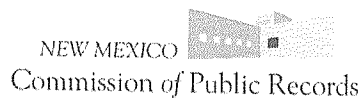


Instructions for completing the NMAC TRANSMITTAL FORM



Your agency must complete the following:

Your Access to Public Information

Volume, Issue and Publication Date. Example: Volume: XXX , Issue: 10, Publication date: May 28, 2019.

Provide the total number of pages of the paper version of the new rule, amendment, repeal, or emergency document.
Note: Do not include the pages of the transmittal form, billing sheet, PO, etc.

Sequence number is for **ALD use only**.

Issuing agency's name and mailing address.

Agency's 3-digit DFA code. Example: 123

Contact person's Name, Phone number, E-mail address.

Check type of rule action: **New** (brand new rule or replacement rule), **Amendment**, **Repeal** (repeal and do not replace or repeal and replace), **Emergency**, or **Renumber**. **For a repeal and replacement rule, the agency must provide TWO signed transmittal forms; one for the repeal statement and another for the new (replacement) rule.**

Most Recent Filing Date of the Part for **ALD use only**.

Identify NMAC Title, Chapter and Part numbers and Title, Chapter and Part names.

Example:

Title 19 Natural Resources and Wildlife
Chapter 30 Wildlife Administration Aquatic
Part 14 Invasive Species

Description of Amendment: (if amending) Example: "Amending three sections".

Amendment's NMAC citation: (if amending) Example: "Sections 9 and 18 of 7.1.13 NMAC".

Are any materials incorporated by reference? Check: Yes or No. If Yes, please list attachments or provide Internet site.

If incorporated, has copyright permission been granted? Check Yes or No or check if document is in the public domain.

Concise Explanatory Statement for rulemaking adoption See 1.24.25.14 NMAC:

Provide your agency's specific statutory or other authority authorizing rulemaking: Check with your agency's general counsel office to determine the correct citation(s) authorizing your agency to make rules.

Provide your Notice date(s) (when notice of rulemaking was published in Register): Hearing date(s) (if agency has board or commission): Rule adoption date: (see note below) and Rule effective date (date rulemaking becomes effective)

Note:

- There must be at least **30** days between the notice publication date and hearing date.
- Your agency **must file** your rule within **15** days from rule adoption date. The date of adoption of the proposed rule shall be the date the concise explanatory statement is signed by the agency, unless otherwise specified in the concise explanatory statement. Unless your rule is an emergency filing, the rule effective date cannot be any earlier than the publication date in the New Mexico Register.

Findings required for rulemaking adoption. If attaching a separate document as findings or as concise explanatory statement, please indicate as such in findings section.

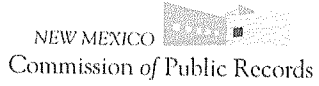
Check with your agency's general counsel office regarding substance of any required findings to be filed.

Issuing Authority: Name, Title Date signed and original Signature of issuing authority or their delegate in **black** ink:

Note: If authority has been delegated, this box must be checked. A letter of delegation must be on file with the State Records Center and Archives, Administrative Law Division.

NMAC

Transmittal Form



Your Access to Public Information

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:

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

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

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

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

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

Name:

Billy J. Jimenez

Check if authority has been delegated

Title:

Acting Cabinet Secretary

Signature: (BLACK ink only)

Date signed:

10/08/2020

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF HEALTH**

**IN THE MATTER OF THE EMERGENCY
AMENDMENT OF SECTION 7.34.4.28 NMAC**

**STATEMENT OF REASONS
FOR ADOPTION OF EMERGENCY AMENDMENT TO
RULE SECTION 7.34.4.28 NMAC**

The Acting Cabinet Secretary for the New Mexico Department of Health (“Department”), Billy J. Jimenez, hereby adopts an emergency amendment to Medical Cannabis Program rule 7.34.4.28 NMAC, concerning Medical Cannabis Program reciprocity. In further support of this action, the Acting 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. The Lynn and Erin Compassionate Use Act was amended in 2019 to include provisions for granting Medical Cannabis Program reciprocity for persons who hold proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo. *See* NMSA 1978, § 26-2b-7(I), (J).
4. The statute authorizes the Department of Health to promulgate rules relating to medical cannabis program reciprocity. NMSA 1978, § 26-2b-7(I).
5. The statute further authorizes the Department of Health to identify requirements for the granting of reciprocity, including (but not limited to) provisions to limit the period of time

in which a reciprocal participant may participate in the Medical Cannabis Program. NMSA 1978, 26-2b-7(I).

6. The statute authorizes reciprocal participants to “participate in the medical cannabis program in accordance with department rules”. NMSA 1978, 26-2b-7(J)(1).

7. The Department is authorized pursuant to the NM State Rules Act to adopt a rule prior to conducting a public hearing for the receipt of public comment, if the agency finds that the time required to complete the procedures would cause an imminent peril to the public health, safety or welfare. NMSA 1978, § 14-4-5.6.

8. On September 11, 2020, the Department of Health, Medical Cannabis Program issued correspondence to licensed nonprofit medical cannabis producers regarding requirements for reciprocal participation in the Medical Cannabis Program.

9. By that correspondence, the Medical Cannabis Program (“Program”) expressed that New Mexico residents could not become registered as reciprocal participants in the Program, but would instead need to pursue enrollment as qualified patients in accordance with 7.34.3 NMAC. *Id.*

10. By that correspondence, the Program also stated that proof of authorization to participate in the medical cannabis program of California would consist of a medical marijuana identification card, and that “letters of eligibility in the California medical program” would not constitute proof of authorization for purposes of the New Mexico Medical Cannabis Program. *Id.*

11. The letter also stated that nonprofit producers may not register their employees or board members for reciprocity. *Id.*

12. On September 22, 2020, a lawsuit was filed in the Santa Fe District Court in the matter of *New Mexico Top Organics Ultra Health Inc v. New Mexico Department of Health et. al.*, case no. D-101-CV-2020-02059 in which the Petitioner sought a writ of mandamus to invalidate the directives of the September 11, 2020 letter, based in part on the contention that these directives constitute “rules” for purposes of the State Rules Act, NMSA 1978, §§ 14-4-1 through 14-4-11, which must therefore be promulgated in accordance with that Act.

13. The Department recognizes that reciprocity was created in the statute for the purpose of enabling out-of-state residents who participate in the medical cannabis program of another state to access medicine while visiting New Mexico.

14. The Department finds that reciprocity was not created in the statute to enable New Mexico residents to circumvent the enrollment criteria of the Lynn and Erin Compassionate Use Act, NMSA 1978, §§ 26-2b-1 through 26-2b-10 and associated Department regulations at 7.34.3 NMAC, although this would be the consequence if New Mexico residents were allowed to participate in the Medical Cannabis Program as reciprocal participants.

15. Such a result would be absurd, and contrary to the legislative intent of the Lynn and Erin Compassionate Use Act.

16. The Department also finds that it was not the intention of the New Mexico Legislature to permit an individual to participate in the New Mexico Medical Cannabis Program as a reciprocal participant on the basis of an authorization issued by a jurisdiction other than the person’s place of residence.

17. Again, the Department recognizes that the purpose of reciprocity is to enable out-of-state residents who participate in the medical cannabis program of another state to access medicine while visiting New Mexico.

18. Ensuring that a person's residence matches their place of enrollment not only helps to verify that the individual is who they claim to be and that they are truly enrolled in the medical cannabis program of another jurisdiction, but also tends to verify that the person is actually participating in the medical cannabis program in which they are enrolled.

19. With regard to the documents that may constitute "proof of authorization", as that expression is used in the statute at NMSA 1978, § 26-2b-7: the Department finds that a letter from a medical practitioner, taken alone, is not sufficient to demonstrably prove that an individual has been authorized to participate in the medical cannabis program of another jurisdiction.

20. A letter that is issued by a medical practitioner can easily be falsified, and, when taken alone, does not afford the same degree of proof as a card or other legal document that is issued by the originating jurisdiction to authorize participation in that jurisdiction's medical cannabis program.

21. A letter from a medical practitioner, taken alone, also does not provide any verification that the practitioner who signed the letter is in good standing with their licensing body; whereas a card or other authorization issued from a governmental entity in the originating state provides greater assurance that the reciprocal participant has met the eligibility requirements of the originating jurisdiction.

22. Accordingly, the Department interprets the expression "proof of authorization", as it is used at NMSA 1978, § 26-2b-7, as a card or other physical document issued by a governmental entity authorized by law to enroll the applicant in the medical cannabis program in the originating jurisdiction.

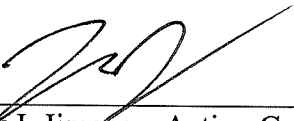
23. The Acting Cabinet Secretary finds that the delay that would be caused by completing the ordinary rulemaking procedures described in the State Rules Act at NMSA 1978, 14-4-1 through 14-4-11, prior to adoption of the rule amendment to 7.34.4.28 NMAC would cause an imminent peril to the public health, safety and welfare, insofar as it would 1) permit New Mexico residents who would not otherwise meet criteria to enroll as qualified patients in the Medical Cannabis Program to access cannabis; 2) allow non-residents who are not demonstrably authorized to participate in the medical cannabis program of another jurisdiction to access cannabis; and 3) negatively impact the availability of medical cannabis in New Mexico by diverting medicine from qualified patients, thereby harming the health, safety, and welfare of qualified patients in the state.

24. In accordance with the State Rules Act at NMSA 1978, § 14-4-5.6(E), this emergency rule amendment is temporary, and will expire if no permanent rule is adopted within one hundred eighty days from the effective date, identified below.

25. This rule amendment is adopted pursuant to the police powers of the State of New Mexico, Department of Health, to regulate, promote, and protect public health and safety.

26. The Acting Cabinet Secretary finds that the proposed rule amendment is appropriate and consistent with authorizing laws, and for each of the reasons stated, the emergency amendment to 7.34.4.28 NMAC is hereby adopted.

NEW MEXICO DEPARTMENT OF HEALTH



Billy J. Jimenez, Acting Cabinet Secretary

10 / 8 / 20

Date