

34-20G-1.[Effective July 1, 2021] Definitions.

Terms used in this chapter mean:

- (1) "Allowable amount of cannabis," means:
 - (a) Three ounces of cannabis or less;
 - (b) The quantity of cannabis products as established by rules promulgated by the department under § 34-20G-72;
 - (c) If the cardholder has a registry identification card allowing cultivation, three cannabis plants minimum or as prescribed by physician; and
This is confusing with a 3-plant minimum, does that mean if a person possesses 1 or 2 plants they are in violation? In addition, 1 plant can produce much more than 3 ounces, so are they in violation if they have more than 3 ounces in possession? What about a maximum number of plants? One plant can easily produce a pound or more and produce a pound every 60 to 90 days.
 - (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;
Individual cultivation seems in conflict with all the restrictions we place on commercial growers. No quality control if this is truly medicine?
- (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 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 edible cannabis products, beverages, topical products, ointments, oils, and tinctures; Understand **there is no quality control in terms of dosage in each edible, amount of THC can vary greatly, is this what we want? There are no medicines dispensed through any bona fide program that have zero dosing regulations or requirements.**
- (4) "Cannabis product manufacturing facility," an entity registered with the department pursuant to this chapter 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 chapter 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 chapter that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a medical cannabis establishment;
- (8) "Debilitating medical condition,":

- (a) 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 characteristic of multiple sclerosis; or
 - (b) Any other medical condition or its treatment added by the department, as provided for in § 34-20G-26;
- (9) "Department," means the Department of Health;
- (10) "Designated caregiver," a person who:
 - (a) Is at least twenty-one 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 **No other requirements, such as resident of SD, medical training etc**
 - (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 violent crime that was classified as a felony in the jurisdiction where the person was convicted; Why **only crime of violence, absurd that other crimes like contributing to the delinquency of a minor, crimes of dishonestly, drug possession and distribution all would allow a person to have a position of trust in distributing medication??**
- (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, or 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 or a person 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 § 22-42-1;
- (15) "Medical cannabis dispensary" or "dispensary," an entity registered with the department pursuant to this chapter 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 card holder'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: **Gives authority to any state, no matter what their standards for issuing a "medical" marijuana card, to negate SD law**
- (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 this state or who has been a resident of this state for fewer than forty-five days; So **on day 46 a person is deemed a resident, at least for purposes on marijuana?**
 - (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 **Don't believe this to be consistent with other prescription medications. What does "country recognized by U.S. " mean?**
 - (d) Has submitted any documentation required by the department, and has received confirmation of registration;
- (20) "Practitioner," a physician 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; **There should not be a separate lower standard for out of state "practitioners"**
- (21) "Qualifying patient," 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 §§ [34-20G-29](#) to [34-20G-42](#), inclusive; and
- (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. This document 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.

34-20G-2.[Effective July 1, 2021] Cardholders not subject to arrest, prosecution, penalty, or discipline for certain conduct.

A cardholder is not subject to arrest, prosecution, or penalty of any kind, 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: **Several times throughout there is reference to professional licensing boards having no jurisdiction, is this what we want? In conflict with recent administrative rule passed by Law enforcement Standards and Training Commission stating law enforcement cannot use medical marijuana. Administrative Rule 2:01:11:10**

- (1) The medical use of cannabis in accordance with this chapter, 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;
- (4) Compensating a dispensary or a testing facility for goods or services provided;
- (5) Selling, transferring, or delivering cannabis seeds 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. **This allows individuals to transfer marijuana to each other. If this is "medicine" only a doctor should be prescribing. We don't allow individuals to share their other prescription drugs with each other. No other medicine is allowed to be grown and shared by non-medical trained individuals.**

34-20G-3.[Effective July 1, 2021] Nonresident cardholders not subject to arrest, prosecution, penalty, or discipline for certain conduct.

No nonresident cardholder is subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including civil penalty or disciplinary action by a business or occupational or professional licensing board or entity, for transporting, purchasing, possessing, or using medical cannabis in accordance with this chapter 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 under **Why are we granting this to out of state residents, difficult enough to regulate by limiting it to SD residents.**

34-20G-7.[Effective July 1, 2021] Persons not subject to arrest, prosecution, penalty, or discipline for certain conduct.

No person is subject to arrest, prosecution, or penalty of any kind, or may be 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; **Means anyone can sell drug paraphernalia to a card holder**
- (2) Being in the presence or vicinity of the medical use of cannabis that is exempt from criminal or civil penalty by this chapter;
- (3) Allowing the person's property to be used for an activity that is exempt from criminal or civil penalty by this chapter; or
- (4) Assisting a registered qualifying patient with the act of using or administering cannabis. **Anyone? Or just a care giver? Again, if this is “medicine” it seems very wide open as to who can do what in terms of “medicine”**

34-20G-8.[Effective July 1, 2021] Dispensaries and agents not subject to prosecution, search, seizure, penalty, or discipline for certain conduct.

No dispensary or a dispensary agent is subject to prosecution, search, or inspection, except by the department pursuant to § 34-20G-69, seizure, or penalty in any manner; or may be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting in accordance with this chapter to: **Law enforcement should be able to conduct a search of a business, as well as department, just like any other business or pharmacy. These facilities should not have special protections that are not afforded to other businesses or medical establishments. The idea that, even with probable cause and a warrant, that these businesses cannot be searched for violation of a law is absurd.**

The overly broad definition of a dispensary agent that we saw previous comes into play here. Essentially immune from search, notwithstanding probable cause, warrant etc.

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

34-20G-9.[Effective July 1, 2021] Cultivation facilities and agents not subject to prosecution, search, seizure, penalty, or discipline for certain conduct.

No cultivation facility or a cultivation facility agent is subject to prosecution, search, or inspection, except by the department pursuant to § 34-20G-69, seizure, or penalty of any kind, or may be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting in accordance with this chapter to: **Same objection as above in 34-20G-8**

- (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, or related supplies or educational materials to a cultivation facility and dispensary.

34-20G-10.[Effective July 1, 2021] Cannabis product manufacturing facilities and agents not subject to prosecution, search, seizure, penalty, or discipline for certain conduct.

No cannabis product manufacturing facility or a cannabis product manufacturing facility agent is subject to prosecution, search, or inspection, except by the department pursuant to § 34-20G-69, seizure, or penalty of any kind, or may be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting in accordance with this chapter to: **Same objection as previous 2 sections**

- (1) Purchase or otherwise acquire cannabis from 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, or related supplies or educational materials to a dispensary or 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.

34-20G-11.[Effective July 1, 2021] Testing facilities and agents not subject to prosecution, search, seizure, penalty, or discipline for certain conduct.

No testing facility or testing facility agent is subject to prosecution, search, or inspection, except by the department pursuant to § 34-20G-69, seizure, or penalty in any manner, or may be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting in accordance with this chapter to: **Same objection as previous 3 sections**

- (1) Acquire, possess, transport, and store cannabis or cannabis products obtained from a cardholder, nonresident cardholder or medical cannabis establishment;
- (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 services under this section.

34-20G-12.[Effective July 1, 2021] Sale or donation of cannabis seeds to cultivation facility.

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 in this state. **Unused prescription products should not be sold, traded or given between unregistered parties, or anyone else for that matter. Again, we do not handle other prescription medicines in this manner.**

34-20G-13.[Effective July 1, 2021] Seizure or forfeiture of cannabis or related property.

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 chapter, or acts incidental to such use, may not be seized or forfeited. This chapter does not prevent the seizure or forfeiture of cannabis exceeding the amount allowed under this chapter, or prevent seizure or forfeiture if the basis for the action is unrelated to the cannabis that is possessed, manufactured, transferred, or used in accordance this chapter. **Should at least impose the duty to have proof of compliance. Later, Act permits retroactive proof that a user “could have gotten” a card, which means that law enforcement cannot seize evidence until the case is over. Absurd once again and unlike any other criminal prosecution.**

34-20G-16.[Effective July 1, 2021] Enforcement of federal law by state law enforcement officers.

No law enforcement officer employed by an agency that 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 et seq., if the officer has reason to believe that the activity is in compliance with this chapter. No officer may expend any state or local resources, including the officer's time, to provide any information or logistical support related to any activity to any federal law enforcement authority or prosecuting entity. **Law enforcement are sworn to uphold both state and federal constitutions, as well as state and federal law. This provision makes SD a sanctuary state for purposed o marijuana. This violates the oath and traditions of law enforcement. This provision is bizarre at best.**

34-20G-17.[Effective July 1, 2021] Contracts enforceable.

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 chapter is unenforceable on the basis that activity related to cannabis is prohibited by federal law. **The supremacy clause does not allow states to supersede federal law.**

34-20G-18.[Effective July 1, 2021] Unauthorized conduct.

This chapter 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; The **term “under the influence” is never defined.**
- (2) Possessing cannabis or otherwise engaging in the medical use of cannabis in any correctional facility;
- (3) Smoking cannabis: **What about other ways of ingesting marijuana, are those allowed in these same places?**
 - (a) On any form of public transportation; or
 - (b) In any public place or any place that is open to the public; **Allows for marijuana use around children.**
- (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.

34-20G-19.[Effective July 1, 2021] Schools and landlords--Prohibited conduct.

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. **Several sections talk about cardholder rights, but appear to impose unjust rules on property owners. Should reconcile the sections that take away property owner rights. This is not done with any other prescription medicine so why are we doing so here?**

34-20G-20.[Effective July 1, 2021] Qualifying patient not disqualified from medical care for cannabis use.

For the purposes of medical care, including organ and tissue transplants, a registered qualifying patient's use of cannabis in accordance with this chapter 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. **Why put this into SD law? The rules for organ donation and receipt should not be different for marijuana than they are for smoking tobacco or consumption of alcohol. This should be a medical decision.**

34-20G-21.[Effective July 1, 2021] Custody and visitation rights--Child neglect or endangerment.

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 chapter, unless the person's behavior creates an unreasonable danger to the safety of the minor as established by clear and convincing evidence. **Other legal substances, including medications, may affect custody. Clear pattern throughout these laws of exempting marijuana and treating it differently. What is "clear and Convincing evidence?"**

34-20G-22.[Effective July 1, 2021] Employment and drug testing.

Except as provided in this chapter, a registered qualifying patient who uses cannabis for a medical purpose shall be afforded all the same rights under state and local law, as the person would be afforded if the person were solely prescribed a pharmaceutical medication, as it pertains to: **Under 41 U.S. Code 8102, there are drug free workplace requirements for federal contractors.**

- (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.

34-20G-27.[Effective July 1, 2021] Cost reimbursement, permission to smoke cannabis on property, and permission to cultivate on rental property not required.

Nothing in this chapter requires: **A landlord rights issue once again. Requires landlord to allow marijuana use on the property. Current language is confusing, unclear if this applies to only the tenant and not others? Also confusing as to how the marijuana can be used, all forms except smoking? Poorly drafted.**

- (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.

34-20G-28.[Effective July 1, 2021] Discipline for ingestion of cannabis at workplace and working under the influence of cannabis permitted.

Nothing in this chapter prohibits an employer from disciplining an employee for ingesting cannabis in the workplace or for working while under the influence of cannabis. **Again, under the influence is not defined.**

34-20G-29.[Effective July 1, 2021] Information required for issuance of registry identification cards--Fee.

No later than November 18, 2021, the department shall issue 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; **How many caregivers can a person have? Who is decides who is qualified to be a care giver and who is not?**
- (7) The name of no more than two dispensaries that the qualifying patient designates, if any; and **Why ???**
- (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.

34-20G-32.[Effective July 1, 2021] Background check of designated caregiver.

The department may conduct a background check of a designated caregiver in order to carry out the provisions of § 34-20G-31. **Beyond the lack of qualifications for “caregivers” the background check should be mandatory.**

34-20G-33.[Effective July 1, 2021] Issuance of registry identification card to patient under age 18--Conditions.

The department may not issue a registry identification card to a qualifying patient who is younger than eighteen years of age unless: **Should be age 21**

- (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.

34-20G-35.[Effective July 1, 2021] Grounds for denial of application or nonrenewal of designated caregiver.

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 defined in § 34-20G-1; **There are virtually no requirements**
- (2) The applicant does not provide the information required;
- (3) The designated caregiver previously had a registry identification card revoked; **Almost impossible to be revoked** or
- (4) The applicant or the designated caregiver provide false information. **But it is okay if they are convicted of perjury, embezzlement, false statements etc, as long it was not included in the application. Caregiver model is a slippery slope. Why not go through known approved facilities? Should it be a role of the State? Other states have encountered issues with the multiple caregiver model and inability to track it.**

34-20G-38.[Effective July 1, 2021] Temporary qualifying patient registry identification card.

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 patient's application, written certification, and proof that the application was submitted to the department is deemed a registry identification card. **This means the application is deemed permission until the denial comes through. Seems odd that you are granted something even before the application process is complete, which may result in a denial??**

34-20G-39.[Effective July 1, 2021] Temporary designated caregiver registry identification card.

Until a designated caregiver whose qualifying patient has submitted an application and the required fee receives a registry identification card or a denial, a copy of the qualifying patient's application, written certification, and proof that the application was submitted to the department is deemed a registry identification card. **Same problem as identified in 34-20G-38**

34-20G-41.[Effective July 1, 2021] Availability of applications--Temporary designated caregiver registry identification card.

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. **Any person?**

34-20G-42.[Effective July 1, 2021] Contents of registry identification cards.

A registry identification card shall contain all of the following:

- (1) The name of the cardholder;
- (2) A designation of whether the cardholder is a qualifying patient or a designated caregiver;
- (3) The date of issuance and expiration date of the registry identification card;
- (4) A random ten-digit alphanumeric identification number, containing at least four numbers and at least four letters, that is unique to the cardholder;
- (5) If the cardholder is a designated caregiver, the random identification number of the qualifying patient the designated caregiver will assist;
- (6) A clear indication of whether the cardholder has been designated to cultivate cannabis plants for the qualifying patient's medical use; **Personal cultivation should not ever be permitted for "medical" marijuana**
- (7) A photograph of the cardholder; and
- (8) The phone number or website address where the card can be verified.

34-20G-43.[Effective July 1, 2021] Expiration of registry identification card.

A registry identification card expires one year after the date of issue. Unless the practitioner states in the written certification that the qualifying patient would benefit from cannabis until a specified earlier date, then the registry identification card expires on that date. **Prescriptions should include dosage and refill specifications, not just length of time.**

34-20G-45.[Effective July 1, 2021] Secure phone or web-based verification system.

Within one hundred twenty days of July 1, 2021, the department shall establish a secure phone or web-based verification system. The verification system shall allow law enforcement personnel and medical cannabis establishments to enter a registry identification number and determine whether the number corresponds with a current, valid registry identification card. The system may disclose only:

- (1) Whether the identification card is valid;
- (2) The name of the cardholder;
- (3) Whether the cardholder is a qualifying patient or a designated caregiver;
- (4) Whether the cardholder is permitted to cultivate cannabis plants;
- (5) The registry identification number of any affiliated registered qualifying patient; and
- (6) The registry identification of the qualifying patient's dispensary or dispensaries, if any.

Should be one dispensary not multiple.

34-20G-49.[Effective July 1, 2021] Card void upon notice to department that patient no longer qualifies--Disposal of cannabis.

If the registered qualifying patient's certifying practitioner notifies the department in writing that the registered qualifying patient has ceased to suffer from a debilitating medical condition or that the practitioner no longer believes the patient would receive therapeutic or palliative benefit from the medical use of cannabis, the card is void. However, the registered qualifying patient shall have fifteen days to dispose of or give away any cannabis in the registered qualifying patient's possession. **No other "medicine" gets gifted if you no longer need it.**

34-20G-50.[Effective July 1, 2021] Theft or loss of cannabis--Notice to department.

A medical cannabis establishment shall notify the department within one business day of any theft or significant loss of cannabis. **Define "significant" ??**

34-20G-51.[Effective July 1, 2021] Medical purpose defense to prosecution involving cannabis.

Except as provided in § 34-20G-18 and this section, a person may assert the medical purpose for using cannabis as a defense to any prosecution involving cannabis, and such defense is presumed valid where the evidence shows that:

- (1) A practitioner has stated that, in the practitioner's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide practitioner-patient relationship, the patient has a debilitating medical condition and the potential benefits of using cannabis for medical purposes would likely outweigh the health risks for the person;
- (2) The person was in possession of no more than three ounces of cannabis, the amount of cannabis products allowed by department rules, six cannabis plants minimum or as prescribed by a physician, and the cannabis produced by those plants; **So 5 or fewer plants are illegal? No maximum number of plants?**
- (3) The person was engaged in the acquisition, possession, use, manufacture, cultivation, or transportation of cannabis, paraphernalia, or both, relating to the administration of cannabis to treat or alleviate the person's debilitating medical condition or symptoms associated with the person's debilitating medical condition; and
- (4) Any cultivation of cannabis and storage of more than three ounces of cannabis occurred in a secure location that only the person asserting the defense could access.

34-20G-52.[Effective July 1, 2021] Proof of unavailability of defense to prosecution.

An affirmative defense and motion to dismiss shall fail if the prosecution proves that:

- (1) The person had a registry identification card revoked for misconduct; or
- (2) The purpose for the possession or cultivation of cannabis was not solely for palliative or therapeutic use by the person with a debilitating medical condition who raised the defense. **This entire section shows that this is not about medicine. If we have a process for medicine, we do not permit people to ignore it and later claim that they “could have gotten” a prescription.**

34-20G-53.[Effective July 1, 2021] Registry identification card not required to raise defense.

A person is not required to possess a registry identification card to raise the affirmative defense set forth in § 34-20G-51. **Why not? A prescription would be required for a defense to the possession of any other drug.**

34-20G-54.[Effective July 1, 2021] Person using cannabis for medical purpose not subject to discipline or forfeiture.

If a person demonstrates the person's medical purpose for using cannabis pursuant to this chapter, except as provided in § 34-20G-18, the person is not subject to the following for the person's use of cannabis for medical purposes:

- (1) Disciplinary action by an occupational or professional licensing board or bureau; or
- (2) Forfeiture of any interest in or right to any property other than cannabis. **There is a great deal short of negligence (which is the standard stated previously) that any licensing board may take action.**

34-20G-55.[Effective July 1, 2021] Application for medical cannabis establishment--Contents and conditions--Time for registration.

Not later than ninety days after receiving an application for a medical cannabis establishment, the department shall register the prospective medical cannabis establishment and issue a registration certificate and a random ten-digit alphanumeric identification number if all of the following conditions are satisfied:

- (1) The prospective medical cannabis establishment has submitted all of the following:
 - (a) The application fee;
 - (b) An application, including:
 - (i) The legal name of the prospective medical cannabis establishment;
 - (ii) The physical address of the prospective medical cannabis establishment that is not within one thousand feet of a public or private school existing before the date of the medical cannabis establishment application;
 - (iii) The name and date of birth of each principal officer and board member of the proposed medical cannabis establishment; and
 - (iv) Any additional information requested by the department;
 - (c) Operating procedures consistent with rules for oversight of the proposed medical cannabis establishment, including procedures to ensure accurate record keeping and adequate security measures;
 - (d) If the city or county where the proposed medical cannabis establishment would be located has enacted zoning restrictions, a sworn statement certifying that the proposed medical cannabis establishment does not violate the restrictions;
 - (e) If the city or county where the proposed medical cannabis establishment requires a local registration, license, or permit, a copy of the registration, license, or permit;
- (2) None of the principal officers or board members has served as a principal officer or board member for a medical cannabis establishment that has had its registration certificate revoked; **They can however, have been convicted of fraud, perjury, distribution of controlled substances, and any of a hundred other offenses.**
- (3) None of the principal officers or board members is under twenty-one years of age; and
- (4) At least one principal officer is a resident of this state.

34-20G-58.[Effective July 1, 2021] Local government ordinances governing medical cannabis establishments.

A local government may enact an ordinance not in conflict with this chapter, governing the time, place, manner, and number of medical cannabis establishments in the locality. A local government may establish civil penalties for violation of an ordinance governing the time, place, and manner of a medical cannabis establishment that may operate in the locality. **But no criminal penalties, which would make violations less important than a speeding ticket.**

34-20G-61.[Effective July 1, 2021] Criminal background check of medical cannabis establishment officers, employees, and volunteers.

Each medical cannabis establishment shall conduct a background check into the criminal history of each person seeking to become a principal officer, board member, agent, volunteer, or employee before the person begins working at the medical cannabis establishment.

How do they conduct a “criminal” background check and what is done with the information from the background check?

34-20G-62.[Effective July 1, 2021] Employment restrictions on medical cannabis establishments.

A medical cannabis establishment may not employ any person who:

- (1) Was convicted of a disqualifying felony offense; or **Limited to violent felonies and can vary from state to state as to what is a violent felony.**
- (2) Is under twenty-one years of age.

34-20G-65.[Effective July 1, 2021] Cultivation, harvesting, manufacturing, and packaging of cannabis.

All cultivation, harvesting, manufacturing and packaging of cannabis shall take place in a secure facility at a physical address provided to the department during the registration process. The secure facility may only be accessed by agents of the medical cannabis establishment, emergency personnel, and adults who are twenty-one years of age and older and who are accompanied by a medical cannabis establishment agent. **But individuals can???**

34-20G-69.[Effective July 1, 2021] Inspection of medical cannabis establishments.

A medical cannabis establishment is subject to inspection by the department during business hours. **Define “business hours”**

34-20G-70.[Effective July 1, 2021] Conditions for dispensing cannabis.

Before cannabis may be dispensed to a cardholder or nonresident cardholder, a dispensary agent:

- (1) Shall make a diligent effort to verify that the registry identification card or registration presented to the dispensary is valid; **“Diligent” means what...try real hard??**
- (2) Shall make a diligent effort to verify that the person presenting the documentation is the person identified on the document presented to the dispensary agent;
- (3) May not dispense an amount of cannabis to a person that would cause the person to possess more than the allowable amount of cannabis; and
- (4) Shall make a diligent effort to verify that the dispensary is the current dispensary that was designated by the cardholder or nonresident cardholder. **Same comment as above**

34-20G-71.[Effective July 1, 2021] Limitations on amount of cannabis dispensed.

A dispensary may not dispense more than three ounces of cannabis to a nonresident cardholder or a registered qualifying patient, directly or via a designated caregiver, in any fourteen-day period. A dispensary shall ensure compliance with the limitation under this section by maintaining internal, confidential records that include records specifying how much cannabis is dispensed to a nonresident cardholder or registered qualifying patient and whether it is dispensed directly to a registered qualifying patient or to the designated caregiver. **Limit to residents of SD. SD has an established prescription registrar to prevent abuse for prescription drugs. Shouldn't marijuana be treated the same if it is a prescription and be included in the State registry?**

34-20G-72.[Effective July 1, 2021] Promulgation of rules--Violation of required or prohibited action as misdemeanor.

Not later than October 29, 2021, the department shall promulgate rules pursuant to chapter 1-26:

- (1) Governing the manner in which the department shall consider petitions from the public to add a debilitating medical condition or treatment to the list of debilitating medical conditions as defined by this chapter, including public notice of and an opportunity to comment in public hearings on the petitions;
- (2) Establishing the form and content of registration and renewal applications submitted under this chapter;
- (3) Establishing a system to numerically score competing medical cannabis establishment applicants, in cases where more applicants apply than are allowed by the local government, that includes analysis of:
 - (a) The preference of the local government;
 - (b) In the case of dispensaries, the suitability of the proposed location and its accessibility for patients;
 - (c) The character, veracity, background, qualifications, and relevant experience of principal officers and board members; and
 - (d) The business plan proposed by the applicant, that in the case of a cultivation facility or dispensary shall include the ability to maintain an adequate supply of cannabis, plans to ensure safety and security of patrons and the community, procedures to be used to prevent diversion, and any plan for making cannabis available to low-income registered qualifying patients;
- (4) Governing the manner in which the department shall consider applications for and renewals of registry identification cards, that may include creating a standardized written certification form;
- (5) Governing medical cannabis establishments to ensure the health and safety of qualifying patients and prevent diversion and theft without imposing an undue burden or compromising the confidentiality of a cardholder, including: **What about undue burden on communities and non-marijuana users?**
 - (a) Oversight requirements;
 - (b) Record-keeping requirements;
 - (c) Security requirements, including lighting, physical security, and alarm requirements;

- (d) Health and safety regulations, including restrictions on the use of pesticides that are injurious to human health;
 - (e) Standards for the manufacture of cannabis products and both the indoor and outdoor cultivation of cannabis by a cultivation facility;
 - (f) Requirements for the transportation and storage of cannabis by a medical cannabis establishment;
 - (g) Employment and training requirements, including requiring that each medical cannabis establishment create an identification badge for each agent;
 - (h) Standards for the safe manufacture of cannabis products, including extracts and concentrates;
 - (i) Restrictions on the advertising, signage, and display of medical cannabis, provided that the restrictions may not prevent appropriate signs on the property of a dispensary, listings in business directories including phone books, listings in marijuana-related or medical publications, or the sponsorship of health or not-for-profit charity or advocacy events;
 - (j) Requirements and procedures for the safe and accurate packaging and labeling of medical cannabis; and
 - (k) Certification standards for testing facilities, including requirements for equipment and qualifications for personnel;
- (6) Establishing procedures for suspending or terminating the registration certificates or registry identification cards of cardholders and medical cannabis establishments that commit multiple or serious violations of this chapter; **“Serious means what”? “Multiple” means what?**
- (7) Establishing labeling requirements for cannabis and cannabis products, including requiring cannabis product labels to include the following:
- (a) The length of time it typically takes for a product to take effect;
 - (b) Disclosing ingredients and possible allergens;
 - (c) A nutritional fact panel; and
 - (d) Requiring that edible cannabis products be clearly identifiable, when practicable, with a standard symbol indicating that it contains cannabis; **No requirement that an establishment know or disclose the purity of the substances, so people have no idea as to how much “medicine” they are taking.**
- (8) Establishing procedures for the registration of nonresident cardholders and the cardholder's designation of no more than two dispensaries, which shall require the submission of:
- (a) A practitioner's statement confirming that the patient has a debilitating medical condition; and
 - (b) Documentation demonstrating that the nonresident cardholder is allowed to possess cannabis or cannabis preparations in the jurisdiction where the nonresident cardholder resides; **In other words if no rules in their home state then there are no rules that apply here.**
- (9) Establishing the amount of cannabis products, including the amount of concentrated cannabis, each cardholder and nonresident cardholder may possess; and
- (10) Establishing reasonable application and renewal fees for registry identification cards and registration certificates, according to the following:

- (a) Application fees for medical cannabis establishments may not exceed five thousand dollars, with this upper limit adjusted annually for inflation; **Should be up to local government to decide.**
- (b) The total fees collected shall generate revenues sufficient to offset all expenses of implementing and administering this chapter; **How do you cap (set) the fees for what is an unknown expense?**
- (c) A sliding scale of patient application and renewal fees based upon a qualifying patient's household income; **Who will investigate this and sort it out?**
- (d) The fees charged to qualifying patients, nonresident cardholders, and caregivers shall be no greater than the costs of processing the application and issuing a registry identification card or registration; and
- (e) The department may accept donations from private sources to reduce application and renewal fees.

A violation of a required or prohibited action under any rule authorized by this section is a Class 2 misdemeanor. **Most every violation in IM 26 is either a civil penalty or a class 2 misdemeanor. Authors were careful to not give it teeth for enforcement.**

34-20G-73.[Effective July 1, 2021] Civil penalty for failure to provide required notice.

A cardholder or medical cannabis establishment who fails to provide a notice required by this chapter is subject to a civil penalty of no more than one hundred fifty dollars. Any civil penalty collected shall be deposited in the state general fund. **Not much of a penalty, particularly in terms of the potential revenue generated from marijuana sales.**

34-20G-76.[Effective July 1, 2021] False statement to law enforcement official about medical use of cannabis as misdemeanor.

A person who intentionally makes a false statement to a law enforcement official about any fact or circumstance relating to the medical use of cannabis to avoid arrest or prosecution is guilty of a Class 2 misdemeanor. The penalty is in addition to any other penalty that may apply for making a false statement or for the possession, cultivation, or sale of cannabis not protected by this chapter. If a person convicted of violating this section is a cardholder, the person is disqualified from being a cardholder under this chapter. **Currently in SD law it is a class 1 misdemeanor for a person to give a law enforcement officer a false name.**

34-20G-80.[Effective July 1, 2021] Suspension or revocation of medical cannabis establishment registration certificate.

The department may on its own motion or on complaint, after investigation and opportunity for a public hearing at which the medical cannabis establishment has been afforded an opportunity to be heard, suspend or revoke a registration certificate for multiple negligent or knowing violations or for a serious and knowing violation by the registrant or any of its agents of this chapter. **Define “multiple” “negligent” and “serious” Again marijuana establishments are being treated different from other businesses and given a “public hearing”**

34-20G-82.[Effective July 1, 2021] Permitted and prohibited conduct during suspension.

A medical cannabis establishment may continue to possess cannabis during a suspension, but it may not dispense, transfer, or sell cannabis. A cultivation facility may continue to cultivate and possess cannabis plants during a suspension, but it may not dispense, transfer, or sell cannabis. **You get to keep your marijuana even while suspended?**

34-20G-84.[Effective July 1, 2021] Revocation of registry identification card for multiple or serious violations.

The department may revoke the registry identification card of any cardholder who knowingly commits multiple unintentional violations or a serious knowing violation of this chapter. **Define multiple and serious.**

34-20G-86.[Effective July 1, 2021] Confidential data.

Data in a registration application and supporting data submitted by a qualifying patient, designated caregiver, nonresident cardholder or medical cannabis establishment, including data on designated caregiver or practitioner, is private data that is confidential. **Who can the data be shared with, if anyone? Is the State entitled to see the data?**

34-20G-89.[Effective July 1, 2021] Restrictions on data maintained by medical cannabis establishments.

Any information kept or maintained by a medical cannabis establishment may only identify a cardholder by registry identification number and may not contain names or other personal identifying information. **But patient has to prove identity. How does the establishment prove the identify?**

34-20G-92.[Effective July 1, 2021] Oversight committee membership.

The Executive Board of the Legislative Research Council shall appoint an oversight committee comprised of: one member of the House of Representatives, one member of the Senate, one Department of Criminal Investigation agent, one staff member from the Office of the Attorney General, two representatives of law enforcement, one representative from the department, one practitioner with experience in medical cannabis issues, one nurse, one board member or principal officer of a cannabis testing facility, one person with experience in policy development or implementation in the field of medical cannabis, and three qualifying patients. **Department of Criminal Investigation should be Division of Criminal Investigation.**

34-20G-93.[Effective July 1, 2021] Oversight committee duties.

The oversight committee shall meet at least two times per year for the purpose of evaluating and making recommendations to the Legislature and the department regarding:

- (1) The ability of qualifying patients in all areas of the state to obtain timely access to high-quality medical cannabis;
- (2) The effectiveness of the dispensaries and cultivation facilities, individually and together, in serving the needs of qualifying patients, including the provision of educational and support services by dispensaries, the reasonableness of their prices, whether they are generating any complaints or security problems, and the sufficiency of the number operating to serve the state's registered qualifying patients;
- (3) The effectiveness of the cannabis testing facilities, including whether a sufficient number are operating;
- (4) The sufficiency of the regulatory and security safeguards contained in this chapter and adopted by the department to ensure that access to and use of cannabis cultivated is provided only to cardholders;
- (5) Any recommended additions or revisions to the department regulations or this chapter, including relating to security, safe handling, labeling, and nomenclature; and
- (6) Any research studies regarding health effects of medical cannabis for patients.

Is this list exclusive? Shouldn't the oversight committee have broader authority if they deem necessary?

34-20G-95.[Effective July 1, 2021] Administration of medical cannabis to students.

The Department of Education and the department shall establish policy to allow students who are medical cannabis cardholders to have their medicine administered in school in accordance with their physician's recommendation. This policy shall be implemented the first day of the new school year following passage of this chapter. The departments shall implement substantively identical provisions to Colorado Revised Statute 22-1-119.3 as of January 1, 2019.

School districts have protocols for dispensing medicine, why special treatment for marijuana?