MEDICAL MARIJUANA IN U.S. AND WORK COMP
-A QUICK LOOK-
LMAC – June 2019
History in Montana

• 2004 – November I-148 approved by Montana voters
  • Growth moderate

• 2011 – SB 423
  • Repealed laws from initiative and replaced with more restrictive laws
  • Reasonable access no more than 3 patients

• 2016 – Montana Supreme Court
  • Mont. Cannabis Indus. Ass’n. v. State, 2012 MT 201 [reversing a District Court injunction against part of the 2011 legislation] and Mont. Cannabis Indus. Ass’n. v. State, 2016 MT 44 [affirming in part and reversing in part a District Court injunction against portions of the 2011 legislation], decided Feb. 25, 2016. A good procedural history of both cases can be found at 2016 MT 44 at paras. 3-10.
    • Ruled in favor of restrictive law which greatly reduced access

• 2016 – I-182
  • Removed the 3 patient restriction
  • PTSD qualifies
  • Businesses must be licensed and inspected
  • No longer unannounced inspections from law enforcement

• 2017 – SB 333
  • Regulation on seed to sale tracking; licensing of dispensaries; allowable amounts; tax on providers; fee for dispensaries
In Work Comp in Montana

• **39-71-407, MCA**
  - Worker is not eligible for benefits if the use marijuana for a debilitating medical condition is the cause of the injury or OD
  - Insurer not required to reimburse for costs associated with the use of marijuana for a debilitating condition
  - In an accepted claim, benefits payable may not be increased or enhanced due to a worker’s use of marijuana for a debilitating medical condition
  - Marijuana not considered a prescribed drug

• **24.29.1526, ARM**
  - Disallowed procedures includes medical marijuana
Marijuana Legalization in the US
As of April 1, 2019

Recreational Use Legalized
Medical Marijuana Broad Legalization
CBD/Non-Psychactive Legalized
Marijuana Illegal All Forms
Is Medical Marijuana Reimbursable in WC

- **Allow Reimbursement**
  - New Mexico
    - Also has a fee schedule
  - Connecticut
  - Minnesota
  - New York

- **Does Not Allow**
  - Florida
  - North Dakota
  - Louisiana (2018) does not prohibit but does not require
  - Montana
    - Statute
    - Rule
Legislation in 2019

- Considered legislation to authorize reimbursement for medical marijuana
  - Hawaii
  - Kansas
  - Maine
  - Maryland
  - New Jersey
  - New York
  - Vermont

- Proposed legislation to not prohibit but not require
  - Hawaii
  - Kentucky
  - Oklahoma
Recent Court Cases

• In March 2019 the New Hampshire Supreme Court – State’s Medical Marijuana law does not prohibit reimbursement but does not require reimbursement

• In 2018 Maine Supreme Court employers not required to reimburse for WC treatment
Some Stakeholder Questions

• Can or should medical marijuana be used to treat a workplace injury?

• How does it affect the injured worker’s job?
  • Workplace
    • Drug-free
    • Hiring practices
    • Promote safety
  • Determination of impairment?
  • Impact on WC benefits when worker is injured is under the influence while working?
    • Montana says employee not eligible for benefits if medical marijuana is the major contributing factor
Questions?