

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 854

(Senator Zirkin)

Judicial Proceedings

Economic Matters

Workers' Compensation - Medical Cannabis - Compensation and Benefits

This bill expressly authorizes the Workers' Compensation Commission (WCC) to require an employer or its insurer to provide medical cannabis to an injured employee receiving workers' compensation benefits as part of the injured employee's medical treatment. The bill also clarifies that, related to medical cannabis, an injured employee may be denied compensation benefits if the cannabis was taken, but not under the written certification of a certifying provider or the written instructions of a physician. The bill applies prospectively and may not be applied or interpreted to have any effect on or application to any claim arising from events occurring before October 1, 2019.

Fiscal Summary

State Effect: State expenditures for workers' compensation benefits may be affected, as discussed below. Revenues are not affected.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: Chesapeake revenues and expenditures may be affected, as discussed below.

Local Effect: Local expenditures for workers' compensation benefits may be affected, as discussed below. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Current Law/Background:

Workers' Compensation Medical Benefits

If an employee covered under workers' compensation insurance has suffered an accidental personal injury, compensable hernia, or occupational disease, the employee is entitled to compensation benefits paid by the employer, its insurer, the Subsequent Injury Fund, or the Uninsured Employers' Fund, as appropriate. Workers' compensation benefits including wage replacement, medical treatment, death and funeral costs, and vocational rehabilitation expenses.

Specifically, an employer or its insurer has to pay for specified medical care and treatment for an injured employee who experiences a compensable injury or occupational disease. This includes (1) medical, surgical, or other attendance or treatment; (2) hospital and nursing services; (3) medicine; (4) crutches and other apparatus; and (5) artificial arms, feet, hands, and legs and other prosthetic appliances. This medical care and treatment must be provided for an appropriate time period, depending on the nature and type of personal injury, compensable hernia, or occupational disease.

Existing Protections Related to the Use of Medical Cannabis

A qualifying patient who is in possession of a 30-day supply of medical cannabis (or more if the patient's certifying provider stated in the written certification that a 30-day supply is inadequate) is not subject to arrest, prosecution, or any civil or administrative penalty and may not be denied any right or privilege for the medical use of cannabis. Although it is not explicitly stated, these protections likely already apply to an injured employee's right to seek workers' compensation benefits while using medical cannabis. Regulations define a "30-day" supply as (1) 120 grams of usable cannabis or (2) in the case of a medical cannabis-infused product, 36 grams of Δ^9 -Tetrahydrocannabinol (better known as THC).

Natalie M. LaPrade Medical Cannabis Commission – Medical Cannabis Implementation

The Natalie M. LaPrade Medical Cannabis Commission is responsible for implementation of the State's medical cannabis program, which is intended to make medical cannabis available to qualifying patients in a safe and effective manner. The program allows for the licensure of growers, processors, and dispensaries and the registration of their agents, as well as registration of independent testing laboratories and their agents. There is a framework to certify health care providers (including physicians, dentists, podiatrists, nurse practitioners, and nurse midwives), qualifying patients, and their caregivers to provide qualifying patients with medical cannabis legally under State law via written

certification. Additionally, recent legislation extended legal protections to third-party vendors authorized by the commission to test, transport, or dispose of medical cannabis, medical cannabis products, and medical cannabis waste. In December 2018, the commission proposed regulations that require registration of secure transportation companies and address the shipment of products between licensees.

As of January 9, 2019, the commission issued 15 final and 3 pre-approved grower licenses; 16 final and 2 pre-approved processor licenses; and 71 final and 31 pre-approved dispensary licenses. Additionally, the commission has registered five independent laboratories. The commission maintains a list of licensees on its [website](#). Furthermore, there were 79,427 registered patients, 54,236 certified patients, 4,890 caregivers, and 1,243 certifying providers. The commission reported that, in the first 13 months of sales, there were \$112.1 million in retail sales at medical cannabis dispensaries in the State.

Insurance Treatment of Medical Cannabis

Health insurers in the United States do not cover medical cannabis as it remains a Schedule I drug (no currently accepted medical use and a high potential for abuse) and it has not been approved by the U.S. Food and Drug Administration (FDA). Health insurers are generally not required to cover drugs that are not FDA-approved. Some insurance companies in other countries have begun covering cannabis. In Germany, medical cannabis is covered by insurance. In Canada, which recently legalized recreational cannabis, SunLife Financial covers cannabis for specific health conditions, including cancer, rheumatoid arthritis, multiple sclerosis, HIV/AIDS, and palliative care.

Workers' compensation boards in several states have approved coverage for medical cannabis recipients. A New Jersey administrative law judge recently ordered that a workers' compensation insurance carrier reimburse past and future cannabis purchases made by a claimant. The ruling sparked similar decisions in New Mexico and Maine.

State/Chesapeake/Local/Small Business Expenditures: Currently available information suggests that employers and workers' compensation insurers in the State do not pay for medical cannabis for covered employees receiving workers' compensation benefits. In addition, Chesapeake advises that it does not currently pay for medical cannabis and only recently received its first claim requesting it; the claim has not yet been heard by WCC.

The bill may affect State, Chesapeake, local government, and small business expenditures; however, the direction and magnitude of the effect depends on numerous unknown factors. For example, if the use of medical cannabis is in addition to any other medications and treatments provided to an injured employee, expenditures increase. Conversely, if medical cannabis is prescribed instead of a more expensive medication or treatment, total expenditures decrease.

Chesapeake Revenues: As a workers' compensation insurer, Chesapeake may increase or decrease premiums for its policyholders, thereby increasing or decreasing its revenues, based on the effect that paying for medical cannabis has on its total expenditures.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Uninsured Employers' Fund; Workers' Compensation Commission; National Law Review; Department of Legislative Services

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