

Written Testimony in Support of Senate Bill 461**Workers' Compensation - Medical Cannabis - Compensation and Benefits**
Before the Finance Committee: February 18, 2021

Senate Bill 461 protects the health of Marylanders by amending the term “treatment” to include medical cannabis as a treatment option compensable under Maryland’s Workers’ Compensation system. This bill is narrowly tailored to protect employers and insurers from unreasonable claims. Under this bill, a covered employee or their dependent cannot receive compensation under workers’ compensation if the employee’s accidental injury, compensable hernia, or occupational disease was solely caused by the effects of cannabis and the cannabis was taken without a certifying provider or not in accordance with the provider’s instructions.¹

Senate Bill 461 should be adopted because it provides much needed reimbursement for medical cannabis treatment to employees for injuries suffered within the workplace. This bill will improve the lives of employees while simultaneously benefiting the State, employers, and insurers by decreasing injuries, claims, and time away from work. Further, the passage of Senate Bill 461 presents the opportunity to clarify the law and set expectations for employees who seek to use medical cannabis treatment.

Medical Cannabis is a Legitimate Treatment

Maryland and thirty-five other states recognize medical cannabis as a lawful medication. However, in Maryland and many of these other states, the law does not require that workers’ compensation coverage include reimbursement for medical cannabis. This undermines the effectiveness of a medical cannabis system. Employers and workers’ compensation insurers must not be permitted to treat medical cannabis differently than other medication. Generally, workers’ compensation systems cannot and do not deny coverage simply because of the type of medication involved. For example, insurers won’t refuse to compensate an employee for the employee’s legal prescription of opioid medications simply because that medication is an opioid. But that is exactly what insurers do with legitimate medical cannabis treatment. Senate Bill 461 simply seeks to include medical cannabis as a treatment option compensable by workers’ compensation.

Even if medical cannabis is included as an option, this would not change the insurers’ ability to review compensation claims or appeal claims with the Workers’ Compensation Commission. Therefore, insurers may still deny coverage for a variety of reasons, such as a finding that the treatment is not medically necessary, reasonable, or efficacious, based upon facts and evidence presented by the injured employee regarding their condition. Accordingly, Senate

¹ This bill’s reference to “dependents” is for cases where an employee dies and their dependent seeks to claim benefits for their loss.

Bill 461 merely seeks to normalize the use of cannabis as a valid medication and does not require treatment reimbursement without just cause.

Public Health Impacts of Covering Medical Cannabis Under Workers' Compensation

Providing workers' compensation coverage for medical cannabis patients who lawfully obtain certification improves the health and wellbeing of Maryland's workers. In a study published in the *International Journal of Drug Policy*, researchers found an association between a 19.5% drop in the number of workplace fatalities among workers aged 25-44 and the legalization of medical cannabis.² This research indicates that legalizing medical cannabis benefits employees and their families by improving workplace safety and reducing the number of employees who die on the job. Further, the reduction in workplace fatalities also financially benefits employers and their insurers because of the decrease in dependent claims.

In addition, allowing for reimbursement of medical cannabis under workers' compensation mitigates the devastating effects of the opioid epidemic. There is a distinct overlap between medical cannabis treatment and chronic pain for which employees often file workers' compensation claims. Since the early 2000s, almost 220,000 Americans have died as a result of opioids.³ As related to the workplace, a 2017 study by the National Safety Council found that seventy-percent of employers reported that their businesses were affected by opioid drug abuse, including absenteeism, injuries, accidents, and overdoses.⁴ Further, the Bureau of Labor Statistics reports that workplace opioid overdose deaths have been increasing by twenty-five percent or more each year since 2010.⁵ Several scientific studies have found that cannabis is effective in treating pain symptoms and that many patients would even prefer medical cannabis to opioids to treat their symptoms.⁶ Reimbursing for medical cannabis treatment provides Maryland workers with a safer alternative to opioids.⁷ Accordingly, Maryland must look toward medical cannabis as a better option for pain management to reduce fatalities and improve the health and the quality of life for workers.

Senate Bill 461 Protects Employers and Insurers

² Mark Anderson, Daniel I. Rees, & Erdal Tekin, *Medical Marijuana Laws and Workplace Fatalities in the United States*, *International Journal of Drug Policy* (Oct. 2018).

³ James G. Hodge, Jr. et al., *From Opioids to Marijuana: Out of the Tunnel and into the Fog*, 67 *Kan. L. Rev.* 879 (2019).

⁴ Jenny Gold, *Workers Overdose on the Job and Employers Struggle to Respond*, *New York Times* (Sept. 21, 2018), <https://www.nytimes.com/2018/09/21/business/economy/opioid-overdose-workplace.html>.

⁵ Jenny Gold, *Workers Overdose on the Job and Employers Struggle to Respond*, *New York Times* (Sept. 21, 2018), <https://www.nytimes.com/2018/09/21/business/economy/opioid-overdose-workplace.html>.

⁶ James G. Hodge, Jr. et al., *From Opioids to Marijuana: Out of the Tunnel and into the Fog*, 67 *Kan. L. Rev.* 879 (2019).

⁷ Devon Q. Toro, *How Come Mary-Jane is not on Workers' Comp?: Requiring Rhode Island Workers' Compensation Insurers to Reimburse Employees for Medical Marijuana*, 3 *Roger Williams University L. Rev.* 25 (2020).

Senate Bill 461 is narrowly tailored to protect employers and insurers from unreasonable claims and financial loss. Specifically, an employer can deny reimbursement if an employee's injury was caused solely by cannabis and the employee unlawfully used cannabis without a certifying provider or failed to use the medical cannabis in accordance with the provider's instructions. Therefore, under this bill, an employee who is not using cannabis as permitted by law is not eligible for benefits under workers' compensation. The impact of this exclusion would be minimal on medical cannabis patients because they, by definition, use cannabis with certification by a provider and in accordance with that provider's instructions.

Additionally, requiring workers' compensation to reimburse employees for costs associated with medical cannabis is cost-effective. For example, reimbursement of medical cannabis may lead to fewer claims brought by employees. A 2019 study conducted by researchers at Temple University and the University of Cincinnati,⁸ found that states with laws that enabled general access to medical cannabis experienced nearly a seven-percent decline in workers' compensation claims. Moreover, "when workers did present claims in these states, the claims were for shorter periods of time, on average, after medical marijuana was legalized," thereby increasing the total number of hours worked by employees. Further, according to the bill's fiscal and policy note, "if medical cannabis is prescribed instead of a more expensive medication or treatment, total expenditures [to the State, local government, and small businesses] decrease."⁹ This should hold true for all private employers as well. These cost-saving measures provide a powerful incentive to the enactment of Senate Bill 461.

The Maryland Legislature Must Decide the Law

Maryland must enact Senate Bill 461 to clarify the law. Maryland workers need to know whether their medical cannabis treatment is covered by workers' compensation. Not only has Maryland determined medical cannabis to be a valid form of treatment, the Workers' Compensation Commission has recently opined that legally allowed treatment must be covered, including medical cannabis.¹⁰ Other states have also addressed this issue on a case-by-case basis through the courts, rather than through legislation. Of these states, at least six have found that medical cannabis is reimbursable by workers' compensation. For example, several New Mexico courts¹¹ have held that the use of medical cannabis is to be treated as the 'functional equivalent of a prescription' and to be paid for under New Mexico's Workers' Compensation if such treatment is reasonable and medically necessary.

⁸ Keshar M. Ghimire and Johanna Catherine Maclean, Access to Medical Marijuana Tied to Reduced Workers' Compensation Claims, *Health Economics*, (Dec. 4, 2019)

⁹ 2021 Regular Session - Fiscal and Policy Note, Senate Bill 461.

¹⁰ Byron Warnken, *Our Results Last Month* (Jan 2020), Warnken, LLC (Feb. 29, 2020).

¹¹ *Maez v. Riley Indus.*, 347 P.3d 732 (N.M. Ct. of Appeals, 2015); *see also Vialpando v. Ben's Automotive Services and Redwood Fire Casualty*, No. 32,920 (N.M. Ct. of Appeals, 2014).

The Maryland Legislature should not allow the case-by-case approach taken by other states because it creates confusion, inequitable results, and fails to provide employees with any clear guidelines as to coverage options. Accordingly, Senate Bill 461 allows the General Assembly to act swiftly and meaningfully to clarify the law in this area and to set expectations for employees seeking medical cannabis treatment for injuries they sustained in the workplace.

Conclusion

Since 2014, medical cannabis has been a legally authorized medical treatment in Maryland. Despite this recognition, Maryland does not clearly allow injured employees to seek reimbursement for their lawful use of medical cannabis under workers' compensation. As such, Maryland should adopt SB461 to secure the health, safety, and well-being of employees by allowing Maryland's workers to receive repayment for this legal treatment.

This testimony is submitted on behalf of the Public Health Law Clinic at the University of Maryland Carey School of Law and not by the School of Law or the University of Maryland system.