# Department of Legislative Services

Maryland General Assembly
2010 Session

## FISCAL AND POLICY NOTE
**Revised**

Senate Bill 627 (Senator Brinkley, *et al.*)
Judicial Proceedings Rules and Executive Nominations

**Public Health - Medical Marijuana**

This bill authorizes the legal use of marijuana for medical purposes under specified circumstances; sets up a system whereby the Department of Health and Mental Hygiene (DHMH) must license growers and dispensaries; allows doctors to recommend marijuana to certain patients; and makes marijuana a Schedule II controlled dangerous substance, rather than Schedule I. DHMH must adopt regulations to implement the bill by January 1, 2011.

## Fiscal Summary

**State Effect:** General fund expenditures increase by $400,000 in FY 2011 to purchase a software system to monitor the dispensation of medical marijuana beginning the following year. DHMH and the Maryland Department of Agriculture (MDA) can develop regulations with existing resources. Future year expenditures reflect staffing costs related to program implementation only and do not reflect any potential additional funding available for drug rehabilitation programs in Maryland. Future year revenues are generated from fees collected from growers, dispensers, and registry applicants. Any additional payments to the Criminal Justice Information System (CJIS) for criminal history records checks are cost-recovery only. CJIS can handle the bill's requirements with existing resources.

| (in dollars) | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 |
|---|---|---|---|---|---|
| GF Revenue | $0 | $290,000 | $580,000 | $868,000 | $1,118,000 |
| GF Expenditure | $400,000 | $391,500 | $547,600 | $760,600 | $966,800 |
| Net Effect | ($400,000) | ($101,500) | $32,400 | $107,400 | $151,200 |

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

**Local Effect:** Minimal.

**Small Business Effect:** Potential meaningful.

## Analysis

**Bill Summary:**

*Definitions*

"*Bona fide* physician-patient relationship" means a relationship in which the physician has an ongoing responsibility for the assessment, care, and treatment of a patient's medical condition.

"Debilitating medical condition" means a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe chronic pain; severe nausea; seizures; severe and persistent muscle spasms; or, as documented by the physician with whom the patient has a bona fide physician-patient relationship, any other condition that is severe and resistant to conventional medicine.

"Authorized grower" means an entity that is selected by DHMH to cultivate marijuana and may dispense the marijuana to a pharmacy that holds a registration permit to distribute it to a dispensing center for a fee.

"Dispensing center" means an entity registered under the bill that acquires, possesses, delivers, transfers, transports, supplies, or dispenses marijuana or related supplies and educational materials.

"Primary caregiver" means a resident of the State who is at least 18 years old, has agreed to assist with only one qualifying patient's medical use of marijuana at one time, has been designated as a primary caregiver on the qualifying patient's application or renewal for a registry identification card or in other written notification to the department, and has satisfied a criminal history records check.

*Growers*

DHMH must issue a request for proposals (RFP) to select authorized growers of medical marijuana and may select as many authorized growers as necessary to provide it in all geographic regions of the State. The bill sets standards and requirements that must be followed by authorized growers and requires DHMH, in consultation with MDA, to adopt regulations that growers must follow.

An authorized grower may not hold any other permit issued under the bill or be a physician who prepares a written certification for medical marijuana.

*Distributors*

DHMH must establish a registration permit program to authorize entities to distribute medical marijuana, assign a unique identification number, and charge a fee to issue registration permits based on the amount of marijuana distributed by the entity. Entities that may register as dispensers include pharmacies and dispensing centers. DHMH must require specified information from distribution applicants and must approve or deny an application within 60 days after receipt of a completed application.

A dispenser may not hold any other permit issued under the bill or be a physician who prepares a written certification for medical marijuana.

*Qualifying Patients and Caregivers*

DHMH must establish a registry of qualifying patients and issue a registry identification card with a photograph to a qualifying patient who submits any required application or renewal fee (which may be based on a sliding scale) and other specified information to DHMH. Information submitted must include written certification from a physician with whom a patient has a *bona fide* physician-patient relationship, who is the primary care physician, hospice physician, or physician responsible for ongoing treatment of the patient's debilitating medical condition, and whose treatment of the patient is not limited to authorization for the patient to use medical marijuana or consultation for that purpose. The certification must also include a statement by the physician that the potential benefits of medical marijuana use likely outweigh the risks for the patient and that the patient has a debilitating medical condition for which recognized drugs or treatments would not be effective or for which other treatment options have more side effects. A physician who prepares a written certification may not hold any permit under the bill.

DHMH must also establish a registry of primary caregivers and issue registration identification cards to primary caregivers who submit specified information verified by DHMH.

Before issuing a registry identification card, DHMH must require the qualifying patient or caregiver to choose the dispensing center or pharmacy from which the registrant will obtain marijuana. An application or renewal for a qualifying patient and a primary caregiver must be approved or denied within 30 days of the application's receipt, and DHMH must issue a temporary registry identification card within 5 days of approval. Registry identification cards are valid for one year and must include specific information,

including photo identification of the cardholder and the identification number of the authorized dispenser or pharmacy. DHMH must maintain a confidential list of individuals to whom it has issued registry identification cards and the authorized dispensing center or pharmacy of each registered qualifying patient.

The bill creates a procedure and timeframe for the withdrawal of a written certification for a patient and removal of the patient from the program in the event of a change in status of a patient's debilitating medical condition.

*Purchase Requirements and Dispensing Limitations*

Unless a patient or patient's primary caregiver presents a signed, written certification stating that the patient needs a specified amount of marijuana that is greater than six ounces for a 30-day period, the total amount dispensed to any one patient within a 30-day period may not exceed six ounces.

A qualifying patient or primary caregiver must present the qualifying registry identification card with the identification code of the primary or dispensing center to the pharmacy or dispensing center, which must be verified and logged by the center or pharmacy. Each pharmacy or center must maintain confidential internal records of each marijuana transaction.

A patient or a primary caregiver may reimburse a pharmacy or dispensing center for reasonable costs associated with the production of marijuana for the cardholder.

Registered qualifying patients who need to change to a different authorized pharmacy or dispensing center must register the change with DHMH and pay a $15 fee. DHMH must update the registered qualifying patient's record and the primary caregiver record, if any, within five business days after receiving the request and issue a new registry identification card upon receipt of the patient's old card. DHMH may limit the number of times a patient may change a designation of a pharmacy or dispensing center to one time every 30 days.

*State Monitoring, User Limitations, Criminal History Records Checks, and Legal Protections*

The Secretary of Health and Mental Hygiene must establish a system to monitor the dispensation of medical marijuana in the State.

Individuals may not operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or boat while under the influence of marijuana and may not smoke it in a

public place or on private property in certain cases, such as property that is rented from a landlord and is subject to a policy that prohibits the smoking of marijuana on the property.

The bill requires that growers, dispensers, and primary caregivers submit to a criminal history records check prior to authorization or registration. In addition as already noted, authorized growers and dispensers may not hold any other permit issued under the bill or be a physician who prepares a written certification for medical marijuana. Likewise, a physician who prepares a written certification may not hold any permit under the bill.

The bill prevents arrest and prosecution, and provides other legal protections for physicians, qualifying patients, primary caregivers, authorized growers, and dispensers, for the medical use of marijuana under the bill.

*Reporting Requirements and Funding*

DHMH must annually report specified information regarding the medical marijuana "program" to the Governor and the General Assembly beginning October 1, 2011. In addition, DHMH must submit a biennial report to the Governor and the General Assembly by October 1, 2012, regarding supply sufficiency and pricing.

DHMH may accept from any source grants or contributions to be used to carry out the bill. Any collected fees must be used to offset the cost of administering the bill, and any funds received by DHMH above the amount necessary to fulfill the bill's provisions must be distributed to drug rehabilitation programs throughout the State.

**Current Law:** A person charged with possession or use of marijuana, a Schedule I controlled dangerous substance, or related paraphernalia may introduce evidence related to medical necessity and, if the person is convicted and the court finds there was medical necessity, the maximum punishment is limited to a fine of $100. Otherwise, violators of prohibitions against simple possession or use of marijuana are guilty of a misdemeanor and subject to fines of up to $1,000 and/or imprisonment for up to one year.

**Background:** Marijuana is classified as a Schedule I controlled substance at the federal level, making distribution a federal offense. However in October 2009, the Obama Administration sent a memo to federal prosecutors encouraging them not to prosecute people who distribute marijuana for medical purposes in accordance with state law.

In 1996, California became the first state to allow the medical use of marijuana. Since then, 14 more states have enacted similar laws. These states generally have some form of

patient registry that may provide some protection from arrest for possession up to a certain amount for medical use. Maryland is an exception; State law simply allows for medical purposes a defense against arrest and prosecution of possession but does not provide a means for patients to actually obtain marijuana.

**State Fiscal Effect:**

*Assumptions*

Legislative Services advises that, absent data on the number of people with each chronic or debilitating condition that may produce any of the ailments listed in the bill, it cannot definitively determine the number of people who will be eligible as "qualifying patients" and seek medical marijuana but assumes that the number of qualifying patients will grow each year as more people access medical marijuana. While the number of qualifying patients, primary caregivers, dispensers, and growers will likely reach a point of saturation in future years, this estimate assumes relatively steady growth through fiscal 2015, which includes only four years of program implementation. Likewise, staffing and other program costs are set at a level to handle the estimated number of qualifying patients, primary caregivers, dispensers, and growers used in the estimate, and increase accordingly through fiscal 2015 to handle the additional volume. Logic dictates that staffing and program costs will level out with the volume of qualifying patients, primary caregivers, dispensers, and growers in future years. Legislative Services recognizes that, in reality, the number of qualifying patients, primary caregivers, dispensers, and growers could vary a great deal from this estimate; program costs would vary accordingly.

Legislative Services recognizes that DHMH may set qualifying patient and primary caregiver registration fees on a sliding scale. However, since the number of qualifying patients and primary caregivers who may pay lower fees on such a scale cannot be determined, this estimate assumes an average and relatively low registration fee of $40, although fees could vary from person to person depending on income levels.

Finally, Legislative Services notes that, while the bill requires that all fees generated be used to cover the cost of the program, it does not set up a special fund for this purpose. Therefore, this estimate assumes that all program revenues and expenditures are general funds.

*Fiscal 2011 – Preparing for Implementation*

No revenues are collected in fiscal 2011 while DHMH and MDA develop regulations and DHMH issues an RFP to select authorized growers. DHMH and MDA can develop regulations with existing resources.

Legislative Services notes that, to meet the bill's requirement to establish a system to monitor the dispensation of medical marijuana in the State, DHMH must have a secure software system in place prior to program implementation. Therefore, general fund expenditures increase by $400,000 in fiscal 2011 to purchase a software system to monitor the dispensation of medical marijuana beginning the following year.

*Fiscal 2012 and Future Years – Implementation*

In fiscal 2012, general fund revenues increase by $290,000. This estimate reflects DHMH registering 2,500 qualifying patients and 1,250 primary caregivers at an application cost of $40 each, which assumes one-half of the qualifying patients represent themselves and the other half needs the assistance of a primary caregiver. In addition, DHMH selects one grower's RFP at $100,000, and issues 100 dispenser permits at $400 each. The $15 fee required for patients to change to a different dispenser or pharmacy is not expected to materially impact revenues.

Future years reflect DHMH issuing or renewing additional patient and caregiver registrations at $40 each, since registry identification cards are valid for one year. Future years also reflect DHMH selecting additional growers each year at $100,000 each, and issuing or renewing additional dispensing permits each year, assuming permits are valid for one year.

Legislative Services notes that the bill requires fees to offset the cost of administration. In this estimate, fees do not offset the cost of administration in fiscal 2011 or 2012, but exceed administration costs beginning in fiscal 2013. This is difficult to remedy as it is due in part to software costs incurred before any revenues are generated. Legislative Services advises that DHMH may have to adjust fees to approximate the cost of administering the program.

The bill requires any funds received by DHMH above the amount necessary to fulfill the bill's provisions be distributed to drug rehabilitation programs throughout the State, as DHMH may accept from any source grants or contributions to be used to carry out the bill. Legislative Services does not anticipate significant additional funds.

General fund expenditures increase by $391,479 in fiscal 2012 which accounts for staffing and operating costs necessary to implement the program. Staff include one administrative specialist to process patient and caregiver applications, one full-time and one-part time inspector to inspect dispensers and the one anticipated grower selected, one information technology specialist to manage the software system and track data, and one program manager to oversee the program and assist the staff with implementation.

| | |
|---|---|
| Positions | 4.5 |
| Salaries and Fringe Benefits | $301,630 |
| Start-up Costs | 46,475 |
| Ongoing Operating Expenses | 43,374 |
| **Total FY 2012 Expenditures** | **$391,479** |

Future year expenditures reflect the addition of one administrative specialist per year to handle additional registration and permit applications, and the addition of one full-time and one part-time inspector to inspect additional growers and distributors. Future year expenditures also reflect full salaries with 4.4% annual increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses.

DHMH can handle the bill's reporting requirement with existing resources and the assistance of the program manager.

**Small Business Effect:** Potentially meaningful for small pharmacies and other small businesses that choose to become permitted distributors as well as for farmers and other small businesses that become authorized growers.

## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 712 (Delegate Morhaim, *et al.*) - Health and Government Operations and Judiciary.

**Information Source(s):** Baltimore, Carroll, and Montgomery counties; Commission on Criminal Sentencing Policy; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of State Police; Office of Administrative Hearings; Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; National Conference of State Legislatures; Department of Legislative Services

**Fiscal Note History:** First Reader - February 25, 2010
ncs/mwc Revised - Senate Third Reader/Clarification - April 12, 2010

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