



## State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Tony Evers, Governor  
Mark V. Afable, Commissioner

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September 3, 2019

Mr. Jeff Renk  
Senate Chief Clerk  
State Capitol  
P.O. Box 7882  
Madison, WI 53707

Mr. Patrick Fuller  
Assembly Chief Clerk  
17 West Main Street  
Room 410  
Madison, WI 53703

**Re: Social and Financial Impact Report—2019 Senate Bill 377 relating to marijuana possession, regulation of marijuana distribution and cultivation, medical marijuana, operating a motor vehicle while under the influence of marijuana.**

Dear Chief Clerks Renk and Fuller:

Pursuant to s. 601.423, Wis. Stat., the Office of the Commissioner of Insurance (OCI) is submitting a social and financial impact report on 2019 Senate Bill 377 relating to marijuana possession, regulation of marijuana distribution and cultivation, medical marijuana, operating a motor vehicle while under the influence of marijuana.

**Medical use of Marijuana**

OCI has determined that Section 190 (Medical use of Marijuana) requires a social and financial impact report for the following reasons:

1. The provision requires coverage of a particular treatment, equipment or drug.
2. The provision requires a particular benefit design or imposes conditions on cost sharing under an insurance policy, plan, or contract for the treatment of a particular disease, condition, or other health care need, for a particular type of health care treatment or service, or for the provision of equipment, supplies, or drugs used in connection with a health care treatment or service.

**Social Impact**

OCI has reviewed the requirements proposed in the 2019 Senate Bill 377 section 190 creating Wis. Stat. § 632.895 (16p). This subsection requires insurers offering disability insurance policies and non-federal, governmental self-insured plans that offer coverage for prescription drugs and devices to additionally provide coverage for the medical use of tetrahydrocannabinols and any necessary equipment or supplies. Insurers and non-federal, governmental self-insured plans may impose the same exclusions, limitations, and cost-sharing provisions that generally apply to prescription drugs and device coverage. Pursuant to Wis. Stat. § 961.632 (2m) (b) residents can possess cannabidiol without psychoactive effect with a written certificate from a licensed physician to treat a medical condition.

However, currently there is no health insurance coverage required for either cannabidiol under Wis. Stat. § 961.632 (2m) (b) or medical tetrahydrocannabinols. Additionally, residents do not currently have legal access tetrahydrocannabinols for medical treatment in the state.

Qualified Health Plans (QHPs), in order to be considered as providing essential health benefits, must offer prescription drug and device coverage pursuant to 45 CFR § 156.122 under the Affordable Care Act (ACA). Additionally, non-federal, governmental self-insured plans are subject to Wis. Stat. § 632.895 (9) to (17). Therefore, at a minimum, residents who are insured by QHPs and residents who are covered by self-insured non-federal governmental plans would be eligible for coverage of medical tetrahydrocannabinol under the bill. There are several categories of disability insurance plans that are not currently subject to all ACA requirements including, "grandfathered plans" (plans that were in existence as of March 23, 2010, have been continually offered and have benefits that have not significantly changed over time), and "transitional plans" (plans offered primarily to employers that have been exempted from full compliance with the ACA). Although not required by federal law, it is indeterminate as to how many fully-insured disability insurance plans that are not QHPs provide prescription drug coverage and, therefore, would be subject to the coverage requirement. OCI is unable to definitively determine how many residents could benefit from the proposed mandated coverage.

### **Financial Impact**

Currently, under the ACA individual, small and large group health plans must provide prescription drug coverage that may impose exclusions, limitations and cost-sharing provisions that generally apply to similar coverage. Insurers offering coverage through the federal marketplace exchange must provide coverage that is substantially similar to the state's established benchmark plan. The state's benchmark plan includes both state and federal coverage requirements and plans are required to offer prescription drugs consistent with 45 CFR 156.122. Insurers offering grandfathered plans or transitional plans, non-federal governmental health plans, self-insured private employer plans and large employer group health plan are not restricted to offering a plan that is similar to the Wisconsin benchmark plan. Large employers and non-federal governmental plans may select a benchmark plan from another state provided the plan includes Wisconsin's mandated benefits. For these latter groups, OCI is unable to determine whether the newly proposed prescription drug mandate would provide more expansive benefits than is currently provided. Therefore, OCI cannot determine whether or not there would be an additional cost for the proposed prescription drug mandate.

Federal guidance requires a state that mandates health benefits in excess of the benchmark plan to defray the cost of the additional mandated health benefits but only for coverage offered through the federal marketplace exchange (see, 45 CFR § 155.170). Wisconsin's benchmark plan was established as of January 1, 2014, and included all statutory health mandates active on that date. 2019 Senate Bill 377 section 190, creates a new category of medication that is to be covered only if the disability insurance plan offers prescription drug coverage. The state would only be required to defer costs in the event that the medical tetrahydrocannabinols as proposed in 2019 Senate Bill 377, was found by the federal government to extend coverage outside the scope of the benchmark plan.

Chief Clerks Renk and Fuller

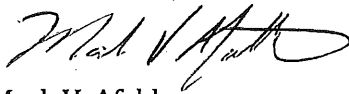
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Therefore, OCI is unable to determine whether the proposed health benefit will have a financial impact on health insurers or non-federal, governmental plans offering prescription drug coverage. OCI is also unable to determine the impact on premiums or costs to policyholders since the financial impact on health insurers is indeterminate. Further, it is indeterminate how many residents would benefit from access to the medication, what the expected utilization would be, or whether the use of the medical tetrahydrocannabinols would substitute for more expensive treatments or services since the extent of the medical use of tetrahydrocannabinols is not fully known.

Please contact Nathan Houdek at (608) 266-2493 or [Nathan.Houdek@wisconsin.gov](mailto:Nathan.Houdek@wisconsin.gov) if you have any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark V. Afable", with a stylized flourish at the end.

Mark V. Afable  
Commissioner

Cc: The Honorable Tony Evers, Governor of Wisconsin