Department of Legislative Services

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FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 17 (Delegate Glenn, *et al.*)
Health and Government Operations Judicial Proceedings

Natalie M. LaPrade Medical Cannabis Commission – Processing and Dispensing Medical Cannabis

This emergency bill makes numerous changes to the State's medical cannabis program, including (1) authorizing specified entities to register with the Natalie M. LaPrade Medical Cannabis Commission to purchase medical cannabis for research purposes; (2) requiring the commission to allow licensed medical cannabis dispensaries and processors to sell "edible cannabis products," as specified; (3) increasing the length of time a medical cannabis license holder must be actively engaged in the industry before selling or transferring ownership of the license; (4) expanding legal protections for individuals participating in the State's medical cannabis program; and (5) restricting medical cannabis advertising. The commission must adopt regulations, including some in consultation with the Maryland Department of Health (MDH), to implement portions of the bill.

Fiscal Summary

State Effect: No likely effect in FY 2019. Special fund expenditures increase by $407,500 in FY 2020 for staff and training costs: out-years reflect ongoing staff costs. The bill's imposition of existing penalty provisions does not materially affect State finances.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	$0	$0	$0	$0	$0
SF Expenditure	407,500	309,600	330,800	342,100	353,900
Net Effect	($407,500)	($309,600)	($330,800)	($342,100)	($353,900)

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

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: Meaningful.

Analysis

Bills Summary:

Academic Research Centers

An institution of higher education, a related medical facility, or an affiliated biomedical research firm is authorized to register with the commission to purchase medical cannabis for the purposes of conducting a bona fide research project relating to the medical uses, properties, or composition of cannabis. Further, an "academic research representative" may purchase medical cannabis from a licensed dispensary. The commission may adopt implementing regulations.

An "academic research representative" is an employee or agent of an institution of higher education, a related medical facility, or an affiliated biomedical research firm that has filed a registration with the commission and is authorized to purchase medical cannabis for the institution of higher education or related medical facility.

An institution of higher education, a related medical facility, or an affiliated biomedical research firm's registration must include (1) the name of the primary researcher; (2) the expected duration of the research; and (3) the primary objectives of the research. The registration must remain valid until there is a change in the research project or the registration is withdrawn.

An academic research representative may not be penalized or arrested under State law for acquiring, possessing, or dispensing cannabis, products containing cannabis, related supplies, or educational materials for use in a bona fide research project relating to the medical uses, properties, or composition of cannabis.

An academic research representative purchasing medical cannabis in accordance with the bill and Maryland's medical cannabis program is not subject to arrest, prosecution, revocation of mandatory supervision, parole, or probation, or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, nor may they be denied any right or privilege, for the medical use or possession of medical cannabis.

The bill generally makes conforming changes to existing legal protections for licensed growers, dispensaries, and processors to allow these entities and their agents to provide medical cannabis to academic research representatives in accordance with the State's medical cannabis program and the bill.

A person may not distribute, possess, manufacture, or use cannabis that has been diverted from an academic research representative.

Edible Cannabis Products

"Edible cannabis product" means a medical cannabis product intended for human consumption by oral ingestion, in whole or in part, and includes medical cannabis products that dissolve or disintegrate in the mouth. "Edible cannabis product" does not include any (1) medical cannabis concentrate; (2) medical cannabis-infused product, including an oil, wax, ointment, salve, tincture, capsule, suppository, dermal patch, or cartridge; or (3) other dosage form that is recognized by the U.S. Pharmacopeia, the national formulary, or the U.S. Food and Drug Administration and is approved by the commission.

The commission must allow a licensed medical cannabis dispensary (or a registered dispensary agent) to acquire, possess, transfer, transport, sell, distribute, or dispense edible cannabis products for use by a qualifying patient, a caregiver, or an academic research representative. The commission must also allow a licensed processor (or a registered processor agent) to (1) acquire, possess, process, package, label, transfer, transport, sell, and distribute to a dispensary edible cannabis products and (2) transport edible cannabis products to an independent testing laboratory. The bill also clarifies that a licensed dispensary cannot process medical cannabis products.

The commission, in consultation with MDH, must adopt regulations (1) to require a dispensary and a processor to meet any additional requirements that the commission determines necessary, including requiring a permit, for the dispensing or processing of edible cannabis products, respectively and (2) regarding the packaging, labeling, marketing, and appearance of edible cannabis products to ensure the safety of minors.

Transfer of Ownership of Licenses

The bill increases, from two years to three years, the length of time that the holder of a medical cannabis grower, processor, or dispensary license must be physically and actively engaged in the cultivation, processing, or dispensing of medical cannabis immediately preceding the sale or transfer of the ownership of the license.

Immunity from Revocation of Mandatory Supervision, Parole, or Probation

The bill establishes that the following persons acting in accordance with the statutory provisions of the State's medical cannabis program are not subject to revocation of mandatory supervision, parole, or probation, for the medical use or possession of medical cannabis: (1) a qualifying patient in possession of a 30-day supply of medical cannabis, or a greater amount if authorized by the qualifying patient's written certification; (2) a grower

or grower agent; (3) a certifying provider; (4) a caregiver; (5) an academic research representative purchasing medical cannabis in accordance with the bill; (6) a dispensary or dispensary agent; (7) a processor or processor agent; (8) a hospital, medical facility, or hospice program where a qualifying patient is receiving treatment; or (9) an authorized third-party vendor.

Advertising Restrictions

All advertisements for medical cannabis, medical cannabis products, edible cannabis products, or medical cannabis-related services that make therapeutic or medical claims must be supported by substantial clinical evidence or data and include information on the most significant side effects or risks associated with use.

Any advertisement for a grower, processor, dispensary, independent testing laboratory, certifying provider, or third-party vendor may not (1) make any statement that is false or misleading in any material way or is otherwise a violation of the Maryland Consumer Protection Act (MCPA) or (2) contain a design, illustration, picture, or representation that encourages or represents the recreational use of cannabis, targets or is attractive to minors, displays the use of cannabis, encourages or promotes cannabis for use as an intoxicant, or is obscene.

All advertising for medical cannabis medical cannabis products, or edible cannabis products must include a statement that the product is only for use by a qualifying patient.

Any website owned, managed, or operated by a certifying provider, dispensary, grower, or processor must employ a neutral age-screening mechanism to verify users are at least age 18. An advertisement placed on social media or a mobile application must include a notification that (1) a person must be at least age 18 to view the content and (2) medical cannabis is for use by certified patients only.

Any advertisement for medical cannabis, medical cannabis products, edible cannabis products, or medical cannabis-related services may not be placed within 500 feet of (1) a substance abuse or treatment facility; (2) a primary or secondary school in the State or a licensed child care center or a registered family child care home; or (3) a playground, recreation center, library, or public park. However, these location restrictions do not apply to an advertisement placed on property owned or leased by a dispensary, grower, or processor.

The commission must adopt regulations that establish enforcement procedures and a process for an individual to voluntarily submit an advertisement to the commission for an advisory opinion on whether the advertisement complies with the bill's advertising restrictions.

Current Law:

Maryland's Medical Cannabis Program

The Natalie M. LaPrade Medical Cannabis Commission is responsible for implementation of the State's medical cannabis program. 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. Additionally, recent legislation extended legal protections to third-party vendors authorized by the commission to test, transport, or dispose of medical cannabis, medical cannabis products, and medical cannabis waste. In December 2018, the commission proposed regulations that require registration of secure transportation companies and address the shipment of products between licensees.

Statute defines a "dispensary" as an entity that acquires, possesses, processes, transfers, transports, sells, distributes, dispenses, or administers cannabis, products containing cannabis, related supplies, related products containing cannabis including food, tinctures, aerosols, oils, or ointments, or educational materials for use by a qualifying patient or caregiver. The definition of a licensed "dispensary" in Maryland regulations is similar; however, it also includes an entity that repackages products containing medical cannabis, and it does not include "food" in the description of related products.

Maryland regulations define "medical cannabis-infused product" to mean oil, wax, ointment, salve, tincture, capsule, suppository, dermal patch, cartridge, or other product containing medical cannabis concentrate or usable cannabis that has been processed so that the dried leaves and flowers are integrated into other material. "Medical cannabis-infused product" does not include food.

Although both the statutory and regulatory definitions of "dispensary" include processing products containing cannabis, the commission advises that, in practice, processing medical cannabis is outside the scope of licensed dispensaries, and dispensaries in the State are not authorized to process medical cannabis, which includes the manufacture of a medical-cannabis infused product.

Statute defines a "processor" as an entity that (1) transforms medical cannabis into another product or extract and (2) packages and labels medical cannabis.

There are no cannabis-specific advertising and marketing restrictions in the State. However, Chapter 598 of 2018, an emergency bill, made a number of significant reforms

to Maryland's medical cannabis program, including requiring the commission to submit a report to the General Assembly on potential rules and regulations governing the advertising and marketing of medical cannabis in the State. The commission submitted this report in December 2018.

Chapter 598 also addressed the sale or transfer of ownership for regulated medical cannabis entities. Specifically, a medical cannabis grower, processor, or dispensary license holder may only transfer ownership of a license if the licensee was physically and actively engaged in cultivating, processing, or dispensing medical cannabis for at least two years immediately preceding the sale or transfer. For additional information regarding the commission and Maryland's medical cannabis program, including license and ownership transfers, please see the **Appendix – Medical Cannabis**.

Protections Against Arrest, Prosecution, and Civil or Administrative Penalties

Current law establishes that any of the following persons acting in accordance with the statutory provisions of Maryland's medical cannabis program are not subject to arrest, prosecution, or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, nor may they be denied any right or privilege, for the medical use or possession of medical cannabis: (1) a qualifying patient who is in possession of a 30-day supply of medical cannabis, or a greater amount if authorized by the qualifying patient's written certification; (2) a grower or grower agent; (3) a certifying provider; (4) a caregiver; (5) a dispensary or dispensary agent; (6) a processor or processor agent; (7) a hospital, medical facility, or hospice program where a qualifying patient is receiving treatment; or (8) an authorized third-party vendor.

Probation

Probation is a disposition that allows an offender to remain in the community, frequently requiring compliance with certain standards and special conditions of supervision imposed by the court. A court has broad authority to impose reasonable conditions to fit each case. A standard condition of probation, for example, prohibits the offender from engaging in any further criminal activity. Additional conditions may require an offender to participate in drug or alcohol treatment, refrain from the use of drugs or alcohol, participate in counseling (common in domestic violence and sexual offense cases), pay restitution, or refrain from contacting or harassing the victim of the crime and the victim's family. A judge may also order "custodial confinement," which usually refers to home detention or inpatient drug or alcohol treatment but can also include other forms of confinement short of imprisonment.

If an offender is alleged to have violated a condition of probation, the offender is returned to court for a violation of probation hearing. If the court finds that a violation occurred, it

may revoke the probation and impose a sentence allowed by law. The court may alternately choose to continue the offender on probation subject to any additional conditions it chooses to impose. Probation may either be probation before judgment (commonly known as "PBJ") or probation following judgment.

Release on Mandatory Supervision

Release on mandatory supervision is a conditional release from confinement that results from the application of diminution credits, discussed below, and applies only to an inmate in a State correctional facility sentenced to a term of confinement exceeding 18 months. An inmate in a State correctional facility serving a term of 18 months or less and an inmate in a local detention center may also earn credits, but those inmates are not subject to mandatory supervision on release. There is no discretion involved in release on mandatory supervision.

Individuals on mandatory supervision are supervised by the Department of Public Safety and Correctional Services (DPSCS) until the expiration of the term and are subject to the same terms and conditions as inmates released on parole. See the discussion of parole below.

The entire sentence imposed by a trial court often is not actually served in custody before expiration of the sentence because diminution credits that may be awarded to an inmate shorten the time required to be served in custody by the inmate. Diminution credits are days of credit either granted or earned on a monthly basis. Inmates in State correctional facilities and local detention centers are eligible for diminution credits. Credits may be forfeited or restricted due to misbehavior in the institution.

Parole

In general, parole is a discretionary and conditional release from imprisonment determined after a hearing for an inmate who is eligible to be considered for parole. If parole is granted, the inmate is allowed to serve the remainder of the sentence in the community, subject to the terms and conditions specified in a written parole order.

The Maryland Parole Commission (MPC) has jurisdiction regarding parole for eligible inmates sentenced to State correctional facilities and local detention centers. Inmates in the Patuxent Institution who are eligible for parole are under the jurisdiction of the Patuxent Board of Review.

Any violation of a condition of release may result in revocation of parole. A violation is classified as either a "technical" violation that is not a crime (*e.g.*, failure to attend a required meeting or failing to be employed) or a commission of a new crime. If a violation

is alleged, MPC or DPSCS (if this power is delegated to the department in a particular case) must decide whether to issue a subpoena or a retake warrant for purposes of a parole revocation hearing. A subpoena is requested from the parole commission if the parole agent believes that the offender is not a public safety threat and that the offender will not flee. Otherwise, a parole agent must request a retake warrant, which subjects the individual to arrest, and submit a written report to the commission on the alleged violation.

Maryland Consumer Protection Act

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division of the Office of the Attorney General (OAG) is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to $10,000 for each violation and up to $25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to $1,000 and/or imprisonment for up to one year.

State Fiscal Effect: The bill (1) authorizes specified entities to register with the commission to purchase medical cannabis for research purposes; (2) requires the commission to allow licensed medical cannabis dispensaries and processors to sell edible cannabis products; (3) increases the length of time a medical cannabis license holder must be actively engaged in the industry before selling or transferring ownership of the license; (4) expands legal protections for individuals participating in the State's medical cannabis program; and (5) restricts medical cannabis advertising. As a result, special fund expenditures for the commission increase by a total of $407,490 in fiscal 2020 for staff and training costs.

Restricting the sale and transfer of medical cannabis licenses does not materially affect State finances. Similarly, the expansion of legal protections for individuals participating in the State's medical cannabis program clarifies current law and is not anticipated to

materially affect State finances or operations. The specific fiscal impacts associated with the other portions of the bill are discussed below.

Academic Research Centers

The commission advises that several institutions of higher education in the State have expressed interest in obtaining medical cannabis for research purposes. The commission notes that it plans to charge a registration fee for academic institutions (as well as related medical facilities and affiliated biomedical research firms) and their employees/agents similar to the fee for registration of independent testing laboratories and their agents. The current fee for an independent testing laboratory is $100, and the fee per agent/employee is $200. Thus, special fund revenues may increase from registration fees, beginning as early as fiscal 2019, but any increase is likely minimal. Correspondingly, the commission's workload increases minimally to review applications.

It is assumed that the commission can promulgate implementing regulations with existing budgeted staff and resources.

State institutions of higher education and related medical facilities (as well as affiliated biomedical research firms) may benefit from having access to medical cannabis from a safe, secure, and highly regulated source for the purpose of conducting bona fide research relating to the medical uses, properties, or composition of cannabis.

Administrative Expenditures Related to Edible Cannabis Products

Commission special fund expenditures increase by $296,787 in fiscal 2020, which accounts for the bill's emergency status, and assumes staff are hired effective July 1, 2019. This estimate reflects the cost of hiring two full-time permanent environmental health specialists and one permanent full-time director of food safety to oversee the expansion of edible cannabis products, establish standard operating procedures, conduct inspections, assist commissioners with enforcement, develop regulations, and provide guidance. It includes salaries, fringe benefits, one-time start-up costs (including travel and training), and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below.

- The commission does not currently have any staff trained in food safety or sanitation and needs to conduct stability studies on edible cannabis products.
- The commission is responsible for ensuring that edible cannabis products are properly labeled and dosages are clear to consumers and safe for use.

Positions	3.0
Salaries and Fringe Benefits	$266,242
Training and Associated Travel	14,000
Other Operating Expenses	16,545
FY 2020 Costs Related to Edible Cannabis Products	**$296,787**

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

Since it is unknown whether the commission will determine if it is necessary to issue permits to processors or dispensaries relating to edible cannabis products, this analysis does not reflect any potential revenues or expenditures related to permits.

Administrative Expenditures to Implement and Enforce Advertising Restrictions

Special fund expenditures for the commission increase by $110,703 in fiscal 2020, which accounts for the bill's emergency status, and assumes staff is hired effective July 1, 2019. This estimate reflects the cost of hiring one full-time permanent enforcement officer to develop regulations, review and give advisory opinions on advertisements, and generally enforce the bill's requirements. It includes a salary, fringe benefits, one-time start-up costs (including attending a training course for four commission employees), and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- The commission is responsible for enforcing the bill's requirements.
- The commission does not have experience with enforcing advertising regulations and cannot absorb the additional responsibilities under the bill with existing budgeted staff and resources.

	FY 2020	**FY 2021**
Position	1.0	-0.5
Salary and Fringe Benefits	$93,144	$72,352
Training Expenses	12,200	-
Operating Expenses	5,359	625
Costs Related to Advertising Restrictions	**$110,703**	**$72,977**

Future year expenditures reflect a full salary with annual increases and employee turnover and going operating expenses. However, it is assumed that, as medical cannabis entities become more familiar with the bill's prohibitions and requirements, the enforcement officer will need to provide fewer advisory opinions. Thus, the enforcement officer can likely transition from a full-time to a part-time position after the first year; the costs for

fiscal 2021 above reflect this assumption. Any further staffing requirements depend on the enforcement procedures developed in the regulations.

OAG can handle enforcement related to unfair, abusive, or deceptive advertising under MCPA with existing resources.

Small Business Effect: While there may be costs associated with retrofitting or building a facility to meet any applicable regulations regarding production of edible cannabis products, according to the commission, edible cannabis products are an extremely popular form of ingestion and represent a large market share in other jurisdictions that regulate medical cannabis. Thus, Maryland licensees can expect potentially significant increased sales from edible cannabis products.

The bill may meaningfully affect medical cannabis entities' ability to advertise in the State. Many medical cannabis entities are small businesses. Additionally, since marijuana remains illegal at the federal level, there are fewer scientific studies regarding the health effects of the use of medical cannabis. Thus, the content of advertisements under the bill is limited. The bill also limits the format and placement of advertisements. These restrictions may negatively affect business operations and finances.

Additional Information

Prior Introductions: None.

Cross File: SB 857 (Senator Zirkin) - Judicial Proceedings.

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

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Appendix – Medical Cannabis

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. Additionally, recent legislation extended legal protections to third-party vendors authorized by the commission to test, transport, or dispose of medical cannabis, medical cannabis products, and medical cannabis waste. In December 2018, the commission proposed regulations that require registration of secure transportation companies and address the shipment of products between licensees.

Controversy Over Geographic, Racial, and Ethnic Diversity

In August 2016, the commission announced the award of 15 grower and 15 processor Stage One license pre-approvals. In December 2016, the commission announced the award of 102 dispensary Stage One license pre-approvals. After the award announcements, significant controversy involved two main issues: the decision to include geographic diversity as a final factor in choosing the grower finalists and the absence of any minority-led grower among the 15 Stage One approved grower finalists.

Legislation to alter the commission and medical cannabis industry was introduced during the 2017 and 2018 sessions. Chapter 598 of 2018, an emergency bill, made a number of significant reforms including (1) requiring outreach to encourage participation in the medical cannabis industry by small, minority, and women business owners; (2) requiring the commission to promulgate emergency remedial regulations based on the results of a disparity study and delay reviewing, ranking, or evaluating license applications until the regulations are adopted; (3) raising the statutory cap on grower licenses from 15 to 22; (4) establishing a new license cap of 28 processors; and (5) requiring the commission to report to the General Assembly regarding potential rules and regulations governing marketing and advertising practices for licensees by January 1, 2019.

Pursuant to Chapter 598, in December 2018, the commission announced five grant awards to educational and business development organizations to develop medical cannabis educational and business development training programs. The programs are designed to

provide training and assistance to small, minority, and women business owners and entrepreneurs seeking to become licensed in Maryland's medical cannabis industry.

Evaluation of Disparity Study and Conclusions

The disparity study evaluated in accordance with Chapter 598 concluded that there is a compelling interest to implement remedial measures to assist minorities and women seeking to participate in the medical cannabis industry. Based on these findings, the commission submitted emergency regulations in October 2018. The regulations alter the application review process for obtaining a medical cannabis grower, processor, and dispensary license by implementing remedial measures to assist minorities and women in the medical cannabis industry. The regulations also alter the current weighted criteria used when ranking applicants for licenses to include certain race-neutral and race-conscious provisions, addressing the needs of women and minority-owned applicants.

License and Ownership Transfers

Chapter 598 of 2018 also addressed the sale or transfer of ownership for regulated medical cannabis entities. Specifically, a medical cannabis grower, processor, or dispensary license holder may only transfer ownership of a license if the licensee was physically and actively engaged in cultivating, processing, or dispensing medical cannabis for at least two years immediately preceding the sale or transfer. Regulations require licensed growers, processors, and dispensaries to (1) notify the commission of any proposed transfer of 5% or more of an ownership interest; (2) submit criminal history and audited financial information for the potential owner or transferee; (3) obtain written commission approval of the transfer; and (4) pay a transfer fee. Statute prohibits the commission from issuing more than one medical cannabis grower license to each applicant. Regulations specify that license applicants may only have an interest in one of each type of license. In February 2018, the commission issued a bulletin highlighting rules related to the sale or transfer of a medical cannabis license. The bulletin also addressed third-party management agreements, which some licensees have entered into to allow third parties to contract to operate the licensee's business without possessing an ownership stake.

Status of Medical Cannabis Implementation

As of January 9, 2019, the commission issued 15 final and 3 pre-approved grower licenses; 16 final and 2 pre-approved processor licenses; and 71 final and 31 pre-approved dispensary licenses. Additionally, the commission has registered five independent laboratories. The commission maintains a list of licensees on its website. Furthermore, there were 79,427 registered patients, 54,236 certified patients, 4,890 caregivers, and 1,243 certifying providers. The commission reported that, in the first 13 months of sales, there were $112.1 million in retail sales at medical cannabis dispensaries in the State.