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FISCAL IMPACT REPORT

SPONSOR Sanchez, C ORIGINAL DATE 2/5/16
LAST UPDATED 2/11/16 HB _____

SHORT TITLE Medical Cannabis As Reimbursable Benefit SB 245/aSCORC

ANALYST Klundt

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)

Duplicates HB 195

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workers' Compensation Administration (WCA)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of SCORC Amendment

The SCORC amendment substitutes language addressing liability of an employer or insurer for a claim for reimbursement for medical cannabis with language providing that the insurer is not required to pay for the costs associated with purchase or use of medical marijuana.

Synopsis of Bill

Senate Bill 245 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

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 if they are subject to prohibitions barring working while under the influence 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 research to support use of medical cannabis to treat work place injuries and worry about the potentially deadly combination of opioids and medical cannabis.

POSSIBLE QUESTIONS

How many injured workers statewide would be affected by exempting medical cannabis?

KK/al/jo