Navigating the Complexities of Cannabis Insurance

August 28, 2023

The cannabis industry, just like any other industry, requires insurance coverage. Insurance is often required for plant-touching businesses such as growers, processors, and dispensaries and is well-advised for ancillary cannabis businesses, such as real estate brokerages, transportation companies, and payment processors. While the cannabis industry is rapidly making its mark on the U.S. economy as more states pass laws to legalize its use (both medicinally and recreationally), the cannabis insurance industry, by comparison, has been slow to adapt to the expanding need for cannabis insurance. As a result, cannabis businesses are oftentimes left with spotty coverage, high premiums, and more questions than answers.

Insurance Basics

Insurance products are generally offered in two markets: the admitted market and the surplus lines market.

Insurance products offered in the admitted market are typical, also known as “off the shelf” products, e.g., insurance for personal use vehicles, residential housing, life and health, travel, and more. These products are easily accessible, and most national insurance companies sell these products to the general public with ease of marketing.

The surplus insurance market, in contrast, is meant to fill the gaps for insurance products and offerings that are not readily available in the admitted market. Products in the surplus lines market can cover unique items of value or certain risks that require individualized underwriting to determine the value. Tom Brady’s arm during the many seasons in which he played and Beyoncé’s voice are examples of unique “risks” covered by a specialized insurance product not offered in the general marketplace for insurance.

In order for an insurance product to be considered in the surplus lines market, most states will require that at least three insurance companies turn down writing this type of coverage in the general admitted market.

Finding Cannabis Insurance

With the emergence of businesses newly operating in the small-to-medium markets of the cannabis industry, so too has emerged the need for insurance coverage. In fact, many states’ regulatory schemes require insurance policies meeting specific coverage guidelines in order to obtain the requisite licensing for storefronts, cannabis-related services, transportation, etc.

Unfortunately, the availability of insurance (especially competitively priced insurance) in most jurisdictions is difficult to find. Brokers who sell insurance are less likely, depending on the state, to advertise they can offer insurance for cannabis-related businesses.

However, some states – such as California, which has a more mature cannabis market – publish a list of brokers and insurance companies that offer insurance products for cannabis-related industries so they may be more readily accessible to cannabis licensees and ancillary businesses. Ultimately, if coverage can be located, it will most likely be surplus lines coverage.

A Look Forward

While the insurance industry has an express interest in covering these higher risks and business-related activities, but due to factors such as the potential higher premium-to-loss ratios, insurance companies often find themselves unsure of what insurance products to offer and how to offer cannabis insurance products in the admitted market.

How products for the cannabis industry will be underwritten and how premiums are determined in most cases is a black box of strategy. Due to the nascent nature of the legal cannabis industry, there are relatively few historical metrics on which to rely for creating such pricing compared to other high-risk industries. This is yet another reason insurance products for the cannabis industry are most commonly offered in the surplus lines market: because the cannabis industry rates are not yet regulated by the state, there is typically little to no state guidance on how to set relevant rates or underwrite these specific kinds of risks.

While how to offer insurance-related products to marijuana and marijuana-related businesses is on the minds of regulators throughout the United States, regulators are unsure of how to propose such regulations in light of these challenges and when the industry is still illegal under federal law.

Alabama Takes Action

As explained above, cannabis insurance – to the extent it is offered – is typically packaged as a surplus line, and states have been slow to roll out relevant guidance. However, changes are on the horizon.

Recently, the Alabama Department of Insurance (DOI) issued Bulletin No. 2023-03 titled "Creation of a Medical Cannabis Insurance Market in Alabama." The Bulletin is a future directive that all "commercial property and casualty medical cannabis-related rate, rule, or combination filings" be filed with the Alabama DOI. The Bulletin's future directives are procedural in nature: "encourag[ing]" insurers to "submit rates and forms" for use with marijuana licensees. The relevant submissions "will" (future tense) be made under Ala. Admin. Code r. 482-1-123-.03 (File and Use System).

There was no date of implementation, or deadline for compliance, provided in the Bulletin. Once implemented, however, the Bulletin states File and Use Rates will continue for three years or until the DOI can properly forecast rates based on statewide experience.

Alabama legalized the medicinal use of marijuana in 2021. The Alabama DOI likely took this step to issue the Bulletin in May 2023 because the state closed its cannabis license application window at the end of 2022, and the Alabama Medical Cannabis Commission awarded medical cannabis business licenses in June 2023 and August 2023. The state required applicants to submit, as part of their Applicant's Verified Business Plan, "[a]n insurance plan, including declarations pages and letters of intent, if any, from an A-rated insurer as to, at a minimum, casualty, workers' compensation, liability, and (as applicable) auto or fleet policy." Ala. Admin. Code r. 538-x-3-.05(3)(m)(15)(k), Contents of Application. Alabama's regulations also deem applicants ineligible to receive a license if "[t]he Applicant fails to demonstrate the ability to maintain adequate minimum levels of liability and casualty insurance or other financial guarantees for its proposed facility." Ala. Admin. Code r. 538-x-3-.14, Ineligibility for License. Thus, the need for cannabis-related insurance in Alabama is surging.

The DOI's likely intent in implementing this procedure through the issuance of the Bulletin to allow the DOI to gather facts at present and, later, administer and enact laws and regulations regarding marijuana-related insurance products and coverage, rates, and more.

Next Steps

Changes to the cannabis insurance landscape, such as the emergence of admitted market lines, are on the horizon and will likely be implemented in the future. As more states pass laws to legalize the use of marijuana, it is expected that the transition from surplus lines to the admitted market will accelerate. Businesses involved in the cannabis industry – including both direct, plant-touching companies as well as ancillary product or service providers – must be mindful of their insurance obligations in each jurisdiction in which they operate and should keep their fingers on the pulse of these issues as the cannabis market continues to expand and mature.

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