

**Department of Legislative Services**  
 Maryland General Assembly  
 2018 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 2 (Delegate Glenn)  
 Health and Government Operations

**Natalie M. LaPrade Medical Cannabis Commission Reform Act**

This emergency bill repeals and reconstitutes the membership of the Natalie M. LaPrade Medical Cannabis Commission and requires extensive outreach to encourage industry participation by small, minority, and women business owners. The commission must evaluate a disparity study, which may inform future licensing decisions. The bill establishes new 20-license caps for medical cannabis growers and processors and then restricts when a report regarding the demand for additional licensees may be submitted. A new “compassionate use” special fund is established to provide free or discounted medical cannabis to specified individuals. The bill establishes reporting requirements for the commission and licensees.

**Fiscal Summary**

**State Effect:** Special fund expenditures increase by at least \$28,500 in FY 2018 for commission salaries and outreach costs; out-years reflect ongoing costs and deferral of a planned FY 2019 demand study. Potentially significant additional costs related to the results of the disparity study, remedial measures, grants, and compassionate use fund are not reflected below. General fund expenditures increase by at least \$20,700 in FY 2018 for outreach costs; out-years reflect ongoing costs. Special fund revenues likely decrease beginning in FY 2018, but capitalization of the new compassionate use fund is not reflected below.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
SF Revenue	(-)	(-)	(-)	(-)	(-)
GF Expenditure	\$20,700	\$119,500	\$125,000	\$128,400	\$133,300
SF Expenditure	\$28,500	(\$24,900)	\$141,800	\$141,800	\$141,800
Net Effect	(\$49,100)	(\$94,600)	(\$266,800)	(\$270,200)	(\$275,000)

*Note: ( ) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** The bill is not expected to materially affect local government finances.

**Small Business Effect:** Meaningful.

## Analysis

### Bill Summary:

#### *Natalie M. LaPrade Medical Cannabis Commission – Membership, Salaries, and Duties*

Commission membership is reduced from 16 to 9 members. The Secretary of Health (or designee) continues to serve; the other members must include:

- 5 members appointed by the Governor with the advice and consent of the Senate;
- 1 member appointed by the Governor from a list of 3 individuals recommended by the President of the Senate;
- 1 member appointed by the Governor from a list of 3 individuals recommended by the Speaker of the House; and
- 1 member appointed by the Governor from either of the lists from the President or the Speaker.

The terms of all current commission members terminate June 1, 2018, and new commission member terms are staggered, as specified. However, the Governor is authorized to reappoint a commission member serving before enactment of the bill (but only in filling the five positions that require the advice and consent of the Senate).

The bill establishes a number of new requirements for commission members, including age, residency, and experience requirements. Additionally, new prohibitions related to conflicts of interest are established. To the extent practicable by law, membership must reflect the racial, ethnic, and gender diversity of the State. Members must file financial disclosure forms with the State Ethics Commission.

The Governor may remove a commission member for just cause and must appoint an executive director (with the advice and consent of the Senate). Except for the Secretary of Health, a commission member is entitled to both the salary provided in the commission's budget and reimbursement for reasonable expenses.

The commission must conduct ongoing, thorough, and comprehensive outreach to small, minority, and women business owners and entrepreneurs that may have an interest in applying for a medical cannabis license, including (1) developing partnerships with specified entities and collaborating with these partners to ensure outreach is appropriately targeted; (2) establishing and conducting training programs for employment in the medical cannabis industry; and (3) disseminating information about the licensing process through targeted media. The commission must also partner with the Department of Labor,

Licensing, and Regulation (DLLR) to identify employment opportunities within the medical cannabis industry for job seekers, dislocated workers, and ex-offenders.

The commission may make grants to appropriate educational and business development organizations to train and assist small, minority, and women business owners and entrepreneurs seeking to become licensed.

The commission's annual report to the Governor and General Assembly (due by January 1 of each year) is expanded to include the demand, by condition treated, and average consumer price for medical cannabis products provided under the program. Additionally, by January 1, 2019, the commission, in consultation with the Maryland Department of Health (MDH), must report to the General Assembly on the treatment of an opioid use disorder by using medical cannabis.

#### *Natalie M. LaPrade Medical Cannabis Compassionate Use Fund*

The bill establishes the Natalie M. LaPrade Medical Cannabis Compassionate Use Fund, a special nonlapsing fund that is administered by MDH. The fund is subject to audit by the Office of Legislative Audits (OLA). The purpose of the fund is to establish a program to allow eligible individuals enrolled in Medicaid or in the Veterans Administration Maryland Health Care System to obtain medical cannabis from a licensed dispensary free of charge or at a reduced cost. Accordingly, the fund is used to reimburse a licensed dispensary for the cost of the medical cannabis dispensed to an eligible individual. MDH must set fees in an amount necessary to fund the program but cannot impose fees on a licensee during the two years immediately following pre-approval. MDH must adopt implementing regulations for this program and the fund.

By December 1, 2018, the commission, in consultation with MDH, must report to the General Assembly on (1) the revenues necessary to implement the program; (2) fee levels and which licensees should be assessed a fee to generate sufficient revenues; (3) the use of any other funding mechanism to implement the program; and (4) any anticipated savings in prescription drug costs for Medicaid resulting from providing medical cannabis under the program.

#### *Evaluation of Disparity Study*

The commission, in consultation with the State's "certification agency" (the Maryland Department of Transportation (MDOT)); the Governor's Office of Small, Minority, and Women Business Affairs (GOMA); and the Office of the Attorney General must (1) evaluate a [disparity] study of the medical cannabis industry and market to determine whether there is a compelling interest to implement remedial measures, which may include applying the requirements of the State's Minority Business Enterprise (MBE) Program, to

assist minorities and women in the cannabis industry; (2) evaluate race-neutral programs or other methods that may address the needs of minority and women applicants and minority- and women-owned businesses seeking to participate in the medical cannabis industry; and (3) submit emergency regulations, if necessary based on the findings of the study and allowed by law. Any remedial measures adopted may only be applied prospectively and may not have any effect on licenses awarded Stage One pre-approval before the effective date of the bill.

### *Issuance of Additional Licenses and Licensee Reporting Requirements*

The commission may *not* review, evaluate, or rank applications or award any additional licenses until the emergency regulations related to the disparity study are adopted. Once these regulations are adopted, the commission must accept new applications (in addition to those already received); allow previous applicants to amend and resubmit or withdraw applications; and resume reviewing, evaluating, and ranking applications in accordance with the evaluation system adopted in regulations. The commission may waive the initial application fee for an applicant who previously applied and may charge a reasonable fee for the submission of an amended application.

To the extent permitted by federal and State law, the commission must actively seek to achieve racial, ethnic, and geographic diversity when licensing growers, dispensaries, and processors. The commission must also encourage applicants who are small, minority, or women-owned business entities to apply for licensure as growers, dispensaries, and processors.

*Growers:* The bill increases the current cap on the number of grower licenses that may be issued from 15 to 20. Additionally, the bill repeals language authorizing the commission to issue additional licenses as necessary to meet demand beginning June 1, 2018. Instead, the commission may issue the report after December 1, 2024, with the approval of the Legislative Policy Committee (LPC). The bill prohibits the report from being issued prior to December 1, 2024, and requires that the report be issued by December 1, 2028. A statutory change would then be required to increase the cap. The bill increases the term of initial grower licenses from four to six years and renewal grower licenses from two to four years.

*Processors:* The bill establishes a new cap of 20 on the number of processor licenses that may be issued. Additionally, the bill requires the commission to report to the General Assembly on the number of processor licenses necessary to meet demand by December 1, 2028; however, that report may not be submitted before December 1, 2024. Further, the commission may not submit the report between December 1, 2024, and December 1, 2028, without approval from LPC. A statutory change would then be required

to increase the cap. The bill increases the term of initial processor licenses from four to six years and renewal processor licenses from two to four years.

*Licensee Reporting Requirements:* Beginning June 1, 2018, and annually thereafter, all licensees must report to the commission on (1) the number of minority and women owners of the licensee; (2) the ownership interest of any minority and women owners; and (3) the number of minority and women employees of the licensee.

#### *Registration of Grower, Dispensary, and Processor Agents with a Felony Drug Conviction*

The bill modifies the current prohibition against registering an individual convicted of a felony drug offense as a medical cannabis grower agent, dispensary agent, or processor agent. Instead, the commission *may* register an individual convicted of a felony drug offense as an agent *unless* (1) the individual was convicted of the offense or satisfactorily completed his or her sentence, including probation, within the seven-year period immediately preceding the date on which the individual submitted an application or (2) the commission finds a substantial reason to deny the registration.

#### *Prohibitions*

The bill establishes a general prohibition against a constitutional officer or a Secretary of a principal department of the Executive Branch of State government owning, being employed by, or having a business relationship with an entity holding a medical cannabis license unless the ownership, employment, or business relationship existed prior to their election or appointment.

### **Current Law/Background:**

#### *Maryland's Medical Cannabis Program*

Chapter 403 of 2013 established, Chapters 240 and 256 of 2014 expanded, and Chapter 251 of 2015 and Chapter 474 of 2016 further modified the State's medical cannabis program. The Natalie M. LaPrade Medical Cannabis Commission administers the program, which makes medical cannabis available to qualifying patients and their caregivers legally under State law via written certification. The commission comprises 16 members, including the Secretary of Health, with 15 members appointed by the Governor. Commission members may not receive compensation, but they are entitled to standard reimbursement for travel.

A qualifying patient with a written certification can obtain a 30-day supply of medical cannabis, which is defined as 120 grams of usable cannabis. The first medical cannabis was available for sale in the State in late 2017. The program allows for the licensure of growers, processors, and dispensaries and the registration of their agents, as well as

registration of independent testing laboratories and their agents. For more information regarding the commission and Maryland's medical cannabis program, please see the **Appendix – Medical Cannabis**.

### *Licensees and Registrants*

Statute limits the number of growers that may be licensed by the commission to 15 until June 1, 2018, when the commission may issue enough grower licenses to meet demand. There is no statutory or regulatory limit on the number of processors that may be licensed. Regulations establish a limit of 2 dispensary licenses per senatorial district or up to 94 dispensary licenses statewide. The commission opened applications for grower, processor, and dispensary licenses in September 2015. In August 2016, the commission announced the 15 growers and 15 processors who were awarded Stage One license pre-approvals, and in December 2016, 102 dispensary Stage One licensee pre-approvals were announced (some of which hold a combination license and thereby fall within the limits on each type of license). By the end of calendar 2017, the commission had issued final licenses for 14 growers, 12 processors, and 22 dispensaries. For further discussion on the license application process and controversy over geographic, racial, and ethnic diversity in the licensing process, please see the appendix.

Licensees are required to apply to the commission for a registration card for each agent. An “agent” is an owner, employee, volunteer, officer, or director of a licensee. The commission is prohibited from registering an agent who has been convicted of a felony drug offense.

### *Maryland's Minority Business Enterprise Program*

The State's MBE program requires that a statewide goal for MBE contract participation be established biennially through the regulatory process under the Administrative Procedure Act. The biennial statewide MBE goal is established by the Special Secretary for GOMA, in consultation with the Secretary of Transportation and the Attorney General. Generally, prior to each reauthorization of the State's MBE program, the State conducts a disparity study to determine whether there is continued evidence that MBEs are underutilized in State contracting. Each industry is composed of specific industry classifications defined by U.S. Census North American Industry Classification System (NAICS) codes.

The most recent disparity study was completed in 2017 and serves as the basis for the most recent reauthorization of the MBE program. It found continued and ongoing disparities in the overall annual wages, business earnings, and rates of business formation between nonminority males and minorities and women in Maryland. In August 2013, GOMA announced a new statewide goal of 29% MBE participation that applied to fiscal 2014 and 2015; as no new goal has been established, the 29% goal remains in effect for fiscal 2018.

An MBE is a legal entity, other than a joint venture, that is:

- organized to engage in commercial transactions;
- at least 51% owned and controlled by one or more individuals who are socially and economically disadvantaged; and
- managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it.

In response to proposed legislation during the 2017 session, and controversy related to geographic, racial, and ethnic diversity in the licensing process, Governor Hogan issued an executive order in April 2017 directing GOMA to initiate a disparity study of Maryland's regulated medical cannabis industry. The commission provided MDOT with NAICS codes for the medical cannabis industry in Maryland. MDOT provided these codes to the State's disparity study consultant to evaluate whether the State's most recent disparity study, published in February 2017, covered NAICS codes applicable to the medical cannabis industry in Maryland. MDOT anticipates that this evaluation will be finalized by the end of January 2018.

#### *Maryland's Small Business Reserve Program*

Chapter 75 of 2004 established the Small Business Reserve (SBR) program and defined a small business as either a certified minority-owned business or a business other than a broker that is independently owned and operated, not a subsidiary of another firm, and not dominant in its field of operation. To qualify as a small business under SBR, a business must meet *either* of the following criteria in its most recently completed three fiscal years:

- the firm did not employ more than 25 people in its retail operations; 50 people in either its wholesale or construction operations; or 100 people in either its service, manufacturing, or architectural and engineering operations; *or*
- average gross sales did not exceed \$2.0 million for manufacturing operations, \$3.0 million for retail operations, \$4.0 million for wholesale operations, \$4.5 million for architectural and engineering services, \$7.0 million for construction operations, and \$10.0 million for service operations.

Chapter 438 of 2017 expanded SBR to apply to all State agencies, and increased the program's goal from 10% to 15% of State procurement dollars being awarded to certified small businesses. Small businesses self report their small business status by registering on eMaryland Marketplace, the State's online procurement portal. GOMA is responsible for administering SBR. Currently, more than 6,000 certified small businesses in Maryland are eligible to participate in SBR.

## **State Revenues:**

### *Effect of Caps on Licenses Issued*

The bill increases the cap on the number of grower licenses the commission may issue to 20, and it establishes a cap of 20 for processor licenses, both of which are permanent until changed in statute, which would likely not occur until after submission of the demand studies (December 1, 2024, at the earliest). However, the commission may not award any *new* licenses until the commission has adopted any necessary remedial regulations in response to the results of the evaluation of the disparity study of the medical cannabis industry. If the 2017 study demonstrates a disparity exists, then any necessary remedial measures can presumably be developed and implemented in short order. However, if the 2017 disparity study *does not* apply to the NAICS codes identified by the commission, then a new full disparity study must be initiated. MDOT advises that a full disparity study takes years to complete.

Thus, if the commission issues the additional five grower licenses authorized under the bill, the licenses are likely not able to be awarded until late fiscal 2018 at the earliest, and possibly later. Under current law, the commission would be able to issue additional grower licenses as required to meet demand, beginning June 1, 2018, and there is no cap on processor licenses. Given the permanent-but-higher cap on the number of grower licenses and the new cap on processor licenses, the bill likely results in foregone special fund revenues as it either delays issuance of new licenses and/or further limits the number that may be issued. Additionally, to the extent that any current Stage One pre-approval licensees fail to satisfy the commission's requirements for final licensure, and the commission rescinds their Stage One pre-approval, the commission cannot issue additional licenses as it would have been able to do under current law. Thus, special fund revenues may decrease further. As of January 8, 2018, final approval is pending for one grower, 86 dispensaries, and four processors.

### *Increased Term of Certain Licenses*

The bill increases the terms of licensure for growers and processors from four to six years for initial licenses and from two to four years upon renewal. The commission advises that, since the commission's licensure fees (established in regulation) are paid on an annual basis, changing the terms of licensure has no effect on the commission's special fund revenues.

### *Capitalization of the Natalie M. LaPrade Medical Cannabis Compassionate Use Fund*

The bill establishes the new fund and requires MDH to administer the fund and set fees in an amount necessary to provide revenues for the purposes of the fund. However, the bill



prohibits the commission from imposing fees on licensees during the two years immediately following pre-approval. Therefore, funding from fees assessed on licensees is not available until early fiscal 2019 at the earliest. The actual timing and amount of any capitalization are unknown and depend on any fees assessed and outside sources of funding.

### *Grant Revenue*

To the extent that the commission chooses to issue grants to appropriate educational and business development organizations for training, as authorized under the bill, revenues for these institutions increase. The University System of Maryland notes that it may realize grants and partner with the commission to (1) educate medical professionals and health care providers; (2) educate potential minority applicants and trade associations; (3) prepare Maryland's workforce for employment within the industry; and (4) analyze and test medical cannabis grown in Maryland.

### **State Expenditures:**

#### *Administrative Costs for the Commission*

Special fund expenditures increase for the commission to pay salaries for the eight eligible commission members. Although the budgeted amount anticipated for this purpose is unknown, the provision was modeled after a similar provision for lottery and gaming commissioners, who are paid \$18,000 annually. Thus, the medical cannabis commission must likely pay eight of the commissioners at least \$18,000 annually. Assuming eight commissioners are in place by June 1, 2018, special fund expenditures for the commission increase by \$12,000 in fiscal 2018, and by \$144,000 annually thereafter. Since the commissioners are not State employees, this estimate does not include any fringe or health care benefits.

The bill decreases the commission membership by a net of seven members. Thus, the commission realizes savings of approximately \$200 in fiscal 2018 and \$2,300 annually thereafter from a reduction in reimbursement and travel costs for these commission members. This estimate is based on the budgeted amount for travel for each commission member in fiscal 2019.

Special fund expenditures also decrease by an estimated \$250,000 in fiscal 2019 from funding that had been budgeted to hire a consultant to conduct a study to determine the demand for medical cannabis by qualifying patients. Under the bill, this study may not be submitted prior to December 1, 2024.

The commission can likely adopt regulations and submit all required reports with existing budgeted resources.

### *Costs to Conduct Required Outreach*

DLLR advises that current staff from the Division of Workforce Development and Adult Learning can partner with the commission to identify employment opportunities within the medical cannabis industry for job seekers, dislocated workers, and ex-offenders. However, since these employees are federally funded and DLLR cannot use federal funds for activities regarding medical cannabis, general funds are needed to cover the portion of employees' salaries for time spent fulfilling the bill's requirements. Since the bill does not specify a time limit, it is assumed that these costs are ongoing. Thus, general fund expenditures for DLLR increase by \$20,662 in fiscal 2018 (assuming the partnership begins May 1, 2018), by \$119,507 in fiscal 2019, and by a minimum of \$125,037 annually thereafter.

Special fund expenditures for the commission increase, likely beginning at the end of fiscal 2018 and continuing into fiscal 2019, to conduct the required outreach, including (1) developing partnerships with the specified entities; (2) establishing and conducting training programs for employment in the medical cannabis industry; and (3) disseminating information required to reach large numbers of minority and women business owners and entrepreneurs. The commission estimates that costs to hire a consultant to assist with the required outreach are likely around \$100,000, based on current costs to hire a diversity consultant and the breadth of the required outreach. Thus, special fund expenditures for the commission to hire the consultant increase by an estimated \$16,667 in fiscal 2018 and \$83,333 in fiscal 2019. Some costs are likely maintained in the out-years, because the outreach must be ongoing, but it is unknown whether a consultant is still needed. To the extent that the commission chooses to issue grants to appropriate educational and business development organizations for training, as authorized under the bill, special fund expenditures further increase. However, the amount and timing of such grant funding are unknown and have not been factored into this analysis.

The commission is also required to develop a partnership with GOMA. GOMA can work with the commission to provide outreach, compliance, training, and technical assistance to the commission. GOMA also plans to provide technical assistance to MBEs, which will entail training and advocacy related to contractual opportunities. Further, if the MBE program is applied to the medical cannabis industry in the State, GOMA plans to work closely with State agencies to ensure that agencies take appropriate steps to implement the program. GOMA advises that it would likely need to hire one additional staff to the extent that it is required to work directly with the commission and the medical cannabis industry is added to the MBE program. The Department of Legislative Services (DLS) generally

concur but notes that if the partnership is less robust, or the medical cannabis industry is not added to the MBE program, GOMA likely does not require additional staff.

*Evaluation of Disparity Study and Potential Future Costs Depending on the Outcome*

The commission and MDOT must (1) complete the required evaluation of a [disparity] study of the medical cannabis industry and market and determine whether there is compelling interest to implement remedial measures (including application of the State's MBE program) and to implement those measures as necessary and (2) evaluate race-neutral programs or other methods to address the needs of minority and women applicants and minority and women-owned businesses seeking to participate in the industry. However, the actual timing and the magnitude of these costs depends largely on the outcome of the study, as discussed below.

The commission has already identified NAICS codes for the medical cannabis industry in the State, and MDOT has already hired the State's disparity study consultant to make an initial determination of whether the 2017 disparity study applies to those NAICS codes. Thus, immediate costs related to evaluation of the study for the commission and MDOT are likely minimal. Future costs depend on the outcome of the evaluation. To the extent that the 2017 study is applicable, and there is a finding of disparate impact, a similar round of evaluation must be repeated every few years. MDOT advises that hiring the consultant to evaluate industry-specific NAICS codes costs approximately \$75,000. However, to the extent that the most recent study *does not* cover the NAICS codes for the medical cannabis industry and a new disparity study must be conducted, expenditures increase by \$1.5 million to \$2.0 million over a multi-year period. It is unknown whether the commission or MDOT would bear the costs to conduct a new study or for the ongoing evaluation of disparity.

If the State's disparity study consultant determines that the 2017 disparity study *does* cover the NAICS codes identified by the commission, and there is a determination that remedial measures are necessary, related costs likely begin as early as May 1, 2018. The commission must promulgate regulations and reopen applications for licensure. Special fund expenditures for the commission likely increase by at least \$400,000 in the fiscal year in which the commission issues any additional licenses to hire a consultant to assist the commission in awarding additional licenses and establishing a new licensing process as necessary based on the remedial measures taken. DLS based this estimate on the costs to conduct the initial scoring of grower licenses through the Regional Economic Studies Institute (better known as RESI).

If the State's MBE program is applied to the medical cannabis industry, MDOT cannot expand the program with existing resources. MDOT advises that its Office of Minority Business Enterprise is currently understaffed and struggles to meet mandated time requirements to be in compliance with regulations. DLS concurs that MDOT needs to hire

at least one additional full-time permanent employee beginning the year in which the MBE program is applied to medical cannabis to answer phone inquiries, review applications, and conduct investigations and annual review processing.

*Administration of the Natalie M. LaPrade Medical Cannabis Compassionate Use Fund*

Concurrent with program implementation, MDH may need additional staff to reimburse licensed dispensaries for the cost of medical cannabis dispensed to eligible individuals under the program and generally implement the fund. Although there is no specific authorization to use either the new fund or the existing fund for administrative costs, this analysis assumes that special funds from one of the funds are used to cover any administrative costs for MDH related to administering the new program; otherwise, general fund support is needed. The Comptroller's Office can administer the fund, as directed by MDH, with existing budgeted staff and resources. OLA can conduct the required audit with existing budgeted staff and resources.

**Small Business Effect:** The bill requires the commission to conduct extensive outreach and to provide specified assistance to encourage small, minority, and women-owned businesses to enter the medical cannabis industry. This likely results in more small businesses entering the industry than under current law. Benefits may be greater depending on the outcome of the evaluation of the disparity study.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 1 (Senator Conway, *et al.*) - Finance.

**Information Source(s):** Governor's Office of Small, Minority, and Women Business Affairs; Office of the Attorney General; University System of Maryland; Morgan State University; Maryland Department of Health; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; Department of Veterans Affairs; Department of Legislative Services - Office of Legislative Audits; Department of Legislative Services

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## Appendix – Medical Cannabis

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### *Natalie M. LaPrade Medical Cannabis Commission*

The Natalie M. LaPrade Medical Cannabis Commission is responsible for implementation of the State’s medical cannabis program, which is intended to make medical cannabis available to qualifying patients in a safe and effective manner. The program allows for the licensure of growers, processors, and dispensaries and the registration of their agents, as well as registration of independent testing laboratories and their agents. There is a framework to certify health care providers (including physicians, dentists, podiatrists, nurse practitioners, and nurse midwives), qualifying patients, and their caregivers to provide qualifying patients with medical cannabis legally under State law via written certification.

Medical cannabis may only be obtained from a grower or dispensary licensed by the commission, and the commission may license no more than 15 growers. However, beginning June 1, 2018, the commission may issue the number of grower licenses necessary to meet demand for medical cannabis by qualifying patients and caregivers in an affordable, accessible, secure, and efficient manner. There is no established limit on the number of processor licenses in statute or regulation, but the commission [chose](#) to limit the initial number to 15. While there is no specific restriction on the number of dispensaries in statute, regulations set a limit of 2 dispensary licenses per senatorial district or up to 94 dispensary licenses statewide.

### *License Application Process*

The commission is required to actively seek to achieve racial, ethnic, and geographic diversity when licensing growers and to encourage such applicants who qualify as a minority business enterprise (MBE). There is no requirement for the commission to seek to achieve racial, ethnic, and geographic diversity when licensing processors, but there is such a statutory requirement for dispensaries. There is no requirement to encourage applicants who qualify as an MBE for either processor or dispensary licenses.

The commission opened applications for grower, processor, and dispensary licenses in September 2015. Towson University’s Regional Economic Studies Institute (RESI) was commissioned to review grower and processor applications through a double-blind review process in which all identifying information was redacted. The scoring system authorized the commission to take into account the geographic location of the growing operation to ensure geographic diversity in the award of licenses. The scoring system did not include a consideration of race, based on a letter from the Office of the Attorney General stating that

constitutional limits prohibited the consideration of race or ethnicity for licensing when there is no disparity study that indicates past discrimination in similar programs.

In August 2016, the commission announced the 15 growers and 15 processors who were awarded Stage One license pre-approvals. The evaluation procedures to be used in the award of dispensary licenses were adopted by the commission in November 2016, and the commission announced 102 dispensaries who were awarded Stage One license pre-approvals in December 2016 (this number included 10 pre-approvals issued to applicants who also received grower license pre-approvals). All of the Stage One pre-approvals awarded in 2016 have 365 days from the date of pre-approval notification to complete all necessary steps to obtain final licensure. Should an awardee fail to do so, the commission has the authority to not issue a final license.

### *Controversy Over Geographic, Racial, and Ethnic Diversity*

Since the award announcements, there has been significant controversy surrounding two main issues: the decision to include geographic diversity as a final factor in choosing the grower finalists; and the fact that none of the 15 Stage One approved grower finalists is led by minorities.

Geographic diversity became an issue when two companies among the top 15 ranked growers did not receive pre-approval after being replaced by other companies in order to provide geographic representation throughout the State. In July 2016, a subcommittee of the commission unanimously voted to preliminarily approve the top 15 growers based on the RESI scoring, which did not include a consideration of location. Afterward, the subcommittee reversed its vote, which resulted in two lower-ranked firms being moved into the top 15 growers in order to achieve geographic diversity. The two companies that were initially included in the top 15 growers but later removed are suing the commission, claiming that the determination of how geographic diversity was to be considered was unclear to applicants. In addition, none of the top 15 growers is minority owned, which prompted a lawsuit by an African American-owned company that was denied a grower license seeking to halt the medical cannabis program until the commission takes action to ensure racial and ethnic diversity among licensed growers.

A number of bills relating to the composition of the commission and the number of grower and processor licenses, as well as licensing criteria and the approval process, were introduced during the 2017 legislative session. However, none of these bills passed.

In April 2017, Governor Lawrence J. Hogan directed the then Governor's Office of Minority Affairs to initiate a disparity study of Maryland's regulated medical cannabis industry to be conducted by the Maryland Department of Transportation (MDOT) in cooperation with the commission. According to MDOT, the study is underway, and will

be completed by early 2018. Additionally, in July 2017, Governor Hogan announced nine new appointments to the commission; of these, three appointments filled vacancies, and six replaced commissioners whose terms had expired. As a result of these appointments, minority representation on the commission doubled.

The chair of the commission has stated that the commission is committed to seeking and promoting racial diversity and minority inclusion and will continue to work with the legislature to help solve these complex problems, but it does not want to further delay the program. At its October 3, 2017 meeting, the commission announced that, as a result of discussions with the Legislative Black Caucus, it intended to form a minority affairs subcommittee to help address some caucus concerns; this committee has since been formed.

### *Status of Medical Cannabis Implementation*

As detailed in its annual report, the commission had issued final licenses for 14 growers, 12 processors, and 22 dispensaries by year-end 2017. Additionally, the commission had approved one-year provisional registrations for four independent testing laboratories. The commission maintains a list of licensees on its website, which can be found at <http://mmcc.maryland.gov/Pages/industry.aspx>. The first medical cannabis in the State was available for sale in late 2017, and at least seven dispensaries planned to be open for business by January 2018.