

Medical Cannabis Insurance Reimbursement (MCIR) Working Group
Act 161 (SB2488 SD2 HD1 CD1) Session Laws of Hawai'i 2018

Meeting Minutes

DATE: October 8, 2018
TIME: 3:00 pm
LOCATION: Hawai'i State Capitol, CR229

Working Group Members in Attendance:

Sen. Rosalyn Baker, Co-chair

Rep. John Mizuno

Judy Mohr Peterson, Med-QUEST Administrator

Jennifer Diesman, HMSA (representing a mutual benefit society)

Garret Sugai, Kaiser Permanente (representing a health maintenance organization)

Laura Esslinger, AlohaCare (representing a Medicaid managed care plan)

Mike Takano, Pono Life Sciences (representing a licensed medical cannabis dispensary)

Randy Gonce, qualifying patient (via teleconference)

Excused:

Rep. Roy Takumi, Co-chair

Sen. Stanley Chang

Gordon Ito, Insurance Commissioner

Monique Chantal, parent of a minor qualifying patient

At the Chairs' invitation, representatives from the Dept. of the Attorney General, the Department of Labor and Industrial Relations, and the Department of Health were also present. Key staff from the Department of Commerce and Consumer Affairs attended of behalf of the Insurance Commissioner. Staff from Co-chair Rep. Roy Takumi and Sen. Stanley Chang were also present. Rep. Joy San Buenaventura was in attendance.

I. Introduction of Members and Invitees, Sen. Roz Baker

II. Working Group Roundtable Discussion

- Sen. Baker provided background information on the medical cannabis program in Hawai'i, and actions taken in other States. Key points were the following:
 - 5 states are currently reimbursing claims for medical cannabis through their workers' compensation systems
 - There have been no reimbursements via health plans outside of workers' compensation systems in any state
 - Of the 31 states with medical cannabis programs, 24 have statutory provisions which stipulate that reimbursement for medical cannabis via insurance is not required. Alaska's state law prohibits reimbursement via insurance.
 - In Hawai'i, the process by which patients qualify for treatment with medical cannabis is as follows:
 - Physician (MD or DO) or nurse practitioner with prescriptive authority (APRN) certifies that a patient has one of the debilitating medical conditions that may benefit from treatment with medical cannabis. These debilitating conditions are enumerated in statute or via Department of Health (DOH)

- rules. Other conditions may be added as provided by the Legislature or through the petitioning process to DOH;
 - Patient presents the certification to DOH, which issues a 329 card;
 - Patient then is able to access the dispensary system and purchase medical cannabis, or patient/patient caregivers can grow their own plants.
- Sen. Baker and Deputy Attorney General Jill Nagamine provided background information on federal laws related to cannabis. Key points included:
 - Cannabis is an illegal Schedule I drug under the Controlled Substances Act (CSA). Due to this scheduling, there are associated policy complications, including the certification process for medical cannabis patients.
 - Under federal law, providers cannot prescribe a Schedule I drug without a risk to their license. Instead, they certify the presence of a debilitating condition and DOH issues a 329 card.
 - Medical Cannabis is not a recognized prescription drug by the Federal Drug Administration (FDA) and is not obtained via prescription.
 - State of Hawai'i regulates access to Medical Cannabis through a series of licensed growers and dispensaries. Medical Cannabis sold at dispensaries must undergo random testing to ensure product safety regarding contaminants.

The first part of the roundtable discussion consisted of a series of questions posed by Chair Baker to the insurers present and are summarized below:

- **Q: Have insurers had internal conversations about covering medical cannabis?**
 - Med-Quest Division (MQD) reached out to other State Medicaid Programs to find out if they are reimbursing for medical cannabis, particularly using State-only funds since the use of federal funds would likely be deemed illegal and could risk the program's federal funding. Per MQD's conversations with other state plans, no other states are reimbursing for medical cannabis using either state or federal Medicaid funds.
 - Kaiser Permanente (KP) and Hawai'i Medical Services Association (HMSA) had not engaged in internal conversations about medical cannabis coverage prior to being named as working group participants, and are still gathering information about how Hawai'i's medical cannabis program works.
- **Q: How do health plans approve and reimburse for prescription drugs on their formularies?**
 - Per MQD, Medicaid and Medicare managed care plans are required to cover drugs that are both FDA-approved and eligible for rebates under the Medicaid Drug Rebate Program. That list of drugs is established by the Centers for Medicare and Medicaid Services (CMS). Furthermore, federal law prohibits Medicaid and Medicare from covering a drug or service, which is not "reasonable and necessary" for the diagnosis or treatment of illness or injury. The determination of whether a drug or service is "reasonable and necessary" involves a determination that the drug or service is "safe and effective, not experimental, and appropriate."

- HMSA pharmacists meet to review new or discontinued drugs for inclusion on or removal from their formulary on a quarterly basis. If a drug is not on the formulary, then it is not a covered benefit.
- **Q: How do health insurers decide which alternative/ancillary insurance products (such as acupuncture) to cover, and what is the process an insurer uses before offering plans that cover alternative/ancillary products?**
 - Representatives of MQD and AlohaCare stated that Medicaid/Medicare typically will not cover these types of products and in many cases are prohibited from doing so by federal regulations. Managed care plans in Hawai'i have offered coverage for ancillary products with well-established standards of care (such as dental care), but these services are not reimbursed through Medicaid/Medicare; it is up to the individual plan to determine how they will reimburse for these services.
 - Representative from HMSA said that the decision to offer a plan that covers ancillary product hinges first on whether there is a market for plans covering that product. Most health plans are purchased by employers, and not all employers have compelling reasons to purchase plans that cover ancillary products. Before a plan with coverage for ancillary products is offered for sale, insurers go through an internal process to determine how to price, package and market the plan. The process can take a significant amount of time to complete.
- **Q: If the Legislature were to pass a law requiring insurance coverage for medical cannabis, what barriers do insurers anticipate and what steps would insurers have to take in order to comply?**
 - MQD: Because cannabis is an illegal drug under federal law, using federal funds to reimburse for medical cannabis would result in the federal government cutting off that stream of revenue to the state, creating an enormous budgetary shortfall, and adversely affecting Medicaid patients in Hawai'i. Thus, reimbursements for medical cannabis could only be paid out using State funds. Furthermore, if Medicaid/Medicare managed care plans were required to cover medical cannabis in that manner, it would be necessary to take extraordinary measures to prevent the co-mingling of federal funds with state funds used to reimburse for medical cannabis. In order to protect Hawai'i's federal Medicaid funding, MQD would need to create a firewall of separation between the part of the department that was required to deal with medical cannabis and the part of the department that handled federal funds. This would include an office in a separate location, separate bank accounts, and staff that dealt only with medical cannabis. Additionally, reimbursements would have to be dispersed directly to individuals rather than to the managed care plans, due to federal law dealing with financial institutions. MQD does not currently provide direct reimbursement to members and would need to develop a model for doing so.
 - HMSA response: Unlike MQD, they do have some services that are reimbursed directly to plan members, and thus have a model for doing so. HMSA representative expressed the need to understand more clearly the certification process, and noted

that even though no prescriptions are involved with medical cannabis, FDA approval is required for an insurer to put a drug on the formulary. The insurers noted concern about their contractual obligations with Federally Qualified Healthcare Centers (FQHCs) and potential impact on the federal funds those providers receive, in connection to the federal scheduling of cannabis. Members discuss cannabis' federal classification as a drug under the Controlled Substances Act and the ambiguity associated with treating medical cannabis as anything other than a drug for coverage purposes. The member representing dispensaries noted that when a provider engages in the certification process, a provider makes a determination that the benefits associated with treatment by medical cannabis outweigh the risks, as they would do with any other type of treatment. He further noted that multiple states have set up medical cannabis programs that exist and operate despite the ambiguities inherent to the conflict between state and federal law. He also noted that this conflict is unlikely to be resolved conclusively in the near-term, and asked the other members to continue to advance the conversation despite this federal/state conflict. HMSA noted that insurers, by virtue of their business model, can sometimes be quite risk-adverse and would appreciate the opportunity to thoroughly investigate these concerns. HMSA added that plans providing coverage for medical cannabis would need to be evaluated using the process previously outlined for ancillary products and realistically it would be 2020 or 2021 before HMSA could complete that process. KP expressed similar concerns and outlined substantially similar barriers. Sen. Baker offered that if a sticking point preventing insurers from covering medical cannabis is the distinction between a prescribed treatment and a physician's certification of a debilitating condition outlined under HRS Ch 329, a legislative solution may be considered, such as statutorily deeming 329 cardholders to have been prescribed medical cannabis.

The last half of the working group's discussion centered on identifying areas where there are gaps in information and possible steps for remedying those gaps. Topics included:

- The cost/benefit ratio of treatment with medical cannabis vs. opioids;
- Insurers' needs prior to providing coverage for medical cannabis including time requirements and permissive legislation; and
- Pricing/reimbursements models for medical cannabis, including:
 - The average monthly cost of medical cannabis for patients with qualifying conditions. Dispensaries have some information and DOH may have additional via their tracking system. It is important to ascertain the types of de-identified information is available. Dispensary representatives indicated a willingness to work toward getting this information together.
 - Insurance riders
There may be more of a market for medical cannabis riders, as they are marketed to individuals rather than employers. Riders exist for chiropractic and acupuncture care, which could serve as a model for medical cannabis.
 - Caregivers
Hawai'i County does not currently have a dispensary in operation, thus all patients either self-grow or have a caregiver grow on their behalf. If insurers are reimbursing

for medical cannabis, it is likely that caregivers would want some form of reimbursement as well.

- Coordination of care, drug interactions, and standardized dosing for medical cannabis
 - Is there standardized dosing for medical cannabis from other states or countries? Are there medical professionals who can provide guidance? Are there scientific studies that could provide information on dosing? To what extent are patients relying on dispensary staff for dosage information?
 - Is any medical professional coordinating care for medical cannabis patients? Are there drug interactions associated with cannabis, and how is this information provided to patients/caregivers? Is there a medical or other liability for adverse interactions?
- HMSA/Kaiser plan to submit questions to the Department of Health about the certification process. Dispensaries will help facilitate.
- Rep. Mizuno and the patient member emphasized the importance of medical cannabis, the difference it makes in patients' lives, and the challenges associated with low-income individuals obtaining treatment

III. Next Steps and Announcements

- Members will suggest agenda items for the next working group meeting.

IV. Adjournment