Navigating The Issue: Medical Marijuana In The Realm Of Workers' Compensation

Key Points

1. Discover the complexities of medical marijuana from medical and legal perspectives.
2. Find out areas in which workers' comp stakeholders need to be pro-active to avoid precarious issues surrounding the initiation of claims as well as ongoing treatment.
3. Learn how a clinical approach can reduce risks, better control costs and attain improved outcomes for injured workers.

A Potential Legal Quagmire

Nationwide, workers' compensation providers are struggling to grapple with the potential effects of medical marijuana. Not the least of these is the issue of legality. While on a federal level it is illegal to be in possession of marijuana under any circumstances, 17 states and the District of Columbia have made it legal to use marijuana for medical purposes and similar legislation is currently pending in another seven states. Throughout the country, even in states that have legalized its use, federal law prevents doctors from prescribing marijuana. This conflict between state and federal laws raises any number of issues that directly affect the workers' compensation industry and the workplace as a whole.

Despite legalization, it remains to be seen what accommodations employers must make in those states in which medical use of marijuana is allowed. No states make it legal for an

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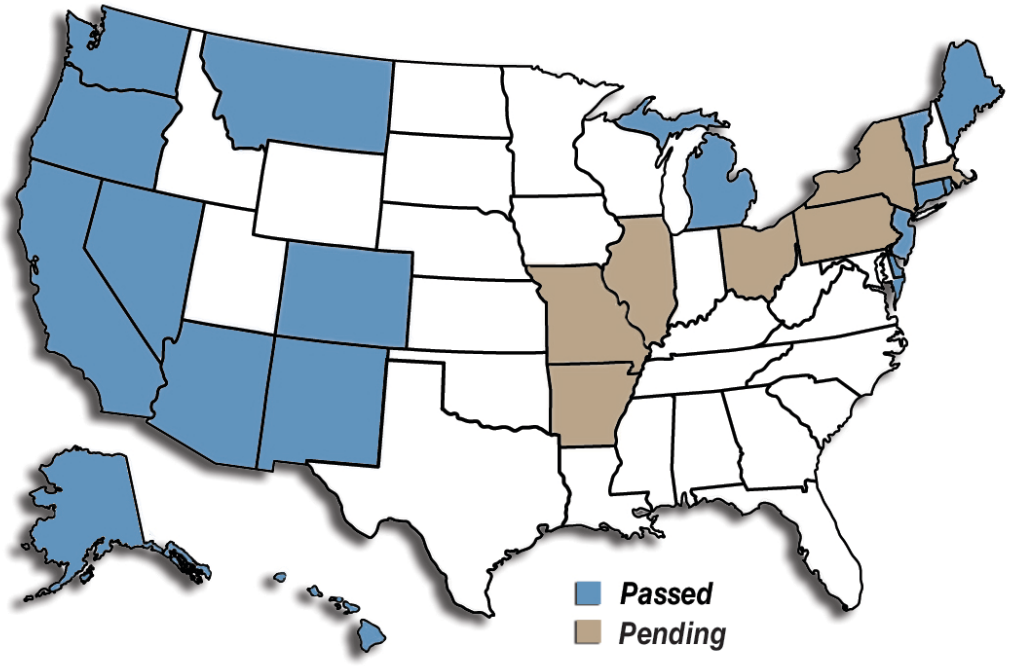
employee to use marijuana in the workplace or require an employer to allow its use on the job. In Colorado, one of the 17 states in which medical marijuana is legalized, the state workers' compensation statue imposes a 50% loss of wages/benefit penalty if an employee is injured as a consequence of being impaired by medical marijuana.[1]



Medical Marijuana: States That Have Legalized Use Since 1996 or Have Legislation Currently Pending

The maze of legal issues yet to be addressed by the courts includes:

- whether an employee who can legally use medical marijuana can face consequences for arriving at work with detectible amounts of marijuana in his/her system
- whether said employee can raise a legal claim against his/her employer if they are terminated for use outside of work.

In some states which have legalized marijuana, employers are not required to allow use outside of work, since federal law recognizes possession of marijuana as a crime.

Whether the use is for medical purposes or not, legal issues are having an impact in the workplace. In South Dakota, a state with no legalized use of marijuana, a case involving an injured worker with a post-accident drug screen showing positive for marijuana resulted in laying the ultimate burden of proof directly on the employer to show that marijuana use constitutes an act of willful misconduct.[2]

Do employers and insurers have to pay for a claimant's medical marijuana? It has yet to be determined whether the answer is affected by state or federal regulations. Even in states in which marijuana use is legal for medical purposes, laws may not require insurers to pay

for it. In a situation in which the employer or insurance provider is located in a state that does not allow for medical marijuana and chooses to pay for its use for an employee in a state in which it is allowed, the employer may find themselves to be in violation of their own state's laws, as well as federal law.

In the states in which it is currently legal to use marijuana for medical purposes, legal protection is afforded to patients diagnosed with a variety of illnesses. Generally, these include pain relief, particularly of neuropathic pain, nausea, spasticity, glaucoma, and movement disorders. Marijuana is also a powerful appetite stimulant, specifically for patients suffering from HIV, the AIDS wasting syndrome, or dementia. Legislation varies widely, and can be as vague as that in California, which reads, "Any debilitating illness where the medical use of marijuana has been 'deemed appropriate and has been recommended by a physician'".

Scientists have confirmed that the cannabis plant contains active ingredients with therapeutic potential for relieving pain, controlling nausea, stimulating appetite, and decreasing ocular pressure.[3] While the majority of these diagnoses are not relevant in the workers' compensation arena, chronic, and especially, neuropathic pain stands out as an issue that insurers must address.

Affects On The Body

Much of the effect of marijuana comes from an ingredient called delta-0-tetrahydrocannobinol (THC), which mimics a chemical found throughout the body and in the brain called Anandamide. Just like this naturally-produced chemical, THC attaches itself to specialized proteins known as cannabinoid (CB) receptors. The highest concentration of CB receptors is found in regions of the brain that influence pleasure, memory, thought, concentration, sensory and time perception, appetite, pain, and coordination. THC disrupts the function of CB receptors, producing cellular reactions that have a wide range of effects, such as impaired short-term memory, slowed reaction time and impaired motor coordination, altered judgment and decision making, increased heart rate and altered mood. The overstimulation of the CB receptors leads to the "high" experienced when smoking marijuana.

Marijuana As A Medicine

While there may be documented therapeutic potential, marijuana is not an FDA-approved medicine. In states which have legalized its medical use, it is recognized for:

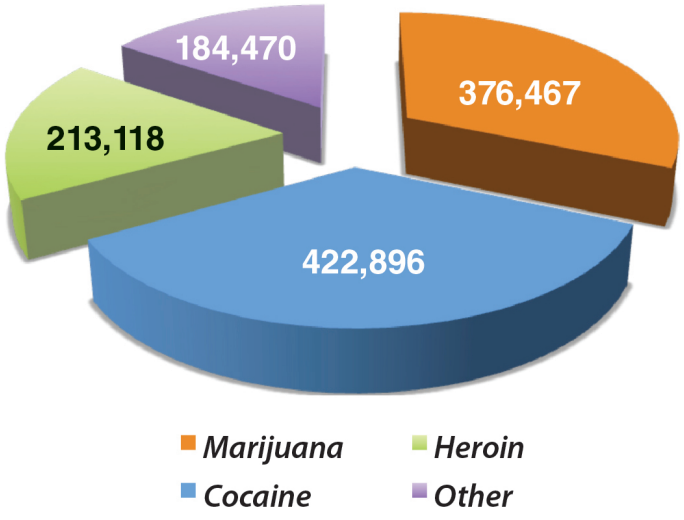
- **powerful anti-inflammatory compounds as well as natural analgesics –** It could be considered as an alternative treatment for chronic pain, arthritis, fibromyalgia, and multiple sclerosis.[4] Medical marijuana

appears to be similar to codeine for treatment of pain, however, extreme sleepiness and other central nervous system effects make cannabinoids undesirable as a painkiller.[5]

- **reducing intraocular pressure –** It may help to halt or reverse deterioration of the optic nerve and glaucoma.
- **treating cancer and AIDS –** THC, the main ingredient in marijuana, is used in the FDA-approved oral medication dronainol (Marinol), for treatment of nausea and vomiting cased by chemotherapy, as well as weight loss or appetite loss due to AIDS.

While research continues on marijuana's medical use, the adverse effects of smoking marijuana are well documented and concern either the smoke itself or THC. In either case, therapeutic benefits do not outweigh any harmful effects. Marijuana smoke contains many of the same toxins as tobacco smoke, resulting in increased risk of respiratory illnesses and cancer. In addition, habitual use may decrease the ability of immune cells in the lungs to fight off fungi, bacteria and tumor cells, increasing risks for patients with already weakened immune systems.

While the potential medicinal benefits of marijuana remain the subject of research and much debate, the fact is that marijuana is not an FDA-approved medicine. There are a number of reasons why. Most importantly, to be considered a legitimate medicine a substance must have well-defined and measurable ingredients that are consistent from one unit to the next. The marijuana plant contains over 400 chemical compounds as well as THC, which vary from plant to plant. Adding to the concern is the fact that the average potency of marijuana has more than doubled



Emergency Department Visits Involving Illicit Drugs, 2009

Of the approximately 2.1 million drug misuse or abuse Emergency Department visits that occurred during 2009, a total of 973,591, or just under half, involved illicit drugs. A majority (59.2%) of illicit drug ED visits involved multiple drugs and are represented in multiple categories in this graphic.

Source: Drug Abuse Warning Network, 2009: National Estimates of Drug-Related Emergency Department Visits

since 1998.[6] Some reports indicate that it has reached an all-time high average of over 11% THC, with some strains being as high as 30%, contributing to the negative effects of the drug.

Research on outcomes following long-term marijuana use has been inconclusive, but there is evidence that it can lead to addiction, as well as mental health issues, especially in higher dose users. One out of 11 people who ever used marijuana will become dependent on it; this risk rises to one-in-six when use begins in adolescence. In 2009, marijuana was involved in 376,000 emergency department visits nationwide.[7]

effective at improving function. In fact, side effects and behavioral effects make it counterproductive to the treatment of pain for injured workers. Chronic marijuana use has been shown to impact learning and memory that lasts for days or weeks after the effects of the drug wear off.[9]

Steven P. Cohen, MD, Director of Pain Research at Walter Reed Army Medical Center in Washington, D.C., has stated, "the magnitude of the pain relief from smoking marijuana was less than expected compared with those few effective drugs. When considered in the context of the higher

"Marijuana has the potential to cause or exacerbate problems in daily life, including increased absences, tardiness, accidents, workers' compensation claims and job turnover." *National Institute on Drug Abuse*

Marijuana is classified as a Schedule I drug, meaning it has a high potential for abuse and no currently accepted medical use in treatment in the United States.[8] Regardless of state laws to the contrary, there is no such thing as "medical" marijuana under Federal law.

Within The Realm Of Workers' Compensation

As a treatment for chronic pain, there is no strong evidence that medical marijuana is

incidence of minor and serious side effects with medical marijuana, cannabinoids should remain a third or fourth line drug for neuropathic pain."[10]

What research clearly demonstrates, and what may have more of an impact on workers' compensation insurers than anything else, is that marijuana has the potential to cause or exacerbate problems in daily life. Several studies associate workers' marijuana smoking with increased absences,

tardiness, accidents, workers' compensation claims, and job turnover.[11]

Managing The Issues: The Insurer's Perspective

The controversy and conflict between federal and state laws on medical marijuana have clouded the issue for employers and insurers. When viewed in light of the primary goal in workers' compensation, which is to return to work, the issue becomes much clearer. The therapeutic effects of medical marijuana treatment are counterintuitive to meeting the intended therapeutic outcome for any injured worker. When viewed from this perspective, conflicting legalities or lack of FDA approval or REMS programs, which require training for prescribers and the development of patient counseling materials on safe use and risk of misuse or addiction, becomes immaterial.

Medical marijuana simply does not fit in the treatment of injured workers. Perspective is one thing, but the reality is that this type of treatment is being utilized and insurers must be proactive in defining a plan of response.

Frame A Strategy With A Clinical Approach

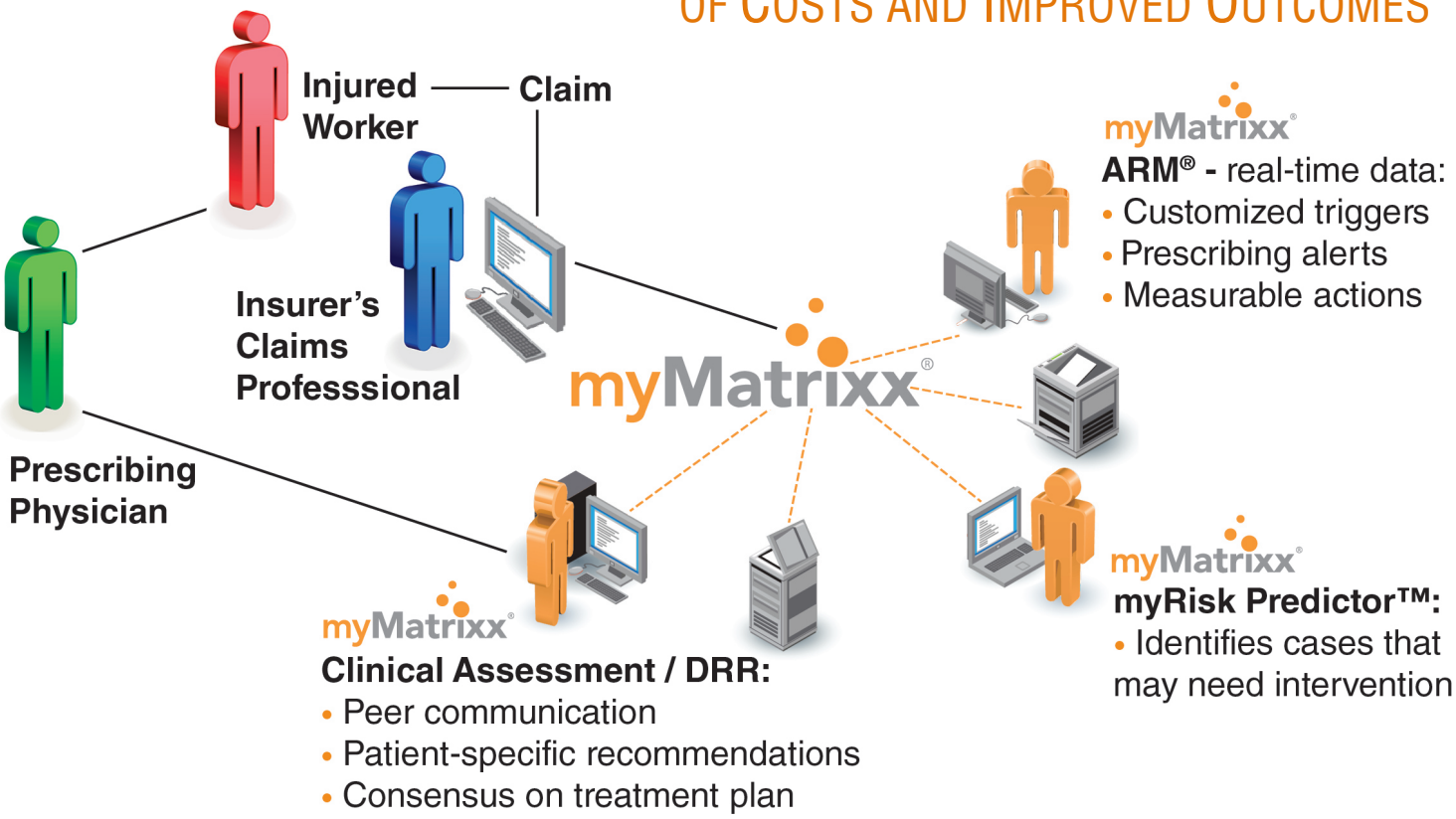
Medical marijuana's impact in the workers' compensation arena is in the management of pain, specifically those cases involving opioid pain management. As a leader in Pharmacy Benefit Management (PBM) for injured workers, myMatrixx has developed a comprehensive Clinical Program that enables clients to manage care for these patients from the outset. Using a multifaceted approach, we focus on educating claims professionals, developing advanced technologies and emphasizing open lines of communication between our clinical staff and physicians.

Continuously evolving technologies give clients real-time access to information that helps them identify potential problems, evaluate the appropriateness of therapy and develop effective treatment plans.

- **Alert, Review and Manage (ARM®) –** This program combines real-time data with clinical oversight that can be customized to target specific areas of concern to a client. Each ARM® is tied to one or more measurable actions, reviewed by and communicated to the physician by our pharmacists. The clinical information provided by the ARM® program has enabled us to build a strong pharmacist-physician link aimed at optimizing patient care.

- **myRisk Predictor™ –** This fully integrated risk assessment tool is an extension of the ARM program. By combining, analyzing and stratifying patient information kept in diverse places, myRisk Predictor™ couples our predictive modeling capabilities with

Clinical Strategy = Reduced Risks, Better Control of Costs and Improved Outcomes



algorithms developed by our clinical team to identify cases in need of intervention. The program's algorithms are also customizable, adapting to risk levels identified in a specific client's injured worker population.

- **Urine Drug Screening (UDS) –** An essential component in pain management patient care, UDS involves complex analysis beyond the scope of standard workplace drug testing. myMatrixx teams with diagnostic laboratories that use sophisticated data analysis in order to provide summary reports that are easy to interpret and clearly flag unexpected results.

UDS is an essential tool when it comes to the issue of medical marijuana use, providing critical information that has often been previously undetected by the treating physician. The presence of marijuana in a drug screen should be viewed as a red flag by practitioners in the case of any patient receiving opioid therapy for treatment of chronic pain. Studies have shown that illicit drug use (mainly marijuana) is statistically

linked to a higher rate of eventual dependence on or addiction to opioids.

Clinical Link Is Key

With the information provided through ARM® and myRisk Predictor™, the myMatrixx clinical team can initiate a complete Drug Regimen Review (DRR). Our clinical pharmacists use the DRR to facilitate peer-to-peer interaction with treating physicians. This comprehensive assessment provides detailed information for making improvements in treatment specific to individual patients. It can include risk reduction strategies with detailed recommendations to assist the physician in decision making and outlines a course of action.

Having established this pharmacist-physician communication, our clinical team is in a unique position to provide guidance on the direction of treatment. As an unbiased third party working between the insurer and the physician, myMatrixx clinical staff can be effective in getting agreement on the inappropriateness of medical marijuana when the goal is to get the injured patient back to work.

myMatrixx maintains an ongoing commitment to help our clients manage treatment for their injured workers. With advanced systems and customizable technology, backed by clinical expertise, we help our clients control the cost of care, while striving for improved outcomes.

Key Questions to Ask About Your Medical Marijuana Strategy

1. Are all stakeholders viewing the issue from a return-to-work perspective?
2. Are you getting the real-time data and customized risk assessment that enables you to manage patient care from a clinical perspective?
3. Are drug screens included in your strategy and combined with sophisticated analysis and easy-to-interpret reporting?
4. Do you have a third party, professional communication link to prescribing physicians that can directly impact patient care?

Contact Us

If you would like to see how a clinical approach can help manage the treatment of your injured workers, contact myMatrixx at 813-247-2341 to set up a review of your Pharmacy Benefit Management program.

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