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Assembly California Legislature



MARK LENO
ASSEMBLYMAN, THIRTEENTH DISTRICT

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September 23, 2005

Terry Trinidad, Chief
Office of County Health Services
Department of Health Services
1800 Third Street, Room 100
P.O. Box 942732
Sacramento, CA 94234-7320

Dear Ms. Trinidad,

Along with Senator John Vasconcelos, I co-sponsored SB 420, legislation that mandated a state voluntary ID card program for medical marijuana patients and caregivers. It was the intent of this legislation that legal patients and caregivers be given increased protection from arrest and seizures, and that law enforcement officers be able to more easily verify their legal status. In doing so, the DHS was given the responsibility to design a system to verify records and maintain patient and caregiver confidentiality.

SB 420 stated, and is now codified in Health & Safety Code § 11362.71(b)(3), that "Every county health department, or the county's designee, shall...[m]aintain records of identification card programs."¹ Further referencing the statute, Health & Safety Code § 11362.71(d)(1) states that, "The department shall develop...[p]rotocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision (b), including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records."²

Currently, provisions exist in the April 2005 DHS-issued "Medical Marijuana Program County Handbook,"³ which indicate that patient records (specifically, a patient's recommendation and any other medical records needed for the application process) "must"⁴ be kept by the administering agency for "at least one year."⁵ In addition, the handbook states that renewal applications must occur once a year and that the administering agency has the option to use "applications and supporting documentation on file"⁶ in making its determination.

¹ See Health & Safety Code § 11362.71

² Ibid.

³ State of California Medical Marijuana Program County Handbook, issued by California Department of Health Services, April 2005.

⁴ Medical Marijuana Program County Handbook, 5.1 What Must be Maintained, p. 14.

⁵ Medical Marijuana Program County Handbook, 5.2 Length of Time, p. 14.

⁶ Medical Marijuana Program County Handbook, 4.2 Replacement and Renewal MMIC, p. 8.

After California's Attorney General provided a response to questions by DHS on its medical marijuana ID card program in July of this year,⁷ it was clear that patient information was susceptible to federal subpoena, and that information retained by the card program may be obtained by federal officials and used in federal prosecution against patients.⁸

I would support an ID card program record-keeping protocol such as that implemented by the San Francisco Department of Public Health (DPH), which returns patient records after verification or denial, and retains copies of the photograph, a unique identifier and a renewal date. Upon any reapplication, a patient's information would have to be provided by them again.

Secondly, there is also concern that the implementation of the ID card program is progressing very slowly. Given the low number of counties in the pilot program (Amador, Del Norte, and Mendocino), and the low number of commitments from counties after full implementation of the program began on August 1, 2005 (Marin, Shasta, and Trinity), more encouragement is needed to improve enrollment. There also appears to be confusion as to the obligations of local government and what is needed from the state regarding implementation of local ID card programs. For example, the county of San Diego reports as of August 2, 2005, regarding implementation of an ID card program, that the "County's Health and Human Services Agency is awaiting the issuance of final guidelines, policies, and procedures by the State before local implementation would be considered."⁹ This policy of inaction is aided by a passive enrollment process that does not place any explicit responsibility on counties to comply.

While there is no specified date by which all of California's counties should be enrolled, it may be helpful to choose a reasonable, self-imposed deadline (i.e. December 1, 2005),¹⁰ and widely publicize the need for counties to come into compliance per SB 420.

I want to thank your office for implementing the medical marijuana ID card program. Please feel free to contact my staff if you have any questions.

Sincerely,



MARK LENO
Assemblyman, 13th District

⁷ Informal legal opinion issued to DHS regarding its medical marijuana ID card program, July 15, 2005. http://www.safeaccessnow.org/downloads/AG_Opinion_DHS.pdf

⁸ "Medical Marijuana ID Cards Don't Come Without A Cost," NBC-TV, July 19, 2005.

"Medical marijuana ID program resumes," The Daily Review, July 19, 2005.

"State resumes medical marijuana ID card program," The Times-Standard, July 19, 2005.

⁹ County of San Diego Response to 2004-2005 Grand Jury Report "The Politics of Medical Marijuana: Question of Compassion," issued June 8, 2005, and approved by the San Diego Board of Supervisors August 2, 2005.

¹⁰ December 1, 2005 is a date used in SB 420 to allow the California Attorney General to "recommend modifications to the possession or cultivation limits" set forth in Health & Safety Code § 11362.77, and could also be used by DHS for county enrollment purposes.