

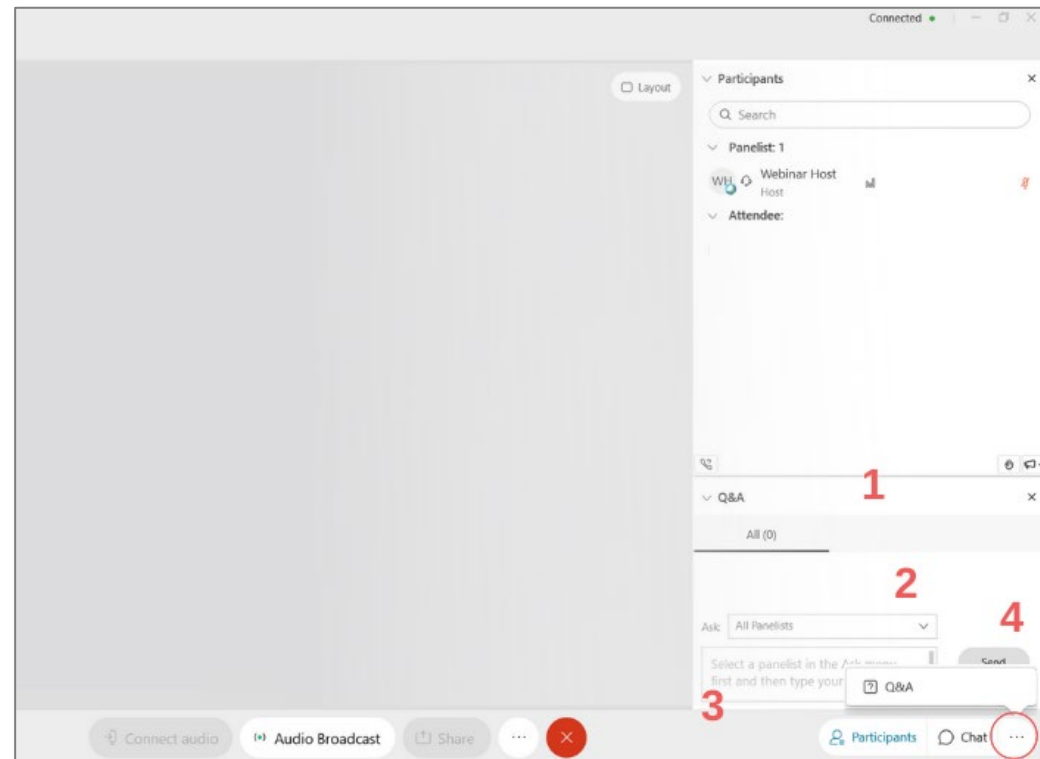
Legal Protections to Prevent Discrimination against Medical Cannabis Patients

April 8, 2021



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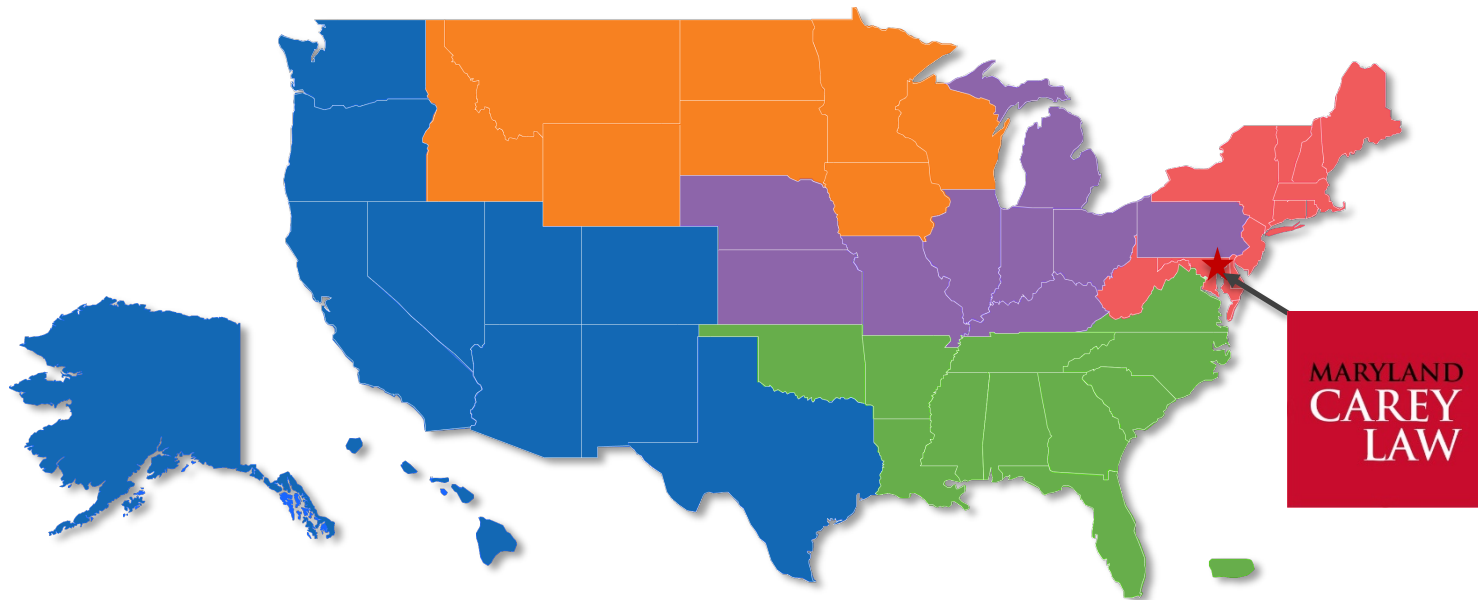
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The Network for Public Health Law



Robert Wood Johnson Foundation



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State Protections for Medical Cannabis Patients

April 8, 2021



Overview

- 36 states & Washington, D.C. recognize medical cannabis as lawful medication
 - A determination by a licensed medical provider is necessary
- Laws in many of these states do not protect medical cannabis patients from discrimination related to employment, education, rental of homes, or custody and visitation of their children





Why do patients need protections?

- Treating medical cannabis patients differently is discriminatory and stigmatizing
 - Produces negative health outcomes and may cause patients to delay or not seek medical cannabis treatment
- Makes patients vulnerable to other negative health outcomes
 - Economic instability
 - Housing insecurity
- Addresses historical inequities and discriminatory practices in certain areas
- Undermines the decision of states to provide a medical cannabis program



Employment – Americans with Disabilities Act

- The Americans with Disabilities Act (“ADA”) does not apply
 - Cannabis remains a Schedule I drug under federal law
 - Therefore, medical cannabis use is categorized an “illegal use of drugs” under the ADA
 - There are no exceptions for medical cannabis use
- Consequently, there are no federal protections for disabled employees who are treating their medical conditions with medical cannabis





Employment – Americans with Disabilities Act

- Because the ADA does not apply, state law policies are crucial to ensuring medical cannabis patients are protected from workplace discrimination
- At least nine states and D.C. have introduced bills this year that propose new laws or strengthen existing laws that provide employment protections to medical cannabis employees



- Recognizes that a drug test alone is not indicative of impairment





Employment – Protections for Employers

- Under these explicit protections, employers can still:
 - Adopt policies and procedures that prohibit impairment at work
 - Comply with the federal Drug Free Workplace Act
 - Distribute formal drug-free workplace policy & establish drug-free awareness program
 - Notify federal contracting agency of any covered violation
 - Take direct action against employee who violates
- Do not require employers to take any action that would violate federal law or risk the loss of federal funding
 - Exception for specific occupations



Employment – Reasonable Accommodations

- Nevada: Reasonably accommodate medical needs of a medical cannabis patient
 - Reasonable accommodation = “any change in the work environment or policy & procedure that enables an individual with a disability to have equal employment opportunities”
 - Does not required the employer to:
 - Modify the job or working conditions
 - Implement accommodations that would endanger persons or property, impose undue hardship on the employer, or prohibit the employee from doing their job
- New York - Medical cannabis use is defined by statute as a disability and is thereby protected under state civil rights laws

School Enrollment

- 10 states prohibit schools from denying enrollment or penalizing medical cannabis patients seeking an education
 - Includes: AZ, AR, CT, DE, HI, IL, ME, MN, NJ, RI
- Why is this good?
 - More education leads to higher paying jobs, access to health-promoting benefits (i.e. health insurance), healthier foods, time to exercise, and access to transportation





Organ Transplants

- 11 states prohibit the disqualification of a patient from organ transplants because of their status as a medical cannabis patient
 - Includes: AZ, AR, CA, DE, HI, IL, MN, MO, NJ, RI, UT
- Medical cannabis patients are denied transplants because of a concern that cannabis would increase risk of transplant failure - medical cannabis does not place the organ recipient at an increased risk for rejection
- Why is this protection good?
 - Gives equal access to life-saving organ transplants



Housing Rentals

- 11 states prohibit landlords from refusing to lease or penalizing a tenant solely for the tenant's status as a medical cannabis patient
 - Includes: AZ, AR, CT, DE, HI, IL, ME, MN, NH, NJ, RI
- Why is this important?
 - Reduces housing instability
 - Reduces frequency of moving





Child Custody and Visitation Rights

- 12 states provide that a person entitled to child custody or visitation rights cannot be denied such rights due to their use of medical cannabis, unless their use of cannabis creates an unreasonable danger to the minor
 - No presumption of neglect or endangerment based on the parent's use of cannabis
 - Includes: AZ, AR, CA, DE, HI, IL, ME, MI, MN, NH, NJ, PA
- Why is this important?
 - Parental presence is critical to a child's life for development and growth
 - Recognizes the constitutional right to parent



Workers' Compensation

- 6 states recognize that workers' compensation must reimburse injured workers for costs associated with medical cannabis treatment if treatment is “reasonable and necessary”
 - Includes: NM, CT, NJ, NY, CA, MN
- 2 states allow for reimbursement of medical cannabis treatment but do not require it
 - Includes: LA, NH
- 12 states explicitly state that medical cannabis is not reimbursable by workers' compensation
 - Includes: ME, AZ, MT, UT, FL, OR, CO, ND, IL, MI, OH, VT



Workers' Compensation

- Courts should not be determining whether workers' compensation covers medical cannabis because such cases have produced mixed results
- These varied outcomes may create confusion, inequitable results, and fail to provide employees with any clear guidelines as to coverage options
 - New Hampshire Supreme Court ruled that federal law does not preempt workers' compensation reimbursement
 - Massachusetts Supreme Judicial Court found that medical cannabis is not compensable under workers' compensation



Workers' Compensation

- Why are employers/insurers concerned about reimbursing for medical cannabis treatment?
 - Worried about breaking federal law
- But no real threat of federal prosecution for reimbursement
Why?
 - 6 states already require reimbursement - no federal actions against them.
 - Prosecutorial discretion
 - Appropriations rider

- Providing workers' compensation benefits to medical cannabis patients improves health & wellbeing of workers.
 - 19.5% drop in workplace fatalities
 - Opioid epidemic - cannabis is effective in treating pain symptoms, provides workers with a safer alternative to opioids





Conclusion

- Medical cannabis is a legitimate medical treatment in 36 states and Washington, D.C. but many states fail to adequately protect medical cannabis patients from discrimination
- Without anti-discrimination measures, states risk undermining the effectiveness of their medical cannabis programs and the health of patients
- To learn more: visit the Network for Public Health's companion survey and issue brief of state policies

Thank you for your time

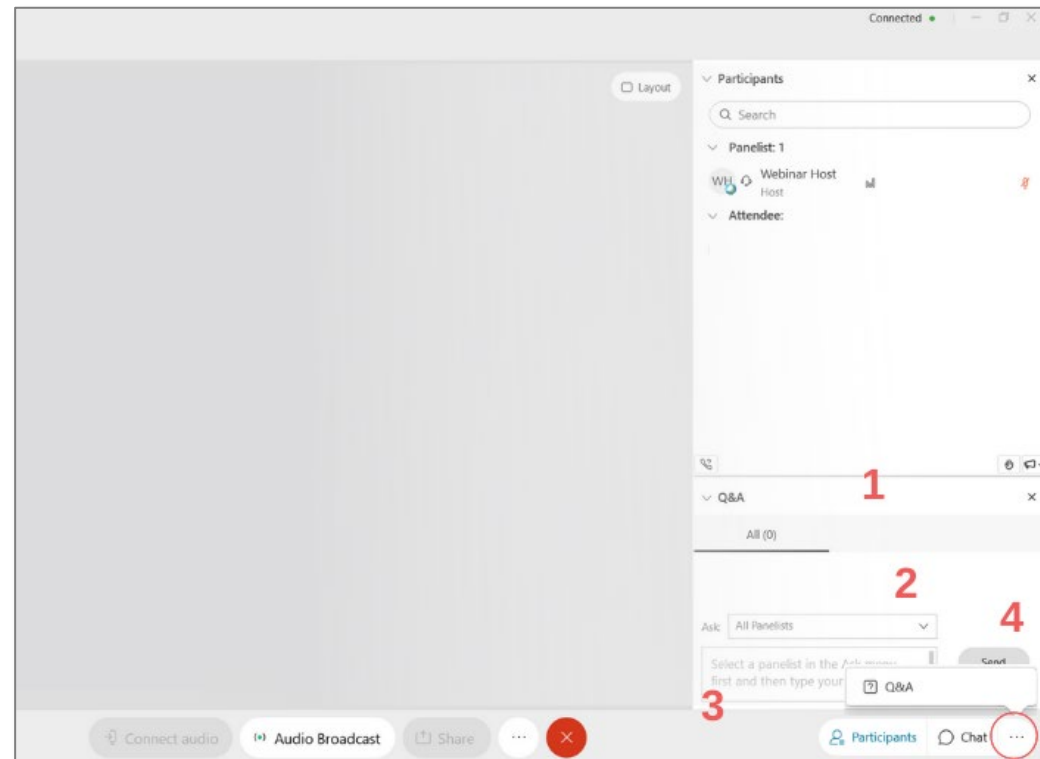
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