Cannabis Social Equity Coalition – NYS

Despite the Best Intentions, Governor Hochul's Seeding Opportunity Initiative Has, So Far, Failed to Live Up to Its Promise to Social Equity Applicants

What the Governor Can Do to Turn Things Around

Prepared by:
Reginald Fluellen, Ph.D.
Mika'il DeVeaux, Ph.D.
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The *Seeding Opportunity Initiative* is Governor Kathy Hochul's flagship cannabis social equity program for New York. Justice involved individuals who were disproportionately impacted by marijuana prohibition and small, local farmers who formerly grew Hemp are the target beneficiaries of the Governor's program. The lessons learned from their success (or lack thereof) will inform the character of support provided to social equity applicants seeking full licenses. A cursory look at how they have fared over the year-and-a-half (19 months) since the program began reveals they are, unfortunately, significantly worse off today than they were at the start of the program on March 10, 2022. The big winners over the same time period are the eleven (11) medical marijuana companies. Clearly, this was not the intent of the Governor or the intent of the elected officials who fought so hard to ensure social equity applicants received priority treatment in the Marijuana Regulation and Taxation Act (MRTA). The Governor and elected officials alike repeatedly promised disproportionately impacted individuals and small, local farmers they would reap the benefits from New York's adult-use cannabis market before allowing the big medical marijuana companies to benefit. It is therefore fair to draw from this unintended outcome, the Governor's social equity program has so far not delivered on its promise. The corrective action needed to put the Governor's program back on track will require the Governor's leadership and direct intervention from the Executive Chamber.

CAURD License Holders are Worse Off

Governor Hochul's *Seeding Opportunity Initiative* established the Conditional Adult-Use Retail Dispensary (CAURD) program to redress the harm done to justice involved individuals disproportionately impacted by the unequal enforcement of the marijuana drug laws. Two hundred million dollars ($200 million) was earmarked by the Governor through a public-private partnership with the private investment community to support CAURD license recipients acquire and buildout cannabis dispensaries in prime locations around New York State. Four hundred and sixty-three (463) CAURD licenses were awarded to justice involved individuals. Each of these licenses allowed CAURD license holder to own and operate three (3) dispensaries. As of this writing, the dispensary licenses held by CAURD license holders have been suspended along with the $200 million allocated to support license holder. The suspension is the result of an injunction imposed by a New York Supreme Court Judge in response to a petition challenging the legality of the

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CAURD program. An unfavorable ruling by the judge will invalidate the CAURD program and effectively void the three dispensary licenses issued to the 463 CAURD license holders. It will also breach the contract made with private investors who contributed $150 million to the $200 million fund to support CAURD license holders. The debt incurred by the 437 CAURD license holder unable to open their business before the injunction was enacted will impose a significant financial hardship on these CAURD license holder. They will lose any personal money expended on locating, acquiring, and building out a dispensary as well as access to the $200 million fund. And while all CAURD license holders were advised by the Office of Cannabis Management (OCM) to apply for a full dispensary license when the full license applications opened on October 4th to ensure they have a dispensary license if the court invalidates the CAURD program, each of them will only be allowed to apply for one dispensary license. As a result, all CAURD license holders will effectively lose two out of the three licenses they were initially awarded under the CAURD program.

In addition, as a result of a ruling made by the Cannabis Control Board (CCB) on September 12, 2023, all CAURD license holders will lose the opportunity to gain a foothold in New York's adult-use cannabis market before having to compete with the big eleven (11) medical marijuana companies and with multi-state operators from around the country. The Control Board's ruling allows the medical marijuana companies and multi-state operators to enter New York's adult-use cannabis market at essentially the same time as all other license holders, including small, local social equity operators and CAURD license holders. These big cannabis operators, the majority of which are publicly traded companies who have been operating since 2016, have a significant advantage over small, local social equity operators and CAURD license holders. Small, local social equity operators and CAURD license holders have not been allowed to gain the experience, customer loyalty, and obtain the strategic partners needed to effectively compete with the big well established cannabis companies. The ruling by the Cannabis Control Board forces small, local social equity operators and CAURD license holders to operate in an unequal playing field.

AUCC License Holder are Worse Off

Governor Hochul's *Seeding Opportunity Initiative* also established the Adult-Use Conditional Cultivator (AUCC) program to allow small, local Hemp farmers be the first to sell adult-use cannabis to the general public. Over 280 AUCC licenses were issued. As of this writing, most of the small, local farmers who were awarded AUCC licenses are sitting on thousands of pounds of cannabis at risk of spoiling because of limited dispensary outlets. Only 26 of 463 dispensaries are currently open in New York State. The crisis AUCC farmers are experiencing was graphically exhibited during the public comment period at the September 12th Cannabis Control Board meeting. Virtually every presenter shared with members of the Board how their inability to sell their stockpile of cannabis has placed them in financial ruins. They consistently pleaded with Board members to reverse their decision to allow the medical marijuana companies to enter the market at the same time as small operators. They explained how doing so would worsen their current situation because they would be forced to compete with these big publicly traded companies for the limited dispensary outlets currently available.

Finally, CAURD license holders who were fortunate enough to open before the court ordered injunction and AUCC license holders who made use of the Cannabis Grower Showcases that were established to provide an outlet for the backlog of cannabis product are still hindered by a proliferation of unlicensed cannabis operators. The number of unlicensed operators has grown exponentially since the start of the Governor's *Seeding Opportunity Initiative*. Unlicensed operators siphon off sales to license holders by selling comparable cannabis products way below market price. While both CAURD dispensaries and AUCC cultivators have been adversely affected by the proliferation of unlicensed shops, the Growers Showcases held in New York City and in other urban areas around the state have suffered the greatest. The ubiquitous presence of unlicensed operators in densely populated cities and urban centers has made it impossible for Grower Showcases held in these areas to attract customers.

Social Equity Applicants Seeking Full Licenses are Worse Off

As we enter the full license period of the MRTA beginning on October 4, 2023, no attempt has been made to reduce or otherwise mitigate the well-established barriers to access and sustainability to the cannabis market that will be experienced by social equity applicants seeking full licenses. These barriers are access to financing, real estate, timing in the market and capacity building training and technical assistance. For CAURD, there was a recognition by state regulators and elected officials that the barriers to access and sustainability to the cannabis market had to be reduced. The $200 million Cannabis Social Equity Investment Fund was created for that purpose. It provided access to capital and access to real estate. And it initially provided early access to the adult-use market without the presence of multi-state operators. Under the full license program, no similar fund has been created to support social equity applicants seeking full licenses. No financing or access to real estate has been made available. Social equity applicants seeking full licenses will be entering an unequal playing field. They will be forced to enter New York's cannabis market in direct competition with the highly funded and experienced eleven (11) medical marijuana companies and other multi-state operators.

In short, under the full license program, social equity applicants will simply be given a license and told to fend for themselves. There seems to be a misguided belief among state regulators that the barriers to access and sustainability will disappear on their own under the full license program. However, the lessons learned from CAURD license holders given access to the $200 million Cannabis Social Equity Investment Fund is that barriers to access will persist for social equity applicants whether or not access to financing and real estate is there if the financing is viewed as predatory and the cost of real estate is considered arbitrarily inflated. That was the belief held by many CAURD license holders. A year-and-a-half after the Cannabis Social Equity Investment Fund was created, only 26 out of 463 CAURD license holders utilized the Fund or used their own financing and were fully operational before the court injunction. The remaining 437 continue to seek financing and real estate. Unlike CAURD license holder, social equity applicants seeking a full license will not even have access to questionable financing or real estate support. Consequently, under the full license program social equity applicants are worse off than CAURD license holders before the injunction and are equally worse off (in the same boat) as the 437 CAURD license holders after the injunction.

Medical Marijuana Companies are the Big Winners

Prior to the passage of the MRTA, under the Cuomo administration, the ten (10)[1] medical marijuana companies licensed to sell marijuana in New York state were limited to selling cannabis oils, vapes, edibles and other cannabis infused products to their medical patients. No flower or smokeable marijuana products were allowed to be produced or were permitted for sale. The medical marijuana companies were also limited to the cultivation and processing capacity assigned to them when they were licensed. No increase in cultivation or processing capacity was permitted under the Cuomo administration. Under the Cuomo administration, both these restrictions remained in effect before and after the passage of the MRTA. Cannabis policy under the Cuomo administration was to "stand up" New York's adult-use recreational market before allowing the medical marijuana companies to expand their capacity and sell smokable flower. Given the head start the medical marijuana companies already had in New York's cannabis market, delaying their expansion would allow others to enter New York's market and become competitive. This all changed under the Hochul administration.

On September 2021, not long after Governor Hochul was appoint Governor of New York, Green Thumb Industries, with the help of Senator Mike Martucci, obtained permission from Hochul's administration to expand their cultivation and processing facility beyond the size assigned to their medical marijuana license and relocate their headquarters to a new location in Warwick, N.Y. Shortly thereafter, at the very first meeting of the Cannabis Control Board held on October 5, 2021, the members of the Cannabis Control Board approved a resolution to allow the medical marijuana companies to cultivate smokeable flower and sell it to their medical marijuana patients. Since then, Green Thumb and other medical marijuana companies have been expanding their cultivation and processing capacity and fine tuning their production of smokeable flower for the New York market. Indeed, since October of 2021, virtually all of the medical marijuana companies licensed in New York increased their cultivation and processing capacity as reflected in a report published by the Cannabis Social Equity Coalition – NYS.

Finally, on September 12, 2023, OCM submitted, and the Cannabis Control Board approved, revised regulations that allowed the medical marijuana companies to enter the adult-use recreational market at the same time as all other license holders. This is a significant accomplishment because in the initial regulations submitted to the Board on November 21, 2022, OCM recommended delaying the medical marijuana companies from entering the market for three (3) years. In the revised regulations submitted to the Board on May 11, 2023 and subsequently approved by the Board on September 12, 2023, the three-year delay was eliminated.

[1] Prior to the passage of the MRTA, only ten (10) medical marijuana companies were licensed to sell medical marijuana in New York State.

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This retreat from delaying the medical marijuana companies from entering the adult-use recreational market coupled with their expanded cultivation and processing capacity and over two years of experience at cultivating smokeable flower for the New York market places these medical marijuana companies in an extremely advantageous position and the big winners entering New York's adult-use recreational market.

A Series of Bad Decisions by the Regulators

The unintended outcome of Governor Hochul's *Seeding Opportunity Initiative* can be attributed to a series of bad decisions made by OCM, CCB and the Dormitory Authority of the State of New York (DASNY):

1) Allowing the medical marijuana companies to expand their cultivation and processing capacity and produce smokeable flower for sale to its clients,
2) Relying on the private investment community to fund a critical segment of the cannabis supply chain, namely, dispensaries,
3) Legislatively codifying the AUCC program but not legislatively codifying the CAURD program. Instead, using OCM's regulatory authority to establish the CAURD program,
4) Turning the *Seeding Opportunity Initiative* into a racially bifurcated licensing system by awarding the more lucrative supply side licenses (cultivation, processing and distribution) to Hemp farmers who are 97% White and relegating the less lucrative retail side licenses (dispensaries, on-site consumption lounges and delivery) to justice involved individuals who are 70% Black and Brown,
5) Emphasizing outdoor cultivation and excluding indoor cultivation, subjecting AUCC farmers to the volatility of New York's weather,
6) Allowing the medical marijuana companies and the multi-state operators to enter New York cannabis market at the same time as small, local social equity operators and CAURD license holders,
7) Approving a Social and Economic Equity Plan that is devoid of any clear strategy for achieving the nine (9) social equity goals mandated by the MRTA. (See Review of New York's Social Equity Plan.)

What the Governor Can Do to Turn Things Around

The Cannabis Social Equity Coalition – NYS (CSEC-NY) is strongly invested in the success of the social equity program in New York. We strongly believe it is time for the Governor to take a leadership role in bringing about the course correction needed to turn things around. We would like to assist the governor in making the changes needed. More specifically, we would like to discuss with you establishing a committee in the Executive Chamber that oversees decisions made by OCM, CCB and DASNY. This committee will report directly to the Governor.

The goal of the oversite committee is to accomplish the following:

1) Fast-forward from State funds between $750 million and $1billion of anticipated cannabis tax revenue and anticipated medical marijuana application fees. The funds can be borrowed from the Tobacco Master Settlement Agreement, or come

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from Cannabis Bonds, or from the State's General Funds. The funds would be paid back, with interest, from cannabis tax revenue and application fees. The funds would be used to immediately monetize:

   a. zero-interest and low-interest loans to support social equity dispensaries, cultivation, micro-businesses, and other critical segments of the cannabis supply chain, and
   b. the incubator program to support education, training and capacity building technical assistance in partnership with CSEC-NY and Oaksterdam University, and
   c. the expansion of OCM's enforcement capacity to effectively curtail the proliferation of unlicensed operators, and
   d. the administrative/staffing support to the Cannabis Advisory Board (CAB) to enable them to more effectively make recommendations to the CCB, OCM and the legislature on cannabis and on social and economic equity in the cannabis industry, and
   e. the disbursal by the CAB of Community Grant Reinvestment Funds to qualified community-based nonprofit organizations and approved government agencies for the purpose of reinvesting in communities disproportionately affected by past federal and state drug policies,

2) Level the playing field by awarding:
   a. 50% of all nine (9) license categories to the social equity population, and
   b. eleven (11) new medical marijuana licenses to social equity applicants who are representative of communities disproportionately impacted by marijuana prohibition,
3) Cap the number of all licenses,
4) Sign the 280E City Tax Code Bill passed by the senate and the assembly,
5) Codify the CAURD program,
6) Incentivize city and municipalities to establish zoning policy that support environmentally sustainable, industrial and commercial indoor cultivation and processing facilities,
7) Demand the immediate revision of the Social and Economic Equity Plan,
8) Use Section 63, Subdivision 1-a of the MRTA to prohibit the medical marijuana companies from selling wholesale cannabis products to retail cannabis dispensaries for three (3) years.

We would be happy to discuss these recommendations with you in more detail.