Marijuana: The Implications of Legalization

How quickly things change. In 2010, the federal Office of National Drug Control Policy published a fact sheet outlining the pros and cons—mostly cons—of what marijuana legalization would mean to the country. From a financial and health perspective, the fact sheet suggested the country would go up in smoke, as it were. The criminal justice system would be negatively affected, it claimed, as would our overall mental and physical health.

Four years later, in a now-famous January 2014 New Yorker interview, President Obama admitted to smoking pot when he was young. “I don’t think it is more dangerous than alcohol,” he said.

Following the interview, advocates for legalization sprang to action, circulating new petitions asking for marijuana to be removed from the Schedule I list of drugs, where it is classified with LSD, ecstasy and heroin. Congress responded with a note to the president from 18 members saying, “We request that you take action to help alleviate the harms to society caused by the federal Schedule I classification of marijuana.” Never mind that President Obama, in the same interview, had gone on to state why he felt legalization would be a bad idea.

As of March 2014, 20 states and the District of Columbia have legalized medical marijuana. On Nov. 6, 2012, two states—Colorado and Washington—became the first to legalize marijuana for recreational use, paving the way for the city of Portland, Maine, to legalize marijuana possession a year later. Possession is allowed for up to 2.5 ounces, although sale of marijuana is still prohibited. The Michigan cities of Ferndale, Jackson and Lansing approved similar laws, allowing possession of less than an ounce of cannabis. Other places, including D.C. in early March, have opted to decriminalize marijuana by reducing the penalties for possession or deprioritizing enforcement of marijuana laws.

The Justice Department elected not to challenge the laws and has left marijuana enforcement policies to the discretion of local governments. Today, nearly 30 states are considering legalizing cannabis use either for medical or
recreational purposes.

The Grass is Greener
For the most part, entrepreneurs could not be happier. Estimated sales figures are all over the map—$25 billion annually, according to one Harvard economist, or $40 billion according to Privateer Holdings, a private equity firm helping finance the industry. Marijuana dispensaries are cropping up anywhere there is a legal foothold. An April 2013 estimate put the number of dispensaries at 2,000 nationwide, though figures from 2009 estimated the number of locations at 2,100 in California alone.

It seems everyone wants in on the "green rush," and no wonder: medical marijuana profits come in at $1.5 billion annually, according to Privateer. That is a lot of green for a substance that remains illegal at the federal level.

Now the specialty insurance market is capitalizing on the cannabis craze as well. Specialty insurance products cover most anything cannabis-related, including physicians who recommend the product, dispensaries, growers, crops, landlords and even special events like medical marijuana conventions.

For JB Woods, a marijuana insurance brokerage was a conscious career move. After more than 20 years in insurance, Woods left a career with Allstate and found a new path in the form of a specialty brokerage supporting the medical marijuana industry. Woods said the buzz about medical cannabis use in his state made the choice a no-brainer.

Five years in, as the owner of Greenpoint Insurance Advisors in Parker, Colo., Woods works with five domestic carriers, an excess and surplus syndicate, and Lloyd’s of London to place coverage for his clients’ businesses. By his estimation, carriers are trailing behind, still trying to understand the industry’s needs and risk exposures.

Insurers are also looking to work with brokers that have a certain level of comfort and experience in the marijuana industry. “We’re in an industry that’s never been done before,” Woods said. “Plus, there are all these different laws that converge on this industry—contracts, employment laws, tort law, constitution law, insurance law and administrative law. They want to insure the industry, but they want to do it right.”

Some insurers have figured it out, though, and coverage is now becoming more available. “In Massachusetts, the law actually requires it,” he added.

Losses due to recreational use are not covered so far, however, and smoking marijuana in public in Colorado is still a statutory violation. The key to some of this will be the local system. “It’s never been tested in court,” he said. “We’re trailblazing here. The issue will be in the policy.” Coverage will boil down to what is in the product portion of the policy and what is excluded.

Premiums have risen dramatically. Woods said that five years ago the average business premium was $1,500 annually. Last year, they spiked to $100,000 as states become better educated and more sophisticated in their understanding of medical marijuana. Carriers are now beginning to require marijuana product liability coverage because some state statutes mandate it while, in others, the liability is implied.

As for policy limits, most carriers offer $1 million per occurrence and $2 million in aggregate. Woods thinks this is rather low because these limits would not be enough to cover a business entirely. But as more states welcome the cannabis industry, insurance carriers are evaluating business on a state-by-state basis. “In Massachusetts and Connecticut, there’s a high degree of comfort [for insurers] because they know they have solid regulations,” Woods said.

The Straight Dope
Not everyone in the insurance industry is thrilled about marijuana going mainstream. In fact, the National Council on Compensation Insurance named medical marijuana one of the top issues for workers compensation in 2014, and insurers are already seeing an increase in workers comp claims related to medical marijuana.
To date, however, there have been no known approvals of those claims. That pleases experts like Phil Walls, chief clinical and compliance officer with Tampa-based pharmacy benefits manager Matrix Healthcare Services. He believes that insurers should not pay for any claims associated with marijuana. A vocal opponent of legalization, his opposition is founded on nearly 40 years of experience as a pharmacist.

His main complaint with marijuana is the way it is ingested. “We have a drug that’s by-and-large smoked,” Walls said. “Two marijuana cigarettes are equal (in toxicity) to a pack of cigarettes. States are lining up to legalize something that is going to cause harm.”

Walls believes marijuana is a gateway drug that paves the way for the use of other illegal substances. Further, adverse interactions with other drugs are well documented, he said, including decreased effectiveness of some medications and increased potency of others.

His biggest concern, however, is how marijuana flies under the radar of traditional medicine. An injured worker using medical marijuana usually does so without the knowledge of the pharmacist filling other prescriptions, said Walls. Likewise, a dispensary has no knowledge of what prescriptions the worker uses and what interactions might occur. What’s more, most dispensaries do not have the training to assess drug interactions with marijuana. “It’s a huge disconnect,” Walls said. “We’re creating risks for these patients. Injured patients are extremely unaware of the risks of taking opioids. Now we’re adding a drug that’s outside the mainstream that no one in the traditional method can monitor.”

**Weeding Out Exposures**

According to a 2013 survey by the International Association of Industrial Accident Boards and Commissions, most states surveyed have yet to put in place any regulations specific to marijuana. Because of its federal status, individual state insurance departments and legislators will have to determine how workers compensation deals with cannabis. Dr. Robert Hartwig, president and economist with the Insurance Information Institute, said that, as long as federal statute deems marijuana illegal, there will be no federal revision to workers comp legislation.

At least one state has addressed this issue. The Michigan legislature passed a bill clarifying language in its workers comp regulations to state that employers are not required to reimburse injured workers for charges associated with medical marijuana treatment.

From the employer’s perspective, marijuana is a more complex issue. Would denying an employee the right to medical marijuana—or even the use of marijuana recreationally, where applicable—be a violation of an employee’s personal rights? Walls said employers in Colorado or Washington should use OSHA as a guide. “If an employee is using marijuana—recreational or medical—does that promote a safe work environment? The answer is no,” he said.

Workers compensation is not the only concern. While there is little to suggest that any insurer has paid a workers comp claim for medical marijuana, there are clear loss exposures insurers are beginning to respond to. Walls pointed out, for instance, that because of the nationwide status of marijuana, companies could find themselves in violation of federal law if any of their business involves federal contracts.

Hartwig said that insurance coverage for the business side of legalized marijuana is much the same as any other business operation. “It’s just that the industry is a new one and there’s going to be a learning curve here for insurers and brokers alike,” he said. “It’s a growing business. In the greater scheme of things, this is probably not the riskiest or most difficult of businesses for insurers to break into.”

Angela Matherly understands the need to address the possible exposure from an employer perspective. As the senior director of risk management for snack food maker Snyder’s-Lance, Inc. in Charlotte, N.C., she has already built language into her company’s policies prohibiting the use of marijuana as a condition of employment, even if it is a state-allowed practice.

Her company does not do business in any of the states in question, Matherly said, but their drivers travel nationwide. Luckily, help came from the Department of Transportation addressing drivers and marijuana use. “The DOT came out
with a letter that says, regardless of state laws, the DOT recognizes federal law," she said. Since the company’s drivers are DOT-qualified, they are prohibited from using marijuana.

Matherly believes companies will take a hard line on the issue, especially those touting a drug-free workplace. “Our policy was that we don’t abide by the use of any type of illegal drug or misuse of prescription medication," she said.

Still, it is a fine line. With alcohol, companies don’t regulate what happens when employees are on their own time, but with marijuana, it is more difficult. “You can smoke all weekend and report to work sober on Monday, but if we pull you for a random drug test, you’re going to show positive,” she said.

Her advice to employers is to get ahead of the risk. “Go back and review the policies, look at the language, decide how the company is going to respond to the use of marijuana, and define that in the policies,” she said. “Then, communicate those changes back out to the associates.”

As states untangle the web of federal and local laws, employers will need to determine how to treat permitted use. For now, the legalization decision will remain with the states. “It’s not something that can be taken up in the federal courts because marijuana is not authorized at the federal level,” Hartwig said.

Opponents of legalization will continue looking for ways to curb it. Walls likens legalization to the repeal of prohibition. “A lot of it came down to whether or not there was a tax revenue associated with this,” he said. “In spite of what the states are doing, this is still, federally, an illegal drug.”

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