

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 855

(Senator Zirkin)

Judicial Proceedings

Correctional Services - Medical Cannabis - Medical Treatment for Inmates

This bill requires the Department of Public Safety and Correctional Services (DPSCS), in consultation with the Natalie M. LaPrade Medical Cannabis Commission, to adopt regulations for State and local correctional facilities regarding the treatment of inmates using medical cannabis. Likewise, the regulations adopted by the commission must include procedures for the treatment of inmates at State and local correctional facilities.

Fiscal Summary

State Effect: Significant increase in general fund expenditures for DPSCS to comply with the required regulations. Special fund revenues for the commission increase, potentially significantly, due to fees paid by correctional facilities for caregivers and qualifying patients. Special fund expenditures increase minimally for the commission to update its caregiver registration process and related software.

Local Effect: Significant increase in expenditures for local correctional facilities to comply with the required regulations. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Meaningful.

Analysis

Bill Summary: The regulations that DPSCS must adopt in consultation with the commission must:

- require medical treatment using medical cannabis for an inmate who is a “qualifying patient” under existing provisions regarding medical cannabis;

- establish procedures to allow an inmate in a State or local correctional facility to (1) obtain a written certification from a “certifying provider” and (2) apply to the commission to become a qualifying patient;
- provide for and require State and local correctional facilities to obtain medical cannabis for treatment of inmates who are qualifying patients; and
- require each State and local correctional facility to designate an employee or agent of the correctional facility to (1) be registered with the commission as a “caregiver” and (2) distribute medical cannabis to an inmate who is a qualifying patient.

Current Law/Background:

Maryland’s Medical Cannabis Program

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.

The commission issues identification cards for qualifying patients and caregivers. To obtain a card, qualifying patients must apply on a form provided by the commission and include a clear current photograph, a specified proof of identity, and pay a \$50 fee. Upon being designated as a caregiver by a qualifying patient, a caregiver must apply for a card on a form provided by the commission and (1) provide proof that the caregiver is authorized to act as a caregiver; (2) include a clear current photograph; (3) provide specified attestations, including that the caregiver is not the caregiver for more than five qualifying patients; (4) provide specified proof of identity; and (5) pay a \$50 fee. Regulations require identification cards to contain specified identifying information, the expiration date, and a current photograph. Regulations establish a \$100 fee for replacement cards for qualifying patients and caregivers.

Broadly speaking, statute establishes a cap of 28 on the number of processor licenses and a cap of 22 on the number of grower licenses the commission can issue. Regulations limit the number of dispensary licenses the commission can issue to 2 per senatorial district, or

94 statewide. However, in 2015, the commission authorized growers to apply for a dispensary license. At the time, 8 growers applied for and received pre-approval for a dispensary license. As of January 9, 2019, the commission had 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 testing laboratories. The commission maintains a list of licensees on its [website](#). The commission anticipates that all 130 possible processor and dispensary licenses will be awarded and operational by the end of fiscal 2020.

Maryland’s medical cannabis program statute cannot be construed to authorize any individual to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for, the following:

- undertaking any task under the influence of marijuana or cannabis, when doing so would constitute negligence or professional malpractice;
- operating, navigating, or being in control of any motor vehicle, aircraft, or boat while under the influence of marijuana or cannabis; or
- smoking marijuana or cannabis in any public place, in a motor vehicle, or on private property that is rented and subject to a policy that prohibits smoking marijuana or cannabis on the premises.

Further, there is no immunity for a person who violates medical cannabis statute from criminal prosecution for a violation of any law prohibiting or regulating the use, possession, dispensing, distribution, or promotion of controlled dangerous substances (CDS), dangerous drugs, detrimental drugs, or harmful drugs, or any conspiracy or attempt to commit any of those offenses.

“Caregiver” means a person who has agreed to assist with a qualifying patient’s medical use of cannabis and, for a qualifying patient younger than age 18, a parent or legal guardian.

“Certifying provider” means an individual who has a specified license and is in good standing, as specified, has a State controlled dangerous substances registration, and is registered with the commission to make cannabis available to patients for medical use in accordance with regulations adopted by the commission.

“Qualifying patient” is an individual who (1) has been provided with a written certification by a certifying provider in accordance with a bona fide provider-patient relationship and (2) has a caregiver if the individual is younger than age 18.

“Written certification” means a certification that (1) must be issued by a certifying provider to a qualifying patient with whom the provider has a bona fide provider-patient relationship and (2) includes a written statement certifying that, in the provider’s professional opinion,

after having completed an assessment of the patient’s medical history and current medical condition, the patient has a qualifying condition, as specified.

Costs to Purchase Medical Cannabis

According to a December 2018 [report](#) by the commission, in Maryland, the price of medical cannabis is not set by statute or regulation. Prices vary significantly based on content (*i.e.*, THC or cannabinoid concentration) or location, but 1 gram of flower typically ranges between \$5 and \$20. A patient is permitted to purchase up to 120 grams of medical cannabis in a rolling 30-day period, which means a patient purchasing the maximum allowable amount of flower product could spend \$600 to \$2,400 per 30-day period. The cost of medical cannabis concentrates and medical cannabis-infused products also vary significantly based on content and location and are generally more expensive than flower products.

Correctional Services

A “local correctional facility” is a correctional facility that is operated by one or more counties or a municipality. A “correctional facility” is a facility that is operated for the purpose of detaining or confining adults who are charged with or found guilty of a crime.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility, which also falls under the definition of “correctional facility.” The sheriff of a county is responsible for keeping each person in custody safe until the person is discharged. The managing official of a local correctional facility is responsible for providing inmates with food, board, and any article of comfort considered necessary by an attending physician. Inmates are responsible for reimbursing the county for medical expenses and for providing any information related to specified health insurance coverage. Although inmates are eligible for medical care and treatment while incarcerated, prescriptions that are obtained prior to incarceration are not necessarily given to an inmate while incarcerated.

A person is prohibited from knowingly possessing contraband (any item, material, or substance not authorized for inmate possession by the managing official or that is brought into the correctional facility in a manner prohibited by the managing official) in a place of confinement. Additionally, a person who is detained or confined in a place of confinement may not knowingly possess or receive CDS. A person who possesses CDS in confinement is guilty of a misdemeanor and is subject to imprisonment for up to three years and/or a fine up to \$1,000.

Home Detention Programs

The Director of the Division of Parole and Probation (DPP), or the director's designee, with the approval of the Secretary of Public Safety and Correctional Services, is authorized to establish a home detention program under which an offender may live in an approved private dwelling. Offenders in the program must be supervised by electronic devices and direct contact by DPP employees. An inmate is not eligible for the home detention program if a violation of a condition of parole or mandatory supervision is based on the commission of a crime of violence.

While in the program, an offender must remain in the approved dwelling except to go (1) with the director's approval, to the offender's job, to a medical or mental health treatment facility, or DPSCS offices; (2) as required by legitimate medical or other emergencies; (3) or as otherwise allowed and directed by the director. While participating in the program, an offender is responsible for the offender's living expenses, including those for food, clothing, medical care, shelter, and utilities.

Criminal Law Provisions Related to Marijuana

CDS are listed on one of five schedules (Schedules I through V) set forth in statute depending on their potential for abuse and acceptance for medical use. Under the federal Controlled Substances Act, for a drug or substance to be classified as Schedule I, the following findings must be made: (1) the substance has a high potential for abuse; (2) the drug or other substance has no currently accepted medical use in the United States; and (3) there is a lack of accepted safety for use of the drug or other substance under medical supervision. No distinction is made in State law regarding the illegal possession of any CDS, regardless of which schedule it is on, with the exception of marijuana.

Pursuant to Chapter 158 of 2014, possession of less than 10 grams of marijuana is a civil offense punishable by a fine of up to \$100 for a first offense and \$250 for a second offense. The maximum fine for a third or subsequent offense is \$500. For a third or subsequent offense, or if the individual is younger than age 21, the court must (1) summon the individual for trial upon issuance of a citation; (2) order the individual to attend a drug education program approved by the Maryland Department of Health; and (3) refer him or her to an assessment for a substance abuse disorder. After the assessment, the court must refer the individual to substance abuse treatment, if necessary.

Chapter 4 of 2016 repealed the criminal prohibition on the use or possession of marijuana paraphernalia and eliminated the associated penalties. The law also established that the use or possession of marijuana involving smoking marijuana in a public place is a civil offense, punishable by a fine of up to \$500.

Federal Guidance

The U.S. Department of Justice (DOJ) announced in August 2013, that it would focus on eight priorities when enforcing marijuana provisions of the Controlled Substances Act. The guidelines also state that, although DOJ expects states with legalization laws to establish strict regulatory schemes that protect these eight federal interests, the department is deferring its right to challenge their legalization laws. Then, on January 4, 2018, in a memorandum to all U.S. Attorneys, former Attorney General Jefferson B. Sessions III announced that the aforementioned guidance regarding federal marijuana prosecutions was rescinded effective immediately.

State Fiscal Effect: DPSCS and the Natalie M. LaPrade Medical Cannabis Commission can promulgate the required regulations with existing resources; however, compliance with the regulations results in a significant increase in general fund expenditures for DPSCS. Special fund expenditures for the commission increase minimally to update its caregiver registration process and related software. Special fund revenues for the commission increase potentially significantly due to fees paid by State and local correctional facilities, as discussed below.

Department of Public Safety and Correctional Services

Because the number of medical cannabis dispensaries is limited by current regulations, and because all of the preapprovals for those dispensaries have already been issued by the commission, this analysis assumes that correctional facilities do not become licensed as dispensaries as a result of the required regulations. Rather, it is assumed that each correctional facility registers with the commission as a caregiver and contracts with a dispensary (and likely a secure transportation company) to obtain the required medical cannabis.

Thus, general fund expenditures for DPSCS increase for State correctional facilities to pay for identification cards for caregivers (\$50 each) and qualifying patients (\$50 each). DPSCS likely needs to hire additional staff for each of the 22 State correctional facilities to act as caregivers and distribute medical cannabis in accordance with the regulations adopted pursuant to the bill. Although the total number of new staff needed for each facility cannot be determined until the regulations are adopted, if each facility hires just *one* additional correctional officer to serve as a caregiver to distribute medical cannabis, costs increase by approximately \$1.1 million in fiscal 2020 and by at least \$1.3 million annually thereafter.

General fund expenditures also increase significantly to contract with a dispensary (and likely a secure transportation company) to obtain medical cannabis for inmates that become qualifying patients. The cost to obtain medical cannabis varies greatly, as discussed above.

However, the use of medical cannabis may allow DPSCS to reduce its spending on other prescription drugs. A reliable estimate regarding necessary modifications of the existing medical and pharmacy contracts is unknown at this time.

This analysis does not address any additional costs that could be incurred by DPSCS to dispense medical cannabis to inmates in home detention.

It is assumed that DPSCS does not need to construct new facilities for the secure storage of medical cannabis but rather is able to store medical cannabis with other pharmaceuticals. To the extent construction of secure storage facilities is required under the regulations, capital funding may be required.

Natalie M. LaPrade Medical Cannabis Commission

Current regulations limit each registered caregiver to serving a maximum of five medical cannabis patients, and the commission's existing software prohibits an individual from serving as a caregiver for more than five patients. Because, under the regulations required as a result of the bill, correctional facilities will need to serve as caregivers for more than five patients, the commission needs to develop a new registration category and update its software to enable a correctional facility employee to serve as a caregiver for more than five patients. The cost for the commission to do this is estimated at \$40,000.

Special fund revenues to the commission increase potentially significantly from payments made by State and local correctional facilities (for identification cards for caregivers and qualifying patients). Specifically, special fund revenues increase by \$50 for each caregiver and each qualifying patient. The total number of caregivers and qualifying patients that result from the bill's changes is unknown, but likely significant.

Local Expenditures: Similar to the effect on State correctional facilities, compliance with the required regulations likely results in a significant increase in expenditures for local correctional facilities. For example, Prince George's County reports significant operational and fiscal impacts for the county to provide medical cannabis to inmates. Howard County advises that medical cannabis is not part of the county's current medical contract, and that dispensing medical cannabis affects the budget for county correctional facilities. In addition, Howard County expresses concern that the county may be in violation of its contract with the federal government to house federal inmates if county correctional facilities dispense medical cannabis.

Small Business Effect: The regulations adopted pursuant to the bill result in a potentially meaningful increase in sales for licensed medical cannabis entities in the State. Specifically, the required regulations may result in a significant increase in qualifying patients in the State. Thus, Maryland licensees, including growers, processors, and

dispensaries, can expect potentially significant increased sales and demand for medical cannabis from a population of qualifying patients who otherwise would not be able to obtain medical cannabis. Additionally, secure transportation companies may realize a potentially meaningful increase in business from transporting medical cannabis from dispensaries to correctional facilities.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Howard, Montgomery, and Prince George's counties; Maryland Association of Counties; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

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