

NMAC

Transmittal Form

Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: New Amendment Repeal Emergency Renumber (ALD Use Only) Most recent filing date:

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment): Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes No 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 is made in accordance with the following authorities: Section 9-7-6, NMSA 1978; Section 26-2B-7, NMSA 1978 and Section 24-1-3, NMSA 1978.

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

2019 AUG 15 PM 4: 27

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 amendments modify provisions concerning the number of Advisory Board members (in accordance with statute), remove specialization requirements for Advisory Board members (in accordance with statute), and modify the number of Advisory Board members required to achieve a quorum (in accordance with statute).

The reasons for adoption of these amendments are as stated in the attached Statement of Reasons dated August 12, 2019, by which the Cabinet Secretary, Kathyleen M. Kunkel, adopted the rule amendments, and which is hereby incorporated by reference. The reasons for adoption are further expressed in the rulemaking record that is held by the NM Department of Health, which includes but is not limited to the Report and Recommendation of the Hearing Officer, Craig T. Erickson, Esq., dated 8/7/19, Exhibits 1 through 17, the audio recording of the rule hearing conducted on 7/12/19, and correspondence between the Department of Health and the Hearing Officer regarding public comments received by the Department.

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

Name:

Kathyleen Kunkel

Check if authority has been delegated

Title:

Cabinet Secretary

Signature: (BLACK ink only)

Kathyleen M Kunkel

Date signed:

8/15/19

2019 AUG 15 PM 4: 28

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF HEALTH

IN THE MATTER OF PROPOSED
AMENDMENTS TO RULES
7.34.2, 7.34.3 AND 7.34.4 NMAC

STATEMENT OF REASONS
FOR ADOPTION OF RULE AMENDMENTS

The Cabinet Secretary for the New Mexico Department of Health (“Department”), Kathyleen M. Kunkel, hereby adopts proposed amendments to Medical Cannabis Program rules at 7.34.2 NMAC at sections 7, 8 and 10, 7.34.3 NMAC at sections 7, 8, 9, 10, 11, 15, 17, and 19, and 7.34.4 NMAC at sections 7, 8, 18, 19, 23, 24, and 25, as partly revised in response to public comments, and in consideration of the recommendations submitted by the Hearing Officer, Craig T. Erickson, Esq. following a public hearing conducted on July 12, 2019. This decision is based on the entire record in this matter, which includes Exhibits 1 through 17, the audio recording of the hearing, written correspondence between the Department and the Hearing Officer, and the Report and Recommendation of the Hearing Officer, Craig Erickson, Esq., dated August 7, 2019 and received by the Cabinet Secretary on August 9, 2019 via U.S. postal mail.

In further support of this action, the Cabinet Secretary finds the following:

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. NMSA 1978, § 26-2B-7.
3. In accordance with NMSA 1978, Section 9-7-6(E) and NMSA 1978, § 14-4-5.2, notice of the July 12, 2019 hearing for the proposed rule amendments was provided to the public,

which included publication in the Albuquerque Journal newspaper on June 11, 2019, and publication in the New Mexico Register on June 11, 2019.

4. By a letter dated May 31, 2019, the Cabinet Secretary designated Mr. Erickson to serve as Hearing Officer for the purpose of conducting the hearing, receiving and reviewing public comment, and submitting a recommendation regarding the proposed rule amendments.

5. A public rule hearing was held in Santa Fe, New Mexico, on July 12, 2019 in accordance with NMSA 1978, Section 9-7-6(E).

6. Members of the public were afforded the opportunity to submit data, views and arguments on the proposed rules orally and in writing, and those comments were received by the Hearing Officer until the close of the public hearing on July 12, 2019.

7. The purpose of the proposed rule amendments is to adopt various revisions to 7.34.2 NMAC, 7.34.3 NMAC, and 7.34.4 NMAC, as more fully described in the rulemaking record, which revisions include but are not limited to the following:

- Modifications to the definition sections of all of the Medical Cannabis Program rules (7.34.2.7, 7.34.3.7, and 7.34.4.7 NMAC);
- Revisions of portions of the Medical Cannabis Advisory Board rule (7.34.2 NMAC), including modification of provisions concerning the number of Advisory Board members (in accordance with statute), removal of specialization requirements for members (in accordance with statute), and modification to the number of Advisory Board members required to achieve a quorum (in accordance with statute);
- Revisions to portions of the Registry Identification Card rule (7.34.3 NMAC), including but not limited to modifications to the lists of qualifying medical conditions, removal of the THC limit for cannabis-derived products (in accordance

with statute), removal of the replacement fee for registry identification cards (in accordance with statute), extension of the enrollment period from one year to three years (in accordance with statute), and removal of the prohibition of transfer of cannabis from a patient or primary caregiver to another patient or primary caregiver (in accordance with statute);

- Revisions to portions of the Licensing Requirements for Producers, Couriers, Manufacturers and Laboratories (7.34.4 NMAC), including but not limited to revision of the plant limit for licensed nonprofit producers, modification of the definition of “seedling” and inclusion of a provision to allow licensed nonprofit producers to possess unlimited numbers of seedlings (as that term is now defined), removal of the prohibition against volume discounts and promotional sales by LNPPs, removal of references to the previous THC limit for cannabis-derived products (in accordance with statute), modifications to LNPP licensing fees, inclusion of a provision recognizing the ability of either a qualified patient or primary caregiver to hold a personal production license (PPL) to grow cannabis for the qualified patient’s use, revisions concerning where a PPL holder may grow cannabis, revisions to identified bases for disciplinary actions against licensees, revisions to fines applicable to licensees for regulatory violations, and inclusion of an exemption from civil and criminal liability for public schools and school districts and their designated personnel to enable the administration of cannabis products to qualified students in public school settings in accordance with recent statutory changes.

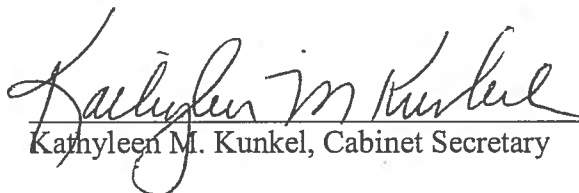
8. The Cabinet Secretary has reviewed the Report and Recommendation of the Hearing Officer and finds that the Hearing Officer has appropriately considered the proposed

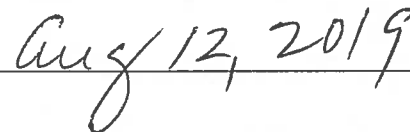
rule amendments and the substantive comments made through public comment, and the Secretary adopts the Hearing Officer's recommendations concerning the proposed rule amendments.

9. The Cabinet Secretary finds that the rule amendments are appropriate and consistent with authorizing laws, and the rule amendments are hereby adopted.

10. An emergency rule amendment to 7.34.4.8 NMAC was previously adopted by the Cabinet Secretary on March 1, 2019 and published in the NM Register, Vol. XXX, Issue 6, on March 26, 2019. By amending 7.34.4.8 NMAC within 180 days of the emergency rule amendment, in accordance with NMSA 1978, § 14-4-5, the Cabinet Secretary adopts a permanent rule that replaces the March 1, 2019 emergency rule amendment.

NEW MEXICO DEPARTMENT OF HEALTH


Katelyn M. Kunkel, Cabinet Secretary


Date

2019 AUG 15 PM 4: 28

This is an amendment to 7.34.2 NMAC, Sections 7, 8 and 10, effective 8/27/2019.

7.34.2.7 DEFINITIONS:

A. “Act” means the Lynn and Erin Compassionate Use Act, NMSA 1978, Sections 26-2B-1 through 26-2B-7.

B. “Adequate supply” means an amount of cannabis, derived solely from an intrastate source and in a form approved by the department, that is possessed by a qualified patient or collectively possessed by a qualified patient and the qualified patient’s primary caregiver, that is determined by the department to be no more than reasonably necessary to ensure the uninterrupted availability of cannabis for a period of three months or 90 consecutive calendar days.

C. “Administrative review committee” means an intra-department committee that reviews qualified patient or primary caregiver application denials, licensed producer denials made by the program manager, 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).

D. “Administrative withdrawal” means the procedure for the voluntary withdrawal of a qualified patient or primary caregiver from the medical cannabis program.

E. “Advisory board” means the medical cannabis advisory board consisting of ~~eight~~ nine practitioners ~~[representing the fields of neurology, pain management, medical oncology, psychiatry, infectious disease, family medicine, and gynecology]~~ knowledgeable about the medical use of cannabis, who are appointed by the secretary.

F. “Applicant” means any person applying for enrollment or re-enrollment in the medical cannabis program as a qualified patient, primary caregiver, or licensed producer.

G. “Approved laboratory” means a ~~[laboratory]~~ 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.

H. “Batch” means, with regard to usable cannabis, a homogenous, identified quantity of cannabis no greater than five pounds that is harvested during a specified time period from a specified cultivation area, 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.

I. “Cannabidiol (“CBD”)” is a cannabinoid and the primary non-psychoactive ingredient found in cannabis.

J. “Cannabis” means ~~[all parts of the plant, cannabis sativa, and cannabis indica, whether growing or not and the resin extracted from any part of the plant]~~ 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.

K. “Cannabis-derived product” means a product, other than cannabis itself, which contains or is derived from cannabis, not including hemp.

L. “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 (30%) THC by weight.

M. “Courier” means a person or entity that transports usable cannabis within the state of New Mexico from a licensed non-profit producer to a qualified patient or primary caregiver, to another non-profit producer, to an approved laboratory, or to an approved manufacturer.

N. “Debilitating medical condition” means:

- (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) 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; [Ø]
- (8) amyotrophic lateral sclerosis;
- (9) Crohn's disease;
- (10) hepatitis C infection;
- (11) Huntington's disease;
- (12) inclusion body myositis;
- (13) inflammatory autoimmune-mediated arthritis;
- (14) intractable nausea or vomiting;
- (15) obstructive sleep apnea;
- (16) painful peripheral neuropathy;
- (17) Parkinson's disease;
- (18) posttraumatic stress disorder;
- (19) severe chronic pain;
- (20) severe anorexia or cachexia;
- (21) spasmodic torticollis;
- (22) ulcerative colitis; or
- ~~(8)~~ (23) 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.

O. "Department" means the department of health or its agent.

P. "Facility" means any building, space, or grounds licensed for the production, possession, testing, manufacturing, or distribution of cannabis, concentrates, or cannabis-derived products.

Q. "Intrastate" means existing or occurring within the state boundaries of New Mexico.

R. "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.

S. "License" means the document issued by the department granting the legal right to produce medical cannabis for a specified period of time.

T. "Licensed producer" means a person or entity licensed to produce medical cannabis.

U. "Licensure" means the process by which the department grants permission to an applicant to produce cannabis.

V. "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.

W. "Male plant" means a male cannabis plant.

X. "Manufacture" means to make or otherwise produce cannabis-derived product or concentrate.

Y. "Manufacturer" means a ~~[business entity that manufactures cannabis-derived product that has been approved for this purpose by the medical cannabis program]~~ person that is licensed by the department 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.

Z. "Mature female plant" means a harvestable female cannabis plant that is flowering.

AA. "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.

BB. "Medical cannabis program manager" means the administrator of the medical cannabis program who holds that title.

CC. "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.

DD. “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.

EE. “Minor” means an individual less than 18 years of age.

FF. “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.

[FF.] GG. “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.

[GG.] HH. “Patient enrollment/re-enrollment form” means the registry identification card application form for patient applicants provided by the medical cannabis program.

[HH.] II. “Personal production license” means a ~~license issued to a qualified patient participating in the medical cannabis program, to permit the qualified patient to produce medical cannabis for the qualified patient's personal use, consistent with the requirements of department rule~~ 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.

[H.] JJ. “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.

[JJ.] KK. “Plant” means any cannabis plant, cutting, or clone that has roots or that is cultivated with the intention of growing roots.

[KK.] LL. “Policy” means a written statement of principles that guides and determines present and future decisions and actions of the licensed producer.

[LL.] MM. “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.

[MM.] NN. “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.

[NN.] OO. “Primary caregiver application form” means the registry identification card application form provided by the medical cannabis program.

[OO.] PP. “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.

[PP.] QQ. “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.

[QQ.] RR. “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.

[RR.] SS. “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.

[SS.] TT. “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.

[TT.] UU. “Secretary” means the secretary of the New Mexico department of health.

[UU.] VV. “Secure grounds” means a facility that provides a safe environment to avoid loss or theft.

[VV.] WW. “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.

~~[WW.]~~ XX. “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.

~~[XX.]~~ YY. “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.

~~[YY.]~~ ZZ. “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.

~~[ZZ.]~~ AAA. “THC” means tetrahydrocannabinol, a cannabinoid that is the primary psychoactive ingredient in cannabis.

~~[AAA.]~~ BBB. “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.

CCC. “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.

~~[BBB.]~~ DDD. “Testing” means the process and procedures provided by an approved laboratory for testing of cannabis and cannabis derived products, consistent with provisions of this rule.

~~[CCC.]~~ EEE. “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.

~~[DDD.]~~ FFF. “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. [7.34.2.7 NMAC - Rp, 7.34.2.7 NMAC, 2/27/2015; A, 2/29/2016; A, 8/27/2019]

7.34.2.8 **ADVISORY BOARD MEMBERSHIP REQUIREMENTS AND RESPONSIBILITIES:**

A. Advisory board membership: The advisory board shall consist of ~~[eight]~~ nine practitioners ~~[representing the fields of neurology, pain management, medical oncology, psychiatry, infectious disease, family medicine and gynecology. The practitioners shall be nationally board certified in their area of specialty and knowledgeable about the medical use of cannabis]~~ knowledgeable about the medical use of cannabis. The members shall be chosen for appointment by the secretary from a list proposed by the New Mexico medical society, the New Mexico nurses association, the New Mexico academy of family physicians, the New Mexico academy of physician assistants, the New Mexico pharmacists association, or the New Mexico Hispanic medical association.

B. Duties and responsibilities: The advisory board shall convene at least twice per year to:

- (1) review and recommend to the department for approval additional debilitating medical conditions that would benefit from the medical use of cannabis;
- (2) recommend quantities of cannabis that are necessary to constitute an adequate supply for qualified patients and primary caregivers;
- (3) accept and review petitions to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis and all lawful privileges under the act and implementing rules;
- (4) issue recommendations concerning rules to be promulgated for the issuance of registry identification cards; and
- (5) review conditions previously reviewed by the board and approved by the secretary for the purpose of determining whether to recommend the revision of eligibility criteria for persons applying under those conditions or to review new medical and scientific evidence pertaining to currently approved conditions.

C. Advisory board membership term: Each member of the advisory board shall serve a term of two years from the date of appointment by the secretary. No member may be removed prior to the expiration of his or her term without a showing of good cause by the secretary.

D. Chairperson elect: The advisory board shall elect by majority vote cast of the ~~[eight]~~ nine member board a chairperson and an alternate. The chairperson or alternate shall exercise all powers and duties prescribed or delegated under the act or this rule.

(1) **Public hearing responsibilities:** The chairperson shall conduct a fair and impartial proceeding, assure that the facts are fully elicited and avoid delay. The chairperson shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial resolution of issues arising during the public hearing proceedings or in any public meeting in which a quorum of the advisory board are present.

(2) **Delegation of chair:** The chairperson may delegate their responsibility to an alternate. The alternate shall exercise all powers and duties prescribed or delegated under the act or this part.

E. **Per diem and mileage:** All advisory board members appointed under the authority of the act or this part will receive as their sole remuneration for services as a member those amounts authorized under the Per Diem and Mileage Act, Sections 10-8-1 *et seq.*, NMSA 1978.

[7.34.2.8 NMAC - Rp, 7.34.2.8 NMAC, 2/27/2015; A, 8/27/2019]

7.34.2.10 **ADVISORY BOARD PUBLIC HEARING PROCEDURES:**

A. **Public hearing requirement:** The advisory board shall convene by public hearing at least twice per year to accept and review petitions requesting the inclusion of medical conditions, medical treatments or diseases to the list of debilitating medical conditions. Any meeting consisting of a quorum of the advisory board members held for the purpose of evaluating, discussing or otherwise formulating specific opinions concerning the recommendation of a petition filed pursuant to this rule, shall be declared a public hearing open to the public at all times, unless a portion of the hearing is closed to protect information made confidential by applicable state or federal laws. A petitioner or his or her representative may request to close a portion of the hearing to protect the disclosure of confidential information by submitting their request in writing and having that request delivered to medical cannabis program staff at least 48 hours prior to the hearing.

B. **Location of the public hearing:** Unless otherwise ordered by the advisory board, the public hearing shall be held in New Mexico at a location sufficient to accommodate the anticipated audience.

C. **Public hearing notice:** The medical cannabis program manager or designee shall, upon direction from the advisory board chairperson, prepare a notice of public hearing setting forth the date, time and location of the hearing, a brief description of the petitions received, and information on the requirements for public comment or statement of intent to present technical evidence, and no later than 30 days prior to the hearing date, send copies, with requests for publication, to at least one newspaper of general circulation. The program manager or designee may further issue notice of the hearing by any other means the department determines to be acceptable to provide notice to the public.

D. **Public hearing agenda:** The department shall make available an agenda containing a list of specific items to be discussed or information on how the public may obtain a copy of such agenda.

E. **Postponement of hearing:** Request for postponement of a public hearing will be granted, by the advisory board for good cause shown.

F. **Statement of intent to present technical evidence:** Any individual or association of individuals who wish to present technical evidence at the hearing shall, no later than 15 days prior to the date of the hearing, file a statement of intent. The statement of intent to present technical evidence shall include:

- (1) the name of the person filing the statement;
- (2) indication of whether the person filing the statement supports or opposes the petition at issue;
- (3) the name of each witness;
- (4) an estimate of the length of the direct testimony of each witness;
- (5) a list of exhibits, if any, to be offered into evidence at the hearing; and
- (6) a summary or outline of the anticipated direct testimony of each witness.

G. **Ex parte discussions:** At no time after the initiation and before the conclusion of the petition process under this part, shall the department, or any other party, interested participant or their representatives discuss ex parte the merits of the petitions with any advisory board member.

H. **Public hearing process:** The advisory board chairperson shall conduct the public hearing so as to provide a reasonable opportunity for all interested persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition.

- (1) A quorum of the advisory board shall consist of [~~three~~] **five** voting members.
- (2) The advisory board chairperson or alternate shall convene each public hearing by:
 - (a) introduction of the advisory board members;
 - (b) statutory authority of the board;
 - (c) statement of the public hearing agenda; and
 - (d) recognition of the petitioner.

(3) Petitioner comment period. The petitioner or by representative may present evidence to the advisory board. The advisory board shall only consider findings of fact or scientific conclusions of medical evidence presented by the petitioner or by representative to the advisory board prior to or contemporaneously with the public hearing.

(4) **Public comment period:** The advisory board may provide for a public comment period. Public comment may be by written comment, verbal or both.

(a) **Written comment:** Any individual or association of individuals may submit written comment to the advisory board either in opposition or support of the inclusion of a medical conditions, medical treatments or diseases to the existing list of debilitating medical conditions contained under the act. All written comment shall adhere to the requirements of Subsection F of this section.

(b) **Public comment:** Any member of the general public may testify at the public hearing. No prior notification is required to present general non-technical statements in support of or in opposition to the petition. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is non-technical in nature and not unduly repetitious of the testimony.

I. **Recording the hearing:** Unless the advisory board orders otherwise, the hearing will be audio recorded. Any person, other than the advisory board, desiring a copy of the audio tapes must arrange copying with the medical cannabis program or designee at their own expense.

[7.34.2.10 NMAC - Rp, 7.34.2.10 NMAC, 2/27/2015; A, 8/27/2019]