

# Marijuana Coverage Implications

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MARIJUANA IS APPROVED for use in some manner in over half of the states, including medical use in 29 states and the District of Columbia, as well as recreational use in at least 8 states. However, it continues to be a controlled substance under Federal law, thereby posing potential insurance coverage issues. Helping clients understand the possible implications of marijuana and other controlled substances is another sign of the true insurance professional.

Marijuana readily comes to mind when people talk about insurance coverage for “controlled substances”. From an insurance standpoint, the problem stems from the fact that, on a federal level, marijuana is classified as Schedule I, which means it is considered to have “no currently accepted medical use”, a “high potential for abuse” and “there is a lack of accepted safety for use of the drug or other substance under medical supervision” ([www.deadiversion.usdoj.gov](http://www.deadiversion.usdoj.gov)).

Use of a controlled substance may negate coverage under most insurance policies, whether or not the results of the individual’s action were intentional. Workplace laws, including mandatory drug testing, can pose a problem for users, as marijuana can stay in a person’s system for a number of months. In some states, such as Wisconsin, Workers’ Compensation benefits for the injured employee and their dependents are voided if the employee violated the employer’s drug policy. However, a number of courts have ruled that a positive test for marijuana does not necessarily mean impairment, and does not preclude recovery of Workers’ Compensation benefits. In states where marijuana is legal, laws vary as to whether Workers’ Comp-

sation should pay for the treatment.

Auto liability coverage may come into play in the case where an employee testing positive causes an accident. State laws vary as to legal limits in a driver’s system before the driver is considered impaired.

General liability coverage may or may not respond to incidents involving an employee using marijuana.

Employment Practices Liability is another area that may come into play. Employers must take care to ensure that their hiring and firing practices include provisions for employees who are using medical marijuana. Some states allow employers to terminate employees for positive drug tests, and federal law does not allow for marijuana use at work ([www.marsh.com](http://www.marsh.com)).

Marijuana is a booming industry. Sales of legal marijuana, for both medical and recreational purposes – at \$6 billion in 2016 – are projected to exceed \$24 billion by 2025. A number of insurance companies now offer coverage to businesses that grow, process, manufacture and sell marijuana products.

Crime is a serious issue in marijuana businesses. Marijuana is a cash industry. The federal government regulates banking, so banks are hesitant to accept marijuana money, fearing legal problems that could ensue. Credit card companies generally don’t allow their cards to be used to purchase marijuana. This means that large amounts of cash are often on hand at



dispensaries. This presents a significant exposure to any insurer willing to write coverage for the business.

Hawaii recently announced it plans to become the first noncash marijuana state. They are setting up a payment process with a Colorado-based credit union. Patients will be asked to use a debit payment app. Customers would use their checking accounts to pay the credit union ([wtop.com/business-finance](http://wtop.com/business-finance)).

For the plants themselves, the coverage questions are more difficult. For those who grow marijuana for personal use in “legal marijuana” states, the best answer is to contact the insurer and ask. State laws regarding quantities grown must be followed. If the grower is operating a business and selling the plants or products, then coverage under a standard personal lines policy will be voided.

Insurance coverage for marijuana use is still a developing issue. Helping clients understand the possible implications is another value-added service of the professional insurance agent.

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