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Legislation Might Remove Hurdle to Medical Marijuana Reimbursement

State: N.J.

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A New Jersey lawmaker has introduced a bill that would clarify that state law doesn't prohibit workers' comp payers from reimbursing an injured worker for the use of medical marijuana.

The legislation, [Assembly Bill 4097](#), was introduced just weeks before a New Jersey Division of Workers' Compensation judge on June 28 ordered Freehold Township to reimburse an injured worker, Steven McNeary, for the use of medical marijuana to treat an injury.

The case is at least the second time that a New Jersey workers' comp judge has ordered reimbursement for medical marijuana. That was also the outcome of *Watson v. 84 Lumber* in December 2016.

AB 4097, introduced by Assemblywoman Joann Downey, D-Monmouth, would amend a section of the state's medical marijuana law that says a government medical assistance program or private health insurer is not required to reimburse a patient for costs of the drug.

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The bill would add to that section a statement that, “Nothing in this section shall preclude any employer or any workers’ compensation insurer from reimbursing a person for costs associated with the medical use of marijuana.”

The definition of “employer” would include the state or any county, municipality or other political subdivision.

The bill has been referred to the Assembly Labor Committee, where it may yet be considered during the 2018-19 legislative session.

Downey couldn’t be reached for comment on Friday, and the reason for introducing the bill at this time was unclear.

But John Kutner, a workers’ comp defense attorney and partner with Weber Gallagher in Bedminster, said the bill might remove one possible objection from payers who are ordered to reimburse an injured worker for marijuana.

“If a judge orders it, they can’t point to the statute and say the statute protects them,” Kutner said.

Current New Jersey law refers to “a government medical assistance program or private health insurer” as entities that aren’t required to pay for marijuana, and many would say that doesn’t include workers’ comp payers, Kutner said. But some might debate that point.

Adam Fowler, senior policy analyst for government affairs in Optum’s workers’ comp and auto no-fault division, said the New Jersey legislation would give workers’ comp payers permission to pay for medical marijuana, but would not require them to do so.

“It just gives them a little more legal leeway,” at least regarding state law, he said.

While the bill might provide some reassurance to carriers that are already inclined to pay for medical marijuana, Fowler said he doesn’t expect it to open the floodgates of marijuana reimbursement in workers’ comp. Many carriers are deterred by the fact marijuana is illegal at the federal level, he said.

“It really depends on the carrier,” Fowler said.

In the McNeary case, the payer decided to oppose reimbursement of the claimant’s marijuana because of a June 14 decision by the Maine Supreme Judicial Court in *Bourgoin v. Twin Rivers Paper*.

In that case, the Maine court said an employer cannot be ordered to reimburse an injured worker for medical marijuana because such a payment would be “aiding and abetting” a violation of federal law. The federal Controlled Substances Act makes it a crime to knowingly or intentionally manufacture, distribute, dispense or possess marijuana, which is classified as a Schedule I drug.

But New Jersey Division of Workers’ Compensation Judge Lionel Simon said he did not agree with the Maine high court’s reasoning, according to a [transcript](#) of a hearing in the McNeary case. He said the intent of state and federal drug laws was to curtail the use and distribution of illegal narcotics.

“I honestly don’t feel in my heart of hearts that this is a conflict,” Simon said. “Certainly I don’t understand how a carrier, who will never possess, never distribute, never intend to distribute these products, who will ... sign a check into an attorney’s trust account, is in any way complicit with the distribution of illicit narcotics.”

Simon also said marijuana was a better treatment for McNeary’s muscle spasticity than opioids. He noted the concern that McNeary would become addicted to opioids. And marijuana is less expensive to payers than opioids, he added.

“If there’s anything criminal here, it’s how these drugs have been force-fed to injured people, creating

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addicts,” Simon said of opioids.

Despite Simon’s order in the McNeary case and the decision in Watson v. 84 Lumber, work comp defense attorney Kutner said he thinks the Maine high court decision will have more of an impact on the workers’ comp industry, which had been lacking direction on the marijuana issue.

“The Maine case is definitely more influential,” he said.

But ultimately the issue may be settled if marijuana is de-scheduled, Kutner said. Bills have been introduced in Congress this session that would do that. With de-scheduling of marijuana, the substance would no longer be illegal at the federal level, and the conflict with state laws would be removed.