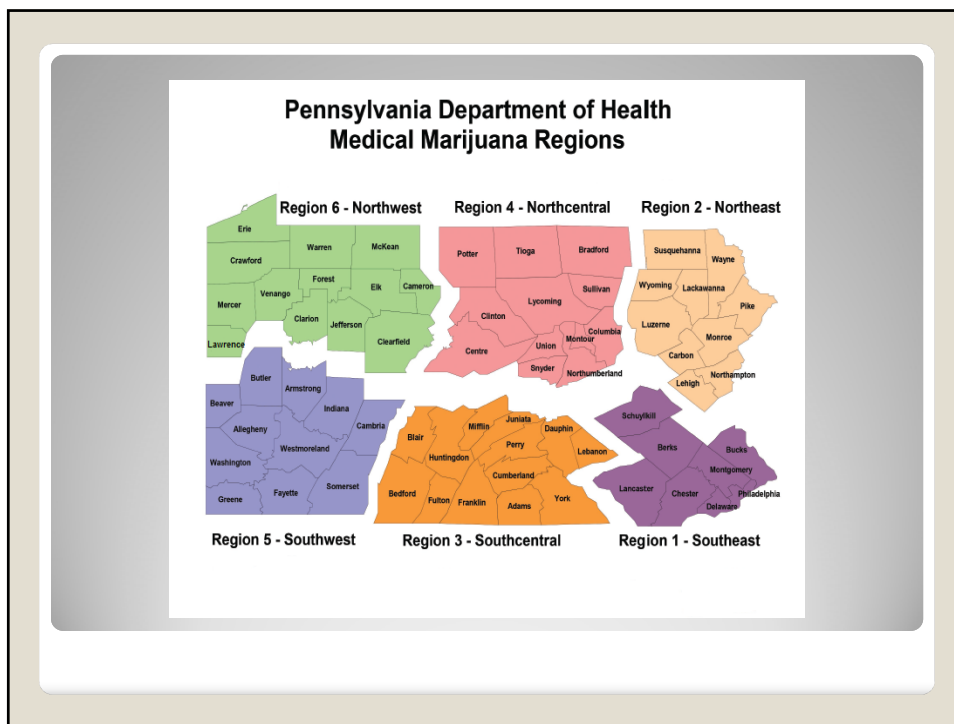


Lessons From Phase 1 of PA's Medical Marijuana Applications & Where Do We Go From Here

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- The following deadlines were imposed on applicants in Phase 1:
 - **January 17, 2017:**
 - Applications, forms, and instructions were made available on the website of the Pennsylvania Department of Health, Medical Marijuana Page.
 - **February 8, 2017:**
 - Questions regarding the application process were accepted by the Department until this date. The Department published answers on the website of the Pennsylvania Department of Health, Medical Marijuana Page.
 - **February 20, 2017:**
 - The Department began accepting application packages from applicants.
 - **March 20, 2017:**
 - The latest date the Department accepted application packages.
 - **June 20, 2017**
 - 12 Permits for G/P issued.
 - **June 29, 2017**
 - 27 Permits for dispensaries issued.

PHASE 1 TIMELINE



MEDICAL MARIJUANA REGIONS

The Commonwealth is divided into six Medical Marijuana Regions, comprised of the counties listed below. [A map of the Medical Marijuana Regions](#) is available online.

The Department intends to issue up to 2 grower/processor permits in each medical marijuana region during Phase 1.

For dispensary permit applicants, italicized counties indicate those in which an applicant for a dispensary permit is eligible to locate a primary dispensary location. The numbers in parentheses indicate the maximum number of primary dispensary locations for which the Department may issue permits in Phase 1.


Region 1 (Southeast)	Region 2 (Northeast)	Region 3 (Southcentral)	Region 4 (Northcentral)	Region 5 (Southwest)	Region 6 (Northwest)
<i>Berks (1)</i>	Carbon	Adams	Bradford	<i>Allegheny (2)</i>	Cameron
<i>Bucks (1)</i>	<i>Lackawanna (1)</i>	Bedford	<i>Centre (1)</i>	Armstrong	Clarion
<i>Chester (1)</i>	<i>Lehigh (1)</i>	<i>Blair (1)</i>	Clinton	Beaver	Clearfield
<i>Delaware (1)</i>	<i>Luzerne (1)</i>	<i>Cumberland (1)</i>	Columbia	<i>Butler (1)</i>	Crawford
<i>Lancaster (1)</i>	Monroe	<i>Dauphin (1)</i>	Montour	Cambria	Elk
<i>Montgomery (2)</i>	<i>Northampton (1)</i>	Franklin	Northumberland	Fayette	<i>Erie (1)</i>
<i>Philadelphia (3)</i>	Pike	Fulton	Sullivan	Greene	Forest
Schuylkill	Susquehanna	Huntingdon	Snyder	Indiana	Jefferson
	Wayne	Lebanon	Tioga	Somerset	Lawrence
	Wyoming	Mifflin	Union	<i>Washington (1)</i>	<i>McKean (1)</i>
		Perry	<i>Lycoming (1)</i>	<i>Westmoreland (1)</i>	Mercer
		York (1)	Potter		Venango
					Warren

- How were the applications graded?
- Are there any clues/trends one can take away from the scoring cards from this phase?
- DOH debriefing requests?

Questions about Phase 1 Applications

Grower/Processor Application Scoring	Pass/ Fail	Points per section	Subtotal
PART A – Applicant Identification and Facility Information			
1 – Applicant Name, Address and Contact Information	✓		
2 – Facility Information	✓		
PART B – Diversity Plan			
3 – Diversity Plan		100	100
PART C – Applicant Background Information			
4 – Principals, Financial Backers, Operators and Employees	✓		
5 – Moral Affirmation	✓		
6 – Compliance with Applicable Laws and Regulations	✓		
7 – Civil and Administrative Action	✓		
PART D – Plan of Operation			
8 – Operational Timetable		50	
9 – Employee Qualifications, Description of Duties and Training		25	
10 – Security and Surveillance		50	
11 – Transportation of Medical Marijuana		25	
12 – Storage of Medical Marijuana		25	
13 – Packaging and Labeling of Medical Marijuana		25	
14 – Inventory Management		25	
15 – Management and Disposal of Medical Marijuana Waste		25	
16 – Diversion Prevention		50	
17 – Growing Practice		50	
18 – Nutrient and Additive Practices		50	
19 – Processing and Extraction		50	
20 – Sanitation and Safety		25	
21 – Quality Control and Testing for Potential Contamination		50	
22 – Recordkeeping		25	
Subtotal			550
PART E – Applicant Organization, Ownership, Capital and Tax Status			
23 – Organizational Structure	✓		
24 – Business History and Capacity to Operate		75	
25 – Current Officers	✓		
26 – Ownership	✓		
27 – Capital Requirements		75	
Subtotal			150
PART F – Community Impact			
28 – Community Impact		100	100
ATTACHMENTS:			
Attachment A: Signature Page	✓		
Attachment B: Organizational Documents	✓		
Attachment C: Property Title, Lease, or Option to Acquire Property Location	✓		
Attachment D: Site and Facility Plan		50	

Dispensary Application Scoring	Pass/Fail	Points per section	Subtotal
PART A – Applicant Identification and Dispensary Information			
1 – Applicant Name, Address and Contact Information	✓		
2 – Dispensary Information	✓		
PART B - Diversity Plan		100	100
3 – Diversity Plan			
PART C - Applicant Background Information			
4 – Principals, Financial Backers, Operators and Employees	✓		
5 – Moral Affirmation	✓		
6 – Compliance with Applicable Laws and Regulations	✓		
7 – Civil and Administrative Action	✓		
PART D – Plan of Operation			
8 – Operational Timetable		100	
9 – Employee Qualifications, Description of Duties and Training		50	
10 – Security and Surveillance		100	
11 – Transportation of Medical Marijuana		25	
12 – Storage of Medical Marijuana		50	
13 – Labeling of Medical Marijuana Products		25	
14 – Inventory Management		50	
15 – Diversion Prevention		50	
16 – Sanitation and Safety		50	
17 – Recordkeeping		50	
Subtotal			550
PART E – Applicant Organization, Ownership, Capital and Tax Status			
18 – Organizational Structure	✓		
19 – Business History and Capacity to Operate		75	
20 – Current Officers	✓		
21 – Ownership	✓		
22 – Capital Requirements		75	
Subtotal			150
PART F – Community Impact			
23 – Community Impact		100	100
ATTACHMENTS:			
Attachment A: Signature Page	✓		
Attachment B: Organizational Documents	✓		
Attachment C: Property Title, Lease, or Option to Acquire Property Location	✓		
Attachment D: Site and Facility Plan		50	
Attachment E: Personal Identification		50	
Attachment F: Affidavit of Business History	✓		
Attachment G: Affidavit of Criminal Offense	✓		
Attachment H: Tax Clearance Certificates	✓		
Attachment I: Affidavit of Capital Sufficiency	✓		
Attachment J: Sample Medical Marijuana Product Label	✓		



Regulation Committee Training
March 23, 2017

Agenda

- Medical Marijuana Program
- Regulations
- Evaluation Process
- Goals and Responsibilities

Medical Marijuana Program

Vision

The Pennsylvania Department of Health's vision is to have a high quality, efficient and compliant medical marijuana program for commonwealth residents with serious medical conditions as defined by Act 16.

Medical Marijuana Program

Mission

When fully implemented, the Medical Marijuana Program will provide access to medical marijuana for patients with a serious medical condition through a safe and effective method of delivery that balances patient need for access to the latest treatments with patient care and safety.

The Medical Marijuana Program will also promote high quality research into the efficacy of medical marijuana in treating a patient's serious medical condition.

Medical Marijuana Program

Building Principles


The Pennsylvania Department of Health will strive to develop and maintain a Medical Marijuana Program that is viewed as:

- medically-focused program benefiting patients
- efficient communication
- consistent, transparent and efficient
- healthy, thriving, research-driven program
- transparent

Medical Marijuana Program

What is medical marijuana?

- Pills, oil, topical forms such as patches or ointments
- A form medically appropriate to symptoms
- Tinctures and liquids



Scoring Worksheet – Grower/Processor

Application # _____ Applicant Name: _____

Point allocation Guide

If the total number of points =	25	50	75	100
Then scores are as follows				
Exceeds Expectations	21-25	41-50	66-75	81-100
Better Than Average	16-20	31-40	46-65	61-80
Meets Expectations	11-15	21-30	31-45	41-60
Below Expectations	6-10	11-20	16-30	21-40
Not Acceptable	0-5	0-10	0-15	0-20

Indicate score below in colored boxes as either Pass or Fail, or a numeric score.

Grower/Processor Application Scoring:

Assignment	Pass/Fail	Max points/section	Score
PART A – Applicant Identification and Facility Information			
1 – Applicant Name, Address and Contact Information			
2 – Facility Information			
PART B – Diversity Plan			
3 – Diversity Plan			
PART C – Applicant Background Information			
4 – Principals, Financial Backers, Operators and Employees			

Medical Marijuana Permit Application - Diversity Plan Evaluation Matrix

Was a Diversity Plan included with the Application? No _____ 0 points
Yes _____ (proceed to #1)

1) Diversity Practices (maximum of 75 points). The following questions are in regard to the applicant's internal company makeup, including ownership, management, and employment, as well as efforts taken by an applicant to promote diversity in the community. Diverse participants include individuals from diverse racial, ethnic and cultural backgrounds and communities, women, veterans, individuals with disabilities.

Points	Applicant's commitment to diversity	Diversity Practices and Goals
61-75	Exemplary commitment to diversity in its internal workforce and its community.	<p>Internal Company practices:</p> <ul style="list-style-type: none"> A high percentage of diverse participant principals, operators, financial backers, or owners. High percentage of diverse participant employees in management or other leadership roles. Plans to use diverse participant employees for this contract, including at least one in a leadership role. Multiple diverse participants represented across the firm. Official affirmative action plan to recruit, utilize, and promote diverse participants. Adopted internal diversity goals and regularly tracks its progress toward their achievement. <p>Consistent efforts to promote diversity in the community through outreach and events, such as:</p> <ul style="list-style-type: none"> Provides community outreach, mentoring, training or professional development programs or other opportunities to cultivate diversity in the community. Participates in outside organizations, i.e., civic and professional groups, that promote diversity. <p>Exemplary usage of diverse participants for subcontracting opportunities.</p>
46-60	Significant commitment to diversity in its internal workforce and its community.	<p>Internal Company practices:</p> <ul style="list-style-type: none"> A moderate percentage of diverse participant principals, operators, financial backers, or owners. High percentage of diverse participant employees. Plans to use diverse participant employees for this contract, including at least one in a leadership role. Official affirmative action plan to recruit, utilize, and promote diverse participants. Internal diversity goals with tracked progress toward their achievement. <p>Regular efforts to promote diversity in the community through outreach and events, such as:</p>

		<ul style="list-style-type: none"> Provides or plans to provide community outreach, mentoring, training or professional development programs or other opportunities to cultivate diversity in the community. Participates in outside organizations, i.e., civic and professional groups, that promote diversity.
31-45	Moderate commitment to diversity in both its internal workforce and its community.	<p>Significant usage of diverse participants for subcontracting opportunities.</p> <p>Internal Company practices:</p> <ul style="list-style-type: none"> Few diverse participant principals, operators, financial backers, or owners. Moderate percentage of diverse participant employees. Plans to use some diverse participant employees for this contract. Official affirmative action plan to recruit, utilize, and promote diverse participants. Internal diversity goals. <p>Moderate efforts to promote diversity in the community through outreach and events.</p> <p>Moderate usage of diverse participants for subcontracting opportunities.</p>
16-30	Some commitment to diversity in both its internal workforce and its community.	<p>Internal Company practices:</p> <ul style="list-style-type: none"> No diverse participant principals, operators, financial backers, or owners. Some diverse participant employees. Plans to use some diverse participant employees for this contract. No official affirmative action plan to recruit, utilize, and promote diverse participants. No internal diversity goals. <p>Sporadic efforts to promote diversity in the community through outreach and events.</p> <p>Some usage of diverse participants for subcontracting opportunities.</p>
1-15	Minimal commitment to diversity in both its internal workforce and its community.	<p>Internal Company practices:</p> <ul style="list-style-type: none"> No diverse participant principals, operators, financial backers, or owners. Few diverse participant employees. No plans to use diverse participant employees for this contract. No official affirmative action plan to recruit, utilize, and promote diverse participants. No internal diversity goals. <p>Minimal efforts to promote diversity in the community through outreach and events.</p> <p>Nominal usage of diverse participants for subcontracting opportunities.</p>

0	No commitment to diversity.	<p>Internal Company practices:</p> <ul style="list-style-type: none"> No diverse participant principals, operators, financial backers, or owners. No diverse participant employees. No plans to use diverse participant employees for this contract. No official affirmative action plan to recruit, utilize, and promote diverse participants. No internal diversity goals. <p>No efforts to promote diversity in the community through outreach and events.</p> <p>No usage of diverse participants for subcontracting opportunities.</p>
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Total Score for Diversity Practices (maximum 75 points) _____

3) Subcontracting with Diverse Groups (maximum 25 points). The following section is in regard to the applicant's plan to utilize Diverse Groups. Diverse Groups include Disadvantaged businesses, Minority-owned businesses, Women-owned businesses, Service-disabled veteran-owned small businesses, and Veteran-owned small businesses that have been certified by a third-party certifying organization (Unified Certification Program (UCP), Woman's Business Enterprise National Council (WBENC), National Minority Supplier Development Council (NMSDC), United States Small Business Administration (SBA) 8(a) Program, and Vets First Verification Program (vetbiz.gov)). Applicants must provide proof of current Diverse Group status. Total available points are based upon expected percentage of revenues to be paid to Diverse Groups for the full permit term. Variations within each point range may be based upon information presented by an applicant who demonstrates additional commitments to utilizing Diverse Groups.

Total number of subcontracts with Diverse Groups _____

Total anticipated dollar amount of revenues to be paid to Diverse Groups for the full permit term _____

Total of expected percentage of revenues to be paid to Diverse Groups for the full permit term (utilize this figure as a point benchmark below)

Points	Percentage of revenues to be paid to Diverse Groups for the full permit term
21 - 25	81-100 percent of revenues will be paid to Diverse Groups
16-20	61-80 percent of revenues will be paid to Diverse Groups
11-15	41-60 percent of revenues will be paid to Diverse Groups
6-10	21-40 percent of revenues will be paid to Diverse Groups
1-5	1-20 percent of revenues will be paid to Diverse Groups
0	No revenues will be paid to Diverse Groups

Total Score for Utilization of Diverse Groups (maximum 25 points) _____

Total overall Diversity Plan score: _____ /100 total points

Community Impact Scoring for Growers/Processors

1. Job Creation	20%
Facility will have a dramatic impact within the community	20 points
Facility will have a meaningful impact within the community	10 points
Facility will have a minimal impact within the community	5 points
2. Site Selection (Check all that apply)	40%
Act 47, Early Intervention Program (See list from [redacted])	30 points
The project is the redevelopment of a brownfield or a vacant, previously utilized site or building.	10 points
3. Need for Economic Development (See Unemployment Insert)	15%
County or municipality in which the project is located has an unemployment rate 25% or greater than the state average	15 points
County or municipality in which the project is located has an unemployment rate 1% to 24% above the state average	10 points
**County or municipality in which the project is located has an unemployment rate that is below the state average and either the municipality has a per capita income below the state average or has a declining population	5 points
**Use information from Need for Economic Development Metrics Insert	
4. Priority Points (Check all that apply)	25%
Sliding scale analysis of other community impact factors and initiatives	0-25 points
Total	_____/100

- RTK Requests
 - What is being requested?
 - What is the lawyer's role in the matter?
 - Why does any of this matter?

- Appeals of the Department's Decisions
 - What relief is requested?
 - Specific examples of issues raised on appeal?
 - Permitted entities right to intervene?

Litigation

What are the immediate concerns for a permitted MMJO?

- Must be operational within 6 months
- Changes/Alterations to your operational timetable or application
- Market Development/Advertising Concerns
- Employee Training
- Labs
- MJ Freeway Seed-to-Sale

Phase 1 Updates

- Once a permitted entity is operational, tax planning becomes a priority because of IRC 280(e)
 - What is it?
 - Are there strategies used in other states to minimize the impact?
 - Legislative efforts to address this issue

Practical Concerns: Taxes and Banking

- Banking needs continues to plague this industry, but...
- FinCEN guidance and updates indicate that some banks may be loosening their position.
- *Fourth Corner Credit Union* case.
 - 861 F.3d 1052 (10thCir. 2017)

Practical Concerns: Taxes and Banking

SCOPE OF REPRESENTATION

- Lawyers needed to recognize their own limitations and not over-promise.
- The role of consultants and other service providers.
- Difference between compliance oversight and business advice.
 - Make sure you and your client are on the same page.

APPLICATION CONFLICTS

REAL WORLD EXAMPLES

- Can a lawyer represent a permitted medical marijuana organization AND an unsuccessful applicant who wishes to appeal the DOH denial decision?
 - What relief is the unsuccessful applicant seeking?
 - Is it detrimental to the permitted client?

POST-PERMITTING CONFLICTS

FEDERAL CONCERNS

- Marijuana remains listed as a schedule 1 drug under the Controlled Substances Act.
- Guidance given to US Attorneys
 - Changes with the political climate
- Importance of the Rohrabacher budgetary amendment.
- United States v. McIntosh and United States v. Pisarski
- McElfresh Example

- Pre-Sessions approach to medical marijuana.
- AG Sessions' task force on drug policy
 - Stated purpose
 - Intended findings
 - Did the *actual* results differ from intent?
- Sessions' May 2017 Memo to congress
 - Inherit admission concerning current capability
 - *United States v. McIntosh*

Federal Issues under the Trump Administration

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