

Medical Cannabis in Maryland: *Legal Issues and Implications*

Healthy St. Mary's Partnership Annual Meeting
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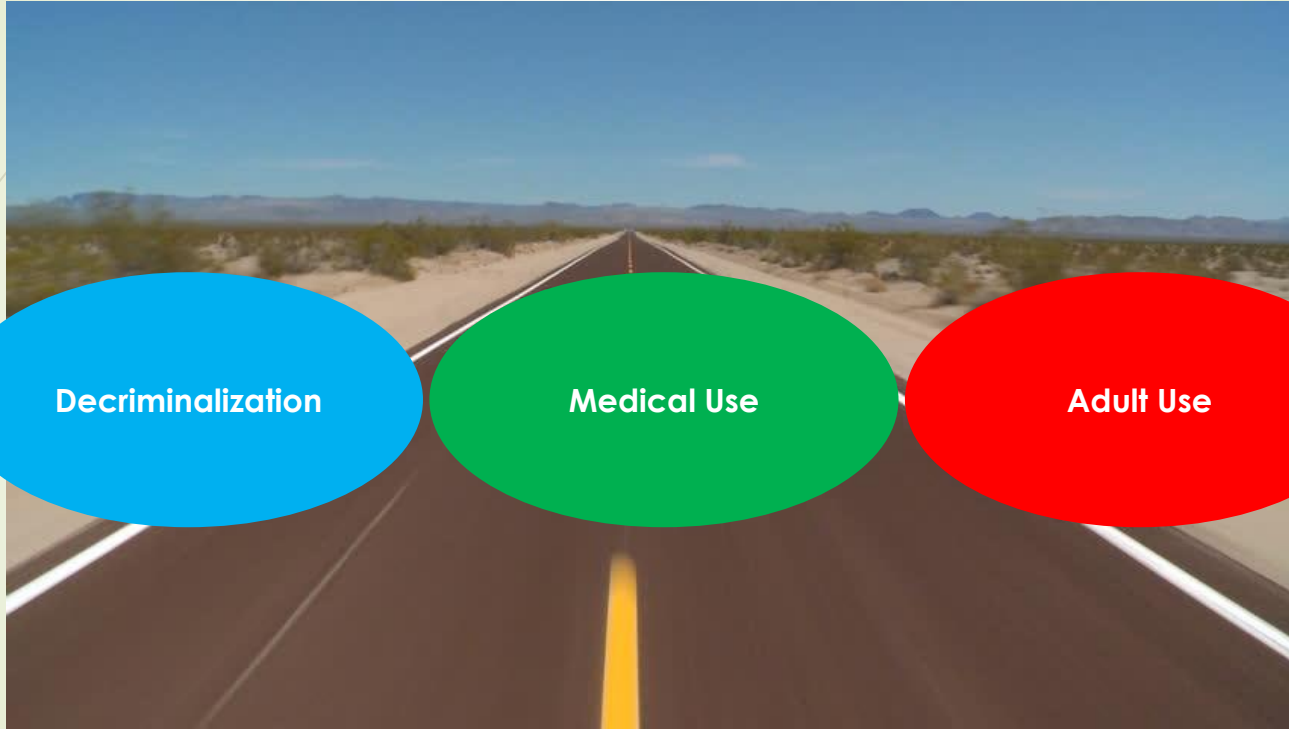


Presentation Overview

- What's Legal in Maryland?
- MMCC's Role
- Snapshot of medical cannabis program in Maryland
- Frequently Asked Questions
 - Employment Issues
 - Federal benefits (SNAP, VA, etc.)
 - Minor patients/Use in Schools
 - Advertising
 - Pesticides



What's Legal in Maryland?



Medical Use

- ▶ Qualifying patients may lawfully access a specific amount of medical cannabis from a licensed Maryland dispensary
- ▶ A **qualifying patient** is an individual who:
 - Has a chronic or debilitating disease or medical condition,
 - Registers with MMCC,
 - Receives an in-person assessment from a certifying provider, and
 - The certifying provider determines the (1) patient meets the inclusion criteria for treatment with medical cannabis, and (2) potential health benefits outweigh the health risks for the patient.
- ▶ **Minor patients** are permitted, but must have a parent/guardian as a caregiver, and caregiver must obtain and administer medical cannabis
- ▶ **Patient Certification**
 - Valid for up to 1 year (provider can set any time period)
 - Can be revoked by the provider at any time
 - "30-Day supply" is default (120 grams/.26 pounds of usable cannabis/36 grams of THC); may be increased or decreased by certifying provider



Adult Use/Recreational

- ▶ Use, possession, or distribution by individuals not registered with MMCC and certified by a certifying provider
 - For **99.7%** of Maryland residents, cannabis use remains illegal
- ▶ Even for qualifying patients, the following remains illegal:
 - Cultivation at home
 - Possession of cannabis from out-of-state (e.g., D.C.)
 - Edibles
 - Use in any public place, while driving, or in a dispensary
- ▶ The penalties associated with use vary according to age and amount
 - Due to the lessening of penalties for use and possession, many local jurisdictions in Maryland have de-prioritized marijuana enforcement



Decriminalization

- ▶ Use or possession of 10 grams (.02 pounds) or less is a civil money penalty
- ▶ Fine of up to \$100
- ▶ For individuals under 21, in addition to fine must attend a drug education program
- ▶ Use or possession of more than 10 grams
 - ▶ Criminal misdemeanor and up to 1 year in prison and/or a fine up to \$1,000
- ▶ Affirmative defense that the defendant possessed marijuana for medical use out of medical necessity (does not need to be in program to assert defense)



Medical Cannabis Program in Maryland



MMCC's Role

- ▶ Regulate the legal medical cannabis market:

Oversee all licensing, registration, inspection, and testing measures pertaining to Maryland's medical cannabis program and provide relevant program information to patients, providers, caregivers, growers, processors, dispensaries and testing laboratories.

- ▶ Use, possession, and distribution of illicit cannabis remains under authority of state and local law enforcement
 - ▶ MMCC restricted from establishing any additional provisions related to locations where use is permitted/restricted (e.g., workplace, schools, or correctional facilities)
- ▶ State licensing boards remain authority for certifying providers
 - MMCC prohibited from establishing continuing education or other requirements for certifying providers



Program Snapshot



Program History

2013

General Assembly establishes the MMMC to oversee academic medical centers growing and dispensing medical marijuana

2015

MMCC issues regulations and accepts license applications

2017

Dispensaries open and begin selling cannabis

2015

Marijuana is out, cannabis is in.

Authorizes MMCC to license processors and independent testing laboratories

Est. immunity for licensed entities

2016

Dentists, podiatrists, nurse practitioners, and certified nurse midwives added to certifying providers

Preapprovals announced for growers, processors, and dispensaries

2018

HB 2 passed by General Assembly
Altering the makeup of the Commission and the industry



Current Statistics

- ▶ **Patients and Caregivers**
 - Certified Patients – 39,948 (250-300 applicants per day)
 - Minor patients – 138
- ▶ **Providers (1,036)**
 - Physicians – 665
 - Nurses – 306
 - Podiatrists – 11
 - Dentists – 57
- ▶ **Licensees**
 - Dispensary **65 out of 102**
 - Grower **14 out of 15** (up to 7 more permitted under Ch. 598)
 - Processor **14 out of 15** (up to 13 more permitted under Ch. 598)
- ▶ **Independent Testing Laboratories** – 5 registered and accredited



St. Mary's County

- ▶ **Patients** – 1,219 (1.1% of county population)
- ▶ **Providers** – 7
- ▶ **Licensees** – Up to two dispensaries per legislative district
 - ▶ **District 29**
 - Southern Maryland Relief LLC, Mechanicsville, MD
 - G&J Pharmaceuticals LLC (dba Greenwave), Solomons, MD (Calvert County)



Medical Cannabis Products in MD

- Flower/ Pre-rolls
- Extracts, Oils, & Tinctures
- Vape Cartridges
- Capsules & Patches
- Salves, Lotions, Ointments
- Cannabis-infused edible food products
ARE NOT approved in Maryland



Tinctures



Pre-rolls



Extracts



Oils

Patient Identification Card



Caregiver Identification Card



Who is a Caregiver?

- A person designated by a patient to purchase cannabis from a licensed medical cannabis dispensary
- Must be (1) 21 years of age or older, (2) register with the MMCC, (3) designated by a valid patient, and (4) carrying an ID card
- A patient may only have 2 caregivers at a time
- A minor patient must have a caregiver who is a parent/guardian

Chapter 598 of the Acts of 2018

➤ **Licensing**

- Increase number of grower licenses from 15 to 22
- Increase number of processor licenses from 15 to 28
- Develop emergency regulations to address needs of minority and women business owners and entrepreneurs interested in a medical cannabis license
- Develop new application and new application process, incorporating new diversity provisions

➤ **Compassionate Use Fund**

- Establish compassionate use fund to provide reduced cost or free medical cannabis to Medicaid enrollees and Veterans

➤ **Commission Makeup**

- Reduce the number of Commissioners from 16 to 13, beginning on October 1, 2019;
- Remove authority to license beyond newly established caps

➤ **Outreach/Education**

- Conduct outreach to small, minority, and women businesses, including, (1) training programs for employment, and (2) educational information on licensing process
- Make grants to educate and train interested minority and women business owners and entrepreneurs

➤ **Reporting**

- Fees and revenues necessary to implement the Compassionate Use Fund
- Providers, product demand, and consumer price
- Advertising and marketing practices of licensees
- Use of medical cannabis to treat opioid use disorder



Frequently Asked Questions



Employment Issues



Can employers access the patient registry?

No.

- ▶ Patient information is not shared with employers, including state and federal agencies.
- ▶ The MMCC will only turn over patient information in two circumstances:
 1. Court Order, and
 2. Express written patient authorization



May employers restrict medical cannabis use?

Yes.

- ▶ Employers may screen for cannabis use, and fire or refuse to hire someone for medical cannabis use
- ▶ HB 1496, which would have provided express labor employment protections for medical cannabis users received an unfavorable vote from the Health and Government Operations Committee
- ▶ Absent express statutory protections, virtually all state courts have rejected disability discrimination claims for medical cannabis patients. (Exception: New Mexico)
- ▶ The Drug-Free Workplace Act of 1988 generally requires federal contractors and grantees to agree to provide a drug-free workplace.



Federal Benefits



Does medical cannabis use prevent you from receiving federal benefits?



- **Government Housing** – All federally subsidized housing must prohibit the use of cannabis, regardless of whether it is used by a qualifying patient with a state-sanctioned medical program. However, property management agencies and PHAs have discretion in enforcing these policies.
- **SNAP and TANF** – a individual convicted under the state's drug felony statutes is "ineligible for temporary cash assistance or food stamps for 1 year after the date of conviction," and "subject to testing for substance abuse...for 2 years."
- **Veterans** – New directive from Dept. of Veterans Affairs (December 8, 2017) continues policy where VA physicians may not prescribe medical cannabis, but veteran's now permitted to participate in state medical cannabis programs – does not affect eligibility for VA care and services



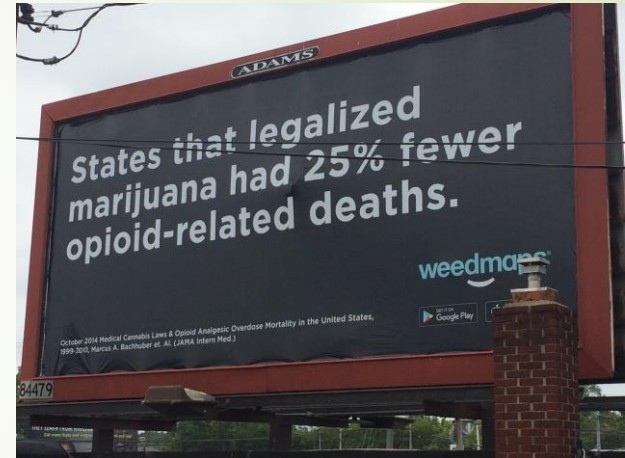
Medical Cannabis in Schools

- No provision of state statute restricts use or administration in school
- A minor is eligible to be a patient if:
 - A parent or guardian serves as the caregiver
 - The caregiver must purchase and administer the medical cannabis
- School nurses are not authorized to serve as a caregiver for a minor patient or otherwise be involved in the administration of medical cannabis to a minor patient
- Since the state medical cannabis law is silent, the issue of administration or use on school grounds is left up to MSDE, county boards of education, or individual schools



Medical Cannabis Advertising

- No cannabis specific advertising restrictions in Maryland
- General Assembly considered 4 different cannabis advertising bills during the 2018 session
- MMCC advertising steps:
 - Reviewed advertising laws in all 30 medical cannabis states
 - Accepted public comment at April 16 meeting
 - Proposed advertising regulations at May 24 and June 25 meetings
 - Solicited feedback from other agencies, including the Office of the Attorney General
- Medical cannabis businesses subject to any county or municipal advertising or signage requirements, such as:
 - No off-premises advertising
 - Limiting percent of storefront window that may include advertising (e.g. 20 percent)
 - Size and location restrictions



Pesticide Use



- MMCC regulations prohibit pesticide use in cultivation of medical cannabis
- General Assembly passed bill requiring MDA to publish list of permitted pesticides
- Effective July 6, 2018, certain pesticides may be used in cultivation of medical cannabis
- MMCC considering labeling requirements
- Why does it matter?
 - No pesticides tested for safety on cannabis
 - Product inhaled
 - Difficult to remove pesticide residues

Looking Forward

- Decriminalization of up to 1 oz.
- Employment Protections
- Zoning
- Recreational/Adult Use

Any Questions? E-mail:

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Note: The information presented here are for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem.

