

Office of the Auditor General

Performance Audit Report

Michigan Medical Marihuana Program

Department of Licensing and Regulatory Affairs

November 2016



The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.

Article IV, Section 53 of the Michigan Constitution



Performance Audit
Michigan Medical Marihuana Program
(MMMP)
Department of Licensing and Regulatory
Affairs

Report Number:
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November 2016

MMMP is the State registry program that administers the Michigan Medical Marihuana Act (Sections 333.26421 - 333.26430 of the *Michigan Compiled Laws*). As of September 30, 2015, MMMP had 182,091 registered patients and 34,269 active caregivers. In fiscal year 2015, MMMP received 81,090 initial and 22,879 renewal applications, collected \$6.4 million in revenue, and expended \$4.2 million. As of January 31, 2016, MMMP had 30 employees.

Audit Objective			Conclusion
Objective #1: To assess the effectiveness of MMMP's administration of the Michigan Medical Marihuana Act.			Moderately effective
Findings Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
MMMP had not implemented its audit process to verify the validity of physician certifications to mitigate the risk of fraudulent physician certification forms. We identified 1 physician who certified 11,810 (14%) applicants and 22 other physicians who certified 46,854 (56%) applicants (Finding #1).	X		Agrees
MMMP should improve the timeliness of processing change forms submitted by registered patients and primary caregivers. MMMP took more than 25 days to process 24% of the change forms we sampled, which could leave patients without access to their medicine for extended periods of time and cause legal ramifications (Finding #2).		X	Agrees
MMMP should consider implementing an electronic system to provide an online application process to decrease application processing time and costs and also increase program efficiency and effectiveness (Finding #3).		X	Agrees

Audit Objective			Conclusion
Objective #2: To assess MMMP's compliance with legislative reporting requirements.			Complied
Findings Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
None reported.	Not applicable	Not applicable	Not applicable

A copy of the full report can be obtained by calling 517.334.8050 or by visiting our Web site at: www.audgen.michigan.gov

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Doug A. Ringler, CPA, CIA
Auditor General

November 3, 2016

Ms. Shelly Edgerton, Director
Department of Licensing and Regulatory Affairs
Ottawa Building
Lansing, Michigan

Dear Ms. Edgerton:

I am pleased to provide this performance audit report on the Michigan Medical Marijuana Program, Department of Licensing and Regulatory Affairs.

We organize our findings and observations by audit objective. Your agency provided preliminary responses to the recommendations at the end of our fieldwork. The *Michigan Compiled Laws* and administrative procedures require an audited agency to develop a plan to comply with the recommendations and submit it within 60 days of the date above to the Office of Internal Audit Services, State Budget Office. Within 30 days of receipt, the Office of Internal Audit Services is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

We appreciate the courtesy and cooperation extended to us during this audit.

Sincerely,

A handwritten signature in black ink that reads "Doug Ringler". The signature is written in a cursive, flowing style.

Doug Ringler
Auditor General

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AUDIT OBJECTIVES, CONCLUSIONS, FINDINGS, AND OBSERVATIONS

ADMINISTRATION OF THE MICHIGAN MEDICAL MARIHUANA ACT (MMMA)

BACKGROUND

The Michigan Medical Marihuana Program (MMMP) is the registry program provided for in the MMMA (Sections 333.26421 - 333.26430 of the *Michigan Compiled Laws*). The MMMA protects patients* and caregivers* from arrest, prosecution, or penalty for the medical use* of marihuana provided that:

- The patient or caregiver has a valid registry identification card.
- The caregiver is connected to the patient through a registry identification card.
- The patient or caregiver is not in possession of an amount of marihuana that exceeds the amount allowed.

Patients register for the program by submitting their applications, physician certification forms, and applicable fees. During our audit period, MMMP received an average of 450 applications daily. In accordance with the MMMA, applications are required to be processed within 15 business days, a registry identification card is required to be issued within 5 business days from the date of approval, and registry identification cards are valid for 2 years and can be renewed through submission of a new application and physician certification form.

Registered patients can elect to have a primary caregiver assist them with their medical use of marihuana. A primary caregiver must pass a criminal history background check and can be the primary caregiver for no more than 5 registered patients. MMMP performs criminal history background checks using the Michigan Department of State Police's Internet Criminal History Access Tool (ICHAT).

Registered patients and/or primary caregivers can submit change forms to request changes to their medical marihuana cards, such as adding or removing a caregiver or a patient, changing a caregiver, or requesting a replacement card.

AUDIT OBJECTIVE

To assess the effectiveness* of MMMP's administration of the MMMA.

CONCLUSION

Moderately effective.

* See glossary at end of report for definition.

**FACTORS
IMPACTING
CONCLUSION**

- MMMP processed 99.5% of all applications in a timely manner.
- MMMP ensured that 99.9% of caregivers did not have more than 5 registered patients.
- All 50 physicians reviewed were appropriately licensed.
- MMMP conducted ICHAT background checks for the 40 caregivers that we tested. Also, 99.6% of the 33,192 active caregivers, as of January 31, 2016, did not have a criminal history that would disqualify them from being a caregiver.
- MMMP processed the 26 refunds reviewed for appropriate reasons.
- Reportable condition* related to implementing an electronic application system.
- Reportable condition related to improving the timeliness of processing change forms.
- Material condition* related to implementing MMMP's audit process to verify physician certifications.

** See glossary at end of report for definition.*

FINDING #1

Improvements are needed for verifying physician certifications.

1 physician certified 11,810 (14%) applicants;
22 other physicians certified 46,854 (56%) applicants.

MMMP had not implemented its audit process to verify the validity of physician certifications to mitigate the risk of fraudulent physician certification forms.

Michigan Administrative Code R 333.103(1)(b)(ii) requires that an MMMP application include a written certification* signed by a licensed physician in the course of a bona fide physician-patient relationship*. Section 333.26423(a) of the *Michigan Compiled Laws* defines a bona fide physician-patient relationship as a treatment or counseling relationship in which certain appointments have been held and others are reasonably expected to be held in the future. Also, Section 333.26426(c) of the *Michigan Compiled Laws* and *Michigan Administrative Code R 333.109* and *R 333.117* require that MMMP verify the application or renewal information.

For the applications submitted during fiscal year 2015, 1,419 physicians certified that they had a bona fide physician-patient relationship with 84,120 applicants. One physician certified 11,810 (14%) applicants and 22 other physicians certified 46,854 (56%) applicants. Based on a 261-day work year, the first physician would have to see an average of 45 and the 22 physicians would have to see an average of 8 medical marijuana patients per day. A survey conducted by The Physicians Foundation during 2014 indicated that the majority of primary care physicians reported seeing an average of 11 to 20 patients per day, and an article published in the July-August 2016 issue of the *Journal of the American Board of Family Medicine* stated that current caseloads for primary care physicians were between 1,200 and 1,900 patients.

MMMP informed us that although it verified physician certifications for suspicious applications and had developed an audit process to verify physician certifications on a random test basis, it had not implemented the audit process.

RECOMMENDATION

We recommend that MMMP improve its process to verify physician certifications to mitigate the risk of fraudulent physician certification forms.

AGENCY PRELIMINARY RESPONSE

The Department of Licensing and Regulatory Affairs (LARA) provided us with the following response:

We agree. The MMMP implemented the random audit of physician certifications on September 28, 2016.

* See glossary at end of report for definition.

FINDING #2

Improvements are needed for more timely processing of change forms.

MMMP took more than 25 business days to process 24% of change forms sampled.

MMMP should improve the timeliness of processing change forms submitted by registered patients and primary caregivers. Doing so would help to ensure that registered patients are not left without access to medical marihuana for extended periods of time and to minimize legal ramifications.

MMMA protects patients and caregivers from arrest, prosecution, or penalty for the medical use of marihuana provided that certain criteria are met, including that the patient and caregiver are connected through a valid registry identification card. Section 333.26426(c) of the *Michigan Compiled Laws* requires MMMP to approve or deny applications and renewals within 15 business days of receipt. Although the statute does not specifically address change forms, it seems reasonable that a similar time frame would apply. Also, MMMP indicated that it had an informal policy to process change forms within 25 days of receipt.

MMMP processed more than 246,100 applications and renewals and 23,500 change forms between October 1, 2013 and January 31, 2016. Our review disclosed that MMMP processed at least 99% of the applications and renewals within 15 business days; however, it took MMMP more than 25 days to process 24% of the 100 change forms tested, as follows:

<u>Number of Business Days</u>	<u>Percent of Change Forms Processed</u>
9 to 15	35%
16 to 25	41%
26 to 47	<u>24%</u>
Total	<u>100%</u>

Also, we noted instances in which MMMP processed change forms or issued change form refunds for unprocessed change forms after processing the patients' or caregivers' subsequently received renewal applications that nullified the change forms.

MMMP indicated that processing applications and renewals within 15 days is its first priority and that it processes change forms as time permits.

RECOMMENDATION

We recommend that MMMP improve the timeliness of processing change forms.

AGENCY PRELIMINARY RESPONSE

LARA provided us with the following response:

We agree. As noted above, the MMMP processed 76% of change forms within 25 business days.

The MMMP has hired additional staff and restructured its work processes to improve the timeliness of processing change forms. By taking this action, we believe the percentage of change forms processed within 25 business days will increase significantly.

FINDING #3

Implementation of an electronic application system should be considered.

MMMP should consider implementing an electronic system to provide an online application process to decrease application processing time and costs and also increase program efficiency and effectiveness.

Michigan Administrative Code R 333.103 allows for the use of an electronic application process.

MMMP daily received approximately 450 applications and 41 change forms between October 1, 2013 and January 31, 2016. MMMP staff manually reviewed each paper application and change form against submitted supporting documentation, entered the data into an electronic tracking system, verified the physician licensure status, and conducted ICHAT background checks. MMMP incurred approximately \$1.5 million and \$1.2 million in payroll related costs during fiscal years 2014 and 2015, respectively.

We identified the following manual tasks that, although inherent in processing applications, renewals, and change forms, could benefit from the implementation of an electronic application system:

- Verifying the validity of the physician certifications (Finding #1).
- Processing change forms (Finding #2).
- Conducting ICHAT background checks on the primary caregivers identified on each application and change form.
- Verifying the patient/caregiver ratio prior to approving each new license.

RECOMMENDATION

We recommend that MMMP consider implementing an electronic application system.

AGENCY PRELIMINARY RESPONSE

LARA provided us with the following response:

We agree with the recommendation and are in the process of obtaining a new IT system.

COMPLIANCE WITH LEGISLATIVE REPORTING REQUIREMENTS

BACKGROUND

Section 333.26426(j) of the *Michigan Compiled Laws* and MMMP's annual appropriations acts (Section 507, Public Act 252 of 2014 and Section 902(1), Public Act 84 of 2015) require MMMP to annually report the:

- Number of initial and renewal applications filed for registry identification cards.
- Number of registry identification cards issued to or renewed for patients and the number of primary caregivers approved, by county.
- Number of initial and renewal applications approved and denied.
- Average amount of time to process an initial or renewal application.
- Percentage of initial and renewal applications not approved or denied within the time requirements established by MMMA.
- Percentage of registry identification cards for approved initial and renewal applications not issued within the time requirements established by MMMA.
- Nature of the debilitating medical conditions* of the registered patients.
- Number of physicians providing written certifications for registered patients.
- Number of registry identification cards revoked.
- Amount collected from the MMMP application and renewal fees.
- Costs of administering MMMP.

AUDIT OBJECTIVE

To assess MMMP's compliance with legislative reporting requirements.

CONCLUSION

Complied.

* See glossary at end of report for definition.

**FACTORS
IMPACTING
CONCLUSION**

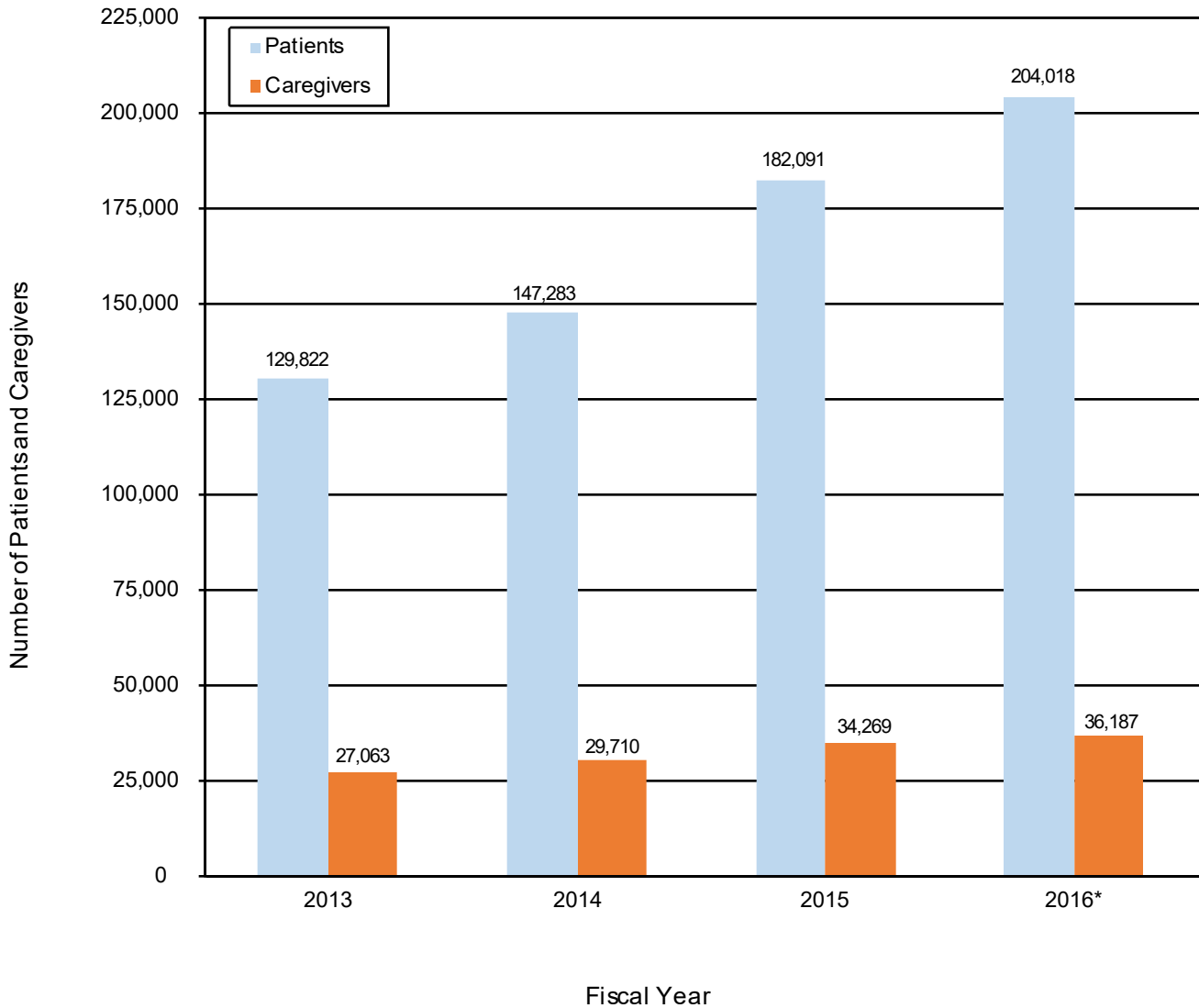
- MMMP submitted all required reports in a timely manner.
- All reports reviewed contained complete and accurate data.

SUPPLEMENTAL INFORMATION

UNAUDITED

MICHIGAN MEDICAL MARIHUANA PROGRAM Department of Licensing and Regulatory Affairs

Number of Registered Patients and Primary Caregivers
As of September 30*



* Fiscal year 2016 includes data as of June 1, 2016.

Source: The Office of the Auditor General prepared this exhibit from data obtained from MMMP.

PROGRAM DESCRIPTION

MMMP is the State registry program that administers the MMMA under Sections 333.26421 - 333.26430 of the *Michigan Compiled Laws*. The MMMA, effective December 4, 2008, allows the medical use of marihuana and provides protections for qualifying patients and primary caregivers who have applied to the program, paid the necessary fee, and received a registry identification card. MMMP operates organizationally within the Special Programs Division, Bureau of Professional Licensing, Department of Licensing and Regulatory Affairs (LARA).

MMMP's mission* is to ensure that the medical marihuana patient registration process is conducted efficiently and effectively, consistent with all statutes and administrative rules pertaining to MMMP.

In fiscal year 2015, MMMP expended \$4.2 million, collected \$6.4 million in revenue, and received 81,090 initial and 22,879 renewal applications. As of September 30, 2015, MMMP had 182,091 registered patients and 34,269 active caregivers (see supplemental information). As of January 31, 2016, MMMP had 30 employees.

* See glossary at end of report for definition.

AUDIT SCOPE, METHODOLOGY, AND OTHER INFORMATION

AUDIT SCOPE

To examine the records and processes of MMMP. We conducted this performance audit* in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Subsequent to our audit fieldwork, Public Acts 281 through 283 of 2016 were enacted. These Acts will give local governments the authority to regulate the location and number of medical marijuana provisioning centers; allow marijuana-infused products, such as lotions and tinctures for patients who would rather not smoke or consume marijuana; and create a "seed-to-sale" tracking system to ensure that any marijuana being dispensed to patients has been tested for safety. These Acts are effective December 20, 2016 and were not included in the scope of our audit.

PERIOD

Our audit procedures, which included a preliminary survey, audit fieldwork, report preparation, analysis of agency responses, and quality assurance, generally covered October 1, 2013 through January 31, 2016.

METHODOLOGY

We conducted a preliminary survey to gain an understanding of MMMP's operations and activities in order to establish our audit objectives, scope, and methodology. During our preliminary survey, we:

- Interviewed MMMP's management and staff regarding their functions and responsibilities.
- Obtained an understanding of and observed MMMP's processes for:
 - Verifying information contained on applications and supporting documentation.
 - Conducting and reviewing primary caregiver criminal history background checks.
 - Approving and denying applications.

* See glossary at end of report for definition.

- Entering registered patient and primary caregiver information into its tracking database.
- Refunding application fees.
- Obtained an understanding of and observed LARA's process for receiving and recording application fees.
- Reviewed applicable State laws, administrative rules, and MMMP's policies and procedures.

OBJECTIVE #1

To assess the effectiveness of MMMP's administration of the MMMA.

To accomplish this objective, we:

- Analyzed the timeliness of MMMP's processing of the 246,159 initial and renewal applications submitted to determine if they were processed within the time frames required by statute.
- Analyzed the number of licenses issued to the 33,192 active caregivers, as of January 31, 2016, to determine if any caregiver was issued more than 5 licenses.
- Reviewed a sample of 50 of the 3,442 physicians identified on approved applications to determine if they were licensed by the State.
- Analyzed the timeliness of MMMP's processing of a sample of 100 of approximately 23,500 change forms.
- Matched all active caregivers against the Michigan Department of State Police criminal history database.
- Reviewed the appropriateness of a sample of 26 of the 156 refund transactions.

All samples were randomly selected to eliminate bias and to enable us to project the results to the entire population.

OBJECTIVE #2

To assess MMMP's compliance with legislative reporting requirements.

To accomplish this objective, we:

- Interviewed staff to determine MMMP's process for preparing legislatively required reports.

- Verified the submission of all required reports for fiscal years 2014 and 2015.
- Verified the accuracy of the fiscal year 2015 reports.

CONCLUSIONS

We base our conclusions on our audit efforts and any resulting material conditions or reportable conditions.

When selecting activities or programs for audit, we direct our efforts based on risk and opportunities to improve State government operations. Consequently, we prepare our performance audit reports on an exception basis.

AGENCY RESPONSES

Our audit report contains 3 findings and 3 corresponding recommendations. LARA's preliminary response indicates that it agrees with all of the recommendations.

The agency preliminary response that follows each recommendation in our report was taken from the agency's written comments and oral discussion at the end of our audit fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and the State of Michigan Financial Management Guide (Part VII, Chapter 4, Section 100) require an audited agency to develop a plan to comply with the recommendations and submit it within 60 days after release of the audit report to the Office of Internal Audit Services, State Budget Office. Within 30 days of receipt, the Office of Internal Audit Services is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

SUPPLEMENTAL INFORMATION

Our audit report includes supplemental information that relates to our audit objectives. Our audit was not directed toward expressing a conclusion on this information.

GLOSSARY OF ABBREVIATIONS AND TERMS

bona fide physician-patient relationship

A treatment or counseling relationship between a physician and patient in which all of the following are present:

- (1) The physician has reviewed the patient's relevant medical records and completed a full assessment of the patient's medical history and current medical condition, including a relevant, in-person, medical evaluation of the patient.
- (2) The physician has created and maintained records of the patient's condition in accord with medically accepted standards.
- (3) The physician has a reasonable expectation that he or she will provide follow-up care to the patient to monitor the efficacy of the use of medical marihuana as a treatment of the patient's debilitating medical condition.
- (4) If the patient has given permission, the physician has notified the patient's primary care physician of the patient's debilitating medical condition and certification for the use of medical marihuana to treat that condition.

caregiver
(or primary caregiver)

A person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has not been convicted of any felony within the past 10 years and has never been convicted of a felony involving illegal drugs or a felony that is an assaultive crime.

debilitating medical condition

One or more of the following:

- (1) Cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.
- (2) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis.
- (3) Any other medical condition or its treatment approved by LARA.

effectiveness	Success in achieving mission and goals.
ICHAT	Internet Criminal History Access Tool.
LARA	Department of Licensing and Regulatory Affairs.
material condition	A matter that, in the auditor's judgment, is more severe than a reportable condition and could impair the ability of management to operate a program in an effective and efficient manner and/or could adversely affect the judgment of an interested person concerning the effectiveness and efficiency of the program.
medical use	The acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.
mission	The main purpose of a program or an entity or the reason that the program or the entity was established.
MMMA	Michigan Medical Marihuana Act.
MMMP	Michigan Medical Marihuana Program.
patient	A person who has been diagnosed by a physician as having a debilitating medical condition.
performance audit	An audit that provides findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.
reportable condition	A matter that, in the auditor's judgment, is less severe than a material condition and falls within any of the following categories: an opportunity for improvement within the context of the audit objectives; a deficiency in internal control that is significant within the context of the audit objectives; all instances of fraud; illegal acts unless they are inconsequential within the context of the audit objectives; significant violations of provisions of contracts or grant

agreements; and significant abuse that has occurred or is likely to have occurred.

written certification

A document signed by a physician, stating all of the following:

- (1) The patient's debilitating medical condition.
- (2) The physician has completed a full assessment of the patient's medical history and current medical condition, including a relevant, in-person, medical evaluation.
- (3) In the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

