

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1035

(Delegate Glenn)

Health and Government Operations

Finance

Natalie M. LaPrade Medical Cannabis Commission - Certifying Providers -
Referrals

This bill prohibits a referral of a qualifying patient, under the State’s medical cannabis program, to a certifying provider from being made by any person or entity who has any specified employment or compensation interest in facilitating a person to become a qualifying patient.

Fiscal Summary

State Effect: The bill does not have a material impact on State finances or operations.

Local Effect: None.

Small Business Effect: Minimal, as discussed below.

Analysis

Current Law:

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. The program requires the licensure of growers, processors, and dispensaries and the registration of their agents. The program also requires the 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.

Certifying Providers and Qualifying Patients

Certifying providers must meet specified requirements and submit required application materials to the commission, including a proposal with the reasons for including a patient under the care of the provider; an attestation that a standard patient evaluation will be completed (including a history, a physician examination, a review of symptoms, and other pertinent medical information); and the provider's plan for the ongoing assessment and follow-up care of a patient. A qualifying patient may be a patient of the certifying provider; or be referred to the certifying provider.

A certifying provider and his/her spouse is prohibited from receiving any gifts from, or having an ownership interest in a medical cannabis entity. A certifying provider may receive compensation from a medical cannabis entity if the provider (1) obtains prior approval from the commission and (2) discloses the amount of compensation received to the commission.

Maryland regulations establish that a certifying *physician* may not receive compensation, including promotion, recommendation, advertising, subsidized rent, or anything of value, from a licensed grower, licensed processor, or a licensed dispensary unless the certifying physician submits an application to the commission for approval for the compensation. When submitting an application to the commission for approval, the application must disclose the specific type and value of compensation and the services for which the compensation will be paid. Additionally, the applicant must include an attestation that the compensation does not violate the Maryland Medical Practice Act or patient referral laws.

Patient Referral Laws

Under the Health Occupations Article, generally a health care practitioner may not refer a patient, or direct an employee or a person under contract with the health care practitioner to refer a patient, to a health care entity (1) in which the health care practitioner or the practitioner in combination with the practitioner's immediate family owns a beneficial interest; (2) in which the practitioner's immediate family owns a beneficial interest of 3% or greater; or (3) with which the health care practitioner, the practitioner's immediate family, or the practitioner in combination with the practitioner's immediate family has a compensation arrangement. There is an exemption for specified compensation agreements that are funded fully by the Medicare or Medicaid programs.

However, this prohibition does not apply to a health care practitioner who refers in-office ancillary services or tests that are (1) personally furnished by the referring health care practitioner, a health care practitioner in the same group practice as the referring health care practitioner, or an individual who is employed and personally supervised by the qualified referring health care practitioner or a health care practitioner in the same group practice as the referring health care practitioner; (2) provided in the same building where the referring health care practitioner or a health care practitioner in the same group practice as the referring health care practitioner furnishes services; and (3) billed by the health care practitioner performing or supervising the services or a group practice of which the health care practitioner performing or supervising the services is a member.

Small Business Effect: To the extent that a certifying provider and another individual or entity have a referral agreement in place for compensation, and the bill prohibits this agreement, the bill may result in a loss of revenues and/or business for some providers.

Additional Information

Prior Introductions: None.

Cross File: SB 1063 (Senator Conway, *et al.*) - Finance.

Information Source(s): Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - March 4, 2018
mag/jc Third Reader - March 22, 2018
Revised - Amendment(s) - March 22, 2018

Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510