

Navigating Workers' Compensation and Medical Marijuana

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American Academy of Actuaries

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American Academy of Actuaries – Issue Brief

- Published in April 2023
- Interviewed third-party administrators (TPAs), lawyers, claims professionals, loss control specialists, and actuaries
- https://www.actuary.org/sites/default/files/2023-04/IB.MMJ_4.26.23.pdf

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Issue Brief

Navigating Workers' Compensation and Medical Marijuana

APRIL 2023

Key Points

- Medical marijuana can impact workers' compensation before, during, and after a workplace injury.
- There is significant complexity involved with:
 - The interpretation of workers' compensation law when medical marijuana use intersects with workers' compensation claims; and
 - The research on medical marijuana use, reimbursement of claims, and treatment options.
- Workers' compensation actuaries should work closely with claims professionals to understand the potential implications of medical marijuana laws on their projections.

Introduction

For many years, marijuana has been on the “hot topic” list for workers' compensation, and the landscape continues to evolve as more states approve it for medical and recreational use. The U.S. Department of Drug Enforcement Administration (“DEA”) classifies marijuana as a Schedule I drug,¹ making it illegal at the federal level. Due to the federal classification, research on marijuana, including its impact on the mind/body and dosing guidelines, is extremely limited. The majority of available information in the U.S. is from voluntary surveys conducted by independent research firms. (Other countries including Canada and Israel have studied medical marijuana, but international activities are outside the scope of this issue brief.) However, a recent bill (H.R.8454²), signed into law on December 2, 2022, has opened the door to allow for research on medical marijuana.

Individual states' treatment of marijuana use ranges from fully illegal to fully legal with a plethora of variations in between. As of December 2022, 38 jurisdictions including the District of Columbia have medical marijuana programs; of these, 27 have decriminalized cannabis or have full adult recreational-use programs.

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¹ Per the DEA, Schedule I drugs typically have a high potential for abuse and the potential to create severe psychological and/or physical dependence.
² <https://www.congress.gov/bills/117/8454/congressional-legislation/117th-congress/house-bill/8454>

Key Points of the Issue Brief

- Medical marijuana can impact workers' compensation before, during, and after a workplace injury.
- There is significant complexity involved with:
 - The interpretation of workers' compensation law when medical marijuana use intersects with workers' compensation claims.
 - The research on medical marijuana use, reimbursement of claims, and treatment options.
- Workers' compensation actuaries should work closely with claims professionals to understand the potential implications of medical marijuana laws on their projections.

Court Cases Reflect Three Overarching Themes

1

Who has jurisdiction,
and is it a crime?

2

Proximate cause?

3

Is it the right
treatment?

Court Cases – Who Has Jurisdiction, and Is It a Crime?

ISSUES PRESENTED:

Do federal drug laws like the Controlled Substances Act (CSA), 21 U.S.C.S. supersede state laws that compel insurers and employers to reimburse an employee for the cost of medical marijuana used in response to pain arising from a work-related injury?

Is an employer that pays for medical marijuana aiding and abetting a crime?

Notable Cases

New Hampshire, March 2021	Appeal of Andrew Panaggio
New Jersey, April 2021	Vincent Hager v. M&K Construction
Minnesota, October 2021	Bierbach v. Digger's Polaris and Musta v. Mendota Heights Dental Center
U.S. Supreme Court, June 2022	The Supreme Court denied reimbursement for medical marijuana in workers' compensation cases.

Court Cases – Proximate Cause?

ISSUE PRESENTED:

Was medical or recreational marijuana use the proximate cause for an employee injury?

Notable Cases

Florida, June 2018

Brinson v. Hospital Housekeeping Services

Kentucky, July 2018

New Workers' Compensation Intoxication Rebuttable Presumption

Court Cases – Is It The Right Treatment?

ISSUES PRESENTED:

Did the attending physician use other treatments before prescribing medical marijuana to treat the claimant?

Was medical marijuana a reasonable and necessary medical treatment for the injuries sustained?

Notable Case

Maine, June 2018

Gaetan H. Bourgoin v. Twin Rivers Paper Company, LLC, et al.

Employment Issues

Impact on employment

- Societal views on the use of marijuana
- Drug testing policies
- Type of job/industry
- Recruiting and retaining employees
- State laws – protections afforded to employees

Reimbursement Issues

Managing medical marijuana reimbursement for workers' compensation claims

- TPAs
- Employer views (cost savings, drug-free workplace policies)
- State laws

Opioid Issues

Medical marijuana versus opioids

- Efficiency of treatment
- Differences in costs

Updates and Other Resources

- Cannabis vs. Opioids
 - <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8237244/>
 - The link above also provides resources to other studies that can be referenced.
- H.R. 8454 (117th): Medical Marijuana and Cannabidiol Research Expansion Act
 - [Medical Marijuana and Cannabidiol Research Expansion Act \(2022; 117th Congress H.R. 8454\) - GovTrack.us](#)
 - [H.R.8454 - 117th Congress \(2021-2022\): Medical Marijuana and Cannabidiol Research Expansion Act | Congress.gov | Library of Congress](#)
- Additional Court Case Information
 - <https://www.ncci.com/articles/pages/Court-Case-Insights.aspx>
 - <https://www.ncci.com/Articles/Pages/Insights-Regulatory-Legislative-Trends2023.aspx>
- Marijuana Legalization Map
 - <https://disa.com/marijuana-legality-by-state>

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