

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 870

(Delegate Pena-Melnyk, *et al.*)

Health and Government Operations

Finance

**Natalie M. LaPrade Medical Cannabis Commission – Compassionate Use Fund –
Revisions (The Fakiza Rahman Act)**

This bill requires the Natalie M. LaPrade Medical Cannabis Commission, instead of the Maryland Department of Health (MDH), to administer and adopt regulations to implement the Natalie M. LaPrade Medical Cannabis Compassionate Use Fund and related statutory provisions. The bill expresses the intent of the General Assembly that the commission establish a fee structure to support the Compassionate Use Fund, as specified.

Fiscal Summary

State Effect: The commission can likely establish fees and regulations and administer the fund with existing budgeted staff and resources. Special fund revenues increase, likely significantly, from fees collected from licensees, beginning as early as FY 2021. Special fund expenditures increase correspondingly to reimburse dispensaries.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary/Current Law:

Natalie M. LaPrade Medical Cannabis Commission

Under current law, 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, there are legal protections for third-party vendors authorized by the commission to test, transport, or dispose of medical cannabis, medical cannabis products, and medical cannabis waste. These provisions are unchanged under the bill.

Compassionate Use Fund

Chapter 598 of 2018 established the Natalie M. LaPrade Medical Cannabis Compassionate Use Fund, a special nonlapsing fund administered by MDH. Under the bill, the commission must administer the fund. The purpose of the fund is to establish a program to allow eligible individuals enrolled in Medicaid or in the Veterans Affairs (VA) Maryland Health Care System to obtain medical cannabis from a licensed dispensary free of charge or at a reduced cost. Accordingly, the fund is intended to be used to reimburse a licensed dispensary for the cost of the medical cannabis dispensed to an eligible individual. Under the bill, eligible individuals must be allowed to obtain medical cannabis from a licensed dispensary only at a reduced cost (not at no cost).

Under current law, MDH must set fees in an amount necessary to fund the program, but fees cannot be imposed on a licensee during the two years immediately following pre-approval of the licensee. MDH must adopt implementing regulations for this program and the fund. Under the bill, the commission must set fees and promulgate regulations. Additionally, the commission may not impose fees during the two years immediately following the *issuance* of a license pursuant to the State's medical cannabis program.

The bill expresses the intent of the General Assembly that the commission establish a fee structure to support the Compassionate Use Fund and the program. In establishing the fee structure, the commission must (1) consider the financial and administrative burden placed on medical cannabis licensees in the initial stages of establishing the program; (2) establish procedures for assessing and collecting fees; and (3) provide reimbursement to licensed medical cannabis dispensaries in a manner that minimizes the financial and administrative burden on the commission and the licensed medical cannabis growers, processors, and dispensaries.

In developing the required regulations, the commission must consider (1) measures that may be implemented to identify and deter diversion of medical cannabis and medical cannabis products; (2) methods for assisting licensed medical cannabis dispensaries in

determining the eligibility of patients; and (3) whether a specified section of the Internal Revenue Code affects any fee structure used to support or the administration of the Compassionate Use Fund program.

Background: The commission submitted a required [report](#) in December 2018 on the revenues needed to fund the Compassionate Use Fund, potential funding mechanisms, and any anticipated savings in prescription drug costs for the State's Medicaid program. Among other things, the report concluded that the revenues necessary to provide eligible qualifying patients with even modest price reductions is substantial. The fund would need at least \$5.6 million in fiscal 2020 to provide a 15% discount, and \$7.5 million to provide a 20% discount. However, to date, MDH has not promulgated any regulations to assess fees, and there have been no appropriations to the fund in the State budget. Thus, the fund has never functioned in practice.

Statute limits the number of grower and processor licenses the commission can issue, and regulations establish a limit on the number of dispensary licenses. Specifically, the commission can issue 22 grower, 28 processor, and 102 dispensary licenses. As of January 2020, the commission had issued 17 final grower licenses, 18 final processor licenses, and 85 final dispensary licenses. Additionally, the commission had registered six independent laboratories. The commission maintains a list of licensees on its [website](#). Furthermore, there were 37,363 registered patients, 88,594 certified patients, 8,003 caregivers, and 1,705 certifying providers. The commission estimates that approximately 30% of qualifying patients are enrolled in Medicaid or the VA Maryland Health Care System.

The commission reported that between December 2018 and December 2019 there were \$268.3 million in retail sales at medical cannabis dispensaries in the State.

State Fiscal Effect: Once the commission establishes a fee structure and promulgates regulations to implement the Compassionate Use Fund and program, special fund revenues increase, likely significantly, beginning as early as fiscal 2021. Special fund expenditures increase correspondingly to reimburse dispensaries for discounted medical cannabis dispensed to eligible individuals under the program. Given the funding levels that were estimated to be necessary to provide even modest discounts to eligible qualifying patients, special fund revenues and expenditures are likely significant. However, since any actual revenues (and corresponding expenditures) depend on the fees established under the regulations, the Department of Legislative Services cannot provide a specific estimate at this time.

The commission can administer the Compassionate Use Fund and program with existing budgeted staff and resources.

Small Business Effect: Expenditures increase for licensees to pay fees established by the commission pursuant to the bill. Given the estimated funding levels necessary to provide discounts to eligible qualifying patients, these fees could be significant. On the other hand, dispensaries benefit from reimbursements from the Compassionate Use Fund. It is unknown at this time if dispensaries are fully reimbursed under the Compassionate Use Fund program. According to the commission, some dispensaries already offer discounted medical cannabis products to veterans and low-income patients, but the commission does not have a specific estimate of the amount of the discount or how widespread these practices are across the industry.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Health; U.S. Department of Veterans Affairs; Department of Legislative Services

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