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New Mexico Register

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HEALTH, DEPARTMENT OF

NOTICE OF RULEMAKING HEARING

The New Mexico Department of Health (Department) will hold a public hearing on the proposed repeal and replace of part 7.2.2 NMAC "Vital Records and Statistics". The hearing will be held on October 1, 2019 at 9:00 a.m. in the auditorium of the Harold Runnels Building, located at 1190 St. Francis Drive in Santa Fe, New Mexico.

The proposed rule amendments include:

* Addition of the process in which an individual may amend their gender on their birth certificate to reflect as Male, Female, or X.
* Update the delayed birth certificate issuance process.
* Update the death certificate guidelines.
* Updated the requirements for filing a fetal death report to align with statutory requirements.
* Remove the requirement that documentary evidence for amendments to birth certificates be prior to the registrants 7th birthday, allowing for documentation from any age as long as it was issued at least 5 years prior to the date of application.
* Updated language and formatting to meet current NMAC requirements.
* Updated costs section to reflect current statutory cost requirements.

The legal authority for the proposed rule amendments is at Subsection E of Section 9-7-6 NMSA 1978, and the Vital Statistics Act Sections 24-14-1 to 24-14-31 NMSA 1978.

Free copies of the full text of the proposed rule amendments can be obtained online from the New Mexico Department of Health's website at http://nmhealth.org/about/asd/cmo/rules/ or from Franchesca Martinez using the contact information below.

The public hearing will be conducted to receive public comment the proposed repeal and replace of Part 7.2.2 NMAC. Any interested member of the public may attend the hearing and submit data, views, or arguments either orally or in writing on the proposed rule amendments during the hearing. Written public comment may also be submitted prior to the date of the hearing. Please submit any written comments regarding the proposed rule amendments to the attention of:

Franchesca Martinez
NM Department of Health
P.O. Box 26110
Santa Fe, NM 87502-6110

Or at:

franchesca.martinez@state.nm.us

All written comments must be received by 5:00 p.m. MDT on September 30, 2019, or may be submitted at the public hearing. All written comments will be published on the agency website at http://nmhealth.org/about/asd/cmo/rules/ within 3 days of receipt, and will be available at the New Mexico Department of Health Office of General Counsel for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Franchesca Martinez by telephone at (505) 827-2997. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule 8.320.2, Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services. These proposed rule changes will ensure New Mexico Centennial Care is in compliance with the federal mandate Section 12006 of the 21st Century Cures Act which requires implementation of Personal Care Services no later than January 1st, 2020.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: August 27, 2019
Hearing Date: September 30, 2019
Adoption Date: Proposed as January 1st, 2020
Technical Citations: Section 12006 of the 21st Century Cures Act

The Department is proposing to amend the rule as follows:
Section 7
Language added to define Electronic Visit Verification (EVV).

Section 18
Subsection B, Paragraph (3): Language added to include EVV as a requirement of the training curriculum.

Subsection G: New subsection added stating that the **"**Use of the Electronic Visit Verification (EVV) system is required for payment of Personal Care Services including EPSDT eligible members. The managed care organizations shall

collaborate to offer a single EVV vendor for PCS and monitor compliance with the federal 21st Century Cures Act. The MCO shall maintain an EVV system capable of leveraging up-to-date technology as it emerges to improve functionality in all areas of the state, including rural areas."

These proposed rule changes will be contained in 8.320.2 NMAC. The proposed register and the proposed rule are available on the HSD website at: http://www.hsd.state.nm.us/LookingForInformation/registers.aspx and http://www.hsd.state.nm.us/2017-comment-period-open.aspx. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at (505) 827-1337.

The Department proposes to implement these rules effective January 1, 2020. A public hearing to receive testimony on this proposed rule will be held in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico on September 30, 2019 at 10:30 a.m., Mountain Daylight Time (MDT).

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at *(505) 827-1337*. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MDT on September 30, 2019. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at http://www.hsd.state.nm.us/2017-comment-period-open.aspx along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

PUBLIC SCHOOLS FACILITIES AUTHORITY

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Public School Facilities Authority (PSFA) gives notice that it will conduct a public hearing located at the UNM Science and Technology Park Auditorium, 800 Bradbury Dr. SE Albuquerque, NM, 87106, on Thursday, September 26, 2019 from 9:00 a.m. to 11:00 a.m. (MDT). The purpose of the public hearing is to receive public input on the proposed amendments to 6.27.30 NMAC, Statewide Adequacy Standards. At the hearing, the PSFA will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given five (5) minutes to make a statement regarding the rule changes. Written comment will also be accepted at the hearing.

Explanation of Purpose and Summary of Text.
As the New Mexico public school statewide adequacy standards are dynamic, the purpose of the proposed amendment to rule 6.27.30 NMAC is to ensure that updates to space and attributes needed to support educational and technology programs and curricula, defined and justified as required by public education department standards and benchmarks are incorporated into the adequacy standards as time and circumstances require.

Statutory Authorizations:
Sections 22-24-1 through 22-24-11 NMSA 1978

Stakeholder Engagement.
Stakeholder engagement regarding this proposed rule change was held. PSFA conducted statewide workshops with school districts and the architecture and engineering community in 2018 to explain the purpose of the standards and gather feedback regarding potential changes from these stakeholders.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to Casandra Cano, Programs Support Manager, Public School Facilities Authority, 1312 Basehart SE, Suite 200, Albuquerque, NM 87106, by electronic mail to programs@nmpsfa.org. All written comments must be received no later than 5:00 p.m. (MDT) on September 27, 2019. The PSFA encourages the early submission of written comments. The public comment period is from August 27, 2019 to September 27, 2019 at 5:00 p.m. (MDT). The PSFA will review all feedback received during the public comment period and issue communication regarding final decision at a later date.

Copies of the proposed new rule may be accessed via PSFA's home page under the "Notice of Rulemaking" section http://nmpsfa.org, or may be obtained from Casandra Cano at (505) 468-0283 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any

form of auxiliary aid to attend or participate in the public hearing are asked to contact Casandra Cano at (505) 468-0283 as soon as possible before the date set for the public hearing. The PSFA requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

REGULATION AND LICENSING DEPARTMENT

NUTRITION AND DIETETICS, BOARD OF

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Board of Nutrition and Dietetics will hold a rule hearing on Monday, October 7, 2019. Following the rule hearing, the Board will convene a Board meeting to consider adoption of the rules and address regular business. The rule hearing and board meeting will be held 10:00 a.m. at the Regulation and Licensing Department, 5500 San Antonio Dr., NE, Albuquerque, NM in the Sandia Conference Room.

The purpose of the rule hearing is to consider proposed amendments to the following rules:

16.14.1.7 NMAC - Definitions
16.14.3.14 NMAC- Reciprocity
16.14.5.9. NMAC - Test Administration
16.14.6.8 NMAC - Annual Renewal
16.14.7.8 NMAC - Reinstatement of a Lapsed License
16.14.10.8 NMAC- Standards of Practice

The changes to Parts 1, 3, 5, 6, 7 and 10 are to adopt and define reciprocity which will bring the board in compliance with Senate Bill 105 ("SB 105"). This adoption will allow individuals from other states with similar licensure requirements to acquire a license in New Mexico. Test administration change is being made to clarify the use of testing agencies rather than naming a specific company that administers the examination. We are also making changes for clerical corrections.

To obtain and review copies of the proposed changes you may go to the Board's website at: www.rld.state.nm.us/boards/Nutrition_and_Dietetics_Members_and_Meetings.aspx, or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Richard Espinoza, Executive Director, via electronic mail at: richard.espinoza@state.nm.us or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Friday, October 4, 2019. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board's website at: www.rld.state.nm.us/boards/Nutrition_and_Dietetics_Members_and_Meetings.aspx.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Richard Espinoza, Executive Director at (505) 476-4622.

Statutory Authority: The Nutrition and Dietetics Practice Act, Sections 61-7A-1 to -15 NMSA 1978 (1993, as amended through 2017), among other provisions, specifically authorizes the Board to "adopt and file all rules necessary for the implementation and enforcement of the provisions of the Nutrition and Dietetics Practice Act."

Summary of Proposed Changes:
In addition to making minor clarification changes, the proposed rules are summarized as follows:

16.14.1.7. NMAC - Definitions
This adoption is to define "Reciprocity" which will bring the board in compliance with SB105.

16.14.3.14. NMAC - Reciprocity
This adoption will allow individual from other states with similar licensure requirements to acquire a license in New Mexico. This adoption will bring the board in compliance with SB105.

16.14.5.9. NMAC – Test Administration
This change is being made to clarify the use of testing agency rather than naming a specific company that administers the examination.

16.14.6.8. NMAC – Annual Renewal
This change is being made for a clerical correction.

16.14.7.8 NMAC – Reinstatement of a Lapsed License
This change is being made for a clerical correction.

16.14.10.8. NMAC – Standards of Practice
The statutory cite which allows us to change each rule is Paragraph 8 of Subsection A of Section 61-7A-6 NMSA 1978.

End of Notices of Rulemaking and Proposed Rules

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Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

GENERAL SERVICES DEPARTMENT

This is an amendment to 1.4.4 NMAC, Section 8 effective 8/27/2019.

1.4.4.8 PURPOSE: This rule implements the mandated requirements of Section 14-11-7 NMSA 1978, as amended, and as outlined in 1.4.4.3 NMAC of this rule, the newspaper publisher is entitled to receive no more than:

A. [~~$.63 cents ($.63)~~] $.68 cents ($.68) for each column line of eight point or smaller type for the first insertion; and

B. [~~$.49 cents ($.49)~~] $.52 cents ($.52) per line of each subsequent insertion;

C. all emblems, display headings, rule work and necessary blank spaces shall be calculated as solid type and shall be counted and paid for as such.

[2/15/1999; 1.4.4.8 NMAC - Rn, 1 NMAC 1.1.8 & A, 11/15/2005; A, 5/14/2009; A, 6/15/2009; A, 8/27/2019]

HEALTH, DEPARTMENT OF

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

7.34.2.7 DEFINITIONS:

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

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

C. "Administrative review committee" means an intra-department committee that reviews qualified patient or primary caregiver application denials, licensed producer denials made by the program manager, or the summary suspension of a producer's license, in accordance with department rules. The administrative review committee shall consist of the chief medical officer of the department (or that's person's designee); a deputy secretary of the department (or that person's designee), and the chief nursing officer of the department (or that person's designee).

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

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

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

G. "Approved laboratory" means a [~~laboratory~~] licensed cannabis testing facility as defined in the Lynn and Erin Compassionate Use Act, Subsection I of Section 26-2B-3 NMSA 1978 that has been approved by the department specifically for the testing of cannabis, concentrates, and cannabis derived products.

H. "Batch" means, with regard to usable cannabis, a homogenous, identified quantity of cannabis no greater than five pounds that is harvested during a specified time period from a specified cultivation area, and with regard to concentrated and cannabis-derived product, means an identified quantity that is uniform, that is intended to meet specifications for identity, strength, and composition, and that is manufactured, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling protocol.

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

J. "Cannabis" means [~~all parts of the plant, cannabis sativa, and cannabis indica, whether growing or not and the resin extracted from any part of the plant~~] all parts of the plant Cannabis sativa L. containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; the sterilized seed of the plant that is incapable of germination; the weight

of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink or another product; or hemp.

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

L. "Concentrated cannabis-derived product ("concentrate")" means a cannabis-derived product that is manufactured by a mechanical or chemical process that separates any cannabinoid from the cannabis plant, and that contains (or that is intended to contain at the time of sale or distribution) no less than thirty-percent (30%) THC by weight.

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

N. "Debilitating medical condition" means:

(1) cancer;

(2) glaucoma;

(3) multiple sclerosis;

(4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;

(5) epilepsy;

(6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;

(7) admission into hospice care in accordance with rules promulgated by the department; [~~or~~]

(8) amyotrophic lateral sclerosis;

(9) Crohn's disease;

(10) hepatitis C infection;

(11) Huntington's disease;

(12) inclusion body myositis;

(13) inflammatory autoimmune-mediated arthritis;

(14) intractable nausea or vomiting;

(15) obstructive sleep apnea;

(16) painful peripheral neuropathy;

(17) Parkinson's disease;

(18) posttraumatic stress disorder;

(19) severe chronic pain;

(20) severe anorexia or cachexia;

(21) spasmodic torticollis;

(22) ulcerative colitis; or

[~~**(8)**~~] **(23)** any other medical condition, medical treatment, or disease as approved by the department which results in pain, suffering, or debility for which there is credible evidence that medical use cannabis could be of benefit.

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

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

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

R. "Laboratory applicant" means a laboratory that seeks to become an approved laboratory, or that seeks renewal of approval as an approved laboratory, in accordance with this rule.

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

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

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

V. "Lot" means an identified portion of a batch, that is uniform and that is intended to meet specifications for identity, strength, and composition; or, in the case of a cannabis-derived product or concentrate, an identified quantity produced in a specified period of time in a manner that is uniform and that is intended to meet specifications for identity, strength, and composition.

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

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

Y. "Manufacturer" means a [~~business entity that manufactures cannabis-derived product that has been approved for this purpose by the medical cannabis program~~] person that is licensed by the department to manufacture cannabis products; package, transport or courier cannabis products; have cannabis products tested by a cannabis testing facility; purchase, obtain, sell and transport cannabis products to other cannabis establishments; and prepare products for personal production license holders.

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

AA. "Medical cannabis program" means the administrative body of the department charged with the management of the medical cannabis program and enforcement of program regulations, to include issuance of registry identification cards, licensing of producers, and regulation of manufacturing and distribution.

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

CC. "Medical director" means a medical practitioner designated by the department to determine whether the medical condition of an applicant qualifies as a debilitating medical condition eligible for enrollment in the program, and to perform other duties.

DD. "Medical provider certification for patient eligibility form" means a written certification form provided by the medical cannabis program signed by a patient's practitioner that, in the practitioner's professional opinion, the patient has a debilitating medical condition as defined by the act or this part and would be anticipated to benefit from the use of cannabis.

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

FF. "Non-profit producer" means a New Mexico corporation that has been designated as a non-profit corporation by the New Mexico secretary of state, that has been licensed by the department to possess, produce, dispense, distribute and manufacture cannabis and cannabis products and sell wholesale or by direct sale to qualified patients and primary caregivers.

[~~FF.~~] **GG. "Paraphernalia"** means any equipment, product, or material of any kind that is primarily intended or designed for use in compounding, converting, processing, preparing, inhaling, or otherwise introducing cannabis or its derivatives into the human body.

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

[~~HH.~~] **II. "Personal production license"** means a [~~license issued to a qualified patient participating in the medical cannabis program, to permit the qualified patient to produce medical cannabis for the qualified patient's personal use, consistent with the requirements of department rule~~] license issued to a qualified patient or to a qualified patient's primary caregiver participating in the medical cannabis program to permit the qualified patient or the qualified patient's primary caregiver to produce cannabis for the qualified patient's use at an address approved by the department.

[~~H.~~] **JJ. "Petitioner"** means any New Mexico resident or association of New Mexico residents petitioning the advisory board for the inclusion of a new medical condition, medical treatment, or disease to be added to the list of debilitating medical conditions that qualify for the use of cannabis.

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

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

[~~LL.~~] **MM. "Practitioner"** means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act, Sections 30-31-1 *et seq.*, NMSA 1978.

[~~MM.~~] **NN. "Primary caregiver"** means a resident of New Mexico who is at least 18 years of age and who has been designated by the qualified patient or their representative and the patient's practitioner as being necessary to take responsibility for managing the well-being of a qualified patient with respect to the medical use of cannabis pursuant to the provisions of the Lynn and Erin Compassionate Use Act, Section 26-2B-1 *et seq*., NMSA 1978.

[~~NN.~~] **OO. "Primary caregiver application form"** means the registry identification card application form provided by the medical cannabis program.

[~~OO.~~] **PP. "Private entity"** means a private, non-profit organization that applies to become or is licensed as a producer and distributor of cannabis, concentrates, or cannabis-derived products.

[~~PP.~~] **QQ. "Proficiency testing"** means testing conducted by the department or its agent to determine the ability of a laboratory applicant or approved laboratory to accurately identify presence, quantity, or other factors pertaining to a given analyte.

[~~QQ.~~] **RR. "Qualified patient"** means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received a registry identification card issued pursuant to the requirements of the act or department rules.

[~~RR.~~] **SS. "Registry identification card"** means a document issued and owned by the department which identifies a qualified patient authorized to engage in the use of cannabis for a debilitating medical condition or a document issued by the department which identifies a primary caregiver authorized to engage in the intrastate possession and administration of cannabis for the sole use of the qualified patient.

[~~SS.~~] **TT. "Representative"** means an individual designated as the applicant's or petitioner's agent, guardian, surrogate, or other legally appointed or authorized health care decision maker.

[~~TT.~~] **UU. "Secretary"** means the secretary of the New Mexico department of health.

[~~UU.~~] **VV. "Secure grounds"** means a facility that provides a safe environment to avoid loss or theft.

[~~VV.~~] **WW. "Security alarm system"** means any device or series of devices capable of alerting law enforcement , including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device used to detect or report an emergency or unauthorized intrusion.

[~~WW.~~] **XX. "Security policy"** means the instruction manual or pamphlet adopted or developed by the licensed producer containing security policies, safety and security procedures, and personal safety and crime prevention techniques.

[~~XX.~~] **YY. "Seedling"** means a cannabis plant that has no flowers and that is less than 12 inches in height, as measured vertically in the plant's natural position from the uppermost part of the root system

(or from the soil line, if the plant is planted in soil) to the tallest point of the plant.

[~~YY.~~] **ZZ.** **"Segregate"** means to separate and withhold from use or sale batches, lots, cannabis, usable cannabis, or cannabis-derived products in order to first determine its suitability for use through testing by an approved laboratory.

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

[~~AAA.~~] **BBB.** **"Technical evidence"** means scientific, clinical, medical, or other specialized testimony, or evidence, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.

CCC. "Telemedicine" means the use of telecommunications and information technology to provide clinical health care from a site apart from the site where the patient is located, in real time or asynchronously, including the use of interactive simultaneous audio and video or store-and-forward technology, or off-site patient monitoring and telecommunications in order to deliver health care services.

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

[~~CCC.~~] **EEE.** **"Unit"** means a quantity of usable cannabis, concentrate, or cannabis-derived product that is used in identifying the maximum supply that a qualified patient may possess for purposes of department rules.

[~~DDD.~~] **FFF.** **"Usable cannabis"** means the dried leaves and flowers of the female cannabis plant and cannabis-derived products, including concentrates, but does not include the seeds, stalks, or roots of the plant.

[7.34.2.7 NMAC - Rp, 7.34.2.7 NMAC, 2/27/2015; A, 2/29/2016; A, 8/27/2019]

7.34.2.8 ADVISORY BOARD MEMBERSHIP REQUIREMENTS AND RESPONSIBILITIES:

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

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

(1) review and recommend to the department for approval additional debilitating medical conditions that would benefit from the medical use of cannabis;

(2) recommend quantities of cannabis that are necessary to constitute an adequate supply for qualified patients and primary caregivers;

(3) accept and review petitions to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis and all lawful privileges under the act and implementing rules;

(4) issue recommendations concerning rules to be promulgated for the issuance of registry identification cards; and

(5) review conditions previously reviewed by the board and approved by the secretary for the purpose of determining whether to recommend the revision of eligibility criteria for persons applying under those conditions or to review new medical and scientific evidence pertaining to currently approved conditions.

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

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

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

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

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

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

7.34.2.10 ADVISORY BOARD PUBLIC HEARING PROCEDURES:

A. Public hearing requirement: The advisory board

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

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

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

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

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

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

(1) the name of the person filing the statement;

(2) indication of whether the person filing the statement supports or opposes the petition at issue;

(3) the name of each witness;

(4) an estimate of the length of the direct testimony of each witness;

(5) a list of exhibits, if any, to be offered into evidence at the hearing; and

(6) a summary or outline of the anticipated direct testimony of each witness.

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

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

(1) A quorum of the advisory board shall consist of [~~three~~] five voting members.

(2) The advisory board chairperson or alternate shall convene each public hearing by:

(a) introduction of the advisory board members;

(b) statutory authority of the board;

(c) statement of the public hearing agenda; and

(d) recognition of the petitioner.

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

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

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

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

I. Recording the hearing: Unless the advisory board orders otherwise, the hearing will be audio recorded. Any person, other than the advisory board, desiring a copy of the audio tapes must arrange copying with the medical cannabis

program or designee at their own expense.
[7.34.2.10 NMAC - Rp, 7.34.2.10 NMAC, 2/27/2015; A, 8/27/2019]

HEALTH, DEPARTMENT OF

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, Sections 26-2B-1 through 26-2B-7 NMSA 1978.

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

C. "Administrative review committee" means an intra-department committee that reviews qualified patient or primary caregiver application denials, licensed producer denials made by the program manager, or the summary suspension of a producer's license, in accordance with department rules. The administrative review committee shall consist of the chief medical officer of the department (or that's person's designee); a deputy secretary of the department (or that person's designee), and the chief nursing officer of the department (or that person's designee).

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

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

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

G. "Approved laboratory" means a [~~laboratory~~] licensed cannabis testing facility as defined in the Lynn and Erin Compassionate Use Act, Subsection I of Section 26-2B-3 NMSA 1978 that has been approved by the department specifically for the testing of cannabis, concentrates, and cannabis derived products.

H. "Batch" means, with regard to usable cannabis, a homogenous, identified quantity of cannabis no greater than five pounds that is harvested during a specified time period from a specified cultivation area, and with regard to concentrated and cannabis-derived product, means an identified quantity that is uniform, that is intended to meet specifications for identity, strength, and composition, and that is manufactured, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling protocol.

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

J. "Cannabis" means [~~all parts of the plant, cannabis sativa, and cannabis indica, whether growing or not and the resin extracted from any part of the plant~~] all parts of the plant Cannabis sativa L. containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; the sterilized seed of the plant that is incapable of germination; the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink or another product; or hemp.

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

L. "Concentrated cannabis-derived product ("concentrate")" means a cannabis-derived product that is manufactured by a mechanical or chemical process that separates any cannabinoid from the cannabis plant, and that contains (or that is intended to contain at the time of sale or distribution) no less than thirty-percent (30%) THC by weight.

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

N. "Debilitating medical condition" means:

(1) cancer;

(2) glaucoma;

(3) multiple sclerosis;

(4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;

(5) epilepsy;

(6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;

(7) admission into hospice care in accordance with rules promulgated by the department; [~~or~~]

(8) amyotrophic lateral sclerosis;

(9) Crohn's disease;

(10) hepatitis C infection;

(11) Huntington's disease;

(12) inclusion body myositis;

(13) inflammatory autoimmune-mediated arthritis;

(14) intractable nausea or vomiting;

(15) obstructive sleep apnea;

(16) painful peripheral neuropathy;

(17) Parkinson's disease;

(18) posttraumatic stress disorder;

(19) severe chronic pain;

(20) severe anorexia or cachexia;

(21) spasmodic torticollis;

(22) ulcerative colitis; or

[~~**(8)**~~] **(23)** any other medical condition, medical treatment, or disease as approved by the department which results in pain, suffering, or debility for which there is credible evidence that medical use cannabis could be of benefit.

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

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

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

R. "Laboratory applicant" means a laboratory that seeks to become an approved laboratory, or that seeks renewal of approval as an approved laboratory, in accordance with this rule.

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

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

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

V. "Lot" means an identified portion of a batch, that is uniform and that is intended to meet specifications for identity, strength, and composition; or, in the case of a cannabis-derived product or concentrate, an identified quantity produced in a specified period of time in a manner that is uniform and that is intended to meet specifications for identity, strength, and composition.

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

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

Y. "Manufacturer" means a [~~business entity that manufactures cannabis-derived product that has been approved for this purpose by the medical cannabis program~~] person that is licensed by the department to manufacture cannabis products; package, transport or courier cannabis products; have cannabis products tested by a cannabis testing facility; purchase, obtain, sell and transport cannabis products to other cannabis establishments; and prepare products for personal production license holders.

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

AA. "Medical cannabis program" means the administrative body of the department charged with the management of the medical cannabis program and enforcement of program regulations, to include issuance of registry identification cards, licensing of producers, and regulation of manufacturing and distribution.

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

CC. "Medical director" means a medical practitioner designated by the department to determine whether the medical condition of an applicant qualifies as a debilitating medical condition eligible for enrollment in the program, and to perform other duties.

DD. "Medical provider certification for patient eligibility form" means a written certification form provided by the medical cannabis program signed by a patient's practitioner that, in the practitioner's professional opinion, the patient has a debilitating medical condition as defined by the act or this part and would be anticipated to benefit from the use of cannabis.

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

FF. "Non-profit producer" means a New Mexico corporation that has been designated as a non-profit corporation by the New Mexico Secretary of State, that has been licensed by the department to possess, produce, dispense, distribute and manufacture cannabis and cannabis products and sell wholesale or by direct sale to qualified patients and primary caregivers.

[~~**FF.**~~] **GG. "Paraphernalia"** means any equipment, product, or material of any kind that is primarily intended or designed for use in compounding, converting, processing, preparing, inhaling, or otherwise introducing cannabis or its derivatives into the human body.

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

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

patient or the qualified patient's primary caregiver to produce cannabis for the qualified patient's use at an address approved by the department.

[~~H.~~] **JJ. "Petitioner"** means any New Mexico resident or association of New Mexico residents petitioning the advisory board for the inclusion of a new medical condition, medical treatment, or disease to be added to the list of debilitating medical conditions that qualify for the use of cannabis.

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

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

[~~LL.~~] **MM. "Practitioner"** means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act, Sections 30-31-1 *et seq.*, NMSA 1978.

[~~MM.~~] **NN. "Primary caregiver"** means a resident of New Mexico who is at least 18 years of age and who has been designated by the qualified patient or their representative and the patient's practitioner as being necessary to take responsibility for managing the well-being of a qualified patient with respect to the medical use of cannabis pursuant to the provisions of the Lynn and Erin Compassionate Use Act, Section 26-2B-1 *et seq.*, NMSA 1978.

[~~NN.~~] **OO. "Primary caregiver application form"** means the registry identification card application form provided by the medical cannabis program.

[~~OO.~~] **PP. "Private entity"** means a private, non-profit organization that applies to become or is licensed as a producer and distributor of cannabis, concentrates, or cannabis-derived products.

[~~PP.~~] **QQ. "Proficiency testing"** means testing conducted by the department or its agent to determine the ability of a laboratory applicant or approved laboratory to accurately identify presence, quantity, or other factors pertaining to a given analyte.

[~~QQ.~~] **RR. "Qualified patient"** means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received a registry identification card issued pursuant to the requirements of the act or department rules.

[~~RR.~~] **SS. "Registry identification card"** means a document issued and owned by the department which identifies a qualified patient authorized to engage in the use of cannabis for a debilitating medical condition or a document issued by the department which identifies a primary caregiver authorized to engage in the intrastate possession and administration of cannabis for the sole use of the qualified patient.

[~~SS.~~] **TT. "Representative"** means an individual designated as the applicant's or petitioner's agent, guardian, surrogate, or other legally appointed or authorized health care decision maker.

[~~TT.~~] **UU. "Secretary"** means the secretary of the New Mexico department of health.

[~~UU.~~] **VV. "Secure grounds"** means a facility that provides a safe environment to avoid loss or theft.

[~~VV.~~] **WW. "Security alarm system"** means any device or series of devices capable of alerting law enforcement , including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device used to detect or report an emergency or unauthorized intrusion.

[~~WW.~~] **XX. "Security policy"** means the instruction manual or pamphlet adopted or developed by the licensed producer containing security policies, safety and security procedures, and personal safety and crime prevention techniques.

[~~XX.~~] **YY. "Seedling"** means a cannabis plant that has no flowers and that is less than 12 inches in height, as measured vertically in the plant's natural position from the uppermost part of the root system (or from the soil line, if the plant is planted in soil) to the tallest point of the plant.

[~~YY.~~] **ZZ. "Segregate"** means to separate and withhold from use or sale batches, lots, cannabis, usable cannabis, or cannabis-derived products in order to first determine its suitability for use through testing by an approved laboratory.

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

[~~AAA.~~] **BBB. "Technical evidence"** means scientific, clinical, medical, or other specialized testimony, or evidence, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.

CCC. "Telemedicine" means the use of telecommunications and information technology to provide clinical health care from a site apart from the site where the patient is located, in real time or asynchronously, including the use of interactive simultaneous audio and video or store-and-forward technology, or off-site patient monitoring and telecommunications in order to deliver health care services.

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

[~~CCC.~~] **EEE. "Unit"** means a quantity of usable cannabis, concentrate, or cannabis-derived product that is used in identifying the maximum supply that a qualified patient may possess for purposes of department rules.

[~~DDD.~~] **FFF. "Usable cannabis"** means the dried leaves and flowers of the female cannabis

plant and cannabis-derived products, including concentrates, but does not include the seeds, stalks, or roots of the plant.
[7.34.3.7 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 12 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 NMSA 1978, 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]

HEALTH, DEPARTMENT OF

This is an amendment to 7.34.4 NMAC, Sections 7, 8, 18, 19 and 23 through 25, effective 8/27/2019.

7.34.4.7 DEFINITIONS:

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

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

C. "Administrative review committee" means an intra-department committee that reviews qualified patient or primary caregiver application denials, licensed producer denials made by the program manager, or the summary suspension of a producer's license, in accordance with department rules. The administrative review committee shall consist of the chief medical officer of the department (or that's person's designee); a deputy secretary of the department (or that person's designee), and the chief nursing officer of the department (or that person's designee).

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

E. "Advisory board" means the medical cannabis advisory board consisting of [~~eight~~] nine practitioners [~~representing the fields of neurology, pain management, medical oncology, psychiatry,~~

~~infectious disease, family medicine, and gynecology~~] knowledgeable about the medical use of cannabis, who are appointed by the secretary.

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

G. "Approved laboratory" means a [~~laboratory~~] licensed cannabis testing facility as defined in the Lynn and Erin Compassionate Use Act, Subsection I of Section 26-2B-3 NMSA 1978 that has been approved by the department specifically for the testing of cannabis, concentrates, and cannabis derived products.

H. "Batch" means, with regard to usable cannabis, a homogenous, identified quantity of cannabis no greater than five pounds that is harvested during a specified time period from a specified cultivation area, and with regard to concentrated and cannabis-derived product, means an identified quantity that is uniform, that is intended to meet specifications for identity, strength, and composition, and that is manufactured, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling protocol.

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

J. "Cannabis" means [~~all parts of the plant, cannabis sativa, and cannabis indica, whether growing or not and the resin extracted from any part of the plant~~] all parts of the plant Cannabis sativa L. containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; the sterilized seed of the plant that is incapable of germination; the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink or another product; or hemp.

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

L. "Concentrated cannabis-derived product ("concentrate")" means a cannabis-derived product that is manufactured by a mechanical or chemical process that separates any cannabinoid from the cannabis plant, and that contains (or that is intended to contain at the time of sale or distribution) no less than thirty-percent (30%) THC by weight.

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

N. "Debilitating medical condition" means:

(1) cancer;

(2) glaucoma;

(3) multiple sclerosis;

(4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;

(5) epilepsy;

(6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;

(7) admission into hospice care in accordance with rules promulgated by the department; [~~or~~]

(8) amyotrophic lateral sclerosis;

(9) Crohn's disease;

(10) hepatitis C infection;

(11) Huntington's disease;

(12) inclusion body myositis;

(13) inflammatory autoimmune-mediated arthritis;

(14) intractable nausea or vomiting;

(15) obstructive sleep apnea;

(16) painful peripheral neuropathy;

(17) Parkinson's disease;

(18) posttraumatic stress disorder;

(19) severe chronic pain;

(20) severe anorexia or cachexia;

(21) spasmodic torticollis;

(22) ulcerative colitis; or

[~~**(8)**~~] **(23)** any other medical condition, medical treatment, or disease as approved by the department which results in pain, suffering, or debility for which there is credible evidence that medical use cannabis could be of benefit.

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

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

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

R. "Laboratory applicant" means a laboratory that seeks to become an approved laboratory, or that seeks renewal of approval as an approved laboratory, in accordance with this rule.

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

T. "Licensed producer" means a person or entity

licensed to produce medical cannabis.

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

V. "Lot" means an identified portion of a batch, that is uniform and that is intended to meet specifications for identity, strength, and composition; or, in the case of a cannabis-derived product or concentrate, an identified quantity produced in a specified period of time in a manner that is uniform and that is intended to meet specifications for identity, strength, and composition.

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

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

Y. "Manufacturer" means a [~~business entity that manufactures cannabis-derived product that has been approved for this purpose by the medical cannabis program~~] person that is licensed by the department to manufacture cannabis products; package, transport or courier cannabis products; have cannabis products tested by a cannabis testing facility; purchase, obtain, sell and transport cannabis products to other cannabis establishments; and prepare products for personal production license holders.

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

AA. "Medical cannabis program" means the administrative body of the department charged with the management of the medical cannabis program and enforcement of program regulations, to include issuance of registry identification cards, licensing of producers, and regulation of manufacturing and distribution.

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

CC. "Medical director" means a medical practitioner designated by the department to determine whether the medical condition of an applicant qualifies as a debilitating medical condition eligible for enrollment in the program, and to perform other duties.

DD. "Medical provider certification for patient eligibility form" means a written certification form provided by the medical cannabis program signed by a patient's practitioner that, in the practitioner's professional opinion, the patient has a debilitating medical condition as defined by the act or this part and would be anticipated to benefit from the use of cannabis.

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

FF. "Non-profit producer" means a New Mexico corporation that has been designated as a non-profit corporation by the New Mexico secretary of state, that has been licensed by the department to possess, produce, dispense, distribute and manufacture cannabis and cannabis products and sell wholesale or by direct sale to qualified patients and primary caregivers.

[~~FF.~~] GG. "Paraphernalia" means any equipment, product, or material of any kind that is primarily intended or designed for use in compounding, converting, processing, preparing, inhaling, or otherwise introducing cannabis or its derivatives into the human body.

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

[~~HH.~~] **II. "Personal production license"** means a [~~license issued to a qualified patient participating in the medical cannabis program, to permit the qualified patient to produce medical cannabis for the qualified patient's personal use, consistent with the requirements of department rule~~] license issued to a qualified patient or to a qualified patient's primary caregiver participating in the medical cannabis program to permit the qualified patient or the qualified patient's primary caregiver to produce cannabis for the qualified patient's use at an address approved by the department.

[~~II.~~] **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.

[7.34.4.7 NMAC - Rp, 7.34.4.7 NMAC, 2/27/2015; A, 2/29/2016; A, 8/27/2019]

7.34.4.8 PRODUCER LICENSING; GENERAL PROVISIONS:

A. The department may license two classes of producers:

(1) A qualified patient or primary caregiver who holds a valid personal production license. A qualified patient or primary caregiver who holds a valid personal production license is authorized to possess no more than four mature female plants and a combined total of 12 seedlings and male plants, and may possess no more than an adequate supply of usable cannabis, as specified in department rule; provided that a qualified patient or qualified patient's primary caregiver may possess that qualified patient's harvest of cannabis. A personal production license holder may additionally obtain usable cannabis, seeds, or plants from licensed non-profit producers. 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 that is identified on the personal production license [~~; the primary caregiver may not independently produce medical cannabis~~].

(2) A non-profit producer that operates a facility and, at any one time, is limited to a combined total of no greater than [~~2,500 mature female plants, seedlings and mature male~~] 1,750 cannabis plants, not including seedlings, and an inventory of usable cannabis and seeds that reflects current patient needs [~~, and that shall sell cannabis with a consistent unit price, without volume discounts or promotional sales based on the quantity purchased~~]. A non-profit producer may possess any quantity of seedlings, as defined in this rule. A non-profit producer shall not

possess a quantity of cannabis [~~either mature female plants or seedlings and mature male~~] plants that exceeds the quantities authorized by their licensure and associated licensing fee. A licensed non-profit producer may sell and distribute usable cannabis to a person or entity authorized to possess and receive it. A licensed non-profit producer may obtain plants, seeds and usable cannabis from other licensed non-profit producers.

B. Increase to non-profit producer plant limit: The department may increase the cannabis plant limitation for a licensed non-profit producer in accordance with the following:

(1) Effective June 1, 2021, a non-profit producer may request an increase of up to 500 plants that exceeds the total plants allowed in Paragraph (2) of Subsection A of 7.34.4.8 NMAC at the time of renewal of its licensure period. In order to be considered for approval by the department, the non-profit producer shall demonstrate a need for the plant count increase to meet demand for their qualified patients. The non-profit producer shall provide the following information to the department to demonstrate the need for a plant count increase:

(a) Average yield of usable cannabis flower and trim produced by the non-profit producer from the past 12 months;

(b) Current reported inventory of cannabis and cannabis-derived products;

(c) Percentage of usable cannabis and cannabis-derived products that was sold to qualified patients, primary caregivers, or to another licensed producer or manufacturer; and

(d) Any other information requested by the department.

(2) The department shall make a determination to approve or deny the non-profit producer's request to increase plant count based on the following factors:

(a) The non-profit producer has sold at least eighty percent of its usable cannabis for the last 12 months it has operated;

(b) The non-profit producer's current inventory and average yield of usable cannabis is consistent with current averages from other licensed producers;

(c) The number and severity of complaints and enforcement actions on the non-profit licensed producer;

(d) The information provided by non-profit producer is consistent with the quarterly reports or inventory tracking information it has provided to the department within the last 12 months;

(e) Supply and demand of medical cannabis throughout the state and in underserved geographical regions; and

(f) The completeness of information and data provided to the department.

(3) Effective June 1, 2021, a non-profit producer may request an emergency increase once per year outside of their license renewal period, of up to 500 plants that exceeds the total plants allowed in Paragraph (2) of Subsection A of 7.34.4.8 NMAC, at any time. The non-profit producer shall demonstrate a need for the plant count increase to meet demand for their qualified patients, and shall submit to the department the information identified in Paragraph (1) of Subsection B of 7.34.4.8 NMAC. The department shall only approve the request if the non-profit producer can demonstrate by clear and convincing evidence that it is not able to meet qualified patient demand for usable cannabis or cannabis-derived products with its current plant count or by obtaining usable cannabis or cannabis products from another licensed producer. The non-profit producer shall provide objective data about the current supply in the medical cannabis market to demonstrate these factors. The department shall also consider the same factors in Subsection B when approving or denying this request.

(4) Any increase in plant count approved under this section shall be voided in the event of a transfer of the majority of ownership for a licensed producer, at which time the plant limit for the license shall revert to the limit allowed in Paragraph (2) of Subsection A above.

(5) The department is not required to approve a request for an increase to a non-profit producer's plant limit and retains sole discretion to grant or deny the request.

[~~B.~~] **C. Limitation on distribution:** A non-profit producer shall not knowingly sell or otherwise distribute usable cannabis to any person or entity that is not authorized to possess and receive the usable cannabis pursuant to department rules.

[~~C.~~] D. Processing of production applications:

(1) The issuance of an application is in no way a guarantee that the completed application will be accepted or that a license will be granted. Information provided by the applicant and used by the licensing authority for the licensing process shall be accurate and truthful. Any applicant that fails to participate in good faith or that falsifies information presented in the licensing process shall have its application denied by the department.

(2) The number of licenses issued by the department to non-profit private entities, and the determination of which non-profit entities shall be licensed, shall be determined at the discretion of the secretary, which determination shall constitute the final administrative decision of the department.

(3) A non-profit producer whose application for licensure is not approved shall not be entitled to further administrative review.

[~~D.~~] **E. Factors considered:** The secretary shall consider the overall health needs of

qualified patients and the safety of the public in determining the number of licenses to be issued to non-profit private entities and shall further consider:

(1) the sufficiency of the overall supply available to qualified patients statewide;

(2) the service location of the applicant;

(3) the applicant's production plan, including but not limited to the applicant's plan for the growth, cultivation, and harvesting of medical cannabis;

(4) the applicant's sales and distribution plan, including but not limited to the applicant's plan for sale of medical cannabis, plan for delivery (if any) to qualified patients, and the forms of usable cannabis and cannabis-derived products to be sold or distributed;

(5) the applicant's skill and knowledge of horticulture and cannabis production technology, as well as the applicant's knowledge of current good manufacturing practice in manufacturing, packaging, labeling, or holding operations for dietary supplements; environmental protection agency agricultural worker protection standards; and New Mexico department of agriculture (NMDA) pesticide registration, licensing and use requirements to ensure a safe product and environment;

(6) the applicant's plan for the manufacture or distribution of cannabis derived products, including but not limited to edible products;

(7) the security plan proposed, including location, security devices employed, and staffing;

(8) the applicant's quality assurance plan, including but not limited to the applicant's plan to ensure purity, consistency of dose, as well as the applicant's plan for routine testing by a department approved laboratory;

(9) the experience and expertise of the non-profit board members;

(10) the financial resources available to the applicant for licensure and operations;

(11) the facilities available to the applicant for production, distribution, storage, and other purposes, and the applicant's ownership of the property, buildings, or other facilities identified in the production and distribution plan, as applicable; and

(12) other relevant factors.

[~~E.~~] **F. Production and distribution of medical cannabis by a licensed non-profit producer; use of couriers:** Production and distribution of medical cannabis by a licensed non-profit producer to a qualified patient or primary caregiver shall take place at locations described in the non-profit producer's production and distribution plan approved by the department, and shall not take place at locations that are within 300 feet of any school, church, or daycare center. For purposes of this provision, delivery to the residence of a qualified patient or primary caregiver shall not be deemed "distribution". A licensed non-profit producer may, consistent with this rule, and with the consent of a purchasing qualified patient or primary caregiver, utilize an approved courier to transport usable cannabis to a qualified patient or primary caregiver, and may for this purpose share with an approved courier the contact information of the purchasing qualified patient or primary caregiver. A licensed non-profit producer may, consistent with this rule, also utilize an approved courier to transport usable cannabis to another non-profit producer, to an approved laboratory, and to an approved manufacturer. A licensed non-profit producer shall not identify any person as an intended recipient of usable cannabis who is not a qualified patient, a primary caregiver, an approved courier, an approved manufacturer, or an approved laboratory.

[~~F.~~] **G. Verification of application information:** The department may verify information contained in each application and accompanying documentation by:

(1) contacting the applicant by telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face meeting and the production of additional identification materials if proof of identity is uncertain; and

(4) requiring additional relevant information as the department deems necessary.

[~~G.~~] **H. Cooperation with the department:** Upon submitting an application, an applicant shall fully cooperate with the department and shall timely respond to requests for information or documentation. Failure to cooperate with a request of the department may result in the application being denied or otherwise declared incomplete.

[~~H.~~] **I. Criminal history screening requirements:** All persons associated with a licensed non-profit producer or non-profit producer-applicant, manufacturer or manufacturer-applicant, approved laboratory or laboratory applicant, and approved courier or courier-applicant, shall consent to and undergo a nationwide and department of public safety (DPS) statewide criminal history screening background check. This includes qualified patients, board members, persons having direct or indirect authority over management or policies, employees, contractors, and agents. Background check documentation shall be submitted annually for approval to the department with the applicant's renewal materials and prior to an individual assuming any duties or responsibilities for a non-profit producer, manufacturer, laboratory, or courier. Background check documentation shall be received by the medical cannabis program, and the individual shall be approved by the program, before the individual begins

to provide any work or services to the producer, manufacturer, laboratory, or courier.

(1)

Criminal history screening fees: All applicable fees associated with the nationwide and DPS statewide criminal history screening background checks shall be paid by the non-profit producer, manufacturer, laboratory, courier, or applicant.

(2)

Disqualifying convictions: Individuals convicted of a felony violation of Section 30-31-20 (trafficking of a controlled substance); 30-31-21 (distributing a controlled substance to a minor); 30-31-22 NMSA 1978 (distributing a controlled substance); or a violation of any equivalent federal statute or equivalent statute from any other jurisdiction, shall be prohibited from participating or being associated with either a non-profit producer licensed under this rule, an approved laboratory, an approved manufacturer, or an approved courier. If an individual has been convicted of a felony violation of the NM Controlled Substances Act other than Sections 30-31-20 through 30-31-22 NMSA 1978, or has been convicted of any equivalent federal statute or equivalent statute from any other jurisdiction, and the final completion of the entirety of the associated sentence of such conviction has been less than five years from the date of the individual's anticipated association with the production facility, then the individual shall be prohibited from serving on the board of a licensed non-profit producer, or working for the licensed producer, or approved entity. An individual who is disqualified shall be notified of his or her disqualification. If an individual has been convicted of more than one felony violation of the above-cited sections of the NM Controlled Substances Act or an equivalent federal statute or equivalent statute from any other jurisdiction, the individual shall be notified that he or she is permanently prohibited from participating or being associated with a licensed non-profit producer, approved manufacturer, approved laboratory, or approved courier. Any violation of this subsection shall result in the immediate revocation of any privilege granted under this rule and the act.

[~~I.~~] **J. Board membership requirements for private entities:** The board of directors for a private non-profit applicant or licensee shall include at a minimum five voting members, including one medical provider limited to a physician (MD or DO), a registered nurse, nurse practitioner, licensed practical nurse, or physician assistant, and three patients currently qualified under the Lynn and Erin Compassionate Use Act.

(1) for purposes of board membership, a single individual may not qualify as both the patient and as the medical provider;

(2) members of the board of directors for a non-profit producer shall be residents of New Mexico; and

(3) no member of a non-profit producer's board of directors may at any given time serve on more than one single board of directors for licensed non-profit producers, or be employed by another non-profit producer.

[~~J.~~] **K. Limitation on number of production facilities:** A licensed non-profit producer shall conduct its production operations at a single, physical location approved by the department. An additional production facility or facilities may be allowed at the department's discretion if the non-profit producer is approved to grow more than 150 plants.

[~~K.~~] **L. Limitation on sales within 90 consecutive calendar days:** A licensed non-profit producer shall not sell or distribute usable cannabis to a qualified patient or primary caregiver in a total quantity that exceeds 230 units, as described in department rules concerning patient registry identification cards, within any 90-day period, unless the qualified patient or primary caregiver presents proof of a valid medical exception granted by the department.

[~~L.~~] **M.** [~~**Maximum concentration of THC in concentrates**: A licensed non-profit producer shall not sell or otherwise distribute a concentrated cannabis derived product to a qualified patient or primary caregiver that contains greater than seventy percent (70%) THC by weight, unless the qualified patient or primary caregiver presents proof of a valid medical exception granted by the department.~~] **Destruction of usable cannabis:** A licensed non-profit producer shall document the destruction of any usable cannabis using a video recording, and shall retain the video recording of the destruction for no less than 120 days. A licensed non-profit producer shall make the video recording of the destruction available for the department's inspection or copying upon the department's request.

[~~M.~~] **N. Maximum water content in dried usable cannabis:** A licensed non-profit producer shall not sell usable cannabis, other than a cannabis derived product, that contains fifteen percent (15%) or greater water content by weight. A licensed non-profit producer may be subject to testing to ensure compliance, consistent with the provisions of this rule.

[~~N.~~] **O. Non-profit producer policies and procedures:** The non-profit producer shall develop, implement, and maintain on the premises policies and procedures relating to the medical cannabis program, which shall at a minimum include the following:

(1) distribution criteria for qualified patients or primary caregivers appropriate for cannabis services, to include clear, legible photocopies of the registry identification card and New Mexico photo identification card of every qualified patient or primary caregiver served by the private entity;

(2) testing criteria and procedures, which shall be consistent with the testing requirements of this rule;

(3) alcohol and drug-free work place policies and procedures;

(4) an attestation that no firearms will be permitted on any premises used for production or distribution by the non-profit entity;

(5) employee policies and procedures to address the following requirements:

(a) job descriptions or employment contracts developed for every employee that identify duties, authority, responsibilities, qualifications, and supervision; and

(b) training materials concerning adherence to state and federal confidentiality laws.

(6) personnel records for each employee that include an application for employment and a record of any disciplinary action taken;

(7) on-site training curricula, or contracts with outside resources capable of meeting employee training needs, to include, at a minimum, the following topics:

(a) professional conduct, ethics, and patient confidentiality; and

(b) informational developments in the field of medical use of cannabis.

(8) employee safety and security training materials provided to each employee at the time of his or her initial appointment, to include:

(a) training in the proper use of security measures and controls that have been adopted; and

(b) specific procedural instructions regarding how to respond to an emergency, including robbery or a violent accident.

(9) a general written security policy, to address at a minimum:

(a) safety and security procedures;

(b) personal safety; and

(c) crime prevention techniques.

(10) training documentation prepared for each employee and statements signed by employees indicating the topics discussed (to include names and titles of presenters) and the date, time, and place the employee received said training;

(11) a written policy regarding the right of the private entity to refuse service;

(12) a confidentiality policy to ensure that identifying information of qualified patients is not disclosed or disseminated without authorization from the patient, except as otherwise required by the department; and

(13) such other policies or procedures as the department may require.

[~~O.~~] **P. Retention of training documentation:** A non-profit producer shall maintain documentation of an employee's training for a period of at least six months after termination of an employee's employment. Employee training documentation shall be made available within 24 hours of a department representative's request; the 24 hour period shall exclude holidays and weekends.

[~~P.~~] **Q. Licensure periods:**

(1) Licensure period for non-profit producers: The licensure period of a licensed non-profit producer shall be from August 1st (or the date of approval of the licensure application, if later) through July 31st of a given year. Exception; transition to revised 2019 rules: The licensure period for a licensed non-profit producer that would otherwise end on August 1, 2019 shall instead continue until September 30, 2019.

(2) Licensure period for qualified patient producers: A qualified patient's personal production license shall expire annually at the end of their enrollment in the NM medical cannabis program.

(3) Return of a license or identification card: Licenses and identification cards issued by the department are the property of the department and shall be returned to the department upon a producer's withdrawal from the program, upon termination of a card holder's employment with a licensed non-profit producer, or upon suspension or revocation.

[~~Q.~~] **R. Amended license:** A licensed producer shall submit to the department an application form for an amended license, and shall obtain approval from the department, at least 30 business days prior to implementing any:

(1) change of location of a qualified patient who also holds a personal production license;

(2) change of location of a non-profit producer's production or distribution facilities, change of directors, change of ownership of production or distribution facilities, private entity name, capacity or any physical modification or addition to the facility; and

(3) substantial change to a private entity's production plan or distribution plan, including any change to the type(s) of products produced or distributed, the private entity's method(s) of distribution, and security plan.

[~~R.~~] **S. Application for renewal of an annual production license:**

(1) Deadline for private entities. Each licensed non-profit producer shall apply for renewal of its annual license no later than August 1st of each year by submitting a renewal application to the department. The department shall provide the renewal application requirements no later than June 1st of each year.

(2) Deadline for personal production license holders: A patient who holds personal production licensure shall apply for renewal of their annual license no later than 30 days prior to the expiration of the license by submitting a renewal application to the department.

(3) General submission requirements for

qualified patients: Qualified patients applying for personal production licensure shall submit:

(a) an application for issuance or renewal of a personal production license; and

(b) a non-refundable thirty dollar ($30) application fee, except that the fee may be waived upon a showing that the income of the qualified patient is equal to or lesser than two hundred percent (200%) of the federal poverty guidelines established by the U.S. department of health and human services [~~; and~~

~~**(c)** a fifty dollar ($50) payment, for replacement of a personal production license~~]. A lost or stolen identification card shall be reported as soon as practicable to the medical cannabis program.

(4) General submission requirements for private entities: Private entities shall submit:

(a) an application for renewal of license; and

(b) applicable non-refundable licensure renewal fees.

[~~S.~~] **T. Non-transferable registration of license:**

(1) A license shall not be transferred by assignment or otherwise to other persons or locations. Unless the licensed producer applies for and receives an amended license, the license shall be void and returned to the department when any one of the following situations occurs:

(a) ownership of the facility changes;

(b) location change;

(c) change in licensed producer;

(d) the discontinuance of operation; or

(e) the removal of all medical cannabis from the facility by lawful state authority.

(2) Transactions, which do not constitute a change of ownership, include the following:

(a) when applicable, changes in the membership of a corporate board of directors or board of trustees; and

(b) two or more corporations merge and the originally licensed corporation survives.

[~~T.~~] **U. Automatic expiration of license:**

(1) A license shall expire at 11:59 p.m. on the day indicated on the license as the expiration date, unless the license was renewed at an earlier date, suspended, or revoked.

(2) A private entity that intends to voluntarily close or is involuntarily closed shall notify the licensing authority no later than 30 calendar days prior to closure. All private non-profit entities shall notify all qualified patients or the primary caregivers prior to expiration of the license. Any unused medical cannabis shall be turned over to local law enforcement, destroyed by the producer, donated to patients, or provided to another non-profit producer to be donated to patients. A producer that destroys medical cannabis shall submit documentation of that destruction to the department.

[~~U.~~] **V. Display of license:** The licensed producer shall maintain the license safely at the production location and be able to produce the license immediately upon request by the department or law enforcement.

[~~V.~~] **W. Fees applicable to applicants and licensees:**

(1) Non-profit producer application fee: A non-profit producer shall submit with its initial application an application fee of ten thousand dollars ($10,000). If the application is denied, the department shall issue a refund of nine thousand dollars ($9,000) to the applicant.

(2) Non-profit producer license fee: A non-profit producer that is licensed shall submit to the medical cannabis program a non-refundable licensure fee before beginning operations, no earlier than July 1st of each renewal year and no later than August 1st of each renewal year, of: [~~thirty thousand dollars ($30,000)~~] $40,000 for the first [~~150~~] 500 cannabis plants to be possessed by the non-profit producer [~~, and ten thousand dollars ($10,000) for each additional quantity of 50 plants thereafter to be possessed, up to a maximum collective total of 450 cannabis plants~~]; $5,000 for each additional increment of 50 cannabis plants above 500 and up to a collective total of 1,000 cannabis plants; and $6,000 for each additional increment of 50 cannabis plants above 1,000.

(3) Exception; Transition to revised LNPP fees, plant limits: A fee that is paid by a non-profit producer [~~for the year 2015 and prior to the adoption of this rule shall be assessed, on a pro-rated basis, towards the fees identified in this section for that licensure year~~] in the year 2019 shall be tendered to the department no earlier than September 23, 2019 and no later than October 4, 2019.

(4) Qualified patient personal production fees: A qualified patient shall submit with each initial application and renewal application for personal production licensure a fee of thirty dollars ($30), except that the fee may be waived upon a showing that the income of the qualified patient is equal to or lesser than two hundred percent (200%) of the federal poverty guidelines established by the U.S. department of health and human services; and

(5) Replacement license fee: A fifty dollar ($50) payment is required for replacement of [~~a license~~] an identification card for an employee of a licensed non-profit producer, and for replacement of a personal production license card.

(6) Payment: Fees shall be paid by check, money order, or any other form of payment approved by the medical cannabis program manager or designee, and shall be made payable to the medical cannabis program of the department.

[~~W.~~] **X. Inventory and sales equipment:** The department may require a licensed non-profit

producer to utilize specified equipment, software, and services for purposes of tracking inventory, sales, and other information, and for the purpose of reporting that information to the department of health.
[7.34.4.8 NMAC - Rp, 7.34.4.8 NMAC, 2/27/2015; A, 2/29/2016; A/E, 3/1/2019; A, 8/27/2019]

7.34.4.18 QUALIFIED PERSONAL PRODUCTION APPLICATION AND LICENSURE REQUIREMENTS:

A. A qualified patient may apply for a personal production license for either the qualified patient or the qualified patient's primary caregiver to produce medical cannabis solely for the qualified patient's own use.

B. A qualified patient may obtain no more than one personal production license, which license may be issued for production to occur either indoors or outdoors in no more than one single location [~~, which shall be either the patient's primary residence or other property owned by the patient~~].

C. No more than two personal production licenses may be issued for a given location, with proof that a second registered patient currently resides at the location. Multiple personal production licenses may not be issued for non-residential locations.

D. Qualified patients shall provide the following in order to be considered for a personal production license to produce medical cannabis:

(1) applicable non-refundable fee;

(2) a description of the single indoor or outdoor location that shall be used in the production of cannabis;

(3) if the location is on property that is not owned by the applicant: a written statement from the property owner or landlord that grants to the applicant permission to grow cannabis on the premises;

(4) a written plan that ensures that the cannabis production shall not be visible from the street or other public areas;

(5) a written acknowledgement that the applicant will ensure that all cannabis, cannabis-derived products and paraphernalia is accessible only by the applicant and their primary caregiver (if any), and kept secure and out of reach of children;

(6) a description of any device or series of devices that shall be used to provide security and proof of the secure grounds; and

(7) a written acknowledgement of the limitations of the right to use and possess cannabis for medical purposes in New Mexico.
[7.34.4.18 NMAC - Rp, 7.34.4.9 NMAC, 2/27/2015; A, 8/27/2019]

7.34.4.19 NON-PROFIT PRODUCER APPLICATION AND LICENSURE REQUIREMENTS: An applicant for initial or renewal non-profit producer licensure shall provide materials and information to the department, in accordance with the provisions of this section, in order to be considered for a license to produce medical cannabis. A licensed non-profit producer shall also promptly submit revised versions of any such materials in the event that the materials or their content change.

A. Organizational information and materials: An applicant for non-profit producer licensure shall submit to the department:

(1) proof that the private entity is a non-profit corporation in good standing with the NM secretary of state pursuant to Section 53-8-1 *et seq*., NMSA 1978;

(2) proof that the non-profit producer is in good standing with the New Mexico taxation and revenue department;

(3) copies of the entity's articles of incorporation;

(4) copies of the entity's by-laws;

(5) verification that the board of directors of the non-profit includes, at a minimum, five voting members, including one medical provider limited to a physician (MD or OD), a registered nurse, nurse practitioner, licensed practical nurse, or physician assistant, and three patients currently qualified under department regulations and the Lynn and Erin Compassionate Use Act, Section 26-2B-1 *et seq.*, NMSA 1978;

(6) a list of all persons or business entities having direct or indirect authority over the management or policies of the private entity;

(7) a list of all persons or business entities having any ownership interest in any property utilized by the non-profit producer, whether direct or indirect, and whether the interest is in land, building(s), or other material, including owners of any business entity that owns all or part of land or building(s) utilized;

(8) the identities and financial information, including information concerning loans and monetary investments, of all creditors currently holding a security interest in the non-profit producer or premises of the non-profit producer, if any; and

(9) a business plan showing how the private entity intends to fund its operations and become a successful producer, including information concerning personnel, horticulture, technology, and funding sources.

B. Production and distribution information and materials: An applicant for non-profit producer licensure shall submit to the department:

(1) an acknowledgement that production, at any time, shall not exceed the total of [~~mature female [plants, seedlings, and male~~] cannabis plants that the non-profit entity has been approved to produce as well as an inventory of usable cannabis that reflects current patient needs;

(2) a production plan that includes the non-profit entity's plan for the growth, cultivation, and harvesting of medical cannabis;

(3) a written set of distribution criteria for qualified patients or primary caregivers appropriate for cannabis services that describes the method by which and locations at which distribution will occur;

(4) a complete written description of the means that the non-profit entity shall employ to safely dispense cannabis and cannabis-derived products to qualified patients and qualified patients' primary caregivers;

(5) an attestation that qualified patients shall not be permitted to consume cannabis or cannabis-derived products on the entity's property;

(6) an attestation that the entity will require the presentation of a department-issued identification card and a valid New Mexico photo identification card or a passport prior to selling or otherwise distributing cannabis or cannabis derived products to qualified patients and primary caregivers;

(7) a description and sample of the packaging of the usable cannabis and cannabis-derived products that the non-profit producer shall utilize, including a label that satisfies the labeling requirements of this rule; and

(8) a written quality assurance plan.

C. Facility information: An applicant for non-profit producer licensure shall submit to the department:

(1) a description of the facilities and equipment that shall be used in the production and distribution of cannabis;

(2) proof that the facilities are not within 300 feet of any school, church, or daycare center; and

(3) a description of the methods and device or series of devices that shall be used to provide security.

D. Educational methods and materials: An applicant for non-profit producer licensure shall submit to the department:

(1) a description of the private entity's means for educating the qualified patient and the primary caregiver on the limitation of the right to possess and use cannabis;

(2) a description of the means the private entity shall employ to make qualified patients or the primary caregiver aware of the quality of the product;

(3) a description of ingestion options of usable cannabis provided by the private entity;

(4) a description of inhalation techniques that shall be provided to qualified patients;

(5) a description of potential side effects and how the private entity will educate qualified patients and the qualified patient's primary caregivers regarding potential side effects;

(6) a description of the means the private entity shall employ to make qualified patients or the primary caregiver aware of how to report adverse events related to medical cannabis use; and

(7) a description of the means the private entity shall employ to make qualified patients or the primary caregiver aware of how to report concerns regarding the private entity's products and services.

E. Sales record forms: A licensed non-profit producer that applies for renewal of licensure shall submit to the department a sample of the non-profit producer's sales record form(s), which shall identify (among other items) the name of the purchaser, the date of the sale, the quantity, and price of medical cannabis sold. A non-profit producer that applies for renewal of licensure shall additionally submit a profit and loss statement and balance sheet quarterly and as requested by the department.

F. Business licensure; TRD certificate: An applicant for non-profit producer licensure shall submit a current business license and tax and revenue registration certificate.

G. Policies and procedures: An applicant for non-profit producer licensure shall submit to the department copies of policies and procedures developed, implemented, and to be maintained on the premises of the private entity's facility. The applicant shall verify that the private entity will comply with the stated terms of the policies and procedures as written and submitted to the department.

H. Personnel records: An applicant for non-profit producer licensure shall submit to the department:

(1) separate nationwide and statewide criminal history screening documentation, in accordance with the provisions of this rule;

(2) samples of the personnel records to be retained by the private entity for each employee as required by this rule, including:

(a) a sample application for employment;

(b) state and federal employment documentation;

(c) a sample written job descriptions or employment contracts developed for all employee positions, to include duties, authority, responsibilities, qualifications, and supervision;

(d) payment or payroll records for all individuals associated with a non-profit producer renewal applicant's production and distribution facility, to include board members, persons having direct or indirect authority over management or policies, and employees submitted quarterly and as requested by the department.

(3) an on-site training curriculum (unless the private entity intends to enter into contractual relationships with outside resources capable of meeting employee training needs) that addresses, at a minimum, the following topics:

(a) state and federal confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(b) professional conduct and ethics;

(c) the Lynn and Erin Compassionate Use Act and department of health rules;

(d) informational developments in the field of medical use of cannabis; and

(e) employee safety and security training addressing, at a minimum, the proper use of the security measures and controls that have been adopted, and specific procedural instructions on how to respond to an emergency, including a robbery or violent accident.

(4) proof of HIPAA certification for all individuals associated with the private entity, including all board members, persons having direct or indirect authority over management or policies, and employees.

I. Other materials: An applicant for non-profit producer licensure shall submit to the department:

(1) a description of the department approved laboratory or laboratories that the non-profit entity will utilize for testing usable cannabis in accordance with this rule, and the type(s) of testing that the approved laboratory or laboratories will perform for the non-profit entity;

(2) the name of any courier that the non-profit entity intends to use for transport of usable cannabis to qualified patients and primary caregivers; and

(3) such other information as the private entity wishes to provide and such other information as the department may reasonably request.

J. Patient identification and sales records: A licensed non-profit producer shall retain clear, legible photocopies or electronic copies of current registry identification cards and current New Mexico photo identification cards of all qualified patients and primary caregivers served by the non-profit entity. A licensed non-profit producer shall also create and retain materials that document every instance in which usable cannabis was sold or otherwise distributed to another person or entity, including documentation of the recipient, type, quantity, and batch of the usable cannabis.

K. Material safety data sheets: A licensed non-profit producer shall maintain current material safety data sheets on-site for all chemicals used, including but not limited to cleaning compounds, sanitizing agents, and pesticides.

L. Local ordinance: A licensed non-profit producer shall comply with all applicable local ordinances, including but not limited to zoning, occupancy, licensing, and building codes.

[7.34.4.19 NMAC - Rp, 7.34.4.8 & 10 NMAC, 2/27/2015; A, 2/29/2016; A, 8/27/2019]

7.34.4.23 MONITORING AND CORRECTIVE ACTIONS:

A. Monitoring:

(1) The department or its designee may perform on-site assessments of a licensed producer or producer-applicant, an approved manufacturer or manufacturer-applicant, an approved laboratory or a laboratory-applicant, and an approved courier or courier-applicant, to determine compliance with these rules or submissions made pursuant to this rule. The department may enter the premises of a licensed producer, approved manufacturer, approved laboratory, or approved courier at any time to assess or monitor.

(2) 24 hours notice shall be provided to personal production license holders prior to an on-site assessment, except when the department has reasonable suspicion to believe that providing notice will result in the destruction of evidence, or that providing such notice will impede the department's ability to enforce these regulations.

(3) The department may review any and all records of a licensed non-profit producer, a qualified patient or primary caregiver, an approved manufacturer, approved laboratory, and approved courier, and may require and conduct interviews with such persons or entities and persons affiliated with such entities, for the purpose of determining compliance with department rules and applicable laws.

(4) All licensed producers, approved manufacturers, approved laboratories, and approved couriers shall provide the department or the department's designee immediate access to any material and information necessary for determining compliance with this rule.

(5) Failure by a licensed producer, approved manufacturer, approved laboratory, or approved courier to provide the department access to the premises or materials may result in disciplinary action(s), in accordance with this rule.

(6) Any failure to adhere to these rules that is documented by the department during monitoring may result in disciplinary action, in accordance with this rule.

(7) The department shall refer complaints alleging criminal activity that are made against a licensed producer, approved manufacturer, approved laboratory, or approved courier to appropriate New Mexico state or local law enforcement authorities.

B. Financial records: A licensed non-profit producer shall maintain detailed confidential sales records in a manner and format approved by the department, and shall inform the department of the location where such records are kept, and promptly update that information if the records are removed.

(1) Access: The department and its agents shall have reasonable access to the sales and other financial records of a licensed non-profit producer, <u>including data from point of sale systems,</u> and shall be granted immediate access to <u>inspect or copy</u> those records upon request. A patient shall be granted reasonable access to a licensed non-profit producer's sales records for that patient upon request.

(2) Audit: A licensed non-profit producer shall submit the results of an annual audit to the department no later than 90 days after the end of each fiscal year of the licensed non-profit. For the purposes of this section, the fiscal year of a non-profit producer shall be the 12 month cycle identified by the producer in its filings with the New Mexico taxation and revenue department. The annual audit shall be conducted by an independent certified public accountant; the costs of any such audit shall be borne by the private entity. Results of the annual audit shall be forwarded to the medical cannabis program manager or designee. The department may also periodically require, within its discretion, the audit of a non-profit producer's financial records by the department.

(3) Quarterly reports: A non-profit producer shall submit reports on at least a quarterly basis, or as otherwise requested, and in the format specified by the department. The quarterly report shall include at a minimum:

(a) Number of qualified patients and primary caregivers who purchased usable cannabis;

(b) Total number of retail transactions;

(c) Average amount (in units) purchased per retail transaction;

(d) Number of units provided without charge;

(e) Number of cannabis plants in production, including mature plants and seedlings;

(f) Number of cannabis plants harvested;

(g) Total yield of usable cannabis harvested from cannabis plants (in grams);

(h) Average yield per plant (in grams);

(i) Amount of cannabis (in grams) sold by wholesale;

(j) Amount of cannabis (in grams) purchased by wholesale;

(k) Number of live cannabis plants (including clones) and cannabis seeds sold;

(l) Amount of dried cannabis leaves and flowers in stock;

(m) Average price per gram of dried cannabis leaves and flowers;

(n) Total amount of dried cannabis leaves and flowers sold (in units);

(o) Total sales of dried cannabis leaves and flowers (in dollars and units);

(p) Amount of cannabis derived products in stock (in units);

(n) Total amount of cannabis derived products sold (in units);

(o) Total sales of cannabis derived products (in dollars and units);

(p) Amount of gross receipts tax paid to the New Mexico department of taxation and revenue;

(q) All quality testing reports, to be included as attachments;

(r) A detailed description of any thefts, robberies, break-ins or security breaches that occurred, including a description of any property that was stolen or destroyed, and the quantity of any usable cannabis that was stolen; and

(s) Such additional information as the department may request.

C. Corrective action:

(1) If violations of requirements of this rule are cited as a result of monitoring or review of financial records, the licensed producer shall be provided with an official written report of the findings within seven business days following the monitoring visit or the review of financial records.

(2) Unless otherwise specified by the department, the licensed producer shall correct the violation within five calendar days of receipt of the official written report citing the violation(s).

(3) The violation shall not be deemed corrected until the department verifies in writing within seven calendar days of receiving notice of the corrective action that the corrective action is satisfactory.

(4) If the violation has not been corrected, the department may issue a notice of contemplated action to suspend, revoke, or take other disciplinary action against the producer's license, in accordance with the provisions of this rule.

D. Suspension of license without prior hearing: If immediate action is required to protect the health and safety of the general public, a qualified patient, or a primary caregiver, the program manager or designee may suspend the qualified patient, primary caregiver, or licensed producer's license without notice, and may immediately withdraw approval for a laboratory, manufacturer, or courier without notice.

(1) A licensee or approved entity whose license has been summarily suspended or whose approval has been withdrawn may request a record review in accordance with this part.

(2) The record review requested subsequent to a summary suspension shall be conducted by the administrative review committee.

(3) The administrative review committee shall conduct the record review on the summary suspension or withdrawal of approval by reviewing all documents submitted by both licensee and the department.

(4) The sole issue at a record review on a summary suspension or withdrawal of approval is whether the license shall remain suspended or whether the approval shall remain withdrawn pending a final adjudicatory hearing and subsequent ruling by the secretary.

(5) A licensee or approved entity given notice of summary suspension or summary withdrawal by the program may submit a written request for a record review. To be effective, the written request shall:

(a) be made within 30 calendar days, from the date of the notice issued by the department, as determined by the postmark;

(b) be properly addressed to the medical cannabis program;

(c) state the applicant's name, address, and telephone numbers;

(d) provide a brief narrative rebutting the circumstances of the suspension or withdrawal, and

(e) include attachments of any additional documentation that the individual or entity wishes to be considered in the record review.

[7.34.4.23 NMAC - Rp, 7.34.4.15 NMAC, 2/27/2015; A, 8/27/2019]

7.34.4.24 DISCIPLINARY ACTIONS AND APPEAL PROCESS:

A. Grounds for disciplinary action: Disciplinary action may be taken against a producer-applicant, a licensed producer, a manufacturer-applicant or approved manufacturer, a laboratory applicant or approved laboratory, or an approved courier or courier-applicant. Disciplinary action may include revocation, suspension, or denial of an application, license, or department approval, monetary penalties, and other action. Disciplinary action may be imposed for:

[~~**(1)** failure to comply with or satisfy any provision of this rule;~~

~~**(2)** falsification or misrepresentation of any material or information submitted to the department;~~

~~**(3)** failing to allow or impeding a monitoring visit by authorized representatives of the department;~~

~~**(4)** failure to adhere to any acknowledgement, verification, or other representation made to the department;~~

~~**(5)** failure to submit or disclose information required by this rule or otherwise requested by the department;~~

~~**(6)** failure to correct any violation of this rule cited as a result of a review or audit of financial records or other materials;~~

~~**(7)** failure to comply with the department's requested access to premises or materials;~~

~~**(8)** failure to pay a required monetary penalty;~~

~~**(9)** diversion of cannabis or a cannabis-derived product, as determined by the department;~~

~~**(10)** threatening or harming a patient, a medical practitioner, or an employee of the department; and~~

~~**(11)** any other basis identified in this rule.~~]

(1) A major violation implicating public safety, including:

(a) failure to comply with or satisfy any provision of this rule that implicates public safety;

(b) diversion of cannabis or a cannabis-derived product, as determined by the department;

(c) threatening or harming a patient, a medical practitioner, or an employee of the department;

(d) intentionally destroying, damaging, altering, removing or concealing evidence of a violation under this rule, attempting to do so, or asking or encouraging another person to do so;

(e) deliberately purchasing usable cannabis, cannabis-derived products or cannabis plants from out of state or outside the legal medical cannabis system; or

(f) other conduct that shows willful or reckless disregard for health or safety;

(2) A major violation not implicating public safety, including:

(a) failure to pay a required monetary penalty;

(b) failure to comply with the department's requested access to premises or materials;

(c) failure to allow or impedance of a visit by authorized representatives or designees of the department;

(d) falsification or misrepresentation of any material or information submitted to the department;

(e) failure to adhere to any acknowledgement, verification, or other representation made to the department;

(f) failure to submit or disclose information required by this rule or otherwise requested by the department;

(g) failure to correct any violation of this rule cited as a result of a review or audit of financial records or other materials, or cited as a result of a monitoring visit or site inspection;

(h) a pattern of non-major license violations;

(i) noncompliance with tax obligations as determined by a taxation regulatory authority;

(j) exceeding the plant limit of the license; and

(3) Any other violation, including:

(a) failure to comply with or satisfy any provision of this rule that does not implicate public safety;

(b) failure to take a video recording of the destruction of usable cannabis, in accordance with this rule; and

(c) selling or transferring to a qualified patient or primary caregiver a quantity of usable cannabis greater than the

maximum amount permitted by department rule.

B. Fines: Disciplinary actions against a licensed non-profit producer, approved manufacturer, approved laboratory, or approved courier may include the imposition of monetary penalties, which may be assessed by the department in the amount of:

(1) [~~one-hundred dollars ($100) for the first assessed monetary penalty in a calendar year~~] up to $50,000 for each major violation implicating public safety;

(2) [~~five hundred dollars ($500) for the second assessed monetary penalty in a calendar year~~] up to $20,000 for each major violation not implicating public safety;

(3) **[**~~one-thousand dollars ($1,000) for every monetary penalty thereafter assessed in a calendar year~~] up to $5,000 for each other violation.

C. Persons and entities who may request a hearing: The following persons or entities may request a hearing to contest an action or proposed action of the department, in accordance with this rule:

(1) a licensed producer whose license has been summarily suspended or who has received a notice of contemplated action to suspend, revoke, or take other disciplinary action;

(2) a personal production licensure applicant whose application is denied for any reason other than failure to submit a completed application or failure to meet a submittal requirement of this rule;

(3) an approved manufacturer whose approval status has been summarily suspended or who has received a notice of contemplated action to suspend, revoke, or take other disciplinary action;

(4) a manufacturer-applicant whose application is denied for any reason other than failure to submit a completed application or failure to meet a submittal requirement of this rule;

(5) an approved laboratory whose approval status has been summarily suspended or who has received a notice of contemplated action to suspend, revoke, or take other disciplinary action;

(6) a laboratory-applicant whose application is denied for any reason other than failure to submit a completed application or failure to meet a submittal requirement of this rule;

(7) an approved courier whose approval status has been summarily suspended or who has received a notice of contemplated action to suspend, revoke, or take other disciplinary action;

(8) a courier-applicant whose application is denied for any reason other than failure to submit a completed application or failure to meet a submittal requirement of this rule; and

(9) a person whose participation with a licensed producer or approved entity is prohibited based on a criminal background check.

D. Timing and content of request for hearing: The appellant shall file the request for hearing within 30 calendar days of the date the action is taken or the notice of contemplated action is received. The request shall:

(1) be properly addressed to the medical cannabis program;

(2) state the requestor's name, address, and telephone number(s); and

(3) include a statement of the issue(s) that the appellant considers relevant to the review of the action.

E. Hearing process:

(1) All hearings held pursuant to this section shall be conducted by a hearing officer appointed by the secretary.

(2) Hearings shall be conducted in Santa Fe, NM or, with the consent of the parties, in another location.

(3) Due to federal and state confidentiality laws, hearings held pursuant to this section that concern qualified patients, patient-applicants, licensed producers or producer-applicants, shall be closed to the public. Portions of hearings may further be closed to prevent the disclosure of confidential information.

(4) The hearing shall be recorded on audiotape or other means of sound reproduction.

(5) Any hearing provided for in this rule may be held telephonically, with the consent of the parties.

F. Scheduling: The department shall schedule and hold the hearing as soon as practicable, however; in any event no later than 60 calendar days from the date the department receives the appellant's request for hearing. The hearing examiner shall extend the 60 day time period upon motion for good cause shown or the parties may extend the 60 day time period by mutual agreement. The department shall issue notice of hearing, which shall include:

(1) a statement of the location, date, and time of the hearing;

(2) a short and plain statement of the legal authority under which the hearing is to be held; and

(3) a short and plain statement of the subject of the hearing.

G. Presentation of evidence: All parties shall be given the opportunity to respond and present evidence and argument on all relevant issues.

H. Record of proceeding: The record of the proceeding shall include the following:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence and briefs received or considered;

(3) a statement of matters officially noticed;

(4) offers of proof, objections, and rulings thereon;

(5) proposed findings and conclusions; and

(6) any action recommended by the hearing examiner.

I. Audio recording: A party may request a copy of the audio recording of the proceedings.

J. Procedures and evidence:

(1) A party may be represented by a person licensed to practice law in New Mexico or a non-lawyer representative, or may represent himself or herself.

(2) The rules of evidence as applied in the courts do not apply in these proceedings. Any relevant evidence shall be admitted. Irrelevant, immaterial, or unduly repetitious evidence may be excluded.

(3) The experience, technical competence, and specialized knowledge of the hearing examiner, the department or the department's staff may be used in the evaluation of evidence.

(4) An appellant's failure to appear at the hearing at the date and time noticed for the hearing shall constitute a default.

K. Conduct of proceeding: Unless the hearing examiner determines that a different procedure is appropriate, the hearing shall be conducted in accordance with the procedures set forth in this rule. The following procedures shall apply:

(1) the appellant shall present an opening statement and the department may present an opening statement or reserve the statement until presentation of the department's case;

(2) after the opening statements, if made, the appellant shall present its case;

(3) upon the conclusion of the appellant's case, the department shall present its case;

(4) upon conclusion of the appellee's case, the appellant may present rebuttal evidence; and

(5) after presentation of the evidence by the parties, the parties may present closing argument.

L. Burden of proof: The appellant shall bear the burden of establishing by a preponderance of the evidence that the decision made or proposed by the department should be reversed or modified.

M. Continuances: The hearing examiner may grant a continuance for good cause shown. A motion to continue a hearing shall be made at least 10 calendar days before the hearing date.

N. Telephonic hearings:

(1) Any party requesting a telephonic hearing shall do so no less than 10 business days prior to the date of the hearing. Notice of the telephonic hearing shall be given to all parties and shall include all necessary telephone numbers.

(2) The appellant is responsible for ensuring the telephone number to the appellant's location for the telephonic hearing is accurate and the appellant is available at said telephone number at the time the hearing is to commence. Failure to provide the correct telephone number or failure to be available at the commencement of the hearing shall be treated as a failure to appear and shall subject the appellant to a default judgment.

(3) The in-person presence of some parties or witnesses at the hearing shall not prevent the participation of other parties or witnesses by telephone with prior approval of the hearing examiner.

O. Recommended action and final decision:

(1) The parties may submit briefs including findings of fact and conclusions of law for consideration by the hearing examiner.

(2) No later than 30 calendar days after the last submission by a party, the hearing examiner shall prepare and submit to the secretary a written recommendation of action to be taken by the secretary. The recommendation shall propose sustaining, modifying, or reversing the action or proposed action of the department.

(3) The secretary shall issue a final written decision accepting or rejecting the hearing examiner's recommendation in whole or in part no later than 30 calendar days after receipt of the hearing examiner's recommendation. The final decision shall identify the final action taken. Service of the secretary's final decision shall be made upon the appellant by registered or certified mail.

(4) The final decision or order shall be included in a producer's file with the medical cannabis program.

[7.34.4.24 NMAC - Rp, 7.34.4.16 NMAC, 2/27/2015; A, 8/27/2019]

7.34.4.25 EXEMPTION FROM STATE CRIMINAL AND CIVIL PENALTIES [~~FOR THE MEDICAL USE OF CANNABIS~~]:

A. No officer, employee, or approved contractor of a licensed producer, approved manufacturer, approved courier, or approved laboratory, nor any qualified patient licensed as a producer or enrolled primary caregiver, shall be subject to arrest, prosecution, or penalty in any manner for the production, possession, distribution, or dispensation of cannabis in accordance with this rule and the act. For the purpose of this section, the department deems approved manufacturers, approved couriers, and approved laboratories to be ancillaries of licensed non-profit producers, entitled to the protections from criminal liability identified for licensed producers in the Lynn and Erin Compassionate Use Act, Section 26-2B-4 NMSA 1978.

B. Any property interest that is possessed, owned, or used in connection with the production of cannabis or acts incidental to such production shall

not be harmed, neglected, injured, or destroyed while in the possession of state or local law enforcement officials. Any such property interest shall not be forfeited under any state or local law providing for the forfeiture of property except as provided in the Forfeiture Act. Cannabis, 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 act as shall be evidenced by a failure to actively investigate the case, a decision not to prosecute, the dismissal of charges, or acquittal.

C. In accordance with the Public School Code, Chapter 22 NMSA 1978, and the Lynn and Erin Compassionate Use Act at Subsection G of Section 26-2B-4 NMSA 1978, the department hereby deems New Mexico public schools, school districts, local school boards, locally-chartered charter schools, state-chartered charter schools, and governing bodies of state-chartered charter schools to be licensees, and designated school personnel (including designated employees and volunteers of the foregoing licensees) to be licensee representatives, authorized within the licensees' licensure to possess and store cannabis and cannabis derived products on behalf of qualified students, and to administer cannabis and cannabis derived products to qualified students, in school settings. The department deems the licensees and licensee representatives to be entitled to immunity from arrest, prosecution or penalty, in any manner, for activities conducted within the licensees' licensure and in accordance with the Public School Code.

[7.34.4.25 NMAC - Rp, 7.34.4.17 NMAC, 2/27/2015; A, 8/27/2019]

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY
PART 10 MEDICAL CANNABIS IN SCHOOLS

6.12.10.1 ISSUING AGENCY: Public Education Department, herein after the department.
[6.12.10.1 NMAC – N, 8/27/2019]

6.12.10.2 SCOPE: This rule applies to school districts, local school boards, state-chartered charter schools and governing bodies.
[6.12.10.2 NMAC – N, 8/27/2019]

6.12.10.3 STATUTORY AUTHORITY: Sections 9-24-8, 22-2-1, 22-2-2 and 22-33-5 NMSA 1978.
[6.12.10.3 NMAC – N, 8/27/2019]

6.12.10.4 DURATION: Permanent.
[6.12.10.4 NMAC – N, 8/27/2019]

6.12.10.5 EFFECTIVE DATE: August 27, 2019, unless a later date is cited at the end of a section.
[6.12.10.5 NMAC – N, 8/27/2019]

6.12.10.6 OBJECTIVE: The objective of this rule is to provide parameters for the possession, storage, and administration of medical cannabis to qualified students for use in school settings.
[6.12.10.6 NMAC – N, 8/27/2019]

6.12.10.7 DEFINITIONS:

A. "Cannabis" means all parts of the plant cannabis, including any and all varieties, species, and subspecies of the genus cannabis, and excludes the plant cannabis sativa L. and any party 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.

B. "Cannabis producer" means a person or entity licensed by the department of health to possess, produce, dispense, distribute, and manufacture cannabis and cannabis products and sell wholesale or by direct sale to qualified patients and primary caregivers.

C. "Certifying practitioner" means a health care practitioner who is licensed in New Mexico to diagnose a qualified patient and recommend medical cannabis as a course of treatment.

D. "Designated school personnel" means a school employee whom a public school, charter school, or school district authorizes to possess, store, and administer medical cannabis to a qualified student in accordance with the provisions of Section 22-33-5 NMSA 1978, this rule, the Lynn and Erin Compassionate Use Act, and New Mexico department of health rules regarding the Lynn and Erin Compassionate Use Act.

E. "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, and is exempt from the New Mexico Controlled Substances Act.

F. "License" means written authorization to licensees issued by the New Mexico department of health to implement the provisions of Section 22-33-5 NMSA 1978, this rule, the Lynn and Erin Compassionate Use Act, and New Mexico department of health rules regarding the Lynn and Erin Compassionate Use Act.

G. "Licensee" means a person or entity issued a license by the New Mexico department of health pursuant to the Lynn and Erin Compassionate Use Act and includes school districts, local school boards, locally-chartered charter schools, state-chartered charter schools, and governing bodies of state-chartered charter schools.

H. "Licensee representative" means designated

school personnel who work for a licensee and possess, store, or administer medical cannabis to a qualified student in a school setting.

I. "Medical Cannabis" means cannabis:

(1) recommended for treatment of a debilitating medical condition as defined in the Lynn and Erin Compassionate Use Act, in a written certification by a certified practitioner;

(2) dispensed by a cannabis producer that has received approval from the New Mexico department of health to conduct sales of medical cannabis;

(3) is in the form of a capsule, extract, or concentrate to be ingested through the mouth that:

(a) may be safely divided into measurable doses;

(b) is not an aerosol product consumable through smoking or in particulate form as a vapor or by burning;

(c) is not a food or beverage product;

(d) is not a salve, balm, or other topical product;

(e) does not require refrigerated storage; and

(4) is provided to a school in package or container clearly labeled with:

(a) the student's name and date of birth; and

(b) the dosage allotment.

J. "Primary caregiver" means a parent or legal guardian.

K. "Qualified patient" means a person who has:

(1) been diagnosed by a certifying practitioner;

(2) received written certification from a certifying practitioner; and

(3) is currently enrolled in the New Mexico department of health's medical cannabis program and has received a current and valid registry identification card pursuant to the Lynn and Erin Compassionate Use Act.

L. "Qualified student" means a student who demonstrates evidence to the school that the student is authorized as a qualified patient pursuant to the Lynn and Erin Compassionate Use Act to carry and use medical cannabis.

M. "Self-administering" means the ingestion of medical cannabis by a qualified student without the presence of a primary caregiver or designated school personnel in a school setting.

N. "School" means a public school, including a charter school.

O. "School setting" means any of the following locations during a school day:

(1) a school building;

(2) a school bus used within the state during, in transit to, or in transit from a school-sponsored activity;

(3) a public vehicle used within the state during, in transit to, or in transit from a school-sponsored activity in the state; or

(4) a public site in the state where a school-sponsored activity takes place.

P. "Written certification" means a statement written by a qualified student's certifying practitioner:

(1) in a qualified student's medical records or in the written treatment plan statement;

(2) certifying that the qualified student has a debilitating medical condition pursuant to the Lynn and Erin Compassionate Use Act;

(3) certifying that the certifying practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the qualified student; and

(4) signed by the certifying practitioner.

Q. "Written treatment plan" means a document developed by the primary caregiver in collaboration with the certifying practitioner that:

(1) includes the certifying practitioner's diagnosis and description the qualified student's debilitating medical condition per the Lynn and Erin Compassionate Use Act;

(2) describes the plan for recommended treatment with medical cannabis, including:

(a) the recommended dosage allotment;

(b) the recommended frequency of administration of medical cannabis in a school setting; and

(c) is signed by the primary caregiver and the certifying practitioner.

[6.12.10.7 NMAC – N, 8/27/2019]

6.12.10.8 POSSESSION, STORAGE, AND ADMINISTRATION:

A. Policies and Procedures. Each local school board or governing body shall establish policies and procedures for the possession, storage, and administration of medical cannabis that:

(1) address the administration of medical cannabis in school settings during the school day by:

(a) primary caregivers; and/or

(b) designated school personnel;

(2) require the primary caregiver to deliver the medical cannabis in a container clearly labeled with:

(a) the student's name and date of birth; and

(b) the dosage allotment;

(3) require the provision of a secure location with a locked storage container accessible only by designated school personnel;

(4) require the immediate return of medical cannabis used in a school setting outside of school premises to a locked storage container;

(5) require the designated school personnel responsible for storage of the qualified student's medical cannabis to return any unused medical cannabis to the primary caregiver at the end of each school year or upon disenrollment, withdrawal, transfer, or graduation of the qualified student, whichever occurs first;

(6) require districts to provide appropriate training to all school personnel on medical cannabis policies; and

(7) require witnessed clean-up and witnessed destruction of medical cannabis in the event of spillage and waste and notification to the primary caregiver within the same day in which spillage or waste occurs.

B. Prohibitions. Each local school board or governing body shall establish policies and procedures for the possession, storage, and administration of medical cannabis that:

(1) prohibit a primary caregiver from administering medical cannabis in a manner that creates disruption to the education environment or causes other students to be exposed to medical cannabis;

(2) prohibit disciplining a school employee who refuses to administer medical cannabis; and

(3) prohibit students from possessing, storing, or self-administering medical cannabis in a school setting.

[6.12.10.8 NMAC – N, 8/27/2019]

6.12.10.9 PRIMARY CAREGIVER: School districts and charter schools' policies and procedures regarding primary caregivers' responsibilities shall address a primary caregiver's duty to:

A. Demonstrate evidence to the school that the student is authorized as a qualified patient pursuant to the Lynn and Erin Compassionate Use Act.

B. Provide a written certification.

C. provide a written treatment plan, using the written treatment form posted on the department's website.

D. Submit a written release of liability that:

(1) releases from civil liability the following persons and entities for acting in accordance with the provisions of Section 22-33-5 NMSA 1978 and this rule, as well as the Lynn and Erin Compassionate Use Act and applicable department of health rules:

(a) school districts, school district personnel and volunteers, schools, school personnel and volunteers, local school boards, and local school board members; and

(b) charter schools, charter school personnel and volunteers, governing bodies of charter schools, and governing body members;

(2) releases the persons and entities listed in Subparagraph (a) of Paragraph (4) of Section B of 6.12.10.9 NMAC, above, from any liability and reimbursement claims for costs associated with accidental spillage or waste of medical cannabis; and

(3) acknowledge that the qualified student shall not be entitled to the implementation of the provisions of Section 22-33-5 NMSA 1978 and this rule, as well as the Lynn and Erin Compassionate Use Act and applicable department of health rules, outside of this state.

E. Submit to the school a signed Health Insurance Portability and Accountability Act (HIPAA) authorization, using the HIPAA authorization form posted on the New Mexico department of health's website, that permits the school to obtain current information from the department of health regarding the enrollment status of the qualified student in the department of health's medical cannabis program. The HIPAA authorization form shall be retained as a medical record.

F. Indicate that a written certification and a written treatment plan shall be valid for no more than one year from the date of issuance and shall be presented to the school at, or prior to, the beginning of the school year for which the written certification and written treatment plan shall apply.

G. Pick up from the designated school personnel any unused medical cannabis at the end of each school year or upon disenrollment, withdrawal, transfer, or graduation of the qualified student, whichever occurs first.

H. Provide the written certification and a written treatment plan, a new release from liability, and a new package or container with clearly labeled identifiers including the qualified student's name, date of birth, and dosage allotment, upon enrollment in a new public school following disenrollment, withdrawal, transfer, or graduation from another school.

[6.12.10.9 NMAC – N, 8/27/2019]

6.12.10.10 DESIGNATED SCHOOL PERSONNEL: For each local school board or governing body that identifies the school personnel who will serve as designated school personnel under Section 22-33-5 NMSA 1978, policies shall address possession, storage, and administration of medical cannabis to a qualified student.

[6.12.10.10 NMAC – N, 8/27/2019]

6.12.10.11 STUDENTS:

A. Each school district and charter school shall ban a student's possession, use, distribution, sale, or being under the influence of a cannabis product in a manner inconsistent with provisions of the Lynn and Erin Compassionate Use Act.

B. No school shall discipline a student who is a qualified student on the basis that the student requires medical cannabis as necessary for the student to attend school.

C. No school shall deny eligibility to attend school

to a qualified student on the basis that the qualified student requires medical cannabis as a reasonable accommodation necessary for the student to attend school or an in-state school-sponsored activity.
[6.12.10.11 NMAC – N, 8/27/2019]

6.12.10.12 EXEMPTION FROM RULE; APPEAL PROCEDURES:

A. A school district or charter school may seek an exemption from implementing the provisions of this rule if it receives written communication from the federal government that implementation would result in federal education funding being withheld or withdrawn. The school district or charter school shall deliver electronically such written communication from the federal government to the secretary, who shall review the written communication for compliance with this paragraph. After the secretary confirms compliance with this paragraph, the school district or charter school shall post on its website the written communication from the federal government and notice of the exemption from implementing the provisions of this rule.

B. A primary caregiver may appeal the school district's or charter school's exemption by submitting a signed letter to the secretary containing a statement of the facts on which the appeal is based, detailing the basis of the appeal. The secretary or secretary's designee may require additional documentation to be provided by the primary caregiver, school district, or charter school before responding to the appeal. Such additional documentation, if requested, shall be due within 10 days of the request. The secretary shall provide a written response with a final decision within 30 days of receipt of the appeal or within 30 days of receipt of the additional documentation requested, whichever is later. The secretary, at the secretary's discretion, may require a hearing, to be conducted within 60 days of receipt of the appeal, and to include a representative of the school district or charter school, before the secretary or secretary's designee. The secretary shall issue a final decision within 30 days of the hearing.
[6.12.10.12 NMAC – N, 8/27/2019]

6.12.10.13 EXEMPTION FROM STATE CRIMINAL AND CIVIL PENALTIES: In accordance with this rule and New Mexico department of health rules:

A. Designated school personnel shall be exempt from civil liability and are authorized within their scope of employment, and their licensure if applicable, to possess, store, and administer cannabis to qualified students in school settings for purposes of implementing the provisions of Section 22-33-5 NMSA 1978, this rule, the Lynn and Erin Compassionate Use Act, and New Mexico department of health rules regarding the Lynn and Erin Compassionate Use Act.

B. Designated school personnel shall be exempt from criminal liability, as the department of health deems public schools to be licensees, and deems designated school personnel to be licensee representatives, authorized within their scope of employment, and their licensure if applicable, to possess and store medical cannabis on behalf of qualified students, and to administer medical cannabis to qualified students in school settings, in accordance with Section 22-33-5 NMSA 1978, this rule, the Lynn and Erin Compassionate Use Act, and New Mexico department of health rules regarding the Lynn and Erin Compassionate Use Act. The department of health deems the public schools and designated school personnel to be entitled to immunity from arrest, prosecution or penalty, in any manner, for activities conducted within their scope of employment and their licensure, if applicable, and in accordance with the Public School Code.
[6.12.10.13 NMAC – N, 8/27/2019]

6.12.10.14 HEMP EXEMPTED: School districts and charter schools are encouraged to have policies and procedures relating to hemp, which is not subject to the same civil or criminal laws as cannabis or medical cannabis.
[6.12.10.14 NMAC – N, 8/27/2019]

HISTORY OF 6.12.10 NMAC: [RESERVED]

SUPERINTENDENT OF INSURANCE, OFFICE OF

The Office of Superintendent of Insurance has repealed its rule 13.19.4 NMAC - Multiple Employer Welfare Arrangements, filed 5/2/2002, and replaced it on an emergency basis, with 13.19.4 NMAC - Multiple Employer Welfare Arrangements, effective 8/27/2019.

SUPERINTENDENT OF INSURANCE, OFFICE OF

TITLE 13 INSURANCE
CHAPTER 19 NON-ADMITTED OR SURPLUS LINES INSURANCE
PART 4 MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

13.19.4.1 ISSUING AGENCY: Office of Superintendent of Insurance.
[13.19.4.1 NMAC - Rp/E, 13.19.4.1 NMAC, 8/27/2019]

13.19.4.2. SCOPE:

A. Applicability.
These rules apply to any group establishing or maintaining a multiple employer welfare arrangement providing health benefits in accordance with Section 59A-15-16 NMSA 1978 for its participants or their beneficiaries. This rule also applies to authorized insurers selling fully-insured products to associations, discretionary groups or trusts.

B. Exclusions.
Notwithstanding Subsection A of this section, these rules do not apply to any multiple employer welfare arrangement that:

(1) establishes or maintains a multiple employer welfare arrangement plan pursuant to one or more agreements that the United States secretary of labor finds to be a collective bargaining agreement;

(2) is a rural electric cooperative or a rural telephone cooperative association as those terms are defined in ERISA; or

(3) has satisfactorily demonstrated to the superintendent that it is subject to the jurisdiction of another agency of this state or the federal government in accordance with Section 59A-15-17 NMSA 1978.

[13.19.4.2 NMAC - Rp/E, 13.19.4.2 NMAC, 8/27/2019]

13.9.4.3 STATUTORY AUTHORITY: Sections 59A-1-8, 59A-1-18, 59A-2-9, 59A-4-14, 59A-10-3, 59A-15-17, 59A-15-20, 59A-16-1, 59A-16-27, 59A-18-13.2, 59A-18-13.3, 59A-18-13.5, 59A-23-3, 59A-23c-3 NMSA 1978.

[13.19.4.3 NMAC - Rp/E, 13.19.4.3 NMAC, 8/27/2019]

13.19.4.4 DURATION: Permanent.

[13.19.4.4 NMAC - Rp/E, 13.19.4.4 NMAC, 8/27/2019]

13.19.4.5 EFFECTIVE DATE: August 27, 2019, unless a later date is cited at the end of a section.

[13.19.4.5 NMAC - Rp/E, 13.19.4.5 NMAC, 8/27/2019]

13.19.4.6 OBJECTIVE: The purpose of this rule is to establish eligibility requirements, registration, reporting, oversight and transparency requirements for multiple employer welfare arrangements (MEWAs). This rule also clarifies the applicability of state and federal statutes protecting consumers' access to care.

[13.19.4.6 NMAC - Rp/E, 13.19.4.6 NMAC, 8/272019]

13.19.4.7 DEFINITIONS: For definitions of terms contained in this rule, refer to 13.10.29 NMAC, unless otherwise noted below.

A. "Association health plan or association or AHP" means any foreign or domestic association that provides a health benefits plan that covers the employees of multiple employers or union members. All association health plans are multiple employer welfare arrangements.

B. "By laws" means the statements adopted by a MEWA that prescribe its purpose, government and administration.

C. "Discretionary group" means a group that does not meet the standard, eligible group requirements under state or federal law, but have otherwise obtained insurance by the discretion of the superintendent to operate.

D. "Employer" means:

(1) a person who is an employer as that term is defined in Section 3(5) of the federal Employee Retirement Income Security Act of 1974, and who employs two or more employees; and

(2) a partnership in relation to a partner pursuant to Section 59A-23E-17 NMSA 1978.

E. "ERISA" refers to the Employee Retirement Income Security Act of 1974 (29 United States Code Section 1002(4)), and ERISA's implementing regulations, as currently enacted or subsequently amended;

(1) these rules incorporate the definitions in 29 U.S.C.A., § 1002, and in its implementing regulations, as currently enacted or subsequently amended.

(2) unless inconsistent with the definitions in 29 U.S.C.A., § 1002, or in its implementing regulations, these rules incorporate the definitions in the New Mexico Insurance Code.

F. "Fully-insured multiple employer welfare arrangement" means that an authorized insurer is obligated to provide all of the benefits and services owed to a participant in, or beneficiary of, a MEWA and is directly liable to each participant or beneficiary for those services or benefits.

G. "Insurance code" refers to the New Mexico Insurance Code and its implementing rules, as currently enacted or subsequently amended.

H. "M-1 filing" means a Form M-1 report that the federal department of labor requires a MEWA to file annually.

I. "Multiple employer welfare arrangement" or **"MEWA"** refers to any foreign or domestic entity that administers a multiple employer welfare arrangement pursuant to 29 U.S.C.A., § 1002(40)(A) and these rules.

J. "NAIC" means the National Association of Insurance Commissioners.

K. "Plan administrator or third-party administrator" means a person or entity engaged by a self-funded MEWA, as defined in this section, to act as executive director to carry out the policies established by the trustees and to otherwise administer and provide day-to-day management of the health benefits plan;

L. "Self-funded multiple employer welfare arrangement" or **"association health plan"** refers to a MEWA that is not fully-insured. A fully-insured MEWA shall be deemed a self-funded MEWA, subject to all of the laws and regulations pertaining thereto, if, at any time, any of the obligations owed by the MEWA to a participant or beneficiary will not be provided by an authorized insurer.

M. "Self-insure" means to assume primary liability or responsibility for certain risks or benefits, rather than transferring liability or responsibility to some other entity.

N. "SERFF" means the System for Electronic Rates and Forms Filings.

[13.19.4.7 NMAC - Rp/E, 13.19.4.7 NMAC, 8/27/2019]

13.19.4.8 ELIGIBILITY TO OPERATE:

A. Eligibility to operate as or offer coverage through a MEWA.

(1) Self-funded MEWA. A self-funded MEWA shall be eligible to offer health benefits plans only after meeting the requirements outlined in this section

(2) Fully-insured MEWA. An insurance carrier shall confirm that any employer group, association, trust or union forming a MEWA to whom it is offers coverage conforms with the requirements of this section prior to the sale or delivery of any health benefits plan to MEWA members.

B. Eligibility for status as MEWA. A MEWA shall prove that it:

(1) is a bona fide association or MEWA, which means that the association or MEWA:

(a) has membership consisting solely of employers or union members;

(b) has been actively in existence for at least five continuous years;

(c) is engaged in substantial activities for its members, other than the sponsorship of an employee welfare benefit plan, and provides business or professional assistance and benefits to its members who share a common business interest and are primarily engaged in the same trade or business;

(d) does not condition membership in the association or MEWA on any health status-related factor relating to an individual (including an employee of an employer or a dependent of an employee) and clearly so states in all membership and application materials;

(e) has within its membership the employers who participate in and fund the arrangement;

(f) makes health benefits plan coverage offered through the MEWA available to all members regardless of any health status-related factor relating to such members (or individuals eligible for coverage through a member) and clearly so states in all marketing and application materials;

(g) does not make health benefits plan coverage offered through the MEWA available other than in connection with a member of the MEWA and clearly so states in all marketing and application materials; and

(h) provides and annually updates information necessary for the superintendent to determine whether or not a MEWA meets the definition of a bona fide as a MEWA before qualifying as bona fide for the purposes of this rule.

(i) meets at least one of the following conditions:

(i) is a New Mexico entity;

(ii) includes a member that is a New Mexico entity or who conducts business in New Mexico; or

(iii) has a participant who resides in New Mexico.

(2) shares a commonality of interests, which means that the employers or union members are in the same trade, industry, line of business, or profession; or

(3) does not charge employers or union members membership fees solely to participate in the MEWA and no membership fees are included in the premiums charged for health benefits plans.

C. Limitations of membership. A MEWA may only provide benefits to active or retired owners, officers, directors, or employees (and the domestic partners and family members of any of them) of participating employers or union members, except as may otherwise be limited by provisions of ERISA.

D. MEWAs formed for the purposes of selling insurance, prohibited. No MEWA, either fully-insured or self-insured, shall be formed solely for the purpose of selling insurance to a group.

E. Limitations on large group plans. A health benefits plan shall not be considered a large group plan exempt from state and federal laws governing individual or small group coverage solely because the aggregate number of lives covered by the MEWA meets the definition of a large group plan.

F. Size of MEWA. A self-funded MEWA proposing to provide a health benefits plan to fewer than 100 covered lives does not meet the criteria for eligibility under this rule, shall not be registered as an authorized MEWA and shall not offer a health benefits plan to any employees or union members.

[13.19.4.8 NMAC - Rp/E, 13.19.4.8 NMAC, 8/27/2019]

13.19.4.9 MULTIPLE EMPLOYER WELFARE ARRANGEMENT OR ASSOCIATION HEALTH PLAN NAME:

A. Clarity of name usage. No MEWA formed pursuant to this rule shall take any name that is the same as or closely resembles the name of any other MEWA possessing registration and doing business in this state. A MEWA must complete its application for registration to transact business under its own name and shall not adopt any assumed name, except that a MEWA by amending its articles may change its name or take a new name with the approval of the superintendent. A MEWA shall clearly state this name on all advertising materials.

B. Legal proceedings. Whenever it shall be necessary in any legal proceeding to prove the existence of a multiple-employer welfare arrangement, a certified copy of the MEWA registration in this state shall be prima facie evidence of the existence of the MEWA.

[13.19.4.9 NMAC - Rp/E, 13.19.4.9 NMAC, 8/27/2019]

13.19.4.10 DUTIES AND COMPENSATION OF TRUSTEES, OFFICERS OR DIRECTORS:

A. Responsibilities of trustees, officers or directors.

The trustees, officers or directors of a MEWA shall give the attention and exercise the vigilance, diligence, care and skill that prudent persons use in like or similar circumstances.

B. Authority of trustees, officers or directors. The board of trustees, officers or directors shall select such directors as designated in the articles or bylaws or trust agreement and may appoint agents as deemed necessary for the transaction of the business of the MEWA. All directors and agents shall respectively have such authority and perform such duties in the management of the property and affairs of the MEWA as may be delegated by the board of trustees, officers or directors. Any director or agent may be removed by the board of trustees, officers or directors whenever in their judgment the business interests of the MEWA will be served by the removal. The board of trustees, officers or directors shall secure by bond or otherwise the fidelity of any or all such directors or agents who handle the funds of the MEWA.

C. Duties of the trustees, officers or directors. The trustees, officers or directors of a MEWA are responsible for the operations of the MEWA. The directors shall have, at minimum, the following duties:

(1) fiduciary responsibility for the MEWA operation and financial condition;

(2) selection, supervision, and evaluation of the service company, financial administrator, accountant, insurer, and any other contractors;

(3) on the basis of the plan's overall financial condition, authorizing changes in premium, reserve, or investment practices; and declaring assessments or dividends as appropriate;

(4) approving all reports concerning the plan's operations and status to the superintendent and the members;

(5) monitoring delinquent premiums, loss experience, and the financial condition of individual members; and authorizing disciplinary action or expulsion as appropriate;

(6) authorizing acceptance or rejection of applications for membership;

(7) as permitted by the bylaws, making or recommending changes to the bylaws for the improvement of the plan's operation and financial integrity; and

(8) monitoring the plan's compliance with all statutes and rules governing its operation.

D. Compensation of trustees, officers or directors. Trustees, officers or directors shall serve without compensation from the MEWA except for actual and necessary expenses to perform the oversight functions of the MEWA.

E. Compensation of employees or agents. The compensation of any employee of a MEWA shall not be calculated directly or indirectly as a percentage of money or premium collected. The compensation of any agent shall not exceed five percent of the money or premium collected.

F. Membership. Members of the MEWA's board of trustees, officers or directors shall include individuals receiving benefits from the MEWA's health plan.
[13.19.4.10 NMAC - Rp/E, 13.19.4.10 NMAC, 8/27/2019]

13.19.4.11 APPLICATION PROCESS FOR MEWAS:

A. Application requirements for registration generally. All MEWAs shall submit an application for registration and receive approval from the superintendent before sale of any plans or products. All application materials shall be provided in the format specified by the superintendent on the office of superintendent of insurance website.

B. Contents of application, generally. An application for registration shall include the MEWA's most current M-1 filing with the United States department of labor. Unless the information in the documents requested below is provided in the M-1 filing, the MEWA must also file:

(1) a certified copy of the formative documents that establish the MEWA entity name and type under which the MEWA will operate, the MEWA's federal employer identification number (FEIN) and filings which demonstrate that the MEWA is authorized to do business in New Mexico;

(2) copies of all bylaws, operating agreements or similar documents that govern the control of the MEWA;

(3) the name, address, and telephone number for the contact for each association, group, trust, employer or member participating in the MEWA;

(4) the name, address, and telephone number of each officer, director, partner or trustee of the MEWA;

(5) a description of all sources of financing and revenue of the MEWA;

(6) the MEWA's current financial statements including audit reports, a balance sheet, income statement, cash flow statement and detailed listing of assets and debts, each developed according to generally accepted accounting principles;

(7) an affidavit from an officer, director, fiduciary or trustee of the MEWA attesting that, based on the affiant's informed belief, the MEWA is in compliance with all applicable provisions of ERISA;

(8) an affidavit from an officer, director, fiduciary or trustee of the MEWA attesting that, based on the affiant's informed belief, the MEWA is in compliance with all applicable provisions of the Insurance Code and applicable portions of the Affordable Care Act. Such affidavit does not absolve the MEWA from any rate or form filing requirements under 13.19.4.11.24 NMAC;

(9) an affidavit from an officer, director or trustee of the MEWA certifying that all association members and their employees shall be eligible for participation in the MEWA;

(10) a copy of any document executed by an employer or trust to become a member of the MEWA, including application for membership;

(11) a description of all membership requirements;

(12) the names and license numbers of any third-party benefit administrators administering health benefits offered by the MEWA; and

(13) any additional information requested by the superintendent.

C. Additional specifications for fully-insured MEWAs. An application for a registration to operate as a fully-insured MEWA shall also include:

(1) the NAIC number of each insurer who will provide benefits on behalf of the MEWA; and

(2) all contracts between the MEWA and each insurer identified in Paragraph (1) of this subsection.

D. Additional specifications for self-insured MEWAs. An application for registration to operate as a self-insured MEWA shall also include:

(1) an actuarial opinion prepared, signed and dated by a person who is a member of the American Academy of Actuaries stating that appropriate loss and loss adjustment reserves have been established and that adequate premiums are being charged;

(2) a copy of an indemnity agreement that jointly and severally binds the MEWA and each member thereof to meet the obligations of the MEWA;

(3) a copy of a document that binds and obligates the board members of the MEWA to replace any funding shortfall relating to the MEWA operations in this state. Such document shall provide for the payment of one hundred percent of the covered amount of any claims covered by the plan in the event the MEWA operates in states other than New Mexico;

(4) a copy of all stop-loss or reinsurance commitments, binders or policies insuring the MEWA or its members for benefits owed under the plan;

(5) any applicable documents required to be filed pursuant to 13.2.7 NMAC; and

(6) all documents necessary to demonstrate its solvency to the superintendent's satisfaction, as set forth in 13.19.4.14 NMAC.

E. Application filing fee. The application filing fee for registration to operate as a MEWA in New Mexico shall be the same as those described under Section 59A-6-1, NMSA 1978.

[13.19.4.11 NMAC - Rp/E, 13.19.4.11 NMAC, 8/27/2019]

13.19.4.12 APPLICATION REVIEW AND APPROVAL PROCESS FOR MEWAS:

A. Application completion requirements. An application is not complete until the MEWA has met all the requirements of this section to the satisfaction of the superintendent. The superintendent shall examine the application and supporting documents submitted by the applicant and shall conduct any investigation that the superintendent deems necessary. Incomplete applications shall be denied.

B. Application review. Upon receipt of a complete application, the superintendent shall evaluate whether the MEWA is currently in compliance with all applicable provisions of federal law, the Insurance Code and these rules. Upon determining that the application is in compliance, the superintendent shall register the MEWA. If the superintendent finds that the applicant MEWA does not satisfy any requirement for registration, the superintendent shall notify the applicant setting forth each deficiency. If the MEWA does not correct the deficiency within 60 days from the date of transmission of the superintendent's notice, or within such other time specified by the superintendent, its application will be deemed denied and closed. An unsuccessful applicant may file a new application for registration at any time.

C. Material changes. A MEWA that has made an application under this rule shall amend such application within 30 days of the date the MEWA becomes aware, or through the exercise of due diligence should have become aware, of any material change to the information required to be filed. The amended application filing shall accurately reflect material changes to the information originally filed. Any changes made subsequent to the immediately preceding M-1 filing shall be specifically identified.

D. Rate and form filing requirements. A MEWA shall comply with the rate and form and filing requirements described in Chapter 59A, Section 18, NMSA 1978 and its implementing rules, as currently enacted or subsequently amended.. All forms, rates and advertisements shall be filed through SERFF prior to use.

[13.19.4.12 NMAC - Rp/E, 13.19.4.12 NMAC, 8/27/2019]

13.19.4.13 REVOCATION: The superintendent may revoke a MEWA's registration upon determining that the MEWA is no longer in compliance with any applicable provision of federal law, the Insurance Code or these rules, even if the non-compliance pre-dated registration.

[13.19.4.13 NMAC - Rp/E, 13.19.4.13 NMAC, 8/27/2019]

13.19.4.14 SELF-FUNDED MEWA DEPOSIT REQUIREMENTS:

A. Deposit requirement. Every self-funded MEWA shall make and maintain a deposit in trust of not less than $300,000 for the benefit and protection of all of its participants and their beneficiaries. The deposit shall consist of assets eligible under Section 59A-10-3 NMSA 1978, and shall be deposited with or

through the superintendent or in a commercial depository located in the state of New Mexico approved by the superintendent subject to Section 59A-10-1 *et seq*., NMSA 1978. For good cause shown, and in the superintendent's sole discretion, the superintendent may require a MEWA to make and maintain a deposit in an amount lesser or greater than otherwise required in this rule.

B. Deposit release conditions. Any such deposit shall be released only in the following instances:

(1) upon extinguishment of all fixed and contingent liabilities of the MEWA secured by the deposit;

(2) upon the assumption by an authorized insurer of the MEWA's fixed and contingent liabilities secured by the deposit; or

(3) upon proper order of a court of competent jurisdiction, the reserve deposit may be released to the receiver, conservator, rehabilitator or liquidator of the MEWA for whose account the deposit is held.

C. Uncovered expenditures insolvency deposit. A MEWA shall maintain an uncovered expenditures insolvency deposit.

(1) Amount and location of deposit. If at any time uncovered expenditures exceed ten percent of total health care expenditures, a self-funded MEWA shall place an uncovered expenditures insolvency deposit with the superintendent, with any organization or trustee acceptable to the superintendent through which a custodial or controlled account is maintained, cash or securities that are acceptable to the superintendent.

(a) Such deposit shall at all times have a fair market value in an amount of one hundred twenty percent of the MEWA's outstanding liability for uncovered expenditures for enrollees in this state, including incurred but not reported claims, and shall be calculated as of the first day of the month and maintained for the remainder of the month.

(b) If a self-funded MEWA is not otherwise required to file a quarterly report, it shall file a report within 45 days of the end of the calendar quarter with information sufficient to demonstrate compliance with this paragraph.

(2) Accounting of deposit. The deposit required under Subsection C of this section is in addition to the deposit required under Subsection A and is an admitted asset of the MEWA in the determination of net worth. All income from such deposits or trust accounts shall be assets of the MEWA and may be withdrawn from such deposit or account quarterly with the approval of the superintendent.

(3) Withdrawals. A self-funded MEWA that has made a deposit may withdraw that deposit or any part of the deposit if a substitute deposit of cash or securities of equal amount and value is made, the fair market value of the deposit exceeds the amount of the required deposit, or the required deposit under Paragraph (1) of this section is reduced or eliminated. Deposits, substitutions or withdrawals may be made only with the prior written approval of the superintendent.

(4) Use of deposit in case of insolvency. The deposit required under Paragraph (1) of this section is in trust and may be used only as provided under this section. The superintendent may use the deposit of an insolvent MEWA for administrative costs associated with administering the deposit and payment of claims of enrollees of this state for uncovered expenditures in this state. Claims for uncovered expenditures shall be paid on a pro rata basis based on assets available to pay such ultimate liability for incurred expenditures. Partial distribution may be made pending final distribution. Any amount of the deposit remaining shall be paid into the liquidation or receivership of the MEWA.

(5) Manner of paying claims. The superintendent may prescribe the time, manner and form for filing claims under Paragraph (4) of this section.

(6) Reporting. The MEWA is required to file quarterly reports to demonstrate compliance with this section. The superintendent may require that the reports include liability for uncovered expenditures as well as an audit opinion.

(7) Deposit release order. No release of deposits shall be made except on application and written order of the superintendent made upon proof satisfactory to the superintendent of the existence of one or more of such grounds.

[13.19.4.14 NMAC - Rp/E, 13.19.4.14 NMAC, 8/27/2019]

13.19.4.15 SELF-FUNDED MEWA MINIMUM SOLVENCY REQUIREMENTS:

A. Net worth requirements. Every self-funded MEWA shall maintain an unallocated reserve level of not less than the greater of twenty percent of the total contributions in the preceding plan year or twenty percent of the total estimated contributions for the current plan year. The superintendent may require a self-funded MEWA to maintain a minimum net worth in an amount lesser or greater than otherwise required in this rule.

B. Reserve accounting principles. Every self-funded MEWA shall establish and maintain loss and loss adjustment reserves determined by sound actuarial principles in a format consistent with that required by the national association of insurance commissioners for commercial health insurers. These principles shall give proper actuarial regard for known claims, paid and outstanding, a history of incurred but not reported claims, claims handling expenses, unearned premium, an estimate for bad debts, a trend factor and a margin for error.

C. Reserve requirements. Reserves shall be maintained in cash or federally guaranteed obligations of less than five-year maturity that have a fixed or recoverable principal amount or such other investments as the

superintendent has authorized by rule.
[13.19.4.15 NMAC - Rp/E, 13.19.4.15 NMAC, 8/27/2019]

13.19.4.16 ACCOUNTING STANDARDS AND REPORTING REQUIREMENTS:

A. Annual statement required. Each MEWA transacting business in this state shall file annually with the superintendent statements and reports in compliance with 13.2.5 NMAC. Additionally, each annual statement shall be filed:

(1) by June 1st of each year, financial statements audited by a certified public accountant; and

(2) by March 1st of each year, an actuarial opinion prepared and certified by an actuary who is not an employee of the MEWA and who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 United States Code §§ 1241 and 1242). The actuarial opinion shall include:

(a) a description of the actuarial soundness of the MEWA, including any recommended actions that the MEWA should take to improve its actuarial soundness;

(b) the recommended amount of cash reserves the MEWA should maintain, which shall not be less than the greater of twenty percent of the total contributions in the preceding plan year or twenty percent of the total estimated contributions for the current plan year;

(c) a calculation of cash reserves with proper actuarial regard for known claims, paid and outstanding, a history of incurred but not reported claims, claims handling expenses, unearned premiums, an estimate for bad debts, a trend factor, and a margin for error; and

(d) the recommended level of specific and aggregate stop-loss insurance the multiple-employer welfare arrangement should maintain.

B. Renewal contingent upon compliance. The superintendent shall review the statements and reports required by Subsection A of this section. Renewal of a MEWA registration is contingent upon the superintendent finding that the MEWA meets the requirements of the Insurance Code and these sections.

C. Order for actuarial review. On a finding of good cause, the commissioner may order an actuarial review of a MEWA in addition to the actuarial opinion required by this section. The cost of any such additional actuarial review shall be paid by the MEWA.

D. Quarterly reports. The superintendent shall require a self-funded MEWA to file quarterly financial reports. Quarterly reports shall contain statements for each health benefits plan offered by the MEWA showing:

(a) current total cash on hand and on deposit, and total investments;

(b) current total reserve for unearned and advance premiums, total reserve for outstanding losses reported and unreported, total operating full funding reserve, and total runoff full funding reserve;

(c) dividends declared during the quarter;

(d) gross premiums written during the quarter;

(e) losses paid during the quarter;

(f) proximity to the aggregate excess stop-loss insurance attachment point for the current fund year and, if applicable, the past fund year;

(g) current total employer members and covered lives; and

(h) any other matters the superintendent requests.

E. Examination timeline. The superintendent shall examine the affairs and conduct of a self-funded MEWA at least once every three years in the same manner that applies to domestic and foreign insurers with a certificate of authority to transact insurance in New Mexico. Expenses of examination shall be paid by each MEWA, or its insurers, pursuant to Section 59A-4-14 NMSA 1978.

F. Penalties. A MEWA failing to file, without just cause reasonably beyond control of the MEWA, its annual statement required by this section, shall be subject to penalties outlined in Section 59A-5-30 NMSA 1978.
[13.19.4.16 NMAC - Rp/E, 13.19.4.16 NMAC, 8/27/2019]

13.19.4.17 INVESTMENT REQUIREMENTS OF SELF-FUNDED MEWAS: Every self-funded MEWA shall comply fully with the investment requirements of Section 59A-9-2 NMSA 1978. In addition, a MEWA must not invest in securities or debt of a member employer, or a member employer's parent, subsidiary, or affiliate; or any person or entity under contract with the MEWA.
[13.19.4.17 NMAC - Rp/E, 13.19.4.17 NMAC, 8/27/2019]

13.19.4.18 FINANCIAL INTEGRITY OF SELF FUNDED-MEWAS:

A. Fidelity bond. All persons who handle self-funded MEWA funds or who will have authority to gain access to MEWA funds, including trustees, officers or directors must be covered by a fidelity bond. The bond must cover losses from dishonesty, robbery, forgery or alteration, misplacement, and mysterious and unexplainable disappearance. The amount of coverage for each occurrence must be $300,000 or more. The MEWA must purchase a fidelity bond covering the required persons, or submit separate proof of coverage for all required contractors and individuals not covered under the MEWAs bond.

B. Integrity of assets. A MEWA's assets:

(1) must not be commingled with the assets of any employer member;

(2) must not be loaned to anyone for any purpose, or used as security for a loan, except as permitted under Subsection C of this section for investments.

(3) must be employed solely for the purposes stated in the bylaws, and in compliance with this chapter and related statutes; and

(4) must not be considered the property or right of any member, covered employee, or other covered person, except:

(a) for benefits under the coverage documents;

(b) for dividends declared in accordance with Section 59A-37-22 NMSA 1978.

(c) for a portion of the assets remaining after the plan's dissolution.

C. Sources and uses of funds. A MEWA may expend funds for payment of losses and expenses, and for other costs customarily borne by insurers under conventional insurance policies in New Mexico. A MEWA must not borrow money or issue debt instruments, except to maintain cash flow through a stop-loss policy requiring an insurer to advance funds to the MEWA under conditions approved by the superintendent. A MEWA may bring legal suits to collect legal debts. A MEWA must not obtain funds through subrogation of the rights of covered employees or other covered persons. A MEWA may receive funds only from:

(1) its members as premiums, assessments or penalties;

(2) its insurers or indemnitors pursuant to insurance or indemnification agreements;

(3) dividends, interest, or the proceeds of sale of investments;

(4) refunds of excess payments;

(5) coordination of benefits with automobile coverage, workers' compensation coverage, and other employee health benefit coverage; or

(6) collection of money owed to the MEWA.

D. Separate accounts. A MEWA may establish separate accounts for the payment of claims or certain types of expenses. These accounts must be used only by the MEWA's third-party administrators, its authorized subcontractors or financial administrators as appropriate to the account's purpose. The amount in these special accounts must not exceed the amount reasonably sufficient to pay the claims or expenses for which it is established. All monetary and investment assets not in these accounts must be under the control of the financial administrator.

E. Monitoring financial condition. The trustees, officers or directors must regularly monitor the MEWA's revenues, expenses, and loss development, and evaluate its current and expected financial condition. The trustees, officers or directors must attempt in good faith to maintain or restore the MEWA's sound financial condition, using any means at its disposal. These means include but are not limited to adjusting premium rates, underwriting standards, dividend rates, expulsion standards, and other powers granted in this rule and the bylaws. If the superintendent judges that the trustees', officers' or director's actions are inadequate to maintain or restore the plan's sound financial condition, the superintendent shall, as appropriate: order an increase in the premium rates; revoke the MEWA's registration; or order that an assessment be levied against the members.

F. Employee Protections. Member employers must not require covered employees to pay a portion of an assessment, nor must covered employees be required to pay any amount for premium increases on coverage in force. The amount of assessments must not be more than the amount of member employers' most recent annual premium, including the portion paid by covered employees.

[13.19.4.18 NMAC - Rp/E, 13.19.4.18 NMAC, 8/27/2019]

13.19.4.19 SELF-FUNDED MEWA STOP-LOSS COVERAGE REQUIREMENTS:

A. Proof of coverage. Every self-funded MEWA shall maintain individual and aggregate excess stop-loss coverage from an authorized insurer. The MEWA must submit the commitment, binder or policy of stop-loss coverage to the superintendent for approval as a condition of approval of registration or continued approval.

B. Purchase and alteration. A MEWA must inform the superintendent at least 180 days prior to expiration of any required stop-loss insurance policy whether it intends to renew the policy, and whether the insurer is willing to renew the policy. Alteration of a required stop-loss insurance policy midterm with the effect of reducing coverage, and cancellation by the plan midterm, are prohibited. If more than one stop-loss insurance policy is obtained in fulfillment of this part's requirements, their expiration dates must be the same.

C. Individual excess. A MEWA shall have and maintain individual excess stop-loss insurance, that provides for the insurer to assume all liability in excess of the per person limit per year under all coverages the plan offers. The reporting period under this coverage shall be no less than one year after the fund year's conclusion. A MEWA must apply to the superintendent for a determination of the individual excess stop-loss insurance limit. The superintendent shall approve the application if the limit would not be detrimental to the solvency and stability of the plan, considering the plan's experience, size, surplus, and other factors affecting financial integrity.

D. Aggregate excess. A MEWA must have and maintain aggregate excess stop-loss insurance that provides for the insurer to assume all liability in excess of a specified amount of losses for each fund year. The aggregate excess coverage may be in the form of incurred basis stop-loss insurance or paid basis stop-loss insurance. MEWAs using

paid basis stop-loss insurance shall have and maintain extended or runoff aggregate excess stop-loss insurance on an incurred basis. The extended or runoff coverage shall provide for the insurer to assume all liability in excess of a specified amount of losses incurred while the paid basis stop-loss insurance was in force, but paid after its termination or nonrenewal. The reporting period under paid basis insurance shall be no less than three months after the fund year's conclusion. The reporting period under incurred basis insurance, including extended or runoff insurance shall be no less than one year after the fund year's conclusion.

E. Surety coverage. A MEWA shall have and maintain the following language in its required aggregate excess stop-loss insurance policy, unless the superintendent determines that a policy with that language is not available in the market for stop-loss coverage, in which case, the superintendent may determine the requirements needed to obtain stop-loss coverage and meet solvency requirements: "The insurer shall, at the superintendent's request, assume direct responsibility for the MEWA's coverage and all other responsibilities under this chapter and related statutes, if the MEWA becomes insolvent, ceases operations without authorization, or otherwise fails to fulfill its responsibilities under this chapter and related statutes. The insurer may attempt to collect reimbursement from the MEWA or an employer member on whose behalf the insurer is called upon to pay premium, pay claims, or incur other extraordinary expenses. However, the insurer shall fulfill its responsibilities under this section while any collection attempts are pending. The insurer's responsibilities extend to all matters arising during or attributable to the policy period, and do not terminate with the end of the policy period." The policy shall not alter or qualify these terms to harm the plan's rights materially.

F. Return of liability. No liability or other responsibilities transferred to an insurer under this part may, directly or indirectly, be returned to a MEWA, an employer member, or an employer member's parent, subsidiary, or affiliate. This does not prohibit the insurer from seeking reimbursement from the MEWA or an employer member, as permitted under Subsections E and F of this section.

[13.19.4.19 NMAC - Rp/E, 13.19.4.19 NMAC, 8/27/2019]

13.19.4.20 ENDING SELF-INSURANCE, RUNOFF PERIOD, AND PLAN DISSOLUTION:

A. Ending self-insurance registration. A MEWA may decide to end its self-insurance registration and cease to provide coverage, effective at the end of a fund year. The MEWA shall notify the superintendent within 14 days of such a decision. A MEWA may not elect to end its self-insurance registration less than 45 days prior to the end of the fund year in question. Voluntary ending of self-insurance registration does not constitute MEWA dissolution under Subsection D of this section.

B. Revocation of self-insurance registration. The superintendent shall, by order, revoke the registration of a MEWA to self-insure upon ten days' written notice if any of the following events occur or conditions develop, and if the superintendent judges them to be material:

(1) failure of the MEWA to comply with this rule and all applicable statutes under the Insurance Code;

(2) failure of the MEWA to comply with any lawful order of the superintendent;

(3) commission by the MEWA of an unfair or deceptive practice or fraud as defined in Chapter 59A, Articles 16, 16b, or 16c of the Insurance Code or in related rules; or

(4) a deterioration of the MEWA's financial integrity to the extent that its present or future ability to meet obligations promptly and in full is or will be significantly impaired.

C. Runoff period. A health benefits plan offered by a MEWA shall continue to exist as a runoff plan after its self-insurance registration has ended, for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the plan provided coverage. A runoff plan shall continue to comply with all appropriate provisions of this rule, and with all other applicable New Mexico statutes and rules. Authority to exist as a runoff plan is open-ended, and does not require renewal of registration.

D. Dissolution. A MEWA, including a runoff health benefits plan offered by a MEWA, which desires to cease existence shall apply to the superintendent for authorization to dissolve. Applications shall be approved or disapproved within 60 days of receipt. Dissolution without authorization is prohibited and void, and does not absolve a MEWA or runoff plan from fulfilling its continuing obligations, and does not absolve its members from assessment under premium tax law. The MEWA's assets at the time of dissolution shall be distributed to the members and covered employees as provided in the bylaws. The superintendent shall grant authorization to dissolve if either of the following conditions are met:

(1) the MEWA demonstrates that it has no outstanding liabilities, including incurred but not reported liabilities; or

(2) the MEWA has obtained an irrevocable commitment from a licensed insurer that provides for payment of all outstanding liabilities, and for providing all related services, including payment of claims, preparation of reports, and administration of transactions associated with the period when the plan provided coverage.

[13.19.4.20 NMAC - Rp/E, 13.19.4.20 NMAC, 8/27/2019]

13.19.4.21 EFFECT OF REGISTRATION:

A. Deemed to be an insurer. Upon approval of the

application for registration, a self-funded MEWA that is subject to these rules is deemed to be an "insurer" under Subsection A of Section 59A-1-8 NMSA 1978.

B. Deemed to be an authorized issuer. Upon approval of the application for registration, a self-funded MEWA is deemed to be an authorized insurer for purposes of compliance with state and federal law.

C. Plan deemed to be a contract. The health benefits plan of a self-funded MEWA that has been approved for registration is deemed to be a health benefits plan under state and federal law.

[13.19.4.21 NMAC - Rp/E, 13.19.4.21 NMAC, 8/27/2019]

13.19.4.22 RENEWAL OF REGISTRATION:

A. Renewal requirements. A MEWA's registration shall continue in force as long as the MEWA complies with these rules and all other applicable state and federal laws, unless suspended or revoked by the superintendent or terminated at the MEWA's request, subject to continuance of the registration by the MEWA each year by:

(1) payment on or before March 1 of a $200.00 continuation fee;

(2) filing on or before March 1, by the MEWA or its authorized insurer(s), of an audited financial statement for the preceding year;

(3) payment by the MEWA, or its authorized insurer(s), of premium taxes for the preceding calendar year;

(4) reporting on demographic information, on a form approved by the superintendent, providing MEWA, and any third party administrator, intermediary, regulatory compliance, and insurer contacts that complies with the following requirements:

(a) the MEWA contact shall be the person responsible for filing all applicable forms and changes in information with the superintendent; and

(b) the regulatory contact shall be the person responsible for receiving notice of laws, rules, bulletins and the like that may affect the plan;

(5) notice of any changes in information previously filed with the superintendent, which shall include, but is not limited to, the following items:

(a) biographical affidavits of any new trustees, officers, directors, or other members of the association's or MEWA's governing body;

(b) the names, addresses, and qualifications of any new individuals responsible for the conduct of the plan's affairs, including third-party administrators;

(c) any new policy or amendment;

(d) any new trust agreement, plan document, plan summary, or bylaws;

(e) any new advertising and marketing material;

(f) any new members of the MEWA; and

(g) any other new agreements.

B. Expiration of registration and cure. A MEWA's registration shall expire under the same conditions and be cured by the same processes as described in Section 59A-5-23, NMSA 1978.

[13.19.4.22 NMAC - Rp/E, 13.19.4.22 NMAC, 8/27/2019]

13.19.4.23 APPLICABILITY OF FEDERAL PREEMPTION REQUIREMENTS:

A. Jurisdiction of superintendent. Notwithstanding any other provision of law, and except as provided in this regulation, any MEWA that provides coverage in this state for health benefits, whether such coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the jurisdiction of the superintendent unless the MEWA shows that while providing such services it is exempt from state jurisdiction as a result of federal preemption.

B. Proof of federal jurisdiction. A MEWA may show that it is subject to federal jurisdiction by providing to the superintendent the appropriate authorization issued by the federal agency that permits or qualifies it to provide those services for which it is authorized. An M-1 filing with the U.S. department of labor shall not, in and of itself, be sufficient to overcome the presumption of the superintendent's jurisdiction as set forth in this section. Proof of federal jurisdiction may include evidence that the plan is self-funded and provides benefits only to the employees of one employer.

C. Examination requirement. Except as otherwise set forth herein, any MEWA that is unable to show that it is solely subject to federal jurisdiction shall submit to an examination by the superintendent to determine whether the organization and solvency of such MEWA is in compliance with the applicable provisions of New Mexico law.

D. Failure to demonstrate federal jurisdiction. Any MEWA that is unable to show that it is solely subject to federal jurisdiction shall be subject to all appropriate provisions of this rule regarding the conduct of its business.

[13.19.4.23 NMAC – N/E, 8/27/2019]

13.19.4.24 RATE AND FORM FILING REQUIREMENTS:

A. Rate and form filing requirements. A MEWA selling health benefits plans to New Mexico residents or employers, or an insurance company offering coverage through a MEWA, shall set premiums in accordance with sound actuarial methods and the standards outlined below:

(1) All contracts evidencing benefits provided and all premium rates proposed, including any and all amendments, endorsements, riders, certificates or other modifications to contracts or premiums, shall conform to the filing and approval requirements contained in Sections 59A-18-13.2, 59A-18-13.3 and 59A-18-13.5 NMSA 1978,

and any other applicable state or federal law.

(2) All MEWAs covering New Mexico residents shall charge premium rates in compliance with state and federal law, consistent with the market in which employer member is part; that is, a self-employed individual will have an individual policy, a small business will have a small group policy, and a large employer will have a large group policy.

(3) All MEWAs covering New Mexico residents shall file forms and rates in compliance with state and federal law, consistent with the market in which employer member is part, that is, a self-employed individual will have an individual policy, a small business will have a small group policy, a large employer will have a large group policy.

(4) All MEWAs covering New Mexico residents shall cover consumer protections in compliance with state and federal law, consistent with the market in which employer member is part, that is, a self-employed individual will have an individual policy, a small business will have a small group policy, a large employer will have a large group policy.

B. Existing group rates use. A fully-insured MEWA offering small or large group coverage may use its existing small or large group rates, as applicable, without making a MEWA-specific rate filing, so long as such group rates have been filed with and approved by the superintendent and meet the requirements of this section.

C. Rate guarantee requirement. A self-insured or fully-insured MEWA offering benefits plans to individuals through sole proprietorship businesses shall guarantee the rates on all such plans for a minimum of 12 months.

D. Medical loss ratio requirements. A self-insured or fully-insured MEWA offering a health benefit plan with covered lives in New Mexico shall comply with respect to those covered lives, with the medical loss ratio and rebating requirements of New Mexico law.

E. Commissions and medical loss ratios. Any fees associated with broker services shall not be incorporated into the medical loss ratio under Subsection D of this section, but shall be incorporated into the administrative expense portion of a self-insured or fully-insured MEWA's rate filing.

F. Commission reimbursement. A self-insured or fully-insured MEWA shall not pay commissions or fees higher than the commissions allowed for the same coverage offered as a qualified health plan in the individual or small group market, as applicable.

G. Third party administrator contracts. Prior to sale of any health benefits plan, a self-insured or fully-insured MEWA shall file in SERFF as informational filings all copies of all contracts or agreements between the MEWA and any other entity that govern the management or administration of the MEWA, including any third-party benefit administrators;

H. Approval. No health benefits plan or certificate of coverage shall be delivered or issued for delivery in this state until a copy of the form and of the rules for the classification of risks has been filed with and approved by the superintendent in accordance with state law.

[13.19.4.24 NMAC - N/E, 8/27/2019]

13.19.4.25 BENEFIT REQUIREMENTS: All MEWAs covering New Mexico residents or insurance companies offering coverage through MEWAs shall provide all mandated benefits and consumer protections, compliant with state and federal law, consistent with the product type and the market in which the employer member is a part, that is, a self-employed individual will have an individual policy, a small business will have a small group policy, and a large employer will have a large group policy.

[13.19.4.25 NMAC - N/E, 8/27/2019]

13.19.4.26 NOTICE REQUIREMENTS:

A. Notice language. The following notice shall be provided by a MEWA or third-party administrator within the policy documents to employers and employees who obtain coverage from a MEWA:

"Notice

The [Insert the name of the MULTIPLE EMPLOYER WELFARE ARRANGEMENT in all capital letters] IS NOT AN INSURANCE COMPANY. FOR ADDITIONAL INFORMATION ABOUT THE [Insert the name of the MULTIPLE EMPLOYER WELFARE ARRANGEMENT in all capital letters] YOU SHOULD ASK QUESTIONS OF THE ADMINISTRATOR OF THE [Insert the name of the MULTIPLE EMPLOYER WELFARE ARRANGEMENT in all capital letters], OR YOU MAY CONTACT THE NEW MEXICO OFFICE OF THE SUPERINTENDENT OF INSURANCE USING THE CONTACT INFORMATION PROVIDED ON THE OSI WEBSITE."

B. Contact for superintendent. Each MEWA related notice shall include the superintendent's current consumer service telephone number and website in this notice.

C. Notice to individual and small group prospective enrollees. Any MEWA, third-party administrator or agent or producer acting on behalf of a MEWA shall provide the following information to prospective purchasers of an individual or small group health benefits plan:

(1) A statement that the individual or small group has the option of purchasing insurance on the New Mexico Health Insurance Exchange;

(2) Contact information for the New Mexico health insurance marketplace, including website and phone number;

(3) A statement that purchasing a health

benefits plan through the MEWA may result in preventing the employer or individual from accessing premium subsidies, cost sharing reductions, or other financial assistance that may otherwise be available through the New Mexico health insurance exchange; and

(4) A table showing current income eligibility guidelines for Medicaid and individual and family marketplace coverage through the New Mexico health insurance exchange.

D. Advertising. A self-funded or fully-insured MEWA shall file its advertising and marketing materials with the superintendent for approval prior to sale.

[13.19.4.26 NMAC - N/E, 8/27/2019]

13.19.4.27 ENROLLMENT PERIODS: A self-funded or fully-insured MEWA shall offer open and special enrollment periods consistent with state and federal law and consistent with the market in which the employer member is a part; that is, a self-employed individual will have an individual policy, a small business will have a small group policy, and a large employer will have a large group policy.

[13.19.4.27 NMAC - N/E, 8/27/2019]

13.19.4.28 RECORD RETENTION: A MEWA doing business in New Mexico shall maintain its books and records for a minimum period of seven years. Records shall be made available to the superintendent for review upon request.

[13.19.4.28 NMAC - N/E, 8/27/2019]

13.19.4.29 ENFORCEMENT:

A. Violation. A violation of this rule shall be considered an unfair and deceptive trade practice under Section 59A-16-1 *et. seq*. NMSA 1978. Failure to file the information required in this rule shall be *prima facie* evidence of a deceptive practice that endangers the legitimate interests of consumers and public. If a MEWA does not qualify for an exemption under ERISA, after hearing, the MEWA may be found in violation of Section 59A-15-20 NMSA 1978.

B. Enforcement action for failure to comply with rule. The superintendent may revoke, suspend or refuse to continue the registration of a MEWA that fails to comply with this rule and may impose such other applicable administrative penalties authorized under the Insurance Code.

C. Enforcement action for failure to comply with state or federal law. The superintendent may decline to issue or renew a registration issued pursuant to this rule if the superintendent finds that a MEWA does not satisfy any standard or requirement of this rule or any provision of other applicable state or federal law or regulation.

D. Cease and desist. When the superintendent believes that a MEWA or any other person is operating in this state without a registration or has violated the law or a rule or order of the superintendent, the superintendent may issue an order to cease and desist such violation or take any other action set forth in Section 59A-16-27 NMSA 1978.

E. Penalty. Any person or entity who violates any provision of this rule is subject to the penalties provided in Section 59A-1-18 NMSA 1978.

[13.19.4.29 NMAC - N/E, 8/27/2019]

13.19.4.30 FRAUD REPORTING REQUIREMENT:

A. Reporting requirement. An insurer, third-party administrator, or agent or broker having knowledge or reasonable suspicion that a MEWA or entity holding itself out to be a MEWA in this state is not in compliance with the requirements of this rule shall immediately report to the superintendent, in writing, regarding the identity of the entity, any known contact information or other materials, and the nature of the entity's practices that triggered this reporting. This reporting obligation also requires an insurer report to the superintendent any person, including a licensed or unlicensed agent, a broker, or other individual soliciting, offering, or selling a health benefit plan on behalf of a MEWA, or entity holding itself out to be such a MEWA in this state without complying with the requirements of this rule.

B. Documents in evidence. The documents and evidence provided pursuant to this subsection or obtained by the superintendent in an investigation or suspected or actual conduct in violation of this rule shall be privileged and confidential.

C. Release of documents in evidence. Subsection B of this section does not prohibit release by the superintendent of document and evidence obtained in an investigation of suspected or actual conduct in violation of this rule:

(1) in administrative or judicial proceedings to enforce laws administered by the superintendent;

(2) to federal, state or local law enforcement or regulatory agencies or to the NAIC; or

(3) at the superintendent's discretion.

D. Maintenance of privilege. Release of documents and evidence under Subsection C of this section does not abrogate or modify the privilege granted in Subsection B.

[13.19.4.30 NMAC - N/E, 8/27/2019]

13.19.4.31 INSURANCE AGENTS AND BROKERS:

A. Agent or broker compliance. Any person, including a licensed agent, broker or other individual, soliciting, offering or selling a health benefit plan on behalf of a MEWA to a New Mexico employer or a New Mexico resident shall comply with the following requirements:

(1) Prior to completing a sale of individual or small group coverage, disclose to the employer or resident that:

(a) the agent or broker is being compensated for the sale of the health benefit plan;

(b) that the small employer or individual has the option of purchasing insurance on the New Mexico health insurance marketplace;

(c) the eligibility guidelines for Medicaid coverage and financial assistance for coverage through the New Mexico health insurance exchange;

(d) contact information for the New Mexico health insurance exchange;

(e) a comparison table showing the similarities and differences in coverages between a MEWA with qualified health plans sold in the individual and small group market; and

(2) Prior to engaging in or assisting any person to engage in selling health benefits plans through a MEWA, an agent or broker shall document appropriate due diligence to establish, at a minimum; the following:

(a) that the MEWA's insurer or third-party administrator is licensed in the state;

(b) that the MEWA has registered, permitting it to operate in the state;

(c) that the disclosures listed in Paragraph (1) are in the policy document; and

(d) that the advertising and marketing materials that the agent or broker is using have been approved by the superintendent.

B. Fraud reporting requirement. Any person, including a licensed or unlicensed agent, broker or other individual soliciting, offering or selling a health benefit plan on behalf of a MEWA or entity holding itself out to be such a MEWA in this state that is not in compliance with the requirements of this rule shall immediately report to the superintendent in writing regarding the identity of the entity, any known contact information or other materials, and the nature of the entity's practices triggering this reporting. This reporting obligation also requires such person to report to the superintendent any person, including a licensed or unlicensed agent, broker or other individual soliciting, offering or selling a health benefit plan on behalf of a MEWA or entity holding itself out to be such a MEWA in this state without complying with the requirements of this rule. The confidentiality provisions of Subsection B of 13.19.4.30 NMAC shall apply to this subsection.

C. Lack of knowledge not a defense. Lack of knowledge regarding the compliance of any MEWA is not a defense to a violation of this regulation. Any agent or broker involved in the solicitation or sale of health benefits plans through unauthorized insurers, MEWAs which are found not to be in compliance with the provisions of this regulation and applicable state and federal law are subject to discipline or action including fines, suspension or revocation of his or her license. [13.19.4.31 NMAC - N/E, 8/27/2019]

13.19.4.32 SHORT TERM LIMITED DURATION AND EXCEPTED BENEFIT PLANS: No MEWA shall offer a short-term or excepted benefits plan to a resident of this state unless fully insured. All MEWAs offering short-term or excepted benefits plans shall comply with all sections of this rule pertaining to fully-insured MEWA plans. Any discretionary group, including a group formed by an association or trust, offering a short-term, limited duration or excepted benefit plan shall comply with the provisions of this section.

A. Short term limited duration plans. Any short-term, limited duration plan sold through a MEWA in this state shall:

(1) be defined as a nonrenewable health benefits plan covering a resident of this state, regardless of where the plan is delivered that:

(a) has a maximum specified duration of not more than three months after the effective date of the plan;

(b) is issued only to individuals who have not been enrolled in a health benefits plan that provides the same or similar nonrenewable coverage from any health insurance carrier within the three months preceding enrollment in the short-term plan; and

(c) is not an excepted benefit or combination of excepted benefits.

(2) only offer coverage that is fully-insured;

(3) shall comply with the requirements outlined in this rule, with the exception of Subsection D of Section 11, Sections 14, 15, 17, 18, 19, and 20; and

(4) shall comply with any other state law pertaining to the sale of short term plans.

B. Excepted benefits plans. Any excepted benefit plan sold through a MEWA in this state shall:

(1) mean a plan offering excepted benefits furnished pursuant to the following:

(a) coverage-only for accident or disability income insurance;

(b) coverage issued as a supplement to liability insurance;

(c) liability insurance;

(d) workers' compensation or similar insurance;

(e) automobile medical payment insurance;

(f) credit-only insurance;

(g) coverage for on-site medical clinics;

(h) other similar insurance coverage specified in rule under which benefits for medical care are secondary or incidental to other benefits;

(i) the following benefits if offered separately:

(i) limited-scope dental or vision benefits;

(ii) benefits for long-term care, nursing

home care, home health care, community-based care or any combination of those benefits; and

(iii) other similar excepted benefits specified in rule;

(j) the following benefits, offered as independent, non-coordinated benefits:

(i) coverage-only for a specified disease or illness; or

(ii) hospital indemnity or other fixed indemnity insurance;

(iii) the following benefits if offered as a separate insurance policy:

(iv) medicare supplemental health insurance as defined pursuant to Section 1882(g)(1) of the federal Social Security Act; and

(v) coverage supplemental to the coverage provided pursuant to Chapter 55 of Title 10 USCA and similar supplemental coverage provided to coverage pursuant to a group health plan; and

(vi) other similar individual or group insurance coverage or arrangement designated by the superintendent pursuant to rule under which benefits are secondary or incidental to health events, services or medical care;

(2) only offer coverage that is fully insured;

(3) shall comply with the requirements outlined in this rule, with the exception of sections 11(D), 14, 15, 17, 18, 19, and 20, and

(4) shall comply with any other state law pertaining to excepted benefits plans.

[13.19.4.32 NMAC - N/E, 8/27/2019]

13.19.4.33 VACCINE PURCHASING ACT COMPLIANCE: A MEWA subject to this rule offering a major medical health benefits plan shall comply with the reporting requirements under the Vaccine Purchasing Act at 24-5a-1 et seq. NMSA 1978.

[13.19.4.33 NMAC - N/E, 8/27/2019]

13.19.4.34 PHARMACY BENEFIT MANAGERS: Any self-funded or fully-insured MEWA offering drug coverage through a pharmacy benefit manager shall comply with Section 59A-61-1 et seq. NMSA 1978.

[13.19.4.34 NMAC - N/E, 8/27/2019]

13.19.4.35 DISCRETIONARY GROUPS: A discretionary group, including any group formed as an association or trust, shall receive approval by the superintendent before issuing any products to members residing in this state.

A. Approval. A discretionary group shall file an application for approval pursuant to Section 13.19.4.11 NMAC and consistent with its product type. All rates and forms shall be approved prior to sale consistent with Section 13.19.4.24 NMAC.

B. Rule compliance. Any discretionary group, approved by the superintendent pursuant to Section 59A-23-3 NMSA 1978 shall comply with these rules in accordance with the type of product offered to group members.

C. Portability trusts. No discretionary group shall be approved in the form of a portability trust unless the trust is comprised of former employees from a single employer or union members from a single union.

D. Discretionary groups approved out-of-state. No discretionary group approved in another state shall offer or sell an insurance product to a New Mexico resident without first obtaining approval under these rules.

[13.19.4.35 NMAC - N/E, 8/27/2019]

13.19.4.36 OUT-OF-STATE MEWA: An out-of-state self-funded or fully-insured MEWA that does not comply with this rule shall not:

A. advertise in the state as a benefit of membership for any group health insurance policy available to its members or beneficiaries;

B. issue a certificate for delivery in New Mexico to any resident of the state; or

C. solicit membership in the state on the basis of the existence or availability of such health insurance coverage.

[13.19.4.36 NMAC - N/E, 8/27/2019]

13.19.4.37 PREMIUM TAX, FEES AND ASSESSMENTS: A self-funded MEWA shall be considered an insurer for purposes of compliance with state law on premium tax, assessments, and fees. All insurance companies offering health benefits plans through a MEWA shall comply with state law on premium tax, assessments and fees applicable to the type of coverage offered.

[13.19.4.37 NMAC - N/E, 8/27/2019]

13.19.4.38 COMPLIANCE FOR EXISTING MEWAS OR DISCRETIONARY GROUPS: A MEWA or discretionary group subject to this rule on its effective date shall comply with the provisions of this rule no later than 45 days following its effective date. If a MEWA or discretionary group fails to comply with the provisions of this rule, it shall cease to offer health benefits plans to New Mexico residents.

[13.19.4.38 NMAC - N/E, 8/27/2019]

13.19.4.39 DEADLINES: The superintendent, for good cause, may shorten or extend any deadline set by this rule or under the Insurance Code.

[13.19.4.39 NMAC - N/E, 8/27/2019]

13.19.4.40 SEVERABILITY: If any provision of this rule, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this rule that can be given effect without the invalid provision or application, and to that end the provisions of this rule are severable.

[13.19.4.40 NMAC - N/E, 8/27/2019]

HISTORY OF 13.19.4 NMAC:
13.19.4 NMAC - Multiple Employer Welfare Arrangements filed 5/1/2002 was repealed and replaced by 13.19.4 NMAC - Multiple Employer Welfare Arrangements, effective 8/27/2019.

End of Adopted Rules

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Other Material Related to Administrative Law

HEALTH, DEPARTMENT OF

NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION

The New Mexico Department of Health gives Notice of a Minor, Nonsubstantive Correction.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all published and electronic copies of the following rule:

The errant word, "section", has been removed from Paragraphs 1, 3 and 4 of Subsection B of 7.34.4.8 NMAC as superfluous. The words "subdivision" "subparagraph" and "paragraph" have been changed to "Subsection" "Paragraph" and "Subsection", respectively. The paragraphs now read, as follows:

(1) Effective June 1, 2021, a non-profit producer may request an increase of up to 500 plants that exceeds the total plants allowed in Paragraph (2) of Subsection A of 7.34.4.8 NMAC at the time of renewal of its licensure period. In order to be considered for approval by the department, the non-profit producer shall demonstrate a need for the plant count increase to meet demand for their qualified patients. The non-profit producer shall provide the following information to the department to demonstrate the need for a plant count increase:

***

(3) Effective June 1, 2021, a non-profit producer may request an emergency increase once per year outside of their license renewal period, of up to 500 plants that exceeds the total plants allowed in Paragraph (2) of Subsection A of 7.34.4.8 NMAC, at any time. The non-profit producer shall demonstrate a need for the plant count increase to meet demand for their qualified patients, and shall submit to the department the information identified in Paragraph (1) of Subsection B of 7.34.4.8 NMAC. The department shall only approve the request if the non-profit producer can demonstrate by clear and convincing evidence that it is not able to meet qualified patient demand for usable cannabis or cannabis-derived products with its current plant count or by obtaining usable cannabis or cannabis products from another licensed producer. The non-profit producer shall provide objective data about the current supply in the medical cannabis market to demonstrate these factors. The department shall also consider the same factors in Subsection B when approving or denying this request.

(4) Any increase in plant count approved under this section shall be voided in the event of a transfer of the majority of ownership for a licensed producer, at which time the plant limit for the license shall revert to the limit allowed in Paragraph (2) of Subsection A above.

A copy of this Notification will be filed with the official version of the above rule.

HIGHER EDUCATION DEPARTMENT

NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION

The New Mexico Higher Education Department gives Notice of a Minor, Nonsubstantive Correction.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all published and electronic copies of the following rule:

An errant word, "may", has been removed from the first sentence of Subsection C of 5.7.35.8 NMAC. The sentence now reads:

"Award recipients shall petition the public school in which…"

A copy of this Notification will be filed with the official version of the above rule.

End of Other Material Related to Administrative Law

2019 New Mexico Register

Submittal Deadlines and Publication Dates
Volume XXX, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 15
Issue 2	January 17	January 29
Issue 3	January 31	February 12
Issue 4	February 14	February 26
Issue 5	February 28	March 12
Issue 6	March 14	March 26
Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 14
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