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BILL



ANALYSIS

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House Bill 4834 (Substitute H-5 as passed by the House)
Sponsor: Representative Gail Haines
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 6-12-12

CONTENT

The bill would amend the Michigan Medical Marihuana Act (MMMA) to do the following:

- **Require a photograph on a qualifying patient's or primary caregiver's registry identification card.**
- **Provide that a registry ID card would expire two years, rather than one year, after it was issued.**
- **Allow employees of the Department of Licensing and Regulatory Affairs (LARA) and of a LARA contractor to have access to confidential information.**
- **Delete a requirement that LARA verify information about a registry ID card to law enforcement, and instead allow a law enforcement officer or official to have access to registry information through the Law Enforcement Information Network (LEIN) under certain circumstances.**
- **Require LARA to contract with a private entity to assist the Department in processing and issuing registry ID cards.**
- **Require LARA to establish a review panel to approve medical conditions or treatments for addition to the Act's list of debilitating medical conditions for which a qualifying patient may be issued a registry ID card.**
- **Require LARA to accept a written petition from any person requesting the addition of a medical condition**

or treatment, and specify the process for consideration and review of a petition.

Photographs & Expiration of Cards

The MMMA requires LARA to issue registry identification cards to qualifying patients and primary caregivers who submit certain information in accordance with the Department's rules. A qualifying patient or primary caregiver who possesses a registry identification card is not subject to arrest, prosecution, or penalty for the medical use of marihuana if the amount does not exceed quantities specified in the Act and the possession and use of marihuana meet specified standards.

The bill would require a qualifying patient to submit two identical two-inch by two-inch color photographs that showed the applicant's current appearance. The picture would have to be a full-face, front view against a plain, white or off-white background. The applicant's head would have to measure between one inch and one and three-eighths inches from the bottom of the chin to the top of the head, and the applicant's hair or hairline could not be obscured. The applicant could not be wearing dark or nonprescription glasses, unless medically necessary. If a qualifying patient designated a primary caregiver, the qualifying patient would have to submit a photograph of the primary caregiver's current appearance that met the same requirements.

Currently, registry ID cards must contain information specified in the MMMA, including a photograph, if LARA requires one by rule. The bill, instead, would require a photograph as described above for a patient registry ID card or for a caregiver registry ID card.

Under the Act, LARA must issue a registry ID card within five days of approving an application or renewal, and the card expires one year after the date of issuance. Under the bill, a card would expire two years after it was issued.

Confidentiality

Under the MMMA, applications and supporting information submitted by qualifying patients, including information regarding their primary caregivers and physicians, are confidential. The Department must maintain a confidential list of the people to whom it has issued registry ID cards. Individual names and other identifying information on the list are confidential and exempt from disclosure under the Freedom of Information Act. Under the bill, these provisions would apply except as described below for LARA employees or contractors and law enforcement officers or officials.

The Act requires LARA to verify to law enforcement personnel whether a registry ID card is valid, without disclosing more information than is reasonably necessary to verify the authenticity of the card. The bill would delete that provision.

The bill would prohibit LARA from allowing any person access to any information about patients in its confidential list of people to whom it has issued registry ID cards or from whom it has received an application, or to information otherwise maintained by the Department concerning both physicians who provided written certification and primary caregivers. That restriction on access to information would not apply to authorized employees of the Department, or of a subcontractor, in the course of their official duties.

The restriction on access to information also would not apply to a State or local law enforcement officer or official if he or she provided a registry ID number and were acting in the course of his or her official duties, and LARA did not allow access to more information than was reasonably

necessary to verify the authenticity of the registry ID card.

In addition, the restriction on access to information would not apply if a State or local law enforcement officer or official provided a name and a date of birth for an individual or an address; the officer or official had probable cause to believe a violation of law that involved the possession, use, transfer, or transportation of marijuana had occurred; and LARA did not allow access to more information than was reasonably necessary to verify that the individual or an individual at the specified address had a valid registry ID card. The Department would have to allow access to information under this provision through the LEIN. An officer or official would not have to obtain a search warrant to obtain access to the registry information.

"State or local law enforcement officer or official" would mean any of the following:

- A sheriff or deputy sheriff of a Michigan county.
- An officer of the police department of a Michigan city, village, or township.
- A marshal of a Michigan city, village, or township.
- A constable of any Michigan local unit of government.
- An officer of the Michigan State Police.
- A security employee employed by the State and authorized by the Director of the Department of State Police to protect State-owned or -leased property or facilities in Lansing and at the State Secondary Complex.
- A motor carrier officer.
- A police officer or public safety officer of a Michigan community college, college, or university who is authorized by the school's governing board to enforce State law and the rules and ordinances of the school.
- A park and recreation officer commissioned under the Natural Resources and Environmental Protection Act (NREPA).
- A State forest officer commissioned under NREPA.
- A judge of the district, circuit, or probate court.
- A Michigan parole or probation officer.

Under the MMMA, a person, including an employee or official of LARA or another State agency or local unit of government, who discloses confidential information in

violation of the Act is guilty of a misdemeanor, punishable by up to six months' imprisonment, a maximum fine of \$1,000, or both. Under the bill, that penalty would apply to a person, including an employee, contractor, or official of LARA or another State agency or local unit who accessed, used, or disclosed nonpublic information governed under the Act for personal use or gain or in a manner that was not authorized by the Act.

Private Contractor

Within one year after the bill's effective date, LARA would have to enter into a contract with a private contractor to assist the Department in processing and issuing registry ID cards. The Department, however, would have to retain the authority to make the final determination as to issuing the cards. The contract would have to include a provision requiring the contractor to preserve the confidentiality of information in conformity with the provisions described above.

Review Panel

Under the Act, a registry ID card may be issued to a person who has a debilitating medical condition, as verified by a written certification from a physician. The MMMA defines "debilitating medical condition" as one or more of the following:

- Cancer, glaucoma, positive status for HIV, AIDS, hepatitis C, ALS, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.
- 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 those characteristic of epilepsy; or severe and persistent muscle spasms, including those characteristic of MS.
- Any other medical condition or its treatment approved by LARA, as provided for under the Act.

The MMMA required the Department, within 120 days after the Act took effect, to promulgate rules governing the manner in which it will consider the addition of medical conditions or treatments to the list of debilitating medical conditions specified in the Act. The Department must allow for

petition by the public to include additional medical conditions and treatments. In considering petitions, the Department must include public notice of, and an opportunity to comment in, a public hearing. After a hearing, LARA must approve or deny petitions within 180 days of their submission. The approval or denial of a petition is subject to review by the Circuit Court for Ingham County.

The bill would require LARA, within six months after the bill's effective date, to appoint a panel of not more than 15 members to review petitions to approve medical conditions or treatments for addition to the MMMA's list of debilitating medical conditions under the administrative rules. The panel would have to provide recommendations to LARA regarding whether the petitions should be approved or denied.

A majority of the panel members would have to be licensed physicians. Members would have to include the Michigan Chief Medical Executive and seven appointed members of the Advisory Committee on Pain and Symptom Management. The seven members from the advisory committee would have to include four licensed physicians and three nonphysicians.

The Department would have to provide staff support to the review panel to assist with scheduling meetings, making conference calls, and disseminating petition-related materials, and to perform other administrative duties related to the performance of the panel's review.

A quorum of the panel would have to concur with a recommendation in order for it to be considered an official recommendation of the panel. For this purpose, a majority of the members appointed to and serving on the review panel would constitute a quorum.

Petition Consideration

The bill would require LARA to accept a written petition from any person requesting that a particular medical condition or treatment be included in the list of debilitating medical conditions under the administrative rules. The Department would have to submit the petition to the review panel. Within 60 days of receiving the petition, the panel would have to make a recommendation to LARA regarding approval or denial of the petition.

Upon receiving a recommendation from the review panel, LARA would have to post the panel's recommendations on the Department's website for 60 days for public comment, hold a public hearing within the 60-day period, and give at least 10 days' notice of the public hearing.

After the hearing, LARA would have to forward comments made during the hearing to the panel for review. If, based on a review of the comments, the panel determined that substantive changes should be made to its initial recommendation, the petition would have to be denied, the Department would have to give the petitioner a copy of the initial recommendation and an explanation of the substantive changes. The petitioner could resubmit the petition to LARA at any time. If no changes were made to the initial recommendation or the changes were minor and did not affect the general content of the recommendation, the Department would have to forward the recommendation to the LARA Director for a final determination on the petition.

Within 180 days after a petition was filed with LARA, the Director would have to make a final determination on it. The approval or denial would be a final Department action, subject to judicial review.

If a petition were approved, LARA would have to create a document verifying the addition of the new medical condition or treatment to the list of debilitating medical conditions identified under the administrative rules. Until the MMMA was amended to recognize the medical condition officially as a qualifying debilitating medical condition, the Department would have to develop a policy that allowed the medical condition to be used to qualify an individual for a registry identification card.

MCL 333.26426

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have a negative fiscal impact on the Department of Licensing and Regulatory Affairs.

The Department would incur new costs associated with processing and digitizing the patient and caregiver photos as required in the bill. The new identification card printer

recently purchased by LARA could handle the printing of the photos at little additional cost.

The bill would require LARA to enter into a contract with a private contractor to assist with processing and issuing identification cards. In 2010, the Department of Community Health (DCH) performed a study that concluded that using a contractor for these services would not be likely to save any money. The DCH report concluded that the costs of outsourcing the processing and issuance portions of the Medical Marihuana Program (MMP) would exceed the savings by approximately \$200,000 to \$1,200,000. Since the bill would require LARA to enter into a contract for assistance with processing and issuance of identification cards, this provision of the bill could cost up to \$1.2 million, if the DCH estimates are correct.

The bill also would require LARA to appoint a 15-member panel that would review petitions to add medical conditions to the list of conditions approved for the MMP. The Department would have to provide administrative support to the panel, which would introduce some new, but likely small, administrative costs.

Finally, the bill would extend the period that MMP identification cards are valid for from one year to two years. This would have the effect of reducing the amount of work for the Bureau of Health Professions (BHP) as well as reducing the amount of application fee revenue received. Currently, the MMP is running a budget surplus; the balance at the end of FY 2010-11 was \$12.5 million, and the estimated balance for the end of FY 2011-12 is \$16.7 million. Reducing the amount of revenue to and expenditures from the MMP would serve to reduce the rate at which this surplus grows. The application fees, which are the revenue source for the MMP, may be used only for the administration of the Program.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.