



THE HAZY DEBATE OVER COVERING MEDICAL MARIJUANA UNDER GROUP BENEFITS PLANS

Medical questions and legal and regulatory issues are creating a confusing landscape for patients, insurers and plan sponsors

By Jennifer Paterson

In 2014, Jonathan Zaid won the right to have medical marijuana covered under his university's benefits plan.

It has been more than a year since Jonathan Zaid won the right to have his medical marijuana prescription covered under his group benefits plan, effectively kicking off a wider conversation about coverage for the drug.

For nearly a decade, Zaid, 23, had been suffering from a chronic condition called new daily persistent headaches. He tried a variety of prescription medications and alternative treatments, but nothing really worked. “I turned to medical cannabis after I learned that it could work for my condition and it was really working well, but the cost started adding up,” he says, noting his monthly out-of-pocket costs for vaporizing the drug were averaging about \$800.

Zaid’s benefits had covered the other prescription drugs and treatments he had tried to relieve his pain, whether they were through his father’s employer-paid plan or his undergraduate health coverage at the University of Waterloo. He had even obtained quick approval for a few medications that weren’t on the formulary.

“I approached the school to do the same thing with medical cannabis, but this time, it ended up being an eight-month process of talking with the student union, lots of meetings and conversations about medical cannabis and its use, a lot of education,” he says.

“In the end, they determined it would have a positive impact on both my health and my education, so the school decided to cover it.”

Zaid is the founder and executive director of a group called Canadians for Fair Access to Medical Marijuana. “I am helping a lot of people through CFAMM’s individualized insurance education program,” he says.

“Patients are reaching out to their employers and to their group plan administrators to try to get coverage, and I think more and more employers are responding. We’re just going through that process with a lot of them now. It’s really a long process and people react with misconceptions surrounding it at

first, so there’s a lot of education needed in most cases.”

Chris Murray, director of medical development at Bedrocan Canada Inc., one of nearly 30 licensed producers in Canada, says the body of evidence for the benefits of medical marijuana is growing and researchers are looking at cannabis more regularly now than they were a few decades ago. The company is working with Zaid to identify people who may be eligible for insurance based on their existing group benefits plans.

“We believe there are hundreds, if not thousands, of other Jonathans out there who just need the right guidance,” he says. “Our hope is that a hands-on approach will create momentum and ultimately lead to system-wide changes.”

If there are others like Zaid out there, plan sponsors will want to pay attention as there’s a chance one of them works for their company. And with drug costs continuing to escalate and companies like Shoppers Drug Mart exploring the possibility of getting into the sale of medical marijuana, employers will want to keep an eye on this issue.

Keeping it legal

The legislative landscape around medical marijuana in Canada has changed dramatically in recent years. Canada is still dealing with the fallout of the most recent significant change that began in June 2013 when the marijuana for medical purposes regulations came into effect. The regulations, which allow licensed producers to grow and distribute medical marijuana, have been subject to numerous legal challenges, with the court recently having declared them invalid.

On the topic of legalizing marijuana for recreational purposes, federal Health Minister Jane Philpott announced in

April the government would introduce legislation next year. “The election of the Liberal majority government in October and the legalization narrative was an enormous change in the equation,” says Mike Sullivan, president of Cubic Health Inc.

“But with the recent decision by the appeals court that effectively suggested the new regulations are not appropriate, there was a messaging back saying that the new regulations implemented by the Conservative government don’t work and they need to be fixed.

“It has left things in an enormous mess, and I don’t think anybody knows what’s going to happen now until the regulations get redrafted and recreated. [Legalization] is very much akin to something becoming over the counter in the prescription drug benefit world. If it becomes an over-the-counter product, why does anybody go through the process of obtaining a prescription and having it run through as a prescription?”

Another legislative issue that could affect employers is around discrimination, according to Will Cascadden, a partner at McCarthy Tétrault LLP’s Calgary office.

“If a doctor tells an employee their illness requires treatment to be the use of medical marijuana in some form — and that’s the medical prescription — and the employee says, ‘If I needed insulin, it would be covered, but because I need medical marijuana, it isn’t,’ that could be discriminating against someone on the basis of illness or disability.

“If group benefit plans don’t cover it, I can see there being a challenge from a human rights’ perspective. Ultimately, the humans rights [tribunals] will say it is discriminatory to not cover that medication, when you cover others, because that particular disability is the one a person has and if they’re not getting the same treatment, that’s discriminatory.”

But the first step will have to be sorting out the regulatory regime, and then the pharmaceutical industry and benefits providers will have to figure out how to deal with it, he says. “At that point, there will be a process.”

'Uptick in claims'

It's becoming more and more common for doctors to prescribe medical marijuana to people with certain types of cancer, HIV/AIDS, Crohn's disease and multiple sclerosis, as well as for chronic pain and as a sleep aid or a replacement for potentially expensive and harmful opioid treatments.

"Why are certain drugs covered and others not covered?" asks Robert Crowder, president of the Benefits Trust. "It's a real question that employers are battling with and it's becoming a bigger and bigger issue as the benefits of medical marijuana are becoming more and more relevant on a case-by-case basis."

While there are about 30 companies with licences to produce and sell medical marijuana in Canada, Health Canada hasn't provided it with a drug identification number. But the Canada Revenue Agency did add it as a medically exempt tax credit at the end of 2015, which means

it's now payable through employer-provided health spending accounts.

"We've seen a little bit of an uptick in claims there," says Joan Weir, director of health and dental policy at the Canadian Life and Health Insurance Association.

While the issues around medical marijuana coverage have come up in member meetings and some insurers are putting exceptions in place when asked by plan sponsors, Weir says there isn't a lot of clamour from employers to add it to group benefits plans. "There are just enough questions about how we do it, does it actually make people more productive . . . There are still questions about all of that. Right now, we're sort of watching."

Adam Greenblatt, co-founder and executive director of Santé Cannabis, Quebec's first medical marijuana clinic, says there's a big movement towards coverage, despite the drug bypassing many of the regulatory hurdles. "Medical marijuana has largely evolved in Canada

because of court rulings," he says.

The industry at large relies on Health Canada guidelines when it comes to managing the dosage and pricing of pharmaceuticals and other medications. "Medical marijuana doesn't fit tidily into the current paradigm for prescription medication," says Karen Taylor Smith, senior manager for group benefits at the Benefits Trust.

"There is, from the medical community, information that there can be a very wide variation in dosing, depending on the individual patient and the condition that it's being used for, because there's a growing categorization of conditions where clinical studies are showing it's effective."

There's also some emerging data around the cost benefits, particularly when it comes to the substitution effect, "where people use marijuana in place of conventional medication that group benefits plans would happily pay for," says Greenblatt.



THE HISTORY OF CANNABIS IN CANADA

1923
Cannabis added to the schedule of the Opium and Drug Act.

1997
Ontario Court of Appeal upholds ruling that people must be able to access medical marijuana treatment without fear of arrest.

2001
Canada adopts the marijuana medical access regulations that allow patients to buy the drugs from licensed companies or, in some cases, grow it themselves.

2003
Ontario Superior Court rules the regulations are unconstitutional because the government isn't providing a legal source of marijuana. Ottawa responds by providing seeds or dried leaves to authorized Canadians.

2011
Nova Scotia Supreme Court orders the provincial government to pay for the marijuana-growing equipment of a Halifax woman on social assistance.

An example would be to compare the cost of marijuana to that of Zofran, a typical anti-nausea drug used for chemotherapy patients. Zofran costs \$40 a pill, while a marijuana joint costs about \$2 or \$3. "You can start to get a sense of the costs," says Greenblatt.

But Weir questions the business case. "It's not clear yet that medical marijuana would necessarily replace other medication. While cost is only one part of the equation, insurers are looking for solid evidence that medical marijuana will not simply add cost to benefits plans.

"Are we making the employee more productive and/or enabling an employee on disability to return to work? Of course, the business case equation focuses on cost, and there are other considerations as well."

Murray, however, suggests the issue is fairly straightforward. "It is simple medicine and mathematics," he says. "In many cases, cannabis is a more cost-effective treatment for patients than the alternatives

VETERANS AFFAIRS TAKEN TO TASK FOR MEDICAL MARIJUANA COSTS

In May, the federal auditor general released a report urging Veterans Affairs Canada to explore ways to control its spending on medical marijuana.

According to the report, Veterans Affairs expects expenditures could reach \$25 million in the 2016-17 fiscal year.

The department has been covering the costs since 2008, after making the decision to reimburse one individual based on compassionate grounds in 2007. Since new regulations by Health Canada took effect in 2013, the costs have risen significantly.

The department advised the

auditor general that it covers only the amount recommended by a physician or medical professional. More specifically, it has approved coverage of 10 grams per day, per veteran, which the auditor general says is double the amount identified as being appropriate in Veterans Affairs' consultations with external health professionals and three times the amount Health Canada has reported as being common for individuals using the drug for medical purposes.

The department has agreed to implement a policy to contain the costs.

The marijuana for medical purposes regulations come into effect, allowing licensed producers to grow and distribute medical marijuana. Health Canada writes on its website it hopes the changes will minimize the amount of marijuana "being diverted to an illicit market or use."

The Supreme Court rules patients can use all forms of medical marijuana, including oils and edible products.

Health Canada issues an exemption under the Controlled Drugs and Substances Act that will allow licensed producers to produce and sell cannabis oil and fresh marijuana buds and leaves in addition to dried marijuana.

Trudeau directs ministers "to create a federal-provincial-territorial process that will lead to the legalization and regulation of marijuana."

The government's proposed timeline to introduce legislation to legalize marijuana, according to a statement by federal Health Minister Jane Philpott on April 20, 2016.

JUNE 2013

MARCH 2014

JUNE 11, 2015

JUNE 24, 2015

JULY 11, 2015

OCTOBER 19, 2015

NOVEMBER 13, 2015

FEBRUARY 2016

SPRING 2017

Despite the repeal of the marijuana medical access regulations, some patients authorized to possess and produce the drug under them can continue to do so until the court reaches a final decision on the issue.

Vancouver regulates dispensaries.

Justin Trudeau's Liberal party wins the federal election. One of its campaign promises is to legalize cannabis for recreational use.

A Federal Court judge declares the marijuana for medical purposes regulations invalid and gives the Liberal government six months to enact a new regime.

Sources: The Canadian Press, CBC, Health Canada and the Library of Parliament

3,486 

Number of people in Canada who held a designated-person production licence

Source: Health Canada marijuana medical access program statistics, January 2013

Canada hand out an identification number any time soon. “Some of the licensed producers say they are trying to do some of these clinical trials but they are a long way away from having a level of evidence that Health Canada would need,” says Sullivan. “I don’t think it would ever bypass that.”

In the meantime, Canada can take notes and learn lessons from countries like the Netherlands, where drug plan coverage of medical marijuana is common, and U.S. states, such as Washington and Colorado.

“What we’re seeing in Washington state, for example, is a recreational cannabis program that is rolling right over their state-authorized medical program, and they have had some great difficulties with that because it looks like they chose recreational over medicinal when they already had some pieces in place of a medical system,” says Shaw, noting Colorado addressed the medical system before allowing for recreational sales.

“In some cases, it’s being covered by some private insurance companies in these two states.” 

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while also causing less harm. If a treatment is more cost-effective and results in patients getting back to work and healthier more quickly, it is a win for the insurance provider and the employer. Most importantly, it is a win for the patient.”

The argument that medical marijuana is a cheaper option is a good reason for a benefits provider to be in favour of any legislation that requires it to cover the drug, according to Cascadden. “I think what’s ultimately going to happen is that it will simply become properly administered by benefits providers and everything else.

“And I think we’re going to end up in a place where we do have the producers being regulated, which is what the federal government was trying to do, and that will increase the legitimacy of it because then they can say this strain does X and this strain does Y. Once you know that, it will be a lot easier to regulate and there will be more precise costs associated with it.”

Taboos and stigma linger

Despite the new government’s stance on legalizing marijuana and the anecdotal evidence of its medical benefits, long-standing taboos associated with the drug persist.

“Part of that is because it’s cannabis and part of it is just because it’s a plant

medicine,” says Jamie Shaw, former president of the Canadian Association of Medical Cannabis Dispensaries. “There is stigma towards plant medicine in Canada as well that [isn’t] cannabis.”

Murray believes there’s a knowledge gap rather than a stigma, so his organization actively engages with the health-care community. “We can overcome the knowledge gap by having open dialogue and by facilitating conversations and engaging in the evolving legislative process,” he says.

Ultimately, advocates for the benefits of medical marijuana believe plans should cover it like any other pharmaceutical drug. “Most plans cover pharmaceuticals up to a certain percentage of the cost, depending on the plan, and we believe cannabis should be treated the same way,” says Murray.

“The first step towards coverage, however, is to have cannabis added to the provincial formularies. If the provinces were to request the inclusion of cannabis in the common drug review, this would give the Canadian Agency for Drugs and Technologies in Health the opportunity to demonstrate what we believe to be a much more cost-effective solution for the provinces.”

But many members of the benefits industry don’t expect to see Health

5,392 

Number of people in Canada who indicated they would access dried marijuana and/or marijuana seeds from Health Canada for medical purposes

Source: Health Canada marijuana medical access program statistics, January 2013

WORKING THROUGH THE COVERAGE PROCESS

Through a pilot project launched in March called CannabisCoverage, MarijuanaMedInfo is working with a group of clinics, physicians and their patients to create, submit and follow up on requests for coverage of the drug through group benefits plans.

“We’ve seen a lot of people get coverage of medical marijuana through health spending accounts since the CRA put it on the list,” says Dan Rego, president of MarijuanaMe-

dInfo, an online resource on medical marijuana. “But we really needed to do a comprehensive look at what the landscape is, and that will guide us in our next steps.”

Through the pilot project, MarijuanaMedInfo is working with patients to collect their reimbursement information, get the proper authorization from their physician, submit claims to their insurer and then follow up.

“We thought we’d do a few hundred patients, get a lay of the land, and that would guide us to instruct the licensed producers on

where they should be focusing their efforts with large employers and insurance companies . . . to say, maybe in certain cases, this drug should be added to the list of benefits,” says Rego.

One of the patients in the pilot project is Garnet Harper, a school support worker in Sudbury, Ont., who has experienced severe migraines and social anxiety ever since he suffered a diabetic retinopathy.

He and his wife, whose group benefits plan with Laurentian University is the one in question, have

focused on organic and natural health care whenever they can.

Laurentian’s benefits provider said it couldn’t cover medical marijuana under the group plan, but Harper’s wife learned from her union representative that it had been covered before. The case is at a standstill.

The CannabisCoverage program is aiming to build a database of at least 300 patients. “Going through the process like this is the only way to know where the opportunities are to make progress,” says Rego.