

MINUTES

Medical Marijuana Oversight Committee



Senator Erin Tobin, Chair
Representative Ernie Otten, Vice Chair

First Meeting, 2022 Interim
Thursday, July 14, 2022

Room 362 – State Capitol
Pierre, South Dakota

Senator Erin Tobin called the meeting to order at 9:00 a.m. in Room 362 of the State Capitol, Pierre.

A quorum was determined with the following members answering the roll call: Joan Adam, Christopher Dietrich (remote), Eric Grocott, Shawn Madison, Melissa Mentele (remote), Representative Taylor Rehfeldt (remote), Matthew Templar, Elizabeth Tiger (remote), Shon Van Hulzen, Bryan Walz; Representative Ernie Otten, Vice Chair; and Senator Erin Tobin, Chair. Excused: Brian Doherty.

Staff members present included Amanda Marsh, Principal Research Analyst; and Cindy Tryon, Administrative Specialist.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was webcast live. The archived webcast is available at the LRC website at sdlegislature.gov.

Opening Remarks

Senator Tobin welcomed everyone to the first Medical Marijuana Oversight Committee meeting and thanked the members for taking part in the committee. Senator Tobin listed the duties of the oversight committee as set in [SDCL 34-20G-93](#). The committee is to evaluate and make recommendations to the Legislature regarding the Medical Marijuana program.

Medical Cannabis Program Overview and Update

Ms. Lynne Valenti, Deputy Secretary and Division Director for Licensure and Accreditation, Department of Health (DOH), introduced **Mr. Geno Adams, Medical Cannabis Program Administrator**, and **Ms. Ali Tornow, Medical Cannabis Program Attorney**. Ms. Valenti said the Department of Revenue (DOR) has been an integral partner with DOH in getting the Medical Cannabis program operational.

Mr. Geno Adams gave a PowerPoint presentation, *Medical Cannabis Update* ([Document #1](#)). Mr. Adams reviewed the timeline, found on pages 4 through 5 of document #1, illustrating how the medical cannabis program was developed over an 18-month timeframe. Mr. Adams said DOH and DOR learned from other states' experiences how best to set up the program. Representatives from DOH and DOR visited North Dakota and Iowa to learn first-hand about their cannabis programs.

The DOH finalized the administrative rules for the medical marijuana program in October of 2021. The establishment portal was then opened in October of 2021, and the physician portal was made available in November of 2021. There were a few patient cards sent out in late November of 2021 and the first establishment certificates were issued in January of 2022. It can take 10 to 12 months for an establishment to be fully functional. The first harvest of plants was in June of this year. Mr. Adams said the law allows for home cultivation and there are a few patients taking advantage of this opportunity.

Mr. Adams went through the Overview pages of the presentation, found on pages 7 through 9 of document #1. The overview includes the list of debilitating medical conditions, types of practitioners who can certify patient qualification, and the establishment types. The overview includes bona-fide practitioner-patient relationship. The patient must have an in-person consultation with the practitioner. South Dakota does not allow online consultations as is allowed in some states.

Pages 10 through 11 of document #1 lists the groups the DOH has communicated with regarding the medical cannabis program. Mr. Adams said DOH has built some good relationships with people who have experience in this industry and these contacts are critical for the success of the program. Education is also a key aspect of the program and the DOH staff has done a lot to help people get through the process.

Mr. Adams said the state joined the Cannabis Regulators Association (CANNRA); an organization of government officials involved in cannabis regulation. The organization has a lot of available resources. DOH staff attended the CANNRA conference in Olympia, WA, which was invaluable.

The DOH PowerPoint presentation (document #1) includes charts and samples of various forms and webpages used by those involved in the medical cannabis program. Document #1 also includes detailed information on the seed to sale requirements which are tags that follow through the life cycle of a cannabis plant. Metrc is the company selected to oversee the seed to sale program. The company has been conducting training throughout the state and thus far has held in-person training sessions in Sioux Falls, Pierre, and Rapid City that have been well attended. Metrc also offers training online and has call centers available to answer questions regarding the seed to sale process.

Mr. Adams presented the program data found in document #1. The data includes the number of establishment applications received and the number of establishment applications still in review. The number of physicians who have thus far signed up to take part in the program is 116 and the total number of PAs and APRNs is eight.

The total number of medical marijuana patient cards applied for as of July 12, 2022, is 1,545. The graph showing the number of applications submitted for patient cards shows big increases for applications in May and June. These big increases are due to medical marijuana card clinics that sprung up in some areas of the state. These card clinics do meet the requirements of the law and are held in many states. The decrease in applications this month is mostly due to people knowing there are no dispensaries open, and there is no access yet to medical marijuana.

Mr. Adams said the State Health Lab is certified to provide required medical cannabis testing. Thus far, the Cannabis Chem Lab located in Flandreau is the only private lab certified in the state. Cannabis Chem Lab is completing its facility and will be operational in the near future. Once any certified private lab is operational in the state, the State Health Lab will only be providing confirmatory testing and testing for law enforcement. Any additional testing will be done by the certified private labs.

Mr. Adams said DOH hired an inspection coordinator. DOH works with the Department of Public Safety (DPS) for other DOH inspections, and the plan is to use those same inspectors for the medical cannabis program. A Medical Cannabis Facility Inspection Guide is being prepared by DOH. A standard symbol will be required on all packaging. There is an effort to have the same packaging symbol used across the country, so South Dakota will be using the packaging symbol used in many other states.

The medical cannabis section of the codified laws, SDCL 34-20G-72-(10)(b), states "The total fees collected shall generate revenues sufficient to offset all expenses of implementing and administering this chapter;". Mr. Adams reviewed the current fees set by DOH. The state establishment fee is \$5,000 per license and local fees are set by the jurisdictions. The establishment license must be renewed annually. The annual fee for both resident and

non-resident patient cards is \$75, with a low-income patient card annual fee of \$20. The first caregiver is free but additional caregivers are \$20 each. The home cultivation application fee is \$20.

Mr. Adams went through the spending and revenue pages of document #1. The cannabis program expenditure for FY21 was \$46,480 and for FY22 it was \$1,170,997. There was no revenue for FY21 and the revenue for FY22 was \$1,038,804. The program is to be self-sustaining so some adjustments will need to be made to meet that requirement.

Mr. Adams said a consultant used information from states with comparable medical cannabis programs and provided some projections. The report projects 109 cultivation certifications, 98 manufacturing certifications, and 272 dispensaries. The report also projects 6,000 patient cards after three years. DOH will use these projections when setting the budget for the medical cannabis program.

Mr. Adams said the qualifying medical conditions for using medical cannabis are set in administrative rules. A South Dakota resident can, however, petition to have their medical condition considered for approval if it is not included in the qualifying conditions. The DOH has had one petition submitted for consideration and the petition is currently under review. The decision on any such petition must be made by DOH within 180 days.

Mr. Adams said the laws and rules regulating medical cannabis will be under constant review and changes will be proposed as needed, either through legislation or the administrative rules process.

Senator Tobin opened the meeting to committee questions regarding the DOH presentation.

Mr. Grocott asked if physician residents are able to certify patients for medical cannabis. Ms. Valenti said the requirement is the certification must be done by a licensed practitioner. Dr. Dietrich said this would most likely be up to the program directors for the residents, as their licenses are restricted. Mr. Grocott said residents do have prescriptive authority, but there may be issues if the attending does not want the resident to do the certification.

Ms. Tiger asked if the physician uses the 90-day trial period for a patient, does the patient have to pay the patient card fee again if the physician extends certification after the 90 days. Mr. Adams said this would be considered a new patient card and the fee would most likely have to be paid again. Ms. Tiger said many patients are on limited incomes, and DOH should consider not charging an additional fee if the certification is extended after the 90 days.

Senator Tobin asked about the process used when a patient petitions to add a new qualifying condition to the list. Ms. Valenti said DOH will first ensure the requirements of the application are met and then will go through the administrative rules process to bring the petition forward.

Ms. Mentele said the current rules allow for a 180-day turnaround time for petitions submitted for adding a qualifying condition. Ms. Mentele asked if the amount of time for consideration of the petition can be reduced as these patients are in need of help. Ms. Valenti said the law sets the process for adding qualifying conditions and DOH must follow the administrative rules process, but there will be situations where the response is sooner than the allowed 180 days. Ms. Valenti explained that DOH held teletown hall meetings before submitting the proposed rules and heard from several people wanting certain conditions added to the list. DOH did put these suggested conditions in the proposed rules, but the Interim Rules Review Committee decided DOH does not have the authority to add conditions in that manner.

Senator Tobin asked about the card clinics and the law requiring a "bona fide practitioner-patient relationship." Mr. Adams said DOH does not have the ability to keep tabs on the practitioner-patient relationship. The card clinics did certify up to 60 patients a day. The card clinic practice is being discussed and will continue to be addressed as the medical cannabis program moves forward.

Public Testimony

Ms. Deb Peters, Cannabis Chem Lab, Flandreau, said Cannabis Chem Lab has been preparing to open since March. The lab received final approval from the state on June 28, and will be open for business within a week. The lab works with the Flandreau Santee Sioux Tribe and is at just 1% capacity at this time. The plan is to quadruple the lab space by October. The company is also preparing to open a lab in Rapid City which will add another 50% capacity. The state requires certain testing capabilities with varying deadlines and Cannabis Chem Lab plans to meet all testing requirements for July of 2023 by the end of this year.

Mr. Jeremiah M. Murphy, Cannabis Industry Association of South Dakota (CIASD), Rapid City, said the medical cannabis program will be deemed a success when a person with a debilitating medical condition can walk into a dispensary and purchase the product needed to give them relief. The process to get there is monumental and may seem frustrating at times, but alcohol has been legal for 89 years and the state is constantly tweaking that system. There is a lot to be considered when regulating an adult, and possibly dangerous, product safely.

Mr. Murphy distributed a document explaining CIASD's suggested changes to the medical cannabis administrative rules ([Document #2](#)). Mr. Murphy said on page 1 there is an "X" beside the paragraph regarding one of his client's concerns with the electronic tracking system. Mr. Murphy said he has spoken to DOH about the concern and the department is willing to work with CIASD regarding this issue.

Pages 2 through 5 of Mr. Murphy's document lists five issues written in rule form that need to be considered. The fifth item in the document is regarding the additional eight conditions DOH proposed at the administrative rules hearing and were denied. The Rules Review Committee determined medical conditions can only be added after a formal review process for each condition.

Senator Tobin said the Oversight Committee does not decide what must be done with the Medical Cannabis program but works with DOH in looking at possible changes. Mr. Murphy said these issues are critical enough that CIASD hopes DOH will address them right away.

Mr. Emmett Reistroffer, Genesis Farms, Box Elder, gave remote testimony saying Genesis Farms in Box Elder will have at least 50 security cameras. Storing security video for 90 days will be expensive. The business is looking at \$16,000 in hardware alone. Storing tape takes up a large footprint.

Regarding butane extractions, Mr. Reistroffer said odorized gas affects the product. Odorless gas has been used for many years in other industries. Sensors detect the gas even though the human nose cannot smell it.

Mr. Reistroffer said everyone he knows in the medical cannabis industry is committed to following the laws and rules. If the state fears there are too many dispensaries, the state can put a moratorium on any new medical cannabis businesses, which would keep things from getting out of control and help stop big cannabis businesses from coming into the state. Current license holders also need to understand what happens to dispensary licenses when a licensee passes away or decides to get out of the business. According to Mr. Reistroffer, there should be flexibility for transfer of licenses. Municipalities are not allowing medical cannabis dispensary license transfers.

Mr. Reistroffer said other issues needing to be addressed regarding medical cannabis are the use of telemedicine for certification; taxation of medical cannabis (other prescribed drugs are not taxed); and public education. Mr. Reistroffer offered tours of the Genesis Farms facilities for any of the Oversight Committee members.

Mr. Kittrick Jeffries, Director of Compliance, Dakota Cannabis Consulting, Rapid City, testified remotely that he has learned during his seven years in the cannabis industry that tethering patients to dispensaries is detrimental to the patient. When a patient is allowed to only shop at one or two dispensaries, it limits their ability to find the

product needed to address their condition. Mr. Grocott asked DOH if, regarding the tethering issue, there is a tracking system for the purchase of medical marijuana. Mr. Adams said the Metrc system allows dispensaries to monitor when a patient has purchased product at any location in the state. The patient number allows tracking of the patient's medical cannabis purchases.

Mr. Jeffries said several states allow one ounce of flower every day, but in South Dakota patients are only allowed three ounces of flower every two weeks. Mr. Jeffries added that Colorado requires security video tapes only be stored for 40 days.

Mr. Jeffries said Missouri addressed the issue of owning firearms if using medical marijuana through Missouri's House Bills 85 and 310, the Missouri Second Amendment Preservation Act. Mr. Jeffries said this act removes local law enforcements' ability to take away a law abiding citizen's second amendment rights because they use medical marijuana.

Representative Ernie Otten said the federal law is clear when it comes to owning firearms if using marijuana and asked if Missouri's legislation has been tested in the courts. Mr. Jeffries said he does not know if there has been a court case regarding the Missouri Second Amendment Preservation Act.

Mr. Ned Horsted, Executive Director, CIASD, Sioux Falls, joined the meeting remotely, saying that he supports the comments made by the other public testifiers.

Committee Discussion

Senator Tobin said the committee will address administrative rules proposals today and suggestions for legislative changes at the next Oversight Committee meeting.

Representative Ernie Otten moved, seconded by Bryan Walz, to recommend the Department of Health consider the proposed rule changes discussed during today's Medical Marijuana Oversight Committee meeting. Motion prevailed on a roll call vote with 12 AYES; 1 EXCUSED. Voting AYE: Adam, Dietrich, Grocott, Madison, Mentele, Rehfeldt, Templar, Tiger, Van Hulzen, Walz, Otten, and Tobin. EXCUSED: Doherty.

The committee discussed the card clinics and the concern regarding follow-up care after the patient receives the medical cannabis card through a card clinic.

Ms. Tiger said practitioners in South Dakota do not seem to understand how the medical cannabis program works and are taking a slow approach to joining the program. Patients need the help found through medical cannabis now.

Ms. Mentele said patients do not know what providers are available in the state to help with certifying them for medical cannabis. Many primary care providers are hesitant to put their name on the certification but will follow-up with patients who get certified by someone else.

The committee discussed the question as to whether medical cannabis should be subject to sales tax, as prescription drugs are not taxed. Mr. Grocott said medical cannabis is a natural and herbal supplement and should be subject to sales tax. Ms. Tiger said natural and herbal supplements can be purchased without having a doctor's signature and state approval. Medical marijuana is treated more like prescription drugs and should not be subject to sales tax.

Ms. Mentele asked if it would be possible to start the oversight committee members' two-year terms with today's meeting, since the committee got such a late start. Senator Tobin said she and Representative Otten will discuss this question with the Executive Board at the next Executive Board meeting.

The next meeting of the Medical Marijuana Oversight Committee will be Tuesday, October 25, in Pierre.

Adjourn

Mr. Grocott moved, seconded by Secretary Adam, the Medical Marijuana Oversight Committee adjourn. Motion prevailed on a voice vote.

The Medical Marijuana Oversight Committee adjourned at 1:37 p.m.