Compassionate Care Act

Obligations
Restrictions
Unresolved Issues
“Medical Marijuana” – A term without meaning

- Marijuana is NOT medicine
- Marijuana remains Illegal
Marijuana - Schedule I Controlled Substance

- Not FDA Approved
- No dosing guidelines
- No product consistency
- No demonstrated labeling accuracy
- Limited, if any, known efficacy in treatment of condition
State and Federal Conflict

- Federal Supremacy
- Preemption
- Dual Sovereignty - “anti-commandeering doctrine”
State and Federal Conflict

- State actors cannot violate federal law
- State cannot provide incentives to violate federal law
- Consequence of judicially determined preemption
Compassionate Care Act

19-24.1-32 Protections

- A registered qualifying patient is not subject to arrest or prosecution or the denial of any right or privilege, including a civil penalty or disciplinary action by a court or occupational or professional regulating entity for the acquisition, use, or possession of usable marijuana or related supplies under this chapter.
Compassionate Care Act

19-24.1-33 Limitations

- This chapter does not authorize a person to engage in, and does not prevent the imposition of any civil liability or criminal liability or other penalties for engaging in the following conduct: ***

  Operating, navigating, or being in actual physical control of a motor vehicle, aircraft, train, or motorboat, while under the influence of marijuana. However, a registered qualifying patient may not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana that appear in insufficient concentration to cause impairment.
Compassionate Care Act

  - This chapter does not prohibit an employer from disciplining an employee for possessing or consuming usable marijuana in the workplace or for working while under the influence of marijuana.
Drug Free Workplace

41 U.S. Code § 8101 - Definitions and construction

Drug Free Workplace

41 U.S. Code § 8101 -

Definitions and construction

- (5) Drug-free workplace - The term “drug-free workplace” means a site of an entity — (A) for the performance of work done in connection with a specific contract or grant described in section 8102 or 8103 of this title; and (B) at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of the Anti-Drug Abuse Act of 1988 (Public Law 100-690, 102 Stat. 4181).
US DOT Drug and Alcohol Testing Program

49 CFR Pt. 40

§ 40.151 What are MROs prohibited from doing as part of the verification process?

- As an MRO, you are prohibited from doing the following as part of the verification process:
  
  (e) You must not verify a test negative based on information that a physician recommended that the employee use a drug listed in Schedule I of the Controlled Substances Act. (e.g., under a state law that purports to authorize such recommendations, such as the “medical marijuana” laws that some states have adopted.)
The term “illegal use of drugs” means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.
Human Rights Act

14-02.4-03. Employer's discriminatory practices

- An employer is not required to provide an accommodation that would disrupt or interfere with the employer’s normal business operations; threaten an individual’s health or safety; contradict business necessity of the employer**
Human Rights Act

14-02.4-03. Employer's discriminatory practices

- It is a discriminatory practice***
  - participation in **lawful activity** off the employer's premises during nonworking hours which is not in **direct conflict** with the essential business-related interests of the employer.
Human Rights Act

14-02.4-08. Qualification based on religion, sex, national origin, physical or mental disability, or marital status.

- Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice [to treat adversely] ***
  - On the basis of that individual’s participation in lawful activity.
  - If that participation is contrary to a bona fide occupational qualification that reasonably and rationally relates to employment activities and the responsibilities of a particular employee or group of employees, rather than to all employees of that employer.
FMLA

29 U.S. Code § 2611 - Definitions

(11) Serious Health Condition

The term “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves— (A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) continuing treatment by a health care provider.
Open Issues

- Federal Preemption of ND Law
- The meaning of “under the influence”
- How to quantify, identify or determine impairment
Recommendations