



LITIGATION MATTERS

Impact of the use of marijuana

In this edition of Munich Re's Claims newsletter, we review the potential impact of the legalization of medical and recreational marijuana on an insurance policy and on our industry.

1. Medical marijuana and drug coverage under group health

Not so long ago, prescribing marijuana for pain relief was generally not an acceptable medical practice in our country. The use of medical marijuana was considered acceptable only to manage pain-related to terminal conditions.

Since 2001, the use of marijuana for medicinal purposes has been legal in Canada. The current regulation in force replacing two prior versions under the **Controlled Drugs and substances Act** (S.C. 1996, c.19) is the **Access to Cannabis for Medical Purposes Regulations** (SOR/2016-230).

On January 30, 2017, the Nova Scotia Human Rights Commission heard a case involving the denial of coverage of expenses related to medical marijuana under a Group health coverage in **Skinner v. Board of Trustees of the Canadian Elevator Industry Welfare Trust**. The plaintiff, as a result of an accident, had developed a disability involving chronic pain and a depressive disorder.

The Human Rights Commission came to the following conclusion:

"[...] where an employee with a disability requests coverage that is consistent with the purpose of a plan and comparable to coverage provided to other beneficiaries, more is required from a plan administrator than simply an assertion that its hands are tied by its policy and forms. In the absence of evidence that extending coverage would unreasonably alter the plan premiums or risk its financial sustainability, non-coverage of a medically-necessary drug may amount to discrimination. [...] I find that the complainant in this case was discriminated against when he was denied coverage for medical marijuana by the trustees responsible for making decisions under his benefit plan."

There have been many other court decisions over the past few years on whether or not the prescribed medical marijuana was covered, i.e., is it a compensable drug or not.

Decisions on this are not unanimous, and thus, contract wording/language should be considered carefully. Another consideration, as indicated in the Skinner case, is that:

“Despite these fairly seismic changes in the legal and regulatory framework for medical marijuana in Canada, it has yet to be approved by Health Canada under the Food and Drugs Act.”

Due to the impact on costs, Group insurers and sponsors might want to monitor expenses associated with medical marijuana. It may be prudent to revisit plan coverage if group experience is negatively impacted.

Given the further potential impact of medical marijuana once recreational marijuana is decriminalized, while some groups may not see any changes, some insurers may have no choice but to increase premiums for affected plans. A maximum amount allowed per year per participant may also be considered.

2. Decriminalization of recreational marijuana

As promised in the last federal election, on April 13, 2017, the Liberal party introduced **Bill C45**, an Act respecting cannabis and to amend the controlled Drugs and Substances Act, the Criminal Code and other Acts (Cannabis Act). Also, **Bill C46**, an Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts was introduced. Second reading and referral to Committee in the House of Commons took place on June 8, 2017, and the Federal government’s goal is for the law to be in effect by July 2018. Thus, this will provide the provinces an open window of time to adopt/modify leg-

islations pertaining to highway safety codes and the commerce of marijuana.

Section 8(1) of the Cannabis Act specifies the following prohibitions, unless otherwise authorized under the Cannabis Act:

- 8 (1) [...]
- a. for an individual who is 18 years of age or older to possess, in a public place, cannabis of one or more classes of cannabis the total amount of which, [...] is equivalent to more than 30 g of dried cannabis;
 - b. for an individual who is 18 years of age or older to possess any cannabis that they know is illicit cannabis;
 - c. for a young person to possess cannabis of one or more classes of cannabis the total amount of which, [...] is equivalent to more than 5 g of dried cannabis;
 - d. [...]to possess, in a public place, one or more cannabis plants that are budding or flowering;
 - e. [...]to possess more than four cannabis plants that are not budding or flowering; or
 - f. for an organization to possess cannabis.

In light of these upcoming changes, it is time to revisit policy coverage limitation wording to ensure that claims involving the use of marijuana are adjudicated in line with the new law and according to the applicable scope of risk and pricing.

3. Typical exclusions for Accidental Death, Disability, CI and optional Life coverage

Exclusion on abusive use of drugs

The exclusion on abusive use of drugs, illicit or not, will continue to apply while driving or not driving.

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Exclusion on prescribed drugs

Prescribed drugs, including medical marijuana, may lead to a denial of a claim if the information on file indicates that the insured was exceeding the prescribed dosage.

Exclusion on Drug Impairment while driving: change required

With the coming legalization of recreational marijuana, we can expect to find more people driving while drug impaired. The federal legislation is thus looking to amend impaired driving laws. This legislation would create three new offences where proposed level for THC (tetrahydrocannabinol – the most psychoactive compound in cannabis) would be:

- 2 nanograms (ng) but less than 5 ng of THC per millilitre (ml) of blood within two hours of driving,
- 5 ng or more of THC, and
- Combined THC and Alcohol: Having a blood alcohol concentration of 50 milligrams (mg) of alcohol per 100 ml of blood, combined with a THC level greater than 2.5 ng per ml of blood within two hours of driving.

Policy exclusions typically indicate that benefits are denied if the insured person is driving while over the legal alcohol limit or under the influence of any illicit drug.

Consequently, with the federal legislation to decriminalize possession and use of marijuana for recreational purposes, policy wording for most lines of business needs to be reviewed to include marijuana. Like with alcohol, a legal limit for the use of marijuana while operating a vehicle with a motor engine needs to be added.

4. Smoking and marijuana

Some curious people will give marijuana a try, and how many will continue to smoke it? How many people will seek prescribed marijuana for treatment? Will the legalization also have the effect of normalizing smoking again? What about the impact of the use of edible and topical forms of marijuana? Only time will tell.

Tips:

- Closely monitor the impact of the use of therapeutic marijuana on claims experience in Group health coverage.
- Be prepared for July 2018 by reviewing exclusion wording in accordance with the new federal legislation for driving while impaired by cannabis.
- Read our ***Tips to Underwriting the Medical Marijuana User***

NOT IF, BUT HOW