



February 16, 2021

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

RE: House Bill 706 – “Medical Cannabis – Dispensary Grower-Processor License” – Letter of Information

Dear Chair Pendergrass and Committee Members:

The Maryland Medical Cannabis Commission (the Commission) is submitting this letter of information for House Bill (HB) 706 entitled “Medical Cannabis – Dispensary Grower-Processor License.” HB 706 would establish a new licensing category that allows a business to cultivate, manufacture, and dispense medical cannabis, and provides that only licensed dispensaries would be eligible to apply for this new license category.

HB 706 was previously considered in 2020 as HB 1317, and the sponsor’s stated purpose for introducing the legislation was to diversify the ownership of licensed businesses in the medical cannabis program. Diversity and equity in the medical cannabis program, particularly among ownership, has been a priority of the General Assembly and the Commission for several years. In 2018, the General Assembly adopted emergency legislation to increase the number of grower and processor licenses and required the Commission to award these licenses based upon an application that addressed the findings of a disparity study ordered by Governor Hogan. In 2019, the Commission adopted emergency regulations and developed a revised application to address the needs of minority and women applicants, and in October 2020 awarded 11 Stage One pre-approvals for grower and processor licenses.

The ownership of these new awardees is incredibly diverse: 11 out of 11 businesses are majority-owned by minority and/or women owners, 9 out of 11 are majority-owned by African American owners, and 5 out of 11 are majority-owned by women. Subsequently, 6 out of 21 medical cannabis growers (28%) and 14 out of 26 (54%) processors are majority-owned by women and minority owners. Each of these figures represents a significant improvement over initial awards made in 2016 (where 20% of growers and processors were majority-owned by minority and women owners), and is significantly higher than other states that track demographic data of cannabis owners (Cultivation licenses: Illinois 0% majority minority-owned, Colorado 7%, Massachusetts 8%, and Michigan 10%). In contrast, for example, a newly established dispensary grower-processor license could create a maximum of 3 new majority-owned African American licensees, out of a potential 50 awards (6%).

There are currently 94 licensed dispensaries in Maryland, with an additional seven preapproved dispensaries that are likely to become licensed during the coming 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 706 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 706 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 HB 2 (2018) (see Health-General Article, Section 13-3305.2). Additionally, HB 706 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.

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. Since this bill was introduced last year, several factors have changed the landscape of the medical cannabis program, including the award of additional licensees to minority and women applicants as mentioned above. Additionally, the independent firm Mathematica completed a market study in November 2020 which concluded that the current market supply of medical cannabis was adequate to meet current demand. Furthermore, with the future of the medical cannabis program unclear as legalization of cannabis for adult-use has moved to the forefront of discussions regarding cannabis policy, this bill would represent an immense and unnecessary disruption to the medical cannabis program.

I hope this information is useful. If you would like to discuss this further, please contact me at (443) 915-5297 or at taylors.kasky@maryland.gov.

Sincerely,

Taylor Kasky, JD
Director of Policy and Government Affairs

cc: Members of the House Health and Government Operations Committee