

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 by the Secretary of the Department of Health is made in accordance with the following authorities: Sections 9-7-6, 26-2b-7, 26-2b-2, and 24-1-3 NMSA 1978.

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

Concise Explanatory Statement For Rulemaking Adoption:

FILED WITH
NEW MEXICO STATE
RECORDS CENTER

2022 FEB 10 PM 3:01

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:

Chris D. Woodward

Check if authority has been delegated

Title:

Assistant General Counsel

Signature: (BLACK ink only)

Date signed:

Chris D. Woodward

Digitally signed by Chris D. Woodward
Date: 2022.02.09 14:04:28 -07'00'

2/09/2022

2022 FEB 10 PM 3:01

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

**IN THE MATTER OF AMENDMENTS TO 7.34.2.7 NMAC,
7.34.4 NMAC, AND SECTIONS OF 7.34.3 NMAC**

**STATEMENT OF REASONS
FOR ADOPTION OF RULE AMENDMENTS**

The Acting Cabinet Secretary for the New Mexico Department of Health (“Department”),
David Scrase, M.D., hereby adopts amendments to the following rule sections:

1. 7.34.2.7 NMAC (“Definitions”);
2. 7.34.3.7 NMAC (“Definitions”);
3. 7.34.3.8 NMAC (“Qualifying Medical Conditions”);
4. 7.34.3.9 NMAC (“Quantity of Usable Cannabis That May Be Possessed by a Qualified Patient or Primary Caregiver”);
5. 7.34.3.10 NMAC (“Qualified Patient and Primary Caregiver Registry Identification Card Application Card Requirements”);
6. 7.34.3.11 NMAC (“Registry Identification Cards”);
7. 7.34.3.13 NMAC (“Possession of Usable Cannabis”);
8. 7.34.3.19 NMAC (“Disposal of Unused Cannabis”);
9. 7.34.3.22 NMAC (“Reciprocity”); and
10. 7.34.4.28 NMAC (“Reciprocity”).

The Acting Cabinet Secretary has familiarized himself with the rulemaking record, and finds as follows:

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, including but not limited to rules to govern the manner in which the Department will consider applications for registry identification cards and for the renewal of identification cards for qualified patients and primary caregivers, and rules to define the amount of cannabis that is necessary to constitute an “adequate supply”, including amounts for topical treatments. NMSA 1978, § 26-2b-7.

2022 FEB 10 PM 3:01

3. A public rule hearing concerning the proposed amendments was held via the Cisco Webex online video conferencing platform on November 12, 2021 pursuant to NMSA 1978, § 9-7-6(E).

4. In accordance with NMSA 1978, Section 14-4-5.2, notice of the public hearing for the proposed rule changes was published in the New Mexico Register, the official publication for notices of all rulemaking in New Mexico, on October 13, 2021, as more fully described in the Affidavit at Exhibit 7 (Affidavit of Publication in the New Mexico Register).

5. In accordance with the Department of Health Act at NMSA 1978, Section 9-7-6(E), notice of the public hearing for the proposed rule changes was also published in the Albuquerque Journal, newspaper on October 13, 2021, as more fully described in the Affidavit at Exhibit 6 (Affidavit of Publication, Abq. Journal).

6. Notice of the rulemaking was also provided to the public in accordance with NMSA 1978, Section 14-4-5.2, as more fully described in the Affidavit at Exhibit 5 (Affidavit of Notice to the Public).

7. In accordance with NMSA 1978, § 26-2B-7(A), the Department of Health consulted the Medical Cannabis Advisory Board (“MCAB”) concerning the proposed amendments to the Medical Cannabis Program rules. The Medical Cannabis Advisory Board reviewed the proposed amendments at its meeting on December 7, 2021, and unanimously recommended in favor of their adoption, as reflected in the MCAB Meeting Minutes at Exhibit 18.

8. By a letter dated September 30, 2021, the Acting Cabinet Secretary, David Scrase, M.D., designated Mr. Craig Erickson, Esq. to serve as hearing officer for the purpose of

2022 FEB 10 PM 3:01

conducting the hearing and submitting a recommendation regarding the proposed rule amendment.

9. Members of the public were afforded an opportunity to comment on the proposed rules at the hearing, and in writing prior to the hearing.

10. The Secretary finds that the Hearing Officer has appropriately considered the comments received, and finds that the recommendations of the Hearing Officer are appropriate; and, by this reference, the Secretary hereby adopts and incorporates all of the findings and recommendations of the Hearing Officer that are stated in Hearing Officer's Report, issued by the Hearing Officer on January 18, 2022 and received by the Secretary on January 20, 2022,

11. Virtually all of the public comments (both oral and written) in this rulemaking were submitted by representatives of the licensed medical cannabis producer Ultra Health. *See* Ex. 10, 14-16. Ultra Health primarily contended that NMDOH lacks authority to set regulatory standards concerning the "adequate supply" limit at 7.34.3.9 NMAC.

12. In a letter dated December 3, 2021, contained at Exhibit 17, Assistant General Counsel Chris D. Woodward responded to Ultra Health's comments on behalf of the Department's Medical Cannabis Program. The Acting Cabinet Secretary finds that that response is well taken, and accordingly, adopts the reasoning of that letter, which is hereby incorporated in its entirety by this reference.

13. Contrary to the legal contentions of Ultra Health's representatives, the New Mexico Department of Health continues to be charged by the Lynn and Erin Compassionate Use Act with setting the "adequate supply" limit, as well as setting a reciprocal participation limit. Those authorities were not transferred to the Regulation and Licensing Department (RLD) by the Cannabis Regulation Act (CRA) at NMSA 1978, § 26-2C-5, which concerned only the transfer

2022 FEB 10 PM 2:02

of “licensing duties”. The “licensing duties” that were transferred to RLD under the CRA concerned only licensing of commercial cannabis establishments, and did not include the setting of the adequate supply limit.

14. The recent case of *Jason Barker v. New Mexico Department of Health, Dr. Dominick Zurlo, Dr. David R. Scrase, New Mexico Regulation and Licensing Department, Linda Trujillo, John Blair, and Robert Sachs*, case no. D-202-CV-2021-04058, involved legal contentions identical to those raised by Ultra Health in this rulemaking.

15. In the *Jason Barker* case, a petitioner sought a writ of mandamus from the NM Second Judicial District Court against the Department of Health, the Regulation and Licensing Department, and various representatives of those two agencies, to prohibit the enforcement of purchase and possession limitations on medical cannabis found at 7.34.3.9(A) NMAC and 7.34.4.8(L) NMAC, and to require that qualified patients and primary caregivers be allowed to purchase unlimited quantities of cannabis, tax-free, applying only the two-ounce per-transaction limit of the Cannabis Regulation Act at NMSA 1978, § 26-2C-25(A)(2).

16. In a December 16, 2021 “Order Quashing Alternative Writ of Mandamus”, contained at Exhibit 19, the Bernalillo County District Court (Hon. Benjamin Chavez) rejected the Petitioner’s reasoning and quashed the alternative writ, concluding in relevant part that the Department of Health continues to possess authority under the Lynn and Erin Compassionate Use Act to set the adequate supply limit by rule, and concluding that the Department’s rules at 7.34.3.9(A) NMAC and 7.34.4.8(L) NMAC are not inconsistent with the Cannabis Regulation Act.

17. Accordingly, for the reasons stated, the Acting Cabinet Secretary finds that the rule amendments are within the Department of Health’s statutory authority.

2022 FEB 10 PM 3:02

18. Ultra Health's representatives also argued that the 15-ounce adequate supply limit, specified in the amendment to 7.34.3.9 NMAC, lacks "substantial evidence". Ultra Health's argument on this subject contradicts its repeated requests over the years for the Department of Health to set a 15-ounce adequate supply limit, documented at Exhibits 11 and 13.

19. In those letters, Ultra Health's representatives petitioned the Department of Health and the Medical Cannabis Advisory Board, respectively, to increase the adequate supply limit to 420 units/grams, slightly less than the 425 units/grams limit specified in the pending amendment to 7.34.3.9 NMAC. Ultra Health claimed in those petitions that fifteen ounces of dried usable cannabis for a three-month period was a common industry standard; that it was adopted in several states, including Arizona, Arkansas, Illinois, Maine, and Nevada; and that this limit would be enough to ensure that patients can purchase, consistent with CDC guidance, a back-stock of medicine sufficient to allow them to keep a 30-day supply of medicine on-hand.

20. In an e-mail submitted by its counsel after the conclusion of the public hearing in this rulemaking, Ultra Health appeared to pivot away from its "substantial evidence" argument, claiming instead that "[a]ny cannabis-related events that occurred prior to June 29, 2021 are largely irrelevant, because the world of cannabis in New Mexico fundamentally changed on June 29, 2021 with the effectuation of the Cannabis Regulation Act." Ex. 16 at 1.

21. As explained, the Department of Health's authority to set the adequate supply limit is established by the Lynn and Erin Compassionate Use Act, and has been confirmed by the NM Second Judicial District Court. Furthermore, Ultra Health has not offered anything to demonstrate that changes resulting from the Cannabis Regulation Act will in some way impact consumption patterns among qualified patients or reciprocal participants, such that a larger limit

2022 FEB 10 PM 3:02

is necessitated, or that a larger limit would be medically appropriate. In fact, Ultra-Health has not proposed any alternative limit at all, but has simply declared, without explanation, that its previous endorsement of 15-ounces is now erroneous and lacks “substantial evidence”.

22. In his report, the Hearing Officer concluded that the proposed 15-ounce adequate supply limit was supported by substantial evidence, noting that “the basis for the 15-ounce adequate supply limit was articulated in written submissions from Ultra Health for the last two years, beginning in 2019.” The Hearing Officer concluded that this limit “is an industry standard that has been applied in several states”; that it was unanimously approved by the Medical Cannabis Advisory Board; and that it was further supported by the fact that less and one percent of qualified patients in the Medical Cannabis Program have sought access to additional quantities of cannabis under the previous medical exception of the rule. Report at p.25. The Acting Cabinet Secretary finds that these conclusions are well taken, and adopts the Hearing Officer’s reasoning.

23. With the coming of commercial cannabis sales in New Mexico, the adequate supply limit will no longer function as an acquisition limit for the vast majority of qualified patients and primary caregivers. When commercial cannabis sales begin (no later than April 1st of this year, per the CRA at NMSA 1978, § 26-2C-6(K)), any person 21 years of age or older will be able to purchase “commercial cannabis”, above and beyond “medical cannabis” purchases, with the only acquisition limit for those purchases being a limit per each individual transaction.

24. Also, as of June 29, 2021, the CRA has made it legal for any person 21 years of age and older to possess up to six mature and six immature cannabis plants at any time, a fifty-

2022-550-10-01-7-02

percent increase over the previous 4-mature-plant limit for personal production license holders under the previous NMDOH rule.

25. Based on these factors, and based on each of them individually, the Acting Cabinet Secretary finds that the Department's 15-ounce adequate supply and reciprocal participation limits will not prevent individuals from obtaining needed medicine, and that the 425-unit limit is reasonable and appropriate.

26. The Acting Cabinet Secretary finds that the amendments are in harmony with the agency's express statutory authorities and/or spring from those powers that may fairly be implied therefrom, and that the amendments are consistent with the statutory purposes of the Department of Health. *Rio Grande Chapter of Sierra Club v. New Mexico Mining Comm'n*, 2003-NMSC-005, ¶ 25, 133 N.M. 97, 106 (internal citations omitted).

27. The Acting Cabinet Secretary finds that the rule amendments fall within the scope of the rulemaking proceeding, that they are a logical outgrowth of the notice given and comment received, and that commenters were afforded a fair opportunity to present their views on the contents of the final plan. *See* 1.24.25.14(C) NMAC; *see also* N.M. Att'y Gen. Op. 87-59 (1987) (*citing BASF Wyandotte Corp. v. Costle*, 598 F.2d 637, 642 (1st Cir. 1979)).

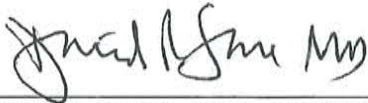
28. The purpose of the amendments is to modify the rule requirements for the New Mexico Medical Cannabis Program, as detailed in Exhibits 1, 2 and 3, and in the Notice of Public Hearing at Exhibit 4.

29. The rule amendments are adopted in the exercise of police powers of the State of New Mexico, Department of Health, to regulate, promote, and protect public health and safety.

2022 FEB 10 PM 3:02

30. The Cabinet Secretary finds that the proposed rule amendments are appropriate and consistent with authorizing laws; and for each of the reasons stated, the rule amendments, as identified at Exhibits 1, 2, and 3, are hereby adopted.

NEW MEXICO DEPARTMENT OF HEALTH



David R. Scrase, M.D., Cabinet Secretary

2/9/2022

Date

2022 FEB 10 PM 3: 02

This is an amendment to 7.34.2 NMAC, Section 7, effective 2/22/2022.

7.34.2.7 DEFINITIONS:

A. Definitions beginning with "A":

(1) "Act" means the Lynn and Erin Compassionate Use Act, Sections 26-2B-1 through 26-2B-10, NMSA 1978.

(2) "Adequate supply" means an amount of cannabis, in a form approved by the department possessed by a qualified patient or collectively possessed by a qualified patient and the qualified patient's primary caregiver, that is determined by rule of the department to be no more than reasonably necessary to ensure the uninterrupted availability of cannabis for a period of three months and that is derived solely from an intrastate source.

(3) "Administrative review committee" means an intra-department committee that reviews qualified patient or primary caregiver application denials [~~licensed producer denials made by the program director, 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).

(4) "Administrative withdrawal" means the procedure for the voluntary withdrawal of a qualified patient or primary caregiver from the medical cannabis program.

(5) "Advisory board" means the medical cannabis advisory board consisting of nine practitioners knowledgeable about the medical use of cannabis, who are appointed by the secretary.

(6) "Applicant" means any person applying for enrollment or re-enrollment in the medical cannabis program as a qualified patient [5] or primary caregiver [or licensed producer].

[~~_____~~] (7) "Approved entity" means a manufacturer, laboratory, or courier.]

B. Definitions beginning with "B": [RESERVED]

~~["Batch" means, with regard to usable cannabis, an identified quantity of cannabis no greater than five pounds that is of the same strain of cannabis, that is harvested during the same specified time period from the same specified cultivation area, and with respect to which the same agricultural practices were utilized, including the use of any pesticides; 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.]~~

C. Definitions beginning with "C":

(1) "Cannabis" means ~~[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.]~~

(a) means all parts of the plant Cannabis 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

(b) 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;

~~[(2) "Cannabis consumption area" means an area within a licensed nonprofit producer's premises that is approved by the department, where cannabis may be consumed by qualified patients, in accordance with department rules.~~

~~_____ (3) (2) "Cannabis-derived product" or "cannabis product" means [a product, other than cannabis itself, which contains or is derived from cannabis, not including hemp]~~

(a) means a product that contains cannabis, including edible or topical products that may also contain other ingredients; and

~~(b)~~ does not include the weight of any other ingredient combined with cannabis or cannabis extract to prepare topical or oral administrations, food, drink or another product.

~~[(4)]~~ **“(Cannabis establishment)”** means:

- ~~(a)~~ a licensed cannabis courier;
- ~~(b)~~ a licensed cannabis testing facility;
- ~~(c)~~ a licensed cannabis manufacturer;
- ~~(d)~~ a licensed non-profit producer; or
- ~~(e)~~ such other person that the department may by rule approve for participation in the medical cannabis program.

~~(5)]~~ **(3) “CBD”** means cannabidiol, a cannabinoid and the primary non-psychoactive ingredient found in cannabis.

~~[(6)]~~ **(4) “CBDA”** means cannabidiolic acid, a non-psychoactive ingredient found in cannabis and an acid precursor to CBD.

~~[(7)]~~ **“(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 THC by weight.

~~(8)~~ **“(Courier)”** means a cannabis courier as defined by the Lynn and Erin Compassionate Use Act, Subsection D of Section 26-2b-3 NMSA 1978, that has been approved by the department specifically to transport usable cannabis and cannabis products within the state of New Mexico from a cannabis establishment to a qualified patient, a primary caregiver, or another cannabis establishment.]

D. Definitions beginning with “D”:

(1) “Debilitating medical condition” means:

- ~~(a)~~ cancer;
- ~~(b)~~ glaucoma;
- ~~(c)~~ multiple sclerosis;
- ~~(d)~~ damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;
- ~~(e)~~ seizure disorder, including epilepsy;
- ~~(f)~~ positive status for human immunodeficiency virus or acquired immune deficiency syndrome;
- ~~(g)~~ [admission] admitted into hospice care in accordance with rules promulgated by the department;
- ~~(h)~~ amyotrophic lateral sclerosis;
- ~~(i)~~ Crohn’s disease;
- ~~(j)~~ hepatitis C infection;
- ~~(k)~~ Huntington’s disease;
- ~~(l)~~ inclusion body myositis;
- ~~(m)~~ inflammatory autoimmune-mediated arthritis;
- ~~(n)~~ intractable nausea or vomiting;
- ~~(o)~~ obstructive sleep apnea;
- ~~(p)~~ painful peripheral neuropathy;
- ~~(q)~~ Parkinson’s disease;
- ~~(r)~~ posttraumatic stress disorder;
- ~~(s)~~ severe chronic pain;
- ~~(t)~~ severe anorexia or cachexia;
- ~~(u)~~ spasmodic torticollis;
- ~~(v)~~ ulcerative colitis; or
- ~~(w)~~ 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.

(2) “Department” means the department of health or its agent.

(3) “Diversion” means the unlawful transfer of a cannabis plant, plant material, or cannabis-derived product.

(4) “Dried usable cannabis” means the dried leaves, flowers, and trim of the female cannabis plant, but does not include the seeds, stalks, or roots of the cannabis plant.

(5) **“Dry weight basis”** means a process by which delta-9-tetrahydrocannabinol concentration is measured relative to the aggregate weight of all parts of the plant genus Cannabis, whether growing or not, including the leaves of the plant, the flowers and buds of the plant, the seeds of the plant, the resin of the plant and the stalks of the plant, at the point of harvest and with no moisture added to the harvested plant.

E. **Definitions beginning with “E”:** [RESERVED]

F. **Definitions beginning with “F”:** [RESERVED] [**“Facility”** means any building, space, or grounds licensed for the production, possession, testing, manufacturing, or distribution of cannabis, concentrates, or cannabis-derived products.]

G. **Definitions beginning with “G”:** [RESERVED]

H. **Definitions beginning with “H”:** **“Hemp”** means the plant cannabis sativa L. and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol concentration of no more than three-tenths percent on a dry weight basis;

I. **Definitions beginning with “I”:**

(1) **“Intrastate”** means existing or occurring within the state boundaries of New Mexico.

(2) **“Inversion”** means the unlawful acquisition of a cannabis plant, plant material, or cannabis-derived product.

J. **Definitions beginning with “J”:** [RESERVED]

K. **Definitions beginning with “K”:** [RESERVED]

L. **Definitions beginning with “L”:** **“Licensee”** means any person licensed by the New Mexico cannabis control division pursuant to the Cannabis Regulation Act, Sections 26-2C-1 through 26-2C-42 NMSA 1978 who is authorized by that license to sell cannabis to qualified patients, primary caregivers, and reciprocal participants.

[~~_____ (1) “Laboratory” means a 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.~~

[~~_____ (2) “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.~~

[~~_____ (3) “Licensed producer” means a person or entity licensed to produce medical cannabis.]~~

[~~_____ (4) “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.]~~

M. **Definitions beginning with “M”:**

[~~_____ (1) “Male plant” means a male cannabis plant.~~

[~~_____ (2) “Manufacture” means to prepare a cannabis.~~

[~~_____ (3) “Manufacturer” means a cannabis manufacturer as defined in the Lynn and Erin Compassionate Use Act, Subsection F of Section 26-2B-3 NMSA 1978, that has been approved by the department specifically 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.~~

[~~_____ (4) “Mature female plant” means a harvestable female cannabis plant that is flowering.~~

[~~_____ (5) (1) “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] the program established pursuant to the Lynn and Erin Compassionate Use Act for authorization and regulation of the medical use of cannabis in the state.~~

[~~_____ (6) (2) “Medical cannabis program director” means the administrator of the medical cannabis program who holds that title.~~

[~~_____ (7) (3) “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.~~

[~~_____ (8) (4) “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.~~

[~~_____ (9) (5) “Minor” means an individual who is less than 18 years of age.~~

2022 FEB 10 PM 3:02

N. **Definitions beginning with "N":** [~~“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.] **[RESERVED]**

O. **Definitions beginning with "O":** **[RESERVED]**

P. **Definitions beginning with "P":**

(1) **“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.

(2) **“Patient enrollment/re-enrollment form”** means the registry identification card application form for patient applicants provided by the medical cannabis program.

~~(3) “Permanent structure” means a building or structure that is placed on the land for the foreseeable future that is anchored to a permanent foundation, that is roofed and walled, and which requires a building permit from a local and or state governing authority.~~

~~(4) “Personal production license” means a 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.~~

~~(5) “Pesticide” means a pesticide as defined by the New Mexico Pesticide Control Act, Section 76-4-3, NMSA 1978.~~

~~(6) (3) “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.~~

~~(7) “Plant” means any cannabis plant, cutting, or clone that has roots or that is cultivated with the intention of growing roots.~~

~~(8) “Policy” means a written statement of principles that guides and determines present and future decisions and actions of the licensed producer.]~~

~~(9) (4) “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.~~

~~(10) (5) “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.~~

~~(11) (6) “Primary caregiver application form” means the registry identification card application form provided by the medical cannabis program.~~

~~(12) “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.~~

~~(13) “Produce” means to engage in any activity related to the planting or cultivation of cannabis.~~

~~(14) “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.]~~

Q. **Definitions beginning with "Q":** **“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] a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card pursuant to the Lynn and Erin Compassionate Use Act on the basis of having been diagnosed, in person or via telemedicine, by a practitioner as having a debilitating medical condition.

R. **Definitions beginning with "R":**

(1) **“Recall”** means to request the return of a product after the discovery of a safety issue or product defect.

(2) **“Reciprocal limit”** means the quantity of cannabis and cannabis products that a reciprocal participant can use and possess in a given year pursuant to department rule.

(3) **“Reciprocal participant”** means [an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a

2022 FEB 10 PM 3:03

~~territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo] a person who is not a resident of New Mexico and who holds proof of enrollment by a governmental regulatory authority to participate in the medical cannabis program of another state of the United States, the District of Columbia or a territory or commonwealth of the United States in which the person resides or a person who holds proof of enrollment by a governmental regulatory authority of a New Mexico Indian nation, tribe or pueblo to participate in its medical cannabis program;~~

(4) **“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] a document in printed or electronic form that the department issues:

(a) to a qualified patient that identifies the bearer as a qualified patient and authorizes the qualified patient to use cannabis for a debilitating medical condition; or

(b) to a primary caregiver that identifies the bearer as a primary caregiver authorized to engage in the intrastate possession and administration of cannabis for the sole use of a qualified patient who is identified on the document.

(5) **“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.

S. Definitions beginning with “S”:

[~~_____~~ (1) **“Secretary”** means the secretary of the New Mexico department of health.

[~~_____~~ (2) **“Secure grounds”** means a facility that provides a safe environment to avoid loss or theft.

[~~_____~~ (3) **“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.

[~~_____~~ (4) **“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.

[~~_____~~ (5) **“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.

[~~_____~~ (6) **“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.]

T. Definitions beginning with “T”:

(1) **“THC”** means tetrahydrocannabinol, a [cannabinoid] substance that is the primary psychoactive ingredient in cannabis.

[~~_____~~ (2) **“THCA”** means tetrahydrocannabinolic acid, a non-psychoactive ingredient in cannabis and an acid precursor to THC.

[~~_____~~ (3) (2) **“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.

[~~_____~~ (4) (3) **“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.

[~~_____~~ (5) **“Testing”** means testing of cannabis and cannabis-derived products, consistent with provisions of this rule.]

U. Definitions beginning with “U”:

(1) **“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.

(2) **“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.

V. Definitions beginning with “V”: [RESERVED]

W. Definitions beginning with “W”:

2022 FEB 10 PM 3:03

(1) "Wastage" means the destruction of usable cannabis or cannabis plants;
(2) "Written certification" means a statement made on a department-approved form and signed by a patient's practitioner that indicates, in the practitioner's professional opinion, that the patient has a debilitating medical condition and the practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the patient.

X. Definitions beginning with "X": [RESERVED]

Y. Definitions beginning with "Y": [RESERVED]

Z. Definitions beginning with "Z" [RESERVED]

[7.34.2.7 NMAC - Rp, 7.34.2.7 NMAC, 2/27/2015; A, 2/29/2016; A, 8/27/2019; A, 6/23/2020; A, 2/22/2022]