Medical Marijuana: An Urgent Care Issue?

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In November 2012, Colorado and Washington voters made national headlines when they legalized marijuana for adults aged 21 and older and authorized their state governments to regulate and tax marijuana sales. Previously those states had decriminalized marijuana for "medicinal use," along with sixteen other states and the District of Columbia (illustrated in Table 1) with "medical cannabis" legislation. While many urgent care centers operate in states that have already dealt with this issue, for the majority of nation's urgent care operators these headlines raise questions as to what the laws entail—especially as additional states ponder medical marijuana legislation.

In addition to removing state criminal sanctions for marijuana's medicinal use, medical marijuana laws define eligibility and specify means of access. With the exception of Maryland and Washington, states issue ID cards to patients who provide recommendations from their doctor to a state or county agency. All of these laws, with the exception of California and Massachusetts, require physician certification that the patient has a serious medical condition or symptom listed in the law. Generally, cancer, multiple sclerosis, AIDS, chronic pain and severe nausea are qualifying conditions under the law. Some states allow patients to cultivate their own medical marijuana while others license and regulate retail "dispensaries." In addition to protecting patients from criminal prosecution, all of these state laws protect physicians who make the recommendations, and all but Maryland allow designated caregivers to assist one or more patients.

Impact on the Urgent Care Center

Feedback from providers in states like Colorado and California indicate that medical marijuana has minimal, if any, effect on the day-to-day operations of urgent care centers. In states where legislation has passed, the medical marijuana community generally has its own physicians who are known "advocates" and make a business out of recommending patients for medical marijuana. In Colorado, 15 physicians have registered 49% of all medical marijuana patients, and a single physician has registered 10% of all patients. In Arizona, eight physicians have recommended half of the 10,000 residents certified to use medical marijuana. Those seeking medical marijuana learn of these providers and are thus unlikely to turn to urgent care seeking a physician authorization.

In addition, urgent care centers treat episodic injuries and illnesses including colds, flu, sinus infections, lacerations, sprains, and fractures. Medical marijuana is allowed only for longitudinal conditions such as fibromyalgia, glaucoma, and gastrointestinal disease. Thus, the urgent care center is not the appropriate setting to be managing conditions approved for medical marijuana and patients with these conditions are better referred to a primary care physician or specialist.

Furthermore, marijuana remains illegal under federal law, which creates conflict between state and federal law for insurance companies, provider entities, and individual doctors in legal medical marijuana states. Physicians contracted with major health plans in these states are for the most part barred from recommending marijuana to patients. As a result, many urgent care centers adopt a policy of refusing to recommend individuals marijuana for medicinal use.

While medical marijuana is mostly irrelevant to the day-to-day operations of urgent care, it certainly has relevance in occupational medicine.

Impact on Occupational Medicine

Many urgent care centers provide treatment for workers compensation injuries, drug testing for employers, as well as employment and compliance physicals for police, fire, DOT, FAA, and others. While marijuana remains illegal under the Federal Controlled Substances Act, the Obama administration announced in 2009 that federal prosecutors would no longer pursue users and distributors of medical marijuana in states where such is legal. And while Attorney General Eric Holder has said the Justice Department will soon announce its intentions regarding legalized cannabis in Colorado and Washington, the administration has been ambiguous as to what its next steps would be. These developments present some important questions that occupational medicine providers need to address.

The protocols addressing issues on medical marijuana drug screenings are quite simple on the federal level. In federally regulated drug testing, federal rules take precedent over state laws. Under state law "medical marijuana" isn't a valid medical explanation for testing positive in federal programs. Ship captains, pilots, truck drivers, and other safety-sensitive occupations covered under Department of Transportation policies are prohibited from using medical marijuana.

In states where medical marijuana is legal, the issue of workplace testing becomes much more complex. According to Dr. William Newkirk, MD, FACPM, developer of SYSTOC and author of several leading occupational medicine textbooks, the medical review officer should follow the state's position on medical marijuana in state-regulated drug testing, as long as that position has been clearly defined through either court decisions or legislation.[1] Some states have clearly taken a position on the issue of drug testing, including California, Nevada, and Oregon. In Nevada, state legislation specifically states: the provisions of this chapter do not require any employer to accommodate the medical use of marijuana in the workplace. While the California Supreme Court has ruled that the state's medical marijuana law does not protect patients from drug testing, an Oregon appeals court has held otherwise.

If the state's position isn't clear, Dr. Newkirk has said, "I would speak with the employer mandating the testing, review the issues associated with medical marijuana, and find out how the employer would like to proceed. After all, it is the employer who is most likely to be sued. If the employer has no preference in a state regulated drug testing program and the state has taken the position that medical marijuana is legal, then I would accept medical marijuana as a valid medical explanation."

Health care employers need to consider state law, case law, as well as the federal law when reviewing their own drug testing policies.[2] There are a number of reasons for healthcare employers to have zero-tolerance policies and substance abuse testing programs, including government contracting requirements, quality patient care, workplace safety, and third-party liability among others. Urgent care operators should review their existing policies to make sure that they comply with the law, and that they prohibit "any detectable amount" of drugs that are illegal under state or federal law, as opposed to merely prohibiting being "under the influence." Urgent care centers must have protocols put in place to deal with situations like post-injury drug screening, pre-employment drug-screening, random drug-screening, and compliance physicals.

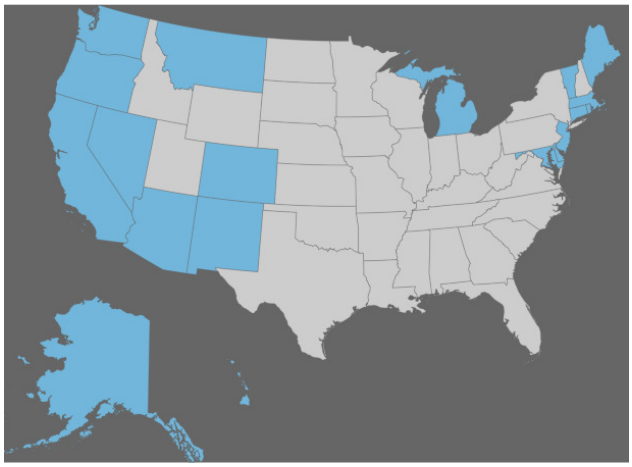
The federal government's response to state marijuana laws is expected to come soon. That decision will more than likely address all state marijuana laws, including medical marijuana legislation. The response won't change the fact that medical marijuana has minimal impact on the day-to-day-operations of urgent care centers, but it will go a long way towards determining medical marijuana's relevance in occupational medicine.

Figure 1: Medical Marijuana Laws by State[3]

State	Statutory Language (year)	Patient Registry	Allows Dispensaries	Specifies Conditions	Recognizes Patients from Other States	State Allows Recreational Use
Alaska	Measure 8 (1998) SB 94 (1999) Statute Title 17, Chapter 37	Yes	No	Yes		
Arizona	Proposition 203 (2010)	Yes	Yes	Yes	Yes	
California	Proposition 215 (1996) SB 420 (2003)	Yes	Yes	No		
Colorado	Amendment 20 (2000)	Yes	Yes	Yes		Amendment 64 (2012)
Connecticut	HB 5387 (2012)	Yes	Yes	Yes		
Delaware	SB 17 (2011)	Yes	Yes	Yes	Yes	
District of Columbia	Initiative 59 (1998) LR 720 (2010)	Yes	Yes	TBD		
Hawaii	SB 862 (2000)	Yes	No	Yes		
Maine	Question 2 (1999) LD 611 (2002) Question 5 (2009) LD 1811 (2010) LD 1296 (2011)	Yes	Yes	Yes	Yes	
Maryland*	HB 702 (2003) SB 308 (2011)	No	No	No		
Massachusetts	Question 3 (2012)	Yes	Yes	Yes		
Michigan	Proposal 1 (2008)	Yes	No	Yes	Yes	
Montana	Initiative 148 (2004) SB 423 (2011)	Yes	No	Yes	No	
Nevada	Question 9 (2000) NRS 453A NAC 453A	Yes	No	Yes		
New Jersey	SB 119 (2009)	Yes	Yes	Yes		
New Mexico	SB 523 (2007)	Yes	Yes	Yes		
Oregon	Oregon Medical Marijuana Act (1998) SB 161 (2007)	Yes	No	Yes		
Rhode Island	SB 791 (2007) SB 185 (2009)	Yes	Yes	Yes	Yes	
Vermont	SB 76 (2004) SB 7 (2007) SB 17 (2011)	Yes	Yes	Yes		
Washington	Initiative 692 (1998) SB 5798 (2010) SB 5073 (2011)	No	No	Yes		Initiative 502 (2012)

*Maryland has a limited medical marijuana defense for possession only.

Figure 2: States with Medical Marijuana Laws as of March, 2013



[1] Newkirk, William L. "Federal Drug-Testing Rules Modified," *Occupational Health Tracker,* Winter 2010-11, Vol. 13, No. 4., p. 6.

[2] Sabus, Melissa, "Changing Marijuana Laws: How Do You Keep Your Workplace Drug Free?," TLNT: The Business of HR, January 31, 2013.

[3] Adapted from ProCon.org http://medicalmarijuana.procon.org/view.resource.php?resourceID=000881 Accessed March 10, 2013.