

Cannabis: Considerations For Your Benefits Plan and Workplace

With much anticipation and apprehension, legalization of recreational cannabis is here.

The Cannabis Act or Bill C-45 received Royal Assent on June 21st making Canada only the second country in the world (and the first G7 country) to legalize recreational cannabis at a federal level. Bill C-45 amended the Controlled Drugs and Substances Act and the Criminal Code so that the recreational use of cannabis would be decriminalized as of October 17, 2018.

The legalization of recreational cannabis has been a topic of conversation at home around the supper table, at schools, and in the employer workplace. This article will discuss coverage of medical cannabis under your benefits plan and best practices to consider in your workplace to manage recreational cannabis.

Group Benefit Plans and Medical Cannabis

Benefit plans have adjudication guidelines in place to help guide the decision on whether an expense is eligible for reimbursement or not. Common reimbursement guidelines (or criteria) are typical under a Prescription Drug Plan. However, other reimbursement criteria may exist in your plan therefore it is important that you review and understand your reimbursement criteria.

Below is the reimbursement criteria that you will see most often:

- The drug must have a Drug Identification Number (DIN) issued by Health Canada

- The drug must be prescribed by a health care professional legally authorized to do so
- The drug must be dispensed by a pharmacist or health care professional legally authorized to do so
- The drug must not be listed as an exclusion

Medical cannabis does not have a Drug Identification Number (DIN) and therefore will not be considered an eligible expense under Prescription Drug Plans that contain the criteria above. Medical cannabis may be reimbursed under a benefit plan as discussed below.

Optional Coverage for Medical Cannabis

There is growing clinical evidence that medical cannabis may provide health benefits to those suffering from specific medical conditions and related symptoms. As a result, many carriers are offering coverage for medical cannabis, for certain medical conditions, up to an annual maximum on an optional basis.



If your carrier offers optional coverage, it generally will be provided under the Medical Services and Supply section of the Extended Health Care (EHC) benefit in your benefits plan or alternatively can be provided under a Health Spending Account (HSA).

The annual maximum dollar amount of coverage varies by carrier as do the coverage for medical conditions. Prior authorization is a must. Although the dollar amount of coverage varies by carrier, an acceptable annual amount of coverage would be between \$2,000-\$2,500.

If optional coverage is elected, the following conditions must be met:

- The prescription must be prescribed by a health care professional legally authorized to do so
- The medical cannabis must be purchased from a Health Canada licensed producer of medical cannabis
- It is treating an approved medical condition

The medical conditions vary by carrier however, two conditions covered by most carriers are:

- Treatment of spasticity or pain in patients with Multiple Sclerosis where symptoms cannot be treated with standard prescription drug therapy
- Treatment of nausea/vomiting in cancer patients where symptoms cannot be treated with standard prescription drug therapy

Other less frequent conditions covered carriers are:

- Rheumatoid Arthritis where pain failed to respond to standard therapy
- Individuals requiring palliative care
- HIV/AIDS patients with anorexia or with neuropathic pain

Self-Funded Plans

Self-funded plans may consider coverage to an annual dollar maximum. Alternatively, unlimited coverage may also be considered but depending on your stop loss provider, claims for medicinal cannabis may not contribute towards your stop loss threshold.

Coverage Under Health Spending Accounts (HSAs)

Medical cannabis is an allowable medical expense for income tax purposes as determined by the Canada Revenue Agency and as such, some employers have been reimbursing medical cannabis for years under a HSA. Prior authorization may be applied to HSA expenses but this varies by carrier.

Workplace Considerations Drug and Alcohol Use

Employers should understand cannabis in the workplace in much the same way as they do alcohol and other drugs causing impairment. Occupational Health and Safety Legislation tells us

clearly that employees cannot be impaired while at work since they cannot compromise their own or anyone else's safety. Under this legislation, employers need to (within reason) identify and prevent the 'risk of impairment' and the most effective tools they have to do so are effective policy and employee training.

Drug and Alcohol Policy

The legalization of cannabis will not impact a good policy already in place for alcohol or drug use. Employers have both a responsibility to ensure and a right to know employees are not impaired at work. The health and safety of the employee, their co-workers, your customers and anyone who enters your workplace is important and must be ensured. Workplaces that have safety-sensitive job roles may have stricter regulations (up to and including drug testing) to ensure safety.

Employers are encouraged to revisit policies and procedures that address drug and alcohol use to check that there is an accommodation component within the policy, that employees are encouraged to self-disclose using any drug that may cause impairment and that managers understand both recognizing the signs of impairment and how/when their duty to accommodate is triggered.

Many workplace drug and alcohol policies prohibit the use of illicit or illegal drugs on company property. Cannabis will no longer be illegal. Employers need to make sure they do not accidentally exclude substances by changing the language to prohibiting 'any drug that impairs

one's ability to work'. This statement would be inclusive and would cover other drugs such as prescription medications and over the counter medicines.

Duty to Accommodate

Under both federal and provincial human rights law, employers have a duty to accommodate employees with disabilities up to the point of undue hardship. When you are accommodating workers who may have a prescription for medical cannabis, or those who may have a substance dependency, it's important to remember you are not accommodating the drug - you are accommodating the underlying mental or physical disability.

Human Rights case law provides us with examples of how employees can't be discriminated against for medical cannabis use. However, this must be balanced with the responsibility to not be impaired at work, particularly if the employee has a safety-sensitive component to their work. Additionally, accommodations for any relevant substance dependency (including cannabis) would be managed in similar ways as they would for alcohol addiction.

Provincial Legislation

Provincial legislation varies widely by province and is still changing within provinces. The demands on the workplace will require employers to review their benefit plans and workplace policies with the help of an expert. Each organization's workplace needs will be different.

Talk to your benefits consultant today for more information.