STATE OF NEW HAMPSHIRE
OFFICE OF LEGISLATIVE BUDGET ASSISTANT
AUDIT DIVISION

PROPOSED PERFORMANCE AUDIT SCOPE STATEMENT
THERAPEUTIC CANNABIS ID CARDS

In September 2018, the Fiscal Committee of the General Court adopted a joint Legislative Performance Audit and Oversight Committee recommendation to conduct a performance audit of the Therapeutic Cannabis Program, issuance of registry identification cards.

Background

The General Court created the Therapeutic Cannabis Program (TCP) in 2013 to protect patients with debilitating medical conditions, as well as their medical providers and designated caregivers, from arrest and prosecution, criminal and other penalties, and property forfeiture if such patients engage in the therapeutic use of cannabis. The TCP regulates the use of therapeutic cannabis and involves, at a minimum, a qualifying patient, a medical provider, and an alternative treatment center. A *qualifying patient* is a New Hampshire resident who has been diagnosed by a medical provider as having a qualifying medical condition and who possesses a valid registry identification card. A *medical provider* is a physician or advanced practice registered nurse who possess an active registration from the United States Drug Enforcement Administration to prescribe controlled substances. An *alternative treatment center* is a not-for-profit entity registered with the State Department of Health and Human Services (DHHS) that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies, and dispenses cannabis, and related supplies and educational materials, to qualifying patients. In some cases an additional designated caregiver may be used to assist a qualifying patient's therapeutic use of cannabis.

Advisory Committee Membership And Operations

A Therapeutic Use Of Cannabis Advisory Council (TUCAC) guides the TCP and the operations are overseen by a Program Administrator within the DHHS, Division of Public Health Services. Membership of the TUCAC is comprised of two House members; one Senate member; the Commissioners of the DHHS and Safety or designees; the Attorney General or designee; one physician with experience in therapeutic use of cannabis; an advanced practice registered nurse; and one representative each from the following groups: community hospitals; New Hampshire Civil Liberties Union; a qualifying patient; a public member who is not a law enforcement officer or employed by any government agency, contractor, elected official, or healthcare provider; hospitals; Board of medicine; Board of Nursing; and the New Hampshire Association of Chiefs of Police. The TUCAC is responsible for:

- assisting the department in adopting and revising rules;
- collecting information, including patient satisfaction;
- making recommendations to the Legislature and the DHHS for additions and revisions of department laws or rules;
- issuing a formal opinion after five years of operation whether the program should be continued or repealed; and
- annually reporting to the DHHS and Health and Human Services Oversight Committee, the Board of Medicine, and the Board of Nursing.

The TCP is administered by a Program Administrator who formulates policies and procedures for the TCP, administers the TCP registry function, and administers the Alternate Treatment Center regulatory function.

Table 1 shows the number of patients with each diagnosed qualifying medical condition as of June 30, 2018. The total number of unique patients served by the TCP during 2018 was 6,480. However, the number of patients diagnosed with qualifying medical conditions is 7,380 because a patient may have more than one qualifying condition.

Table 1

Number of Patients By Qualifying Medical Conditions
As Of June 30, 2018

Qualifying Medical Condition	Number Of Patients	Percent of Total[1]
Moderate To Severe Chronic Pain	1,615	25
Spinal Cord Injury Or Disease	1,402	22
One Or More Injuries Or Conditions	1,018	16
Cancer	738	11
Severe Pain That Has Not Responded To Treatment	727	11
Moderate To Severe Post-Traumatic Stress Disorder	408	6
Multiple Sclerosis	365	6
Traumatic Brain Injury	182	3
Epilepsy	159	2
Crohn's Disease	148	2
Parkinson's Disease	139	2
Glaucoma	96	1
Ulcerative Colitis	69	1
Lupus	65	1
Chronic Pancreatitis	64	1
Ehlers-Danlos Syndrome	41	1
Hepatitis C	40	1
Muscular Dystrophy	30	<1
Acquired Immune Deficiency Syndrome	23	<1
Positive Status For Human Immunodeficiency Virus	20	<1
Alzheimer's Disease & Amyotrophic Lateral Sclerosis	31	<1

Note: [1] Percent of total does not add to 100 percent because a single patient may have multiple qualifying medical conditions.

Source: LBA analysis of unaudited 2018 Data Report.

Statute established a nonlapsing, continually appropriated fund within the State Treasury, known as the Registry Identification Card and Certificate Fund, to pay for the operational expenses of the TCP. Statute required the fee structure to generate revenues sufficient to offset all department expenses of implementing and administering the TCP. Table 2 shows revenues beginning in State fiscal year (SFY) 2015 of $112,000. RSA 126-X:6 required the DHHS to adopt rules no later than one year after the effective date of establishing legislation. The legislation was effective on July 23, 2013 and administrative rules were adopted by the Commissioner of DHHS on July 23, 2014 and filed the same day with the Director of Legislative Services with an effective date of August 1, 2015.

Table 2

TCP Revenues, Expenditures, And Fund Balances, SFYs 2015-2018

	2015	2016	2017	2018
Agency Income	$ 112,000	$ 245,403	$ 631,018	$ (44,748)[1]
Salaries & Benefits	-	-	(388,607)	(216,360)
Expenditures	-	-	(30,264)	(27,461)
Encumbrances	-	-	-	(6,304)
Fund Balance	$ 112,000	$ 357,403	$ 569,550	$ 274,678

Note:[1]This negative revenue balance will be investigated during the audit.
Source: LBA analysis of Statements of Appropriation.

Audit Scope

Concerns have been raised with the length of time it takes DHHS to issue registry identification cards. Statute requires DHHS to approve or deny an application or renewal within 15 days of receipt and issue registry identification cards within five days (20 days to complete the process). We reviewed a dataset of cases within a database maintained by the program containing qualifying patients receiving registry identification cards during calendar year 2018 which appeared to take an excessive length of time to process. In this small random, nonstatistical sample of qualifying patients, we determined we could not rely on the data contained in the database in calculating timeliness of issuing identification cards. We observed a large number of applications that were incomplete initially upon receipt, which may account for the perception the cards are not processed timely. Due to the way the database is designed and used, we could not accurately calculate the length of time it takes to issue a registry card using the compelete database. Therefore, physical files containing the application and supporting documentation will be needed to determine TCP performance in issuing registry cards.

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We will seek to answer the following question: **Did the TCP distribute registry identification cards to qualifying TCP patients and caregivers timely during calendar year 2018?** Specifically, we will focus on how long it takes to issue registry identification cards for patients and caregivers. As part of our work, we will attempt to determine how long it took for patients and caregivers to submit all required information. While we will primarily be examining the TCP's performance in 2018, audit work may be required that goes beyond that single year.

To address this question, we plan to:

- review relevant State laws, administrative rules, policies, and forms;
- document the process from the submission of applications to issuance of registry identification cards;
- analyze information collected from the paper files of a statistically valid random sample of patients and caregivers to determine the average length of time it takes to issue a TCP registration card, what proportion of cards are issued after 20 days, and how long it takes for an application to be fully completed by the patient or caregiver before the application is considered complete; and
- review TCP operations to the extent necessary to determine the cause of any delays.

We anticipate a thorough review and analysis of paper files will answer the above questions and will negate the need to survey qualifying patients. We anticipate completing this project by June 2019.