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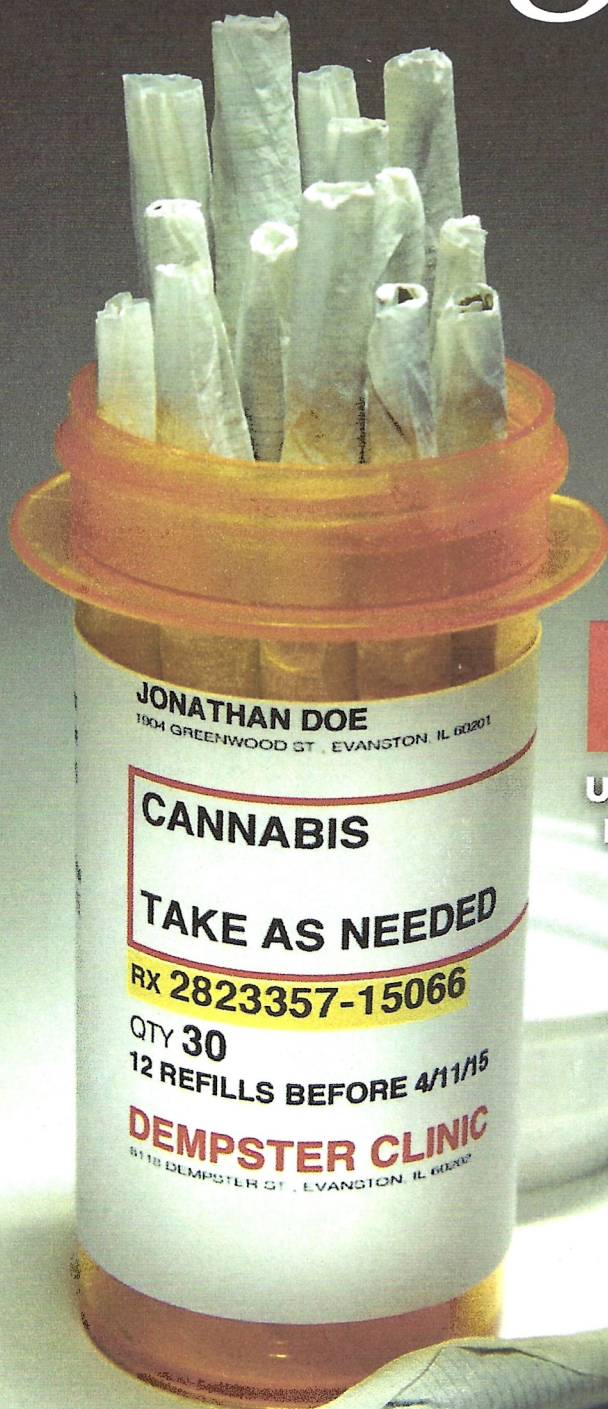
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STRATEGIES FOR SUCCESSFUL RESOLUTION



ARE YOU READY FOR **MEDICAL MARIJUANA?**

Understanding the Medical, Legal, and
Liability Implications for Insurers P22

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ARE YOU READY FOR MEDICAL MARIJUANA?

**Understanding the Medical, Legal, and
Liability Implications for Insurers**

By Mark Pew

The legalization of medical marijuana appears to be a societal inevitability. As of June 2014, 22 states and the District of Columbia have legalized it, and nearly all of the remaining states are considering it. In addition, Colorado, Washington, and the city of Portland in Maine have legalized the recreational use of marijuana.

An August 2014 ballot initiative in Alaska would regulate and tax marijuana like alcohol and would essentially legalize recreational use, and advocates in Oregon are striving to countermand the legislature's refusal to allow a ballot initiative in November 2014 to legalize recreational marijuana. Despite the obvious momentum behind legalization, evolving social policy around marijuana will bring a host of difficult-to-answer questions.

Many payers think that their pharmacy benefit managers (PBMs) will block all medical marijuana prescriptions because there are

no national drug codes. But there already are FDA-approved prescription drugs on the market that contain natural or synthetic marijuana, such as Marinol and Cesamet. Another, Sativex, is undergoing clinical trials in the U.S.

The more controversial forms of medical marijuana are typically seen in recreational use, the kind that is usually smoked, vaporized, or eaten. These still are illegal at the federal level as the Drug Enforcement Agency categorizes marijuana as a Schedule I drug.

States of Mind

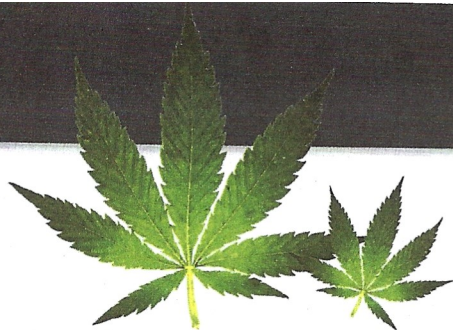
States have taken different approaches to regulation. Some jurisdictions, like California, have relatively lax rules regarding how medicinal marijuana may be obtained. Usage is largely subject to an individual saying, "I have pain."

On the other hand, Florida's Governor Rick Scott has pledged to sign the recently passed SB 1030, which would only decriminalize "Charlotte's Web," a marijuana

extract high in cannabidiol that has been shown to treat certain seizure disorders. Kentucky would limit medical marijuana's use to certain conditions and diseases, including terminal illnesses, peripheral neuropathy, cancer, and AIDS.

It's hard to argue with the tax revenue that marijuana is capable of producing. A June 2005 report from Harvard University's Dr. Jeffrey Miron estimated that replacing marijuana prohibition with a system of taxation and regulation similar to alcohol would produce combined savings and tax revenues of between \$10 billion to \$14 billion per year.

According to a March 2014 article on Forbes.com, Colorado sold \$14 million worth of recreational marijuana in January 2014, delivering \$3.5 million in total tax revenue to the state (\$1.5 million came from medical marijuana). In Denver, total taxes are as high as 21.12 percent. The fact that Colorado potentially could reap \$40 million a year in marijuana tax revenue certainly provides strong motivation for other



So building agility into the system to deal with the unintended consequences is critical.

states to consider legalization.

Following are some considerations for states as they contemplate the legalization of medical marijuana:

- ① **Deal with the dissonance between federal and state laws.**
- ② **Determine the scope of treatment.** Should use be limited to specific disorders/diagnoses?
- ③ **Understand the entire constituency's beliefs and values about marijuana.** Does the majority of the population favor legalization, or is it just a vocal minority?
- ④ **Consider reciprocity.** What are neighboring states doing, and will their policies be acceptable?
- ⑤ **Remember the law of unintended consequences.** We can foresee unintended consequences and develop what-if scenarios around them. Unintended consequences come from the things you cannot predict, such as pets getting sick from eating marijuana or fourth graders selling pot, as has happened in Colorado.

Comp Concerns

Workers' compensation payers and their medical management partners also face a tough task. Medical marijuana use is complicated and multidimensional, with nearly as many pros (anti-nausea, anti-seizure, anti-anxiety, and pain relief) as cons (increased risk of schizophrenia, reduced motivation, and potential lung damage). Some studies suggest that marijuana cigarettes pose as much risk for lung damage as tobacco; others say casual smoking does not cause lung damage. It will take the type of randomized, controlled, multiphase clinical trials required for FDA drug approval to know the answers.

Advocates suggest that marijuana is preferable to manufactured anti-anxiety drugs and may be a safer painkiller than opioids, although they lack clinical evidence to back those assertions. Because marijuana is not FDA approved, studies on its efficacy and safety have been largely flawed and, therefore, inconclusive.

Patient safety regarding drug interactions also is important. The American Medical Association affirmed

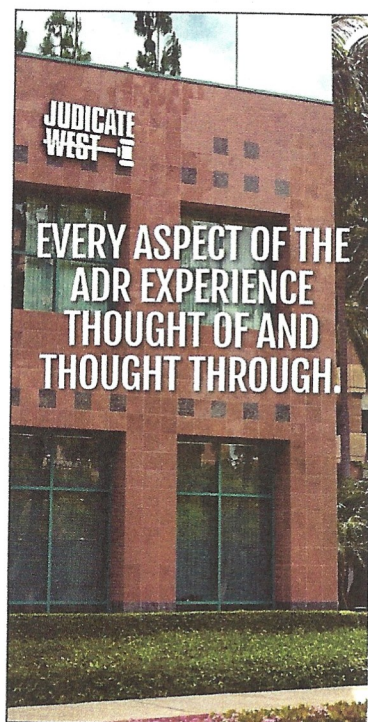
HOW PAYERS CAN PREPARE FOR MEDICAL MARIJUANA

- Understand legal implications.
- Understand jurisdictional differences, compliance issues, and neighboring states' statutes and any reciprocity.
- Evaluate medical/pharmacological aspects. Does it do more harm than good? What are the dangers, and how can they be mitigated?
- Consider impact on workplace, workplace safety, and drug-free workplace policies.
- Develop an enterprise-wide policy for addressing the use and reimbursement of medical marijuana for workers' compensation illnesses and injuries.
- Implement jurisdictionally specific policy. This might include prior authorization and case-by-case decisions, PBM formulary, and urine drug testing.

its opposition to the legalization of marijuana in November 2013, saying that it "is a dangerous drug and, as such, is a public health concern." Just as states are embracing prescription drug monitoring programs, medical marijuana could come along and bypass the scrutiny of pharmacists who know much more about drug interactions than people working at marijuana dispensaries.

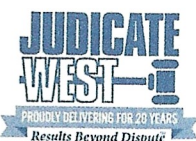
Employers and other payers need to understand the medical issues, legal implications, and liabilities, which includes potential violations of federal law if parts of their businesses involve federal contracts. Then they must create enterprise-wide policies for managing medical marijuana. Most payers are multijurisdictional and have to comply with a mosaic of legal issues and jurisdictional perspectives. Following are considerations for that process:

- ① How do federal RICO statutes affect the reimbursement of marijuana, and do they put your organization at risk?
- ② What kind of PBM formulary should



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be in place to deal with FDA-approved medical marijuana? Should there be prior authorization to allow case-by-case decisions or outright blocks to disallow? Will your policies be the same or different for medical marijuana that is not FDA approved but is legal in individual jurisdictions?

- ③ What precedents have been set by case law at the individual state and federal levels, and how should they influence your individual policy?
- ④ Although cancer and seizures are not prevalent diagnoses in workers' compensation, should they be individual decisions, given the anecdotal evidence that medical marijuana can be helpful?
- ⑤ As legalization of medical marijuana expands, how will your policies keep pace?

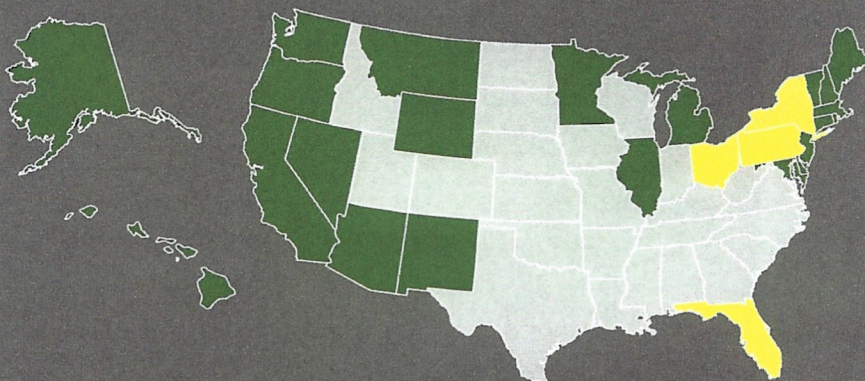
To remove any personal biases from decisions on reimbursement, the payer's executive team needs to develop enterprise-wide policies for addressing requests for cannabis. Have legal counsel analyze the legislative landscape, medical directors examine the physiological and pharmacological aspects, and risk managers weigh in on worksite safety issues to lay the groundwork for organizational policy.

Even with that groundwork, the decision may not be yours fully. In the recent case *Vialpando v. Ben's Automotive Service and Redwood Fire & Casualty* (2014), the New Mexico Court of Appeals required an employer to pay for an injured worker's medical marijuana. While this may be appealed, it shows that states (and injured workers) may force the issue.

Regardless, the workers' compensation industry needs to prepare for expanded use of medical marijuana and requests for reimbursement. This is a complex circumstance that should not be ignored or deferred. **CM**

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LEGALIZING MEDICAL MARIJUANA



Twenty-two states plus Washington, D.C. have made medical marijuana legal in some form or manner. Four other states have legislation pending.

LEGAL

- | | | |
|---------------|-----------------|----------------|
| ■ Alaska | ■ Maine | ■ New Jersey |
| ■ Arizona | ■ Maryland | ■ New Mexico |
| ■ California | ■ Massachusetts | ■ Oregon |
| ■ Colorado | ■ Michigan | ■ Rhode Island |
| ■ Connecticut | ■ Minnesota | ■ Vermont |
| ■ Delaware | ■ Montana | ■ Washington |
| ■ Hawaii | ■ Nevada | |
| ■ Illinois | ■ New Hampshire | |

PENDING

- | | |
|-----------|----------------|
| ■ Florida | ■ New York |
| ■ Ohio | ■ Pennsylvania |

Source: ProCon.org



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