

Written Testimony in Support of House Bill 628

Employment – Workers’ Compensation and Workplace Discrimination – Use of Medical
Cannabis

Before the Economic Matters Committee: February 15, 2022

House Bill 628 protects medical cannabis patients from employment discrimination based on their status as medical cannabis patients or positive tests for cannabis components or metabolites.

When the General Assembly legalized medical cannabis, it determined that medical cannabis is a valid medical treatment. MD. HEALTH GEN. § 13-3301.1. The adoption of House Bill 628 would reinforce this policy decision, protecting Maryland employees who are authorized medical cannabis patients. At the same time, the bill makes certain that employers may regulate medical cannabis use in the workplace and impose restrictions required under federal law. The passage of House Bill 628 would place Maryland among the increasing number of states that have taken affirmative steps to protect medical cannabis patients from discrimination in the workplace.

**This Bill is Consistent with the Decision to Recognize Medical Cannabis as Medical
Treatment**

Maryland and other states across the country recognize medical cannabis as a legitimate treatment for a variety of medical conditions. Medical cannabis patients should not be treated any differently from other patients who use other legal and legitimate medications. In order to qualify as a medical cannabis patient in Maryland, a provider certified to recommend medical cannabis has to determine that medical cannabis is efficacious and medically appropriate for the patient’s treatment. If a qualified medical provider has determined the patient qualifies for the use of medical cannabis, the patient should be allowed to take their medication without fear of reprisal from their employer.

House Bill 628 Protects Patients and Reasonably Accommodates Employers

The protections afforded by House Bill 628 are narrowly tailored to balance employers’ rights, the safety of others, and the well-being of employee-patients. Specifically, this bill protects a patient’s authorized cannabis use while still preserving an employer’s right to prohibit employees from performing their duties when impaired by medical cannabis. Further, this bill does not require employers to provide protections for medical cannabis patients if doing so will violate federal law, such as the Drug Free Workplace Act, or cause the employer to risk their federal funding sources or licensing. Accordingly, this bill accommodates an employer’s needs

to provide workplace safety and comply with federal law by narrowly tailoring the employment protections provided.

House Bill 628 also prohibits employment discrimination based on a positive test for cannabis components or metabolites. Employee-patients might forgo their legally authorized medication if they believe they will be discriminated against for testing positive on a drug test even though they are not currently impaired. The prohibition in this bill also recognizes that current blood and urine tests are not good indicators of present impairment. THC remains in a person's system long after they are impaired from use, and therefore, the presence of THC does not necessarily indicate the person is currently impaired.¹ Employers may still test for impairment with psychophysical tests, such as the Drug Recognition Expert protocol, which are more reliable indicators of whether someone is currently intoxicated.²

The Public Health Impacts of Discrimination against Medical Cannabis Patients

Treating medical cannabis patients as a separate group distinct from other patients is inherently discriminatory, and the stigmatization it drives is harmful to individuals and public health. Not only does this discrimination undermine the State's effort to legitimize cannabis as an option for medical treatment and the reasonable judgment of medical professionals, it produces negative short- and long-term health effects. Stigma is considered a primary social determinant of health because research demonstrates it can affect individuals' health in numerous ways.

Stress is a common way that stigma manifests. A study conducted on California's medical cannabis patients showed that they experienced chronic stress because of perceived stigma.³ Chronic stress negatively impacts an individual's mental health and physical health. Research shows that the stigmatization of medical cannabis leads patients to delay or not seek legally authorized medical care. Both concerns, chronic stress and the underutilization of care, contribute to poor health outcomes, which creates a cycle of disadvantage and risk of other negative outcomes, such as job loss.⁴

Lack of employment and underemployment are drivers of poor health outcomes.⁵ For example, unemployed individuals tend to suffer more from stress-related illnesses, such as high

¹ *Field Sobriety Tests and THC Levels Unreliable Indicators of Marijuana Intoxication*, National Institute of Justice (2021), at <https://nij.ojp.gov/topics/articles/field-sobriety-tests-and-thc-levels-unreliable-indicators-marijuana-intoxication>.

² Rebecca L. Hartman, et al., *Drug Recognition Expert (DRE) examination characteristics of cannabis impairment*, 92 ACCIDENT ANALYSIS AND PREVENTION 227 (2016).

³ Travis Satterlund, et al., *Stigma Among California's Medical Marijuana Patients*, 47(1) J. PSYCHOACTIVE DRUGS 10 (2015).

⁴ Larisa Antonisse and Rachel Garfield, *The Relationship Between Work and Health: Findings from a Literature Review*, Kaiser Family Foundation (2018).

⁵ Linda Rae Murray., *Sick and Tired of Being Sick and Tired*, 93(2) AM. J. PUBLIC HEALTH 221 (2003); Daniel S. Friedland and Richard H. Price, *Underemployment: Consequences for the Health and Well-Being of Workers*, 32(1-2) AM. J. COMMUNITY PSYCHOL. 33 (2003).

blood pressure, stroke, heart attack, heart disease, and arthritis.⁶ Similarly, studies have shown that those who experience underemployment are more likely to report that their health interferes with their activities, experience chronic disease and depression, and have less positive self-image than adequately employed workers.⁷ If medical cannabis patients fear reprisal from their employers or the stigma associated with their status, it may become difficult for them to maintain employment and to stay on top of their health care. House Bill 628 provides needed safeguards that will help protect medical cannabis patients from discrimination and from the negative health outcomes associated with underemployment and unemployment.

Other States Have Provided Employment Protections for Medical Cannabis Patients

Maryland would not be the first to provide employment protections for medical cannabis patients. Many state medical cannabis programs protect employees and applicants from discrimination when they are using their legally authorized treatment. Fourteen states and D.C. have enacted statutory provisions protecting medical cannabis patients in employment. House Bill 628 is similar to these laws. For example, Delaware's statute, enacted in 2011, prohibits employment discrimination based on the person's status as a cardholder or a cardholder's positive drug test for marijuana components or metabolites. 16 Del. C. § 4905A (2011). Like House Bill 628, Delaware preserves the employer's right to prohibit an employee from working while impaired by medical cannabis. Further, Delaware's statute also allows an employer to preclude an individual from employment if failure to do so would violate federal law or would cause the employer to lose federal money or licensing. Some states have even stronger protections for employees. Nevada requires employers to make workplace accommodations for medical cannabis employee-patients.

The enactment of House Bill 628 would strike a balance between providing adequate protections for patients while ensuring employers can regulate workplace conduct. Maryland should adopt House Bill 628 to join the growing tide of states that recognize medical cannabis as a valid and necessary treatment and, accordingly, provide employment protections for legally authorized medical cannabis patients.

Conclusion

Medical cannabis is an authorized form of medical treatment in Maryland and has been for several years. The Maryland Medical Cannabis Commission has carefully adhered to the directions of the General Assembly to create a system that provides safe access to those qualified

⁶ United States Office of Disease Prevention and Health Promotion, *Healthy People 2020: Employment* (October 8, 2020) <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/employment#7>.

⁷ Daniel S. Friedland and Richard H. Price, *Underemployment: Consequences for the Health and Well-being of Workers*, 32(1-2) AM. J. COMMUNITY PSYCHOL. 33 (2003).

for the treatment. Despite this authorization and comprehensive regulations, Maryland does not adequately protect medical cannabis patients against workplace discrimination. House Bill 628 prescribes much-needed employment protections while balancing the needs of employers. It should be adopted to fully realize the goals of our medical cannabis program by protecting patients from discrimination and adverse employment actions for use of a legal, medically necessary treatment.