
Medical & Cards Working Group Report

Representative Taylor Rehfeldt, Chair

Members: Representative Linda Duba, and Senators Bryan Breitling and VJ Smith

Please note: The Legislative Research Council has not reviewed the statutory language provided in this document for style and form.

Recommendation 1

Repeal SDCL 34-20G-1 subdivision (23) regarding written certification definition.

Please note: Recommendation provided by SDAHO.

34-20G-1. Definitions.

Terms used in this chapter mean:

(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~~ patient has a qualifying 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.

Recommendation 2

Revise SDCL 34-20G-1 subdivision (20) to include physician assistant and nurse practitioner to the definition of practitioner.

34-20G-1. Definitions.

Terms used in this chapter mean:

(20) "Practitioner," a physician, physician assistant or nurse practitioner, who is licensed in South Dakota 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 the patient's residence;~~

Recommendation 3

Repeal SDCL 34-20G-12 regarding the sale or donation of cannabis seeds.

34-20G-12. 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.~~

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021.

Recommendation 4

Revise SDCL 34-20G-34 regarding the grounds of denial or nonrenewal of a registry identification card.

34-20G-34. Grounds for denial or nonrenewal of qualifying patient registry identification card. 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) Does not meet the requirement to obtain a registry identification card as defined in _____;
- ~~(2)~~(3) Previously had a registry identification card revoked; or
- ~~(3)~~(4) Provided false information.

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021.

Recommendation 5

Revise SDCL 34-20G-36 regarding the notice for denial of registry identification card, this amendment would allow the department to revoke the card.

Please note: No judicial review for the revocation of a registry identification card. Under 34-20G-85, only the revocation of a medical cannabis establishment license is a final decision subject to judicial review. The same type of review is not provided to the revocation of a registry identification card.

34-20G-36. Notice of reason for denial.

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

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021.

Recommendation 6

Repeal SDCL 34-20G-38 regarding temporary qualifying patient registry identification card.

34-20G-38. 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.~~

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021.

Recommendation 7

Repeal SDCL 34-20G-39 regarding the temporary designated caregiver registry card.

34-20G-39. 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.~~

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021.

Recommendation 8

Repeal SDCL 34-20G-40 regarding the use of a written certification as a temporary registry identification card until twenty-five days after the department makes applications available.

34-20G-40. Availability of applications--Written certification as temporary registry identification card.

~~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.~~

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021.

Recommendation 9

Repeal SDCL 34-20G-41 regarding temporary cards and the ability for patients to purchase cannabis before the department has made applications available.

34-20G-41. 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.~~

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021.

Recommendation 10

Revise SDCL 34-20G-42 regarding contents of registry identification cards.

34-20G-42. Contents of registry identification cards.

A patient's registry identification card shall contain all of the following:

- (1) The name, address, date of birth, and South Dakota driver's license or South Dakota identification card number of the cardholder patient;
- (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;
- (7) A photograph of the cardholder; and
- (8) The phone number or website address where the card can be verified.

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021.

Recommendation 11

Revise SDCL 34-20G-43 regarding the expiration of a registry identification card and allow the practitioner to specify expiration date.

34-20G-43. Expiration of registry identification card.

A patient's registry identification card expires on the date noted by the practitioner on the patient's medical card, but not to exceed 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.~~

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021.

Recommendation 12

Revise SDCL 34-20G-44 regarding the confidential list maintained by the department.

Please note: This issue is not addressed in the proposed DOH rules.

34-20G-44. Confidential list of persons issued registry identification cards.

The department shall maintain a confidential list of any person to whom the department has issued a registry identification card and the addresses, phone number, and registry identification number of each person. The list may not be combined or linked in any manner with any other list or database, nor may it be used for any purpose not provided for in this chapter. The registry must also contain the name, address, and phone number of the practice location of the patient's practitioner. The registry must also contain the name, address, and phone number of the patient's parent or legal guardian if the patient is a minor.

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021.

Recommendation 13

Revise SDCL 34-20G-46 regarding the required notifications to the department in the event the patient's practitioner changes.

34-20G-46. Required notifications to department.

The following notifications are required:

- (1) A registered qualifying patient shall notify the department of any change in the applicant's name, ~~or~~ address, practitioner, or if the patient ceases to have a debilitating medical condition, within ten days of the change;
- (2) A registered designated caregiver shall notify the department of any change in the caregiver's name or address, or if the caregiver becomes aware the qualifying patient passed away, within ten days of the change;
- (3) Before a registered qualifying patient changes a designated caregiver, the patient shall notify the department;
- (4) If a registered qualifying patient changes a preference as to who may cultivate cannabis for the patient, the patient shall notify the department;
- (5) If a cardholder loses a registry identification card, the cardholder shall notify the department within ten days of becoming aware the card has been lost; and
- (6) Before a registered qualifying patient changes a designated dispensary, the patient shall notify the department.

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021.

Recommendation 14

If recommendation is approved, language will be drafted by LRC staff to require the patient to immediately dispose of cannabis if the patient no longer qualifies or ceases to suffer from a debilitating medical condition.

Recommendation 15

Revise SDCL 34-20G-83 regarding the revocation of a registry identification card under certain circumstances.

34-20G-83. Revocation of registry identification card for cannabis sale to unauthorized person-- Disqualification.

The department shall immediately revoke the registry identification card of any cardholder who sells cannabis or otherwise transfers cannabis to any person or entity. ~~a person who is not allowed to possess cannabis for medical purposes under this chapter,~~ and the cardholder is disqualified from being a cardholder under this chapter.

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021.

Recommendation 16

Revise SDCL 34-20G-92 regarding amending the current language to reflect the title of the Division of Criminal Investigation.

34-20G-92. 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~~ Division 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.

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021.

Topics for Continued Discussion:

1. Nonresident Cardholder
2. Caregiver Model