

MINUTES

Medical Marijuana Oversight Committee



Senator Erin Tobin, Chair

Representative Roger DeGroot, Vice Chair

Second Meeting, 2024 Interim

Monday, October 28, 2024

Room 413 – State Capitol

Pierre, South Dakota

Senator Erin Tobin called the meeting to order at 9:00 a.m. in Room 413 of the State Capitol, Pierre.

A quorum was determined with the following members answering the roll call: Senator Jim Mehlhaff and Representative Curt Massie; Dr. Francine Arneson (remote), Brad Jurgensen (remote), Katie Kassin, Brian Mueller (remote), Kristi Palmer, Jon Thum (remote), and Rachel Waddell (remote), Representative Roger DeGroot, Vice Chair and Senator Erin Tobin, Chair.

Staff members present included L. Anita Thomas, Chief Research and Legal Analyst and Michelle Deyo-Amende, Administrative Specialist.

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

Approval of Minutes

Senator Mehlhaff moved, seconded by Representative DeGroot, to approve the minutes of the August 19, 2024 meeting. Motion prevailed on a voice vote.

SDCL § 34-20G-96 – Practitioner Attestation if the Individual Seeking Medical Marijuana is a Probationer or a Parolee

Kelly Wasko, Secretary, South Dakota Department of Corrections, said last session the legislature considered Senate Bill 191, which allowed parolees and probationers to obtain medical marijuana, provided the practitioner attests to the need. She said approximately 95 percent of offenders have a substance use disorder. She said the attestation process is an opportunity for providers to determine whether medical marijuana is the most effective treatment option for the offender population. She said it was designed to ensure that there is a patient-provider relationship. She said parolees and probationers are under conditional release. She said just being under the influence of alcohol or marijuana contributes to criminality. She said it is our job to ensure that parolees and probationers are serving their conditional supervision with success. She said Senate Bill 191 is doing what it was intended to do.

Dr. Arneson said she does not believe it is ethically sound to ask patients whether or not they are on parole. She said that status has nothing to do with the medical care that is delivered. She said practitioners do a detailed substance use history and would take into consideration whether the patient has a substance use disorder.

Senator Mehlhoff said, at the last meeting, he had indicated a willingness to look at this issue. He said the best way forward is just to leave it as it is. He said people who are impaired often do not make the best decisions. He

said it might be uncomfortable for a practitioner to delve into a patient's criminal background. However, he said, all patients are asked a lot of questions when they go to a practitioner.

Recent and Proposed Changes to Administrative Rules Governing Medical Marijuana

Jeremiah M. Murphy, registered lobbyist, Cannabis Industry Association of South Dakota, said there will be no administrative rule changes this year. He said the Department of Health staffing has been light and they did not have the time to complete any of the rules requested by the industry. He said, unfortunately, the effect on the industry is significant. He said, every day, the industry struggles with these issues.

Mr. Murphy said the travel handoff requirements are problematic. He said when one is trying to deliver product across the state, the current rule is that a manifest must be involved and a lot of communication and documentation. The driver must stay in the car, without stopping anywhere. He said the driver cannot just leave the product in the parking lot. He said the industry agrees with that. However, he said, given the size of the state, a driver cannot always make a run from Sioux Falls to Rapid City without stopping. He said there needs to be a way for the product to be put into the hands of another, who can continue the trip.

Mr. Murphy said another problem is harvest batch size. He said he has spoken of this before. He said the statute provides that batches may be no more than 50 pounds. He said when marijuana is harvested, it has a weight. He said after it is cured and moisture is removed, it has a different weight. He said marijuana can lose 80 percent of its weight through water. He said the common practice in the industry is that the plant is harvested, dried, and then baled. He said 1000 pounds of wet material may produce 200 pounds of dry material. He said that equates to four batches that need to be tested. He said that is expensive. He said, today, batch size is determined by the wet weight. He said, instead of testing 200 pounds in four batches, they have to test what was once a 1000 pounds in 20 batches. He said each of those batches will not be anywhere near 50 pounds. He said they will each be about 10 to 15 pounds. He said we are not accounting for the shrinkage.

Mr. Murphy said this has nothing to do with keeping patients or non-patients safe. He said it is a misreading of the statute and a rule.

Mr. Murphy said the way we measure edibles is by their THC content. He said one would expect that there are limits on the amount of THC content in an edible. He said we treat tinctures by weight and that creates all sorts of problems because one could make an incredibly powerful tincture. He said they are not addressing potency.

Mr. Murphy said he has spoken to the committee earlier regarding heavy metals. He said, initially, the program used very conservative threshold estimates for heavy metals. He said it has been challenging to grow a product that has the proper limits of heavy metals. He said, unfortunately, South Dakota limits are some of the tightest in the industry. He said North Dakota and Minnesota both have higher allowable concentrations of heavy metals.

Mr. Murphy said the bigger issue is that if a 200-pound dry harvest is high for heavy metals, that biomass can be converted into a concentrate. He said, during that process, the heavy metals leave with the waste. He said products can be remediated and sold again as edibles, for instance. He said the products are re-tested after remediation.

Mr. Murphy said this industry has security requirements and medical requirements. He said we are stalled right now with the program. He said there has been a lot of turnover in the Department of Health. He said the department had manpower needs, so they raised the industry fees. Ultimately, he said, it is the patients who have to absorb these increases. He said it also affects the industry's bottom line.

He said the industry would like to see broader reporting regarding the Department of Health and specifically, the department's customer service levels. He said some in the industry have encountered challenges getting answers about releasing product, about inventory, etc. He said the industry would like to know the average call response time, how long it takes the department to answer an email, how long it takes the department to produce an inspection report, how many inspections are occurring, and how many per facility. He said it seems that some are being inspected more than others.

Mr. Murphy said the change in the composition of the committee resulted in a lack of understanding about operational issues and patient issues. He said the first committee had a representative from the Department of Health and one from a cannabis testing facility.

Ned Horstead, CEO, 605 Cannabis, said the current regulators are not necessarily those with whom the program was built. He said, as an industry, we want reasonable and responsive regulation, with questions answered in a timely manner. He said we want equal enforcement of issues and rule interpretations. He said we want the testing of appropriate batch weights because the current manner of testing is costing six to ten times what it should.

Mr. Horstead said we have had approximately one stakeholder meeting per year, since the program began. He said the industry and regulators need to communicate. He said the regulators need to provide timely compliance information.

In response to a question from Senator Tobin, Mr. Murphy said marijuana plants attract heavy metals. He said they come from the soil. He said the industry believes that the thresholds need to be changed and provisions for remediation need to be made. He said the industry believes that operational issues need to be addressed, and it would help if the oversight committee had some necessary experience. He said we should go back at least to the original three patient representatives.

Senator Tobin said, statutorily, the oversight committee is to seek relevant input from qualifying patients, designated caregivers, pharmacists, school board administrators, parents, municipal representatives, state agencies, etc. She said any one can come forward to the microphone. She said she is more concerned about going in and after only two years changing the committee makeup. She said the committee cannot have experts in all the respective areas.

Ms. Emily Kerr, Medical Cannabis Program Administrator, said the Department of Health would like to take the time and have a robust conversation with stakeholders and industry. She said the department is open to conversing on some of the issues that were raised. She said the department has to conduct research and make sure that rule changes are appropriate from a safety perspective.

In response to a question from Senator Mehlhaff, Ms. Kerr said the key to determining proper batch size for testing purposes is patient safety. She said the 50-pound batch size was the interpretation at the time the rule was implemented and that's been the consistent position of the department.

Operational Challenges Encountered by Growers, Manufacturers, and Dispensaries

Kittrick Jeffries, Owner, Puffy's Dispensary said there are anecdotal stories about patients having frustrations about departmental communications. He said perhaps the Department of Health could create a patient hotline and provide staff to answer questions.

In response to a question from Senator Tobin, Mr. Jeffries said the principal reason for a denial would be the lack of a qualifying condition.

Scope and Adequacy of Training Provided to Dispensary Employees

In response to a question from Ms. Kassin, Mr. Jeffries said there are state mandated requirements for record keeping. He said he puts a new employee through a 90-day review process. He said he has hundreds of pages of standard operating procedures on the day-to-day operations. He said they cover everything from storing marijuana to counting cash. He said, during that 90-day period, a manager reviews everything that the new employee does. He said there is additional training to be able to discuss therapeutic and palliative benefits. He said, if a patient indicates that they are taking other medications, they are advised to contact their primary care provider.

Transparency Regarding the Amount of Product Produced vs. the Amount of Product Procured by Patients

Mr. Jeremiah Murphy said, at the last meeting, law enforcement expressed a concern that there was overproduction, given the amount that known cardholders might use in a given period.

Mr. Jeffries said his operation has perpetual harvest cycles. He said marijuana is harvested every two weeks. He said this allows us to always have the freshest product for patients. He said he is a wholesale distributor and distributes to about 70 percent of active South Dakota dispensaries. He said overproduction has a lot to do with crop failure. He said crop failure can come for a number of different reasons -- heavy metals, pesticides, mold or mildew, etc. He said we have to take crop failure into consideration. He said humidity can also impact the plants, as can things coming through the air ducts. He said curing takes time, as does manicuring the buds. He said it takes about two months before the product ever gets to market, and that does not include the manufacturing timelines.

In response to a question from Representative Massie, Mr. Jeffries said about five to ten percent of the entire market could, at some point, have a possibility of contamination. He said there are rules in place about how a product must be destroyed.

Mr. Thum said we are looking at a crop that has high failure rates and spoilages. He said, as law enforcement, we do not have access to any production numbers, spoilage rates, or what goes out the door.

Committee Discussion

In response to a question from Senator Mehlhaff, Mr. Horstead said, under state law, once a theft is identified, the Department of Health must be notified within 24 hours. He said there is zero tolerance in the industry. He said an employee would be fired and law enforcement would be notified. He said, every day before midnight, all inventory is reconciled.

In response to a question from Representative DeGroot, Mr. Jeffries said if Initiated Measure 29 were to pass, there would be a dual provider license - medical cannabis and adult use marijuana. He said both would be sold under the same roof. He said this would require a bill. He said it is not in the measure. He said Ohio State University Moritz College of Law had conducted a study about legislation needed to bring about adult use marijuana measures.

Mr. Jeffries said Metrc has all of the inputs from state licensees so it can track marijuana from seed to sale. He said in medical cannabis programs the tags are yellow, and in adult use marijuana states, the tags are blue.

Senator Mehlhaff said there is a need to develop a sensible process to address testing, delivery, and the most efficient way to provide a product that is safe, without imposing unnecessary costs. He said that could probably be done through conversation with the Department of Health.

Senator Tobin said we have all these very small issues that do not require legislation, but rather communication. She said she does not think we need to have more laws, unless we were to have a requirement that the agency meet with the industry on a biannual basis.

Senator Mehlhaff said we have all kinds of solutions. He said he would visit with the Department of Health regarding how they are approaching issues surrounding batch sizes and testing.

Senator Tobin said, in medicine, we talk not about weight, but about dosage. She said this is a unique animal and coming up with regulatory clarity is challenging. She said, however, the industry still needs standardization and consistency.

Mr. Murphy said there has been a lot of turnover in the department. He said during the first couple years, we made a lot of rule changes. He said some of the rule changes have now gotten stalled. He said these problems are costly. He said the difference between \$4,000 in testing and \$10,000 in testing on a 1,000-pound sample is huge.

Senator Mehlhaff moved, seconded by Mrs. Kassin to adjourn. Motion prevailed on a voice vote.

The committee adjourned at 11:45 a.m.