

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 907 (Delegate Morhaim)
Health and Government Operations

Medical Cannabis – Limit on the Number of Licensed Growers – Repeal

This emergency bill repeals any limitations on the number of medical cannabis growers that the Natalie M. LaPrade Medical Cannabis Commission is authorized to license.

Fiscal Summary

State Effect: No likely material impact in FY 2018. Special fund revenues increase significantly beginning in FY 2019 from additional application and annual license fees, as discussed below. Special fund expenditures increase beginning in FY 2019 to review applications and inspect additional grower facilities.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background: 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, which makes medical cannabis available to qualifying patients and their caregivers legally under State law via written certification.

A qualifying patient with a written certification can obtain a 30-day supply of medical cannabis, which is defined as 120 grams of usable cannabis. 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. For more

information regarding Maryland's medical cannabis program, please see the **Appendix – Medical Cannabis**.

In order to qualify for a grower license, an applicant must meet stringent requirements established in regulation. Among other things, a grower applicant must meet capitalization requirements; have a security plan; demonstrate experience, knowledge, and training in commercial horticultural or agronomic production; and have a plan for quality control, inventorying, safekeeping, and tracking. Statute requires an applicant for a grower license to meet all local zoning and planning requirements.

The commission must license medical cannabis growers that meet all requirements established by the commission. However, statute limits the number of growers that may be licensed to 15 until June 1, 2018, when the commission may issue enough grower licenses to meet the demand for medical cannabis by qualifying patients and caregivers in an affordable, accessible, secure, and efficient manner. There is no statutory or regulatory limit on the number of processors that may be licensed. Regulations establish a limit of 2 dispensary licenses per senatorial district or up to 94 dispensary licenses statewide.

The commission is authorized to set fees to cover its operating costs; these fees were established by regulations promulgated in September 2015. Grower application fees are paid in two stages: Stage One is \$2,000 and Stage Two is \$4,000. There is also an annual license fee of \$125,000.

The first medical cannabis was available for sale in the State in late 2017, about two years after the commission opened applications for grower, processor, and dispensary licenses in September 2015. The commission received 145 initial grower applications. In August 2016, the commission announced the 15 growers and 15 processors who were awarded Stage One license pre-approvals, and in December 2016, 102 dispensary Stage One licensee pre-approvals were announced (some of which hold a combination license and thereby fall within the limits on each type of license). By the end of calendar 2017, the commission had issued final licenses for 14 growers, 12 processors, and 22 dispensaries.

For further discussion on the license application process and controversy over geographic, racial, and ethnic diversity in the licensing process, please see the Appendix.

State Revenues: Despite the bill's emergency effective date, it is unlikely that repealing the cap on the number of grower licenses has a material impact on special fund revenues in fiscal 2018. However, special fund revenues likely increase significantly in fiscal 2019 and future years from repealing *any limit* on the number of grower licenses that the commission may issue. Under current law, the cap of 15 licenses is lifted June 1, 2018, but the total number of grower licenses issued is still limited to an amount to meet demand.

Under the bill, there is no limit, and the commission must issue a license to an applicant that meets the commission's requirements. There were 145 initial grower applications in September 2015. It is unknown how many of these applicants were qualified for licensure, but if even a small portion of them were qualified and reapply under the bill, special fund revenues increase significantly.

For illustrative purposes only, for every 10 growers that apply and are approved for licensure despite demand for more growers, special fund revenues attributable to grower license fees increase by \$1.3 million. This assumes that 10 applicants pay the \$2,000 application fee at Stage One, the \$4,000 application fee at Stage Two, and the first-year annual license fee of \$125,000 when approved. Annually thereafter, these 10 growers continue to pay the annual license fee of \$125,000, resulting in special fund revenues increasing by \$1.25 million each year.

Under this illustrative example, special fund revenues attributable to grower agent registration fees also increase, but the Department of Legislative Services does not have a reliable estimate for the number of grower agents hired by each licensed grower. Growers pay a \$200 registration fee for each agent.

State Expenditures: Special fund expenditures also increase beginning in fiscal 2019; however, costs to issue grower licenses under the bill are likely much lower than under current law – primarily because there is no need to score applications against each other (even though the bill retains a provision for ranking as part of the review and evaluation process). Applications must only be evaluated to ensure the applicants meet all requirements established by the commission to operate in the State. The commission likely needs to hire additional inspectors and staff to review applications. The actual increase in special fund expenditures depends on the timing and number of applications submitted regardless of whether there is a greater demand for more growers. It is assumed that any increase in expenditures is more than covered by the increase in special fund revenues from grower licensure fees.

Small Business Effect: Small businesses may be licensed as medical cannabis growers more readily than under current law. However, any small business growers already licensed may be negatively affected due to the additional competition for market share – particularly since the bill removes the provision tying the number of licensed growers to the demand for medical cannabis. It is unknown whether any applicants under the bill, or already licensed growers, would be or are small businesses.

Additional Information

Prior Introductions: None.

Cross File: None.

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.

Medical cannabis may only be obtained from a grower or dispensary licensed by the commission, and the commission may license no more than 15 growers. However, beginning June 1, 2018, the commission may issue the number of grower licenses necessary to meet demand for medical cannabis by qualifying patients and caregivers in an affordable, accessible, secure, and efficient manner. There is no established limit on the number of processor licenses in statute or regulation, but the commission [chose](#) to limit the initial number to 15. While there is no specific restriction on the number of dispensaries in statute, regulations set a limit of 2 dispensary licenses per senatorial district or up to 94 dispensary licenses statewide.

License Application Process

The commission is required to actively seek to achieve racial, ethnic, and geographic diversity when licensing growers and to encourage such applicants who qualify as a minority business enterprise (MBE). There is no requirement for the commission to seek to achieve racial, ethnic, and geographic diversity when licensing processors, but there is such a statutory requirement for dispensaries. There is no requirement to encourage applicants who qualify as an MBE for either processor or dispensary licenses.

The commission opened applications for grower, processor, and dispensary licenses in September 2015. Towson University’s Regional Economic Studies Institute (RESI) was commissioned to review grower and processor applications through a double-blind review process in which all identifying information was redacted. The scoring system authorized the commission to take into account the geographic location of the growing operation to ensure geographic diversity in the award of licenses. The scoring system did not include a consideration of race, based on a letter from the Office of the Attorney General stating that

constitutional limits prohibited the consideration of race or ethnicity for licensing when there is no disparity study that indicates past discrimination in similar programs.

In August 2016, the commission announced the 15 growers and 15 processors who were awarded Stage One license pre-approvals. The evaluation procedures to be used in the award of dispensary licenses were adopted by the commission in November 2016, and the commission announced 102 dispensaries who were awarded Stage One license pre-approvals in December 2016 (this number included 10 pre-approvals issued to applicants who also received grower license pre-approvals). All of the Stage One pre-approvals awarded in 2016 have 365 days from the date of pre-approval notification to complete all necessary steps to obtain final licensure. Should an awardee fail to do so, the commission has the authority to not issue a final license.

Controversy Over Geographic, Racial, and Ethnic Diversity

Since the award announcements, there has been significant controversy surrounding two main issues: the decision to include geographic diversity as a final factor in choosing the grower finalists; and the fact that none of the 15 Stage One approved grower finalists is led by minorities.

Geographic diversity became an issue when two companies among the top 15 ranked growers did not receive pre-approval after being replaced by other companies in order to provide geographic representation throughout the State. In July 2016, a subcommittee of the commission unanimously voted to preliminarily approve the top 15 growers based on the RESI scoring, which did not include a consideration of location. Afterward, the subcommittee reversed its vote, which resulted in two lower-ranked firms being moved into the top 15 growers in order to achieve geographic diversity. The two companies that were initially included in the top 15 growers but later removed are suing the commission, claiming that the determination of how geographic diversity was to be considered was unclear to applicants. In addition, none of the top 15 growers is minority owned, which prompted a lawsuit by an African American-owned company that was denied a grower license seeking to halt the medical cannabis program until the commission takes action to ensure racial and ethnic diversity among licensed growers.

A number of bills relating to the composition of the commission and the number of grower and processor licenses, as well as licensing criteria and the approval process, were introduced during the 2017 legislative session. However, none of these bills passed.

In April 2017, Governor Lawrence J. Hogan directed the then Governor's Office of Minority Affairs to initiate a disparity study of Maryland's regulated medical cannabis industry to be conducted by the Maryland Department of Transportation (MDOT) in cooperation with the commission. According to MDOT, the study is underway, and will

be completed by early 2018. Additionally, in July 2017, Governor Hogan announced nine new appointments to the commission; of these, three appointments filled vacancies, and six replaced commissioners whose terms had expired. As a result of these appointments, minority representation on the commission doubled.

The chair of the commission has stated that the commission is committed to seeking and promoting racial diversity and minority inclusion and will continue to work with the legislature to help solve these complex problems, but it does not want to further delay the program. At its October 3, 2017 meeting, the commission announced that, as a result of discussions with the Legislative Black Caucus, it intended to form a minority affairs subcommittee to help address some caucus concerns; this committee has since been formed.

Status of Medical Cannabis Implementation

As detailed in its annual report, the commission had issued final licenses for 14 growers, 12 processors, and 22 dispensaries by year-end 2017. Additionally, the commission had approved one-year provisional registrations for four independent testing laboratories. The commission maintains a list of licensees on its website, which can be found at <http://mmcc.maryland.gov/Pages/industry.aspx>. The first medical cannabis in the State was available for sale in late 2017, and at least seven dispensaries planned to be open for business by January 2018.