CANNABIS INSURANCE (C) WORKING GROUP HEARING, DAY 1

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NAIC NATIONAL MEETING SUMMER 2021

Date: 7/13/21

Virtual Meeting
(in lieu of meeting at the 2021 Summer National Meeting)

CANNABIS INSURANCE (C) WORKING GROUP
Monday, July 19, 2021
2:00 – 4:30 p.m. ET / 1:00 – 3:30 p.m. CT / 12:00 – 2:30 p.m. MT / 11:00 a.m. – 1:30 p.m. PT
Tuesday, July 27, 2021
2:00 – 4:30 p.m. ET / 1:00 – 3:30 p.m. CT / 12:00 – 2:30 p.m. MT / 11:00 a.m. – 1:30 p.m. PT

ROLL CALL

Ricardo Lara, Chair	California	Marlene Caride	New Jersey
Michael Conway, Vice Chair	Colorado	Glen Mulready	Oklahoma
Lori K. Wing-Heier	Alaska	Andrew R. Stolfi	Oregon
Jimmy Harris	Arkansas	John Lacek	Pennsylvania
Michael Gould	Delaware	Elizabeth Kelleher Dwyer	Rhode Island
Angela King	District of Columbia	Christina Rouleau	Vermont
C.J. Metcalf	Illinois	Michael Walker	Washington
Gennady Stolyarov	Nevada		

NAIC Support Staff: Anne Obersteadt/Aaron Brandenburg

AGENDA

Monday, July 19, 2021
SESSION 1: SETTING THE CANNABIS STAGE

1:00 – 1:05 p.m.	**Opening Remarks**—*Melerie Michael (CA)*	
1:05 – 1:25 p.m.	**Presentation**: Understanding the Geographical Expansion of States Legalizing Cannabis and its Impact at the Federal Level—*Ian Stewart (Wilson Elser)*	Attachment A
1:25 – 1:45 p.m.	**Presentation**: Overview of the Cannabis Business Regulatory and Licensing Landscape—*Norman Birenbaum (Cannabis Regulators Association—CANNRA)*	Attachment B
1:45 – 2:05 p.m.	**Presentation**: Cannabis Insurance Market Segments and Insurance Needs from Seed to Sale for Vertically Integrated and Niche Players—*Michael Hall (Golden Bear) and Summer J. Jenkins (National Cannabis Industry Association [NCIA] and Cannasure)*	Attachment C
2:05 – 2:20 p.m.	**Session Q&A**	

SESSION 2: INSURANCE PRODUCT AVAILABILITY

2:20 – 2:25 p.m.	**Opening Remarks**—*Peg Brown (CO)*	

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2:25 – 2:45 p.m.	**Presentation:** Expanding Commercial Product Options—*Joe Lam (Insurance Services Office—ISO) and Joseph Jonas (American Association of Insurance Services—AAIS)*	Attachment D
2:45 – 3:20 p.m.	**Panel Discussion:** Admitted and Nonadmitted Coverage Across the Cannabis Business Sectors—*Beth Medvedev (James River), Michael Hall (Golden Bear), Summer J. Jenkins (NCIA and Cannasure), and Norman Ives (Amwins)*	
3:20 – 3:30 p.m.	**Session Q&A**	

Tuesday, July 27, 2021
SESSION 3: BARRIERS TO COVERAGE AVAILABILITY AND AFFORDABILITY

1:00 – 1:05 p.m.	**Opening Remarks**—*Peg Brown (CO)*	
1:05 – 1:25 p.m.	**Presentation**: Balancing Actual and Perceived Risks—*Brenda Wells, Ph.D. (East Carolina University—ECU)*	Attachment E
1:25 – 2:00 p.m.	**Panel Discussion**: Uncovering Obstacles to Offering Coverage—*Ian Stewart (Wilson Elser), Lois J. Massa (GJ Sullivan Co. Reinsurance—GJS Re), Michael Hall (Golden Bear), and Tim McCarthy (ISO)*	
2:00 – 2:35 p.m.	**Panel Discussion:** Insurance Coverage Challenges—*Summer J. Jenkins (NCIA and Cannasure), Norman Ives (Amwins), Beth Medvedev (James River), Michael Hall (Golden Bear), and Ian Stewart (Wilson Elser)*	
2:35 – 2:45 p.m.	**Session Q&A**	

SESSION 4: MOVING FORWARD

2:45 – 2:50 p.m.	**Opening Remarks**—*Melerie Michael (CA)*	
2:50 – 3:25 p.m.	**Panel Discussion:** What's on the Horizon? How Can Insurance Regulators Help?—*Summer J. Jenkins (NCIA and Cannasure), Michael Hall (Golden Bear), and Norman Ives (Amwins)*	
3:25 – 3:30 p.m.	**Hearing Q&A**	

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SESSION 1: SETTING THE CANNABIS STAGE
Opening Remarks

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Understanding the Geographical Expansion of States Legalizing Cannabis and its Impact at the Federal Level

Attachment A

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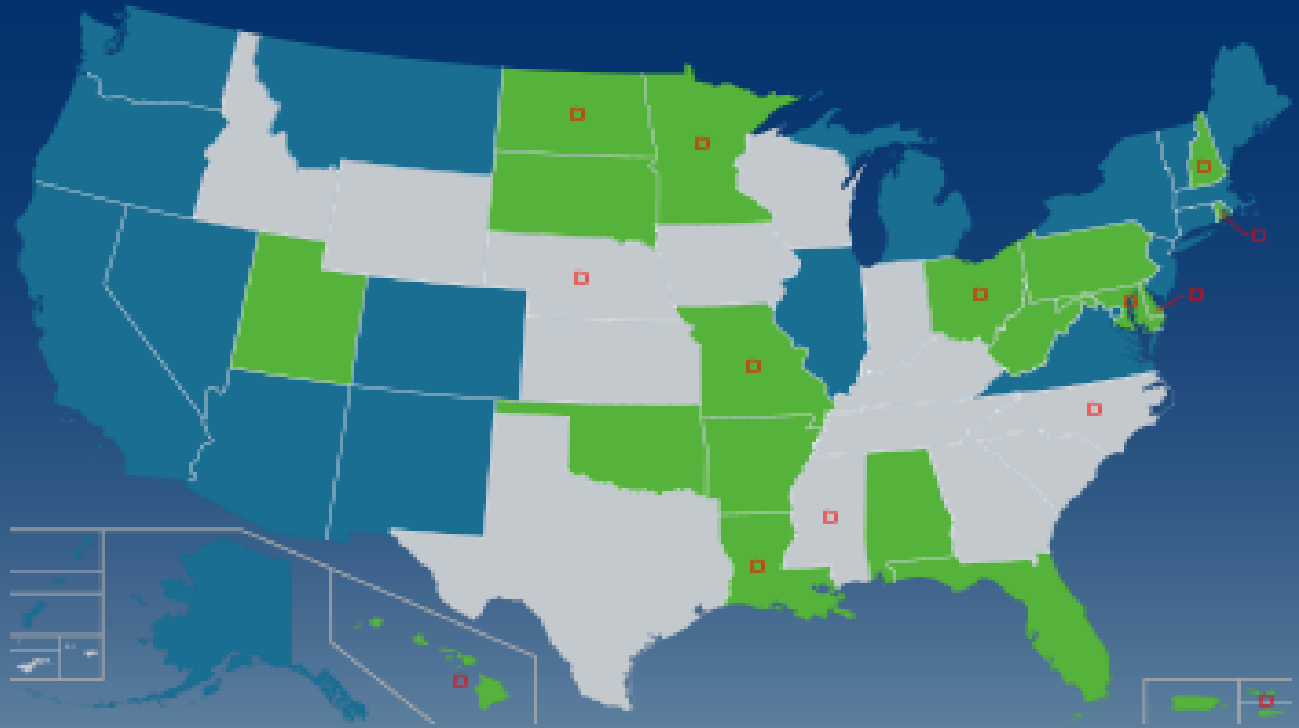
Geographic Expansion of State Cannabis Markets

- Adult use
  - 18 states and D.C. and Guam
- Medical use
  - 37 states, D.C., Puerto Rico, Guam and U.S. Virgin Islands
- Social changes are upon us
  - Nearly all Americans now live in a state where some form of cannabis is legal
  - Over 90% of Americans believe cannabis should be legal either for adult or medical use

Geographic Expansion of State Cannabis Markets

- Since last November, ten states have passed new adult use or medical cannabis laws
  - **Alabama, Arizona, Connecticut, New Jersey, New Mexico, New York, Montana, Mississippi, South Dakota** and **Virginia**
- In 2021, six states have passed expansions to their medical cannabis regulations
  - **Georgia, Louisiana, Minnesota, Pennsylvania, Tennessee** and **Texas**

Geographic Expansion of State Cannabis Markets



Geographic Expansion of State Cannabis Markets

- Adult-use legislation is currently being considered in **Delaware, Florida, Hawaii, Iowa, Maryland, Minnesota, North Carolina, North Dakota, Pennsylvania**, **Rhode Island** and **Wisconsin**.
- Adult use ballot initiatives in 2022 are expected in **Arkansas**, **Florida**, **Missouri**, **Ohio** and **Oklahoma**.

Cannabis Administration and Opportunity Act

- Draft bill released by Senators Schumer, Booker and Wyden on 7/14/21
  - Removes marijuana from Schedule 1 of CSA
  - Regulates cannabis similar to alcohol
    - States can determine their own cannabis laws
    - Transfers federal agency jurisdiction from DEA to FDA (HHS), TTB (Treasury) and ATF (DOJ)
  - Lifts restrictions on research and directs various federal agencies and departments to study and report on cannabis
    - GAO, HHS, NIH, DOT, BLS
  - Automatically expunges criminal convictions for non-violent marijuana offenses
  - Establishes grant programs for non-profits, small business loans and state funding to assist individuals disproportionately impacted by war on drugs

Cannabis Administration and Opportunity Act

- Establishes grant programs for non-profits, small business loans and state funding to assist individuals disproportionately impacted by war on drugs
- Levies federal excise tax on cannabis products
- Establishes federal track and trace regime
- Restricts interstate commerce of cannabis products that fail to comply with mandated packaging and labeling requirements
- Creates legal pathway for CBD in dietary supplements with maximum recommended daily serving
- Establishes process for delivery of inadvertent “hot hemp” to licensed cannabis operator for processing

Overview of the Cannabis Business Regulatory and Licensing Landscape

Attachment B

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Changes and Trends in Cannabis Regulation

CANNABIS REGULATORS ASSOCIATION MEMBERS

- ARIZONA
- CALIFORNIA
- COLORADO
- CONNECTICUIT
- DELAWARE
- DISTRICT OF COLUMBIA
- FLORIDA
- GEORGIA
- GUAM
- HAWAII
- ILLINOIS
- IOWA
- LOUISIANA
- MAINE
- MARYLAND
- MASSACHUSETTS
- MICHIGAN
- MINNESOTA MONTANA
- NEW JERSEY
- NEW YORK
- NEVADA
- NORTH DAKOTA
- OHIO
- OREGON
- RHODE ISLAND
- SOUTH DAKOTA
- TEXAS
- UTAH
- WASHINGTON

Evolution in Federal Oversight and How Standards Are Created

- **Shift from voter initiatives to legislative process**
- **Shift from DOJ enforcement to Treasury Compliance**
- **Interaction with federal public health agencies**
- **Entering into cannabis "3.0" – learning from other jurisdictions**

Packaging and Labeling

- Uniform and/or standardized packaging and labeling requirements
- Flexibility in label warnings based on packing
- Use of rotating warnings
- Use of opaque or standard packaging forms
- Informing the consumer vs means of advertising

Testing and Product Safety

- Use of PCR vs Plating for microbial
- Thresholds of residual contaminants
- Stability testing
- Use of a reference lab and round robin testing
- Allowing for remediation of product and use of radiation
- Testing for non traditional cannabinoids (potential links to marketing)
- Use of GMP

Vaping Regulation

- **EVALI has shifted the landscape**
- **Excipients and diluents**
- **Use of flavors and their origin**
- **Cartridge requirements and identifiers**
- **Device requirements**
- **Testing of vapor and long term stability testing**

Marketing & Advertising

- **Approved Forms of media**
- **Use of third party validators**
- **Advertising by ancillary industry participants**
- **Depictions of rapid consumption**
- **Not targeting youth vs not seen by youth**
- **Ability to use sales and/or coupons**
- **Lack of “master settlement agreement”**
- **Protections under state law vs federal law**
- **Displacing the illicit market vs. increasing use**

Tax Structure

- Ad valorem vs weight based vs potency vs cannabinoid volume
- Impact on displacing/absorbing the illicit market
- Impact on use rates and preferred product categories
- Where is the product taxed
- Local vs state taxes and distribution
- Allocations to the General Fund vs specific initiatives

Social Consumption and Delivery

- **Know Your Customer requirements**
- **Limits on product and/or cash which may be used**
- **Role of video surveillance**

- **BYO vs purchased on sight**
- **Liability for businesses**
- **Indoor clean air protections vs more variable means of administration**

Market Architecture and Licensing

- Commercialized model vs non-profit vs state control
- Competitive evaluation process vs minimum criterial vs lottery
- License caps or restrictions on vertical integration
- In state vs out of state interests
- Changes and limits in "ownership" and control
- Role of counties and municipalities in licensing and regulation

Public Health & Education Programs

- **Establishing baseline data and ongoing monitoring of use rates and outcomes**
- **Identifying at risk populations**
- **Effective public awareness campaigns**
- **Adverse event reporting systems**
- **Budtender certification and education**

Workplace Impairment and DUI

- **Per Se limit vs observed behavior**
- **Differing limits for adults and youth**
- **Ability to conduct search based on odor**
- **Employer's hiring and workplace drug use policies**
- **Exemptions for Law enforcement, federal employees and sensitive workers**
- **Use vs impairment and cannabis metabolite vs active THC**
- **Canine officers and complications from Hemp**

Social and Economic Equity Licensing

- How is Social and economic equity defined?
- Revenue allocation vs industry participation
- Role of local licensing
- Ability to sell or transfer licenses
- Access to capital and workforce development
- Licensing process and what licenses are available

Emerging Issues/Filling the Federal Void

- State Efforts to Facilitate Financial Services
- "Total THC" and new THC isomers
- Use of isomerization and cellular agriculture
- Coordination with medical cannabis and Hemp markets
- Preparing for interstate commerce (uniform standards, validation, IP, distribution)

For More Information

www.cann-ra.org **info@cann-ra.org**

Cannabis Insurance Market Segments and Insurance Needs from Seed to Sale for Vertically Integrated and Niche Players

Attachment C

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Cannabis Insurance Market Segments and Insurance Needs from Seed to Sale for Vertically Integrated and Niche Players.

Summer Jenkins, Cannasure

Michael Hall, Golden Bear

CANNASURE

Golden Bear
INSURANCE COMPANY

General Needs & License Types

- Cannabis businesses are just like any other business the biggest needs for most are the basic coverages
- Unilateral standardization of class codes, tables and rating methodologies.
- From an insurance perspective many regulations, like Track and Trace, and strict licensing rules provide a strong starting point for risk management
- Availability of reinsurance as primary barrier

MRA
MICHIGAN MARIJUANA REGULATORY AGENCY

BUREAU OF CANNABIS CONTROL

Cannabis Control Commission
COMMONWEALTH OF MASSACHUSETTS

Cultivation

- Nationally recognized success of the agricultural industry affords a wealth of information
- Challenges include technological advancement and speed of industry developments
- Farm & Agricultural policies address commercial and residential exposures cannabis policies do not
- Outdoor crop, transportation conveyances like air and rail
- Environmental incidents
- Earth moving equipment
- No property for high protection class risk assigned risk pools do not apply

Distribution

- Wholesale distribution, storage, packaging and labeling of cannabis products
- Bailment Bailee-Bailor protection coverage and supporting law
- Consider food and beverage industry
- Hired & Non-Owned Auto is excess only
- Excess liability and limits over $1 ML are limited or non existent

Retail

- Keep it simple, think high end liquor store with tight security and high stock values
- Rate flexibility as a tool to attract Admitted Carriers
- Needed clarification around liability of on-site consumption

Manufacturing

- Gaps in coverage created by the patchwork of coverage forms and a lack of output
- Incongruities in coverage forms
- Labeling, labeling, labeling…

Q&A

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SESSION 2: INSURANCE PRODUCT AVAILABILITY
Opening Remarks

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Expanding Commercial Product Options

Attachment D

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Cannabis

ISO'S PROPERTY & LIABILITY OPTIONS

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Cannabis Risks

Entities seeking cannabis coverage solutions span entire production cycle, including:

- Cultivation
- Storage
- Manufacturing and processing
- Design
- Packaging
- Testing
- Distribution
- Selling, serving, dispensing
- Disposal

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Cannabis GL Coverage Options

1) Cannabis Activity Coverage Aggregate Limit Endorsement

- Modifies Commercial General Liability (CGL) Coverage Form;
- "Cannabis activity" definition introduced.
- "Cannabis activity" must be properly licensed and permitted by law;

2) Cannabis Exclusion With Hemp Exception Subject To Hemp Aggregate Limit Endorsement

- Modifies CGL Coverage Form;
- Coverage for BI, PD, P&AI arising out of hemp products, property damage to hemp products, and P&AI arising out of select offenses;
- Hemp must be permitted under an applicable state or local statute, regulation or ordinance.

3) Cannabis Exclusion With Designated Product Or Work Exception Subject To Cannabis Products/Completed Operations Aggregate Limit

- Modifies Coverage CGL Coverage Form;
- Exclusion for property damage to cannabis and for BI/PD included in "products-completed operations hazard" and arising out of cannabis
- Exception for designated products or work related to cannabis, up to a limit.

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Cannabis GL Coverage Options

4) Exclusion – Designated Cannabis Products

- Modifies CGL and Products/Completed Operations Liability Coverage Forms;
- Exclusion for designated cannabis products from "products-completed operations hazard".

5) Exclusion – Cannabis Products

- Modifies CGL and Products/Completed Operations Liability Coverage Forms;
- Exclusion for all cannabis products from "products completed operations hazard".

6) Defense Within Limits – Products/Completed Operations

- Modifies Products/Completed Operations Liability Coverage Form;
- Not limited to cannabis.

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Cannabis Property Coverage

The cannabis coverage endorsement will address the following property-related coverages:

- Coverage 1 - Cannabis Stock
- Coverage 2 - Cannabis Business Income
- Coverage 3 - Cannabis Extra Expense

Additional provisions:

- Deductible
- Valuation

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Questions?

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PRESENTED BY:

Joseph Jonas

Product Manager, Commercial Lines

The Cannabis Industry and the Insurance Market

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AAIS

Member Focused Advisory Solutions

Coverage and Exclusion Considerations

- Defining Cannabis
- Accounting for Hemp
- Territorial Restrictions
- Track and Trace Data
- Exclusions for:
  - Health Hazard vs. Chronic Illness Exposures
  - Contaminated or untraceable cannabis property
  - Noncompliance with pertinent state and local regulations
  - On-site use or exposure
  - Professional/medical advice

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Cannabis Insurance Myths

- ✗ The industry is unprofessional/inexperienced.
- ✗ There is no due diligence.
- ✗ Insured compliance is impossible.
- ✗ A wait-and-see approach is needed.
- ✗ No banks will work with the cannabis industry.
- ✗ The insurance industry is a target of federal enforcement.
- ✗ Carriers risk reputational/shareholder damage.

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Cannabis Insurance Truths

- ✓Cannabis items and activities are insurable
- ✓Reasonable expectation of coverage
- ✓Cannabis-related contracts are enforceable
- ✓Unresolved legal issues, untested policy language, jurisdictional splits
- ✓Unrealized liability trends and unanticipated exposures
- ✓Risks and exposures can vary significantly among businesses and locations
- ✓Cannabis is a moving target

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Insurance Solutions

- ✓Increasing admitted carrier participation
  - ✓Working with regulators
    - ✓NAIC
    - ✓NYIA/NYDFS
    - ✓Colorado DOI
    - ✓California DOI
  - ✓Working with trade organizations
    - ✓IRMI
    - ✓Insurance Journal
    - ✓Business Insurance
  - ✓Working closely with interested carriers
- ✓Standardized programs
  - ✓Cannabis specific programs vs endorsement

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Cannabis Ratemaking

- Existing program rate modification (e.g. AAIS BOP)
- Industry analogues (pharmaceutical, liquor, tobacco, etc.)
- Informed by state laws, licenses, and regulatory structure
- Judgmental rates to be adjusted as loss data becomes more prevalent

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Panel Discussion: Admitted and Nonadmitted Coverage Across the Cannabis Business Sectors

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Q&A

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