

# SOUTH DAKOTA MUNICIPAL LEAGUE

## IM 26 - A Primer

*Codified as 34-20G in SD Statute*

*Disclaimer: these materials are for general information purposes only and should not be construed as providing legal advice or opinions for a specific situation. The reader is encouraged to contact the attorney of their choice for any specific legal discussion and legal advice.*

### **Some Definitions:**

#### ▪ **Medical Cannabis:**

All parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. The term does not include the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis; (§22-42-1)

#### ▪ **Allowable Amounts of Cannabis:**

- 3 ounces or less of cannabis
- Department of Health to establish rules for the quantity of products – concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract. Includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures
- If the cardholder has a registry identification card allowing cultivation, they are allowed three plants at a minimum or as prescribed by a physician
- If the cardholder is allowed to cultivate, they are allowed any amount as long as it is produced from the cardholder's allowable plants and is possessed at the same property as the plants were cultivated. (§34-20G-1 (1))

#### ▪ **Cardholder:**

A patient who has been diagnosed by a practitioner as having a debilitating medical condition or a designated caregiver who has been issued and possesses a valid registry identification card (§34-20G-1 (6))

#### ▪ **Practitioner:**

A physician who is licensed with the authority to prescribe drugs to humans. (§34-20G-1 (20))

#### ▪ **Debilitating Medical Condition:**

A chronic or debilitating disease or condition or its treatment that causes wasting syndrome; severe, debilitating pain; severe nausea; seizures; or severe and persistent muscle spasms, including those

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characteristic of multiple sclerosis; or any other medical condition as defined by the Department of Health. (§34-20G-1 (8))

## ▪ **Dispensary:**

Any entity registered with the department pursuant to this chapter that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials to cardholders. (§34-20G-1 (15))

## ▪ **Medical Cannabis Establishment:**

A cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a dispensary. (§34-20G-1 (16))

## ▪ **Non-Resident Cardholders:**

Non-residents fall under the provisions of the new laws if they have been diagnosed with a debilitating medical condition and were issued a registry card by another jurisdiction, have submitted any required documentation to the department of health, and have received confirmation of registration. (§34-20G-1 (19))

## ▪ **Registry Identification Card:**

A document issued by the Department of Health that identifies a person as a patient or designated caregiver. (§34-20G-1 (22))

## ▪ **Designated Caregiver:**

- Is at least 21 years old;
- Has agreed to assist with a qualifying patient's medical use of cannabis;
- Has not been convicted of a disqualifying felony; and
- Assists no more than five qualifying patients, unless the patients reside in or are admitted to a health care or residential care facility where the caregiver is employed. (§34-20G-1 (10))

## ▪ **Written Certification:**

A document dated and signed by a practitioner, stating that in the practitioner's professional opinion the patient is likely to receive benefit from the use of medical cannabis to treat or alleviate symptoms from a debilitating medical condition. (§34-20G-1 (23))

## **What Happens July 1, 2021?**

The Department of Health is required to establish the form and content of registration and renewal applications by **October 29, 2021** (§34-20G-19) and must be ready to issue registry identification cards to qualifying patients by **November 18, 2021**. (§34-20G-29) This means the soonest you will likely see an officially-issued

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registered card holder is in November, 2021. **However, until 25 days after the department makes applications available, a valid, written certification is deemed to be a registry identification card.** (§34-20G-38 through §34-20G-41)

So on July 1, any person who has this written certification is deemed to have a registry identification card, and designated caregiver who has a copy of the qualifying patient's written certification and a signed affidavit attesting that the caregiver has responsibility for the qualifying patient is deemed to hold a caregiver registry identification card.

These folks have a lot of protection from arrest, prosecution, or discipline for use or possession in compliance with the new laws, and that begins July 1, 2020. (§34-20G-2 through §34-20G-11; §34-20G-13 through §34-20G-16); 34-20G-51; 34-20G-53; 34-20G-54)

A cardholder, nonresident cardholder, or the equivalent of a medical cannabis establishment that is registered in another jurisdiction may sell or donate cannabis seeds to a cultivation facility. (§34-20G-12)

Law enforcement is not allowed to enforce federal law in this area as long as the law enforcement officer believes the activity is otherwise in compliance with the new state laws. (§34-20G-16)

## **Some realities:**

A practitioner is going to need to provide written certification; and the patient/caregivers are going to need to provide cannabis or products that have been grown, manufactured, and tested in South Dakota. None of that is going to happen overnight, and there does not appear to be a way to grow, manufacture, produce, test, or sell cannabis or products (other than seeds) until they are registered with the Department of Health – which has until October 29, 2021 to establish those rules. (§34-20G-19)

However, the laws providing protection from prosecution, search, inspection (other than by the Department of Health) seizure or penalty of any kind for cultivation facilities, manufacturing facilities, dispensaries, and testing facilities are effective July 1, 2021. (§34-20G-2 through §34-20G-11; §34-20G-13 through §34-20G-16); 34-20G-51; 34-20G-53; 34-20G-54)

## **What Can Municipalities Do?**

- Limit the number of medical cannabis establishments, but you may NOT prohibit a dispensary either expressly or through the enactment of an ordinance that makes the operation of the dispensary impracticable. (§34-20G-58 and §34-20G-59)
- Enact an ordinance in compliance with the new laws governing the time, place, manner, and number of medical cannabis establishments in the locality, and may establish civil penalties for violation of that ordinance. (§34-20G-58)

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- May require a medical cannabis establishment to obtain a local license, permit, or registration to operate, and may charge a reasonable fee for that. (§34-20G-60)

## **What About Employees and the Municipality as Employer?**

The abilities of your law enforcement officers in dealing with medical cannabis will change as of July 1, and you will need to work with your city attorney to determine the impact of the new laws and what law enforcement can and cannot do regarding possession/ingestion of medical cannabis.

Individuals are NOT allowed:

- to do tasks under the influence of cannabis when doing so would constitute negligence or professional malpractice;
- to possess or use cannabis in any correctional facility;
- to smoke cannabis on any form of public transportation or in any public place or any place that is open to the public;
- operate motorized vehicles while under the influence of cannabis. (§34-20G-18)

In operating a motorized vehicle, a registered qualifying patient or nonresident cardholder is not considered to be under the influence of cannabis if the presence of metabolites or components appear in insufficient concentration to cause impairment. (§34-20G-18)

## **Employment and drug testing:**

A registered qualifying patient shall be afforded all the same rights under state and local law, as the person would be afforded if the person were solely prescribed a pharmaceutical medication, as it pertains to:

- any interaction with the person's employer;
- drug testing by a person's employer; or
- drug testing required by any state or local law, agency, or government official. (§34-20G-22)

However, some of these rights of the cardholder/employee may not apply to the extent that they conflict with an employer's obligations under federal law or regulation, or to the extent that they would disqualify an employer from a monetary or licensing-related benefit under federal law or regulation. (§34-20G-23)

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. However, a registered qualifying patient may not be considered to be under the influence solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment. (§34-20G-24)

The new laws do not prevent an employer from disciplining an employee for ingesting cannabis in the workplace or for working while under the influence of cannabis. (§34-20G-28)