



**DEPARTMENT OF PUBLIC SAFETY
and
DEPARTMENT OF HEALTH**

REPORTS TO THE 2015 LEGISLATURE

**RESPONSE TO ACT 177
SESSION LAWS OF HAWAII 2013**

**TRANSFER OF RESPONSIBILITIES OF THE
MEDICAL USE OF MARIJUANA PROGRAM
FROM THE
DEPARTMENT OF PUBLIC SAFETY
TO THE
DEPARTMENT OF HEALTH**

NOVEMBER 2014

INTRODUCTION

In 2010, the Medical Cannabis Working Group recommended to the Hawaii State Legislature that administration of the Medical Use of Marijuana Program (MUMP) be transferred from the Department of Public Safety (DPS) to the Department of Health (DOH). Act 177, Session Laws of Hawaii 2013, enacts this recommendation.

Act 177 allows for the MUMP transfer to take place over an 18-month period, from July 1, 2013 to January 1, 2015. Elements of Act 177 include:

1. The establishment of the Medical Marijuana Registry Special Fund within the DOH to accept moneys derived from medical marijuana fees collected annually and use those funds to support the operations of the MUMP. Section 12 of Act 177 sets an expenditure ceiling of \$150,000 per year for Fiscal Biennium 2013-2015. Upon the transfer of the program on January 1, 2015, DPS's authority to collect and expend MUMP revenues will be deleted from Section 329-59, Hawaii Revised Statutes, Controlled Substance Registration Revolving Fund.
2. The transfer of DPS civil service employees to DOH while retaining civil service status. Also provides for the transfer to DOH of all DPS documents, equipment and supplies "made, used, or acquired exclusively" for the MUMP.
3. The transfer of the June 30, 2013 balance of "all surplus moneys collected exclusively for the medical use of marijuana program" from DPS to the newly established DOH Medical Marijuana Registry Special Fund by September 1, 2013. The Act further requires that any surplus funds collected by DPS between September 1, 2013 and December 31, 2014, be transferred to DOH on January 1, 2015.
4. Reenacts and makes applicable to DOH all rules, policies, procedures, guidelines, and other material adopted or developed by DPS until amended or repealed by DOH.
5. Permits written certificates issued by DPS to remain valid until DOH issues new designated forms.

This final report, a follow-up to the interim report submitted in December 2013, is presented to satisfy the requirements of Act 177, Section 11, informing the 2015 Hawaii State Legislature of progress made by the two departments in effecting the transfer of the MUMP from DPS to DOH.

RECAP OF DECEMBER 2013 REPORT

Fiscal

In accordance with the requirements of Act 177, Section 7, a total of \$328,036.67 representing the June 30, 2013 balance of “all surplus moneys collected exclusively for the medical use of marijuana program by the Department of Public Safety” was transferred from DPS to DOH and deposited into the new DOH Medical Marijuana Registry Special Fund. The surplus was determined by identifying the medical marijuana (MMJ) registration fees collected between July 1, 2010 to June 30, 2013, less expenditures made (salaries, fringe and operating costs) during the same period to support the program.

There will be a second transfer of funds from DPS to DOH on January 1, 2015, representing the balance of surplus monies from MMJ registration fees collected between July 1, 2013 and December 31, 2014. The balance will be determined by deducting from the fees collected the amount used by DPS to continue operating the program during that period (not to exceed \$217,500) plus any expenditures made at the behest of DOH to further the transfer of the program.

Medical Marijuana Transition Project

Through the Department of Human Resources Development and with the approval of Governor Neil Abercrombie, DPS and DOH established a joint Exempt Special Project to facilitate the transfer of the medical marijuana program. The advantage of a joint project is that resources can be expended by both departments to further the goals of the transition, including hiring of staff, purchasing equipment and entering into contracts. The duration of the exempt project is from March 1, 2014 to February 29, 2016, at which time the project will be established as a permanent program in DOH.

For example, the project allowed for the re-description of a vacant DPS Narcotics Enforcement Division position to appoint a Transition Project Coordinator to facilitate the administrative, logistic, staffing, programmatic and other developments necessary to transfer the program from DPS to DOH. Ms. Scottina Ruis was selected and began employment in May 2014.

Although Ms. Ruis is currently an employee of DPS, with her salary and fringe supported through MMJ registration fees collected by the Narcotics Enforcement Division, she reports to Mr. Peter Whitar, Chief of the DOH STD/AIDS Prevention Branch where the MMJ program will be located in DOH. These costs are an example of

the additional expenditures that will be deducted from the registration fees collected by DPS between July 1, 2013 and December 31, 2014. Effective January 1, 2015, Ms. Ruis' position will be transferred to DOH as provided for in Act 177.

Extending the project into the first year of DOH's administration of the program provides flexibility to amend the organization structure and redescribe positions to ensure they best meet the needs of the new program.

PROGRESS MADE SINCE JULY 1, 2013

BACKGROUND

Pursuant to Act 228, Session Laws of Hawaii 2000, DPS's Narcotics Enforcement Division (NED) has operated the Medical Use of Marijuana Program (MUMP) since its inception. Given its mandate concerning the "registration and control of manufacture, distribution, prescription, and dispensing of controlled substances" (see Chapter 329, HRS), NED already had the knowledge and experience to establish a medical marijuana registration program. The program was organizationally created as an adjunct to NED's Diversion Branch, which was already responsible for overseeing registration of physicians, pharmacists and manufacturers of regulated chemicals. Organizing in this manner allowed for the sharing of staff, equipment and funds within the Diversion Branch.

What was the advantage in 2000 of shared responsibility and resources has proven a hindrance in 2014 as we implement the transfer of responsibilities from DPS to DOH. Three areas in particular make this task more arduous. These are:

1. Electronic database. The current database was developed over a decade ago and is completely reliant upon staff entering information from forms submitted through the mail by physicians and patients. Once the data is entered, a registration card is printed and mailed back to the physician who distributes it to the patient. The system does not allow for the electronic transfer of information from physician to NED and back again.
2. MMJ registration fees are currently deposited into the Controlled Substances Registration Revolving Fund and co-mingled with all registration fees collected by NED. The Department can clearly account for what amounts are attributed to MMJ registration fees through treasury deposit receipts, but until March 2013 could not easily identify which expenditures from the fund were particularly related to the MMJ program. This dilemma was resolved through assigning an object code specific to MMJ program expenditures

3. Shared staff and equipment allowed for efficient use of resources at NED but did not easily provide a method to determine how to allocate a portion of those resources specifically to the MMJ program.

Through a work analysis study where staff tracked over a two-week period how much time was dedicated to various responsibilities of NED, it became clear the majority of time was spent on controlled substances and regulated chemicals activities. Given this, identifying specific positions to transfer to DOH became near impossible. For example, there is just one NED account clerk position that is responsible for all fiscal activities in the office. NED could ill afford to release this position to DOH.

The above conditions made it clear that to be a standalone program independent of NED, the existing MMJ program operations could not be transferred as a whole to DOH but rather must be recreated.

Preparation for Operational Transfer of the Medical Use of Marijuana Program

Since June 2014 MMJ Transition Project Coordinator Scottina Ruis has worked closely with NED staff to learn how the program is currently administered by NED. NED staff will continue to provide ongoing counsel and training for the new DOH MMJ staff so they have an understanding and knowledge to assume responsibility for the program starting January 2015.

The Medical Marijuana Transition Project allows for a total of four full-time exempt positions to be established and filled: (1) FTE Transition Project Coordinator; (1) FTE Program Specialist; (1) FTE Account Clerk; and (1) FTE Office Assistant. The Transition Project Coordinator position was filled in May 2014, with the remaining positions to be filled in November/December 2014. The new staff will intern directly with NED staff at their office in late November and December 2014

A new, secure MMJ program office for four staff and necessary equipment and supplies has been established by compressing the space of other programs in an existing DOH facility. A separate facility space has been contracted to provide secure storage and accessibility to over 200 boxes of MMJ files that are being transferred to the safe keeping of DOH. A new phone system that will permit a range of callers to receive specific recorded information 24/7 without having to talk to as staff person has been installed. Efforts are underway to establish an electronic document management system that will access electronic application data to print cards, letters, envelopes etc. to reduce staff labor and speed work flow. These systems are critical to help the limited staff cope with the high volume of administrative tasks. The initial testing and implementation of this system will extend into 2015.

A proposed reorganization that transfers the medical marijuana program from DPS to DOH has been drafted within DOH and is projected to be completed before February 2016. The DOH STD/AIDS Prevention Branch will take on the new program and will be changing its name to one more inclusive of the Medical Marijuana program and its expanded scope.

Projected Staffing and Operational Expenses

The addition of the Medical Marijuana Program will increase the DOH STD/AIDS Prevention Branch's overall budget by \$344,869 including \$228,138 for personnel and \$116,731 for operating. The Legislature has approved 4 FTE medical marijuana program staff including 1 permanent FTE and three temporary FTE's.

Communication with Stakeholders

The DOH MMJ program has developed and is implementing a communications strategy to ensure that critical stakeholders, patients, physicians, caregivers and law enforcement have access to information necessary for interacting with the DOH rather than DPS starting January 1, 2015. As there is no mechanism to directly contact existing patients or caregivers or even to easily communicate with physicians, new approaches had to be developed so stakeholders are not confused or unaware of the transitions. Components include: departmental media releases, highlight postings on the DOH website home page, email/mail notices to existing MMJ physicians, working with MMJ advocacy groups to share information with their contacts and hosting a physician question and answer conference call and several conference calls with law enforcement agencies statewide. Central to the communication strategy is establishing the new DOH MMJ web site to provide easily accessible and updatable information. The website has tabs with information for key stakeholders including, physicians, patients and caregivers, law enforcement and the general public and extensive FAQ section for users to find answers to their own questions. The STD/AIDS Branch Chief has given several presentations at various stakeholder meetings to talk about the transition and link them to online information. Overall, DOH is using all means to drive stakeholders to the DOH MMJ website on a regular basis to access the latest information.

The new MMJ program web site is accessible from the DOH home page rather than under the page of the STD/AIDS Prevention Branch to reduce confusion and any possible stigmatization. A new short URL has been developed so users can more easily access the MMJ web site. Also, located on the MMJ program home page is a link to allow individuals to sign up on a volunteer basis to receive automatic electronic notifications on any changes to the medical marijuana system or other updates. This will make it easier for stakeholders to keep up to date on the MMJ program. It will also include a survey feature that can collect information as users visit the web-site for more

general information and upon participant application for card renewal. This will permit the program to easily request and receive stakeholder feedback and input on services and other issues.

Establishment and Management of a Secure and Confidential MMJ Database

One of the most important and complex tasks has been the development of a new medical marijuana database system that captures all the information related to certification and issuance of registration cards. The system will permit the importation of all the DPS data entered into its database since 2001. Importantly, it is being developed to allow permitted confidential online verification for law enforcement 24/7. This online access has not been available previously and refinement of the system will surely continue into 2015. The new database will also be able to capture all the new data and process elements that will follow with the approval of the new DOH medical marijuana administrative rules (that are discussed separately below). DOH and DPS have worked closely to affect a confidential, accurate and complete transfer of the electronic files. To ensure that DOH will be able to administer the program if there are delays with development and launch of its new database DOH is developing a backup system that will allow the program to maintain of services in the interim using a version of the DPS database. However, this system does not permit online access to program staff or law enforcement for verification. Without this capacity any 24/7 verification will place considerable stress on the two DOH professional program staff. Both the online and back up database systems will not be available for testing and staff training until late November 2014 so there will likely be a break in period that extends into 2015 and may impact program performance.

Establishment of a new Online MMJ Program Application and Payment System

Online application and payment systems for physicians and patients are under development with deployment of initial versions planned for January 2015. These systems are critical as they will reduce the data entry burden and errors and improve the timeliness of customer service. Their deployment will allow phase out of the current hard copy application system initially developed by DPS. There is not sufficient DOH MMJ program staff to maintain a paper application and data entry process. It is hoped the final version of the online application system will be completed in the first 6 months of 2015. The online application permits use of online payment which provides ease of use for patients and reduces administrative time needed to deal with check payments.

DOH has developed a new DOH MMJ registration card for use commencing January 1, 2015. It meets the requirements of the statute while being thin and vinyl covered (like an insurance card) to facilitate it being carried in the wallets and purses etc. of patients and caregivers for verification purposes with law enforcement. The new DOH medical

marijuana administrative rules will require patients and caregivers to have the card on the person anytime they are in possession of MMJ.

Verification of the Medical Marijuana Registration of Qualifying Patients and Caregivers

Section 329-123 (d), HRS, requires that the MMJ program verify for law enforcement agencies whether the subject of an inquiry has registered with the DOH as a qualifying patient or primary caregiver. Such verification must be made available 24/7.

Through extensive collaboration and discussions with State and county law enforcement DOH is establishing contacts and protocols to allow such verification through its secure electronic data system. DPS's Sheriff Division has agreed to centralize verification requests and provision of DOH's responses that come in from all federal and state law enforcement agencies. Access to the verification system will be secure and confidential; limited to designated personnel and written records will be maintained of all requests and the results given. In addition to 24/7 verification of whether an individual is a registered patient or caregiver, DOH will respond to requests from law enforcement for marijuana grow site verifications during business hours on State working days. This work will initially be done by staff but an online verification process is anticipated.

Promulgation of Medical Marijuana Rules

Act 173, Session Laws of Hawaii (SLH) 2011, amended Section 329-123, Hawaii Revised Statutes (HRS), to permit the increase of MMJ registration fees "not to exceed \$35". To implement the higher fee, DPS was required to amend Section 23-202-5, Hawaii Administrative Rules, which proposed to increase annual registration fees for qualifying patients from \$25 to \$35 and increase the fee for duplicate registrations from \$10 to \$15. A public hearing on the proposed amendments was held on October 30, 2014, with only one testimony submitted. The new DPS rule is expected to become effective in late 2014.

Concurrent with the DPS process to increase MMJ fees DOH has drafted new Medical Marijuana Administrative Rules. The development process involved significant communications and input from key stakeholders including patients, physicians, caregivers, law enforcement and medical marijuana community activists, followed by a comprehensive review by the Department of the Attorney General. The new DOH rules incorporate changes to medical marijuana laws pursuant to Acts 177 and 178, SLH 2013. They add a new process to determine debilitating medical conditions eligible for the medical use of marijuana and add requirements to improve investigation and enforcement of potential abuse of the program. The rules increase operational flexibility for more efficient program administration, better define and clarify requirements; and reorganizes the chapter for readability and clarity purposes.

In drafting these rules, DOH considered the existing DPS medical marijuana rules and researched and examined the rules of medical marijuana programs from ten other states.

A request to hold a public hearing has been submitted to the Governor with the hearing and approval of the new rules planned for early 2015.

CONCLUSION

DPS and DOH have worked collaboratively to transition the medical marijuana program by January 1, 2015. In many areas DOH has laid the ground work for a new chapter in the administration of the program. The development of several important innovative technological, information and database systems has proved to be complex and challenging. Additional work in these areas will continue in 2015. However, given limited capacity of the program's small staff to serve the administrative demands of a large and growing patient population and 24/7 law enforcement verification requirement the systems' development are necessary. The DOH looks forward to providing quality services to all medical marijuana program participants in keeping with its public health mission.