

REPORT AND RECOMMENDATIONS OF THE HEARING OFFICER

Public Hearing: New Mexico Department of Health

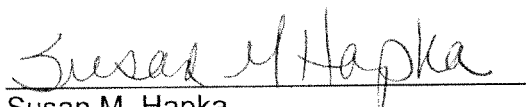
Proposed Actions in Question: Repeal and replace 7.34.2 NMAC, "Advisory Board Responsibilities and Duties;" 7.34.3 NMAC, "Registry Identification Cards;" and 7.34.4 NMAC, "Licensing Requirements for Producers, Production Facilities and Distribution".

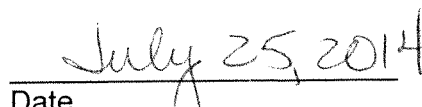
Public Hearing Date: June 16, 2014

Report Date: July 25, 2014

RECOMMENDATIONS

That the existing regulations 7.34.2 NMAC, "Advisory Board Responsibilities and Duties;" 7.34.3 NMAC, "Registry Identification Cards;" and 7.34.4 NMAC, "Licensing Requirements for Producers, Production Facilities and Distribution" not be repealed and replaced until (i) the Advisory Board has met and issued its recommendations; (ii) the Department has had an opportunity to consider the recommendations of the Advisory Board and consult with other interested parties, as appropriate; (iii) the regulations are further revised as the Department intends and otherwise determines is appropriate; and (iv) another public hearing is held concerning the proposed revised regulations.


Susan M. Hapka


Date

HEARING OFFICER'S REPORT

On June 16, 2014, the New Mexico Department of Health ("Department") held a public hearing at the Harold Runnels Building Auditorium in Santa Fe, New Mexico regarding the proposed repeal and replacement of 7.34.2 NMAC, "Advisory Board Responsibilities and Duties," 7.34.3 NMAC, "Registry Identification Cards," and 7.34.4 NMAC, "Licensing Requirements for Producers, Production Facilities and Distribution."

Susan M. Hapka, Esq. presided as Hearing Officer. Ken Groggel, Program Manager for the Department's Medical Cannabis Program, Chris Woodward, Esq., Assistant General Counsel for the Department, and Andrea Sunberg, Program Coordinator for the Department's Medical Cannabis Program, attended the hearing.

At the beginning of the hearing, the Hearing Officer introduced the hearing, explaining that the purpose of the hearing was to allow members of the interested public to comment on the proposed revisions to the regulations. Mr. Groggel generally explained the proposed revisions to the regulations at the start of the hearing.

I. SUMMARY OF EVIDENCE

Documentary Evidence.

Exhibits

The following Exhibits were submitted by the Department and are made part of the record:

1. 7.34.2 NMAC "Advisory Board Responsibilities and Duties" comparison, showing proposed revisions to the existing rule;
2. 7.34.2 NMAC "Advisory Board Responsibilities and Duties" - proposed rule;
3. 7.34.3 NMAC "Registry Identification Cards" comparison, showing proposed revisions to the existing rule;
4. 7.34.3 NMAC "Registry Identification Cards" – proposed rule;
5. 7.34.4 NMAC "Licensing Requirements for Producers, Production Facilities and Distribution" comparison, showing proposed revisions to the existing rule;
6. 7.34.4 NMAC "Licensing Requirements for Producers, Production Facilities and Distribution" – proposed rule;
7. Notice of Public Hearing, published in the New Mexico Register on May 15, 2014;
8. Notice of Public Hearing, published in the Albuquerque Journal on May 15, 2014 and May 16, 2014;
9. Hearing Officer Appointment Letter dated May 5, 2014;
10. Public Comment. The Department forwarded approximately 1000 written public comments it received through July 1, 2014 to the Hearing

Officer. The Department has hard copies of the written public comments it received and these are made part of the record. The Hearing Officer placed the written public comments she received from the Department on a CD that is made part of the record.

11. Visitor sign-in sheets.

Additional Correspondence.

Included as part of the hearing record is the following correspondence:

12. Summary of public comments received by the Department through June 16, 2014, prepared by the Department;
13. June 20, 2014 letter from Susan Hapka, Esq. to Chris Woodward, Esq. inviting the Department to respond to certain public comments; and
14. July 14, 2014 letter from Chris Woodward, Esq. to Susan Hapka, Esq. responding to the June 20, 2014 letter.

Recording of Hearing.

15. The June 16, 2014 hearing was digitally recorded. CDs of the recordings are made part of the record.

Public Comment Received at the June 16, 2014 Hearing

The hearing was held in the Harold Runnels Building auditorium, which seats approximately 240 people. More than 240 people showed up for the hearing and were asked to wait outside until seats became available. Although there was an overflow crowd during the morning session, the afternoon session had empty seats. Everyone who wished to speak was given the opportunity to do so. The hearing was not adjourned until all individuals who wanted to speak did so and a few individuals spoke twice. Approximately 140 people provided comment at public hearing. The hearing was also broadcast live via an Internet video feed. The public was given the opportunity to submit written comments both before and after the hearing, through July 1, 2014, and approximately 1000 written public comments were received.

The public comments received before, during and after the June 16, 2014 hearing centered on the following areas:

1. Advisory Board Involvement in the Proposed Rule Changes. Members of the public expressed concern that the Department did not consult with the Advisory Board regarding the proposed changes to the quantity of cannabis that constitutes an adequate supply and rules for the issuance of registry identification cards, pursuant to NMSA 1978, § 26-2B-6(D) and (E).

2. The Definition of Adequate Supply. Members of the public expressed concern about the quantity of cannabis that the Department deems to be an adequate supply and the maximum THC content of concentrates allowed under 7.34.3.9 NMAC.

3. Decrease in the Number of Plants PPL Holders May Possess. Members of the public expressed concern that reducing the number of mature female plants and seedlings that a qualified patient holding a valid personal production license may possess, as proposed in 7.34.4.8(A)(1) NMAC, would exacerbate the shortage of medical cannabis, particularly for patients that limit their purchases from licensed producers due to cost concerns or access, particularly in rural areas.

4. Fees Imposed on Patients. Members of the public expressed concern that the fees the Department proposes to impose on qualified patients, including application fees, renewal fees, lost card fees and background check fees, create a financial burden, as many of the patients are on a fixed income, and that imposing such fees on qualified patients violates § 26-2B-7(B) of the Lynn and Erin Compassionate Use Act.

5. Fees and Plant Limits for Licensed Producers. Members of the public expressed concern that the substantial increase in fees for licensed producers for a limited number of additional plants, as proposed in 7.34.4.8(W) NMAC, will exacerbate, rather than alleviate, the shortage of medical cannabis available to qualified patients and increase the cost of medical cannabis for patients.

6. Courier Requirements. Members of the public expressed concern that restricting couriers to possessing medical cannabis up to a maximum of 24 hours, as proposed in 7.34.16(C)(7) NMAC, will make it impossible for couriers to deliver cannabis to patients in rural areas at a cost that is economically feasible for the patients.

7. Registry Identification Cards. Members of the public expressed concern that the Department has imposed requirements for the issuance of registry identification cards that exceed the requirements stated in the Lynn and Erin Compassion Act, specifically § 26-2B-7(B) and § 26-2B-7(C), including the requirement that a practitioner must certify that the standard treatments have failed to bring adequate relief.

8. Non-Profit Entity Application and Licensure. Members of the public commented that requiring producers to be non-profit and the regulations imposed regarding the conduct of their businesses, including as proposed in 7.34.4.8 (I)(3), (J) and (K) NMAC and 7.34.4.18 NMAC, exceed the authority of the Department and unreasonably interfere with the operation of their businesses.

9. Testing Requirements. Members of the public commented that they supported testing to ensure the safety and quality of the products they are purchasing. However, concerns were raised regarding the testing requirements proposed in 7.34.4.9 NMAC, including that the proposed standards for microbiological testing are unattainable, mycotoxin testing is only suitable for concentrates made using cannabis,

and there may be less burdensome and less costly alternatives to heavy metal and pesticide testing.

II. DEPARTMENT'S FURTHER INTENDED REVISIONS

On June 20, 2014, the Hearing Officer invited the Department to respond to certain written comments made prior to and after the hearing and public comments made at the hearing. In a letter dated July 14, 2014, the Department addressed concerns raised by the public and stated that it would take the following actions in response to the public comments received:

1. The Department intends to withdraw the proposed reduction in personal production license plant limits;
2. The Department intends to withdraw the criminal history screening provisions that would apply to personal production license holders;
3. The Department intends to combine the plant limit totals for mature female plants, seedlings and male plants into a single total, permitting non-profit producers to select how many mature female plants, seedlings and male plants they wish to possess within their given total;
4. The Department intends to increase the 24 hour time limitation for couriers to possess medical cannabis for delivery to individual qualified patients to one week;
5. The Department is considering withdrawing the proposed testing requirements for heavy metals and pesticide residue, intends to examine standards used in other contexts for the testing of plant material and revise the proposed standards, as appropriate, and include a staggered implementation standard for testing to ensure sufficient time for approved testing laboratories to become available; and
6. The Department expects that the Advisory Board will hold a meeting in August 2014, regarding the proposed rules, and looks forward to receiving the Advisory Board's recommendations.

III. HEARING OFFICER'S RECOMMENDATIONS

Based on the foregoing, I recommend that the existing regulations 7.34.2 NMAC, "Advisory Board Responsibilities and Duties;" 7.34.3 NMAC, "Registry Identification Cards;" and 7.34.4 NMAC, "Licensing Requirements for Producers, Production Facilities and Distribution" not be repealed and replaced until (i) the Advisory Board has met and issued its recommendations; (ii) the Department has had an opportunity to consider the recommendations of the Advisory Board and consult with other interested parties, as appropriate; (iii) the regulations are further revised as the Department intends and otherwise determines is appropriate; and (iv) another public hearing is held concerning the proposed revised regulations.