

Timothy M. Keller
State Auditor



Sanjay Bhakta, CPA, CGFM, CFE, CGMA
Deputy State Auditor

State of New Mexico
OFFICE OF THE STATE AUDITOR

Via Email and U.S. Postal Mail

June 20, 2016

Secretary Designate Lynn Gallagher
New Mexico Department of Health
1190 South St. Francis Dr.
Santa Fe, NM 87505
Lynn.Gallagher@state.nm.us

Re: Potential non-compliance with Chapter 26, Article 2B NMSA 1978 (Lynn and Erin Compassionate Use Act)

Dear Secretary Designate Gallagher:

The Office of the State Auditor (“Office”) recently learned that the New Mexico Department of Health (“Department”) may not be in compliance with the statutory requirement that the Department “approve or deny an application [for a) identification card] within thirty days of receipt” (26-2B-7.C NMSA 1978). As OSA understands the situation, the Department appears to be asking patients applying for or renewing their medical cannabis registry identification cards not to call to inquire about the status of their applications unless more than 60 days have passed since the application was submitted. The Office also received reports indicating that patients have experienced processing times up to 90 days. Based on the information described above, it appears that processing times may be at least double, even triple in some cases, the 30 day timeline required in statute.

The Office understands that the Department has experienced an increased volume of applications for medical cannabis registry identification cards and has hired additional staff to help eliminate the backlog and reduce processing time. Nevertheless, the Lynn and Erin Compassionate Use Act requires the Department to approve or deny applications within 30 days of receipt, regardless of volume or budget constraints. This does not appear to be occurring. Furthermore, as reported in the Department’s fiscal year 2015 annual audit report, the Department recently reverted \$126,249 from the Medical Cannabis program to the State General Fund. It is not clear why the Department failed to use these funds to hire, or contract for, the necessary additional resources sooner.

The Department’s apparent failure to comply with these provisions of the Lynn and Erin Compassionate Use Act in administering New Mexico’s medical cannabis program causes significant hardship to New Mexicans suffering from debilitating medical conditions such as cancer, glaucoma, multiple sclerosis, epilepsy, HIV, and AIDS. The difference between 30 days

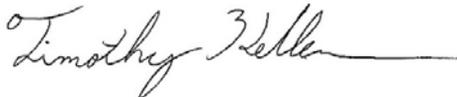
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and 60 days may not seem like much administratively, but to patients with these conditions it is significant, and can be devastating.

This is a critical juncture for the Department to address its apparent non-compliance with the Lynn and Erin Compassionate Use Act and fulfill its statutory responsibilities to New Mexico citizens afflicted with debilitating medical conditions. We understand that eliminating the backlog and ensuring future compliance with the statutory timeframe will require ongoing effort and monitoring on the part of the Department. Accordingly, the fiscal year 2016 annual audit of the Department will require testing for compliance with the provisions of Chapter 26, Article 2B, NMSA 1978. Further failure to comply may trigger additional actions, including but not limited to special audit, risk advisory and law enforcement referral, by this office.

Please respond to this letter acknowledging the Department's awareness of the required compliance testing for the fiscal year 2016 audit and provide a backlog clearance completion date. If you have questions, or would like to discuss this issue further, please do not hesitate to contact the Office's Director of Quality Control Emily Oster, CPA at 505-476-3833 or Emily.Oster@osa.state.nm.us. The Office of the State Auditor appreciates the Department of Health's attention to this issue and looks forward to your response.

Sincerely,

A handwritten signature in cursive script that reads "Timothy M. Keller". The signature is written in black ink and includes a horizontal line extending to the right from the end of the name.

Timothy M. Keller
State Auditor

cc: CliftonLarsonAllen