

It was the last day of school in 1976  
A time they'd never forget  
(If only they could remember)

# Dazed and Confused



See It With A Bud

GRAMERCY PICTURES PRESENTS AN ALPHAVILLE PRODUCTION IN ASSOCIATION WITH DETOUR FILM PRODUCTION "DAZED AND CONFUSED"  
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CASTING BY JAMES JACKS  
EDITED BY JAMES JACKS  
MUSIC BY JAMES JACKS  
EXECUTIVE PRODUCERS JAMES JACKS SEAN DANIEL RICHARD LINKLATER  
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## DAZED AND CONFUSED: WHAT YOU NEED TO KNOW ABOUT WEED AT WORK

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MAYNARDNEXSEN

# WHERE WE'RE GOING

- The State Law Mess
- South Carolina Update
- Federal Issues
- Takeaways for Employers

# DUDE, I'M CONFUSED . . .

Did the **government** already  
recommend that marijuana be  
**decriminalized**?

**Yes**



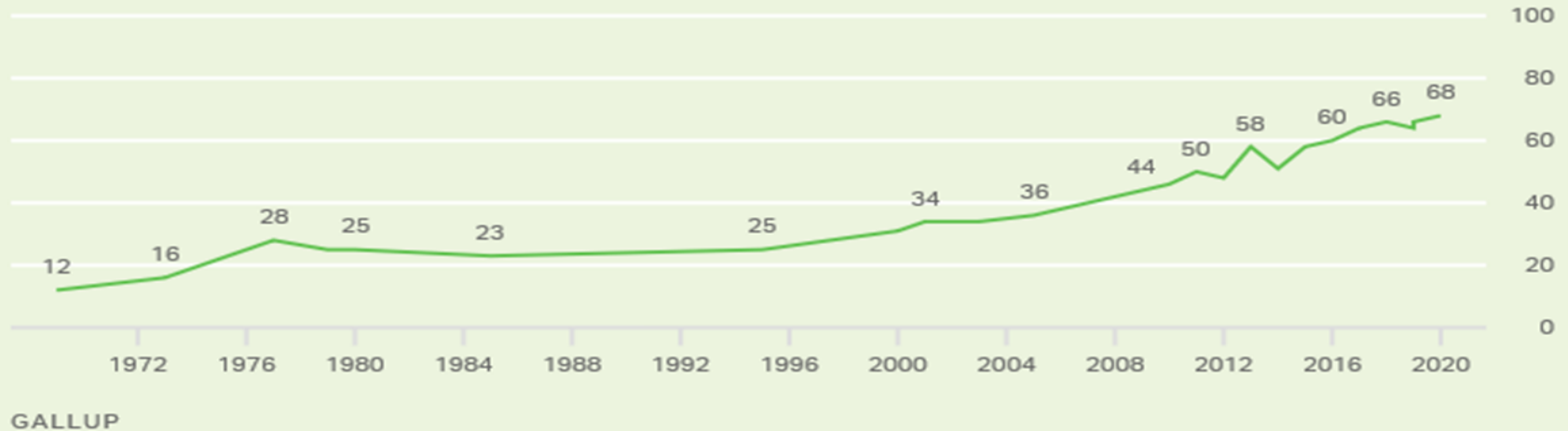
In 1971, while president Nixon was drafting the Controlled Substance Act, the National Commission on Marihuana and Drug Abuse concluded that marijuana users were not a danger to society. They recommended that the government use social measures rather than criminal measures to discourage use of the drug... Nixon did not agree.

# Changing Public Opinion on Marijuana - 2020

## Americans' Views on Legalizing Marijuana Reach New High

Do you think the use of marijuana should be made legal, or not?

■ % Yes, legal



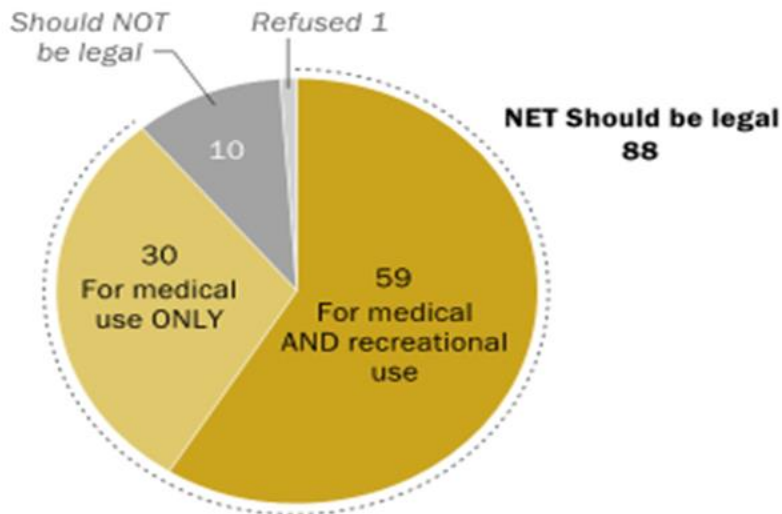
According to a 2020 Gallup poll, 68% of Americans support the legalization of marijuana which is a sharp increase from the mere 12% of supporters since 1969. This trend is further evidenced by an increasing number of states legalizing various uses of marijuana and THC products.

# Even More Support for Legalization- 2022

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## Just one-in-ten U.S. adults say marijuana should not be legal at all

*% of U.S. adults who say marijuana ...*



Source: Survey of U.S. adults conducted Oct. 10-16, 2022.

PEW RESEARCH CENTER

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# STATE LAWS ACROSS U.S.

PLEASE EXCUSE

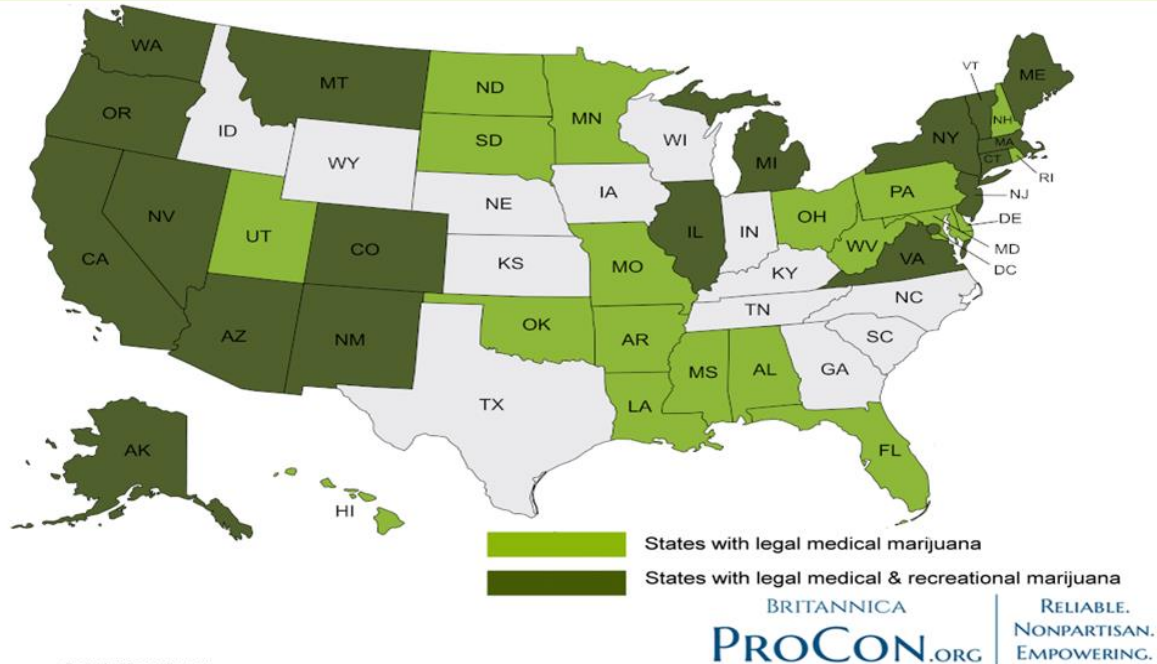


OUR MESS

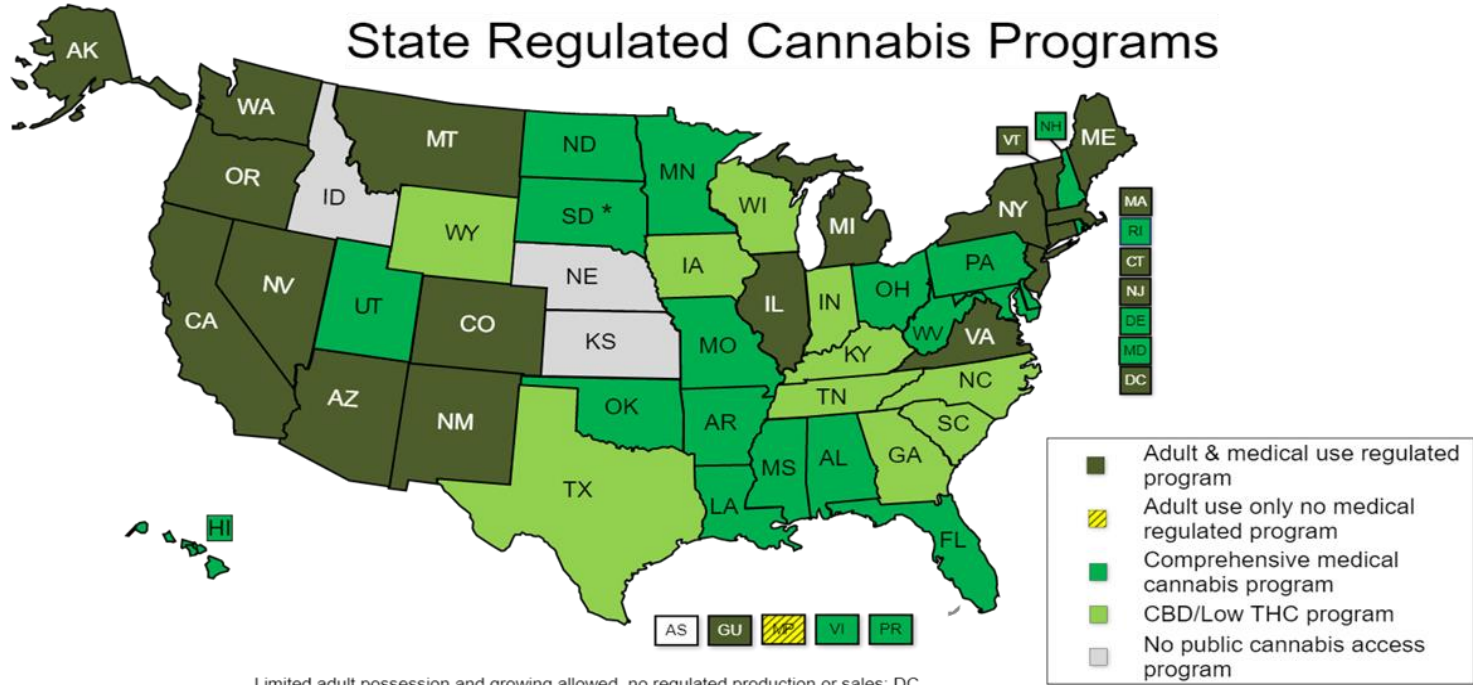


# WHERE WE STAND

## Legal Medical & Recreational Marijuana States



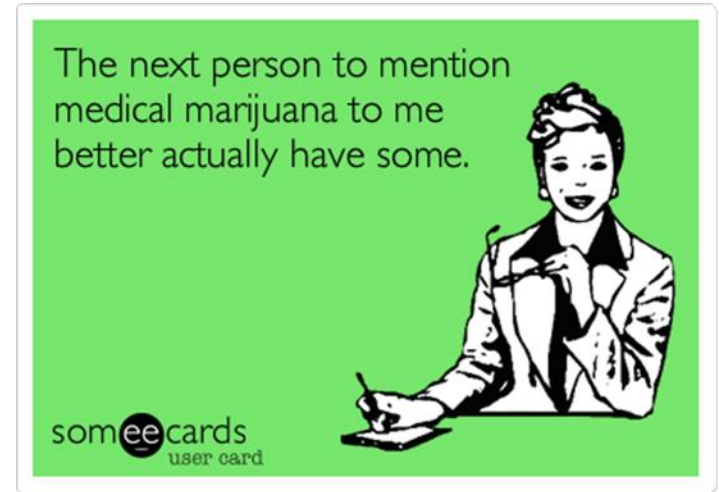
# WHERE WE STAND



# What are the Major Bugaboos?

## No “One Size Fits All”

- Varying state laws that are not consistent nationwide
- May provide for medicinal use, recreational use, or both
- Varying positions on permissible amount for individual possession, patient registration issues, and marijuana dispensaries



# What are the Major Bugaboos?

## To Sue or Not to Sue . . .

- Differing interpretations of state law, including protections afforded under the statute
- Anti-discrimination provision may provide an implied right of action, even when the statute is silent regarding a private remedy
  - *Palmiter v. Commonwealth Health Sys., Inc.*, 2021 PA Super 159, 260 A.3d 967, 971 (2021). Pennsylvania's Medical Marijuana Act states: "[n]o employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana."
  - PMMA contains an implied right of action for individuals who suffer an adverse employment action on account of their status as a certified user of medical marijuana.
- Other states have made similar findings: Connecticut, Arizona, Rhode Island, Delaware

# What are the Major Bugaboos?

## Understand the Exceptions

- **Safety Sensitive Positions**

- Many statutes provide a carve out for safety sensitive positions, but the definitions can vary by state
  - Nevada: “Pose a threat of harm or danger to persons or property or impose an undue hardship on the employer”
  - Oklahoma: “Any job that includes tasks or duties that the employer reasonably believes could affect the safety and health of the employee performing the task,” such as dispensing pharmaceuticals, carrying a firearm or handling hazardous materials
  - Pennsylvania: Duties performed in small, confined spaces or at great heights and “any duty which could result in a public health or safety risk while under the influence of medical marijuana.”
  - Colorado: No safety-sensitive carve out defined because employers retain the right to fire employees for marijuana use based on an employer policy

# What are the Major Bugaboos?

## Understand the Exceptions

- **Federal Contractor Status** (split among Courts)

When I said the company should "go green," what I meant was we should all smoke joints at work.



your eCards  
someecards.com

- Yay: State law does not trump federal contractor's right to have a drug free workplace (Montana)
- Nay: DFWA does not require drug testing of applicants or employees; DFWA does not prohibit federal contractors from employing someone who uses drugs—even illegal drugs— outside of the workplace (Connecticut)

# What are the Major Bugaboos?

## Understand the Employment Protections

- **Off-duty recreational use**: Protected in Connecticut, Montana, Nevada, New Jersey, and New York
- **Off-duty medicinal use**: Massachusetts High Court ruled that exception to employer's drug policy to permit off-site marijuana use may be a reasonable accommodation where the employee's physician determines that marijuana is the most effective treatment and other medication permitted by the drug policy would not be as effective in treating the disability (other states providing off-duty protections include: Arizona, Arkansas, Connecticut, Delaware, Illinois, Maine, Minnesota, New York, Pennsylvania, and West Virginia)
- **Emergency personnel**: Nevada law prohibits employers from making employment decisions based on a positive marijuana test, but the law does not apply to first responders and law enforcement
- **No adverse employment action**: New York and New Jersey prohibit employers from taking adverse action against applicants based solely on a positive marijuana test, even if the position qualifies as safety-sensitive

# JUST FOR FUNSIES

## Workers' Compensation Implications

- **Is reimbursement required for medical marijuana use?**
  - New Jersey: An employer *can be* ordered by a workers' compensation court to reimburse a claimant for reasonable costs related to prescribed medical marijuana as part of workers' compensation treatment
  - New York: Employer/workers' compensation carrier was *required* to reimburse medical marijuana use
  - Massachusetts: Workers' compensation insurer *cannot be required* to reimburse a claimant for medical marijuana expenses as a necessary and reasonable medical treatment

# JUST FOR FUNSIES

## Workers' Compensation Implications

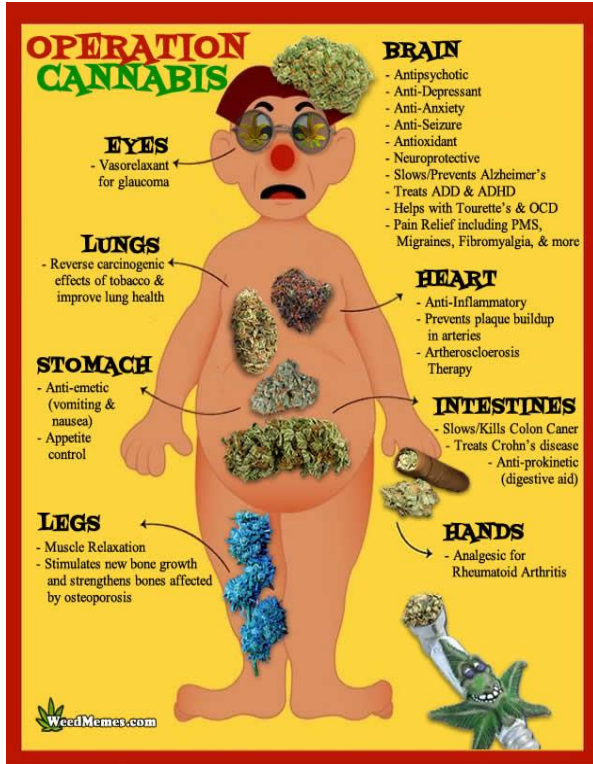
- **How is employee intoxication/impairment determined for benefit eligibility?**
  - Alabama: Employee is not eligible for workers' compensation benefits if the injury or death was due to the employee's impairment from medical marijuana (conclusive presumption that employee was impaired if the employee tests positive or refuses to take the drug test)
  - Montana: Failing to pass, or refusing to take, a drug test after an accident creates a presumption that the major contributing cause of the accident was use of the non-prescribed drugs (exception for employees certified to use medical marijuana)
  - North Dakota: Rebuttable presumption that the employee's injury is due to recreational marijuana use if the employee's drug test is above a certain limit; if the employee refuses to submit to the drug test after a workplace accident, the employee forfeits all entitlement to workplace safety and insurance benefits arising from any injury

# THE CAROLINAS



# South Carolina Compassionate Care Act

- Passed by the SC Senate in February 2022, but was then blocked on procedural grounds in the SC House.
- **The skinny:**
  - Permits very narrow medicinal use (recreational use still prohibited)
  - Patient can obtain a Registry Identification Card if certified by a physician
  - Physician may prescribe use for 14-day supply of non-smokable cannabis to treat certain debilitating conditions
    - End stage cancer; PTSD; Crohn's disease; glaucoma; chronic pain; certain seizure disorders, etc.



# South Carolina Compassionate Care Act



- NO requirement to accommodate use on an employer's premises
- NO requirement to accommodate ingestion in any workplace
- NO requirement to allow employees to work under the influence of medical cannabis
- NO private right of action against an employer for:
  - Wrongful discharge,
  - Discrimination, or
  - Any other adverse employment action.

# What about our neighbors?

## North Carolina

- Has its own proposed Compassionate Care Act
- Provides for 30-day supply with medical certification
- Only permits use for certain medical conditions (cancer; HIV/AIDS; sickle cell anemia, epilepsy; severe PTSD for veterans and emergency personnel, etc.) and patients in hospice care
- Regulated production, distribution, and prescription (set number of licenses)
- Registry Card with database of people who have been prescribed medical marijuana



# What about our neighbors?

## Georgia

- No medical marijuana use— only Low THC Oil Registry Card
- Registry Card can be obtained for certain medical conditions— end stage cancer, sickle cell disease, AIDS, seizure disorders, Crohn's disease, etc.
- No sale or possession of marijuana
- Purpose of the law: protection from criminal prosecution



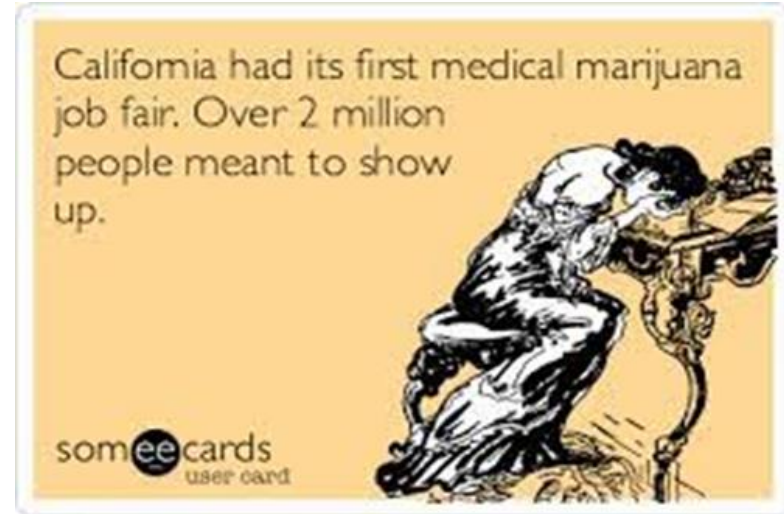
# FEDERAL LAW



# Let's be blunt, what's the big deal?

## Illegal Under Federal Law

- Controlled Substances Act–  
Schedule I Drug
    - High propensity for abuse
    - No medicinal value
    - Lack of accepted safety for use  
under medical supervision
- \*\*\* Marijuana remains classified  
as a Schedule I substance\*\*\***



# “MARIJUANA-LITE”

## CBD Oil

- The “Source Rule”
  - CBD derived from cannabis is an illegal Schedule 1 substance
  - CBD derived from a hemp source (which contains less THC) is not a controlled substance, and therefore legal



# Questioning the “Medical” in Medical Marijuana

## Not Regulated by the Food and Drug Administration

- Marijuana not approved as a “safe and effective” drug
- FDA has taken a “cautious and restrictive” approach to the regulation of CBD.
  - Only one CBD-containing drug (Epidiolex) is presently authorized for use as a drug to treat two rare and severe forms of epilepsy.
- The agency has also approved two other cannabis-related drug products (containing synthetic delta-9-tetrahydrocannabinol (THC)) for therapeutic uses for the treatment of anorexia associated with weight loss in AIDS patients & nausea associated with chemotherapy



# What about the ADA?

## No Cause of Action Under the ADA

- ADA prohibits use of illegal drugs in the workplace
  - *James v. City of Costa Mesa*, 700 F.3d 394 (9th Cir. 2012) (ruling plaintiff's use of medical marijuana constituted "illegal use of drugs" as defined under the ADA and was not a protected activity because "the ADA does not protect medical marijuana users who claim to face discrimination *on the basis of* their marijuana use")
- Supervised Use Exception– "illegal use of drugs" does not include the use of a drug taken under the supervision of a licensed healthcare professional (42 U.S.C. § 12210)
  - Exception does not apply and there is no cause of action because the ADA does not protect medical marijuana users who claim to face discrimination *on the basis of* their marijuana use
- Preemption savings clause allows states to enact greater protections for persons with disabilities
- What about request for accommodation?

# “MORE” ACT

## Marijuana Opportunity Reinvestment and Expungement Act

- Passed by House on April 1, 2022
- Received in Senate on April 4, 2022 and referred to the Committee on Finance
- Main Components of the Bill
  - Decriminalize marijuana nationwide
  - Eliminate criminal penalties for anyone who manufactures, distributes, or possesses
  - Procedure to expunge previous convictions
  - Impose a tax on the sale on cannabis (5%→ 8%)



Bill Murray   
@BillMurray

We should legalize cannabis in all 50 states, use the taxes to repair roads & highways & call it operation pothole.

# KEY TAKEAWAYS

# WHAT DOES THIS MEAN FOR EMPLOYERS?

- Employers with national footprints must identify the relevant marijuana laws in the state where their employees work and reside.
- Different state laws may or may not have an exception for certain employees working in particular jobs.
- Different state laws may or may not require employers to provide an accommodation for medical marijuana use.
- Keep an eye out on new state/federal initiatives.



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