



**2022 SESSION
POSITION PAPER**

BILL NO: HB 614

COMMITTEE: Economic Matters Committee

POSITION: Support

TITLE: Workers' Compensation – Medical Cannabis – Compensation and Benefits

BILL ANALYSIS: House Bill (HB) 614 authorizes the Worker's Compensation Commission (WCC) to require an employer or its insurer to reimburse for the cost of medical cannabis provided under a written certification for an injured employee receiving compensable worker's compensation benefits as part of the injured employee's medical treatment. The bill makes exceptions for circumstances under which the reimbursement would cause the employer to violate federal law or regulations or to lose a monetary or licensing-related benefit.

POSITION AND RATIONALE: The Maryland Medical Cannabis Commission (the Commission) supports HB 614.

Medical cannabis is legal in 37 states and the District of Columbia. The authorized use of cannabis for medical conditions has sparked debate over whether workers' compensation coverage should extend to medical cannabis patients and treatment as provided by HB 614. Five states, by way of appellate court precedent (CT, NH, NJ, NM, and NY), currently authorize insurers to pay workers' compensation claims involving medical cannabis. However, there is an emerging interest by State legislatures to codify this requirement into statute. Legislation similar to HB 614 has recently been introduced in at least five other states (Hawaii, ME, NJ, NY, and VT). To legislate in this area would clarify the law, alleviate confusion and unneeded litigation expenses, and bring peace of mind to patients.

Although Maryland law does not expressly address reimbursement for medical cannabis, the Labor and Employment Article, §9-660, provides that the WCC may require compensation for any *medicine* and *medical treatment*. Health-General Article, §13-3304 expressly authorizes healthcare providers in the State to prescribe medical cannabis for the "treatment of a chronic or debilitating disease or medical condition." Likewise, a number of other areas across the Maryland Code establish parity between medical cannabis and prescription drugs, including

exemption from the State sales tax as a medicine, allowing administration to students in a school setting to treat a disease, condition, or illness, and requiring substantial clinical evidence or data to make a medical or therapeutic claim about a product. Further, reimbursement for medical cannabis comports with the statutory requirement that states a medical cannabis patient “may not be subject to arrest, prosecution...or any civil or administrative penalty...or may not be denied any right or privilege” for the use of medical cannabis. Health-General Article, §13-3313(a).

WCC Commissioners have on numerous occasions determined that medical cannabis is covered under existing law, but consistent application requires statutory clarification. Statutory codification will explicitly put patients, employers, and insurers on notice that reimbursement for medical cannabis is authorized by law and thus better ensure its consistent application. Since January 2021, there have been a total of six approvals and two denials in claims for reimbursement of medical cannabis by the Maryland Workers’ Compensation Commission. In addition, Chesapeake Employers’ Insurance Company (Chesapeake), a large worker’s compensation insurer, offered reimbursement for medical cannabis treatment as part of its benefits package in 2021.

The Journal of Health Economics published first of its kind research in February 2020. The study focused on the effects of state medical cannabis laws on workers’ compensation claiming among adults. The study authors noted that there is substantial overlap in the conditions that cannabis can be used to treat symptoms and the conditions common to worker’s compensation recipients. The study concluded that medical cannabis impacts workers’ compensation claiming among adults by allowing improved symptom management, and thus reduced need for the benefit, among injured or ill workers.

Medical cannabis can also serve as a less addictive alternative to opioids, with fewer side effects and no risk of overdose death. According to the Centers for Disease Control and Prevention there were more than 75,000 opioid overdose fatalities in 2020. The opioid epidemic has been a modern day great American tragedy in health care for the lives harmed and the lives lost. Requiring workers’ compensation coverage for medical cannabis in some cases could eliminate the need to cover high-priced prescription opioids, which may lead to addiction, overdose, or a cascade of other treatment services such as physical therapy and surgeries.

Hesitancy to provide reimbursement for medical cannabis arises because cannabis is illegal at the federal level. However, federal law prevents the U.S. Department of Justice or the Drug Enforcement Agency from using federal funds to prevent states from implementing medical cannabis laws, and protects individuals and businesses complying with state law. Since this protection was first adopted by Congress in 2014, it is notable that there have been no federal prosecutions for violations of the Controlled Substances Act (CSA) against employers or insurers for the reimbursement of legal medical cannabis. Further, workers’ compensation coverage for medical cannabis is not in direct conflict with the federal Controlled Substances Act since it does not involve the possession, manufacturer, or distribution of cannabis, but instead only requires reimbursement for the cost of medical cannabis treatment. In 2021, courts in four states that had been reimbursing claimants for medical cannabis addressed the issue of whether the

HB 614 – Support

reimbursement conflicted with federal law. Three out of 4 of these appellate courts ruled in favor of reimbursement citing no federal preemption or conflict with the CSA - (See Attachment – 2021 Appellate Cases Addressing the Interplay of Worker’s Compensation Reimbursement and the CSA)

SB 461 represents an important advance in creating equity under the law for medical cannabis patients. Parity in worker’s compensation coverage for medical cannabis patients, as it already exists for patients who are prescribed pharmaceuticals, acknowledges the current reality of the use of medical cannabis as an important and valued medicine for the treatment of medical conditions. SB 461 is significant legislation and on behalf of the Commission, thank you for considering this bill.

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This position does not necessarily reflect the position of the Maryland Department of Health or the Administration..

ATTACHMENT –

2021 APPELLATE CASES ADDRESSING THE INTERPLAY OF WORKER’S COMPENSATION REIMBURSEMENT & THE CONTROLLED SUBSTANCES ACT

February 25, 2021- New York State Supreme Court, Appellate Division – *New York Quigley v. Village of East Aurora*, 193 A.D. 3rd 207 (2021) Employer and its workers’ compensation insurance carrier appealed WC Board’s medical cannabis reimbursement decision. The Court held that the carrier is required to reimburse the claimant for the cost of medical cannabis because the Compassionate Care Act does not conflict with and is not pre-empted by the federal Controlled Substances Act (CSA). The Court stated that because the insurer is merely required to reimburse for the costs associated with medical cannabis and reimbursement is not an activity that is expressly prohibited by the CSA.

March 2, 2021 - New Hampshire Supreme Court – *Appeal of Andrew Panaggio*, 174, N.H. 89 (2021), held that requiring a workers’ compensation insurer to reimburse costs of medical cannabis did not conflict with the Controlled Substances Act (CSA). (In 2019, the NH Supreme Court had previously held that a workers’ compensation insurance carrier is not prohibited from reimbursing a claimant for the cost of purchasing medical cannabis but did not address the federal issue.)

April 13, 2021 – New Jersey Supreme Court - *Hager v. M& K Construction*, 246 N.J. 1, 247 A. 3d, 864 (2021) Employer appealed workers’ compensation order requiring it to reimburse for medical cannabis. The Court held that reimbursement for medical cannabis did not conflict with the federal CSA. The Court delivered a 51-page, expansive opinion that covered the overlap between federal and state law.

October 13, 2021 – Minnesota Supreme Court – Two workers’ compensation insurers challenged MN’s WC orders for reimbursement for medical cannabis in workers’ compensation cases, arguing that continued federal prohibition of cannabis forbids payment for injured worker’s use of drugs for pain relief. The MN Sup. Court held that workers’ compensation for injured employees does not cover medical cannabis because the drug remains illegal under federal law, so mandating that employers pay for medical cannabis makes them criminally liable for aiding and abetting possession. The Court further stated that the proper remedy would be for Congress to pass legislation to resolve the conflicts between state and federal laws. See *Susan K. Musta, Respondent v. Mendota Heights Dental Center & Hartford Insurance Group, Relators* 2021 WL 4767978 and *Daniel Bierbach, Respondent v. Digger’s Polaris and State Auto/United Fire & Casualty Group*, 2021 WL 4762642 (only Westlaw citation is currently available)