

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1101

(Delegate Morhaim, *et al.*)

Health and Government Operations and
Judiciary

Judicial Proceedings and Finance

**Medical Marijuana - Academic Medical Centers - Natalie M. LaPrade Medical
Marijuana Commission**

This bill allows for the investigational use of marijuana for medical purposes. Specifically, the bill establishes, as an independent commission within the Department of Health and Mental Hygiene (DHMH), the Natalie M. LaPrade Medical Marijuana Commission to (1) develop requests for applications for academic medical centers to operate programs in the State; (2) approve or deny initial and renewal program applications; and (3) monitor and oversee programs approved for operation. The bill also establishes the Natalie M. LaPrade Medical Marijuana Commission Fund as a special, nonlapsing fund.

Fiscal Summary

State Effect: The Department of Legislative Services (DLS) advises that, because the bill establishes a tiered approach to implementation and requires the commission to take a number of actions before the program can be fully implemented, the earliest patients could benefit through academic medical centers is FY 2016. Thus, this estimate assumes that no special fund revenues are generated in FY 2014 or 2015, but that special fund revenues may increase beginning in FY 2016 due to fees collected from academic medical centers. Because academic medical center program participation is expected to be low (or nonexistent), as discussed below, fees generated under the bill are unlikely to offset the administrative costs for the commission (as the bill requires). It is further assumed that general funds are needed for initial implementation and to supplement or to capitalize the new special fund. Thus, in accordance with a likely timeline for program development and implementation (and accounting for significant start-up expenses), general fund expenditures increase by \$343,400 in FY 2014 and general and special fund expenditures increase by \$544,400 in FY 2018. Supplemental Budget No. 1 includes

\$125,000 in general funds, contingent upon the enactment of this bill, for contractual services to implement the bill.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
SF Revenue	\$0	\$0	-	-	-
GF Expenditure	\$343,400	\$745,700	\$0	\$0	\$0
GF/SF Exp.	\$0	\$0	\$508,100	\$525,900	\$544,400
Net Effect	(\$343,400)	(\$745,700)	(\$508,100)	(\$525,900)	(\$544,400)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Any impact on local government finances is likely minimal and may be offset by fewer violations of current law.

Small Business Effect: Potential meaningful for any small growers that provide marijuana to approved programs.

Analysis

Bill Summary:

Natalie M. LaPrade Medical Marijuana Commission and Fund

The bill specifies membership and terms for the commission. A member of the commission may not receive compensation as a member of the commission but is entitled to reimbursement for expenses. In addition, the commission is authorized to employ staff (including contractual staff) in accordance with the State budget.

The commission is required to administer the fund, which consists of any money appropriated in the State budget to the fund and any other money from any other source accepted for the benefit of the fund (in accordance with any conditions adopted by the commission). Expenditures from the fund may be made only in accordance with the State budget. The fund is subject to legislative audit and must be invested in the same manner as other State funds, with investment earnings retained to the credit of the fund. No part of the fund may revert or be credited to the general fund or any other special fund of the State.

The commission must, during fiscal 2014, develop specified policies, procedures, regulations, and guidelines for the bill's implementation. By December 1, 2013, the commission must report to the Governor and the General Assembly on sources of funding for, and suggested fees to support, the implementation of the bill beginning July 1, 2014.

Application Process for Academic Medical Centers

The commission must annually issue a request for applications for academic medical centers to operate medical marijuana compassionate use programs. An “academic medical center” is a hospital that operates a medical residency program for physicians and conducts research that is overseen by the U.S. Department of Health and Human Services and involves human subjects. An application submitted by an academic medical center must:

- specify the medical conditions to be treated, the criteria by which patients will be included in or excluded from participation, how patients will be assessed for addiction before and during treatment, and the length of treatment and dosage permitted;
- describe the source and type of the marijuana to be used, how health care providers will be eligible to participate and what training they will receive, and the plan for defining and monitoring the success or failure of treatment;
- demonstrate approval of the program by the center’s institutional review board;
- include a description of whether and how caregivers will interact with participating patients, a plan for monitoring aggregate data and outcomes and publishing results, and a description of the sources of funding; and
- describe any required training for providers and patients on diversion-related issues, steps the center will take to prevent and monitor diversion, how the program will dispose of any unused marijuana, and how the center and the program will meet any other established criteria.

The commission is required to establish an application review process, as specified by the bill, that includes reviewers with expertise in scientific research and analysis, medical training, and law enforcement. The commission may grant a one-year renewable license to a program and must set application and renewal fees that cover its expenses in reviewing and approving applications and providing program oversight.

The commission may approve no more than five programs to operate at one time.

The commission must report annually to the Governor and the General Assembly on programs approved to operate under the bill.

Program Limitations and Requirements

An academic medical center that is approved to operate a program under the bill must provide to the commission, on a daily basis, updated data on patients and caregivers; the commission must then make the data available in real time to law enforcement. If a center utilizes caregivers as part of a program, the center is required to limit the number

of patients a caregiver is allowed to serve to no more than five and limit the number of caregivers that serve a particular patient to no more than two.

A center must report annually to the commission, as specified by the bill. In addition, a center that wishes to continue the program has to apply annually to the commission for renewal of approval. A center is also subject to inspection by the commission (which is authorized to rescind approval of a program if the program is found to not be in compliance with established conditions of approval).

Licensed Growers

The commission is required to license medical marijuana growers to operate in the State to provide marijuana to (and only to) programs approved under the bill. However, the commission may license no more than five medical marijuana growers for each approved program. In addition, the commission must establish requirements for security (including a product-tracking system) and for the manufacturing process; a grower must meet these requirements to obtain a license. The commission is authorized to inspect licensed growers to ensure compliance and may impose penalties upon, or rescind the license of, a grower that does not meet the commission's standards for licensure.

An academic medical center may use marijuana obtained only from the federal government or from a medical marijuana grower licensed under the bill.

Protections, Penalties, and Other Legal Considerations

The following persons may not be subject to arrest, prosecution, or any civil administrative penalty – or be denied any right or privilege – for the medical use of marijuana in accordance with the bill: (1) a patient enrolled in an approved program who is in possession of an amount of marijuana that is authorized under the program; (2) a licensed grower (or the grower's employee) who is acting in accordance with the terms of the license; or (3) an academic medical center or employee of the center (or any other person associated with the operation of an approved program), for activities conducted in accordance with the program.

A person is prohibited from distributing, possessing, manufacturing, or using marijuana that has been diverted from an approved program or from a patient who is enrolled in an approved program. A violator is guilty of a felony and on conviction is subject to (in addition to any existing applicable penalties) imprisonment for up to five years and/or a fine of up to \$10,000.

The bill may not be construed to authorize any individual to engage in (and does not prevent the imposition of any civil, criminal, or other penalties for) any of the following: (1) undertaking any task under the influence of marijuana when doing so would

constitute negligence or professional malpractice; (2) operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or boat while under the influence of marijuana; or (3) smoking marijuana in any public place, in a motor vehicle, or on a private property that is subject to specified policies prohibiting the smoking of marijuana on the property. Furthermore, the bill may not be construed to provide immunity to a person who violates the bill from criminal prosecution for a violation of any law prohibiting or regulating the use, possession, dispensing, distribution, or promotion of controlled dangerous substances, dangerous drugs, detrimental drugs, or harmful drugs (or any conspiracy or attempt to commit any of those offenses).

A State employee who incurs counsel fees in connection with a federal criminal investigation or prosecution solely related to the employee's good faith discharge of public responsibilities under the bill is eligible for reimbursement of counsel fees, as specified by the bill. The Governor may suspend implementation of the bill on making a determination that there is a reasonable chance of federal prosecution of State employees for involvement with the bill's implementation.

Current Law: In general, a defendant in possession of marijuana is guilty of a misdemeanor and subject to imprisonment for up to one year and/or a fine of up to \$1,000. However, pursuant to Chapters 193 and 194 of 2012 (SB 214/HB 350), a person in possession of less than 10 grams of marijuana is subject to a reduced penalty of imprisonment for up to 90 days and/or a maximum fine of \$500. The law went into effect on October 1, 2012.

The use or possession of less than 10 grams of marijuana may not be considered a lesser-included crime of any other crime unless specifically charged by the State. If a person is convicted of possessing less than 10 grams of marijuana, the court must stay any imposed sentence that includes an unserved, nonsuspended period of imprisonment without requiring an appeal bond (1) until the time for filing an appeal has expired and (2) during the pendency of a filed appeal of the conviction.

If the court finds that the defendant used or possessed marijuana out of medical necessity, the maximum punishment is a \$100 fine. An affirmative defense is available to defendants for use or possession of marijuana or related paraphernalia due to a debilitating medical condition.

Pursuant to Chapters 504 and 505 of 2012 (SB 422/HB 261), as of January 1, 2013, a police officer must issue a citation for possession of marijuana if (1) the officer is satisfied with the defendant's evidence of identity; (2) the officer reasonably believes that the defendant will comply with the citation; (3) the officer reasonably believes that the failure to charge on a statement of charges will not pose a threat to public safety; (4) the defendant is not subject to arrest for another criminal charge arising out of the same

incident; and (5) the defendant complies with all lawful orders by the officer. A police officer who has grounds to make a warrantless arrest for an offense that may be charged by citation may (1) issue a citation in lieu of making the arrest or (2) make the arrest and subsequently issue a citation in lieu of continued custody.

Subject to specified limitations, the Board of Public Works may approve reimbursement of reasonable counsel fees incurred by a State officer or employee (1) in connection with a criminal investigation into conduct as an officer or employee if the investigation has concluded and criminal charges have not been filed against the officer or employee or (2) in defending against criminal charges that related to conduct as an officer or employee if final disposition of all of the charges does not result in a plea of *nolo contendere*, a guilty plea, or a finding of guilt.

Background: In 1996, California became the first state to allow the medical use of marijuana. Since then, 17 other states (as well as the District of Columbia) have enacted similar laws. States with medical marijuana laws generally have some form of patient registry and provide protection from arrest for possession of up to a certain amount of marijuana for medical use. Maryland is an exception; although State law allows for medical necessity as an affirmative defense, it does not provide a means for patients to actually obtain marijuana.

Federal Activity

Marijuana is classified as a Schedule I controlled substance at the federal level, making distribution a federal offense. In October 2009, the Obama Administration sent a memorandum advising federal prosecutors that it is not an efficient use of resources to prosecute individuals who use marijuana for medical purposes in accordance with state laws. In June 2011, however, the Obama Administration sent another memorandum advising that, while this view of the efficient use of resources had not changed, persons who are in the business of cultivating, selling, or distributing marijuana (and those who knowingly facilitate such activities) are in violation of federal law and are subject to federal enforcement action.

State Activity

Chapter 215 of 2011 (SB 308) required the Secretary of Health and Mental Hygiene to convene a workgroup to develop a model program for facilitating patient access to marijuana for medical purposes. The Secretary was required to report, by December 1, 2011, on the workgroup's findings, including draft legislation that would establish a program to provide access to marijuana in the State for medical purposes. Due to a lack of consensus, the workgroup ultimately submitted two separate plans for consideration by the General Assembly: one that was based on an investigational use model and another that more closely resembled the traditional medical marijuana

program model that is used in other states. While both plans were considered during the 2012 session, neither bill passed.

State Fiscal Effect:

Assumptions

Although the bill does not specify the purposes for which the special fund established by the bill may be used, it is assumed that the fund is used solely to fund the commission. It is further assumed that any fee revenues collected under the bill are intended to be deposited into the special fund rather than accrue to the general fund. Moreover, absent any other means to capitalize the fund, it is assumed that general funds are needed to either supplement or capitalize the fund. Thus, all expenditures in fiscal 2014 and 2015 are assumed to consist solely of general funds, while expenditures in future years are assumed to consist of general and special funds.

Both the University of Maryland Medical System (UMMS) and the Johns Hopkins University (JHU) previously advised (with regards to a similar bill introduced in the 2012 legislative session) that they did not intend to participate in the program as academic medical centers. JHU and UMMS have confirmed that their intentions have not changed. It is unclear how many, if any, other institutions are eligible (and willing) to participate as academic medical centers under the bill. For purposes of this estimate, however, it is assumed that there will be at least one participating academic medical center. Thus, the estimate reflects the minimum staff needed to implement the program, assuming any participation. Although certain activities are required by the bill to be undertaken, actual program costs could vary significantly from the estimate depending on the extent of participation. Revenues and expenditures do not account for any potential violations of the bill.

Because the bill authorizes, rather than requires, the commission to inspect academic medical centers and growers – and given that participation is expected to be low – DLS assumes that inspectors are not needed to implement the bill. Thus, the estimate does not account for any costs associated with inspections. However, to the extent that any inspections are conducted under the bill, DLS advises that expenditures increase to reflect costs associated with utilizing either permanent staff or contractual services to conduct the inspections.

Because the bill neither authorizes the commission to charge a licensing fee for growers nor requires cost-recovery for the grower-licensing process, DLS assumes that no fees are generated from growers under the bill. Moreover, while the bill requires the commission to suggest fees to support the bill's implementation, any revenues generated from such fees cannot be reliably estimated at this time. However, given that the number of

programs and growers that may operate under the bill is limited, expenditures (including database development and ongoing maintenance) are not likely to be recouped under the bill.

It is further assumed that growers are readily able to obtain the necessary seeds to cultivate and harvest marijuana for use by a participating academic medical center. The estimate does not account for delays associated with germination and/or growth.

In addition, it is assumed that the commission will largely rely upon the expertise of its members in reviewing academic medical center applications. It is further assumed that the commission can substantially rely on ongoing contractual consulting services to assist in the development and implementation of necessary regulations.

Finally, DLS notes that this estimate differs from previous estimates due to updated information received from DHMH. In addition, this estimate recognizes that academic medical centers share much of the operational and financial burdens of implementation and it reflects the phasing in of staff and other costs in accordance with a likely timeline for program development and implementation.

Future year expenditures reflect staff increases in accordance with the program's implementation, annual salary increases, employee turnover, and annual increases in ongoing operating expenses.

Fiscal 2014 – Establishing the Commission and Developing Regulations

Revenues are not generated in fiscal 2014, during which time the commission is established and develops regulations to implement the bill.

General fund expenditures increase by \$343,437 in fiscal 2014, which reflects the bill's October 1, 2013 effective date. The estimate includes at least \$150,000 for ongoing contractual consulting services to assist with the development and implementation of regulations (including those related to security). (DHMH advises that this estimate is based on similar contracts used by the various health occupations boards.) It also includes \$193,437 for staffing and operating costs necessary to provide administrative support to the commission and assist with the development of regulations (and, in future years, monitor and oversee approved programs). Staff includes one full-time program director, one full-time staff attorney, and one full-time office secretary. This reflects the minimum staffing necessary to implement the bill under the tiered approach to implementation established by the bill.

Supplemental Budget No. 1 includes \$125,000 in general funds, contingent upon the enactment of this bill, for contractual services for DHMH to begin to implement the bill.

Fiscal 2015 – Issuing the RFP, Reviewing Applications, and Establishing Database

Revenues are not generated in fiscal 2015, during which time the commission issues the RFP and may begin reviewing applications from academic medical centers and license growers.

General fund expenditures increase by \$745,725 in fiscal 2015. The estimate reflects at least \$250,000 for software and contractual services associated with the development of a database – to receive data daily from academic medical centers and share it with law enforcement on a real-time basis – and \$495,725 for ongoing staffing costs and consulting services. It also factors in the addition of one full-time systems administrator to assist with the development and maintenance of the database.

Fiscal 2016-2018 – Monitoring and Overseeing Approved Programs

Special fund revenues may increase beginning in fiscal 2016 to reflect fees collected by the commission from academic medical centers. Because participation in the program is expected to be low (or nonexistent), however, DLS advises that the commission is not likely to be able to comply with the bill's requirement to set its fees at a level sufficient to offset program costs unless it sets its fees at a level that would likely be prohibitively high.

Special and general fund expenditures continue to increase in future years for ongoing expenses. DLS advises that, to the extent that the program participation increases in future years, additional staff may be needed to assist with oversight.

Additional Comments: As noted above, JHU and UMMS, the two primary institutions that would be most likely considered as participating academic medical institutions under the bill, have stated that they will not participate. Furthermore, it is unclear how many, if any, other institutions would be eligible (and willing) to participate under the bill. Thus, DLS notes the possibility that – although the bill requires a specified infrastructure to be established and expenditures to be made – ultimately, there may be no programs for that infrastructure to support. DLS further notes the possibility that growers may be licensed but unable to supply a program with marijuana if there is no participation among academic medical centers.

Although JHU has indicated that it will not participate as an academic medical center, the university has advised that – for any institution that does participate – costs are likely to be significant. DLS concurs with this assessment.

Additional Information

Prior Introductions: HB 1024 of 2012, a similar bill, was heard by the House Judiciary and Health and Government Operations committees, but no further action was taken.

Cross File: None.

Information Source(s): The Johns Hopkins University, Maryland Department of Agriculture, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), State's Attorneys' Association, University of Maryland Medical System, Department of Legislative Services

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Analysis by: Jennifer A. Ellick

Direct Inquiries to:
(410) 946-5510
(301) 970-5510