



February 19, 2020

The Honorable Shane Pendergrass
Chair, House Health and Government Operations Committee
Room 241 House Office Building
Annapolis, MD 21401-1991

**RE: House Bill 1317 – “Medical Cannabis – Dispensary Grower-Processor License” –
Letter of Information**

Dear Chair Pendergrass:

The Maryland Medical Cannabis Commission (the Commission) is submitting this letter of information for House Bill 1317 entitled “Medical Cannabis – Dispensary Grower-Processor License.” HB 1317 would establish a new licensing category for dispensary grower-processors.

The bill provides that only licensed dispensaries would be eligible to apply for a dispensary grower-processor license. There are currently 90 licensed dispensaries in Maryland, with an additional 11 preapproved dispensaries that are likely to become licensed during the next six months. Therefore, there are 101 dispensaries in Maryland that would potentially be eligible to apply for a dispensary grower-processor license. Applying for a dispensary grower-processor license would be particularly attractive because HB 1317 would allow a dispensary to achieve vertical integration and requires the Commission to grant Stage One Pre-Approval to *all* applications that score within the top 50th percentile – regardless of the quality of the applications. Theoretically, this could result in up to 50 additional growers and 50 additional processors, which would more than double the current number in each license category.

In 2018, the General Assembly established a statutory cap on the number of growers and processors at 22 and 28 licensees, respectively. However, HB 1317 creates an exception to these statutory caps for existing businesses. Further, current law also limits a person to holding an ownership interest in only one grower license or one processor license. (*see* Health-General Article Sections §§13-3306 and 13-3309). It is unclear whether the one grower/one processor limitation would extend to a grower or processor who is authorized under a dispensary grower-processor license – which could afford certain businesses the opportunity to occupy a sizable portion of the medical cannabis market.

This bill also requires the Commission to establish an application review process for granting the dispensary grower-processor licenses that uses the application forms and scoring criteria from the 2016 licensing round. Reverting to the 2016 application and scoring criteria raises potential constitutional and other legal concerns since the 2016 applications do not consider race, gender, and ethnicity, as required under current law. House Bill 2 (2018) (*see* Health-General Article, Section §13-3305.2) required the Commission to adopt regulations and implement remedial

measures to the extent permissible under the law based upon the findings of a disparity study ordered by Governor Hogan. The disparity findings demonstrated that minorities are discriminated against in the medical cannabis industry, with African Americans and Native Americans experiencing the most discrimination. The Commission's applications for 10 additional growers and 4 additional processors in 2019 provided up to 15 points for various diversity factors as required by the Commission's regulations. HB 1317 states that to the extent authorized by federal and State law, the Commission must actively seek to achieve racial, ethnic, gender, and geographic diversity when licensing dispensary grower-processors. However, reverting to the 2016 applications and scoring criteria would categorically circumvent the statutory requirement to implement remedial and race conscious measures to facilitate participation of minority and women applicants and businesses seeking to participate in the medical cannabis industry.

Furthermore, HB 1317 would require the Commission to establish an application review process for a dispensary grower-processor license *prior* to awarding the additional four grower and 10 processor licenses authorized under House Bill 2 (2018). On September 26, 2019, the Commission announced it would delay the award of pre-approvals for the new grower and processor licenses in order to allow Commission staff sufficient time to complete a preliminary investigation to verify material aspects of the highest ranking applications. Additionally, the Commission was informed that multiple applicants had raised concerns about the impartiality of the application evaluation. While the Commission is confident that the application evaluation process and procedures were comprehensive and fair, in order to evaluate these concerns, the Commission issued a Request for Proposals (RFP) to engage an independent firm to evaluate the impartiality of the medical cannabis evaluation process. Upon completion of the investigation, the Commission will report on the findings to the Maryland General Assembly and the public. Further, the Commission hopes to be in a position to award one or more Stage One Pre-Approvals at that time.

The Commission appreciates the General Assembly's interest in the medical cannabis program and its desire to provide patients affordable and adequate access to medical cannabis. Given this interest, the Commission committed to issue a Request for Proposals (RFP) to assess the current and future size of the medical cannabis market. The Commission intends to issue the RFP in Spring 2020 and make the award in Summer 2020, with a deadline for completion of the market assessment anticipated not later than December 1, 2020.

Please do not hesitate to contact me at william.tilburg@maryland.gov or (410) 487-8069 if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "William Tilburg". The signature is written in a cursive style and is followed by a long, horizontal, sweeping underline.

William Tilburg, JD, MPH
Executive Director

cc: Members of the House Health and Government Operations Committee