MEDICAL MARIJUANA: THE ANTIDOTE TO OPIOID ADDICTION?

MEDICAL MARIJUANA HAS RECENTLY BEEN GAINING GROUND AS ACCEPTABLE TREATMENT, AND POSSIBLE OPIOID REPLACEMENT, FOR PAIN THERAPY

With opioid use and abuse by injured work comp claimants becoming an increasing concern among self-insured employers, medical marijuana is being considered as a possible alternative because of its purported medical benefits and allegedly low risk of addiction.

In a recent session at SIIA's National Educational Conference and Expo in San Francisco, Kevin Glennon, VP of Clinical Programs, National Product for One Call and Brian Allen, Vice President of Government Affairs at Mitchell International explored the pros and cons of substituting medical marijuana for opioids in the treatment of occupational injuries, conflicting legislation and court rulings, and what the future holds for self-funded employers considering covering it for their injured workers.

Since 1999, overdose deaths in the U.S. involving opioids have quadrupled and opioid abuse totals over $72 billion in medical costs alone each year in the U.S.

We have more prescription drug addicts in the United States than any other place in the world, and on average there are up to four to six drug overdose deaths per hour (although that does not mean they necessarily got that prescription legally), explained Glennon. What we do know is that in many of the states that have legalized recreational, and especially medical marijuana, there has been upwards of a 25% percent decrease in those prescription drug overdoses, according to studies from the Journal of American Medical Association.

MEDICINAL VALUES

Cannabis was first and foremost utilized for treatment of intractable seizure disorders in children, and that was primarily using the CBD components of the cannabis plant.

CBD is the medicinal value that works on inflammation, swelling and muscle spasm, while THC is the component that gets you high. CBD affects the body and the CBD receptors in the brain but does not give you the euphoric feeling that you get with high levels of THC, clarified Glennon.

It is also worth noting that the majority of medical CBD is not smoked or vaped; it is in edibles, oil or tincture/topical forms.

Even though 33 states and the District of Columbia have legalized marijuana for medical purposes, it remains illegal federally and is still listed as a Schedule 1 drug "because there have been no FDA approved triple blind studies that have been completed to document the medical efficacy of cannabis" indicated Glennon.

"But we currently do have 3 FDA approved triple blind studies going on right now for the use of medical marijuana for the treatment of PTSD. They are both in the third phase right now I believe, and the preliminary outcomes are proving to be extremely positive."

The study is using low-dose THC and a high percentage CBD during the day. The opposite is being used at night, with a higher percentage of THC to turn the dream centers off in the brain, as most individuals with PTSD suffer from Night Terrors where they are reenacting the event that has caused the PTSD.

"The other very interesting thing is that the individuals in the study are weaning off all of their prescription medications. So not only are they weaning off those medications, but they're losing the side effects of those medications. I think that's one of the biggest things – we don't see side effects like nausea, vomiting, constipation, stomach ulcers,

which are many of the things that we see with the common drugs that are utilized in our industry today. If it's work comp, the first visit is pain pill, muscle relaxer, anti-inflammatory. The next visit we give them something because they have an ulcer and then we have to give them something for constipation," he continued.

DITCHING OPIOIDS FOR MARIJUANA

"In many of the cases I'm monitoring across the United States, especially those where the carrier has been court-ordered to reimburse, the intent is that the primary care physician must have them on a weaning schedule to get them off all of their other drugs, and in all but a handful of the cases it has been extremely successful," stated Glennon.

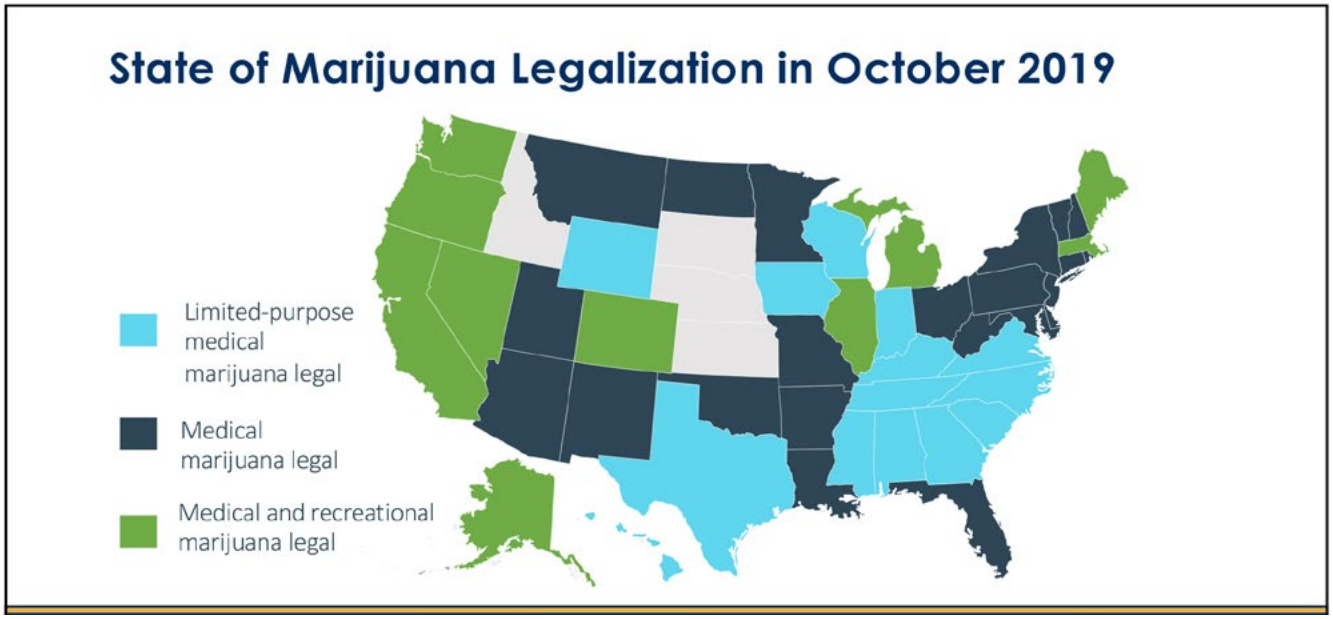
"Even for those Injured workers that are paying for it on their own and not being reimbursed, they are taking themselves off the other drugs and everyone has been reporting 'I feel much better. I don't have the side effects. I have a much better quality of life and I'm able to function not being all confused and disoriented and drowsy from the prescription medication'."

The first state to reimburse for medical cannabis was New Mexico, establishing a fee schedule of Maximum Reimbursable Amount = $12.02 per unit (i.e., per 1-gram dry weight equivalent) up to a half a pound per year, but mandating any patient getting reimbursed is on a weaning schedule to taper off opioids.

POLICIES

"We're in a very interesting time in this country because we have a lot of conflicting policy at the state and federal level and it's creating a lot of angst out in the marketplace, it is especially troubling for work comp insurers and self-insured employers because nobody really knows where this is going to end up," stated Brian Allen.

He continued, "there's still a lot we don't know about it and I think we're really excited about the studies that are going on and hopefully they'll be revelatory, and we'll hear about what it can and can't do, and some of the effects that are out there."



Several states currently have voter initiatives that would legalize marijuana either recreationally or medically. In the last year, even though a state's status of marijuana didn't necessarily change, some of the states that have medical marijuana already have decided to include it on their prescription drug monitoring programs so they can see who's dispensing it, who's getting it, and which doctors are recommending it.

A number of states have also added chronic pain as a qualifying condition for medical marijuana in an attempt to reduce opioids.

More states are also starting to allow home cultivation. "I think the challenge I see from a medical and clinical perspective is that if someone is recommended to receive medical marijuana, but they can grow their own, it's going to be challenging to figure out how they're using it and when they're using it, because you aren't going to have a paper trail on all of that. And if it is readily available recreationally, who's going to go to the doctor to get a prescription? I guess unless they want to get it paid for it by their insurance carrier. But right now, that doesn't happen in most states," stated Allen. "Getting it on the PDMP is a good way of knowing whether or not they are getting both opioids and marijuana which would help validate some of the stuff that's out there or invalidate it as the case maybe be."

WORKERS COMP REIMBURSEMENT

"Pretty much every work comp carrier has said they're not going to just automatically reimburse. We have no approved ODG or ACOEM guidelines. There is no AWP so there is no formulary," explained Glennon, "and that brings up a whole other multitude of issues. How do we know what strength or how much you pay per strength?

In New Mexico, they base it on leaf (smokable bud). But if we see more and more edibles and tinctures, how are we going to reimburse with those?"

There has been a lot of discussion at the state level on whether or not work comp should be required to reimburse from a policy standpoint. New Jersey bill AB4097, if passed, would require work comp to cover individuals.

"Kentucky actually had a bill running that would exempt work comp insurance from paying for medical marijuana, which is not even legal there. There was a bill running that would legalize it so that's open sided run a bill out of the defense mechanism," said Allen, continuing that Utah's medical marijuana law has a provision that insurers don't have to pay for it.

"And that's the real challenge that if there's no medical treatment guidelines that indicate the medical marijuana should not be used and there's a state and federal law, it is still illegal federally so there's some reluctancy on the part of payers" he concluded.

There have been several court cases regarding reimbursement. In New Mexico there were three cases that were of note and in all three of the cases the circuit court ruled that the employer should reimburse, which is what ultimately spawned the regulation that created the fee schedule in New Mexico.

In Minnesota the Department of Labor and Industry has put out a public statement saying that it will not treat marijuana as an illegal substance. If an injured worker was recommended to use medical marijuana, they would not look at it as an illegal substance.

Allen described an interesting case in New York, *Matter of WDF, Inc* from 2017 where an injured worker was recommended to have medical marijuana, submitted the bill for reimbursement, was denied and challenged it at the workers comp board. The workers comp board found in favor of the employer not because marijuana is a Schedule 1 drug, but because the doctor failed to pre-authorize it, stating that had the doctor pre-authorized it, they would have ordered payment. They were not concerned about the legal status of marijuana.

"We're hearing that a lot from courts. In *Petrini v. Marcus Dairy* (Connecticut in 2016) that's another case where the judge said 'yes, it's illegal federally and we recognize that, but the risk of prosecution is so low we think it negates the Schedule 1 status and your unwillingness to pay for it as an employer' and they required the employer to pay. It was almost the exact same in the case of *Watson v. 84 Lumber* in 2016 in New Jersey" stated Allen.

In *Michael Hall v Safelite Group, Inc.* an injured worker in Vermont was prescribed medical marijuana, but Vermont had language in their medical marijuana law that said the person that was using medical marijuana could not be discriminated against by a business, industry or professional licensing board. The lawyer read business to be a standalone word, but the court interpreted it as a business licensing board of the state and ruled that the law itself was not intended to regulate private business and in that case upheld the denial of payment.

Bourgoin v Twin Rivers Paper went all the way to the Maine Supreme Court. The worker won at every level until it got to the Supreme Court, where they indicted that yes, there is a medical marijuana law and it is allowed in the state, but they didn't feel it was appropriate for state law to require an employer to violate federal law, and ultimately ruled in favor of the employer.

"You can see the states are all over the charts on this and it is not something that is settled law by any means," concluded Allen.

The question now becomes is reclassification possible? There are several bills at the federal level dealing with marijuana in general, and how to handle at the federal level.

"Workers comp employers, insurers and anybody involved in the system really needs to start preparing now to deal with it because it's coming," stated Allen. "We just have to be prepared and continue to watch for what is in the clinical studies. Because those are the things that are ultimately going to tell us how we manage in within our industry." he concluded. ■