CCAP Medical Marijuana Task Force

Findings and Recommendations

October 2018 Update

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Association of Pennsylvania

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Acknowledgments

The Medical Marijuana Task Force was privileged to have the participation of key stakeholders at the state and county level, as well as individuals with experience with marijuana laws in other states, who shared their expertise with the members, and the Task Force wishes to acknowledge them for their contributions. Throughout the course of many meetings, the following individuals made presentations, provided background materials and research, engaged in discussions with staff and shared information that has been utilized in the development of the Task Force report and recommendations.

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Introduction

The State Landscape

Pennsylvania adopted legislation, SB 3, for the legalization of medical marijuana during the 2015-2016 legislative session, which became Act 16 of 2016. The original law allowed Pennsylvania residents to obtain medical marijuana for 17 specific serious medical conditions; in April 2018, the Secretary of Health approved the recommendations of the Medical Marijuana Advisory Board to add four additional eligible conditions, including dyskinetic disorders, neurodegenerative disorders, opioid use disorder and terminal illness.

Act 16 originally allowed medical marijuana to be obtained in pill, oil, topical gel/cream/ointment, tincture or liquid format. On the recommendation of the Medical Marijuana Advisory Board, the Secretary of Health in April 2018 approved allowing patients to also obtain marijuana in a form "medically appropriate for administration by vaporization or nebulization, including dry leaf or plant form for administration by vaporization."

Act 16 requires a physician to be registered with the state to be authorized to issue certifications to patients to use medical marijuana, and also requires patients and caregivers who wish to obtain or administer medical marijuana to register with the state.

Medical marijuana organizations must obtain a permit from the state Department of Health to grow/process or dispense medical marijuana. Medical marijuana will be closely tracked from seed to sale and use.

Act 16 also addresses the ability of employers to regulate the use of medical marijuana in the workplace and provides for zoning and land use requirements related to medical marijuana facilities. These and other provisions are discussed in greater detail throughout this report.

The Federal Landscape

Although many states have taken action to legalize both medical and recreational marijuana, marijuana remains on the federal Drug Enforcement Agency's (DEA) list of scheduled drugs as a Schedule I substance. The abuse rate is a determinate factor in the scheduling of the drug; Schedule I drugs are considered to have a high potential for abuse and the potential to create severe psychological and/or physical dependence, according to the DEA website. This means marijuana – whether recreational or medical – remains illegal under federal law, which may have implications for programs receiving federal funds, as detailed throughout this report.

In 2013, the Obama administration issued what has become known as the "Cole Memo," in which Deputy Attorney General James Cole said the Justice Department would refrain from prosecuting medical marijuana businesses and users in states where it was legal, and that it would prioritize more serious marijuana offenses. However, in early January, current Attorney General Jeff Sessions rescinded a trio of Obama-era memos that had adopted a policy of non-interference with state laws legalizing marijuana, giving more latitude to U.S. attorneys to decide on an individual basis how to prioritize resources to enforce federal laws related to marijuana possession, distribution and cultivation in states

that have legalized it. Media reports have indicated that U.S. attorneys in Pennsylvania do not seem to have any immediate intentions of changing their approach on this issue.

At the same time, though, the federal Rohrabacher-Farr Act (now known as the Rohrabacher-Blumenauer amendment) that was originally enacted in 2014 has continued to be renewed by Congress through Dec. 8, 2018. This amendment blocks the Department of Justice from using any money to prosecute medical marijuana in states where it is legal.

Gov. Wolf has also issued a statement of his intent to pursue legal action should Pennsylvania's medical marijuana program be threatened by federal interference and has urged Congress to take action to protect states that legalized medical marijuana.

Status of Implementation of Act 16
The Department of Health has divided the state into six regions, and as of July 2018, 25 grower/processor facilities have been deemed fully operational:

The first medical marijuana dispensaries opened in Pennsylvania on Feb. 15.

The Medical Marijuana Patient and Caregiver Registry was launched on Nov. 1, 2017, and as of September 2018, more than 70,000 patients and 700 caregivers had registered for the program. In addition, almost 1,200 physicians had already been approved by the Department of Health as medical marijuana practitioners, with 800 having been approved as practitioners.

The Wolf administration also certified eight medical schools as Academic Clinical Research Centers for Pennsylvania's medical marijuana program in September 2018. The research program is guided by Act 43 of 2018, and will provide studies for the use of medical marijuana to treat patients with serious medical conditions, such as veterans with post-traumatic stress disorder and individuals with opioid use disorder, to help shape future treatment options.

More information on Act 16 and Pennsylvania's medical marijuana program can be found at: https://www.pa.gov/guides/pennsylvania-medical-marijuana-program/

Purpose

In August 2017, the CCAP Human Services Committee requested that the Association establish a Medical Marijuana Task Force to examine the impacts of the state's new medical marijuana industry on county operations and programs. The Task Force convened its first meeting in late October, with membership representing the CCAP policy committees as well as county human services staff from CCAP's six human services affiliates.

This report is the result of the Task Force's work, and serves as a conversation tool for counties to engage their staff to see where the impacts may be and what policies may need to be updated as they relate to medical marijuana, from operational aspects such as employment policies and insurance programs to programmatic considerations for human services, courts and corrections and many others. Each section outlines relevant sections of Act 16, considerations related to other state and federal laws and regulations, and input from Pennsylvania counties as well as other states where marijuana laws have already been in effect. While this report serves as a guide to help create awareness for Pennsylvania's counties regarding the impacts medical marijuana and Act 16 may have in their jurisdictions, it is not meant to offer legal advice and counties should discuss these considerations with their solicitors to determine how they apply in their own circumstances and whether further action may be needed.

The Task Force has also made recommendations for further clarifications that may be needed to existing laws and regulations regarding the use of medical marijuana, resources for counties as they navigate the implications of Act 16 and areas where additional conversation is likely to be needed with state agencies regarding delivery of programs and services. These recommendations are provided to the respective CCAP policy committees for further review and potential action.

Timing and Process

The Task Force held its initial meeting in October 2017 to discuss Act 16 with Sen. Folmer's staff; Sen. Folmer was the prime sponsor of the legislation. The Task Force also received input from a number of other state associations of counties whose states have previously enacted medical and/or recreational marijuana laws from their experience, as well as Pennsylvania state agencies, state associations and other experts in various aspects of county operations. Presentations and other materials reviewed by the Task Force are available on CCAP's Medical Marijuana Task Force web page at http://www.pacounties.org/GR/Pages/MedicalMarijuanaTaskForce.aspx.

The original comprehensive report was presented to the CCAP policy committees during the CCAP Spring Conference in March 2018 and was presented to the full membership via webinar. However, given the number of questions that remain to be addressed as the industry continues to develop in Pennsylvania, the Task Force may review this report on an ongoing basis and issue updates as necessary, including this October 2018 update

Findings and Recommendations

As the Task Force reviewed the potential impacts of Pennsylvania's medical marijuana law on county operations, it became clear that the most challenging aspect would be the lack of clear guidance due to

the disconnect between state law, which makes medical marijuana legal in the commonwealth, and federal law, under which marijuana remains a federally banned substance. For this reason, and despite numerous conversations and discussion, the Task Force was unable to develop recommendations for counties in how to address many of the issues that follow. Instead, the Task Force has issued this report which is meant to make counties aware of the many ways in which individuals using medical marijuana could impact programs, services and day-to-day operations, so that counties will have an understanding of the multiple laws and regulations at play and questions that should be raised with staff and solicitors.

In addition, the Task Force has identified several areas, particularly regarding human services programs, where further discussion will need to be held with the legislature and state and federal agencies to determine how they intend to view medical marijuana in conjunction with program requirements and funding eligibility.

County Governance

County employees may wish to treat an eligible condition with medical marijuana, which raises questions regarding how medical marijuana may impact an employee's performance and to what extent a county must allow, or may restrict, the use of medical marijuana in a job-related setting. References to Act 16 are provided where applicable, and counties should also note special considerations related to correctional facilities later on in this report.

In addition, it should be noted that section 2103(b)(3) specifically notes that nothing in Act 16 requires an employer to commit any act that would put the employer or any person acting on its behalf in violation of federal law.

Further, it is also noted that there is no reciprocity regarding medical marijuana laws; that is, if an individual is a patient and using medical marijuana legally in one state does not mean that person is protected from arrest and criminal prosecution in another. Someone must be a card-carrying medical marijuana patient in Pennsylvania and obtain the medicine through a permitted Pennsylvania dispensary to be compliant with Act 16.

What constitutes "under the influence"?

In particular, the Task Force wrestled with the question of what "under the influence" means when it comes to medical marijuana. The Act does not define "under the influence" specifically, but does offer the following for consideration, as discussed in further detail below:

- Pursuant to section 510, a patient may be restricted from certain activities (discussed in greater detail below), while "under the influence with a blood content of more than 10 nanograms of active tetrahydrocannabis (THC) per milliliter of blood in serum."

However, other references to "under the influence" in the same section do not include similar specifications regarding testing limits.

Pennsylvania's Vehicle Code, section 3802(d) states that an individual may not drive, operate or be in actual physical control of the movement of a vehicle if there is any amount of a Schedule I controlled substance in a person's blood. In the April 30, 2011, edition of the Pennsylvania Bulletin, the Department of Health published an update to the minimum levels of controlled substances or their metabolites in blood to establish presence of controlled substance that must be present in a person's blood for the test results to be admissible in a prosecution for a violation of the Vehicle Code, setting the maximum level of Delta-9-carboxy THC at one nanogram per milliliter of blood.

The Task Force heard in its meetings that science has shown that medical marijuana can stay in the body for a long time, and 10 nanograms could be too much for one patient and have a physical effect on an individual, but not be strong enough for another individual.

The question of what constitutes being "under the influence" is therefore not clearly resolved in the Act.

Workplace performance and restrictions

As noted above, under section 510 of Act 16, a patient under the influence with a blood content of more than 10 nanograms of active tetrahydrocannabis per milliliter of blood in serum may not be in control of:

- Chemicals that require a permit issued by the state or federal government
- High-voltage electricity or other public utility

Section 510 also prohibits an individual from performing employment duties at heights or in confined spaces while "under the influence" of medical marijuana.

Section 510 permits an employer to refuse to allow a medical marijuana patient to:

- Perform any task the employer deems life-threatening, to the employee or other employees while under the influence of medical marijuana
- Perform any duty which could result in a public health or safety risk while under the influence of medical marijuana.

Prohibiting an employee from performing functions under this section shall not be deemed an adverse employment decision, even if the prohibition results in financial harm for the patient.

Further, under section 1309, Act 16 does not permit a person to undertake any task under the influence of medical marijuana when doing so would constitute negligence, professional malpractice or professional misconduct. Civil, criminal and other penalties may be imposed for performing such tasks while under the influence.

Questions were raised as to whether an employee has an obligation to disclose the use of medical marijuana for a non-work related condition to their employer. Act 16 does not offer any guidance on this issue, and counties may wish to consider existing laws, regulations and their own policies related to the disclosure and use of other drugs or medicine that may cause impairment.

Transportation

Counties should also be aware that some positions may be subject to federally mandated, drug free work place programs, such as transportation employees who are required to undergo alcohol and drug testing as mandated by the U.S. Department of Transportation Federal Motor Carrier Safety Administration.

These mandates are found in 49CFR Part 40 (https://www.transportation.gov/odapc/part40), and counties should be aware of the following specific language under §40.151(e):

> (e) You must not verify a test negative based on information that a physician recommended that the employee use a drug listed in Schedule I of the Controlled Substances Act. (e.g., under a state law that purports to authorize such recommendations, such as the "medical marijuana" laws that some states have adopted).

Recall, as noted above, that Pennsylvania's Vehicle Code, section 3802(d) states that an individual may not drive, operate or be in actual physical control of the movement of a vehicle if there is any amount of a Schedule I controlled substance in a person's blood.

The Pennsylvania State Police has noted that the state's laws likely need to be updated for medical marijuana users who take the drug in small doses.

Counties may also wish to review with their solicitors any provisions of their insurance policies related to liability for an employee operating a county vehicle who is found to be impaired by drug use.

Hiring/human resources considerations
Section 2103 (b) of Act 16 prohibits employers from discharging, threatening, refusing to hire or otherwise discriminating or retaliating against an employee regarding compensation, terms, conditions, location or privileges solely on the basis of that employee's status as one who is certified to use medical marijuana.

Accommodations
Section 2103(b) of Act 16 indicates that employers are not required to make any accommodation for the use of medical marijuana on the property or premises of any place of employment, nor does the law limit an employer's ability to discipline an employee for being under the influence of medical marijuana in the work place or working under the influence of medical marijuana when the employee's conduct falls below the standard of care normally accepted for that position.

Given that the same section also indicates that employers are not required to commit any act that would put the employer or any person acting on its behalf in violation of federal law, counties may wish to review these provisions of Act 16 together with the federal Americans with Disabilities Act (ADA) and other applicable federal laws, in conjunction with their solicitors as necessary.

Drug testing
Task Force members raised questions as to whether an employer may test an individual for use of medical marijuana a before hiring or commencing job duties. While Act 16 does not provide any guidance on this matter, counties should consult with their solicitors to determine whether workplace policies regarding drug and alcohol testing and use clearly, or under reasonable interpretation of those policies, include or exclude use of medical marijuana. These decisions should also take into account applicable federal law relating to pre-employment drug testing.

Recommendations:

- CCAP should identify experts who can provide training in various settings, such as conferences and webinar, on how to identify when someone is "under the influence." The Task Force further recommends this training be offered to CCAP affiliate members, including the human services affiliates and SCHRRP.
- Counties should review existing drug and alcohol policies to determine whether they clearly, or under a reasonable interpretation, include or exclude the testing for or use of medical marijuana in the job setting.
- Counties should proactively consider what job duties it may determine to be restricted under the language provided in sections 510 and 1309 of Act 16. It may also be in the best interest of

counties, in consultation with their solicitors, to develop a list of positions that are eligible and ineligible to use medical marijuana in non-work settings.

Human Services

Most county human services programs rely on a combination of state and federal funding, which leads to many questions for counties who may encounter individuals using medical marijuana who are also enrolled in county services since medical marijuana is legal under state law, but not federal law.

Funding

Generally speaking, if medical marijuana is the sole purpose of the service being funded (for instance, transportation provided by the medical assistance transportation program or care provided in a county nursing facility), that service is unlikely to be considered eligible for federal funds.

Guidelines and Regulations

Act 16 required the Department of Human Services to promulgate regulations within 18 months of the effective date of the Act (that is, by November 2017) regarding:

- Possession and use of medical marijuana by a child under the care of a child-care or social service center licensed or operated by the Department of Human Services
- Possession and use of medical marijuana by an employee of a child-care or social service center licensed or operated by the Department of Human Services
- Possession and use of medical marijuana by employees of a youth development center or other facility which houses children adjudicated delinquent

However, the Task Force is not aware that such regulations have been finalized, or even drafted, as of the writing of this report, nor is it clear to what extent the term "social service center" will apply to county human services.

With these points in mind, counties should consider and discuss with their solicitors the following with regard to services that involve both state and federal funding, as well as both state and federal oversight.

Child Welfare

Section 2103(c) provides that the fact that an individual is certified to use medical marijuana and acting in accordance with Act 16 shall not by itself by considered by a court in a custody proceeding. In determining the best interest of a child with respect to custody, the provisions of 23 Pa.C.S. Chapter 53 (related to child custody) will apply.

With that in mind, the Task Force raised the following questions for further consideration in conjunction with the Department of Human Services:

- If a caseworker enters a house to investigate a report of child abuse, and sees or becomes aware that someone in the house is using medical marijuana, does that create any implications for how

the investigation must be handled since marijuana is listed as a Schedule I drug under federal law?
- What guidelines should counties follow regarding foster parents, those involved in kinship care or other custodial arrangements, and how will funding be affected in these cases if an individual is using medical marijuana pursuant to Act 16?

Recommendation:
The Task Force recommends the following related to county child welfare:
- Training should be developed and provided to caseworkers to assist them in distinguishing between recreational and medical marijuana.
- CCAP should engage the Department of Human Services in additional discussions to seek clarification on the questions raised.

Drug and Alcohol Programs
The Task Force reviewed Act 16 to determine whether funding would be directed for drug and alcohol programs. A five percent tax will be imposed on the gross receipts of a grower/processor received from the sale of medical marijuana to a dispensary, with all revenues to be deposited in the Medical Marijuana Program Fund. Ten percent of the Fund is to be used by the Department of Drug and Alcohol Programs for drug abuse prevention and counseling and treatment services. No further guidelines have been provided as of the writing of this report regarding eligibility for these funds.

Recommendations:
The Task Force recommends the following related to county drug and alcohol programs:
- Training should be developed and provided to employees in this field to assist them in understanding if and how medical marijuana fits into the context of substance abuse prevention training and education.
- CCAP should engage the Department of Drug and Alcohol Services to offer input and seek additional information regarding the disbursement of revenues from the Department of Drug and Alcohol Programs for prevention and treatment services.

Long-term Care and County Nursing Facilities
Act 16 presented a number of questions for the Task Force in the area of long-term care. More specifically, while it does not appear that Medicaid or Medicare would cover the purchase of medical marijuana directly, the interplay between state and federal law raises several concerns specifically related to the use of medical marijuana in a facility whether a patient is Medicaid- or Medicare-paid and how that may impact staffing, funding, licensing and more.

The Task Force offers the following information regarding Act 16 for further discussion by counties, in conjunction with their solicitors, and notes that this information is provided for consideration and each county must review state and federal law to determine best how to handle this situation in light of individual circumstances. Counties should also consider potential liability for staff and facilities regarding care of residents using medical marijuana.

Licensing/inspections

- The Department of Health conducts surveys (inspections) in nursing homes to make sure they are following state and federal regulations; how will the Department look at a facility with a resident who uses medical marijuana since the substance is illegal under federal law?
- If a nursing facility has a Medicaid or Medicare provider agreement, what will CMS say about that agreement if a resident is using medical marijuana, since regulations require facilities to comply with both state and federal law?

Staffing

- Must a nurse who is caring for a patient who uses medical marijuana register with the state as a caregiver under Act 16?
    - Act 16 refers to a caregiver as an individual designated by a patient to deliver medical marijuana.
    - A patient may designate no more than two caregivers at any one time, and Act 16 also prohibits an individual from acting as a caregiver for more than five patients.
- What are the requirements for caregivers?
    - Under section 502 of Act 16, if a patient designates a caregiver, an application must submit an application to the Department of Health, state and federal criminal history record information (including fingerprints). The Department will check the prescription drug monitoring program related to the caregiver as well.
    - A caregiver must also obtain an identification card from the Department of Health authorizing the caregiver to obtain medical marijuana on behalf of the patient, and provide the expiration date as part of the caregiver application.
    - A $50 processing fee is required to obtain an identification card, and an application to be a caregiver is also subject to a $50 fee.
- Can a facility register as a caregiver, rather than an individual?
    - As noted above, Act 16 refers to a caregiver as an "individual" designated by a patient to deliver medical marijuana.
    - Given staffing constraints, particularly in a small facility that may have limited staff available on an overnight shift, being able to register a facility as a caregiver would allow more flexibility if there are multiple patients using medical marijuana and/or situations where staff who are registered as caregivers may call off or take vacation. However, additional clarity is needed on this point from the Department of Health.

Patient rights

- Can a nursing facility decline admission to an individual who wants to treat a condition with medical marijuana?
    - State and federal regulations provide direction to nursing facilities regarding patient self-determination and resident rights. Until further guidance may be provided, counties should review their circumstances with their solicitor to determine how they may best comply with all existing laws and regulations.
- May medical marijuana be incorporated into food or other format for patients?

- While it is generally unlawful under Act 16 to incorporate medical marijuana into edible form, Section 304(c) provides that the Act does not preclude the patient or a caregiver from incorporating medical marijuana into edible form to aid ingestion by the patient.
- Personal care homes and skilled nursing facilities should consider this in conjunction with state and federal regulations that generally prohibit pre-pouring of medication except in certain circumstances.

Recommendation:
The Task Force recommends the following related to long-term care and county nursing facilities:

- CCAP should engage the Department of Human Services and the Department of Health for further consideration and to obtain written clarification from the agencies, if possible, on how residents using medical marijuana may impact licensing and reimbursements.

Transportation
A broader discussion regarding considerations for county employees who transport themselves or others as part of their scope of work is included above under the County Governance section.

The Task Force questioned whether a county may transport an individual through the Medical Assistance Transportation Program (MATP) to appointments related to medical marijuana treatment, or to obtain medical marijuana at a dispensary. As noted above, generally speaking, if medical marijuana is the sole purpose of the service being funded, that service is unlikely to be considered eligible for federal funds.

Other Federally Funded Programs
The Task Force raised questions regarding the potential audit impacts, or disallowable expenses, as those pertain to other federally funded programs. In addition, the Task Force asked if there are implications for outside contractors who have to follow federal guidelines. Additional discussion will be needed with the Department of Human Services, Department of Health and other agencies to seek clarification on these points; in the meantime, counties should consider whether federal regulations, licensing requirements or funding are involved when evaluating any service where individuals being treated with medical marijuana may present themselves.

Courts and Corrections
Use of medical marijuana by correctional employees
Under section 1309 of Act 16, counties were permitted to adopt resolutions within 18 months of the effective date (by November 2017) regarding the possession and use of medical marijuana by employees in a county correctional facility.

The same section prohibits use or possession of medical marijuana in a youth detention center or other facility that houses children adjudicated delinquent, although it specifies that this shall not be construed to apply to employees of these facilities. However, the Department of Human Services was required to promulgate regulations with 18 months of the effective date of Act 16 (by November 2017) regarding

the possession and use of medical marijuana by employees of a youth development center or other facility which houses children adjudicated delinquent; the Task Force is not aware that such regulations have been finalized, or even drafted, as of the writing of this report.

Use of medical marijuana by inmates

Under section 1309 of Act 16, medical marijuana may not be possessed or used in a state or county correctional facility, including a facility owned or operated or under contract with the Department of Corrections or the county which houses inmates serving a portion of their sentences on parole or other community correction program. Additionally, medical marijuana may not be possessed or used in a youth detention center or other facility that houses children adjudicated delinquent.

The Task Force raised several questions regarding the use of medical marijuana by individuals in the corrections system:

- While medical marijuana cannot be used in a correctional facility under Act 16, does the county have any obligation to get an inmate to transport the inmate to a medical facility or another setting to receive medical marijuana treatment?
- How does this affect individuals on probation or parole?

Impacts on law enforcement

In discussions with other state associations of counties with experience legalizing medical marijuana, it was unclear whether there had been an increase in criminal activity or any other direct impacts to law enforcement. Act 16 does provide that five percent of the funding in the Medical Marijuana Program Fund will go to the Pennsylvania Commission on Crime and Delinquency for distribution to local police departments that demonstrate a need related to enforcement of Act 16.

Sheriff Departments

The Pennsylvania State Police has issued the following statement (available at http://www.psp.pa.gov/firearms-information/Pages/Firearms-Information.aspx) regarding purchase or ownership of firearms:

> It is legal under Pennsylvania law for the holder of a validly issued patient Medical Marijuana Card to possess approved forms of medical marijuana. However, as per the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE), the possession of medical marijuana remains a violation of federal law, and possession of a valid Medical Marijuana Card and/or the use of medical marijuana makes you an "unlawful user of or addicted to any controlled substance" who is prohibited by federal law from the purchase or acquisition, possession, or control of a firearm pursuant to 18 U.S.C. § 922(g)(3), and 27 C.F.R. § 478.32(a)(3).
>
> The BATFE's position is set forth in its September 21, 2011, Open Letter to all Federal Firearms Licensees, which states in part that "[t]herefore, any person who uses or is addicted to marijuana, regardless of whether his or her State has passed legislation authorizing marijuana use for medicinal purposes, is an unlawful user of or addicted to a

controlled substance, and is prohibited by Federal law from possessing firearms or ammunition." Click here for a copy of the Open Letter. Likewise, the mere possession of a Medical Marijuana Card will give rise to an inference that you are an "unlawful user of or addicted to" a controlled substance, pursuant to 27 C.F.R. § 478.11.

Therefore, it is also unlawful for you to apply for, possess or renew a Pennsylvania License to Carry Firearm (LTC), because you are "[a]n individual who is prohibited from possessing or acquiring a firearm under the statutes of the United States." (Pennsylvania Consolidated Statutes Chapter 18, Section 6109(e)(1)(xiv).

The Task Force does not include this information to invite debate regarding gun control or to take a position in support or opposition of this information. However, because sheriffs' departments are authorized to issue firearm licenses, they should be aware of this information from the Pennsylvania State Police. The Pennsylvania Sheriffs Association is also reviewing this information and may provide additional guidance to its members.

Recommendation:
The Task Force recommends the following related to courts and corrections:

- CCAP should engage the Department of Health and the Department of Corrections in additional discussions to seek clarification on the questions raised.

Veterans

The U.S. Department of Veterans Affairs has advised on its website that it is required to follow all federal laws including those regarding marijuana. As long as marijuana a remains classified as a Schedule One controlled substance, VA health care providers may not recommend it or assist veterans in obtaining it, nor will the VA pay for medical marijuana prescriptions from any source.

That said, the VA has also clarified that veteran participation in state marijuana programs does not affect eligibility for VA care and services and veterans will not be denied VA benefits because of marijuana use. VA health care providers will record marijuana use in the veteran's VA medical record in order to have the information available in treatment planning, but as with all clinical information, this is part of the confidential medical record and protected under patient privacy and confidentiality laws and regulations.

The full directive from the VA is available at https://www.publichealth.va.gov/marijuana.asp.

Insurance

Coverage

Section 2102 of Act 16 indicates that nothing in the Act requires an insurer or health plan, whether paid by commonwealth funds or private funds, to provide coverage for medical marijuana, although neither the term "insurer" nor "health plan" are defined. Conversely, nothing in Act 16 prevents an insurer from

deciding to provide coverage for medical marijuana if it would be beneficial, although counties should remain mindful of federal law in making any such decisions. As of October 2018, CCAP is not aware of any Pennsylvania court decision interpreting this provision of the law.

Workers' Compensation
Pennsylvania's Workers' Compensation Act, section 201, indicates that in an action to recover damages from an injury, it is not a defense that the injury was caused by employee negligence, unless it can be established that the injury was caused by the employee's intoxication. Under section 301 of the Workers' Compensation Act, where injury or death is determined to be caused by intoxication, no compensation shall be paid if the injury or death would not have occurred except for the employee's intoxication, with the burden of proof on the employer. Again, counties should remain mindful of the earlier discussion in the County Governance section regarding what constitutes being "under the influence" and consult with their solicitor in all situations.

Workplace Restrictions
Counties should take into consideration the allowable restrictions that may be placed on employees in the County Governance section above as they may relate to employees returning to work after an injury or other health-related issue who may be using medical marijuana to treat the condition.

Agriculture/Environment
Natural Resource Impact
CCAP consulted associations of counties in several other states with medical marijuana programs, and their staff indicated they had not seen an impact had on the agriculture industry or their natural resources (water, fertilizer, etc.) Although no two states are the same, there is no indication as this report is being drafted that Pennsylvania would experience a major impact on its agricultural or environmental resources, although counties may wish to monitor this area, perhaps in conjunction with its conservation district or other natural resource partners.

Community and Economic Development
Workforce/Training Considerations
Principals and employees of medical marijuana organizations who have direct contact with patients, caregivers or who directly handle medical marijuana are required, under Section 301 of Act 16, to complete a two-hour course that includes instruction in methods to recognize and report unauthorized activity, proper handling techniques of medical marijuana, recordkeeping and other subjects as indicated by the state Department of Health. Principals must complete the course prior to commencing initial operation of the medical marijuana organization, while employees must do so within 90 days of commencing employment.

Banking
One of the challenges facing the development of the medical marijuana industry is access to the banking industry. In response to U.S. Attorney General Jeff Sessions' rescission of several Obama-era

memos related to the prosecution of marijuana, the U.S. Treasury announced in early February that it is reviewing banking guidance and consulting with law enforcement. The Treasury Department's Financial Crimes Enforcement Network (FinCEN) has had guidance in place since 2014 that lays out a process for how banks can open accounts for marijuana businesses and avoid triggering federal enforcement actions. While the guidance was intended to provide clarity and assurances to banks, many have remained reluctant to work with marijuana businesses because of the overarching federal laws. The Pennsylvania Bankers Association has confirmed that to their knowledge, no bank in the commonwealth has been willing to work with the medical marijuana industry. With no or limited access to financial institutions, it is unclear how medical marijuana organizations will pay taxes, pay employees and handle large quantities of cash.

Land Use and Zoning

Under Section 2107 of Act 16, grower/processor facilities are required to meet the same municipal zoning and land use requirements as other processing and production facilities in the same zoning district. Dispensaries must meet the same municipal zoning and land use requirements as other commercial facilities located in the same zoning district. In other words, a local government may not implement additional zoning or land use requirements on medical marijuana facilities beyond those implemented on other entities within the applicable zoning district. In addition, a dispensary may not be located within 1,000 feet of the property line of a public, private or parochial school or a day care center (Section 802).

The Lehigh Valley Planning Commission has offered the following recommendations for consistency with Act 16:

- Consider the allowable uses in local commercial and industrial districts currently and determine if definitions or zoning district boundaries need to be revised. Also, make sure current uses are compatible with the additional of growers/processors and dispensaries.
- Use the definitions in Act 16 to develop amendments to municipal zoning ordinances to accommodate the required additions of growers/processors and dispensaries.
- Additional definitions may be added; however, care should be taken to make sure that these definitions do not conflict with any provisions of the Pennsylvania Municipalities Planning Code or Act 16.
- Consider the potential "optimal" location of growers/processors and dispensaries in commercial and industrial locations that best accommodate the intensity and hours of operation of these uses. Considerations may include location along public transit routes or major roads, near other health-related facilities, or near other water-intensive industrial uses where sewer and water capacity can support the growing of marijuana.
- Consider adding performance standards to local zoning ordinances that address the potential land use impacts of grower/processor and dispensary operations, provided these do not exceed similar commercial and industrial uses. These could include building size, setbacks and buffers, parking requirements, lighting, security, infrastructure and loading areas.

- Assure any zoning provisions that are adopted do not create undue regulatory hardship by adhering to timing, processing, advertising and other associated provisions of the Municipalities Planning Code.

The Tri-County Regional Planning Commission has also prepared a model medical marijuana ordinance for local governments to consider, which is available at http://www.tcrpc-pa.org/model-ordinances/. The Planning Commission recommends local government officials interested in using this model review it, examine their local situation, and adopt the regulations that make the most sense for their municipality, modifying anything they deem appropriate.

In all cases, local governments should consult with their solicitors in the development of any zoning or land use ordinance.

Assessment and Taxation

Assessment

Under Pennsylvania assessment law, property is valued based on bricks-and-mortar, rather than use or the personal property housed within the structure, so there will likely not be anything that would change the property value of a medical marijuana facility compared to other similar industrial (in the case of grower/processors) or health (in the case of dispensaries) facilities.

While each case must be evaluated on its own circumstances, it is unlikely that a grower/processor or dispensary permit would increase the value of the property, as the permit goes to the operator rather than the property itself. The presence of a security system could add value, or if there was a change in zoning for a property (for instance, from agriculture to commercial), there would be a change in land value, but this would occur no matter what the nature of the business was.

Counties should consult their chief assessor with any further questions on this matter.

Clean and Green

If a medical marijuana grower/processors requests preferential assessment under the Clean and Green program as an agricultural use, counties should consider the definition of "agricultural use" in the statute, which reads in part:

> " Land which is used for the purpose of producing an agricultural commodity…"

The definition of "agricultural commodity" in the Clean and Green Law is as follows:

> Any of the following:
> (1) Agricultural, apicultural, aquacultural, horticultural, floricultural, silvicultural, viticultural and dairy products.
> (2) Pasture.
> (3) Livestock and the products thereof.
> (4) Ranch-raised furbearing animals and the products thereof.
> (5) Poultry and the products of poultry.

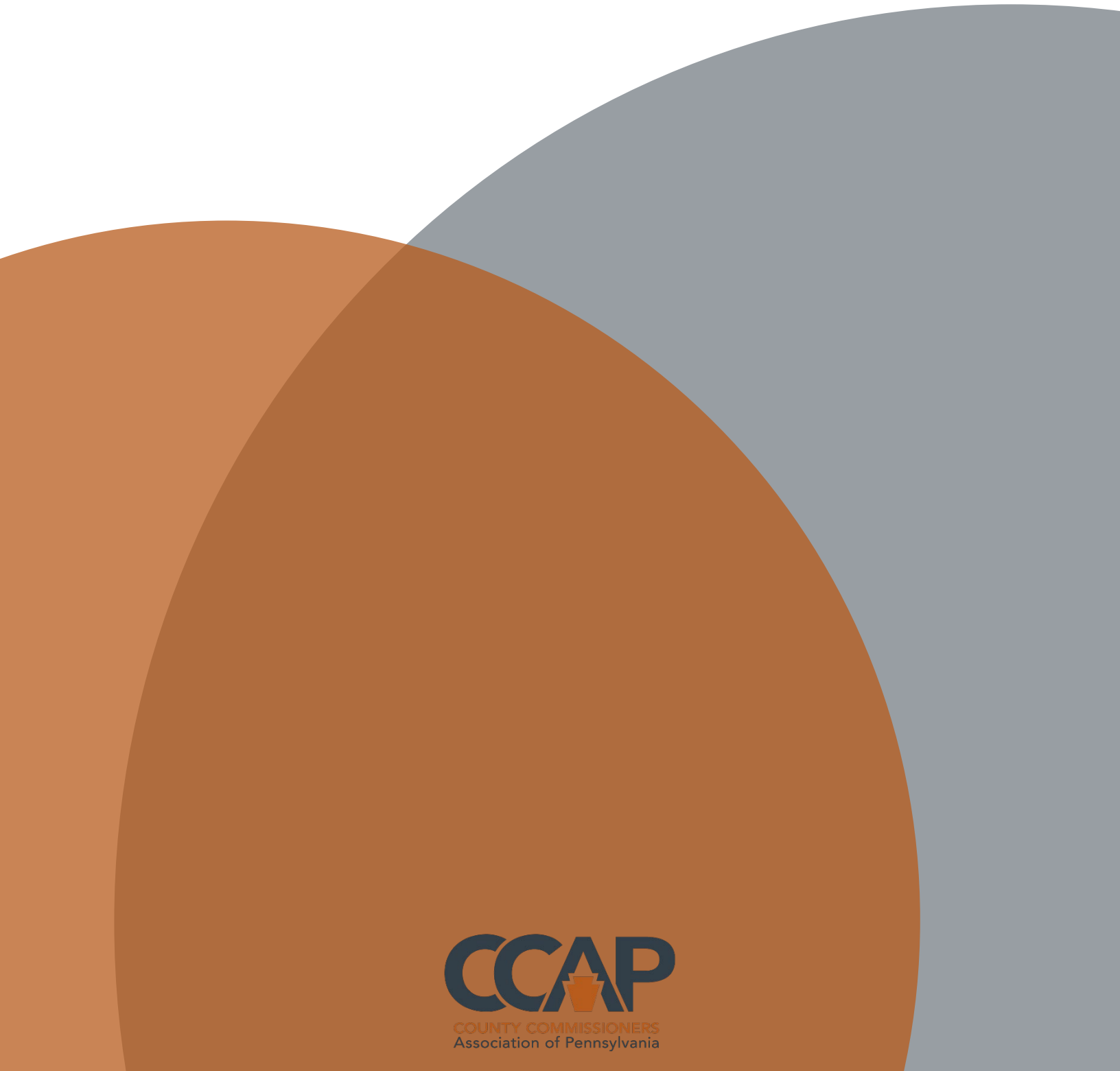
(6) Products commonly raised or produced on farms which are:
(i) intended for human consumption; or
(ii) transported or intended to be transported in commerce.
(7) Processed or manufactured products of products commonly raised or produced on farms which are:
(i) intended for human consumption; or
(ii) transported or intended to be transported in commerce.
(8) Compost.

While neither the Clean and Green Law nor Act 16 clearly address this issue, under Section 2107 of Act 16, grower/processor facilities are required to meet the same municipal zoning and land use requirements as other *processing and production* facilities in the same zoning district.

Counties should consult with their chief assessor and solicitor to evaluate any applications by a grower/processor for the Clean and Green Program in the context of these provisions.

Impact on Value of Neighboring Properties
It is too early to tell whether the presence of a medical marijuana facility would have an impact on the value of surrounding properties, although the experience of other states has not indicated an impact. The Three Mile Island experience may be instructive, as it was originally thought that there would be a negative impact on surrounding property values, but over time the county found that there really was not an impact.

Local taxing authority
There are no provisions in Act 16 authorizing local governments to levy a specific local tax or fee on a grower/processor facility or dispensary located in their jurisdiction.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