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FROM: Riana Durrett
SUBJECT: LCB Opinion regarding background checks and medical marijuana patient cards

February 11, 2016

On February 10, 2016, the Legislative Counsel Bureau ("LCB") responded to Senator Farley's question as to whether the Department of Public and Behavioral Health ("DPBH") was authorized to issue a registry identification card ("patient card") prior to completion of the statutorily required background check. LCB also responded to Senator Farley's question as to whether a dispensary could sell to a patient once the patient's application as approved, but prior to the patient's receipt of the patient card. Please find a summary of LCB's opinion below:

1. DPBH can approve an application for a registry identification card "patient card" prior to completion of a background check.
2. A dispensary can only sell to a person who is a "holder" of a patient card.
3. A person is a "holder" of a patient card once they submitted the application until the application is "actually approved" or denied. The patient can present the application to a dispensary to make purchases at that point.
4. Once a person is "actually approved" or denied, the dispensary can no longer sell to them without being exposed to criminal penalties. This potentially creates a "window of nonservice" between "actual approval" and the time the patient receives a letter of approval or physical patient card patient card.
5. This window of nonservice could be avoided by the DMV providing a temporary card.

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REMAINING QUESTIONS:

1. The LCB opinion not specify whether Division's approval letter is sufficient for dispensing purposes (even the Division agrees that the letter it issues is sufficient for dispensing purposes for 14 days so it should be sufficient indefinitely).
2. How does a dispensary or patient know when the application is actually approved or denied?
3. Can the Division issue a temporary card as soon as it receives the application since it is not required to wait for the result of the background check and could later revoke?