

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 10, 3740, and 3437

# STATE OF NEW JERSEY

DATED: NOVEMBER 26, 2018

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 10, 3740, and 3437.

This substitute bill makes various revisions to the title and requirements of the “Compassionate Use Medical Marijuana Act,” P.L.2009, c.307 (C.24:6I-1 et al.), including revising the requirements to authorize a patient for medical cannabis; revising the permit and operational requirements for alternative treatment centers (ATCs), including establishing discrete cultivator, manufacturer, and dispensary permits; creating a new clinical registrant permit, and establishing additional protections for registry cardholders. Additionally, this substitute bill updates references throughout the current law to reflect the establishment of the Cannabis Regulatory Commission (CRC) pursuant to Senate Bill No. 2703, which is an entity established in, but not of, the Department of the Treasury, and which will be vested with oversight authority over the medical cannabis program. All authority over the medical cannabis program will transfer from the Department of Health to the CRC at such time as the members of the CRC are appointed and the CRC first organizes.

#### Patient and Caregiver Requirements

Current law sets forth an enumerated list of debilitating medical conditions that can qualify a patient for the medical use of cannabis. The substitute bill changes the term “debilitating medical condition” to “qualifying medical condition,” and updates and revises the list of conditions in certain ways, including adding additional conditions and providing that medical cannabis may be used as a treatment of first resort for any condition included in the list, which are: seizure disorder, including epilepsy; intractable skeletal muscular spasticity; post-traumatic stress disorder; glaucoma; positive status for human immunodeficiency virus; acquired immune deficiency syndrome; cancer; amyotrophic lateral sclerosis; multiple sclerosis; muscular dystrophy; inflammatory bowel disease, including Crohn's disease; terminal illness, if the patient has a prognosis of less than 12 months of life; anxiety; migraine; Tourette’s syndrome; dysmenorrhea; chronic

pain; or any other medical condition or its treatment that is approved by the CRC.

The substitute bill expands the list of professionals who can authorize patients for the medical use of cannabis. Current law only allows physicians to provide this authorization; the substitute bill provides that physician assistants and advanced practice nurses may authorize patients for medical cannabis as well. The substitute bill provides that health care practitioners will not be required to register with the CRC, or be publicly listed in any CRC registry, as a condition of authorizing patients for medical cannabis. Practitioners will be prohibited from authorizing themselves or members of their immediate family for medical cannabis.

The substitute bill provides that, in order to authorize a qualifying patient who is a minor for medical cannabis, the practitioner will be required to either be a certified pediatric specialist or obtain written confirmation from a certified pediatric specialist establishing that, following examination of the patient or a review of the patient's record, the minor patient is likely to receive therapeutic or palliative benefits from the medical use of cannabis to treat or alleviate symptoms associated with the patient's qualifying medical condition.

With regard to caregivers, current law provides that each patient may have only one primary caregiver and that a person may serve as primary caregiver to no more than one patient at a time. The substitute bill changes the term "primary caregiver" to "designated caregiver," and provides that each caregiver may serve up to two patients at one time and that each patient may have up to two designated caregivers at one time. Patients may petition the CRC for approval to have more than two designated caregivers. An immediate family member of a patient will not be required to undergo a criminal history record background check as a condition of serving as designated caregiver.

The substitute bill also establishes the position of "institutional caregiver," which is an employee of a health care facility who is authorized to assist qualifying patients who are patients or residents at the health care facility with the medical use of cannabis. An institutional caregiver registration will be valid for one year. Each institutional caregiver will be required to be a New Jersey resident, at least 18 years of age, and authorized, within the individual's scope of professional practice, to possess and administer controlled dangerous substances to patients and residents at the facility. An institutional caregiver will be required to undergo a criminal history background check unless the individual has already done so as a condition of professional licensure or certification. Medical cannabis may be dispensed to an institutional caregiver if authorized by the patient. There will be no limit to the number of patients an institutional caregiver can serve at one time, provided that the caregiver is able to meet the needs of all such patients and attend to the caregiver's other duties at the facility without jeopardizing the health or safety of any

patient or resident at the facility. Facilities that choose to authorize the use of institutional caregivers will be required to certify, with each caregiver application, that the facility has established appropriate security measures to prevent unauthorized access to medical cannabis to guard against theft, diversion, and adulteration; the facility has established protocols to prevent adverse drug interactions between medical cannabis and other medications; the facility will not charge a patient for medical cannabis in excess of the actual cost of the medical cannabis plus reasonable acquisition costs; and the facility will promptly notify the CRC in the event that an institutional caregiver ceases to be employed by the facility or is convicted of a crime.

The substitute bill provides that qualifying patients and designated caregivers who are registered with a medical cannabis program in another state will be deemed to be qualifying patients and designated caregivers for the purposes of New Jersey law for up to six months, provided the individual possesses a valid registry card and a photo identification card issued by the other state. Medical cannabis may only be dispensed to an out-of-State patient or caregiver pursuant to written instructions issued by a New Jersey practitioner. After six months, the out-of-State registrant will be prohibited from engaging in conduct related to medical cannabis in New Jersey unless the individual is registered as a qualifying patient or caregiver in New Jersey. The CRC is to seek to establish medical cannabis reciprocity agreements with other states.

#### Dispensing Requirements for Medical Cannabis

Current law provides that up to two ounces of medical cannabis may be dispensed to a patient in a 30-day period. The substitute bill provides that, commencing January 1, 2019, the maximum amount that may be dispensed will increase to two and one-half ounces, and commencing July 1, 2019, the maximum amount will increase to three ounces. The quantity restrictions will not apply to a patient receiving hospice care or who is terminally ill; other patients may petition the CRC for an exemption from the monthly quantity limits, which may be granted if appropriate to the patient's treatment needs. The CRC is to establish recommended dosing guidelines for medical cannabis products that are equivalent to one ounce of medical cannabis in dried form.

Current law provides that physicians may issue multiple written instructions authorizing up to a 90-day supply of medical cannabis, provided that each instruction is issued for a legitimate medical purpose, includes the earliest date on which the instruction becomes valid, and does not present an undue risk of diversion or abuse. The substitute bill will allow practitioners to authorize up to a one year supply at one time.

The substitute bill requires the CRC to establish a process for patients to be dispensed medical cannabis in quantities of up to a two week supply during the pendency of the patient's registration with the CRC; additional two-week supplies may be dispensed until the registration process is completed. The CRC is to establish appropriate restrictions to protect against fraud, abuse, and diversion.

The substitute bill removes a provision that limits access to edible forms of medical cannabis, including oils, to qualifying patients who are minors, and specifies that medical cannabis may be distributed in transdermal, sublingual, and tincture forms, as well as in the forms authorized under current law. Upon dispensing medical cannabis, the medical cannabis dispensary or clinical registrant is to notify the practitioner of the amount, strain, and form of medical cannabis dispensed.

The substitute bill provides that medical cannabis may be dispensed to a patient by any medical cannabis dispensary or clinical registrant in the State; under current law, patients are to be registered with, and may only be dispensed medical cannabis from, a single ATC where the patient is registered. The bill requires that, prior to dispensing medical cannabis to a patient, the dispensary or clinical registrant will be required to access a system currently maintained by the Division of Consumer Affairs in the Department of Law and Public Safety that tracks written instructions for, and dispensations of, medical cannabis, in order to ascertain whether any medical cannabis was dispensed to or on behalf of the patient within the preceding 30 days.

The substitute bill provides that a practitioner or an immediate family member of a practitioner who authorizes patients for medical cannabis may not hold any profit or ownership interest in an ATC. A practitioner or the immediate family member of a practitioner who applies for an ATC identification card is to certify that the practitioner has not authorized any patients for medical cannabis in the preceding 90 days. A person who violates the prohibition will be guilty of a crime of the fourth degree, which is punishable by imprisonment for up to 18 months, up to a \$10,000 fine, or both. The substitute bill specifies that nothing in the prohibition will ban any practitioner from serving on the governing board or medical advisory board of an ATC, provided the practitioner receives no special compensation or remuneration from the ATC, including payments based on patient volumes or the number of authorizations for medical cannabis the practitioner issues.

The substitute bill additionally prohibits practitioners from authorizing themselves or members of their immediate family for the medical use of cannabis.

The substitute bill requires the CRC to establish curricula for practitioners and employees of medical cannabis dispensaries and clinical registrants that are designed to assist with patient consultations

regarding the form, strain, quantity, and dosing of medical cannabis appropriate to the patient's qualifying medical condition. Practitioners will be required to complete the health care practitioner curriculum as a condition of authorizing patients for the medical use of cannabis, and employees of medical cannabis dispensaries and clinical registrants will be required to complete the curriculum as a condition of registering with the CRC.

Currently, medical cannabis is subject to the State sales tax. The substitute bill will phase out the sales tax over several years: commencing July 1, 2020, the tax will be five percent; commencing July 1, 2022, the tax will be three percent; commencing July 1, 2023, the tax will be one percent; and commencing July 1, 2024, no sales tax may be assessed against medical cannabis.

#### ATC Application and Permitting Requirements

The substitute bill establishes three distinct permit types in connection with the production and dispensing of medical cannabis: medical cannabis cultivators, medical cannabis manufacturers, and medical cannabis dispensaries. The substitute bill identifies the specific activities and functions authorized for each permit type. The CRC will be required to issue a request for new permit applications within 90 days of the effective date of the substitute bill, and to make a determination on any permit application within 90 days after the date of submission. The CRC will be authorized to issue a conditional permit pending a final decision on an application; the requirements for issuance of a conditional permit and the scope of conduct authorized by a conditional permit will be in the discretion of the CRC.

For a period of 18 months after the effective date of the substitute bill, an entity will be permitted to hold both a cultivator and a manufacturer permit, but not a dispensary permit, and an entity that holds a dispensary permit will not be permitted to hold either a cultivator or manufacturer permit. After 18 months, an entity will be authorized to concurrently hold one of each permit type, for a total of up to three permits. However, the substitute bill provides that the CRC is to issue six new plenary ATC permits that are not subject to these restrictions; the six ATCs will be deemed to concurrently hold all three permit types. These restrictions will also not apply to ATCs that were issued a permit prior to the effective date of the bill or that were issued a permit after the effective date of the bill pursuant to an application submitted prior to the effective date of the bill, which will be deemed to hold all three permit types, plus an additional dispensary permit for each satellite dispensary authorized prior to the effective date of the bill. No new satellite dispensaries will be approved.

The CRC will be required to specify by regulation the number of new permits of each type that it will authorize in the first year following the effective date of the substitute bill, and thereafter

periodically evaluate whether the current number of permits is sufficient to meet the needs of qualifying patients and issue requests for new applications as needed.

The substitute bill sets forth the specific information to be considered when reviewing new permit applications, which includes specific information concerning the applicant's operational experience, workforce development plan, community impact analysis, security capabilities, storage systems, emergency management plan, and proposed location, along with any other criteria the commissioner deems appropriate. The CRC will determine the weight to be afforded to each criterion. All applicants will be required to submit evidence that the applicant has entered into a labor peace agreement with a bona fide labor organization, and maintain the labor peace agreement as an ongoing requirement for maintaining the permit. Failure to enter into a collective bargaining agreement within 200 days of opening will result in suspension or revocation of the entity's permit.

Applicants may submit multiple permit applications, with a separate application for each proposed facility; the substitute bill establishes procedures for determining which permit to award to an applicant who scores high enough to be awarded multiple permits of the same type.

The CRC will be required to conduct a disparity study to evaluate the adverse effects of the State's drug laws on New Jersey communities to determine whether race-based measures should be considered when issuing permits. To the extent possible, the CRC is to seek to ensure that at least 25 percent of new medical cannabis cultivator, manufacturer, and dispensary permits are issued to certified minority, women, and veteran-owned businesses.

The CRC is to grant special consideration to an applicant for an integrated curriculum permit or "IC permit," pursuant to which the applicant establishes an agreement with an institution of higher education to create an integrated curriculum involving the theoretical or practical application of medical cannabis cultivation, manufacturing, or dispensing to an area of academic study. Integrated curricula are subject to approval by the CRC and the Department of Education. If an IC permit holder's agreement with an institution of higher education ends, the IC permit holder will have six months to establish a new integrated curriculum or the IC permit will be revoked, unless the CRC determines that the entity should be allowed to retain the permit. The CRC may establish incentives to encourage applicants to seek IC permits, such as revised permit fees.

Current law provides that an ATC permit is valid for one year. Under the bill, an initial medical cannabis cultivator, manufacturer, or dispensary permit will be valid for three years and will be renewable on a biennial basis.

The substitute bill creates a new permit type, clinical registrant, which will authorize the permit holder to engage in all conduct related

to the cultivation, manufacturing, and dispensing of medical cannabis and medical cannabis products as is authorized for other ATC permit holders. The clinical registrant will be required to enter into a contractual relationship with an academic medical center, which is a facility located in New Jersey that has faculty practices in addiction medicine and pain management, has a graduate medical training program that includes primary care and specialized medicine, is the principal teaching affiliate of a New Jersey medical school, and has the ability to conduct research related to cannabis. If the facility is part of a health care system, the health care system is required to be principally located in New Jersey in order for the facility to qualify as an academic medical center.

Academic medical centers will engage in clinical research related to medical cannabis in order to advise the affiliated clinical registrant concerning patient health and safety, medical applications, and the dispensing and management of controlled dangerous substances. Clinical registrant applicants will be required to demonstrate at least \$15 million in capital.

A clinical registrant permit will be valid for the term of the contractual relationship, and may be renewed based upon the clinical registrant renewing its contractual relationship with the academic medical center. A clinical registrant permit may not be sold or transferred unless the CRC determines that the sale or transfer is necessary to continue essential clinical research or is otherwise consistent with the purposes of the medical cannabis program. Each clinical registrant may contract with no more than one academic medical center. Clinical registrants will be authorized to additionally hold a Class 1 Cannabis Grower license, a Class 2 Cannabis Processor license, a Class 3 Cannabis Wholesaler license, and a Class 4 Cannabis Retailer license issued in relation to adult use cannabis.

Clinical registrants will be authorized to serve all qualifying patients, as well as qualifying patients who agree to participate in clinical research. Clinical registrants may operate from more than one location and may be approved for a satellite dispensing location, and may relocate to another location in the same region unless the CRC determines relocation would be contrary to the purposes of the medical cannabis laws. Clinical registrants are required to report the results of the clinical research to the CRC upon completion of the study or following publication of the study in a peer-reviewed medical journal.

An entity issued a medical cannabis cultivator, manufacturer, or dispensary permit may not concurrently hold a clinical registrant permit, and an entity issued a clinical registrant permit may not concurrently hold any medical cannabis cultivator, manufacturer, or dispensary permit.

The substitute bill revises the criminal history record background check requirements for medical cannabis cultivator, manufacturer, dispensary, and clinical registrant applicants to provide that a

conviction for a crime of the first, second, or third degree, as well as any drug offense other than minor cannabis possession, constitutes a disqualifying conviction that may bar the applicant from holding an interest in or being employed by a medical cannabis cultivator, manufacturer, dispensary, or clinical registrant. Current law limits disqualifying convictions to drug offenses other than minor cannabis possession. The CRC will retain the discretion to issue a permit to an applicant if it finds evidence of rehabilitation.

The substitute bill further provides that no criminal history record background check will be required for an applicant who holds less than a five percent investment interest in the medical cannabis cultivator, manufacturer, dispensary, or clinical registrant, or who is a member of a group that holds less than a 20 percent investment interest where no member of the group holds more than a five percent interest in the total group investment, and the applicant does not have the authority to make operational decisions for the permitted entity. If the applicant or group gains an investment interest above these thresholds or the applicant gains the authority to make operational decisions, the individual or group will be required to notify the CRC and undergo a criminal history record background check within 30 days, or the permit will be revoked and the individual or group will be prohibited from holding any investment interest in a medical cannabis cultivator, manufacturer, dispensary, or clinical registrant for a period of two years.

The substitute prohibits an employee of any department, division, agency, board, or other governmental entity involved in the process of reviewing, processing, or making determinations with regard to a medical cannabis permit from having any financial interest in medical cannabis or receiving anything of value from a permit applicant in exchange for reviewing, processing, or making recommendations with regard to a permit application.

#### ATC Operational Requirements

The substitute bill requires medical cannabis cultivators, manufacturers, and clinical registrants to establish and maintain standardized price lists, which will reflect the price of all medical cannabis sold by a cultivator or clinical registrant, and all medical cannabis products sold by a manufacturer or clinical registrant, to other permitted entities. Price lists are to be posted on the entity's Internet website, if any, maintained on file with the CRC, and may be updated once per month. An entity that sells medical cannabis or medical cannabis products at a price that deviates from its price list will be liable to a civil penalty of \$1,000 per sale, and an entity that fails to maintain its current price list on file with the CRC will be liable to a civil penalty of \$10,000 for each week during which the CRC does not have the current price list. The prices charged by a



medical cannabis dispensary to other dispensaries, and the prices charged by a medical cannabis dispensary or clinical registrant to patients and their caregivers, are to be reasonable and consistent with the costs of acquiring and dispensing, selling, or transferring the medical cannabis or medical cannabis product.

The owners, directors, officers, and employees at each medical cannabis cultivator, manufacturer, dispensary, and clinical registrant will be required to undergo eight hours of ongoing training each calendar year. The training is to be tailored to the roles and responsibilities of the individual's job function and include training on confidentiality and any other topics required by the CRC. For medical cannabis dispensary and clinical registrant employees, the ongoing training may include completing the curriculum developed by the CRC concerning patient consultations.

The substitute bill requires the CRC to establish, by regulation, thresholds for administrative action to be taken against permit holders, including specific penalties and disciplinary actions that may be imposed in a summary proceeding.

The substitute bill sets forth certain requirements for the sale or transfer of a medical cannabis cultivator, manufacturer, or dispensary permit, which include completing a criminal history record background check of the entity purchasing or receiving the permit. Nonprofit ATCs issued a permit prior to the effective date of the bill will not be required to comply with the requirements of the "New Jersey Nonprofit Corporation Act," N.J.S.15A:1-1 et seq., but the sale or transfer will be conditioned on the nonprofit ATC paying in full all of its outstanding debts and obligations, the acquiring entity assuming the debts and obligations, or the nonprofit ATC establishing a reserve fund for the purpose of paying its outstanding debts and obligations.

The substitute bill provides that medical cannabis cultivators, manufacturers, dispensaries, and clinical registrants will be permitted to establish a medical advisory board to advise the permitted entity on all aspects of its business. A medical advisory board is to comprise five members: three healthcare practitioners; one qualifying patient who resides in the same area as the permitted entity; and one business owner from the same area as the permitted entity. No owner, director, officer, or employee of a permitted entity may serve on a medical advisory board. Medical advisory boards are to meet at least two times per year.

Medical cannabis dispensaries and clinical registrants are to consider whether to make interpreter services available to the population served, including for individuals with a vision or hearing impairment. The CRC is to assist facilities in locating appropriate interpreter resources. Dispensaries and clinical registrants will be responsible for the cost of providing interpreter services.

Medical cannabis cultivators, manufacturers, dispensaries, and clinical registrants operating on a for-profit basis may not operate at

any premises that was the subject of a business development incentive. Medical cannabis cultivators and clinical registrants may not be located on land valued, assessed, or taxed as an agricultural or horticultural use pursuant to the “Farmland Assessment Act of 1964,” P.L.1964, c.48 (C.54:4-23.1 et seq.).

#### Other Cannabis-Related Licensure

Each ATC that was issued a permit prior to the effective date of the bill, each ATC that was issued a permit pursuant to an application submitted prior to the effective date of the bill, and the six new plenary ATC permits to be issued by the CRC under the bill will all be deemed to hold a Class 1 Cannabis Grower license, a Class 2 Cannabis Processor license, a Class 3 Cannabis Wholesaler license, and a Class 4 Cannabis Retailer license, plus an additional Class 4 Cannabis Retailer license for each satellite dispensary approved for the ATC pursuant to an application submitted prior to the effective date of the bill, immediately upon enactment of legislation authorizing adult use cannabis pursuant to Senate Bill No. 2703. The ATC will be authorized to engage in all activities authorized by the adult use cannabis licenses without being required to establish or maintain any physical barriers or separations between the medical use and adult use cannabis operations, provided that, as a condition of selling to the adult use market, the ATC certifies to the CRC that it has sufficient quantities of medical cannabis and medical cannabis products available to meet the needs of medical patients.

The bill requires each batch of medical cannabis and each batch of a medical cannabis product to be tested by a laboratory to determine its chemical composition and potency and to screen for contamination by biologic contaminants, foreign material, residual pesticides, and other agricultural residue and residual solvents. The laboratory is to produce a written report detailing the results of the testing, a summary of which is to be included in any packaging materials for the medical cannabis or cannabis product. Laboratories may charge a reasonable fee for performing the test. The testing requirement will take effect once the CRC certifies that there are a sufficient number of testing laboratories licensed to ensure that the testing and labeling requirements can be satisfied without disrupting timely patient access to medical cannabis.

Laboratories providing testing services will be required to register with the CRC and will be subject to inspection to ensure that the equipment used is in good condition and properly calibrated. The owners, directors, officers, and employees of a testing laboratory will be required to undergo a criminal history record background check as a condition of licensure; no applicant with a disqualifying conviction will be authorized to own, operate, or be employed by a medical cannabis testing laboratory. “Disqualifying conviction” means any drug offense other than minor cannabis possession; applicants with a

disqualifying conviction may still be approved if the applicant demonstrates clear and convincing evidence of rehabilitation.

The CRC is required to conduct a feasibility study concerning the establishment of a new research and development permit that would be dedicated to advancing the medical uses of cannabis. The study is to examine potential funding sources and include a public hearing, and the CRC is to conduct the study every three years until such time as a research and development permit is established in the State. The CRC will be authorized to establish additional permit types as may be appropriate, including permits authorizing pharmacies to be issued medical cannabis dispensary permits.

#### Legal Protections for Patients and Caregivers

The substitute bill provides that qualifying patients and designated caregivers may not be discriminated against when enrolling in schools and institutions of higher education, when renting or leasing real property, or in the issuance of professional licensing, certifications, or permits issued by the State, solely on the basis of the individual's status as a registry cardholder or engaging in authorized conduct in relation to medical cannabis. However, schools, institutions of higher education, landlords, and licensing authorities will not be required to take any action that would jeopardize a monetary grant or privilege of licensure based on federal law. Schools, institutions, and landlords may not be penalized or denied benefits under State law solely on the basis of enrolling or renting or leasing real property to a registered patient. A person's status as a patient or caregiver, or as an owner, officer, director, or employee of a medical cannabis cultivator, manufacturer, dispensary, or clinical registrant will not constitute the sole grounds for entering an order restricting or denying custody of, or visitation with, a minor child of the person.

The substitute bill provides that medical cannabis is to be treated the same as any other medication for the purposes of furnishing medical care, including determining the individual's eligibility for an organ transplant.

The substitute bill prohibits employers from taking any adverse employment action against an employee based on the employee's status as a registry identification cardholder. If an employer has a drug testing policy and an employee or job applicant tests positive for cannabis, the employee or job applicant is to be offered an opportunity to present a legitimate medical explanation for the positive test result or request a retest. Nothing in the substitute bill will restrict an employer's ability to prohibit or take adverse employment action for the possession or use of intoxicating substances during work hours or require an employer to commit any act that would violate federal law or result in the loss of a federal contract or federal funding. Employers

will not be penalized or denied any benefit under State law for employing a person who is a registry cardholder.

The substitute bill provides that health care facilities are prohibited from taking adverse employment action or ending a professional affiliation with a health care practitioner solely based on the practitioner authorizing patients for the medical use of medical cannabis or otherwise engaging in authorized conduct in relation to medical cannabis. Health care facilities may not be penalized or denied benefits under State law for employing or maintaining a professional affiliation with a practitioner who engages in authorized conduct in relation to medical cannabis.

Insurance carriers will be prohibited from denying health care practitioners medical malpractice coverage or charging increased premiums, deductibles, or other fees based on the practitioner engaging in authorized conduct in relation to medical cannabis.

The substitute bill provides that the chief administrator of a facility that provides behavioral health services is to develop a policy allowing designated caregivers, parents, and guardians access to registered qualifying patients who are receiving services at the facility, for the purpose of assisting the patient with the administration of medical cannabis. Nothing in the substitute bill will authorize medical cannabis to be smoked in any area of the facility where smoking is otherwise prohibited by law.

The substitute bill updates the annual reporting requirements for the CRC to reflect new data that will be generated pursuant to the bill, including information concerning diversity in the permits awarded in by the CRC and information on disparities in drug arrests.

Nothing in the substitute bill is to be construed to restrict or otherwise affect the sale, prescribing, and dispensing of prescription drugs and devices approved by the federal Food and Drug Administration.

The substitute bill adds a severability clause and provides that the CRC may waive any requirements of the State medical cannabis laws if waiver is necessary to achieve the purposes of the law and provide access to patients who would not otherwise qualify for medical cannabis to alleviate suffering from a debilitating medical condition, and if granting the waiver does not create a danger to the public health, safety, or welfare.

As reported by the committee, this committee substitute is identical to the Senate Committee Substitute for Senate Bill Nos. 10 and 2426, which was reported by the Senate Health, Human Services, and Senior Citizens Committee on this date.

FISCAL IMPACT:

The OLS concludes that the bill will have several countervailing impacts on State expenditures and revenues regarding the administration of the State's Medicinal Cannabis Program. In addition,

the bill will result in a decrease in State sales tax revenue, as the bill ultimately phases out imposition of the sales tax on the sale of medicinal cannabis. The OLS also notes that the bill will shift existing expenditures and revenues associated with the State's Medicinal Cannabis Program from the Department of Health (DOH) to the Cannabis Regulatory Commission (CRC) – an entity that will be established in, but not of, the Department of Treasury pursuant to Senate Bill No. 2703 of 2018, currently pending before the Legislature - due to the transfer of authority between these two entities regarding the administration of the Program.

The OLS estimates that the CRC will incur indeterminate additional administrative expenses, beyond the existing DOH costs, due to the expansion of the program under the bill. It is unclear whether revenue generated under the program will offset a portion, or potentially all, of these expenses. Historically, the Medicinal Cannabis Program has been supported by a State appropriation and program revenues. For example, in FY 2018, the DOH spent approximately \$2.4 million, of which \$857,000 was appropriated from the General Fund and the remainder was generated from program revenues, to administer the Program.

The OLS finds it likely that the provisions of the bill which expand access to medical cannabis for qualifying patients will increase the number of patients and caregivers participating in the Program and, therefore, the amount of registration fees collected by the CRC. The DOH's report submitted pursuant to Executive Order 6 indicated that such provisions of the bill, if adopted, would generally remove barriers to program access. It may be noted that, earlier this year, the DOH halved the registration fee and expanded access to discount registration fees, which, if continued, will likely limit the overall additional revenues resulting from expanded access. The OLS notes that the bill codifies certain conditions as qualifying medical conditions that were added to the program by the Medicinal Marijuana Review Panel in March of 2018. These provisions of the bill do not change the existing program and have been cited largely as the source for the program's growth since January 2018.

In addition, the OLS notes that the establishment of new permit types under the bill may lead to an increase in permit fee collections. The amount of revenue generated will be dependent upon the permit fee schedule and the number of permits issued, as determined by the CRC. The bill directs the CRC to begin processing applications for six alternative treatment center permits and four clinical registrant permits, as established under the bill, within 90 days of the effective date of the bill. Thereafter, the CRC is authorized to determine the need to request additional permits. Under the bill, an entity may not concurrently hold a basic permit type and a clinical registrant permit. Assuming the CRC issues 10 permits in the first year following implementation, and the current \$20,000 application fee is maintained,

State revenue would increase by \$200,000. The OLS cannot determine how and by what standard subsequent permit applications will be requested and issued by the CRC. It is likely, however, that demand for medical cannabis will fluctuate from year to year and ultimately plateau, and that this revenue will not be maintained annually.

Finally, under this bill, the sales tax currently imposed on medicinal cannabis will be phased out over a multiple year period. The OLS is unable to determine the year to year impact of this provision due to the countervailing effects of a decreasing sales tax rate, anticipated growth in sale amounts, and the potential that competition created by the issuance of additional permits may decrease the sales price of medical cannabis. As such, the sales tax revenue generated from medicinal cannabis may increase even as the current sales tax rate decreases, as provided in the bill. However, as of FY 2025, the bill provides that no sales tax may be assessed against medicinal cannabis, ultimately providing for a net State revenue loss.

For reference, according to information provided during the FY 2019 budget process, the Executive anticipates collecting between \$2.5 and \$5.0 million in sales tax revenue from medicinal cannabis sales in FY 2019. Based on the current sales tax rate of 6.625 percent, this data indicates between \$37.7 million and \$75.5 million in medicinal cannabis sales in the current fiscal year.