



Clearing the Haze:

**Medical Marijuana
Considerations
for Plan Sponsors**

by | **Mike Sullivan**



As discussion about the legalization of marijuana heats up in Canada, benefit plan sponsors should consider establishing policies on whether their benefit plans will cover medical marijuana. Considerations include plan cost and design and legal issues that could arise.

Medical marijuana was already a hot conversation topic, but the Liberal Party's recent victory in the federal election has brought the legalization of marijuana to the forefront of health policy discussions. This will likely result in even more pressure for Canadian benefit plan sponsors to consider the inclusion of medical marijuana under health benefit plans.

Some objective evidence of the interest in the medical marijuana market in the days following the election lies in the stock market. Shares of Canada's largest publicly traded medical marijuana company, Canopy Growth Corporation (which owns both Tweed and Bedrocan Cannabis Corporation) jumped in price from \$1.69 per share on October 9, 2015 to \$2.42 by October 22. There is clear optimism that the emergence of a Liberal government will expedite the expansion of Canada's nascent medical marijuana industry.

The following are some important considerations for Canadian plan sponsors as they determine what approach they might take in including medical marijuana under health benefit plans in the future.

Context: How Did We Get Here?

The private medical marijuana industry is new. The Medical Marihuana Access Regulations (MMAR) came into effect in 2001, giving patients access to cannabis for medical purposes as long as a physician indicated the patient was using it to treat an approved condition. Under MMAR, patients could only obtain medical marijuana

by applying to access Health Canada's supply, obtaining Health Canada approval to produce their own or by designating someone to cultivate it on their behalf. Hence, it was a government-controlled program outside the jurisdiction of private plans.

The regulations approved medical marijuana for treating symptoms related to the following conditions:

- End-of-life care (palliative care)
- Multiple sclerosis
- Spinal cord injury or disease
- Cancer
- HIV/AIDS
- Arthritis
- Epilepsy.

In 2013, the game changed dramatically, prompting the conversation about including medical marijuana within private health benefit plans. The Marihuana for Medical Purposes Regulations (MMPR) replaced MMAR in 2014. The key changes include:

- Health Canada is no longer in the business of growing and distributing medical marijuana.
- Patients can no longer cultivate cannabis for their own use (although there is currently an injunction allowing patients to do so while the case works its way through federal court).
- Patients can only obtain medical marijuana from a Health Canada-approved and -regulated licensed producer (LP)—hence, the birth of a new industry and new considerations for plan sponsors.
- Health Canada no longer plays any role in the authorization for a patient to possess medical mari-

juana—Its sole responsibility now is to oversee LPs.

- Reasons for using medical marijuana do not need to be disclosed to the producer.
- Patients must apply directly to the producer for access to medical marijuana with authorization from a physician.
- LPs are free to set their own price.

It is important to note that Health Canada does not endorse the use of medical marijuana. Medical marijuana has neither Health Canada approval as a "drug" nor a drug identification number (DIN). Since most health plans require both for a drug to be eligible for reimbursement, inclusion of medical marijuana in private health benefit plans has been restricted.

Is There Any Proof Medical Marijuana Works?

Most of the current evidence supporting the use of medical marijuana is anecdotal, and there is very little conclusive scientific evidence available proving its effectiveness. However, a number of small clinical trials in recent years support its safety and efficacy in certain areas, and more are underway. Medical marijuana advocates swear by its safety and effectiveness, but regulators and evidence-based

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medicine professionals point to a lack of objective, reproducible evidence that can validate safety and efficacy. This creates a grey zone and puts plan sponsors in a difficult and complicated position.

Further complicating the equation is that cannabis is highly complex and contains multiple *cannabinoids* (the unique active components) as well as hundreds of other chemicals. This complexity makes it difficult to study medical marijuana because every producer can grow strains with different concentrations of cannabinoids. In addition, no studies have evaluated medical marijuana's long-term effects, so the efficacy question will remain unanswered for some time, continuing to complicate the plan sponsor's job.

Evidence for the use of medical marijuana is greatest in the following areas:

- Multiple sclerosis—spasticity related to the condition
- Chronic neuropathic (nerve) pain
- HIV/AIDS—in both sensory neuropathy and wasting.

Dosing and Use

Specifying medical marijuana dosing is incredibly difficult given the wide variations in the strains available and individual tolerance. MMPR does not restrict the daily amount that can be authorized but has a possession limit of the lesser of 150 grams or 30 times the daily amount needed. Daily doses in the medical literature range between 75 mg (9.4% tetrahydrocannabinol (THC) by weight) to 3.2 g (up to 8% THC by weight) of dried cannabis. Current literature suggests the majority of people using medical marijuana consume 1-3 grams daily.

A recent development may bring more standardization to dosing. In July 2015, Health Canada gave LPs approval to produce and market cannabis oils as well as fresh marijuana buds. Prior to the change, LPs could only provide dried marijuana that was either smoked or vaporized. The expanded options could eventually lead to the production of liquids, gel caps and topical preparations. New dosage forms could create more complexity for plan sponsors because products could be used more discreetly compared with smoking or vaporizing dried marijuana. Some plan sponsor objections to accommodating smoking or vaporizing would be addressed with other dosage forms.

How Is Medical Marijuana Used?

This is one of the greatest challenges for plan sponsors—The list of conditions treated by medical marijuana appears to grow on a monthly basis. The major areas of use today include:

- Nausea and vomiting
- Wasting syndrome
- Multiple sclerosis
- Spinal cord injury
- Epilepsy
- Chronic pain
- Movement disorders
- Glaucoma
- Asthma
- High blood pressure
- Psychiatric disorders
- Alzheimer's disease
- Inflammation
- Inflammatory bowel disease.

There isn't another therapy on benefit plans today with this range of possible indications for use. Because plan members don't have to disclose why they are taking the product to an LP, and there are no defined dosage limits for various conditions, it will be challenging for plan sponsors, claims processors and insurance carriers to manage claims in this area. For example, eliminating the need to disclose what the medication is being used for could render a process like prior authorization very challenging. Even if a patient seeking reimbursement through private plan coverage provides a reason for use, it will be difficult to set

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Takeaways

- As the issue of whether to legalize marijuana gains more attention, Canadian benefit plan sponsors may feel more pressure to consider including medical marijuana under health benefit plans.
- Health Canada does not endorse the use of medical marijuana and has not approved it as a drug or given it a drug identification number.
- Most of the current evidence supporting the use of medical marijuana is anecdotal. Small clinical trials have been held in recent years, and more are underway.
- Managing claims is one potential challenge because plan members don't have to disclose why they are taking medical marijuana to a licensed producer, and there are no defined dosage limits.
- It will take time to determine how workplaces with zero-tolerance rules for drugs and alcohol will address medical marijuana.

maximum dosage levels where dosing has not been well-established.

Other Practical Considerations for Plan Sponsors

Cost and Plan Design

Cost is one of the first considerations for plan sponsors looking to make a case for covering medical marijuana. As of late 2015, the average price Canadian LPs charged for medical marijuana was approximately \$7.50 per gram.

Assuming up to 3 grams per day (on average) over 365 days, the cost could easily exceed \$8,000 per year, which would elevate medical marijuana into the realm of a specialty drug from a cost perspective. That's not to suggest the investment is, or is not, worth the cost. It is simply an expression of the fiscal reality for plans considering the inclusion of medical marijuana.

The challenge for most plans, regardless of their appetite to cover medical marijuana, will be finding resources to cover a material portion of the cost of a therapy that could cost thousands of dollars annually for a growing array of chronic conditions. To be in a realistic position to cover the associated plan costs, plan sponsors will need to consider:

- Isolating and eliminating inefficiencies within the prescription drug plan that are providing little to no benefit to plan sponsors and their members today and reinvesting savings into areas like the coverage of medical marijuana for members who qualify for coverage.
- Plan design changes that help to ensure long-term cost containment without adversely affecting member health. Examples could include moving away from open plans and designs with flat reimbursement levels (i.e., one tier), implementing actively managed prior authorization and introducing partnerships with preferred vendors.
- Integrating data from multiple benefit lines (i.e., absence, short-term disability, long-term disability and drug) to determine total returns from enhanced management of chronic conditions—Can a business plan be developed and returns measured for investments in new therapies like medical marijuana in approved cases?

It should be noted that the Canada Revenue Agency considers medical marijuana as an eligible medical expenditure for income tax purposes.

Legal

This is another grey area in the world of plan sponsor coverage that will take time to sort out. Some workplaces have zero-tolerance rules for drugs and alcohol, and it will take time to determine how medical marijuana will be considered (if at all) in such environments. A recent decision issued by the British Columbia Human Rights Tribunal supported a logging company in upholding its zero-tolerance policy on marijuana use due to safety concerns. However, a complicating factor in the case is the lack of sufficient medical documentation to support the use of medical marijuana. That raises questions about what the outcome might have been if proper medical documentation had been available.

These legal questions also raise concerns about the duty to accommodate. Employers have a duty to make accommodations as it relates to a member's medical condition(s), but that duty must be balanced with the need to maintain a safe workplace. This can be a challenge in industries where heavy machinery or similar dangers exist. The duty to accommo-

date also cannot create undue hardship for an employer. Since there are no hard-and-fast rules to what that means, all situations need to be assessed on a case-by-case basis.

Bottom Line

The topic of medical marijuana is likely to pick up momentum in the months and years ahead. Plan sponsors will need to proactively establish policies on whether medical marijuana will be covered and, if so, with what restrictions. Because of all of the uncertainty that exists in this area today and, given that the private medical marijuana industry is in its infancy, plan sponsors should revisit this area annually.

Plan sponsors that see great value in covering medical marijuana should give serious consideration to optimizing current plan designs and eliminating inefficiencies to be in a position to provide sustainable coverage. ☯

BIO

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