



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

RECEIVED
MAR 27 2017
S.D. SEC. OF STATE

HAND DELIVERED

March 27, 2017

Hon. Shantel Krebs
Secretary of State
500 E. Capitol
Pierre, SD 57501

RE: **Attorney General's Statements for initiated measures legalizing marijuana**

Dear Secretary Krebs,

This Office received proposed initiated measures that the sponsor will seek to place on the November 2018 general election ballot. Enclosed is a copy of each of the initiated measures, in final form, that was submitted to this Office. In accordance with SDCL 12-13-25.1, I hereby submit the Attorney General's Statement with respect to both measures.

By copy of this letter, I am providing copies of the Attorney General's Statements to the sponsor of the initiated measures pursuant to SDCL 12-13-25.1.

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

cc/enc.: Melissa Mentele
Jason Hancock, Director of LRC

RECEIVED

MAR 27 2017

S.D. SEC. OF STATE

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to legalize marijuana for medical use

Explanation:

This 95-section measure legalizes medical use of marijuana by qualifying patients, including minors. No person or entity may be penalized, or denied any right or privilege, for conduct that is lawful under the measure.

Qualifying patients must be certified by a practitioner as having a debilitating medical condition. South Dakota patients must obtain a registration card from the State Department of Health ("Department"). Non-resident patients are permitted to use their registration cards from other jurisdictions.

Qualifying patients may designate caregivers to assist with their use of marijuana. A designated caregiver must obtain a registration card from the Department for each qualifying patient.

Allowable amounts of marijuana include three ounces of marijuana, a minimum (not maximum) of six marijuana plants if cultivation is permitted for that cardholder, and quantities of other marijuana products as determined by the Department.

The measure legalizes marijuana testing, manufacturing, and cultivation facilities, as well as dispensaries where marijuana may be acquired by cardholders. These establishments must register with the Department.

Schools and landlords cannot penalize, or refuse to enroll or lease, based solely on a person's cardholder status, absent federal law to the contrary.

Marijuana possession, use, cultivation and distribution remain illegal under Federal law.

For an Act Entitled, to provide for regulation, access, and compassionate use of cannabis in South Dakota.

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA.

Section 1. Terms used in this Act mean:

- (1) "Allowable amount of cannabis,":
 - (a) Three ounces of cannabis;
 - (b) The quantity of cannabis products as established by rules promulgated by the department;
 - (c) If the cardholder has a registry identification card allowing cultivation, six cannabis plants minimum or as prescribed by physician; and
 - (d) If the cardholder has a registry identification card allowing cultivation, the amount of cannabis and cannabis products that were produced from the cardholder's allowable plants, if the cannabis and cannabis products are possessed at the same property where the plants were cultivated;
- (2) "Bona fide practitioner-patient relationship,":
 - (a) A practitioner and patient have a treatment or consulting relationship, during the course of which the practitioner has completed an assessment of the patient's medical history and current medical condition, including an appropriate in-person physical examination;
 - (b) The practitioner has consulted with the patient with respect to the patient's debilitating medical condition; and
 - (c) The practitioner is available to or offers to provide follow-up care and treatment to the patient, including, but not limited to, patient examinations;
- (3) "Cannabis products," any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof, and are intended for use or consumption by humans. The term includes, without limitation, edible cannabis products, beverages, topical products, ointments, oils, and tinctures;
- (4) "Cannabis product manufacturing facility," an entity registered with the department pursuant to this act that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a medical cannabis dispensary;
- (5) "Cannabis testing facility," or "testing facility," an independent entity registered with the department pursuant to this act to analyze the safety and potency of cannabis;
- (6) "Cardholder," a qualifying patient or a designated caregiver who has been issued and possesses a valid registry identification card;

(7) "Cultivation facility," an entity registered with the department pursuant to this Act that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a medical cannabis establishment;

(8) "Debilitating medical condition,"

(a) Cancer, glaucoma, positive status for HIV, endometriosis, reflex sympathetic dystrophy, epilepsy, AIDS, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, IBS, ulcerative colitis, agitation of Alzheimer's disease, post-traumatic stress disorder, or the treatment of any of these conditions;

(b) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe, debilitating pain; severe nausea; seizures; or severe and persistent muscle spasms, including those characteristics of multiple sclerosis; or

(c) Any other medical condition or its treatment added by the department, as provided for in section 26 of this Act;

(9) "Department," means the South Dakota Department of Health,

(10) "Designated caregiver," a person who:

(a) Is at least 21 years of age;

(b) Has agreed to assist with a qualifying patient's medical use of cannabis;

(c) Has not been convicted of a disqualifying felony offense; and

(d) Assists no more than five qualifying patients with the medical use of cannabis, unless the designated caregiver's qualifying patients each reside in or are admitted to a health care facility or residential care facility where the designated caregiver is employed;

(11) "Disqualifying felony offense,"

(a) A violent crime that was classified as a felony in the jurisdiction where the person was convicted; or

(b) A violation of a state or federal controlled substances law that was classified as a felony in the jurisdiction where the person was convicted, not including:

(i) An offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed ten or more years earlier; or

(ii) An offense that consisted of conduct for which this Act would likely have prevented a conviction, but the conduct either occurred prior to the enactment of this Act or was prosecuted by an authority other than the State of South Dakota.

(12) "Edible cannabis products," any product that:

(a) Contains or is infused with cannabis or an extract thereof;

(b) Is intended for human consumption by oral ingestion; and

(c) Is presented in the form of foodstuffs, beverages, extracts, oils, tinctures, and other similar products;

(13) "Enclosed, locked facility," any closet, room, greenhouse, building, or other enclosed area that is equipped with locks or other security devices that permit access only by a cardholder allowed to cultivate the plants. Two or more cardholders who reside in the same dwelling may share one enclosed, locked facility for cultivation;

(14) "Medical cannabis" or "cannabis," marijuana as defined in section 22-42-1(7);

(15) "Medical cannabis dispensary" or "dispensary," an entity registered with the department pursuant to this Act that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials to cardholders;

(16) "Medical cannabis establishment," a cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a dispensary;

(17) "Medical cannabis establishment agent," an owner, officer, board member, employee, or volunteer at a medical cannabis establishment;

(18) "Medical use," includes the acquisition, administration, cultivation, manufacture, delivery, harvest, possession, preparation, transfer, transportation, or use of cannabis or paraphernalia relating to the administration of cannabis to treat or alleviate a registered qualifying patient's debilitating medical condition or symptom associated with the patient's debilitating medical condition. The term does not include:

(a) The cultivation of cannabis by a nonresident cardholder;

(b) The cultivation of cannabis by a cardholder who is not designated as being allowed to cultivate on the cardholder's registry identification card; or

(c) The extraction of resin from cannabis by solvent extraction unless the extraction is done by a cannabis product manufacturing facility;

(19) "Nonresident cardholder," a person who:

(a) Has been diagnosed with a debilitating medical condition, or is the parent, guardian, conservator, or other person with authority to consent to the medical treatment of a person who has been diagnosed with a debilitating medical condition;

(b) Is not a resident of South Dakota or who has been a resident of South Dakota for less than forty-five days;

(c) Was issued a currently valid registry identification card or its equivalent by another state, district, territory, commonwealth, insular possession of the United States, or country recognized by the United States that allows the person to use cannabis for medical purposes in the jurisdiction of issuance; and

(d) Has submitted any documentation required by the department and has received confirmation of registration;

(20) "Practitioner," a person who is licensed with authority to prescribe drugs to humans. In relation to a nonresident cardholder, the term means a person who is licensed with authority to prescribe drugs to humans in the state of the patient's residence;

(21) "Qualifying patient," means a person who has been diagnosed by a practitioner as having a debilitating medical condition;

(22) "Registry identification card," a document issued by the department that identifies a person as a registered qualifying patient or registered designated caregiver, or documentation that is deemed a registry identification card pursuant to sections 29-41 of this Act;

(23) "Written certification," a document dated and signed by a practitioner, stating that in the practitioner's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat or alleviate the patient's debilitating medical condition or symptom associated with the debilitating medical condition. A written certification shall affirm that it is made in the course of a bona fide practitioner-patient relationship and shall specify the qualifying patient's debilitating medical condition.

Section 2. A cardholder who possesses a valid registry identification card is not subject to arrest, prosecution, or penalty in any manner, or denial of any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau for:

- (1) The medical use of cannabis pursuant to this Act, if the cardholder does not possess more than the allowable amount of cannabis, and if any cannabis plant is either cultivated in an enclosed, locked facility or is being transported;
- (2) Reimbursement by a registered qualifying patient to the patient's registered designated caregiver for direct costs incurred by the registered designated caregiver for assisting with the registered qualifying patient's medical use of cannabis;
- (3) Transferring the cannabis to a testing facility for testing;
- (4) Compensating a dispensary or a testing facility for goods or services provided;
- (5) Selling, transferring, or delivering a cannabis seed produced by the cardholder to a cultivation facility or dispensary; or
- (6) Offering or providing cannabis to a cardholder for a registered qualifying patient's medical use, to a nonresident cardholder, or to a dispensary if nothing of value is transferred in return and the person giving the cannabis does not knowingly cause the recipient to possess more than the allowable amount of cannabis.

Section 3. No nonresident cardholder may be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, civil penalty, or disciplinary action by a business or occupational or professional licensing board or entity, for the transporting, purchasing, possessing, or using medical cannabis pursuant to this Act if the nonresident cardholder does not possess more than three ounces of cannabis and the quantity of cannabis products established by rules promulgated by the department.

Section 4. There is a presumption that a qualifying patient or designated caregiver is engaged in the medical use of cannabis pursuant to this Act if the cardholder is in possession of a registry identification card and an amount of cannabis that does not exceed the allowable amount of cannabis. The presumption may be rebutted by evidence that conduct related to cannabis was not for the purpose of treating or alleviating a qualifying patient's debilitating medical condition or symptom associated with the qualifying patient's debilitating medical condition pursuant to this Act.

Section 5. No practitioner may be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including civil penalty or disciplinary action by the South Dakota Board of Medical and Osteopathic Examiners or by any other occupational or professional licensing board or bureau, solely for providing written certifications or for otherwise stating that, in the practitioner's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition. However, nothing in this Act prevents a practitioner from being sanctioned for:

- (1) Issuing a written certification to a patient with whom the practitioner does not have a bona fide practitioner-patient relationship; or
- (2) Failing to properly evaluate a patient's medical condition.

Section 6. No attorney may be subject to disciplinary action by the State Bar of South Dakota or other professional licensing association for providing legal assistance to a prospective or registered medical cannabis establishment or other related to activity that is no longer subject to criminal penalties under state law pursuant to this Act.

Section 7. No person may be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for:

- (1) Providing or selling cannabis paraphernalia to a cardholder, nonresident cardholder, or to a medical cannabis establishment;
- (2) Being in the presence or vicinity of the medical use of cannabis that is exempt from criminal penalties by this Act;
- (3) Allowing the person's property to be used for an activity that is exempt from criminal penalties by this Act; or
- (4) Assisting a registered qualifying patient with the act of using or administering cannabis.

Section 8. No dispensary or a dispensary agent may be subject to prosecution, search, inspection, (except by the department pursuant to sections 61-71 of this Act), seizure, or penalty in any manner, or be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this Act or rules authorized by this Act to:

- (1) Possess, transport, or store cannabis or cannabis products;
- (2) Deliver, transfer, or transport cannabis to a testing facility and compensate a testing facility for services provided;

- (3) Accept cannabis offered by a cardholder or nonresident cardholder if nothing of value is exchanged in return;
- (4) Purchase or otherwise acquire cannabis from a cultivation facility or dispensary, or cannabis products from a cannabis product manufacturing facility or dispensary; and
- (5) Deliver, sell, supply, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, related supplies, or educational materials to a cardholder, nonresident cardholder, or dispensary.

Section 9. No cultivation facility or cultivation facility agent may be subject to prosecution, search, or inspection, (except by the department pursuant to sections 61-71 of this Act), seizure, or penalty in any manner, or be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this Act or rules authorized by this Act to:

- (1) Possess, plant, propagate, cultivate, grow, harvest, produce, process, manufacture, compound, convert, prepare, pack, repack, or store cannabis;
- (2) Deliver, transfer, or transport cannabis to a testing facility and compensate a testing facility for services provided;
- (3) Accept cannabis offered by a cardholder or nonresident cardholder if nothing of value is exchanged in return;
- (4) Purchase or otherwise acquire cannabis from a cultivation facility;
- (5) Purchase cannabis seeds from a cardholder, nonresident cardholder, or the equivalent of a medical cannabis establishment that is registered in another jurisdiction; or
- (6) Deliver, sell, supply, transfer, or transport cannabis, cannabis paraphernalia, related supplies, or educational materials to a cultivation facility or dispensary.

Section 10. No cannabis product manufacturing facility or cannabis product manufacturing facility agent may be subject to prosecution, search, or inspection, (except by the department pursuant to section 61 to 71 of this Act), seizure, or penalty in any manner or be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this Act or rules authorized by this Act to:

- (1) Purchase or otherwise acquire cannabis from a cultivation facility, and cannabis products or cannabis from a cannabis product manufacturing facility;
- (2) Possess, produce, process, manufacture, compound, convert, prepare, pack, repack, and store cannabis or cannabis products;
- (3) Deliver, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, related supplies, or educational materials to a dispensary or a cannabis product manufacturing facility;
- (4) Deliver, transfer, or transport cannabis to testing facility and compensate testing facility for services provided; or

(5) Deliver, sell, supply, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, or related supplies or educational materials to a cannabis product manufacturing facility or dispensary.

Section 11. No testing facility or testing facility agent may be subject to prosecution, search, or inspection (except by the department pursuant to sections 61 to 71 of this Act), seizure, or penalty in any manner, or be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this Act or rules authorized by this Act to:

- (1) Acquire, possess, transport, and store cannabis or cannabis products obtained from a cardholder, nonresident cardholder, or medical cannabis establishments;
- (2) Return the cannabis or cannabis products to a cardholder, nonresident cardholder, or medical cannabis establishment from whom it was obtained;
- (3) Test cannabis, including for potency, pesticides, mold, or contaminants; or
- (4) Receive compensation for those services.

Section 12. A cardholder, nonresident cardholder, or the equivalent of a medical cannabis establishment that is registered in another jurisdiction may sell or donate cannabis seeds to a cultivation facility.

Section 13. Any cannabis, cannabis product, cannabis paraphernalia, or other interest in or right to property that is possessed, owned, or used in connection with the medical use of cannabis as allowed under this Act, or acts incidental to such use, may not be seized or forfeited. This Act does not prevent the seizure or forfeiture of cannabis exceeding the amount allowed under this Act, nor does it prevent seizure or forfeiture if the basis for the action is unrelated to the cannabis that is possessed, manufactured, transferred, or used pursuant to this Act.

Section 14. Possession of, or application for, a registry identification card does not constitute probable cause or reasonable suspicion, nor may it be used to support a search of the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property of the person to inspection by any governmental agency.

Section 15. For the purposes of South Dakota state law, an activity related to medical cannabis is considered lawful as long as it is conducted in accordance with this Act.

Section 16. No law enforcement officer employed by an agency which receives state or local government funds may expend any state or local resources, including the officer's time, to effect any arrest or seizure of cannabis, or conduct any investigation, on the sole basis of activity the officer believes to constitute a violation of the federal Controlled Substances Act 21 U.S.C. § 801 if the officer has reason to believe that the activity is in compliance with state medical cannabis laws. No officer may expend any state or local resources, including the officer's time, to provide any information or logistical support related to such activity to any federal law enforcement authority or prosecuting entity.

Section 17. It is the public policy of the State of South Dakota that a contract related to medical cannabis that is entered into by a cardholder, medical cannabis establishment, or medical cannabis establishment agent, and a person who allows property to be used by those persons, is enforceable. It is the public policy of the State of South Dakota that no contract entered into by a cardholder, a medical cannabis establishment, or medical cannabis establishment agent, or by a person who allows property to be used for

an activity that is exempt from state criminal penalties by this Act is unenforceable on the basis that activity related to cannabis is prohibited by federal law.

Section 18. This Act does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalty for engaging in, the following conduct:

- (1) Undertaking any task under the influence of cannabis, when doing so would constitute negligence or professional malpractice;
- (2) Possessing cannabis or otherwise engaging in the medical use of cannabis in any correctional facility;
- (3) Smoking cannabis:
 - (a) On any form of public transportation; or
 - (b) In any public place or any place that is open to the public; or
- (4) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, train, or motorboat while under the influence of cannabis, except that a registered qualifying patient or nonresident cardholder is not considered to be under the influence of cannabis solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment.

Section 19. No school or landlord may refuse to enroll or lease to and may not otherwise penalize a person solely for the person's status as a cardholder, unless failing to do so would violate federal law or regulations or cause the school or landlord to lose a monetary or licensing related benefit under federal law or regulation.

Section 20. For the purposes of medical care, including organ and tissue transplants, a registered qualifying patient's use of cannabis according to this Act is considered the equivalent of the authorized use of any other medication used at the discretion of a practitioner and does not constitute the use of an illicit substance or otherwise disqualify a qualifying patient from needed medical care.

Section 21. No person may be denied custody of or visitation rights or parenting time with a minor solely for the person's status as a cardholder, and there is no presumption of neglect or child endangerment for conduct allowed under this Act, unless the person's behavior is such that it creates an unreasonable danger to the safety of the minor as established by clear and convincing evidence.

Section 22. Except as provided in this Act, a registered qualifying patient who uses cannabis for a medical purpose shall be afforded all the same rights under state and local law, including those guaranteed under South Dakota law, as the individual would be afforded if the person were solely prescribed a pharmaceutical medication, as it pertains to:

- (1) Any interaction with a person's employer;
- (2) Drug testing by a person's employer; or

(3) Drug testing required by any state or local law, agency, or government official.

Section 23. The rights provided by sections 19 to 25 of this Act do not apply to the extent that they conflict with an employer's obligations under federal law or regulation or to the extent that they would disqualify an employer from a monetary or licensing-related benefit under federal law or regulation.

Section 24. No employer is required to allow the ingestion of cannabis in any workplace or to allow any employee to work while under the influence of cannabis. A registered qualifying patient may not be considered to be under the influence of cannabis solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment.

Section 25. No school, landlord, or employer may be penalized or denied any benefit under state law for enrolling, leasing to, or employing a cardholder.

Section 26. Any resident of South Dakota may petition the department to add a serious medical condition or treatment to the list of debilitating medical conditions as defined by this Act. The department shall consider a petition in the manner required by rules promulgated by the department pursuant to this Act, including public notice and hearing. The department shall approve or deny a petition within one hundred eighty days of submission. The approval or denial of any petition is a final decision of the department, subject to judicial review.

Section 27. Nothing in this Act requires:

- (1) A government medical assistance program or private insurer to reimburse a person for costs associated with the medical use of cannabis;
- (2) Any person or establishment in lawful possession of property to allow a guest, client, customer, or other visitor to smoke cannabis on or in that property; or
- (3) A landlord to allow the cultivation of cannabis on the rental property.

Section 28. Nothing in this Act prohibits an employer from disciplining an employee for ingesting cannabis in the workplace or for working while under the influence of cannabis.

Section 29. No later than one hundred forty days after the effective date of this Act, the department shall begin issuing registry identification cards to qualifying patients who submit the following, in accordance with rules promulgated by the department:

- (1) A written certification issued by a practitioner within ninety days immediately preceding the date of an application;
- (2) The application or renewal fee;
- (3) The name, address, and date of birth of the qualifying patient, except that if the applicant is homeless, no address is required;
- (4) The name, address, and telephone number of the qualifying patient's practitioner;
- (5) The name, address, and date of birth of the designated caregiver or designated caregivers, chosen by the qualifying patient;

(6) If more than one designated caregiver is designated at any given time, documentation demonstrating that a greater number of designated caregivers are needed due to the patient's age or medical condition;

(7) The name of no more than two dispensaries that the qualifying patient designates; and

(8) If the qualifying patient designates a designated caregiver, a designation as to whether the qualifying patient or designated caregiver will be allowed under state law to possess and cultivate cannabis plants for the qualifying patient's medical use.

Section 30. If the qualifying patient is unable to submit the information required by section 29 of this Act due to the person's age or medical condition, the person responsible for making medical decisions for the qualifying patient may do so on behalf of the qualifying patient.

Section 31. Except as provided in section 32 of this Act, the department shall:

(1) Verify the information contained in an application or renewal submitted pursuant to this Act and approve or deny an application or renewal within fifteen days of receiving a completed application or renewal application;

(2) Issue registry identification cards to a qualifying patient and to a qualifying patient's designated caregivers, if any, within five days of approving the application or renewal. A designated caregiver must have a registry identification card for each of the qualifying patients; and

(3) Enter the registry identification number of the dispensary the patient designates into the verification system.

Section 32. The department may conduct a background check of the prospective designated caregiver in order to carry out the provisions of section 31 of this Act.

Section 33. The department may not issue a registry identification card to a qualifying patient who is younger than eighteen years of age unless:

(1) The qualifying patient's practitioner has explained the potential risks and benefits of the medical use of cannabis to the custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient; and

(2) The custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient consents in writing to:

(a) Allow the qualifying patient's medical use of cannabis;

(b) Serve as the qualifying patient's designated caregiver; and

(c) Control the acquisition of the cannabis, the dosage, and the frequency of the medical use of cannabis by the qualifying patient.

Section 34. The department may deny an application or renewal of a qualifying patient's registry identification card only if the applicant:

- (1) Does not provide the required information, fee, or materials;
- (2) Previously had a registry identification card revoked; or
- (3) Provided false information.

Section 35. The department may deny an application or renewal for a designated caregiver chosen by a qualifying patient whose registry identification card was granted only if:

- (1) The designated caregiver does not meet the requirements of a designated caregiver as provided in Section 1 of this Act
- (2) The applicant does not provide the information required;
- (3) The designated caregiver previously had a registry identification card revoked; or
- (4) The applicant or the designated caregiver provided false information.

Section 36. The department shall give written notice to the qualifying patient of the reason for denying a registry identification card to the qualifying patient or to the qualifying patient's designated caregiver.

Section 37. Denial of an application or renewal is considered a final department action, subject to judicial review.

Section 38. Until a qualifying patient who has submitted an application and the required fee to the department receives a registry identification card or a denial, a copy of the individual's application, written certification, and proof that the application was submitted to the department is considered a registry identification card.

Section 39. Until a designated caregiver whose qualifying patient has submitted an application and the required fee receives a registry identification card or a rejection, a copy of the a qualifying patient's application, written certification, and proof that the application was submitted to the department shall be deemed a registry identification card.

Section 40. Until twenty-five days after the department makes applications available, a valid, written certification issued within the previous year shall be deemed a registry identification card for a qualifying patient.

Section 41. Until twenty-five days after the department makes applications available, the following is considered a designated caregiver registry identification card:

- (1) A copy of a qualifying patient's valid written certification issued within the previous year; and
- (2) A signed affidavit attesting that the person has significant responsibility for managing the well-being of the patient and that the person has been chosen to assist the qualifying patient.

Section 42. A registry identification cards must contain all of the following:

- (1) The name of the cardholder;