
Public Safety Working Group Report

REVISED (9/28/2021)

Representative Caleb Finck, Chair

Members: Representatives Carl Perry, Marli Wiese and Senator Jim Stalzer

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.

Revised language from the AG's office.

"Under the influence of cannabis means any abnormal mental or physical condition which is the result of consuming or indulging in any degree in cannabis, which tends to deprive a person of that clearness of intellect and control of himself that he would otherwise possess."

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 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 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 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 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 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

Recommendation 35

34-20G-##. Healthcare Facilities.

Health care facilities licensed under chapter 34-12, hospice providers licensed under chapter 34-12, adult foster care home, community living home or supervised living facilities licensed under chapter 34-12, assisted living center, facilities owned, controlled, managed, or under common control with hospitals licensed under chapter 34-12, facilities accredited under chapter 34-20A, and other health facilities licensed by the Department, may adopt restrictions on the use of medical cannabis by a cardholder who resides at, is actively receiving treatment or care, or is visiting the facility. The restrictions may include a provision that the facility will not store or maintain the cardholder's supply of medical cannabis, that the facility is not responsible for providing the medical cannabis for cardholders, and that medical cannabis be used only in a place specified by the facility.

Any employee or agent of a facility listed in this section is not subject to violations under this chapter for possession of medical cannabis while carrying out employment duties, including providing or supervising care to a cardholder, or distribution of medical cannabis to a cardholder who resides at or is actively receiving treatment or care at the facility with which the employee or agent is affiliated. Nothing in this section shall require the facilities to adopt such restrictions.