

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 614 (Delegates Valderrama and Charkoudian)
Economic Matters and Health and
Government Operations

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 obtained in accordance with State law 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. By October 1, 2022, WCC must adopt regulations to implement the bill. **The bill takes effect July 1, 2022; it applies prospectively and may not be applied or interpreted to have any effect on or application to any claim arising from events occurring before that date.**

Fiscal Summary

State Effect: State expenditures for workers' compensation benefits may be affected, as discussed below. WCC can adopt the required regulations using existing budgeted resources. 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

Bill Summary: An employer or its insurer is not required to provide medical cannabis under the bill if doing so would cause the employer to violate federal law or regulations or to lose a monetary or licensing-related benefit under federal law or regulations.

Current Law:

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 include wage replacement, medical treatment, death and funeral costs, and vocational rehabilitation expenses.

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.

Natalie M. LaPrade Medical Cannabis Commission

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, nurse midwives, and physician assistants), qualifying patients, and their caregivers to provide qualifying patients with medical cannabis legally under State law via written certification. Additionally, there are legal protections for third-party vendors authorized by the commission to test, transport, or dispose of medical cannabis, medical cannabis products, and medical cannabis waste.

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.

State/Chesapeake/Local/Small Business Expenditures: Currently available information suggests that employers and workers’ compensation insurers in the State are infrequently required to pay for medical cannabis for covered employees receiving workers’ compensation benefits; WCC advises that it has previously approved seven claims for medical cannabis and denied five claims.

As such, the express authority granted by 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 Comments: The bill’s provision that “an employer or its insurer is not required to provide medical cannabis under the bill if doing so would cause the employer to violate federal law or regulations...” could be interpreted to allow any employer or insurer in the State to refuse to provide medical cannabis to claimants. Specifically, medical cannabis is not legal at the federal level, and the provision of it to claimants in any manner could be interpreted to violate federal law.

Additional Information

Prior Introductions: HB 683 of 2021, a similar bill, received a hearing in the House Economic Matters Commission and was later withdrawn. Its cross file, SB 461, received an unfavorable report from the Senate Finance Committee. Another similar bill, SB 854 of 2019, as amended, passed the Senate and received a hearing in the House Economic Matters committee, but no further action was taken.

Designated Cross File: None.

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

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km/ljm

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