



Ultra Health[®]

March 29, 2020

VIA Email and Hand Delivery

Medical Cannabis Advisory Board
Department of Health
Medical Cannabis Program
1474 Rodeo Road Suite 200
Santa Fe, NM 87502

Petitioner

Ultra Health
255 Camino Don Tomas
Bernalillo, NM 87004
415-250-8564

Re: Petition to recommend quantities of cannabis that are necessary to constitute an adequate supply for qualified patients and primary caregivers

Dear Medical Cannabis Advisory Board Member,

On behalf of the petitioner, Ultra Health, 255 Camino Don Tomas, Bernalillo, N.M., 87004, we respectfully submit the following petition for your consideration. This submission includes all required sections defined by the Department of Health, to the extent that it does not include material specifically required for a petition related to a newly requested qualifying medical condition. The petition is submitted in accordance with NMSA 1978 §26-2B-6(E). The

index of materials are as follows (due to the number of attachments and size of files, I have attached three files electronically and have provided links for other referenced materials):

<i>Index</i>	<i>Page</i>
Introduction	2
Advisory Board Statutory Duty to Recommend Quantities Regarding Adequate Supply	4
Existing Rule Regarding Adequate Supply	4
Proposed Rule in Underline and Strikethrough Format	4
Reasoning for Rule Change and Increased Adequate Supply	5
I. NEW MEXICO’S LIMITS ARE ABNORMALLY RESTRICTIVE	5
II. PATIENT SURVEY RESPONSES INDICATE NEED FOR HIGHER LIMITS	7
III. DISCREPANCY BETWEEN QUALIFIED PATIENTS’ POSSESSION LIMITS	7
IV. ACCESSIBILITY TO SAFE, LAWFUL, AND REGULATED MEDICINE	8
V. COVID-19 IMPACT ON PATIENT NEEDS	9
Summary/Conclusions	9
Supporting Documents	12
Citations	12

Introduction

Pursuant to Rule 1.24.25.10 NMAC, New Mexico Top Organics-Ultra Health, Inc. (Ultra Health) previously petitioned the Department of Health to initiate a rulemaking regarding patient purchase and possession limitations, specifically to raise the patient purchase and possession limitation to the common conservative industry standard of 15 ounces (or 420 units if continuing current methodology of tracking) in any three-month period.

In connection with that written petition submitted on March 25, 2019, over one year ago, Ultra Health provided extensive objective data and evidence to the Department of Health Secretary Kathy Kunkel to increase patient purchase and possession limitations to a more reasonable and conservative industry standard of no less than 15 ounces (or 420 units if

continuing current methodology of tracking) in any three-month period. Secretary Kathy Kunkel responded to the aforementioned petition indicating that the DOH intended to revisit adequate supply in the then upcoming rulemaking regarding plant limits.

Unfortunately, this gaping issue in our Medical Cannabis Program has still not been addressed, despite Secretary Kunkel's response; despite two extensive rulemaking processes being initiated; and despite patient surveys conducted by Research and Polling, Inc., on behalf of the NMDOH, indicating the need for an increase in the allowed purchase limits. The Secretary's response indicated a willingness to review the matter, conditional on accomplishing the survey and the survey results (response attached). Sufficient time has expired and it is incumbent on the Medical Cannabis Advisory Board to properly consider the matter.

Governor Lujan Grisham has stated time and time again that she is committed to the need for a more robust medical cannabis program. Ultra Health provides sufficient evidence in this petition to support that an increase in the amount currently determined to what constitutes adequate supply will better the health and quality of life for the 82,000+ New Mexicans currently enrolled in the medical cannabis program and create the robust medical cannabis program the Governor has pledged.

Comparatively, the record is very clear on how reasonable other states have been in establishing their purchase and possession limits for medical cannabis patients. Of the 33 states with medical cannabis programs, only Ohio comes close to matching New Mexico's 230 units per 90 days, but even the Ohio model has broken it further into tiers and a possession limit on the amount of THC (dry weight) at any one time which potentially could provide amounts greater than New Mexico, particularly when applying to purchases of concentrates and edibles. Thus, New Mexico clearly falls to last in the country for those medical cannabis programs allowing for THC above 0.5%, and is not consistent with the Governor's expectation of a industry leading robust medical cannabis program.

The disparity is even more glaring when compared regionally with surrounding states. New Mexico's purchase and possession limit as determined for an adequate supply clearly needs an immediate increase. By example, Oklahoma has the most generous program allowing 270 ounces over 90 days, followed by Colorado at 180 ounces over 90 days, and then Arizona and Nevada both at 15 ounces over 90 days. Interestingly, one of the more conservative states in the region is Utah and their program officially initiated dispensing activities on March 1, 2020. Just weeks old, Utah became the most recently launched program in the U.S., and is allowing patients to possess 12 ounces in a 90-day period, which is 50% higher than what New Mexico patients are legally allowed to access. New Mexico must immediately update the amount deemed to be an adequate supply.

Advisory Board Statutory Duty to Recommend Quantities Regarding Adequate Supply

NMSA 1978 §26-2B-3(A) explicitly defines “adequate supply” as “an amount of cannabis, in any 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”.

The medical cannabis advisory board has the statutory authority and the duty to recommend amounts of cannabis qualified patients may purchase and possess. The Lynn and Erin Compassionate Use Act explicitly lists advisory board duties. NMSA 1978 §26-2B-6(E) states, “The advisory board shall: (...) E. **recommend quantities of cannabis that are necessary to constitute an adequate supply for qualified patients and primary caregivers**” (emphasis added).

Ultra Health respectfully requests that the advisory board uphold their statutory duty to recommend quantities of cannabis to constitute an adequate supply and, for the reasons stated within this petition, recommend a minimum of 15 ounces (420 units) of usable cannabis for a period of three months.

Existing Rule Regarding Adequate Supply

The current rule regarding patient possession and adequate supply is Rule 7.34.3.9 NMAC, which states, “A qualified patient and a qualified patient’s primary caregiver may collectively possess within any three-month period a quantity of usable cannabis no greater than 230 total units. For purposes of department rules, this quantity is deemed an adequate supply.” This roughly translates to 8 ounces, or 230 grams, per 90 days.

To calculate a unit, “one unit of usable cannabis shall consist of one gram of dried leaves and flowers of the female cannabis plant, or 0.2 grams (200 milligrams) of THC for cannabis derived products.” Rule 7.34.3.9 NMAC.

There are exceptions allowed if the patient can produce “a statement by a medical practitioner explaining why a greater number of units of usable cannabis is medically necessary.” Rule 7.34.3.9 NMAC.

Proposed Rule in Underline and Strikethrough Format

The underlined material indicates new language, the strikethrough material indicates language to be removed.

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 within any three-month period a quantity of usable cannabis no greater than ~~230~~ 420 total units. For purposes of department rules, this quantity is deemed an adequate supply. (For ease of reference: ~~230~~ 420 units is equivalent to ~~230~~ 420 grams, or approximately ~~eight~~ fifteen ounces, of dried usable cannabis plant material.) A qualified patient and primary caregiver may also possess cannabis seeds.

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.

Reasoning for Rule Change and Increased Adequate Supply

I. NEW MEXICO’S LIMITS ARE ABNORMALLY RESTRICTIVE

New Mexico’s patient purchase limitations are much more restrictive than those of other states. The following is a breakdown of how other states’ medical cannabis programs address the needs of their medical cannabis patients:

State	Purchase limits (oz)	Supply period	3-month supply period (oz)
Arizona	2.5 ounces	14-day period	15 ounces
Arkansas	2.5 ounces	14-day period	15 ounces
Colorado	2 ounces	At any time	180 ounces

Hawaii	4 ounces	15-day period	24 ounces
Illinois	2.5 ounces	14-day period	15 ounces
Maine	2.5 ounces	15-day period	15 ounces
Nevada	2.5 ounces	14 days	15 ounces
Oklahoma	3 ounces	“A single transaction”	270 ounces
Oregon	24 ounces	May possess at any one time	
Utah	4 ounces	30-day period	12 ounces
Washington	3 ounces	1 day	270 ounces

New Mexico appears to be the only state with such scant purchase limits. These examples indicate that other states are able to maintain regulatory control while offering patients access to cannabis in quantities sufficient to meet their medical needs.

New Mexico’s purchase limits are an outlier and one should not assume that New Mexican patients simply use or need less medicine than the patients of other states. It is more reasonable to assume that patient acuity should be comparable between states unless the NMDOH can point to specific patient data to suggest otherwise. What can also be safely assumed is that patients with unmet needs in the regulated market are seeking relief from the illicit markets.

The purchase limitations of other states are far more reflective of actual need than New Mexico's stringent eight ounces. These examples also show that Ultra Health's recommended 15 ounces per any 3-month period is in keeping with the industry practice.

II. PATIENT SURVEY RESPONSES INDICATE NEED FOR HIGHER LIMITS

In May 2019 the DOH conducted a patient survey in connection with determining adequate supply and producer plant limits. On page 32 of the survey there are two important statistics worth noting here:

- When asked, "Would you purchase more cannabis or cannabis-derived products in a 90-day period if allowed?" Of the patients surveyed:
 - 48% answered YES
 - 49% answered NO
 - 3% don't know/won't say
- When asked, "Have you built up a tolerance to cannabis or cannabis products in the past year?" Of the patients surveyed:
 - 24% answered YES
 - 73% answered NO
 - 3% don't know/won't say

Nearly half of patients surveyed have indicated they would purchase more medicine in a 90-day period if allowed, therefore indicating a need for higher patient purchase limits. At its current enrollment of over 82,000+ patients, the survey indicates over 39,000 patients' needs are not met under the 230 unit limit.

In addition, one-quarter of patients have reported they developed a tolerance to cannabis during the past year, which indicates a greater need for purchase limits to be adjusted to accommodate tolerance to the medicine. Per the survey, this indicates nearly 20,000 patients could benefit from an adjustment to purchase limits and allow those patients to receive the beneficial use of medical cannabis as established within the purpose of the Lynn and Erin Compassionate Use Act to treat their debilitating medical condition.

III. DISCREPANCY BETWEEN QUALIFIED PATIENTS' POSSESSION LIMITS

Another important factor in the discussion on patient limits is the discrepancy that currently exists between qualified patients with a personal production license (PPL) and those without. NMSA 1978 §26-2B-4(A) states, "A qualified patient or a qualified patient's primary caregiver shall not be subject to arrest, prosecution or penalty in any manner for the possession of or the medical use of cannabis if the quantity of cannabis does not exceed an adequate supply;

provided that a qualified patient or the qualified patient's primary caregiver may possess that qualified patient's harvest of cannabis.”

Rule 7.34.4.8 NMAC states, “A qualified patient or primary caregiver who holds a valid personal production license is authorized to possess no more than four mature female plants and a combined total of 12 seedlings and male plants, and may possess no more than an adequate supply of usable cannabis, as specified in department rule; provided that a qualified patient or qualified patient’s primary caregiver may possess that qualified patient’s harvest of cannabis. A personal production license holder may additionally obtain usable cannabis, seeds, or plants from licensed non-profit producers.”

Patients with PPLs could potentially cultivate more than the eight ounces deemed to constitute an adequate supply with the plant allotment allowed by rule. Patients with PPLs are also, rightfully so, allowed to purchase their full 230 units through the dispensary. This creates a huge disparity between classes of patients, all of whom deserve equal protection under the law. Increasing possession limits is the first step towards creating that equality and meeting *all* patients’ needs.

IV. ACCESSIBILITY TO SAFE, LAWFUL, AND REGULATED MEDICINE

Raising the purchase limits should increase incentive and accessibility for patients to purchase from a lawful, regulated source. When patients are restricted in the regulated system, from purchasing the quantities necessary to alleviate their symptoms, they have limited and less than ideal options.

One option is to suffer through their debilitating medical condition until they are able to visit a practitioner, receive their statement, mail their statement to DOH, and await notice of an increase from DOH that still may not be sufficient to meet their needs.

Another option is to travel over state lines and purchase from a regulated adult-use market that has higher purchase limits than New Mexico, and risk federal drug trafficking charges upon returning to New Mexico as well as criminal and civil penalties.

Another option is to purchase from the illicit market where patients are not restricted by arbitrary purchase limits, but risk incurring criminal and civil penalties, and the potential to consume contaminated products potentially worsening their debilitating medical conditions.

“The purpose of the Lynn and Eric Compassionate Use Act is to allow for the beneficial use of medical cannabis in a regulated system for alleviating symptoms of debilitating medical conditions and their medical treatments.” None of the options listed above meet the purpose of

the Act. Increased purchase limits will resolve this accessibility issue for patients and will allow for the beneficial use of medical cannabis.

Finally, in 2019 the Legislature and the Governor have made their position clear by adopting in statute "...a qualified patient's use of cannabis pursuant to the Lynn and Erin Compassionate Use Act shall be considered the equivalent of the use of any other medication under the direction of a physician and shall not be considered to constitute the use of an illicit substance or otherwise disqualify a qualified patient from medical care." In keeping with the spirit of the law, it would seem logical to allow deference to patient-need over archaic views to the use of medical cannabis as an illicit substance. Many of today's New Mexico caps on the medical cannabis program, including patient limits are an outgrowth of a 'war on drugs' mentality and not based on science or the community standard of care when measured against other more rational state approved programs.

V. COVID-19 IMPACT ON PATIENT NEEDS

Again, the most commonly accepted, conservative industry standard for patient purchase limits equates to 15 ounces in a 90-day period. The advisory board should recommend to the Department an increase in patient purchase limits to no less than 15 ounces over 90 days to ensure patients can purchase back-stock medicine allowing them to meet the CDC's recommendation to have a 30-day supply of medicine on hand. This will also aid in reducing unnecessary dispensary foot traffic, limiting unnecessary travel, particularly in rural areas, limiting travel to other states for cannabis needs, and reducing illicit market activity where patients are dangerously exposed to contracting COVID-19.

Increased consumption of medical cannabis is a predictable outgrowth of the current environment, particularly because [85% of patients](#) enrolled in the New Mexico medical cannabis program have the qualifying conditions of PTSD (52%) or chronic pain (33%). These vulnerable populations need medical cannabis now more than ever. Increased anxiety and depression, deviation from normal day-to-day life, mental impact of being homebound, stress over loss of income, loss of access to other therapeutic treatments (i.e. water therapy, massage therapy, group therapy, etc.) all of these factors and more are contributing to cannabis patients' increased consumption needs as they seek some manner of relief during these trying times.

Summary/Conclusions

The New Mexico Medical Program was approved in 2007 and suffered from limited patient growth and heavy-handed regulations for a number of years under the previous administration of Governor Susana Martinez. Thankfully, the medical cannabis program has benefitted from a national discourse on the acceptability of medical cannabis, favorable court

decisions in New Mexico triggering more dispensary locations and additional plants in production, expansion in the number of qualifying conditions, and an increased patient awareness/acceptability statewide.

During the eight years of Governor Martinez's administration a number of notable activities happened in surrounding states with regard to cannabis, including the legalization of the adult-use and sale in Colorado, approval and launching of both the medical cannabis program and adult-use in Nevada, and near passage of an adult-use program in Arizona. The vote failed in Arizona by 22,000 votes but the hotly contested campaign caused a surge in the medical cannabis program and now stands at nearly 230,000 cardholders.

More recently, during the new administration of Governor Michelle Lujan Grisham, the surrounding states have seen continued progressive evolution in the programmatic design of their medical cannabis programs. Oklahoma has put forth the most patient-friendly medical cannabis model in the region which has resulted in a soaring program of over 258,000 patients in the first year alone. Utah has joined the ranks of surrounding state approved medical cannabis programs by launching their model on March 1, 2020.

In all surrounding states with medical cannabis programs allowing for THC above 0.5%, New Mexico lags significantly in the approved amount of cannabis deemed necessary to constitute an adequate supply for qualified patients and caregivers. New Mexico's shortage in the allowance granted to patients creates an absurd and unreasonable result in which patients cannot adequately medicate without reliance on illicit, unregulated purchases from either surrounding states or the black market. Utah allows 50% more per medical patient than New Mexico. Nevada and Arizona allow 100% more per patient than New Mexico. Colorado and Oklahoma allow medical patients to buy more in as little as three days than New Mexicans can buy over three months. In fact, Oklahomans are allowed to purchase nearly 3,300% more per patient or 33 times what a similar patient would be allowed in New Mexico.

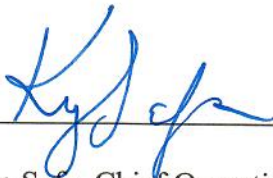
The purpose of the program is to serve the needs of all medical cannabis patients, not just a few. In order for the program to function and for the statutory purpose of the beneficial use of cannabis to be met, the rules on adequate supply need to reflect every patient's needs and provide for a robust program that allows patients to acquire more medicine if their debilitating condition calls for it. A program that does not allow patients to purchase what they need frustrates the purpose of the statute and forces otherwise legal participants to seek medicine from the black market, where cannabis can pose serious health risks that can be completely avoided if the department were to provide adequate patient purchase limits.

Whether considered individually or collectively, each element listed here justifies the need for increased adequate supply. New Mexico has abnormally restrictive state limits

compared with other medical cannabis programs nationally and regionally. There's a proven need for change demonstrated by patient voices in a survey produced by an independent polling contractor and provided by the NMDOH. There exists a discrepancy and inequality between the category of patients within New Mexico, those with a personal production license and those without. There is a legal obligation to provide safe, accessible medicine from the lawful regulated industry that is not being wholly met. Lastly, though certainly not least important, the unknown short to long term implications of COVID-19 on our medically vulnerable 82,000+ patients should cause us to reevaluate what is right for the patients. The need for change is clear.

We respectfully request the Medical Cannabis Advisory Board increase adequate supply to a minimum of the conservative industry standard of 15 ounces (or 420 units) for a three-month period. Ideally, the Medical Cannabis Advisory Board should commit to reviewing adequate supply annually and make recommendations for its adjustment as the program progresses.

Thank you for your time and consideration on this matter.



Kylie Safa, Chief Operating Officer, Ultra Health®

Supporting Documents (provided via electronic attachment)

03 25 19 Petition to Initiate Rulemaking Process

NMDOH Response - Purchase limits

Medical Cannabis Patient Survey, May 2019

Citations

Arizona:

<https://www.azleg.gov/viewdocument/?docName=http://www.azleg.gov/ars/36/02806-02.htm>

Arkansas: <https://www.healthy.arkansas.gov/programs-services/topics/medical-marijuana-faqs>

Colorado: <https://codes.findlaw.com/co/title-25-health/co-rev-st-sect-25-1-5-106.html>

Hawaii: <https://health.hawaii.gov/medicalcannabis/files/2018/07/Act-116-18.pdf>

Illinois: <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3503&ChapterID=35>

Maine:

<https://www.maine.gov/dafs/bbm/mmmp/sites/maine.gov.dafs.bbm.mmmp/files/inline-files/2018-MMP-Rules-1111.pdf>

Ohio: <http://codes.ohio.gov/oac/3796:8-2-04v1>

Oklahoma:

<http://omma.ok.gov/Websites/ddeer/images/310-681%20EME2%20Medical%20Marijuana%20Rules%208-1-18%20wRedMark%20Revisions.pdf>

Oregon:

<https://www.oregon.gov/oha/ph/diseasesconditions/chronicdisease/medicalmarijuanaprogram/pages/top20.aspx#patientlimits>

Utah: <https://le.utah.gov/~2018S3/bills/static/HB3001.html>

Washington: <https://app.leg.wa.gov/RCW/default.aspx?cite=69.51A.210>