More Options for Cannabis Insurance? Insurance Thought Leadership

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Two bills currently being considered in the U.S. Congress may expand the insurance options available to marijuana-related businesses (MRBs) that operate in states that have legalized marijuana for medical or recreational use. As discussed in the recent Insurance Thought Leadership article, "Marijuana Policy Gap: Insurers' Uncertainty," 33 states have legalized marijuana for medical use, with 10 of those states legalizing for recreational use. As a result, cannabis has become a multibillion-dollar industry in the U.S. and is expected to continue growing rapidly.

Nevertheless, pursuant to the Federal Controlled Substances Act (CSA), the cultivation, sale, distribution and possession of marijuana remains illegal under federal law. The conflict between the CSA and the laws of states that have legalized marijuana in some capacity has resulted in uncertainty for those interested in entering the "legal" cannabis market.

The confusion created by conflicting approaches to marijuana legalization has implications for businesses in the cannabis industry and those that service the "legal" cannabis industry. So, the insurance options available to MRBs are fairly limited, as large, admitted insurers have taken a cautious approach and largely avoided entering this market.

Many of the insurance options available to MRBs are limited to smaller, specialized insurers and the excess and surplus lines market. Excess and surplus insurers tend to be more specialized and are "non-admitted," meaning they are not licensed by the insurance department of the state in which they underwrite risk. This is significant because excess and surplus policyholders are not protected by state insurance guarantee funds, which offer protection to insureds in the event that their insurers become insolvent. In addition, because excess and surplus insurers are not licensed by the states in which they issue policies, they are not necessarily subject to the same regulations as admitted insurers, such as regulations governing policy forms or finances. Accordingly, MRBs may face higher premiums and less comprehensive coverage.