
Public Safety Working Group Report

Representative Caleb Finck, Chair

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

Recommendation 1

Add the definition of "under the influence of cannabis" to SDCL 34-20G-1.

Under the Influence of cannabis means a registered qualifying patient showing signs of intoxication including but not limited to impaired motor skills, incoordination, difficulty walking, impaired concentration, and memory loss; or a blood content of more than 5 nanograms of active tetrahydrocannabinol per milliliter of blood in serum.

Recommendation 2

Revise SDCL 34-20G-2 regarding the allowable use of cannabis by a cardholder.

34-20G-2. 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 the medical use of cannabis in accordance with this chapter. ~~(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.~~

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

Recommendation 3

Repeal SDCL 34-20G-4 regarding the presumption that a patient or designated caregiver is engaged in medical cannabis in accordance with chapter 34-20G.

34-20G-4. Presumption that qualifying patient or designated caregiver is engaged in the medical use of cannabis--Presumption rebuttable.

~~There is a presumption that a qualifying patient or designated caregiver is engaged in the medical use of cannabis in accordance with this chapter 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 under this chapter.~~

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

Recommendation 4

Revise SDCL 34-20G-5 regarding practitioners' protections for certain actions related to written certification.

34-20G-5. Practitioners not subject to arrest, prosecution, penalty, or discipline for certain conduct.

No practitioner is subject to arrest, prosecution, or penalty of any kind, 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, ~~for: 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. Nothing in this chapter 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 for:~~

~~(1) Advising a patient whom the practitioner has diagnosed as having a debilitating medical condition about the risks and benefits of medical use of cannabis or that the patient might benefit from the medical use of cannabis, if the advice is given in the context of a bona fide practitioner-patient relationship and is based upon the practitioner's contemporaneous assessment of:~~

~~(a) The patient's medical history and current medical condition; and~~

~~(b) Other approved medications and treatments that might provide relief and that are reasonably available to the patient and that can be tolerated by the patient; or~~

~~(2) Providing a patient with a written statement in an application for registration. Nothing in this section prevents a practitioner from being sanctioned for issuing a statement to a patient with whom the practitioner does not have a bona fide practitioner-patient relationship, failing to properly evaluate a patient's medical condition, or otherwise violating a standard of care. Nothing in this section prevents the imposition of any civil, criminal or other penalty upon a practitioner due to harms suffered by a patient as a result of violating a standard of care.~~

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

Recommendation 5

Repeal SDCL 34-20G-6 regarding attorneys not subject to discipline for providing legal assistance.

34-20G-6. Attorneys not subject to discipline for certain conduct.

~~No attorney is 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 not subject to criminal penalties under law of this state.~~

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

Recommendation 6

Repeal SDCL 34-20G-8 regarding dispensaries and agents to not be subject to any prosecution, search, or inspection under this chapter.

34-20G-8. 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:~~

- ~~(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.~~

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

Recommendation 7

Repeal SDCL 34-20G-9 regarding cultivation facilities and agents to not be subject to any prosecution, search, or inspection under this chapter.

34-20G-9. 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:~~

- ~~(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.~~

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

Recommendation 8

Repeal SDCL 34-20G-10 regarding manufacturing facilities and agents to not be subject to any prosecution, search, or inspection under this chapter.

34-20G-10. 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:~~

- ~~(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.~~

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

Recommendation 9

Repeal SDCL 34-20G-11 regarding testing facilities and agents to not be subject to any prosecution, search, or inspection under this chapter.

34-20G-11. 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:~~

- ~~(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.~~

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

Recommendation 10

Repeal SDCL 34-20G-13 regarding the prohibition to seize any cannabis or any cannabis related property.

34-20G-13. 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 with this chapter.~~

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

Recommendation 11

Repeal SDCL 34-20G-16 regarding the enforcement of the federal Controlled Substances Act by state law enforcement officers.

34-20G-16. 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.~~

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

Recommendation 12

Repeal SDCL 34-20G-17 regarding contracts entered into by persons in engaged in activities under this chapter.

34-20G-17. 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.~~

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

Recommendation 13

Revise SDCL 34-20G-18 regarding any unauthorized conduct by persons including possession on certain locations or engaging in smoking or vaping of cannabis as a minor and add a definition of "safety-sensitive job" to SDCL 34-20G-1 pursuant to these revisions.

34-20G-18. 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;
- (2) Possessing cannabis or otherwise engaging in the medical use of cannabis: ~~in any correctional facility~~
 - (a) ~~On public or private school grounds unless authorized pursuant to 34-20G-95.~~
 - (b) ~~On a school bus or other school vehicle unless authorized pursuant to 34-20G-95.;~~
 - (c) ~~On a school-sanctioned trip unless authorized pursuant to 34-20G-95.;~~
 - (d) ~~On a drug-free zone.~~
 - (e) ~~On the grounds of any correctional facility;~~
- (3) Smoking ~~or vaping~~ cannabis:
 - (a) ~~If a minor;~~
 - (b) ~~On any form of public transportation; or~~
 - (c) ~~In any public place or any place that is open to the public;~~
- (4) ~~Performing any safety-sensitive job as defined in _____ while under the influence of cannabis. 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;~~
- (5) ~~Selling, trading, exchanging or giving away medical cannabis per 34-20G-75.~~

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

DEFINITION OF SAFETY SENSITIVE: "Safety-sensitive" means any job that includes tasks or duties that the employer reasonably believes could affect the safety and health of the employee performing the task or others including, but not limited to, any of the following:

a. The handling, packaging, processing, storage, disposal or transport of hazardous materials;

b. The operation of a motor vehicle, aircraft, train, motorboat, or other vehicle, equipment, machinery or power tools;

c. Working on transportation property, equipment, or facilities.

d. Repairing, maintaining or monitoring the performance or operation of any equipment, machinery or manufacturing process, the malfunction or disruption of which could result in injury or property damage;

e. Public safety first responders, including but not limited to law enforcement officers, paramedics, EMT's, corrections personnel and firefighters;

f. The operation, maintenance or oversight of critical services and infrastructure including, but not limited to, electric, gas, and water utilities, power generation or distribution;

g. The extraction, compression, processing, manufacturing, handling, packaging, storage, disposal, treatment or transport of potentially volatile, flammable, combustible materials, elements, chemicals or any other highly regulated component;

h. Dispensing pharmaceuticals;

i. Carrying a firearm, or

j. The supervision or care of children, medical patients, or vulnerable persons.

k. A safety sensitive position pursuant to federal regulations governing drug and alcohol testing adopted by the United State Department of Transportation or any other safety sensitive rules, guidelines, or regulations adopted by any other federal agency.

Recommendation 14

Revise SDCL 34-20G-19 to allow landlords to adopt reasonable restrictions of medical cannabis use by residents.

34-20G-19. 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.

However, a landlord may adopt reasonable restrictions on the use of medical cannabis by a cardholder who resides at the property. Nothing in this section requires the landlord to adopt such restrictions.

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

Recommendation 15

Revise SDCL 34-20G-21 to clarify that chapter 34-20G does not affect custody or visitation rights.

34-20G-21. 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.~~ Nothing in this chapter shall supersede or otherwise affect custody decisions, visitation rights or parenting time based upon the best interests of the child.

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

Recommendation 16

Revise SDCL 34-20G-24 regarding cannabis use in the workplace and if employees are considered under the influence of cannabis.

34-20G-24. Ingestion of cannabis at workplace--Working under the influence of cannabis.

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.~~

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

Recommendation 17

New section language to clarify the rights of employers under chapter 34-20G.

New Section: Nothing in this chapter shall:

(1) Require any employer to permit, accommodate, or allow the use, possession, transfer, display, or transportation of cannabis in the workplace, or to modify any job or working conditions of any employee who engages in the use of medical cannabis or for any reason seeks to engage in the use of medical cannabis.

(2) Prohibit an employer from implementing policies restricting the use of cannabis by employees in the workplace.

(3) Prohibit or limit an employer from establishing and enforcing a zero-tolerance drug policy or a drug-free workplace by use of a drug testing policy in accordance with _____ or any other procedures provided by federal statutes, federal regulations, or orders issued pursuant to federal law.

(4) Interfere with, impair, or impede, any federal restrictions on employment, including, but not limited to, regulations adopted by the United States Department of Transportation in Title 49, Code of Federal Regulations.

(5) Affect, alter, or otherwise impact an employer's right to deny, or establish legal defenses to, the payment of workers' compensation benefits to an employee on the basis of a positive drug test or refusal to submit to or cooperate with a drug test.

(6) Limit the ability of the state or a local government to prohibit or restrict any conduct otherwise permitted under this chapter within a building owned, leased, or occupied by the state or the local government.

Recommendation 18

Revise SDCL 34-20G-27 regarding the reimbursements allowed for costs associated with medical cannabis use.

34-20G-27. Cost reimbursement, permission to smoke cannabis on property, and permission to cultivate on rental property not required.

Nothing in this chapter requires:

- (1) A government medical assistance program or private health insurer, workers' compensation carrier, or self-insured employer providing workers' compensation benefits 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.

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

Recommendation 19

Revise SDCL 34-20G-51 to remove language regarding certain evidence that may be used as a defense to any prosecution involving cannabis.

34-20G-51. 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;~~

~~(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.~~

(1) The patient was registered under this chapter; and

(2) The conduct underlying the alleged offense complied with this chapter; and

(3) If the defendant is the caregiver, the caregiver was in physical possession of the caregiver registry identification card at the time of the alleged offense.

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

Recommendation 20

Repeal SDCL 34-20G-53 regarding allowing all persons to raise an affirmative defense not just those persons with a registry identification card.

34-20G-53. 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.~~

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

Recommendation 21

Revise SDCL 34-20G-54 regarding the protections for legal use of cannabis under this chapter.

34-20G-54. Person using cannabis for medical purpose not subject to discipline or forfeiture.

If a person demonstrates the person's medical certification 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.~~

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

Recommendation 22

New section language to clarify that no persons may divert cannabis from registered persons under chapter 34-20G.

New Section: An individual may not distribute, possess, manufacture, or use medical cannabis or a medical cannabis product that has been diverted from a registered qualified patient, or a licensed cultivator, processor, secure transporter, dispensary, or a state testing laboratory. An individual who violates this section is guilty of a Class _____ felony.

Recommendation 23

Revise SDCL 34-20G-72 regarding the promulgation of rules for packaging of medical cannabis.

34-20G-72. 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:

- (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:
- (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, distribution, and tracking of medical cannabis; and

- (k) Certification standards for testing facilities, including requirements for equipment and qualifications for personnel;

Recommendation 24

Revise SDCL 43-20G-73 regarding the civil penalty to a medical establishment for violations of this chapter or rules promulgated under this chapter and imposed by the department.

34-20G-73. 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. The department may impose a civil penalty against a medical cannabis establishment that may not exceed one thousand dollars for each violation of this chapter or rule promulgated pursuant to this chapter where no penalty has been specified. This penalty is in addition to any other applicable penalties in law. Any civil penalty collected pursuant to this section shall be deposited into the state general fund.~~

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

Recommendation 25

Revise SDCL 34-20G-75 regarding to the sale or transfer of cannabis to unauthorized individual by a cardholder.

34-20G-75. Intentional cannabis sale or transfer by cardholder to unauthorized person as felony. In addition to any other penalty under law, a cardholder or nonresident cardholder who intentionally sells or otherwise transfers cannabis ~~in exchange for anything of value to a person or entity other than a cardholder, a nonresident cardholder, or to a medical cannabis establishment or its agent~~ is guilty of a Class 6 felony.

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

Recommendation 26

Revise SDCL 34-20G-80 regarding the suspension or revocation of a medical cannabis establishment registration certificate for a good cause.

34-20G-80. 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 for good cause. For purposes of this section, good cause includes any of the following:~~

- ~~(1) Violates or fails to fulfill any of the requirements of this chapter or the rules adopted thereunder;~~
- ~~(2) Permits, aids, or abets the commission of any violation of state law at the manufacturer's location for cultivation, harvesting, manufacturing, packaging, and processing or at any site for distribution of medical cannabis;~~
- ~~(3) Performs any act contrary to the welfare of a patient; or~~
- ~~(4) Obtains, or attempts to obtain, a registration by fraudulent means or misrepresentation.~~

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

Recommendation 27

Revise SDCL 34-20G-86 regarding confidential data submitted to the department that is not considered public record.

34-20G-86. Confidential data.

Data in a registration application and supporting data submitted to the Department 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-not a public record open to public access, inspection, or copying under chapter 1-27. Records concerning registered manufacturers are a public record open to public access, inspection, or copying unless the record is a trade secret or security information under § 1-27-1.5.~~

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

Recommendation 28

Revise SDCL 34-20G-88 to delete the existing language and replace with language regarding the accessibility of information kept by the department under this chapter.

34-20G-88. Permitted disclosure of data maintained by department.

~~Data kept or maintained by the department may be disclosed solely for:~~

- ~~(1) The verification of a registration certificate or registry identification card pursuant to this chapter;~~
- ~~(2) Submission of the annual report required by this chapter;~~
- ~~(3) Notification of state or local law enforcement of an apparent criminal violation of this chapter;~~
- ~~(4) Notification of state and local law enforcement about falsified or fraudulent information submitted for the purpose of obtaining or renewing a registry identification card; or~~
- ~~(5) Notification of the South Dakota Board of Medical and Osteopathic Examiners if there is reason to believe that a practitioner provided a written certification and the department has reason to believe the practitioner otherwise violated the standard of care for evaluating a medical condition.~~

Information kept pursuant to _____ is confidential and is only accessible to:

- (1) Verify a registration certificate or registry identification card pursuant to this chapter;
- (2) Submit the annual report required by this chapter;
- (3) The South Dakota Board of Medical and Osteopathic Examiners if the board is seeking information from the central repository that is relevant to an investigation of an individual who holds a license issued by that board;
- (4) Any law enforcement or prosecutorial officials engaged in the enforcement of laws relating to the use of medical cannabis;
- (5) Any judicial authority under grand jury subpoena or court order or equivalent judicial process for investigation of criminal, civil, or administrative violations related to the use of medical cannabis; or
- (6) An authorized employee of the department during official duties.

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

Recommendation 29

New section language regarding certified annual audit submitted by a medical cannabis manufacturer.

New Section: A medical cannabis manufacturer shall submit the results of an annual certified financial audit to the department no later than July first of each year for the calendar year. The annual audit shall be conducted by an independent certified public accountant and the costs of the audit are the responsibility of the manufacturer. Results of the audit shall be provided to the manufacturer and the department. The department may also require another audit of the manufacturer by a certified public accountant chosen by the department with the costs of the audit paid by the manufacturer.

Recommendation 30

New section language regarding the department's authority for examination of medical cannabis manufacturers and the costs of any examination shall be paid by the manufacturer. The department shall promulgate rules regarding the examinations.

New Section: The department may examine the financial and business affairs, practices, and conditions of a manufacturer. The costs incurred by the department in conducting an examination shall be paid for by the manufacturer. When making an examination under this section, the department may retain attorneys, appraisers, independent economists, independent certified public accountants, or other professionals and specialists as designees. A certified public accountant retained by the department may not be the same certified public accountant providing the certified annual audit in § 34-20G-91.2. The department shall make a report of an examination conducted under this section and provide a copy to the manufacturer. The department shall post a copy of the report on the department's website. All working papers, recorded information, documents, and copies produced by, obtained by, or disclosed to the department or any other person in the course of an examination, other than the information contained in any department official report, are not a public record open to public access, inspection, or copying under chapter 1-27. The department shall promulgate rules concerning the nature and scope of an examination conducted under this section pursuant to chapter 1-26.

Recommendation 31

New section regarding the establishment web-based monitoring system for medical cannabis manufacturers.

New Section: The department shall establish a secure web-based monitoring system for manufacturers. The monitoring system shall allow a manufacturer to enter a registry identification number and verify the validity of the registration card, name of the cardholder, the current rate of use and dosage of medical cannabis prescribed to a patient, the tracking numbers of medical cannabis prescribed for a patient, and when a patient is due for a refill of medical cannabis. A manufacturer shall record the rate of use, current dosage, and tracking number of medical cannabis distributed to a patient using the monitoring system.

Recommendation 32

Revise SDCL 34-20G-93 regarding the oversight committee and the recommendations for revisions to the department regulations or chapter 34-20G.

34-20G-93. 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 employment, law enforcement, medical providers, review of medical complications and side-effects, security, safe handling, labeling, ~~and~~ nomenclature, and other recommendations; and
- (6) Any research studies regarding health effects of medical cannabis for patients.

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

Recommendation 33

Revise SDCL 34-20G-94 regarding the information included in the annual report to the Legislature.

34-20G-94. Annual report to the Legislature--Information excluded.

The department shall report annually to the Legislature on the number of applications for registry identification cards received, the number of qualifying patients and designated caregivers approved, the number of registry identification cards revoked, the number of each type of medical cannabis establishment registered, ~~and~~ the expenses incurred and revenues generated from the medical cannabis program, the number of patient cardholders by medical condition, patient demographics by age and sex, the number and specialty of providers providing certifications, number of cannabis establishments by type, the number of licensing violations determined by the department, impact on public safety, public health, and behavioral health services, and any other information the department believes would inform public officials how this chapter affects the public, as well as key take aways and recommendations. The department may not include identifying information on a qualifying patient, designated caregiver, or practitioner in the report.

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

Recommendation 34

Replace the existing language of SDCL 34-20G-95. New language regarding the prohibited use of medical cannabis on school grounds unless a school district adopts a policy permitting the use of medical cannabis.

34-20G-95. 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.~~

A public school student who is a medical marijuana cardholder is not permitted to use medical marijuana on school grounds, on a school bus, or at a school activity unless the school district adopts a policy permitting the use. Any adopted policy shall require that medical marijuana:

(1) may only be a nonsmokeable and nonvappable form;

(2) may be administered only by a parent or legal guardian;

(3) may not be administered in a manner that is disruptive to the educational environment or causes exposure to other students.

After the parent or legal guardian administers the medical marijuana, the parent or legal guardian shall remove any remaining medical marijuana from the grounds of the school, the school bus, or school sponsored event.

No school district may discipline a student who holds a valid recommendation for medical marijuana solely because the student requires medical marijuana in a nonsmokeable or nonvappable form as a reasonable accommodation necessary for the child to attend school

The act does not apply to a public school district if the school district loses federal funding as a result of implementing the act.

Should the school district develop policy to allow administration of medical marijuana, it shall post the policy on its website in a conspicuous place.

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