NAMIC® ADVOCACY

CANNABIS IMPAIRMENT AND THE UNINTENDED ACCEPTANCE OF RISK

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Odom entered the insurance industry in 1996. Although he has experience in multiple lines of insurance, including life/health, his primary focus has been auto claims. Odom brings to NAMIC considerable experience in the auto insurance industry, stemming from a variety of leadership roles at Federated Mutual, Indiana Farmers Mutual, and The Hartford Insurance Group. Prior to joining NAMIC in early 2025, he worked at Amerisure Mutual Insurance, spearheading the commercial auto physical damage operation.

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INTRODUCTION

In its simplest definition, insurance is the transfer of risk from one party to another. The exchange involves an assessment of that risk, a calculation of the premium to be charged if it is accepted, and a future promise to protect the transferring party from specific types of loss. The fundamental component of an insurers' underwriting function is to evaluate a proposed risk and to determine the appropriate rate to charge for it, ensuring that adequate funds have been collected to pay for the likelihood of future claims.

The cornerstone of any sound underwriting practice is the insurers' ability to adequately match rate to the risk they choose to accept.

In the context of automobile insurance, this practice entails several factors that should be included within this risk assessment, such as the property to be insured, the age of the driver, the geographic territory in which the vehicle will be principally driven and garaged, and the driving history of the individual. These factors highlight why state-based regulation of insurance remains so important. Perils and conditions vary greatly between locations such as Manhattan, New York, and a much more rural setting of Aberdeen, South Dakota. An auto insurance company will want to identify as much information as possible to gain insight into the risk profile of a given operator and the likelihood of that person being involved in an accident and submitting an insurance claim.

A key piece of information that an auto insurer will wish to obtain in the initial risk assessment is the motor vehicle record of the applicant or policyholder. Aside from the representations submitted on an application for an insurance policy, the MVR serves as the most important record that an insurer will review in its underwriting analysis. An MVR reveals details about past motor vehicle violations, accidents, and other operator-related infractions. Furthermore, an MVR will be run by an insurer each time the policy comes up for renewal to ensure that it knows about any new risks that have entered the picture since the inception of the policy. An important criterion that insurers have always reviewed closely is whether an applicant's MVR reveals any prior history of operating a vehicle while under the influence of alcohol. Impairment from marijuana and other drugs has equally been of concern. But now with the changing landscape where marijuana has been legalized in many areas of the country and, as such, has become that much more accessible to drivers of all ages, impaired driving continues to be a growing concern across the insurance industry.

ALCOHOL AND DRIVING IMPAIRMENT

The combination of alcohol and driving has had devastating impacts on road safety for decades. Approximately 32 people die each day in motor vehicle accidents involving alcohol and impaired driving. A defined threshold exists for determining the legal limit to be able to drive a motor vehicle after consuming alcohol. This is established at a blood alcohol content level of .08 g/dL or higher in almost every state across the country. The National Highway Traffic Safety Administration has found that 30 percent of all automobile accidents involve alcohol-impaired drivers.[1] It is not difficult to make the connection between these accidents and the impacts an auto insurance companies face from more frequent and severe claims activity.

When an insurance company rejects an application for insurance or applies a higher premium for the requested protection, an MVR is not used in a punitive manner for addressing prior offenses. Rather, insurers are in the business of assessing risk; there is a correlation between past behavior and the propensity to replicate that same behavior in the future.

[1] National Highway Traffic Safety Administration. (n.d.). Drunk driving. U.S. Department of Transportation. https://www.nhtsa.gov/risky-driving/drunk-driving

As for violations involving alcohol, NHTSA has found that individuals with a prior DUI conviction are three to four times more likely to have a future violation or accident involving the illegal operation of a motor vehicle while intoxicated[1]. This is critical information for an insurer to consider in its underwriting and ratemaking processes.

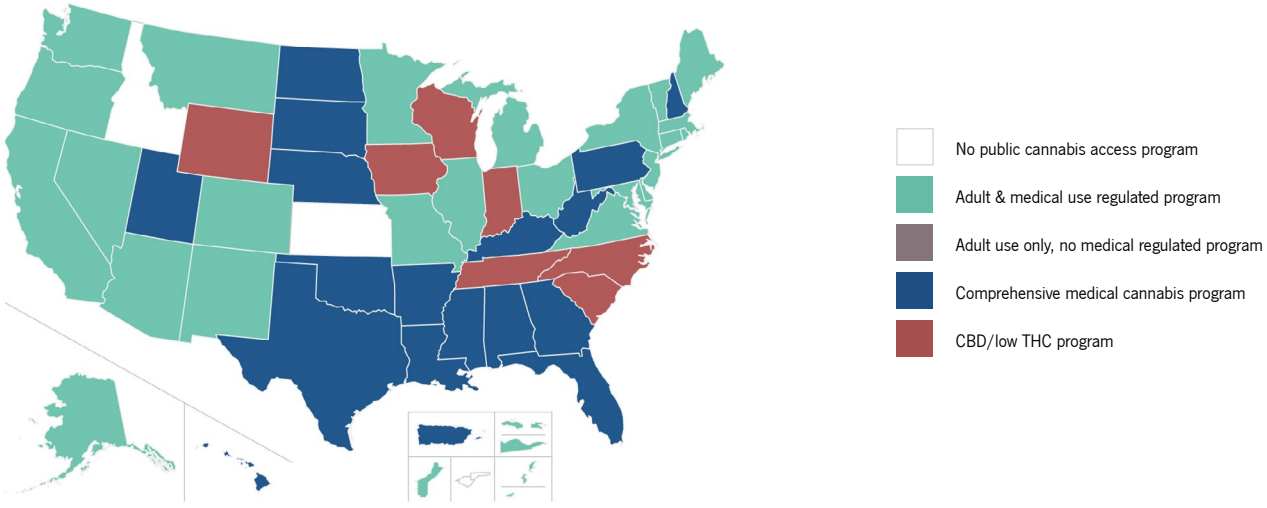
Another factor an insurer might consider in its risk assessment is the age of the vehicle operator. For obvious reasons related to the amount of experience behind the wheel, younger drivers inherently involve higher levels of risk and present a higher probability of future accidents and resulting claims. As it pertains to alcohol and impaired driving, drivers ages 21 to 24 account for nearly 28 percent of accidents involving impairment. This percentage slips to less than 20 percent in operators ages 45 to 54.[2]

The analysis up to this point has focused on alcohol-impaired driving. These foundational factors are important to consider when trying to understand the impact of cannabis on driving safety and the insurance industry. Alcohol consumption is clearly connected to higher accidents; there are defined legal standards for addressing the definition of impairment, younger drivers are clearly more susceptible to operating while impaired, and there is a correlation between previous violations and the likelihood of future incidents. How are these factors assessed when considering marijuana consumption?

MARIJUANA LEGALIZATION

Since 2012, when marijuana was permitted in Colorado for recreational use, many states have followed the same steps toward legalization. As illustrated below, 24 states have laws allowing for the legal consumption of marijuana recreationally while quite a few others allow for its medicinal use.

Most states that permit the recreational use of marijuana stipulate that the minimum age for use and possession is 21.[3] However, these laws pertain to the pure form of the marijuana drug itself and do not have the same oversight of hemp derivatives, variants of tetrahydrocannabinol, or other cannabinoids contained in the drug. This is an important distinction. Due to this gap in the law, some forms of marijuana are accessible to those younger than 21 and not regulated by the states.



[2] National Safety Council. (n.d.). Alcohol-impaired driving. Injury Facts. https://injuryfacts.nsc.org/motor-vehicle/motor-vehicle-safety-issues/alcohol-impaired-driving
[3] National Conference of State Legislatures. (2024, June 20). Cannabis overview. http://www.ncsl.org/civil-and-criminal-justice/cannabis-overview

There is a wide array of hemp-derived products available to consumers today. Many of these, such as Delta-9 THC, have federal limitations as to their potency but are generally legal across the country. In 2018, the federal government signed into law the Agriculture Improvement Act, also known as the 2018 Farm Bill. This bill changed the federal regulation of the production and sale of hemp and various derivatives. These changes effectively removed any hemp-derivative product with a tetrahydrocannabinol concentration of less than 0.3 percent from being treated as a controlled substance.[4] It is only if this threshold is exceeded that the substance becomes classified as marijuana and consequently has both federal and state regulatory oversight. In addition to Delta-9, there are several additional isomers of marijuana on the market today, including Delta-8, Delta-10, THCa, THC-O, and hexahydrocannabinol – just to name a few – all of which contain cannabinoid chemicals and produce varying levels of intoxication. Each variant is readily available to consumers, even in states that have laws forbidding marijuana consumption. Moreover, no federal regulatory framework exists to ensure that these variants are produced to certain safety standards and that the packaging is properly labeled to inform consumers about what they are consuming.[5]

Marijuana that has state approval for recreational and medicinal purposes is sold and controlled exclusively through dedicated dispensaries. Hemp derivatives, in contrast, are available for purchase online or through local convenience stores. **There is no oversight, uniform age requirement for purchasing these products, or requirement for product warnings or instructions on consumer dosage.**

While hemp-derivative products do maintain the 0.3 percent threshold on psychoactive ingredients, this limitation clearly has little impact on an individual's ability to consume multiple doses simultaneously, magnifying intoxication levels and resulting impairment from safely operating a motor vehicle. Ironically, the states that have enacted laws permitting the legal purchase, ownership, possession, or consumption of marijuana have stipulated that individuals cannot purchase alcohol at the same locations where marijuana is sold.[6] Hemp derivatives do not hold such a restriction, increasing the probability that individuals purchasing these products may also purchase and consume alcohol in combination. Studies have shown that combining alcohol with hemp products, even when consumed at moderate levels, exacerbates intoxication and results in more intense, longer lasting impairment.[7]

The impact marijuana intoxication has on a driver's ability to safely operate a motor vehicle is well documented. Similar to alcohol, intoxication from marijuana use affects balance, motor skills, judgment, and reaction time. Next to alcohol, cannabis is the second-most-common drug found in victims of fatal motor vehicle accidents.

In fact, studies have revealed that **more than 33 percent of those fatally injured in a motor vehicle accident tested positive for marijuana.**

The fact that these marijuana variants are widely accessible and fly below the regulatory radar, coupled with the inconsistency and uncertainty around how they are manufactured, greatly increases the risk, that an individual may unknowingly get behind the wheel while impaired and ultimately become involved in a motor vehicle accident.

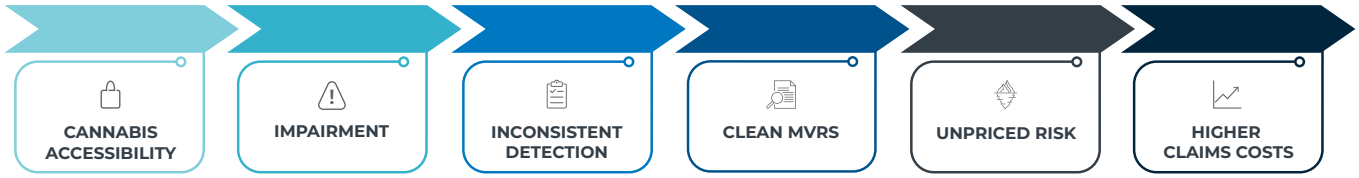
[4] Food and Drug Administration. (n.d.). FDA regulation of cannabis and cannabis-derived products, including cannabidiol (CBD). https://www.fda.gov/news-events/public-health-focus/fda-regulation-cannabis-and-derived-products
[5] Legislative Analysis and Public Policy Association. (2025, July). Cannabinoids fact sheet. https://legislativeanalysis.org/wp-content/uploads/2025/07/Cannabinoids-Fact-Sheet
[6] National Center for Biotechnology Information. (2023). PubMed Central (PMC).https://pmc.ncbi/nlm.nih.gov/articles/PMS10406389
[7] Carrier Management. (2026, June 4). [Article title unavailable]. https://www.carriermanagement.com/news/2026-06-04/288696.htm

THE CHALLENGE OF CANNABIS IMPAIRMENT TESTING

Given the previous overview of marijuana and the variations in which it is produced and available, the challenge insurers face is how to appropriately price for the risk. As previously noted, insurers spend time carefully reviewing MVRs and other documents to identify factors that correlate to increased risk. The harsh reality is that if there are factors that increase risk but are not presented in these records, insurers are blindly accepting them. As noted, marijuana consumption impacts one's ability to safely operate a motor vehicle. While more than one-third of drivers fatally injured in a collision have the drug in their system, this is identified only after the accident through posthumous bloodwork analysis.[8]

An insurer's largest challenge is in the identification of drivers who have a history of operating a motor vehicle while impaired by marijuana consumption. They are dependent on law enforcement identifying these violations and recording them in MVRs.

The problem is not in law enforcement addressing the issue, it is the inconsistency in how states have implemented testing for marijuana impairment. The presence of marijuana can remain in one's system for hours or even days after consumption. Plus, the detection of marijuana does not determine impairment.



A person can have consumed marijuana earlier in the day, tested positive for it, and even exceeded an identified limit in certain states, yet be completely sober at the time of testing. Unlike testing for alcohol impairment, there is no breathalyzer available to detect the presence of marijuana. More problematic is that there is no BAC standard similar to alcohol to assess intoxication from marijuana. Instead, law enforcement must utilize different forms of testing and observation, resulting in subjectivity, difficulty in prosecution, and – most importantly to an insurer – inconsistent MVR reporting.[9]

Without a universal threshold and the lack of consistency in available testing to identify impairment, law enforcement has primarily relied on three approaches to spot unsafe driving. These are saliva testing, per se limit testing, and field sobriety testing that entails assessments on balance, pupil response, and other cognitive abilities. Saliva testing involves swabbing the inside of the mouth to collect saliva and the presence of marijuana use. The downside of saliva testing is that it can only detect the presence of THC, not how much was consumed or when. While biofluid testing of blood and urine, the aforementioned per se limit testing, are also options available to law enforcement, both can be difficult to identify impairment and can involve the need to obtain a court-ordered warrant to obtain the sample.

Moreover, these tests cannot identify active intoxication, as there is not a standardized legal limit for THC in either blood or urine testing. Each method of toxicology testing has received criticism due to the inability to consistently and accurately detect marijuana intoxication. The primary drawback of toxicology testing is simply that detection of THC does not equate to impairment in all cases, given the lack of uniform testing across states and a universal threshold to be surpassed that equates to intoxication.

[8] National Library of Medicine. (2023). State cannabis laws and cannabis positivity among fatally injured drivers. https://pmc.ncbi.nlm.nih.gov/articles/PMC11010426
[9] Miller, N. S. (2024, July 29). Driving under the influence of marijuana: An explainer and research roundup. The Journalist's Resource. https://journalistsresource.org/health/marijuana-driving/

Field sobriety techniques, such as pupil response and balance testing, can be useful indicators of the potential for impaired driving but ultimately do not definitively support a case of intoxicated driving. As a result, although a driver may show deficiencies in coordination, memory, and balance, many cases are not prosecuted on the basis of impaired driving.[10]

Some states have adopted zero-tolerance laws, meaning if THC has been consumed, it is illegal to operate a motor vehicle. A few states have implemented per se limits, requiring that a certain nanogram per millimeter be exceeded for a driver to be considered impaired. However, the challenge is that the presence of marijuana or THC does not determine impairment. As a result, many impaired drivers are not prosecuted and driving records do not reflect these offenses.

There is a strong connection between marijuana consumption and unsafe vehicle operation and resulting accidents. However, the constraints on testing leave many impaired motorists on our roadways with clean driving records. Unfortunately, the outcome is a devastating impact on safety and a corresponding increase in claims for insurers to absorb without any ability to consider these risks in their underwriting decisions.[11]

CONCLUSION

What does all this mean to the average consumer? Should consumers have an interest in the challenges faced by insurance companies? The answer is yes as most consumers are concerned about the cost of insurance and how premiums are determined. Outside of the scope of highway safety and accident avoidance, the primary concern for consumers is higher insurance costs. As insurers remain in the dark as to much of this impaired driving risk, they are ultimately impacted in the form of more frequent and often more severe accidents. Again, an insurer's ability to evaluate and match the appropriate rate to risk is fundamentally challenged.

When insurers take on more risk than calculated and absorb more claims than anticipated — particularly those for which they have not charged the appropriate premium — upward pressure on the cost of insurance is created. These higher loss costs faced by the insurers ultimately impact the general public, and consumers will see higher premiums as a result.

Furthermore, these undetected violations do not make their way to MVRs, the primary source for an insurer to evaluate past behavior and assess future risk. Armed with such insight, insurers would likely not accept the risk.

The wider availability of marijuana-related products has created the perfect recipe for disaster: Start with a high-risk group of drivers, add the opportunity for these individuals to legally purchase and consume hemp-derivative products that clearly have intoxicating properties and affect the safe operation of a vehicle, then add in the lack of enforcement with no consistent methodology to detect impairment, and you have more continued impairment and endangerment on our roadways.

[10] National Institute of Justice. (2021, April 5). Field sobriety tests and THC levels unreliable indicators of marijuana intoxication. U.S. Department of Justice, Office of Justice Programs. https://nij.ojp.gov/topics/articles/field-sobriety-tests-and-thc-levels-unreliable-indicators-marijuana-intoxication

[11] National Conference of State Legislatures. (2024, March 27). Drugged driving | Marijuana impaired driving. https://www.ncsl.org/transportation/drugged-driving-marijuana-impaired-driving

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