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May 30, 2023

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RECEIVED

MAY 31 2023

SD Secretary of State

Dear Travis Ismay:

SDCL 12-13-25 requires the South Dakota Legislative Research Council (LRC) to review each proposed initiated measure submitted to it by a sponsor, for the purpose of assisting the sponsor in writing the proposal "in a clear and coherent manner in the style and form of other legislation" that "is not misleading or likely to cause confusion among voters." Based on this review, the LRC provides written comments to the proposal's sponsor for the purpose of assisting the sponsor in meeting these requirements. This includes providing "assistance . . . to minimize any conflict with existing law and to ensure the [proposal]'s . . . effective administration."

The proposed initiated measure repeals SDCL chapter 34-20G, the medical cannabis chapter.

The *Guide to Legislative Drafting*, which can be found on the South Dakota Legislature's website sdlegislature.gov, under the menu option REFERENCES, provides examples on how to draft a section that repeals a section of the codified laws. These examples are found on pages 57-58. To conform with the requirement to write the proposed initiated measure in the form of other legislation, the sponsor should consider redrafting each section of the proposed initiated measure to conform to the drafting requirements for repealing a section. If the sponsor chooses to make these conforming changes, the sponsor may implement the changes in the final form of the proposal submitted under SDCL 12-13-25.1.

Below is an example of how to repeal a section.

Section 2. That § 34-20G-2 be REPEALED:

~~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:~~

- ~~(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;~~

Initiative petition

WE, THE UNDERSIGNED qualified voters of the state of South Dakota, petition that the following proposed law be REPEALED by the voters of the state of South Dakota at the next general election on November 3, 2024

Title: The REPEAL of 34-20G the medical cannabis law.

CHAPTER 34-20G MEDICAL CANNABIS

- ~~34-20G-1 Definitions.~~
- ~~34-20G-2 Cardholders not subject to arrest, prosecution, penalty, or discipline for certain conduct.~~
- ~~34-20G-3 Nonresident cardholders not subject to arrest, prosecution, penalty, or discipline for certain conduct.~~
- ~~34-20G-4 Presumption that qualifying patient or designated caregiver is engaged in the medical use of cannabis. Presumption rebuttable.~~
- ~~34-20G-5 Practitioners not subject to arrest, prosecution, penalty, or discipline for certain conduct.~~
- ~~34-20G-6 Licensed professionals not subject to discipline for certain conduct.~~
- ~~34-20G-7 Persons not subject to arrest, prosecution, penalty, or discipline for certain conduct.~~
- ~~34-20G-8 Dispensaries and agents not subject to prosecution, search, seizure, penalty, or discipline for certain conduct.~~
- ~~34-20G-9 Cultivation facilities and agents not subject to prosecution, search, seizure, penalty, or discipline for certain conduct.~~
- ~~34-20G-10 Cannabis product manufacturing facilities and agents not subject to prosecution, search, seizure, penalty, or discipline for certain conduct.~~
- ~~34-20G-11 Testing facilities and agents not subject to prosecution, search, seizure, penalty, or discipline for certain conduct.~~
- ~~34-20G-12 Sale or donation of cannabis seeds to cultivation facility.~~
- ~~34-20G-13 Seizure or forfeiture of cannabis or related property.~~
- ~~34-20G-14 Possession of or application for registry identification card not grounds for search.~~
- ~~34-20G-15 Activity conducted in accordance with chapter law ful.~~
- ~~34-20G-16 Enforcement of federal law by state law enforcement officers.~~
- ~~34-20G-17 Contracts enforceable.~~
- ~~34-20G-18 Unauthorized conduct.~~
- ~~34-20G-19 Schools and landlords Prohibited conduct.~~
- ~~34-20G-20 Qualifying patient not disqualified from medical care for cannabis use.~~
- ~~34-20G-21 Custody and visitation rights Child neglect or endangerment.~~
- ~~34-20G-22 Employment and drug testing.~~
- ~~34-20G-23 Conflict with employer's obligations or benefits under federal law.~~
- ~~34-20G-24 Ingestion of cannabis at workplace Working under the influence of cannabis.~~
- ~~34-20G-25 Schools, landlords, and employers not to be penalized.~~
- ~~34-20G-25.1 Healthcare and accredited prevention or treatment facilities.~~
- ~~34-20G-26 Petition to add serious medical condition or treatment to list of debilitating medical conditions Department consideration Judicial review.~~
- ~~34-20G-27 Cost reimbursement, permission to smoke or vape cannabis on property, permission to cultivate on rental property, permission to allow conduct related to medical cannabis in public buildings not required.~~
- ~~34-20G-28 Discipline for ingestion of cannabis at workplace and working under the influence of cannabis permitted.~~
- ~~34-20G-29 Information required for issuance of registry identification cards Fee.~~
- ~~34-20G-30 Submission of information by person responsible for medical decisions for qualifying patient.~~
- ~~34-20G-31 Department verification of information Issuance of registry identification card Verification system.~~
- ~~34-20G-32 Background check of designated caregiver.~~
- ~~34-20G-33 Issuance of registry identification card to patient under age 18 Conditions.~~
- ~~34-20G-34 Grounds for denial or nonrenewal of qualifying patient registry identification card.~~
- ~~34-20G-35 Grounds for denial of application or nonrenewal of designated caregiver.~~
- ~~34-20G-36 Notice Denial or revocation.~~
- ~~34-20G-37 Judicial review of application denial or nonrenewal.~~
- ~~34-20G-38 Repealed.~~
- ~~34-20G-39 Temporary designated caregiver registry identification card.~~
- ~~34-20G-40 Repealed.~~
- ~~34-20G-41 Repealed.~~
- ~~34-20G-42 Contents of registry identification cards.~~
- ~~34-20G-43 Expiration of registry identification card.~~
- ~~34-20G-44 Confidential list Personal information.~~
- ~~34-20G-45 Secure phone or web-based verification system.~~
- ~~34-20G-46 Required notifications to department.~~
- ~~34-20G-47 Notifications by designated caregiver.~~
- ~~34-20G-48 Issuance of new registry identification card following required notification to department.~~
- ~~34-20G-49 Card void upon notice to department that patient no longer qualifies Disposal of cannabis.~~
- ~~34-20G-50 Theft or loss of cannabis Notice to department.~~
- ~~34-20G-51 Medical purpose defense.~~
- ~~34-20G-52 Proof of unavailability of defense to prosecution.~~
- ~~34-20G-53 Registry identification card not required to raise defense.~~
- ~~34-20G-54 Person using cannabis for medical purpose not subject to discipline or forfeiture.~~
- ~~34-20G-55 Application for medical cannabis establishment Contents and conditions Time for registration.~~
- ~~34-20G-56 Local government limitation on number of medical cannabis establishments.~~
- ~~34-20G-57 Renewal of medical cannabis establishment registration.~~
- ~~34-20G-58 Local government ordinances governing medical cannabis establishments.~~
- ~~34-20G-58.1 Municipal zoning Medical cannabis establishments.~~
- ~~34-20G-59 Local government prohibition of dispensaries not permitted.~~
- ~~34-20G-60 Local licensing of medical cannabis establishments Fee.~~
- ~~34-20G-61 Criminal background check of medical cannabis establishment officers, employees, and volunteers.~~
- ~~34-20G-62 Employment restrictions on medical cannabis establishments.~~
- ~~34-20G-63 Medical cannabis establishment procedures for oversight and record keeping.~~
- ~~34-20G-64 Medical cannabis establishment security measures.~~
- ~~34-20G-65 Cultivation, harvesting, manufacturing, and packaging of cannabis.~~
- ~~34-20G-65.1 Test samples of cannabis or cannabis products Collection Packaging Timing.~~
- ~~34-20G-66 Production of cannabis products.~~
- ~~34-20G-67 Sharing office space and patient referrals to practitioners prohibited.~~
- ~~34-20G-68 Consumption of cannabis on medical cannabis establishment property prohibited.~~
- ~~34-20G-69 Inspection of medical cannabis establishments.~~
- ~~34-20G-70 Conditions for dispensing cannabis.~~
- ~~34-20G-71 Limitations on amount of cannabis dispensed.~~
- ~~34-20G-72 Promulgation of rules Violation of required or prohibited action as misdemeanor.~~
- ~~34-20G-73 Civil penalty for failure to provide required notice.~~
- ~~34-20G-74 Intentional cannabis sale or transfer to unauthorized person by medical cannabis establishment or agent as felony Disqualification.~~
- ~~34-20G-75 Intentional cannabis sale or transfer by cardholder to unauthorized person as felony.~~
- ~~34-20G-76 False statement to law enforcement official about medical use of cannabis as misdemeanor.~~

- (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.

34-20C-3. Nonresident cardholders not subject to arrest, prosecution, penalty, or discipline for certain conduct.

No nonresident cardholder is subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including civil penalty or disciplinary action by a business or occupational or professional licensing board or entity, for transporting, purchasing, possessing, or using medical cannabis in accordance with this chapter if the nonresident cardholder does not possess more than three ounces of cannabis and the quantity of cannabis products established by rules promulgated by the department under § 34-20C-72.

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

34-20C-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.

34-20C-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, 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.

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

34-20C-6. Licensed professionals not subject to discipline for certain conduct.

No person licensed by the state or any other governmental entity to engage in any profession, occupation, or other activity is subject to disciplinary action, denial of the rights and privileges of such license, or otherwise penalized by the licensing authority for lawfully engaging in any activity authorized under this chapter or providing any service to a person engaged in activity that is authorized by this chapter merely because that activity is prohibited by federal law.

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021; SL 2022, ch. 421, § 1.

34-20C-7. Persons not subject to arrest, prosecution, penalty, or discipline for certain conduct.

No person is subject to arrest, prosecution, or penalty of any kind, or may be denied any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for

- (1) Providing or selling cannabis paraphernalia to a cardholder, nonresident cardholder, or to a medical cannabis establishment;
- (2) Being in the presence or vicinity of the medical use of cannabis that is exempt from criminal or civil penalty by this chapter;
- (3) Allowing the person's property to be used for an activity that is exempt from criminal or civil penalty by this chapter; or
- (4) Assisting a registered qualifying patient with the act of using or administering cannabis.

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

34-20C-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 § 34-20C-60, 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.

34-20C-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 § 34-20C-60, 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.

34-20C-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 § 34-20C-60, 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.

34-20C-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 § 34-20C-60, 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;

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

No employer is required to allow the ingestion, possession, transfer, display, or transportation of cannabis in any workplace or to allow any employee to work while under the influence of cannabis. No employer is prohibited from establishing and enforcing a drug-free workplace policy that may include a drug-testing program that complies with state and federal law and acting with respect to an applicant or employee under the policy.

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021; SL 2022, ch 116, § 3.

34-20G-25. Schools, landlords, and employers not to be penalized.

No school, landlord, or employer may be penalized or denied any benefit under state law for enrolling, leasing to, or employing a cardholder.

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

34-20G-25.1. Healthcare and accredited prevention or treatment facilities.

A health care facility, as defined in § 34-13-1(1), an accredited prevention or treatment facility, as defined in § 34-20A-2, a mental health center, as defined in § 27A-1-1, a child welfare agency, as defined in § 26-5-1, or a community support provider or community services provider, as defined in § 27B-1-17, may adopt restrictions on the use of medical cannabis by a cardholder who resides at, is actively receiving treatment or care from, 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 the medical cannabis be used only in a place specified by the facility. Nothing in this section requires a facility to adopt such restrictions or requires a facility to allow the consumption of medical cannabis on the grounds of the facility.

No employee or agent of a facility may be subject to arrest, prosecution, or penalty of any kind or may be denied any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board 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.

Source: SL 2022, ch 117, § 2.

34-20G-26. Petition to add serious medical condition or treatment to list of debilitating medical conditions—Department consideration—Judicial review.

Any resident of this state may petition the department to add a serious medical condition or treatment to the list of debilitating medical conditions as defined by this chapter. The department shall consider a petition in the manner required by rules promulgated by the department pursuant to this chapter, including public notice and hearing. The department shall approve or deny a petition within one hundred eighty days of submission. The approval or denial of any petition is a final decision of the department, subject to judicial review.

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

34-20G-27. Cost reimbursement, permission to smoke or vape cannabis on property, permission to cultivate on rental property, permission to allow conduct related to medical cannabis in public buildings not required.

Nothing in this chapter requires:

- (1) A government medical assistance program or private health insurer, workers' compensation insurance 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 or vape cannabis on or in that property;
- (3) A landlord to allow the cultivation of cannabis on the rental property; or
- (4) A state or local government to allow any conduct otherwise permitted by this chapter within a building owned, leased, or occupied by the state or local government.

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021; SL 2022, ch 124, § 1; SL 2022, ch 125, § 1.

34-20G-28. Discipline for ingestion of cannabis at workplace and working under the influence of cannabis permitted.

Nothing in this chapter prohibits an employer from disciplining an employee for ingesting cannabis in the workplace or for working while under the influence of cannabis.

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

34-20G-29. Information required for issuance of registry identification cards—Fee.

No later than November 18, 2021, the department shall issue registry identification cards to qualifying patients who submit the following, in accordance with rules promulgated by the department:

- (1) A written certification issued by a practitioner within ninety days immediately preceding the date of an application;
- (2) The application or renewal fee;
- (3) The name, address, and date of birth of the qualifying patient, except that if the applicant is homeless, no address is required;
- (4) The name, address, and telephone number of the qualifying patient's practitioner;
- (5) The name, address, and date of birth of the designated caregiver, or designated caregivers, chosen by the qualifying patient;
- (6) If more than one designated caregiver is designated at any given time, documentation demonstrating that a greater number of designated caregivers are needed due to the patient's age or medical condition;
- (7) The name of no more than two dispensaries that the qualifying patient designates, if any; and
- (8) If the qualifying patient designates a designated caregiver, a designation as to whether the qualifying patient or designated caregiver will be allowed under state law to possess and cultivate cannabis plants for the qualifying patient's medical use.

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

34-20G-30. Submission of information by person responsible for medical decisions for qualifying patient.

If the qualifying patient is unable to submit the information required by § 34-20G-29 due to the person's age or medical condition, the person responsible for making medical decisions for the qualifying patient may do so on behalf of the qualifying patient.

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

34-20G-31. Department verification of information—Issuance of registry identification card—Verification system.

Except as provided in § 34-20G-32, the department shall:

- (1) Verify the information contained in an application or renewal submitted pursuant to this chapter and approve or deny an application or renewal within fifteen days of receiving a completed application or renewal application;
- (2) Issue registry identification cards to a qualifying patient and to a qualifying patient's designated caregivers, if any, within five days of approving the application or renewal. A designated caregiver shall have a registry identification card for each of the qualifying patients; and
- (3) Enter the registry identification number of any dispensary the patient designates into the verification system.

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

34-20G-32. Background check of designated caregiver.

The department may conduct a background check of a designated caregiver in order to carry out the provisions of § 34-20G-31.

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

34-20G-33. Issuance of registry identification card to patient under age 18—Conditions.

The department may not issue a registry identification card to a qualifying patient who is younger than eighteen years of age unless:

- (1) The qualifying patient's practitioner has explained the potential risks and benefits of the medical use of cannabis to the custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient; and
- (2) The custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient consents in writing to:
 - (a) Allow the qualifying patient's medical use of cannabis;
 - (b) Serve as the qualifying patient's designated caregiver; and
 - (c) Control the acquisition of the cannabis, the dosage, and the frequency of the medical use of cannabis by the qualifying patient.

The following notifications are required:

- (1) A registered qualifying patient shall notify the department of any change in the applicant's name or address, or if the patient ceases to have a debilitating medical condition, within ten days of the change;
- (2) A registered designated caregiver shall notify the department of any change in the caregiver's name or address, or if the caregiver becomes aware the qualifying patient passed away, within ten days of the change;
- (3) Before a registered qualifying patient changes a designated caregiver, the patient shall notify the department;
- (4) If a registered qualifying patient changes a preference as to who may cultivate cannabis for the patient, the patient shall notify the department;
- (5) If a cardholder loses a registry identification card, the cardholder shall notify the department within ten days of becoming aware the card has been lost; and
- (6) Before a registered qualifying patient changes a designated dispensary, the patient shall notify the department.

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

34-20G-47. Notifications by designated caregiver.

Any notification that a registered qualifying patient is required to make under this chapter may be made by the patient's designated caregiver if the qualifying patient is unable to make the notification due to age or medical condition.

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

34-20G-48. Issuance of new registry identification card following required notification to department.

If a cardholder notifies the department of any item listed in § 34-20G-46, but remains eligible under this chapter, the department shall issue the cardholder a new registry identification card with a new random ten-digit alphanumeric identification number within ten days of receiving the updated information and a twenty-dollar fee. If the person notifying the department is a registered qualifying patient, the department shall also issue the patient's registered designated caregiver, if any, a new registry identification card within ten days of receiving the updated information.

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

34-20G-49. Card void upon notice to department that patient no longer qualifies. Disposal of cannabis.

If the registered qualifying patient's certifying practitioner notifies the department in writing that the registered qualifying patient has ceased to suffer from a debilitating medical condition or that the practitioner no longer believes the patient would receive therapeutic or palliative benefit from the medical use of cannabis, the card is void. However, the registered qualifying patient shall have fifteen days to dispose of or give away any cannabis in the registered qualifying patient's possession.

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

34-20G-50. Theft or loss of cannabis. Notice to department.

A medical cannabis establishment shall notify the department within one business day of any theft or significant loss of cannabis.

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

34-20G-51. Medical purpose defense.

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, two flowering cannabis plants, two cannabis plants that are not flowering, 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.

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021; SL 2022, ch. 119, § 2.

34-20G-52. Proof of unavailability of defense to prosecution.

An affirmative defense and motion to dismiss shall fail if the prosecution proves that:

- (1) The person had a registry identification card revoked for misconduct; or
- (2) The purpose for the possession or cultivation of cannabis was not solely for palliative or therapeutic use by the person with a debilitating medical condition who raised the defense.

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

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.

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

If a person demonstrates the person's medical 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.

34-20G-55. Application for medical cannabis establishment. Contents and conditions. Time for registration.

Not later than ninety days after receiving an application for a medical cannabis establishment, the department shall register the prospective medical cannabis establishment and issue a registration certificate and a random ten-digit alphanumeric identification number if all of the following conditions are satisfied:

- (1) The prospective medical cannabis establishment has submitted all of the following:
 - (a) The application fee;
 - (b) An application, including:
 - (i) The legal name of the prospective medical cannabis establishment;
 - (ii) The physical address of the prospective medical cannabis establishment that is not within one thousand feet of a public or private school existing before the date of the medical cannabis establishment application;
- (iii) The name and date of birth of each principal officer and board member of the proposed medical cannabis establishment; and
- (iv) Any additional information requested by the department;
- (c) Operating procedures consistent with rules for oversight of the proposed medical cannabis establishment, including procedures to ensure accurate record keeping and adequate security measures;
- (d) If the city or county where the proposed medical cannabis establishment would be located has enacted zoning restrictions, a sworn statement certifying that the proposed medical cannabis establishment does not violate the restrictions;
- (e) If the city or county where the proposed medical cannabis establishment requires a local registration, license, or permit, a copy of the registration, license, or permit;
- (2) None of the principal officers or board members has served as a principal officer or board member for a medical cannabis establishment that has had its registration certificate revoked;
- (3) None of the principal officers or board members is under twenty-one years of age; and
- (4) At least one principal officer is a resident of this state.

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

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

34-20C-69. Inspection of medical cannabis establishments.

A medical cannabis establishment is subject to inspection by the department during business hours.

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

34-20C-70. Conditions for dispensing cannabis.

Before cannabis may be dispensed to a cardholder or nonresident cardholder, a dispensary agent:

- (1) Shall verify that the registry identification card or registration presented to the dispensary is valid;
- (2) Shall verify the identity of the person by requiring the person to present a valid photographic identification document issued by this state, another state, tribe, or the federal government;
- (3) May not dispense an amount of cannabis to a person that would cause the person to possess more than the allowable amount of cannabis; and
- (4) Shall verify that the dispensary is the current dispensary that was designated by the cardholder or nonresident cardholder.

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021; SL 2022, ch 133, § 1.

34-20C-71. Limitations on amount of cannabis dispensed.

A dispensary may not dispense more than three ounces of cannabis to a nonresident cardholder or a registered qualifying patient, directly or via a designated caregiver, in any fourteen-day period. A dispensary shall ensure compliance with the limitation under this section by maintaining internal, confidential records that include records specifying how much cannabis is dispensed to a nonresident cardholder or registered qualifying patient and whether it is dispensed directly to a registered qualifying patient or to the designated caregiver.

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

34-20C-73. Promulgation of rules—Violation of required or prohibited action as misdemeanor.

The department shall promulgate rules pursuant to chapter 1-26:

- (1) Governing the manner in which the department shall consider petitions from the public to add a debilitating medical condition or treatment to the list of debilitating medical conditions as defined by this chapter, including public notice of and an opportunity to comment in public hearings on the petitions;
- (2) Establishing the form and content of registration and renewal applications submitted under this chapter;
- (3) Establishing a system to numerically score competing medical cannabis establishment applicants, in cases where more applicants apply than are allowed by the local government, that includes analysis of:
 - (a) The preference of the local government;
 - (b) In the case of dispensaries, the suitability of the proposed location and its accessibility for patients;
 - (c) The character, veracity, background, qualifications, and relevant experience of principal officers and board members; and
 - (d) The business plan proposed by the applicant, that in the case of a cultivation facility or dispensary shall include the ability to maintain an adequate supply of cannabis, plans to ensure safety and security of patrons and the community, procedures to be used to prevent diversion, and any plan for making cannabis available to low-income registered qualifying patients;
- (4) Governing the manner in which the department shall consider applications for and renewals of registry identification cards, that may include creating a standardized written certification form;
- (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, labeling, distribution, and tracking of medical cannabis;
 - (k) Certification standards for testing facilities, including requirements for equipment and qualifications for personnel; and
 - (l) Requirements for samples of cannabis and cannabis products submitted to testing facilities, including batch sizes to not exceed fifty pounds of cannabis intended for retail sale, batch sizes for homogeneous cannabis products intended for retail sale, and procedures to ensure representative sampling;
- (6) Establishing procedures for suspending or terminating the registration certificates or registry identification cards of cardholders and medical cannabis establishments that commit multiple or serious violations of this chapter;
- (7) Establishing labeling requirements for cannabis and cannabis products, including requiring cannabis product labels to include the following:
 - (a) The length of time it typically takes for a product to take effect;
 - (b) Disclosing ingredients and possible allergens;
 - (c) A nutritional fact panel; and
 - (d) Requiring that edible cannabis products be clearly identifiable, when practicable, with a standard symbol indicating that it contains cannabis;
- (8) Establishing procedures for the registration of nonresident cardholders and the cardholder's designation of no more than two dispensaries, which shall require the submission of:
 - (a) A practitioner's statement confirming that the patient has a debilitating medical condition; and
 - (b) Documentation demonstrating that the nonresident cardholder is allowed to possess cannabis or cannabis preparations in the jurisdiction where the nonresident cardholder resides;
- (9) Establishing the amount of cannabis products, including the amount of concentrated cannabis or cannabis preparations in the jurisdiction where the nonresident cardholder resides, and
- (10) Establishing reasonable application and renewal fees for registry identification cards and registration certificates, according to the following:
 - (a) Application fees for medical cannabis establishments may not exceed five thousand dollars, with the upper limit adjusted annually for inflation;
 - (b) The total fees collected shall generate revenues sufficient to offset all expenses of implementing and administering this chapter;
 - (c) A sliding scale of patient application and renewal fees based upon a qualifying patient's household income;
 - (d) The fees charged to qualifying patients, nonresident cardholders, and caregivers shall be no greater than the costs of processing the application and issuing a registry identification card or registration; and
- (e) The department may accept donations from private sources to reduce application and renewal fees.

A violation of a required or prohibited action under any rule authorized by this section is a Class 2 misdemeanor.

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021; SL 2022, ch 131, § 2; SL 2022, ch 133, § 1.

34-20C-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.

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

34-20C-74. Intentional cannabis sale or transfer to unauthorized person by medical cannabis establishment or agent as felony—Disqualification.

In addition to any other penalty under law, a medical cannabis establishment or an agent of a medical cannabis establishment who intentionally sells or otherwise transfers cannabis in exchange for anything of value to a person other than a cardholder, a nonresident cardholder, or to a medical cannabis establishment or its agent is guilty of a Class 6 felony. A person convicted under this section may not continue to be affiliated with the medical cannabis establishment and is disqualified from any future affiliation with any medical cannabis establishment under this chapter.

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

34-20C-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 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.

34-20C-88, Restrictions on data maintained by medical cannabis establishments.

Any information kept or maintained by a medical cannabis establishment may only identify a cardholder by registry identification number and may not contain names or other personal identifying information.

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

34-20C-89, Cardholder's request for department to confirm cardholder status to others.

At the cardholder's request, the department may confirm the cardholder's status as a registered-qualifying patient or a registered-designated caregiver to a third party, such as a landlord, school, medical professional, or court.

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

34-20C-91, Destruction of unused media containing cardholder information.

Any department hard drive or other data recording media that is no longer in use and that contains cardholder information shall be destroyed.

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

34-20C-92, Oversight committee membership.

The Executive Board of the Legislative Research Council shall appoint an oversight committee comprised of: one member of the House of Representatives, one member of the Senate, one Division of Criminal Investigation agent, one staff member from the Office of the Attorney General, two representatives of law enforcement, one representative from the department, one practitioner with experience in medical cannabis issues, one nurse, one board member or principal officer of a cannabis testing facility, one person with experience in policy development or implementation in the field of medical cannabis, and three qualifying patients.

Source: Initiated Measure No. 26, approved Nov. 3, 2020, eff. Jul. 1, 2021; SL 2022, ch 135, § 1.

34-20C-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 security, safe handling, labeling, and nomenclature, 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.

34-20C-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; the expenses incurred and revenues generated from the medical cannabis program; the number of patient cardholders by medical condition; qualifying patient demographics by age and sex; the number and specialty of the practitioners providing written certifications; the number of medical cannabis establishments by type; the number of licensing violations determined by the department; the impact of medical cannabis on public safety, public health, and behavioral health services; any other information regarding the effects of medical cannabis on the public; and any 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; SL 2022, ch 136, § 1.

34-20C-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.