

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1135 (Delegate S. Johnson, *et al.*)

Health and Government Operations and
Economic Matters

Health Care Facilities – Use of Medical Cannabis

This bill requires a “health care facility” to allow a qualifying patient with a valid written certification to consume medical cannabis within the health care facility if the patient is receiving nonemergency medical care at the health care facility, subject to specified requirements, prohibitions, and exceptions.

Fiscal Summary

State Effect: The bill is not expected to materially affect governmental operations or finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Health care facility” means a hospital or related institution and a hospice facility. “Health care facility” does not include a hospital or related institution that primarily provides treatment for individuals with substance-related disorder or a hospital emergency department.

A health care facility must:

- prohibit the consumption of medical cannabis through smoking or vaping;
- document a patient’s use of medical cannabis in the patient’s record;

- require a patient to provide a copy of their written certification;
- reasonably restrict how a patient may store medical cannabis, including requiring storage in a locked container;
- comply with drug and medication requirements applicable to Schedule II, III, and IV drugs (despite cannabis being classified as a Schedule I drug); and
- develop and disseminate written guidelines for the use of medical cannabis.

A health care facility is not required to (1) issue a written certification to a patient; (2) include medical cannabis in a patient's discharge plan; or (3) comply with the bill as a condition for obtaining, retaining, or renewing a license. A health care facility may not prohibit patient use of medical cannabis based on its classification as a Schedule I controlled dangerous substance or other federal prohibitions on the use of medical cannabis.

A health care facility may suspend compliance with the bill if (1) a federal regulatory agency or the U.S. Department of Justice (DOJ) initiates an enforcement action against the health care facility related to its compliance with a State-regulated medical cannabis program or (2) a federal regulatory agency, DOJ, or the Centers for Medicare and Medicaid Services (CMS) adopts a regulation or provides notification to a health care facility that expressly prohibits the use of medical cannabis in the health care facility or otherwise prohibits compliance with the State's medical cannabis program. If a health care facility suspends compliance with the bill, it may not resume compliance unless specifically authorized to do so by a regulatory entity, DOJ, or CMS.

The bill does not reduce, expand, or otherwise modify any provision of law restricting the cultivation, possession, distribution, or use of cannabis that may otherwise be applicable.

Current Law:

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, nurse midwives, and physician assistants), qualifying patients, and their caregivers to provide qualifying patients with medical cannabis legally under State law via written certification. Additionally, there are legal protections for third-party vendors

authorized by the commission to test, transport, or dispose of medical cannabis, medical cannabis products, and medical cannabis waste.

Status of Medical Cannabis Implementation

Statute limits the number of grower and processor licenses the commission can issue, and regulations establish a limit on the number of dispensary licenses. Specifically, the commission can issue 22 grower, 28 processor, and 102 dispensary licenses. At the close of calendar 2022, the commission had issued 18 final grower licenses, 21 final processor licenses, and 97 final dispensary licenses. In addition, there are three licensed independent testing laboratories. The commission maintains a list of licensees on its [website](#). Also, at the close of calendar 2022, there were 162,300 certified patients, 8,159 caregivers, and 1,560 certifying providers. The commission additionally reports a preliminary total of \$674.2 million in retail sales at cannabis dispensaries in the State for calendar 2022.

Medical Cannabis in Hospitals, Medical Facilities, or Hospice Programs

Pursuant to § 13-3313 of the Health-General Article, a hospital, medical facility, or hospice program where a qualifying patient is receiving treatment may not be 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, or be denied any right or privilege for the use of or possession of medical cannabis. The Code of Maryland Regulations (*COMAR 10.62.30.04*) authorize a medical cannabis licensee or registrant to deliver and a medical facility to accept medical cannabis at the medical facility where a qualifying patient is receiving inpatient treatment.

Additional Comments: The commission advises that, in January 2022, California implemented similar legislation allowing for the use of medical cannabis products by terminally ill patients. Prior to adoption, the California state legislature received assurances from CMS that permitting a medical cannabis patient to use medical cannabis products at a health care facility would not jeopardize federal funding.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 587 (Senator Hayes) - Finance.

Information Source(s): Office of the Attorney General; Maryland Department of Health; Department of Legislative Services

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js/jc

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