

Canadian provinces restrict use of medical marijuana in workers comp

Angela Childers – Business Insurance

Canada may have been the first country in the world to legalize medical marijuana back in 2001, but its provinces are still grappling with what that means in the workers compensation world.

The provinces that have implemented or are planning to adopt policies governing the use of medical marijuana as a pain treatment option have moved slowly out of concern about potential adverse health impacts or questions about its effectiveness and have limited the circumstances in which it can be prescribed, experts say.

WorkSafeNB, which oversees New Brunswick's workers comp system, led the way by issuing its marijuana policy in April 2018, which allows for the use of medical marijuana for work-related injuries in limited instances.

"Really what drove (our policy) is we were seeing more and more requests from workers and their physicians indicating that they thought cannabis would be a viable treatment" for workers injuries, said Laragh Dooley, director of communications for WorkSafeNB in St. John. "We wanted to standardize our decision-making."

The New Brunswick policy does not allow for dry cannabis to be smoked and limits use mainly to end-of-life care or palliative settings, central nervous system injuries or chronic neuropathic pain. Even then, medical marijuana is only covered after all other treatment options have failed or been determined to be inappropriate, with a full risk assessment and follow-up monitoring.

WorkSafeNB will consider medical marijuana for harm reduction if an injured worker is on an opioid dosage amount over the daily maximum dose and is at a high risk of harm, Ms. Dooley said. Currently, 71 workers have been approved for medical marijuana, with a maximum dose of 3 grams per day. The board will pay up to CA\$8.50 (\$6.39) per gram, which is the same payment and amount maximum authorized by Veterans Affairs Canada.

While some stakeholders advocated for a more liberal policy, Ms. Dooley noted that medical evidence is still emerging regarding the use of marijuana as a medical treatment, but that the province is open to modifying the policy in the future.

The Ontario's Workplace Safety and Insurance Board, which is the only workers compensation insurer in the province, looked at scientific evidence, clinical guidance, provisions of the province's workers compensation statutes and federal regulations regarding the use of medical marijuana to craft its operational policy, Cannabis for Medical Purposes, which it released in March, said a WSIB spokeswoman.

The Ontario policy covers medical marijuana for five work-related conditions and only after all appropriate conventional treatments are exhausted. Prior to the board's development of a policy, requests for medical marijuana were considered on a case-by-case basis and just 32 claims had been approved.

Evan Stait, commercial account executive for Hub International Ltd. based in Kelowna, British Columbia, said he believes the conservative approach taken by the provincial workers comp agencies is positive and allows employers time to assess and understand potential ramifications of the use of medical marijuana to treat worker injuries.

One reason workers compensation has been restrictive with covering the use of medical marijuana is the lack of clear evidence on how effective it can be in treating certain conditions, as well as the potential negative impact on health, said Darren Avery, associate in the London, Ontario, office of Filion Wakely Thorup Angeletti LLP.

"With work-related injuries, cannabis can be helpful, but what happens when you go back to the job?" he said.

Other provinces are still determining medical marijuana compensability on a case-by-case basis. WorkSafeBC, which handles workers comp for the province of British Columbia, noted in a statement in late 2018 that it is consulting with other jurisdictions and regulators about any new national frameworks that would require changes to be made to the province's Workers Compensation Act or its Occupational Health and Safety Regulation.

Gillian Burnett, the acting senior manager of government and media relations at WorkSafeBC, said the agency doesn't cover cannabis — including medically authorized cannabis — for the treatment of musculoskeletal pain.

"In a small number of cases, WorkSafeBC will cover cannabinoids that have been approved by Health Canada for treatment of neuropathic pain," said Ms. Burnett in an email.

Nova Scotia is expected to release a policy in early April, and a spokesperson for Nova Scotia's Workers Compensation Board said it will be guided by best medical practice and that the province will consider, on a case-by-case basis, if medical marijuana may be a part of the recovery process. To date, the provincial board has approved medical marijuana in fewer than 10 workers comp claims.

In Quebec, the Commission des normes, de l'équité, de la santé et de la sécurité du travail, also known as the CNESST, will reimburse marijuana for medical purposes "only when it has been prescribed by the doctor in charge of the worker and that prescription is related to the employment injury," wrote a CNESST spokeswoman in an email. "However, the CNESST ensures, in all cases, the need for this treatment through a medical assessment procedure" outlined in the province's workers comp legislation.