

CANNABINOID INSURANCE COVERAGE MANDATES

LEGAL CONSIDERATIONS

Lawmakers in multiple states have introduced bills that would require health insurance and workers' compensation plans to cover non-FDA-approved cannabinoid products for therapeutic use. This document summarizes potential legal issues arising from such coverage mandates.

Controlled Substances Act (CSA)

The CSA, under which marijuana and many other cannabinoid products are illegal, would likely preempt a state law requiring coverage of non-FDA-approved cannabinoid products.

Food, Drug, & Cosmetics Act (FDCA)

State laws mandating coverage of non-FDA-approved cannabinoid products would permit parties to introduce, or cause to be introduced, non-FDA-approved cannabinoid products into interstate commerce, which is illegal under the FDCA.

Employee Retirement Income Security Act of 1974 (ERISA)

ERISA imposes a fiduciary duty on plan administrators to comply with federal laws. Plan administrators offering coverage of non-FDA-approved cannabinoid products would likely breach their duty to comply with federal laws.



Patient Protection & Affordable Care Act (ACA)

The ACA permits states to adopt stronger, but not weaker, consumer protections than those provided under the ACA. Requiring coverage of non-FDA-approved cannabinoid products would weaken federal protections ensuring consumers receive safe medications.

Drug Free Workplace Act (DFWA)

The DFWA requires employers that enter into federal contracts to maintain a drug-free workplace. If employers are required to cover non-FDA-approved cannabinoid products, then it may be difficult for them to maintain a drug-free workplace.

Occupational Safety & Health Act (OSH Act)

The OSH Act imposes a duty on employers to ensure workplaces are free from hazards that are likely to cause serious physical harm or death. Physical harm or death is foreseeable when an employee with cannabinoid-impaired psychomotor skills or cognitive abilities performs safety-sensitive tasks.

Tort Liability

An employer could be liable for acts of an impaired employee who injures a third party or damages the third party's property while acting within the scope of employment.



GET MORE INFORMATION

More in depth discussions of these issues can be found in:

Cannabinoids:

A Fact Sheet for Health Plan Decision Makers (2022)

Dazed and Confused:

Making Sense of Employers' Risks from Mandated Coverage of Non-FDA-Approved Cannabis Products (2021).

REFERENCES

1. <https://scholarship.shu.edu/shlj/vol45/iss2/4/>
2. See *Durand v. Hanover Ins. Grp., Inc.*, 560 F.3d 436, 442 (6th Cir. 2009).
3. <https://scholarship.shu.edu/shlj/vol45/iss2/4/>
4. <https://scholarship.shu.edu/shlj/vol45/iss2/4/>
5. 41 U.S.C. §§ 8102–8103.
6. 29 U.S.C. § 654(a)(1).
7. <https://scholarship.shu.edu/shlj/vol45/iss2/4/>



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