MARSH | Wortham

Opioids in the Workers' Compensation Arena

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OPIOID EPIDEMIC!

MEDICAL MARIJUANA?

ALTERNATIVE MEDICINE?

Lori Freedman
Sr. Vice President, Claim Advocacy Leader
Marsh Wortham, a division of Marsh USA Inc.
Austin, Texas

Drugs- FDA

- Schedule I- Controlled Substances; High potential for abuse and the potential to create severe psychological and physical dependency. No accepted medical use in the U.S.
  - **Heroin, Marijuana, LSD, Ecstasy, Meth (Quaaludes)**
- Schedule II- High potential for abuse with high potential for abuse and may lead to severe psychological or physical dependency
  - **Morphine, Cocaine, Codeine, Opiates, Oxycodone/OxyContin, Adderall, Ritalin (II N- Non Narcotic)**
- Schedule III- Less than I or II but more than IV…moderate to low dependence
  - **Tylenol with Codeine, Steroids, Vicodin, hydrocodone**
- Schedule IV- Low potential for abuse
  - **Tramadol, Xanax, Soma, Ambien, Valium**
- Schedule V- Cough preparations, Robitussin AC, Phenergan with Codeine

Opioids in the Workplace

Whether due to a work related-injury or personal medical condition is costing employers approximately $10 Billion from ‘absenteeism’ and ‘presenteeism’ or lack of productivity throughout the US.

American Society of Addiction Medicine (ASAM)

Epidemiology of overuse

The number of prescriptions for opioids have escalated from around
76 million in 1991 to nearly **207 million in 2013**

80%
of all opioid analgesics dispensed in the world are dispensed in the U.S.

99%
of all hydrocodone dispensed in the world is dispensed in the U.S.

In 2010, enough prescription painkillers were prescribed to medicate every American adult
every 4 hours for 1 month

6.1 million
people have used prescription pain relievers non-medically in the past month

52 million
people in the U.S., over the age of 12, have used prescription drugs non-medically in their lifetime

Epidemiology of overuse

Since 2000, the rate of deaths from drug overdoses has increased

137%

During 2014, a total of

47,055

drug overdose deaths occurred in the U.S., representing a 1-year increase of 6.5%

46

Americans die each day from prescription opioid overdoses

2 deaths an hour

17,000

annually

91% of patients

who survive opioid overdose are prescribed more opioids

Correlates of Opioid Dispensing

Table 1 Opioid Utilization across Industry Groups

	Among Injured Workers Receiving Pain Medications		Among Injured Workers Receiving Opioids		
	% That Received an Opioid Rx	% That Received 2 or More Opioid Rx	% That Received Opioids on a Longer-Term Basis	% That Had at Least 60 Days of Opioids Supply in Any 90-Day Period[a]	% That Had High-Dose Opioids (MED ≥ 50 mg for at least 60 days)[a]
Industry/occupation categories					
Mining (including oil and gas)	62%	33%	7%	14%	3%
Construction	55%	29%	7%	12%	3%
Agriculture, forestry, and fishing	52%	25%	4%	9%	1%
Public safety	51%	25%	5%	8%	2%
Wholesale and retail trade	50%	23%	5%	9%	2%
Restaurants and entertainment	50%	23%	5%	9%	2%
Health care and social assistance	49%	22%	5%	8%	2%
Manufacturing	48%	23%	5%	9%	2%
Services (except public safety)	48%	23%	5%	10%	2%
Transportation, warehousing, and utilities	48%	24%	5%	9%	2%
Clerical and professional	47%	21%	4%	8%	2%

Note: The underlying data include prescriptions filled within 1.5 years of the injury date for all medical claims that had injuries occurring between October 1, 2014, and September 30, 2015.

Case-mix adjusted measures are reported. Unadjusted measures are reported in Table TA.1. Regression estimates and significance tests are in Tables TA.3–TA.5.

[a] These two measures are based on a subset of claims with opioids that had complete days of supply.

Correlates of Opioid Dispensing

Table 6 Opioid Utilization across Injury Groups

	Among Injured Workers Receiving Pain Medications		Among Injured Workers Receiving Opioids		
	% That Received an Opioid Rx	% That Received 2 or More Opioid Rx	% That Received Opioids on a Longer-Term Basis	% That Had at Least 60 Days of Opioids Supply in Any 90-Day Period[a]	% That Had High-Dose Opioids (MED ≥ 50 mg for at least 60 days)[a]
Injury type categories					
Fractures	79%	42%	4%	7%	2%
Upper extremity neurologic (carpal tunnel)	70%	38%	3%	4%	0%
Neurologic spine pain	66%	46%	11%	21%	5%
Inflammations	56%	38%	7%	10%	2%
Other injuries	55%	30%	4%	7%	2%
Other sprains and strains	43%	27%	4%	8%	1%
Lacerations and contusions	39%	14%	0%	1%	0%
Back and neck sprains, strains, and non-specific pain	38%	22%	5%	13%	2%

Note: The underlying data include prescriptions filled within 1.5 years of the injury date for all medical claims that had injuries occurring between October 1, 2014, and September 30, 2015.

Case-mix adjusted measures are reported. Unadjusted measures are reported in Table TA.1. Regression estimates and significance tests are in Tables TA.3–TA.5.

[a] These two measures are based on a subset of claims with opioids that had complete days of supply.

Key: MED: morphine equivalent daily dose; Rx: prescription(s).

Correlates of Opioid Dispensing

- Local Dispensing- Several studies have demonstrated the likelihood of injured workers receiving opioids is associated with the location. WCRI studies show that some states are more likely to receive opioids and on a longer term basis. Among **non surgical** claims with more than **7 days of lost time**. LA, CA, GA, NC, PA, SC frequency of longer term opioid use was higher and in and **Texas 1** in **10** to injured workers with opioids were identified as longer-term opioids use.
- Urban v Rural Areas- **54%** in Urban; **63%** in rural and **68%** in very rural areas
- Opioid Utilization and Health Insurance- **90%** or more with health insurance - **57% use**; Uninsured- over **30%** was less at **48% use**
- Age Groups- Opioid use
  - 15-24 **(36%)**;
  - 25-39 **(42%)**;
  - 40-54 **(47%)**;
  - 55-60 **(49%)**;
  - Over 60 **(49%)**
- Gender- Female **(42%)**; Male **(46%)**

Around the Country…

- Formularies- ND, TX, CA, AR, DE NV, OH, OK, TN, WA, WV
- Litigation- 27 States (including Texas) against Purdue Pharma for DTPA and misrepresenting the addictive nature of OxyContin
- USA and New Zealand are the only Countries that allow Big Pharma to advertise.
- New Hampshire, MA- Mediation program using volunteer attorneys to try to move injured works off opioid pain medications
- Ohio- Phasing out OxyContin and replacing with an abuse resistant drug
- Massachusetts- Supreme Court has ruled that an employee's use of Medical Marijuana to treat qualified disability may be a reasonable accommodation
- Michigan- Court of Appeals upheld the ability of employers to withdraw job offers of at-will employees who fail pre-employment drug test, even if they are legal users of medical marijuana.

Alternate treatment pathway…

2 Year Pilot in MA

Settled WC cases, life time medical, opioid use and where insurers seek to discontinue payment

75-100 cases per year; up to 1 year to settle = long-term opioid use

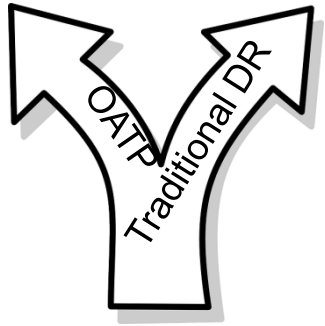
Reviewed 600 post-lump sum cases filed between Jan 2015 -July 2016 of which 102 (17%) were on opioids and another 5% were taking other narcotic pain meds

Insurers or IW can initiate request to participate in Pathways; insurer incurs cost of program including alternative medical treatment for the insured worker

Proposed Alternative Opioid Treatment Pathway

The IW continues to need Opioids to manage pain and Insurer seeks to end payment

The insurer will often initiate the Process to discontinue such treatment as it is expensive and does not include quality of life.



Under the new OATP either party may request this alternative dispute resolution. Both parties must agree to participate

Injured Worker would be assigned a care coordinator within 30 days!

OATP BEGINS

Initial Meeting- DIA will assign case to AJ who will meet with parties in 30 days, Set goals and obligations, time Frames, costs, etc.

→

Care Coordinator- IW assigned Specialized RN who will oversee care. Insurers accept cost of RN.

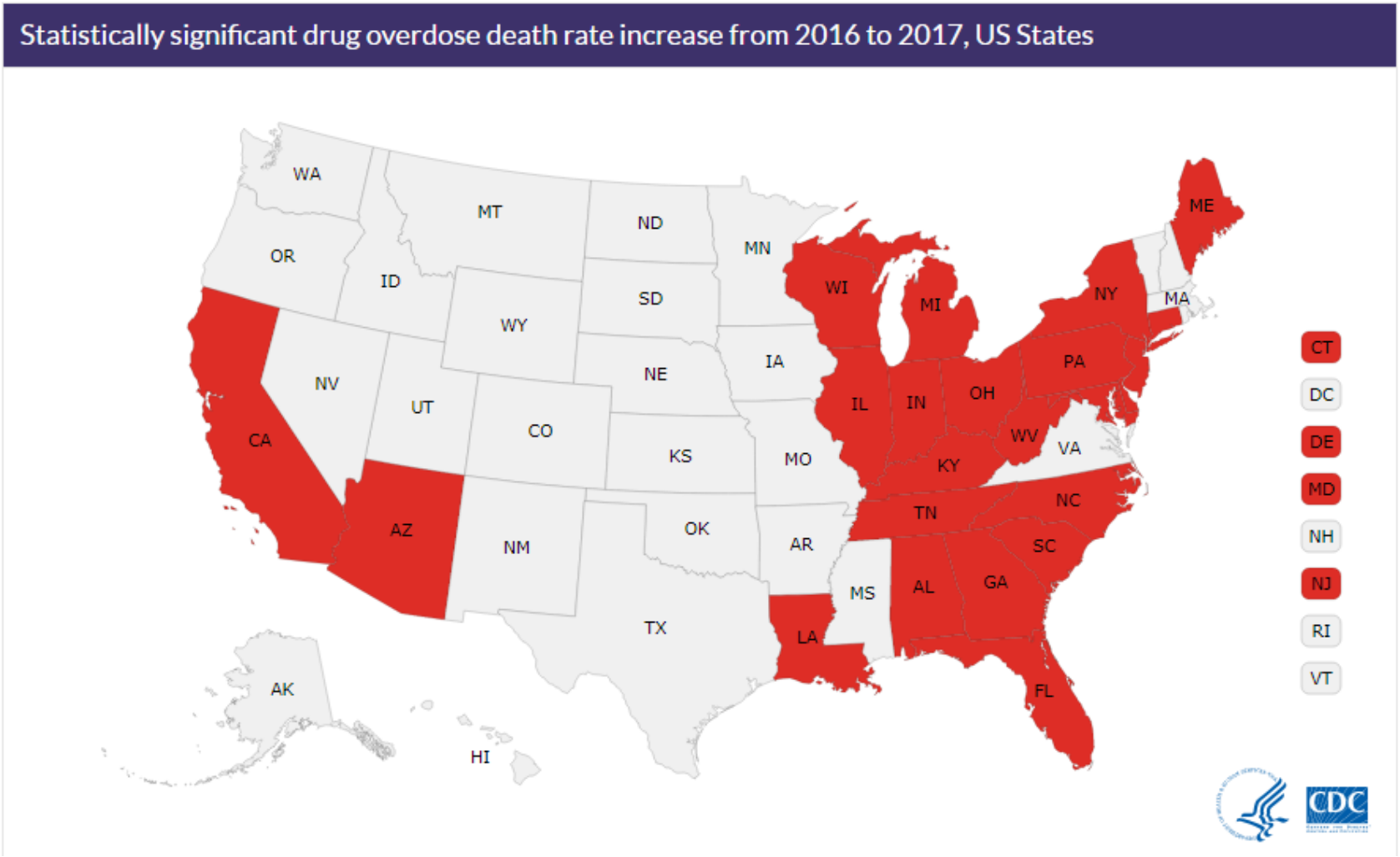
→

Move IW away from opioid based treatment- Either party Can withdraw and re-enter DIA traditional dispute resolution process.

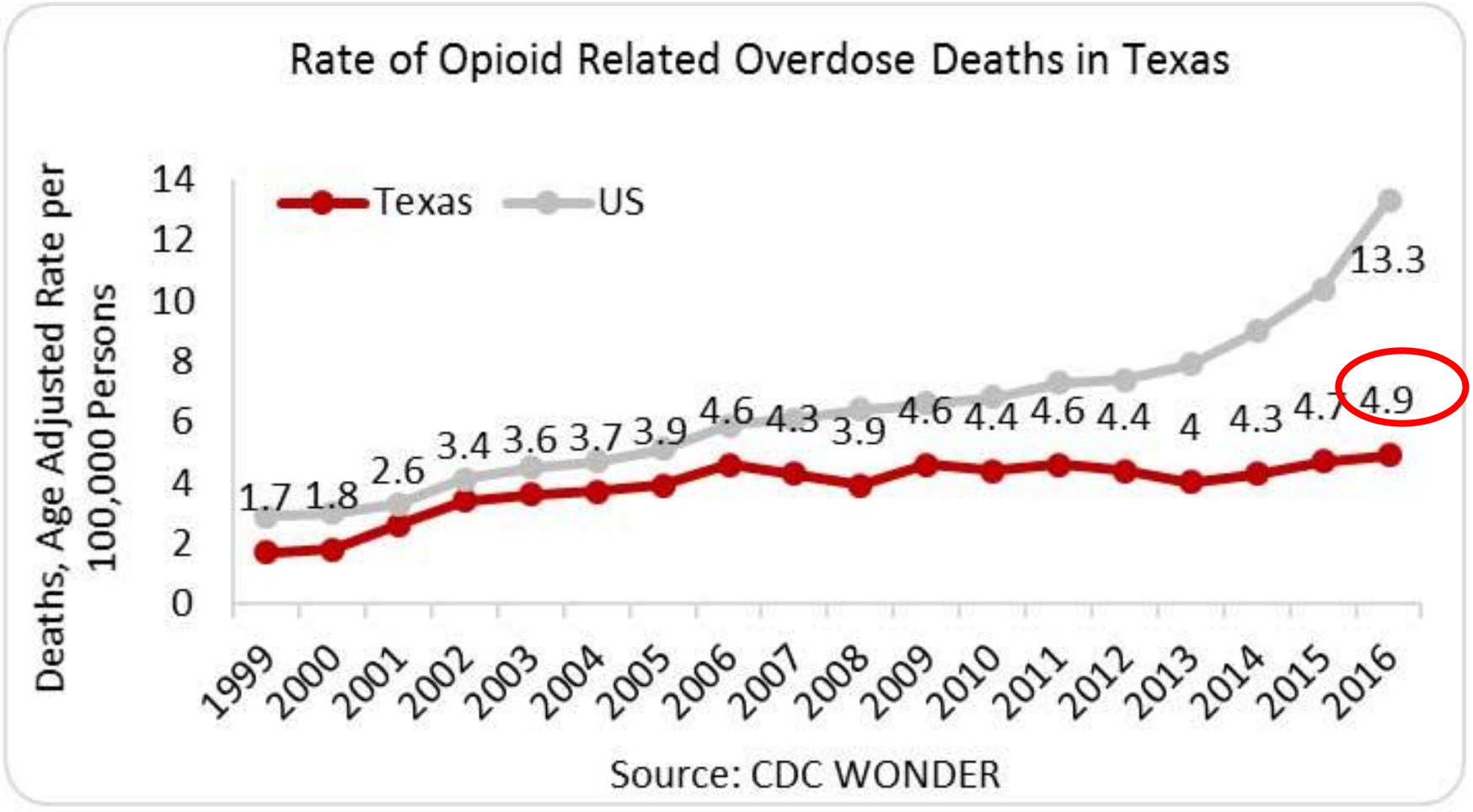
OPIOID FACTS

- 2018 Study conducted by Schnell & Currie revealed doctors who come from lower ranking medical schools prescribe more opioid Rx than higher rated schools
- **ODG** indicates that odds of chronic work loss for **non specific low back** pain for the injured worker:
  - 6 x greater with Schedule II compared to no opioids;
  - 11-14x greater using any type ≥90 days;
  - 3 years after injury costs with Schedule II avg. $19,453 higher per claim
- We're getting older! Long-term opioid use increases fracture risk in chronic **patients > 60** years of age; any opioid use- 28%; taking 50 or more = twofold increase and 10% annual risk

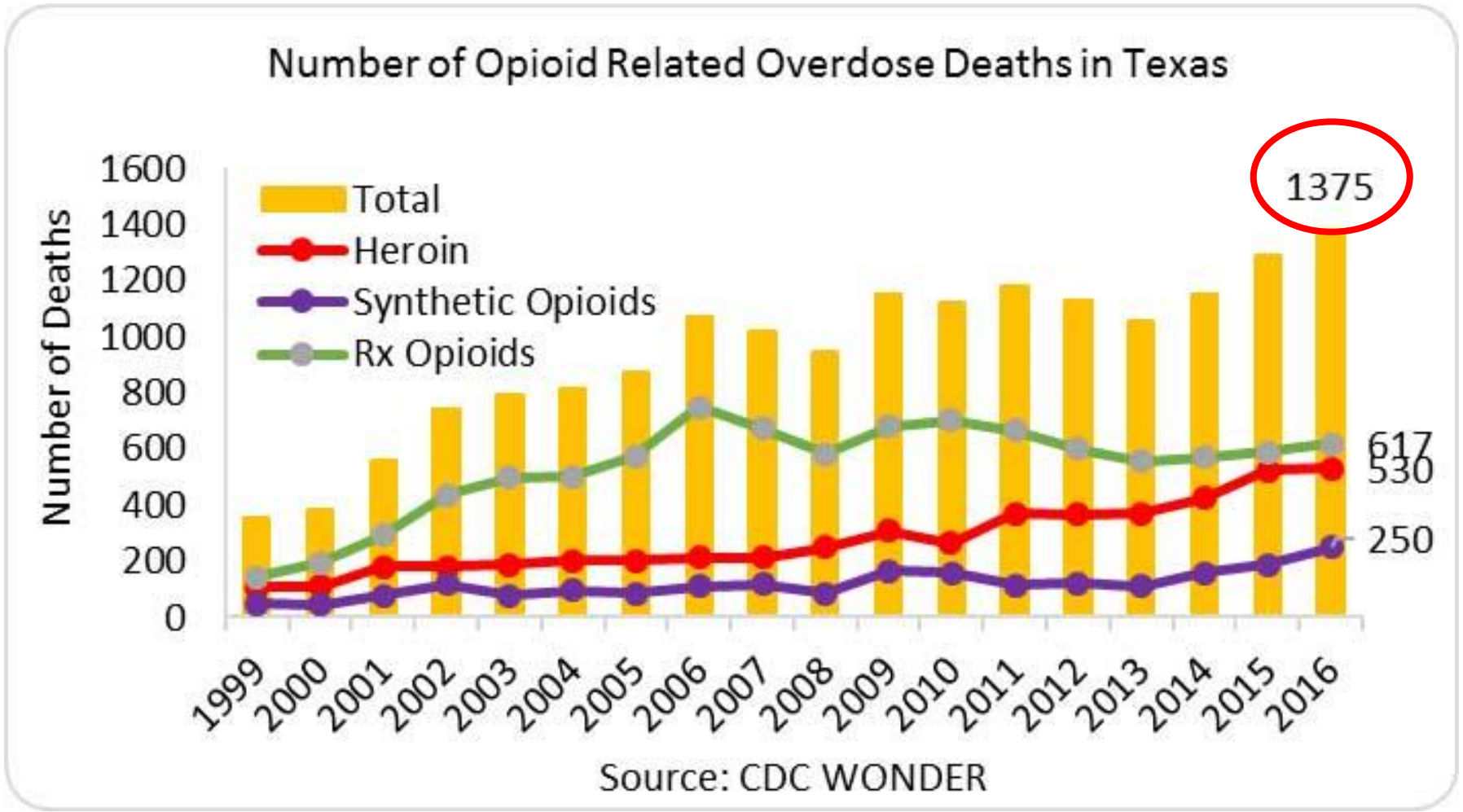
DEATH RATE- US



DEATH RATE-TEXAS



DEATHS IN TEXAS



Combating Opioids in Texas WC

Closed formulary is seeing benefits for Texas WC

- Initial roll out September 2011 for DOL going forward
- Legacy claims (9/11 and older)

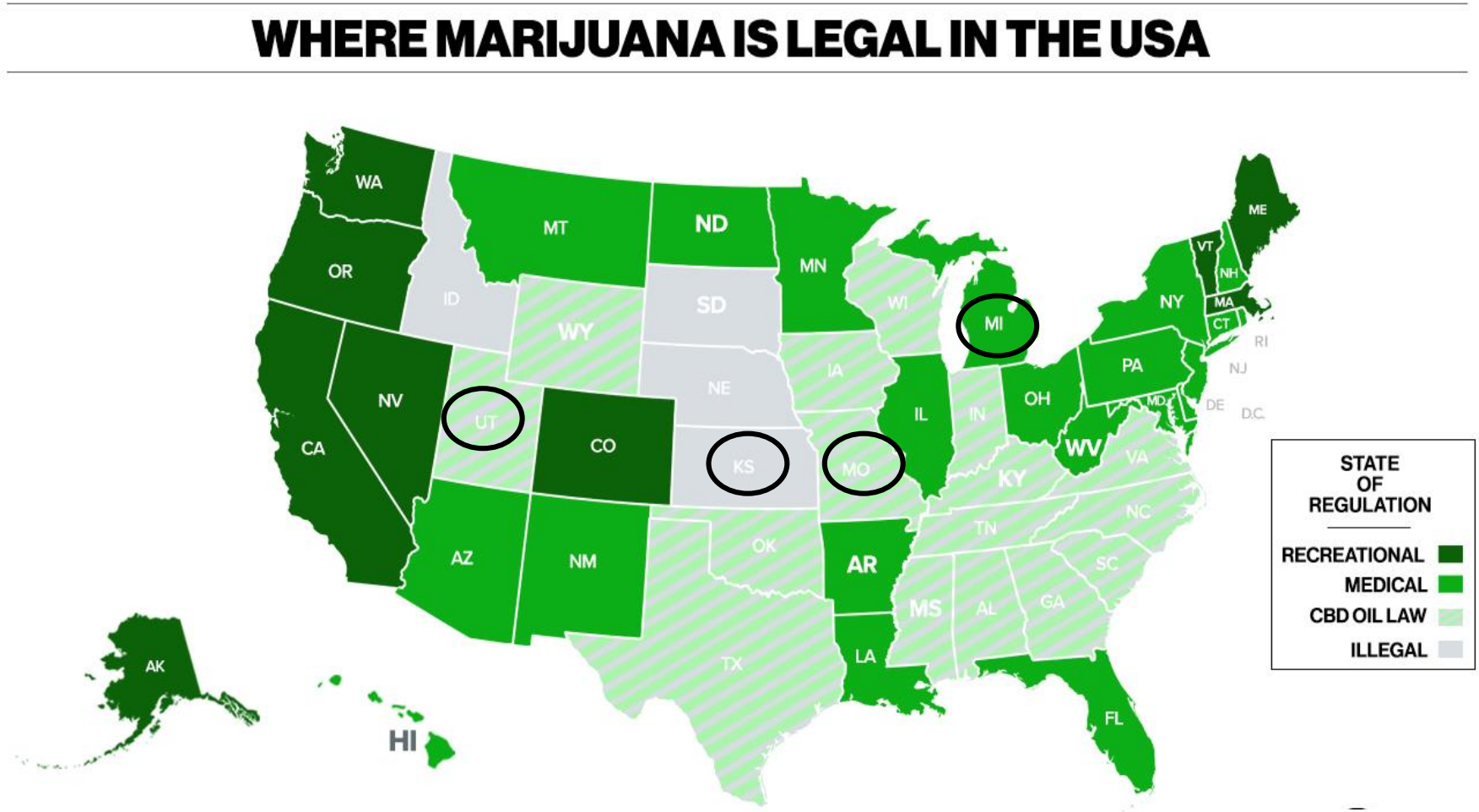
  - All Employees, physicians and pharmacies contacted for legacy claims (prior to 9/2011) for N-Drugs

  - December 2017 the formulary contains 188 drugs with “N” drug status requiring pre-authorization
  - Of the 188 drugs, 52 are opioids and related drugs
- In 2017, only 3.5% of the claims received N-drugs.
  - **N-drug cost was 32% of the total pharmacy cost for lost time claims in 2011**
  - **N-drug cost was 6% for lost time claims in 2017!!!**

Employers Involvement

- Claims Management and Safety Culture
- Pharmacy Benefit Managers
- Large Loss Workers' Compensation Cost Containment
- Carrier/TPA accountability
- Return to Work programs
- Education and knowledge- Joe Paduda, Managed Care Matters; Rx Professor; WCRI, Workers' Compensation conferences
- ? What are you doing?

Let's start the discussion…



Midterm elections

Considerations

Marijuana is **illegal** at the Federal level

- DEA Schedule I controlled substance
- Substances in this schedule have *no currently accepted medical use* in the United States, a lack of accepted safety for use under medical supervision, and a high potential for abuse

2018 Cannabis Sales

Texas Compassionate Use Act

How Texas' law allowing epilepsy patients to use cannabis really works

- As of late 2018, 42 physicians across the state are registered to prescribe Cannabidiol oil, also known as CBD oil. Patients need two of those doctors to sign off on their prescription..
- Not just anyone can receive a prescription. Patients must suffer from epilepsy and have failed to find relief from at least
- Two other types of treatment previously has been attempted.
- Patients can get their prescription filled by one of three CBD oil dispensaries licensed by the state of Texas. The treatment is expensive and not covered by health insurance.
- Under state law, patients' medicine must contain at least 10 percent CBD oil, the ingredient that treats symptoms, and no more than 0.5 percent THC, the ingredient associated with a "high." Experts say that amount of THC is generally considered too low to cause a "high."

Medical Marijuana- Does it work?

Examples of medical conditions approved in other jurisdictions:

- Lack of appetite
- Lack of spasticity
- Cancer
- Glaucoma
- Severe nausea
- Severe pain
- Seizures
- Muscle Spasms
- Insomnia
- Fibromyalgia
- Chronic or persistent pain
- Hep C
- Crohn's
- HIV/AIDS
- PTSD
- Residual limb pain
- Spinal cord injuries
- Autism
- **Opioid Use Disorder**

Official Disability Guidelines (ODG)

- Cannabinoids not recommended for pain.
  - As of August 2014, no quality studies, and serious risks
  - Cite position from The American Society of Addiction Medicine (ASAM)
    - Physicians should not recommend that patients use marijuana for medical purposes, because it is a dangerous, addictive drug and is not approved by the FDA.
    - Cannabis is unstable and unpredictable and the drug should be subject to the same standards that apply to other medications.
    - For every disease and disorder for which marijuana has been recommended, there is a better, FDA-approved medication. (Gitlow, 2013)

odg-twc.com

Medical Marijuana in Workers' Compensation…

- New Mexico- first State to introduce fee schedule for reimbursement
- New Hampshire- State Supreme Court ruled LAST WEEK that Labor Law Appeals board erred that Workers' Compensation could NOT reimburse injured worker for medical marijuana for low back pain over opioid use
- Nova Scotia- approved medical marijuana to help injured worker with neuropathic pain
- Oklahoma- "presence of an intoxicating substance in the blood does not automatically mean a person is intoxicated and grounds for denial of Workers' Compensation claim"
- New Jersey- 2018 ruling that Employer must reimburse injured worker for medical marijuana treatment under the Workers' Compensation statute.
- Fee Schedule in the works- AR, CA, NY, PA, MT, LA

Implications- Work Comp Payor

States that have required reimbursement for medical marijuana in workers' comp:

- Delaware
- Connecticut
- Massachusetts
- Minnesota
- **New Jersey**
- New Mexico

States that have precluded reimbursement for medical marijuana in workers' comp:

- Arizona
- Colorado
- Maine
- Michigan
- Montana
- Oregon
- Vermont

Because marijuana is illegal under federal law payment can not involve the federal banking system therefore reimbursement is typically paid to the injured worker vs. dispensary

Will this logic spread?

- Because the Workers' Compensation statute "is social legislation and it changes with the times," the court properly determined that "it's time for us, as the Division of Compensation, to try to get away from these opioids which are killing people." In fact, the court found that not only is marijuana cheaper, safer and less addictive than opioids in general, in this particular case it was better for the immediate treatment of the muscular spasticity from which the injured worker suffers, and the long term prognosis is better. Judge Lionel Simon

Medical- Opioid Replacement?

- **Brookings Institute Study- Marijuana Schedule I or II**
  - Conflicting and contradictory federal policy is “interfering with the relationship between doctor and patient.”
  - By not moving to Schedule II research is being stifled.
  - Need to expand the “Compassionate Use Program” that once supplied marijuana to patients with legitimate need.
  - Medicare Part D research of painkillers found that after States passed medical marijuana laws that a typical MD prescribed **1826** fewer painkiller doses in a given year. Seniors and late middle age are among the fastest growing marijuana use demographics.
  - 2016 Journal of Pain found chronic pain patients who reported marijuana use were **64%** less likely to report opiate use, more quality of good life and less side effects from their pain medication.

Not Legal

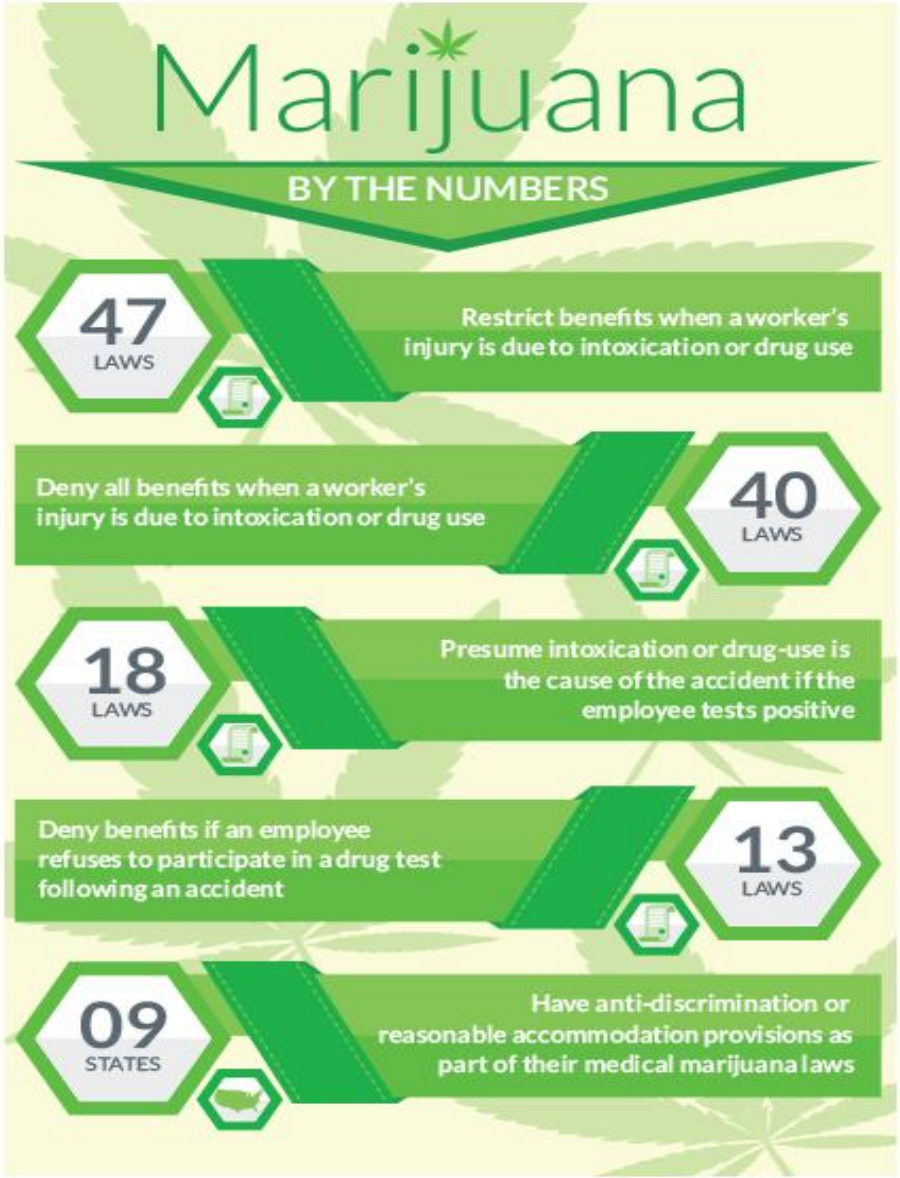
Marijuana is **illegal** at the Federal level

- DEA Schedule I controlled substance
- Substances in this schedule have *no currently accepted medical use* in the United States, a lack of accepted safety for use under medical supervision, and a high potential for abuse

Implications – NCCI Series on Medical Marijuana

- **What are insurers asking?**
  - Will we be required to reimburse/pay for medical marijuana?
  - Is medical marijuana a viable alternative to opioids?
- **What are regulators and legislators asking?**
  - How do I protect workers and promote safe working environments?
  - Is Medical Marijuana safer than narcotics?
  - How do I regulate reimbursement for medical marijuana?
- **What are employers asking?**
  - What is the impact on workers compensation when an employee is injured on he job while under the influence of marijuana?
  - How do employers handle issues like administering a drug-free workplace and establishing hiring practices when employees are legally using medical marijuana under state law??

NCCI and Legal Trends for Employers



Implications- Drug Testing

Drug-free workplace

- General rule is that an employee can lawfully be fired for using marijuana legally
- California Supreme Court has already ruled that there is no general right to use medical marijuana, and EE can be terminated for violation of drug-free workplace rules

Since presence <> impairment, how should employers handle medical use in hiring, firing, RTW, drug-free worksites and other workplace restrictions?

Implications - Risk Management

- **Compensability of Injury**
  - Colorado- Rebuttable presumption that ingestible injury was caused by ingestion and indemnity benefits can be decreased or even terminated
  - CA Labor code 3600 (a) (4) precludes liability for a claim of injury "caused by intoxication, of alcohol or the unlawful use of a controlled substance of the injured worker
  - Most States including Texas- proximate cause must be shown between the injury and the drug use
    - No methodology of measurement of marijuana intoxication
    - Ohio- Trent vs. Stark Metal Sales, 2015, employer was denied relief from a finding of compensability for failing to adhere to the strict requirements of drug testing

Conclusions on Medical Marijuana

- Strongest scientific support for coverage:
  - Chronic pain;
  - An alternative to chronic opioid prescriptions
- Substantial medically based obstacles to WC
  - Standardizing prescription practices;
  - Studies of effectiveness are in their infancy
  - Acceptance by medical treatment guidelines
- Substantial legal obstacles to WC
  - Federal Law; FDA and other financial statutes;
  - State WC statutes and regulations
- **Many occupational physicians believe that there is no place for medical marijuana in WC**

Sources

- WCRI conference March 2019
- CDC
- Brookings Institute Study on Medical Marijuana
- Sr. Judge Hernandez Boston WC Commission
- Mark Pew, Rx Professor
- Insurance Journal -January 2017
- Brian Allen- VP Government Affairs, Mitchell
- Stuart Colburn, JD
- NCCI
- Judge Lionel Simon
- Lori Freedman, Sr. V.P. Marsh Wortham

Q & A

THANK YOU