



# MEDICAL MARIHUANA FACILITIES LICENSING LEGISLATION

PUBLIC ACT 282 AND PUBLIC ACT 283

HISTORY, OVERVIEW AND WHAT NEXT

# HISTORY

- In November of 2008, voters in Michigan passed the Michigan Medical Marihuana Act (MMMA) to provide protections for the medical use of marijuana.
- Enacting legislation set out provisions for Qualifying Patients and Primary Caregivers.
- Numerous subsequent appellate court cases made clear that the legislation permitted nothing beyond Qualifying Patients and Primary Caregivers, thus dispensaries for the shared growing, transfer and/or sale of medical marijuana between anyone other than a Qualifying Patient and his or her Primary Caregiver is not permitted under the Michigan Medical Marihuana Act.



# SOME DEFINITIONS - 2008 MMMA

- **“QUALIFYING PATIENT”** OR “PATIENT” MEANS A PERSON WHO HAS BEEN DIAGNOSED BY A PHYSICIAN AS HAVING A DEBILITATING MEDICAL CONDITION.
- DIAGNOSING PHYSICIAN MUST HAVE **“BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP”** WITH THE QUALIFYING PATIENT, WHICH MEANS:
  - (1) PHYSICIAN HAS REVIEWED THE PATIENT'S RELEVANT MEDICAL RECORDS AND COMPLETED A FULL ASSESSMENT OF THE PATIENT'S MEDICAL HISTORY & CURRENT MEDICAL CONDITION, INCLUDING A RELEVANT, IN-PERSON, MEDICAL EVALUATION OF THE PATIENT.
  - (2) THE PHYSICIAN HAS CREATED & MAINTAINED RECORDS OF PATIENT'S CONDITION.
  - (3) PHYSICIAN HAS A REASONABLE EXPECTATION TO PROVIDE FOLLOW-UP CARE TO PATIENT TO MONITOR THE EFFICACY OF THE USE OF MEDICAL MARIHUANA AS A TREATMENT OF THE PATIENT'S DEBILITATING MEDICAL CONDITION.

# MORE DEFINITIONS 2008 MMMA

- "Primary caregiver" or "caregiver" means 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 as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a.
- Must have a qualifying patient-caregiver relationship established through the state's registration process under the MMMA.
- In *Michigan v McQueen*, Court held that MMMA immunity doesn't extend to a registered qualifying patient who transfers marijuana to another registered qualifying patient for the transferee's use. As reaffirmed by the Michigan Supreme Court in Court of Appeals reversal of *Michigan v Green* (2013).



# SOME SPECIFICS OF 2008 MMMA

## QUALIFYING PATIENT

- May have 2.5 ounce of usable marijuana.
- If the patient does not have a primary caregiver, may have up to 12 marijuana plants kept in an enclosed, locked facility.

## PRIMARY CAREGIVER

- May have 2.5 ounces of usable marijuana for each qualifying patient.
- May have up to 12 marijuana plants per qualifying patient in an enclosed, locked facility.
- A primary caregiver may assist no more than 5 qualifying patients.

The background is a solid green color with a subtle gradient. In the four corners, there are decorative white line art elements resembling circuit boards or neural networks, with lines and small circles connecting them.

# OVERVIEW OF 2016 LEGISLATION

# MICHIGAN 2016 LEGISLATION

September 18, 2016 Governor Snyder signed three bills legalizing and regulating medical marijuana edibles and regulating the growth, processing, transport and provisioning of medical marijuana - “Medical Marijuana Facilities Licensing Act” (MMFLA), Act 281 of 2016.

- Legalizes the medical use of marihuana-infused products, commonly known as “edibles,” for purposes of state law.
- Creates the Medical Marihuana Licensing Board within the Michigan Department of Licensing and Regulatory Affairs (LARA) to issue licenses for various medical marihuana facilities. Process similar to Liquor Licensing.
- Requires an annual license from LARA for five types of entities in order to operate a marihuana facility.

## IMPORTANT TO NOTE THE MMFLA ...

- Does not require a state license to operate as a primary caregiver under the MMMA.
- Does not allow municipalities to prohibit operation as a primary caregiver.
- Does not include registered patients and primary caregivers who lawfully cultivate marijuana in quantities and for purposes permitted under the MMMA in the definition of “growers.”
- Provides that licenses from LARA for Medical Marijuana Facilities may not be issued until beginning December 21, 2017.



# STATE LICENSES UNDER THE MMFLA FOR FIVE TYPES OF USES

- **Growers** – licensees that cultivate, dry, trim, or cure and package marijuana for sale to a processor or provisioning center.
- **Processors** – licensees that purchase marijuana from a grower and extra resin from the marijuana or create a marijuana-infused product for the sale and transfer in packaged form to a provisioning center.
- **Provisioning centers** – licensees that purchase marijuana from a grower or processor and sell, supply, or provide marijuana to patients, directly or through the patient's caregiver.
- **Secure transporters** – licensees that store marijuana and transport it between marijuana facilities for a fee.
- **Safety compliance facilities** – licensees that receive marijuana from a marijuana facility or primary caregiver and test it for contaminants and other substances.

# GROWERS AND PROCESSORS

## GROWER

- A commercial entity located in this state that cultivates, dries, trims, or cures and packages marijuana for sale to a processor or provisioning center.

## PROCESSOR

A commercial entity located in this state that purchases marijuana from a grower and that extracts resin from the marijuana or creates a marijuana-infused product for sale and transfer in packaged form to a provisioning center.

# GROWER LICENSES

There are three types of Grower Classes:

- Class A – 500 marijuana plants
- Class B – 1,000 marijuana plants
- Class C – 1,500 marijuana plants
- Authorizes sale of marijuana seeds or marijuana plants only to a GROWER by means of a SECURE TRANSPORTER.
- Authorizes the sale of marijuana, other than seeds, only to a PROCESSOR or PROVISIONING CENTER.
- Authorizes the GROWER to transfer marijuana only by means of a SECURE TRANSPORTER.
- To be eligible for a grower license, the applicant and each investor in the grower must not have an interest in a secure transporter or safety compliance facility.

# PROCESSOR LICENSES

- A processor license authorizes purchase of marijuana only from a GROWER and sale of marijuana-infused products or marijuana only to a PROVISIONING CENTER.
- Authorizes the processor to transfer marijuana only by means of a SECURE TRANSPORTER.
- To be eligible for a processor license, the applicant and each investor in the processor must not have an interest in a secure transporter or safety compliance facility.



# SECURE TRANSPORTERS

- A commercial entity located in this state that stores and transports marijuana between marijuana facilities for a fee.
- Secure Transporter License authorizes the licensee to store and transport marijuana and money associated with the purchase or sale of marijuana between marijuana facilities for a fee upon request of a person with legal custody of that marijuana or money. It does not authorize transport to a registered qualifying patient or registered primary caregiver.
- To be eligible for a secure transporter license, the applicant and each investor with an interest in the secure transporter must not have an interest in a grower, processor, provisioning center, or safety compliance facility and must not be a registered qualifying patient or a registered primary caregiver.

# PROVISIONING CENTER

- A commercial entity located in this state that purchases marijuana from a grower or processor and sells, supplies, or provides marijuana to registered qualifying patients, directly or through the patients' registered primary caregivers.
- Includes any **commercial property** where marijuana is sold at retail to registered qualifying patients or registered primary caregivers.
- DOES NOT INCLUDE a noncommercial location used by a primary caregiver to assist a qualifying patient connected to that caregiver through the MMMA registration process.

# PROVISIONING CENTER LICENSE

- Authorizes the purchase or transfer of marijuana only from a licensed grower or processor and sale or transfer to only a registered qualifying patient or registered primary caregiver.
- All transfers of marijuana to a provisioning center from a separate marijuana facility must be via a secure transporter.
- Authorizes the provisioning center to transfer marijuana to or from a safety compliance facility for testing via a secure transporter.
- Ineligible for a provisioning center license if the applicant or any investors in the provisioning center have an interest in a secure transporter or safety compliance facility.



# PROVISIONING CENTER LICENSEE GUIDELINES

- May only sell or transfer marijuana to a registered qualifying patient or registered primary caregiver after it has been tested and bears the label required for retail sale.
- Must enter all transactions, current inventory, and other information into the statewide monitoring system as required under MMFLA and marijuana tracking act.
- Must inquire from the statewide monitoring system to determine whether the patient and/or caregiver hold a valid, current, unexpired, and unrevoked registry identification card and that the sale or transfer won't exceed the daily purchasing limit established by the medical marijuana licensing board.
- Must prohibit the sale, consumption, or use of alcohol or tobacco products on the premises.
- Must not permit a physician to conduct a medical exam or issue a medical certification document on the premises for the purposes of obtaining a registry I.D. card.



# SAFETY COMPLIANCE FACILITY

- A commercial entity that receives marijuana from a marijuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids. Returns the test results, and may return the marijuana to the marijuana facility.
- Must be accredited by an entity approved by the board by 1 year after the date the license is issued or have previously provided drug testing services to this state or this state's court system and be a vendor in good standing with respect to those services.
- May apply for variance from above requirement upon finding that it's necessary to protect and preserve public health, safety, or welfare.

## WHAT ABOUT MUNICIPALITIES LIKE THE CITY OF BATTLE CREEK?

- MMFLA ALLOWS THE CITY OF BATTLE CREEK TO CHOOSE WHETHER TO ALLOW ANY OF THESE FACILITIES WITHIN CITY LIMITS.
- IF THE CITY OF BATTLE CREEK TAKES NO ACTION, NONE OF THE FACILITIES ARE ALLOWED.
- IF THE CITY OF BATTLE CREEK DECIDES TO ALLOW THESE FACILITIES, THEN WE MUST ENACT AN ORDINANCE SPECIFICALLY AUTHORIZING THEM.
- CITY OF BATTLE CREEK MAY ADOPT OTHER ORDINANCES RELATED TO THE FACILITIES IN THE CITY SUCH AS ZONING, BUT WE MAY NOT IMPOSE REGULATIONS REGARDING THE PURITY OR PRICING OR MARIJUANA OR INTERFERING OR CONFLICTING WITH STATUTORY REGULATIONS FOR LICENSING MARIJUANA FACILITIES.

# MUNICIPAL ORDINANCES UNDER MMFLA


- Municipality may adopt an ordinance to authorize 1 or more types of marijuana facilities within its boundaries and to limit the number of each type of marijuana facility.
- May adopt other ordinances related to the facilities such as zoning regulations, but may not establish regulations regarding the purity or pricing of marijuana or interfering or conflicting with the state regulations under MMFLA.
- Municipality's ordinance may establish an annual, nonrefundable fee of not more than \$5,000.00 per licensee to help defray administrative and enforcement costs associated with the operation of a marijuana facility in the municipality.



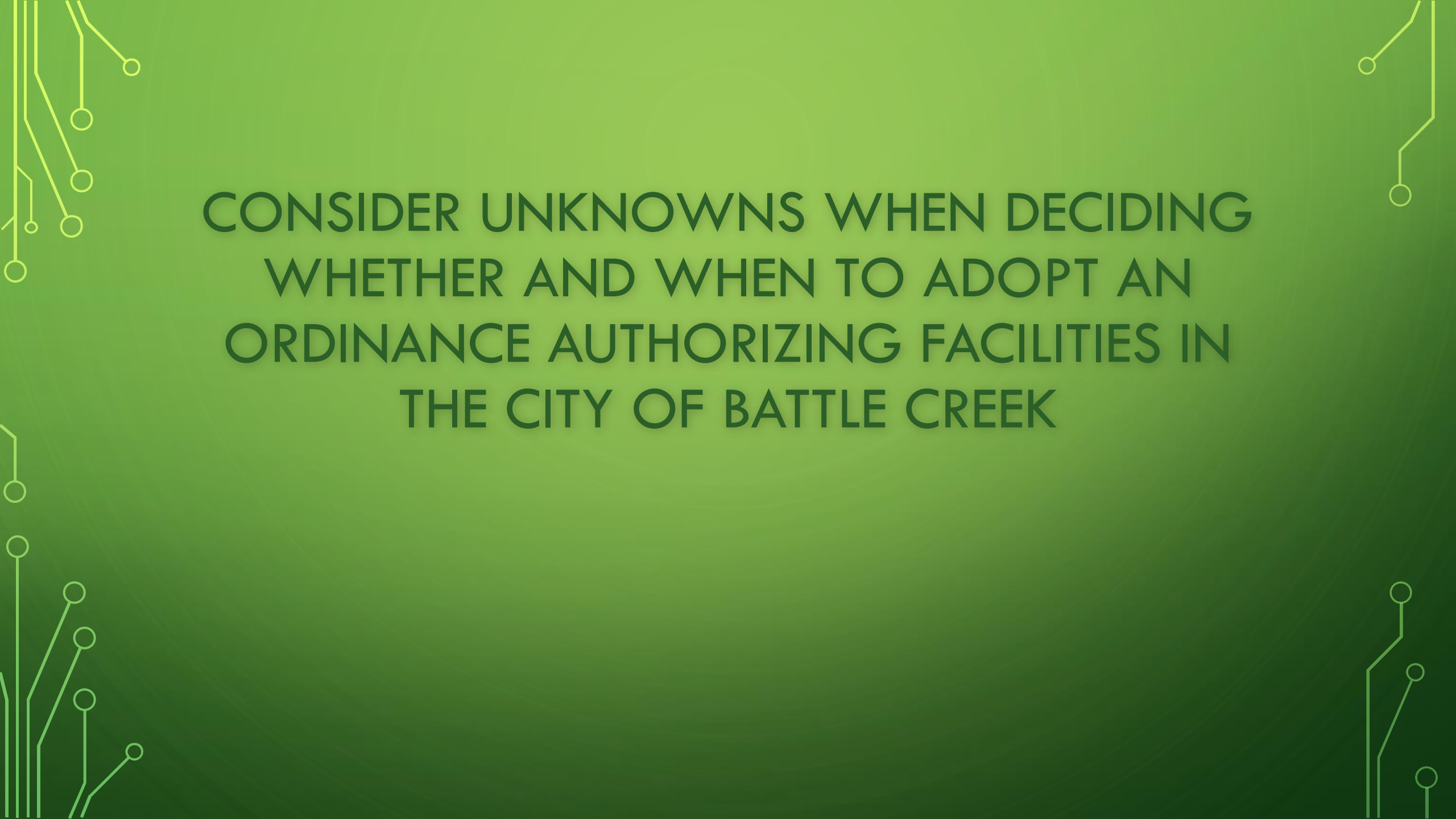
# TAXES AND FEES

- State of Michigan taxes each provisioning center at rate of 3% of the provisioning center's gross retail receipts. It is distributed as follows:
  - 25% to municipalities in which a marijuana facility is located, allocated in proportion to the number of marijuana facilities within the municipality.
  - 30% to counties in which a marijuana facility is located, allocated in proportion to the number of marijuana facilities within the county.
  - 5% to counties in which a marijuana facility is located, allocated in proportion to the number of marijuana facilities within the county to support county Sheriffs.
  - 30% to the state, for deposit in the first responder presumed coverage fund.
  - 5% to the Michigan commission on law enforcement standards for training local law enforcement officers.
  - 5% to the department of state police.



The background is a solid green color with a subtle gradient. It is decorated with abstract, circuit-like patterns in a lighter shade of green. These patterns consist of thin lines and small circles, resembling a stylized electronic circuit board. The patterns are located in the corners and along the edges of the frame.

# WHAT'S NEXT?

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# CONSIDER UNKNOWNNS WHEN DECIDING WHETHER AND WHEN TO ADOPT AN ORDINANCE AUTHORIZING FACILITIES IN THE CITY OF BATTLE CREEK

# FEDERAL LAW

- The Federal Drug Enforcement Agency (DEA), after a recent review, kept marijuana on the DEA's Drug Classification as Schedule 1, which provides:

“Schedule I drugs, substances, or chemicals are defined as drugs with no currently accepted medical use and a high potential for abuse. Some examples of Schedule I drugs are:

- heroin, lysergic acid diethylamide (LSD), marijuana (cannabis), 3,4-methylenedioxymethamphetamine (ecstasy), methaqualone, and peyote.”

# ROHRBACHER AMENDMENT

- IN RECENT YEARS, THE US DEPARTMENT OF JUSTICE (DOJ) HAS HAD AN INFORMAL POLICY NOT TO INTERFERE WITH THE USE OF MARIJUANA PURSUANT TO STATE LAWS PERMITTING MEDICAL MARIJUANA AND RECREATIONAL MARIJUANA.
- AN AMENDMENT WAS ADDED TO A CONGRESSIONAL APPROPRIATIONS BILL IN 2015 CODIFYING THIS POLICY THAT PROTECTS MEDICAL MARIJUANA PATIENTS AND PROVIDERS FROM FEDERAL PROSECUTION. THE AMENDMENT TO THE FY 2016 COMMERCE, JUSTICE AND SCIENCE (CJS) APPROPRIATIONS BILL PROHIBITS THE FEDERAL GOVERNMENT FROM USING ANY FUNDS TO ARREST OR PROSECUTE MEDICAL MARIJUANA PATIENTS OR PROVIDERS THAT ARE IN A COMPLIANCE WITH THEIR STATE'S LAWS.
- ATTORNEY GENERAL JEFF SESSIONS INDICATED IN HIS CONFIRMATION HEARING, THAT HE WOULD ENFORCE THE FEDERAL LAW PROHIBITING USE OF MARIJUANA REGARDLESS OF STATE LAWS.
- A.G. SESSIONS SAID AT A DOJ PRESS BRIEFING IN FEBRUARY THAT STATES CAN "PASS THE LAWS THEY CHOOSE," HE REMINDED THEM THAT IT REMAINS "A VIOLATION OF FEDERAL LAW TO DISTRIBUTE MARIJUANA THROUGHOUT ANY PLACE IN THE UNITED STATES, WHETHER A STATE LEGALIZES IT OR NOT."
- THE RECENT STOPGAP FEDERAL BUDGET LEGISLATION EFFECTIVE THROUGH THE END OF SEPTEMBER PROHIBITS FUNDS FROM BEING ALLOCATED TO THE DOJ TO FIGHT STATE MARIJUANA LAWS.
- WE DON'T KNOW WHAT, IF ANYTHING, WILL HAPPEN AFTER SEPTEMBER 30, 2017 AND THE IMPACT ON MUNICIPALITIES WHO ACCEPT FEDERAL FUNDING AND ENACT LEGISLATION ALLOWING MARIJUANA USE AND FACILITIES.



# CAN THE STATE EFFECTIVELY MONITOR AND PROVIDE DUE DILIGENCE?

- RESULTS OF NOVEMBER 2016 AUDIT\*:
- UNDER THE MMMA, A PHYSICIAN IS ONLY SUPPOSED TO PROVIDE CERTIFICATION THAT AN INDIVIDUAL IS A “QUALIFYING PATIENT” IF, AMONG OTHER THINGS, THERE IS A “BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP.”
- THE AUDIT REVEALED THAT ONE PHYSICIAN CERTIFIED 11,810 PATIENTS – 14% OF THE TOTAL 81,090 APPLICATIONS, IN THE 2015 FISCAL YEAR.
- IT ALSO REVEALED THAT 22 OTHER PHYSICIANS CERTIFIED A COMBINED 46,854 MEDICAL MARIJUANA PATIENTS – 56% OF APPLICANTS – IN 2015.
- 2016 SURVEY BY THE PHYSICIAN’S FOUNDATION FOUND THAT MOST PRIMARY CARE PHYSICIANS IN THE U.S. SEE AN AVERAGE OF 11 TO 20 PATIENTS PER DAY.\*\*
- DOCTOR WHO CERTIFIED 14% OF PATIENTS IN FY 2015 WOULD NEED TO SEE AN AVERAGE OF 45 PATIENTS PER DAY, BASED UPON 5-DAY/52 WEEK WORK YEAR.

• \* [HTTP://AUDGEN.MICHIGAN.GOV/WP-CONTENT/UPLOADS/2016/11/R641043516-0102.PDF](http://audgen.michigan.gov/wp-content/uploads/2016/11/R641043516-0102.pdf)

• \*\* [HTTP://WWW.PHYSICIANSFOUNDATION.ORG/UPLOADS/DEFAULT/BIENNIAL\\_PHYSICIAN\\_SURVEY\\_2016.PDF](http://www.physiciansfoundation.org/uploads/default/biennial_physician_survey_2016.pdf)



# WILL THE STATE BE READY FOR ITS RESPONSIBILITIES UNDER MMFLA?

THE APRIL 13, 2017 UPDATE ON THE LARA WEBSITE STATES:

“BMMR IS IN THE PROCESS OF IMPLEMENTING THE REGULATORY FRAMEWORK CREATED BY LEGISLATION SIGNED BY GOV. SNYDER IN SEPTEMBER 2016. REGULATORY FUNCTIONS INCLUDE THE LICENSING, INVESTIGATION AND ENFORCEMENT OF MEDICAL MARIHUANA GROWERS, PROCESSORS, SECURE TRANSPORTERS, PROVISIONING CENTERS AND SAFETY COMPLIANCE FACILITIES.

THE BOARD AS SET OUT IN MCL 333.27301 HAS NOT YET HAD ANY MEMBERS APPOINTED BY THE GOVERNOR.



# MEDICAL MARIJUANA LICENSING BOARD DUTIES

- IMPLEMENT THE ACT.
- GRANT OR DENY LICENSES.
- CONSULT WITH LARA IN PROMULGATING RULES SUCH AS PURITY AND HEALTH AND SAFETY STANDARDS.
- NO RULES OR REGULATIONS HAVE YET BEEN ESTABLISHED.
- INVESTIGATE APPLICANTS FOR FACILITIES AND INVESTIGATE ALL INDIVIDUALS EMPLOYED BY MARIJUANA FACILITIES.
- NUMEROUS OTHER RESPONSIBILITIES UNDER MCL 333.27303.



# OTHER UNKNOWNNS

- NECESSARY CITY RESOURCES, INCLUDING STAFFING, FOR ZONING INSPECTIONS AND LICENSING.
- WILL FEES GENERATED COVER ADDITIONAL MUNICIPAL STAFFING FOR ENFORCEMENT?
- LEARNING CURVE SINCE STATE REGULATIONS HAVE NOT YET BEEN ESTABLISHED.
- POSSIBLE EFFECTS ON PUBLIC HEALTH AND SAFETY.
- WITH NO RULES YET PROMULGATED, WE DON'T KNOW IF THE BEST INTEREST OF THE PUBLIC WILL BE SERVED IF WE OPT IN.
- WILL OPENING BUSINESSES INCREASE ACCESS TO MARIJUANA BY YOUTH?
- GREATER ACCESS TO MARIJUANA INFUSED PRODUCTS ("EDIBLES") INCREASES E.R. VISITS AND POISON CONTROL CALLS FOR CHILDREN. (SOURCE: ROCKY MOUNTAIN POISON AND DRUG CENTER: EMERGENCY MARIJUANA-RELATED POISON CONTROL CALLS IN CO.)
- IMPACT ON OTHER BUSINESSES.
- POSSIBLE NEGATIVE IMPACTS: ODORS, TRASH, SECURITY, PESTICIDES AND FERTILIZERS.





# **COMMISSION QUESTIONS OF STAFF?**