



The Patient Advocate Pharmacy®



UNCOVERING MEDICAL MARIJUANA IN WORKERS' COMPENSATION

USES

WORKERS' COMPENSATION

LAWS

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MEDICAL MARIJUANA

Marijuana has been listed as a Schedule I controlled substance by the United States Government since the creation of the Controlled Substances Act back in the 1970s. Schedule I drugs are considered those with the highest potential for abuse and dependency and have no accepted medical use.

However, that classification has not stopped the expanded acceptance of marijuana as a potential medical treatment across the country. Over the last few decades, states fought back against that classification as the country's perspective of marijuana and its usage have evolved.

While marijuana remains a Schedule I controlled substance on the federal level, the majority of states passed laws that allow for the use of medicinal marijuana.



California was the first state to pass a medicinal marijuana law back in 1996, but in the years since, 32 states along with **Washington D.C., Guam, Puerto Rico,** and the **U.S. Virgin Islands** joined them.ⁱ

Much like any legislative trend, every state's approach to medical marijuana - from what diseases it can be used to treat to how a patient can purchase it - is unique.

AN ALTERNATIVE TREATMENT OPTION

The most common use of medical marijuana is for pain control, specifically the treatment of chronic pain. Many argue that medical marijuana is a safer alternative given the high risk of overdose and addiction associated with opioids. Additionally, medical marijuana can be used as a replacement for NSAIDS, which some individuals are unable to use due to kidney function issues or ulcers. Many people are aware of the use of medical marijuana for glaucoma and cancer patients, often associated with treating nausea and weight loss, common side effects of chemotherapy. But additional uses of medical marijuana include the treatment of nerve pain, multiple sclerosis, a replacement for muscle relaxants, and those suffering from Post-Traumatic Stress Disorder (PTSD).ⁱⁱ

COMMON USES OF MEDICAL MARIJUANA

CHRONIC PAIN

NERVE PAIN

NSAID ALTERNATIVE

MULTIPLE SCLEROSIS

GLAUCOMA

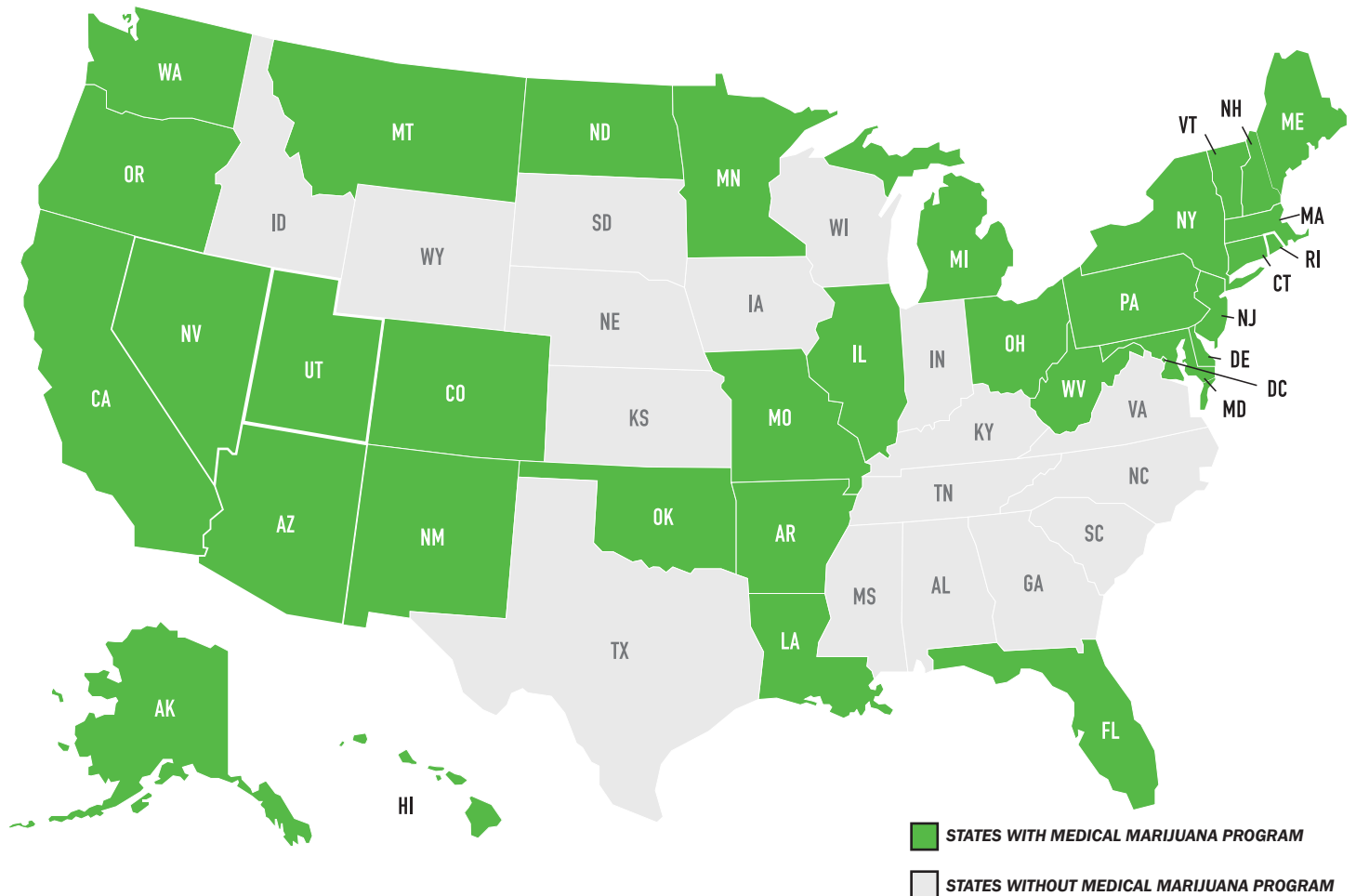
MUSCLE RELAXER

EFFECTS OF CHEMOTHERAPY

PTSD

With the majority of states allowing for medical marijuana, coupled with its cultural acceptance, one might assume that its health benefits are clear, but in reality we really don't know that much.

STATES WITH MEDICAL MARIJUANA PROGRAMS



The **U.S. Food and Drug Administration (FDA)** has not approved marijuana for treating any health problems and there are currently no accepted medical uses.ⁱⁱⁱ

The **U.S. Department of Health and Human Services (HHS)** evaluated marijuana and determined that the drug's chemistry is not known or consistently reproducible, and therefore no adequate safety studies have been conducted using marijuana at this time.

In June 2019, **Stanford University** released a study that found the legalization of medical marijuana did not in fact reduce the rate of fatal opioid overdoses as previously reported in 2014.^{iv}

Additionally, as marijuana remains a Schedule I drug, federal funding to study the use of marijuana as a medical treatment is nearly nonexistent. Therefore, what we know about medical marijuana mostly exists from small scale studies and anecdotal evidence.^v

MEDICAL MARIJUANA IN WORKERS' COMPENSATION

With significant potential benefits, but lack of adequate medical evidence, medical marijuana exists in a relatively new space for the treatment of injuries - especially those in workers' compensation. Supporters of medical marijuana believe the drug is critical for injured workers as a method for treating many common work-related injuries, including those with chronic pain. As we find ourselves in the midst of a national opioid epidemic, the idea of a less addictive medication to treat pain long-term is appealing.

With the great uncertainty surrounding medical marijuana and workers' comp, it's no surprise legal challenges have sprung up across the country in recent years. While the specifics of each case vary, much like medical marijuana laws vary by state, a common theme for such legal challenges center around one question:

IS MEDICAL MARIJUANA AN ACCEPTABLE AND COVERED TREATMENT UNDER WORKERS' COMP?

Some states, like **Florida** and **North Dakota** tackled the issue head on in their laws, specifically excluding medical marijuana from workers' comp coverage. In contrast, **Connecticut**, **Maine**, **Minnesota**, **New Jersey**, **New Mexico**, and **New Hampshire** all relied on court rulings to clarify medical marijuana's position in workers' comp.



MAKING A CASE FOR MEDICAL MARIJUANA

One of the first cases to tackle the issue of medical marijuana in workers' comp came from **New Mexico**. In *Vialpando v. Ben's Automotive Services and Redwood Fire & Casualty*, the **New Mexico Appellate Court** found that medical marijuana was reasonable and necessary medical care for the injured worker's chronic pain as defined by the state's workers' comp statutes.^{vi}

Similar rulings were issued by the **Connecticut Workers' Compensation Review Board**^{vii} in 2017 and the **New Jersey Division of Workers' Compensation**.^{viii} In those decisions, both Boards similarly found that medical marijuana was reasonable and necessary for the treatment of the injured worker's injuries.



Assuming a court or law allows medical marijuana in workers' comp, additional questions are raised, most notably, whether an insurer should be required to provide reimbursement for a drug considered illegal on the **federal level**.

With medical marijuana remaining a Schedule I drug, it lacks a National Drug Code (NDC). NDCs are used for billing and reimbursement of prescription medications and without one it would be nearly impossible to establish a standardized reimbursement rate for medical marijuana.



FEDERAL LAW VIOLATIONS?

Insurers across the country have argued that a state cannot compel them to cover medical marijuana because doing so would violate federal law that prohibits the use and possession of the drug. The counterargument to this assertion, made by claimant's counsel in numerous cases, is that the **U.S. Department of Justice (DOJ)** has a federal policy of noninterference with state medical marijuana programs.^{ix} The DOJ has found that it is an inefficient use of limited federal funding to prosecute those that use medical marijuana in compliance with state laws - meaning, an insurer required to cover medical marijuana used to treat a work injury would not be prosecuted for violating federal law.



TWO STATES ATTEMPTED TO ADDRESS THE REIMBURSEMENT QUESTION THROUGH THEIR LEGAL SYSTEM.



In 2017, the **Maine Workers' Compensation Appellate Division** found that a self-insured employer is not exempt from the Maine Medical Use of Marijuana Act (MMUMA) requirement that reimbursement be provided for costs associated with medical marijuana.^x

However, less than a year later, the **Maine Supreme Court** weighed in on the topic and, in contrast to the majority of decisions being issued on the topic across the country, concluded the state could not compel a carrier to violate federal law by mandating coverage for marijuana.^{xi}



In March 2019, the **New Hampshire Supreme Court** found that a workers' compensation insurance carrier was wrong to deny reimbursement for the cost of medical marijuana when the employee was using it to treat pain associated with his work-related injury.^{xii}

While the court left the more complex question of whether the federal law making marijuana illegal was enough for a carrier to deny reimbursement, they did clearly find that the state does not preclude an insurer from covering medical marijuana. In fact, the court stated that had the legislature intended for carriers to be exempt from such a requirement they would have clearly indicated so in their statute, as was done in **Florida**.



Finally, in determining how medical marijuana works within workers' compensation, laws must first determine:

WHAT IS THE STANDARD FOR WHEN MEDICAL MARIJUANA IS ALLOWED?

Workers' compensation medical treatment, including prescriptions, are often closely controlled by workers' comp divisions, regulations, and even insurers. With little scientific knowledge on the use and effect of medical marijuana, states have struggled with when and where to allow its use.

POTENTIAL ACCEPTED ROLES UNCERTAIN

For example, in the *Petrini v. Marcus Dairy, Inc.* case from [Connecticut](#), the injured employee tried dozens of different medications and a spinal cord stimulator to address his injury before his doctor prescribed medical marijuana. The most common acceptance of medical marijuana is for chronic pain treatment and it seems to be widely accepted that treatment should not be the first line of defense, but rather an alternative when other traditional options fail. However, without clear guidance in laws and regulations, the question of when and where medical marijuana will be accepted in workers' comp remains uncertain at best.

Medical marijuana is more than just a hot topic in workers' compensation. With the ever-changing landscape, ongoing opioid epidemic, and expanded social acceptance of marijuana across the country, the potential role and growth of medical marijuana in the workers' comp industry seems expedient, but any such growth comes with significant questions, concerns, and challenges.

It seems likely that medical marijuana will find its place in workers' compensation in the coming years, but there is a long, uncertain road ahead where much of its success, or failure, will be determined by legal precedent, state by state.





The Patient Advocate Pharmacy®

Injured Workers Pharmacy (IWP)

Injured Workers Pharmacy (IWP) is a specialized workers' compensation home delivery pharmacy that helps injured workers access their prescription medications without delays, denials, or out-of-pocket costs. Our Pharmacy staff is trained on state-specific workers' comp nuances and work closely with the prescriber and patient to offer clinical counseling and medication management.

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