A Guide for Local Government on Medical Cannabis in Georgia

January 2024

Disclaimer: The purpose of this publication is not to provide a comprehensive discussion of all aspects of medical cannabis in Georgia. The materials are intended to highlight the different areas of the state's medical cannabis program and to provide general guidance on local governments' role in making this medical treatment accessible to patients within their respective jurisdictions. The law is constantly changing, and timely legal advice based on current law is essential. This publication is provided for general information purposes only, does not constitute legal advice, and may not apply to your specific situation. Local governments should consult with their city or county attorneys before taking any action based on this information.

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I. Introduction

The majority of states have enacted measures to allow and regulate the use of medical cannabis.[1] Since 2015, the Georgia General Assembly passed a number of legislative bills that collectively establish the state's statutory framework for the regulated production, sale, and use of medical cannabis.[2] In passing these laws (collectively, the "Hope Act"), the General Assembly found that:

> **[T]housands of Georgians have serious medical conditions that can be improved by the medically approved use of cannabis and that the law should not stand between them and treatment necessary for life and health.**[3]

The purpose of this guide is to educate and familiarize local governments about the Hope Act and foster a better understanding of the important role they serve in potentially providing local access to medical cannabis in their communities through dispensaries and pharmacies licensed and regulated by the state.

II. Overview of the Hope Act: Legalizing Medical Cannabis in Georgia

The Georgia General Assembly made clear that the state is "deeply opposed to any recreational or nonmedical use of marijuana, and any system to help patients access [medical cannabis] should be as limited in scope as possible."[4] Consistent with such legislative intent, the Hope Act created the lawful possession, use, production, manufacture, dispensing, and sale of medical cannabis in Georgia under certain circumstances and subject to regulatory oversight by the state (collectively, the "medical cannabis program").

The Hope Act serves as the legal pathway for physicians to recommend medical cannabis as medical relief and treatment for certain medical conditions and for patients to access such medical relief as part of their health care, including palliative care.[5] To spearhead this mission, the Hope Act created a new executive agency—the Georgia Access to Medical Cannabis Commission (GMCC)—to ensure that medical cannabis is produced with quality standards and that patients throughout the state have meaningful access to this medical relief and treatment.

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[1] The terms "cannabis" and "marijuana" are often used interchangeably, including in the Hope Act.
[2] Ga. L. 2015, p. 49-59/HB 1; Ga. L. 2019, p. 43-67/HB 324; Ga. L. 2021, p. 184-204/SB 195.
[3] Ga. L. 2019, p. 44, § 2(a).
[4] Ga. L. 2019, p. 45, § 2(b)(4).
[5] Ga. L. 2019, p. 44, § 2(a).

As further explained in Part II of this guide, the Hope Act requires the engagement and collaboration between the Georgia Access to Medical Cannabis Commission and other state health agencies such as the following: Georgia Department of Health, Georgia State Board of Pharmacy, and Georgia Composite Medical Board. This collaborative effort underscores the state's priority in providing medical relief, through the use of medical cannabis as recommended by their physicians, to some of Georgia's most medically vulnerable patients.

A. Lawful Possession and Use of Medical Cannabis in Georgia

Prior to the enactment of the Hope Act since 2015, Georgia made it "unlawful for any person in Georgia to purchase, possess, or have under his or her control any controlled substance",[6] including the following:

> Tetrahydrocannabinol [THC], tetrahydrocannabinolic acid [THC-A], or a combination of tetrahydrocannabinol and tetrahydrocannabinolic acid which does not contain plant material exhibiting the external morphological features of the plant of the genus Cannabis, but not including such substance when found in hemp or hemp products as such terms are defined in Code Section 2-23-3. Tetrahydrocannabinols do not include products approved by the federal Food and Drug Administration [FDA] under Section 505 of the federal Food, Drug, and Cosmetic Act [FDCA].[7]

Since the Hope Act became law in 2015, Georgia made lawful such purchase, possession, and use of cannabis in Georgia, for medical purposes, if an individual meets one of the following:

> [1] Such person is registered with the [Georgia] Department of Public Health as set forth in Code Section 31-2A-18 and has in his or her possession a registration card issued by the [Georgia] Department of Public Health; or
>
> [2] Such person has in his or her possession a registration card issued by another state that allows the same possession of low THC oil as provided by this state's law; provided, however, that such registration card shall not be lawful authority when such person has been present in this state for 45 days or more.[8]

[6] O.C.G.A. § 16-13-30(a).
[7] O.C.G.A. § 16-13-25(3)(P).
[8] O.C.G.A. § 16-12-191(a).

The Hope Act allows such individuals to possess and use products containing "low-THC oil" which is defined as follows:

> [A]n oil that contains an amount of cannabidiol and not more than 5 percent by weight of [THC], [THC-A], or a combination of [the two] which does not contain plant material exhibiting the external morphological features of the plant of the genus Cannabis. Such term shall not mean products approved by the federal Food and Drug Administration under Section 505 of the federal Food, Drug, and Cosmetic Act.[9]

In addition to low-THC oil delivered through an oil dropper, the Hope Act allows for low-THC oil to be delivered through the form of a tincture, transdermal patch, lotion, or capsule.[10] Certain products are expressly prohibited by the Hope Act, including, but not limited to, edibles infused with low-THC oil and electronic cigarettes.[11] Examples of products authorized or prohibited by the Hope Act are in the "Frequently Asked Questions" section of this guide. To be clear, possession and sale of products containing THC, beyond the limited low-THC oil exemptions allowed under state law (i.e. the Hope Act), remain criminal offenses under Georgia law.[12] Selling items not explicitly authorized by state law (i.e. the Hope Act) constitutes a violation of state law.

The Hope provides certain protections for individuals with a registration card[13] and who are in possession of one of the allowed product forms of medical cannabis. As part of Georgia's criminal Code, such protection is stated as follows:

> The following persons and entities, when acting in accordance with [the Hope Act], shall not be subject to arrest, prosecution, or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege, for the medical use, prescription, administration, manufacture, distribution, or transport of low THC oil or products: (1) A registered patient who is in possession of an amount of low THC oil or products authorized under Code Section 16-12-191 or such patient's caregiver, parent, or guardian[.][14] (Emphasis added).

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[9] O.C.G.A. § 16-12-190.
[10] O.C.G.A. § 16-12-200(15).
[11] O.C.G.A. §§ 16-12-200(15), 16-12-234.
[12] O.C.G.A. § 16-12-191(b)(2) ("Notwithstanding any provision of Chapter 13 of this title, any person who possesses, purchases, or has under his or her control 20 fluid ounces or less of low THC oil without complying with subparagraphs (A), (B), and (C) of paragraph (1) of this subsection shall be punished as for a misdemeanor.")
[13] See Ga. Comp. R. & Regs. R. 351-6-.05(6), 480-52-.10(2) (referring to such a card as a "registry card").
[14] O.C.G.A. § 16-12-231(1).

This section will provide an overview of how patients in Georgia can lawfully possess and use medical cannabis while having the protections of state law to use such medical relief and treatment.

1. Patients with Qualifying Medical Conditions

The Hope Act established the state's Low-THC Oil Patient Registry ("patient registry") within the Georgia Department of Public Health (DPH) to provide a registration of individuals and their caregivers who have been issued registration cards.[15] In managing the patient registry, DPH issues registration cards to "individuals who have been certified by [their] physician as being diagnosed with a condition or is an inpatient or outpatient in a hospice program and have been authorized by such physician to use [medical cannabis] as treatment."[16] The Hope Act identifies the following medical conditions that may be treated with medical cannabis ("qualifying medical conditions"):[17]

- Acquired immune deficiency syndrome
- Amyotrophic lateral sclerosis
- Alzheimer's disease
- Autism spectrum disorder
- Cancer
- Crohn's disease
- Epidermolysis bullosa
- Intractable pain
- Mitochondrial disease
- Multiple sclerosis
- Parkinson's disease
- Peripheral neuropathy
- Post-traumatic stress disorder
- Seizures disorders
- Sickle cell disease
- Tourett's syndrome

Patients should consult with their physicians if they have, or may have, a qualifying medical condition and are interested in medical cannabis for medical relief or medical treatment of their condition. Patients may visit the DPH website for more information about the registration process.[18]

2. Physician Certifications for Patient Registration

Physicians are required to have a physician-patient relationship when certifying their patients as needing medical cannabis and to be treating such patients for the specific

[15] O.C.G.A. § 31-2A-18(c).
[16] O.C.G.A. § 31-2A-18(d).
[17] O.C.G.A. § 31-2A-18(a)(3) (requiring some conditions to be diagnosed as "severe" or "end stage" and requiring a particular age for some conditions).
[18] More information about the patient registry can be found on the DPH official website at https://dph.georgia.gov/low-thc-oil-registry (last visited Jan. 24, 2024).

conditions requiring such medical treatment or to be treating such patients in a hospice program.[19] The Hope Act provides such physicians with protections from arrest, prosecution, or any civil or administrative penalties under state law, "including a civil penalty or disciplinary action by a professional licensing board."[20]

As authorized by state law, the Georgia Composite Medical Board ("GCMB") promulgated rules requiring a physician to take certain steps prior to certifying a patient to the patient registry and requiring such physician to provide certain information about the patient to DPH.[21] Such physicians are required to submit semi-annual reports to GCMB which include, among other information, "dosages recommended for a particular condition, patient clinical responses, levels of THC or THC-tetrahydrocannabinol or tetrahydrocannabinolic acid present in test results, compliance, responses to treatment, side effects, and drug interactions".[22] These reports are used for research purposes to determine the efficacy of the use of low THC oil as a treatment for conditions.[23]

DPH requires physicians to create and maintain an account in the patient registry to electronically complete and submit physician certifications on behalf of the patients.[24] In addition to the patient's information, the physician may also include the caregivers' information so that such caregivers can receive a registration card and purchase medical cannabis on behalf of the patient. In consulting with patients, physicians are required to provide a waiver form to patients with advice regarding the use of cannabinoids and products containing THC.[25] Physicians may visit the DPH website for more information about the certification process and the online portal for physicians to access the patient registry.[26]

3. Registration Cards

After DPH receives and reviews a physician's certification for a patient, DPH prints a registration card containing the respective patient's information and, if applicable, a registration card containing information of the patient's caregiver. Registration cards are mailed from the DPH's main office to a local DPH office and are valid for two years from issuance or the death of the cardholder, whichever occurs first.[27] A registration card may

[19] O.C.G.A. § 31-2A-18(d); Ga. Comp. R. & Regs. R. 360-36-.02(1).
[20] O.C.G.A. § 16-12-231(2).
[21] Ga. Comp. R. & Regs. R. 360-36-.02.
[22] O.C.G.A. § 31-2A-18(e).
[23] *Id.*
[24] See Ga. Comp. R. & Regs. R. 511-5-11-.03(1).
[25] Ga. Comp. R. & Regs. R. 360-36-.03.
[26] More information about the patient registry can be found on the DPH official website at https://dph.georgia.gov/low-thc-oil-registry (last visited Jan. 24, 2024).
[27] Ga. Comp. R. & Regs. R. 511-5-11-.04(1), (3) (referring to registration cards as "low THC oil permits").

be renewed but only by submission of an application by a physician and meeting all the requirements of a new application.[28] A registration card is required to purchase medical cannabis at retail outlets and pharmacies licensed by the state to specifically dispense state-approved products containing low-THC oil.[29] Patients and caregivers can visit the DPH website to check the status of their registration cards.[30]

B. Lawful Production and Manufacture of Medical Cannabis in Georgia

While state law, since 2015, authorized patients with registry cards to possess, purchase, and use medical cannabis, there was no legal access to it because the production and manufacturing of medical cannabis remained unlawful at that time. In 2019, the Georgia General Assembly recognized that "[t]he establishment of the [patient registry] in 2015 allows Georgia patients to possess low THC oil but provides no way to access low THC oil."[31] As further described in this section, the Hope Act was amended in 2019 to create a framework to regulate and allow for the production and manufacturing of low-THC oil and products.

1. Licensing and Regulation of Production Companies

To oversee these processes, the Hope Act authorizes the GMCC to issue up to six production licenses for companies ("production licensees") to grow cannabis in indoor facilities, produce low-THC oil, and manufacture the low-THC oil into medical cannabis products. The Hope Act requires GMCC to grant production licenses pursuant to contracts awarded through a competitive sealed proposals process.[32] This competitive application process requires the submission of, among several other information, comprehensive plans for production, employment, and security.[33] The application process also requires applicants to submit letters of support from one or more local governmental entities where the production facilities will be located, documentation of industry capabilities and management experience, and submission of fingerprints for extensive federal and state criminal background checks.[34]

As to individuals working for or with the production licensees, the Hope Act provides protections from arrest, prosecution, or any civil or administrative penalties under state

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[28] Ga. Comp. R. & Regs. R. 511-5-11-.04(2).
[29] Ga. Comp. R. & Regs. R. 351-6-.05(6), 480-52-.10(2).
[30] The status of a registry card can be found on the official DPH website at https://sendss.state.ga.us/ords/sendss/!thc.showstatus (last visited on Jan. 24, 2024).
[31] Ga. L. 2019, p. 44, § 2(a).
[32] O.C.G.A. § 16-12-221(a).
[33] O.C.G.A. §§ 16-12-211(b)(2), (3), (5) and 16-12-212(b)(2), (3), (5).
[34] O.C.G.A. §§ 16-12-211(b)(8), (10), (12) and 16-12-212(b)(8), (10), (12).

law, “including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege” to an employee, contractor, or agent of a production licensee with proper identification associated with the production, manufacture, distribution, transport, or sale of low-THC oil and products in accordance with the Hope Act.[35]

All GMCC production licensees must adhere to the promulgated rules of the GMCC, which include but are not limited to, comprehensive security protocols, quality control procedures, rules related to the packaging and labeling of low-THC oil and products, and recall procedures. Licensees are also required to keep detailed records regarding production, manufacturing, and distribution of low-THC oil and products.[36] Production licensees are subject to on-demand and routine inspections by the GMCC, the Georgia Bureau of Investigation, or the local law enforcement agency for the jurisdiction in which the indoor production facility is located.[37]

2. Oversight and Regulation of Low-THC Oil and Products

As stated earlier in this guide, the Hope Act allows registered patients in Georgia to purchase, possess, and use products containing low-THC oil in the form of an oil, tincture, transdermal patch, lotion, or capsule.[38] Pursuant to the Hope Act, the GMCC promulgated rules to regulate and oversee the production of low-THC oil and products to ensure production licensees produce and manufacture medical cannabis that is safe and of quality for use as medical relief and medical treatment.

For example, products in their final packaged form must pass extensive testing by an independent laboratory approved by GMCC. Such laboratory testing includes an analysis of the presence of certain cannabinoid compounds, terpenes, residual solvents, heavy metals, pesticides, visible foreign material, microbial impurities, and mycotoxins.[39]

Also, products require certain packaging and labeling to maintain the quality of the product and to communicate important information to the patients. For example, production licensees are required to submit all packaging and labeling designs for all products to the GMCC for approval prior to use of such design.[40] Packaging must be

[35] O.C.G.A. § 16-12-231(6).
[36] *E.g.* Ga. Comp. R. & Regs. R. 351-4-.04(6) (procedures for cultivation and propagation), 351-4-.05(10) (procedures for production), 351-4-.11 (general requirements for records).
[37] O.C.G.A. § 16-12-217(a).
[38] O.C.G.A. § 16-12-200(15).
[39] Ga. Comp. R. & Regs. R. 351-7-.08.
[40] Ga. Comp. R. & Regs. R. 351-4-.07(1).

child-resistant and tamper-evident or have tamper-evident features.[41] Packaging cannot imitate any packaging used for goods that are publicly known to be marketed to minors and cannot include certain words or images so as to attract or market to minors.[42]

C. Lawful Dispensing and Sale of Medical Cannabis in Georgia

With the legislative changes from 2019 and 2021, the Hope Act allows GMCC's production licensees and the Georgia State Board of Pharmacy's (GBOP) licensed pharmacies to dispense and sell such low-THC oil and products (collectively referred to in this guide as "dispensing licensees") to individuals with a registration card. The Hope Act provides employees (including pharmacists), contractors, or agents of such dispensing licensees with protections from arrest, prosecution, or any civil or administrative penalties under state law, "including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege".[43]

1. Licensing Retail Outlets and Pharmacies to Dispense

The Hope Act authorizes GMCC to issue up to five dispensing licenses to each of its production licensees for new retail outlets[44] and to issue additional dispensing licenses as the number of patients increases on the patient registry.[45] The Hope Act requires GMCC to ensure that dispensing licenses are issued "so that retail outlets are dispersed throughout the state."[46]

In contrast, the Hope Act does not set a limit on the number of dispensing licenses issued to pharmacies by GBOP and does not require GBOP to issue such licenses to pharmacies on such a condition that they would be dispersed throughout the state. Unlike the companies with dispensing licenses from GMCC, pharmacies with the predicate pharmacy license from GBOP are already established and are not building a new building structure or establishing a new business entity in seeking and receiving a dispensing license from GBOP.

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[41] Ga. Comp. R. & Regs. R. 351-4-.07(2)(b), (g).
[42] Ga. Comp. R. & Regs. R. 351-4-.07(2)(d), (e).
[43] O.C.G.A. § 16-12-231(3), (6).
[44] O.C.G.A. § 16-12-206(a)(2).
[45] To illustrate: the GMCC can currently issue up to 30 dispensing licenses; once the registry reaches 25,000 patients, it will be authorized to issue up to 36 total dispensing licenses. Each 10,000 patients added thereafter increases the total number of dispensing licenses the GMCC may issue by six.
[46] O.C.G.A. § 16-12-206(a)(2).

2. Oversight and Regulation of Retail Outlets and Pharmacies

In 2023, GMCC and GBOP separately promulgated rules for the oversight of their respective dispensing licensees, as authorized by the Hope Act.[47] Such rules require dispensing licensees to purchase or obtain medical cannabis products only from GMCC production licensees which, as mentioned earlier, are subject to safety and quality standards, including packaging, labeling, and laboratory testing.[48] The rules also require dispensing licensees to physically view an individual's registration card to verify the validity of the card and the identity of the purchaser, before every purchase of a medical cannabis product.[49]

As mirrored in both GMCC and GBOP rules, the Hope Act requires all dispensing licensees to meet certain distance requirements from certain entities, such as a church, synagogue, or other place of public religious worship.[50] Compliance with this requirement must be met prior to the issuance of a dispensing license from either GMCC or GBOP. The next section will further discuss this requirement as it has presented challenges for local governments and prospective dispensing licensees alike.

III. Distance Between Covered Entities and Locations Dispensing Medical Cannabis

As mentioned above, only production licensees can apply for a license from GMCC to dispense medical cannabis at a newly established retail outlet. Similarly, only licensed pharmacies can apply for a license from GBOP to dispense medical cannabis as part of their existing pharmacy operations and at their established pharmacy store. In applying for such a license from either GBOP or GMCC, the Hope Act is consistent in requiring all dispensing licensees (and production licensees) to meet the state's distance requirements. As set forth in O.C.G.A. § 16-12-215(a), the Hope Act requires the following distance:

> No **[production] licensee** shall operate in any location, whether for cultivation, harvesting, and processing of marijuana or for processing, manufacturing, packaging, or distributing low THC oil or products, within a 3,000 foot radius of a covered entity, measured from property boundary to

[47] O.C.G.A. § 16-12-206; Ga. Comp. R. & Regs. R. 480-52-.01 through 480-52-.16 (GBOP rules), Ga. Comp. R. & Regs. R. 351-1-.01 through 351-8-.06 (GMCC rules).
[48] *E.g.* Ga. Comp. R. & Regs. R. 351-4-.09(1)(a) (production licensees transporting products to dispensing licensees), 351-4-.02(4)(production licensees selling products to dispensing licensees), 480-52-.16 (pharmacy dispensaries purchasing or receiving products from GMCC licensees).
[49] Ga. Comp. R. & Regs. R. 351-6-.05(6), 480-52-.10(2).
[50] O.C.G.A. § 16-12-215(a).

> property boundary. No **dispensing licensee** may operate in any location within a 1,000 foot radius of a covered entity, measured from property boundary to property boundary. Notwithstanding the provisions of this subsection, local governments may, via use of existing zoning powers otherwise provided by law, allow dispensing licensees only to locate in places other than those provided in this subsection so long as such modification is needed to allow retail outlets to be established to service registered patients residing within such local jurisdiction. As used in this subsection, the term "covered entity" means a public or private school; an early care and education program as defined in Code Section 20-1A-2; or a church, synagogue, or other place of public religious worship, in existence prior to the date of licensure of such licensee by the commission or State Board of Pharmacy. (Emphasis added)

In 2021, this particular statute of the Hope Act was amended to include the text underlined above, which grants local governments the authority to use zoning powers to provide modifications from the state's distance requirements for dispensing licensees only so that constituents in their local jurisdictions who are also registered patients may locally access the medical relief and treatment recommended by their physicians.[51]

As part of the respective application process for such dispensing licenses, GMCC and GBOP require their eligible licensees ("prospective dispensing licensees") to attest or certify that the location of the proposed retail outlet or current pharmacy store meets the distance requirement as quoted above. That is, the store location is either (a) not within a 1,000 foot radius of a covered entity or (b) it has been allowed by the local governing authority to dispense medical cannabis even though it is within a 1,000 foot radius of a covered entity such that the store can still serve patients residing in that local jurisdiction.

The statute quoted above, O.C.G.A. § 16-12-215(a), is organized around three key elements: (1) the definition of "covered entity"; (2) the default distance requirement that dispensing licensees must operate at least 1,000 feet away from covered entities; and (3) the discretionary power granted to local governments to modify this distance under certain conditions for dispensary locations in their respective jurisdictions. Each of these elements are addressed in turn below.

[51] Ga. L. 2021, p. 197, § 12(a).

A. Definition of "Covered Entity"

The Hope Act defines a "covered entity" as "a public or private school; an early care and education program as defined in Code Section 20-1A-2; or a church, synagogue, or other place of public religious worship, in existence prior to the date of licensure of such licensee by the commission or State Board of Pharmacy."

The Hope Act incorporates an existing definition of "early care and education program" which includes "all support centers, family child care learning homes, and child care learning centers, regardless of whether such homes or centers offer education."[52] The Georgia Department of Early Care and Learning (DECAL) licenses, registers, or permits all early care and education programs.[53]

However, the Hope Act does not define, nor does it incorporate other statutory definitions of, what constitutes "a public or private school"[54] or a "church, synagogue, or other place of public religious worship."[55] Local governments may have these terms, in part or in whole, defined in their respective local ordinances or local regulations. Local government officials should consult with their legal counsel to determine if such local definitions may apply in their exercise of zoning powers to modify the Hope Act's general distance requirements.

B. Default Distance Requirement for Dispensing Licensees

The Hope Act establishes, as a precondition to state licensure, a default distance between a covered entity and a dispensing licensee: "[n]o dispensing licensee may operate in any location within a 1,000 foot radius of a covered entity, measured from property boundary to property boundary."[56] This measurement of distance is much different—and covers more distance—than the measurement used for other purposes,

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[52] O.C.G.A. § 20-1A-2(6).
[53] O.C.G.A. § 20-1A-10(c)(1).
[54] *Compare, e.g.,* O.C.G.A. § 3-3-21(a)(1) (Georgia Alcoholic Beverage Code using the term "college campus" separately from the term "school building") *with* O.C.G.A. § 3-3-21(a)(2) (Georgia Alcoholic Beverage Code defining "school building" or "educational building" as a "state, county, city, or church school building and to other school buildings in which are taught commonly taught subjects in the common schools and colleges of this state and which are public schools or private schools as defined in O.C.G.A. § 20-2-690(b)).
[55] *Compare, e.g.* O.C.G.A. § 3-3-21 (Georgia Alcoholic Beverage Code using the term "church building" without defining the term for the purposes of such Code) *with* O.C.G.A. § 48-5-41(2.1) (Georgia Public Revenue Code using the term "places of religious worship" without defining the term and separately referring to property owned by and operated by entities "qualified as an exempt religious organization under Section 501(c)(3) of the Internal Revenue Code).
[56] O.C.G.A. § 16-12-215(a).

such as measuring distance between locations with an alcoholic beverage license and similar covered entities.

For example, while the Hope Act prescribes the same distance requirement from all covered entities, the Georgia Alcoholic Beverage Code establishes different distances depending on whether the "covered entity" is a church building or school building as that term is used in such Code.[57]

Another significant difference between the Hope Act and the Georgia Alcoholic Beverage Code is the measurement of the distance. The Hope Act measures distance from "property boundary to property boundary" using a straight line without regard to improvements, barriers, or obstructions that would prevent a direct route of travel on the ground between a dispensing licensee and a covered entity.

The Georgia Alcoholic Beverages Code measures distance "by the most direct route of travel on the ground" and measure such distance in the following manner:

1. From the front door of the structure which [a]lcoholic [b]everages are sold or offered for sale;
2. In a straight line to the nearest public sidewalk, walkway, street, road or highway;
3. Along such public sidewalk, walkway, street, road or highway by the nearest route;
4. To the front door of the building or to the nearest portion of the grounds, whichever is applicable under the appropriate statute. (Emphasis added).[58]

The measurement method for establishments selling alcoholic beverages also takes into account "obstacles like fences and other obstructions provided they were not added by the licensee for the purpose of increasing the measurement of distance."[59]

In comparing the two measurement methods, the Hope Act's "property boundary to property boundary" measurement method can be more restrictive in creating patient access to medical relief and medical treatment than the measurement methods related

[57] *E.g.*, O.C.G.A. § 3-3-21(a)(1)(A) (requiring 100 yards (which equals 300 feet) distance between location selling distilled spirits and any church building and requiring 200 yards (which equals 600 feet) distance from any school building, educational building, school grounds or college campus)
[58] Ga. Comp. R. & Regs. R. 560-2-2-.12(1)(b) (for alcoholic beverage licenses issued after March 31, 2007); *see* O.C.G.A. § 3-3-21(c) (requiring distances to be measured by the most direct route of travel on the ground).
[59] Ga. Comp. R. & Regs. R. 560-2-2-.12(2).

to public access (i.e. individuals of lawful age) to alcoholic beverages. As a result, the Hope Act's default distance requirement and measurement method may contribute to an increased number of prospective dispensing licensees seeking modifications from their local governing authorities that would allow them to operate within the default distance from covered entities.

C. Local Government Authority to "Modify" Default Distance

If GMCC's or GBOP's prospective dispensing licensees are farther than 1,000 feet from a covered entity, then they can simply attest on its state application to GMCC or GBOP that its dispensing location meets the Hope Act's default distance requirements.[60] However, in some instances, the Hope Act's default distance requirement may have the unintentional effect of creating, rather than removing, barriers between registered patients and the medical relief authorized and recommended by their physicians. If a dispensary or pharmacy is not able to meet the state's default distance requirement for their state licensing application, then the Hope Act expressly authorizes the local government to depart, via its zoning authority, from the state's default distance requirement. This express authority given to local government is the sole legal pathway to removing those barriers:

> Notwithstanding the provisions of [O.C.G.A. § 16-12-215(a)], local governments may, via use of existing zoning powers otherwise provided by law, allow dispensing licensees only to locate in places other than those provided in this subsection so long as such **modification** is needed to allow retail outlets to be established to service registered patients residing within such local jurisdiction. (Emphasis added).[61]

As quoted above, the Hope Act allows local governments to use their current and already "existing" zoning powers to provide a modification to the distance requirement. The Hope Act does not mandate the pre-existence of any specific procedure through which zoning power may be exercised with respect to prospective dispensing licensees. Rather, it merely requires only that zoning powers be existing, and all local zoning authorities have inherent zoning power granted by the Georgia Constitution, subject to certain limitations imposed by the General Assembly.[62]

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[60] Ga. Comp. R. & Regs. R. 351-3-.02(4)(e)(3), 480-52-.07(1)(c)(1)(vi)(I).
[61] O.C.G.A. § 16-12-215(a).
[62] Ga. Const. art. IX, § II, para. IV (reserving to municipalities and counties the substantive power to zone and plan for land within their respective jurisdictions); O.C.G.A. § 36-66-2(a) (establishing minimum procedural requirements municipalities must observe in exercising home rule power).

Local governments have historically utilized their constitutionally granted zoning powers to enact different zoning procedures that provide various forms of relief to affected parties. Additionally, all local governments have the inherent power to pass ordinances or resolutions amending existing or adding new procedures. To be clear, this provision of the Hope Act provides for complete local control on the decision as to whether to allow for a modification to the zoning code to authorize a dispensing location to be located at a distance less than the default distance requirements. The next section focuses on the role of local government and how some have already used their existing zoning powers to provide modifications to the distance requirement, thus creating access to patients within their local jurisdictions.

IV. Scope of Local Government Authority to "Modify" Default Distance

The most important concept of the Hope Act is providing local and meaningful access to medical relief and treatment for patients with severe medical conditions. While the state plays a dual role in making medical cannabis available and accessible, local governments play a significant role in making medical cannabis accessible within their jurisdictions where dispensing licensees are, or plan to be, located. Specifically, the Hope Act authorizes local governments to "modify" the default distance of 1,000 feet between a dispensing licensee and a covered entity so that the default distance does not serve as a barrier to access for patients. Local governments are not required to make any such modification.

The plain reading of O.C.G.A. § 16-12-215(a), in light of the purposes of the Hope Act as a whole, encourages zoning powers to be used in a way to provide access to medical cannabis wherever registered patients may reside throughout the state. "In all interpretations of statutes, the courts shall look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy."[63]

This section breaks down each part of the statute that authorizes local governments to use their zoning powers consistent with the objectives and purposes of the Hope Act.

[63] O.C.G.A. § 1-3-1(a); *see Scott v. State*, 299 Ga. 568, 571 (2016) (stating that courts "look to the text of the provision in question and its context within the larger legal framework to discern the intent of the legislature in enacting it").

A. "Use of Existing Zoning Powers Otherwise Provided by Law"

The plain language of the Hope Act authorizes local governments to make "use of existing zoning powers otherwise provided by law" to provide modifications to the default distance requirement. This means that the proper authority to use in providing such modifications is through zoning powers that already exist for the respective local government. Local zoning authorities have inherent zoning powers granted by the Georgia Constitution, subject to certain limitations imposed by the General Assembly. The Hope Act does not require the amendment or enactment of "new zoning powers" created to specifically address modifications to the default distance requirement for dispensing licensees. Rather, it merely requires only that the power to regulate zoning be existing. Local governments should review their current zoning ordinances and regulations and consult with legal counsel to determine how such zoning powers may be used to provide a modification to the default distance requirement for dispensing licensees located within their jurisdiction.

B. "Allow Dispensing Licensees Only To Locate in Places Other Than Those Provided in This Subsection"

Although O.C.G.A. § 16-12-215(a) establishes distance requirements for both production licensees and dispensing licensees, the statutory text allowing the use of local zoning powers specifically applies to the modification of the distance requirement established for dispensing licensees. As used in this statute, the term "dispensing licensees" refers to those licensed by both GMCC and GBOP.[64] This makes clear that the Hope Act does not provide such zoning powers to modify the default distance requirement for production licensees.

The remainder of the statutory text " to locate in places other than those provided in this subsection" further narrows the scope in which local zoning powers may be used with regard to the distance requirement. The Hope Act already allows dispensing licensees to operate anywhere beyond the default distance requirement which is 1,000 feet of a covered entity. The only "other" places are those within such default distance requirement.

[64] Although the Hope Act does not define the term "dispensing licensee", it defines the term "licensee" as "any business, or owner of such business, with a valid license issued pursuant to [the Hope Act]". *See* O.C.G.A. § 16-12-200(11). The Hope Act also defines "dispensing license" as "a speciality license issued by [GBOP] or [GMCC] pursuant to Code Section 16-12-206 to dispense low THC oil and products to registered patients." *See* O.C.G.A. § 16-12-200(9).

To “only" locate in other such places, a dispensing licensee may request a local government for a modification to the default distance requirement for only their particular location. For example, and as further explained later in this guide, a pharmacy located at 123 Sample Street is within 1,000 feet of a place of religious worship. The pharmacy has operated as a state-licensed pharmacy for several years and is now seeking a secondary license from GBOP to dispense additional medicine to patients (i.e. low-THC oil in the form of oil, tinctures, capsules, and transdermal patches). Instead of closing the pharmacy and moving the entire business to another property, the pharmacy seeks a modification of the 1,000 foot distance requirement “only” as to their location at 123 Sample Street. This means the pharmacy cannot take the modification with them wherever they may go; the modification applies only to that particular location of the pharmacy.

Thus, a modification to the default distance requirement is authorized by the Hope Act and only necessary when a dispensing licensee seeks to operate in a location within 1,000 feet of a covered entity.

C. “So Long as Such Modification is Needed”

The Hope Act sets a specific condition on when local governments may use their zoning powers to provide a modification to the default distance requirement: “so long as such modification is needed to allow retail outlets to be established to service registered patients residing within such location jurisdiction.” Accordingly, the purposes of such a condition are to “establish” retail outlets and to “service” registered patients. To use zoning powers to achieve the opposite would be inconsistent with the Hope Act.

1. <u>“To Allow Retail Outlets to be Established”</u>

The Hope Act uses the term “allow” a second time in the statutory text of the state’s distance requirement, emphasizing that local governments may use their zoning powers in a way to create access—not barriers—to medical cannabis for patients as authorized and recommended by their physicians. Local governments may consider the information provided by dispensing licensees in their requests for a modification to the distance requirement to determine whether such a modification is needed for the dispensing licensee to be established as a business that makes additional medicine available to patients in their community.

There are no limitations in the Hope Act, GMCC rules and regulations, or GBOP rules and regulations as to the number of modifications a local government may provide

within their communities to create access to medical cannabis. Also, neither state law nor any state regulations place a limit on how far apart dispensing licensees should be from each other. The General Assembly did not place such limitations in any of the text of the Hope Act.[65] The intentional absence of such limitations is consistent with the preamble to the Hope Act: "The General Assembly finds that thousands of Georgians have serious medical conditions that can be improved by the medically approved use of cannabis and that the law should not stand between them and treatment necessary for life and health."[66]

2. "To Service Registered Patients Residing Within Such Local Jurisdiction"

In deciding whether such a modification is needed, the Hope Act requires local governments to consider whether allowing the establishment of a dispensing licensee would service "registered patients residing within such local jurisdiction." The Hope Act defines the term "registered patient" as "an individual who is legally authorized to possess and use low THC oil and products pursuant to Code Section 31-2A-18". In addition to patients registered on the Low-THC Oil Patient Registry, the Hope Act also allows registered patients from other states, with a registry card issued by such respective states, to possess and purchase low-THC oil and products.[67]

Although the Hope Act refers to registered patients who are "residing" in a local jurisdiction, the only requirement to purchase low-THC oil and products in Georgia is the possession of a registry card.[68] The Hope Act allows registered patients to purchase such products from any dispensing licensee that has the type of medicine available to best treat their medical conditions, regardless of where the registered patient "resides." The same is true for dispensing licensees: the Hope Act allows dispensing licensees to make available and dispense such products to registered patients (and their caregivers) if they have a registry card, regardless of where the registered patient or caregiver "resides."

This allows registered patients to be able to travel within the state—whether for family, work, medical treatment, or other reasons—and still have the ability to choose the best form of medical relief and treatment to which their medical conditions respond to. This also fosters access for pending and future registered patients, such as those who are waiting or have yet been diagnosed with a qualifying medical condition, are waiting to

[65] *See Deal v. Coleman*, 294 Ga. 170, 172 (2013) (explaining that "[w]hen we consider the meaning of a statute, 'we must presume that the General Assembly meant what it said and said what it meant'").
[66] *See* Ga. L. 2019, p. 44, § 2(a).
[67] O.C.G.A. § 16-12-191(a)(1)(B).
[68] The Hope Act does not provide a definition for "reside" or "residency" and does not incorporate the definition of such terms from other parts of the Georgia Code.

receive their registry card from the state, and other individuals who may be in situations where they will soon be able to purchase medical cannabis and will need access to such medicine.

V. Use of Zoning Powers Consistent with the Hope Act

The cornerstone of the Hope Act lies in ensuring that registered patients have local and safe access to the medicine authorized by their physicians from dispensing licensees. The Georgia General Assembly made clear that "the law should not stand between [individuals with serious medical conditions] and treatment necessary for life and health."[69] In effect, the Hope Act positions local governments as gatekeepers of this newly available medicine. In doing so, it provides local governments with a meaningful opportunity to benefit both their communities and the patients residing therein.

Local governments that have entertained modification requests from prospective dispensing licensees have generally exercised their zoning powers at least one of two ways: (1) process the request through existing (i.e., previously codified or adopted) zoning procedures; or (2) amend land use or zoning ordinance to specify the procedure with which the local government will handle such requests. In determining whether to provide local access to medical relief, local governments may need to consider certain factors that are "relevant in balancing the interest in promoting public health, safety, morality, or general welfare against the right to the unrestricted use of property" prior to making a zoning decision.[70]

This section will highlight a few local government decisions that are consistent with the objectives and purposes of the Hope Act. These highlights are for educational purposes only for this guide. To ensure local governments make zoning decisions consistent with the Hope Act, local governments should carefully review and follow their local zoning ordinances, regulations, and procedures when considering a local modification to the state's distance requirement and how the modification may be applied to a prospective dispensing licensee located in their jurisdiction. Local governments should also be mindful to consult with their legal counsel.

A. Utilize Existing Zoning Powers and Procedures

Local governments may benefit in using existing zoning procedures for requests submitted by prospective dispensing licensees seeking a local modification to the

[69] *See* Ga. L. 2019, p. 44, § 2(a).
[70] O.C.G.A. § 36-66-5(b).

state's distance requirement in their jurisdiction. As discussed in Section IV.A. of this guide, the zoning powers of such local government should be "existing", meaning that current processes established for general zoning decisions may be used for local governments to provide a modification to the state's default distance requirement. For modification requests from dispensing licensees, this subsection will provide a brief overview of how a few local governments have utilized their existing zoning procedures to process such and grant such requests as variance requests.

A variance is generally defined as the authorization for the use or construction of a building or structure in a way that is prohibited by strict application of a zoning ordinance.[71] Variances involve requests for a nonconforming use not explicitly provided for in the zoning ordinance.[72]

In determining whether to grant such a variance, local governments typically consider: (1) whether granting a variance will be contrary to the public interest; (2) whether a literal enforcement of the ordinance would result in unnecessary or undue hardship on the property owner; (3) whether such hardship is due to certain conditions pertaining to the property; and (4) whether the granting of a variance will be in the spirit of the ordinance observed.[73] Local governments should consult with their legal counsel and zoning authorities to determine whether they have specific ordinances or regulations that require additional or different standards applicable to such local government's consideration and decision of a variance request or application.

Example A: McDuffie County[74]

The McDuffie County Planning Commission used its existing, unamended variance procedures and variance application form to process and consider a modification request from a prospective dispensing licensee. Specifically, a pharmacy licensed by GBOP was interested in applying for a secondary license from GBOP to dispense low-THC oil and products, in addition to other medicine available to patients at its existing location as a pharmacy. The pharmacy was located on a property with

[71] 3 Rathkopf, The Law of Zoning and Planning, § 58:1 (4th ed.).

[72] *City of Cumming v. Flowers*, 797 S.E.2d 846, 854 n.5 (Ga. 2017).

[73] 3 Rathkopf, The Law of Zoning and Planning, § 58:1 (4th ed.); *accord City of Cumming v. Flowers*, 797 S.E.2d 846, 851 n.2 (Ga. 2017).

[74] This example highlights portions of the zoning powers exercised by the McDuffie County Planning Commission to process a variance request from a pharmacy located near a public school. Specific information about the variance request can be found on pages 36-45 of the county's meeting packet: https://www.thomson-mcduffie.gov/sites/default/files/fileattachments/planning_commission/meeting/packets/7716/final_planning_commission_meeting_documents_08.01.2023.pdf (last visited Jan. 24, 2024). The respective meeting minutes can be found on their official website at https://www.thomson-mcduffie.gov/sites/default/files/fileattachments/planning_commission/meeting/7716/planning_commission_approved_minutes_08.01.2023.pdf (last visited Jan. 24, 2024).

boundaries that measured within 1,000 feet of another property boundary on which a parking lot and a building of a public elementary school were located. The pharmacy submitted a modification request to the county planning commission by using the local government's existing application for a variance.

In the application, the pharmacy listed O.C.G.A. § 16-12-215 as the relevant authority to which the pharmacy sought a variance and provided a copy of such state statute. The pharmacy also included a letter explaining the need for the modification to the state's default distance requirement stating, in part, that it is the pharmacy's intention "to ensure the responsible and regulated dispensing of medical cannabis within our community, aligning with the evolving healthcare needs and advancements in medical treatment."[75] After the pharmacy appeared before the commission and provided additional information about registry cards and the process of dispensing medical cannabis, the county planning zoning commission voted to approve the variance.

Example B: Bulloch County[76]

The Bulloch County Planning and Zoning Commission amended its zoning ordinances to adopt the state's default distance requirement and to make clear that the county could grant a variance to the state's default distance requirement as requested by a pharmacy seeking to dispense low-THC oil and products. Thereafter, a pharmacy licensed by GBOP submitted a modification request by using the county's existing application form for a variance. The pharmacy was established and operating as such on the property adjacent to that on which a church was located. In the application for variance, the pharmacy referred to the county ordinance that incorporated the state's default distance requirement.[77]

As part of its review, the county planning and zoning commission made the following determinations on certain variance standards: (1) the variance will not cause substantial detriment to the public good or impair the purposes of the ordinance; (2) the spirit of the

[75] *Id.* at 41 (meeting packet).
[76] This example highlights portions of the zoning powers exercised by the Bulloch County Planning and Zoning Commission to process a variance request from a pharmacy located next to a church. Information about the variance request can be found on pages 31-41 of the county's meeting packet: https://bullochga.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=1716&Inline=True (last visited Jan. 24, 2024). The respective meeting minutes can be found on their official website at https://bullochga.iqm2.com/Citizens/FileOpen.aspx?Type=12&ID=2495&Inline=True (last visited Jan. 24, 2024).
[77] On August 1, 2023, the Bulloch County Board of Commissioners voted unanimously to amend Article 14 of Appendix C – Zoning of the Code of Ordinances by adding new text mirroring the state's default distance requirement and adding a process to grant a variance to such distance. The text of the amendments are reflected in the county's respective meeting minutes which can be found on their official website at https://bullochga.iqm2.com/Citizens/FileOpen.aspx?Type=15&ID=2480&Inline=True (last visited Jan. 24, 2024).

ordinance observed and the public safety and welfare is secured; and (3) the hardship is not related to conditions peculiar to the property and is not a result of any action of the property owner. The county also considered the following factors regarding the impact of land use planning: (1) future land use map; (2) existing land use pattern; (3) zoning patterns and consistency; (4) neighborhood character; and (5) property values. After reviewing the application, the various standards and factors, the county planning and zoning commission voted to approve the application for a variance.

Example C: Newnan[78]

Recently, the Newnan City Council used its existing, unamended zoning ordinances, variance procedures, and variance application form to process and consider modification requests from two prospective dispensing licensees. Both pharmacies licensed by GBOP were interested in applying for a secondary license from GBOP to dispense low-THC oil and products. Both pharmacies were located on properties with boundaries that measured within 1,000 feet of other property boundaries which fall under the covered entities. One pharmacy was within 1,000 feet of a university, a church, and a middle school. The other pharmacy was within 1,000 of a middle school. Both pharmacies used the city's existing application for a variance to request the modification to the distance requirements. In their applications, both pharmacies listed O.C.G.A. § 16-12-215 as the relevant authority to which the pharmacy sought a variance and provided a copy of such state statute. After the Newnan City Council held a public hearing for each pharmacy, they voted to approve each of the variance applications.[79]

The common theme among these highlighted local zoning decisions is the use of existing applications for a variance and the consideration of the impact of allowing a prospective dispensing licensee to make additional medical relief and treatment — through the use of medical cannabis — available to patients in the respective local communities. Although these highlighted decisions relate to those involving pharmacies, the existing processes and application forms could be applicable and used for both types of prospective dispensing licensees if their location is on a property located within the state's default distance from a covered entity.

[78] This example highlights portions of the zoning powers exercised by the Newnan City Council to process variance requests from pharmacies located within 1,000 feet of covered entities. Information about the requests can be found on their official website at https://newnanga.portal.civicclerk.com/event/21/files/409 and https://newnanga.portal.civicclerk.com/event/21/files/410 (last visited Jan. 24, 2024).

[79] This article reports that the Newnan City Council voted unanimously to approve both variances https://www.times-herald.com/news/newnan-council-approves-variances-to-allow-pharmacies-to-dispense-low-thc/article (last visited Jan. 24, 2024).

Example D: Other Jurisdictions

Other jurisdictions have taken other approaches to the novel area of the law. For instance, late in 2023, the City of Johns Creek enacted a zoning amendment which prohibits medical cannabis dispensaries within 2,000 feet of any residential dwelling, residential substance abuse diagnostic or treatment facility, any licensed drug or alcohol rehabilitation facility, religious institution or place of worship, early care or education program, public or private school, college or university, governmental facility or park, and not within three miles of another medical cannabis dispensary.[80] Similarly, the City of Alpharetta prohibits dispensaries from being closer than 2,000 feet to any day care center or early care or education program, public or private school, religious institution or place of worship, government building, park, residential dwelling, residential substance abuse diagnostic or treatment facility, any licensed drug or alcohol rehabilitation facility, or any other medical cannabis dispensary or medical marijuana dispensary.[81] The City of Doraville, among other changes, limited the number of dispensaries to no more than two dispensaries for every 10,000 residents.[82] The City of Dunwoody limited the distances between dispensaries to two miles.[83]

The examples provided above illustrate how local governments are taking many differing actions and discussions with legal counsel, zoning administrators, and experts in the field is vitally important to creating the best path for the community and doing so in a legal manner.

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[80] On November 6, 2023, the Planning Commission of Johns Creek voted to approve a text amendment to the zoning ordinances (Amendment No. A-23-002) which is available on their website at https://www.johnscreekga.gov/residents/community-development/boards/planning-commission (last visited on Jan. 24, 2024). The city council approved the amendments in December of 2023.

[81] On September 2, 2021, the Planning Commission of Alpharetta voted to approve text amendments to Article II (Use of Land and Structures) of the Unified Development Code ("UDC") to add definitions for "medical marijuana dispensary" and "production facility" and assign uses to zoning districts. The city council approved the amendments on October 4, 2021. The meeting materials are available on their official website at https://alpharettaga.portal.civicclerk.com/event/2524/files/17084 (last visited on Jan. 24, 2024). The text is codified in Subsection 1.4.2 and Subsection 2.2.17(C) of the UDC.

[82] On January 12, 2022, the city council conducted a public hearing and voted to approve text amendments to the Code of Ordinances as presented in the meeting packet and made available on their website at https://www.doravillega.us/government/agendas___minutes/index.php (last visited on Jan. 24, 2024). The text is codified in Section 6-992 of the Doraville Code of Ordinances.

[83] On June 13, 2023, the city planning commission voted to recommend amendments to the zoning ordinances (Amendment No. 2023-08-09) which was later approved by city council on August 14, 2023. The council meeting materials are available on the city council's website at https://dunwoodyga.hylandcloud.com/211agendaonline/Meetings (last visited on Jan. 24, 2024). The text is codified in Section 27-133.1 of the Dunwoody Code of Ordinances.

B. Amend Zoning Ordinances

In addition to using existing zoning processes or application forms, some local governments have amended their existing local ordinances or regulations to establish more clear expectations and processes for modification requests submitted by dispensing licensees. This subsection will provide a brief summary of the various amendments passed by local governments that are consistent with the objectives and purposes of the Hope Act.

1. Local Pathways to Modify State's Default Distance Requirement

Some local governments have opted to provide prospective dispensing licensees a clear pathway for such licensees to receive a local modification from the state's default distance requirement, paving a meaningful opportunity for registered patients to access the medicine they need. For example, the City of Columbus passed an ordinance that amended its municipal code to, among other things, specify that prospective dispensing licensees "may request a variance from Council to locate in places prohibited in this subsection based on a showing that such modification is needed to allow retail outlets to be established to service registered patients residing within this local jurisdiction."[84] As referenced earlier, Bulloch County passed a similar ordinance to amend to its zoning ordinances to, among other things, specify that pharmacies seeking to dispense medical cannabis "may be granted [a variance from the distance requirements] if it is determined that the variance is needed to allow retail outlets to be established to service registered patients residing within Bulloch County."[85]

2. Local Measures to Specify Locations of Dispensing Licensees

Some local governments have considered similar pathways to provide access for patients while setting some limitations. The City of Dunwoody, for example, recently proposed an ordinance that would designate medical cannabis dispensaries as uses permitted by right in certain zoning districts.[86] This proposed ordinance incorporates

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[84] Columbus Ord. No. 23-013, § 1 (2-28-23)/Section 3.2.76 of Appendix A - Unified Development Ordinance. The local ordinance may also be viewed online at https://library.municode.com/ga/columbus/codes/code_of_ordinances?nodeId=APXAUNDEOR_CH3USREST_ART2ADSTAPSPUS_S3.2.76MECADI (last visited on Jan. 24, 2024).

[85] The text of the amendments can be found on the county's official website at https://bullochga.iqm2.com/Citizens/FileOpen.aspx?Type=15&ID=2480&Inline=True (last visited Nov. 28, 2023).

[86] The text of the amendment, as voted on by the city's planning commission, can be found on pages 70-85 of their June 13, 2023 meeting packet available on the city's website at https://dunwoodyga.hylandcloud.com/211agendaonline/Documents/ViewDocument/June_Planning_Commission_2681_Agenda_Packet_6_13_2023_6_00_00_PM.pdf?meetingId=2681&documentType=AgendaPacket&itemId=0&publishId=0&isSection=false (last visited on Jan. 24, 2024).

several other notable provisions. First, it incorporates wholesale the 1,000-foot distance requirement set forth in the Hope Act, but it also would require that GMCC dispensing licensees be at least two miles apart. Second, it allows any pharmacy with a dispensing license from GBOP to operate regardless of its distance from any covered entity.[87] This provision would eliminate the need for local governments to make case-by-case determinations regarding this specific type of prospective dispensing licensees.

3. Other Possible Avenues to Provide Access for Patients

The zoning approaches adopted so far by local governments represent just a few possible approaches among many that may be used in the future that are consistent with the objectives and purposes of the Hope Act. Some local governments may be engaging in discussions on similar and other ways to use their existing zoning powers, including:

- Reduce the state's default distances for all prospective dispensing licenses equally;
- Establish reduced default distances for each type of prospective dispensing licensee (i.e. those licensed by GMCC and those licensed by GBOP);
- Establish guidelines on how to include dispensing licensees as part of land use maps and plans;
- Delegate authority to administrative bodies to approve requests from prospective dispensing licensees that meet certain criteria or standards; and
- Clarify the definitions of certain covered entities not defined in the state's default distance requirement by incorporating references in existing local ordinances or in the Georgia Code.

C. Benefits and Policy Considerations

While the state regulates the key parts of the medical cannabis industry, it is at the local level where decisions pertaining to access to such medicine may be made and can directly affect the health and well-being of those within their communities. If made consistent with the purposes of the Hope Act, these decisions can positively affect the quality, affordability, and accessibility to health care options that are necessary to treat such severe or end stage medical conditions.

Whether a local government seeks to use or amend existing zoning procedures or ordinances, a dispensing licensee—whether a pharmacy licensed by GBOP or a new retail dispensary licensed by GMCC—could making the following positive impact on local communities:

[87] *Id.*

- Enhance and improve access to healthcare, including palliative care, as recommended by physicians;
- Support economic development goals with the creation of new jobs and supporting the local tax base;
- Contribute to the local tax base, offsetting any minor public costs;[88]
- Serve densely populated areas, making essential medications and healthcare products more accessible;
- Respond to a community need for more accessible healthcare and palliative care treatment;
- Create safe and secured environments for patients to learn about and purchase medical cannabis;
- Fosters proximity between a patient's residence, medicine, and medical providers; and
- Provide low-THC oil and products that have passed state requirements for laboratory testing, labeling, and packaging to ensure the safety and quality of the medicine.

In addition to the positive impacts listed above, pharmacies dispensing medical cannabis in local communities may provide even more benefits, including:

- Foster communication and relationships between patients and their pharmacists.
- Provide direct access to consultation with licensed medical professionals;
- Utilize familiar and secure environments to learn about medical cannabis and to sell/purchase such products;
- Utilize existing space, minimizing new construction and its associated environmental impact;
- Utilize experience in dispensing other controlled substances within the established pharmacy, without any consideration of proximity to covered entities;
- No impact on existing land use as an already established pharmacy;
- No new public investment in utilities or infrastructure, as the pharmacy would use existing facilities to dispense additional medical relief and treatment; and
- The pharmacy's presence is unlikely to significantly increase the load on public facilities, as it would be using existing infrastructure.

In making these decisions, local governments should keep in mind that medical cannabis is available only to those with a registry card—it is not available to the general public. Although these decisions could positively impact local communities as a whole, the most significant impact is on the lives of those who need medical cannabis for relief and treatment of their medical conditions.

[88] *See* O.C.G.A. § 16-12-226 (subjecting all sale of low-THC oil and products to all applicable sales and use taxes).

Frequently Asked Questions

Legal and Statutory Framework

1. Is marijuana (cannabis) legal in Georgia?

Yes. Since 2015, Georgia enacted measures to create and establish its existing active medical cannabis program.[89] Currently, there are six companies licensed by the Georgia Access to Medical Cannabis Commission (GMCC) that are allowed to grow cannabis in indoor facilities, produce low-THC oil, and manufacture the low-THC oil into certain types of products such as oils, tinctures, transdermal patches, and capsules. These products are only available at stores licensed by the Georgia State Board of Pharmacy (i.e. licensed pharmacies) or by GMCC (i.e. the six licensed companies). Individuals with a registry card can possess and purchase medical cannabis from these state-licensed dispensing locations. These pharmacies and dispensaries are licensed and heavily regulated. Dispensing licensees should not be confused with locations that may be selling products illegal under state law and may be using advertising, such as signs depicting marijuana leaves, geared towards persons seeking illegal drugs.

2. Is marijuana (cannabis) legal under federal law?

No. The Controlled Substances Act (CSA) prohibits the manufacture, distribution, dispensation, and possession of Schedule I substances except for federal government-approved research studies. Marijuana is listed as a Schedule I controlled substance under the CSA, and has been on Schedule I since the CSA was enacted in 1970, notwithstanding any state law to the contrary.[90]

However, Congress has attempted to resolve the tension between the CSA and the laws enacted by a majority of states that have established cannabis programs: since 2014, Congress has prohibited the U.S. Department of Justice (DOJ) from using appropriated funds to prevent states—specifically including Georgia—from "implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana."[91]

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[89] *See generally* Ga. L. 2015, p. 49-59/HB 1; Ga. L. 2019, p. 43-67/HB 324; Ga. L. 2021, p. 184-204/SB 195.

[90] Congressional Research Services. (October 7, 2022). The Schedule I Status of Marijuana. (CRS Report No. IN11204). https://crsreports.congress.gov/product/pdf/IN/IN11204 (last visited Jan. 24, 2024).

[91] *See* Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113–235, § 538, 128 Stat. 2130, 2217 (113th Cong. 2014) (the full text is available at https://www.congress.gov/113/plaws/publ235/PLAW-113publ235.pdf (last visited Jan. 24, 2024)). The

The DOJ is responsible for the enforcement of federal laws, including the CSA. DOJ houses several divisions including, but not limited to, the Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), U.S. attorneys, and the criminal division.[92] Although DOJ has reaffirmed that marijuana growth, possession, and trafficking remain crimes under federal law irrespective of states' marijuana laws, the enforcement of federal law has generally been focused on criminal networks involved in the illicit marijuana trade.[93] DOJ has also "emphasize[d] the investigation and prosecution of growers and dispensers who are violating state law and does not target those that are in compliance with state law and individual users of medical marijuana."[94]

On its face, the congressional directive bars DOJ from taking legal action against the states directly in order to prevent them from promulgating or enforcing medical marijuana laws.[95] In addition, federal courts have interpreted the directive to prohibit certain federal prosecutions of private individuals or organizations that produce, distribute, or possess marijuana in accordance with state medical marijuana laws.[96]

Since November of 2023—and despite the congressional directive—the DEA has initiated and continued multiple communications with Georgia pharmacies with warnings to the pharmacies about dispensing medical cannabis as allowed by the Hope Act. This does not impact and is not related to the local government's authority and ability to consider requests to modify the default distance requirement for pharmacies and dispensaries.

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quoted text applicable to Georgia's medical cannabis program is extended through the following: Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 542 (114th Cong. 2015); Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, § 537 (115th Cong. 2017); Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, § 538 (115th Cong. 2018); Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, § 537 (116th Cong. 2019); Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, § 531 (116th Cong. 2019); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 531 (116th Cong. 2020); Consolidated Appropriations Act, 2022, Pub. L. No. 117-328, § 531 (117th Cong. 2022); Continuing Appropriations Act and Other Extensions Act, 2024, Pub. L. 118-15, § 101 (118th Cong. 2023); Further Continuing Appropriations and Other Extensions Act, 2024, Pub. L. No. 118-22, § 101 (118th Cong. 2023).

[92] More information about the organizational structure of DOJ can be found on their official website at https://www.justice.gov/d9/2023-09/DOJ%20-%20AG%20signed%20%20Approved%2008.17.2023.pdf (last viewed Jan. 24, 2024).

[93] Congressional Research Services. (March 6, 2023). *The Federal Status of Marijuana and the Expanding Policy Gap with States.* (CRS Report No. IF12270). https://crsreports.congress.gov/product/pdf/IF/IF12270 (last visited Jan. 24, 2024).

[94] Congressional Research Services. (April 7, 2022). *The Evolution of Marijuana as a Controlled Substance and the Federal-State Policy Gap.* (CRS Report No. R44782). https://crsreports.congress.gov/product/pdf/R/R44782 (last visited Jan. 24, 2024).

[95] *Id.*

[96] *Id.*

3. What government entities are involved in the medical cannabis program established by the Hope Act?

Multiple government entities work together to ensure the success of the medical cannabis program in Georgia. The Georgia Access to Medical Cannabis Commission regulates the growing, manufacturing, and sale of low THC oil and products. The Georgia Department of Public Health manages the Low THC Oil Patient Registry and issues registry cards to patients with certain medical conditions and their caregivers. Two licensing boards attached to the Georgia Department of Community Health also play a key role: (1) The Georgia Composite Medical Board regulates physicians, including those who certify patients for the Low THC Oil Patient Registry; and (2) the Georgia State Board of Pharmacy regulates the independent pharmacies that may dispense low-THC oil and products to those with a registry card. As the focus of this guide, local governments serve a critical role to increase patient access to medical relief and treatment by allowing a modification to the state's default distance requirements to meet the needs of patients in their communities.

4. What is the legislative history creating the current Hope Act?

In 2015, Governor Deal signed into law HB 1, otherwise known as "Haleigh's Hope Act". This law created the Low-THC Oil Patient Registry managed by the Georgia Department of Public Health and legalized the possession and use of medical cannabis for patients in Georgia with a registry card. In 2019, Governor Kemp signed into law HB 324, which created the Georgia Access to Medical Cannabis Commission to regulate the indoor cultivation, manufacturing, and production of low-THC oil and products as well as the sale and distribution of such products to patients and their caregivers. In 2021, Governor Kemp signed into law SB 195, which updated the requirements specific to the ability of local governments providing a modification to the state's default distance requirement between certain covered entities and locations that are licensed by the state to dispense and sell medical cannabis. This meant patients could potentially have more local and meaningful access to medical cannabis products within their communities. Collectively, HB1, HB 324, and SB 195 have become known collectively as the Hope Act.[97]

[97] Ga. L. 2015, p. 49-59/HB 1; Ga. L. 2019, p. 43-67/HB 324; Ga. L. 2021, p. 184-204 (SB 195).

Patients and Medical Conditions

1. Do physicians prescribe medical cannabis for their patients in Georgia?

No. Physicians can recommend and authorize their patients to use medical cannabis by submitting forms to the Georgia Department of Public Health (DPH) and information to the Georgia Composite Medical Board. Such recommendation and authorization is not a written prescription for a specific product type of medical cannabis. Physicians are required to have a doctor-patient relationship when certifying a patient as needing medical cannabis, and are also required to be treating such individual for the specific condition requiring such treatment or be treating such individual in a hospice program. To certify a patient, physicians are required to submit certification application forms to DPH on behalf of the patient. After processing, DPH will add the patient to the state's Low-THC Oil Patient Registry and issue a registry card to the patient which allows the patient to purchase, possess, and use medical cannabis as part of their medical treatment for their conditions.

2. What conditions qualify a patient to be registered on the Low THC Oil Patient Registry?[98]

- Acquired immune deficiency syndrome
- Amyotrophic lateral sclerosis
- Alzheimer's disease
- Autism spectrum disorder
- Cancer
- Crohn's disease
- Epidermolysis bullosa
- Intractable pain
- Mitochondrial disease
- Multiple sclerosis
- Parkinson's disease
- Peripheral neuropathy
- Post-traumatic stress disorder
- Seizures disorders
- Sickle cell disease
- Tourett's syndrome

Patients who believe they may be eligible to register on the Low-THC Oil Registry must consult with their treating physician regarding their diagnosis of a qualifying condition and the use of medical cannabis as a treatment. If approved by their treating physician, the patient and/or caregiver's information must be entered, by the physician, into DPH's Low-THC Oil Patient Registry. After processing, a registration card will be issued to the patient and/or their caregiver.

[98] O.C.G.A. § 31-2A-18(a)(3).

3. Who determines which medical conditions qualify a patient to use cannabis for medical relief or treatment?

The Georgia Composite Medical Board (GCMB), in coordination with the Georgia Department of Public Health (DPH), is required by statute to conduct an annual review of the medical conditions that qualify a patient for the state's Low-THC Oil Patient Registry and recommend additional conditions with the following information: dosages for a particular condition, patient responses to treatment with respect to the particular condition, and drug interactions with other drugs commonly taken by patients with the particular condition.[99] State law requires these recommendations to be filed jointly by GCMB and DPH no later than December 1 of each year.

Low-THC Oil and Products

1. Who can legally purchase low-THC oil and products in Georgia?

Individuals with a registry card issued by the Georgia Department of Public Health or by another state (under certain circumstances) can purchase low-THC oil and products from a dispensary licensed by the Georgia Access to Medical Cannabis Commission or pharmacy licensed by the Georgia State Board of Pharmacy to dispense medical cannabis.

2. What type of products are allowed in Georgia?

The Hope Act expressly allows the following types of products in which low-THC oil can be manufactured and dispensed: oil, tincture, transdermal patch, lotion, or capsule.[100] Products with low-THC oil may contain an amount of cannabidiol (CBD) and not more than five percent by weight of 5 percent by weight of tetrahydrocannabinol (THC), tetrahydrocannabinolic acid (THC-A), or a combination of THC and THC-A which does not contain plant material exhibiting the external morphological features of the plant of the genus Cannabis.[101]

However, the Hope Act expressly prohibits "food products infused with low THC oil, including, but not limited to, cookies, candies, or edibles".[102] It also makes it unlawful to "ingest low THC oil or products in a manner that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means,

[99] O.C.G.A. § 31-2A-18(h).
[100] O.C.G.A. § 16-12-200(15).
[101] O.C.G.A. § 16-12-190.
[102] O.C.G.A. § 16-12-200(15).

regardless of shape or size, that can be used to produce vapor in a solution or other form, including but not limited to any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of low THC oil or product in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device."[103]

3. What do low-THC oil and products look like? How can someone tell if the product passed laboratory testing and meets all the safety and quality requirements by the state?

Products produced and manufactured by companies licensed by the state can be distinguished by three key characteristics as further described in the table below.

Information on the packaging and labeling[104]	Features of packaging and labeling[105]	Where the product is made available[106]
• Name and license number of production licensee[107] • Registration number of the independent laboratory • Expiration date • Active ingredients • Required symbol indicating the product contains cannabinoids • Manufactured batch number	• Child-resistant • Resealable if more than one dose • Tamper-evident • Opaque • Not imitate any packaging known to be marketed to minors • Not include images, depictions, or words to attract or market to minors • State-approved trademarks, logos, or imagery	• Pharmacy dispensaries licensed by the Georgia State Board of Pharmacy[108] • Dispensaries licensed by the Georgia Access to Medical Cannabis Commission

[103] O.C.G.A. § 16-12-234.
[104] Ga. Comp. R. & Regs. R. 351-4-.07(3)(a)-(j).
[105] Ga. Comp. R. & Regs. R. 351-4-.07(2)(a)-(h).
[106] Ga. Comp. R. & Regs. R. 351-4-.02(4),
[107] Production and dispensing licenses issued by GMCC can be verified on their official website at https://www.gmcc.ga.gov/licensing/verify-a-license (last visited Jan. 24, 2024).
[108] Pharmacies licensed to dispense low-THC oil and products can be verified on the state's official website at https://gadch.mylicense.com/verification/Search.aspx?facility=Y (last visited Jan. 24, 2024).

Dispensing Locations

1. Where are dispensaries and pharmacies located?

As of January 24, 2024, the Georgia Access to Medical Cannabis Commission (GMCC) has licensed ten (10) dispensaries across the state including dispensaries in the following cities: Augusta, Chamblee, Evans, Macon, Marietta, Newnan, Pooler, and Stockbridge. As allowed by the Hope Act, GMCC continues to accept applications from licensed production facilities for additional dispensaries. These dispensaries are subject to the rules and regulations of GMCC. A list of licensed dispensaries, as well as a map of their locations, can be found on the GMCC website at gmcc.ga.gov and selecting either the "licensing" tab and "verify a license" or the "patients" tab and "dispensaries" respectively.

As of January 24, 2024, the Georgia State Board of Pharmacy (GBOP) has licensed twenty-four (24) pharmacies to dispense low-THC oil and products at such existing pharmacy locations in twenty (20) different cities from the northern to southern most regions of the state. In addition to GBOP regulations for retail pharmacies, these pharmacies are subject to additional regulations related to dispensing such products. A list of these pharmacies can be found by visiting the Georgia Department of Community Health's website at https://gadch.mylicense.com/verification/Search.aspx?facility=N and filtering the search results by selecting "pharmacy" as the profession and "Low THC Pharmacy" as the license type. GBOP continues to process applications and issue dispensing licenses to pharmacies pursuant to the Hope Act.

2. Is there a limit to how many pharmacies can sell medical cannabis?

No. The Hope Act does not set a limit on the number of pharmacies that can dispense medical cannabis. The Georgia State Board of Pharmacy also does not limit the number of pharmacies in a community that can apply for and receive a license to dispense medical cannabis products. Many communities have multiple pharmacies that provide services to residents. The same can be true for those that also dispense low-THC oil and products. By allowing multiple pharmacies in one community to dispense low-THC oil and products, patients who qualify to purchase medical cannabis may be able to use the same pharmacy for all their medications, rather than having to go to multiple pharmacies or move their medicine to a different pharmacy.

It should also be noted that pharmacies may sell different types of products, different brands, and products from different companies licensed by the state to produce medical cannabis. Low-THC oil and products can be administered through multiple routes and

different cannabinoid profiles can address different medical conditions. Patients should be able to visit a pharmacy that carries the medical cannabis products that best address their particular conditions. Having multiple pharmacies within the same community that can sell low-THC oil and products increases patient access and helps to ensure patient needs are met.

3. Why are state-licensed pharmacies or dispensaries reaching out to local governments for a modification to a state licensing requirement regarding distance from covered entities?

The Georgia Access to Medical Cannabis Commission (GMCC) issued the first two production licenses in September of 2022 and the first few dispensing licenses in April of 2023 for the opening of new dispensaries. In November of 2023, GMCC issued an additional four production licenses which will open up the door to additional dispensaries across the state. In October of 2023, the Georgia State Board of Pharmacy (GBOP) began accepting and processing applications for pharmacies to apply for a dispensing license, which may explain why several local government officials have received inquiries from pharmacies throughout the state about a local modification to the state's distance requirement from a covered entity within the respective local jurisdiction.

Compliance with state distance requirements for licensing is generally a state-level issue. Rather than authorizing GBOP or GMCC to address modification requests to the distance requirement, the Hope Act delegated that authority specifically to local governments.[109] The distance requirement is the only step of the state's application process for a dispensing license where state law expressly provides local governments with the unique opportunity to be involved in providing local access to low-THC oil and products for patients in their communities. This express delegation allows local governments to use their zoning powers to meet the needs of patients in their communities through a modification to the state's distance requirement for dispensing licensees. Section IV of this guide titled *Use of Zoning Powers Consistent with the Hope Act* provides additional detailed information as it relates to the distance requirements and local government involvement.

[109] *See* O.C.G.A. § 16-12-215(a).

4. **We already have stores selling products with CBD, hemp, or marijuana. Can we amend ordinances to prohibit patients from accessing medical cannabis in our local jurisdiction?**

Low-THC oil and products are not available at local convenience stores, stores selling CBD or hemp products, or other locations that do not have a dispensing license from the state. Local governments should be careful that any decision to amend local regulations or ordinances does not impair or detract from the provisions of state law, but rather are consistent with or strengthen its intent. The amendment or enactment of ordinances to create barriers between patients in local communities and the medical relief authorized by their physicians, when not expressed or allowed by the Hope Act or other applicable state law, could raise concerns related to preemption, conflicts of laws, and other legal issues. For recent ordinances adopted or amended that are consistent with the purposes of the Hope Act, please refer to Section V of this guide, titled *Use of Zoning Powers Consistent with the Hope Act***.**

Additional Resources

Georgia Access To Medical Cannabis Commission (GMCC)	Website: https://www.gmcc.ga.gov Contact: contact@gmcc.ga.gov Rules: https://rules.sos.state.ga.us/gac/351
Georgia Department of Public Health (DPH Unit for Low THC Oil Patient Registry)	Website: https://dph.georgia.gov/low-thc-oil-registry Contact: THCRegistry@dph.ga.gov Rules: https://rules.sos.state.ga.us/gac/511-5-11
Georgia State Board of Pharmacy (GBOP)	Website: https://gbp.georgia.gov Contact: https://gbp.georgia.gov/about-us/contact-us Rules: https://rules.sos.state.ga.us/gac/480-52
Georgia Composite Medical Board (GCMB)	Website: https://medicalboard.georgia.gov Contact: medbd@dch.ga.gov Rules: https://rules.sos.state.ga.us/gac/360-36
Georgia Statutes and Legislative Bills	Official Code of Georgia Annotated: http://www.lexisnexis.com/hottopics/gacode/default.asp HB 1 (2015): https://www.legis.ga.gov/legislation/42674 HB 324 (2019): https://www.legis.ga.gov/legislation/55000 SB 195 (2021): https://www.legis.ga.gov/legislation/59747