

SPRING 2011
www.claimsadvisor.com

claims ADVISOR

INFORMATION FOR TODAY'S CLAIMS PROFESSIONALS

Colossal Cleanup

Regulators prepare to
examine insurers' auto
claims-handling software.

For Closing the Gap

Get the Lead Out

The Fine Points of Art Conservation

Getting Ahead of Cannabusiness Liability

Master Data Management

Take a Byte Out of Cyber Secrecy

Best Audit Practices

FIRST CLASS
U.S. POSTAGE
PAID
LEBANON
JUNCTION, KY
PERMIT NO. 612

CHANGE SERVICE REQUESTED

186 Industrial Center Drive
Lake Helen, FL 32744

Getting of



ing Ahead Cannabusiness Liability

QUICK LOOK

- Cannabis is an up-and-coming business with real property-casualty needs.
- Only a few insurers are active in the niche, but they are setting the standards.
- Potential claims run from theft and crop damage to packaging and product liability.

Some predict high times for the future of medical marijuana businesses, but is the insurance industry ready?

BY BEVRLEE J. LIPS

The medical use of marijuana is legal in 15 states and the District of Columbia, and 17 more states have legalization legislation or ballot measures in the pipeline.

Just the mention of marijuana conjures up images of Cheech and Chong, drooping eyelids, black lights, glow posters, and a smoky haze. But the medical marijuana industry is something quite different. The burgeoning industry deals with the serious issue of pain management for very ill patients, and the continuing rise in public support for the legalization of marijuana for medical use has created a market segment with big implications for the insurance industry.

One of the biggest and

most obvious challenges for the industry is standards. Sketchy state regulations, a confusing message from the federal government and other gaping holes in how the legalization laws are worded provide a plethora of problems for insurers and, ultimately, for claims. The one constant is that doctors cannot prescribe a non-FDA approved substance; however, in medical excuse marijuana states only, they can recommend it. From there it gets complicated.

Under President George W. Bush, marijuana dispensaries operating on the “edge” of the law were raided regularly. However, the Obama administration vowed to end raids on dispensaries taking a more

hands-off approach, and Attorney General Holder has stated that he will not prosecute medical marijuana users. Still, those in the business tread lightly, unsure of what is and is not worthy of the government’s attention.

Laws Vary

Each state has its own set of rules and regulations for medical marijuana growth, eligibility allowances, and use by patients, and they often vary city-by-city or county-by-county.

The state-run program in Michigan allows patients diagnosed with

specific medical conditions to cultivate and use marijuana. The eligible conditions include cancer, AIDS, hepatitis C, Crohn’s disease, Alzheimer’s and multiple sclerosis. Others diseases or conditions are eligible at the discretion of the Department of Community Health.

Washington, D.C.’s program is administered by the mayor and Department of Health—they have not yet determined program details. The legislation approves patients diagnosed with cancer, AIDS, multiple sclerosis,



glaucoma, and other chronic conditions that impede the basic functions of life.

Colorado has a different scenario altogether. “Colorado has an amendment to the constitution [Amendment 20], where in the other states it’s just a law,” says Robert Morrissey, a Colorado-based consultant specializing in medical marijuana-related businesses. “It is an actual right of a Colorado citizen to use medicinal marijuana if a physician sees fit.”

Amid a down economy, the lure of a lucrative business opportunity has fueled rapid growth in some areas, leaving those with unclear or loose parameters scrambling to catch up or make corrections on the fly.

Los Angeles failed to set guidelines out of the gate, and the number of dispensaries grew at an alarming rate—an estimated 1,000 by the end of 2009. The city council is currently working on ordinances to create buffer zones and limit the number of allowable dispensaries to 100. Former talk-show host Montel Williams, who suffers from multiple sclerosis and who has become one of the nation’s most well known medical marijuana activists, has stepped in to urge the council to craft a better ordinance, but finding an acceptable balance so far has been illusive.

Insuring the Industry

There’s no doubt the current economy plays a distinct role

Schedules of Controlled Substances

The U.S. Controlled Substances Act (Title 21 United States Code, Subchapter I, Part B Section 812), regulates the availability of drugs in the U.S., whether they can be prescribed, and to what extent. Drugs are classified into one of five schedules.

SCHEDULE I	A category of drugs not considered legitimate for medical use. Included are heroin, lysergic acid diethylamide (LSD), and marijuana.
SCHEDULE II	A category of drugs considered to have a strong potential for abuse or addiction but that also have legitimate medical use. Included are opium, morphine, and cocaine.
SCHEDULE III	A category of drugs that have less potential for abuse or addiction than Schedule I or II drugs and have a useful medical purpose. Included are short-acting barbiturates and amphetamines.
SCHEDULE IV	A medically useful category of drugs that have less potential for abuse or addiction than those of Schedules I, II and III. Included are diazepam and chloral hydrate.
SCHEDULE V	A medically useful category of drugs that have less potential for abuse or addiction than those of Schedules I through IV. Included are antidiarrheals and antitussives with opioid derivatives.

15 States and D.C. Have Legalized Medical Marijuana

Alaska Arizona California Colorado Hawaii Maine	Michigan Montana Nevada New Jersey New Mexico Oregon	Rhode Island Vermont Washington Washington, D.C.
--	---	---

17 States with Pending or Attempted Legislation or Ballot Measures to Legalize Medical Marijuana

Alabama Delaware Illinois Iowa Kansas Maryland*	Massachusetts Mississippi Missouri New York North Carolina Ohio	Pennsylvania South Dakota Tennessee Wisconsin Virginia
--	--	--

in the unexpected speed of growth for medical marijuana dispensaries and related businesses. In turn, the insurance market is faced with amplified demand to create and provide insurance coverages as for any other business, including general liability, workers’ compensation, auto, equipment, crops, stock, malpractice, event, cargo, E&O, professional liability and even cyber coverage.

Offering insurance products for the medical marijuana industry has presented a challenge from the beginning, and policyholders tend to keep their carrier names hush-hush for fear of drawing unwanted attention and possibly losing their coverage.

In Colorado, where there are roughly more than 700 dispensaries and 105,000 patients, coverage has been historically difficult and expensive to obtain. “There is not much competition at this point so the price for insurance is very high,” says Randy Good, president of the Colorado Bottling Company, which produces medical marijuana edibles. Good’s company takes

its security measures seriously, adhering to state regulations and even adding bulletproof glass and bulletproof drywall in its facility. Over time, the state has seen considerable improvement. “In the beginning, we called tons of insurance companies to no avail,” says Morrissey. “But as the laws became more stabilized, the insurance industry was much more accepting and insurance agents started calling us.”

“Right now there is no standard market, so you have to go to excess and surplus markets, where there is a high minimum premium,” says Bob Collimore, chairman of Kuffel Collimore & Company, a professional independent insurance agency based in Aurora, Ill., that has obtained coverage for dispensaries in nearly every legal state. “Rates overall tend to be anywhere from 50% to 100% higher compared to similar businesses.” Collimore currently works with such carriers as Colony, Evanston, James River, and Lloyd’s of London.

Insiders feel that, as the industry raises its standards and the insurance community

NEW DEVELOPMENT: POT RAID COVERAGE

Medical marijuana raid coverage, announced in February 2011, provides the first ever policy endorsement to cover government action anywhere in the world. The coverage is designed to protect legally operating medical cannabis businesses—dispensaries, collectives, cooperatives, cultivators and caregivers—raided by state or local law enforcement agencies provided the operations have adhered to all specified state and local cannabis-related guidelines and are found innocent of all raid-related charges. It does not cover property seizures conducted by the federal enforcement agencies such as the DEA. Visit www.mmdinsurance.com for more information.

can look at real numbers and historical data, there will be a greater comfort level with dispensaries and growers, and better products and pricing will become available.

“To me, the exposure is not that great by comparison, but traditionally conservative standard companies are not willing to jump in without statistical data,” says Collimore. “I have heard of property claims, such as burglaries and break-ins, but no actual liability claims.” Collimore deals with one California company that will only write workers’ compensation through an assigned risk pool. Their unease is due to the possibility of holdups that could lead to employee injury.

Underwriting standards in any new market can be slow in development. However, one company has taken the lead to develop aggres-

sive underwriting standards. California-based Statewide Insurance Services’ National Director Mike Aberle painstakingly has created better business practices and underwriting guidelines specifically for medical marijuana dispensaries, cultivators and related businesses. Their standards are tough and include special requirements, such as a hefty security system, special safes and camera surveillance. “We work currently with five of the largest national A-rated carriers who write this type of business, and we insure some of the largest concerns, including the International Cannabis and Hemp Expo,” says Aberle. “Now, carriers come to us for help in developing their programs.”

Because of the changing landscape, Statewide actively meets with industry leaders to build better programs

that protect the dispensaries, delivery services, and growers. They also provide help with recommendations, requirements, education and community support. Municipalities have requested their underwriting policies so they, in turn, can provide better ordinances around these businesses.

Aberle sees coverage costs a bit differently than others in the industry. “Just two years ago, premiums for these businesses were off the charts. Today, we’re seeing pricing that is in line with comparable industries,” he says.

A Diverse Niche

Marijuana is said to have unprecedented benefits compared to currently prescribed medications, including pain relief, decreased nausea, increased appetite and muscle relaxation. Many cancer and AIDS patients claim a compelling increase in their quality of life. For patients who don’t want to smoke the product or who need the medication to take effect more quickly, there are options such as brownies, nachos, cookies, trail mix, popcorn and soft drinks—known as edibles.

Edibles present more challenges for insurers. Once cooked up in home kitchens with few controls, today the edible segment of the industry is handled in many cases like any commercial kitchen and regulated similarly. However, labeling is still a major issue. Products crossing state lines and possibly getting into unintended hands have legitimate businesses a bit fearful.

“I don’t know the consequences for a business in the scenario where a patient buys a lollipop in a Colorado dispensary, packs it in their luggage, flies to Florida where

it’s not legal, loses the lollipop, and a child gets a hold of it. What then? I’ve not heard of that happening yet, but that is where packaging, insurance and liability need to be worked out,” says Morrissey.

By using a little creative language, some dispensaries have been able to purchase standard insurance through their agents. They have been placed as “tea” or “herb” shops, according to Collimore. With this kind of trickery, he is unable to compete in price. Moreover, the practice presents unintended exposure for carriers.

Many of the frontrunners didn’t get into the industry to smoke pot in the back room. They have a compelling personal story of medical marijuana significantly improving the quality of life for a loved one. Aberle was inspired by his mother-in-law, who passed away from ovarian cancer. Good’s ex-wife suffers from multiple sclerosis. Medical marijuana is much more than a business opportunity for many advocates driven to showcase the legitimacy and benefits involved.

To date, 64% of states have either enacted an amendment or law to legalize medical marijuana use or have developed legislation toward that end. For carriers keeping an eye on the horizon, the demand for medical marijuana-related business insurance is rising. Standards will likely continue to be in flux in the early stages, so staying on top of the issue will prove to be invaluable. From the look of things, it isn’t “if” these businesses will be on your doorstep, but “when.” **CA**

Bevrlee J. Lips is the publisher and editor of Claims Advisor.



Copyright © 2010 Superum, Inc.

One of the most unique “edible” offerings available is Keef Cola, which contains ingredients typically found in softdrinks, such as aloe vera, vitamins B and C, electrolytes, fiber, sugar, and natural and artificial flavors.

