Health Care Trends and Developments

Daniel R. Brice, Esq.
Partner and Co-Chair
Blitman & King LLP
Syracuse, New York

Katherine A. Hesse, Esq. CEBS, CEBS Compliant, ISCEBS-Fellow
Partner
Murphy, Hesse, Toomey & Lehane, LLP
Boston, Massachusetts

COVID-19

- Impact on Claims
- Impact on Premiums
- Impact on Contributions

COVID-19 (Legislation)

- Families First Coronavirus Response Act
  - Emergency Paid Sick/Family Leave
  - COVID-19 Testing
    - Telehealth
    - Retiree Plans
- CARES Act
  - Over-the-counter drugs without a script—health expense accounts
- State Legislation
  - Application to self-insured plans
  - COVID-19 Leave

Affordable Care Act (ACA) Status

- Passage
- The Patient Protection and Affordable Care Act, P.L. 111-148 ("PPACA", "Health Care Reform" or the "Act")
- Despite indications that passage seemed remote, if not impossible, on March 21, 2010, the House of Representatives passed the health care reform package (PPACA) initially passed by the Senate in December 2009.

ACA Status

- Individual Mandate—(Repealed but still in effect for 2018.) All U.S. citizens and legal residents who can afford health coverage are required to have such coverage in place. Those who do not have coverage will be required to pay a financial penalty for each year in which they do not have coverage. PPACA §1501; IRC § 5000A. Individuals covered by Medicaid or Medicare will not be subject to a penalty.

ACA Status

- Future
  - *California v. Texas*, U.S. Supreme Court case—20 states seeking to have ACA ruled unconstitutional—argument—when Congress eliminated the individual mandate, it invalidated the entire Act
  - Impact of new Supreme Court members
  - Push for single-payer in response to challenge

Future of ACA Provisions

- Difficult to predict; significant overhaul possible
- 20 million voters insured because of ACA
- What about universally popular provisions—Age 26 coverage, no pre-existing condition exclusions . . .

Current State of the ACA Exchanges

- Profit-driven model
- Private insurers dropping out in some markets
- Premiums rising for some polices; however, subsidies offset cost to the individual

Rising Cost of Coverage

- Profit-driven system
- An aging population
- Prescription drug costs—specialty drugs—gene therapy
- Excessive treatment/testing
- Continuation of trend from "defined benefit" type health coverage (premiums pay for health care) to "defined contribution" type health coverage (participant pays via high deductible)

Trends—Medical Expense Accounts

- Health Savings Account (HSA)
- Health Reimbursement Account (HRA)
- Health Flexible Spending Account (FSA)

HSAs—Overview

- Health Savings Account (HSA)
  - The HSA may be utilized to pay for qualified medical expenses including costs for deductibles, co-insurance or co-payments not covered by a medical plan. With limited exception, HSA monies may not be used to pay for premiums.
  - The individual owns the account. Contributions may be made to an HSA only if the individual is enrolled in a high deductible health insurance plan.

HRAs—Overview

- Health Reimbursement Account (HRA)
  - Plan/employer owns the account
  - HRA balances may rollover from year to year, depending on the language of the Plan.
  - Only the employer may deposit monies into the account. The deposits may be made on a pre-tax basis.
  - There is no maximum contribution limit for HRAs.
  - New types of HRAs (individual coverage and excepted benefit)

FSAs—Overview

- Health Flexible Spending Account (FSA)
  - The FSA may be utilized to pay for qualified medical expenses not covered by other insurance. FSA monies may not be used to pay for premiums.
  - The employer/plan owns the account.
  - FSAs may be used with both high deductible and traditional health plans.
  - Both the employee and the employer may deposit money into the account on a pre-tax basis.

Wellness Incentives

- Under ERISA, health plans are generally prohibited from discriminating in eligibility, benefits or premiums based on a health factor.
- Wellness Programs provide an exception to the prohibition.
- EEOC discrimination concerns with scope of incentives plans may offer to encourage participation.

Medical Air Transport

- Almost exclusively out-of-network
- Aggressive Tactics by providers
- Increase in litigation

Medical Air Transport

- Plan Language Options
  - Exclusion
    - Total or carve outs
  - Clear coverage terms regarding "Medically Necessary"
  - Participant Impact—Balance Billing

Medical Air Transport

- Litigation examples
  - *Couture v. GM* (Ariz)—Air transport from Florida to Michigan so participant could be closer to treating doctor—medically necessary
  - *Gernes v. Health & Welfare Plan of Metro* (Mass)—Air transport claim ($798,400) from France to Boston so participant could be closer to home—not medically necessary
  - *Estate of Larrimer* (Ohio)—Air transport from California to Ohio—not medically necessary where California hospital was able to treat condition
  - *Biller v. Excellus* (New York)—Mercy Flight from Pennsylvania to Ohio—not medically necessary—Cleveland Clinic was not nearest facility that could treat the condition

Out-of-Network Lawsuits

- Developing trend of out-of-network providers seeking in-network reimbursement via litigation
- Providers relying on Prior Authorization as contract
- Cases are often brought in state court as opposed to federal ERISA litigation
- Out-of-state substance abuse service claims

Mental Health Parity and Addiction Act: Does Your Plan Comply?

OVERVIEW

- The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 ("MHPAEA" or "Act"), as amended by the Affordable Care Act, generally requires that group health plans and health insurance issuers offering group or individual health insurance coverage ensure that the financial requirements and treatment limitations on Mental Health or Substance Use Disorder benefits they provide are no more restrictive than those on medical or surgical (med/surg) benefits.
- This is commonly referred to as providing such benefits in parity with med/surg benefits.
- Governmental Plans:

Mental Health Parity and Addiction Act: Does Your Plan Comply?

OVERVIEW *(continued)*

- There are requirements for determining parity with respect to **financial requirements** (such as copays) and for **treatment limitations** (such as visit limits), which limit the scope or duration of benefits for treatment.
- Treatment limitations may be **quantitative treatment limitations** (QTLs) which are numerical in nature (such as visit limits) or **non-quantitative treatment limitations** (NQTLs), which are non-numerical limits on the scope or duration of benefits for treatment (such as preauthorization requirements).

Mental Health Parity and Addiction Act: Does Your Plan Comply?

CLASSIFICATIONS

- The final rule does not require a plan to provide any mental health or substance use disorder benefits.
- However, if a plan provides mental health or substance use disorder benefits in any "classification of benefits," the mental health or substance use disorder benefits must be provided in every classification in which medical/surgical benefits are provided.
  - Exception for ACA mandated preventive services.
- A plan must apply the same standards to medical/surgical benefits and to mental health and substance use disorder benefits in determining in which classification a particular benefit belongs.

Mental Health Parity and Addiction Act: Does Your Plan Comply?

CLASSIFICATIONS *(continued)*

- The six classifications are as follows:
  - Inpatient, in-network
  - Inpatient, out-of-network
  - Outpatient, in-network
  - Outpatient, out-of-network
  - Emergency care
  - Prescription drugs

Mental Health Parity and Addiction Act: Does Your Plan Comply?

FINANCIAL REQUIREMENTS AND QUANTITATIVE TREATMENT LIMITATIONS

- A plan that provides both medical/surgical benefits and mental health or substance use disorder benefits may not apply any financial requirement or quantitative treatment limitation in any of the classifications that is more restrictive than the predominant financial requirement or treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification.

Mental Health Parity and Addiction Act: Does Your Plan Comply?

NONQUANTITATIVE TREATMENT LIMITATIONS

- A plan may not impose a nonquantitative (e.g., preauthorization) treatment limitation with respect to mental health or substance use disorder benefits in any classification unless . . .
  - Under the terms of the plan as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits in the classification.

Mental Health Parity and Addiction Act: Does Your Plan Comply?

NONQUANTITATIVE TREATMENT LIMITATIONS
(continued)

- The final rule provides the following non-exhaustive list of types of nonquantitative treatment limitations:
  - Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, based on whether the treatment is experimental or investigative;
  - Formulary design for prescription drugs;
  - For plans with multiple network tiers, network tier design;
  - Standards for provider admission to participate in a network, including reimbursement rates;

Mental Health Parity and Addiction Act: Does Your Plan Comply?

NONQUANTITATIVE TREATMENT LIMITATIONS
(continued)

- The final rule provides the following non-exhaustive list of types of nonquantitative treatment limitations: *(continued)*
  - Plan methods for determining usual, customary, and reasonable charges;
  - Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective; (also known as fail-first policies or step therapy protocols);
  - Exclusions based on failure to complete a course of treatment; and
  - Restrictions on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan or coverage.

Mental Health Parity and Addiction Act: Does Your Plan Comply?

WARNING SIGNS

- The U.S. DOL issued "Warning Signs" for plans regarding compliance with the MHPAEA.
- According to the DOL, stakeholders have requested examples of plan provisions that might trigger careful analysis of the coverage side in order to ensure MHPAEA compliance.
- **It is important to note that the plan/policy terms listed in the Warning Signs do <u>not</u> automatically violate the law. Key compliance question remains . . . Is there parity?**
- The DOL emphasized the categories and examples are not exhaustive.

Mental Health Parity and Addiction Act: Does Your Plan Comply?

WARNING SIGNS *(continued)*

- Preauthorization and Pre-service Notification Requirements
  - ***Blanket Preauthorization Requirement:*** Plan/insurer requires preauthorization for all mental health and substance use disorder services.
  - ***Treatment Facility Admission Preauthorization:*** Plan/policy states that if the participant is admitted to a mental health or substance abuse facility for non-emergency treatment without prior authorization, participant will be responsible for the cost of services received.

Examples:

- Plan states that for inpatient mental health precertification is required.
- Plan requires pre-notification or notification ASAP for non-scheduled mental health/substance abuse disorder benefits ("MH/SUD") admissions and reduces benefits 50% if pre-notification is not received.
- Plan requires preauthorization for all inpatient and outpatient treatment of chemical dependency and all inpatient and outpatient treatment of serious mental illness and mental health conditions.
- Plan requires preauthorization or concurrent care review every "x" days for MH/SUD services but not for med/surg services.

Mental Health Parity and Addiction Act: Does Your Plan Comply?

WARNING SIGNS *(continued)*

- ***Medical Necessity Review Authority:*** Plan's/insurer's medical management program (precertification and concurrent review) delegates its review authority to attending physicians for med/surg services but conducts its own reviews for MH/SUD services.
- ***Prescription Drug Preauthorization:*** Plan/insurer requires preauthorization every three months for pain medications prescribed in connection with MH/SUD conditions.
- ***Extensive Pre-notification Requirements:*** Plan/insurer requires pre-notification for all mental health and substance use disorder inpatient services, intensive outpatient program treatment, and extended outpatient treatment visits beyond 45-50 minutes.

Mental Health Parity and Addiction Act: Does Your Plan Comply?

OTHER

- ***Patient Non-compliance:*** Plan/policy excludes services for chemical dependency in the event the covered person fails to comply with the plan of treatment, including excluding benefits for MH/SUD services if a covered individual ends treatment for chemical dependency against the medical advice of the provider.
- ***Residential Treatment Limits:*** Plan/policy excludes residential level of treatment for chemical dependency.
- ***Geographical Limitations:*** Plan/policy imposes a geographical limitation related to treatment for MH/SUD conditions but does not impose any geographical limits on med/surg benefits.
- ***Licensure Requirements:*** Plan/policy requires that MH/SUD facilities be licensed by a State but does not impose the same requirement on med/surg facilities.

Case Summaries of Litigation Surrounding the MHPAEA

***A.F. v. Providence Health Plan,* 35 F.Supp.3d 1298 (D. Org. 2014)**

- A federal district court in Oregon granted plaintiffs' partial motion for summary judgment, finding that Providence's "Developmental Disability Exclusion" (which excludes coverage for services "related to developmental disabilities, developmental delays, or learning disabilities") violated both the Federal Parity Act and the Oregon Mental Health Parity Act.
- Plaintiffs alleged that, under the Developmental Disability Exclusion, Providence routinely denied coverage for applied behavior analysis therapy for participants and beneficiaries diagnosed with autism spectrum disorders.
- Because the Developmental Disability Exclusion applied to services related to developmental disabilities (which are considered mental health conditions) yet did not apply to services related to medical or surgical conditions, the court found that the exclusion is prohibited by the plain text of both statutes.

Case Summaries of Litigation Surrounding the MHPAEA

***Craft v. Health Care Service Corporation*, 84 F.Supp.3d 748 (N.D. Ill. 2015)**

- Group health benefits plan participant and participant's daughter filed suit under ERISA after plan administrator denied a request for preauthorization for inpatient residential treatment care for daughter who suffered post-traumatic stress disorder, recurrent, severe major depressive disorder, and anorexia nervosa.
- Defendant has moved to dismiss plaintiffs' complaint on the ground that the statute did not apply to "treatment settings" during the relevant time period.
- The court denied Defendant's motion to dismiss and found Defendant's group health benefits plan, which categorically excluded expenses for residential treatment centers for mental health services violated requirement under Parity Act that "treatment limitations" for mental health treatment be in parity with those for medical/surgical conditions.

Case Summaries of Litigation Surrounding the MHPAEA

Joseph F. v. Sinclair Services Company,
2016 U.S. Dist. LEXIS 8644 (C.D. Utah 2016)

- Participants in health plan governed by ERISA brought action against the plan and plan administrator seeking benefits relating to long-term residential treatment services for participants' minor daughter.
- The Utah district court held that the plan's residential treatment exclusion violated the Mental Health Parity Act.
- The court found that ERISA health plan's residential treatment exclusion violated the Mental Health Parity Act because it was a separate treatment limitation applicable only with respect to mental health benefits.

Case Summaries of Litigation Surrounding the MHPAEA

K.M. v. Regence Blueshield, **2014 U.S. Dist. LEXIS 27685 (W.D. Wash. 2014)**

- Plaintiffs brought suit alleging that Defendants have failed to comply with Washington's Mental Health Parity Act and the Mental Health Parity and Addiction Equity Act of 2008.
- Plaintiffs' parents submitted claims to Defendant for coverage of his speech and occupational therapies in connection with his autism, but Defendant denied coverage because B.S. was "over the age of six and did not meet the age limit set by his contract for this benefit."
- Plaintiffs contend that the health care plans underwritten by Defendants do not provide coverage for plaintiffs medically necessary neurodevelopmental therapy, thus violating the mandates of the Act.
- The Court granted the plaintiff's preliminary injunction prohibiting defendants from denying coverage for neurodevelopmental therapy to treat mental health conditions based on the age exclusion in defendants' plans.

Case Summaries of Litigation Surrounding the MHPAEA

- (2019) Anthem Health Plans of Kentucky pays $300,000 to settle class action challenging autism coverage ABA Therapy
- Focus of the case was coverage of applied behavior analysis therapy for autistic children
- Similar cases are pending against other plans

Case Summaries of Litigation Surrounding the MHPAEA

***Smith v. United Healthcare Ins., Co.,* 2019 U.S. Dist. LEXIS 120151 (N.D. Cal. 7/18/19)**

- Lawsuit challenging carrier's practice of discontinuing reimbursement for therapy sessions by psychologists and masters level counselors
- Plaintiffs survived motion to dismiss, despite not identifying comparable medical procedure policy covers more fully

Case Summaries of Litigation Surrounding the MHPAEA

***Ryan S. v. UnitedHealth Group, Inc.,* (C.D. Cal. 7/11/19)**

- Class action alleges mishandling and underpaying substance abuse claims.
  Allegations include refusing to authorize treatments at certain facilities, imposing treatment limits that violate mental health parity laws, questionable billing tactics and refusing to provide coverage for breathalyzer tests and counseling services.

Case Summaries of Litigation Surrounding the MHPAEA

***Timothy D. v. Aetna,* 2019 U.S. Dist. LEXIS 100388 (D. Utah 6/14/19)**

- Plaintiff challenges wilderness therapy exclusion seeking $106,000 in costs incurred with respect to the treatment.
- Wilderness therapy combines traditional mental health care with outdoor experience
- Wilderness therapy can cost hundreds of dollars per day and programs can last weeks or months
- Multiple cases have addressed this issue; until recently lawsuits were generally dismissed. However, there has been recent success for Plaintiffs—such as the above case where dismissal was avoided based on allegations that other "intermediate" treatment type settings were available for medical coverage.

Rx Drugs (Importation)

- Importation of prescription drugs U.S. Food & Drug Administration ("FDA") enforcement
  - New Program allows lawful importation by eligible groups (states, territories, Indian tribes) of certain prescription drugs from Canada
- In most cases, it is unlawful for individuals to import prescription drugs from other countries
- Commercial importation programs are available

Key Takeaways

- Know the details of the health plan
- Keep updated on legal developments
- Communicate with peers regarding trends and practice

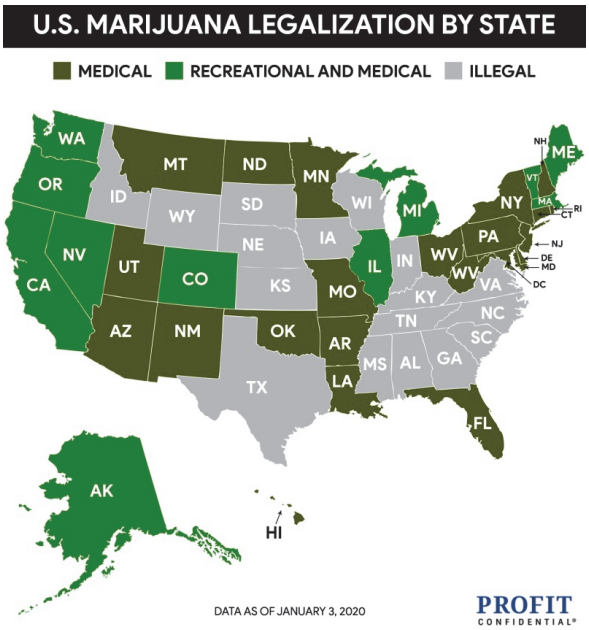
Medical Marijuana: The CSA

- The Controlled Substances Act of 1970 ("CSA") regulates the use, distribution, possession, manufacture and importation of certain drugs.
- The CSA sets out 5 schedules to classify drugs based on their accepted medical uses, the potential for abuse and their psychological and physical effects on the body.

Medical Marijuana: The CSA

- Schedule I contains the most severe restrictions on access and use and the most severe criminal penalties; Schedule V the least severe.
- Marijuana is classified as a Schedule I drug.
  - Other examples of Schedule I drugs include heroin, LSD, ecstasy, and methaqualone
  - Schedule II includes cocaine, fentanyl, methadone, and methamphetamine.
- Hemp-derived cannabidiol (CBD) was removed from Schedule I in 2018.

State-By-State Overview of Legalization of Marijuana



Medical Marijuana— Daniel Wright's Case

- On October 27, 2020, the Supreme Judicial Court of Massachusetts issued a landmark case, its second landmark case on medical marijuana.
  - **Issue**: Whether an insurance company may be ordered to reimburse an employee for medical marijuana expenses pursuant to a general provision of the Massachusetts workers' compensation scheme that requires reimbursement of necessary and reasonable medical expenses.
  - **Holding**: Workers compensation insurers cannot be required to reimburse for medical marijuana expenses.

Daniel Wright's Case

- Describing the current regulatory climate surrounding marijuana as a "hazy thicket," the court observed that the Massachusetts medical marijuana statute expressly prohibits requiring any health insurance provider, or any government agency, to reimburse expenses related to a substance that remains illegal under federal law.
- It then took the opportunity to provide a comprehensive analysis of the Federal Controlled Substances Act and its erratic enforcement, the history of Massachusetts law on medical marijuana, and looked at the laws of many other states as well.

Daniel Wright's Case *(continued)*

- Under the "plain language" of the MMML, insurers are not required to reimburse medical marijuana.
- The Court found that the general language in the WC law requiring WC insurers to reimburse for reasonable medical expenses did not override that plain language.
- The court also noted that many if not most other state MMLs also protect third party insurers from having to provide reimbursement to Medical marijuana patients.

Daniel Wright's Case *(continued)*

- The court rejected Wright's claim that a WC insurer is not a health insurance provider and concluded that the MMML applies to all those providing insurance for medical marijuana payments including WC insurers.
- The court noted that its reasoning would apply equally when an employee seeks reimbursement from his or her private heath insurance provider, which also places the insurer involuntarily at risk of federal prosecution.

Daniel Wright's Case *(continued)*

- Given its holding, the court found it unnecessary to address federal preemption.
- It did note the 2018 SJC of Maine decision in Bourgoin v. Twin Rivers, in which the Maine Supreme Judicial Court found that the federal CSA preempted Maine's MML and thus employers were not responsible for reimbursement of medical marijuana costs for treating work related injuries.
  - Note: Hager v. M & K Constr., 462 N.J. Super. 146, 225 A.3d 137 (App. Div. 2020) finding no preemption.

Wright's Case and Barbuto

- The Mass SJC acknowledged that it had previously considered the issue of involuntary involvement in Barbuto, another landmark case announced 3 years ago.
- State and Federal disability laws generally require employers to provide a qualified disabled person with "reasonable accommodations."
- The issue which gained national attention in Barbuto was the extent to which an employer needed to "reasonably accommodate" employee or prospective employee use of medical marijuana.

Barbuto Decision

- The Massachusetts Supreme Judicial Court allowed Barbuto's reasonable accommodation claim to proceed.
- Barbuto sufficiently alleged that she was a qualified handicapped person
- Barbuto did not automatically win her case on either of these issues:
  - Employer would have the opportunity to prove that medical marijuana use would be an undue hardship for the company

Proving Undue Hardship

- SJC indicated the company could prove undue hardship by showing that offsite medical marijuana use would:
  - Impair employees' performance of their work; or
  - Pose an "unacceptably significant" safety risk to the public, the employee, or fellow employees; or
  - Violate their contractual or statutory obligations—*e.g.*, DOT regulations or Drug Free Workplace Act requirements for recipients of federal grants.

Other Limitations

- Barbuto does not require an employer to condone on-site marijuana use under any circumstances (and neither does the MMML).
- Barbuto did not involve the recreational use of marijuana.
- The Wright court easily distinguished the voluntary acts of patients and doctors from the relief that Wright sought, namely the involuntary forcing of an insurance company to risk prosecution under federal law.

Post-*Barbuto:* Massachusetts

- Employers in Massachusetts have a duty to engage in an interactive process to determine whether an exception to a neutral drug policy is a reasonable accommodation.
- If alternative medicine is less effective, however, exception to drug policy is a facially reasonable accommodation.
- Employer would then bear the burden to prove that making an exception to its policy would be an undue hardship.

Post-*Barbuto:* Other States

- Not all states have found the same way.
- See Noffsinger v. SSC Niantic Operating Company LLC, 273 F. Supp. 3d 326, 33 A.D. Cas. (BNA) 997 (D. Conn. 2017)
- But see Cotto v. Ardagh Glass Packing, Inc., 2018 A.D. Cas. (BNA) 286675, 2018 WL 3814278 (D.N.J. 2018)
- And note In Wild v. Carriage Funeral Holdings, 2020 WL 1144882 (N.J. Mar. 10, 2020)
- What about New York?

Health Insurance

- Does an ERISA covered health plan need to cover medical marijuana under its employee benefit health plans?
- How about a governmental plan?
  - Look to state law
  - NY statute language similar but not identical to MassMML:

"Nothing in this title shall be construed to require an insurer or health plan under this chapter or the insurance law to provide coverage for medical marihuana"

What About Testing/Terminating Employees Using Medical Marijuana?

- Does it depend on your state or city?
- Is there a duty of reasonable accommodation?
- Does it depend on what industry you are in?
- Does it depend on the job duties of the employee?

Testing and Hiring/Firing Based on Status as a Marijuana-User

- Employers in the majority of states, including Oregon, Colorado and California, can require drug tests and take action against employees who test positive for marijuana.
- In some states, however, there are some legal risks for employers who refuse to hire, discipline or discharge medical marijuana users for testing positive for marijuana. This will vary depending on the industry and type of position being filled.

Does EEOC Have a Position on the Accommodation Issue?

- The EEOC has provided only limited insights to its leanings.
- A person who alleges disability based on one of the excluded conditions such as current use of illegal drugs (including marijuana) is not an individual with a disability under the ADA.
- However, an employee cannot be discriminated against under the ADA on the basis of an underlying disability, *e.g.*, drug addiction.

Does EEOC Have a Position on the Accommodation Issue?

- Some have cited a 9th Circuit case: "We do not hold, as the dissent states, that "medical marijuana users are not protected by the ADA in any circumstance." We hold instead that the ADA does not protect medical marijuana users who claim to face discrimination on the basis of their marijuana use.
- See 42 U.S.C. § 12210(a) (the illegal drug use exclusion applied only "when the covered entity acts on the basis of such use").

New York

- New York law
  - Provides protection for certified patients against NY state criminal prosecution
  - Provides protection against disciplinary action by a business solely for actions protected under the NYMML
- New York law provides that being a certified patient
  - Shall be deemed to be having a disability for certain purposes including the HR law
  - Shall not bar enforcement of a policy prohibiting an employee from performing his or her employment duties while impaired.
  - But this shall not require any person or entity to do any act that would put the person or entity in violation of federal law or cause it to lose federal contract or funding.
- New York City prohibits preemployment testing for marijuana.

Medical Marijuana Key Takeaways

- Laws/enforcement continues to change with sometimes different results in different jurisdictions, but it is still illegal under CSA
- Keep up to date with current interpretations as to this changing area of law, including state and industry-specific guidance, how it may affect your plans, your workplaces, your members, your employees
- There will be more litigation to come.

Medical MJ Key Takeaways: Plan, Prepare and Communicate

- Know whether you are covered by the Drug Free Workplace Act or DOT regulations
- Update your policies and job descriptions
- Clearly communicate policies to your employees, prospective employees, and to participants and beneficiaries
- Seek advice of experienced counsel before taking action