

SENATE BILL 923

J1

4lr1660
CF 4lr1079

By: **Senators Raskin, Brinkley, Feldman, Forehand, Frosh, Jacobs, Madaleno, Mathias, Montgomery, Muse, Stone, Young, and Zirkin**

Introduced and read first time: January 31, 2014

Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Medical Marijuana – Natalie M. LaPrade Medical Marijuana Commission

FOR the purpose of altering the purpose of the Natalie M. LaPrade Medical Marijuana Commission to include the registration and regulation of certain physicians; authorizing the Commission to set reasonable fees to cover certain costs; altering the contents of the Natalie M. LaPrade Medical Marijuana Commission Fund to include certain fees collected by the Commission; requiring the Commission to approve certain individuals as certifying physicians; requiring a physician to submit a certain proposal to the Commission to be registered as a certifying physician; encouraging and authorizing the Commission to approve certain applications; requiring each certifying physician to submit a certain annual report to the Commission; authorizing a certifying physician to apply for a renewal of a registration on a certain basis; requiring the Commission to grant or deny a renewal of a registration based on a certifying physician's performance in complying with certain regulations; providing that a certifying physician shall be protected from certain penalties for certain actions; altering the contents of a certain report the Commission is required to make to the Governor and General Assembly each year; altering the number of medical marijuana growers the Commission may license; encouraging the Commission to license medical marijuana growers that grow certain strains of marijuana; authorizing an entity licensed to grow marijuana under certain provisions of law to provide marijuana to certain patients or certain caregivers; adding to the persons that may not be subject to arrest, prosecution, or certain penalties, or be denied any right or privilege, for the medical use of marijuana; providing that a person may not distribute, possess, manufacture, or use marijuana that has been diverted from a qualifying patient; requiring the Commission to adopt certain regulations; defining certain terms; making certain conforming changes; and generally relating to the Natalie M. LaPrade Medical Marijuana Commission and medical marijuana.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY repealing and reenacting, with amendments,

Article – Health – General

Section 13–3301 through 13–3303 and 13–3307 through 13–3311

Annotated Code of Maryland

(2009 Replacement Volume and 2013 Supplement)

BY adding to

Article – Health – General

Section 13–3307 and 13–3313

Annotated Code of Maryland

(2009 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, without amendments,

Article – Health – General

Section 13–3304 through 13–3306

Annotated Code of Maryland

(2009 Replacement Volume and 2013 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General

13–3301.

(a) In this subtitle the following words have the meanings indicated.

(b) “Academic medical center” means a hospital that:

(1) Operates a medical residency program for physicians; and

(2) Conducts research that is overseen by the federal Department of Health and Human Services and involves human subjects.

(c) **“CERTIFYING PHYSICIAN” MEANS AN INDIVIDUAL WHO:**

(1) IS LICENSED BY THE STATE BOARD OF PHYSICIANS UNDER TITLE 14 OF THE HEALTH OCCUPATIONS ARTICLE TO PRACTICE MEDICINE;

(2) IS ON STAFF AT A HOSPITAL OR WITH A HOSPICE PROGRAM IN THE STATE; AND

(3) REGISTERS WITH THE COMMISSION TO MAKE MARIJUANA AVAILABLE TO PATIENTS FOR MEDICAL USE.

[(c)] (D) “Commission” means the Natalie M. LaPrade Medical Marijuana Commission established under this subtitle.

[(d)] (E) “Fund” means the Natalie M. LaPrade Medical Marijuana Commission Fund established under § 13–3303 of this subtitle.

[(e)] (F) “Program” means an investigational use–type program overseen by an academic medical center through which marijuana is made available to patients for medical use.

(G) “QUALIFYING PATIENT” MEANS A RESIDENT OF THE STATE WHO:

(1) IS AT LEAST 18 YEARS OLD, UNLESS THE COMMISSION GRANTS AN EXCEPTION AT THE RECOMMENDATION OF THE PATIENT’S CERTIFYING PHYSICIAN; AND

(2) (I) HAS BEEN PROVIDED WITH A WRITTEN CERTIFICATION BY A CERTIFYING PHYSICIAN IN ACCORDANCE WITH A BONA FIDE PHYSICIAN–PATIENT RELATIONSHIP; OR

(II) IS ENROLLED IN A RESEARCH PROGRAM WITH A REGISTERED ACADEMIC MEDICAL CENTER.

(H) “WRITTEN CERTIFICATION” MEANS A CERTIFICATION THAT:

(1) IS ISSUED BY A CERTIFYING PHYSICIAN TO A QUALIFYING PATIENT WITH WHOM THE PHYSICIAN HAS A BONA FIDE PHYSICIAN–PATIENT RELATIONSHIP; AND

(2) INCLUDES A WRITTEN STATEMENT CERTIFYING THAT, IN THE PHYSICIAN’S PROFESSIONAL OPINION, AFTER HAVING COMPLETED A FULL ASSESSMENT OF THE PATIENT’S MEDICAL HISTORY AND CURRENT MEDICAL CONDITION, THE PATIENT HAS A CONDITION:

(I) THAT MEETS THE INCLUSION CRITERIA AND DOES NOT MEET THE EXCLUSION CRITERIA OF THE CERTIFYING PHYSICIAN’S APPLICATION; AND

(II) FOR WHICH:

1. RECOGNIZED DRUGS OR TREATMENT WOULD NOT BE EFFECTIVE OR OTHER TREATMENT OPTIONS HAVE MORE SERIOUS SIDE EFFECTS OR A GREATER RISK OF ADDICTION; AND

2. THE POTENTIAL BENEFITS OF THE MEDICAL USE OF MARIJUANA WOULD LIKELY OUTWEIGH THE HEALTH RISKS FOR THE PATIENT.

13-3302.

- (a) There is a Natalie M. LaPrade Medical Marijuana Commission.
- (b) The Commission is an independent commission that functions within the Department.
- (c) The purpose of the Commission is to:
 - (1) Develop requests for applications for academic medical centers to operate programs in accordance with this subtitle;
 - (2) Approve or deny applications for programs;
 - (3) Approve or deny applications for renewal of programs; [and]
 - (4) Monitor and oversee programs approved for operation under this subtitle; **AND**
 - (5) REGISTER AND REGULATE CERTIFYING PHYSICIANS.**

13-3303.

- (a) The Commission consists of the following 12 members:
 - (1) The Secretary of Health and Mental Hygiene, or the Secretary's designee; and
 - (2) The following 11 members, appointed by the Governor:
 - (i) One member of the public who supports the use of marijuana for medical purposes and who is or was a patient who found relief from the use of medical marijuana;
 - (ii) One member of the public designated by the Maryland Chapter of the National Council on Alcoholism and Drug Dependence;
 - (iii) Three physicians licensed in the State who specialize in addiction, pain, oncology, neurology, or clinical research;
 - (iv) One nurse licensed in the State who has experience in hospice care, nominated by a State research institution or trade association;

(v) One pharmacist licensed in the State, nominated by a State research institution or trade association;

(vi) One scientist who has experience in the science of marijuana, nominated by a State research institution;

(vii) One representative of the Maryland State's Attorneys' Association;

(viii) One representative of the Maryland Chiefs of Police; and

(ix) An attorney who is knowledgeable about medical marijuana laws in the United States.

(b) (1) The term of a member is 4 years.

(2) The terms of the members are staggered as required by the terms provided for members on October 1, 2013.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member may not serve more than three consecutive full terms.

(5) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(c) The Governor shall designate the chair from among the members of the Commission.

(d) A majority of the full authorized membership of the Commission is a quorum.

(e) A member of the Commission:

(1) May not receive compensation as a member of the Commission; but

(2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(f) The Commission may employ a staff, including contractual staff, in accordance with the State budget.

(G) THE COMMISSION MAY SET REASONABLE FEES TO COVER THE COSTS OF OPERATING THE COMMISSION.

[(g)] (H) (1) There is a Natalie M. LaPrade Medical Marijuana Commission Fund.

(2) The Commission shall administer the Fund.

(3) The Fund is a special continuing, nonlapsing fund that is not subject to § 7–302 of the State Finance and Procurement Article.

(4) The State Treasurer shall hold the Fund separately, and the Comptroller shall account for the Fund.

(5) The Fund shall be invested and reinvested in the same manner as other State funds, and any investment earnings shall be retained to the credit of the Fund.

(6) The Fund shall be subject to an audit by the Office of Legislative Audits as provided for in § 2–1220 of the State Government Article.

(7) The Comptroller shall pay out money from the Fund as directed by the Commission.

(8) The Fund consists of:

(i) Any money appropriated in the State budget to the Fund;

(ii) Any other money from any other source accepted for the benefit of the Fund, in accordance with any conditions adopted by the Commission for the acceptance of donations or gifts to the Fund; **AND**

(III) ANY FEES COLLECTED BY THE COMMISSION UNDER THIS SUBTITLE.

(9) No part of the Fund may revert or be credited to:

(i) The General Fund of the State; or

(ii) Any other special fund of the State.

(10) Expenditures from the Fund may be made only in accordance with the State budget.

13–3304.

(a) The Commission shall issue at least annually a request for applications for academic medical centers to operate medical marijuana compassionate use programs.

(b) An application submitted by an academic medical center to operate a program under this subtitle shall:

(1) Specify the medical conditions to be treated under the program to be operated by the academic medical center, proposed on the basis of evidence;

(2) Specify the criteria by which the academic medical center will include and exclude patients from participation in the program;

(3) Specify how patients will be assessed for addiction before and during treatment using marijuana through the program;

(4) Describe the source of the marijuana to be used in a program and include scientific details of the type of marijuana to be used in the program;

(5) Specify the length of treatment and dosage permitted under the program;

(6) Describe how health care providers will be eligible to participate in the program and what training they will receive;

(7) Include a description of whether and how caregivers will interact with patients participating in the program;

(8) Demonstrate approval of the program by the academic medical center's institutional review board;

(9) Describe the plan for defining and monitoring the success or failure of treatment using marijuana through the program;

(10) Include a plan for monitoring aggregate data and outcomes and publishing results from the program, as appropriate;

(11) Include a description of the sources of funding for the program, including any research grants;

(12) Describe any required training for health care providers and patients participating in the program on diversion-related issues;

(13) Describe steps the academic medical center will take to prevent and monitor for diversion and address violations of its diversion policy;

(14) Describe how the program will dispose of any unused marijuana;
and

(15) Describe how the academic medical center and the program will meet any other criteria established by the Commission related to diversion or other aspects of programs overseen by the Commission.

(c) The Commission shall set application fees and renewal fees that cover its expenses in reviewing and approving applications and providing oversight to programs.

13-3305.

(a) The Commission shall establish an application review process that includes reviewers with expertise in scientific research and analysis, medical training, and law enforcement.

(b) The reviewers shall:

(1) Review, evaluate, and rate applications for medical marijuana compassionate use programs submitted by academic medical centers based on the procedures and guidelines established by the Commission; and

(2) Make recommendations to the Commission, based on the ratings awarded to proposals by the reviewers, for approval of applications from medical marijuana compassionate use programs.

(c) The Commission may grant a 1-year approval to a program, which may be renewed by the Commission.

(d) The Commission may approve no more than five programs to operate at one time.

13-3306.

(a) (1) An academic medical center approved to operate a program under this subtitle shall provide to the Commission updated data each day on patients and caregivers participating in each program overseen by the academic medical center.

(2) The Commission shall make the data available in real time to law enforcement.

(b) An academic medical center operating a program approved under this subtitle may use marijuana obtained only from:

(1) The federal government; or

(2) A medical marijuana grower licensed under this subtitle.

(c) If an academic medical center utilizes caregivers as part of a program approved under this subtitle, the academic medical center shall:

(1) Limit the number of patients a caregiver is allowed to serve to no more than five; and

(2) Limit the number of caregivers that serve a particular patient to no more than two.

(d) An academic medical center operating a program approved under this subtitle shall report annually to the Commission, in the form specified by the Commission, on:

(1) The number of patients served through the program;

(2) The county of residence of the patients served by the program;

(3) The conditions treated under the program;

(4) Any outcomes data on the results of treatment through the program; and

(5) Any research studies conducted under the program.

(e) An academic medical center operating a program approved under this subtitle shall apply annually to the Commission for renewal of approval of the program, in accordance with any procedures established by the Commission.

(f) An academic medical center operating a program approved under this subtitle is subject to inspection by the Commission to ensure that the program is operating according to the conditions of approval established by the Commission.

(g) The Commission may rescind approval of a program if the Commission finds that the program is not in compliance with the conditions of approval established by the Commission.

13-3307.

(A) THE COMMISSION SHALL APPROVE AS A CERTIFYING PHYSICIAN AN INDIVIDUAL WHO:

(1) MEETS THE REQUIREMENTS OF THIS SUBTITLE; AND

(2) SUBMITS APPLICATION MATERIALS THAT ARE SATISFACTORY TO THE COMMISSION.

(B) TO BE REGISTERED AS A CERTIFYING PHYSICIAN, A PHYSICIAN SHALL SUBMIT A PROPOSAL TO THE COMMISSION THAT INCLUDES:

(1) THE REASONS FOR INCLUDING A PATIENT UNDER THE CARE OF THE PHYSICIAN FOR THE PURPOSES OF THIS SUBTITLE, INCLUDING THE PATIENT'S QUALIFYING MEDICAL CONDITIONS;

(2) THE REASONS THE PHYSICIAN WILL USE TO EXCLUDE PATIENTS FROM THE CARE OF THE PHYSICIAN FOR THE PURPOSES OF THIS SUBTITLE;

(3) THE PHYSICIAN'S PLAN FOR SCREENING A PATIENT FOR DEPENDENCE, BOTH BEFORE AND AFTER THE QUALIFYING PATIENT IS ISSUED A WRITTEN CERTIFICATION; AND

(4) THE PHYSICIAN'S PLAN FOR THE ONGOING ASSESSMENT AND FOLLOW-UP CARE OF A PATIENT AND FOR COLLECTING AND ANALYZING DATA.

(C) THE COMMISSION IS ENCOURAGED TO APPROVE APPLICATIONS FOR THE FOLLOWING MEDICAL CONDITIONS:

(1) A CHRONIC OR DEBILITATING DISEASE OR MEDICAL CONDITION THAT RESULTS IN A PATIENT BEING ADMITTED INTO HOSPICE OR RECEIVING PALLIATIVE CARE; OR

(2) A CHRONIC OR DEBILITATING DISEASE OR MEDICAL CONDITION OR THE TREATMENT OF A CHRONIC OR DEBILITATING DISEASE OR MEDICAL CONDITION THAT PRODUCES:

(I) CACHEXIA, ANOREXIA, OR WASTING SYNDROME;

(II) SEVERE OR CHRONIC PAIN;

(III) SEVERE NAUSEA;

(IV) SEIZURES; OR

(V) SEVERE OR PERSISTENT MUSCLE SPASMS.

(D) THE COMMISSION MAY APPROVE APPLICATIONS THAT INCLUDE ANY OTHER CONDITION THAT IS SEVERE AND RESISTANT TO CONVENTIONAL MEDICINE IF THE SYMPTOMS REASONABLY CAN BE EXPECTED TO BE RELIEVED BY THE MEDICAL USE OF MARIJUANA.

(E) (1) EACH CERTIFYING PHYSICIAN SHALL SUBMIT AN ANNUAL REPORT TO THE COMMISSION.

(2) THE ANNUAL REPORT SHALL INCLUDE:

(I) THE NUMBER OF PATIENTS SERVED;

(II) THE COUNTY OF RESIDENCE OF EACH PATIENT SERVED;

(III) ANY MEDICAL CONDITION FOR WHICH MEDICAL MARIJUANA WAS RECOMMENDED; AND

(IV) A SUMMARY OF CLINICAL OUTCOMES, INCLUDING ADVERSE EVENTS AND ANY CASES OF SUSPECTED DIVERSION.

(3) THE ANNUAL REPORT MAY NOT INCLUDE ANY PERSONAL INFORMATION THAT IDENTIFIES A PATIENT.

(F) (1) A CERTIFYING PHYSICIAN MAY APPLY BIENNIALY FOR A RENEWAL OF A REGISTRATION.

(2) THE COMMISSION SHALL GRANT OR DENY A RENEWAL OF A REGISTRATION BASED ON THE PHYSICIAN'S PERFORMANCE IN COMPLYING WITH REGULATIONS ADOPTED BY THE COMMISSION.

(G) A CERTIFYING PHYSICIAN SHALL BE PROTECTED FROM CIVIL AND CRIMINAL PENALTIES UNDER STATE AND LOCAL LAW FOR ACTIONS AUTHORIZED UNDER THIS SUBTITLE, INCLUDING THE ISSUANCE OF WRITTEN CERTIFICATIONS AND THE COLLECTION AND ANALYSIS OF DATA.

[13-3307.] 13-3308.

On or before January 1 each year, the Commission shall report to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly on [programs]:

(1) PROGRAMS approved to operate under this subtitle; AND

(2) PHYSICIANS CERTIFIED UNDER THIS SUBTITLE.

[13-3308.] 13-3309.

(a) (1) The Commission shall license medical marijuana growers to operate in the State to provide marijuana to programs approved for operation under this subtitle.

(2) The Commission may license no more than five medical marijuana growers [for each approved program].

(3) THE COMMISSION SHALL ENCOURAGE LICENSING MEDICAL MARIJUANA GROWERS THAT GROW STRAINS OF MARIJUANA WITH DEMONSTRATED SUCCESS IN ALLEVIATING SYMPTOMS OF SPECIFIC DISEASES OR CONDITIONS.

(b) An entity licensed to grow marijuana under this section may provide marijuana [only to]:

(1) TO PATIENTS PARTICIPATING IN A PROGRAM OPERATED BY an academic medical center [approved to operate a program] under this subtitle; **OR**

(2) TO A QUALIFYING PATIENT OF A CERTIFYING PHYSICIAN OR THE QUALIFYING PATIENT'S DESIGNATED CERTIFIED CAREGIVER.

(c) The Commission shall establish requirements for security and the manufacturing process that a grower must meet in order to obtain a license under this section, including a requirement for a product-tracking system.

(d) The Commission may inspect growers licensed under this section to ensure compliance with this section.

(e) The Commission may impose penalties or rescind the license of a grower that does not meet the standards for licensure set by the Commission.

[13-3309.] 13-3310.

(a) Any of the following persons acting in accordance with the provisions of this subtitle may not be subject to arrest, prosecution, or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege, for the medical use of marijuana:

(1) A **QUALIFYING** patient [enrolled]:

(I) ENROLLED in a program approved under this subtitle who is in possession of an amount of marijuana authorized under the program; **OR**

(II) IN POSSESSION OF AN AMOUNT OF MARIJUANA AUTHORIZED BY A CERTIFYING PHYSICIAN IN ACCORDANCE WITH THIS SUBTITLE;

(2) A grower licensed under [§ 13–3308] **§ 13–3309** of this subtitle or an employee of the licensed grower who is acting in accordance with the terms of the license; [or]

(3) An academic medical center, an employee of the academic medical center, or any other person associated with the operation of a program approved under this subtitle for activities conducted in accordance with the program approved under this subtitle; **OR**

(4) A CERTIFYING PHYSICIAN.

(b) (1) A person may not distribute, possess, manufacture, or use marijuana that has been diverted from a program approved under this subtitle or from a **QUALIFYING** patient [who is enrolled in a program approved under this subtitle].

(2) A person who violates this subsection is guilty of a felony and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both.

(3) The penalty under this subsection is in addition to any penalties that a person may be subject to for manufacture, possession, or distribution of marijuana under the Criminal Law Article.

[13–3310.] 13–3311.

(a) This subtitle may not be construed to authorize any individual to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for, the following:

(1) Undertaking any task under the influence of marijuana, when doing so would constitute negligence or professional malpractice;

(2) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or boat while under the influence of marijuana;

(3) Smoking marijuana in any public place;

(4) Smoking marijuana in a motor vehicle; or

(5) Smoking marijuana on a private property that:

(i) 1. Is rented from a landlord; and

2. Is subject to a policy that prohibits the smoking of marijuana on the property; or

(ii) Is subject to a policy that prohibits the smoking of marijuana on the property of an attached dwelling adopted by one of the following entities:

1. The board of directors of the council of unit owners of a condominium regime; or

2. The governing body of a homeowners association.

(b) This subtitle may not be construed to provide immunity to a person who violates the provisions of this subtitle from criminal prosecution for a violation of any law prohibiting or regulating the use, possession, dispensing, distribution, or promotion of controlled dangerous substances, dangerous drugs, detrimental drugs, or harmful drugs, or any conspiracy or attempt to commit any of those offenses.

[13-3311.] 13-3312.

(a) Notwithstanding § 12-315 of the State Government Article, a State employee who incurs counsel fees in connection with a federal criminal investigation or prosecution solely related to the employee's good faith discharge of public responsibilities under this subtitle is eligible for reimbursement of counsel fees as authorized by § 12-314 of the State Government Article.

(b) The Governor may suspend implementation of this subtitle on making a determination that there is a reasonable chance of federal prosecution of State employees for involvement with implementation of this subtitle.

13-3313.

THE COMMISSION SHALL ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SUBTITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2014.