



2023 South Dakota Legislature

House Bill 1102

Introduced by: **Representative** Deutsch

1 **An Act to clarify and modify requirements related to the medical cannabis program.**

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,":
- 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, two
- 10 flowering cannabis plants and two cannabis plants that are not flowering;
- 11 and
- 12 (d) If the cardholder has a registry identification card allowing cultivation, the
- 13 amount of cannabis and cannabis products that were produced from the
- 14 cardholder's allowable plants, if the cannabis and cannabis products are
- 15 possessed at the same property where the plants were cultivated;
- 16 (2) "Bona fide practitioner-patient relationship," a ~~treatment or consulting~~ relationship
- 17 between a practitioner and patient, during which:
- 18 (a) The practitioner completes, at the initial visit, an assessment of the patient's
- 19 medical history and current medical condition, including an appropriate in-
- 20 person physical examination;
- 21 (b) The patient is under the practitioner's continuing care ~~for the debilitating~~
- 22 ~~medical condition that qualifies the patient for the medical use of cannabis~~
- 23 ~~or has been referred to the practitioner by the a practitioner caring for the~~
- 24 ~~patient's debilitating medical condition that qualifies the patient for the~~
- 25 ~~medical use of cannabis to another practitioner~~ providing the patient
- 26 continuing care;

- 1 (c) ~~The patient has a reasonable expectation that the practitioner providing the~~
 2 provides written certification ~~will continue to provide~~ that the practitioner
 3 will assess the clinical status of the patient and offer or recommend follow-
 4 up care to the patient to monitor the patient's medical use of cannabis; and
- 5 (d) The relationship is not for the sole purpose of providing a written
 6 certification for the medical use of cannabis unless the patient has been
 7 referred by a practitioner providing the patient continuing care ~~for the~~
 8 ~~debilitating medical condition that qualifies the patient for the medical use~~
 9 ~~of cannabis;~~
- 10 (3) "Cannabis products," any concentrated cannabis, cannabis extracts, and products
 11 that are infused with cannabis or an extract thereof, and are intended for use or
 12 consumption by humans. The term includes edible cannabis products, beverages,
 13 topical products, ointments, oils, and tinctures;
- 14 (4) "Cannabis product manufacturing facility," an entity registered with the
 15 department pursuant to this chapter that acquires, possesses, manufactures,
 16 delivers, transfers, transports, supplies, or sells cannabis products to a medical
 17 cannabis dispensary;
- 18 (5) "Cannabis testing facility" or "testing facility," an independent entity registered
 19 with the department pursuant to this chapter to analyze the safety and potency of
 20 cannabis;
- 21 (6) "Cardholder," a qualifying patient or a designated caregiver who has been issued
 22 and possesses a valid registry identification card;
- 23 ~~(7)~~ "Continuing care," a patient's ongoing course of treatment with a practitioner for a
 24 debilitating medical condition, during which the practitioner has completed a full
 25 assessment of the patient's medical history and current medical condition, an in-
 26 person physical examination, and at least one additional interaction with the
 27 patient regarding the debilitating medical condition by phone, virtually, or in
 28 person;
- 29 ~~(7)~~(8) "Cultivation facility," an entity registered with the department pursuant to this
 30 chapter that acquires, possesses, cultivates, delivers, transfers, transports,
 31 supplies, or sells cannabis and related supplies to a medical cannabis
 32 establishment;
- 33 ~~(8)~~(9) "Debilitating medical condition,":
 34 (a) A chronic or debilitating disease or medical condition or its treatment that
 35 produces one or more of the following: cachexia or wasting syndrome;

- 1 severe, debilitating pain; severe nausea; seizures; or severe and persistent
 2 muscle spasms, including those characteristic of multiple sclerosis; or
 3 (b) Any other medical condition or its treatment added by the department, as
 4 provided for in § 34-20G-26;
- 5 ~~(9)~~(10) "Department," the Department of Health;
- 6 ~~(10)~~(11) "Designated caregiver," an individual who:
- 7 (a) Is at least twenty-one years of age;
- 8 (b) Has agreed to assist with a qualifying patient's medical use of cannabis;
- 9 (c) Has not been convicted of a disqualifying felony offense; and
- 10 (d) Assists no more than five qualifying patients with the medical use of
 11 cannabis, unless the designated caregiver's qualifying patients each reside
 12 in or are admitted to a health care facility, as defined in § 34-12-1.1, an
 13 accredited prevention or treatment facility, as defined in § 34-20A-2, a
 14 mental health center, as defined in § 27A-1-1, a child welfare agency, as
 15 defined in § 26-6-1, or a community support provider or community
 16 services provider, as defined in § 27B-1-17, where the designated caregiver
 17 is employed;
- 18 ~~(11)~~(12) "Disqualifying felony offense," a violent crime that was classified as a felony in
 19 the jurisdiction where the person was convicted;
- 20 ~~(12)~~(13) "Edible cannabis products," any product that:
- 21 (a) Contains or is infused with cannabis or an extract thereof;
- 22 (b) Is intended for human consumption by oral ingestion; and
- 23 (c) Is presented in the form of foodstuffs, beverages, extracts, oils, tinctures,
 24 or other similar products;
- 25 ~~(13)~~(14) "Enclosed, locked facility," any closet, room, greenhouse, building, or other
 26 enclosed area that is equipped with locks or other security devices that permit
 27 access only by a cardholder or a person allowed to cultivate the plants. Two or
 28 more cardholders who reside in the same dwelling may share one enclosed, locked
 29 facility for cultivation;
- 30 ~~(14)~~(15) "Flowering cannabis plant," the reproductive state of the cannabis plant in
 31 which the plant shows physical signs of flower budding out of the nodes of the
 32 stem;
- 33 ~~(15)~~(16) "Medical cannabis" or "cannabis," marijuana as defined in § 22-42-1;
- 34 ~~(16)~~(17) "Medical cannabis dispensary" or "dispensary," an entity registered with the
 35 department pursuant to this chapter that acquires, possesses, stores, delivers,

- 1 transfers, transports, sells, supplies, or dispenses cannabis, cannabis products,
2 paraphernalia, or related supplies and educational materials to cardholders;
3 ~~(17)~~(18) "Medical cannabis establishment," a cultivation facility, a cannabis testing
4 facility, a cannabis product manufacturing facility, or a dispensary;
5 ~~(18)~~(19) "Medical cannabis establishment agent," an owner, officer, board member,
6 employee, or volunteer at a medical cannabis establishment;
7 ~~(19)~~(20) "Medical use," includes the acquisition, administration, cultivation,
8 manufacture, delivery, harvest, possession, preparation, transfer, transportation,
9 or use of cannabis or paraphernalia relating to the administration of cannabis to
10 treat or alleviate a registered qualifying patient's debilitating medical condition or
11 symptom associated with the patient's debilitating medical condition. The term
12 does not include:
- 13 (a) The cultivation of cannabis by a nonresident cardholder;
 - 14 (b) The cultivation of cannabis by a cardholder who is not designated as being
15 allowed to cultivate on the cardholder's registry identification card; or
 - 16 (c) The extraction of resin from cannabis by solvent extraction unless the
17 extraction is done by a cannabis product manufacturing facility;
- 18 ~~(20)~~(21) "Nonresident cardholder," a person who:
- 19 (a) Has been diagnosed with a debilitating medical condition, or is the parent,
20 guardian, conservator, or other person with authority to consent to the
21 medical treatment of a person who has been diagnosed with a debilitating
22 medical condition;
 - 23 (b) Is not a resident of this state or who has been a resident of this state for
24 fewer than forty-five days;
 - 25 (c) Was issued a currently valid registry identification card or its equivalent by
26 another state, district, territory, commonwealth, insular possession of the
27 United States, or country recognized by the United States that allows the
28 person to use cannabis for medical purposes in the jurisdiction of issuance;
29 and
 - 30 (d) Has submitted any documentation required by the department, and has
31 received confirmation of registration;
- 32 ~~(21)~~(22) "Practitioner," a physician, a physician assistant, or an advanced practice
33 registered nurse, who is licensed with authority to prescribe drugs to humans. In
34 relation to a nonresident cardholder, the term means a person who is licensed with
35 authority to prescribe drugs to humans in the state of the patient's residence;

- 1 ~~(22)~~(23) "Qualifying patient," a person who has been diagnosed by a practitioner as
 2 having a debilitating medical condition;
- 3 ~~(23)~~(24) "Registry identification card," a document issued by the department that
 4 identifies a person as a registered qualifying patient or registered designated
 5 caregiver, or documentation that is deemed a registry identification card pursuant
 6 to §§ 34-20G-29 to 34-20G-42, inclusive;
- 7 ~~(24)~~(25) "Safety-sensitive job," any position with tasks or duties that an employer
 8 reasonably believes could:
- 9 (a) Cause the illness, injury, or death of an individual; or
 10 (b) Result in serious property damage;
- 11 (26) "Secretary," the secretary of the Department of Health;
- 12 ~~(25)~~(27) "Under the influence of cannabis," any abnormal mental or physical condition
 13 that tends to deprive a person of clearness of intellect and control that the person
 14 would otherwise possess, as the result of consuming any degree of cannabis or
 15 cannabis products; and
- 16 ~~(26)~~(28) "Written certification," a document dated and signed by a practitioner ~~that~~
 17 meets the requirements of section 4 of this Act.
- 18 ~~(a) — Stating that the patient has a qualifying debilitating medical condition or~~
 19 ~~symptom associated with the debilitating medical condition;~~
- 20 ~~(b) — Affirming that the document is made in the course of a bona fide~~
 21 ~~practitioner-patient relationship;~~
- 22 ~~(c) — Specifying the qualifying patient's debilitating medical condition; and~~
- 23 ~~(d) — Specifying the expiration date of the qualifying patient's written~~
 24 ~~certification, pursuant to § 34-20G-43.~~

25 **Section 2. That chapter 34-20G be amended with a NEW SECTION:**

26 Before a practitioner may issue any written certification, a practitioner must enroll
 27 with the department as a practitioner for purposes of the medical cannabis program.

28 **Section 3. That chapter 34-20G be amended with a NEW SECTION:**

29 Before issuing a written certification for a patient, a practitioner shall:

- 30 (1) Have an established bona fide practitioner-patient relationship with the patient;
 31 and
- 32 (2) Assess the patient's medical history and current medical condition as it relates to
 33 the use of medical cannabis, including an in-person physical examination of the

1 patient appropriate to confirm the diagnosis of a debilitating medical condition and
2 the establishment of a treatment plan for the patient.
3 A practitioner may not conduct the in-person physical examination required by
4 subdivision 2 by telehealth, as defined in § 34-52-1.

5 **Section 4. That chapter 34-20G be amended with a NEW SECTION:**

6 For a patient to qualify for the medical use of cannabis under this chapter, a written
7 certification on behalf of the patient must be issued by a practitioner who meets the
8 requirements of section 3 of this Act. If a practitioner determines that a patient has a
9 debilitating medical condition or a symptom associated with a debilitating medical
10 condition, the practitioner may issue a written certification. To issue a written certification,
11 the practitioner shall complete a written certification form provided by the department
12 that contains:

- 13 (1) A certification that the patient is under the practitioner's care for a debilitating
14 medical condition;
- 15 (2) A certification that the patient has been diagnosed with a qualifying debilitating
16 medical condition or symptom associated with the debilitating medical condition;
- 17 (3) A certification that the diagnosis has been made in the course of a bona fide
18 practitioner-patient relationship;
- 19 (4) A certification that the practitioner has assessed the patient's medical history and
20 current medical condition, including an in-person physical examination;
- 21 (5) A certification that the practitioner has developed a treatment plan for the patient's
22 medical use of cannabis;
- 23 (6) A certification that the practitioner has evaluated any medical cannabis
24 contraindications with any other drug the patient is taking, assessed other medical
25 conditions the patient has, and discussed with the patient any associated risks of
26 taking medical cannabis considering the patient's medical condition;
- 27 (7) A certification that the practitioner has considered the clinical status of the patient
28 and has offered or recommended follow-up care with the patient or the patient's
29 parents or legal guardian to monitor the patient's medical use of cannabis;
- 30 (8) A certification that the practitioner-patient relationship is not for the sole purpose
31 of providing a written certification to the patient, unless the patient has been
32 referred by a practitioner providing the patient continuing care;
- 33 (9) The practitioner's name, address, and phone number;

- 1 (10) The practitioner's South Dakota license and National Practitioner Identification
2 numbers, if applicable;
- 3 (11) The dates of each interaction, whether by phone, virtually, or in-person, with the
4 patient in the twelve months immediately preceding the date of the written
5 certification;
- 6 (12) The date on which the last in-person physical examination was conducted;
- 7 (13) If the patient was referred by a practitioner providing the patient continuing care,
8 the name and address of the referring practitioner;
- 9 (14) If the patient was referred by a practitioner providing the patient continuing care,
10 a certification that medical records or a visit summary including the treatment plan
11 will be sent to the referring practitioner following the office visit related to the use
12 of medical cannabis;
- 13 (15) The date of expiration of the written certification, not to exceed one year from the
14 date of issuance; and
- 15 (16) The number of designated caregivers, if more than one, that the patient's age or
16 medical condition necessitates.
- 17 A practitioner shall submit each completed written certification to the department.

18 **Section 5. That chapter 34-20G be amended with a NEW SECTION:**

19 A practitioner shall maintain health records for each patient for whom the
20 practitioner has issued a written certification. The records must accurately reflect and
21 provide clinically relevant documentation of the patient's evaluation, treatment, and plan
22 for each date of service.

23 A practitioner shall keep the records required under this section for at least three
24 years from the date of the patient's last visit.

25 **Section 6. That chapter 34-20G be amended with a NEW SECTION:**

26 The secretary shall review each written certification submitted to the department
27 under section 4 of this Act.

28 The secretary shall deny an application for a registry identification card if the
29 secretary finds that a written certification includes information that a practitioner and
30 patient met only one time and the written certification is based on the medical assessment
31 made at that one meeting, unless the patient was referred to the practitioner by a
32 practitioner providing the patient continuing care.

1 If the secretary finds that a written certification does not include a certification or
 2 information required by section 4 of this Act, the secretary shall notify the patient and the
 3 practitioner that the written certification is incomplete, and that the practitioner may
 4 reissue a revised written certification. If the secretary does not receive a revised written
 5 certification that includes all the required certifications and information within ten calendar
 6 days of the notice, the secretary shall deny the request for the registry identification card
 7 based on the incomplete written certification.

8 **Section 7. That chapter 34-20G be amended with a NEW SECTION:**

9 If the secretary has reason to believe, based on a review of a written certification
 10 submitted to the department, that a practitioner has issued a written certification to a
 11 patient in the absence of having a bona fide practitioner-patient relationship with the
 12 patient, the secretary must notify the applicable licensing board of the secretary's review.
 13 Upon notification, the applicable licensing board shall investigate whether a violation of
 14 this chapter has occurred.

15 **Section 8. That § 34-20G-29 be AMENDED:**

16 **34-20G-29.** ~~No later than November 18, 2021, the~~The department shall issue a
 17 registry identification ~~card~~card to a ~~qualifying patients~~patient who ~~submits~~submits the
 18 following, in accordance with rules promulgated by the department in accordance with
 19 chapter 1-26:

- 20 (1) A written certification issued by a practitioner within ninety days immediately
 21 preceding the date of an application;
- 22 (2) The application or renewal fee;
- 23 (3) The name, address, and date of birth of the qualifying patient, except that if the
 24 applicant is homeless, no address is required;
- 25 (4) The name, address, and telephone number of the qualifying patient's practitioner;
- 26 (5) The name, address, and date of birth of the designated caregiver, or designated
 27 caregivers, chosen by the qualifying patient;
- 28 (6) If more than one designated caregiver is designated at any given time,
 29 documentation demonstrating that a greater number of designated caregivers are
 30 needed due to the patient's age or medical condition;
- 31 (7) The name of no more than two dispensaries that the qualifying patient designates,
 32 if any; and

- 1 (8) If the qualifying patient designates a designated caregiver, a designation as to
 2 whether the qualifying patient or designated caregiver will be allowed under state
 3 law to possess and cultivate cannabis plants for the qualifying patient's medical
 4 use.

5 **Section 9. That § 34-20G-34 be AMENDED:**

6 **34-20G-34.** The ~~department~~secretary may deny an application or renewal of a
 7 qualifying patient's registry identification card ~~only if the applicant:~~

- 8 (1) ~~Does~~If the applicant does not provide the required information, fee, or materials;
 9 (2) ~~Does~~If the applicant does not meet the requirement to obtain a registry
 10 identification card ~~as defined in § 34-20G-1;~~
 11 (3) ~~Previously~~If the applicant had a registry identification card revoked; or
 12 (4) ~~Provided~~If the applicant provided false information.

13 **Section 10. That chapter 34-20G be amended with a NEW SECTION:**

14 A practitioner or an entity employing a practitioner may not publish in any form or
 15 through any medium, or cause to be published in any form or through any medium, an
 16 advertisement that:

- 17 (1) Contains false or misleading statements about the medical cannabis program;
 18 (2) States or implies that the practitioner is endorsed by the state or the medical
 19 cannabis program;
 20 (3) Contains medical symbols that could reasonably be confused with symbols of
 21 established medical associations or groups;
 22 (4) Guarantees or promises the issuance of a written certification or participation in
 23 the medical cannabis program or implies such a guarantee or promise; or
 24 (5) Offers to deliver through telehealth, as defined in § 34-52-1, the initial in-person
 25 visit and medical assessment as required by section 3 of this Act.

26 Upon notification by the department of a violation of this section, the practitioner
 27 or entity employing a practitioner shall cease the nonconforming advertisement and
 28 remove the nonconforming advertisement from any website, social media application,
 29 mobile application, or sign.

30 A practitioner or entity employing a practitioner found by the secretary to have
 31 violated this section is prohibited from providing a written certification to any patient for
 32 a time period not to exceed six months. A decision by the secretary under this section
 33 may be appealed under chapter 1-26.

1 **Section 11. That § 34-20G-88 be AMENDED:**

2 **34-20G-88.** Confidential data or data that is not a public record kept or maintained
3 by the department may only be disclosed as necessary to:

- 4 (1) Verify a registration certificate or registry identification card pursuant to this
5 chapter;
- 6 (2) Notify law enforcement of an apparent criminal violation of this chapter or respond
7 to law enforcement or prosecutorial officials engaged in the investigation or
8 enforcement of the criminal provisions of this chapter;
- 9 (3) Notify state and local law enforcement about falsified or fraudulent information
10 submitted for the purpose of obtaining or renewing a registry identification card;
- 11 (4) Notify the applicable licensing board if there is reason to believe that a practitioner
12 provided a written certification in the absence of a bona fide practitioner-patient
13 relationship and/or the department has reason to believe the practitioner otherwise
14 violated the standard of care for evaluating a medical condition ~~or respond to the~~
15 ~~board, if the board is seeking data relevant to an investigation of a person who~~
16 ~~holds a license issued by the board for purposes of the medical cannabis program;~~
17 (5) Respond to an applicable licensing board, if that board is seeking data or
18 information relevant to an investigation of a practitioner who holds a license issued
19 by the board;
- 20 ~~(5)(6)~~ Any judicial authority under grand jury subpoena or court order or equivalent
21 judicial process for investigation of criminal, civil, or administrative violations
22 related to the use of medical cannabis;
- 23 ~~(6)(7)~~ An authorized employee of the department performing official duties associated
24 with the medical cannabis program; or
- 25 ~~(7)(8)~~ A practitioner to determine if a person in the practitioner's care engages in the
26 medical use of cannabis so the practitioner may assess possible drug interactions
27 or assess other medically necessary concerns.

28 **Section 12. That § 36-4-30 be AMENDED:**

29 **36-4-30.** The term, unprofessional or dishonorable conduct, as used in this
30 chapter includes:

- 31 (1) Producing or aiding or abetting a criminal abortion;
- 32 (2) Employing what is known as cappers or steerers;

- 1 (3) Obtaining any fee on the assurance that a manifestly incurable disease can be
2 permanently cured;
- 3 (4) Willfully betraying a professional confidence;
- 4 (5) All advertising of medical business in which untruthful or improbable statements
5 are made or which are calculated to mislead or deceive the public, including any
6 violation of section 10 of this Act;
- 7 (6) Conviction of any criminal offense of the grade of felony, any conviction of a
8 criminal offense arising out of the practice of medicine or osteopathy, or one in
9 connection with any criminal offense involving moral turpitude;
- 10 (7) Habits of intemperance or drug addiction, calculated in the opinion of the Board of
11 Medical and Osteopathic Examiners to affect the licensee's practice of the
12 profession;
- 13 (8) Refusal or neglect to report the existence of a diseased or unsanitary condition to
14 the proper health authorities, as prescribed by the regulations of the board;
- 15 (9) Prescribing intoxicants, narcotics, barbiturates, or other habit-forming drugs to any
16 person in quantities and under circumstances making it apparent to the board that
17 the prescription was not made for legitimate medicinal purposes or prescribing in
18 a manner or in amounts calculated in the opinion of the board to endanger the
19 well-being of an individual patient or the public in general;
- 20 (10) Splitting fees or giving to any person furnishing a patient any portion of the fees
21 received from the patient or paying or giving to any person consideration of any
22 kind for furnishing a patient;
- 23 (11) Failure to disclose one's school of practice or one's professional academic degree
24 when using a professional title or designation;
- 25 (12) Sustaining any physical or mental disability which renders the further practice of a
26 licensee's profession dangerous;
- 27 (13) Failure to comply with state or federal laws on keeping records regarding
28 possessing and dispensing of narcotics, barbiturates, and habit-forming drugs;
- 29 (14) Falsifying the medical records of a patient or any official record regarding
30 possession and dispensing of narcotics, barbiturates, and habit-forming drugs or
31 regarding any phase of medical treatment of a patient;
- 32 (15) Presenting to the board any license, certificate, or diploma which was obtained by
33 fraud or deception practiced in passing a required examination or which was
34 obtained by the giving of false statements or information on applying for the
35 license;

- 1 (16) Illegally, fraudulently, or wrongfully obtaining a license required by this chapter by
 2 the use of any means, devices, deceptions, or helps in passing any examination or
 3 by making false statements or misrepresentations in any applications or
 4 information presented;
- 5 (17) Conviction of violating § 34-23A-10.1;
- 6 (18) Performing medical services which have been declared, by declaratory ruling of the
 7 board, to be of no medical value;
- 8 (19) The exercise of influence within the physician-patient relationship for the purposes
 9 of engaging a patient in sexual activity. For the purposes of this subdivision, the
 10 patient is presumed incapable of giving free, full, and informed consent to sexual
 11 activity with the physician;
- 12 (20) Engaging in gross or immoral sexual harassment or sexual contact;
- 13 (21) Consistently providing or prescribing medical services or treatments which are
 14 inappropriate or unnecessary;
- 15 (22) Any practice or conduct which tends to constitute a danger to the health, welfare,
 16 or safety of the public or patients or engaging in conduct which is unbecoming a
 17 person licensed to practice medicine;
- 18 (23) Failure to fulfill a valid obligation to a federal or state student loan or scholarship
 19 program for medical school education designed to provide medical services to
 20 underserved geographical areas; ~~and~~
- 21 (24) Discipline by another state, territorial, or provincial licensing board or the licensing
 22 board of the District of Columbia-; and
- 23 (25) Providing a written certification, as defined in § 34-20G-1, to a patient in the
 24 absence of a bona fide practitioner-patient relationship, as defined in § 34-20G-1.
 25 No person may be criminally prosecuted for conduct described in this section unless
 26 such conduct is otherwise unlawful.

27 **Section 13. That chapter 36-9 be amended with a NEW SECTION:**

28 In compliance with chapter 1-26, the board may revoke or suspend a license or
 29 may take other disciplinary or corrective action the board considers appropriate upon proof
 30 that a licensed advanced practice registered nurse has issued a written certification, as
 31 defined in § 34-20G-1, to a patient in the absence of a bona fide practitioner-patient
 32 relationship, as defined in § 34-20G-1.