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Issuing agency name and address: Department of Health, P.O. Box 26110, Santa Fe, NM 87502-6110

Agency DFA code: 665

Contact person's name: Andrea Sundberg

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Type of rule action:

New ☐ **Amendment** ■ **Repeal** ☐ **Emergency** ☐ **Renumber** ☐

(ALD Use Only)
Most recent filing date: 2/16/2015

Title number: 7 **Title name:** HEALTH

Chapter number: 34 **Chapter name:** MEDICAL USE OF CANNABIS

Part number: 3 **Part name:** REGISTRY IDENTIFICATION CARDS

Amendment description (If filing an amendment): Amending (8) Sections

Amendment's NMAC citation (If filing an amendment): Sections 7 through 11, 13, 19, and 22 of 7.34.3 NMAC

Are there any materials incorporated by reference?
Yes ☐ **No** X

Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? **Yes** ☐ **No** ☐ **Public domain** ☐

Specific statutory or other authority authorizing rulemaking:

This rulemaking by the Secretary of the Department of Health is made in accordance with the following authorities: Sections 9-7-6, 26-2b-7, 26-2b-2, and 24-1-3 NMSA 1978.

Notice date(s): 10/03/2021

Hearing date(s): 11/12/2021

Rule adoption date: 2/09/2022

Rule effective date: 2/22/2022

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

The findings in support of this amendment are as stated in the attached Statement of Reasons for Adoption of the rule, which is hereby incorporated by reference.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name: Chris D. Woodward

Check if authority has been delegated: X

Title: Assistant General Counsel

Signature: (BLACK ink only) Chris D. Woodward Digitally signed by Chris D. Woodward Date: 2022.02.09 14:04:03 -07'00'

Date signed: 2/09/2022

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF HEALTH

IN THE MATTER OF AMENDMENTS TO 7.34.2.7 NMAC, 7.34.4 NMAC, AND SECTIONS OF 7.34.3 NMAC

STATEMENT OF REASONS FOR ADOPTION OF RULE AMENDMENTS

The Acting Cabinet Secretary for the New Mexico Department of Health ("Department"), David Scrase, M.D., hereby adopts amendments to the following rule sections:

1. 7.34.2.7 NMAC ("Definitions");
2. 7.34.3.7 NMAC ("Definitions");
3. 7.34.3.8 NMAC ("Qualifying Medical Conditions");
4. 7.34.3.9 NMAC ("Quantity of Usable Cannabis That May Be Possessed by a Qualified Patient or Primary Caregiver");
5. 7.34.3.10 NMAC ("Qualified Patient and Primary Caregiver Registry Identification Card Application Card Requirements");
6. 7.34.3.11 NMAC ("Registry Identification Cards");
7. 7.34.3.13 NMAC ("Possession of Usable Cannabis");
8. 7.34.3.19 NMAC ("Disposal of Unused Cannabis");
9. 7.34.3.22 NMAC ("Reciprocity"); and
10. 7.34.4.28 NMAC ("Reciprocity").

The Acting Cabinet Secretary has familiarized himself with the rulemaking record, and finds as follows:

1. The Department of Health is authorized to promulgate rules as may be necessary to carry out the duties of the Department and its divisions. NMSA 1978, § 9-7-6(E).

2. The Department is also authorized to promulgate rules to implement the purpose of the Lynn and Erin Compassionate Use Act, including but not limited to rules to govern the manner in which the Department will consider applications for registry identification cards and for the renewal of identification cards for qualified patients and primary caregivers, and rules to define the amount of cannabis that is necessary to constitute an "adequate supply", including amounts for topical treatments. NMSA 1978, § 26-2b-7.

3. A public rule hearing concerning the proposed amendments was held via the Cisco Webex online video conferencing platform on November 12, 2021 pursuant to NMSA 1978, § 9-7-6(E).

4. In accordance with NMSA 1978, Section 14-4-5.2, notice of the public hearing for the proposed rule changes was published in the New Mexico Register, the official publication for notices of all rulemaking in New Mexico, on October 13, 2021, as more fully described in the Affidavit at Exhibit 7 (Affidavit of Publication in the New Mexico Register).

5. In accordance with the Department of Health Act at NMSA 1978, Section 9-7-6(E), notice of the public hearing for the proposed rule changes was also published in the Albuquerque Journal, newspaper on October 13, 2021, as more fully described in the Affidavit at Exhibit 6 (Affidavit of Publication, Abq. Journal).

6. Notice of the rulemaking was also provided to the public in accordance with NMSA 1978, Section 14-4-5.2, as more fully described in the Affidavit at Exhibit 5 (Affidavit of Notice to the Public).

7. In accordance with NMSA 1978, § 26-2B-7(A), the Department of Health consulted the Medical Cannabis Advisory Board ("MCAB") concerning the proposed amendments to the Medical Cannabis Program rules. The Medical Cannabis Advisory Board reviewed the proposed amendments at its meeting on December 7, 2021, and unanimously recommended in favor of their adoption, as reflected in the MCAB Meeting Minutes at Exhibit 18.

8. By a letter dated September 30, 2021, the Acting Cabinet Secretary, David Scrase, M.D., designated Mr. Craig Erickson, Esq. to serve as hearing officer for the purpose of

conducting the hearing and submitting a recommendation regarding the proposed rule amendment.

9. Members of the public were afforded an opportunity to comment on the proposed rules at the hearing, and in writing prior to the hearing.

10. The Secretary finds that the Hearing Officer has appropriately considered the comments received, and finds that the recommendations of the Hearing Officer are appropriate; and, by this reference, the Secretary hereby adopts and incorporates all of the findings and recommendations of the Hearing Officer that are stated in Hearing Officer's Report, issued by the Hearing Officer on January 18, 2022 and received by the Secretary on January 20, 2022.

11. Virtually all of the public comments (both oral and written) in this rulemaking were submitted by representatives of the licensed medical cannabis producer Ultra Health. *See* Ex. 10, 14-16. Ultra Health primarily contended that NMDOH lacks authority to set regulatory standards concerning the "adequate supply" limit at 7.34.3.9 NMAC.

12. In a letter dated December 3, 2021, contained at Exhibit 17, Assistant General Counsel Chris D. Woodward responded to Ultra Health's comments on behalf of the Department's Medical Cannabis Program. The Acting Cabinet Secretary finds that that response is well taken, and accordingly, adopts the reasoning of that letter, which is hereby incorporated in its entirety by this reference.

13. Contrary to the legal contentions of Ultra Health's representatives, the New Mexico Department of Health continues to be charged by the Lynn and Erin Compassionate Use Act with setting the "adequate supply" limit, as well as setting a reciprocal participation limit. Those authorities were not transferred to the Regulation and Licensing Department (RLD) by the Cannabis Regulation Act (CRA) at NMSA 1978, § 26-2C-5, which concerned only the transfer

of "licensing duties". The "licensing duties" that were transferred to RLD under the CRA concerned only licensing of commercial cannabis establishments, and did not include the setting of the adequate supply limit.

14. The recent case of *Jason Barker v. New Mexico Department of Health, Dr. Dominick Zurlo, Dr. David R. Scrase, New Mexico Regulation and Licensing Department, Linda Trujillo, John Blair, and Robert Sachs*, case no. D-202-CV-2021-04058, involved legal contentions identical to those raised by Ultra Health in this rulemaking.

15. In the *Jason Barker* case, a petitioner sought a writ of mandamus from the NM Second Judicial District Court against the Department of Health, the Regulation and Licensing Department, and various representatives of those two agencies, to prohibit the enforcement of purchase and possession limitations on medical cannabis found at 7.34.3.9(A) NMAC and 7.34.4.8(L) NMAC, and to require that qualified patients and primary caregivers be allowed to purchase unlimited quantities of cannabis, tax-free, applying only the two-ounce per-transaction limit of the Cannabis Regulation Act at NMSA 1978, § 26-2C-25(A)(2).

16. In a December 16, 2021 "Order Quashing Alternative Writ of Mandamus", contained at Exhibit 19, the Bernalillo County District Court (Hon. Benjamin Chavez) rejected the Petitioner's reasoning and quashed the alternative writ, concluding in relevant part that the Department of Health continues to possess authority under the Lynn and Erin Compassionate Use Act to set the adequate supply limit by rule, and concluding that the Department's rules at 7.34.3.9(A) NMAC and 7.34.4.8(L) NMAC are not inconsistent with the Cannabis Regulation Act.

17. Accordingly, for the reasons stated, the Acting Cabinet Secretary finds that the rule amendments are within the Department of Health's statutory authority.

18. Ultra Health's representatives also argued that the 15-ounce adequate supply limit, specified in the amendment to 7.34.3.9 NMAC, lacks "substantial evidence". Ultra Health's argument on this subject contradicts its repeated requests over the years for the Department of Health to set a 15-ounce adequate supply limit, documented at Exhibits 11 and 13.

19. In those letters, Ultra Health's representatives petitioned the Department of Health and the Medical Cannabis Advisory Board, respectively, to increase the adequate supply limit to 420 units/grams, slightly less than the 425 units/grams limit specified in the pending amendment to 7.34.3.9 NMAC. Ultra Health claimed in those petitions that fifteen ounces of dried usable cannabis for a three-month period was a common industry standard; that it was adopted in several states, including Arizona, Arkansa, Illinois, Maine, and Nevada; and that this limit would be enough to ensure that patients can purchase, consistent with CDC guidance, a back-stock of medicine sufficient to allow them to keep a 30-day supply of medicine on-hand.

20. In an e-mail submitted by its counsel after the conclusion of the public hearing in this rulemaking, Ultra Health appeared to pivot away from its "substantial evidence" argument, claiming instead that "[a]ny cannabis-related events that occurred prior to June 29, 2021 are largely irrelevant, because the world of cannabis in New Mexico fundamentally changed on June 29, 2021 with the effectuation of the Cannabis Regulation Act." Ex. 16 at 1.

21. As explained, the Department of Health's authority to set the adequate supply limit is established by the Lynn and Erin Compassionate Use Act, and has been confirmed by the NM Second Judicial District Court. Furthermore, Ultra Health has not offered anything to demonstrate that changes resulting from the Cannabis Regulation Act will in some way impact consumption patterns among qualified patients or reciprocal participants, such that a larger limit

is necessitated, or that a larger limit would be medically appropriate. In fact, Ultra Health has not proposed any alternative limit at all, but has simply declared, without explanation, that its previous endorsement of 15-ounces is now erroneous and lacks "substantial evidence".

22. In his report, the Hearing Officer concluded that the proposed 15-ounce adequate supply limit was supported by substantial evidence, noting that "the basis for the 15-ounce adequate supply limit was articulated in written submissions from Ultra Health for the last two years, beginning in 2019." The Hearing Officer concluded that this limit "is an industry standard that has been applied in several states"; that it was unanimously approved by the Medical Cannabis Advisory Board; and that it was further supported by the fact that less and one percent of qualified patients in the Medical Cannabis Program have sought access to additional quantities of cannabis under the previous medical exception of the rule. Report at p.25. The Acting Cabinet Secretary finds that these conclusions are well taken, and adopts the Hearing Officer's reasoning.

23. With the coming of commercial cannabis sales in New Mexico, the adequate supply limit will no longer function as an acquisition limit for the vast majority of qualified patients and primary caregivers. When commercial cannabis sales begin (no later than April 1st of this year, per the CRA at NMSA 1978, § 26-2C-6(K)), any person 21 years of age or older will be able to purchase "commercial cannabis", above and beyond "medical cannabis" purchases, with the only acquisition limit for those purchases being a limit per each individual transaction.

24. Also, as of June 29, 2021, the CRA has made it legal for any person 21 years of age and older to possess up to six mature and six immature cannabis plants at any time, a fifty-

percent increase over the previous 4-mature-plant limit for personal production license holders under the previous NMDOH rule.

25. Based on these factors, and based on each of them individually, the Acting Cabinet Secretary finds that the Department's 15-ounce adequate supply and reciprocal participation limits will not prevent individuals from obtaining needed medicine, and that the 425-unit limit is reasonable and appropriate.

26. The Acting Cabinet Secretary finds that the amendments are in harmony with the agency's express statutory authorities and/or spring from those powers that may fairly be implied therefrom, and that the amendments are consistent with the statutory purposes of the Department of Health. *Rio Grande Chapter of Sierra Club v. New Mexico Mining Comm'n*, 2003-NMSC-005, ¶ 25, 133 N.M. 97, 106 (internal citations omitted).

27. The Acting Cabinet Secretary finds that the rule amendments fall within the scope of the rulemaking proceeding, that they are a logical outgrowth of the notice given and comment received, and that commenters were afforded a fair opportunity to present their views on the contents of the final plan. *See* 1.24.25.14(C) NMAC; *see also* N.M. Att'y Gen. Op. 87-59 (1987) (*citing BASF Wyandotte Corp. v. Costle*, 598 F.2d 637, 642 (1st Cir. 1979)).

28. The purpose of the amendments is to modify the rule requirements for the New Mexico Medical Cannabis Program, as detailed in Exhibits 1, 2 and 3, and in the Notice of Public Hearing at Exhibit 4.

29. The rule amendments are adopted in the exercise of police powers of the State of New Mexico, Department of Health, to regulate, promote, and protect public health and safety.

30. The Cabinet Secretary finds that the proposed rule amendments are appropriate and consistent with authorizing laws; and for each of the reasons stated, the rule amendments, as identified at Exhibits 1, 2, and 3, are hereby adopted.

NEW MEXICO DEPARTMENT OF HEALTH

David R. Scrase, M.D., Cabinet Secretary

2/9/2022
Date

This is an amendment to 7.34.3 NMAC, Sections 7 through, 3, 19, and 22, effective 2/22/2022.

7.34.3.7 DEFINITIONS:

A. Definitions beginning with "A":

(1) "Act" means the Lynn and Erin Compassionate Use Act, Sections 26-2B-1 through 26-2B-10, NMSA 1978.

(2) "Adequate supply" means an amount of cannabis, in a form approved by the department possessed by a qualified patient or collectively possessed by a qualified patient and the qualified patient's primary caregiver, that is determined by rule of the department to be no more than reasonably necessary to ensure the uninterrupted availability of cannabis for a period of three months and that is derived solely from an intrastate source.

(3) "Administrative review committee" means an intra-department committee that reviews qualified patient or primary caregiver application denials [~~, licensed producer denials made by the program director, or the summary suspension of a producer's license,~~] in accordance with department rules. The administrative review committee shall consist of the chief medical officer of the department (or that's person's designee); a deputy secretary of the department (or that person's designee), and the chief nursing officer of the department (or that person's designee).

(4) "Administrative withdrawal" means the procedure for the voluntary withdrawal of a qualified patient or primary caregiver from the medical cannabis program.

(5) "Advisory board" means the medical cannabis advisory board consisting of nine practitioners knowledgeable about the medical use of cannabis, who are appointed by the secretary.

(6) "Applicant" means any person applying for enrollment or re-enrollment in the medical cannabis program as a qualified patient or primary caregiver [~~or licensed producer~~].

[~~**(7) "Approved entity"** means a manufacturer, laboratory, or courier.~~]

B. Definitions beginning with "B": [~~**"Batch"** means, with regard to usable cannabis, an identified quantity of cannabis no greater than five pounds that is of the same strain of cannabis, that is harvested during the same specified time period from the same specified cultivation area, and with respect to which he same agricultural practices were utilized, including the use of any pesticides; and with regard to concentrated and cannabis-derived product, means an identified quantity that is uniform, that is intended to meet specifications for identity, strength, and composition, and that is manufactured, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling protocol.~~] [**RESERVED**]

C. Definitions beginning with "C":

(1) "Cannabis" means: [~~all parts of the plant Cannabis sativa L containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; the sterilized seed of the plant that is incapable of germination; the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink or another product; or hemp.~~]

(a) means all parts of the plant Cannabis containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and

(b) does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; the sterilized seed of the plant that is incapable of germination; the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink or another product; or hemp;

[~~**(2) "Cannabis consumption area"** means an area within a licensed nonprofit producer's premises that is approved by the department, where cannabis may be consumed by qualified patients, in accordance with department rules.~~

~~(3)~~] **(2) "Cannabis-derived product"** or **"cannabis product"** means [~~a product, other than cannabis itself, which contains or is derived from cannabis, not including hemp~~]

(a) means a product that contains cannabis, including edible or topical products that may also contain other ingredients; and

(b) does not include the weight of any other ingredient combined with cannabis or cannabis extract to prepare topical or oral administrations, food, drink or another product.

[~~(4) "Cannabis establishment" means:~~

~~(a) a licensed cannabis courier;~~

~~(b) a licensed cannabis testing facility;~~

~~(c) a licensed cannabis manufacturer;~~

~~(d) a licensed non-profit producer; or~~

~~(e) such other person that the department may by rule approve for participation in the medical cannabis program.~~

~~(5)~~] (3) **"CBD"** means cannabidiol, a cannabinoid and the primary non-psychoactive ingredient found in cannabis.

[~~(6)~~] (4) **"CBDA"** means cannabidiolic acid, a non-psychoactive ingredient found in cannabis and an acid precursor to CBD.

[~~(7) "Concentrated cannabis-derived product ("concentrate")" means a cannabis-derived product that is manufactured by a mechanical or chemical process that separates any cannabinoid from the cannabis plant, and that contains (or that is intended to contain at the time of sale or distribution) no less than thirty-percent THC by weight.~~

~~(8) "Courier" means a cannabis courier as defined by the Lynn and Erin Compassionate Use Act, Subsection D of Section 26-2b-3 NMSA 1978, that has been approved by the department specifically to transport usable cannabis and cannabis products within the state of New Mexico from a cannabis establishment to a qualified patient, a primary caregiver, or another cannabis establishment.~~]

D. Definitions beginning with "D":

(1) "Debilitating medical condition" means:

(a) cancer;

(b) glaucoma;

(c) multiple sclerosis;

(d) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;

(e) seizure disorder, including epilepsy;

(f) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;

(g) [~~admission~~] admitted into hospice care in accordance with rules promulgated by the department;

(h) amyotrophic lateral sclerosis;

(i) Crohn's disease;

(j) hepatitis C infection;

(k) Huntington's disease;

(l) inclusion body myositis;

(m) inflammatory autoimmune-mediated arthritis;

(n) intractable nausea or vomiting;

(o) obstructive sleep apnea;

(p) painful peripheral neuropathy;

(q) Parkinson's disease;

(r) posttraumatic stress disorder;

(s) severe chronic pain;

(t) severe anorexia or cachexia;

(u) spasmodic torticollis;

(v) ulcerative colitis; or

(w) any other medical condition, medical treatment, or disease as approved by the department which results in pain, suffering, or debility for which there is credible evidence that medical use cannabis could be of benefit.

(2) "Department" means the department of health or its agent.

(3) "Diversion" means the unlawful transfer of a cannabis plant, plant material, or cannabis-derived product.

(4) "Dried usable cannabis" means the dried leaves, flowers, and trim of the female cannabis plant, but does not include the seeds, stalks, or roots of the cannabis plant.

(5) **"Dry weight basis"** means a process by which delta-9-tetrahydrocannabinol concentration is measured relative to the aggregate weight of all parts of the plant genus Cannabis, whether growing or not, including the leaves of the plant, the flowers and buds of the plant, the seeds of the plant, the resin of the plant and the stalks of the plant, at the point of harvest and with no moisture added to the harvested plant;

E. Definitions beginning with "E": [RESERVED]

F. Definitions beginning with "F": [RESERVED] [~~**"Facility"** means any building, space, or grounds licensed for the production, possession, testing, manufacturing, or distribution of cannabis, concentrates, or cannabis-derived products.~~]

G. Definitions beginning with "G": [RESERVED]

H. Definitions beginning with "H": "Hemp" means the plant cannabis sativa L. and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol concentration of no more than three-tenths percent on a dry weight basis;

I. Definitions beginning with "I":

(1) **"Intrastate"** means existing or occurring within the state boundaries of New Mexico.

(2) **"Inversion"** means the unlawful acquisition of a cannabis plant, plant material, or cannabis-derived product.

J. Definitions beginning with "J": [RESERVED]

K. Definitions beginning with "K": [RESERVED]

L. Definitions beginning with "L": "Licensee" means any person licensed by the New Mexico Cannabis Control Division pursuant to the Cannabis Regulation Act, Sections 26-2C-1 through 26-2C-42 NMSA 1978, who is authorized by that license to sell cannabis to qualified patients, primary caregivers, and reciprocal participants.

[~~(1) **"Laboratory"** means a licensed cannabis testing facility as defined in the Lynn and Erin Compassionate Use Act, Subsection I of Section 26-2B-3 NMSA 1978, that has been approved by the department specifically for the testing of cannabis, concentrates, and cannabis derived products.~~

~~(2) **"Laboratory applicant"** means a laboratory that seeks to become an approved laboratory, or that seeks renewal of approval as an approved laboratory, in accordance with this rule.~~

~~(3) **"Licensed producer"** means a person or entity licensed to produce medical cannabis.~~

~~(4) **"Lot"** means an identified portion of a batch, that is uniform and that is intended to meet specifications for identity, strength, and composition; or, in the case of a cannabis-derived product or concentrate, an identified quantity produced in a specified period of time in a manner that is uniform and that is intended to meet specifications for identity, strength, and composition.~~]

M. Definitions beginning with "M":

[~~(1) **"Male plant"** means a male cannabis plant.~~

~~(2) **"Manufacture"** means to prepare a cannabis.~~

~~(3) **"Manufacturer"** means a cannabis manufacturer as defined in the Lynn and Erin Compassionate Use Act, Subsection F of Section 26-2B-3 NMSA 1978, that has been approved by the department specifically to manufacture cannabis products; package, transport or courier cannabis products; have cannabis products tested by a cannabis testing facility; purchase, obtain, sell and transport cannabis products to other cannabis establishments; and prepare products for personal production license holders.~~

~~(4) **"Mature female plant"** means a harvestable female cannabis plant that is flowering.~~

~~(5)~~] (1) **"Medical cannabis program"** means [~~the administrative body of the department charged with the management of the medical cannabis program and enforcement of program regulations, to include issuance of registry identification cards, licensing of producers, and regulation of manufacturing and distribution~~] the program established pursuant to the Lynn and Erin Compassionate Use Act for authorization and regulation of the medical use of cannabis in the state.

[~~(6)~~] (2) **"Medical cannabis program director"** means the administrator of the medical cannabis program who holds that title.

[~~(7)~~] (3) **"Medical director"** means a medical practitioner designated by the department to determine whether the medical condition of an applicant qualifies as a debilitating medical condition eligible for enrollment in the program, and to perform other duties.

[~~(8)~~] (4) **"Medical provider certification for patient eligibility form"** means a written certification form provided by the medical cannabis program signed by a patient's practitioner that, in the practitioner's professional opinion, the patient has a debilitating medical condition as defined by the act or this part and would be anticipated to benefit from the use of cannabis.

[~~(9)~~] (5) **"Minor"** means an individual who is less than 18 years of age.

N. Definitions beginning with "N": [**RESERVED**] [~~**"Non-profit producer"** means a New Mexico corporation that has been designated as a non-profit corporation by the New Mexico secretary of state, that has been licensed by the department to possess, produce, dispense, distribute and manufacture cannabis and cannabis products and sell wholesale or by direct sale to qualified patients and primary caregivers.~~]

O. Definitions beginning with "O": [**RESERVED**]

P. Definitions beginning with "P":

(1) "Paraphernalia" means any equipment, product, or material of any kind that is primarily intended or designed for use in compounding, converting, processing, preparing, inhaling, or otherwise introducing cannabis or its derivatives into the human body.

(2) "Patient enrollment/re-enrollment form" means the registry identification card application form for patient applicants provided by the medical cannabis program.

[~~**(3) "Permanent structure"** means a building or structure that is placed on the land for the foreseeable future that is anchored to a permanent foundation, that is roofed and walled, and which requires a building permit from a local and or state governing authority.~~

~~**(4) "Personal production license"** means a license issued to a qualified patient or to a qualified patient's primary caregiver participating in the medical cannabis program to permit the qualified patient or the qualified patient's primary caregiver to produce cannabis for the qualified patient's use at an address approved by the department.~~

~~**(5) "Pesticide"** means a pesticide as defined by the New Mexico Pesticide Control Act, Section 76-4-3, NMSA 1978.~~]

[~~**(6)**~~] **(3) "Petitioner"** means any New Mexico resident or association of New Mexico residents petitioning the advisory board for the inclusion of a new medical condition, medical treatment, or disease to be added to the list of debilitating medical conditions that qualify for the use of cannabis.

[~~**(7) "Plant"** means any cannabis plant, cutting, or clone that has roots or that is cultivated with the intention of growing roots.~~

~~**(8) "Policy"** means a written statement of principles that guides and determines present and future decisions and actions of the licensed producer.~~]

[~~**(9)**~~] **(4) "Practitioner"** means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act, Sections 30-31-1 *et seq.*, NMSA 1978.

[~~**(10)**~~] **(5) "Primary caregiver"** means a resident of New Mexico who is at least 18 years of age and who has been designated by the qualified patient or their representative and the patient's practitioner as being necessary to take responsibility for managing the well-being of a qualified patient with respect to the medical use of cannabis pursuant to the provisions of the Lynn and Erin Compassionate Use Act, Section 26-2B-1 *et seq.*, NMSA 1978.

[~~**(11)**~~] **(6) "Primary caregiver application form"** means the registry identification card application form provided by the medical cannabis program.

[~~**(12) "Private entity"** means a private, non-profit organization that applies to become or is licensed as a producer and distributor of cannabis, concentrates, or cannabis-derived products.~~

~~**(13) "Produce"** means to engage in any activity related to the planting or cultivation of cannabis.~~

~~**(14) "Proficiency testing"** means testing conducted by the department or its agent to determine the ability of a laboratory applicant or approved laboratory to accurately identify presence, quantity, or other factors pertaining to a given analyte.~~]

Q. Definitions beginning with "Q": "Qualified patient" means [~~a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received a registry identification card issued pursuant to the requirements of the act or department rules~~] a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card pursuant to the Lynn and Erin Compassionate Use Act on the basis of having been diagnosed, in person or via telemedicine, by a practitioner as having a debilitating medical condition.

R. Definitions beginning with "R":

(1) "Recall" means to request the return of a product after the discovery of a safety issue or product defect.

(2) "Reciprocal limit" means the quantity of cannabis and cannabis products that a reciprocal participant can use and possess in a given year pursuant to department rule.

(3) "Reciprocal participant" means [~~an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a~~

~~territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo~~] a person who is not a resident of New Mexico and who holds proof of enrollment by a governmental regulatory authority to participate in the medical cannabis program of another state of the United States, the District of Columbia or a territory or commonwealth of the United States in which the person resides or a person who holds proof of enrollment by a governmental regulatory authority of a New Mexico Indian nation, tribe or pueblo to participate in its medical cannabis program;

(4) "Registry identification card" means [~~a document issued and owned by the department which identifies a qualified patient authorized to engage in the use of cannabis for a debilitating medical condition or a document issued by the department which identifies a primary caregiver authorized to engage in the intrastate possession and administration of cannabis for the sole use of the qualified patient~~] a document in printed or electronic form that the department issues:

(a) to a qualified patient that identifies the bearer as a qualified patient and authorizes the qualified patient to use cannabis for a debilitating medical condition; or

(b) to a primary caregiver that identifies the bearer as a primary caregiver authorized to engage in the intrastate possession and administration of cannabis for the sole use of a qualified patient who is identified on the document.

(5) "Representative" means an individual designated as the applicant's or petitioner's agent, guardian, surrogate, or other legally appointed or authorized health care decision maker.

S. Definitions beginning with "S":

[~~**(1)**~~]**"Secretary"** means the secretary of the New Mexico department of health.

[~~**(2) "Secure grounds"** means a facility that provides a safe environment to avoid loss or theft.~~

~~**(3) "Security alarm system"** means any device or series of devices capable of alerting law enforcement , including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device used to detect or report an emergency or unauthorized intrusion.~~

~~**(4) "Security policy"** means the instruction manual or pamphlet adopted or developed by the licensed producer containing security policies, safety and security procedures, and personal safety and crime prevention techniques.~~

~~**(5) "Seedling"** means a cannabis plant that has no flowers and that is less than 12 inches in height, as measured vertically in the plant's natural position from the uppermost part of the root system (or from the soil line, if the plant is planted in soil) to the tallest point of the plant.~~

~~**(6) "Segregate"** means to separate and withhold from use or sale batches, lots, cannabis, usable cannabis, or cannabis-derived products in order to first determine its suitability for use through testing by an approved laboratory.~~]

T. Definitions beginning with "T":

(1) "THC" means tetrahydrocannabinol, a [~~cannabinoid~~] substance that is the primary psychoactive ingredient in cannabis.

[~~**(2) "THCA"** means tetrahydrocannabinolic acid, a non-psychoactive ingredient in cannabis and an acid precursor to THC.~~]

[~~**(3)**~~] **(2) "Technical evidence"** means scientific, clinical, medical, or other specialized testimony, or evidence, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.

[~~**(4)**~~] **(3) "Telemedicine"** means the use of telecommunications and information technology to provide clinical health care from a site apart from the site where the patient is located, in real time or asynchronously, including the use of interactive simultaneous audio and video or store-and-forward technology, or off-site patient monitoring and telecommunications in order to deliver health care services.

[~~**(5) "Testing"** means testing of cannabis and cannabis-derived products, consistent with provisions of this rule.~~]

U. Definitions beginning with "U":

(1) "Unit" means a quantity of usable cannabis, concentrate, or cannabis-derived product that is used in identifying the maximum supply that a qualified patient may possess for purposes of department rules.

(2) "Usable cannabis" means the dried leaves and flowers of the female cannabis plant and cannabis-derived products, including concentrates, but does not include the seeds, stalks, or roots of the plant.

V. Definitions beginning with "V": [RESERVED]

W. Definitions beginning with "W":

(1) **"Wastage"** means the destruction of usable cannabis or cannabis plants;

(2) **"Written certification"** means a statement made on a department-approved form and signed by a patient's practitioner that indicates, in the practitioner's professional opinion, that the patient has a debilitating medical condition and the practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the patient.

X. Definitions beginning with "X": [RESERVED]

Y. Definitions beginning with "Y": [RESERVED]

Z. Definitions beginning with "Z" [RESERVED]

[7.34.3.7 NMAC - Rp, 7.34.3.7 NMAC, 2/27/2015; A, 2/29/2016; A, 8/27/2019; A, 6/23/2020; A, 2/22/2022]

7.34.3.8 QUALIFYING DEBILITATING MEDICAL CONDITIONS:

A. Statutorily-approved conditions: As of the date of promulgation of this rule, specific qualifying debilitating medical conditions, diseases, and treatments ("qualifying conditions") identified in the Lynn and Erin Compassionate Use Act, Subsection B of Section 26-2B-3 NMSA 1978, include:

(1) cancer;

(2) glaucoma;

(3) multiple sclerosis;

(4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;

(5) seizure disorder, including epilepsy;

(6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;

(7) admission into hospice care in accordance with rules promulgated by the department.

(8) amyotrophic lateral sclerosis (Lou Gehrig's disease);

(9) Crohn's disease;

(10) hepatitis C infection;

(11) Huntington's disease;

(12) inclusion body myositis;

(13) inflammatory autoimmune-mediated arthritis: each individual applying to the program for enrollment shall submit medical records that confirm the diagnosis of inflammatory autoimmune-mediated arthritis;

(14) intractable nausea/vomiting;

(15) obstructive sleep apnea;

(16) painful peripheral neuropathy: application to the medical cannabis program shall be accompanied by medical records that confirm the objective presence of painful peripheral neuropathy;

(17) Parkinson's disease;

(18) post-traumatic stress disorder (PTSD): each individual applying to the program for enrollment shall submit medical records that confirm a diagnosis of PTSD meeting the diagnostic criteria of the current *diagnostic and statistical manual of mental disorders*;

(19) severe chronic pain:

(a) objective proof of the etiology of the severe chronic pain shall be included in the application; and

(b) a practitioner familiar with the patient's chronic pain shall provide written certification that the patient has an unremitting severe chronic pain condition;

(20) severe anorexia/cachexia;

(21) spasmodic torticollis (cervical dystonia); and

(22) ulcerative colitis.

B. Department-approved conditions: The department finds that the following additional qualifying conditions result in pain, suffering, or debility for which there is credible evidence that the medical use of cannabis could be of benefit, through the alleviation of symptoms, and the department accordingly approves these conditions as qualifying debilitating medical conditions for the participation of a qualified patient or primary caregiver in the medical cannabis program. The department-approved conditions include:

(1) autism spectrum disorder;

(2) Friedreich's ataxia;

(3) Lewy body disease;

(4) spinal muscular atrophy;

(5) Alzheimer's disease;
(6) opioid use disorder;
(7) such other conditions as the secretary may approve.

C. Additional application requirements: A patient shall submit with the patient's application a written certification from the patient's practitioner which shall attest:
(1) to the diagnosis of the medical condition;
(2) that the condition is debilitating; and
(3) that potential risks and benefits of the use of medical cannabis for the condition have been discussed with the patient, in accordance with this rule; a patient who applies on the basis of having a department-approved condition may also be required to satisfy additional eligibility criteria, as specified in this rule.

D. Annual [~~submittal requirements~~] written certification requirement: Pursuant to the Lynn and Erin Compassionate Use Act, Section 26-2B-7.1 NMSA 1978, in order to remain eligible for participation in the medical cannabis program, [~~A~~] a qualified patient shall submit annually to the department, and at least 30 calendar days prior to the annual certification date printed on their card, [~~on a department-approved form,~~] a statement from a practitioner on a department approved form [~~indicating that:~~]. The annual written certification shall be attested by the certifying practitioner no more than 90 days prior to submission of the certification to the department. The certification shall indicate the following:
(1) the practitioner has examined the qualified patient during the preceding 12 months;
(2) the qualified patient continues to have a debilitating medical condition; and
(3) the practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the qualified patient.

E. Modification or removal of department-approved conditions: The secretary may remove or modify a department-approved condition only if the secretary determines, on the basis of substantial credible medical and scientific evidence, and after an opportunity for review of the proposed removal or modification by the medical advisory board, that the use of cannabis by patients who have the approved condition would more likely than not result in substantial harm to the patients' health.

[7.34.3.8 NMAC - N, 2/27/2015; A, 2/29/2016; A, 8/27/2019; A, 2/22/2022]

7.34.3.9 QUANTITY OF USABLE CANNABIS THAT MAY BE POSSESSED BY A QUALIFIED PATIENT OR PRIMARY CAREGIVER:

A. Maximum quantity: A qualified patient and a qualified patient's primary caregiver may collectively [~~possess~~] purchase within any three-month period a quantity of usable cannabis no greater than [~~230~~] 425 total units. For purposes of department rules, this quantity is deemed an adequate supply. (For ease of reference: [~~230~~] 425 units is equivalent to [~~230~~] 425 grams, or approximately [~~eight~~] 15 ounces, of dried usable cannabis plant material.) [~~A qualified patient and primary caregiver may also possess cannabis seeds.~~] A qualified patient and a primary caregiver may possess the amounts of cannabis permitted in accordance with the Cannabis Regulation Act, Sections 26-2C-1 through 26-2C-42 NMSA 1978. Once commercial cannabis sales are authorized by the cannabis control division to begin in accordance with Subsection K of Section 26-2C-6 NMSA 1978, qualified patients and primary caregivers will be able to make commercial purchases above the adequate supply limit, in accordance with the Cannabis Regulation Act.

B. Calculation of units: For purposes of department rules, one unit of usable cannabis shall consist of one gram of the dried leaves and flowers of the female cannabis plant, or 0.2 grams (200 milligrams) of THC for cannabis-derived products.

[~~**C. Medical exception:** A greater quantity of usable cannabis, not to exceed 115 additional units, may be allowed, at the department's discretion, upon the submission of a statement by a medical practitioner explaining why a greater number of units of usable cannabis is medically necessary. Any such allowance shall be reviewed for approval by the program's medical director.~~]

[7.34.3.9 NMAC - N, 2/27/2015; A, 8/27/2019; A, 2/22/2022]

7.34.3.10 QUALIFIED PATIENT AND PRIMARY CAREGIVER REGISTRY IDENTIFICATION CARD APPLICATION REQUIREMENTS:

A. The department shall issue a registry identification card to an applicant for the purpose of participating in the medical cannabis program upon the written certification of the applicant's practitioner and supporting application documents. Certifications from certifying providers must be obtained within 90 calendar days prior to the expiration of the patient's registry identification card.

B. The department may require the submittal of a recent photograph from a patient applicant and primary caregiver applicant.

C. The following information shall be provided in (or as an attachment to) the participant enrollment form submitted to the department in order for a registry identification card to be obtained and processed. An attached original medical provider certification for patient eligibility form shall contain:

(1) the name, address, and telephone number of the practitioner;

(2) the practitioner's clinical licensure;

(3) the patient applicant's name and date of birth;

(4) the medical justification for the practitioner's certification of the patient's debilitating medical condition, which shall include but not be limited to a statement that, in the practitioner's professional opinion, the practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh health risks for the patient;

(5) an attestation that the practitioner's primary place of practice is located within the state of New Mexico;

(6) the practitioner's signature and the date;

(7) the name, address, and date of birth of the applicant;

(8) the name, address, and telephone number of the applicant's practitioner;

(9) a legible photocopy of the applicant's New Mexico driver's license or comparable state of New Mexico issued photo identification card verifying New Mexico residence;

(10) documented parental consent, if applicable, to the applicant;

(11) the applicant's debilitating medical condition;

(12) the length of time the applicant has been under the care of the practitioner providing the medical provider certification for patient eligibility;

(13) the applicant's signature and date; and

(14) a signed consent for release of medical information related to the patient's debilitating medical condition, on a form provided by the medical cannabis program.

D. Qualified minor: The department shall issue a registry identification card to an applicant under the age of 18 for the purpose of participating in the medical cannabis program upon the medical provider certification for patient eligibility from the applicant's practitioner and supporting application documents required under this rule. The qualified minor parental consent form shall require the following information to be provided:

(1) written documentation that the applicant's practitioner has explained the potential risks and benefits of the use of cannabis to both the applicant and parent or representative of the applicant; and

(2) written consent of the applicant's parent or legal representative to:

(a) allow the applicant's use of cannabis and cannabis-derived products;

(b) serve as the applicant's primary caregiver; and

(c) control the acquisition of the cannabis, dosage, and the frequency of the use of cannabis and cannabis-derived products by the applicant.

E. Primary caregiver: The department shall issue a registry identification card to a primary caregiver applicant for the purpose of managing the well-being of up to four qualified patients pursuant to the requirements of this rule upon the completion and approval of the primary caregiver application form available from the medical cannabis program. In order for a registry identification card to be obtained and processed, the following information shall be submitted to the medical cannabis program:

(1) New Mexico driver's license or comparable state of New Mexico issued photo identification card verifying that the applicant is at least 18 years of age and is a resident of New Mexico;

(2) written approval by each qualified patient, and written approval by at least one certifying practitioner for each qualified patient, authorizing the primary caregiver's responsibility for managing the well-being of the patient(s) with respect to the medical use of cannabis;

(3) the name(s), address(es), telephone number(s), and date of birth(s) of the qualified patient(s);

(4) the name, address, and telephone number of each qualified patient's practitioner;

(5) the name, address, and telephone number of the applicant primary caregiver;

(6) an attestation from the primary caregiver applicant that he or she is a resident of the state of New Mexico; and

(7) the applicant primary caregiver's signature and the date [~~; and~~].

[~~**(8)** documentation of completed nationwide and statewide background checks conducted within six months of the application submission date.~~

~~F. Primary caregiver application requirements: Criminal history screening requirements.]~~

~~(1) All primary caregiver applicants are required to consent to a nationwide and statewide department of public safety (DPS) criminal history screening background check. All applicable application fees associated with the nationwide and statewide criminal history screening background check shall be paid by the primary caregiver applicant.~~

~~(2) Individuals convicted of a felony violation of Section 30-31-20, 30-31-21, or 30-31-22 NMSA 1978, or a violation of any equivalent out-of-state statute in any jurisdiction are prohibited from serving as a primary caregiver. If an applicant has been convicted of a felony violation of Section 30-31-1 *et seq.* NMSA 1978, other than Sections 30-31-20 through 30-31-22, and the final completion of the entirety of the associated sentence of such felony conviction has been less than three years from the date of the applicant's application as a primary caregiver, then the applicant is prohibited from being a primary caregiver. The applicant and qualified patient shall be notified of his or her disqualification from being a primary caregiver. If the applicant has been convicted of more than one felony violation of Section 30-31-1 *et seq.* NMSA 1978 or a violation of an equivalent out-of-state statute in any jurisdiction, the applicant and qualified patient shall be notified that the applicant is permanently prohibited from being a primary caregiver and cannot be issued a medical use cannabis registry identification card.]~~

[~~G.~~] **F. Primary caregiver requirements:**

(1) A primary caregiver applicant shall be a resident of New Mexico.

(2) A qualified patient's primary caregiver shall be permitted to obtain and transport medical cannabis from a licensed nonprofit to the qualified patient.

(3) The primary caregiver of a qualified patient who holds a personal production license may assist the qualified patient to produce medical cannabis at the designated licensed location, identified on the personal production license.

(4) A qualified patient shall only reimburse their primary caregiver for the cost of travel, supplies, or utilities associated with the possession of medical cannabis, or cannabis-derived products by the primary caregiver for the qualified patient. No other cost associated with the possession of medical cannabis, or cannabis-derived products by the primary caregiver for the qualified patient, including the cost of labor, shall be reimbursed or paid. All medical cannabis or cannabis-derived products possessed by a primary caregiver for a qualified patient are the property of the qualified patient.

(5) A qualified patient shall notify the medical cannabis program in the event that the qualified patient ceases to retain the services of a primary caregiver. A primary caregiver shall promptly dis-enroll from the medical cannabis program at the time that the primary caregiver's services are no longer used by a qualified patient in their care.

[~~H.~~] **G. Certifying practitioner requirements:**

(1) A patient may not be certified by a practitioner who is related to the patient within the second degree of consanguinity or the first degree of affinity, including a spouse, child, stepchild, parent, step-parent, sibling, grandparent, mother-in-law, father-in-law, son-in law, or daughter-in-law of the patient.

(2) A practitioner's primary place of practice must be located within the state of New Mexico in order for the practitioner to certify a patient's eligibility.

(3) In order to certify a patient's application, a practitioner must have an actual physician-client relationship with the applicant or qualified patient. A practitioner shall conduct an in-person physical or mental evaluation of the applicant or qualified patient prior to issuing a certification. A practitioner may only issue a written certification on the basis of an evaluation conducted via telemedicine if the practitioner has previously examined the patient in person.

(4) A practitioner may be prohibited from certifying patient applications for:

(a) failure to comply with any provision of this rule;

(b) falsification of any material or information submitted to the department;

(c) threatening or harming an employee of a producer, a medical practitioner, a patient, or an employee of the department; or

(d) any determination by the practitioner's licensing body that practitioner has engaged in unprofessional or dishonorable conduct.

[~~I.~~] **H. Continuing education of certifying practitioners:** The department encourages certifying practitioners to obtain at least two continuing medical education credit hours annually related to the medicinal use of cannabis.

[7.34.3.10 NMAC - Rp, 7.34.3.9 NMAC, 2/27/2015; A, 8/27/2019; A, 2/22/2022]

7.34.3.11 REGISTRY IDENTIFICATION CARDS:

A. Department inquiry:

(1) The department may verify information on each application and accompanying documentation by the following methods:

(a) contacting each applicant by telephone or mail, or if proof of identity is uncertain, by requiring a face-to-face meeting, and the production of additional identification materials;

(b) when applicable, contacting a minor's parent or legal representative;

(c) contacting the New Mexico medical board, the New Mexico board of nursing, board of pharmacy, or other licensing agencies to verify that the practitioner is licensed to practice and prescribe controlled substances in New Mexico and is in good standing; and

(d) contacting the practitioner to obtain further documentation to verify that the applicant's medical diagnosis and medical condition qualify the applicant for enrollment in the medical cannabis program.

(2) The department shall approve or deny an application within 30 calendar days of receipt of the completed application. A request by the department for additional information shall toll this period until such time as the requested information is received.

B. Department registry identification card: The department shall issue a registry identification card within five business days of approving an application. A registry identification card shall include the name, address, and date of birth of the qualified patient and primary caregiver (if any), the date of issuance and expiration [~~,~~] date of the registry identification card, and a code maintained by the program which identifies the qualified patient or primary caregiver. Unless renewed at an earlier date, suspended, or revoked, a registry identification card shall be valid for a period of three years from the date of issuance and shall expire at midnight on the day indicated on the registry identification card as the expiration date. A registry identification card is the property of the department, and shall be returned to the department upon the disenrollment, suspension, or revocation of a qualified patient or primary caregiver, and upon a change of address, or change of a qualified patient's primary caregiver.

C. Supplemental information requirement: A qualified patient or primary caregiver who possesses a registry identification card shall notify the department of any change in the person's name, address, qualified patient's primary caregiver, or change in status of the qualified patient's debilitating medical condition, within 10 calendar days of the change. Failure to provide notification of any change may result in the immediate revocation of the registry identification card and all lawful privileges provided under the act.

D. Registry identification card application denial: The medical director or designee shall deny an initial application if the application fails to satisfy any requirement of this rule, if the applicant fails to provide the information required, if the department determines that the information provided is false, if the patient does not have a debilitating medical condition eligible for enrollment in the program as determined by the medical director, or if the applicant's certifying provider(s) determine(s) that the use of cannabis by the patient would more likely than not be detrimental to the patient's health. The medical director or designee may also deny an application if the applicant has threatened or harmed an employee of a [~~producer~~] licensee, a medical practitioner, a patient, or an employee of the department. A person whose application has been denied shall not reapply for six months from the date of the denial, unless otherwise authorized by the department, and is prohibited from all lawful privileges provided by this rule and act. A person whose application as a qualified patient or primary caregiver has been denied for failure to complete an application or failure to meet a submittal requirement of this rule may request a record review to be conducted by the medical cannabis program.

E. Registry identification card renewal application: Each registry identification card issued by the department [~~is valid for~~] shall expire three years [~~from~~] after the date of issuance. A qualified patient or primary caregiver shall apply for a registry identification card renewal no less than 30 calendar days prior to the expiration date of the existing registry identification card in order to prevent interruption of possession of a valid (unexpired) registry identification card. Certifications from certifying providers must be obtained within 90 calendar days prior to the submission of the application.

F. Non-transferable registration of registry identification card: A registry identification card shall not be transferred by assignment or otherwise to other persons. Any attempt shall result in the immediate revocation of the registry identification card and all lawful privileges provided by this rule and act.

G. Automatic expiration of registry identification card by administrative withdrawal: Upon request of the qualified patient or primary caregiver, the qualified patient or primary caregiver may discontinue the medical cannabis program by an administrative withdrawal. A qualified patient or primary caregiver that intends to seek an administrative withdrawal shall notify the licensing authority no later than 30 calendar days prior to withdrawal and return the proof of registry identification to the program.

H. Lost or stolen registry identification card: The qualified patient or primary caregiver shall report a lost or stolen registry identification card to the medical cannabis program within five business days after discovery. Upon notification and receipt of the *information change or replacement card* form provided by the medical cannabis program, the medical cannabis program manager or designee shall issue a new registry identification card. The patient or primary caregiver shall verify the accuracy of all documentation in the most recent application. Unless documentation in the most recent application has changed, the qualified patient or primary caregiver shall not be required to submit a new application.
[7.34.3.11 NMAC - Rp, 7.34.3.10 NMAC, 2/27/2015; A, 8/27/2019; A, 2/22/2022]

7.34.3.13 POSSESSION OF USABLE CANNABIS:

A. A qualified patient or primary caregiver shall ensure that that all cannabis, cannabis-derived products, and paraphernalia are kept secure and out of reach of children.

B. A qualified patient and primary caregiver shall ensure that all cannabis and cannabis-derived products that are purchased from a licensed non-profit producer remain in the package or container provided by the non-profit entity when not in use. If the package or container is damaged, the product label and any other identifying information from the package or container shall be kept and remain with the cannabis or cannabis-derived product upon transfer to another package or container.

~~[C. A qualified patient or primary caregiver may transfer cannabis and cannabis derived products to an approved laboratory for testing purposes.]~~
[7.34.3.13 NMAC - N, 2/27/2015; A, 02/22/2022]

7.34.3.19 DISPOSAL OF UNUSED CANNABIS: Unused cannabis, concentrate, or cannabis-derived product in the possession of a qualified patient [~~or~~] , primary caregiver, or reciprocal participant that is no longer needed for the [~~patient's~~] needs of the patient or reciprocal participant may be disposed of by transporting the unused portion to a state or local law enforcement office, [~~or~~] by destroying the unused cannabis, or by transferring, without financial consideration, to a person who is 21 years of age or older not more than the amount of cannabis lawfully purchased and obtained pursuant to the Medical Cannabis Program or the Cannabis Regulation Act. [~~Transfer to a nonprofit entity is prohibited.~~]
[7.34.3.19 NMAC - Rp, 7.34.3.17 NMAC, 2/27/2015; A, 8/27/2019; A, 2/22/2022]

7.34.3.22 RECIPROCITY: Beginning July 1, 2020, an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo may lawfully purchase a quantity of cannabis that does not exceed the reciprocal limit identified in this section. A reciprocal participant may possess the amounts of cannabis permitted in accordance with the Cannabis Regulation Act, Sections 26-2C-1 through 26-2C-42 NMSA 1978. Once commercial cannabis sales are authorized by the cannabis control division to begin in accordance with Subsection K of Section 26-2C-6 NMSA 1978, a reciprocal participant will be able to make commercial purchases above the reciprocal limit, in accordance with the Cannabis Regulation Act. A qualified patient may not be registered or participate as a reciprocal participant in the New Mexico medical cannabis program.

A. Reciprocal participation:

(1) General requirements: A reciprocal participant:

(a) may participate in the medical cannabis program in accordance with department rules;

(b) shall not be required to comply with the registry identification card application and renewal requirements established pursuant to this section and department rules;

(c) shall at all times possess proof of authorization to participate in the medical cannabis program of another state, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo and shall present proof of that authorization when purchasing cannabis from a licensee; and

(d) shall register with a licensee for the purpose of tracking sales to the reciprocal participant in an electronic system specified by the cannabis control division of the regulation and licensing department that is accessible to the department of health.

(2) Minors: In the event that a reciprocal participant is a minor, the reciprocal participant may not purchase cannabis, but may have cannabis purchased on their behalf by the minor's parent or legal guardian who holds proof of authorization to purchase cannabis on the minor's behalf that was issued by another state of the

United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo.

(3) Residency requirements:

(a) Non-residents: A person who is not a resident of New Mexico may participate in the medical cannabis program as a reciprocal participant, provided that the reciprocal participant's place of residence is consistent with their place of enrollment. (For example: a Colorado resident shall not be registered or otherwise participate as a reciprocal participant on the basis that he or she is enrolled in the medical cannabis program of a state or other jurisdiction other than Colorado.)

(b) New Mexico residents: A New Mexico resident who is not a member of a New Mexico Indian nation, tribe, or pueblo shall not participate in the medical cannabis program as a reciprocal participant, but may pursue enrollment as a qualified patient in accordance with rule 7.34.3 NMAC. A member of a New Mexico Indian nation, tribe or pueblo medical cannabis program may participate as a reciprocal participant, provided that the individual has proof of authorization to participate in the New Mexico Indian nation, tribe or pueblo's medical cannabis program.

B. Reciprocal limit: A reciprocal participant may collectively possess within any three-month period a quantity of usable cannabis no greater than 425 total units. For purposes of department rules, this quantity is deemed the reciprocal limit. (For ease of reference: 425 units is equivalent to 425 grams, or approximately 15 ounces, of dried usable cannabis plant material.)

C. Registration: At the time of registration, a reciprocal participant shall sign a registration form acknowledging that they understand the requirements of participation in the program, including but not limited to acknowledging the time and quantity limits for reciprocal participation under this rule, as well as the state and federal prohibitions against the transport of cannabis across state and international boundaries.

D. Proof of authorization: Proof of authorization to participate in the medical cannabis program of another jurisdiction (an "originating jurisdiction") shall consist of a card or other physical document issued by a governmental entity authorized by law to enroll the applicant in the medical cannabis program in the originating jurisdiction. For purposes of reciprocal participation in the New Mexico medical cannabis program, permission from a medical practitioner shall not in itself be deemed proof of authorization to participate in the medical cannabis program of another jurisdiction, but shall be accompanied by a card or other proof of enrollment issued by an authorized governmental entity of the originating jurisdiction. (For example, a written letter from a physician authorizing the individual to participate in the California medical cannabis program shall not be deemed proof of authorization for the purpose of participating in the New Mexico medical cannabis program.)

E. Compliance with rule requirements: Noncompliance with the requirements of this rule may result in the suspension or revocation by the department of a reciprocal participant's registration and ability to participate reciprocally in the New Mexico medical cannabis program.

[7.34.4.28 NMAC - Rp. 7.34.4.28 NMAC, 6/23/2020; A/E, 10/8/2020; A, 3/23/2021; N, 2/22/2022]