2023 South Dakota Legislature

House Bill 1129

Introduced by: ***Representative*** *Deutsch*

An Act to modify and establish provisions related to medical cannabis.

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

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

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

(1) "Allowable amount of cannabis,":

(a) Three ounces of cannabis or less;

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

(c) If the cardholder has a registry identification card allowing cultivation, two flowering cannabis plants and two cannabis plants that are not flowering; and

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

(2) "Bona fide practitioner-patient relationship," a treatment or consulting relationship between a practitioner and patient, during which:

(a) The practitioner completes, at the initial visit, an assessment of the patient's medical history and current medical condition, including an appropriate in-person physical examination;

(b) The patient is under the practitioner's care for the debilitating medical condition that qualifies the patient for the medical use of cannabis or has been referred by the practitioner caring for the patient's debilitating medical condition that qualifies the patient for the medical use of cannabis to another practitioner;

(c) The patient has a reasonable expectation that the practitioner providing the written certification will continue to provide follow-up care to the patient to monitor the medical use of cannabis; and

(d) The relationship is not for the sole purpose of providing a written certification for the medical use of cannabis unless the patient has been referred by a practitioner providing care for the debilitating medical condition that qualifies the patient for the medical use of cannabis;

(3) "Cannabis products," any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof, and are intended for use or consumption by humans. The term includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures;

(4) "Cannabis product manufacturing facility," an entity registered with the department pursuant to this chapter that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a medical cannabis dispensary;

(5) "Cannabis testing facility" or "testing facility," an independent entity registered with the department pursuant to this chapter to analyze the safety and potency of cannabis;

(6) "Cardholder," a qualifying patient or a designated caregiver who has been issued and possesses a valid registry identification card;

(7) "Cultivation facility," an entity registered with the department pursuant to this chapter that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a medical cannabis establishment;

(8) "Debilitating medical condition,":

(a) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe, debilitating pain; severe nausea; seizures; or severe and persistent muscle spasms, including those characteristic of multiple sclerosis; or

(b) Any other medical condition or its treatment added by the department, as provided for in § 34-20G-26;

(9) "Department," the Department of Health;

(10) "Designated caregiver," an individual who:

(a) Is at least twenty-one years of age;

(b) Has agreed to assist with a qualifying patient's medical use of cannabis;

(c) Has not been convicted of a disqualifying felony offense; and

(d) Assists no more than five qualifying patients with the medical use of cannabis, unless the designated caregiver's qualifying patients each reside in or are admitted to a health care facility, as defined in § 34-12-1.1, 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 § 26-6-1, or a community support provider or community services provider, as defined in § 27B-1-17, where the designated caregiver is employed;

(11) "Disqualifying felony offense," a violent crime that was classified as a felony in the jurisdiction where the person was convicted;

(12) "Edible cannabis products," any product that:

(a) Contains or is infused with cannabis or an extract thereof;

(b) Is intended for human consumption by oral ingestion; and

(c) Is presented in the form of foodstuffs, beverages, extracts, oils, tinctures, or other similar products;

(13) "Enclosed, locked facility," any closet, room, greenhouse, building, or other enclosed area that is equipped with locks or other security devices that permit access only by a cardholder or a person allowed to cultivate the plants. Two or more cardholders who reside in the same dwelling may share one enclosed, locked facility for cultivation;

(14) "Flowering cannabis plant," the reproductive state of the cannabis plant in which the plant shows physical signs of flower budding out of the nodes of the stem;

(15) "Medical cannabis" or "cannabis," marijuana as defined in § 22-42-1;

(16) "Medical cannabis dispensary" or "dispensary," an 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;

(17) "Medical cannabis establishment," a cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a dispensary;

(18) "Medical cannabis establishment agent," an owner, officer, board member, employee, or volunteer at a medical cannabis establishment;

(19) "Medical use," includes the acquisition, administration, cultivation, manufacture, delivery, harvest, possession, preparation, transfer, transportation, or use of cannabis or paraphernalia relating to the administration of cannabis to treat or

alleviate a registered qualifying patient's debilitating medical condition or symptom associated with the patient's debilitating medical condition. The term does not include:

(a) The cultivation of cannabis by a nonresident cardholder;

(b) The cultivation of cannabis by a cardholder who is not designated as being allowed to cultivate on the cardholder's registry identification card; or

(c) The extraction of resin from cannabis by solvent extraction unless the extraction is done by a cannabis product manufacturing facility;

(20) "Nonresident cardholder," a person who:

(a) Has been diagnosed with a debilitating medical condition, or is the parent, guardian, conservator, or other person with authority to consent to the medical treatment of a person who has been diagnosed with a debilitating medical condition;

(b) Is not a resident of this state or who has been a resident of this state for fewer than forty-five days;

(c) Was issued a currently valid registry identification card or its equivalent by another state, district, territory, commonwealth, insular possession of the United States, or country recognized by the United States that allows the person to use cannabis for medical purposes in the jurisdiction of issuance; and

(d) Has submitted any documentation required by the department, and has received confirmation of registration;

(21) "Practitioner," a physician, physician assistant, or advanced practice registered nurse, who is licensed with authority to prescribe drugs to humans. In relation to a nonresident cardholder, the term means a person who is licensed with authority to prescribe drugs to humans in the state of the patient's residence;

(22) "Qualifying patient," a person who has been diagnosed by a practitioner as having a debilitating medical condition;

(23) "Registry identification card," a document issued by the department that identifies a person as a registered qualifying patient or registered designated caregiver, or documentation that is deemed a registry identification card pursuant to §§ 34-20G-29 to 34-20G-42, inclusive;

(24) "Safety-sensitive job," any position with tasks or duties that an employer reasonably believes could:

(a) Cause the illness, injury, or death of an individual; or

(b) Result in serious property damage;

(25) "Under the influence of cannabis," any abnormal mental or physical condition that tends to deprive a person of clearness of intellect and control that the person would otherwise possess, as the result of consuming any degree of cannabis or cannabis products; and

(26) "Written certification," a document dated and signed by a practitioner:

(a) Stating that the patient has a qualifying debilitating medical condition or symptom associated with the debilitating medical condition;

(b) Affirming that the document is made in the course of a bona fide practitioner-patient relationship;

(c) Specifying the qualifying patient's debilitating medical condition; ~~and~~

(d) Specifying the expiration date of the qualifying patient's written certification, pursuant to § 34-20G-43;

(e) Stating that the practitioner has assessed the patient's medical history and current medical condition, including an in-person physical examination;

(f) Stating that the practitioner-patient relationship is not for the sole purpose of providing a written certification to the patient, unless the patient has been referred by a practitioner providing the patient continuing care; and

(g) Stating that the practitioner has evaluated any medical cannabis contraindications with any other drug the patient is taking, assessed other medical conditions the patient has, and discussed with the patient any associated risks of taking medical cannabis considering the patient's medical condition.

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

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

(1) Have a bona fide practitioner-patient relationship with the patient; and

(2) Assess the patient's medical history and current medical condition as it relates to the use of medical cannabis, including an in-person physical examination of the patient appropriate to confirm the diagnosis of a debilitating medical condition and the establishment of a treatment plan for the patient.

A practitioner may not conduct the in-person physical examination required by subdivision 2 by telehealth, as defined in § 34-52-1.

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

If the secretary of the Department of Health has reason to believe that a practitioner has issued a written certification to a patient in violation of this chapter, the secretary must notify the applicable licensing board of the potential violation. Upon notification, the applicable licensing board shall investigate whether a violation of this chapter has occurred.

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

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

(1) Contains false or misleading statements about the medical cannabis program;

(2) States or implies that the practitioner is endorsed by the state or the medical cannabis program;

(3) Contains medical symbols that could reasonably be confused with symbols of established medical associations or groups;

(4) Guarantees or promises the issuance of a written certification or participation in the medical cannabis program or implies such a guarantee or promise;

(5) Offers to deliver through telehealth, as defined in § 34-52-1, the initial in-person visit and medical assessment as required by section 2 of this Act; or

(6) Offers discounts, deals, or other financial incentives for making an appointment with a practitioner or an entity employing a practitioner.

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

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

Section 5. That § 34-20G-88 be AMENDED:

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

(1) Verify a registration certificate or registry identification card pursuant to this chapter;

(2) Notify law enforcement of an apparent criminal violation of this chapter or respond to law enforcement or prosecutorial officials engaged in the investigation or enforcement of the criminal provisions of this chapter;

(3) Notify state and local law enforcement about falsified or fraudulent information submitted for the purpose of obtaining or renewing a registry identification card;

(4) Notify the applicable licensing board if there is reason to believe that a practitioner provided a written certification and the department has reason to believe the practitioner otherwise violated the standard of care for evaluating a medical condition or respond to the board, if the board is seeking data relevant to an investigation of a person who holds a license issued by the board;

(5) Any judicial authority under grand jury subpoena or court order or equivalent judicial process for investigation of criminal, civil, or administrative violations related to the use of medical cannabis;

(6) An authorized employee of the department performing official duties associated with the medical cannabis program; ~~or~~

(7) A practitioner to determine if a person in the practitioner's care engages in the medical use of cannabis so the practitioner may assess possible drug interactions or assess other medically necessary concerns; or

(8) Respond to an applicable licensing board, if that board is seeking data or information relevant to an investigation of a practitioner who holds a license issued by the board.

Section 6. That § 36-4-30 be AMENDED:

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

(1) Producing or aiding or abetting a criminal abortion;

(2) Employing what is known as cappers or steerers;

(3) Obtaining any fee on the assurance that a manifestly incurable disease can be permanently cured;

(4) Willfully betraying a professional confidence;

(5) All advertising of medical business in which untruthful or improbable statements are made or which are calculated to mislead or deceive the public, including any violation of section 4 of this Act;

(6) Conviction of any criminal offense of the grade of felony, any conviction of a criminal offense arising out of the practice of medicine or osteopathy, or one in connection with any criminal offense involving moral turpitude;

(7) Habits of intemperance or drug addiction, calculated in the opinion of the Board of Medical and Osteopathic Examiners to affect the licensee's practice of the profession;

(8) Refusal or neglect to report the existence of a diseased or unsanitary condition to the proper health authorities, as prescribed by the regulations of the board;

(9) Prescribing intoxicants, narcotics, barbiturates, or other habit-forming drugs to any person in quantities and under circumstances making it apparent to the board that the prescription was not made for legitimate medicinal purposes or prescribing in a manner or in amounts calculated in the opinion of the board to endanger the well-being of an individual patient or the public in general;

(10) Splitting fees or giving to any person furnishing a patient any portion of the fees received from the patient or paying or giving to any person consideration of any kind for furnishing a patient;

(11) Failure to disclose one's school of practice or one's professional academic degree when using a professional title or designation;

(12) Sustaining any physical or mental disability which renders the further practice of a licensee's profession dangerous;

(13) Failure to comply with state or federal laws on keeping records regarding possessing and dispensing of narcotics, barbiturates, and habit-forming drugs;

(14) Falsifying the medical records of a patient or any official record regarding possession and dispensing of narcotics, barbiturates, and habit-forming drugs or regarding any phase of medical treatment of a patient;

(15) Presenting to the board any license, certificate, or diploma which was obtained by fraud or deception practiced in passing a required examination or which was obtained by the giving of false statements or information on applying for the license;

(16) Illegally, fraudulently, or wrongfully obtaining a license required by this chapter by the use of any means, devices, deceptions, or helps in passing any examination or by making false statements or misrepresentations in any applications or information presented;

(17) Conviction of violating § 34-23A-10.1;

(18) Performing medical services which have been declared, by declaratory ruling of the board, to be of no medical value;

(19) The exercise of influence within the physician-patient relationship for the purposes of engaging a patient in sexual activity. For the purposes of this subdivision, the patient is presumed incapable of giving free, full, and informed consent to sexual activity with the physician;

(20) Engaging in gross or immoral sexual harassment or sexual contact;

(21) Consistently providing or prescribing medical services or treatments which are inappropriate or unnecessary;

(22) Any practice or conduct which tends to constitute a danger to the health, welfare, or safety of the public or patients or engaging in conduct which is unbecoming a person licensed to practice medicine;

(23) Failure to fulfill a valid obligation to a federal or state student loan or scholarship program for medical school education designed to provide medical services to underserved geographical areas; and

(24) Discipline by another state, territorial, or provincial licensing board or the licensing board of the District of Columbia.

No person may be criminally prosecuted for conduct described in this section unless such conduct is otherwise unlawful.