

2022 South Dakota Legislature

Draft 222

Requested by: at the request of the Marijuana Interim Study Committee

1 **An Act to revise the definition of bona fide practitioner-patient relationship.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 34-20G-1 be AMENDED:**

4 **34-20G-1.** ————Terms used in this chapter mean:

5 (1) "Allowable amount of cannabis," ~~means:~~

6 (a) Three ounces of cannabis or less;

7 (b) The quantity of cannabis products as established by rules promulgated by
8 the department under § 34-20G-72;

9 (c) If the cardholder has a registry identification card allowing cultivation, three
10 cannabis plants minimum or as prescribed by physician; and

11 (d) If the cardholder has a registry identification card allowing cultivation, the
12 amount of cannabis and cannabis products that were produced from the
13 cardholder's allowable plants, if the cannabis and cannabis products are
14 possessed at the same property where the plants were cultivated;

15 (2) "Bona fide practitioner-patient relationship," ~~is:~~

16 ~~(a) A practitioner and patient have a treatment or consulting relationship between a~~
17 ~~practitioner and patient, during the course of which the practitioner has completed~~
18 ~~completes, at every visit, an assessment of the patient's medical history and~~
19 ~~current medical condition, including an appropriate in-person physical~~
20 ~~examination;~~

21 ~~(b) The practitioner has consulted with the patient with respect to the patient's~~
22 ~~debilitating medical condition; and~~

23 ~~(c) The practitioner is available to or offers to provide follow-up care and treatment to~~
24 ~~the patient, including patient examinations;~~

25 , and during which the following circumstances are present:

26 (a) The patient is under the practitioner's continued care for the debilitating
27 medical condition that qualifies the patient for the medical use of cannabis;

- 1 **(b) The patient has a reasonable expectation that the practitioner will continue**
2 **to provide in-person follow-up care to the patient to monitor the medical**
3 **use of cannabis; and**
- 4 **(c) The relationship is not for the sole purpose of providing a written**
5 **certification for the medical use of cannabis;**
- 6 (3) "Cannabis products," any concentrated cannabis, cannabis extracts, and products
7 that are infused with cannabis or an extract thereof, and are intended for use or
8 consumption by humans. The term includes edible cannabis products, beverages,
9 topical products, ointments, oils, and tinctures;
- 10 (4) "Cannabis product manufacturing facility," an entity registered with the
11 department pursuant to this chapter that acquires, possesses, manufactures,
12 delivers, transfers, transports, supplies, or sells cannabis products to a medical
13 cannabis dispensary;
- 14 (5) "Cannabis testing facility" or "testing facility," an independent entity registered
15 with the department pursuant to this chapter to analyze the safety and potency of
16 cannabis;
- 17 (6) "Cardholder," a qualifying patient or a designated caregiver who has been issued
18 and possesses a valid registry identification card;
- 19 (7) "Cultivation facility," an entity registered with the department pursuant to this
20 chapter that acquires, possesses, cultivates, delivers, transfers, transports,
21 supplies, or sells cannabis and related supplies to a medical cannabis
22 establishment;
- 23 (8) "Debilitating medical condition,":
- 24 (a) A chronic or debilitating disease or medical condition or its treatment that
25 produces one or more of the following: cachexia or wasting syndrome;
26 severe, debilitating pain; severe nausea; seizures; or severe and persistent
27 muscle spasms, including those characteristic of multiple sclerosis; or
- 28 (b) Any other medical condition or its treatment added by the department, as
29 provided for in § 34-20G-26;
- 30 (9) "Department," ~~means~~ the Department of Health;
- 31 (10) "Designated caregiver," a person who:
- 32 (a) Is at least twenty-one years of age;
- 33 (b) Has agreed to assist with a qualifying patient's medical use of cannabis;
- 34 (c) Has not been convicted of a disqualifying felony offense; and

- 1 (d) Assists no more than five qualifying patients with the medical use of
2 cannabis, unless the designated caregiver's qualifying patients each reside
3 in or are admitted to a health care facility or residential care facility where
4 the designated caregiver is employed;
- 5 (11) "Disqualifying felony offense," a violent crime that was classified as a felony in the
6 jurisdiction where the person was convicted;
- 7 (12) "Edible cannabis products," any product that:
8 (a) Contains or is infused with cannabis or an extract thereof;
9 (b) Is intended for human consumption by oral ingestion; and
10 (c) Is presented in the form of foodstuffs, beverages, extracts, oils, tinctures,
11 or other similar products;
- 12 (13) "Enclosed, locked facility," any closet, room, greenhouse, building, or other
13 enclosed area that is equipped with locks or other security devices that permit
14 access only by a cardholder or a person allowed to cultivate the plants. Two or
15 more cardholders who reside in the same dwelling may share one enclosed, locked
16 facility for cultivation;
- 17 (14) "Medical cannabis" or "cannabis," marijuana as defined in § 22-42-1;
- 18 (15) "Medical cannabis dispensary" or "dispensary," an entity registered with the
19 department pursuant to this chapter that acquires, possesses, stores, delivers,
20 transfers, transports, sells, supplies, or dispenses cannabis, cannabis products,
21 paraphernalia, or related supplies and educational materials to cardholders;
- 22 (16) "Medical cannabis establishment," a cultivation facility, a cannabis testing facility,
23 a cannabis product manufacturing facility, or a dispensary;
- 24 (17) "Medical cannabis establishment agent," an owner, officer, board member,
25 employee, or volunteer at a medical cannabis establishment;
- 26 (18) "Medical use," includes the acquisition, administration, cultivation, manufacture,
27 delivery, harvest, possession, preparation, transfer, transportation, or use of
28 cannabis or paraphernalia relating to the administration of cannabis to treat or
29 alleviate a registered qualifying patient's debilitating medical condition or symptom
30 associated with the patient's debilitating medical condition. The term does not
31 include:
32 (a) The cultivation of cannabis by a nonresident cardholder;
33 (b) The cultivation of cannabis by a cardholder who is not designated as being
34 allowed to cultivate on the cardholder's registry identification card; or

- 1 (c) The extraction of resin from cannabis by solvent extraction unless the
2 extraction is done by a cannabis product manufacturing facility;
- 3 (19) "Nonresident cardholder," a person who:
- 4 (a) Has been diagnosed with a debilitating medical condition, or is the parent,
5 guardian, conservator, or other person with authority to consent to the
6 medical treatment of a person who has been diagnosed with a debilitating
7 medical condition;
- 8 (b) Is not a resident of this state or who has been a resident of this state for
9 fewer than forty-five days;
- 10 (c) Was issued a currently valid registry identification card or its equivalent by
11 another state, district, territory, commonwealth, insular possession of the
12 United States, or country recognized by the United States that allows the
13 person to use cannabis for medical purposes in the jurisdiction of issuance;
14 and
- 15 (d) Has submitted any documentation required by the department, and has
16 received confirmation of registration;
- 17 (20) "Practitioner," a physician who is licensed with authority to prescribe drugs to
18 humans. In relation to a nonresident cardholder, the term means a person who is
19 licensed with authority to prescribe drugs to humans in the state of the patient's
20 residence;
- 21 (21) "Qualifying patient," a person who has been diagnosed by a practitioner as having
22 a debilitating medical condition;
- 23 (22) "Registry identification card," a document issued by the department that identifies
24 a person as a registered qualifying patient or registered designated caregiver, or
25 documentation that is deemed a registry identification card pursuant to §§ 34-20G-
26 29 to 34-20G-42, inclusive; and
- 27 (23) "Written certification," a document dated and signed by a practitioner, stating that
28 in the practitioner's professional opinion the patient is likely to receive therapeutic
29 or palliative benefit from the medical use of cannabis to treat or alleviate the
30 patient's debilitating medical condition or symptom associated with the debilitating
31 medical condition. This document shall affirm that it is made in the course of a
32 bona fide practitioner-patient relationship and shall specify the qualifying patient's
33 debilitating medical condition.