaged 14.8%. In 2017, 130,661 ID Cards were issued. Renewals comprised 14.7% of this total. Program revenue has exceeded administrative expenditures for each year of the registry program, as shown in [Table 2](#).

Table 2

| Program Revenue and Expenditures | | | | |
|---|---------------------|----------------|---------------------|----------------------------------|
| Fiscal Year | Applications | Revenue | Expenditures | Revenue/ Expenditures |
| 2012-13 | 133,890 | \$10,612,250 | \$3,767,452 | 282% |
| 2013-14 | 116,981 | 8,882,419 | 5,863,496 | 151% |
| 2014-15 | 103,969 | 7,086,259 | 4,756,905 | 149% |
| 2015-16 | 148,908 | 9,866,902 | 4,470,223 | 221% |
| 2016-17 | 152,434 | 10,056,379 | 4,832,071 | 208% |

Source: Department of Licensing and Regulatory Affairs.

Medical Marihuana Facilities Licensing Act

The Medical Marihuana Facilities Licensing Act (MMFLA) governs the licensure and regulation of facilities for the cultivation, processing, transportation, and sale of medical marihuana.¹ A person may apply for licensure as a grower, processor, transporter, provisioning center (retailer), or safety compliance (testing) facility. In addition to a \$6,000 application fee, successful applicants (excluding testing facilities) must pay an annual regulatory assessment.

The Act is administered by the Medical Marihuana Licensing Board within LARA. The Board consists of five members who are appointed by the Governor. The Board's duties include

¹ For a detailed description of the legislation enacted in 2016, please see the Senate Fiscal Agency ["Summary as Enacted" of House Bills 4209, 4210, and 4827](#), dated 9-23-16: House Bill 4209 enacted the Michigan Marihuana Facilities Licensing Act, House Bill 4210 amended the Michigan Medical Marihuana Act, and House Bill 4827 enacted the Marihuana Tracking Act.

granting or denying license applications, and providing oversight of marihuana facilities. The Board may suspend, revoke, or restrict a license if the licensee violates the Act, rules promulgated under it, a municipality's marihuana facility ordinance, or the Marihuana Tracking Act (which was enacted in conjunction with the MMFLA).

As with the MMMA, local decisions and regulations will restrict the distribution and number of facilities. In order for a facility to be licensed, the municipality in which it is located must first pass an ordinance authorizing that particular type of facility. Municipalities may require licensees to pay an annual fee of up to \$5,000.

License Types

All licensees are subject to restrictions and conditions. Licensee categories are as follows:

- *Growers* may sell marihuana to processors, provisioning centers, and other growers. Growers typically may transfer marihuana only by a secure transporter, but they may sell and transport seeds, seedlings, and tissue cultures to caregivers and other growers without a secure transporter. Commercial entities may be of one of three classes based on the maximum number of plants they will grow: Class A (500), Class B (1,000), and Class C (1,500).
- *Processors* may purchase marihuana from growers and extract resin from the marihuana or create marihuana-infused products for sale and transfer in packaged form to a provisioning center or another processor. Generally, processors may transfer marihuana only through a secure transporter.
- *Secure transporters* may store and transport marihuana between facilities, but not to patients or caregivers.
- *Provisioning centers* are permitted to purchase marihuana from processors and growers and sell to qualifying patients and registered caregivers.
- *Safety compliance facilities* receive marihuana from a marihuana facility or registered caregiver, perform testing, and return the test results. They also may return the marihuana to a facility. Safety compliance facilities are permitted to transport marihuana to and from other licensed facilities.

Funds

Three funds are dedicated to medical marihuana-related purposes. End-of-year balances and returns on investments remain in their respective funds and do not lapse to the General Fund at the end of the fiscal year. Each fund is created within the Department of Treasury.

- *Marihuana Registry Fund*

The Marihuana Registry Fund was established by the Michigan Medical Marihuana Act. All fees collected for the registry program are deposited in this Fund and used to administer the Michigan Medical Marihuana Program. Table 3 lists the beginning and ending Fund balances for FY 2015-16 through FY 2018-19, as estimated.



Table 3

| Marihuana Registry Fund Balance | | |
|--|-------------------------------|------------------------------|
| Fiscal Year | Beginning Fund Balance | Year-End Fund Balance |
| 2015-16 | \$28,031,910 | \$32,564,150 |
| 2016-17 | 32,564,149 | 34,167,781 |
| 2017-18 | 34,167,781 | 28,183,181* |
| 2018-19 | 28,183,181* | 32,531,781* |

* As estimated in the FY 2018-19 Executive Recommendation.

Source: Executive Budget

- *Marihuana Regulatory Fund*

The Marihuana Regulatory Fund includes revenue generated from the collection of application fees and annual regulatory assessments under the Medical Marihuana Facilities and Licensing Act. Money in this Fund must be spent on the implementation, administration, and enforcement of the MMFLA. Fiscal year 2018-19 revenue is estimated at \$29,156,200.

- *Medical Marihuana Excise Fund*

The Medical Marihuana Excise Fund was created by the Medical Marihuana Facilities and Licensing Act. The act imposes a 3% tax on the gross retail receipts of each provisioning center. This revenue, in addition to fees, fines, and other charges not excluded, is deposited into the Excise Fund. Fiscal year 2018-19 revenue is estimated at \$12,705,000.

Thirty percent of the Excise Fund is allocated to the First Responder Presumed Coverage Fund, 30% to counties that contain marihuana facilities in proportion to the number of such facilities, 25% to municipalities that contain marihuana facilities in proportion to the number of those facilities, and 5% to each of the following: county sheriffs in counties where a facility is located, in proportion to the number of facilities; to the Michigan Commission on Law Enforcement Standards (MCOLES) for training purposes; and to the Department of State Police to assist with local enforcement.

Appropriations

Table 4 shows the appropriations for each medical marihuana fund and the allocation of those appropriations for FY 2017-18 year-to-date and FY 2018-19 as enacted.



Table 4

| Medical Marihuana Appropriations and Fund Allocations | | |
|--|------------------------------------|-------------------------------|
| | FY 2017-18 Year-To-Date | FY 2018-19 Enacted |
| Marihuana Registry Fund | | |
| LARA - Program Administration | \$4,949,100 | \$5,001,300 |
| LARA - Grants to County Sheriffs..... | 3,000,000 | 3,000,000 |
| LARA - Other Administrative Costs | <u>935,300</u> | <u>852,200</u> |
| TOTAL | \$8,884,400 | \$8,853,500 |
| Marihuana Regulatory Fund | | |
| LARA - Licensing and Enforcement; Substance Use Program | \$10,000,000 | \$10,500,000 |
| State Police - Enforcement..... | 8,775,700 | 15,082,500 |
| DHHS - Substance Use Disorder Programs | 375,000 | 1,155,100 |
| Treasury - Tax Processing/Compliance | 675,000 | 911,400 |
| Attorney General - Legal Costs | <u>375,000</u> | <u>507,200</u> |
| TOTAL | \$20,200,700 | \$28,156,200 |
| Medical Marihuana Excise Tax Fund | | |
| First Responder Presumed Coverage Fund..... | \$1,980,000 | \$5,445,000 |
| Counties..... | 1,980,000 | 5,445,000 |
| Municipalities | 1,650,000 | 4,537,500 |
| Sheriffs..... | 330,000 | 907,500 |
| State Police..... | 330,000 | 907,500 |
| MCOLES..... | <u>330,000</u> | <u>907,500</u> |
| TOTAL | \$6,600,000 | \$18,150,000 |

Source: PA 107 of 2017; Senate Fiscal Agency; State Budget Office.

Conclusion

It is unknown whether the number of patients and/or caregivers under the Medical Marihuana Program will plateau. Early FY 2017-18 numbers suggest that the program will match or surpass the number of applications and patients from FY 2016-17. For FY 2014-15 through FY 2016-17, the number of registered caregivers grew at a slower pace than the number of patients did. As of February 2018, there were 71,439 patient or caregiver applications, 46% of the FY 2016-17 total.

The Department of Treasury considers medical marihuana subject to the 6% sales tax at the time of purchase from a caregiver or dispensary. Patients are expected to report their tax liability on their individual State income tax return. Collections are reported to be minimal.

Legalization of marihuana for nonmedical purposes would significantly alter all related regulations and patterns in the State. An initiative petition to legalize marihuana was certified by the Board of State Canvassers on April 26, 2018. The petition will appear on the November



2018 ballot if it is not approved by the Legislature within 40 session days from the time the Legislature receives it. The petition contains a provision specifying that the legislation, if enacted, will not affect either the Michigan Medical Marihuana Act or the Medical Marihuana Facilities Licensing Act. States that have legalized recreational sales, such as Colorado, have experienced a subsequent drop in registered medical marihuana patients. The proposed "Michigan Regulation and Taxation of Marihuana" Act would continue to permit municipalities to limit or prohibit marihuana facilities within their boundaries.

Facilities began applying for licenses under the Medical Marihuana Facilities Licensing Act in December 2017. As of March 2018, there were more than 400 applications but only nine were pre-approved by the Medical Marihuana Licensing Board. Following pre-approval, facilities must pass inspections to become fully approved for operations. Over 200 existing facilities received cease and desist orders from LARA in March 2018 due to failure to apply for a license or because of municipal prohibitions against their presence.

The "opt-in" nature of facility-permitting at the local level appears likely to result in significant limitations for prospective licensees. Each municipality must choose to permit facilities in its jurisdiction and implement accompanying changes in zoning, law enforcement, and other areas.

Finally, the status of both medical and recreational marihuana in states is somewhat unclear from a legal perspective due to the Federal government's prohibition against its use and the classification of the drug as a Schedule I substance. In January 2018, the Attorney General of the United States issued a new memorandum reinstating stricter enforcement of Federal laws. However, an FY 2018 Federal spending bill contained language protecting states from Federal intervention. The future outcome of this conflict between state and Federal enforcement is unknown.