



COMMONWEALTH OF MASSACHUSETTS

# INTERIM REPORT: TRANSFER OF THE MEDICAL-USE OF MARIJUANA PROGRAM

Report to the Joint Committee on Marijuana Policy

July 13, 2018

Massachusetts Cannabis Control Commission

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## **Legislative Mandate**

Pursuant to Section 64 of Chapter 55 of the Acts of 2017, An Act to ensure safe access to marijuana (Act), the Department of Public Health (Department) and the Cannabis Control Commission (Commission) “shall develop and implement a transfer agreement providing for the orderly transfer of the [medical-use marijuana] program, including personnel, from the department to the commission pursuant to sections 64 to 69, inclusive.” The following report is issued pursuant to Section 70 of the Act, which provides in relevant part: “The commission shall submit a report to the joint committee on marijuana policy not later than July 15, 2018 detailing the progress of the transfer of the program as set forth in sections 64 to 69, inclusive.”

## **Executive Summary**

### **Purpose**

The purpose of this report is to provide the Legislature with information regarding the transfer of the Medical Use of Marijuana Program (Program).

### **Findings**

This report demonstrates that the Commission has addressed its legislative mandate to develop and implement an agreement for the transfer of the Medical Use of Marijuana Program with the Department. The Commission has made significant progress toward addressing the operational areas identified by the Legislature, and anticipating additional areas not addressed under the Act. As described below, progress has been made in the areas of personnel, licensing, finance, legal, public records, technology, communications, and office space.

### **Recommendations**

The Commission will continue to work with the Department to develop and implement a transfer agreement which includes, but is not limited to, the operational areas described in this report.

## **Introduction**

### **Medical-Use of Marijuana Program**

On November 6, 2012, Ballot Question 3, "An Initiative Petition for a Law for Humanitarian Medical Use of Marijuana" passed with 63.3% of the vote, making Massachusetts the 18th state in the nation, in addition to the District of Columbia, to legalize marijuana for medical use. The resulting law, Chapter 369 of the Acts of 2012, "An Act for the Humanitarian Medical Use of Marijuana," required the Department to issue regulations. The regulations, 105 CMR 725.000: *Implementation of the Act for the Humanitarian Use of Marijuana*, were published on May 24, 2013, and subsequently amended.

Through the Medical Use of Marijuana Program, the Department licenses entities to cultivate and dispense marijuana for medical use and registers physicians, patients, personal caregivers, and dispensary agents. For those purposes, the Department receives paper applications and enters them into its online registration system.

As of June 30, 2018, there are 100 Registered Marijuana Dispensaries (RMD) that have been granted Provisional Certificates of Registration (PCR) and 42 RMDs that have been granted Final Certificates of Registration (FCR). There are 259 registered physicians, 51,288 registered patients, 6,087 registered personal caregivers, and 1,864 registered dispensary agents.

The Program is overseen by the Commissioner of Public Health. It is staffed by 18 full-time Program employees and supported by additional non-program employees. It occupies 1,348 square feet of office space at 99 Chauncy Street in Boston. The Program is funded through fees deposited in the Medical Marijuana Trust Fund.

### **Adult-Use Program**

On November 8, 2016, Ballot Question 4 “Legalize Marijuana” passed with 53.6% of the vote. At that time, Massachusetts joined seven other states, in addition to the District of Columbia, which legalized marijuana for adult-use (a.k.a., recreational use). The resulting law, Chapter 334 of the Acts of 2016, The Regulation and Taxation of Marijuana Act, which was amended in Chapter 55 of the Acts of 2017, An Act to ensure safe access to marijuana, required the Commission to issue regulations. The regulations, 935 CMR 500.000: *Adult Use of Marijuana*, were published on March 23, 2018.

In September 2017, five Commissioners were appointed by the Governor, Treasurer, and Attorney General, to oversee the adult-use program. Currently, the program is staffed by 26 employees. It occupies approximately 5,000 square feet of office space at 101 Federal Street in Boston. The adult-use program is funded through the Marijuana Regulation Fund, which is subject to legislative appropriation.

Through the adult-use program, the Legislature required the Commission to certify priority applicants, license Marijuana Establishments, register marijuana agents and laboratory agents, and approve applicants for the Social Equity program. To that end, the Commission and its outside vendors designed and implemented Massachusetts Cannabis Industry Portal (MassCIP), its electronic registration system, and its electronic seed-to-sale tracking system.

- Between April 17, 2018, and May 22, 2018, the Commission completed the application process for priority certification. Of the 813 applications, 322 were submitted, and 82 RMD applicants and 123 economic empowerment applicants were granted priority certification.
- To date, the Commission also received 73 full applications for licensure as a Marijuana Establishment. The Commission has granted 5 provisional licenses, which are in various stages of development as Marijuana Establishments.

- To date, the Commission has received 35 applications for registration as a marijuana establishment agent and 1 application for registration as a laboratory agent.
- The Commission has also taken steps to develop the application process for the Social Equity Program.

### **Transfer of program**

Under Section 64(b), the Commission is required to assume the Medical Use of Marijuana Program's assets, liabilities, obligations, and debt, as well as its rights, powers, and duties. To that end, the Commission reports on the operational areas implicated by the transfer of the Program.

#### **Personnel**

Under Section 64(b), the transfer agreement must provide for "the orderly transfer of the [medical use of marijuana] program, including personnel."

In anticipation of the transfer, the Department produced an organizational chart of the Program and identified the staff that will be transferred. Commission staff was introduced to the department heads and staff of the Program. Regular meetings occur between Commission and their counterparts in the Department and Program. To the extent that any Program staff are subject to collective bargaining agreements, the Commission will independently and formally engage union representatives and consult with any involved state agencies.

To address ongoing staffing needs of the program, the Commission entered a memorandum of understanding (MOU) with the Department. Commission liaisons participate in the posting, interviewing, and hiring processes to address these needs.

#### **Licensing**

Under Section 64, "all applications submitted, requests, investigations and other proceedings appropriately and duly brought before the program . . . shall continue unabated and remain in force, but shall be assumed and completed by the commission."

At this time, it is anticipated that the majority of existing RMDs licensed through the Department will apply to also be licensed as a Marijuana Establishment with the adult-use program. The Department shared with the Commission limited licensing information on RMDs that applied to the Commission for certification as a priority applicant and for licensure as a Marijuana Establishment. To address the inspection of existing RMDs seeking to be licensed as a Marijuana Establishment with the adult-use program, the Commission has finalized a MOU with the Department that allows it to inspect RMD facilities.

## **Financial**

Under Section 64(b), the Commission is required to assume the Medical Use of Marijuana Program's assets, liabilities, obligations, and debt. Section 69(a) specifically requires that "the comptroller shall transfer the unexpended balances of the Medical Marijuana Trust Fund . . . to the Marijuana Regulation Fund." To this end, the Department and Commission finance staff have consulted with each other and the associated agencies, including the Office of the Comptroller, on the transfer of the Medical Marijuana Trust Fund to the Marijuana Regulation Fund. They also identified mechanisms for collecting patient fees and depositing these fees into the Marijuana Regulation Fund after the transfer.

## **Legal**

Under Section 64(d), the Commission must provide the Department with written certification that it "has in place the legal and regulatory framework to regulate and oversee the medical-use program without disruption to the medical marijuana industry or patient access to medical marijuana."

To that end, Department and Commission legal staff consulted with each other and relevant agencies on the following legal processes:

- The rescission by the Department of the fee structure established for the Medical Use of Marijuana Program, and the setting of the fees by the Commission.
- The repeal by the Department of 105 CMR 725.000: *Implementation of the Act for the Humanitarian Use of Marijuana*, and the adoption of the regulations by the Commission.
- The transfer by the Department of the Medical Marijuana Trust Fund, and the assumption of this fund by the Commission.

The Commission will work with the Department to draft and exchange the necessary documents to effectuate these processes in Fall 2018.

Under Section 64(d), the Commission is required to transfer "all duly existing contracts, leases, or obligations of the program." The Department identified three contracts related to the Program and subject to transfer and additional contracts that are related to the Program, but not subject to transfer.

The two contracts with outside vendors concern (1) the maintenance of the Program's online registration system; and (2) the issuance of identification cards for patients, personal caregivers, and dispensary agents. Commission staff established relationships with the outside

vendors associated with these contracts. The Commission anticipates seeking a new vendor relationship for the credit-card processing associated with the program.

One agreement involves services through the Virtual Gateway, which hosts the Program's online registration system. Commission technical and legal staff established relationships with its counterparts at Executive Office of Health and Human Services (EOHHS). An exchange of information regarding the technical implications of the transfer will occur. The Commission anticipates entering an Interagency Service Agreement (ISA) with EOHHS to maintain this service after the transfer.

The Commission anticipates relying on its existing vendor and agency relationships for background check services associated with the Program.

The Department reports that none of the contracts associated with their toxicology program will transfer. The Commission anticipates entering an ISA after the transfer for toxicology services.

### **Public Records**

The Commission's Records Access Officer (RAO) met with the Department's RAO to discuss the Program's processes for responding to public records requests. The Commission asked the Department's RAO to file a report to the Secretary of the Commonwealth's Public Records Division on public records requests made until the point of transfer.

To the extent the Commission is required under Section 64(c), to take ownership, possession, and control of all records, Commission and Department administrative and technology staff will consult on the physical and electronic transfer of Program records.

### **Technology**

Under Section 64(c), the Commission is required to transfer "ownership, possession, and control of all property." Although the transfer provision is silent on the issue of technology, the Commission made significant progress in this regard. DPH and Commission technology staff consulted with each other and relevant agencies on the technological issues implicated by the transfer. The Commission identified and began to address specific needs associated with infrastructure (network shares, access databases, websites, and software and tracking tools, e.g., for the Program's patient support center), software (the Program's online registration system and EOHHS' Virtual Gateway), and integrations (payment and Program identification cards).

### **Communications**

In cooperation with the Department, the Commission communications staff established working groups to address the communication needs implicated by the transition, patient identification cards, and the Public Awareness Campaign required pursuant to Section 51.

### **Office Space**

After the transfer, but by or before May 2019, the Medical Use of Marijuana Program and the majority of its staff will continue to occupy its current headquarters at 99 Chauncy Street in Boston. The Department and Commission anticipate entering an ISA for the continued use of this space. To the extent that this space will no longer be available to the Program in mid-2019, the Commission, through the Division of Capital Asset Management and Maintenance, is seeking a headquarters and a satellite office to accommodate both the medical-use and adult-use programs. The Commission anticipates identifying its future headquarters by Fall of 2018.

### **Conclusion**

This report identifies the many operational needs implicated by the transfer of the Medical Use of Marijuana Program. An analysis of this information demonstrates that the Commission continues to meet its statutory requirements. In accordance with Chapter 55, the Department expects that it will effectuate the transfer of the Medical Use of Marijuana Program to the Commission by or before December 31, 2018.