



## **SENATE BILL 833 – FAVORABLE WITH AMENDMENTS**

### **Cannabis - Legalization and Regulation**

**March 3, 2022**

The Maryland Wholesale Medical Cannabis Trade Association (CANMD), an organization representing the majority of medical cannabis grower and processor licensees in Maryland, submits this statement in general support of Senate Bill 833, with some suggested changes. We applaud Senator Feldman for taking a leadership role on this issue, and particularly appreciate his focus on social justice and social equity in this bill.

CANMD members have been, and remain, dedicated to creating and supporting a medical cannabis program in the State that provides a safe, affordable, accessible product for Maryland patients. If the State makes the decision to move forward with an adult use program, CANMD members have a valuable perspective to share on what has worked in Maryland's medical program and across the country. As well-regulated existing entities, medical licensees should be included in any adult use program, as has happened in every other State that has permitted adult use after adopting a medical program.

We support the sponsor's focus on the issues of social justice and inclusion. These goals are advanced through the possession and expungement provisions; efforts to further diversify the cannabis industry; the role of existing licensees in assisting and supporting new social equity licensees and; the targeting of tax proceeds to communities most impacted by the disparate enforcement of current cannabis laws. Our comments, however, generally relate to the structure, regulation, and implementation of an adult use market, as others are more expert on criminal justice issues.

Overall, Senate Bill 833 presents a sound framework for an adult use market, if that is the policy direction Maryland pursues. The proposal addresses social justice issues, promotes diversity and inclusion in the industry, and contemplates a well-regulated system that includes existing medical operators with sound records of regulatory compliance and the production of safe products. We look forward to working with Senator Feldman and the Committee on the conceptual issues that we identify here.

**Regulatory Structure.** As drafted, Senate Bill 833 places regulatory responsibility for the adult use program with the Alcohol and Tobacco Commission (ATC) while the Maryland Medical Cannabis Commission (MMCC) presumably retains regulatory responsibility for the medical program. If enacted, this approach would contradict the approach taken in most States that have adopted an adult use program while maintaining an existing medical program – one regulator should have responsibility for both programs. CANMD has no position on the

particular entity that will be the regulator. However, there are several considerations that should be observed when making that decision.

First, Maryland should take advantage of the experienced personnel at the current MMCC (as contemplated in the bill), who have developed significant expertise in regulating the medical market. Staff is very knowledgeable and strict, but fair, and Maryland should take advantage of that experience. Second, the regulating entity's Commissioners/Board members should reflect the new mission of the entity – the qualifications of the current membership of the ATC and/or MMCC would have to be amended to meet that need. Finally, the regulating entity should be a truly independent entity that can promulgate its own regulations and act swiftly and decisively when necessary to perform its duties.

**Regulatory Provisions.** As a related matter, Maryland's medical program is governed by a comprehensive set of regulations that have been developed over time by the MMCC based on best practices across the country (COMAR Title 10, Subsection 62.01-37). Senate Bill 833 unnecessarily dedicates several pages to topics that a new regulator must address through regulations – yet all these programmatic issues are already incorporated in the current regulations, including security, seed-to-sale tracking, testing, diversion, labeling, advertising, child-proof packaging, transportation, crop protection, marketing to children, and many others. As a general matter, the regulations for the adult use program should reflect the current medical regulations unless there is a significant reason to differentiate – which should be the exception.

**Existing medical cannabis grower, processor, dispensary and independent testing laboratory licensees.** Senate Bill 833 reflects the practice in other States that allows medical cannabis licensees to participate in the adult use market. To participate, a medical licensee must have a solid regulatory record and commit to continuing to serve the medical market that remains after adult use is implemented. This approach benefits the State and consumers. The State benefits from having a set of businesses that have experience following State laws and policies on security, diversion, and the development of a safe product, to assist in the immediate production of taxable adult use products. Consumers benefit from knowing they are purchasing from established entities with a record of safety.

Senate Bill 833 requires a payment from these medical licensees to a Social Equity Fund that can help provide much needed technical assistance and starting capital for applicants for the newly available social equity licenses. This structure helps relieve a significant hurdle for small and minority businesses that may have difficulty acquiring capital to navigate the application process, secure property, and establish their new business. CANMD looks forward to working with the sponsor on this and other measures that the State and existing medical licensees can take to help new businesses get established in the adult use market. States that have recently adopted an adult use program have used a variety of approaches to assist – fees similar to the fees dedicated in the bill to the Social Equity Fund; incubators; mentorships; application assistance; access to capital; joint venture partnerships; tax credits and other approaches.

**Licensing issues, including number, size, multiple ownership and license transfer.** As drafted, Senate Bill 833 creates a system for “tiered” grow operations, unlimited processor licenses, and a statutory cap on dispensary licenses. CANMD does not support unlimited license structures, which have led to significant regulatory issues in other States. Ideally, license numbers would be set after an analysis of the projected adult use market in Maryland. Demand in that market will far exceed demand in the medical market and would dictate the issuance of many additional licenses, which should be distributed consistent with the equity and inclusion provisions in the bill.

It is important that any system with limits on the size of cultivation facilities accounts for the size and growth of existing medical licensees, which Senate Bill 833 contemplates. Further, legislation needs to clarify the relationship between ownership restrictions in the medical program and restrictions in the new adult use program. For example, a medical licensee can have an interest in up to four dispensaries. Senate Bill 833 allows a person to have an interest in “five retailers.” Senate Bill 833 also limits a person to an interest in one cultivator but makes no mention of interests in a processor or any other license category in the new market.

**Maintenance of a medical program.** Senate Bill 833 generally requires that dual licensees (existing medical licensees) continue to serve medical patients “without increasing prices or reducing product availability” (page 48, lines 14-17). CANMD agrees that the medical program needs to be preserved and patients need to be prioritized and served. However, the vague standard in the bill is difficult to interpret and likely impossible to meet. This is particularly true given the experience in other States that the existing medical program loses enrollment, often by large amounts, when an adult use system is put in place. Other States have used more measurable standards to regulate the supply to the medical market, and more precise standards should be put in place here.

As noted, the reduction of the patient count in a State that moves to adult use varies, but inevitably it declines. It is important, therefore, to ensure medical licensees can be converted to dual licensees, as Senate Bill 833 contemplates. Some of the potential restrictions on size, however, cause concern if medical licensees are capped as dual licensees. If that occurs, the dual licensee would be able to produce for the adult use market only the amount of product equal to the reduction in demand in the medical market. This is inefficient and is a particular impediment to the launching of the adult use market given the initial constraint on supply.

Finally, the bill should allow for the sale of certain medically oriented products (higher dosage, different delivery methods) in the medical market even if they are not permitted in the adult use market.

**Taxation of medical and adult use cannabis businesses (280E).** The cultivation, production and dispensing of cannabis – medical or adult use – are considered illegal business activities in the eyes of the federal government. These businesses are still required to pay federal and State taxes, however. Because of the illegal nature of the business, cannabis-related businesses are

not allowed to deduct ordinary and necessary business expenses (because of Section 280E of the Internal Revenue Code), which include expenses associated with distribution, sales, administration, management, promotion, advertisement, overhead, and support. This also impacts Maryland taxes.

Application of 280E results in cannabis business owners being subjected to an effective tax rate as high as 90%. While there is a need to fix this at the federal level, Maryland can lessen the impact on Maryland business owners by allowing for the deduction of these expenses. This has been a major challenge for medical cannabis licensees in Maryland and should be fixed immediately. Failing to fix it will continue to have a disproportionate impact on entities conducting a business activity that is permitted under Maryland law. This extraordinarily high effective tax rate also poses a challenge for medical businesses in making required payments into the Social Equity Fund as Senate Bill 833 requires.

Senate Bill 833 has language to address the State impact of 280E on page 80.

**Taxation of adult use cannabis.** There are three tax-related issues that are addressed appropriately in Senate Bill 833. First, as noted above, there will continue to be a medical market of some size in Maryland. Senate Bill 833 maintains the current tax exemption for medical products. Second, the bill states that taxation of the product comes only at the point of sale when it can be determined whether the product is sold to a medical patient or an adult use customer. This structure is necessary to avoid an unnecessary and undue burden on licensees to maintain separate inventories of medical and adult use products, which in most instances are identical products. The bill also prohibits the regulatory body from requiring an inventory system that requires the differentiation of medical products from adult use products before the point of sale.

CANMD also endorses the phasing in of a higher sales tax rate over time. An important goal of establishing an adult use market is to displace sales in the illicit market. A lower tax rate at the start of the program, when supply is presumably limited and price is relatively high, makes sense. Over time, as price comes down and people are accustomed to purchasing in the legal market, a higher tax rate can be applied.

**Other issues.** Many other details remain to be worked out. For example, it is unclear when dual licensees can begin to sell products in an adult use market. The bill contemplates licenses being awarded by mid-May 2023, but the required regulations are not required to be submitted until October 1, 2023. Further, the bill is not clear on how dual licensees are permitted to open additional dispensaries – dual or adult use – as contemplated under current law.

In summary, if Maryland decides to adopt an adult use system, CANMD would like to lend its members' experience in the medical market to help structure the program and make it successful. We also share the perspective that an adult use program must promote inclusion, address prior injustices, and ensure social equity. We appreciate Senator Feldman's efforts to make this possible.