
During testimony on Senate bill 2201 provided by the Director of Medical Marijuana, Department of Health and Human Services (DHHS), to the Senate Human Services Committee on January 18, 2023, the committee requested additional information. This document summarizes information discussed during testimony. A fiscal note was submitted for the bill and identified a total reduction in revenue of \$358,000 for the 2023-2025 biennium.

The Medical Marijuana Program operates under a continuing appropriation as established in state law. The first year of expenses and revenue associated with the program was fiscal year 2018. Information on expenses and revenue presented to the House of Representatives Appropriations – Human Resources Division identified expenses, revenues, and an ending fund balance for each fiscal year since 2018. The information provided is on Page 4.

The Department was being conservative on the use of funds and has attempted to operate the program in the most efficient manner possible. The Department's decision on finances was greatly impacted by four areas:

1. Litigation: starting in the summer of 2020, the department became aware of a possible lawsuit. This process started in February 2021 and included a request for over \$5 million in damages. The Department was aware of potential large attorney fees to defend the Department and anticipated a long litigation process. If the Department had been unsuccessful, the entire fund balance would have been eliminated and the Department would have had to approach the legislature. Thus, the Department chose a conservative approach making any changes impacting the fund balance while litigation was ongoing. Litigation was over in June 2022. Administrative rules impacting fees, including a reduction of the qualifying patient application fee from \$50 to \$25, were effective in October 2022. The marijuana industry is an industry with a high risk of litigation.

2. Information technology (IT): the Department procured a major IT system for tracking all marijuana and for a registration system used to register all qualifying patients, designated caregivers, and agents of manufacturing facilities and dispensaries. The Department will need to consider a revised or updated system along with a new contract. Thus, an adequate amount for replacement or a renewal contract for IT is necessary to be maintained in the medical marijuana fund.
3. Growth of the program: the program has shown a significant increase in the qualifying patient population that has exceeded the Department's estimated amounts. This led to an increase in revenue. The patient growth has led to the industry expanding operations which leads to additional revenue. Information related to program growth was also provided to the House Appropriations committee and is included on Page 5.
4. Vote on adult-use measure: an adult-use cannabis measure was on the ballot in November 2022. The Department was aware that if this measure had passed, the Department would need to immediately expend the Medical Marijuana Program and would be incurring additional costs. Again, using a conservative fiscal approach, the department was cautious about decisions being made with the vote on the measure.

The Department has started taking steps now that litigation has ended related to fees. Prior to changes being made to state law during the 2021 Legislative Session, the amount of fees was a set amount and had to be collected. State laws were modified to establish a maximum amount for fees, thus allowing the Department to collect a lesser amount. Administrative rules were modified in the fall of 2022 to reduce fees in two areas:

- The qualifying patient application fee was reduced from \$50 to \$25 (fee paid annually). The fiscal note for this change identified a revenue reduction \$194,000 for the current biennium.
- The registration certificate fee was reduced from \$90,000 to \$30,000 for a dispensary in a city with a population of 10,000 or less (fee paid once every two years).

With the growth of the program, the Department did hire a part-time, temporary individual to assist with calls and processing applications. There was

a request for an additional full-time equivalent (FTE) position, however it was not prioritized. If an FTE were authorized, there would be no impact to the general fund. The original budget when the program was implemented, included 6 FTE. Due to efficiencies gained during implementation and the status of the program, only 5 FTE have been utilized. Also, the Department has seen an increase in requests for data regarding marijuana, marijuana use, and impacts of marijuana in the state. The Department is looking at options to be able to fund a position to be able to assist in data collection.

One item that was identified to the committee related to agent fees. If the committee were to pass the bill, the maximum annual application/renewal fee for an agent registry identification card would go from \$200 to \$100. If the committee believes the maximum amount should be \$200 in a biennium, the Department suggests having the maximum amount be \$125 for each year and remove the requirement that the fees associated with the required criminal history record checks must be paid by the compassion center or the agent (NDCC Section 19-24.1-18, Subsection 3(a)). If the committee determines to leave the maximum agent fee at \$200, it could still remove the language requiring the criminal history record check be paid by the compassion center or the agent.

An agent of a dispensary or manufacturing facility is required to have a criminal history record check upon initial application and then every other year after. Currently, the Department must obtain a \$41.25 check from an applicant to submit to the Bureau of Criminal Investigation (BCI) with their fingerprints. This creates an inefficient process. If state law were changed, the Department would not be required to obtain a check and could be billed monthly by BCI. The agent fees collected would assist in paying for the criminal history record checks performed.

For a designated caregiver, an applicant also is required to pay the fees associated with the required criminal history record checks (NDCC Section 19-24.1-04, Subsection 3). The committee may want to consider removing this language as well.

Medical Marijuana – Continuing Appropriation

Status of the Medical Marijuana Fund

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023 [^]
Revenue	\$95,000	\$928,300	\$743,415	\$1,130,959	\$920,050	\$697,024
Expenditures*	(\$363,426)	(\$722,750)	(\$596,510)	(\$657,822)	(\$820,854)	(\$328,370)
Ending Fund Balance	\$77,225	\$614,188	\$761,093	\$1,234,230	\$1,333,426	\$1,702,080

* General Fund expenditures in fiscal years 2018 and 2019 totaled \$677,064.

[^] Information through December 31, 2022.

Medical Marijuana Program, cont.

Authorized Plant Count at Manufacturing Facilities

	July 1, 2021	December 31, 2022
Grassroots	5,000	8,000
Pure Dakota	1,500	3,000
Total	6,500	11,000

Total Number of Registered Qualifying Patients



Total Dispensary Sales (by Fiscal Year)

	2020	2021	2022	2023 (6 months)
Total Sales	\$6,361,000	\$15,336,000	\$19,970,000	\$10,700,000
Percent of Total Sales that were Dried Leaves and Flowers	67%	72%	69%	66%