

Government of the District of Columbia
Office of the Chief Financial Officer



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Kwame R. Brown
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi 
Chief Financial Officer

DATE: September 7, 2011

SUBJECT: Fiscal Impact Statement – “Marijuana for Medical Treatment Regulation Approval Resolution of 2011”

REFERENCE: Draft resolution shared with OCFO on August 15, 2011

On April 27, 2011, the Office of Revenue Analysis issued a fiscal impact statement on the third rulemaking, which was submitted to the Council under the same name “Marijuana for Medical Treatment Regulation Approval Resolution of 2011.” This fiscal impact statement focuses on the differences between the third rulemaking and the fourth rulemaking, which is already implemented on an emergency basis, and would be approved on a permanent basis by the current resolution.

Conclusion

Funds are sufficient in the FY 2012 through FY 2015 budget and financial plan to implement the provisions of the proposed resolution.

Background

The proposed resolution would approve¹ the fourth proposed rulemaking² that establishes procedures for the initial implementation of the District’s medical marijuana program. The following are some of the key differences between the third emergency rulemaking adopted on April 14, 2011, and the fourth rulemaking:

¹ Pursuant to section 14 of the Legalization of Marijuana for Medical Treatment Initiative of 1998, effective February 25, 2010 (D.C. Law 13-315; 57 DCR 3360), as amended by the Legalization of Marijuana for Medical Treatment Amendment Act of 2010, effective July 27, 2010 (D.C. Law 18-210; 57 DCR 4798).

² These rules were also adopted on an emergency basis on August 10, 2011, and became effective immediately on that date.

- The rulemaking now provides explicit language each applicant must include in its application that limits the District's liability to the registrant or its employees and clarifies that District laws do not preclude the possibility of federal prosecution.
- The rules outline the conditions under which the dispensaries may refuse service to clients.
- A physician, who is the owner, director, officer, member, incorporator, agent, or employee of a dispensary or cultivation center, would not be authorized to recommend the use of medical marijuana to a patient.
- The rules include new details on the:
 - Hearing process should the Department of Health (DOH) deny a new application or a renewal for an application for a patient or a caregiver registration card;
 - Enforcement actions DOH could take should it receive complaints from any person alleging a violation or misconduct by a patient, caregiver, or recommending physician;
 - Revocation and suspension of registrations;
 - Fees and fines that DOH could charge upon infractions;
 - Conditions under which DOH could summarily suspend registrations, processes that should be followed under such suspensions, and the consequent potential appeals and hearings; and
 - The administrative and judicial process that would be followed in case DOH revoked or suspended a cultivation center's license.
- A qualifying patient with income equal to or less than 200 percent of the federal poverty level would be entitled to purchase medical marijuana on a sliding scale from a registered dispensary in the District of Columbia. Previous rules required that that 2 percent of gross revenues of each dispensary would be used to provide reduced prices to patients who cannot afford medical marijuana.
- The rules would expressly ban transferring of a dispensary or cultivation center registration to a new location.
- The panel that is responsible for evaluation and scoring of all applications for cultivation center and dispensary registrations will have six, and not five, members. The members will be appointed from DOH, District Department of the Environment, Office of the Attorney General, Department of Real Estate Services Protective Services Division, Department of Consumer and Regulatory Affairs, and a consumer representative or patient advocate, selected by the Director of DOH. The Metropolitan Police Department will no longer be represented in the panel. The scoring will no longer consider the highest and the lowest scores.
- Implementation of the decisions taken by the panel will be the sole responsibility of the Director of DOH.
- The panel will provide ANCs a larger pool of cultivation centers and dispensaries for review and score. The rules also provide a more detailed scoring rubric for ANCs.
- The rules provide additional guidelines and requirements on the security plans each potential cultivation center and dispensary registrant must provide on its application. The rules also provide more detailed requirements on the electronic recording and alarm systems that would be installed in these establishments.
- Cultivation centers and dispensaries would be banned from offering work or any position of responsibility to any person with a felony conviction or a misdemeanor conviction regarding a drug-related offense.
- No entity would be permitted to hold, directly or indirectly, more than twenty percent of the cultivation center registrations.

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FIS: "Marijuana for Medical Treatment Regulation Approval Resolution of 2011,"

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- A cultivation center or dispensary would be required to install and use a safe for overnight storage of any processed medical marijuana, transaction records, and cash on the registered premises.

Financial Plan Impact

Funds are sufficient in the FY 2012 through FY 2015 budget and financial plan to implement the provisions of the proposed resolution.

The changes in the fourth proposed rulemaking are more about the requirements on the establishments, and the details on the processes DOH and other involved agencies must follow. The changes in the fourth rulemaking are not likely to affect the fee revenues to DOH and implementation costs, which are already accounted for in the FY 2012 through FY 2015 budget and financial plan.

The proposed rulemaking could affect the gross revenues of dispensaries, since they would now have to provide prescriptions to persons with an income of 200 percent or less of Area Median Income, which is no longer limited to 2 percent of their gross revenues. But without knowing the client profile, it is not possible to estimate this impact.