



HOUSE BILL 32 – FAVORABLE WITH AMENDMENTS

Cannabis - Legalization and Regulation (Inclusion, Restoration, and Rehabilitation Act of 2021)

The Maryland Wholesale Medical Cannabis Trade Association (CANMD), an organization representing the majority of medical cannabis grower and processor licensees in Maryland, submits this statement in general support of House Bill 32, with some suggested changes. We applaud Delegate Lewis for taking a leadership role on this issue, and particularly appreciate his focus on social justice and social equity.

CANMD members have been, and remain, dedicated to creating and supporting a medical cannabis program in the State that provides a safe, affordable, accessible product for Maryland patients. While CANMD has not advocated for an adult use program in Maryland, our members believe that if the State makes the decision to move forward with such a program we have a valuable perspective on what has worked in Maryland’s medical program and across the country, and that as well-regulated existing entities medical licensees should be included in any adult use program.

Our comments generally relate to the structure, regulation, and implementation of an adult use market. CANMD members fully embrace the criminal justice, social justice and social equity components of House Bill 32, but others in the advocacy and justice system communities are better equipped to lend expertise to those provisions. The comments below instead address programmatic issues.

Overall, House Bill 32 presents a sound framework for an adult use market, if that is the policy direction Maryland pursues. The proposal addresses social justice issues, promotes diversity and inclusion in the industry, and contemplates a well-regulated system that includes existing medical operators with sound records of regulatory compliance and the production of safe products. We look forward to working with Delegate Lewis and the Committee on the conceptual issues that we identify here.

Regulatory Structure. As drafted, House Bill 32 places regulatory responsibility for the adult use program with the Alcohol and Tobacco Commission (ATC) while the Maryland Medical Cannabis Commission (MMCC) retains regulatory responsibility for the medical program. If enacted, this approach would contradict the approach taken in every other State that has adopted an adult use program while maintaining an existing medical program – one regulator should have responsibility for both programs. CANMD has no position on the particular entity that will be the regulator. However, there are several considerations that should be observed when making that decision.

First, Maryland should take advantage of the experienced personnel at the current MMCC, who have developed significant expertise in regulating the medical market. Staff is very knowledgeable and strict, but fair, and Maryland should take advantage of that experience. Second, the regulating entity's Commissioners/Board members should reflect the new mission of the entity – the qualifications of the current membership of the ATC and/or MMCC would have to be amended to meet that need. Finally, the regulating entity should be a truly independent entity that can promulgate its own regulations and act swiftly and decisively when necessary to perform its duties.

Regulatory Provisions. As a related matter, Maryland's medical program is governed by a comprehensive set of regulations that have been developed over time by the MMCC based on best practices across the country (COMAR Title 10, Subsection 62.01-36). House Bill 32 dedicates several pages to topics that a new regulator must address through regulations – all of these programmatic issues are already incorporated in the current regulations, including security, seed-to-sale tracking, testing, diversion, labeling, advertising, child-proof packaging, transportation, crop protection, marketing to children, and many others. As a general matter, the regulations for the adult use program should reflect the current medical regulations unless there is a significant reason to differentiate – which should be the exception.

Existing medical cannabis grower, processor, dispensary and independent testing laboratory licensees. House Bill 32 reflects the practice in other States that allows medical cannabis licensees to participate in the adult use market. To participate, a medical licensee must have a solid regulatory record and commit to continuing to serve the medical market that remains after adult use is implemented. This approach benefits the State and consumers. The State benefits from having a set of businesses that have experience following State laws and policies on security, diversion, and the development of a safe product, to assist in the immediate production of taxable adult use products. Consumers benefit from knowing they are purchasing from established entities with a record of safety.

Appropriately and innovatively, House Bill 32 requires a payment from these medical licensees to a Social Equity Fund that can help provide much needed technical assistance and starting capital for new social equity applicants. This structure helps relieve a significant hurdle for small and minority businesses that may have difficulty acquiring capital to navigate the application process, secure property, and establish their new business. CANMD looks forward to working with the sponsor and the Committee to set an appropriate level of, and schedule for, these payments, an issue that is impacted by the current tax status of existing medical businesses at the federal and state level, as discussed below.

Licensing issues, including number, size, multiple ownership and license transfer. As drafted, House Bill 32 creates a system for unlimited grower and processor licenses, and caps dispensary licenses. The bill also loosens certain existing restrictions on ownership interest in multiple medical licenses, lacks provisions regarding repayment to the Social Equity Fund upon sale of a social equity license, and allows limits on the size of cultivation operations. CANMD recognizes

that some of these provisions are designed to enhance diversity in the program, which we support. However, CANMD notes that all these provisions must be looked at comprehensively to ensure that the desired result is achieved.

For example, an unlimited license system may enhance participation opportunities. Alternatively, unlimited competition may make it more difficult to establish and improve the odds of success of a social equity licensee. Similarly, size limitations may protect some entities from competition, but may inhibit growth of social equity businesses; allowing multiple ownership interests may allow some social equity applicants to expand their business opportunities, but also may concentrate ownership in larger non-diverse entities. There is not necessarily a simple answer to these issues, but it is necessary to work through them to achieve the result that is being sought. In addition to the above considerations, an unlimited license system can pose challenges to a regulator, making it more difficult to preserve compliance and prevent product diversion.

Maintenance of a medical program. House Bill 32 generally requires that dual licensees (existing medical licensees) continue to serve medical patients “without increasing prices or reducing product availability” (page 50, lines 14-17). CANMD agrees that the medical program needs to be preserved and patients need to be served. However, the vague standard in the bill is difficult to interpret and likely impossible to meet. This is particularly true given the experience in other States that the existing medical program loses enrollment, often by large amounts, when an adult use system is put in place. Other States have used more measurable standards to regulate the supply to the medical market, and more precise standards should be put in place here.

As noted, the reduction of the patient count in a State that moves to adult use varies, but inevitably it declines. It is important, therefore, to ensure medical licensees can be converted to dual licensees, as House Bill 32 contemplates. Some of the potential restrictions on size, however, cause concern if medical licensees are capped as dual licensees. If that occurs, the dual licensee would be able to produce for the adult use market only the amount of product equal to the reduction in demand in the medical market. This is inefficient and is a particular impediment to the launching of the adult use market given the constraint on supply.

Finally, the bill should allow for the sale of certain medically oriented products (higher dosage, different delivery methods) in the medical market even if they are not permitted in the adult use market.

Taxation of medical and adult use cannabis businesses (280E). The cultivation, production and dispensing of cannabis – medical or adult use – are considered illegal business activities in the eyes of the federal government. These businesses are still required to pay federal and State taxes, however. Because of the illegal nature of the business, cannabis-related businesses are not allowed to deduct ordinary and necessary business expenses (because of Section 280E of the Internal Revenue Code), which include expenses associated with distribution, sales,

administration, management, promotion, advertisement, overhead, and support. This also impacts Maryland taxes.

Application of 280E results in cannabis business owners being subjected to an effective tax rate as high as 90%. While there is a need to fix this at the federal level, Maryland can lessen the impact on Maryland business owners by allowing for the deduction of these expenses. This has been a major challenge for medical cannabis licensees in Maryland and should be fixed immediately. Failing to fix it will continue to have a disproportionate impact on those conducting a business activity that is permitted under Maryland law. This extraordinarily high effective tax rate also poses a challenge for medical businesses in making required payments into the Social Equity Fund as House Bill 32 requires.

House Bill 32 has language to address the State impact of 280E on page 76; it is worth noting that it is drafted differently than stand-alone bills that have been introduced this year and in prior Sessions (House Bill 271 and Senate Bill 900 are this year's bills).

Taxation of adult use cannabis. As noted above, there will continue to be a medical market of some size in Maryland. House Bill 32 maintains the current tax exemption for medical products. The bill should more directly state that whatever tax system the State chooses should only be levied at the point of sale to the consumer. This structure is necessary to avoid an unnecessary and undue burden on dual licensees to maintain separate inventories of medical and adult use products, which in almost all situations are identical products. The bill should also prohibit the regulatory body from requiring an inventory system that requires the differentiation of medical products from adult use products before the point of sale.

CANMD believes that the 43% tax rate in the bill (20% excise tax; 20% sales and use tax; 3% local sales tax) is too high. Further, the rate imposed by the State should start off at a relatively low level and phase up to higher levels as the market matures.

Other issues. Many other details remain to be worked out. For example, it is unclear when dual licensees can begin to sell products in an adult use market. The bill contemplates licenses being awarded by mid-May 2022, but the required regulations are not required to be submitted until October 1, 2022. Further, the bill is not clear on how dual licensees are permitted to open additional dispensaries – dual or adult use – as contemplated under current law. Additionally, based on the experience in the medical cannabis program, the bill like cedes too much control over the program and facilities to local governments.

In summary, if Maryland decides to adopt an adult use system, CANMD would like to lend its members' experience in the medical market to help structure the program and make it successful. We also share the perspective that an adult use program must promote inclusion, address prior injustices, and ensure social equity. We appreciate Delegate Lewis's efforts to make this possible.