Medical Marijuana Oversight Committee
2024 Final Report

SOUTH DAKOTA LEGISLATURE
LEGISLATIVE RESEARCH COUNCIL

Study Assignment

In November 2020, the voters of South Dakota approved Initiated Measure No. 26, and in so doing created the state's medical marijuana program. That Initiated Measure also established the Medical Marijuana Oversight Committee and directed that it meet at least twice per year for the purpose of evaluating and making recommendations to the Legislature and the Department of Health regarding:

1. The ability of qualifying patients in all areas of the state to obtain timely access to high-quality medical marijuana;
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 testing facilities, including whether a sufficient number are operating;
4. The sufficiency of the regulatory and security safeguards contained in the chapter and adopted by the department to ensure that access to and use of the product is provided only to cardholders;
5. Additions or revisions to the department rules or SDCL chapter 34-20G, including those relating to security, safe handling, labeling, and nomenclature;
6. Any research studies regarding the health effects of medical marijuana for patients; and
7. Medical and clinical aspects of the program.

Summary of Interim

The Medical Marijuana Oversight Committee met in August and again in October 2024. At its initial meeting the committee heard from representatives of the Department of Health and from the medical marijuana industry.

To date, there are approximately 13,000 patients registered with the program. There are 75 advanced practice nurses, 20 physician assistants, and 184 physicians who are able to certify patients for a medical marijuana card. There are 35 cultivation operations, 18 manufacturing establishments, 2 independent testing facilities, and 68 dispensaries. The Department of Health administers the program with seven staff members.

The committee heard concerns about the increase in licensure costs – from $5,310 to $9,000, but recognized that the programmatic costs, including those of software contracts and safety compliance, were also on the rise. The committee heard additional concerns about safety thresholds applicable to the testing of products for heavy metals, and testing methods that exist, but are not permitted in this state, for the remediation of products found to be above the thresholds.

The committee also heard concerns about the sale of unregulated products that fall within the purview of the 2018 Farm Bill's definition of hemp. Some products were referred to as being psychotropic, intoxicating, and psychoactive, yet untested and readily available in retail establishments. While the committee recognized the need to determine whether the Department of Health, the Department of Agriculture and Natural Resources, or law enforcement entities should be charged with regulating such products, it also recognized that this was not within the scope of its assignment.

At its second meeting, the committee continued to explore the 2024 statutory requirement that before a practitioner certify a probationer or a parolee for medical marijuana, the practitioner must attest that the individual's use of the product is consistent with medical care standards, reasonable in light of the patient's medical needs, and reasonable in light of alternative treatments. Although it was argued that the patient's criminal status

was not a necessary factor in determining treatment, the committee concluded that the attestation was appropriate, given the realization that many patients who find themselves in that status have a history of making less-than-desirable decisions and moreover, those patients are seeking access to a product that is still not permitted under federal law.

The committee again heard that various administrative rules pertaining to testing methodologies and remediation were not addressed by the Department during the current rule promulgation cycle. The industry considers such rules to be important from an economic viability perspective, as well as from an operational perspective. The committee was told that the department needed time to research and fully evaluate suggested rules.

Listing of Legislation Adopted by the Committee

The committee did not adopt any legislation, because the issues under contention this year were largely regulatory in nature. The committee did, however, indicate that issues articulated by the industry had been brought forth previously. The committee was dismayed that the issues had not yet been unresolved. The committee therefore encouraged the Department of Health to meet regularly with representatives of the industry to address the operational challenges and, in a timely manner, arrive at a mutually acceptable solution that recognizes the industry's need for a clear and consistent regulatory structure.

Summary of Meeting Dates and Places

The committee met August 19, 2024, and October 28, 2024, in the State Capitol.

Listing of Committee Members

Members of the committee are Senator Erin Tobin, Chair; Representative Roger DeGroot, Vice Chair; Senator Jim Mehlhaff and Representative Curt Massie; and Dr. Francine Arneson, Brad Jurgensen, Katie Kassin, Brian Mueller, Kristi Palmer, Jon Thum, and Rachel Waddell.

Listing of Staff Members

Staff members for the committee are L. Anita Thomas, Chief Research and Legal Analyst and Michelle Deyo-Amende, Administrative Specialist.