

New Jersey State Assembly Appropriations Committee Advances Bill A1708 Requiring Coverage for Cannabis

On the eve of voters deciding whether to legalize recreational marijuana in New Jersey the State Assembly Appropriations Committee advanced bill A1708. This bill would require workers' compensation carriers and personal injury protection (PIP) auto insurance benefits to cover the cost of medical marijuana when appropriate for medical use. Specifically the proposed legislation states in part:

- *Notwithstanding the provisions of subsection a. of this section, an employer or workers' compensation insurance carrier or private passenger automobile insurance carrier shall provide coverage for costs associated with the medical use of marijuana.*
- *Notwithstanding any provision of the insurance policy to the contrary, if for any reason payment by the insurer to the medical cannabis dispensary is not feasible, the insurer shall remit directly to the insured the costs for any benefits associated with the medical use of cannabis upon proof of payment by the insured to the medical cannabis dispensary.....An employer or workers' compensation insurance carrier shall not be required to provide coverage for costs associated with the medical use of cannabis upon intervention by the federal government to enforce the "Controlled Substances Act" (21 U.S.C. s.802 et seq.).*

This coincides with The Supreme Court of New Jersey preparing to hear oral argument in the case of *Hager v. M&K Construction*, 462 N.J. Super. 146 (App. Div.), cert. granted, 241 N.J. 484 (2020). In *Hager* the Appellate Division ruled that an employer's workers' compensation must cover the cost of medical marijuana. In that case the court specifically addressed the issue of a conflict with federal law or the Controlled Substance Act (C.S.A) and held that requiring a workers' compensation carrier to reimburse an injured worker for the cost would not place them in violation of the CSA. Meanwhile in Massachusetts the Supreme Court there held the opposite on October 27th, or that ordering a carrier to pay for the cost of medical marijuana would place them in violation of the CSA.

The legislation appears to be codifying the holding in *Hager*, in the face of a potential adverse ruling by the Supreme Court. We will keep you apprised of any developments with regard to these issues but for the time being the Appellate Division's decision in *Hager* is controlling.