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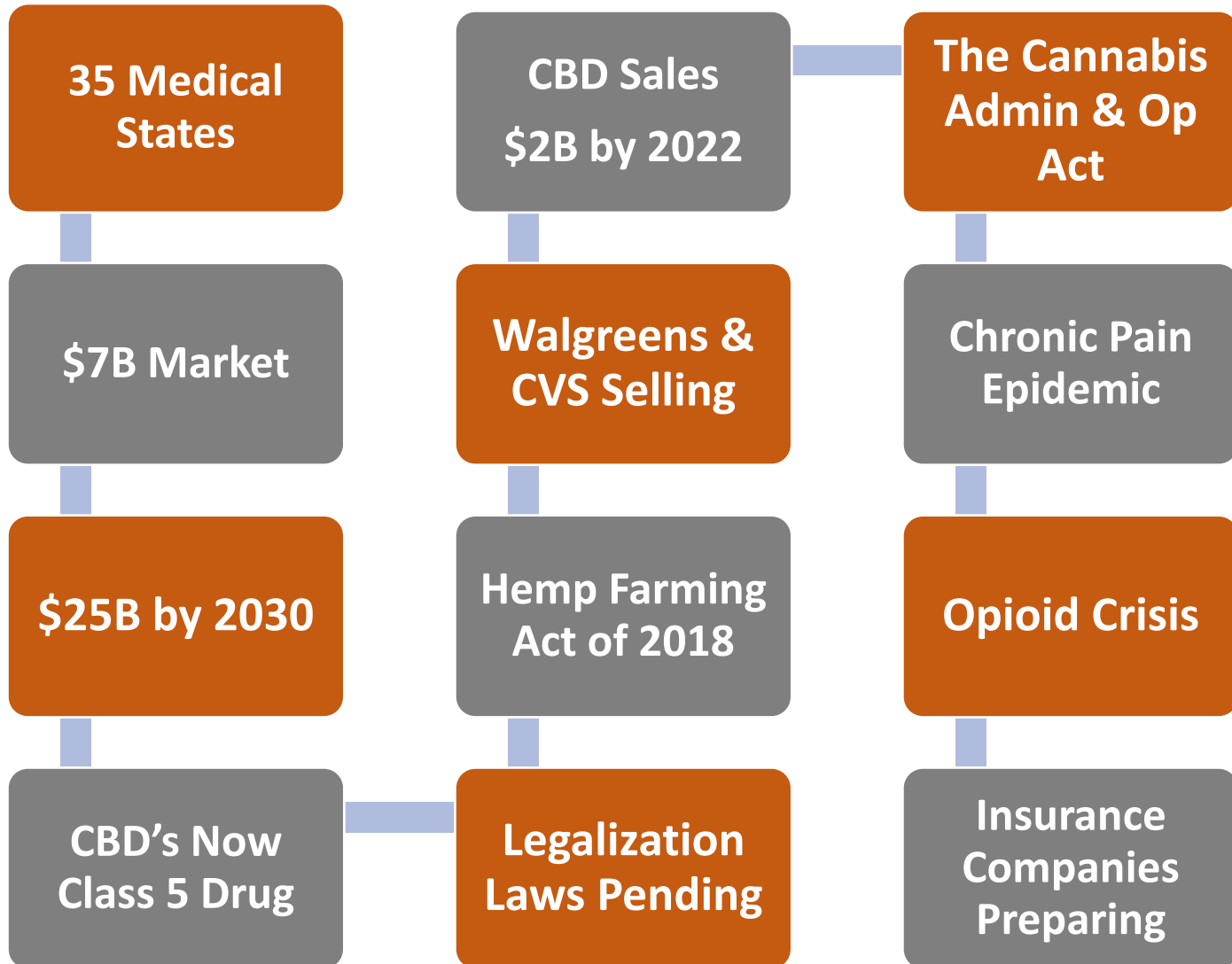
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Federal Legalization of Marijuana: Are You Ready?

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The Landscape





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Marijuana & CBD

What is Marijuana?

- ✓ Marijuana refers to the dried leaves, flowers, stems, and seeds from the Cannabis Sativa or Cannabis Indica plant.
- ✓ The plant contains the mind-altering chemical THC and other related compounds.
- ✓ THC is found in resin produced by the leaves and buds primarily of the female cannabis plant.
- ✓ The plant also contains more than 500 other chemicals, including more than 100 compounds that are chemically related to THC, called *cannabinoids*.
- ✓ People use marijuana by smoking, eating, drinking, or inhaling it.
- ✓ Smoking and vaping THC-rich extracts from the marijuana plant (a practice called dabbing) is on the rise.

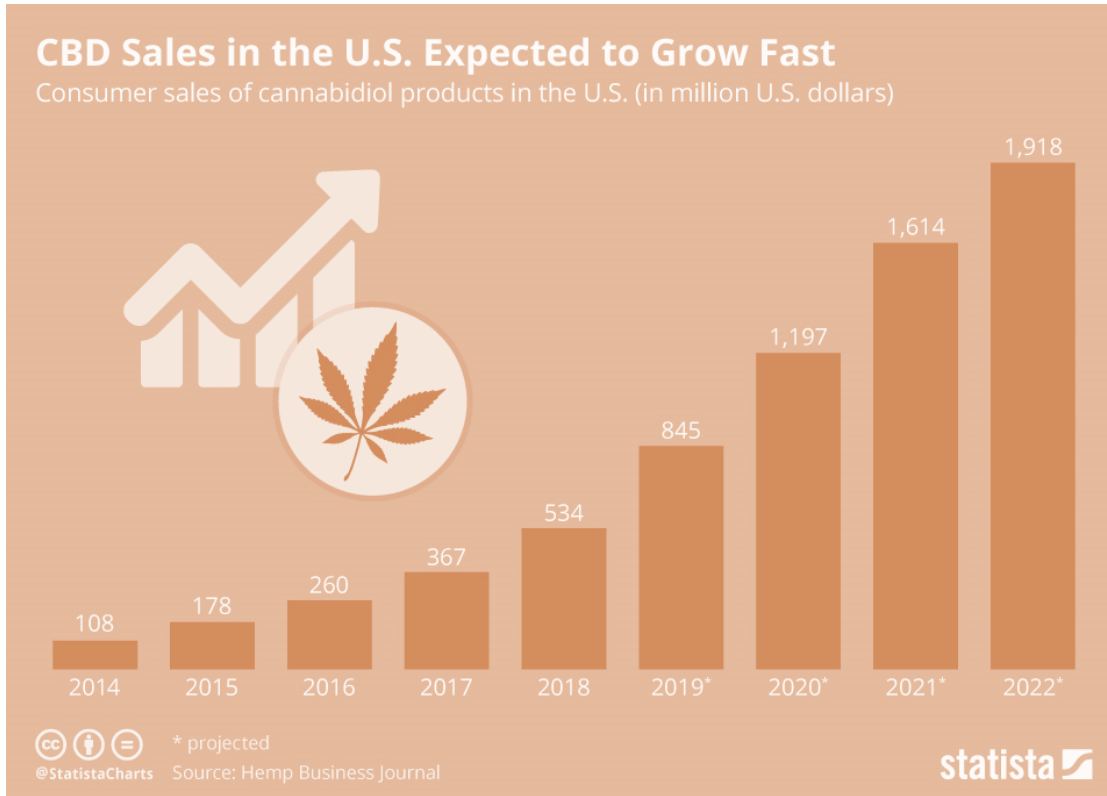
What is CBD?

- ✓ CBD is short for cannabidiol
- ✓ Can be derived from Hemp and the Marijuana plant
- ✓ Does not create a high and is not psychoactive like THC
- ✓ It is a chemical compound from the cannabis plant
- ✓ It's a naturally occurring substance that's used in products like oils and edibles
- ✓ Anecdotally, it imparts a feeling of relaxation and calm
- ✓ The FDA recently approved a drug, Epidiolex produced from CBD used to treat epileptic seizures

Hemp Farming Act & CBD

- ✓ The Hemp Farming Act of 2018 was a proposed law to remove hemp (defined as cannabis with less than 0.3% THC) as a Schedule I controlled substance
- ✓ Its provisions were incorporated in the 2018 United States farm bill that became law on December 20, 2018
- ✓ This makes hemp an ordinary agricultural commodity
- ✓ Hemp, or industrial hemp, is a strain of the *Cannabis sativa* plant species that is grown specifically for the industrial uses of its derived products

CBD Goes Mainstream



selling CBD related products in 800 stores in 8 States

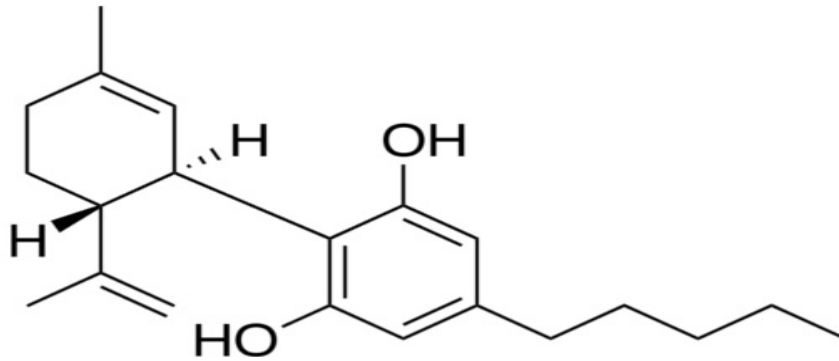


selling CBD products in over 1,500 stores in 9 States

SEPHORA

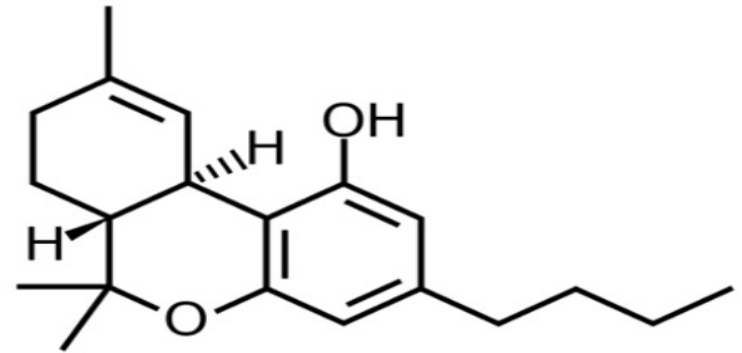
CBD brands to be sold in 170 locations

CBD versus THC



Cannabidiol

CBD's provide similar benefits to THC with no high



Tetrahydrocannabinol

THC binds with CB1 receptors and produces a high

Endocannabinoid System (ECS)



CB1 Receptors

CB1 receptors are concentrated in the brain and the central nervous system, a system in the body that maintains core functions such as motor activity, pain perception, stress response and memory

CB2 Receptors

CB2 receptors are widely distributed throughout the peripheral organs in the body, serving as core components in the immune system, muscular system, and cardiovascular system.

The ECS is responsible for keeping the body in balance

It is claimed CBD's can aid in maintaining that balance

CBD receptors are located in the brain and throughout the body

Anecdotally, CBD's impacts the function of pain, mood, sleep and appetite

Dopamine and Serotonin receptors are impacted as well



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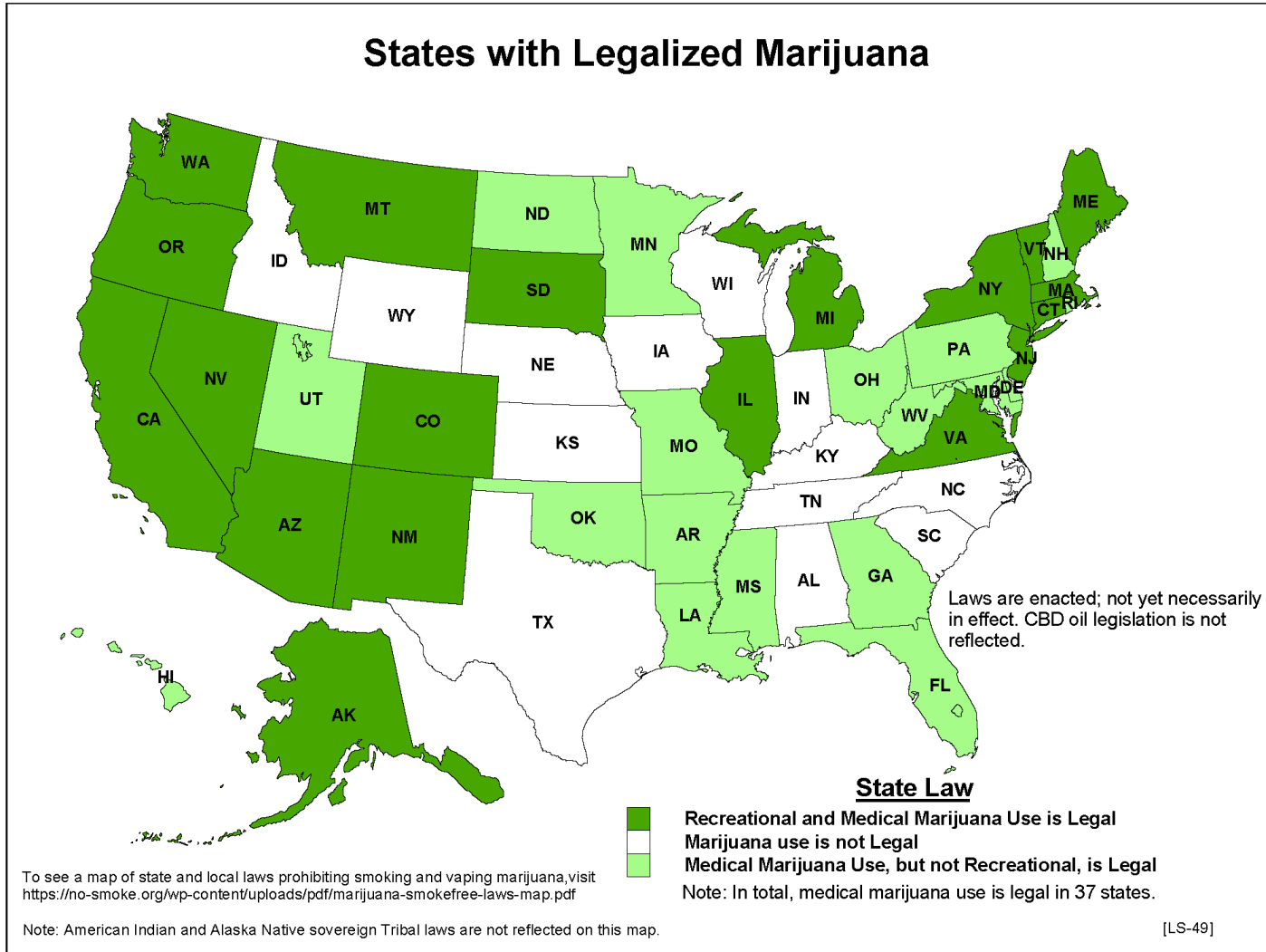
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Legal Status

Federal Status

- ✓ Federally Illegal
- ✓ Class 1 Controlled Substance
- ✓ Same Class as Heroin
- ✓ No Medical Value
- ✓ High Potential for Abuse
- ✓ CBD Now Categorized as a Class 5 Substance
- ✓ Comparable to Cough Syrup

State Legal Status



AIDS, Anorexia, Arthritis, Cancer, Chronic Pain, Glaucoma, Migraine, Persistent Muscle Spasms, Multiple Sclerosis, Seizures, Epilepsy, Severe Nausea and Other Chronic or Persistent Medical Symptoms

May possess no more than eight ounces of dried marijuana and six mature (or 12 immature) marijuana plants

Anorexia, Arthritis, Autism, Alzheimer's, Cancer, Crohn's Disease, Epilepsy, HIV/AIDS, Hospice, Multiple Sclerosis, Sleep Apnea, Opioid Use Disorder, PTSD, Chronic Pain and Ulcerative Colitis

May possess up to 8 ounces over a 90-day period.

No list of approved conditions exist

May possess three ounces of marijuana on their person; six mature marijuana plants; one ounce of concentrated marijuana; and up to eight ounces of marijuana in their residence

Cancer, Epilepsy, Glaucoma, HIV/AIDS, PTSD, ALS, Crohn's & Parkinson's Disease, Multiple Sclerosis, Terminal Condition and Chronic Nonmalignant Pain

May possess a 35-day supply

Federal Legislation

- ✓ Every year Congress vets numerous Marijuana bills
- ✓ These traditionally range from Federal legalization, allowing research regarding medical efficacy to decriminalization
- ✓ This year the House introduced the “Cannabis Administration and Opportunity Act”
- ✓ The CAO A would:
 - ✓ Remove marijuana from the Controlled Substances Act
 - ✓ Allow States the ability to determine their own cannabis laws
 - ✓ Allow for interstate commerce
 - ✓ Enforcement of cannabis laws would be given to the Alcohol and Tobacco Tax and Trade Bureau, the Food and Drug Administration and the Bureau of Alcohol, Tobacco, Firearms and Explosives
 - ✓ Study the impact of cannabis on public safety
 - ✓ Expunge any arrests and convictions for nonviolent federal cannabis offenses



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The Workplace



Workplace Challenges

- ✓ More people in the workforce are utilizing marijuana, according to Reuters Health one in seven polled reported using marijuana
- ✓ According to a recent Pew Research poll, 91% say marijuana should be legal for medicinal and/or recreational use
- ✓ Drug testing proves utilization of marijuana but not impairment
- ✓ Employers can and should still prohibit the use, possession or distribution of marijuana at the workplace
- ✓ However, laws around workplace accommodation and safety may not be able to keep up with speed at which marijuana is becoming an acceptable medicinal solution and legal recreational drug, like alcohol
- ✓ This will create challenges for employers around recruiting, maintaining a drug free workplace, accommodations, pre-hire and post-accident drug screening and consistent application of established policies

Pre-hire Screening

- ✓ Evaluated on a State-by-State basis & the type of occupation
- ✓ In most cases, the employer is protected by ADA/DFEH, which specifically states employers are not required to accommodate the use of an illicit illegal controlled substance
- ✓ State court decisions have either embraced the ADA argument or sided with the State medicinal law
- ✓ New Mexico passed Senate Bill 406 in April of 2019 that prohibits employers from refusing to hire, discharge or take any adverse action against a job applicant or employee solely on the basis of that individual using medicinal marijuana
- ✓ The California Supreme Court Case, *Ross v. Ragingwire* affirmed FEHA does not protect potential employees using marijuana

Accommodation

- ✓ Employers have also asked if they are required to accommodate marijuana use as a reasonable accommodation under disability law
- ✓ Courts and the U.S. Equal Employment Opportunity Commission have consistently held that employers are not required to permit medical marijuana use as a reasonable accommodation under the Americans with Disabilities Act
- ✓ That was the same position courts had taken under State law even in states where marijuana use was legal
- ✓ However, over the last two years there have been cases in Rhode Island and Massachusetts where courts have held that the use of medical marijuana may be a reasonable accommodation for disabled employees under state disability law

Post Accident Screening - OSHA

- ✓ The courts have generally been supportive of requiring alcohol or drug testing based on specific objective facts and after a serious accident
- ✓ OSHA released guidelines around post-accident drug screening and published a memo in October of 2018 to provide further clarity
- ✓ The intent of OSHA's guidelines were to promote consistency and reduce any possible retaliation by the employer to the employee for sustaining an injury
- ✓ OSHA noted that the memorandum would supersede any conflicting provisions in prior interpretive documents and clarified that most workplace drug-testing programs are permissible, including:
 - ✓ Random drug testing
 - ✓ Drug testing unrelated to the reporting of a work-related injury or illness
 - ✓ Drug testing under a state workers' compensation law
 - ✓ Drug testing under other federal law, such as a U.S. Department of Transportation rule

Coats versus Dish Network

- ✓ The Colorado Supreme Court affirmed the court of appeals and found that Coats was not wrongfully terminated as a result of his medical marijuana use
- ✓ In the Coats case, the Colorado Supreme Court reviewed the question of whether medical marijuana use prohibited by federal law was a “lawful activity” for purposes of the statute
- ✓ The court determined that the definition of “lawful” was not confined just to what was lawful under state law
- ✓ The court then stated that marijuana use was unequivocally illegal under federal law and there was no recognized exception for medical marijuana under federal law
- ✓ The court held that because Coats’ medical marijuana use was unlawful under federal law, it was not a “lawful activity”



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Workers' Compensation

State by State Issue

- ✓ Since Workers' Compensation laws are considered and passed State by State, the utilization of Marijuana in a workers' compensation case is no different
- ✓ Some States side that they cannot force an employer or carrier to provide a substance that is Federally illegal while other States require payors provide marijuana as reasonable and necessary care per the State work comp law
- ✓ Connecticut, Delaware, Maine, Massachusetts, Minnesota, New Jersey, New Hampshire and New Mexico are States where payment has been publicly documented and/or ordered by the courts.
- ✓ Maine's Supreme Court subsequently handed down a decision reversing the lower courts, prohibiting payment for marijuana
- ✓ Colorado, Montana, Oregon, Vermont, Florida, Michigan, Arizona and North Dakota do not require reimbursement and in some instances have passed specific laws stating the same

Lack of Controls

- ✓ In States that require reimbursement, the main concern is a lack of controls
- ✓ The treating physician cannot prescribe marijuana
- ✓ The physician can help the injured worker become eligible under the State's medicinal marijuana law
- ✓ The injured worker must show their diagnosis is a covered condition per the State's law
- ✓ When these two criteria are satisfied, the employee is a consumer of their own care
- ✓ They are free to decide on strain, dosage and intake method, shopping and purchasing available products at a dispensary requesting reimbursement
- ✓ New Mexico is the only State to include medical marijuana on its fee schedule for workers compensation: \$12.02/unit (1 gram of dry weight, up to 230 units per calendar year, with a maximum reimbursement of \$11,045 per year.

New Mexico

- ✓ New Mexico was the first State to order reimbursement of medical marijuana
- ✓ The 2014 case, *Vialpando v. Ben's Automotive Services*, requires employers and carriers to reimburse injured workers for the cost of marijuana
- ✓ The State's court of appeals upheld the validity of a workers' compensation award directing an employer and insurer to reimburse Vialpando for the cost of medical marijuana used to relieve pain
- ✓ In 2015, the court of appeals again ordered a carrier to reimburse an injured worker for the cost of medical marijuana in the case of *Miguel Maez v. Riley Industrial*
- ✓ New Mexico is the only State to include medical marijuana in its fee schedule for workers compensation: \$12.02/unit (1 gram of dry weight, up to 230 units per calendar year, with a maximum reimbursement of \$11,045 per year)

California

Ross v. Ragingwire
Telecommunications

Shepherd v. Kohl's Dept Stores

Health & Safety Code

Utilization Review
Independent Medical Review

Cockrell v Farmers

Pedro de Dios v. Carroll's Tire
Warehouse

Questions

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