



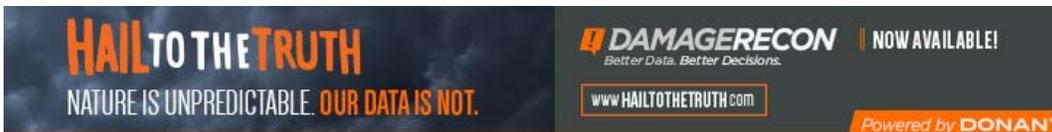
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Insurers Still Grapple With Marijuana Coverage Questions

By Scott Lacourse | September 18, 2014

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Medical marijuana is now legal in 22 states and the District of Columbia. Two of the 20 states — Washington and Colorado — have legalized marijuana for recreational use. This nascent industry is booming. The National Cannabis Industry, comprising entrepreneurs, investors, growers and retailers, says the industry is worth \$1.43 billion and will grow 10-fold over the next four years.



With legal bud here to stay, insurers need to determine how cannabis will influence personal lines. While some already offer coverage for cannabis losses, others are taking a wait-and-see approach. Since the laws are not uniform across legalized states, it makes it confusing for policyholders and insurers alike.

Understanding Cannabis Coverage

Personal lines insurers operating in marijuana-legalized states must fall in step to retain policyholders as customers. Homeowner policies may need revamping. Underwriters may need to cite exclusions for marijuana or follow ISO standards for loss of "plants, trees and shrubs," which today typically provides a \$500 coverage limit. Not enough, if you're talking about cannabis leaf.

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Some of the questions insurers are grappling with on contents coverage for marijuana include:

- Will homeowners insurance cover medical marijuana under contents coverage if the marijuana is lost in a peril?
- Will insurance cover recreational (non-medical approved) marijuana under contents coverage if it is lost in a peril?
- Will insurance cover a claim if an accidental fire in the home is caused from using marijuana (medically or recreationally)?

Conflicting Laws Create Hazy Conditions

As an example of how “hazy” current laws are, take the example of Hawaiian resident Barbara Tracy, who filed a claim for a dozen cannabis plants valued at \$46,600. These legally-grown and owned plants were stolen from her home. However her insurer paid \$8,800 on the claim. In a 2012 landmark case, Tracy sued in court and lost on grounds that federal law, which classifies pot as an illegal Schedule 1 substance, preempted state law. This effectively invalidated her insurance coverage.

Medical Marijuana Raises Questions for Businesses

Given these legal issues, underwriters may be tempted to exclude cannabis plants under standard ISO terms for “plants, trees, and shrubs”. Will insurers indemnify for a house fire caused by someone falling asleep while smoking a joint in bed, just as they would do for tobacco products? For residents of Colorado, the answer is yes, but claimants in other states may need to take their case to court.

Changing Legal Landscape

The FDA categorizes weed similar to heroin, labeling marijuana as a “Schedule 1” drug and therefore illegal to possess or use under federal law. However, this past spring the U.S. House of Representatives passed an amendment prohibiting the Justice Department from interfering with medical marijuana laws. The amendment is now pending approval in the Senate.

And according to Jennifer Shasky Calvery, director of the U.S. Treasury Department Financial Crimes Enforcement Network, 105 banks and credit unions now transact with legal medical marijuana businesses.

While it may be that the Hawaiian case of Barbara Tracy can be used as a defense in future lawsuits, attitudes about the possession of marijuana and its use are shifting as federal policy loses credibility in the halls of public opinion. For example, a New Mexico court just ruled in favor of an injured auto mechanic who sued his workers’ comp insurer for medical marijuana coverage.

Some Insurers Smell Opportunity

With signs that the legalization of marijuana is gaining momentum across the country, a handful of insurance services have sprouted up. Some insurers offer “raid insurance” as protection from changing laws that forced the closure of hundreds of medical marijuana collectives in Los Angeles. But if the DEA is involved in a seizure, the policy falls short.

High on Marijuana Insurance

The Marijuana Business Daily lists about 50 insurance providers in operation, offering products that insure “crops from coast-to-coast” as well as medical dispensaries, cultivation facilities, infused product manufacturers and workman’s comp. MMD Insurance offers product liability coverage at premiums “starting as low as \$750 for coverage limits of one million dollars, with no exclusion to health hazard.”

Most recently, Wellness Medical Protection Group announced it will offer medical marijuana

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liability insurance via Lloyd's of London, offering coverage of up to two million dollars per occurrence and two million dollars aggregate to segments of the commercial marijuana industry, "with a typical \$5,000 retention."

Since 2010 Cannasure has brokered policies in fourteen states. The company offers general liability up to five million dollars and insures loss of property while the pot is in transit from grower to retailer. The company also insures for product liability in the event that cannabis-infused gummy bears send a child to a hospital (an actual case). In addition, Cannasure offers business-interruption insurance and "property protection for loss of furniture fixtures, equipment and inventory in the event of fire, robbery or act of vandalism."

All Eyes on Colorado

True to its "Rocky Mountain High" slogan, Colorado was the first state to fully legalize marijuana use and possession for both medical and recreational purposes. Insurers operating in the state have stepped up to the challenge. They can either risk disapproval from federal regulators or risk alienation from customers. Allstate is choosing the former and serving as a model insurer for others to follow.

In a carefully-worded statement, an Allstate spokesperson in Colorado commented:

"In Colorado, lawfully-possessed, processed marijuana is not excluded and is limited to the personal property limit of the homeowner's policy. Whether it is medical or non-medical is not relevant to coverage. Fire is a covered peril, and coverage of an accidental fire would not be impacted by whether or not it was started in connection to lawful marijuana use.

"Marijuana plants grown with a license for personal use would be limited to the perils and limits under additional protection for trees, shrubs, plants and lawns, but not exceeding the legally-allowed limit. Policies can have different dollar-amount limits for the total coverage of trees, shrubs, and plants as well as maximums for an individual tree, shrub, or plant. Marijuana plants grown for business purposes are not covered."

It appears that the marijuana economy will experience explosive growth just like the years after alcohol prohibition ended. It will have a profound impact on personal lines insurance, workers' comp, product liability, healthcare insurance and more. Forward-thinking insurers will want to get in front of this issue by adopting policies that spell out coverage for legally grown cannabis plants and medical marijuana property.

For help on how best to underwrite and manage the oncoming rush of the cannabis economy, Carole Walker at the Rocky Mountain Insurance Information Association is an excellent resource.



Scott Lacourse is director of Marketing for Enservio, which offers software and services across the entire value chain of contents claim processing—from onsite inventory capture of non-restorable contents—to transcription, appraisal, valuation, payment, replacement and predictive analytics.

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