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FISCAL IMPACT REPORT

SPONSOR Crowder **ORIGINAL DATE** 1/29/16
LAST UPDATED 2/10/16 **HB** 195/aHJC/aHFI#1

SHORT TITLE Medical Cannabis & Workers' Comp **SB** _____

ANALYST Kludt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workers' Compensation Administration (WCA)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of HFL Amendment

The House Floor amendment clarifies that the exemption from payment for employers and insurers applies "if the payment violates federal law."

Synopsis of HJC Amendment

The House Judiciary Committee's amendment change two phrases to reflect that employers are not liable for reimbursement of medical expenses, but are rather expected to provide medical care for work-related injuries. So, instead of stating that employers are not "liable for" claims associated with medical cannabis treatment, the amendments state employers are not "required to pay for costs" of medical cannabis treatment.

Synopsis of Original Bill

House Bill 195 amends the Workers' Compensation Act to exempt employers and insurers from responsibility to reimburse an injured worker for the cost of medical cannabis. The bill also makes other stylist changes.

FISCAL IMPLICATIONS

No fiscal impacts were reported.

SIGNIFICANT ISSUES

Significant Issues House Floor Amendment

The amendment provides a sunset on the exemption from payment for injured workers medical cannabis. If the federal government reclassifies medical cannabis from a Schedule 1 controlled substance so that use, possession, manufacture, or distribution, even for medical purposes, is no longer a federal crime, the exemption from payment will no longer apply.

Significant Issues Original Bill

This bill exempts employers and insurers from responsibility to reimburse an injured worker for the cost of medical cannabis. Under the federal Controlled Substances Act, 21 U.S.C. § 812(b)(1), cannabis is a Schedule I controlled substance. As such insurers in the workers' compensation system and the WCA believe cannabis cannot be used, possessed, manufactured, or distributed, even for medical purposes. However, New Mexico passed the Lynn and Erin Compassionate Use Act, NMSA 1978, §§ 26-2B-1, permitting qualified patients to possess and use medical cannabis for treatment of qualifying medical conditions.

The New Mexico Court of Appeals ruled in *Vialpondo v. Ben's Automotive Services*, 2014-NMCA-084 that medical cannabis can be a reasonable and necessary medical expense in a workers' compensation claim, pursuant to NMSA 1978, § 52-1-49, and ordered the employer reimburse the worker for out of pocket expenses associated with the purchase and use of medical cannabis. The Court of Appeals reasoned that state policy on medical use of cannabis was clear from the Lynn and Eric Compassionate Use Act, whereas federal policies were unclear. Subsequent appellate rulings have affirmed the *Vialpondo* ruling. See *Lewis v. American General*, 2015-NMCA-090 and *Maez v. Riley Indus.*, 2015-NMCA-049.

As of January 27, 2016, 23 states and the District Columbia have passed legislation permitting use of medical cannabis. Of those, 21 states have passed legislation containing either an explicit or implicit provision exempting employers or insurance carriers from responsibility to reimburse or pay for costs associated with medical cannabis purchase or use - Maryland and New Mexico are the only two states that have not passed such legislation. WCA reports New Mexico is currently the only state that requires employers and insurers to reimburse or pay for an injured worker's medical cannabis, and that distinction is the result of the Court of Appeals' decisions.

Based on the Court of Appeals' rulings, the Workers' Compensation Administration had to promulgate a rule and set a fee schedule to provide a system for reimbursement of medical cannabis to injured workers. The rule and fee schedule became effective on January 1, 2016.

WCA reports employers and carriers have expressed numerous concerns regarding the Court of Appeals' decisions and the WCA's adoption of regulations providing a system for reimbursement of medical cannabis. Those concerns include placing employers and insurers in the position of choosing between violating federal law and complying with the Workers' Compensation Act. Opponents have also expressed concern that allowing medical cannabis as a

treatment method in workers' compensation will create a class of injured workers who cannot return to work which is contrary the Act's primary objective, as stated NMSA 1978, § 52-1-26:

“To assure that every person who suffers a compensable injury with resulting disability should be provided with the opportunity to return to gainful employment as soon as possible with minimal dependence on compensation awards.”

Supporters welcome medical marijuana as a better alternative to opioids. According to Centers for Disease Control (“CDC”), New Mexico leads the nation in overdose deaths, with opioid deaths comprising a large percentage of those deaths. Opponents also state there is no evidence based medication to support use of medical cannabis to treat work place injuries and worry about the potentially deadly combination of opioids and medical cannabis.

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