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2019 AUG 15 PM 4: 28

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:

(ALD Use Only)

New Amendment Repeal Emergency Renumber

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?

Please list attachments or Internet sites if applicable.

Yes No

If materials are attached, has copyright permission been received?

Yes

No

Public domain

Specific statutory or other authority authorizing rulemaking:

Notice date(s):

Hearing date(s):

Rule adoption date:

Rule effective date:

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

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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 medical conditions that qualify persons for enrollment in the Medical Cannabis Program; annual submittal requirements for qualified patients; removal of THC limits for cannabis-derived products; removal of fees for replacement registration cards; expansion of enrollment period to three years; and removal of prohibition against transfer of cannabis from patients and primary caregivers to other patients and primary caregivers, among other modifications.

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:

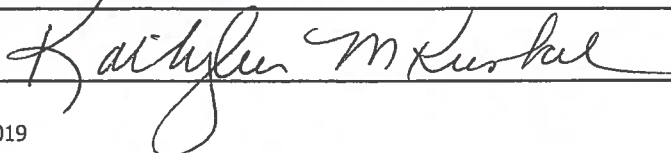
Kathyleen Kunkel

Check if authority has been delegated

Title:

Cabinet Secretary

Signature: (BLACK ink only)



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.

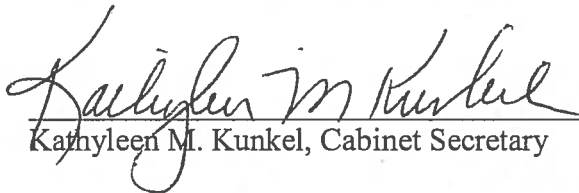
8. The Cabinet Secretary has reviewed the Report and Recommendation of the Hearing Officer and finds that the Hearing Officer has appropriately considered the proposed

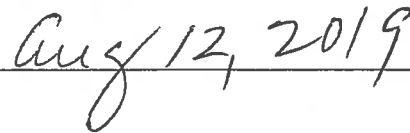
rule amendments and the substantive comments made through public comment, and the Secretary adopts the Hearing Officer's recommendations concerning the proposed rule amendments.

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: 29

This is an amendment to 7.34.3 NMAC, Sections 7 through 11, 15, 17 and 19, effective 8/27/2019.

7.34.3.7 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 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; [øf]
- (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
- [øf] (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. [7.34.3.7 NMAC - Rp, 7.34.3.7 NMAC, 2/27/2015; A, 2/29/2016; A, 8/27/2019]

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, Section 26-2B-3(B) 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; ~~and~~
- (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) [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] autism spectrum disorder;

(2) [painful peripheral neuropathy: application to the medical cannabis program shall be accompanied by medical records that confirm the objective presence of painful peripheral neuropathy] Friedreich's ataxia;

(3) [intractable nausea/vomiting] Lewy body disease;

(4) [severe anorexia/cachexia] spinal muscular atrophy;

(5) [hepatitis C infection currently receiving antiviral treatment: the written certification

shall attest:

(a) that the hepatitis C infection is currently being treated with antiviral drugs; and

(b) to the anticipated duration of the hepatitis C antiviral treatment] Alzheimer's disease;

(6) [Crohn's disease] opioid use disorder;

(7) 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*;

(8) 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;

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

(10) inclusion body myositis;

(11) spasmodic torticollis (cervical dystonia);

(12) Parkinson's disease;

(13) Huntington's disease;

(14) ulcerative colitis; and]

[(15)] (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: A qualified patient shall submit annually to the department, on a department-approved form, a statement from a practitioner indicating that:

(1) the practitioner has examined the qualified patient during the preceding twelve 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.

~~[D.]~~ **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]

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 total units. For purposes of department rules, this quantity is deemed an adequate supply. (For ease of reference: 230 units is equivalent to 230 grams, or approximately eight 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. [Maximum THC content of concentrates: A qualified patient or primary caregiver shall not possess a concentrated cannabis-derived product that contains greater than seventy percent (70%) THC by weight.~~

~~—————D.] Medical exception:~~ A greater quantity of usable cannabis, not to exceed 115 additional units, may be allowed, ~~[and a concentrated cannabis-derived product with THC content greater than seventy percent (70%) by weight 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 ~~[, or a higher concentration of THC in concentrated cannabis-derived product,]~~ 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]

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. [Replacement card fee: A fifty dollar (\$50) payment is required for replacement of registry identification card.~~

~~—————D.]~~ 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 ~~[or federal]~~ 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.

~~[E.]~~ **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.

~~[F.]~~ **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 ~~[or federal]~~ 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;
- (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.

~~[G.]~~ **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.

~~[H.]~~ **G. 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. ~~[The primary caregiver may not independently produce medical cannabis.]~~

(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.

~~[I.]~~ **H. 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 [and] 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.

~~[J.]~~ **I. 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]

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 ~~[one]~~ 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, 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 ~~[one]~~ three years from 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 expiration of the patient's registry identification card]~~ 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, ~~[and remittance of the fifty dollar (\$50) replacement fee,]~~ 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]

7.34.3.15 PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON THE USE OF CANNABIS BY QUALIFIED PATIENTS: Participation in the medical cannabis program by a qualified patient or primary caregiver does not relieve the qualified patient or primary caregiver from:

- A. criminal prosecution or civil penalties for activities not authorized in this rule and act;
- B. criminal prosecution or civil penalties for fraudulent representation to a law enforcement officer about the person's participation in the program to avoid arrest or prosecution;
- C. liability for damages or criminal prosecution arising out of the operation of a vehicle while under the influence of cannabis or cannabis-derived products; or
- D. criminal prosecution or civil penalty for possession, distribution, transfer, or use of cannabis or a cannabis-derived product:

~~[(1) in a school bus or public vehicle;~~

~~(2) on school grounds or property;~~
[~~(3)~~ (1) in the workplace of the qualified patient's or primary caregiver's employment;
[~~(4)~~ (2) at a public park, recreation center, youth center, or other public place;
[~~(5)~~ (3) to a person not approved by the department pursuant to this rule;
[~~(6)~~ (4) outside New Mexico or attempts to obtain or transport cannabis, or cannabis-derived products from outside New Mexico; or
[~~(7)~~ (5) that exceeds the allotted amount of usable medical cannabis, or cannabis-derived products.
[7.34.3.15 NMAC - Rp, 7.34.3.13 NMAC, 2/27/2015; A, 8/27/2019]

7.34.3.17 EXEMPTION FROM STATE CRIMINAL AND CIVIL PENALTIES FOR THE MEDICAL USE OF CANNABIS:

- A.** Possession of, or application for, a registry identification card shall not constitute probable cause or give rise to reasonable suspicion for any governmental agency to search the person or property of the person possessing or applying for the card.
- B.** A qualified patient shall not be subject to arrest, prosecution, or penalty in any manner by the state of New Mexico or a political subdivision thereof for the possession of or the use of medical cannabis if the quantity of cannabis, concentrates, or cannabis-derived products does not exceed an adequate supply as defined by rule; provided that a qualified patient or the qualified patient's primary caregiver may collectively possess that qualified patient's harvest of cannabis.
- C.** A primary caregiver shall not be subject to arrest, prosecution, or penalty in any manner for the possession of cannabis by the state of New Mexico, or a political subdivision thereof, for the medical use by the qualified patient if the quantity of cannabis, concentrates, or cannabis-derived products does not exceed an adequate supply as defined by rule.
- D.** A qualified patient or a primary caregiver shall be granted the full legal protections provided under the Lynn and Erin Compassionate Use Act, Section 26-2B-1 *et seq.*, NMSA 1978, by the state of New Mexico if the qualified patient or primary caregiver is in possession of a valid registry identification card. If the qualified patient or primary caregiver is not in possession of a valid registry identification card, the qualified patient or primary caregiver shall be given an opportunity to produce the registry identification card before any arrest, or criminal charges, or other penalties are initiated.
- E.** A practitioner shall not be subject to arrest or prosecution, penalized in any manner, or denied any right or privilege by the state of New Mexico, or political subdivision thereof, for recommending the medical use of cannabis, or providing written certification for the medical use of cannabis pursuant to this rule and the act.
- F.** Any property interest that is possessed, owned, or used in connection with the medical use of cannabis, or acts incidental to such use, shall not be harmed, neglected, injured, or destroyed while in the possession of New Mexico state or local law enforcement officials. Any such property interest shall not be forfeited under any New Mexico state or local law providing for the forfeiture of property except as provided in the Forfeiture Act. Cannabis, cannabis-derived products, paraphernalia, or other property seized from a qualified patient or primary caregiver in connection with the claimed medical use of cannabis shall be returned immediately upon the determination by a court or prosecutor that the qualified patient or primary caregiver is entitled to the protections of the provisions of this rule and the act, as may be evidenced by a failure to actively investigate the case, a decision not to prosecute, the dismissal of charges, or acquittal.
- G.** A person shall not be subject to arrest or prosecution by the state of New Mexico, or political subdivision thereof, for a cannabis-related offense for being in the presence of the medical use of cannabis as permitted under the provisions of this rule and the act.

[7.34.3.17 NMAC - Rp, 7.34.3.15 NMAC, 2/27/2015; A, 8/27/2019]

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 that is no longer needed for the patient's needs may be disposed of by transporting the unused portion to a state or local law enforcement office, or by destroying the unused cannabis. Transfer to a ~~[qualified patient, primary caregiver, or]~~ nonprofit entity is prohibited.

[7.34.3.19 NMAC - Rp, 7.34.3.17 NMAC, 2/27/2015; A, 8/27/2019]