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New Mexico Register

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A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

Notices of Rulemaking and Proposed Rules

ADMINISTRATIVE HEARING OFFICE

AMENDED NOTICE OF PUBLIC HEARING FOR REPEALING AND REPLACING 22.600.3 NMAC, RULES OF PROCEDURE FOR TAX PROTESTS

The Administrative Hearings Office ("AHO") will hold a public hearing beginning on **Wednesday, July 29, 2020 at 10:00 am** to consider repealing and replacing 22.600.3 NMAC governing the conduct and procedure of tax protests under Section 7-1B-8 NMSA 1978 of the Administrative Hearings Office Act. Proposed rules may be obtained at bit.ly/AHOProposedRule, or by visiting http://www.aho.state.nm.us, or upon request submitted to tax.pleadings@state.nm.us or by telephone to (505) 827-0466. No technical scientific information was consulted in drafting any proposed rules.

Interested members of the public may attend the public hearing by videoconference or telephone. To access the hearing by telephone, call 346-248-7799 or 833-548-0276 (toll free). To access the hearing by videoconference, go to https://zoom.us/j/92270281184?pwd=Y2xjWWZzVnRoUnpYVjF6blBJbE43Zz09 and follow the onscreen instructions provided. If prompted to provide a Meeting ID (access code) or Password, please refer to the following: Meeting ID (access code): 922 7028 1184; Password (8675309).

The hearing will be conducted exclusively by videoconference and telephone for reasons stated in Executive Order 2020-004 of the Governor of the State of New Mexico (declaring a public health emergency) and the Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19, dated March 12, 2020.

The public hearing will be conducted in a fair and equitable manner by an AHO hearing officer and shall be recorded. Interested members of the public attending in the manner described will be provided a reasonable opportunity to offer public comment, orally or in writing, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need auxiliary aid to attend or participate in the public hearing should contact John Griego at john.griego1@state.nm.us. AHO will endeavor to accommodate reasonable requests but cannot assure accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

Written public comment, including presentation of data, views, or arguments about the contemplated repeal or proposed replacement rules, from any interested member of the public will also be accepted until 12:00 p.m. on July 29, 2020 by submitting them via email to tax.pleadings@state.nm.us with the subject line "AHO Rulemaking R20-01," or via first class U.S. Mail to Administrative Hearings Office, ATTN Rulemaking R20-01, P.O. Box 6400, Santa Fe, NM, 87502. Written comments received after the deadline will not be considered.

Repeal and replacement of 22.600.3 NMAC (Hearings Under the Tax Administration Act) is proposed pursuant to Section 7-1B-5 NMSA 1978 for tax protest hearings conducted under Section 7-1-24 NMSA 1978. The replaced rule is intended to refine the procedures of the Administrative Hearings Office for the conduct of tax protests and to implement amendments to the Administrative Hearings Office Act enacted during the 2019 legislative session, including: amendments to definitions of terms; implementing a revised procedure for requesting hearings; addressing the preparation and filing of answers to protests; exercising peremptory excusals of hearing officers; updating the qualifications of authorized representatives; clarifying the effect of a protest withdrawal; requiring parties to confer in good faith before seeking an order compelling discovery; providing a timeline for the presentation, consideration, and disposition of dispositive motions; implementing a process for considering whether the accrual of interest should stop due to the taxing authority's failure to adhere to a statutory deadline; permitting the protesting party to make a rebuttal closing as a matter of right; permitting the request or requirement of submitting digital duplicates of previously tendered evidentiary exhibits to facilitate submission of digital record proper on appeal; establishing a process for consideration of requests for reasonable administrative costs, litigation costs and attorney fees; refining the process for requesting reconsideration. Other sections not substantively revised will nevertheless be repealed, re-organized and replaced among the new material summarized herein.

AGRICULTURE, DEPARTMENT OF

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Department of Agriculture (NMDA), pursuant to the Commercial Feed Act, Sections 76-19A-1 to 76-19A-17, NMSA 1978**,** proposes to amend 21.18.3 NMAC, COMMERCIAL FEEDS.

PURPOSE AND SUMMARY OF THE PROPOSED RULES During the 2020 legislative session SB 57 PET FOOD FEE FOR NEUTERING & SHELTERING was signed into law. This amended the New Mexico Commercial Feed Act (Section 76-19A-1 NMSA 1978) to add a new section "SPAY AND NEUTER PROGRAM FEE". The legislation grants NMDA the regulatory authority to impose an additional fee on pet

food registration for dogs and cats to fund the dog and cat spay and neuter assistance program and the animal sheltering act.

The amendment adds new definitions and adds a new section, Spay and Neuter Program Fee.

STATUTORY AUTHORITY: Granted to the board of regents of New Mexico State University under the New Mexico Commercial Feed Act, Chapter 76, Article 19A Sections 1 - 17, NMSA 1978 Compilation.

Copies of the Notice of Proposed Rulemaking and proposed rules are available by electronic download from the New Mexico Department of Agriculture website (https://www.nmda.nmsu.edu)

NMDA will hold a public video/ telephonic hearing on the proposed rules on July 29, 2020 at 9:00 a.m.,

Join via Video:
Meeting URL: https://nmsu.zoom.us/j/97456254575
Meeting ID: 974 5625 4575

Join via Phone:
+1 346 248 7799 or +1 669 900 6833
Meeting ID: 974 5625 4575

Oral comments will be accepted at the video/telephonic hearing from members of the public and any interested parties. Written comments will be accepted through 5:00 pm on July 29, 2020. Comments may be submitted via email to comments@nmda.nmsu.edu or may be filed by sending original copies to:

New Mexico Department of Agriculture, Office of Director
MSC 3189, PO Box 30005, 3190 S. Espina, Las Cruces, NM 88003-8005

Only signed statements, proposals or comments will be accepted. Scanned or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, NMDA reserves the right to require that original signatures be provided to verify the electronic or facsimile signature.

SPECIAL NEEDS: If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact NMDA at (575) 646-3702 at least one week prior to the meeting or as soon as possible.

The Director will consider all oral comments, and will review all timely submitted written comments and responses.

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
ENERGY CONSERVATION AND MANAGEMENT DIVISION

NOTICE OF PROPOSED RULEMAKING

The New Mexico Energy, Minerals and Natural Resources Department (EMNRD) hereby gives notice of a proposed rulemaking and a public hearing on the proposed New Solar Market Development Income Tax Credit rules. The public hearing will be held on July 23, 2020, at 1:00 p.m. via online and telephone as described below. Written comments will be accepted until 5:00 p.m. July 30, 2020.

Summary of proposed rule. In 2020, the Legislature passed a New Solar Market Development Income Tax Credit. Laws 2020, Chapter 13. EMNRD is proposing a new rule, 3.3.14 NMAC, to implement the new tax credit, including the application contents, application review process, safety codes and standards, minimum system sizes, system applications and eligible components, certification of the system, calculating the solar energy system cost, calculating the tax credit, and claiming the tax credit.

Purpose of proposed rule. The proposed rule implements the New Solar Market Development Income Tax Credit. Laws 2020, Chapter 13.

Legal Authority. The proposed rule is authorized by Laws 2020, Chapter 13, and Section 9-1-5(E) NMSA 1978.

Availability of proposed rule.
The full text of the proposed rule is available at http://www.emnrd.state.nm.us/ECMD/; or by contacting Cherise Martinez at cherise.urioste@state.nm.us; telephone (505) 670-1015.

Written comments. Those wishing to comment on the proposed rule may submit written comments by July 30, 2020 at 5:00 p.m. by mail or e-mail to:

Cherise Martinez, EMNRD
Energy Conservation and Management Division
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505
Cherise.urioste@state.nm.us

Written comments will also be accepted at the address provided below on July 23, 2020, the date of the public hearing for the proposed rulemaking. Those wishing to deliver written comment to EMNRD shall, upon arrival at the building, call (505) 476-3200 ext. 1 to request that an agency representative meet you at the front door to receive the written comment. The phone number will also be posted on the front door along with a copy of this notice.

EMNRD
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Public Hearing. A public hearing will be held on July 23, 2020, at 1:00 p.m. via online and telephone.

The hearing is being held via internet, email, and telephonic means due to the concerns surrounding COVID-19 and in accord with Executive Order 2020-004, Declaration of a Public Health Emergency, and the March

12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19.

Any interested member of the public may attend the Public Hearing online or by telephone and offer public comments on the proposed rule during the hearing.

A Public Hearing Agenda and Participant Information Guide will be posted to the EMNRD website http://www.emnrd.state.nm.us/ECMD/ contemporaneously with this Notice. If you wish to provide oral comments at the Public Hearing you will be required to provide your name and the name of any organization you represent during the comment portion of the Public Hearing.

Your oral comments will be recorded.

To access the Public Hearing via internet and for any updates on the Public Hearing please visit our website http://www.emnrd.state.nm.us/ECMD/. The information for accessing WebEx:

Meeting number (access code): 966 842 553
Meeting password: mH2AusDEM68

To join by phone dial 1-408-418-9388 You may request to speak via Chat during the Public Hearing.

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Cherise Martinez at (505) 670-1015 or the New Mexico Relay Network at 1-800-659-1779 one week prior to the hearing. Public documents can be provided in various accessible formats. Please contact Cherise Martinez at (505) 670-1015, if a summary or other type of accessible format is needed.

Technical Information. There is no technical information that served as the basis of the proposed rule.

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
ENERGY CONSERVATION AND MANAGEMENT DIVISION

NOTICE OF PUBLIC HEARING AND RULEMAKING

The New Mexico Energy, Minerals and Natural Resources Department (EMNRD), Energy Conservation and Management Division is extending the public comment period and moving the date of a public hearing on proposed amendments to rules, 3.3.33 NMAC, "Agricultural Biomass Personal Income Tax Credit" and 3.4.20 NMAC, "Agricultural Biomass Corporate Income Tax Credit". The public hearing, previously scheduled for June 16, 2020, will now be held on August 19, 2020 at 9:00 am via Webex online and via telephone. Oral comments may be made either on-line or by phone as explained below. Written comments will be accepted via email or mail until 5:00 p.m. August 31, 2020, or in person on the day of the hearing.

Purpose of Amendments. In 2020, the Legislature passed a 10-year extension to the Agricultural Biomass Personal Income Tax Credit and the Agricultural Biomass Corporate Income Tax Credit. The Energy Conservation and Management Division (ECMD) of EMNRD currently implements the original Agricultural Biomass Personal Income Tax Credit and the original Agricultural Biomass Corporate Income Tax Credit, through rules 3.3.33 NMAC and 3.4.20 NMAC, respectively. The rules currently have a sunset date of January 1, 2020. The proposed amendments extend the sunset date 10-years to January 1, 2030, as authorized by Subsection F of Section 7-2-18.26 NMSA 1978 and Subsection D of Section 7-2A-26 NMSA 1978.

Legal Authority. EMNRD proposes these rule amendments under the authority of Subsection F of Section 7-2-18.26 NMSA 1978, Subsection D of Section 7-2A-26 NMSA 1978, and Section 9-1-5(E) NMSA 1978.

The full text of the proposed rule amendments are available from EMNRD, Energy Conservation and Management Division; at http://www.emnrd.state.nm.us/ECMD/LawsRegulationsExecutiveOrders/ECMD%20Hearings/Hearings.html; or by contacting Daren Zigich at darenk.zigich@state.nm.us; telephone (505) 476-3323.

Public Hearing and Comment. The public hearing will be held on August 19, 2020 at 9:00 am via Webex online, via telephone, and written comments will be accepted via email or mail until 5:00 p.m. August 31, 2020. Written comments may also be dropped off at the EMNRD main office at, 1220 South Saint Francis Drive, Santa Fe, NM 87505, between 8 am and 10 am on the hearing date.

The hearing is being held via internet, email, and telephonic means due to the concerns surrounding COVID-19 and in accord with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of a Public Health Emergency, and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19.

Any interested member of the public may attend the Public Hearing and offer public comments on the proposed rule amendments during the hearing. To access the hearing by telephone: please call:

408-418-9388, When prompted, enter Meeting Number (access code): 146 127 2345
Meeting password: DKsRtPmq728

To access the Public Hearing via internet, please go to https://nmemnrd.webex.com/nmemnrd/j.php?MTID=mef89936e8a186557c93c8964ed22710c

A Public Hearing Agenda and Participant Information Guide will be posted to the ECMD website

contemporaneously with this Notice. If you wish to provide oral comments at the Public Hearing you will be required to provide your name during the comment portion of the Public Hearing.

You may request to speak via Chat during the Public Hearing. Your oral comments will be recorded.

All interested persons may participate in the hearing and will be given an opportunity to submit relevant evidence, data, views, and arguments, orally or in writing as explained in the following paragraph.

Those wishing to comment on the proposed rule amendments may make oral comments or submit written comments at the hearing or may submit written comments by August 31, 2020 by 5:00 p.m. by mail or e-mail.

Please mail written comments before, during or after the Public Hearing to:

Daren Zigich, EMNRD
Energy Conservation and Management Division
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Or you may submit them by e-mail to:

darenk.zigich@state.nm.us

Written comments will also be accepted at the address provided below on August 19, 2020, the date of the public hearing for the proposed rulemaking. Those wishing to deliver written comment to EMNRD shall, upon arrival at the building, call (505) 476-3200, ext. 1, to request that an agency representative meet you at the front door to receive the written comment. The phone number will also be posted on the front door along with a copy of this notice.

EMNRD
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Technical Information. There is no technical information that served as the basis of the proposed rule amendments.

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Daren Zigich at (505) 476-3323 or the New Mexico Relay Network at 1-800-659-1779 one week prior to the hearing. Public documents can be provided in various accessible formats. Please contact Daren Zigich at (505) 476-3323, if a summary or other type of accessible format is needed.

HEALTH, DEPARTMENT OF

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the adoption of a new rule, 7.1.30 NMAC, "Administrative Hearing for Civil Monetary Penalties Issued Pursuant to PHERA." The hearing will be held on July 23, 2020, at 9:00 a.m. via Cisco Webex online, and via telephone. Written comments will be received via U.S. postal mail until the date of the hearing, and via email until the conclusion of the hearing.

The hearing is being held via internet and telephonic means due to the concerns surrounding the COVID-19 Coronavirus and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004 declaring a Public Health Emergency, and the various Public Health Emergency Orders limiting mass gatherings due to COVID-19. This hearing will be conducted to receive public comment regarding the proposed adoption of a new rule concerning the procedures for administrative hearings to govern the appeal of civil monetary penalties that are assessed pursuant to the Public Health Emergency Response Act (PHERA). A previous version of the rule was adopted on March 20, 2020 via emergency rulemaking, pursuant to Section 14-4-5.6, NMSA 1978.

The New Mexico Department of Health proposes the adoption of this rule to establish administrative hearing standards for administrative appeals of civil monetary penalties assessed pursuant to the Public Health Emergency Response Act (PHERA at Section 12-10a-19, NMSA 1978.

The legal authority authorizing the proposed rule and the adoption of the rule by the Department is at Subsection E of Section 9-7-6, and Section 12-10a-17, NMSA 1978.

A free copy of the full text of the proposed rule can be obtained from the Department's website at https://nmhealth.org/publication/regulation/.

Any interested member of the public may attend the hearing and offer public comments on the proposed rule during the hearing. To access the hearing by telephone: please call 1-408-418-9388. Your telephone comments will be recorded. To access the hearing via internet: please go to Webex.com; click the "Join" button; click the "Join a meeting" button; enter the following meeting number and password where indicated on screen—Meeting number (access code): 960 448 920 #, Meeting password: Xgvr9FFJN59; click the "OK" button. You may also provide comment via Chat during the live streaming.

Please submit any written comments regarding the proposed rule amendments to the attention of:
Sheila Apodaca
New Mexico Department of Health
Office of General Counsel
P.O. Box 26110
1190 St. Francis Drive, Suite N-4095
Santa Fe, NM 87502-6110
Sheila.Apodaca@state.nm.us
505-827-2997

All written comments will be published on the agency website at

https://nmhealth.org/publication/regulation/ 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 Sheila Apodaca by telephone at (505) 827-2997. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing on Monday, July 27, 2020 from 10 a.m. to 12 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501. The location of the public hearing may be subject to change due to the concerns surrounding Coronavirus and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of a Public Health Emergency, and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. Continuous updates on hearing changes and Zoom information will be provided on the PED website. The purpose of the public hearing is to receive public input on the proposed new rules 6.64.19 NMAC, Competencies for Elementary Mathematics Specialists, and 6.30.18, NMAC, Partial Credit for Adjudicated or Mobile Students. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the rule changes. Written comment will also be accepted at the hearing.

Explanation of Purpose and Summary of Text

The purpose of the proposed new rule **6.64.19 NMAC, Competencies for Elementary Mathematics Specialists,** is to allow educators with an elementary education license to add an endorsement specializing in elementary mathematics. The competencies in the new proposed rule provide pathways for educators in school districts and charter schools who are experts in elementary mathematics content and research-based elementary pedagogy to grow and have the potential to be advocates for student learning and support colleagues and community to ensure equitable mathematics teaching and learning in the classroom, and at the school, school district, charter school, and state levels.

The purpose of the proposed new rule **6.30.18 NMAC, Partial Credit for Adjudicated or Mobile Students,** is to establish the parameters for awarding partial credits to students identified as adjudicated or mobile and who experience classroom disruption.

Statutory Authorization(s): Sections 9-24-8, 22-2-1, 22-2-2, 22-10A-3, and 22-12A-14 NMSA 1978.

No technical information served as a basis for this proposed rule change.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to John Sena, Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 121, Santa Fe, New Mexico 87501, by electronic mail to rule.feedback@state.nm.us, or by fax to (505) 827-6520. All written comments must be received no later than 5 p.m. (MDT) on Monday, July 27, 2020. The PED encourages the early submission of written comments. The public comment period is from June 23, 2020 to July 27, 2020 at 5:00 p.m. (MDT).

The PED will review all feedback received during the public comment period and issue communication regarding a final decision at a later date.

Copies of the proposed rules may be accessed through the page titled, "Rule Notification," on the PED's website at http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/, or may be obtained from John Sena at (505) 570-7816 during regular business hours.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact John Sena at (505) 570-7816 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.

PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING
CASE NO. 19-00286-UT

The New Mexico Public Regulation Commission (the "commission") gives notice of its initiation of a proposed rulemaking to repeal and replace **Rule 17.11.10 NMAC, "State Rural Universal Service Fund."** The rule which may be adopted as the final rule in this proceeding may include all, part, or none of the language in the proposed rule issued by the commission. The commission may also consider alternative proposals for amending or replacing the current rule.

Concise statement of proposed rule: The commission is considering repealing and replacing 17.11.10 NMAC. The commission is

considering changes to many sections of the rule. In particular, the commission is considering changes suggested in workshops held in this matter, including changes to the broadband program provisions, provisions concerning qualifying for eligible telecommunications carrier status, provisions concerning need-based support, provisions concerning use of funds, provisions concerning reporting to the commission, provisions affected by recent changes at the FCC, and other changes to modernize or otherwise improve the state rural universal service fund.

Constitutional and statutory authority: New Mexico Constitution, Article XI, Sec. 2; Paragraph 10 of Subsection B of Section 8-8-4 NMSA 1978 (1998), Section 8-8-15 NMSA 1978 (1999, amended 2001), and Section 63-9H-6 NMSA 1978 (amended 2017).

A copy of the full text of the proposed rules may be obtained from the Rulemaking Proceedings section of the Commission's website at http://www.nmprc.state.nm.us under Case No. 19-00286-UT or by calling Isaac Sullivan-Leshin in the Office of General Counsel at (505) 670-4830.

Written initial comments and written response comments shall be filed by the deadlines below. Currently, due to the COVID-19 pandemic and orders of the governor pertaining thereto, the commission has adopted emergency electronic filing procedures, which may or may not be in place at the time that comments are filed in this docket. In the alternative, the commission may revert to the filing procedures in place before the emergency electronic filing procedures were instituted, in which case such filings shall be made with the commission's records bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery to the commission's records management bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501. For information as to how to file at the time of filing, please contact Melanie Sandoval, the commission's records bureau chief at melanie.sandoval@state.nm.us. Written initial comments shall be filed no later than **August 3, 2020** and written response comments shall be filed no later than **August 17, 2020**. Comments shall refer to Case No. 19-00286-UT. All written comments will be posted on the commission's website within three days of their receipt by the records bureau.

A public hearing will be held on **September 2, 2020, beginning at 2:00 p.m.** at the offices of the commission located in the 4th Floor Hearing Room at 1120 Paseo de Peralta, Santa Fe, NM 87501. If emergency conditions arising from the COVID-19 pandemic persist at that time, the commission will announce any alternative forum, such as a conference call, through which the hearing may be held. The purpose of the hearing is to give interested persons an opportunity to give oral comments. The commission may limit the time for each comment to five minutes. The record of this case will close on **September 2, 2020.**

Any person with a disability requiring special assistance in order to participate in the hearing should contact Bradford Borman at (505) 827-4048 at least 48 hours prior to the commencement of the hearing.

REGULATION AND LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES DIVISION

NOTICE OF PUBLIC RULE HEARING

The Construction Industries Commission will convene a public hearing on the following proposed changes to the administrative code to include the repeal of its rule 14.7.6 NMAC – 2009 NEW MEXICO ENERGY CONSERVATION CODE and replace it with 14.7.6 NMAC – 2018 NEW MEXICO RESIDENTIAL ENERGY CONSERVATION CODE and additionally add a new part as 14.7.9 NMAC – 2018 NEW MEXICO COMMERCIAL ENERGY CONSERVATION CODE. The hearing will be held before a hearing officer, at which time any interested person is invited to submit data, views or arguments on the proposed changes, either orally or in writing, and to examine witnesses testifying at the hearing. The original public hearing scheduled for July 13, 2020 is cancelled due to inadvertence in the notice of hearing failing to be published prompting the hearing to be reset for July 29, 2020.

The hearing is scheduled as follows: The hearing begins 9:30 a.m., July 29, 2020, at the New Mexico Regulation and Licensing Department (Toney Anaya Building – Rio Grande Conference Room (on the 2nd Floor), located at 2550 Cerrillos Rd., Santa Fe, NM 87504 and will remain open until 10:00 a.m. or until participants have an opportunity to make public comment, whichever is longer. Interested persons may secure copies of the proposed changes by accessing the Construction Industries Division website (www.rld.state.nm.us/construction) to download the proposed rules or by written request to the Santa Fe CID Office – Toney Anaya Building, 2550 Cerrillos Rd. Santa Fe, NM 87505, attention: Mary James.

In order to ensure that the rules hearing is open to the public in a manner allowing members of the public to participate while social distancing due to COVID-19, the division shall implement the following procedures: You may send written comments to: Construction Industries Division, P.O. Box 25101, Santa Fe, New Mexico 87504, Attention: Public Comments. Written comments may also be faxed to (505) 476-4685/ 505) 476-4702 or submitted to Mary James at her email address: mary.james2@state.nm.us. All written comments must be received no later than 9:30 a.m., on the day of the public hearing, Wednesday, July 29, 2020. You may also review submitted comments by contacting Mary James at her email address above.

On the day of the hearing a division representative shall be stationed at the each of the division offices: Toney Anaya Building, Santa Fe; 5500 San Antonio NE- Suite F Albuquerque and 505 S. Main St – Suite 103 Las Cruces commencing 8:00 a.m. through 9:30 a.m. to receive written comments and to provide for the comments to be admitted into the record during the public hearing. Those desiring to participate in the public video/telephonic hearing process may do so by remote participation through livestreaming the meeting or becoming a participant by following these instructions:

Join via Video:
https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e31ab358d6ef0f6f289075011347ea0a2

Once you join through the above link you will be provided instructions for accessing the meeting. Event password not required.
Join via telephone:
+1-415-655-0002
Access Code: 146 632 4326
No password required.

You may also access the division's website at http://www.rld.state.nm.us/construction the day of the hearing to locate instructions for participating in the hearing. All persons desiring to make public comment during the hearing shall do so through the webex process notifying the host who shall then ensure the ability for recorded comment. If you have any issues you may contact Kimberly Salazar at (575) 621-8351.

All public comments and documentation will be entered into the record during the public rules hearing. If you require special accommodations to attend the hearing, please notify CID by phone, email, or fax, of such needs as soon as possible to ensure adequate accommodations. Telephone: (505) 476-4616. Email: mary.james2@state.nm.us; Fax No. (505) 476-4702.

STATE ETHICS COMMISSION

NOTICE OF RULE MAKING AND PUBLIC RULE HEARING

Notice of Rulemaking: The State Ethics Commission [the commission] will hold a public hearing on the proposed adoption of certain rules, as detailed below in the description of Proposed Rules, establishing procedures for requests for advisory opinions and for commission responses; giving notice of and conducting meetings, including virtual meetings, of the commission; and creating a proposed model code of ethics for state officers and employees. These new rules are proposed pursuant to Sections 10-16-11 and 11.1, NMSA 1978; Subsection C of Section 10-15-1, NMSA 1978; Section 10-16G-8, NMSA 1978; and Paragraph 4 of Subsection B of Section 10-16G-5, NMSA 1978. No technical scientific information was consulted in drafting these proposed rules.

Copies of all the proposed rules may be found at the Commission's website, https://www.sec.state.nm.us, or at the commission's main office in Albuquerque: the New Mexico Ethics Commission, University of New Mexico Science and Technology Park, 800 Bradbury Drive SE, Suite 215, Albuquerque, NM, 87106. The proposed rules are also provided in this notice.

Notice of Public Rule Hearing: The public rule hearing is currently scheduled to occur on Friday, August 7, 2020 at 9:00 am in UNM's Science and Technology Park's Executive Board Room, 851 University SE, Suite 200, Albuquerque, NM 87106. It is possible that, pursuant to the Public Health Emergency declared by Governor Michelle Lujan Grisham in Executive Order 2020-004, as extended, and in light of the current pandemic, the Commission will decide to conduct this meeting remotely at that time and date rather than in person. In that case, instructions for public participation will be posted on the Commission's website, https://www.sec.state.nm.us. Members of the public are advised to check this website before the meeting to confirm whether it will be held in person or over the internet. The public hearing will be conducted in a fair and equitable manner by the commission and shall be recorded. Any interested member of the public may attend the hearing, in person or remotely, and will be provided a reasonable opportunity to offer public comment, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Sonny.Haquani@state.nm.us. The commission will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least five calendar days before the scheduled hearing.

Notice of Acceptance of Written Public Comment: Written public comments, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public will be accepted until 5:00 p.m. on Wednesday, August 5, 2020, by submitting them via email to ethics.commission@state.nm.us with the subject line "SEC Rulemaking R20-01," or via first class mail or by hand delivery to the commission's Albuquerque office: New Mexico Ethics Commission, University of New Mexico Science and Technology Park, 800 Bradbury Drive SE, Suite 215, Albuquerque, NM, 87106.

Description of Proposed Rules: In compliance with Section 14-4-5.2 NMSA 1978, this notice includes the following summary of the proposed amendment and the new proposed rule, a short explanation of the purpose of the amendment and new rule, and specific legal authority authorizing the amendment and proposed new rule. The method and manner of public comment and notice

of public hearing on the proposed rules are listed above.

1.8.1.1 NMAC ("General Provisions"); proposed amendments: This rule currently ensures that the state ethics commission is administered so that it works effectively, efficiently and fairly to achieve its constitutional and statutory mission. That mission is to ensure compliance with all applicable public ethics laws by all public officials, employees, candidates, contractors, lobbyists and others subject to the commission's jurisdiction throughout their employment or dealings with New Mexico state government; and to ensure that the public ethics laws are clear, comprehensive and effective.

The first amendments to this rule proposed in this proceeding, 1.8.1.9 and 1.8.1.10 NMAC, will add two new sections describing the procedure for people to request, and for the commission to issue, advisory opinions, either official or informal. The second amendment to this rule, 1.8.1.16 NMAC, creates rules for convening and managing meetings of the commission. These include rules governing executive sessions, virtual meetings, and maintaining order during meetings.

The proposed amendments to 1.8.1 NMAC are as follows: amendments to Sections 1, 3, and renumbered 14, adding new Sections 9, 10 and 16 and renumbering subsequent existing sections, effective xx/xx/2020.

1.8.1.1 ISSUING AGENCY: State ethics commission (the commission), 800 Bradbury Dr. SE, Ste. 21[~~7~~]5, Albuquerque, NM 87106.
[1.8.1.1 NMAC-N, 1/1/2020; A, xx/xx/2020]

1.8.1.3 STATUTORY AUTHORITY: Paragraph 2 of Subsection A of Section 10-16G-5, State Ethics Commission Act, Section 10-16G-1 NMSA 1978; Subsection (C) of Section 10-15-1, Open Meetings Act, Section 10-15-1 NMSA 1978.
[1.8.1.3 NMAC-N, 1/1/2020; A, xx/xx/2020]

1.8.1.9 ADVISORY OPINIONS:

A. The commission may issue advisory opinions on matters related to ethics. Advisory opinions shall:

(1) be requested in writing by a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist's employer;

(2) identify a specific set of circumstances involving an ethics issue;

(3) be issued within sixty days of receipt of the request unless the commission notifies the requester of a delay in issuance and continues to notify the requester every thirty days until the advisory opinion is issued; and

(4) be published after omitting the requester's name and identifying information.

B. A request for an advisory opinion shall be confidential and not subject to the provisions of the Inspection of Public Records Act.

C. Unless amended or revoked, an advisory opinion shall be binding on the commission in any subsequent commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion.
[1.8.1.9 NMAC-N, xx/xx/2020]

1.8.1.10 INFORMAL ADVISORY OPINIONS:

A. A person authorized to request an advisory opinion who desires a response in fewer than 60 days for the purpose of deliberation and decision making may submit the request for an informal advisory opinion to the director or general counsel, who may answer the request. An informal advisory opinion is specific to the person who requests the advice and the facts presented in the request. The commission shall treat as confidential the request and the informal advisory opinion issued in response.

B. Any informal advisory opinion issued pursuant to this rule is not binding on the commission unless and until the commission votes to adopt the informal advisory opinion as an advisory opinion. If the commission determines that a person committed a violation after reasonably relying on an informal advisory opinion and the violation is directly related to the informal advisory opinion, the commission may consider that the person acted in good faith.

C. Before each regular meeting of the commission, the director shall review any informal advisory opinions issued since the last meeting. The director, based on any informal advisory opinion issued, may draft an advisory opinion for the commission to consider for issuance as an advisory opinion.
[1.8.1.10 NMAC-N, xx/xx/2020]

1.8.1.[~~12~~] 14 ADDRESS FOR FILING DOCUMENTS:

A. By mail: Director, State Ethics Commission, 800 Bradbury Dr. SE, Ste. [~~217~~] 215, Albuquerque, NM 87106.

B. In person: State Ethics Commission, 800 Bradbury Dr. SE, Ste. [~~217~~] 215, Albuquerque, NM 87106.

C. By email: ethics.commission@state.nm.us.
[1.8.14 NMAC-N, 1/1/2020; Rn & A, xx/xx/2020]

1.8.1.16 COMMISSION MEETINGS: The commission chair, in consultation with the director, shall determine the time, place, and duration of commission meetings necessary to conduct the commission's business.

A. Executive Session. Upon motion and vote of a quorum, the commission may enter into a closed, executive session to discuss matters that are confidential under the State Ethics Commission Act,

Section 10-16G-1 NMSA 1978, and as otherwise permitted by the Open Meetings Act, Section 10-15-1 NMSA 1978.

B. Virtual meetings. With the consent of the commission chair, the commission may meet virtually via web or teleconference. In the event the commission meets virtually, commission staff shall ensure that the meeting occurs on a platform that allows members of the public to observe and participate. At a virtual or telephonic meeting, each commissioner participating must be identified when speaking and all meeting participants and members of the public attending must be able to hear every person who speaks during the meeting. The commission staff shall record virtual meetings and make the recordings (except for recordings of closed executive sessions) available for public inspection.

C. Virtual attendance by individual commissioners. An individual commissioner may attend a physical commission meeting virtually, through telephone phone or web conference, when it is difficult or impossible for the commissioner to attend the meeting in person, provided that each commissioner participating by conference telephone can be identified when speaking, and all meeting participants and members of the public attending can hear every person who speaks during the meeting.

D. Maintaining order. The commission chair may take reasonable steps to ensure the commission is able to fairly and efficiently conduct its business, including adopting parliamentary procedure, imposing reasonable limitations on public comment, and excluding members of the public who disrupt commission meetings.
[1.8.1.16 NMAC-N, xx/xx/2020]

1.8.4.1 NMAC ("Proposed Code of Ethics"): This new proposed rule will create proposed code of ethics for public officials and public employees, to be submitted to each elected public official and public agency for adoption, pursuant to Paragraph (4) of Subsection B of Section 10-16G-5 NMSA 1978. The proposed code of ethics will compile in a single rule the ethics provisions of state laws and rules governing the conduct of state officers and employees. Topics to be addressed in the proposed code include the definition of and restrictions on: conflicts of interest, acceptance of gifts, business relations with employees or regulated entities, procurement issues, limitations on former employees, public access to records and meetings of state bodies, allowable political activity and ethical conduct in the workplace, among other subjects.

The proposed 1.8.4 NMAC is as follows:

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 8 STATE ETHICS COMMISSION
PART 4 CODE OF ETHICS

1.8.4.1 ISSUING AGENCY: State Ethics Commission, 800 Bradbury Dr. SE, Ste. 215, Albuquerque, New Mexico 87106.
[1.8.4.1 NMAC-N, xx/xx/2020]

1.8.4.2 SCOPE: This part contains a proposed code of ethics for officers and employees of executive and legislative state agencies and other institutions and instrumentalities of the state. Elected statewide executive branch officers and other state agencies must consider this proposed code when adopting either a code of conduct under Subsection C of Section 11 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978, or a code of ethics under Paragraph 4 of Subsection B of Section 5 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978, for employees subject to the adopting agencies' control. If adopted, this code will apply to all officers and employees of the adopting agency, as well as other persons working for the agency, such as contractors.
[1.8.4.2 NMAC-N, xx/xx/2020]

1.8.4.3 STATUTORY AUTHORITY: Sections 11 and 11.1 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978; and Paragraph 4 of Subsection B of Section 5 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978.
[1.8.4.3 NMAC-N, xx/xx/2020]

1.8.4.4 DURATION: Permanent.
[1.8.4.4 NMAC-N, xx/xx/2020]

1.8.4.5 EFFECTIVE DATE: January 1, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[1.8.4.5 NMAC-N, xx/xx/2020]

1.8.4.6 OBJECTIVE: The objective of this part is to provide the executive and legislative branch agencies of state government and other institutions and instrumentalities of the state with a proposed code of ethics to consider when agencies adopt either a code of ethics under Paragraph 4 of Subsection B of Section 5 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978, or a code of conduct under Sections 11 and 11.1 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978. If adopted, this Code will furnish standards of conduct for the adopting agency's officer's and employees, the violation of which could form the basis for discipline by the adopting agency.
[1.8.4.6 NMAC-N, xx/xx/2020]

1.8.4.7 DEFINITIONS: The following terms apply to this part unless their context clearly indicates otherwise:

A. "Agency" or "this Agency" means the agency that has adopted this proposed code of ethics.

B. "Business" means an entity other than this agency.

C. "Code" means this proposed code of ethics.

D. "Commission" means the State Ethics Commission.

E. "Financial interest" means an ownership interest in a business or property; or employment or prospective employment for which negotiations have already begun.

F. "Gift" has the same meaning as defined by Subsection B of Section 2 of the Gift Act, Section 10-16B-1 NMSA 1978, namely, any donation or transfer without commensurate consideration of money, property, service, loan, promise or any other thing of value, including food, lodging, transportation and tickets for entertainment or sporting events, but does not include:

(1) any activity, including but not limited to the acceptance of a donation, transfer or contribution, or the making of an expenditure or reimbursement, that is authorized by the Campaign Reporting Act or the Federal Election Campaign Act of 1971, as amended;

(2) a gift given under circumstances that make it clear that the gift is motivated by a family relationship or close personal relationship rather than the recipient's position as a state officer or employee or candidate for state office;

(3) compensation for services rendered or capital invested that is:

(a) normal and reasonable in amount;

(b) commensurate with the value of the service rendered or the magnitude of the risk taken on the investment;

(c) in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office; and

(d) not otherwise prohibited by law;

(4) payment for a sale or lease of tangible or intangible property that is commensurate with the value of the services rendered and is in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office;

(5) a commercially reasonable loan made in the ordinary course of the lender's business on terms that are available to all similarly qualified borrowers;

(6) reimbursement for out-of-pocket expenses actually incurred in the course of performing a service for the person making the reimbursement;

(7) any gift accepted on behalf of and to be used by the state or a political subdivision of the state, including travel, subsistence and related expenses accepted by a state agency in connection with a state officer's or employee's official duties that take place away from the state official's or employee's station of duty;

(8) anything for which fair market value is paid or reimbursed by the state officer or employee or candidate for state office;

(9) reasonable expenses for a bona fide educational program that is directly related to the state officer's or employee's official duties; or

(10) a retirement gift.

G. "Indirectly" means in a roundabout manner; coming about or resulting otherwise than directly or immediately, as effects or consequences.

H. "Market value" means the amount for which a good or service can be sold on the relevant market.

I. "Official act" means any act or omission to act that would not be possible but for the actor's official position or state employment.

J. "Public officer or employee" means any elected or appointed official or employee of a state agency who receives compensation in the form of salary or is eligible for per diem or mileage, but excludes legislators.

K. "Restricted donor" has the same meaning as defined by Subsection D of Section 2 of the Gift Act, Section 10-16B-1 NMSA 1978, namely, a person who:

(1) is or is seeking to be a party to any one or any combination of sales, purchases, leases or contracts to, from or with the agency in which the donee holds office or is employed;

(2) will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry or region;

(3) is personally, or is the agent of a person who is, the subject of or party to a matter that is pending before a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency; or

(4) is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction.

L. "Shall" means must, and "must" means shall.

M. Any other terms shall be defined for purposes of this rule as they are defined in Section 2 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978.

[1.8.4.7 NMAC-N, xx/xx/2020]

1.8.4.8 STRUCTURE OF THIS CODE AND CORRESPONDING COMMENTARY:

A. This Code is organized by subject area rather than by the statutes that concern the various subject matters of this code.

B. The Commission publishes and updates extensive commentary and examples corresponding to this Code on the Commission's website. An official or employee of this agency dealing with an ethical issue should identify and consult the relevant sections of this Code. If this Code does not resolve the issue, further guidance might be found in the Commission's separately

published commentary.
[1.8.4.8 NMAC-N, xx/xx/2020]

1.8.4.9 PRINCIPLES OF PUBLIC ETHICS: This Code is based on, and should be interpreted to advance, the following principles of public ethics:

A. Honest services. An officer or employee shall conduct government functions in accordance with the law and free from conflicts of interest. Public office is a public trust; as such, an official or employee must take care to ensure that every official act and decision affecting the rights or interests of individuals is based in law and the public interest.

B. Proportionality. When committing an official act or making a decision, an officer or employee shall ensure that the action taken is proportional to the goal being pursued. The officer or employee shall avoid restricting the rights of New Mexicans or imposing burdens on them when those restrictions or burdens are not justified by a public interest.

C. Impartiality and fairness. The conduct of an officer or employee shall never be guided by:

(1) personal, family or financial interests;

(2) a motivation to benefit or empower an elected official, a candidate for office, or a political party or its members; or

(3) a motivation to disadvantage or disempower an elected official, a candidate for office, or a political party or its members.

D. Consistency. Like cases shall be treated alike. An officer or employee shall behave consistently with the agency's normal practices, unless there is a legitimate basis for departing from those practices in an individual case and that basis is documented in writing. An officer or employee shall respect the reasonable expectations of the public that the agency will continue to act as it has acted in similar circumstances unless there is a rational basis for the change.

E. Diligence. An officer or employee shall ensure that every decision on a matter is made with care and adequate understanding of the issue, within a reasonable time, and without unnecessary delay.

F. Respect. An officer or employee shall be courteous and accessible to members of the public, co-workers, and their colleagues.

G. Transparency. The official acts and decisions of officers and employees shall be made openly and with adequate opportunity for public review and comment.

H. Fallibility and reversibility. Individuals not only err in judgment but also act in ways that unconsciously benefit some and burden others; accordingly, an officer or employee shall endeavor to take official acts and make decisions in ways that are deliberative, open to review and, where appropriate, reversible.
[1.8.4.9 NMAC-N, xx/xx/2020]

1.8.4.10 HONEST SERVICES; AVOIDING CONFLICTS OF INTEREST

A. Outside employment.

(1) Duty to avoid conflicts from outside employment. An officer or employee of this agency engaged in paid employment for a business shall ensure that the employment does not conflict with the duties of state employment.

(2) Disclosure of outside employment. An officer or employee having permissible outside employment shall:

(a) file with the employee's supervisor, or other officer or employee that this agency designates, a signed statement explaining the outside employment and why it does not create a conflict;

(b) the disclosure statement shall include the name of the officer or employee, the name and general nature of the business, the hours that the officer or employee will work, and the reasons why the work does not create a conflict of interest with the officer's or employee's public duties;

(c) in the disclosure statement, the officer or employee shall additionally commit to disclose any potential conflict of interest that may arise during the officer or employee's work with the business.

B. Disclosure of potential conflicts of interest and disqualification.

(1) Disclosure of financial interests.

(a) Mandatory financial disclosure by officers and agency heads. An officer or head of this agency must disclose financial interests to the Secretary of State on the form provided by the Secretary of State.

(b) Disclosure of financial interests: contents; when filed. The disclosure required by 1.8.4.10.B(1)(a) NMAC shall be filed within thirty days of taking office and each January thereafter and shall disclose the following financial interests of the filing individual and the filing individual's spouse, for the prior calendar year:

(i) current employer and the nature of the business or occupation;

(ii) all sources of gross income over $5,000, identified by category;

(iii) real estate owned in the state other than the personal residence;

(iv) other business interests of $10,000 or greater value;

(v) memberships on for-profit boards;

(vi) New Mexico professional licenses held;

(vii) sales to state agencies exceeding $5,000 for the prior year; and

(viii) state agencies before which clients were represented or assisted during the prior year.

(c) Officers and employees required to disclose potentially conflicting financial interests; when filed. An

officer or employee of this agency must file a disclosure of financial interests when the officer or employee believes, or has reason to believe, that their financial interest may be affected by their official acts or actions of the state agency that employs them. The disclosure must be filed before entering state employment or within ten days of the date when the officer or employee knows, or should know, that a potential conflict has arisen and thereafter each subsequent January, so long as the conflict or potential conflict continues to exist.

(d) Financial disclosure statements are public records. All disclosures required under this subsection are public records.

(2) Disqualification from acts affecting financial interests.

(a) An officer or employee of this agency may not take official acts for the purpose of enhancing their financial interests. An officer or employee must be disqualified from any matters that could directly enhance or diminish the officer's or employee's financial interest. If disqualified, then the officer or employee shall refrain from acting on a matter involving the disqualifying financial interest.

(b) An officer or employee of this agency is not disqualified from taking an official action under 1.8.4.10(B)(2)(a) NMAC if the benefit of the official act to the officer's or employee's financial interest is proportionately equal to or less than the benefit to the general public.

C. Business with regulated entities.

(1) Sales to regulated persons. An officer or employee of this agency may not directly or indirectly sell goods or services to, or profit from a transaction with, a business or individual over whom this agency has regulatory authority.

(2) No acceptance of job or contract offers from regulated entities. An officer or employee of this agency may not accept an offer of employment from, or a contract to provide goods or services to any entity that this agency regulates. An officer or employee shall disqualify themselves from any official act or decision involving a business in which an immediate family member is employed or in which the officer or employee seeks employment.

(3) Ordinary transactions at market rates allowed. Nothing in this rule prevents an officer or employee from purchasing or contracting for services or goods from a regulated entity on the same bases that are available to other members of the public.

D. Accepting or Giving Gifts.

(1) Gifts from restricted donors. An officer or employee of this agency may not, directly or indirectly, solicit a gift from, and shall decline any gift offered by, a restricted donor or by any person who gives a gift because of the donee's status as an officer or employee of this agency.

(2) Gifts and business from subordinates. An officer or employee of this agency may not, directly or indirectly:

(a) accept a gift from an employee having a lower rank or receiving less pay, unless the donor and donee are not in a subordinate-superior relationship and there is a personal relationship between the donor and recipient that would justify the gift.

(b) solicit business from a supervised employee where the business redounds to the financial interest of the officer or employee or an immediate family member.

(3) Soliciting gifts for charities. An officer or employee of this agency may not solicit or require a charitable donation from any business, or an agent of any business, regulated by or contracting with this agency; nor from any employees that the officer or employee supervises.

(4) Declining permissible gifts. An officer or employee of this agency shall consider declining an otherwise permissible gift, if they believe that a reasonable person with knowledge of the relevant facts would question the officer or employee's integrity or impartiality as a result of accepting the gift. Among other relevant factors, the officer or employee shall take into account whether:

(a) the gift has a high market value;

(b) the timing of the gift creates the appearance that the donor is seeking to influence an official action;

(c) the gift offered by a person or business entity who has interests may substantially affect the performance or nonperformance of the officer or employee's duties; and

(d) acceptance of the gift would provide the donor with significantly disproportionate access.

(5) Disclosure of offers of gifts from restricted donors. If a restricted donor offers a gift of any value to an officer or employee of this agency, or if an officer or employee of this agency unintentionally receives a gift from a restricted donor, the officer or employee shall report to their supervisor: the date the offer or gift was made or received, the name of the donor and the donor's relationship to the agency, the nature and value of the gift, and whether the officer or employee accepted or refused the gift.

(6) Certain donations of private funds prohibited. No officer or employee of this agency may give:

(a) a gift from their own funds to any person with whom their agency is doing business, or considering doing business, under circumstances which may appear to favor the recipient over other similarly situated persons; or

(b) a gift to any other state officer or employee when the gift may be, or may appear to be, intended to influence any official decision by the recipient.

(7) Certain donations of public funds prohibited. No officer or employee of this agency may give to any person any gift from public funds, unless the gift:

(a) is a service appreciation award of de minimis value; or

(b) does not violate the Anti-Donation Clause, N.M. Const., Article IX, Section 14.

E. Honoraria; no solicitation or acceptance of honoraria permitted for speaking or writing.

(1) An officer or employee of this agency may not request or receive honoraria for a speech or service that relates to the performance of public duties; provided that an officer or employee of this agency may accept reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service.

(2) An officer or employee of this agency may accept payment for services rendered in the normal course of a private business pursuit.

F. Timekeeping, reimbursement, and use of state property.

(1) An officer or employee of this agency must work during the hours required and report time accurately.

(2) An officer or employee of this agency shall not claim reimbursement in excess of what is necessary and incidental to an official duty or action.

(3) An officer or employee of this agency shall limit personal use of state office supplies and assigned equipment, such as computers and telephones, and otherwise shall not use state property or expend state funds for private purposes.

G. Procurement.

(1) Fair and equitable treatment of persons involved in public procurement. An officer or employee of this agency shall treat persons involved in public procurement fairly and equitably.

(2) Maximizing the value of public funds. An officer or employee of this agency involved in procurement shall endeavor to maximize the purchasing value of public funds.

(3) Conflicts of interest prohibited; Intra-agency waiver.

(a) An officer or employee of this agency shall not participate directly or indirectly in a procurement when the officer or employee, or their immediate family member, has a financial interest in a business participating in the procurement.

(b) An officer or employee of this agency who is participating directly or indirectly in procuring goods or services for this agency shall not be concurrently employed by any person or business contracting with this agency.

(c) A conflict of interest under subparagraphs (a) or (b) this Paragraph may be waived by this agency, if the contemporaneous employment or financial interest has been publicly disclosed, the officer or employee is able to perform procurement functions without actual or apparent bias or favoritism, and the officer or employee's participation is in the best interests of this agency.

(4) Due diligence by agency.

(a) Participation by person submitting bid or proposal. An officer or employee of this agency, having responsibilities for evaluating or overseeing a bid or proposal shall exercise due diligence in ensuring that any person or parties submitting bids or proposals do not participate or contribute any knowledge, guidance or explanation in the preparation or receive any advance notice of specifications, qualifications or evaluation criteria on which the specific bid or proposal will be based.

(b) Campaign contribution disclosure and prohibition. An officer or employee of this agency who participates, directly or indirectly, in procuring goods or services for this agency shall exercise due diligence to ensure that the prospective contractor:

(i) does not give a campaign contribution or other thing of value to a person elected to an office or a person appointed to complete a term of elected office who has the authority to award or influence the award of a contract into which the prospective contractor seeks to enter; and

(ii) disclose all campaign contributions, where such contributions in the aggregate exceed over $250 in the two years before the beginning of the procurement process, given by the prospective contractor or a family member or representative of the prospective contractor to a person elected to an office or a person appointed to complete a term of elected office who has the authority to award or influence the award of a contract into which the prospective contractor seeks to enter.

H. Former officers and employees.

(1) Contracting. This agency may not contract with or take any other favorable action toward a person or business that is:

(a) represented by a person who was an officer or employee of this agency within the preceding year, if the contract or action has a value of $1,000 or more and is the direct result of the officer or employee's official act; or

(b) assisted by a former officer or employee of this agency whose official act while in state employment directly resulted in the contract or action. This subparagraph applies regardless of the value of the contract or action, or the length of time since the officer or employee left the agency.

(2) Restrictions on former officers or employees representing a person in the person's dealings with this agency.

(a) A former officer or employee of this agency is prohibited from representing anyone in dealings with this agency on any matter in which the officer or employee participated personally and substantially during their employment with this agency.

(b) A former officer or employee of this agency may not, for one year after the termination of their employment with this agency, represent for pay a person on any matter before this agency, regardless of whether they were involved in that matter personally.
[1.8.4.10 NMAC-N, xx/xx/2020]

1.8.4.11 OPEN GOVERNMENT AND FREEDOM OF INFORMATION:

A. An officer or employee of this agency should welcome and encourage the public to attend and participate in public meetings.

B. An officer or employee of this agency must permit members of the public to inspect this agency's records, unless the records are confidential under the law.
[1.8.4.11 NMAC-N, xx/xx/2020]

1.8.4.12 POLITICAL ACTIVITY:

A. An officer or employee of this agency may not use their official position to pressure others to participate in political activities.

B. An officer or employee of this agency may not use their official position to influence an election or nomination, or otherwise engage in any partisan political activity while on duty.

C. An officer or employee of this agency may not serve as an officer of a political organization.

D. An officer or employee of this agency may not use or allow others to use state money or property to promote a political campaign, candidate for elected office, political party, or other partisan political organization.

E. An officer or employee of this agency who becomes a candidate in a partisan election must take a leave of absence upon filing for or accepting the candidacy.

F. An officer or employee of this agency may participate in political activities while off duty, including:

(1) donating to political candidates;

(2) volunteering or working for a political campaign or political organization, so long as the officer's or employee's work does not violate any applicable conflict-of-interest provision of this rule or statute; and

(3) holding non-partisan political office, such as non-partisan county or municipal office or a seat on a local school board.
[1.8.4.12 NMAC-N, xx/xx/2020]

1.8.4.13 ETHICAL CONDUCT IN THE WORKPLACE:

A. An officer or employee of this agency with supervisory responsibility shall:

(1) manage the hiring of new employees fairly and equitably;

(2) diligently investigate allegations of misconduct;

(3) refrain from unsolicited private business dealings with supervised employees, either directly or indirectly; and

(4) ensure all visitors and staff can access this agency's services.

B. An officer or employee of this agency shall:

(1) treat colleagues with respect;

(2) learn about what behavior constitutes harassment, and make efforts to remove it from the workplace;

(3) report violations of this code of ethics or other laws to responsible authorities within this agency or to the Commission; and

(4) learn how to recognize, report and prevent substance abuse among this agency's personnel.
[1.8.4.13 NMAC-N, xx/xx/2020]

History of 1.8.4 NMAC: [RESERVED]

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance (Superintendent), pursuant to the New Mexico Insurance Code, Sections 59A-l -1 et seq. NMSA 1978 ("Insurance Code") and 13.1.4 NMAC**,** proposes to adopt amendments to rule 13.10.10 MEDICAL INSURANCE POOL PLAN OF OPERATION

PURPOSE OF THE PROPOSED AMENDEMNTS is to modify the Plan of Operation of the New Mexico Medical Insurance Pool.

STATUTORY AUTHORITY: Sections 59A-54-17 and 59A-54-5, NMSA 1978.

Copies of the Notice of Proposed Rulemaking and proposed rules are available by electronic download from the OSI website (https://www.osi.state.nm.us/index.php/idms/) or the New Mexico Sunshine portal.

OSI will hold a public video/ telephonic hearing on the proposed rules on July 24, 2020 at 10:00 a.m.

Join via Video:

https://us02web.zoom.us/j/2916274744

Join via telephone:

1-346-248-7799
Meeting ID: 291 627 4744

The Superintendent designates Bryan E. Brock to act as the hearing officer for this rulemaking. Oral comments

will be accepted at the video/ telephonic hearing from members of the public and any interested parties.

Written comments and proposals will be accepted through 4:00 pm on the day of the public hearing, or the last day of the public hearing if the public hearing extends for more than one day. Responses to written comments or oral comments will be accepted through 4:00 pm on August 3, 2020. Comments may be submitted via email to OSI-docketfiling@state.nm.us or may be filed by sending original copies to:

OSI Records and Docketing, NM Office of Superintendent of Insurance 1120 Paseo de Peralta, P.O. Box 1689, Santa Fe, NM 87504-1689

Docket No.: 20-00036-RULE-LH
IN THE MATTER OF ADOPTING AMENDMENTS TO RULE 13.10.10 NMAC MEDICAL INSURANCE POOL PLAN OF OPERATION

Only signed statements, proposals or comments will be accepted. Scanned or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be provided to verify the electronic or facsimile signature. All filings must be received between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. Any filings after 4:00 will be filed to the docket the next business day.

SPECIAL NEEDS: Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other auxiliary aid or service to attend or participate in the hearing should contact Melissa Gutierrez at 505-476-0333 ten (10) business days prior to the hearing.

The Superintendent will consider all oral comments, and will review all timely submitted written comments and responses.

DONE AND ORDERED this 23rd day of June 2020
/S/RUSSELL TOAL

TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Taxation and Revenue Department proposes to amend/repeal/replace the following rules:

Motor Vehicle Code, Section 66-5-54 NMSA 1978
18.19.5.7 NMAC - Definitions:

Motor Vehicle Code, Section 66-5-9 NMSA 1978
18.19.5.12 NMAC - Proof of identification number, identity and age for United States citizen, United States national or permanent resident alien.
18.19.5.14 NMAC - Proof of identification number, identity, age, and lawful status for lawful United States residents.
18.19.5.15 NMAC - Proof of identity, and age for a driving authorization card or identification card that is not acceptable for federal purposes.

The New Mexico Taxation and Revenue Department proposes to repeal the following rule:

Motor Vehicle Code, Section 66-5-9 NMSA 1978
18.19.5.16 NMAC - Proof of New Mexico residency.

Motor Vehicle Code, Section 66-5-15.2 NMSA 1978
18.19.5.17 NMAC - Fingerprints and Criminal History Screening.

Summary of Proposed Changes:
The proposed rules are being amended or repealed to reflect the 2019 legislative session changes to Section 66-5-9 NMSA 1978, Section 66-5-15.2 NMSA 1978 and Section 66-5-54 NMSA 1978.

The proposals were placed on file in the Office of the Secretary on June 8, 2020. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about August 25, 2020.

A public hearing will be held on the proposals on Thursday, July 23, 2020, at 10:00 a.m. through the internet, email, and telephonic means in response to concerns surrounding COVID-19 and in accord with Executive Order 2020-004, Declaration of a Public Health Emergency, and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19.

The Public Hearing will be accessible via WebEx by going to https://nm-tax.webex.com/nm-tax/j.php?MTID=m2a6b2b02e9a3b85d68b3ceeb1fa85f63 or by telephone by dialing 1-415-655-0002 and using the meeting number (access code) 133 393 3794. Any oral comments made during this hearing will be recorded and any electronic written comments can be submitted during the hearing at policy.office@state.nm.us. At the time of the hearing an employee will be available at the 3rd floor in the Montoya Building, 1100 South St. Francis Drive, Santa Fe, New Mexico 87504.

Accessible copies of the proposals are at www.tax.newmexico.gov/proposed-regulations-hearing-notices.aspx or are available upon request; contact the Tax Policy Office at policy.office@state.nm.us.

Written comments on the proposals can by email to policy.office@state.nm.us or by mail to the Taxation and Revenue Department, Tax Information and Policy Office, Post Office Box 630, Santa Fe, New Mexico 87504-0630 or on or before July 23, 2020. All written comments received by the agency will be posted on www.tax.newmexico.gov no more than 3 business days following receipt to allow for public review.

Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Bobbie Marquez at BobbieJ.Marquez@state.nm.us. The Taxation and Revenue Department will make every effort to accommodate all reasonable requests but cannot guarantee accommodation of a request that is not received at least ten calendar days prior to the scheduled hearing.

18.19.5.7 DEFINITIONS:

A. As used in regulations under the provisions of the New Mexico Commercial Driver's License Act:

(1) "commercial driver's license" means a license issued by a state or other jurisdiction which authorizes the holder to operate a commercial motor vehicle;

(2) "commercial motor vehicle" means a motor vehicle of a type used in commerce:

(a) if the vehicle has a gross vehicle weight rating of 26,001 or more pounds;

(b) if the vehicle is designed to transport sixteen or more passengers, including the driver; or

(c) if the vehicle is transporting hazardous materials and is required to be placarded pursuant to applicable law;

(3) "combination vehicle" means a power or tractor unit with one or more semi-trailers, trailers or semi-trailers converted to trailers by means of a converter gear;

(4) "disqualified" means a driver who has had the qualification to drive a commercial motor vehicle removed and whose New Mexico commercial driver's license is canceled; for purposes of this definition and Section 66-5-68 NMSA 1978, "canceled" shall mean that the commercial driver's license is in "revocation" as that term is defined in Subsection B of Section 66-5-1 NMSA 1978, and the driver is not eligible to apply for a commercial driver's license until the period of time for which the driver was disqualified has elapsed; and

(5) "resident means a person who intends to reside in New Mexico evidenced by registration to vote or other action acceptable to the motor vehicle division.

B. As used in Subsection C of Section 66-5-6 NMSA 1978, "healing arts practitioner" means a person licensed to practice in this state medicine, osteopathic medicine, oriental medicine, chiropractic, or similar medical services for human beings. The term also includes a person licensed to practice in this state as a certified nurse practitioner, clinical nurse specialist, physician assistant or osteopathic physician assistant.

C. As used in regulations under the provisions of the New Mexico Motor Vehicle Code:

(1) "driver's license" means any license, permit or driving authorization card issued by a state or other jurisdiction recognized under the laws of New Mexico pertaining to the authorizing of persons to operate motor vehicles and including a REAL ID-compliant driver's license and a standard driver's license;

(2) "identification card" means a document issued by the department or the motor vehicle administration of a state or other jurisdiction recognized under the laws of New Mexico that identifies the holder and including a REAL ID-compliant identification card and a standard identification card;

(3) "license" without modification means any license, permit or driving authorization card issued by a state or other jurisdiction under the laws of New Mexico pertaining to authorizing of persons to operate motor vehicles including a REAL ID-compliant driver's license and a standard driver's license;

(4) "REAL ID-compliant driver's license" means a license or a class of license issued by a state or other jurisdiction pertaining to the authorizing of persons to operate motor vehicles and that meets federal requirements to be accepted by federal agencies for official federal purposes;

(5) "REAL ID-compliant identification card" means an identification card that meets federal requirements to be accepted by federal agencies for official federal purposes;

(6) "sex" male, female or gender x;

(7) "standard driver's license" means a license or a class of license issued by a state or other jurisdiction recognized by the law of New Mexico that authorizes the holder to operate motor vehicles and is not guaranteed to be accepted for official federal purposes;

(8) "standard identification card" means an identification card that is not guaranteed to be accepted for official federal purposes.

[2/28/1990, 8/20/1993, 10/31/1996; 18.19.5.7 NMAC - Rn & A, 18 NMAC 19.5.7, 9/14/2000; A, 10/31/2007, A, xx/xx/xxxx]

18.19.5.12 [~~PROOF OF IDENTIFICATION NUMBER, IDENTITY, AND AGE FOR UNITED STATES CITIZEN, UNITED STATES NATIONAL OR PERMANENT RESIDENT ALIEN~~] REAL ID-COMPLIANT DRIVER'S LICENSES AND IDENTIFICATION CARDS FOR UNITED STATES CITIZENS, UNITED STATES NATIONALS OR PERMANENT RESIDENT ALIENS:

A. A United States citizen, United States national or permanent resident alien applying for a REAL ID [~~Act of 2005~~] compliant New Mexico driver's license or identification card, [~~driving permit, provisional driver's license, or driver's license~~], other than a commercial driver's license, must provide documentary proof of their identification number, identity, age, indication of sex, lawful status and New Mexico residency.

B. Proof of identity and age: To establish identity and age [~~and lawful status~~] the applicant must present at least one of the following documents:

(1) a valid, unexpired United States passport;

(2) a valid, unexpired United States passport card;

(3) a valid foreign passport with I-551stamp;

(4) an original or a certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's place (state) of birth;

(5) a consular report of birth abroad (CRBA) issued by the U.S. department of state, form FS-240, DS-1350 or FS-545;

(6) a valid, unexpired permanent resident card (form I-551) issued by the U.S. department of homeland security (DHS) or immigration and naturalization service (INS);

(7) a certificate of naturalization issued by DHS, form N-550 or form N-570;

(8) a certificate of citizenship, form N-560 or form N-561, issued by DHS;

(9) [~~other documents as DHS may designate by notice published in the federal register; or~~] a valid unexpired employment authorization document (EAD) issued by DHS, form I-766 or form I-688B, verified through the systematic alien verification for entitlement system (SAVE);

(10) [~~other documents as allowed by an approved DHS exception process.~~] a foreign passport with unexpired U.S. visa affixed, accompanied by the approved I-94 form documenting the applicant's most recent admittance into the U.S., verified by SAVE;

(11) REAL ID driver's license or ID card combined proof of legal presence if legal presence is temporary; or

(12) other documents as allowed by an approved DHS exception process.

C. Proof of Identification number; Along with the proof of identity and age document listed above, an applicant must also present [~~his or her social security administration (SSA) account number card. If a SSA account card is not available, the person shall present~~] one the following documents, provided that the document bears the applicant's social security number:

(1) a social security number (SSN) card;

[~~**(1)**~~] **(2)** a W-2 form;

[~~**(2)**~~] **(3)** a social security administration (SSA)-1099 form;

[~~**(3)**~~] **(4)** a non-SSA-1099 form; or

[~~**(4)**~~] **(5)** a pay stub with the applicant's name and social security number on it.

D. Proof of New Mexico residency: The applicant must present at least two of the following documents that include the individual's name and principal residence:

(1) a current real property rental agreement or a purchase agreement;

(2) a utility bill dates within 60 days of the application and that is not a cellular phone bill;

(3) an insurance bill, card or binder dated within the past six months of the application;

(4) a bank or credit card statement dated within 60 days of the application;

(5) an employment pay stub containing applicant's name and address, dated within 60 days of the application;

(6) a local property tax statement from the county assessor's office of the county where the property is located;

(7) documentation from an educational institution such as a transcript, report card or enrollment confirmation, dated within 60 days of the application;

(8) original documentation from a city, county, state, tribal or federal government organization or community organization attesting to the applicant's New Mexico residency;

(9) a New Mexico medical or public assistance card with address on card, letter from issuing agency that came with the card, showing name and address, or profile print-out from issuing agency;

(10) documents indicating membership in a New Mexico religious organization provided applicant is less than 18 years of age;

(11) documents indicating membership in a New Mexico sports organization provided applicant is less than 18 years of age;

(12) if the applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico identification card, or two proofs of residency of the parent/guardian; or

(13) a document evidencing eligibility and proof that the applicant is currently receiving services from a non-profit organization qualified pursuant to Section 501 (c)(3) of the Federal Internal Revenue Code of 1986 provided the document displays the applicant's address.

E. Indication of Sex: an applicant must indicate their sex as either male, female or gender x.

F. Proof of lawful status: An applicant must present one of the documents listed in Paragraph (1) a valid unexpired US passport, Paragraph (2) a valid unexpired US passport card, Paragraph (4) an original or a certified copy of birth certificate filed with a state office of vital statistics or equivalent agency in the individual's place (state) of birth, Paragraph (5) a consular report of birth abroad, Paragraph (6) a valid unexpired permanent resident card, or Paragraph (7) a certificate of naturalization of Subsection (B) of 18.19.5.12 NMAC.

G. Exceptions process: A process for persons who,

for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity or age. Alternative documents to demonstrate lawful status will only be allowed to demonstrate U.S. citizenship. Circumstances deemed "beyond the person's control" include but are not limited to: an event occurred prior to the year official documents are available from the state or territory; natural disaster circumstances; customer provides proof from the issuing agency that documents were destroyed; or non-issuance of official records.

(1) Defined Exception Process #1: Certified letter of enrollment or of Indian blood & affidavit of birth. If the applicant is a member of a federally- recognized Indian nation, tribe or pueblo and does not have a birth certificate because they were not born in a hospital, the motor vehicle division will accept their certified letter of enrollment **or** valid identification card issued by a federally recognized Indian nation, tribe or pueblo and the applicant's birth registration notification issued by the U.S. census office for the applicant's federally-recognized Indian nation, tribe or pueblo so long as the letter contains the applicant's name and date of birth and the applicant provides a letter from the New Mexico department of health, bureau of vital statistics rejecting the applicant's request for a delayed birth registration. The combination of these documents provides proof of U.S. citizenship and identity.

(2) Defined Exception Process #2: Certified letter of enrollment or valid identification card issued by a federally recognized Indian Nation, tribe or pueblo as proof of age. If the applicant is a member of a federally- recognized Indian nation, tribe or pueblo and does not have a birth certificate to demonstrate proof of age, the applicant may use a certified letter of enrollment or valid photo-identification card issued by a federally- recognized Indian nation, tribe or pueblo as documentary proof of the applicant's age so long as the letter contains the applicant's name and date of birth and the applicant provides a letter from the New Mexico department of health, bureau of vital statistics rejecting the applicant's request for a delayed birth registration.

(3) Defined Exception Process #3: Baptismal certificate as proof of age. If the applicant was born before December 31, 1941, the applicant may use an original baptismal record or certified copy of a baptismal record as documentary proof of the applicant's age so long as the baptismal record contains the applicant's name and date of birth or date of baptism and the applicant provides a letter from the New Mexico department of health, bureau of vital records and health statistics rejecting the applicant's request for a delayed birth registration.

(4) Defined Exception Process #4: Military records as proof of age. If the applicant was born before December 31, 1941, the applicant may use a certified copy of military records as documentary proof of the applicant's age so long as the record contains the applicant's name and date of birth and the applicant provides a letter from the New Mexico department of health, bureau of vital records and health statistics rejecting the applicant's request for a delayed birth registration.

[18.19.5.12 NMAC - N, 6/29/2001; A, 6/14/2002; A, 6/30/2003; A, 10/1/2007; A, 7/31/2009; A, 11/15/2016; A, xx/xx/xxxx]

18.19.5.14 [~~PROOF OF IDENTIFICATION NUMBER, IDENTITY, AGE, AND LAWFUL STATUS~~] REAL ID-COMPLIANT DRIVER'S LICENSE AND IDENTIFICATION CARDS FOR LAWFUL UNITED STATES RESIDENTS:

A. A person who is legally in the United States but not a United States citizen, United States national or permanent resident alien may apply for a REAL ID [~~Act of 2005~~] compliant New Mexico driver's license, or identification card [~~driving permit, provisional driver's license, or driver's license~~], other than a commercial driver's license, and must provide documentary proof of their identification number, identity, age, indication of sex, lawful status and New Mexico residency.

B. Proof of identity and age: To establish identity and age, the applicant must present one of the following documents:

(1) an unexpired employment authorization document issued by U.S. department of homeland security (DHS), form I-766 or form I-688B, verified by the systematic alien verification for entitlements system (SAVE);

(2) an unexpired foreign passport with a valid, unexpired U.S. visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States, verified by SAVE. This document can be used to satisfy both the identity and age requirement, and proof of identification number requirement for a REAL ID compliant credential.

(3) REAL ID [~~Act of 2005~~] driver's license or identification card issued in compliance with the standards established by this part.

C. If the identity document submitted is [~~from one~~] a REAL ID driver's license or identification card as listed in Paragraph (3) of Subsection B of 18.19.5.14 NMAC, then to establish legal or lawful presence in the United States, the applicant must present one of the following documents issued by the U.S. federal government verified through SAVE:

(1) an unexpired immigrant or nonimmigrant visa status for admission into the United States;

(2) a pending or approved application for asylum in the United States;

(3) documentation of admission into the United States as a refugee;

(4) a pending or approved application for temporary protected status in the United States;

(5) documentation of approved deferred action status;

(6) a pending application for adjustment of status to legal permanent resident or conditional resident;

(7) conditional permanent resident alien status; or

(8) other documents as DHS may designate by notice published in the federal register.

D. Proof of identification number: An applicant must also present documentary evidence of their identification number from one of the following documents:

(1) if, eligible for social security number, [~~his or her social security administration (SSA) account number card. If a social security administration account card is not available, the person shall present~~] one the following documents, provided that the document bears the applicant's social security number:

(a) a social security number (SSN) card;

[(~~a~~)] (b) a W-2 form;

[**(~~b~~)**] **(c)** a SSA-1099 form;

[(~~c~~)] (d) a non-SSA-1099 form;

[**(~~d~~)**] **(e)** a pay stub with the applicant's name and social security number on it; or.

(2) an unexpired foreign passport with a valid, unexpired U.S. visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States, verified by SAVE. This document can be used to satisfy both the identity and age requirement, and identification number requirement for a Real ID compliant credential.

E. Indication of sex: an applicant must indicate their sex as either male, female or gender x.

F. Proof of New Mexico residency: The applicant must present at least two of the following documents that include the individual's name and principal residence:

(1) a current real property rental agreement or a purchase agreement;

(2) a utility bill dates within 60 days of the application and that is not a cellular phone bill;

(3) an insurance bill, card or binder dated within the past six months of the application;

(4) a bank or credit card statement dated within 60 days of the application;

(5) an employment pay stub containing applicant's name and address, dated within 60 days of the application;

(6) a local property tax statement from the county assessor's office of the county where the property is located;

(7) documentation from an educational institution such as a transcript, report card or enrollment confirmation, dated within 60 days of the application;

(8) original documentation from a city, county, state, tribal or federal government organization or community organization attesting to the applicant's New Mexico residency;

(9) a New Mexico medical or public assistance card with address on card, letter from issuing agency that came with the card, showing name and address, or profile print-out from issuing agency;

(10) documents indicating membership in a New Mexico religious organization provided applicant is less than 18 years of age;

(11) documents indicating membership in a New Mexico sports organization provided applicant is less than 18 years of age;

(12) if the applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico identification card, or two proofs of residency of the parent/guardian; or

(13) a document evidencing eligibility and proof that the applicant is currently receiving services from a non-profit organization qualified pursuant to Section 501 (c)(3) of the Federal Internal Revenue Code of 1986 provided the document displays the applicant's address.

[18.19.5.14 NMAC - N, 11/15/2016, A, xx/xx/xxxx]

18.19.5.15 [~~PROOF OF IDENTITY, AND AGE FOR A DRIVING AUTHORIZATION CARD OR~~] STANDARD DRIVER'S LICENSE OR STANDARD IDENTIFICATION CARD THAT IS NOT ACCEPTABLE FOR FEDERAL PURPOSES:

A. Applicants for a New Mexico [~~driving authorization card~~] standard license or standard identification card that is not acceptable for federal purposes must provide documentary proof of their identity, indication of sex, age and New Mexico residency.

B. [~~An applicant who cannot establish lawful status and who does not hold a current, valid New Mexico driver's license or identification card must also submit fingerprints for a background check, as provided in 19.18.5.17 NMAC~~.

~~**C.**~~**] Proof of identity and age:** To establish identity and age, [~~Applicants~~] applicants can use one of the following documents if it contains the applicant's name and date of birth, to provide documentary proof of their identity and age. If the document does not contain the applicant's name and date of birth, two of the following documents will be required:

(1) an original or certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's place of birth;

(2) a consular report of birth abroad issued by the U.S. department of state, form FS-240, DS-1350 or FS-545;

(3) an unexpired employment authorization document issued by the U.S. department of homeland security, form I-766 or form I-688B, verified by SAVE;

(4) an identification card issued by a foreign consulate, such as the consulate of Mexico in El Paso, Texas, or Albuquerque, New Mexico [~~or such other foreign consulate~~];

(5) a certified letter of enrollment issued by a federally recognized Indian nation, tribe or pueblo;

(6) a valid identification card issued by a federally recognized Indian nation, tribe or pueblo;

(7) certified copy of foreign birth certificate issued by the applicant's place or birth, provided that if the document is not in English, a certified copy of the foreign birth with a notarized English translation;

(8) affidavit of Indian birth;

(9) a state issued driver's license, a driver's license issued by a territory of the United States, or by jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(10) a state government-issued photo identification card, or a photo identification card issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(11) a state government-issued photo learner's permit, or a photo learner's permit issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(12) an American Indian or Alaskan proof of Indian blood, certificate of degree of Indian blood, federal Indian census card or tribal membership card;

(13) a photo identification card issued by the United States military, United States coast guard or New Mexico national guard;

(14) an identification document issued by the United States veterans administration, so long as it is accompanied by a United States veterans administration medical center identification card;

(15) a valid United States active duty/retiree/ reservist military identification card (DOD ID DD-2);

(16) a United States, state, or local government-issued photo ID, issued based on name, social security number and date of birth;

(17) N560 certificate of citizenship if verified in SAVE;

(18) N550 certificate of naturalization if verified in SAVE;

(19) a valid permanent resident card issued by the United States government if verified in SAVE;

(20) a valid I-551 resident alien card issued since 1997 if verified in SAVE;

(21) a valid New Mexico license or identification card;

(22) a court order for name change, gender change, adoption or divorce, as long as it includes the legal name, date of birth and court seal;

(23) a New Mexico correction department photo identification card, or a photo identification card issued by the federal bureau of prisons, that includes the name, date of birth and documentation that the card has not expired within the past year;

(24) a social security card;

(25) military discharge/separation papers (DD 214);

(26) selective service card;

(27) an I-94 form presented without a passport if it contains the applicant's photo;

(28) a military dependent identification card that includes the applicant's photo;

(29) a medical insurance card or documentation of medical insurance coverage or eligibility containing an insurance identification number including a Medicaid or Medicare card;

(30) a passport or passport card from the applicant's country of citizenship;

(31) a passport or passport card from the United States if verified through systematic alien verification for entitlements system (SAVE);

(32) individual tax identification number (ITIN);

(33) a medical record less than one year old that is not from a visit to an emergency room or urgent care facility;

(34) proof of eligibility for and receipt of [~~welfare~~] public assistance benefits, including general assistance, temporary assistance for needy families and the supplemental nutrition assistance program with a copy of the state human services department eligibility profile page dated with the last year.

C. Proof of New Mexico residence: A person must present at least two of the following documents that include the individual's name and principal residence:

(1) a current real property agreement or a purchase agreement;

(2) a utility bill dated within 60 days of the application and does not include a cell phone bill;

(3) an insurance bill, card or binder dated within the past six months of the application;

(4) a bank or credit card statement dated within 60 days of the application;

(5) an employment pay stub containing applicant's name and address, dated within 60 days of the application;

(6) a local property tax statement from the county assessor's office of the county where the property is located;

(7) documentation from an education institution such as a transcript, report card or enrollment confirmation, dated within 60 days of the application;

(8) original documentation from a city, county, state, tribal or federal government organization or community organization attesting to the applicant's New Mexico residency;

(9) a New Mexico medical or public assistance card with address on card, letter from issuing agency that came with the card, showing name and address, or profile print-out from issuing agency;

(10) documents indicating membership in a New Mexico religious organization provided applicant is less than 18 years of age;

(11) documents indicating membership in a New Mexico sports organization provided applicant is less than 18 years of age;

(12) if the applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico identification card, or two proofs of residency of the parent/guardian;

(13) a document evidencing eligibility and proof that the applicant is currently receiving services from a non-profit organization qualified pursuant to Section 501 (c)(3) of the Federal Internal Revenue Code of 1986 provided the document displays the applicant's address.

D. Applicants for a standard driver's license or standard identification card not acceptable for federal purposes who are homeless or in temporary lodging and unable to provide two of the documents identified in Subsection C of 18.19.5.15 NMAC may provide an affidavit or a notarized letter from a representative of a New Mexico governmental entity, not-for-profit organization, assisted care facility/ home, adult assisted living facility/ home, homeless shelter, transitional service provider, or group/half way house attesting to the address where the applicant resides or receives services *in lieu of* the documents required in Subsection C of 18.19.5.15 NMAC.

E. Indication of sex: an applicant must indicate their sex as either male, female or gender x.

[18.19.5.15 NMAC - N, 11/15/2016; A/E, 6/26/2018; A, 10/30/2018, A, xx/xx/xx]

18.19.5.16 - [~~PROOF OF NEW MEXICO RESIDENCY:~~

~~**A.** All applicants for a REAL ID Act of 2005 compliant New Mexico identification card, driving permit, provisional driver's license, or driver's license, other than a commercial driver's license, and all applicants for a driving authorization card or identification card not acceptable for federal purposes must provide documentary evidence demonstrating New Mexico residency.~~

~~**B.** Applicants must provide two of the following documents, showing the applicant's name or the name of applicant's spouse in combination with a certificate of marriage and a New Mexico residential address for the applicant, as proof that the applicant lives in New Mexico.~~

~~**(1)** a current real property rental agreement or purchase agreement;~~

~~**(2)** a utility bill dated within 60 days, such as water, gas, electric, waste, telephone, cable or satellite bill, but not a bill for a cell phone;~~

~~**(3)** an insurance bill, card or binder, dated within the past 6 months;~~

~~**(4)** a bank or credit card statement dated within 60 days;~~

~~**(5)** an employment pay stub that contains the applicant's name and address, dated within 60 days;~~

~~**(6)** a current, local property tax statement or mortgage documents;~~

~~**(7)** a document from an education institution, such as a transcript, report card or enrollment confirmation, provided it is dated within 60 days;~~

~~**(8)** original documents from a city, county, state, tribal or federal government organization attesting to the fact that the applicant is a New Mexico resident;~~

~~**(9)** a New Mexico medical assistance card with address on card, letter from issuing agency that came with card showing name and address, or profile printout from issuing agency;~~

~~**(10)** a New Mexico public assistance card with address on card, letter from issuing agency that came with card showing name and address, or profile printout from issuing agency;~~

~~**(11)** documents indicating membership in a New Mexico religious organization, provided that the applicant is less than 18 years of age; or~~

~~**(12)** documents indicating membership in a New Mexico sports organization, provided that the applicant is less than 18 years of age;~~

~~**(13)** a New Mexico medical or public assistance card, profile printout or a letter from the issuing agency;~~

~~**(14)** if the applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico driver's license, the parent/guardian's New Mexico identification card, or two proofs of New Mexico residency of the parent/guardian; and~~

~~**(15)** a document evidencing eligibility and proof that the applicant is currently receiving services from a non-profit organization qualified pursuant to Section 501(c)(3) of the Federal Internal Revenue Code of 1986 provided the document displays the applicant's address.~~

~~**C.** Applicants for an identification card not acceptable for~~

~~federal purposes who are homeless or in temporary lodging and unable to provide two of the documents identified in Subsection B of 18.19.5.16 NMAC may provide an affidavit or a notarized letter from a representative of a New Mexico governmental entity, not-for-profit organization, assisted care facility/ home, adult assisted living facility/ home, homeless shelter, transitional service provider, or group/half way house attesting to the address where the applicant resides or receives services *in lieu of* the documents required in Subsection B of 18.19.5.16 NMAC.~~] **~~[RESERVED]~~**
[18.19.5.16 NMAC - N, 11/15/2016; A/E, 6/26/2018; A, 10/30/2018, Repealed, xx/xx/xxxx]

18.19.5.17 ~~[FINGERPRINTS AND CRIMINAL HISTORY SCREENING:~~

~~**A. Authority; use of criminal history information:** The taxation and revenue department (TRD) is authorized to obtain the criminal history records of applicants for driving authorization cards and TRD is authorized to obtain criminal history records of applicants for identification cards that are not acceptable for federal agencies for federal purposes, provided that the applicant does not possess a valid New Mexico license or identification card and that the applicant does not provide proof of lawful status.~~

~~**B. Procedure for applicants:**~~

~~**(1)** If an applicant otherwise meets the application and eligibility requirements, then TRD shall take a full-face or front-view photograph and fingerprints of the applicant and shall submit the same to the New Mexico department of public safety (DPS) for the purpose of obtaining a current criminal history screening through the national crime information center as well as a criminal history screening through the records of DPS.~~

~~**(2)** An applicant shall provide to TRD a criminal background screening request, fingerprints, and supporting documentation including an authorization for release of information to TRD in accordance with the procedures of DPS.~~

~~**(3)** DPS will review state records and also transmit the fingerprints to the federal bureau of investigation for a national screening. The results of the screening will be transmitted to TRD for review.~~

~~**(4)** Applicants and licensees shall bear any costs associated with ordering or conducting criminal history screening. Fees are determined by and payable to DPS or designee of DPS. Fees cannot be waived by TRD.~~

~~**(5)** TRD shall comply with applicable confidentiality requirements of the DPS and the federal bureau of investigation regarding the handling and dissemination of criminal history information.~~

~~**C. TRD review of criminal history information:**~~

~~**(1)** TRD shall review the results and shall not issue a driving authorization card if the results show that the applicant has an outstanding criminal arrest warrant for a felony or a misdemeanor charge in any state or country or if the results show that the applicant's fingerprints are associated with any name, date of birth or social security number other than those provided when the person applied for the driving authorization card.~~

~~**(2)** TRD shall notify the person if the application is denied, including the reason for the denial, and the person's right to a hearing.~~

~~**(3)** TRD shall destroy the results of the screening after it has completed its review and issued the driving authorization card, or one year from the date of the denial, whichever occurs sooner.~~

~~**D. Evidence of eligibility:** A person whose application for a driving authorization has been denied shall become eligible upon submitting evidence that the basis for ineligibility was resolved. Such evidence may include:~~

~~**(1)** documents that demonstrate that the criminal arrest warrant was quashed, withdrawn, or resolved;~~

~~**(2)** documents that demonstrate that there is not a conflict with the name, date of birth or social security number; or~~

~~**(3)** other documents as approved by the director of the motor vehicle division.~~] **~~[RESERVED]~~**
[18.19.5.17 NMAC - N, 11/15/2016; A/E, 6/26/2018; A, 10/30/2018, Repealed, xx/xx/xxxx]

End of Notices of Rulemaking and Proposed Rules

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.

HEALTH, DEPARTMENT OF

The New Mexico Department of Health approved the emergency repeal of its rule 7 NMAC 28.2 - Requirements for Home Health Agencies (filed 10/31/2001) and replaced it with 7.28.2 NMAC - Requirements for Home Health Agencies (adopted on 6/05/2020), and effective 6/5/2020.

The New Mexico Department of Health approved the repeal of its rule 7.34.4 NMAC - Licensing Requirements for Producers, Couriers, Manufacturers and Laboratories, (filed 2/16/2015) and replaced it with, 7.34.4 NMAC - Licensing Requirements for Producers, Couriers, Manufacturers and Laboratories effective 6/23/2020.

HEALTH, DEPARTMENT OF

TITLE 7 HEALTH
CHAPTER 28 HOME HEALTH SERVICES
PART 2 REQUIREMENTS FOR HOME HEALTH AGENCIES

7.28.2.1 ISSUING AGENCY: New Mexico department of health, division of health improvement.
[7.28.2.1 NMAC - Rp 7 NMAC 28.2.1, 6/5/2020]

7.28.2.2 SCOPE: These regulations apply to:

A. public, profit or nonprofit home health agencies providing services as outlined by these regulations;

B. any facility providing services as outlined by these regulations which by federal regulation must be licensed by the state of New Mexico to obtain or maintain full or partial, permanent or temporary federal funding.
[7.28.2.2 NMAC - Rp 7 NMAC 28.2.2, 6/5/2020]

7.28.2.3 STATUTORY AUTHORITY: The regulations set forth herein which govern the licensing of home health agencies have been promulgated by the secretary of the New Mexico department of health, pursuant to the general authority granted under Subsection E of Section 9-7-6 NMSA 1978, and Subsection D of Section 24-1-2 and Subsection I of Section 24-1-3 and 24-1-5 NMSA 1978 of the Public Health Act, as amended.
[7.28.2.3 NMAC - Rp 7 NMAC 28.2.3, 6/5/2020]

7.28.2.4 DURATION: Permanent.
[7.28.2.4 NMAC - Rp 7 NMAC 28.2.4, 6/5/2020]

7.28.2.5 EFFECTIVE DATE: June 5, 2020 unless a different date is cited at the end of a section.
[7.28.2.5 NMAC - Rp 7 NMAC 28.2.5, 6/5/2020]

7.28.2.6 OBJECTIVE:

A. Establish minimum standards for licensing of home health agencies who provide medically directed therapeutic or supportive services to a patient/client in their place of residence.

B. Monitor home health agencies' compliance with these regulations through surveys to identify any areas which could be dangerous or harmful to a patient/client or staff.

C. Encourage the establishment and maintenance of home health agencies to provide medically directed therapeutic or supportive services, to a patient/client in their place of residence, that maintain or improve the health and quality of life to patients/clients who are in New Mexico.
[7.28.2.6 NMAC - Rp 7 NMAC 28.2.6, 6/5/2020]

7.28.2.7 DEFINITIONS: For purposes of these regulations the following shall apply:

A. Definitions beginning with "A":

(1) "Abuse" means any act or failure to act performed intentionally, knowingly or recklessly that causes or is likely to cause harm to a patient/client, including:

(a) physical contact that harms or is likely to harm a patient/client of a home health agency;

(b) inappropriate use of a physical restraint, isolation or medication that harms or is likely to harm a patient/client;

(c) inappropriate use of a physical or chemical restraint, medication or isolation as punishment or in conflict with a physician's order;

(d) medically inappropriate conduct that causes or is likely to cause physical harm to a patient/client;

(e) medically inappropriate conduct that causes or is likely to cause great psychological harm to a patient/client;

(f) an unlawful act, a threat or menacing conduct directed toward a patient/client that results and might reasonably be expected to result in fear or emotional or mental distress to a patient/client.

(2) **"Administrator/director"** means a qualified individual, on-site, appointed by the governing body who organizes and directs the agency's on-going functions, maintains liaison among the governing body, the group of professional personnel and other staff, employs qualified personnel, ensures adequate staff education, ensures the accuracy of public information materials and activities, and implements an effective budgeting and accounting system. A branch office must have a qualified on-site branch manager who receives direction and supervision from the parent home health agency's administrator/director.

(3) **"Applicant"** means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization must have authority from the organization. The applicant must be the owner.

(4) "Auxiliary work station" means a non-licensed, non-staffed convenience work station away from the licensed location of the home health agency's office.

B. Definitions beginning with "B

(1) Branch office" means a licensed location or site from which a home health agency provides services and is located sufficiently close that it is not impractical for it to receive direction and supervision from the parent home health agency on a day-by-day basis.

(2) "Bylaws" means a set of rules adopted by a home health agency for governing the agency's operation.

C. Definitions beginning with "C": "Clinical/ service note" means a written notation dated and signed by a member of the health team that summarizes facts about care furnished and the patient/client's response during a given period of time.

D. Definitions beginning with "D": "Department" means the New Mexico department of health.

E. Definitions beginning with "E":

(1) **"Exception"** Testamentary gifts, such as wills, are not, per se, considered financial exploitation.

(2) **"Exploitation"** of a patient/client consists of the act or process, performed intentionally, knowingly or recklessly, of using any patient/ client's money or property, for another person's profit, advantage or benefit. Exploitation includes but is not limited to:

(a) manipulating the patient/client by whatever mechanism to give money or property to any agency staff or management member;

(b) misappropriation or misuse of monies belonging to a patient/client or the unauthorized sale, transfer or use of a patient/client's property;

(c) loans of any kind from patient/clients to agency staff or management;

(d) accepting monetary or other gifts from a patient/client or their family with a value in excess of $25 or gifts which exceed a total value of $300 in one year. All gifts received by agency operators, their families or staff of the agency must be documented and acknowledged by the person giving the gift and the recipient.

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

G. Definitions beginning with "G":

(1) **"Governing body"** means the governing authority of a facility which has the ultimate responsibility for all planning, direction, control and management of the activities and functions of a home health agency licensed pursuant to these regulations.

(2) "Great psychological harm" means psychological harm that causes mental or emotional incapacitation for a prolonged period of time or that causes extreme behavioral change or severe physical symptoms that require psychological or psychiatric care.

H. Definitions beginning with "H":

(1) **"Home health agency"** means any business, entity or organization primarily engaged in providing medically directed acute, restorative, rehabilitative, maintenance, preventive or supportive services through professional or paraprofessional personnel to a patient/client in the patient/client's residence. This term does not apply to any individual, licensed practitioner providing services within the scope of his/her practice or to any business, entity or organization providing non-medically directed services in a patient/client's place of residence.

(2) "Home health aide" means a person who has successfully completed a course of training or demonstrated competency in assisting patient/ clients to meet basic personal care needs. A home health aide provides medically directed personal care to patient/clients such as, but not limited to, taking and recording vital signs, bathing, grooming, feeding, ambulation, exercise, oral hygiene and skin care.

(3) "Home health services" means those medically directed therapeutic or supportive services provided by a home health agency to a patient/client in his or her place of residence.

(4) **"Homemaker"** means a person who has successfully demonstrated competency to provide household services such as cleaning, meal preparation, laundry, shopping and to assist a patient/client with activities of daily living.

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

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

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

L. Definitions beginning with "L":

(1) "Level of care" means the long term care assessment abstract which medically qualifies a patient/client for medicaid waiver services.

(2) "Licensed practical nurse" means a person licensed as a practical nurse in the state of New Mexico under the Nursing Practice Act, Sections 61-3-1 to 61-3-31 NMSA 1978.

(3) "Licensee" means the person(s) who, or organization which, has an ownership or similar interest in the home health agency and in whose name a license for a home health agency has been issued and who is legally responsible for compliance with these regulations.

(4) "Licensing authority" means the New Mexico department of health.

M. Definitions beginning with "M": "Medically directed services" means in-home services that are provided in accordance with a patient/client's plan or level of care which is reviewed and approved by a physician at least annually.

N. Definitions beginning with "N": "Neglect" means subject to the patient/client's right to refuse treatment and subject to the caregiver's right to exercise sound medical discretion, the grossly negligent: (1) failure to provide any treatment, services, care, medication or item that is necessary to maintain the health or safety of a patient/client; (2) failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a patient/client; (3) failure to carry out a duty to supervise properly or control the provision of any treatment, care, good, service or medication necessary to maintain the health or safety of a patient/client.

O. Definitions beginning with "O":

(1) "Occupational therapist" is a person who is licensed by the state of New Mexico as an occupational therapist, pursuant to Sections 61-12A-1 to 61-12A-24 NMSA 1978.

(2) "Occupational therapist assistant" is a person who is licensed by the state of New Mexico as a certified occupational therapist assistant, pursuant to Sections 61-12A-1 to 61-12A-24 NMSA 1978.

P. Definitions beginning with "P":

(1) "Parent home health agency" means an agency that develops and maintains responsibility for the operation and administrative control of branch office(s).

(2) "Patient/client" means a person who is receiving home health care services.

(3) "Personal care attendant/provider" means a person who has successfully demonstrated competency to provide assistance with personal care such as bathing, grooming, bowel and bladder needs.

(4) "Physical therapist" is a person who is licensed by the state of New Mexico as a physical therapist, pursuant to Sections 61-12-1 to 61-12-21 NMSA 1978.

(5) "Physical therapist assistant" is a person who is licensed by the state of New Mexico as a physical therapist assistant, pursuant to Sections 61-12-1 to 61-12-21 NMSA 1978.

(6) "Plan of care" means a written plan of treatment which sets forth each service that the home health agency agrees to provide to a patient/client.

(7) "Plan of correction" means a plan written and signed by the licensee or representative addressing how and when the licensing authority's identified deficiencies will be corrected.

(8) "Physician" is a person who is a doctor of medicine, osteopathy or podiatry licensed to practice medicine.

(9) "Policy" means a statement of principle that guides and determines present and future decisions and actions.

(10) "Procedure" means the action(s) that must be taken in order to implement a policy.

(11) "Professional personnel" means the staff of the agency or personnel under contract or agreement with the agency who require a license, registration or certification by the state of New Mexico.

Q. Definitions beginning with "Q": "Quality improvement" means an on-going assessment program which addresses clinical care and program evaluation.

R. Definitions beginning with "R":

(1) "Registered nurse" means a person who holds a certificate of registration as a registered nurse in the state of New Mexico under the Nursing Practice Act, Sections 61-3-1 to 61-3-31 NMSA 1978.

(2) "Residence" means the place in New Mexico where a patient/client is residing at the time home health services are provided.

S. Definitions beginning with "S":

(1) "Social worker" is a person who is licensed by the state of New Mexico as a social worker, pursuant to Sections 61-31-1 to 61-31-25 NMSA 1978.

(2) "Speech language pathologist" is a person licensed by the state of New Mexico to practice speech language pathology, pursuant to Sections 61-14B-1 to 61-14B-25 NMSA 1978.

(3) "Supervision" means direction, guidance and oversight by a qualified person, within his/her sphere of competence, of an individual providing services in accordance with a patient/client's plan of care.

(4) "Supportive services" means medically or non-medically directed assistance to patient/clients to meet basic activities of daily living.

T. Definitions beginning with "T": "Therapeutic services" means a medically directed activity or activities to patients/clients based upon a knowledge of disease processes provided by a home health agency.

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

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

W. Definitions beginning with "W": "Waive/ waiver" means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time in which the health, safety, or welfare of the patient/clients and staff are not in danger. Waivers are issued at the sole discretion of the licensing authority.

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

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

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

[7.28.2.7 NMAC - Rp 7 NMAC 28.2.7, 6/5/2020]

7.28.2.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words "shall" or "must" or "may". "Shall" or "must" means mandatory. "May" means permissive. The use of the words "adequate", "proper", and other similar words means the degree of compliance that is generally accepted throughout the professional field by those who provide services of home health agencies as outlined in these regulations.

[7.28.2.8 NMAC - Rp 7 NMAC 28.2.8, 6/5/2020]

7.28.2.9 HOME HEALTH AGENCY AND SCOPE OF SERVICES: An agency or organization meeting the following criteria must be licensed as a home health agency:

A. Provides at least one medically directed service, such as, but not limited to:

(1) skilled nursing

(2) physical therapy

(3) occupational therapy

(4) inhalation therapy

(5) infusion therapy

(6) speech language pathology

(7) social work

(8) home health aide

(9) personal care attendant

(10) homemaker

B. A home health agency must provide at least one of the above services, in its entirety, directly through employees, but may provide other services under arrangements with another agency or organization or provider.

C. A licensed home health agency may also provide non-medically directed services.

D. Home health agency excludes:

(1) independent or sole practitioners providing in-home services under their respective professional practice acts;

(2) medical suppliers who do not provide services listed in Paragraph (1) of Subsection D of 7.28.2.9 NMAC above;

(3) family, friends, volunteers and paid individuals not under the direct control of a home health agency.

E. Branch office: Means a licensed location from which a home health agency provides services to patient/clients. A home health agency may not apply for a license to open a branch office unless the parent agency has been in operation for at least one year, had an annual survey conducted by the licensing authority, and is found to be in substantial compliance with these regulations.

(1) A branch office must be located within 100 miles distance from the licensed location of the parent home health agency.

(2) A branch office must have a qualified on-site administrator who receives direction and supervision from the parent home health agency's administrator/director.

(3) A branch office must be able to provide the same services as the parent home health agency.

(4) Original patient/client records, if stored at the parent home health agency, shall be made available upon request of the licensing authority within two hours.

F. Service area: A home health agency may only provide services to patient/clients who reside within 100 miles distance from the licensed location of the agency.

(1) The licensing authority may grant a temporary exception to the 100 mile distance limitation when the following conditions exist:

(a) no other home health agency service for the patient/client is available;

(b) no home health agency in the area within the 100 miles distance limitation is able or willing to provide services to the patient/client.

(2) Home health agencies not previously required to be licensed by the licensing authority shall have twelve months from the date these regulations are adopted to comply.

G. Auxiliary work station: A non-licensed, non-staffed convenience work station away from the licensed location of the home health agency's office for the limited purposes of storage of supplies and a work area for documentation by staff where a telephone and fax may be available for communication. The auxiliary work station shall not function as a branch office and the following requirements are intended to insure that the work station does not become a branch office:

(1) must not be utilized to increase the geographical service area of a home health agency or as a substitute for a branch operation of the agency;

(2) the name of the agency must not be identified by signage at the work station;

(3) the telephone number for the work station shall not be advertised or

otherwise made available to persons or individuals other than staff of the agency;

(4) patient/clients shall only be admitted by and through the licensed location of the agency;

(5) no orders for patient/client care from physicians shall be accepted by agency staff at its auxiliary work station;

(6) no original patient/client records, copies of patient/client records or personnel records shall be maintained by the agency at the auxiliary work station.

[7.28.2.9 NMAC - Rp 7 NMAC 28.2.9, 6/5/2020]

7.28.2.10 INITIAL LICENSURE PROCEDURES: The authority to determine if a person(s) or organization is subject to regulation under the statute is inherent in the responsibility to regulate agencies that are within the definitions of the statute and these regulations. To obtain an initial license for a home health agency pursuant to these regulations, the following procedures must be followed by the applicant:

A. These regulations should be thoroughly understood by the applicant and used as reference prior to applying for initial licensure.

B. The following documents must be submitted to the licensing authority:

(1) Letter of intent: Submit to the licensing authority a letter of intention to open a home health agency pursuant to these regulations.

(2) Application for initial license: All information requested by the licensing authority must be provided. All applications for an initial license must be accompanied by the required non-refundable fee.

(3) Functional program outline: Each application for initial licensure must be accompanied by a functional program outline that provides the following information:

(a) scope of services to be provided by the proposed home health agency;

(b) estimated number of patient/clients to be served monthly;

(c) services that will be contracted or arranged with another health provider, i.e., homemaker, I.V. therapy, etc.;

(d) hours and days of operation.

(4) Home health agency policies: Submit for review and approval by the licensing authority, a copy of the home health agency policies and a copy of these licensing regulations annotated to the agency's policies and procedures. Note: Each regulation must be referenced to the appropriate policy by writing the page or policy number by the corresponding regulation.

C. Upon the licensing authority's approval of items Paragraphs (1) through (4) of Subsection B of 7.28.2.10 NMAC above, a temporary license will be issued. Upon receipt of the temporary license, the home health agency may admit patients/clients.

D. Upon becoming fully operational and accepting a patient/client, a home health agency must submit a written request to the licensing authority for the initial survey.

E. Upon completion of the initial survey and determination that the facility is in compliance with these regulations, the licensing authority will issue an annual license.

[7.28.2.10 NMAC - Rp 7 NMAC 28.2.10, 6/5/2020]

7.28.2.11 LICENSES:

A. Annual license: An annual license is issued for a one year period to a home health agency which has met all requirements of these regulations.

B. Temporary license: The licensing authority may, at its sole discretion, issue a temporary license prior to the initial survey, or when the licensing authority finds partial compliance with these regulations, or for administrative purposes.

(1) A temporary license shall cover a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies.

(2) In accordance with Subsection D of Section 24-1-5 NMSA 1978, no more than two consecutive temporary licenses shall be issued.

C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of administrator/director, or when there is a change of name for the facility.

(1) application must be on a form provided by the licensing authority.

(2) application must be accompanied by the required fee for an amended license.

(3) application must be submitted within 10 working days of the change.

[7.28.2.11 NMAC - Rp 7 NMAC 28.2.11, 6/5/2020]

7.28.2.12 LICENSE RENEWAL:

A. The licensee must submit renewal application on forms provided by the licensing authority, along with the required fee at least 30 days prior to expiration of the current license.

B. Upon receipt of renewal application, required fee and an on-site survey, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the agency is in substantial compliance with these regulations.

C. If the licensee fails to submit a renewal application with the required fee and the current license expires, the agency shall cease operations until it obtains a new license through the initial licensure procedures. Subsection A of Section 24-1-5 NMSA 1978, as amended, provides that no health facility shall be operated without a license.

[7.28.2.12 NMAC - Rp 7 NMAC 28.2.12, 6/5/2020]

7.28.2.13 POSTING OF LICENSE: The agency's current, original license must be posted in

a conspicuous place at the licensed location, as identified in the application for licensure.
[7.28.2.13 NMAC - Rp 7 NMAC 28.2.13, 6/5/2020]

7.28.2.14 NON-TRANSFERABLE RESTRICTION ON LICENSE: A license shall not be transferred by assignment or otherwise to other persons or locations. The license shall be void and must be returned to the licensing authority when any one of the following situations occur:

A. ownership of the agency changes;

B. the agency changes location of its office;

C. licensee of the agency changes;

D. the agency discontinues operation;

E. an agency wishing to continue operation as a licensed home health agency under circumstances Subsections A through D of 7.28.2.14 NMAC above must submit an application for initial licensure in accordance with Section 10 of these regulations, at least 30 days prior to the anticipated change.
[7.28.2.14 NMAC - Rp 7 NMAC 28.2.14, 6/5/2020]

7.28.2.15 AUTOMATIC EXPIRATION OF LICENSE: A license will automatically expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed, suspended, revoked, or:

A. on the day an agency discontinues operation;

B. on the day an agency is sold, leased, or otherwise changes ownership or licensee;

C. on the day an agency changes location of its office.
[7.28.2.15 NMAC - Rp 7 NMAC 28.2.15, 6/5/2020]

7.28.2.16 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with Subsection H of Section 24-1-5 NMSA 1978, as amended, if immediate action is required to protect human health and safety, the licensing authority may suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.
[7.28.2.16 NMAC - Rp 7 NMAC 28.2.16, 6/5/2020]

7.28.2.17 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES: A license may be revoked or suspended, an initial or renewal application for license may be denied, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following reasons:

A. failure to comply with any provision of these regulations;

B. failure to allow survey by authorized representatives of the licensing authority;

C. any person active in the operation of an agency licensed pursuant to these regulations shall not be under the influence of alcohol or narcotics or convicted of a felony;

D. misrepresentation or falsification of any information on application forms or other documents provided to the licensing authority;

E. discovery of repeat violations of these regulations during surveys;

F. failure to provide the required care and services as outlined by these regulations for the patients/clients receiving care from the agency.
[7.28.2.17 NMAC - Rp 7 NMAC 28.2.17, 6/5/2020]

7.28.2.18 HEARING PROCEDURES:

A. Hearing procedures for adverse action taken by the licensing authority against an agency's license as outlined in Section 16 and 17 above will be held in accordance with adjudicatory hearings, New Mexico department of health, 7.1.2 NMAC.

B. A copy of the above regulations may be requested at any time by contacting the licensing authority.
[7.28.2.18 NMAC - Rp 7 NMAC 28.2.18, 6/5/2020]

7.28.2.19 AGENCY SURVEYS:

A. Application for licensure, whether initial or renewal shall constitute permission for entry into and survey of a home health agency by authorized licensing authority representatives during pendency of the application, and if licensed, during the licensure period.

B. The licensing authority shall perform, as it deems necessary, unannounced on-site surveys to determine compliance with these regulations, to investigate complaints, or to investigate the appropriateness of licensure for any alleged unlicensed facility. The licensing authority may include patient/client home visits as part of any survey or investigation.

C. Upon receipt of the official deficiency statement from the licensing authority, the licensee or his/her representative will be required to submit a plan of correction to the licensing authority within 10 working days, stating how the agency intends to correct each violation noted and the expected date of completion.

D. The licensing authority may, at its sole discretion, accept the plan of correction as written or require modifications of the plan by the licensee.
[7.28.2.19 NMAC - Rp 7 NMAC 28.2.19, 6/5/2020]

7.28.2.20 ACCEPTANCE OF PATIENTS/CLIENTS: Patients/clients must be accepted for treatment by the agency when there is a reasonable expectation that the patient/client's health care or supportive service needs can be met adequately in the patient/client's place of residence.
[7.28.2.20 NMAC - Rp 7 NMAC 28.2.20, 6/5/2020]

7.28.2.21 OFFICE REQUIREMENTS:

A. An agency licensed pursuant to these regulations shall establish and maintain an official office for the conduct of its business with posted hours of operation.

B. The office space must be able to maintain, store and safeguard agency records.

[7.28.2.21 NMAC - Rp 7 NMAC 28.2.21, 6/5/2020]

7.28.2.22 HEALTH AND AGE REQUIREMENTS:

A. All staff or contracted personnel involved in the care of patients/clients shall be at least eighteen (18) years of age.

B. All staff, contracted personnel, or volunteers having patient/client contact must have a TB test in accordance with the requirements of the infectious disease bureau, of the public health division, department of health.

[7.28.2.22 NMAC - Rp 7 NMAC 28.2.22, 6/5/2020]

7.28.2.23 REQUIREMENTS FOR LICENSURE OF PROFESSIONALS: Any health professional employed or contracted by the home health agency, such as, but not limited to, physicians, physician's assistants, nurse practitioners, physical or occupational therapists, speech language pathologists, registered professional nurses, licensed practical nurses, licensed or certified social workers, physical therapy assistants or certified occupational therapy assistants, must have a current license, registration or certification from the state of New Mexico. Proof of licensure must be maintained on file by the agency.

[7.28.2.23 NMAC - Rp 7 NMAC 28.2.23, 6/5/2020]

7.28.2.24 GOVERNING BODY: Each agency licensed pursuant to these regulations must have a governing body who adopts and reviews, at least annually, written by-laws or policies and procedures which govern the day to day operation of the agency.

A. The governing body may include the licensee of the agency.

B. The governing body must have full legal authority and responsibility for the operation of the agency.

C. The governing body must appoint a qualified administrator.

D. The governing body must oversee the management and fiscal affairs of the agency.

E. The governing body must meet at least annually. These meetings shall be documented by dated minutes and a copy of these minutes shall be kept on file in the agency.

[7.28.2.24 NMAC - Rp 7 NMAC 28.2.24, 6/5/2020]

7.28.2.25 ADVISORY GROUP: Each agency licensed pursuant to these shall have an advisory group.

A. The advisory group shall consist of:

(1) at least three individuals;

(2) an individual representing at least one of the services offered by the agency;

(3) at least one member of the group must be neither an owner or an employee of the agency;

(4) governing body members may also be part of the advisory group.

B. The advisory group shall meet at least semi-annually to perform the following functions:

(1) to review the agency's required policies and procedures and on-going quality improvement program and make recommendations to the governing body, at least annually;

(2) to participate in the agency's program evaluation, at least annually;

(3) to advise the agency on professional issues;

(4) to assist the agency in maintaining liaison with other health care providers in the community and in its community information efforts.

C. The advisory group meetings shall be documented by dated minutes and a copy of these minutes shall be kept on file in the agency.

[7.28.2.25 NMAC - Rp 7 NMAC 28.2.25, 6/5/2020]

7.28.2.26 ADMINISTRATOR: Each agency licensed pursuant to these regulations must have an administrator appointed by the governing body who:

A. is a licensed physician; or

B. is a registered nurse; or

C. has at a minimum, a high school diploma or general equivalency diploma, training and experience in health services administration, and at least one year of supervisory or administrative experience in home health care;

D. may also be the supervising physician or registered nurse;

E. is responsible for implementing the directions of the governing body and organizing and directing the on-going functions of the agency in compliance with these regulations;

F. a qualified person is authorized in writing to act in the absence of the administrator.

[7.28.2.26 NMAC - Rp 7 NMAC 28.2.26, 6/5/2020]

7.28.2.27 RESPONSIBILITIES OF AGENCY PERSONNEL: Home health agencies utilizing any of the following personnel for provision of home care services must assure the responsibilities listed below are met.

A. Primary service personnel: including, but not limited to, registered nurses, physical therapists, occupational therapists, speech therapists, social workers, shall:

(1) provide necessary professional care and guidance within the scope of their licensure;

(2) evaluate the home for its suitability for the patient/client's care;

(3) teach the patient/client and caregivers how to provide care;

(4) develop, evaluate and coordinate the patient/client's plan of care on a continuing basis;

(5) inform the physician and other personnel of changes in the patient/client's condition and needs;

(6) perform an evaluation visit and follow-up visits as needed;

(7) prepare clinical notes.

B. Secondary service personnel: Other licensed personnel, including, but not limited to, respiratory therapists, licensed practical nurses, physical therapy assistants, certified occupational therapist assistants, shall:

(1) provide services in accordance with an established plan of care and agency policies;

(2) provide necessary professional care and guidance within the scope of their licensure;

(3) prepare clinical notes;

(4) evaluate the home for its suitability for the patient/client's care;

(5) teach the patient/client and caregiver how to provide care;

(6) inform the physician and other personnel of changes in the patient/client's condition and needs.

C. Non-licensed personnel: Individuals, including, but not limited to, home health aides, homemakers, personal care attendants, shall:

(1) provide personal care including assistance in the activities of daily living;

(2) assist to maintain a safe and clean environment;

(3) perform household services and other activities as assigned;

(4) communicate with appropriate supervisor about changes or variations in the patient/client or home situation;

(5) teach the patient/client and caregivers how to provide care, within the level of their competency;

(6) prepare patient/client notes.

[7.28.2.27 NMAC - Rp 7 NMAC 28.2.27, 6/5/2020]

7.28.2.28 SUPERVISING PERSONNEL:

A. The medically directed services provided by the agency must be supervised by a licensed professional or an appropriately qualified staff member.

B. The supervising staff member or their alternate who is similarly qualified must be available at all times during operating hours of the agency.

C. The supervising staff member or alternate who is similarly qualified must participate in all activities relevant to the services provided, including developing qualifications for assignments of personnel.

[7.28.2.28 NMAC - Rp 7 NMAC 28.2.28, 6/5/2020]

7.28.2.29 SUPERVISION OF SECONDARY AND NON-LICENSED PERSONNEL:

A. Licensed practical nurses: Services and care provided by a licensed practical nurse will be furnished under the supervision of a registered nurse who has a minimum of one year home health experience or a minimum of two years nursing experience. Such supervision will include, at a minimum:

(1) Identify appropriate tasks to be performed by the licensed practical nurse.

(2) Conduct and document a supervisory visit to at least one patient/client residence at least every 60 days, or more often as indicated.

B. Physical therapy assistants: Services and care provided by a physical therapy assistant will be furnished under the supervision of a physical therapist, with a minimum of one year experience. Such supervision will include, at a minimum:

(1) Identify appropriate tasks to be performed by the physical therapy assistant.

(2) Conduct and document a supervisory visit to the patient/client residence at least every 30 days or as indicated.

(3) Be on-call and readily available and within a 100 mile radius, or have appointed another physical therapist in his/her absence.

(4) Supervise no more than two physical therapy assistants.

C. Certified occupational therapy assistants: Services and care provided by a certified occupational therapy assistant will be furnished under the supervision of an occupational therapist, with a minimum of one year experience. Such supervision will include, at a minimum:

(1) Identify appropriate tasks to be performed by the certified occupational therapy assistant.

(2) Conduct and document a supervisory visit to the patient/client residence:

(a) at a minimum of every two weeks for intermediate-level certified occupational therapy assistants;

(b) at a minimum of every 30 days for advanced-level certified occupational therapy assistants.

D. Home health aides: Services and care provided by a home health aide will be furnished under the supervision of an appropriately licensed professional, such as, registered nurse, physical therapist, occupational therapist, or a speech language pathologist with a minimum of one year experience. Such supervision will include, at a minimum:

(1) Preparation of written patient/client instructions which identify appropriate tasks to be performed by the home health aide.

(2) Conduct and document a supervisory visit to the patient/client residence at least every 62 days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple home health aides require only one supervisory visit. This home health aide need not be present in the patient/client's residence at the time of the supervisory visit.

E. Personal care attendants or equivalent: Services and care provided by a personal care attendant or equivalent will be supervised by a licensed professional or by an appropriately qualified staff member who has one year direct patient care experience. Such supervision will include, at a minimum:

(1) Preparation of written patient/client care instructions which identify appropriate tasks to be performed by the personal care attendant or equivalent.

(2) Conduct and document a supervisory visit to the patient/client's residence at least every 62 days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple personal care attendants or equivalent require only one supervisory visit. The personal care attendant need not be present in the patient/client's residence at the time of the supervisory visit.

F. Homemakers: Services and care provided by a homemaker will be supervised by a licensed professional or by an appropriately qualified staff member who has one year direct patient care experience. Such supervision will include, at a minimum:

(1) Preparation of written patient/client care instructions which identify appropriate tasks to be performed by the homemaker.

(2) Conduct and document a supervisory visit to the patient/client's residence at least every 62 days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple homemakers require only one supervisory visit. The homemaker need not be present in the patient/client's residence at the time of the supervisory visit.

[7.28.2.29 NMAC - Rp 7 NMAC 28.2.29, 6/5/2020]

7.28.2.30 HOME HEALTH AIDE TRAINING REQUIREMENTS:

A. General: No agency licensed pursuant to these regulations may employ an individual as a home health aide on a full-time, part-time, temporary, per diem, or other basis unless:

(1) that individual is competent to provide services as a home health aide;

(2) that individual has completed a training program or a competency evaluation program as outlined in Subsections C or E of 7.28.2.30 NMAC of these regulations.

B. Source of training: Any agency licensed pursuant to these regulations may provide training under the following conditions:

(1) The agency must submit, in writing, its intent to conduct home health aide training and the training curriculum to the licensing authority. Approval of the curriculum must be obtained from the licensing authority prior to instituting training.

(2) Agencies electing not to provide formal training must identify the method by which they will establish the competency of home health aides and document that each is determined competent.

(3) The licensing authority may deny a home health agency the right to conduct home health aide training or competency evaluation, for a specified period of time, not to exceed two years, if the licensing authority finds the agency in substantial non-compliance with these regulations.

C. Course requirements: Home health aides: The home health aide training program must address each of the subject areas listed below through classroom and supervised practical training totaling at least 75 hours, with at least 16 hours devoted to supervised practical training. "Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse.

(1) The individual being trained must complete at least 16 hours of classroom training before beginning the supervised practical training;

(2) communications skills;

(3) observation, reporting and documentation of patient status and the care or service furnished;

(4) reading and recording of vital signs;

(5) basic infection control procedures;

(6) basic elements of body functioning and changes in body function that must be reported to an aide's supervisor;

(7) maintenance of a clean, safe and healthy environment;

(8) recognizing emergencies and knowledge of emergency procedures (including CPR and first aid);

(9) the physical, emotional and developmental needs of and ways to work with the populations served by the home health agency, including the need for respect for the patient, his or her privacy and his or her property;

(10) appropriate and safe techniques in personal hygiene and grooming that include, but are not limited to, bathing, shampooing, nail and skin care, oral hygiene and toileting;

(11) safe transfer techniques and ambulation;

(12) normal range of motion and positioning;

(13) nutrition and hydration;

(14) patient/ client rights, including respect for cultural diversity;

(15) any other task that the home health agency may choose to have the home health aide perform.

D. Instructor personnel:

(1) The training of home health aides must be performed by, or under the supervision of, a registered nurse who possesses a minimum of two years of nursing experience, at least one year of which must be in the provision of home health services.

(2) Other pertinent personnel from the health professions may also be utilized as supplemental instructors.

E. Documentation of training or competency evaluation:

(1) All agencies which provide home health aide training courses or competency evaluations must document such training or competency evaluation for each individual taking the training or competency evaluation. Competency evaluation includes both a written test and a skills demonstration. Skills demonstration must be observed and documented by a registered nurse or licensed practical nurse.

(2) Documentation must include at least the following information:

(a) Training:

(i) name of individual taking training;

(ii) title, purpose and objectives of class;

(iii) name of instructor and qualifications;

(iv) number of hours of instruction;

(v) date instruction was given.

(b) Competency:

(i) name of individual being evaluated for competency;

(ii) date and method used to determine competency.

F. Annual in-service training: Each home health aide must participate in at least 12 documented hours of in-service training during each 12 month period. This requirement may be fulfilled on a prorated basis during the home health aide's first year of employment at the home health agency.

G. Annual performance review: A performance review, including written evaluation and skills demonstration must be completed on each home health aide no less frequently than every 12 months.

[7.28.2.30 NMAC - Rp 7 NMAC 28.2.30, 6/5/2020]

7.28.2.31 HOMEMAKER/ PERSONAL CARE ATTENDANT OR EQUIVALENT TRAINING REQUIREMENTS:

A. General: No agency licensed pursuant to these regulations may employ an individual as a homemaker/personal care attendant or equivalent on a full-time, part time, temporary, per diem or other basis unless:

(1) That individual is competent to provide assigned tasks as a homemaker/ personal care attendant or equivalent.

(2) That individual has completed a training program or a competency evaluation program as outlined in Subsections C or E of 7.28.2.31 NMAC of these regulations.

B. Source of training: Any agency licensed pursuant to these regulations may provide training under the following conditions:

(1) The agency must submit, in writing, its intent to conduct homemaker/personal care attendant or equivalent training and the source of training material. Approval of the curriculum must be obtained from the licensing authority prior to instituting training.

(2) Agencies electing not to provide formal training must identify the method by which they will establish the competency of homemaker/personal care attendant or equivalent and document that each is determined to be competent.

(3) The licensing authority may deny a home health agency the right to conduct homemaker/personal care attendant or equivalent training or competency evaluation, for a specified period of time, not to exceed two years, if the licensing authority finds the agency in substantial noncompliance with these regulations.

C. Course requirements: The home health agency's homemaker/personal care attendant or equivalent training program must consist of no less than 40 hours of training, to be completed by the homemaker/personal care attendant or equivalent in the first year of employment. 10 hours of training must be completed prior to placing the homemaker/personal care employee in a patient/client home. Two of the 10 hours may include agency orientation. Eight of the 10 hours training must be patient/client service specific. The training must address, at a minimum, the following areas:

(1) communication skills;

(2) patient/ client rights, including respect for cultural diversity;

(3) recording of information for patient/client records;

(4) nutrition and meal preparation;

(5) housekeeping skills;

(6) care of the ill and disabled, including the special needs populations;

(7) emergency response (including CPR and first aid);

(8) basic infection control;

(9) home safety.

D. Instructor personnel:

(1) The training of homemaker/personal care attendant or equivalent must be performed by or under the direction of a licensed professional or an appropriately qualified person.

(2) Other pertinent personnel from the health professions may also be utilized as supplemental instructors.

E. Documentation of training or competency evaluation:

(1) All agencies which provide homemaker/ personal care attendant or equivalent training courses or competency evaluations must document such training or competency evaluation for each individual taking the training or competency evaluation. The training or competency evaluation must be observed and documented by a licensed professional or an appropriately qualified person.

(2) Documentation must include at least the following information:

(a) Training:

(i) name of individual taking training;

(ii) title, purpose, and objectives of class;

(iii) name of instructor;

(iv) number of hours of instruction;

(v) date instruction was given.

(b) Competency:

(i) name of individual being evaluated for competency;

(ii) date and method used to determine competency.

(3) Annual in-service training: Each homemaker/ personal care attendant or equivalent shall participate in at least 10 documented hours of in-service training during each 12 month period.
[7.28.2.31 NMAC - Rp 7 NMAC 28.2.31, 6/5/2020]

7.28.2.32 PATIENT/ CLIENT RIGHTS: A home health agency licensed pursuant to these regulations must protect and promote the rights of each individual under its care, including each of the following rights:

A. the right to be fully informed in advance about the care and treatment to be provided by the agency;

B. the right to refuse or terminate treatment;

C. the right to be fully informed in advance of any changes in the care or treatment to be provided by the agency that may affect the individual's well-being;

D. the right to participate in planning care and treatment or changes in care or treatment, except for those individuals adjudged incompetent;

E. the right to be treated with dignity and respect and to be free from abuse, neglect, and exploitation. No home health agency to whom a patient/client's money or valuables have been entrusted shall mingle the patient/clients monies, valuables or property, with that of the licensee, staff or management;

F. the right to voice grievances, with respect to treatment or care that is or fails to be furnished, without discrimination or reprisal for voicing such grievances;

G. the right to confidentiality of medical care and patient/client records;

H. the right to have one's property treated with respect;

I. the right to be fully informed, orally and in writing, of all charges for services to be performed by the agency and of any changes in these charges;

J. the right to be informed of the New Mexico home health agency hotline number (1-800-752-8649), hours of operation (8:00am-5:00pm, Monday-Friday), and purpose of the hotline, which is to receive complaints, questions about local home health agencies, or to lodge complaints concerning the implementation of the advance directives requirements;

K. the right to be fully informed regarding advance directives, prior to care being given. This information must include agency policies on advance directives and a description of applicable state law;

L. the right to be fully informed, in writing, of the patient/ client's rights pursuant to these regulations.
[7.28.2.32 NMAC - Rp 7 NMAC 28.2.32, 6/5/2020]

7.28.2.33 PLAN OF CARE: Care of a patient/client by the agency must follow a written plan of care which is reviewed at least annually.

A. Medically directed care: An agency must follow a written plan of care established and periodically reviewed by a physician, physician assistant, nurse practitioner or clinical nurse specialist within the extent of their licensed scope of practice as defined by state law. Care continues under the supervision of a physician, physician assistant, nurse practitioner and clinical nurse specialist acting within the extent of their licensed scope of practice as defined by state law.

(1) The plan of care shall be developed in consultation with appropriate agency staff and cover all pertinent diagnoses, including but not limited to:

(a) mental status;

(b) types of services and equipment required;

(c) frequency and duration of visits;

(d) functional limitations;

(e) activities permitted;

(f) nutritional requirements;

(g) medications and treatments;

(h) safety measures to protect against injury;

(i) plans or goals for care;

(j) any other appropriate items.

(2) If a physician, physician assistant, nurse practitioner and clinical nurse specialist acting within the extent of their licensed scope of practice, refers a patient/client under a plan of care which cannot be completed until after an evaluation visit, the physician,

physician assistant, nurse practitioner and clinical nurse specialist must be consulted to approve additions or modifications to the original plan.

(3) The plan of care must be reviewed by the attending physician, physician assistant, nurse practitioner and clinical nurse specialist acting within the extent of their licensed scope of practice, and home health agency personnel at least annually or as often as the condition of the patient/client requires.

(4) Agency professional staff must promptly alert the physician, physician assistant, nurse practitioner and clinical nurse specialist to any changes that suggest a need to alter the plan of care.

(5) Conformance with physician, physician assistant, nurse practitioner and clinical nurse specialist's orders:

(a) Drugs and treatments shall be administered by agency staff only as ordered by the physician, or physician assistants, nurse practitioners and clinical nurse specialists within the extent of their licensed scope of practice as defined by state law.

(b) Licensed professionals must immediately record and sign oral orders and obtain the physician, or physician assistant, nurse practitioner or clinical nurse specialist's countersignature.

(c) For a patient/client receiving nursing services, all medications a patient/client may be taking must be checked to identify possible ineffective drug therapy, adverse reactions, significant side effects, drug allergies and contraindicated medications. Medication problems must be promptly reported to the physician, or physician assistant, nurse practitioner or clinical nurse specialist.

B. Non-medically directed care: An agency must follow a written plan of care, which includes goals and objectives appropriate to the patient/client being served, and which is established and reviewed at least annually by agency staff.

[7.28.2.33 NMAC - Rp 7 NMAC 28.2.33, 6/5/2020]

7.28.2.34 PATIENT/CLIENT RECORDS: Each agency licensed pursuant to these regulations must maintain the original record for each patient/client receiving services. Patient/client records shall be made available for review upon request of the licensing authority. Every record must be accurate, legible, promptly completed and consistently organized. A patient/client record must meet the following criteria:

A. Content of patient/client record:

(1) Medically directed patient/client record must include:

(a) past and current medical findings in accordance with accepted professional standard;

(b) plan of care;

(c) identifying information;

(d) name of physician;

(e) medications, diet, treatment/services, and activity orders;

(f) signed and dated notes on the day service(s) provided;

(g) copies of summary reports sent to the physician;

(h) evidence of patient/client being informed of rights;

(i) evidence of coordination of care provided by all personnel providing patient/client services;

(j) discharge summary.

(2) Non-medically directed patient/client records must include:

(a) plan of care;

(b) identifying information;

(c) signed and dated notes on the day service(s) provided;

(d) evidence of patient/client being informed of rights;

(e) evidence of coordination of care of all personnel providing patient/client services;

(f) evidence of discharge.

B. If the patient/client is discharged or transferred to another provider of health care, upon receipt of a signed request from the patient/client, a copy of the original record or an abstract of the same must be made available to the receiving facility, within 24 hours.

C. Protection of patient/client records:

(1) The agency must insure that the original patient/client records and information is safeguarded against loss or unauthorized use.

(2) The agency must have written policies and procedures governing the use and removal of patient/client records and conditions for release of information.

(3) Patient/client's written consent is required for release of information not authorized by law.

D. Retention of patient/client records:

(1) Original patient/client records shall be retained for at least 10 years after the patient/client is discharged.

(2) Original patient/client records shall be maintained for the requisite period even if the agency has discontinued operations.

(3) The licensing authority must be notified, in writing, prior to discontinuing operation of the storage location of patient/client records.

[7.28.2.34 NMAC - Rp 7 NMAC 28.2.34, 6/5/2020]

7.28.2.35 REPORTS AND RECORDS REQUIRED TO BE ON FILE IN THE AGENCY:

A. a copy of the last survey conducted by the licensing authority;

B. licensing regulations: A copy of these regulations 7.28.2 NMAC;

C. agreements or contracts to provide services or care;

D. patient/client records;

E. staff records;

F. training and in-service records as applicable;

G. minutes of advisory group and governing board meetings;

H. quality improvement program records;

I. grievances and resolutions;

J. state board of pharmacy certificates as applicable.

[7.28.2.35 NMAC - Rp 7 NMAC 28.2.35, 6/5/2020]

7.28.2.36 CONTRACTED SERVICES: Services that are provided under arrangement by an individual or entity and the home health agency, shall include a written contract between those individuals or entities and the agency, that specifies the following:

A. that patients are accepted for care only by the primary (admitting) home health agency;

B. the services to be furnished under the contract;

C. the necessity to conform to all applicable agency policies including personnel qualifications;

D. the responsibility for participating in developing plans of care;

E. the manner in which services will be controlled, coordinated and evaluated by the primary agency;

F. the procedures for submitting clinical notes, scheduling of visits and conducting periodic patient evaluation;

G. the procedures for payment for services furnished under the contract.

[7.28.2.36 NMAC - Rp 7 NMAC 28.2.36, 6/5/2020]

7.28.2.37 STAFF RECORDS: Each agency licensed pursuant to these regulations must maintain a complete record on file for each staff member and for all volunteers with in-home contact or working more than half-time. Staff records shall be made available for review upon request of the licensing authority within four hours. Staff records must contain at least the following:

A. name;

B. address;

C. position for which employed;

D. date of employment;

E. health certificate for all staff having contact with patient/clients stating that the employee is free from tuberculosis in a transmissible form as required by the infectious disease bureau, of the public health division, department of health;

F. a copy or proof of the current license, registration or certificate for each staff member for whom a license, registration, or certification is required by the state of New Mexico.

[7.28.2.37 NMAC - Rp 7 NMAC 28.2.37, 6/5/2020]

7.28.2.38 POLICIES AND PROCEDURES: Each agency licensed pursuant to these regulations must have written policies and procedures for at least the following:

A. scope of services offered;

B. providing of services through arrangement or contract with individuals or agencies;

C. admission and discharge;

D. written job descriptions for all categories of personnel;

E. personnel policies;

F. staff training;

G. emergency and after normal business hour care policies/ procedures;

H. preparation, safeguarding, and release of information from patient/client records;

I. quality improvement program;

J. complaints and grievances, including timely resolution.

[7.28.2.38 NMAC - Rp 7 NMAC 28.2.38, 6/5/2020]

7.28.2.39 QUALITY IMPROVEMENT: Each agency must establish an on-going quality improvement program to ensure an adequate and effective operation. To be considered on-going, the quality improvement program must document quarterly activity that addresses, but is not limited to:

A. Clinical care: Assessment of patient/client goals and outcome, such as, diagnosis(es), plan of care, services provided, and standards of patient/client care.

B. Operational activities: Assessment of the total operation of the agency, such as, policies and procedures, statistical data (i.e., admissions, discharges, total visits by discipline, etc.), summary of quality improvement activities, summary of patient/client complaints and resolutions, and staff utilization.

C. Quality improvement action plan: Written responses to address existing or potential problems which have been identified.

D. Documentation of activities: The results of the quality improvement activities shall be compiled annually in report format and formally reviewed and approved by the governing body and advisory group of the home health agency. No more than one year may lapse between evaluations of the same part.

E. The licensing authority may, at its sole discretion, request quarterly activity summaries of an agency's on-going quality improvement activities or may direct the agency to conduct specific quality improvement studies.

[7.28.2.39 NMAC - Rp 7 NMAC 28.2.39, 6/5/2020]

7.28.2.40 COMPLAINTS: The home health agency must investigate complaints made by a patient/client, caregiver, or guardian regarding treatment or care, or

regarding the lack of respect for the patient/client's property and must document both the existence of the complaint and the resolution of the complaint. The agency's investigation of a complaint(s) must be initiated within three working days.
[7.28.2.40 NMAC - Rp 7 NMAC 28.2.40, 6/5/2020]

7.28.2.41 INCIDENTS:

A. Reporting: All home health agencies licensed pursuant to these regulations must report to the licensing authority any of the following which has, or could threaten the health, safety and welfare of the patient/clients or staff:

(1) any serious incident or unusual occurrence;

(2) injuries of unknown origin or known, suspected or alleged incidents of patient/client abuse, neglect, exploitation, or mistreatment by staff or person(s) contracted by the home health agency.

B. Documentation: The agency is responsible for documenting all incidents, within five days of the incident, and having on file the following:

(1) a narrative description of the incident;

(2) evidence contact was made to the licensing authority;

(3) results of the facility's investigation;

(4) the facility action, if any.

[7.28.2.41 NMAC - Rp 7 NMAC 28.2.41, 6/5/2020]

7.28.2.42 RELATED REGULATIONS AND CODES: Facilities subject to these regulations are also subject to other regulations, codes and standards as the same may from time to time be amended as follows:

A. Health facility licensure fees and procedures, New Mexico department of health, 7.1.7 NMAC.

B. Health facility sanctions and civil monetary penalties, New Mexico department of health 7.1.8 NMAC.

C. Adjudicatory hearings, New Mexico department of health, 7.1.2 NMAC.

[7.28.2.42 NMAC - Rp 7 NMAC 28.2.42, 6/5/2020]

HISTORY OF 7.28.2 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:
HSSD 74-17, Home Health Agency Licensing Regulations, 9/12/1974.
HSSD 77-4, Home Health Agency Licensing Regulations, 7/22/1977.
DOH 91-2 (PHD), New Mexico Regulations Governing Home Health Agencies, 5/7/1991.

History of Repealed Material:
7 NMAC 28.2, Requirements For Home Health Agencies (filed 10/31/2001) - Repealed 06/05/2020.

Other History:
7 NMAC 28.2, Requirements For Home Health Agencies (filed 10/31/2001), replaced by 7.28.2 NMAC - Requirements For Home Health Agencies, effective 6/5/2020.

HEALTH, DEPARTMENT OF

TITLE 7 HEALTH
CHAPTER 34 MEDICAL USE OF CANNABIS
PART 4 LICENSING REQUIREMENTS FOR PRODUCERS, COURIERS, MANUFACTURERS AND LABORATORIES

7.34.4.1 ISSUING AGENCY: New Mexico Department of Health, Medical Cannabis Program.
[7.34.4.1 NMAC - Rp, 7.34.4.1 NMAC, 6/23/2020]

7.34.4.2 SCOPE: This rule applies to all licensed producers of medical use cannabis, defined in Subsection D of Section 26-2B-3 NMSA 1978 as "any person or association of persons within New Mexico that the department determines to be qualified to produce, possess, distribute, and dispense cannabis pursuant to the Lynn and Erin Compassionate Use Act and that is licensed by the department."
[7.34.4.2 NMAC - Rp, 7.34.4.2 NMAC, 6/23/2020]

7.34.4.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the secretary of the department of health (DOH) pursuant to the authority granted under Subsection E of Section 9-7-6 NMSA 1978, and the Lynn and Erin Compassionate Use Act, 26-2B-1 *et seq*., NMSA 1978. Although federal law currently prohibits any use of cannabis, the laws of several states permit the medical use and cultivation of cannabis. New Mexico joins this effort to provide for the health and welfare of its citizens. New Mexico adopts these regulations to accomplish the purpose of the Lynn and Erin Compassionate Use Act as stated in Section 26-2B-2 NMSA 1978, "to allow for the beneficial use of medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments," while at the same time ensuring proper enforcement of any criminal laws for behavior that has been deemed illicit by the state.
[7.34.4.3 NMAC - Rp, 7.34.4.3 NMAC, 6/23/2020]

7.34.4.4 DURATION: Permanent.
[7.34.4.4 NMAC - Rp, 7.34.4.4 NMAC, 6/23/2020]

7.34.4.5 EFFECTIVE DATE: June 23, 2020 unless a later date is cited at the end of a section.
[7.34.4.5 NMAC - Rp, 7.34.4.5 NMAC, 6/23/2020]

7.34.4.6 OBJECTIVE: Ensuring the safe production, distribution, and dispensation of cannabis for the sole purpose of medical use for alleviating symptoms caused by debilitating medical conditions in a regulated system.
[7.34.4.6 NMAC - Rp, 7.34.4.6 NMAC, 6/23/2020]

7.34.4.7 DEFINITIONS:

A. Definitions beginning with "A":

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

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

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

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

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

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

(7) "Approved entity" means a manufacturer, laboratory, or courier.

B. Definitions beginning with "B": "Batch" means, with regard to usable cannabis, an identified quantity of cannabis no greater than five pounds that is of the same strain of cannabis, that is harvested during the same specified time period from the same specified cultivation area, , and with respect to which the same agricultural practices were utilized, including the use of any pesticides; and with regard to concentrated and cannabis-derived product, means an identified quantity that is uniform, that is intended to meet specifications for identity, strength, and composition, and that is manufactured, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling protocol.

C. Definitions beginning with "C":

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

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

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

(4) "Cannabis establishment" means:

(a) a licensed cannabis courier;

(b) a licensed cannabis testing facility;

(c) a licensed cannabis manufacturer;

(d) a licensed non-profit producer; or

(e) such other person that the department may by rule approve for participation in the medical cannabis program.

(5) "CBD" means cannabidiol, a cannabinoid and the primary non-psychoactive ingredient found in cannabis.

(6) "CBDA" means cannabidiolic acid, a non-psychoactive ingredient found in cannabis and an acid precursor to CBD.

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

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

D. Definitions beginning with "D":

(1) "Debilitating medical condition" means:

(a) cancer;

(b) glaucoma;

(c) multiple sclerosis;

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

(e) epilepsy;

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

(g) admission into hospice care in accordance with rules promulgated by the department;

(h) amyotrophic lateral sclerosis;

(i) Crohn's disease;

(j) hepatitis C infection;

(k) Huntington's disease;

(l) inclusion body myositis;

(m) inflammatory autoimmune-mediated arthritis;

(n) intractable nausea or vomiting;

(o) obstructive sleep apnea;

(p) painful peripheral neuropathy;

(q) Parkinson's disease;

(r) posttraumatic stress disorder;

(s) severe chronic pain;

(t) severe anorexia or cachexia;

(u) spasmodic torticollis;

(v) ulcerative colitis; or

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

(2) **"Department"** means the department of health or its agent.

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

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

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

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

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

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

I. Definitions beginning with "I":

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

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

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

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

L. Definitions beginning with "L":

(1) **"Laboratory"** means a licensed cannabis testing facility as defined in the Lynn and Erin Compassionate Use Act, Subsection I of Section 26-2B-3 NMSA 1978, that has been approved by the department specifically for the testing of cannabis, concentrates, and cannabis derived products.

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

(3) **"Licensed producer"** means a person or entity licensed to produce medical cannabis.

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

M. Definitions beginning with "M":

(1) **"Male plant"** means a male cannabis plant.

(2) **"Manufacture"** means to prepare a cannabis product.

(3) **"Manufacturer"** means a cannabis manufacturer as defined in the Lynn and Erin Compassionate Use Act, Subsection F of Section 26-2B-3 NMSA 1978, that has been approved by the department specifically to manufacture cannabis products; package, transport or courier cannabis products; have cannabis products tested by a cannabis testing facility; purchase, obtain, sell and transport cannabis products to other cannabis establishments; and prepare products for personal production license holders.

(4) **"Mature female plant"** means a harvestable female cannabis plant that is flowering.

(5) **"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.

(6) **"Medical cannabis program director"** means the administrator of the medical cannabis program who holds that title.

(7) **"Medical director"** means a medical practitioner designated by the

department to determine whether the medical condition of an applicant qualifies as a debilitating medical condition eligible for enrollment in the program, and to perform other duties.

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

(9) "Minor" means an individual who is less than 18 years of age.

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

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

P. Definitions beginning with "P":

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

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

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

(4) "Personal production license" means a license issued to a qualified patient or to a qualified patient's primary caregiver participating in the medical cannabis program to permit the qualified patient or the qualified patient's primary caregiver to produce cannabis for the qualified patient's use at an address approved by the department.

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

(6) "Petitioner" means any New Mexico resident or association of New Mexico residents petitioning the advisory board for the inclusion of a new medical condition, medical treatment, or disease to be added to the list of debilitating medical conditions that qualify for the use of cannabis.

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

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

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

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

(11) "Primary caregiver application form" means the registry identification card application form provided by the medical cannabis program.

(12) "Private entity" means a private, non-profit organization that applies to become or is licensed as a producer and distributor of cannabis, concentrates, or cannabis-derived products.

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

(14) "Proficiency testing" means testing conducted by the department or its agent to determine the ability of a laboratory applicant or approved laboratory to accurately identify presence, quantity, or other factors pertaining to a given analyte.

Q. Definitions beginning with "Q": "Qualified patient" means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received a registry identification card issued pursuant to the requirements of the act or department rules.

R. Definitions beginning with "R":

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

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

(3) "Reciprocal participant" means an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo.

(4) "Registry identification card" means a document issued and owned by the department which identifies

a qualified patient authorized to engage in the use of cannabis for a debilitating medical condition or a document issued by the department which identifies a primary caregiver authorized to engage in the intrastate possession and administration of cannabis for the sole use of the qualified patient.

(5) "Representative" means an individual designated as the applicant's or petitioner's agent, guardian, surrogate, or other legally appointed or authorized health care decision maker.

S. Definitions beginning with "S":

(1) "Secretary" means the secretary of the New Mexico department of health.

(2) "Secure grounds" means a facility that provides a safe environment to avoid loss or theft.

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

(4) "Security policy" means the instruction manual or pamphlet adopted or developed by the licensed producer containing security policies, safety and security procedures, and personal safety and crime prevention techniques.

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

(6) "Segregate" means to separate and withhold from use or sale batches, lots, cannabis, usable cannabis, or cannabis-derived products in order to first determine its suitability for use through testing by an approved laboratory.

T. Definitions beginning with "T":

(1) "THC" means tetrahydrocannabinol, a cannabinoid that is the primary psychoactive ingredient in cannabis.

(2) "THCA" means tetrahydrocannabinolic acid, a non-psychoactive ingredient in cannabis and an acid precursor to THC.

(3) "Technical evidence" means scientific, clinical, medical, or other specialized testimony, or evidence, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.

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

(5) "Testing" means testing of cannabis and cannabis derived products, consistent with provisions of this rule.

U. Definitions beginning with "U":

(1) "Unit" means a quantity of usable cannabis, concentrate, or cannabis-derived product that is used in identifying the maximum supply that a qualified patient may possess for purposes of department rules.

(2) "Usable cannabis" means the dried leaves and flowers of the female cannabis plant and cannabis-derived products, including concentrates, but does not include the seeds, stalks, or roots of the plant.

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

W. Definitions beginning with "W": "Wastage" means the destruction of usable cannabis or cannabis plants.

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

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

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

[7.34.4.7 NMAC - Rp, 7.34.4.7 NMAC, 6/23/2020]

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.

(2) A non-profit producer that operates a facility and, at any one time, is limited to a combined total of no greater than 1,750 cannabis plants, not including seedlings, and an inventory of usable cannabis and seeds that reflects current patient needs. 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 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.

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.

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) An applicant whose application for licensure is not approved shall not be entitled to further administrative review.

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.

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 that existed within the 300-foot area before the producer became licensed to operate at the location; provided that this distance requirement shall not apply to distribution at the home of the qualified patient or primary caregiver. 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.

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.

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.

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 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.

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.

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.

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.

M. Destruction of usable cannabis and cannabis plants: A licensed non-profit producer shall document the destruction of any usable cannabis or cannabis plants 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.

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 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.

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;

(13) an attestation that the nonprofit producer will prohibit its employees and contractors from being under the influence of drugs or alcohol in the workplace; and

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

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.

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 one year after the issuance of the personal production license, or at the end of the person's enrollment in the NM medical cannabis program, whichever occurs first.

(3) Identification cards: An employee of a licensed non-profit producer shall carry their department issued employee identification card at all times during their work, and shall present the card to law enforcement officials and to department officials upon request. An employee who is unable to produce their department issued identification card upon request shall not remain on the licensed premises, and shall produce the card for the department's inspection prior to returning to the licensed premises. 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.

R. Amended license:

(1) Submittal of application for 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:

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

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

(c) substantial change to a producer's production plan or distribution plan, including any change to the type(s) of products produced or distributed, the producer's manufacturing plan (as applicable), the producer's method(s) of distribution, and security plan.

(2) Process for incomplete application for amended license: In the event that an application for amended licensure is determined by the program to be incomplete, the program will specify the information or materials that remain to be submitted. If the licensed producer does not submit the requested information or material, and does not otherwise contact the department regarding the application, within thirty days of receiving notice of the deficiency, the application will be closed as incomplete, and the licensed producer will be required to recommence the application in order to resume the application process.

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 of the federal poverty guidelines established by the U.S. department of health and human services. 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.

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.

U. Automatic expiration of license; closure of nonprofit producer operations: 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.

V. Display of license: The licensed producer shall maintain the license safely at the production location(s) and dispensary location(s) and shall be able to produce the license immediately upon request by the department or law enforcement.

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: $40,000 for the first 500 cannabis plants to be possessed by the non-profit producer; $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 in the year 2019 shall be tendered to the department no earlier than September 23, 2019 and no later than October 4, 2019.

(4) Exception; newly licensed LNPPs: The license fee to be paid by a non-profit producer that obtains initial licensure after the enactment of this revised rule shall be pro-rated based on the time remaining in the licensure period.

(5) 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 of the federal poverty guidelines established by the U.S. department of health and human services; and.

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

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

X. Geographic requirements for initial licenses: The department may require that a non-profit producer operate dispensaries in geographical locations of the state that are specified by the department as a precondition of initial licensure.

Y. 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.

Z. Reporting of theft to department: A non-profit producer shall submit to the department notification of any theft, robbery, break-in, or security breach that occurs on the producer's premises, no later than 10 calendar days after the producer first becomes aware of the event. The description shall include a description of any property that was stolen or destroyed, and the quantity of any usable cannabis that was stolen.

AA. Closure of applications period: The department may close the applications period during which applications for non-profit producer licenses will be accepted and reviewed.

[7.34.4.8 NMAC - Rp, 7.34.4.8 NMAC, 6/23/2020]

7.34.4.9 NON-PROFIT PRODUCERS; MINIMUM STANDARDS FOR PRODUCTION OF CANNABIS: A non-profit producer shall comply with the following minimum requirements for the production of cannabis:

A. General requirements: A licensed non-profit producer shall ensure the following:

(1) that all production activities are done on premises that are in compliance with state and local laws, including but not limited to zoning, occupancy, licensing, and building codes;

(2) that all equipment, implements, and fixtures that are used for the production of cannabis shall be used exclusively for the production of cannabis;

(3) that no cannabis plants other than those grown pursuant to the non-profit producer's production license from the department are grown on the licensed property of the non-profit producer, including but not limited to hemp plants;

(4) that production is conducted in a manner that does not allow cross-contamination from chemical or biological hazards;

(5) that production does not occur at a location that is within 300 feet of a school, church, or daycare center that existed within the 300-foot area before the producer became licensed to operate at the location;

(6) that any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including a boil, sore, or infected wound, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with preparation surfaces for cannabis, shall be excluded from any operations which may be anticipated to result in such contamination until the condition is corrected;

(7) that hand-washing facilities are provided that are adequate, accessible, and conveniently located, and that they are furnished with running water at a suitable temperature; hand-washing facilities shall be located in indoor production facilities, in restrooms, and wherever good sanitary practices require employees to wash or sanitize their hands, and shall be stocked with effective hand-cleaning and sanitizing preparations, and sanitary towel service or suitable drying devices;

(8) that all persons involved in preparing or handling medical cannabis conform to hygienic practices while on duty, including:

(a) maintaining adequate personal cleanliness;

(b) washing hands thoroughly in an adequate hand-washing area before starting work, at any other time when the hands may have become soiled or contaminated, and both before putting gloves on and after removal of gloves;

(c) refraining from preparing or handling medical cannabis or cannabis derived products if the handler has or may have an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination, until such condition is corrected; and

(d) complying with the other requirements of this section;

(9) that there is sufficient space for placement of equipment and storage of materials as is necessary for the maintenance of sanitary operations for production of medical cannabis;

(10) that litter and waste are properly removed, and the operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where cannabis is exposed;

(11) that all floors (other than earthen floors), walls, and ceilings that are located within a permanent structure are constructed in such a manner that they are washable, wipeable, and non-absorbent, and can be kept clean, and kept in good repair;

(12) that walls and ceilings remain free of water damage, and that fiberglass and other insulation material not be exposed;

(13) that there is adequate safety-type lighting in all areas where cannabis is processed or stored, and where equipment or utensils are cleaned;

(14) that the non-profit producer provides adequate screening or other protection against the entry of pests; rubbish shall be disposed of so as to minimize the development of odor, minimize the potential for the waste becoming an attractant and harborage, or breeding place for pests;

(15) that building, fixtures, and other physical facilities where cannabis is produced are maintained in a sanitary condition;

(16) that all contact surfaces, including utensils and equipment used for preparation

of cannabis, are cleaned and sanitized as frequently as necessary to protect against contamination;

(17) that all equipment and utensils used for preparation of cannabis are designed and of such material and workmanship as to be adequately cleanable, and are properly maintained;

(18) that only environmental protection agency (EPA) registered sanitizing agents are used in production operations and that they are used in accordance with labeled instructions;

(19) that toxic cleaning compounds, sanitizing agents, and pesticide chemicals shall be identified, held, and stored in a manner that protects against contamination of medical cannabis or cannabis derived products, and that otherwise satisfies the requirements of this rule;

(20) that the water supply is sufficient for the operations intended and is derived from a source that is a regulated water system; private water supplies shall be from a water source that is capable of providing a safe, potable, and adequate supply of water to meet the production facility's needs;

(21) that plumbing shall be of adequate size and design, adequately installed, and maintained to carry sufficient quantities of water to required locations throughout the facility; and properly convey sewage and liquid disposable waste from the facility;

(22) that there are no cross-connections between the potable and waste water lines;

(23) that the non-profit producer provide its employees with adequate, readily accessible, on-site toilet facilities that are maintained in a sanitary condition and good repair;

(24) that all operations in the receipt, inspection, transport, segregation, preparation, manufacture, packaging, and storage of usable cannabis are conducted in accordance with adequate security and sanitation principles;

(25) that usable cannabis that can support the rapid growth of undesirable microorganisms are stored and transported in a manner that prevents the growth of these microorganisms;

(26) that storage and transportation of usable cannabis is accomplished under conditions that will maintain security and protect the usable cannabis against physical, chemical, and microbial contamination as well as against deterioration of the usable cannabis and the container;

(27) that current material safety data sheets are kept on the premises for all chemicals used, including but not limited to cleaning compounds, sanitizing agents, and pesticides;

(28) that all containers used for storage or transport of usable cannabis are washable, wipeable, and nonabsorbent;

(29) that all weighting or measuring devices that are used in the production or distribution of usable cannabis be appropriately documented as having undergone certified registration and calibration that is in accordance with applicable requirements of the New Mexico department of agriculture;

(30) that the non-profit producer will prohibit its employees and contractors from being under the influence of drugs or alcohol in the workplace; and

(31) that hemp, hemp extract, and hemp derived products, other than hemp paper and hemp seed oil, are not combined in any manner with usable cannabis intended to be sold or otherwise distributed by the non-profit producer.
[7.34.4.9 NMAC - Rp, 7.34.4.9 NMAC, 6/23/2020]

7.34.4.10 TESTING OF USABLE CANNABIS: All dried usable cannabis produced by a non-profit producer that is not converted into a concentrated cannabis derived product, and all concentrated cannabis derived products manufactured by a non-profit producer or manufacturer, shall be sampled for testing purposes by the licensed non-profit producer or manufacturer, and those samples shall be tested by an approved laboratory consistent with the requirements of this rule and found to have passed all tests required by this rule, prior to the sale, distribution, or other use of the product. Each batch of dried usable cannabis, other than cannabis that will be converted into a concentrated cannabis derived product, shall be segregated and sampled by the non-profit producer that produced the batch, and the non-profit producer shall ensure that each sample is tested by an approved laboratory in accordance with the testing requirements of this rule and determined to have passed the following individual testing requirements, before dried usable cannabis from that batch is made available for sale or distribution, and before the dried usable cannabis or any substance derived therefrom is incorporated into a cannabis derived product. Each batch of concentrated cannabis derived product shall be segregated and sampled by the manufacturer or non-profit producer that produced the batch, and the manufacturer or non-profit producer (as applicable) shall ensure that each sample is tested by an approved laboratory in accordance with the testing requirements of this rule, and determined by the manufacturer or non-profit producer (as applicable) to have passed the following individual testing requirements, before cannabis derived product from that batch is made available for sale or distribution.

A. Exception; staggered implementation: The department may within its discretion waive testing requirements of this section, in whole or in part, based on considerations such as the ability of currently approved laboratories to process all testing samples, or in order to allow additional time for laboratories to implement revised testing standards.

B. Exception for previously tested cannabis: Except as otherwise provided in this rule, a non-profit producer or manufacturer

shall not be required to sample and test dried usable cannabis or a concentrated cannabis-derived product if the batch was previously sampled and the sample was tested by another non-profit producer or manufacturer in accordance with this rule and determined to have passed the testing requirements of this rule.

C. Individual testing requirements:

(1) Microbiological test: A non-profit producer shall sample and test dried usable cannabis, and a manufacturer or non-profit producer (as applicable) shall sample and test concentrated cannabis derived products, for microbiological contaminants, using an approved laboratory prior to sale, distribution, or other use. A sample may be deemed to have passed the microbiological test if the sample contains less than each action level set forth in Table 1, Microbiological Testing Requirements, below.

Table 1. Microbiological Testing Requirements

Final Product	Test Parameter	Action Level	Test Units
Chopped or Powdered Botanicals (Dried Usable Cannabis Not Extracted)	Total Aerobic Microbial Count	>100000	cfu/g or cfu/mL
	Total Combined Yeast & Mold Count	>1000	cfu/g or cfu/mL
	Bile-tolerant Gram-negative Bacteria	>1000	cfu/g or cfu/mL
	Absence of Salmonella spp. & E. coli	Absent	In 10 grams cfu/g or cfu/mL
	Total Coliforms Count	>1000	cfu/g or cfu/mL
Powdered Botanical Extracts (Extracted or Processed Cannabis Product i.e. hash, bubble hash, rosin, kief)	Total Aerobic Microbial Count	>10000	cfu/g or cfu/mL
	Total Combined Yeast & Mold Count	>1000	cfu/g or cfu/mL
	Bile-tolerant Gram-negative Bacteria	>1000	cfu/g or cfu/mL
	Absence of Salmonella spp. & E. coli	Absent	In 10 grams cfu/g or cfu/mL
	Total Coliforms Count	>1000	cfu/g or cfu/mL
Tinctures (Solutions of Cannabis in Alcohol)	Total Aerobic Microbial Count	>10000	cfu/g or cfu/mL
	Total Combined Yeast & Mold Count	>1000	cfu/g or cfu/mL
Infusions (solutions of cannabis in water)	Total Aerobic Microbial Count	>100	cfu/g or cfu/mL
	Total Combined Yeast & Mold Count	>10	cfu/g or cfu/mL
Decoctions (Solutions of Cannabis derived by boiling in water for at least 15 minutes)	Total Aerobic Microbial Count	>100	cfu/g or cfu/mL
	Total Combined Yeast & Mold Count	>10	cfu/g or cfu/mL
Fluid extracts (An alcoholic liquid extract made by percolation of Cannabis so that 1 mL of the fluidextract represents 1 g of the Cannabis)	Total Aerobic Microbial Count	>10000	cfu/g or cfu/mL
	Total Combined Yeast & Mold Count	>1000	cfu/g or cfu/mL
Nutritional Supplements with Botanicals	Total Aerobic Microbial Count	>100000	cfu/g or cfu/mL
	Total Combined Yeast & Mold Count	>1000	cfu/g or cfu/mL
	Absence of Salmonella spp. & E. coli	Absent	In 10 grams cfu/g or cfu/mL

Botanicals to be treated with boiling water before use (Dried Cannabis to which boiling water is added immediately prior to consumption)	Total Aerobic Microbial Count	>100000	cfu/g or cfu/mL
	Total Combined Yeast & Mold Count	>1000	cfu/g or cfu/mL
	Absence of E. coli	Absent	In 10 grams cfu/g or cfu/mL
Nutritional products with other highly refined ingredients (Edibles)	Total Aerobic Microbial Count	>1000	cfu/g or cfu/mL
	Total Combined Yeast & Mold Count	>100	cfu/g or cfu/mL
	Absence of E. coli	Absent	In 10 grams cfu/g or cfu/mL
Quantitative analysis results shall be rounded off to the first two significant digits.			
E. coli and Salmonella results shall be reported as Present or Absent.			

(2) Mycotoxin test: A non-profit producer shall sample and test dried usable cannabis, and a manufacturer or non-profit producer (as applicable) shall sample and test concentrated cannabis derived products, for mycotoxins, using an approved laboratory prior to sale, distribution, or other use. A sample may be deemed to have passed the mycotoxin test if the total quantity of aflatoxin B1, B2, G1, and G2 and ochratoxin A is collectively less than 20 µg/kg (parts per billion) of the sample. The mycotoxin test shall be conducted in accordance with the testing requirements at Table 2, Mycotoxins Testing Requirements.

Table 2. Mycotoxins Testing Requirements

Targeted Mycotoxins	Chemical Name	Abbreviation	CAS Number	Method Reporting Level (µg/kg)*	Action Level (µg/kg)*
Aflatoxins	Aflatoxin B_1	AFB1	1162-65-8	1.0	Combined concentration of five mycotoxin components: 20
	Aflatoxin B_2	AFB2	7220-81-7	1.0	
	Aflatoxin G_1	AFG1	1165-39-5	1.0	
	Aflatoxin G_2	AFG2	7241-98-7	1.0	
Ochratoxin	Ochratoxin A	OTA	303-47-9	1.0	

Mycotoxins Reporting Requirements for DOH Medical Cannabis Program
Use two significant digits when reporting a total mycotoxins result.
Non-detects are reported as less than the Method Reporting Level. Example: "Total Mycotoxins < 1 µg/kg"
*Micrograms of mycotoxin per kilogram (µg/kg) of sample is equivalent to parts per billion (ppb).

(3) Residual solvent test: A manufacturer or non-profit producer (as applicable) shall sample and test all concentrated cannabis derived products that are manufactured using solvent extraction methods for the presence of solvent residue, using an approved laboratory prior to sale, distribution, or other use. A sample may be deemed to have passed the residual solvent test if the sample contains less than each action level set forth in Table 3, Residual Solvent Testing Requirements. The residual solvent test shall be conducted in accordance with the testing requirements at Table 3.

Table 3. Residual Solvent Testing Requirements

Targeted Compounds	Common Chemical Name	IUPAC Name	CAS Number	Method Reporting Level (µg/g) or (ppm)*	Action Level (µg/g) or (ppm)*
Propane	propane	propane	74-98-6	100	500
Butanes	*n*-butane	butane	106-97-8	100	500
	isobutane	2-methylpropane	75-28-5	100	500
Pentane	*n*-pentane	pentane	109-66-0	100	500
Hexane	*n*-hexane	hexane	110-54-3	25	50

Cyclohexane	cyclohexane	cyclohexane	110-82-7	100	500
Benzene	benzene	benzene	71-43-2	2.0	2.0
Toluene	toluene	methylbenzene	108-88-3	100	200
Heptane	*n*-heptane	heptane	142-82-5	100	500
Ethylbenzene	ethylbenzene	ethylbenzene	100-41-4	100	Combined concentration of all four compounds: 400
and Xylenes	*ortho*-xylene	1,2-dimethylbenzene	95-47-6	100	
	meta-xylene	1,3-dimethylbenzene	108-38-3	200	
	para-xylene	1,4-dimethylbenzene	106-42-3		
Methyl Alcohol	methyl alcohol	methanol	67-56-1	100	1000
Isopropyl Alcohol	isopropanol	2-propanol	67-63-0	200	1000
Methylene Chloride	methylene chloride	dichloromethane	75-09-2	50	100
Acetone	acetone	2-propanone	67-64-1	200	1000

Residual Solvents Reporting Requirements for DOH Medical Cannabis Program

Use two significant digits when reporting residual solvent results.

Non-detects are reported as less than the Method Reporting Level for each residual solvent. Example: "Benzene < 2.0 µg/g"

Note: The isomers meta-xylene and para-xylene cannot be separated chromatographically, so they are reported as a pair.

*Micrograms solvent per gram of sample (µg/g) is equivalent to parts per million (ppm).

(4) Potency test: A non-profit producer shall sample and test all dried usable cannabis, and a non-profit producer or manufacturer (as applicable) shall sample and test all concentrated cannabis derived products, for quantity of tetrahydrocannabinol (THC, tetrahydrocannabinolic acid (THCA), cannabidiol (CBD), cannabidiolic acid (CBDA), and also for THC potency and CBD potency, using an approved laboratory prior to sale, distribution, or other use. A non-profit producer may, at the producer's option, also test for quantity of cannabinol (CBN), cannabigerolic acid (CBGA), cannabigerol (CBG), cannabichromene (CBC), tetrahydrocannabivarin (THCV), and cannabidivarin (CBDV). The potency test shall be conducted in accordance with the testing requirements at Table 4, Potency Testing Requirements.

Table 4. Potency Testing Requirements

Cannabinoid	Abbreviation	CAS Number	Reporting Units*	Comments
Tetrahydrocannabinolic Acid	THCA	23978-85-0	mg/g and % (Percent)	analysis required by rule
Tetrahydrocannabinol	THC	1972-08-3	mg/g and % (Percent)	analysis required by rule
Cannabidiolic Acid	CBDA	1244-58-2	mg/g and % (Percent)	analysis required by rule
Cannabidiol	CBD	13956-29-1	mg/g and % (Percent)	analysis required by rule
THC Potency	THC Potency = Percent THCA x 0.877 + Percent THC		mg/g and % (Percent)	reporting required by the rule and calculation listed
CBD Potency	CBD Potency = Percent CBDA x 0.877 + Percent CBD		mg/g and % (Percent)	reporting required by the rule and calculation listed
Cannabinol	CBN	521-35-7	mg/g and % (Percent)	analysis optional, recommended for strain characterization
Cannabigerolic Acid	CBGA	25555-57-1	mg/g and % (Percent)	analysis optional, recommended for strain characterization
Cannabigerol	CBG	25654-31-3	mg/g and % (Percent)	analysis optional, recommended for strain characterization

Cannabichromene	CBC	20675-51-8	mg/g and % (Percent)	analysis optional, recommended for strain characterization
Tetrahydrocannabivarin	THCV	31262-37-0	mg/g and % (Percent)	analysis optional, recommended for strain characterization
Cannabidivarin	CBDV	24274-48-4	mg/g and % (Percent)	analysis optional, recommended for strain characterization
*Milligrams per gram (mg/g) of sample; this unit can be also expressed in percent composition of the sample.				

A cannabis derived product shall be homogenous in composition with respect to THC potency. A product shall be deemed non-homogenous if ten percent of the infused portion of the product contains more than twenty percent of the total THC contained in the product. In the event that a cannabis derived product does not meet this requirement, the batch shall be wasted in accordance with the provisions of this rule.

(5) Heavy metal test: A non-profit producer shall sample and test all dried usable cannabis, and a non-profit producer or manufacturer (as applicable) shall sample and test all concentrated cannabis derived products, for heavy metals, using an approved laboratory, prior to sale, distribution, or other use. A sample may be deemed to have passed the heavy metals test if the sample contains less than each action level set forth in Table 5, Heavy Metal Testing Requirements. The heavy metals test shall be conducted in accordance with the testing requirements at Table 5.

Table 5. Heavy Metal Testing Requirements

Heavy Metals	Elemental Symbol	IUPAC Name	CAS Number	Action Level (µg/g) or (ppm)*	Method Reporting Level (µg/g) or (ppm)*
Arsenic	As	arsenic	7440-38-2	2.0	0.2
Cadmium	Cd	cadmium	7440-43-9	0.8	0.2
Lead	Pb	lead	7439-92-1	1.2	0.2
Mercury	Hg	mercury	7439-97-6	0.4	0.1
*Micrograms per gram (µg/g) of sample is equivalent to parts per million (ppm).					

(6) Pesticide test: A non-profit producer shall sample and test all dried usable cannabis, and a non-profit producer or manufacturer (as applicable) shall sample and test all concentrated cannabis derived products, for pesticide content using an approved laboratory prior to sale, distribution, or other use. A sample may be deemed to have passed the pesticide test if the sample contains less than each action level set forth in Table 6, Pesticide Testing Requirements. The pesticide test shall be conducted in accordance with the testing requirements at Table 6.

Table 6. Pesticide Testing Requirements

Targeted Pesticide	Common Chemical Name	CAS Number	Action Level (µg/kg)	Method Reporting Level (µg/kg)
Abamectin	avermectin B1a & avermectin B1b	71751-41-2	500	100
Azoxystrobin	azoxystrobin	131860-33-8	200	100
Bifenazate	bifenazate	149877-41-8	200	100
Etoxazole	etoxazole	153233-91-1	200	100
Imazalil	chloramizole	35554-44-0	200	100
Imidacloprid	imidacloprid	138261-41-3	400	100
Malathion	malathion	121-75-5	200	100
Myclobutanil	myclobutanil	88671-89-0	200	100
Permethrins	*cis*-permethrin & *trans*-permethrin	52645-53-1	200	100
Spinosad	spinosyn A & spinosyn D	168316-95-8	200	100
Spiromesifen	spiromesifen	283594-90-1	200	100
Spirotetramat	spirotetramat	203313-25-1	200	100
Tebuconazole	tebuconazole	80443-41-0	400	100
*Micrograms of pesticide per kilogram (**µg/kg**) of sample is equivalent to parts per billion (ppb).				

(7) Moisture content test: A non-profit producer shall sample and test all dried usable cannabis for moisture content using an approved laboratory prior to sale, distribution, or other use.

(8) Random testing of finished cannabis derived products: A non-profit producer or manufacturer that manufactures a cannabis derived product shall establish a schedule for, and shall conduct, random sampling and testing of finished, non-concentrated cannabis derived products, including but not limited to edible cannabis derived products, as follows:

(a) The non-profit producer or manufacturer shall randomly select and sample at and at least one percent of all non-concentrated cannabis derived product batches manufactured every week (and no less than one batch);

(b) The non-profit producer or manufacturer shall apply the sampling and testing standards that otherwise apply under this rule to dried cannabis and concentrated cannabis derived products; and

(c) In the event that a sample fails any of the required tests, the batch shall not be sold, distributed, or otherwise used, unless remediated in accordance with the remediation standards of this rule.

(9) Additional testing: The department may require additional testing of cannabis and cannabis derived products by non-profit producers and manufacturers, as it deems appropriate.

D. Release of batch after testing: A licensed non-profit producer or manufacturer may release an entire batch of dried cannabis or concentrated cannabis derived product for immediate manufacture, sale, or other use, provided that the sample taken from the batch passes the tests required in this section.

E. Procedures for testing: A licensed non-profit producer and a manufacturer shall ensure that the following testing procedures are followed:

(1) sampling and segregation: a licensed non-profit producer or manufacturer shall remove a sample of no less than the quantities of cannabis or cannabis derived product specified in Table 7, Minimum Test Sample Size, from every batch, and shall transfer the sample to an approved laboratory for testing; the remainder of the batch of dried, usable cannabis or concentrated cannabis-derived product shall be segregated until the licensed non-profit producer receives the results of laboratory testing report and determines whether the batch meets the testing requirements of this rule;

Table 7. Minimum Test Sample Size

Targeted Parameter	Sample Matrix	Analysis Platforms (Instrumentation Used by Lab)	Minimum Amount Required for Testing (grams)
Cannabis Potency	dried usable cannabis	HPLC, LCMS	1.0
	concentrated cannabis-derived products (CCDP)	HPLC, LCMS	1.0
	non-concentrated cannabis-derived products (NCCDP)	HPLC, LCMS	1.0
Cannabis Moisture Content	dried usable cannabis	n/a	1.0
Mycotoxins	dried usable cannabis, CCDP, or NCCDP	HPLC, LCMS, LCMSMS	1.0
Residual Solvents	CCDP	GC-FID, GC-PID/FID	1.0
	CCDP	GCMS	0.5
	NCCDP	GC-FID, GC-PID/FID	5.0
	NCCDP	GCMS	1.0
Absence of Salmonella spp. & E. coli	dried usable cannabis, NCCDP	Culture, biochemical, antibody, or nucleic acid-based assays shall be validated microbiological methodology such as FDA, USP, AOAC, or equivalent.	10.0
	CCDP		1.0

Total Aerobic Microbial Count	dried usable cannabis, CCDP, or NCCDP	Direct culture, indirect culture, or non-culture based. Must be validated microbiological methodology such as FDA, USP, AOAC, or equivalent.	10.0 (dried usable cannabis and NCCDP) 1.00 (CCDP)
Total Combined Yeast & Mold Count			
Bile-tolerant Gram-negative Bacteria			
Total Coliforms Count			
Pesticides	dried usable cannabis	HPLC, LCMS, LCMSMS	2.0
Heavy Metals	dried usable cannabis, CCDP, NCCDP	ICP-MS, FIMS	0.5
Minimum required test size for CCDP = 8 g, Minimum required test sample size for NCCDP = 27.5g, Minimum required test sample size for dried usable cannabis = 25.5 g. Minimum test sample size may change if a validated method is approved by NMDOH MCP			

(2) sample selection: a non-profit producer and manufacturer shall collect and submit samples for testing that are representative of the batch being tested; the department may order that a non-profit producer or manufacturer modify its sampling collection practices if it has reason to believe that samples that were previously collected were not representative of an associated batch;

(3) documentation: a non-profit producer and a manufacturer shall appropriately document the sampling and testing of all dried cannabis and concentrated cannabis-derived product, and shall utilize a department approved laboratory for the purpose of testing usable cannabis;

(4) preservation and inspection of testing records: a licensed non-profit producer and a manufacturer shall maintain all results of laboratory tests conducted on cannabis or cannabis derived products produced by the licensed non-profit producer or manufacturer or their contractor for a period of at least two years, and shall make those results available to qualified patients and primary caregivers enrolled in the medical cannabis program upon request; and

(5) disciplinary action: repeated failure to pass testing may result in the imposition of disciplinary action(s) by the department, consistent with this rule.

F. Remediation; subsequent testing: If a sample fails a given test (i.e., if the sample does not measure below the action levels specified in this rule), the non-profit producer or manufacturer (as applicable) shall determine whether remediation is appropriate, and may pursue confirmatory testing at another approved laboratory. In the event that a non-profit producer or manufacturer attempts to remediate cannabis or a cannabis derived product, the batch shall again be sampled and subjected to all of the tests identified in this rule, except those required for heavy metals and pesticides. A batch of usable cannabis that fails a given test and that does not pass the required tests subsequent to remediation conducted in accordance with the terms of this rule, shall be destroyed in accordance with the wastage requirements of this rule. A non-profit producer or manufacturer may remediate cannabis or cannabis derived product in accordance with the following:

(1) Dried usable cannabis: A non-profit producer may remediate dried usable cannabis that has failed a microbiological test, by utilizing extraction or distillation methods that remove or reduce contaminants in the batch such that a subsequent sample from the batch measures within the action levels of a required test. A non-profit producer may not remediate dried usable cannabis that fails any other test required by this rule;

(2) Cannabis derived product: A non-profit producer or manufacturer (as applicable) may remediate a non-edible cannabis derived product (including concentrated product) that has failed a microbiological test or residual solvent test by utilizing extraction or distillation methods that remove or reduce contaminants in the batch such that a subsequent sample from the batch measures within the action levels of a required test. A non-profit producer or manufacturer may not remediate non-edible cannabis derived product that fails any other test required by this rule.

(3) Edible cannabis derived product: A non-profit producer or manufacturer may not remediate an edible cannabis derived product. Edible cannabis derived products include brownies, cookies, candies, and similar finished products intended for human consumption.

(4) Notice and wastage: If the batch of usable cannabis cannot be remediated such that the sample measures within the action levels of a required test, the non-profit producer or manufacturer shall notify the department within 24 hours, and shall confirm the wastage and disposal of the usable cannabis in accordance with this rule. The wasted product shall be removed from inventory, and the removal from inventory shall be tracked in an electronic system specified by the department.

(5) Testing and remediation protocols: A non-profit producer and a manufacturer shall adopt and maintain on the premises protocols regarding sampling, sample testing, remediation, and retesting, consistent with this rule.
[7.34.4.10 NMAC - Rp, 7.34.4.9 NMAC, 6/23/2020]

7.34.4.11 WASTAGE OF CANNABIS; PERMITTED METHODS: A non-profit producer or approved entity that wastes usable cannabis or cannabis plants shall do so by rendering the cannabis unusable and unrecognizable, in accordance with the requirements of this rule, prior to removal from licensed premises. The wastage of usable cannabis and cannabis plants shall be documented by the non-profit producer or approved entity, shall be tracked by batch, and shall be recorded in an electronic tracking system specified by the department. Wastage of usable cannabis or cannabis plants shall occur only within the licensee's ordinary business hours. A non-profit producer or approved entity shall dispose of wasted cannabis and shall not attempt to incorporate wasted cannabis products into any product intended for consumption.

A. Permitted methods of wastage: Wastage of cannabis and cannabis derived products shall be accomplished by the following permitted methods:

(1) Dried usable cannabis: wastage of dried usable cannabis or cannabis plants shall be accomplished by grinding and incorporating the cannabis into other ground material, such as soil, compost material, or leaf and yard waste, so that the resulting mixture is at least fifty percent non-cannabis material by volume;

(2) Non-liquid cannabis derived product: wastage of non-liquid cannabis derived products shall be accomplished in the same manner as the wastage of dried usable cannabis; and

(3) Liquid cannabis derived product: Wastage of cannabis derived liquids shall be accomplished by mixing the liquid with absorbent material such as cat litter, sand, plastic waste, or sawdust, such that the liquid is fully absorbed into the material.

B. Disposal of wasted cannabis: Disposal of wasted cannabis and cannabis products shall be conducted in accordance with all applicable waste disposal laws, including but not limited to hazardous waste disposal laws (as applicable).

C. Holding time: Usable cannabis and cannabis plants that a licensee intends to waste shall be held in a secured designated holding area for a minimum of 72 hours prior to being wasted. A licensee shall affix to each batch that is held for wasting documents that record information concerning the batch, including batch number or code, plant number, and weight. The batch to be wasted shall not be handled, moved, or wasted during the 72 hour period, unless by specific instruction of the department. Cannabis that is intended to be wasted may be subject to inspection by the department or its designee.

D. Documentation of wastage; retention: A licensee shall record the wastage of usable cannabis and cannabis plants, including batch number, weight, plant number, the name of the receiving solid waste facility, dates of wastage and disposal, and any test results associated with a wasted batch, using an electronic system specified by the department, and shall deduct any wasted usable cannabis or cannabis plants from the licensee's inventory. The electronic record shall be retained for no less than two years following the disposal. A licensee shall additionally document the wastage of any usable cannabis or cannabis plants using a video recording, and shall retain the video recording of the destruction for no less than 120 days. A licensee shall make the video recording of the destruction available for the department's inspection and copying upon the department's request.

E. Notice to department: A non-profit producer or manufacturer shall notify the department of the wastage of usable cannabis within five business days of the wastage.
[7.34.4.11 NMAC - N, 6/23/2020]

7.34.4.12 DEPARTMENT TESTING; QUALITY ASSURANCE; RANDOMIZED TESTING; COMPLAINT PROCEDURE:

A. Quality assurance testing by the department: The department may within its discretion conduct quality assurance sampling and testing of usable cannabis, and may require a producer or a manufacturer to provide samples of usable cannabis for this purpose. The department may additionally adopt and enforce a randomized testing schedule for the sampling and testing of usable cannabis. The department may prohibit the sale or distribution of usable cannabis that is determined by the department to contain prohibited levels of contaminants, or that is found to have been improperly tested, or may require remediation of such usable cannabis that is consistent with the remediation standards of this rule.

B. Complaints: If the department or its designee receives a complaint regarding the presence of mold, bacteria, or another contaminant in usable cannabis produced by a non-profit producer, a manufacturer, or patient who holds a personal production license, or if the department or its designee has reason to believe that the presence of bacteria physical, microbiological, chemical, or other contaminant may jeopardize the health of a patient, the department or its designee may conduct an unannounced visit to the producer or manufacturer and may require the producer or manufacturer to provide samples of medical cannabis for testing by the department. Producers and manufacturers shall bear the cost of any testing required by the department.

C. Department sampling and testing requirements: Medical cannabis program employees and their designees may possess

medical cannabis samples for the sole purposes of testing or transport to a testing facility. The department or its designee shall comply with the following testing requirements:

(1) the department or its designee shall maintain chain of custody documentation for any medical cannabis samples taken;

(2) a written receipt shall be given to the producer or manufacturer for all testing samples;

(3) all testing samples shall be placed into a sealed container and clearly labeled;

(4) all testing samples shall be tested by the department or a designated testing facility; and

(5) the quantity of cannabis that is gathered by the department from a producer or manufacturer for testing purposes shall not exceed the applicable sample sizes identified in Table 7.

[7.34.4.12 NMAC - Rp, 7.34.4.10 NMAC, 6/23/2020]

7.34.4.13 USE OF PESTICIDES BY LICENSED PRODUCERS: The use of any pesticide by a licensed producer or manufacturer in the growth or manufacture of cannabis or cannabis products shall be in accordance with the New Mexico Pesticide Control Act, Section 76-4-1 *et seq.*, NMSA 1978, and associated regulations. Pesticides shall be stored in a secured area that is accessible only to employees, and shall be segregated from usable cannabis and cannabis plants and from any product or equipment that is utilized in the manufacturing or production process.

[7.34.4.13 NMAC - Rp. 7.34.4.11 NMAC, 6/23/2020]

7.34.4.14 DEPARTMENT APPROVAL OF MANUFACTURERS OF CANNABIS DERIVED PRODUCTS; GENERAL MANUFACTURING PROVISIONS:

A. Submittal of applications: A manufacturer applicant shall submit an authorized application form to the program with each initial application and renewal application, together with a fee of five thousand dollars ($5,000) issued to the medical cannabis program. A manufacturer applicant shall comply with the application requirements of this rule, and shall submit such other information as the manufacturer applicant wishes to provide or such information as the department may request for initial approval or periodic evaluation(s) during the approval period.

B. Application requirements: A manufacturer applicant shall submit to the department:

(1) proof that the manufacturer applicant is in good standing with the New Mexico taxation and revenue department;

(2) copies of the manufacturer applicant's articles of incorporation and by-laws, as applicable;

(3) a complete written description of the means that the manufacturer applicant shall employ to safely manufacture cannabis-derived products, including but not limited to hygiene standards consistent with the requirements of this rule, and a hazard analysis critical control point plan (HACCP) for each type of product that the manufacturer wishes to manufacture;

(4) a detailed list of all cannabis derived products to be manufactured;

(5) a list of all persons or business entities having direct or indirect authority over the management or policies of the manufacturer applicant;

(6) a list of all persons or business entities having any ownership interest in any property utilized by the manufacturer applicant, 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;

(7) a description of the facilities that shall be used in the manufacture of cannabis derived products;

(8) proof that no buildings to be used by the manufacturer are located within 300 feet of any school, church, or daycare center; or alternatively, proof that any school, church, or daycare center that is located within 300 feet of a building to be used by the applicant did not occupy that location prior to the applicant initially seeking to become licensed to operate at the location;

(9) a description of how the manufacturer applicant will obtain cannabis or cannabis concentrates from a licensed non-profit producer, and how the manufacturer applicant will transport cannabis derived products to a licensed non-profit producer, including but not limited to chain of custody documentation;

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

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

(a) safety and security procedures;

(b) personal safety;

(c) crime prevention techniques.

(12) an attestation that no firearms will be permitted on any premises used for manufacture of cannabis derived products by the manufacturer applicant;

(13) a description of the methods and device or series of devices that shall be used to provide security, as well as documentation of successful testing of alarms and law enforcement notification system;

(14) training documentation prepared for each employee of the manufacturer applicant, 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;

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

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

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

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

(17) employee safety and security training materials provided to each employee of the manufacturer applicant 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;

(18) an attestation that the manufacturer applicant will ensure that all persons who work at a facility of the manufacturer will be 18 years of age or older;

(19) a description of how the manufacturer applicant will utilize the electronic inventory tracking system required by the department;

(20) a written policy to ensure that no cross-contamination of cannabis occurs;

(21) copies of any applicable lease agreements for facilities to be used by the manufacturer applicant;

(22) an attestation that the manufacturer applicant has complied and will comply with all applicable state and local zoning, occupancy, licensing and building codes applicable to buildings to be utilized by the manufacturer;

(23) proof of prior approval by the New Mexico regulation and licensing department for the use of any compressed gas extraction equipment to be utilized by the manufacturer;

(24) an attestation that the manufacturer applicant will not use dimethylsulfoxide (DMSO) in the production of cannabis derived products, and will not possess DMSO on the premises of the manufacturer;

(25) a written statement of the days and hours that the manufacturer will operate;

(26) such other materials as the department may require.

C. Prohibited additives: A manufacturer and a non-profit producer shall not manufacture or distribute a product that is intended to be consumed by inhalation that includes polyethylene glycol, polypropylene glycol, vitamin E acetate, or medium chain triglycerides. A manufacturer and a non-profit producer shall not combine nicotine, caffeine, or any other addictive substance with a usable cannabis product. This prohibition shall not apply to the combination of cannabis with sugar, or a product in which caffeine is naturally occurring, such as coffee, tea, or chocolate.

D. Term of approval: Department approval of a manufacturer shall be for a term of one year, and shall expire after that year, or upon closure of the manufacturer. An approved manufacturer shall apply for renewal of approval annually no later than 30 days prior to expiration.

E. Identification cards: An employee of an approved manufacturer shall carry their department issued employee identification card at all times during their work, and shall present the card to law enforcement officials and to department officials upon request. An employee who is unable to produce their department issued identification card upon request shall not remain on the licensed premises, and shall produce the card for the department's inspection prior to returning to the licensed premises. Identification cards issued by the department are the property of the department and shall be returned to the department upon termination of the holder's employment with the approved manufacturer, suspension, or revocation of approval by the department, or upon demand of the department.

F. Amended license:

(1) An approved manufacturer 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:

(a) change of location of the manufacturer's facilities, change of directors, change of ownership of the manufacturer's facilities, change of company name, and any physical modification or addition to the manufacturer's facilities; and

(b) substantial change to the manufacturer's methods for manufacturing cannabis-derived products, and any substantial change to the manufacturer's security plan.

(2) Process for incomplete application for amended license: In the event that an application for amended licensure is determined by the program to be incomplete, the program will specify the information or materials that remain to be submitted. If the manufacturer does not submit the requested information or material, and does not otherwise contact the department regarding the application, within thirty days of receiving notice of the deficiency, the application will be closed as incomplete, and the manufacturer will be required to resubmit the application in order to recommence the application process.

G. Inventory and sales equipment: The department

may require a licensed manufacturer 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.

H. Reporting of theft to department: A manufacturer shall submit to the department notification of any theft, robbery, break-in, or security breach that occurs on the manufacturer's premises, no later than 10 calendar days after the manufacturer first becomes aware of the event. The description shall include a description of any property that was stolen or destroyed, and the quantity of any usable cannabis that was stolen.

I. Closure of applications period: The department may close the applications period during which applications for manufacturer licenses will be accepted and reviewed.

[7.34.4.14 NMAC - Rp. 7.34.4.12 NMAC, 6/23/2020]

7.34.4.15 STANDARDS FOR MANUFACTURE OF CANNABIS-DERIVED PRODUCTS: The following are minimum requirements for the manufacture of cannabis-derived products which shall apply to all manufacturers and licensed non-profit producers that manufacture cannabis-derived products:

A. General requirements: A licensed non-profit producer and a manufacturer shall ensure the following:

(1) that all manufacturing shall be done in premises that are in compliance with state and local laws, including but not limited to zoning, occupancy, licensing, and building codes;

(2) that the manufacturing operation and all equipment, implements, and fixtures that are used for the manufacture of cannabis derived products shall be used exclusively for the manufacture of cannabis derived products and that food processing for personal, staff, or the general public shall be prohibited;

(3) that all manufacturing is done indoors; with the exception that compressed gas extraction may occur outdoors in accordance with applicable standards of the New Mexico regulation and licensing department;

(4) that all manufacturing is conducted in a manner that does not allow cross-contamination from chemical or biological hazards;

(5) that manufacturing does not occur at a location that is within 300 feet of a school, church, or daycare center that existed within the 300-foot area before the non-profit producer or manufacturer became licensed to operate at the location;

(6) that all non-profit producer and manufacturer staff involved in the handling, transportation, manufacture, testing, or packaging of cannabis derived products must complete general food handler safety training;

(7) that any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including a boil, sore, or infected wound, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with preparation surfaces for medical cannabis or cannabis derived products, shall be excluded from any operations which may be anticipated to result in such contamination until the condition is corrected;

(8) that hand-washing facilities are provided that are adequate, accessible, and conveniently located, and that they are furnished with running water at a suitable temperature; hand-washing facilities shall be located in indoor production facilities, in restrooms, and wherever good sanitary practices require employees to wash or sanitize their hands, and shall be stocked with effective hand-cleaning and sanitizing preparations, and sanitary towel service or suitable drying devices;

(9) that all persons involved in preparing or handling medical cannabis or cannabis derived products at the manufacturing operation conform to hygienic practices while on duty, including:

(a) maintaining adequate personal cleanliness;

(b) washing hands thoroughly in an adequate hand-washing area before starting 0work, at any other time when the hands may have become soiled or contaminated, and both before putting gloves on and after removal of gloves;

(c) refraining from preparing or handling medical cannabis or cannabis derived products if the handler has or may have an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination, until such condition is corrected;

(d) complying with the other requirements of this section.

(10) that there is sufficient space for placement of equipment and storage of materials as is necessary for the maintenance of sanitary operations for production of medical cannabis derived products;

(11) that litter and waste are properly removed, and the operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where medical cannabis or cannabis derived products are exposed;

(12) that floors, walls, and ceilings are constructed in such a manner that they are washable, wipeable, and non-absorbent, and can be kept clean, and kept in good repair;

(13) that walls and ceilings remain free of water damage, and that fiberglass and other insulation material not be exposed;

(14) that there is adequate safety-type lighting in all areas where medical cannabis or cannabis derived products are processed or stored, and where equipment or utensils are cleaned;

(15) that the manufacturer provides adequate screening or other protection against the entry of pests; rubbish shall be disposed of so as to minimize the development of odor, minimize the potential for the waste becoming an attractant and harborage, or breeding place for pests;

(16) that building, fixtures, and other physical facilities where cannabis derived products are manufactured are maintained in a sanitary condition;

(17) that all contact surfaces, including utensils and equipment used for preparation of cannabis derived products are cleaned and sanitized as frequently as necessary to protect against contamination;

(18) that all equipment and utensils used for preparation of cannabis derived products are designed and of such material and workmanship as to be adequately cleanable, and are properly maintained;

(19) that only environmental protection agency (EPA) registered sanitizing agents are used in manufacturing operations and that they are used in accordance with labeled instructions;

(20) that toxic cleaning compounds, sanitizing agents, and pesticide chemicals shall be identified, held, and stored in a manner that protects against contamination of medical cannabis or cannabis derived products;

(21) that any chemicals used for extraction in the manufacturing process be intended for such usage, and that they be of food or medical grade;

(22) that the water supply is sufficient for the operations intended and is derived from a source that is a regulated water system; private water supplies shall be from a water source that is capable of providing a safe, potable, and adequate supply of water to meet the manufacturing facility's needs;

(23) that plumbing shall be of adequate size and design, adequately installed, and maintained to carry sufficient quantities of water to required locations throughout the facility; and properly convey sewage and liquid disposable waste from the facility;

(24) that there are no cross-connections between the potable and waste water lines;

(25) that the manufacturer provide its employees with adequate, readily accessible, on-site toilet facilities that are maintained in a sanitary condition and good repair;

(26) that all operations in the receipt, inspection, transport, segregation, preparation, manufacture, packaging, and storage of medical cannabis or cannabis derived products are conducted in accordance with adequate security and sanitation principles;

(27) that medical cannabis or cannabis derived products that can support the rapid growth of undesirable microorganisms are stored and transported in a manner that prevents the growth of these microorganisms;

(28) that storage and transportation of usable cannabis is accomplished under conditions that will maintain security and protect medical cannabis or cannabis derived products against physical, chemical, and microbial contamination as well as against deterioration of the medical cannabis or cannabis derived product and the container;

(29) that current material safety data sheets are kept on the premises for all chemicals used, including but not limited to cleaning compounds, sanitizing agents, and pesticides;

(30) that extraction for the purpose of manufacturing concentrates is conducted in a closed system utilizing an oil extractor solvent such as N-butane or carbon dioxide or utilizing ethyl alcohol;

(31) that all containers used for storage or transport of usable cannabis are washable, wipeable, and nonabsorbent;

(32) that if alcohol is to be used for extraction, only food grade, non-denatured ethyl alcohol is used for that purpose;

(33) that all weighting or measuring devices that are used in the production, distribution, or manufacture of usable cannabis be appropriately documented as having undergone certified registration and calibration that is in accordance with applicable requirements of the New Mexico department of agriculture;

(34) that the manufacture of a cannabis derived product by a manufacturer from the cannabis material produced by a personal production license holder is recorded in an electronic tracking system specified by the department;

(35) that the manufacturer or non-profit producer will prohibit its employees and contractors from being under the influence of drugs or alcohol in the workplace;

(36) that the department is notified of any changes to the days or hours of business operation;

(37) that staff who are tasked with conducting compressed gas extraction activities be appropriately trained in the of use of extraction equipment, as well as safety and emergency procedures, by a qualified trainer, prior to beginning extraction activities;

(38) that hemp, hemp extract, and hemp derived products (other than hemp paper) are not combined in any manner with usable cannabis that is intended to be sold or otherwise distributed in the medical cannabis program; and

(39) that cannabis and cannabis derived products that are kept in manufacturing areas at all times be clearly segregated from hemp and hemp derived products.

B. Prohibited products: The use of dimethylsulfoxide (DMSO) in the production of cannabis derived products, and the possession of DMSO upon the premises of a

manufacturer or licensed non-profit producer, is prohibited.

C. Imprinting of certain usable cannabis products with universal THC symbol: A manufacturer and a licensed non-profit producer shall ensure that the universal New Mexico THC warning symbol, or a comparable symbol denoting THC content, is embossed or otherwise imprinted directly upon the following usable cannabis products that contain THC, prior to sale or distribution of any such product to a qualified patient or primary caregiver:

(1) chocolate;

(2) soft confections;

(3) hard confections or lozenges; and

(4) pressed pills and capsules

[7.34.4.15 NMAC - Rp. 7.34.4.13 NMAC, 6/23/2020]

7.34.4.16 LABELING OF USABLE CANNABIS; DRUG INFORMATION SHEETS: A non-profit producer shall not sell or otherwise distribute to the public a usable cannabis product that has not been packaged and labeled in accordance with this rule.

A. Packaging and labels not designed to appeal to children: A package containing usable cannabis shall not display any content that reasonably appears to target minors, including but not limited to, cartoon characters or similar images. A product name or package shall not be modeled after a brand of product that is traditionally marketed toward children.

B. Labeling requirements: A label shall be securely affixed to all usable cannabis product packages, prior to sale or distribution, that is in the format provided at Table 8, Sample Label for Usable Cannabis Products, that is conspicuous and unobstructed, and that uses a font that is clearly legible, not italicized, and is printed in no smaller than 1/16th of an inch. The cannabinoid content specified on a cannabis derived product label shall be ninety percent or greater in accuracy. The label shall identify the following:

(1) the names of the entities that produced and manufactured the product, respectively;

(2) the name of the strain of cannabis contained in the product;

(3) a manufacture date and an expiration date;

(4) for dried, usable cannabis: the total of THC and CBD per package, which shall be expressed by percentage of weight;

(5) for concentrated cannabis derived product: the total of THC and CBD per package, which shall each be expressed by weight in milligrams and by percentage of total weight;

(6) for non-concentrated cannabis derived product: the totals of THC and CBD per package, which shall each be expressed by weight in milligrams;

(7) total product weight, expressed in milligrams, and if the product is in liquid form, total volume, expressed in milliliters;

(8) the name of the strain;

(9) the name of the department approved laboratories that analyzed the product or cannabis contained in the product in accordance with department rule;

(10) for all products containing THC: the universal New Mexico THC warning symbol, the image file for which can be obtained from the department upon request, which shall be reproduced at a minimum size of 1/2 inch by 1/2 inch;

(11) warnings for use that include at a minimum the statements, “Consumption of THC when pregnant, or by a mother who is breastfeeding, may adversely impact an infant’s development”, “Do not drive a vehicle or operate heavy machinery while under the influence of this product”, and “Keep out of reach of children”;

(12) for all cannabis-derived products that contain THC and that are intended to be consumed by vaporization: a health warning that states in bolded text, “WARNING: Vaping THC has been associated with cases of severe lung injury, leading to difficulty breathing, hospitalization, and even death.”;

(13) a sales barcode that is associated with the product and product batch;

(14) a batch number or code that is associated with the product batch and that is recorded by the non-profit producer or manufacturer in the electronic tracking system specified by the department; and

(15) instructions for use that are specific to the labeled product.

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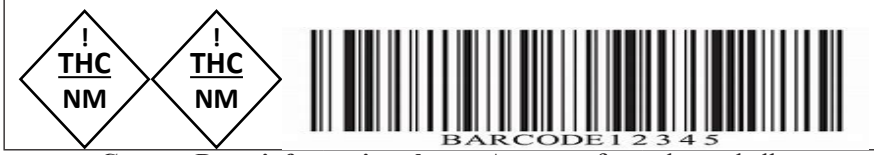
Table 8. Sample Label for Usable Cannabis Products		
Producer:		**Manufacturer:**
Name of strain:		**Total units:**
Net weight: mg	**Manufacture/Production date: / /**	**Expiration date: / /**
Laboratory Analysis		
PER CONTAINER:		
THC: mg / % THC: %		
CBD: mg / % CBD: %		
Testing laboratory:		
Instructions for use:		
WARNING: This product contains medical cannabis. Do not drive a vehicle or operate heavy machinery while under the influence of this product. Consumption of THC when pregnant, or by a mother who is breastfeeding, may adversely impact an infant's development. **WARNING: Vaping THC has been associated with cases of severe lung injury, leading to difficulty breathing, hospitalization, and even death.** **KEEP OUT OF REACH OF CHILDREN.**		
		

C. Drug information sheets: A non-profit producer shall generate a drug information sheet for every item of cannabis and cannabis derived product that is sold or distributed to a qualified patient or primary caregiver, and shall provide a copy of the drug information sheet to the qualified patient or primary caregiver at the time of sale or distribution, and upon request. A copy of a drug information sheet shall be provided to the department or its designee upon request. A drug information sheet shall be in the format provided at Table 9, Sample Label for Usable Cannabis Products, and shall use a font that is clearly legible, not italicized, and is printed in no smaller than 10 point type. The drug information sheet shall contain, at a minimum, the following:

(1) all of the content of the associated product label, as specified in this rule and identified in Table 8;

(2) a batch number or code that is associated with the cannabis used for the manufacture of the product, that is recorded by a non-profit producer in the electronic tracking system specified by the department;

(3) pesticide(s) used in the production of the cannabis or cannabis-derived product;

(4) for dried, usable cannabis and edible cannabis products: the total of THC, THCA, CBD, and CBDA per package, which shall be expressed by percentage of weight;

(5) for concentrated cannabis derived product: the totals of THC, THCA, CBD, and CBDA per package, which shall each be expressed by weight in milligrams and by percentage of total weight;

(6) for non-concentrated cannabis derived product: the total of THC, THCA, CBD, and CBDA, both per serving and per package, which shall each be expressed by weight in milligrams;

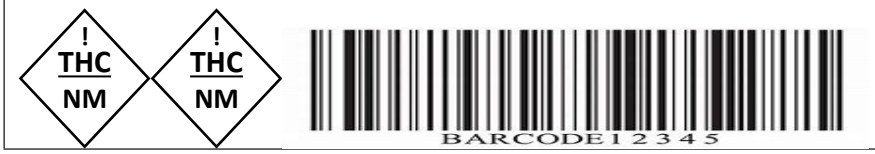
(7) a "best by" date or freeze date for products capable of supporting the growth of infectious, toxigenic, or spoilage microorganisms;

(8) instructions for appropriate storage;

(9) complete list of product ingredients;

(10) product facts or a nutrition fact panel, a statement that the product is for medical use by qualified patients, and a statement that the product is not for resale; and

(11) allergy warnings, including but not limited to information regarding whether the contents of the package were processed in any facility that also processes nuts.

Table 9. Sample Drug Information Sheet for Usable Cannabis Products
Cannabis Facts
Product name:
Product strain:
Producer of cannabis:
Manufacturer of cannabis product:
Net product weight:
Total units:
Manufacture date:
Product expiration date:
Batch number or code for manufactured product:
Batch number or code for cannabis:
Instructions for use:
Instructions for storage:
Nutrition facts:
Product ingredients:
Allergy warnings:
Laboratory Analysis
PER CONTAINER:
THC: mg / % THC: %
THCA: mg / % THCA %
CBD: mg / % CBD: %
CBDA: mg / % CBDA %
Testing laboratory:
WARNING: This product contains medical cannabis. This product is for medical use by qualified patients only. This product is not for resale. Do not drive a vehicle or operate heavy machinery while under the influence of this product. Consumption of THC when pregnant, or by a mother who is breastfeeding, may adversely impact an infant's development. **WARNING: Vaping THC has been associated with cases of severe lung injury, leading to difficulty breathing, hospitalization, and even death.** **KEEP OUT OF REACH OF CHILDREN.**


(Continued Next Page)

D. Expiration date: An expiration date that is identified on a usable cannabis product label shall not be modified, removed, or obscured. In the event that an expiration date specified on a usable cannabis product label has passed, the product shall be wasted in accordance with the terms of this rule and deducted from inventory in the electronic tracking system specified by the department.

E. Failure to comply with packaging or labeling requirements: If a non-profit producer does not comply with any packaging or labeling requirement of this rule, the department may immediately suspend sales and distribution of any such non-compliant product, may order the recall of any such product, may order the relabeling of any such product, and may pursue disciplinary action in accordance with this rule.

[7.34.4.16 NMAC - Rp. 7.34.4.14 NMAC, 6/23/2020]

7.34.4.17 DEPARTMENT-APPROVED TESTING LABORATORIES; GENERAL PROVISIONS: A laboratory applicant shall comply with the application requirements of this rule, and shall submit such other information as the laboratory applicant wishes to provide or such information as the department may request for initial approval and periodic evaluations during the approval period.

A. Testing categories: A laboratory may apply to become approved by the department as an approved laboratory for the testing of cannabis and cannabis derived products in all or any one of the following categories:

(1) mycotoxin analysis;

(2) microbiological contaminant analysis;

(3) solvent residue analysis;

(4) quantity of THC and CBD; and

(5) such other testing categories as the department may identify.

B. Fee: A laboratory applicant shall submit to the program with each initial application and renewal application for continued approval a non-refundable application fee of two-thousand-two-hundred dollars ($2,200), payable to the medical cannabis program.

C. Application materials: A laboratory applicant shall submit to the program with each initial application and renewal application for continued approval the following:

(1) standard operating procedures to be followed by the laboratory, including but not limited to policies and procedures to be used in performing analysis of samples;

(2) a description of the type of tests to be conducted by the laboratory applicant, which may include, but are not limited to, testing for microbiological contaminants, mycotoxins, solvent residue, THC content, CBD content, identity, purity, strength, composition, or nutritional content, and other quality factors;

(3) quality control criteria for the test(s) that the applicant intends to conduct;

(4) evidence that validates the accuracy of the test(s) to be conducted by the laboratory applicant as performed in the applicant's laboratory;

(5) proof that the laboratory applicant is in good standing with the New Mexico taxation and revenue department;

(6) copies of the laboratory applicant articles of incorporation and by-laws, as applicable;

(7) a list of all persons or business entities having direct or indirect authority over the management or policies of the laboratory applicant;

(8) a list of all persons or business entities having any ownership interest in any property utilized by the laboratory applicant, 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;

(9) a description of the facilities and equipment that shall be used in the operation of the laboratory applicant;

(10) a description of how the laboratory applicant will ensure and document chain of custody of any samples held or tested by the laboratory;

(11) a general written security policy, to address at a minimum safety and security procedures;

(12) an attestation that no firearms will be permitted on any premises used by the laboratory applicant;

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

(14) training documentation prepared for each employee of the laboratory applicant, 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;

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

(16) employee safety and security training materials provided to each employee of the laboratory applicant at the time of his or her initial appointment, to include training in the proper use of security measures and controls that have been adopted, and specific procedural instructions regarding how to respond to an emergency, including robbery or a violent accident;

(17) documented proof of required initial and continuing demonstrations of capability, in accordance with this rule;

(18) proof that no buildings to be used by the applicant are located within 300 feet of any school, church, or daycare

center; or alternatively, proof that any school, church, or daycare center that is located within 300 feet of a building to be used by the applicant did not occupy that location prior to the applicant initially seeking to become licensed to operate at the location;

(19) an attestation that the laboratory will not operate in any location within 300 feet of a school, church or daycare center; and

(20) such other materials as the department may require.

D. Materials to be maintained on premises: An approved laboratory shall maintain on its premises, and shall promptly present to the department upon request:

(1) personnel documentation including, but not limited to employment records, job descriptions, education, and training requirements of the laboratory, and documentation of education and training provided to staff for the purpose of performance of assigned functions;

(2) requirements concerning laboratory operations, business licensing, and security procedures;

(3) standards for receipt, handling, and disposition of samples of usable cannabis;

(4) equipment information detailing the type of equipment used, inspection standards and practices, testing and calibration schedules and records, and standards for cleaning and maintenance of equipment;

(5) reagents, solutions, and reference standards including, but not limited to standards for labeling, storage, expiration, and re-qualification dates and records;

(6) reference standards, acquired or internally produced, including the certificate of analysis;

(7) sample analysis procedures including but not limited to procedures for the use of only primary or secondary standards for quantitative analyses;

(8) documentation demonstrating that the analytical methods used by the laboratory are appropriate for their intended purpose; that staff is proficient in the process; and that deviations from approved standards of practice do not occur without proper authorization;

(9) standards for data recording, review, storage, and reporting that include, but are not limited to standards to ensure:

(a) that data is recorded in a manner consistent with this rule, and that it is reviewed to verify that applicable standards of practice, equipment calibration, and reference standards were applied before reporting;

(b) that all data, including raw data, documentation, protocols, and reports are retained in accordance with the requirements of this rule; and

(c) that reports are the property of the business or individual who provided the sample, and reports meet the requirements of this rule.

(10) current material safety data sheets for all chemicals used; and

(11) such other materials as the department may require.

E. Proficiency testing and inspection:

(1) A laboratory applicant shall be subject to proficiency testing by the department or its designee prior to approval, and an approved laboratory shall be subject to proficiency testing, at a frequency and at times to be determined by the program director or designee. A laboratory applicant or approved laboratory shall cooperate with the department or its designee for purposes of conducting proficiency testing. The department or its designee may require submission of cannabis and cannabis-derived product samples from licensed non-profit producers and approved manufacturers for purposes of proficiency testing.

(2) A laboratory applicant and an approved laboratory shall be subject to inspection(s), at times determined by the program director or designee, in accordance with the provisions of this rule. The department may require the inspection of premises, equipment, and written materials to determine compliance with this rule, and to determine compliance with the application submissions of the laboratory applicant or approved laboratory, including but not limited to standard operating procedures and standards for testing.

(3) Failure of proficiency testing: If the department determines on the basis of a proficiency test that a laboratory applicant has not satisfactorily identified the presence, quantity, or other relevant factor(s) pertaining to a given analyte, the department may deny the application in whole or in part, require additional tests, or require remedial actions to be taken by the laboratory applicant. If the department determines on the basis of a proficiency test that an approved laboratory has not satisfactorily identified the presence, quantity, or other relevant factor(s) pertaining to a given analyte, the department may withdraw approval of the laboratory in whole or in part, require additional tests, or require remedial actions to be taken by the approved laboratory.

F. Retention and inspection of testing records: An approved laboratory shall retain all results of laboratory tests conducted on cannabis or cannabis derived products for a period of at least two years and shall make them available to the program upon the program's request.

G. Identification cards: An employee of an approved laboratory shall carry their department issued employee identification card at all times during their work, and shall present the card to law enforcement officials and to department officials upon request. An employee who is unable to produce their department issued identification card upon request shall not remain on the licensed

premises, and shall produce the card for the department's inspection prior to returning to the licensed premises. Identification cards issued by the department are the property of the department and shall be returned to the department upon the termination of the holder's employment with the approved laboratory, upon suspension, or revocation, or upon demand of the department.

H. Reporting of theft to department: A laboratory shall submit to the department notification of any theft, robbery, break-in, or security breach that occurs on the laboratory's premises, no later than 10 calendar days after the laboratory first becomes aware of the event. The description shall include a description of any property that was stolen or destroyed, and the quantity of any usable cannabis that was stolen.

I. Term of approval: Department approval of a laboratory for purposes of this rule shall be for a term of one year, and shall expire after that year, or upon closure of the approved laboratory. An approved laboratory shall apply for renewal of approval annually no later than 60 days prior to expiration.

J. Amended license:

(1) An approved laboratory 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:

(a) change of location of the laboratory's facilities, change of directors, change of ownership of the laboratory's facilities, change of company name, and any physical modification or addition to the laboratory's facilities; and

(b) substantial change to the laboratory's standard operating procedures or substantial change to the types of tests to be conducted.

(2) Process for incomplete application for amended license: In the event that an application for amended licensure is determined by the program to be incomplete, the program will specify the information or materials that remain to be submitted. If the laboratory does not submit the requested information or material, and does not otherwise contact the department regarding the application, within thirty days of receiving notice of the deficiency, the application will be closed as incomplete, and the laboratory will be required to resubmit the application in order to recommence the application process.

K. Termination: The department may deny, withdraw, or suspend approval of a laboratory in accordance with this rule, upon determination by the department that the laboratory has violated a provision of this rule, upon failure of a proficiency test, upon the refusal of the laboratory to provide requested access to premises or materials, or upon the failure of a laboratory to comply with any standard, procedure, or protocol developed, submitted, or maintained pursuant to this rule. [7.34.4.17 NMAC - Rp. 7.34.4.15 NMAC, 6/23/2020]

7.34.4.18 DEPARTMENT-APPROVED TESTING LABORATORIES; GENERAL OPERATIONAL REQUIREMENTS:

A. Receipt of test samples: An approved laboratory may receive test samples of cannabis or cannabis derived products from any licensed producer, qualified patient or primary caregiver, and shall apply the testing standards of this rule, including the testing parameters, action levels, reporting levels, and other criteria identified in Tables 1 through 6, to determine whether a sample passes a given test.

B. Testing policies: An approved laboratory or laboratory applicant shall establish and implement policies for sample preparation, documentation, and transport, including:

(1) accepted test sample types;

(2) minimum test sample size;

(3) recommended test sample container;

(4) test sample labeling;

(5) transport and storage conditions, such as refrigeration, as appropriate;

(6) other requirements, such as use of preservatives, inert gas, or other measures designed to protect sample integrity; and

(7) creation of chain of custody documentation for each sample.

C. Recording of samples received: An approved laboratory shall:

(1) record the receipt of every test sample received, the record of which shall include:

(a) the name and contact information of the licensed producer that was the source of the sample;

(b) an appropriately specific description of the sample;

(c) the date of receipt of the sample;

(d) a statement of the quantity (weight, volume, number, or other amount) of the sample; and

(e) a batch number or code that is associated with the product batch and that is recorded by the non-profit producer or manufacturer in the electronic tracking system specified by the department.

(2) inform each licensed producer or individual who submits a test sample of the policies established in accordance with this section.

D. Sample handling, storage and disposal: An approved laboratory shall establish sample handling procedures for the tracking of test samples through the analytical process (by weight, volume, number, or other appropriate measure) to prevent diversion.

(1) An approved laboratory shall store each test sample under the appropriate conditions to protect the physical and chemical integrity of the sample.

(2) Analyzed test samples consisting of cannabis or cannabis-derived product shall be appropriately segregated, controlled, and held in a controlled access area pending destruction or other disposal.

(3) Any portion of a cannabis or cannabis-derived test sample that is not destroyed during analysis shall be:

(a) returned to the licensed producer who provided the sample; or

(b) destroyed in accordance with the wastage requirements of this rule.

E. State and local laws: An approved laboratory and a laboratory applicant shall comply with all applicable state and local laws, including but not limited to zoning, occupancy, licensing, and building codes.

F. Laboratory premises: An approved laboratory and a laboratory applicant shall maintain the premises of the laboratory in a clean and orderly condition; shall equip the premises with such utensils and equipment as necessary to conduct the operations of the laboratory; and shall ensure adequate space for laboratory operations, sample storage, and document storage.

G. Storage: An approved laboratory and a laboratory applicant shall be equipped with one or more secure, controlled access areas for storage of cannabis and cannabis-derived product test samples, cannabis-derived waste, and reference standards. Access to such storage areas shall be limited by the laboratory to authorized individuals.

H. Equipment:

(1) Equipment used for the analysis of test samples shall be adequately inspected, cleaned, and maintained. Equipment used for the generation or measurement of data shall be adequately tested and calibrated on an appropriate schedule, as applicable.

(2) Laboratory operations shall document procedures setting forth in sufficient detail the methods and schedules to be used in the routine inspection, cleaning, maintenance, testing, and calibration of equipment, and shall specify, as appropriate, remedial action to be taken in the event of failure or malfunction of equipment. The procedures shall designate the personnel responsible for the performance of each operation.

(3) Records shall be maintained of all inspection, maintenance, testing, and calibrating operations. These records shall include the date of the operation, the person who performed it, the written procedure used, and any deviations from the written procedure. Records shall be kept of non-routine repairs performed on equipment as a result of failure and malfunction. Such records shall document the nature of the repair, how and when the need for the repair was discovered, and any remedial action taken in response to the repair.

(4) Computer systems used for the analysis of samples, retention of data, sample tracking, calibration scheduling, management of reference standards, or other critical laboratory management functions shall ensure that electronic records, electronic signatures, and handwritten signatures executed to electronic records are trustworthy, reliable, and generally equivalent to paper records and handwritten signatures executed on paper.

I. Reagents, solutions, and reference standards:

(1) An approved laboratory is authorized to possess reagents, solutions, and reference standards. Such items shall be:

(a) secured in accordance with the approved laboratory's storage policies;
labeled to indicate identity, date received or prepared, and expiration or requalification date; and, where applicable, concentration or purity, storage requirements, and date opened;

(b) stored under appropriate conditions to minimize degradation or deterioration of the material; and

(c) used only within the item's expiration or requalification date.

(2) Deteriorated or outdated reagents and solutions shall be properly destroyed.

(3) An approved laboratory may acquire commercial reference standards for cannabinoids and other chemicals or contaminants, for the exclusive purpose of conducting testing for which the laboratory is approved. An approved laboratory may elect to internally produce reference standards. When internally produced, an approved laboratory shall utilize standard analytical techniques to document the purity and concentration of the internally produced reference standards. An approved laboratory is authorized to obtain cannabis or cannabis-derived product from a licensed non-profit producer for this purpose.

(4) An approved laboratory shall obtain or, for internally-produced standards, shall create a certificate of analysis (COA) for each lot of reference standard. Each COA shall be kept on file and the lot number of the reference standard used shall be recorded in the documentation for each analysis, as applicable.

J. Analysis: An approved laboratory shall:

(1) utilize analytical methods that are appropriate for the purpose of testing cannabis and cannabis-derived products;

(2) require analysts to demonstrate proficiency in the performance of the analytical methods used;

(3) maintain written procedures for the analytical method used for the analysis of each test sample, including:

(a) sample preparation;

(b) reagent, solution, and reference standard preparation;

(c) instrument setup, as applicable;

(d) standardization of volumetric reagent solutions, as applicable;

(e) data acquisition; and

(f) calculation of results.

(4) specify, as applicable to each analytical method used, requirements for accuracy, precision, linearity, specificity, limit of detection, limit of quantitation, and other data quality parameters;

(5) ensure that no deviations from approved protocols or standard operating procedures are made during any analytical process without proper authorization and documentation; and

(6) use only primary standards or secondary standards for quantitative analyses.

K. Recording of analytical data:

(1) An approved laboratory shall ensure that all data generated during the testing of a test sample, except data generated by automated data collection systems, is recorded directly, promptly, and legibly in ink. All data shall be annotated with the date of entry and signed or initialed by the person recording the data. Any change in entries shall be made so as not to obscure the original entry, shall indicate the reason for such change, and shall be dated and signed or initialed at the time of the change.

(2) In automated data collection systems, the individual responsible for direct data input shall be identified at the time of data input. Any change in an entry shall be made so as not to obscure the original entry, shall indicate the reason for such change, and shall be dated and signed or initialed at the time of the change. A corrective action report (CAR) shall accompany such change and shall be made available to the department, a non-profit producer, and a manufacturer upon their request for up to two years after the analysis is completed.

(3) For each final result reported, an approved laboratory shall verify that:

(a) any calculations or other data processing steps were performed correctly;

(b) the data meet any data quality requirements such as for accuracy, precision, linearity, etc.;

(c) any reference standards used were of the appropriate purity and within their expiration or requalification dates;

(d) any volumetric solutions were properly standardized before use; and

(e) any test or measuring equipment used has been properly tested, verified, and calibrated, and is within its verification or calibration period.

L. Data storage:

(1) An approved laboratory shall ensure that all raw data, documentation, protocols, and final reports associated with analysis of a test sample are retained for two years from the date of the completion of analysis.

(2) An approved laboratory shall maintain the records identified in this section. Such records must be maintained:

(a) in a manner that allows retrieval as needed;

(b) under conditions of storage that minimize deterioration throughout the retention period; and

(c) in a manner that prevents unauthorized alteration.

M. Records maintenance and access: An approved laboratory or laboratory applicant shall designate an individual as responsible for records maintenance. Only authorized personnel may access the maintained records.

N. Data reporting:

(1) Contents of report: A laboratory report of a test conducted at the request of a licensed producer or qualified patient shall contain the following information:

(a) the date of receipt of the test sample;

(b) the description of the type or form of the test sample (leaf, flower, powder, oil, specific edible product, etc.);

(c) the batch number or code that is associated with the product batch and that is recorded in the electronic tracking system specified by the department;

(d) information on whether sampling was performed by the laboratory operation, by the compliant business or individual which submitted the test sample, or by a third-party;

(e) date on which analysis occurred;

(f) the analytical method used, including at a minimum identification of the type of analytical equipment used (e.g., GC, HPLC, UV, etc.);

(g) the analytical results, including units of measure where applicable;

(h) the identity of the supervisory or management personnel who reviewed and verified the data and results and ensured that data quality, calibration, and other applicable requirements were met; and

(i) the name, address, and contact information of the approved laboratory that conducted the test.

(2) The laboratory report shall state that reported analytical results apply only to the test sample received.

O. Department access to materials and premises: An approved laboratory shall promptly provide the department or the department's designee access to a report of a test, and any underlying data, that is conducted on a sample at the request of a licensed producer or qualified patient. An approved laboratory shall also provide access to the department or the department's designee to laboratory premises, and to any material or information

requested by the department, for the purpose of determining compliance with the requirements of this rule.

P. Drugs and alcohol: A laboratory shall prohibit its employees and contractors from being under the influence of drugs or alcohol in the workplace.

Q. Failures to meet testing requirements: Repeated failures by a laboratory to comply with the testing requirements of department rule may result in disciplinary action against the laboratory.

[7.34.4.18 NMAC - Rp. 7.34.4.16 NMAC, 6/23/2020]

7.34.4.19 DEPARTMENT-APPROVED TESTING LABORATORIES; INSTRUMENTATION; INITIAL AND CONTINUING DEMONSTRATIONS OF CAPABILITY:

A. Mycotoxin test instrumentation: A laboratory shall utilize HPLC, LCMS, or LCMSMS instrumentation to test for the presence of mycotoxins in usable cannabis and shall analyze for mycotoxins at a concentration as low as 1 µg/kg (ppb). Mycotoxin testing shall be conducted in accordance with the requirements of Table 2, Mycotoxins Testing Requirements.

B. Residual solvents test instrumentation: A laboratory shall utilize gas chromatography – flame ionization detector (GC-FID), gas chromatography tandem photoionization detector/flame ionization detector (GC-PID/FID), or GCMS instrumentation to test for the presence of residual solvents and shall analyze for residual solvents at a concentration as low as 2µg/g (ppm). Residual solvent testing shall be conducted in accordance with the requirements of Table 3, Residual Solvent Testing Requirements.

C. Potency test instrumentation: A laboratory shall utilize HPLC or LCMS instrumentation to test for potency in usable cannabis and shall analyze usable cannabis in accordance with the provisions at Table 4 Potency Testing Requirements.

D. Heavy metals test instrumentation: A laboratory shall utilize Inductively coupled plasma mass spectrometry (ICP-MS) or flow injection mercury system (FIMS) instrumentation to test for the presence of heavy metals in usable cannabis and shall analyze for heavy metals at a concentration as low as 0.2 µg/g (ppm) for lead (Pb) and cadmium (Cd), as low as 1.0 µg/g (ppm) for arsenic (As) and 0.1 µg/g (ppm) for mercury (Hg). Heavy metals testing shall be conducted in accordance with the requirements of Table 5, Heavy Metals Testing Requirements.

E. Pesticide test instrumentation: A laboratory shall utilize high performance liquid chromatography (HPLC), gas chromatography mass spectrometry (GCMS), liquid chromatography - mass spectrometry (LCMS), or liquid chromatography with tandem mass spectrometry (LCMSMS) instrumentation to test for the presence of pesticides in usable cannabis and shall analyze for pesticides at a concentration as low as 100 µg/kg (ppb). Pesticide testing shall be conducted in accordance with the provisions of Table 6, Pesticide Testing Requirements.

F. Initial and continuing demonstrations of capability required: A laboratory or laboratory applicant shall submit to the department an initial demonstration of capability (IDC) for every test identified in this rule that the laboratory or applicant intends to conduct. A laboratory shall submit a continuing demonstration of capability (CDC) annually as part of the laboratory's application for renewal of licensure. The IDC shall be submitted to the department prior to the laboratory or laboratory applicant conducting tests pursuant to this rule. Each IDC and CDC shall describe how quality control samples (negative control samples, positive control samples, low-positive controls, and instrument performance check controls), internal standards, and surrogate standards are to be assessed to determine if the data from an analytical batch are acceptable. The laboratory shall maintain a documented procedure for performing every IDC and CDC. The laboratory shall retain documentation verifying the IDC and CDC for each test required by this rule and make this documentation available to the department upon request. The IDC and CDCs shall follow the same parameters as outlined in the requirements of this rule. Every IDC and CDC that is submitted shall be conducted within one year of application (excluding mycotoxins).

(1) An IDC shall be reconducted and resubmitted to the department:

(a) whenever there is a change in method;

(b) whenever an instrument has been moved;

(c) whenever a new instrument is installed; and

(d) whenever the method has not been performed by the laboratory or sampler within a 12-month period.

(2) Every IDC and CDC shall include the following elements:

(a) **Demonstration of method calibration:** The calibration range shall use at least five calibration points consisting of five different concentration levels of target compounds. The calibration range shall include a low calibration point equal to, or less, than the required minimum reporting level for each targeted compound. The calibration range shall include a calibration point equal to the action level for each targeted compound (mycotoxins and residual solvents). A laboratory or laboratory applicant shall provide the equation and the type of curve fit used for the calibration range, and the percent relative standard deviation or the goodness of fit. The percent relative standard deviation shall be less than twenty percent, or the goodness of fit (correlation coefficient) shall be 0.995 or better.

(b) **Demonstration of method accuracy and precision**: A laboratory or laboratory applicant shall supply the quantitation data for five positive control samples analyzed by its testing method utilizing a median or mid-level calibration concentration. A laboratory or laboratory applicant shall calculate and provide the calculated mean (average) result and the standard deviation. The percent relative standard deviation shall be less than fifteen percent, and the mean shall be within fifteen percent of the expected concentration. For laboratories using GC-FID, GC-PID/FID, or GCMS platforms for residual solvents, the percent relative standard deviation may be within twenty percent, and the mean may be within twenty percent, of the expected concentration for the targeted compounds propane, n-butane, isobutane, and methanol.

(c) **Demonstration of method detection limit:** A laboratory or laboratory applicant shall supply the quantitation data of seven low-level or minimum action level positive control samples. The concentration of these low-level positive control samples is set equal to the lowest calibration point the laboratory uses. These data are then used to calculate a standard deviation, which is then used to calculate method detection limit (MDL) using the following equation: (3.14267 x standard deviation = method detection limit). The calculated method detection limit for each targeted mycotoxin and residual solvent shall be less than the required method reporting level. For potency testing, quantitation values of all the seven low-level positive controls fall within fifty perecent to one hundred and fifty percent% of the expected concentration for the cannabinoids THC, THCA, CBD, and CDBA

(d) **Demonstration of low system background:** A laboratory or laboratory applicant shall supply the analytical data of at least three negative control samples that do not contain any mycotoxins, residual solvents, or cannabinoids. For mycotoxins and residual solvents, the quantitation values shall be less than the minimum detection limit or a non-detect. For potency testing, the quantitation values shall be less than one-third of the value of the method reporting level.

(e) **Demonstration of analyte identification:** A laboratory that uses, and a laboratory applicant than intends to use, HPLC, GC-FID, or GC-PID/FID instrumentation shall supply analytical data where each targeted compound is analyzed as a single compound giving it its characteristic retention time. A laboratory that uses, and a laboratory applicant than intends to use, GCMS, LCMS, or LCMSMS instrumentation shall supply analytical data with the characteristic mass spectrum of each targeted compound.

G. Use of internal standards: A laboratory shall utilize an internal standard chemical compound in the instrumental analysis (testing methods) of cannabinoids, residual solvents, mycotoxins, heavy metals, and pesticides, which are collectively referred to as the tested analytes. The internal standard compound shall be used to determine the characteristic relative chromatographic retention times of these tested analytes to ensure proper analyte identifications (qualification) whenever mass spectral data are not obtained by an instrument. The internal standard compound shall be used to determine the relative instrument response of the tested analytes to ensure the proper measurement of analyte concentrations (quantitation).

H. Reporting results: A laboratory shall use no more than two significant figures to report a positive result. A laboratory shall report a non-detect of an analyte as less than the laboratory's minimum reporting level. A laboratory shall also report a pass or fail evaluation with the reported result. A pass evaluation is assigned to a reported result less than the analytes action level listed. A fail evaluation is assigned to a reported result equal to or greater than the action level for each given analysis, consistent with the requirements of this rule. [7.34.4.19 NMAC - N, 6/23/2020]

7.34.4.20 DEPARTMENT-APPROVED COURIERS; GENERAL PROVISIONS:

A. Approval of couriers: The department may approve a courier for the purpose of transporting usable cannabis from one or more licensed non-profit producers to qualified patients, primary caregivers, other non-profit producers, approved manufacturers and approved laboratories.

B. Application requirements: An applicant who seeks department approval to operate as a courier shall provide the following materials and information to the department in order to be considered for approval; and an approved courier shall promptly submit revisions in the event that the materials or information changes:

(1) a plan for delivery;

(2) a plan for security, including a description of facilities and containers intended for use in storing and transporting usable cannabis;

(3) a plan for safety, to include at a minimum a description of measures to be taken by the courier and its employees to ensure the safety of qualified patients, primary caregivers, and courier staff;

(4) a description of all vehicles used or intended to be used for the transport of usable cannabis;

(5) a complete list of employees;

(6) clear, legible photocopies of current New Mexico state-issued identification cards of all courier personnel;

(7) completed nationwide and statewide criminal history screening documentation;

(8) a description of the courier's hours of operation;

(9) a description of the locations or type(s) of locations where the courier will offer delivery of usable cannabis;

(10) a description of all licensed non-profit producers for whom the courier will deliver usable cannabis, and copies of all agreements between the courier and licensed non-profit producers for the delivery of usable cannabis;

(11) a description of all fees to be charged by the courier;

(12) protocols for contacting and communicating with qualified patients and primary caregivers regarding deliveries;

(13) training materials for drivers;

(14) confidentiality training materials that address the confidentiality of qualified patient and primary caregiver information;

(15) proof that the applicant is in good standing with the New Mexico taxation and revenue department (TRD);

(16) copies of the applicant's articles of incorporation or organization, as applicable;

(17) copies of the applicant's by-laws, as applicable;

(18) a list of all persons or business entities having direct or indirect authority over the management or policies of the courier, as applicable;

(19) a list of all persons or business entities having any ownership interest in any property utilized by the courier, whether direct or indirect, whether the interest is in land, building(s), or other material;

(20) proof that no buildings to be used by the courier are located within 300 feet of any school, church, or daycare center; or alternatively, proof that any school, church, or daycare center that is located within 300 feet of a building to be used by the applicant did not occupy that location prior to the applicant initially seeking to become licensed to operate at the location;

(21) if the courier will base its business at a location that is not owned by the applicant: a written statement from the property owner or landlord of the location that grants to the courier permission to possess cannabis on the premises;

(22) an attestation that the courier will not distribute cannabis within 300 feet of a school, church or daycare center, in accordance with the provisions of this rule;

(23) an attestation that no firearms will be permitted on any premises or in any vehicle used by the courier; and that no employee will possess a firearm when transporting or distributing cannabis; and

(24) an attestation that the courier will not transport cannabis across state lines.

C. Application fee: A courier applicant shall submit to the program with each initial application and renewal application for continued approval a non-refundable application fee of one-thousand-five-hundred dollars ($1,500), payable to the medical cannabis program.

D. General requirements: An approved courier shall adhere to each of the following requirements:

(1) a courier may contract with a licensed non-profit producer to deliver usable cannabis from the non-profit producer to qualified patients, primary caregivers, other non-profit producers, approved manufacturers and approved laboratories; a courier that provides service to more than one licensed non-profit producer shall offer their service at a uniform price for all non-profit producers for whom they deliver; an approved courier shall not transport a cannabis product that is not individually packaged, or that is not labeled in accordance with this rule;

(2) an approved courier shall not request or receive payment from a qualified patient or primary;

(3) upon obtaining a package of usable cannabis from a licensed non-profit producer, an approved courier shall hold the package in a secured area or areas that are locked and otherwise resistant to tampering or theft, until the package is delivered to its intended recipient or returned to the licensed non-profit producer;

(4) an approved courier shall not relinquish possession of usable cannabis unless and until the package of usable cannabis is either successfully delivered or returned to the licensed non-profit producer; for purposes of this section, a package of usable cannabis is successfully delivered only upon the approved courier's verification that an intended recipient has taken actual, physical possession of the package; an approved courier shall not leave a package at any location for any reason, unless the package is successfully delivered to its intended recipient;

(5) an approved courier shall not deliver a package to any person or entity who is not identified by the licensed non-profit producer as an intended, authorized recipient;

(6) at the time of delivery, an approved courier shall verify the recipient's identity by requiring presentation of the recipient's department-issued medical cannabis identification card and New Mexico-issued photo identification card or a passport; an approved courier shall not deliver usable cannabis to any person whose identity is not verified in accordance with this rule; an approved courier shall document having verified the recipient's identification in accordance with this rule for each transaction;

(7) an approved courier shall not possess usable cannabis for a time period greater than seven days; an approved courier shall return any usable cannabis that is not successfully delivered to its intended recipient to a licensed non-profit producer within this time period;

(8) an approved courier shall not distribute cannabis at locations that are within

300 feet of a school, church, or daycare center; provided that, for purposes of this provision, delivery to the residence of a qualified patient or primary caregiver shall not be deemed "distribution";

(9) an approved courier and its personnel shall at all times take measures to ensure confidentiality and safety in the transport and delivery of usable cannabis;

(10) an approved courier shall appropriately train its personnel regarding the confidentiality of information concerning qualified patients and primary caregivers; confidentiality training shall describe confidentiality requirements applicable under both federal and state law; an approved courier shall conduct confidentiality training of its personnel at least once annually, and shall maintain training materials on its premises, and document the training of individual staff;

(11) personnel of an approved courier shall not possess a firearm while distributing or otherwise possessing cannabis; an approved courier shall not possess or permit the possession of a firearm on any premises, including a building or vehicle, utilized by the courier; and

(12) an approved courier shall not, when transporting usable cannabis to a qualified patient or primary caregiver, utilize a delivery vehicle that advertises or otherwise displays signage, logos, or symbols that would indicate that the vehicle is used for the transport of cannabis.

E. Identification cards: The department shall issue an identification card to each authorized employee of an approved courier authorizing that individual to transport cannabis from a non-profit producer to a qualified patient or primary caregiver. An employee of an approved courier shall carry their department issued employee identification card at all times during their work, and shall present the card to law enforcement officials and to department officials upon request. An employee who is unable to produce their department issued identification card upon request shall not remain on the licensed premises, and shall produce the card for the department's inspection prior to returning to the licensed premises. Identification cards issued by the department are the property of the department and shall be returned to the department upon an approved courier's withdrawal from the program, upon the termination of a card holder's employment with the approved courier, upon suspension or revocation, or upon demand of the department.

F. Term of approval: Department approval of a courier shall be for a term of one year, and shall expire after that year, or upon closure of the courier. A courier shall apply for renewal of approval annually no later than 30 days prior to expiration.

G. Amended license:

(1) An approved courier 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:

(a) change of location of the courier's facilities, change of directors, change of ownership of the courier's facilities, change of company name, and any physical modification or addition to the courier's facilities; and

(b) substantial change to the courier's methods for storing, transporting and delivering cannabis-derived products, and any substantial change to the courier's security plan.

(2) Process for incomplete application for amended license: In the event that an application for amended licensure is determined by the program to be incomplete, the program will specify the information or materials that remain to be submitted. If the courier does not submit the requested information or material, and does not otherwise contact the department regarding the application, within thirty days of receiving notice of the deficiency, the application will be closed as incomplete, and the courier will be required to resubmit the application in order to recommence the application process.

H. Reporting of theft to department: A courier shall submit to the department notification of any theft, robbery, break-in, or security breach that occurs on the courier's premises, no later than 10 calendar days after the courier first becomes aware of the event. The description shall include a description of any property that was stolen or destroyed, and the quantity of any usable cannabis that was stolen.

I. Drugs and alcohol: A courier shall prohibit its employees and contractors from being under the influence of drugs or alcohol in the workplace.

J. Inventory and sales equipment: The department may require a licensed courier to utilize specified equipment, software, and services for purposes of tracking distribution, inventory, and other information, and for the purpose of reporting that information to the department of health.

K. Chain of custody: A courier shall adopt, maintain, and enforce chain of custody procedures and documentation requirements to ensure appropriate tracking and inventory of usable cannabis. A courier shall also adopt, maintain, and enforce security requirements to ensure that usable cannabis transported by the courier is secured, and to promote the safety of courier personnel, as well as qualified patients and primary caregivers who receive packages from the courier.

L. Confidentiality: An approved courier may obtain contact information of a purchasing qualified patient or primary caregiver, as permitted by agreement between the courier and a respective licensed non-profit producer, and may utilize such information solely for the purpose of arranging a delivery location and time with the qualified patient or primary caregiver. An approved courier shall not otherwise disseminate, disclose, or use

identifying information or contact information concerning a qualified patient or primary caregiver.
[7.34.4.20 NMAC - Rp. 7.34.4.17 NMAC, 6/23/2020]

7.34.4.21 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.

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.
[7.34.4.21 NMAC - Rp, 7.34.4.18 NMAC, 6/23/2020]

7.34.4.22 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 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, unless the consumption occurs in a department approved cannabis consumption area;

(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 distribution of cannabis, and manufacture of cannabis-derived products (as applicable);

(2) proof that the facilities are not within 300 feet of any school, church, or daycare center; or alternatively, proof that any school, church, or daycare center that is located within 300 feet of a building to be used by the applicant did not occupy that location prior to the applicant initially seeking to become licensed to operate at the location; 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;

(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;

(f) robbery awareness and conflict de-escalation training for all employees;

(g) general food safety training.

(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. State and local laws: A licensed non-profit producer shall comply with all applicable state and local laws regarding construction, occupancy, and operation of a facility or building, including but not limited to zoning, occupancy, licensing, and building codes.

[7.34.4.22 NMAC - Rp, 7.34.4.19 NMAC, 6/23/2020]

7.34.4.23 SECURITY REQUIREMENTS FOR LICENSED PRODUCERS: Private non-profit entities licensed to produce medical cannabis shall comply with the following requirements to ensure that production and distribution facilities are located on secure grounds.

A. The non-profit producer shall provide and maintain in each facility a fully operational security alarm system.

B. The non-profit producer shall conduct a monthly maintenance inspection and make all necessary repairs to ensure the proper operation of the alarm system and, in the event of an extended mechanical malfunction that exceeds an eight hour period, provide alternative security that shall include closure of the premises.

C. The non-profit producer shall maintain documentation for a period of at least 24 months of all inspections, servicing, alterations, and upgrades performed on the security alarm system; all documentation shall be made available within 24 hours of a department representative's request; failure to provide equipment maintenance documentation within the 24 hour period shall subject the licensed producer to the sanctions and penalties provided for in this rule; the 24 hour period shall not include holidays and weekends.

[7.34.4.23 NMAC - Rp, 7.34.4.11 NMAC, 6/23/2020]

7.34.4.24 RECALLS OF USABLE CANNABIS:

A. All non-profit producers and approved manufacturers shall establish and implement written procedures for recalling usable cannabis and products that have been sold or otherwise distributed to qualified patients, primary caregivers, or other cannabis establishments. Recall procedures shall be made available for the department's inspection upon request. The recall procedures shall identify:

(1) The circumstances in which a recall will be conducted, including but not limited to circumstances involving the mislabeling of products and the contamination of products.

(2) Personnel responsible for implementing the recall procedures.

(3) Procedures for notification of all customers who have, or reasonably could have, obtained an affected product, including communication and outreach via media, as appropriate.

(4) Procedures for notification of any other cannabis establishment that supplied or received the recalled product.

(5) Instructions to be provided to qualified patients, primary caregivers, and cannabis establishments for the return or destruction of the recalled product.

(6) Procedures for the collection and wastage (as may be required by this rule) of any recalled product, which shall meet the requirements of this section.

B. All recalled products that are intended to be destroyed shall be wasted in accordance with the wastage requirements of this rule.

C. The licensee shall notify the department of any recall within 24 hours of initiating the recall.

D. The department may order the immediate recall of a usable cannabis product if it deems such action necessary to protect public health and safety.

[7.34.4.24 NMAC - N, 6/23/2020]

7.34.4.25 DENIAL OF AN INITIAL PRODUCER LICENSE:

A. Administrative review of license application denials: An applicant whose initial application for a producer license is denied by the medical cannabis program director or designee may request an administrative review by the administrative review committee. The written notice of denial shall include a statement of the right to request such a review.

B. No administrative review of determinations made by the secretary: An applicant whose initial application for a producer license was for any reason not approved by the secretary (rather than the program director or designee) shall not be entitled to further review by the department, but may reapply at a later date.

C. Procedure for requesting informal administrative review:

(1) An applicant given notice of an application denial by the medical cannabis program director or designee may submit a written request for a record review. To be effective, the written request shall:

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

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

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

(d) state the applicant's proposed status as a licensed producer; and

(e) provide a brief narrative rebutting the circumstances of the application denial.

(2) If the applicant wishes to submit additional documentation for consideration, the applicant shall include such additional documentation when submitting the request for administrative review.

D. Administrative review proceeding: The administrative review proceeding shall be a closed proceeding that is limited to an administrative review of written application materials and documents offered to verify eligibility. The administrative review is not an adjudicatory hearing. The administrative review shall be conducted by the administrative review committee. In cases where the administrative review committee finds the need for additional or clarifying information, the review committee shall request that the applicant supply such additional information within the time set forth in the committees' request.

E. Final determination:

(1) Content: The administrative review committee shall render a written decision setting forth the reasons for the decision.

(2) Effect: The decision of the administrative review committee is the final decision of the informal administrative review proceeding.

(3) Notice: A copy of the decision shall be mailed to the applicant.

F. Judicial review: Except as otherwise provided by law, there shall be no right to judicial review of a decision by the program director or designee, the administrative review committee, or the secretary.

[7.34.4.25 NMAC - Rp, 7.34.4.21 NMAC, 6/23/2020]

7.34.4.26 PROHIBITIONS, RESTRICTIONS, AND LIMITATIONS ON THE PRODUCTION AND DISTRIBUTION OF MEDICAL CANNABIS AND CRIMINAL PENALTIES:

A. Participation in the medical cannabis licensing program by a licensed producer or approved entity, or the employees or contractors of a licensed producer or approved entity, does not relieve the producer, approved entity, employee, or contractor from criminal prosecution or civil penalties for activities not authorized in this rule and the act.

B. Locations of production, distribution, and manufacture: Production of medical cannabis and distribution of medical cannabis to qualified patients or their primary caregivers shall take place at locations (or, with respect to distribution, categories of 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 rule, delivery to the residence of a qualified patient or primary caregiver shall not be deemed "distribution".

C. Fraudulent misrepresentation: Any person who makes a fraudulent representation to a law enforcement officer about the person's participation in the medical cannabis program to avoid arrest or prosecution for a cannabis-related offense is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 *et seq.*, NMSA 1978.

D. Unlawful distribution: If a licensed producer or employee of a licensed producer sells, distributes, dispenses, or transfers cannabis to a person not approved by the department pursuant to this rule and the act, or obtains or transports cannabis outside New Mexico in violation of federal law,

the licensed producer or employee of the licensed producer shall be subject to arrest, prosecution, and civil or criminal penalties pursuant to state law.

E. Revocation of registry identification card, licensed primary caregiver card, license to produce or distribute: Violation of any provision of this rule may result in disciplinary action, in accordance with this rule.

[7.34.4.26 NMAC - Rp, 7.34.4.22 NMAC, 6/23/2020]

7.34.4.27 CANNABIS CONSUMPTION AREAS:

A. General provisions: The smoking, vaporizing, and ingestion of medical cannabis products by qualified patients is permitted within cannabis consumption areas, designated by the department, that are located on the premises of licensed non-profit producers. Cannabis consumption areas may only be operated by licensed non-profit producers, at medical cannabis dispensary locations designated by the department. Alcohol is prohibited in cannabis consumption areas. A licensed non-profit producer that operates a cannabis consumption area shall comply with all applicable state and local laws, including but not limited to zoning, occupancy, licensing, and building codes. Additionally, a licensed non-profit producer that operates a designated cannabis consumption area shall:

(1) restrict access to the cannabis consumption area to qualified patients and their primary caregivers and authorized personnel of the non-profit producer;

(2) ensure that consumption of cannabis in the cannabis consumption area is not visible from any public place or from outside the cannabis consumption area; and

(3) require that qualified patients who consume cannabis in a cannabis consumption area either leave the non-profit producer's premises with a designated driver or utilize other lawful means of transportation from the non-profit producer's premises.

B. Application; operations plan: A licensed non-profit producer shall apply for and obtain prior approval from the department before operating a cannabis consumption area. The licensed non-profit producer shall include an operations plan with its application that includes the following:

(1) operating hours of the cannabis consumption area;

(2) plan for limiting access to qualified patients and primary caregivers access and verification process;

(3) security plan addressing overall security measures, including but not limited to plans for video surveillance, fire safety, public disturbances, refusal of service, and emergency evacuation;

(4) plan for ensuring that only qualified patients, primary caregivers, and authorized staff can access cannabis consumption areas;

(5) plan for educating patients and primary caregivers about the dangers of driving under the influence of cannabis;

(6) plan concerning disposal of wasted cannabis and cannabis-related paraphernalia;

(7) plan concerning measures to limit potential allergic reactions by qualified patients and primary caregivers who visit the cannabis consumption area;

(8) plan to ensure that qualified patients who are minors are accompanied by their primary caregiver at all times while on the premises of a cannabis consumption area;

(9) attestation that access to cannabis consumption areas will be limited to qualified patients and their primary caregivers and authorized personnel of the non-profit producer;

(10) attestation that consumption of cannabis in the cannabis consumption area will not be visible from any public place or from outside the cannabis consumption area;

(11) attestation that the non-profit producer will require that qualified patients who consume cannabis in a cannabis consumption area either leave the non-profit producer's premises with a designated driver (who shall be identified to the non-profit producer by the qualified patient or primary caregiver) or utilize other lawful means of transportation from the non-profit producer's premises; and

(12) such additional information or materials as the department may require.

C. Amended license: The licensed non-profit producer shall apply for amended licensure, and shall obtain approval from the department, at least 30 days prior to implementing any change of location of a cannabis consumption area or any substantial change to any portion of the non-profit producer's cannabis consumption area operations plan.

[7.34.4.27 NMAC - N, 6/23/2020]

7.34.4.28 RECIPROCITY: Beginning July 1, 2020, an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo may lawfully purchase and possess cannabis, provided that the quantity of cannabis does not exceed the reciprocal limit identified in this section.

A. Reciprocal participation:

(1) General requirements: A reciprocal participant:

(a) may participate in the medical cannabis program in accordance with department rules;

(b) shall not be required to comply with the registry identification card application and renewal requirements established pursuant to this section and department rules;

(c) shall at all times possess proof of authorization to participate in the medical cannabis program of another state, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo and shall present proof of that authorization when purchasing cannabis from a licensee; and

(d) shall register with a licensed non-profit producer for the purpose of tracking sales to the reciprocal participant in an electronic system specified by the department.

(2) Minors: In the event that a reciprocal participant is a minor, a licensed non-profit producer shall not sell or transfer cannabis to the minor, but may sell or transfer cannabis to a parent or legal guardian of the minor who holds proof of authorization to purchase cannabis on the minor's behalf that was issued by another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo.

B. Reciprocal limit: A reciprocal participant 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 the reciprocal limit. (For ease of reference: 230 units is equivalent to 230 grams, or approximately eight ounces, of dried usable cannabis plant material.)

C. Registration; verification; tracking: A licensed non-profit producer shall require the submittal of a reciprocal participant's contact information for registration purposes, to include the individual's full name, date of birth, mailing address, and the enrollment number specified in the individual's medical cannabis program enrollment card (if applicable); and shall record that information in an electronic tracking system specified by the department. The licensed non-profit producer shall confirm the accuracy of a reciprocal participant's contact information prior to each transaction. A licensed non-profit producer that registers a reciprocal participant or that sells or transfers cannabis or a cannabis product to a reciprocal participant shall first verify the reciprocal participant's identity by viewing the individual's proof of authorization from the other state, territory or tribe, and also viewing the reciprocal participant's government-issued photo identification card. A licensed non-profit producer that sells or otherwise transfers cannabis or a cannabis product to a reciprocal participant shall track the sale or transfer using an electronic system specified for that purpose by the department.

D. Refusal of service: A non-profit producer that reasonably suspects that either a person's proof of authorization or identification card is falsified may refuse to dispense cannabis to cannabis to that individual.

E. Informational materials: At the time of a sale or transfer of cannabis to a reciprocal participant, a non-profit producer shall provide informational materials to the reciprocal participant that include, at a minimum, a notice of the time and quantity limits for reciprocity under this section, and a notice concerning state and federal prohibitions against the transport of cannabis across state and international boundaries.

[7.34.4.28 NMAC - Rp. 7.34.4.28 NMAC, 6/23/2020]

7.34.4.29 ENFORCEMENT OF PARENTAL RESPONSIBILITY ACT:

A. The medical cannabis program's approval of an employee of a non-profit producer or an approved entity to work for such producer or approved entity may be suspended, and a request for an individual to be approved to work for such a producer or approved entity may be denied, for failure of the approved employee or prospective employee to comply with a judgment and order for child support issued by a district or tribal court or a subpoena or warrant relating to paternity or child support proceedings, as provided in the Parental Responsibility Act, Section 40-5A-1 et seq., NMSA 1978.

B. Procedures for enforcement of the Parental Responsibility Act:

(1) List of obligors: The New Mexico human services department (HSD) will issue to the medical cannabis program a certified list of obligors (meaning persons who have been ordered to pay child support pursuant to a judgment and order for support issued by a district or tribal court) not in compliance with their judgment and order of support or a subpoena or warrant relating to paternity or child support proceedings.

(2) Notice of non-compliance: Upon determination by the medical cannabis program that the name and social security number of an approved employee or prospective employee of a non-profit producer or an approved entity appear on the certified list of obligors, the medical cannabis program shall notify the approved employee or prospective employee in writing. The medical cannabis program may send a copy of the notice of non-compliance to the non-profit producers or approved entities affiliated with the approved employee or prospective employee. The notice shall state that the medical cannabis program intends to suspend the approved employee's approval to work for the non-profit producer or approved entity, or deny the prospective employee's approval to work for the non-profit producer or approved entity, unless the approved employee or prospective employee, within thirty days of the date that the written notice is issued, provides to the medical cannabis program a certified statement from the human services department that he or she is in compliance with a judgment and order for support or subpoenas or warrants relating to paternity or child support proceedings.

(3) Notice of contemplated action: If the approved employee or prospective

employee of a non-profit producer or approved entity does not provide to the medical cannabis program the certified statement of compliance from HSD within thirty days of the date that the written notice is issued, the medical cannabis program shall issue a notice of contemplated action to the approved employee or prospective employee, stating that the medical cannabis program has grounds to suspend or deny the individual's authorization to work for the non-profit producer or approved entity, and that the medical cannabis program shall take such action unless the individual mails a letter (certified mail, return receipt requested) requesting a hearing within 20 days after service of the notice requesting a hearing, or provides the bureau, within 30 days of receipt of the notice of contemplated action, a statement of compliance from HSD. The medical cannabis program may send a copy of the notice of contemplated action to the non-profit producers or approved entities affiliated with the approved employee or prospective employee.

(4) **Disputes regarding findings of non-compliance:** If the approved employee or prospective employee disagrees with the finding of non-compliance, or wishes to come into compliance, the approved or prospective employee shall contact the HSD child support enforcement division.

(5) Hearings: The hearing process of this rule part shall apply to hearings conducted pursuant to this section; provided that, in any such hearing, the following standards shall also apply:

(a) The presence of an individual's name and social security number on the HSD list of obligors is deemed conclusive evidence of an individual's non-compliance that requires the medical cannabis program to deny or withdraw approval of an individual to work for a non-profit producer or approved entity, unless the individual provides the medical cannabis program with a certified statement of compliance, in which case the medical cannabis program shall be precluded from taking further action under this section;

(b) When an action is taken against an approved employee or prospective employee of a non-profit producer or approved entity because the individual is not in compliance with a judgment and order of support or a subpoena or warrant relating to paternity or child support proceedings, the order shall state that the individual's approval to work for a non-profit producer or approved entity shall be reinstated upon presentation to the medical cannabis program of a certified statement of compliance from HSD; and

(c) The secretary may also include in the order any other conditions necessary to comply with requirements for reapplication and re-issuance of licensure, including, but not limited to, requiring payment of a surcharge fee of $50, in addition to any other applicable fees.

[7.34.4.29 NMAC - N, 6/23/2020]

7.34.4.30 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 and a manufacturer shall maintain detailed 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 financial records of a licensed non-profit producer manufacturer, laboratory, or courier, including but not limited to sales records and data from point

of sale systems, and shall be granted immediate access to inspect or copy those records upon request. A patient shall be granted reasonable access to a licensed non-profit producer's or manufacturer'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 director 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);

(q) total amount of cannabis derived products sold (in units);

(r) total sales of cannabis derived products (in dollars and units);

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

(t) all quality testing reports, to be included as attachments; and

(u) such additional information as the department may request.

C. Corrective action:

(1) If violations of requirements of this rule are cited on the basis of a violation that is directly observed in the course of a monitoring visit at an approved location, or on the basis of a review of financial records, the licensed producer, manufacturer, laboratory, or courier 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, manufacturer, laboratory, or courier 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 license of the producer, manufacturer, laboratory, or courier, 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 director or designee may suspend the license of a non-profit producer or personal production license holder 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.

[7.34.4.30 NMAC - Rp, 7.34.4.23 NMAC, 6/23/2020]

7.34.4.31 DISCIPLINARY ACTIONS AND APPEAL PROCESS:

A. Notice of disciplinary action: The department may issue notice of an immediate disciplinary action, as specified in this rule, or notice of contemplated disciplinary action. Notice shall be served upon a licensee's contact person of record. Notice shall be served via certified U.S. postal mail. A notice shall be deemed to have been served on the date borne by the return receipt showing delivery or the last attempted delivery of the notice or decision to the addressee or refusal of the addressee to accept delivery of the notice or decision.

B. 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, immediate suspensions and revocations in accordance with this rule, and other action. Disciplinary actions may be imposed in any combination, and the actions described in this paragraph, including suspension and monetary fines, are not exclusive of one another. Disciplinary action may be imposed for:

(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, inversion, or attempted diversion or inversion, 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) non-compliance 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 wastage 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.

C. 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) up to $50,000 for each major violation implicating public safety;

(2) up to $20,000 for each major violation not implicating public safety;

(3) up to $5,000 for each other violation.

D. 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.

E. Closure of applications period: A hearing may not be requested by a person or entity whose application for licensure is denied solely on the basis that the applicable applications period is closed.

F. Timing and content of request for hearing: The appellant shall mail the request for hearing within 30 calendar days of the date that the notice of contemplated action is received, or in the case of an immediate action, within 30 days of the action. The request shall:

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

(2) be mailed to the medical cannabis program via certified U.S. postal mail;

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

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

G. 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.

H. 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.

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

J. 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.

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

L. 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.

M. 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.

N. 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.

O. 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.

P. 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.

Q. 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.

[7.34.4.31 NMAC - Rp, 7.34.4.24 NMAC, 6/23/2020]

7.34.4.32 EXEMPTION FROM STATE CRIMINAL AND CIVIL PENALTIES:

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.

D. A reciprocal participant shall not be subject to arrest, prosecution or penalty in any manner for the possession of or the medical use of cannabis if the quantity of cannabis does not exceed the limit identified by department rule.

[7.34.4.32 NMAC - Rp, 7.34.4.25 NMAC, 6/23/2020]

7.34.4.33 CLOSURE OF A NON-PROFIT PRODUCER OR AN APPROVED ENTITY: A non-profit producer, manufacturer, laboratory, or courier that anticipates ceasing its business operations shall notify the medical cannabis program no later than 30 calendar days prior to closure. Any such non-profit producer or approved entity shall post public notice of the anticipated closure in any and all locations of the producer or approved entity that are accessible to the public, including but not limited to dispensary locations, at least fourteen days prior to the closure. Any unused medical cannabis that is held by a non-profit producer or approved entity on behalf of another licensee (such as cannabis that is owned by a non-profit producer and held by a manufacturer) shall be returned to its owner. Cannabis that is otherwise held by a licensee shall, prior to the licensee's closure, be surrendered to either state law enforcement or local law enforcement, destroyed by the licensee in accordance with the wastage standards of this rule, or donated to patients via a licensed non-profit producer, and the licensee shall submit documentation of the event to the department.

[7.34.4.33 NMAC - N, 6/23/2020]

7.34.4.34 PERSONAL PRODUCTION LICENSE CONFIDENTIALITY: Personal production license holders and applicants: The department shall maintain a confidential file containing the names, addresses, and telephone numbers of the persons who have either applied for or received a personal production license (PPL). Individual names of PPL producers and PPL producer-applicants shall be confidential and not subject to disclosure, except:

A. to authorized employees or agents of the department as necessary to perform the duties of the department pursuant to the provisions of this rule and the act;

B. to authorized employees of state or local law enforcement agencies, but only for the purpose of verifying that a person is lawfully in possession of the license to produce, or as otherwise expressly permitted in this rule; and

C. as provided in the federal Health Insurance Portability and Accountability Act of 1996.

[7.34.4.34 NMAC - Rp, 7.34.4.26 NMAC, 6/23/2020]

7.34.4.35 STORAGE AND DISPOSAL OF CANNABIS BY LICENSED PRODUCERS:

A. Storage: Medical cannabis, unused cannabis products, and cannabis-derived product waste shall be stored by a licensed producer in a manner that discourages diversion or theft, until such time as the material is transferred, disposed of, or destroyed in accordance with this rule.

B. Disposal by personal production license holders: Unused cannabis, cannabis products, or cannabis-derived product waste that is in the possession of a qualified patient who holds a personal production license shall be disposed of by transporting the unused portion to a state or local law enforcement office, or by destruction of the material.

[7.34.4.35 NMAC - Rp, 7.34.4.279 NMAC, 6/23/2020]

7.34.4.36 ASSESSMENT REPORT: The department shall evaluate the implementation of the Lynn and Erin Compassionate Use Act and regulations issued pursuant to that act and provide a report to the secretary of the department within one year of the effective date of this regulation. In performing its evaluation, the department shall focus on whether the needs of qualified patients are being met by the department's administration of the act and whether there is a demonstrable need for a state run production and distribution facility. The department's assessment report shall be issued every two years, shall be a public document, and shall contain de-identified data upon which the assessment is based.

[7.34.4.36 NMAC - Rp, 7.34.4.28 NMAC, 6/23/2020]

7.34.4.37 SEVERABILITY: If any part or application of these rules is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of these rules legally severed shall not interfere with the remaining protections provided by these rules and the act.
[7.34.4.37 NMAC - Rp, 7.34.4.29 NMAC, 6/23/2020]

HISTORY OF 7.34.4 NMAC:

History of Repealed Material:
7.34.4 NMAC, Licensing Requirements for Producers, Production Facilities and Distribution (filed 12/01/2008) repealed 12/30/2010.
7.34.4 NMAC, Licensing Requirements for Producers, Production Facilities and Distribution (filed 12/16/2010) repealed 2/27/2015.
7.34.4 NMAC, Licensing Requirements for Producers, Production Facilities and Distribution (filed 2/16/2015) repealed 6/23/2020.

NMAC History:
7.34.4 NMAC, Licensing Requirements for Producers, Production Facilities and Distribution (filed 12/01/2008) was replaced by 7.34.4 NMAC, Licensing Requirements for Producers, Production Facilities and Distribution, effective 12/30/2010.
7.34.4 NMAC, Licensing Requirements for Producers, Production Facilities and Distribution (filed 12/16/2010) was replaced by 7.34.4 NMAC, Licensing Requirements for Producers, Couriers, Manufacturers and Laboratories, effective 2/27/2015.
7.34.4 NMAC, Licensing Requirements for Producers, Couriers, Manufacturers and Laboratories (filed 2/16/2015) was repealed and replaced by 7.34.4 NMAC, Licensing Requirements for Producers, Couriers, Manufacturers and Laboratories, effective 6/23/2020.

HEALTH, DEPARTMENT OF

This is an amendment to 7.34.2 NMAC, Section 7 effective 6/23/2020.

7.34.2.7 DEFINITIONS:
[~~**A. "Act"** means the Lynn and Erin Compassionate Use Act, NMSA 1978, Sections 26-2B-1 through 26-2B-7.~~

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

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

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

~~**E. "Advisory board"** means the medical cannabis advisory board consisting of nine practitioners 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 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 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;

(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

(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 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.

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.

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

II. "Personal production license" means a license issued to a qualified patient or to a qualified patient's primary caregiver participating in the medical cannabis program to permit the qualified patient or the qualified patient's primary caregiver to produce cannabis for the qualified patient's use at an address approved by the department.

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.

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

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

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.

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.

OO. "Primary caregiver application form" means the registry identification card application form provided by the medical cannabis program.

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.

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.

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.

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.

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.

UU. "Secretary" means the secretary of the New Mexico department of health.

VV. "Secure grounds" means a facility that provides a safe environment to avoid loss or theft.

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.

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.

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.

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.

AAA. "THC" means tetrahydrocannabinol, a cannabinoid that is the primary psychoactive ingredient in cannabis.

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.~~

~~**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.~~

~~**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.~~

~~**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.~~]

A. Definitions beginning with "A":

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

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

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

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

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

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

(7) "Approved entity" means a manufacturer, laboratory, or courier.

B. Definitions beginning with "B": "Batch" means, with regard to usable cannabis, an identified quantity of cannabis no greater than five pounds that is of the same strain of cannabis, that is harvested during the same specified time period from the same specified cultivation area, and with respect to which he same agricultural practices were utilized, including the use of any pesticides; and with regard to concentrated and cannabis-derived product, means an identified quantity that is uniform, that is intended to meet specifications for identity, strength, and composition, and that is manufactured, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling protocol.

C. Definitions beginning with "C":

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

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

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

(4) "Cannabis establishment" means:

(a) a licensed cannabis courier;

(b) a licensed cannabis testing facility;

(c) a licensed cannabis manufacturer;

(d) a licensed non-profit producer; or

(e) such other person that the department may by rule approve for participation in the medical cannabis program;

(5) "CBD" means cannabidiol, a cannabinoid and the primary non-psychoactive ingredient found in cannabis.

(6) "CBDA" means cannabidiolic acid, a non-psychoactive ingredient found in cannabis and an acid precursor to CBD.

(7) "Concentrated cannabis-derived product ("concentrate")" means a cannabis-derived product that is manufactured by a mechanical

or chemical process that separates any cannabinoid from the cannabis plant, and that contains (or that is intended to contain at the time of sale or distribution) no less than thirty-percent THC by weight.

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

D. Definitions beginning with "D":

(1) "Debilitating medical condition" means:

(a) cancer;

(b) glaucoma;

(c) multiple sclerosis;

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

(e) epilepsy;

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

(g) admission into hospice care in accordance with rules promulgated by the department;

(h) amyotrophic lateral sclerosis;

(i) Crohn's disease;

(j) hepatitis C infection;

(k) Huntington's disease;

(l) inclusion body myositis;

(m) inflammatory autoimmune-mediated arthritis;

(n) intractable nausea or vomiting;

(o) obstructive sleep apnea;

(p) painful peripheral neuropathy;

(q) Parkinson's disease;

(r) posttraumatic stress disorder;

(s) severe chronic pain;

(t) severe anorexia or cachexia;

(u) spasmodic torticollis;

(v) ulcerative colitis; or

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

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

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

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

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

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

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

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

I. Definitions beginning with "I":

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

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

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

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

L. Definitions beginning with "L":

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

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

(3) "Licensed producer" means a person or entity licensed to produce medical cannabis.

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

M. Definitions beginning with "M":

(1) "Male plant" means a male cannabis plant.

(2) "Manufacture" means to prepare a cannabis.

(3) "Manufacturer" means a cannabis manufacturer as defined in the Lynn and Erin Compassionate Use Act, Subsection F of Section 26-2B-3

NMSA 1978, that has been approved by the department specifically to manufacture cannabis products; package, transport or courier cannabis products; have cannabis products tested by a cannabis testing facility; purchase, obtain, sell and transport cannabis products to other cannabis establishments; and prepare products for personal production license holders.

(4) "Mature female plant" means a harvestable female cannabis plant that is flowering.

(5) "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.

(6) "Medical cannabis program director" means the administrator of the medical cannabis program who holds that title.

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

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

(9) "Minor" means an individual who is less than 18 years of age.

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

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

P. Definitions beginning with "P":

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

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

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

(4) "Personal production license" means a license issued to a qualified patient or to a qualified patient's primary caregiver participating in the medical cannabis program to permit the qualified patient or the qualified patient's primary caregiver to produce cannabis for the qualified patient's use at an address approved by the department.

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

(6) "Petitioner" means any New Mexico resident or association of New Mexico residents petitioning the advisory board for the inclusion of a new medical condition, medical treatment, or disease to be added to the list of debilitating medical conditions that qualify for the use of cannabis.

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

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

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

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

(11) "Primary caregiver application form" means the registry identification card application form provided by the medical cannabis program.

(12) "Private entity" means a private, non-profit organization that applies to become or is licensed as a producer and distributor of cannabis, concentrates, or cannabis-derived products.

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

(14) "Proficiency testing" means testing conducted by the department or its agent to determine the ability of a laboratory applicant or approved laboratory to accurately identify presence, quantity, or other factors pertaining to a given analyte.

Q. Definitions beginning with "Q": "Qualified patient" means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating

medical condition and has received a registry identification card issued pursuant to the requirements of the act or department rules.

R. Definitions beginning with "R":

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

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

(3) "Reciprocal participant" means an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo.

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

(5) "Representative" means an individual designated as the applicant's or petitioner's agent, guardian, surrogate, or other legally appointed or authorized health care decision maker.

S. Definitions beginning with "S":

(1) "Secretary" means the secretary of the New Mexico department of health.

(2) "Secure grounds" means a facility that provides a safe environment to avoid loss or theft.

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

(4) "Security policy" means the instruction manual or pamphlet adopted or developed by the licensed producer containing security policies, safety and security procedures, and personal safety and crime prevention techniques.

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

(6) "Segregate" means to separate and withhold from use or sale batches, lots, cannabis, usable cannabis, or cannabis-derived products in order to first determine its suitability for use through testing by an approved laboratory.

T. Definitions beginning with "T":

(1) "THC" means tetrahydrocannabinol, a cannabinoid that is the primary psychoactive ingredient in cannabis.

(2) "THCA" means tetrahydrocannabinolic acid, a non-psychoactive ingredient in cannabis and an acid precursor to THC.

(3) "Technical evidence" means scientific, clinical, medical, or other specialized testimony, or evidence, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.

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

(5) "Testing" means testing of cannabis and cannabis derived products, consistent with provisions of this rule.

U. Definitions beginning with "U":

(1) "Unit" means a quantity of usable cannabis, concentrate, or cannabis-derived product that is used in identifying the maximum supply that a qualified patient may possess for purposes of department rules.

(2) "Usable cannabis" means the dried leaves and flowers of the female cannabis plant and cannabis-derived products, including concentrates, but does not include the seeds, stalks, or roots of the plant.

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

W. Definitions beginning with "W": "Wastage" means the destruction of usable cannabis or cannabis plants.

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

Y. Definitions beginning with "Y":

Z. Definitions beginning with "Z" [RESERVED]

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

HEALTH, DEPARTMENT OF

This is an amendment to 7.34.3 NMAC, Section 7 effective 6/23/2020.

7.34.3.7 DEFINITIONS:

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

~~B. "Adequate supply"~~ ~~means an amount of cannabis, derived~~

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

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

(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

(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 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.

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.

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

II. "Personal production license" means a license issued to a qualified patient or to a qualified patient's primary caregiver participating in the medical cannabis program to permit the qualified patient or the qualified patient's primary caregiver to produce cannabis for the qualified patient's use at an address approved by the department.

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.

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

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

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.

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.

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

~~**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.~~

~~**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.~~

~~**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.~~

~~**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.~~

~~**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.~~

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

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

~~**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.~~

~~**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.~~

~~**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.~~

~~**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.~~

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

~~**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.~~

~~**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.~~

~~**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.~~

~~**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.~~]

A. Definitions beginning with "A":

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

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

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

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

(5) "Advisory board" means the medical cannabis advisory board consisting of nine

practitioners knowledgeable about the medical use of cannabis, who are appointed by the secretary.

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

(7) **"Approved entity"** means a manufacturer, laboratory, or courier.

B. Definitions beginning with "B": "Batch" means, with regard to usable cannabis, an identified quantity of cannabis no greater than five pounds that is of the same strain of cannabis, that is harvested during the same specified time period from the same specified cultivation area, and with respect to which he same agricultural practices were utilized, including the use of any pesticides; and with regard to concentrated and cannabis-derived product, means an identified quantity that is uniform, that is intended to meet specifications for identity, strength, and composition, and that is manufactured, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling protocol.

C. Definitions beginning with "C":

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

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

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

(4) **"Cannabis establishment"** means:

(a) a licensed cannabis courier;

(b) a licensed cannabis testing facility;

(c) a licensed cannabis manufacturer;

(d) a licensed non-profit producer; or

(e) such other person that the department may by rule approve for participation in the medical cannabis program.

(5) **"CBD"** means cannabidiol, a cannabinoid and the primary non-psychoactive ingredient found in cannabis.

(6) **"CBDA"** means cannabidiolic acid, a non-psychoactive ingredient found in cannabis and an acid precursor to CBD.

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

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

D. Definitions beginning with "D":

(1) **"Debilitating medical condition"** means:

(a) cancer;

(b) glaucoma;

(c) multiple sclerosis;

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

(e) epilepsy;

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

(g) admission into hospice care in accordance with rules promulgated by the department;

(h) amyotrophic lateral sclerosis;

(i) Crohn's disease;

(j) hepatitis C infection;

(k) Huntington's disease;

(l) inclusion body myositis;

(m) inflammatory autoimmune-mediated arthritis;

(n) intractable nausea or vomiting;

(o) obstructive sleep apnea;

(p) painful peripheral neuropathy;

(q) Parkinson's disease;

(r) posttraumatic stress disorder;

(s) severe chronic pain;

(t) severe anorexia or cachexia;

(u) spasmodic torticollis;

(v) ulcerative colitis; or

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

(2) **"Department"** means the department of health or its agent.

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

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

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

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

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

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

I. Definitions beginning with "I":

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

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

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

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

L. Definitions beginning with "L":

(1) **"Laboratory"** means a licensed cannabis testing facility as defined in the Lynn and Erin Compassionate Use Act, Subsection I of Section 26-2B-3 NMSA 1978, that has been approved by the department specifically for the testing of cannabis, concentrates, and cannabis derived products.

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

(3) "Licensed producer" means a person or entity licensed to produce medical cannabis.

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

M. Definitions beginning with "M":

(1) "Male plant" means a male cannabis plant.

(2) **"Manufacture"** means to prepare a cannabis.

(3) **"Manufacturer"** means a cannabis manufacturer as defined in the Lynn and Erin Compassionate Use Act, Subsection F of Section 26-2B-3 NMSA 1978, that has been approved by the department specifically to manufacture cannabis products; package, transport or courier cannabis products; have cannabis products tested by a cannabis testing facility; purchase, obtain, sell and transport cannabis products to other cannabis establishments; and prepare products for personal production license holders.

(4) "Mature female plant" means a harvestable female cannabis plant that is flowering.

(5) "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.

(6) "Medical cannabis program director" means the administrator of the medical cannabis program who holds that title.

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

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

(9) "Minor" means an individual who is less than 18 years of age.

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

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

P. Definitions beginning with "P":

(1) **"Paraphernalia"** means any equipment, product, or material of any kind that is primarily intended or designed for use in compounding,

converting, processing, preparing, inhaling, or otherwise introducing cannabis or its derivatives into the human body.

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

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

(4) "Personal production license" means a license issued to a qualified patient or to a qualified patient's primary caregiver participating in the medical cannabis program to permit the qualified patient or the qualified patient's primary caregiver to produce cannabis for the qualified patient's use at an address approved by the department.

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

(6) "Petitioner" means any New Mexico resident or association of New Mexico residents petitioning the advisory board for the inclusion of a new medical condition, medical treatment, or disease to be added to the list of debilitating medical conditions that qualify for the use of cannabis.

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

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

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

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

(11) "Primary caregiver application form" means the registry identification card application form provided by the medical cannabis program.

(12) "Private entity" means a private, non-profit organization that applies to become or is licensed as a producer and distributor of cannabis, concentrates, or cannabis-derived products.

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

(14) "Proficiency testing" means testing conducted by the department or its agent to determine the ability of a laboratory applicant or approved laboratory to accurately identify presence, quantity, or other factors pertaining to a given analyte.

Q. Definitions beginning with "Q": "Qualified patient" means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received a registry identification card issued pursuant to the requirements of the act or department rules.

R. Definitions beginning with "R":

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

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

(3) "Reciprocal participant" means an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo.

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

(5) "Representative" means an individual designated as the applicant's or petitioner's agent, guardian, surrogate, or other legally appointed or authorized health care decision maker.

S. Definitions beginning with "S":

(1) "Secretary" means the secretary of the New Mexico department of health.

(2) "Secure grounds" means a facility that provides a safe environment to avoid loss or theft.

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

(4) "Security policy" means the instruction manual or pamphlet adopted or developed by the licensed producer containing security policies, safety and security

procedures, and personal safety and crime prevention techniques.

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

(6) "Segregate" means to separate and withhold from use or sale batches, lots, cannabis, usable cannabis, or cannabis-derived products in order to first determine its suitability for use through testing by an approved laboratory.

T. Definitions beginning with "T":

(1) "THC" means tetrahydrocannabinol, a cannabinoid that is the primary psychoactive ingredient in cannabis.

(2) "THCA" means tetrahydrocannabinolic acid, a non-psychoactive ingredient in cannabis and an acid precursor to THC.

(3) "Technical evidence" means scientific, clinical, medical, or other specialized testimony, or evidence, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.

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

(5) "Testing" means testing of cannabis and cannabis derived products, consistent with provisions of this rule.

U. Definitions beginning with "U":

(1) "Unit" means a quantity of usable cannabis, concentrate, or cannabis-derived product that is used in identifying the maximum supply that a qualified patient may possess for purposes of department rules.

(2) "Usable cannabis" means the dried leaves and flowers of the female cannabis plant and cannabis-derived products, including concentrates, but does not include the seeds, stalks, or roots of the plant.

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

W. Definitions beginning with "W": "Wastage" means the destruction of usable cannabis or cannabis plants.

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

Y. Definitions beginning with "Y":

Z. Definitions beginning with "Z" [RESERVED]

[7.34.3.7 NMAC - Rp, 7.34.3.7 NMAC, 2/27/2015; A, 2/29/2016; A, 8/27/2019; A, 6/23/2020]

PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department approved at its 5/19/2020 hearing, to repeal its rule 6.35.2 NMAC, Implementing the Indian Education Act, filed 7/30/2015 and replace it with 6.35.2 NMAC, Implementing the Indian Education Act, adopted on 6/11/2020 and effective 7/1/2020.

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 35 INDIAN EDUCATION
PART 2 IMPLEMENTING THE INDIAN EDUCATION ACT

6.35.2.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
[6.35.2.1 NMAC - Rp, 6.35.2.1 NMAC, 7/1/2020]

6.35.2.2 SCOPE: This rule applies to school districts, state-chartered charter schools, locally chartered charter schools, Indian nations, tribes, pueblos, state post-secondary institutions, the New Mexico higher education department, and the department.
[6.35.2.2 NMAC - Rp, 6.35.2.2 NMAC, 7/1/2020]

6.35.2.3 STATUTORY AUTHORITY: This rule is being promulgated pursuant to Sections 9-24-8, 22-2-1, and 22-23A-1 et seq. NMSA 1978.
[6.35.2.3 NMAC - Rp, 6.35.2.3 NMAC, 7/1/2020]

6.35.2.4 DURATION: Permanent.
[6.35.3.4 NMAC - Rp, 6.35.2.4 NMAC, 7/1/2020]

6.35.2.5 EFFECTIVE DATE: July 1, 2020, unless a later date is cited at the end of a section.
[6.35.2.5 NMAC - Rp, 6.35.2.5 NMAC, 7/1/2020]

6.35.2.6 OBJECTIVE: The objective of this rule is to implement the Indian Education Act.
[6.35.2.6 NMAC – Rp, 6.35.2.6 NMAC, 7/1/2020]

6.35.2.7 DEFINITIONS:

A. "Advisory council" means the Indian education advisory council established pursuant to Section 22-23A-6 NMSA 1978.

B. "Assistant secretary" means the assistant secretary for Indian education of the department.

C. "Culturally relevant" means learning environments, instructional materials, curriculum, support services, activities, and professional development that inform culturally and linguistically responsive pedagogy; reflect the cultures, languages, and lived experiences

of tribal society; address tribal descriptions, tribal interpretations, or tribal perspectives of events and experiences; and encourage critical pedagogy.

D. **"Division"** means the Indian education division of the department.

E. **"Fund"** means the Indian education fund created in the state treasury.

F. **"Historically defined Indian impacted school district"** means a school district, a state-chartered charter school, or locally chartered charter school that meets at least one of the following criteria:

(1) serves at least 175 American Indian or Alaska Native students and is located wholly or partially on tribal land; or

(2) identifies at least ten percent of its overall student population as American Indian or Alaska Native and is located wholly or partially on tribal land; or

(3) identifies at least forty-five percent of its overall student population as American Indian or Alaska Native.

G. **"Secretary"** means the secretary of education.

[6.35.2.7 NMAC - Rp, 6.35.2.7 NMAC, 7/1/2020]

6.35.2.8 INDIAN EDUCATION ACT PURPOSES: The department shall support and advance the purposes of the Indian Education Act to:

A. ensure equitable and culturally relevant learning environments, educational opportunities, and culturally relevant instructional materials for American Indian and Alaska Native students enrolled in public schools;

B. ensure maintenance of native languages;

C. provide for the study, development, and implementation of educational systems that positively affect the educational success of American Indian and Alaska Native students;

D. ensure that the department partners with Indian nations, tribes, and pueblos to increase tribal involvement and control over schools and the education of students located in tribal communities;

E. encourage cooperation among the educational leadership of Arizona, Utah, New Mexico, and the Navajo Nation to address the unique issues of educating students in Navajo communities that arise due to the location of the Navajo Nation in those states;

F. provide the means for a formal government-to-government relationship between the state and Indian nations, tribes, and pueblos in New Mexico and the development of relationships with the education division of the bureau of Indian education and other entities that serve American Indian and Alaska Native students;

G. provide the means for a relationship between the state and urban American Indian and Alaska Native community members in New Mexico to participate in initiatives and educational decisions related to American Indian and Alaska Native students residing in urban areas;

H. ensure that parents, tribal departments of education, community-based organizations, the department, universities, and tribal, state, and local policymakers work together to find ways to improve educational opportunities for American Indian and Alaska Native students;

I. ensure that Indian nations, tribes, and pueblos are notified of all curricula development for their approval and support;

J. encourage an agreement regarding the alignment of the bureau of Indian education and state assessment programs so that comparable information is provided to parents and Indian nations, tribes, and pueblos; and

K. encourage and foster parental involvement in the education of American Indian and Alaska Native students.

[6.35.2.8 NMAC - Rp, 6.35.2.8 NMAC, 7/1/2020]

6.35.2.9 POST-SECONDARY EDUCATION: The department shall collaborate with the higher education department and New Mexico post-secondary institutions, including teacher education programs, tribal colleges, and tribal education departments, to coordinate transition efforts and support for American Indian and Alaska Native students in public schools pursuing post-secondary education and training, including sharing aggregate data on:

A. placement test scores; and

B. drop-out rates.

[6.35.2.9 NMAC - Rp, 6.35.2.9 NMAC, 7/1/2020]

6.35.2.10 IMPLEMENTATION OF THE INDIAN EDUCATION ACT:

A. The secretary and the assistant secretary shall:

(1) collaborate, in cooperation with the Indian education advisory council, state and federal departments and agencies, and tribal governments to identify ways such entities can assist the department in the implementation of the Indian Education Act; and

(2) convene semiannual government-to-government meetings for the purpose of receiving input on education of American Indian and Alaska Native students.

B. The assistant secretary shall:

(1) work to expand appropriate Indian education for American Indian and Alaska Native students in preschool through grade 20;

(2) coordinate with appropriate administrators and divisions to ensure that department administrators make implementation of the Indian Education Act a priority;

(3) in accordance with the rules of the department and after consulting with the Indian education advisory council and determining the resources available within the department:

(a) provide assistance, including advice

on allocation of resources, to school districts and Indian nations, tribes, and pueblos to improve services to meet the educational needs of American Indian and Alaska Native students based on current published indigenous best practices in education;

(b) provide assistance to school districts and Indian nations, tribes, and pueblos in New Mexico in the planning, development, implementation, and evaluation of curricula in native languages, culture, and history designed for all students, including American Indian and Alaska Native students, as approved by Indian nations, tribes, and pueblos in New Mexico;

(c) develop or select for implementation a challenging, sequential, culturally relevant curriculum to provide instruction to American Indian and Alaska Native students in pre-kindergarten through sixth grade to prepare them for pre-advanced placement and advanced placement coursework in grades seven through 12;

(d) provide assistance to school districts, post-secondary institutions, and Indian nations, tribes, and pueblos in New Mexico to develop curricula and instructional materials in native languages, culture, and history in conjunction and by contract with native language practitioners and tribal elders, unless the use of written language is expressly prohibited by the Indian nation, tribe, or pueblo;

(e) conduct indigenous research and evaluation for effective curricula for American Indian and Alaska Native students;

(f) collaborate with the department to provide distance learning for American Indian and Alaska Native students in public schools to the maximum limits of the department's abilities;

(g) establish, support, and maintain an Indian education advisory council;

(h) enter into agreements with each Indian nation, tribe, or pueblo in New Mexico or its authorized educational entity to share programmatic information and to coordinate technical assistance for public schools that serve American Indian and Alaska Native students;

(i) seek funds to establish and maintain an Indian education office in the northwest corner of the state, or other geographical location, to: implement agreements with each Indian nation, tribe, or pueblo in New Mexico or its authorized educational entity; monitor the progress of American Indian and Alaska Native students; and coordinate technical assistance at the public pre-kindergarten to post-secondary institutions that serve American Indian and Alaska Native students;

(j) seek funds to establish, develop, and implement culturally relevant support services for the purposes of increasing the number of American Indian and Alaska Native teachers, administrators, and principals and providing continued professional development, including training in cultural competency, for educational assistants, teachers, and principals serving American Indian and Alaska Native students; in conjunction with the Indian education advisory council, the assistant secretary shall:

(i) support recruitment and retention of highly qualified teachers and administrators;

(ii) identify academic transition programs;

(iii) identify academic financial support;

(iv) support teacher preparation;

(v) support teacher induction; and

(vi) support professional development;

(k) develop curricula to provide instruction in tribal history and government and develop plans to implement these subjects into history and government courses in school districts throughout the state;

(l) ensure that native language bilingual programs are part of a school district's professional development plan, as provided in Section 22-10A-19.1 NMSA 1978;

(m) encourage participation in cultural competency training by educational assistants, teachers, and principals serving American Indian and Alaska Native students; and

(n) develop a plan to establish a post-secondary investment system for American Indian and Alaska Native students to which parents, Indian nations, tribes, pueblos, and the state may contribute.

(4) require school districts to obtain a signature of approval by the tribal governments in New Mexico or their government designees residing within school district boundaries, verifying that the Indian nations, tribes, or pueblos agree to Indian education policies and procedures pursuant to federal requirements.

(a) If the district is unable to obtain the required signatures, the district must submit a written, signed explanation of the reasons.

(b) Tribal governments declining to provide a signature of approval will be afforded the opportunity to submit a written, signed explanation of the reasons for the refusal.

(c) A tribal leader or authorized designee of an Indian nation, tribe, or pueblo that has students attending a school district's schools may file a written complaint with the United States department of education regarding any action of the school district pursuant to, or relevant to, the school district's Indian policies and procedures in accordance with Subpart G of 34 CFR Part 222.

[6.35.2.10 NMAC - Rp, 6.35.2.10 NMAC, 7/1/2020]

6.35.2.11 AMERICAN INDIAN/ALASKA NATIVE STUDENT NEEDS ASSESSMENT:

A. Beginning in the 2020-2021 school year, a historically defined Indian impacted school district shall:

(1) by October 15, and every three years thereafter, conduct an American Indian/Alaska Native student needs assessment to determine what supports are needed in school, at home, and in the community to help American Indian and Alaska Native students succeed in school, graduate with a diploma of excellence, and be prepared to enter post-secondary education or the workplace;

(2) seek best practices for conducting an American Indian/Alaska Native student needs assessment that is appropriate for localized needs, to include school, home, and the community;

(3) conduct a tribal consultation with local Indian nations, tribes, and pueblos to prioritize and address, the needs identified in the American Indian/ Alaska Native student needs assessment;

(4) prioritize in its school district budget the needs of American Indian and Alaska Native students and closing the achievement gap between American Indian and Alaska Native students and all other student groups through the use of state and federal funding for American Indian and Alaska Native students, at-risk students, or economically disadvantaged students;

(5) apply for appropriate financial assistance, which may include state, federal, or private grants, to assist with meeting the requirements of 6.35.2.11 NMAC;

(6) develop an accountability tool, which shall be reevaluated annually, that measures the success or failure of a public school's efforts pursuant to the systemic framework provided for in 6.35.2.12 NMAC;

(7) hold a public meeting with members of the district's American Indian and Alaska Native students' tribal leadership, parents, and the Indian education division at least twice during each school year, once by November 30 and once by April 30, to report on the American Indian/Alaska Native student needs assessment and the historically defined Indian impacted school district's evaluation of progress; and

(8) conduct, submit to the department, and publish on its website an annual review on the evaluation of progress to determine if amendments are needed to the systemic framework or accountability tool.

B. A historically defined Indian impacted school district or an Indian nation, tribe, or pueblo may request amendments to the systemic framework or accountability tool as the result of the annual review on the evaluation of progress.

C. A historically defined Indian impacted school district shall reevaluate the American Indian/Alaska Native student needs assessment every three years, or more frequently if determined necessary because of a change in American Indian or Alaska Native student enrollment within the historically defined Indian impacted school district.

D. The American Indian/Alaska Native student needs assessment may be incorporated into a historically defined Indian impact school district's existing school improvement structure.

E. Annually, the department shall:

(1) when approving school district budgets, consider whether a historically defined Indian impacted school district's budget accomplishes the prioritized needs from the American Indian/Alaska Native student needs assessment; and

(2) require the historically defined Indian impacted school district to submit a written statement to the department, which will be published on the department's website, detailing the ways in which the historically defined Indian impacted school district's budget successfully met or failed to meet the prioritized needs from the most recent American Indian/Alaska Native student needs assessment. The historically defined Indian impacted school district shall also submit the written statement to any Indian nation, tribe, or pueblo located within the exterior boundaries of the historically defined Indian impacted school district. Prior to April 15 of each year, the historically defined Indian impacted school district shall submit to the department the written statement, along with its operating budget, for the ensuing fiscal year. The date for the submission of the written statement for each historically defined Indian impacted school district as required by this paragraph may be extended to a later date by the secretary.

[6.35.2.11 NMAC - N, 7/1/2020]

6.35.2.12 SYSTEMIC FRAMEWORK FOR IMPROVING EDUCATIONAL OUTCOMES FOR AMERICAN INDIAN AND ALASKA NATIVE STUDENTS:

A. Beginning in the 2020-2021 school year, a historically defined Indian impacted school district shall:

(1) develop and publish on its website by January 15, a systemic framework for improving educational outcomes for American Indian and Alaska Native students, in collaboration with:

(a) school employees;

(b) American Indian and Alaska Native students and families;

(c) social service providers;

(d) community and civic organizations;

(e) the school district's or charter school's equity council; and

(f) any other entities, including a consultant, identified by the historically defined Indian impacted school district; and

(2) conduct a tribal consultation with local Indian nations, tribes, and pueblos on the development and implementation of the systemic framework for improving educational outcomes for American Indian and Alaska Native students.

B. A historically defined Indian impacted school district may request assistance from schools of education at post-secondary institutions in New Mexico to identify best practices in collecting and using student-centered data to inform teaching strategies and school-wide efforts to close the achievement gap between American Indian and Alaska Native students and all other student demographic groups.

C. The Indian education division shall assist a historically defined Indian impacted school district as required during the development and implementation of the systemic framework.

D. The systemic framework for improving educational outcomes for American Indian and Alaska Native students shall include programs, services, culturally relevant activities, and professional development required to improve Indian education in the state.

E. Based on the priorities developed through the American Indian/Alaska Native student needs assessment and the priorities established in the historically defined Indian impacted school district's budget for the school year, the systemic framework may include any of the following elements:

(1) academic and other programs within the context of the Indian education division's development or selection of culturally relevant curricula and instructional materials as provided in Subsection E of Section 22-23A-5 NMSA 1978:

(a) innovative programs designed to meet the educational needs of disadvantaged American Indian and Alaska Native students;

(b) high-quality, culturally relevant professional development for teaching professionals and paraprofessionals;

(c) the identification of early childhood, pre-kindergarten, and family programs in the school district that emphasize school readiness and that are effective in preparing young children to make sufficient academic growth by the end of grade three, including family-based early childhood programs that provide culturally relevant screening and referral and provide services to American Indian and Alaska Native children with developmental delays or disabilities;

(d) educational programs that are not usually available in sufficient quantity or quality, including remedial instruction, to close the achievement gap of American Indian and Alaska Native students in one or more of the subjects of English, mathematics, science, American Indian/Alaska Native tribal languages, foreign language, art, history, and geography;

(e) bilingual and bicultural programs and projects, including appropriate educational support for American Indian/Alaska Native English learner students;

(f) enrichment programs that focus on problem solving and cognitive skills development and directly support the attainment of challenging state academic standards;

(g) programs designed to encourage and assist American Indian and Alaska Native students to work toward, and gain entrance into, post-secondary institutions;

(h) special compensatory and other programs and projects that are designed to assist and encourage American Indian and Alaska Native students to enter, remain in, or reenter school, and to increase the rate of high school graduation for American Indian and Alaska Native students;

(i) career preparation activities that enable, encourage, and support American Indian and Alaska Native students to participate in programs supported by the federal Carl D. Perkins Career and Technical Education Act of 2006, including programs for technology preparatory education, mentoring, and apprenticeship;

(j) partnership projects between public schools and local businesses for career preparation programs designed to provide American Indian and Alaska Native students with the knowledge and skills needed to make an effective transition from school to a high-skill career;

(k) rigorous and meaningful curricula and educational opportunities that will lead to lifelong success for all students; and

(l) any other academic programs identified by the historically defined Indian impacted school district or local Indian nations, tribes, and pueblos;

(2) culturally related activities that:

(a) support the academic program of the public school;

(b) support American Indian language programs and American Indian language restoration programs that may be taught by traditional leaders and that qualify for the state seal of bilingualism-biliteracy on a student's diploma of excellence as provided in Section 22-1-9.1 NMSA 1978;

(c) promote the incorporation of culturally responsive teaching and learning strategies into the public school's educational program;

(d) educate about the prevention of violence, suicide, and substance abuse;

(e) promote the incorporation of land-based learning, student identity development, and holistic wellness; and

(f) any other culturally related activities

identified by the historically defined Indian impacted school district or local Indian nations, tribes, and pueblos; and

(3) additional educational services focused on the holistic well-being of the whole child, including:

(a) early interventions to help struggling students, such as:

(i) after-school programs;

(ii) tutoring and mentoring; and

(iii) school and community interventions to prevent truancy and reduce dropout rates;

(b) comprehensive guidance and counseling services;

(c) integrated educational services in combination with other programs that meet the needs of American Indian and Alaska Native students and their families, including programs:

(i) that promote parental involvement in school activities; and

(ii) increase student achievement;

(d) special health- and nutrition-related services and other related activities that address the special health, social, and psychological concerns of American Indian and Alaska Native students and their families; and

(e) family literacy services, including:

(i) New Mexico even start; and

(ii) adult basic education programs; and

(f) any other educational services identified by the historically defined Indian impacted school district or local Indian nations, tribes, and pueblos.

[6.35.2.12 NMAC - N, 7/1/2020]

6.35.2.13 TRIBAL EDUCATION STATUS REPORT (TESR):

A. Beginning in school year 2020-2021, by September 30, each school district with tribal lands located within its boundaries shall provide an annual districtwide tribal education status report to all Indian nations, tribes, and pueblos located within the school district boundaries and to the assistant secretary.

B. Beginning in school year 2020-2021, by September 30, each school district adjacent to tribal lands may provide an annual districtwide tribal education status report to all Indian nations, tribes and pueblos with tribal lands adjacent to the school district's boundaries and to the assistant secretary.

C. A report provided in accordance with Subsections A or B of this section shall include the following information based upon data from the immediately preceding school year:

(1) student achievement as measured by a statewide test approved by the department, with results disaggregated by ethnicity; any cell with an n-size of 9 or fewer shall be masked;

(2) school safety;

(3) the graduation rate;

(4) attendance;

(5) parent and community involvement;

(6) educational programs targeting American Indian or Alaska Native students;

(7) financial reports;

(8) current status of federal Indian education policies and procedures;

(9) school district initiatives to decrease the number of student dropouts and increase attendance;

(10) public school use of variable school calendars;

(11) school district consultations with district Indian education committees, school-site parent advisory councils, and tribal, municipal, and Indian organizations;

(12) indigenous research and evaluation measures and results for effective curricula for American Indian and Alaska Native students; and

(13) access to native language programs.

D. The division shall submit a statewide tribal education report to all New Mexico Indian nations, tribes, and pueblos on or before November 15 of each year. The report will incorporate data submitted to the assistant secretary in accordance with Subsections A and B of this section and will further include reports by organizational units within the department regarding activities they are engaged in with Indian nations, tribes, and pueblos related to the education of American Indian and Alaska Native students.

[6.35.2.13 NMAC - Rp, 6.35.2.11 NMAC, 7/1/2020]

6.35.2.14 AWARDS:

A. The fund shall consist of all appropriations, gifts, grants, donations, and income from investment of the fund.

B. Awards from the fund shall be used to support and advance the purposes of the act.

C. At least annually, the department will establish and disseminate procedures for submission of requests for information and applications for grants from the fund, including the requirements that:

(1) requests for information and applications identify the program and goal to be achieved relevant to the act;

(2) requests for information and applications describe how the program will be sustained beyond the fiscal years being funded; and

(3) requests for information and applications describe how the effectiveness of the programs supported by the grant will be measured and reported to the department.

D. The assistant secretary shall consult with the advisory committee regarding

priorities for funding and the request for information and application process.

E. The recommendations of the advisory council, together with the recommendations of the assistant secretary, shall be provided to the secretary. The secretary shall make the final determination of projects approved for grant awards.

F. The grant agreements shall include provisions for periodic expenditure reports to the division, including a final expenditure report, and for reports measuring the effectiveness of the programs supported by the grants.

G. All activities shall be completed no later than June 30 of the fiscal year for which the award is made available. Recipients shall submit requests for reimbursement or invoices for accounts payable no later than July 7 following the close of the fiscal year for which the award is made available.

[6.35.2.14 NMAC - Rp, 6.35.2.12 NMAC, 7/1/2020]

HISTORY OF 6.35.2 NMAC:
6.35.2 NMAC, Implementing the Indian Education Act, filed 7/30/2015, was repealed and replaced by 6.35.2 NMAC, Implementing the Indian Education Act, effective 7/1/2020.

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

The New Mexico Public Employee Labor Relations Board approved at its 6/5/2020 meeting, to repeal its rule 11.21.6 NMAC, Concurrent Pending Related Cases (filed 6/11/2020) effective 7/1/2020.

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

This is an amendment to 11.21.1 NMAC, Sections 7, 10 & 11, effective 7/1/2020.

11.21.1.7 DEFINITIONS:

A. Statutory definition: The terms defined in Section 10-7E-4 NMSA 1978, shall have the meanings set forth therein.

B. Additional definitions: The following terms shall have the meanings set forth below.

(1) "Act" means the New Mexico Public Employee Bargaining Act, Sections 10-7E-1 through 10-7E-26 NMSA 1978 including any amendments to that statute.

(2) "Amendment of certification" means a procedure whereby an incumbent labor organization certified by the board to represent a unit of public employees or a public employer may petition the board to amend the certification to reflect a change such as a change in the name or the affiliation of the labor organization or a change in the name of the employer.

(3) "Certification of incumbent bargaining status" shall mean a procedure whereby a labor organization recognized by a public employer as the exclusive representative of an appropriate bargaining unit on June 30, 1999 petitions the board for a declaration of bargaining status under Subsection B of Section 10-7E-24 NMSA 1978. or after a local board certifying the representative ceases to exist by operation of Section 10-7E-10 NMSA 1978 (2020).

(4) "Challenged ballot" means the ballot of a voter in a representation election whose eligibility to vote is questioned either by a party to the representation case or by the director.

(5) "Complainant" means an individual, labor organization, or public employer that has filed a prohibited practices complaint.

[~~**(6)** "Confidential employee" means a person who devotes a majority of his time to assisting and acting in a confidential capacity with respect to a person who formulates, determines and effectuates management policies.~~]

[~~**(7)**~~**] (6) "Delivering a copy"** as it pertains to service or filing of pleadings or other documents means: (1) handing it to the board, to its agent(s), to opposing counsel or unrepresented parties; (2) sending a copy by facsimile or electronic submission in accordance with 11.21.1.10 NMAC or 11.21.1.24 NMAC; (3) leaving it at the board's, opposing attorney's or party's office with a clerk or other person in charge thereof; or (4) if the attorney's or party's office is closed or the person to be served has no office, leaving it at the unrepresented person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

[~~**(8)**~~] **(7) "Director"** means the Director of the Public Employee Labor Relations Board.

[~~**(9)**~~] **(8) "Document"** means any writing, photograph, film, blueprint, microfiche, audio or video tape, data stored in electronic memory, or data stored and reproducible in visible or audible form by any other means.

[~~**(10)**~~] **(9) "Electronic submission"** means the filing of a pleading or other document with the board using the electronic system established by the PELRB, service by the parties, or email communications.

[~~**(11)**~~] **(10) "On a form prescribed by the Director"** as used in these rules pertaining to the filing of documents with the board, shall include the electronic data submitted by use of any interactive form posted for that purpose on the board's website.

[~~**(12)**~~] **(11) "Probationary employee"** for state employees shall have the meaning set forth in the State Personnel Act and accompanying regulations; for other public employees, other than public school employees, it shall have the meaning set forth in any applicable ordinance, charter or resolution, or, in the absence of such a definition, in a collective bargaining agreement; provided, however, that

for determining rights under the PEBA non-state employees a public employee may not be considered to be a probationary employee for more than one year after the date [~~he or she is hired~~] of hire by a public employer. If otherwise undefined, the term shall refer to an employee who has held [~~his or her~~] that position, or a related position, for less than six months.

[~~(13)~~] **(12)**

"Prohibited practice" means a violation of Section 10-7E-19, 10-7E-20 NMSA 1978 or Subsection A of Section 10-7E-21 NMSA 1978.

[~~**(14) "Public employer"** means the state or a political sub-division thereof, including a municipality that has adopted a home rule charter, and does not include a government of an Indian nation, tribe or pueblo, provided that state educational institutions as provided in Article 12, Section 11 of the constitution of New Mexico shall be considered public employers other than state for collective bargaining purposes only.~~

~~**(15) "Public employee"** means a regular non-probationary employee of a public employer; provided that, in the public schools, "public employee" shall also include a regular probationary employee.~~]

[~~(16)~~] **(13)**

"Representation case" or **"representation proceeding"** means any matter in which a petition has been filed with the director requesting a certification or decertification election, or an amendment of certification, or unit clarification.

[~~(17)~~] **(14)**

"Respondent" means a party against whom a prohibited practices complaint has been filed.

[~~(18)~~] **(15)**

"Rules" means the rules and regulations of the board (these rules), including any amendments to them.

[~~(19)~~] **(16)**

"Unit accretion" means the inclusion in an existing bargaining unit of employees who do not belong to any existing bargaining unit, who share a community of interest with the employees in the existing unit, and whose inclusion will not render the existing unit inappropriate.

[~~(20)~~] **(17)**

"Unit clarification" means a proceeding in which a party to an existing lawful collective bargaining relationship petitions the board to change the scope or description of an existing bargaining unit; a change in union affiliation; to consolidate existing bargaining units represented by the same labor organization; or to realign existing bargaining units of employees represented by the same exclusive representative into horizontal units, where the board finds the unit as clarified to be an appropriate bargaining unit and no question concerning, representation arises.

[~~(21)~~] (18)

"Unit inclusions or exclusions" means the status of an individual, occupational group, or group of public employees in clear and identifiable communities of interest in employment terms and conditions and related personnel matters, as being within or outside of an appropriate bargaining unit based on factors such as supervisory, confidential or managerial status, the absence thereof, job context, principles of efficient administration of government, the history of collective bargaining, and the assurance to public employees of the fullest freedom in exercising the rights guaranteed by the Public Employee Bargaining Act.

[11.21.1.7 NMAC - N, 3/15/2004; A, 2/28/2005; A, 10/16/2018; A, 7/1/2020]

11.21.1.10 FILING WITH THE DIRECTOR OR THE BOARD: To file a document with the director or the board, the document may be either hand-delivered to the board's office in Albuquerque during its regular business hours, or sent to that office by United States mail, postage prepaid, or by the New Mexico state government interagency mail or by sending a copy by facsimile or electronic submission. The director will be responsible for recording the filing of documents to be filed with the board, as well as documents to be filed with the director.

A. Time of filing: A document will be deemed filed when it is received by the director. For hand delivered or mailed documents the date and time stamp affixed by the receiving board agent will be determinative. For faxed or electronically transmitted documents the time and date affixed on the cover page or the document itself by the board's facsimile machine or receiving computer will be determinative.

B. Additional time after service by mail: Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three days shall be added to the prescribed period. Intermediate Saturdays, Sundays, and legal holidays are included in counting these added three days. If the third day is a Saturday, Sunday, or legal holiday, the last day to act is the next day that is not a Saturday, Sunday, or legal holiday.

C. Signatures: [~~Party's~~] Parties or their representatives filing electronically thereby certify that required signatures or approvals have been obtained before filing the document. The full, printed name of each person signing a paper document shall appear in the electronic version of the document. All electronically filed documents shall be deemed to contain the filer's signature. The signature in the electronic document may represent the original signature in the following ways:

(1) by scanning or other electronic reproduction of the signature; or

(2) by typing in the signature line the notation "/s/" followed by the name of the person who signed the original document.

D. Demand for original: A party shall have the right to inspect and copy any pleading or paper that has been filed or served by facsimile

or electronic submission if the pleading or paper has a statement signed under oath or affirmation or penalty of perjury.
[11.21.1.10 NMAC - N, 3/15/2004; A, 10/16/2018; A, 7/1/2020]

11.21.1.11 REPRESENTATION OF A PARTY: A party may [~~represent his, her, or itself~~], be self-represented or be represented by counsel or other representative. Any representative of a party shall file with the board a signed notice of appearance, stating the name of the party; the title and official number (if available) of the case in which the representative is representing the party, and the name, address and telephone number of the representative. The filing of a pleading containing the above information is sufficient to fulfill this requirement.
[11.21.1.11 NMAC - N, 3/15/2004; A, 2/11/2020; A, 7/1/2020]

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

This is an amendment to 11.21.2 NMAC, Sections 8, 25, 27, 36, 37 & 40, effective 7/1/2020.

11.21.2.8 COMMENCEMENT OF CASE: A representation case is commenced by filing a representation petition with the director on a form prescribed by the director. The form shall include, at a minimum, the following information: the petitioner's name, address, phone number, state or national affiliation, if any, and representative, if any; the name, address and phone number of the public employer or public employers whose employees are affected by the petition; a description of the proposed appropriate bargaining unit and any existing recognized or certified bargaining unit; the geographic work locations, occupational groups, and estimated numbers of employees in the proposed unit and any existing bargaining unit; a statement of whether or not there is a collective bargaining agreement in effect covering any of the employees in the proposed or any existing bargaining unit and, if so, the name, address and phone number of the labor organization that is party to such agreement; a statement of what action the petition is requesting. In addition, a petition seeking a certification or decertification election, shall be supported by a thirty percent showing of interest in the existing or proposed bargaining unit. A petition shall contain a signed declaration by the person filing the petition that its contents are true and correct to the best of his or her knowledge and, in the case of a decertification petition that [~~he or she~~] the filer is a member of the labor organization to whom the decertification petition applies.
[11.21.2.8 NMAC - N, 3/15/2004; A, 2/28/2005; A, 6/14/2013; A, 7/1/2020]

11.21.2.25 PRE-ELECTION CONFERENCE: At a reasonable time at least 15 days before the election, the director shall conduct a pre-election conference with all parties to resolve such details as the polling location(s), the use of manual, electronic, or mail ballots the hours of voting, the number of observers permitted, and the time and place for counting the ballots. The director shall notify all parties by mail (and email if available) of the time and place of the pre-election conference, at least five days in advance of the conference. The conference may proceed in the absence of any party.

A. The director will attempt to achieve agreement of all parties on the election details, but in the absence of agreement, shall determine the details. In deciding the polling location(s) and the use of manual [~~or mail~~] mail or electronic participation in the election by employees in the bargaining unit there shall be a strong preference for on-site balloting.

B. The parties may stipulate to a consent election agreement without the necessity of a pre-election conference subject to approval of its terms by the director, in which case the requirement for a pre-election conference shall be waived.
[11.21.2.25 NMAC - N, 3/15/2004; A, 2/28/2005; A, 2/11/2020; A, 7/1/2020]

11.21.2.27 BALLOTS AND VOTING:

A. All voting shall be by secret ballot prepared by the director, position on the ballot shall be determined randomly. Ballots in an initial election shall include a choice of "no representation."

B. All elections shall be conducted by the director, whether electronically, by mail in ballots or on-site elections, subject to the provisions of 11.21.1.28 NMAC regarding the director's authority to delegate duties.

C. Any voter who arrives at a polling area before the polls close will be permitted to vote.

D. Public employers whose employees are eligible to vote in an election shall allow their employees in the voting unit sufficient time away from their duties to cast their ballots and shall allow their employees who have been selected as election observers sufficient time away from their duties to serve as observers. This rule does not impose on public employers an obligation to change the work schedules of employees to accommodate voting hours.
[11.21.2.27 NMAC - N, 3/15/2004; A, 2/11/2020; A, 7/1/2020]

11.21.2.36 CERTIFICATION OF INCUMBENT BARGAINING REPRESENTATIVE STATUS: A labor organization that was recognized by a public employer as the exclusive representative of an appropriate bargaining unit on June 30, 1999 shall be recognized as the exclusive representative of the unit. [~~Such labor organization may petition for declaration of bargaining status under Section 24(B) of the Act by submitting a petition accompanied by a showing of majority support within that unit such a petition for certification of incumbent based on prior recognition shall not raise an~~

~~issue of representation. The director shall investigate the petition and, within 30 days of the filing of the petition, shall issue a report and certification, a report and dismissal, or a notice of hearing. A determination by the director certifying the petitioner or dismissing the petitioner shall be appealable to the board under the procedures set forth in Section 22, above.~~] Such recognition shall not be affected by a local labor board ceasing to exist pursuant to Section 10-7E-10 NMSA 1978 (2020). Such labor organization may petition for declaration of bargaining status under Subsection B of Section 10-7E-24 NMSA 1978 (2003)
[11.21.2.36 NMAC - N, 3/15/2004; A, 7/1/2020]

11.21.2.37 UNIT CLARIFICATION:

A. Except as provided in Section 24(A) of the Act, where the circumstances surrounding the creation of an existing collective bargaining unit are alleged to have changed sufficiently to warrant a change in the scope and description of that unit, or a merger or realignment of previously existing bargaining units represented by the same labor organization, either the exclusive representative or the employer may file with the director a petition for unit clarification. Such a petition seeking realignment of existing units into horizontal units may be filed and processed only when it relates to state employees.

B. Upon the filing of a petition for unit clarification, the director shall investigate the relevant facts, and shall either set the matter for hearing or shall issue a report recommending resolution of the issues within thirty (30) days of the filing of the petition. In the director's investigation or through the hearing, the director or hearing examiner shall determine whether a question concerning representation exists and, if so, shall dismiss the petition. In such a case, the petitioner may proceed otherwise under these rules.

C. If the director or hearing examiner determines that no question concerning representation exists and that the petitioned-for clarification is justified by the evidence presented, the director or hearing examiner shall issue a report clarifying the unit within 30 days of the filing of the petition if no hearing is determined necessary, or within 30 days of the hearing if a hearing is determined necessary. If the director determines that a question concerning representation exists, [~~he or she shall dismiss~~] the petition shall be dismissed..

D. A director or hearing examiner determination on a unit clarification petition shall be appealable to the board under the same procedures set forth in Section 22, above.
[11.21.2.37 NMAC - N, 3/15/2004; A, 2/28/2005; A, 7/1/2020]

11.21.2.40 PETITION WITHDRAWAL: The petitioner in a representation proceeding may request permission of the director to withdraw the petition at any time prior to an initial election. The director [~~may grant or deny such~~] has discretion to grant or deny a withdrawal request only after soliciting the positions of all parties [~~and, in his or her discretion, may decline to approve the withdrawal request~~].
[11.21.2.40 NMAC - N, 3/15/2004; A, 7/1/2020]

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

This is an amendment to 11.21.3 NMAC, Sections 16, 18 & 22, effective 7/1/2020.

Explanatory note: Statute citations were corrected throughout the rule to conform to current legislative styles.

11.21.3.16 PROHIBITED PRACTICES HEARINGS:

A. In the absence of an approved settlement agreement, the hearing examiner shall conduct a formal hearing, assigning the burden of proof and the burden of going forward with the evidence to the complainant, as stated in 11.21.1.22 NMAC.

B. The hearing examiner [~~in his or her discretion~~] may examine witnesses called by the parties, call additional witnesses, or call for the introduction of documents.
[11.21.3.16 NMAC - N, 3/15/2004; A, 7/1/2020]

11.21.3.18 HEARING EXAMINER REPORTS: The hearing examiner shall issue [~~his or her report~~] a "report and recommended decision" within the same time limits and following the same requirements provided in 11.21.2.21 NMAC for hearing examiner reports in representation cases.
[11.21.3.18 NMAC - N, 3/15/2004; A, 2/28/2005; A, 7/1/2020]

11.21.3.22 ARBITRATION DEFERRAL:

A. If the subject matter of a prohibited practices complaint requires the interpretation of a collective bargaining agreement; and the parties waive in writing any objections to timeliness or other procedural impediments to the processing of a grievance, and the director determines that the resolution of the contractual dispute likely will resolve the issues raised in the prohibited practices complaint, then the director may, on the motion of any party, defer further processing of the complaint until the grievance procedure has been exhausted and an arbitrator's award has been issued.

B. Upon its receipt of the arbitrator's award, the complaining party shall file a copy of the award with the director, and shall advise the director in writing that it wishes either to proceed with the prohibited practice complaint or to withdraw it. The complaining party shall simultaneously serve a copy of the request to proceed or withdraw upon all other parties.

C. If the complaining party advises the director that it

wishes to proceed with the prohibited practices complaint, or if the board on its own motion so determines, then the director shall review the arbitrator's award. If in the opinion of the director, the issues raised by the prohibited practices complaint were fairly presented to and fairly considered by the arbitrator, and the award is both consistent with the act and sufficient to remedy any violation found, then the director shall dismiss the complaint. If the director finds that the prohibited practice issues were not fairly presented to, or were not fairly considered by, the arbitrator, or that the award is inconsistent with the act, or that the remedy is inadequate, then the director shall take such other action [~~as he or she deems~~] deemed appropriate. Among such other actions, the director may accept the arbitrator's factual findings while substituting [~~his or her own~~] legal conclusions [~~and/or remedial requirements~~] and remedies pursuant to Subsection F of Section 10-7E-9 NMSA 1978 appropriate for the prohibited practice issues.

D. In the event that no arbitrator's award has been issued within one year following deferral under this rule, then the director may, after notice and in the absence of good cause shown to the contrary, dismiss the complaint.

E. The director's decision either to dismiss or further process a complaint pursuant to this rule may be appealed to the board under the procedure set forth in 11.21.3.13 NMAC. Interim decisions of the director under this rule, including the initial decision to defer or not to defer further processing of a complaint pending arbitration, shall not be appealable to the board.

[11.21.3.22 NMAC - N, 3/15/2004; A, 2/28/2005; A, 7/1/2020]

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

This is an amendment to 11.21.5 NMAC, Sections 6, 8, 9, 11, 12, 13 & 14, effective 7/1/2020.

Explanatory note: Statute citations were corrected throughout the rule to conform to current legislative styles.

11.21.5.6 OBJECTIVE: The objective of Part 5 Chapter 21 is to identify and process information necessary for a public employer other than the state to file an application with the public employee labor relations board [~~to obtain approval for establishing and operating~~] for continued operation of a local labor board conforming with Sections 10-7E-9 and 10-7E-10 NMSA 1978 (2020). [~~and post-approval reporting requirements~~]

[11.21.5.6 NMAC - N, 3/15/2004, A; 7/1/2020]

11.21.5.8 APPLICATION FOR APPROVAL OF A LOCAL BOARD ORDINANCE, RESOLUTION OR CHARTER:

(A) Any public employer other than the state that [~~wishes~~] intends to [~~create a~~] maintain a local public employee labor relations board after January 1, 2021 shall file an application for approval with the state board within the time limits specified in Section 10-7E-10 NMSA 1978 (2020).

(B) Any local board approved pursuant to Subsection A above, shall submit the affirmation required by Subsection D of Section 10 of the Act between November 1, and December 31 of each odd numbered year.

[11.21.5.8 NMAC - N, 3/15/2004; A, 7/1/2020]

11.21.5.9 CONTENTS OF APPLICATION:

A. [~~The application for approval shall include, at a minimum, the following: the name of the local public employer; the name, address and phone number of the local governing body; a complete and fully integrated copy of the proposed resolution, ordinance or charter amendment creating the proposed local board, along with an electronic document or compact disk containing the same information; and the evidence that the proposed resolution, ordinance or charter amendment has either been approved by the local governing body, or submitted for approval pursuant to local procedures.~~] An application to maintain a local board shall include, at a minimum, the following:

(1) an affirmation by the public employer that it intends to maintain a local public employee labor relations board;

(2) evidence that such board existed and its enabling legislation was approved by the public employee labor relations board prior to July 1, 2020;

(3) written notice from each labor organization representing employees of the public employer wishing to maintain the local board expressing the union's intention to continue to operate under the local board;

(4) the name of the local public employer;

(5) the name, address and phone number of the local governing body;

(6) a complete and fully integrated copy of the resolution, ordinance or charter amendment creating the proposed local board conforming with Sections 10-7E-9 and 10-7E-10 NMSA 1978 (2020).

B. All [~~proposed~~] resolutions, ordinances or charter amendments under Subsection A above shall follow the board approved templates provided at www.state.nm.us/pelrb; provided, however, that the public employer may propose variances to the templates where appropriate, pursuant to 11.21.5.10 NMAC.

C. Upon receipt of an application for approval seeking variance from the board approved

templates, the director shall review the application for conformance with Sections 10-7E-9 and 10-7E-10 NMSA 1978 (2020) and submit a recommendation to the PELRB for approval. If in the director's discretion it is desirable to hold a hearing or confer with the local public employer and any identified interested labor organizations before making a recommendation to the board a status and scheduling conference may be held.

[11.21.5.9 NMAC - N, 3/15/2004; Rn, 11.21.5.13 NMAC & A, 2/28/2005; A, 7/1/2020]

11.21.5.11 [~~**ABATEMENT:** The board shall abate, for a period of 45 calendar days, the processing of any matter filed with it subsequent to the application for approval that would come within the cognizance of the local board whose application is pending approval. All limitation periods, whether applicable to representation or prohibited practice matters, shall be tolled during the pendency of any such application~~]
SUBMISSION OF RULES:

A. Each local board submitting an application pursuant to Rule 11.21.5.8, above, shall submit a verified copy of the procedural rules enacted by the applying local board necessary to accomplish its functions and duties under the ACT no later than April 30, 2021.

B. Any proposed changes to the procedural rules of a local board must be approved by the PELRB prior to being enacted by the local board.

[11.21.5.11 NMAC – Rp, 11.21.5 NMAC, N, 7/1/2020]

11.21.5.12 REVIEW OF LOCAL BOARD APPLICATIONS BY THE BOARD:

A. Upon receiving an application for approval of a local board ordinance, charter amendment, or resolution the board shall conduct an administrative review of the application and, at a properly noticed public meeting or hearing, shall formally approve or disapprove the application. Public notice of such meetings or hearings shall be provided as required by law.

B. In considering an application for approval of a local board ordinance, charter amendment, or resolution, the board shall review all applications for approval of such ordinance, charter amendment or resolution, in light of the requirements of Section 10 of the Act and 11.21.5 NMAC. The board shall require that the ordinance, resolution or charter amendment creating the local board be amended as necessary in order to meet the requirements of Section 10 of the Act and 11.21.5 NMAC.

C. Upon a finding that the application for the local board ordinance, charter amendment, or resolution meets statutory and regulatory requirements, the board shall approve such application [~~and remand to the local board once it is duly appointed, any proceedings held in abeyance. The PELRB retains jurisdiction over all matters abated pursuant to 11.21.5.11 NMAC until such time as a local board created pursuant to an approved ordinance, resolution or charter amendment is duly appointed and functioning. If within 60 days following approval of an application under this rule the local board is not duly constituted or, if~~] If after approval pursuant to this rule [~~being duly constituted fails to meet regarding any remanded issues or to promulgate rules necessary to accomplish and perform its functions as established in Section 11 of the Act, or if it~~] a local board fails to act on or respond to a filing by an employee organization or public employer or public employee within a reasonable time, or otherwise acts in a manner inconsistent with [~~the precedent of the public employee labor relations board, the board's approval shall be automatically revoked in accordance with~~] Section 10-7E-9 NMSA 1978 (2020) [~~and 11.21.5.14 NMAC below and this~~] the board shall exercise its jurisdiction over any matters [~~that, but for the application, would be are subject to the Act.~~] then pending before the local board pursuant to Section 2 of the Act. [~~the PELRB The decisions and findings of the board in any such matter shall be binding on the local board, the public employer, the employee organization or public employee consistent with the provisions of Subsection A of Section 10 of the Act.~~]

D. In the event an application demonstrates that the local board ordinance, charter amendment, or resolution does not meet the standards of Section 10 of the Act and 11.21.5 NMAC, the application shall be rejected and returned to the public employer. Thereupon, the public employer shall have [~~a period of the balance of~~ the ~~45 calendar days, or an additional 10 days from receipt of notice of rejection, whichever is later,~~] time available under Section 10-7E-10 NMSA 1978 (2020) in which to make such changes as are necessary to qualify for approval and resubmit its application. After the expiration of time in which [~~an application may be resubmitted~~] a local board may cure defects under the Act, any matters then pending before the board relevant to that public employer shall be processed in accordance with the board's procedures.

[11.21.5.12 NMAC - N, 3/15/2004; Rn, 11.21.5.14 NMAC & A, 2/28/2005; A, 2/11/2020; A, 7/1/2020]

11.21.5.13 POST APPROVAL REPORTING REQUIREMENTS:

Following board approval of a local board, the local board or the public employer that created it shall file with the board [~~and~~] any amendments to the ordinance, resolution, or charter amendment, creating the local board, or any procedural rules, and timely respond to any inquiries by this board of its staff made pursuant to Section 9 of the Act. Upon a finding by the board that the local board no longer meets the requirements of Section 10 of the Act, the local board shall be so notified and be given a period of 30 days to come into compliance or prior approval shall be revoked.

[11.21.5.13 NMAC - N, 3/15/2004; Rn, 11.21.5.15 NMAC & A, 2/28/2005; A, 7/1/2020]

11.21.5.14 REVOCATION OF APPROVAL OF LOCAL BOARD: Upon the issuance of a final order of the board or judgment by a court of competent jurisdiction, finding that a local board is not in compliance with the Act, all matters theretofore pending before the local board shall be removed to and come under the jurisdiction of the board.
[11.21.5.14 NMAC - N, 3/15/2004; Rn, 11.21.5.16 NMAC & A, 2/28/2005; A, 7/1/2020]

RETIREE HEALTH CARE AUTHORITY

This is an amendment to 2.81.11 NMAC, Sections 6 through 10 effective 7/31/2021.

2.81.11.6 OBJECTIVE: The objective of this rule is to establish subsidy levels commensurate with a retiree's years of credited service with a participating employer for employees who become eligible for enrollment into the NMRHCA health care program on or after [~~January 1, 2021~~] July 31, 2021.
[2.81.11.6 NMAC - N, 2/14/2002; A, 1/1/2021; A, 7/31/2021]

2.81.11.7 DEFINITIONS:

A. "Board" means, the board of directors of the NMRCHA.

B. "Credited service" means the number of full years of employment with a participating employer as verified by the authority.

C. "Disabled retiree" means an eligible retiree who has been authorized to retire due to disability by the appropriate state retirement agency.

D. "Member of an enhanced retirement plan" means a member of a retirement plan as defined by Section 10-7C-15 NMSA 1978.

E. "Retiree health care authority" or "authority" or "NMRHCA" means, the retiree health care authority established by chapter 6 laws of New Mexico, 1990 (Sections 10-7C-1 *et seq*., NMSA 1978).

F. "State retirement agency" means each of the agencies created and authorized by law to administer the educational retirement act, the public employees retirement act, the judicial retirement act, the magistrate retirement act, the public employees retirement reciprocity act, or the retirement program of an independent public employer on or before July 1, 1990.

G. "Subsidy" means a set portion of the cost of an eligible retiree's monthly coverage, a varying percentage of which is borne by the authority as determined by the board.
[2.81.11.7 NMAC - N, 2/14/2002; A, 12/30/2002; A: 1/1/2021: A, 7/31/2021]

2.81.11.8 NMRHCA CONTRIBUTION OF A PERCENTAGE OF A SUBSIDY TO MONTHLY PREMIUMS OF ELIGIBLE RETIREES:

A. Except as otherwise provided in 2.81.11.9 NMAC, for eligible retirees who are members of an enhanced retirement plan and become eligible for participation on or after July 1, 2001, or are not members of an enhanced retirement plan and become eligible for participation on or after July 1, 2001 but before [~~January 1, 2021~~] July 31, 2021, and the eligible dependents of such retirees, the NMRHCA will contribute the following percentages of the subsidy to the monthly premiums according to the corresponding numbers of years of credited service with an NMRHCA-participating employer:

(1) Example: If the subsidy for a particular plan is one half the premium cost, then for a retiree with 20 years of credited service the NMRHCA would provide one hundred percent of the subsidy; half the cost.

(2) Example: For the same subsidy of one half the premium cost, the percent of subsidy for a retiree with eight years of credited service would be twenty-five percent of the fifty percent subsidy: twelve and one-half percent of the cost.

Years of credited service	Percentage of subsidy
5	6.25
6	12.50
7	18.75
8	25.00
9	31.25
10	37.50
11	43.75
12	50.00
13	56.25
14	62.50
15	68.75
16	75.00
17	81.25
18	87.50
19	93.75
20	100.00

B. Subject to 2.81.11.10 NMAC and except as otherwise provided in 2.81.11.9 NMAC, for eligible retirees who are not members of an enhanced retirement plan and become eligible for participation on or after [~~January 1, 2021~~] July 31, 2021, and the eligible dependents of such retirees, the NMRHCA will contribute the following percentages of the subsidy to the monthly premiums according to the corresponding numbers of years of credited service with an NMRHCA-participating employer:

(1) Example: If the subsidy for a particular plan is one half the premium cost, then for a retiree with 25 years of credited service the NMRHCA would provide one hundred percent of the subsidy; half the cost.

(2) Example: For the same subsidy of one half the premium cost, the percent of subsidy for a retiree with twelve years of credited service would be thirty-eight and one-tenth percent of the fifty percent subsidy: nineteen and five-hundredths percent of the cost.

Years of credited service	Percentage of subsidy
5	4.76
6	9.52
7	14.29
8	19.05
9	23.81
10	28.57
11	33.33
12	38.10
13	42.86
14	47.62
15	52.38
16	57.14
17	61.90
18	66.67
19	71.43
20	76.19
21	80.95
22	85.71
23	90.48
24	95.24
25	100.00

[2.81.11.8 NMAC - N, 2/14/2002; A, 4/30/2003; A, 1/1/2021; A, 7/31/2021]

2.81.11.9 SUBSIDIES FOR DISABLED RETIREES: Notwithstanding any other provision of this rule:

A. The subsidy paid by the NMRHCA for a disabled retiree with a "duty disability," as described in Subsection B of 2.81.7.10 NMAC, and to the dependents of such a retiree, shall be at the one hundred percent level, corresponding to the applicable maximum year level set forth in 2.81.11.8 NMAC, regardless of such retiree's period of credited service and age.

B. The subsidy paid by the NMRHCA for a disabled retiree with a "non-duty disability," as described in Subsection C of 2.81.7.10 NMAC, and to the dependents of such a retiree, shall be as set forth in Subsection A of 2.81.11.9 NMAC, *provided,* that, as a condition of eligibility for benefits, such retiree has five or more years of credited service.

[2.81.11.9 NMAC - N, 2/14/2002; A, 12/30/2002; A, 4/30/2003; A, 1/1/2021; A, 7/31/2021]

2.81.11.10 AGE REQUIREMENT FOR SUBSIDIES: Except as otherwise provided in 2.81.11.9 NMAC, for eligible retirees who are not members of an enhanced retirement plan and become eligible for participation on or after July 31, 2021, the minimum retiree age requirement to be eligible for subsidies is 55.

[2.81.11.10 NMAC - N, 7/31/2021]

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 to 7.9.2 NMAC.

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 electronic copies of the above rule:

In Subsection E of 7.9.2.22 NMAC, there was a Paragraph (1) and no Paragraph (2). Agency directed that the last sentence of Subparagraph (h) of Paragraph (1) become Paragraph (2).

A copy of this Notification will be filed with the official version of each of the above rules.

HEALTH, DEPARTMENT OF

PUBLIC HEALTH ORDER NEW MEXICO DEPARTMENT OF HEALTH CABINET SECRETARY KATHYLEEN M. KUNKEL

JUNE 12, 2020

Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending the March 23, 2020, April 6, 2020, April 11, 2020, April 30, 2020, May 5, 2020, May 15, 2020, and June 1, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 ("COVID-19"). Continued social distancing and self isolation measures are necessary to protect public health given the potentially devasting effects that could result from a rapid increase in COVID-19 cases in New Mexico. While this Order loosens some restrictions on mass gatherings and business operations, the core directive underlying all prior public health initiatives remains intact; **all New Mexicans should be staying in their homes for all but the most essential activities and services.** When New Mexicans are not in their homes, they should strictly adhere to social distancing protocols to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that:

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended of rescinded:

A. March 13, 2020 Public Health Emergency Order to Temporarily Limit Nursing Home Visitation Due to COVID-19;

B. April 30, 2020 Public Health Emergency Order Modifying Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries;

C. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19; and

D. April 30, 2020 Public Health Emergency Order Clarifying that Polling Places Shall be Open as Required in the Election Code and Imposing Certain Social Distancing Restrictions on Polling Places

3. The May 5, 2020 Public Health Emergency Order Amending the March 23, 2020, April 6, 2020, April 11, 2020, April 30, 2020, May 5, 2020, May 15, 2020, and May 27, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19 is hereby amended as follows:

ORDER

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 ("COVID-19"), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through May 31, 2020;

WHEREAS, COVID-19

continues to spread in New Mexico and nationally. Since, Executive Order 2020-004 was issued, confirmed COVID-19 infections in New Mexico have risen to more than 9,200 and confirmed cases in the United States have risen to more than 2 million;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, social distancing is the sole way New Mexicans can minimize the spread of COVID-19 and currently constitutes the most effective means of mitigating the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-IOA-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

The following definitions are adopted for the purposes of this Order:

Definitions: As used in this Public Health Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) "Essential business" means any business or non-profit entity falling within one or more of the following categories:

a. Health care operations including hospitals, walk-in-care health facilities, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, drug and alcohol recovery support services, and medical supplies and equipment manufacturers and providers;

b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;

c. Childcare facilities necessary to provide services to those workers employed by essential businesses, essential non-profit entities, and other operating non-essential businesses;

d. Grocery stores, supermarkets, food banks, farmers' markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;

e. Farms, ranches, and other food cultivation, processing, or packaging operations;

f. All facilities routinely used by law enforcement personnel, first responders, firefighters, emergency management personnel, and dispatch operators;

g. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;

h. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;

i. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;

j. Veterinary

and livestock services, animal shelters, and facilities providing pet adoption, grooming, daycare, or boarding services;

k. Media services including television, radio, and newspaper operations;

l. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bicycle repair products. Contactless car washes, which are those that do not require person-to-person interaction between customers and employees, are permitted to operate;

m. Hardware stores and self-storage facilities;

n. Laundromats and dry cleaner services;

o. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;

p. Funeral homes, crematoriums and cemeteries;

q. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;

r. Real estate services including brokers, title companies, and related services;

s. Businesses providing mailing and shipping services, including post office boxes;

t. Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

u. Restaurants are those operations that generated at least 50% of their sales from dine-in services from the sale of food during the last calendar year. Sales made to customers for off-site consumption such as the sale of growlers, wholesale revenues, and to-go items are excluded from this calculation. Restaurants may provide dine-in service, but they may not exceed more than 50% occupancy of the maximum occupancy of any enclosed space on the restaurant's premises, as determined by the relevant fire marshal or fire department. Restaurants choosing to open must ensure that there is at least six feet of distance between tables. No more than six patrons may be seated at any single table. No bar or counter seating is permitted. Dine-in services shall be provided only to patrons who are seated at tables, and patrons may not consume food or beverages while standing. Local breweries, which are licensed pursuant to NMSA 1978, § 60-6A-26.l, may provide dine-in service in outdoor seating areas only at up to 50% of their outdoor area fire code occupancy. Outdoor dine-in service may only be provided to patrons who are seated. There must be at least six feet of distance between tables. Restaurants and breweries must operate in compliance with applicable occupancy restrictions and COVID Safe Practices (CSPs) for Restaurants" section of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers''. Local wineries and distillers may operate but only for carry out service.

v. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

w. Logistics, and also businesses that store, transport, or deliver groceries, food, materials, goods or services directly to residences, retailers, government institutions, or essential businesses.

(2) "Individuals" means natural persons.

(3) "Gathering" means any grouping together of individuals in a single connected location.

(4) "Mass gathering" means any public gathering, private gathering, organized event, ceremony, or other grouping that brings together five (5) or more individuals in a single room or connected space, confined outdoor space or an open outdoor space. "Mass gathering" does not include the presence of five (5) or more individuals where those individuals regularly reside. "Mass gathering" does not include individuals who are public officials or public employees in the course and scope of their employment.

(5) "Houses of worship" means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs.

(6) "Close-contact business" includes barbershops, hair salons, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, guided balloon tours, gyms, and personal training services for up to two trainees.

(7) "Recreational facilities" include indoor movie theaters, museums, bowling alleys, miniature golf, arcades, amusement parks, concert venues, event venues, performance venues, go-kart courses, adult entertainment venues, and other places of indoor recreation or indoor entertainment.

(8) "Bars" are defined as food and beverage service establishments that derived more than 50% of their revenue in the prior calendar year from the sale of alcoholic beverages. Bars must remain closed during the pendency of this Public Health Order.

(9) "COVID-Safe Practices" ("CSPs") are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the document titled "All Together New Mexico: COVID-Safe Practices for Individuals and Employers''. That document may be obtained at the following link https://cv.mnhealth.org/covid safe-practices/.

(10) "Places of lodging" means all hotels, motels, RV parks, co-located short- term condominium rentals with a central check-in desk, and short-term vacation rentals.

(11) "Retail space" means any essential business that sells goods or services directly to consumers or end-users such as

grocery stores or hardware stores and includes the essential businesses identified in the categories above: l(d), 1(l), l(m), l(p), and l(s).

I HEREBY DIRECT AS FOLLOWS:

(l) "Except as provided elsewhere in this Order, all "mass gatherings" are hereby prohibited under the powers and authority set forth in the Public Health Act.

(2) "Houses of worship" may hold services and other functions provided that they comply with the "COVID-Safe Practices (CSPs) for Houses of Worship" section of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers". Further, "houses of worship" may not exceed 25% of the maximum occupancy of any enclosed building, as determined by the relevant fire marshal or fire department. Nothing in this order is intended to preclude these faith-based institutions from holding services through audiovisual means.

(3) Essential businesses" may open but must operate in accordance with the pertinent "COVID-Safe Practices (CSPs)" section(s) of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers and also any identified occupancy restrictions.

(4) "Recreational facilities" must remain closed.

(5) Any business that is not identified as an "essential business" or a "recreational facility" may open provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the business's premises, as determined by the relevant fire marshal or fire department.

(6) Businesses identified as a "retail space" may operate provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the business's premises, as determined by the relevant fire marshal or fire department. Any business opening pursuant to this provision must comply with the pertinent CSP's set out in the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers".

(7) Indoor shopping malls are permitted to operate provided that the total number of persons within the mall at mly given time does not exceed 25% of the maximum occupancy of the premises, as determined by the relevant fire marshal or fire department. Further, loitering within the indoor shopping mall is not permitted and food courts must remain closed.

(8) Gyms and similar exercise facilities may operate at up to 50% of the maximum occupancy of any enclosed space on the business's premises, as determined by the relevant fire marshal or fire department, but may not conduct group fitness classes.

(9) Public swimming pools may open but such facilities are limited to lane-swimming and lessons with up to two students only. Play and splash areas shall be closed. Public swimming pools may not exceed 50% of their maximum occupancy.

(10) Ifcustomers are waiting outside of a business, the business must take reasonable measures to ensure that customers maintain a distance of at least six-feet from other individuals and avoid person-to-person contact.

(11) Bars are not permitted to operate other than for take-out and delivery if otherwise permitted under their applicable licenses.

(12) "Places of lodging" shall not operate at more than 50% percent of maximum occupancy. Health care workers who are engaged in the provision of care to New Mexico residents or individuals utilizing lodging facilities for extended stays, as temporary housing, or for purposes of a quarantine or isolation period shall not be counted for purposes of determining maximum occupancy. All places of lodging should comply with the "COVID-Safe Practices (CSPs) for Hotels, Resorts, & Lodging" section of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers". In the case of vacation rentals, occupancy shall be determined based upon the number properties managed by a property manager.

(13) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating, drinking, or exercising. Further, all individuals should comply with the "COVID-Safe Practices (CSPs) for All New Mexicans" section of the "All Together New Mexico: COVID Safe Practices for Individuals and Employers".

(14) All casinos shall close during the pendency of this Order. This directive excludes those casinos operating on Tribal lands. Horse racing facilities may operate without spectators.

(15) This Order does not limit animal shelters, zoos, and other facilities with animal care operations from performing tasks that ensure the health and welfare of animals. Those tasks should be performed with the minimum number of employees necessary, for the minimum amount of time necessary, and with strict adherence to all social distancing protocols.

(16) Golf courses may open provided that they operate in accordance with the "COVID-Safe Practices (CSPs) for Golf Course" section of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers".". Restaurants and other golf course concessions must adhere to operative CSP's.

(17) Outdoor tennis facilities may open for outdoor use only and provided that they operate in accordance with the pertinent "All Together New Mexico: COVID-

Safe Practices for Individuals and Businesses"

(18) State parks may open on a modified basis and subject to staff availability. They may only be open for day use. Camping areas, visitor centers, and any other large enclosed indoor spaces normally open to the public shall remain closed.

(19) Summer youth programs may operate on a limited basis that complies with the pertinent CSP's set out in the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers".

(20) The New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(21) In order to minimize the shortage of health care supplies and other necessary goods, grocery stores and other retailers are hereby directed to limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual. NMSA 1978, § 12-IOA- 6 (2012).

I FURTHER DIRECT as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Order shall take effect immediately and remain in effect through June 30, 2020.

I FURTHER ADVISE the public to take the following preventive precautions:

-- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**

-- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.

-- Avoid crowds.

-- Avoid all non-essential travel including plane trips and cruise ships.

DONE AT THE EXECUTIVE OFFICE THIS 12TH DAY OF JUNE 2020

ATTEST:
/S/ MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO

/S/ KATHLEEN M. KUNKEL
SECRETARY OF THE STATE OF NEW MEXICO DEPARTMENT OF HEALTH

End of Other Material Related to Administrative Law

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Issue 2	January 16	January 28
Issue 3	January 30	February 11
Issue 4	February 13	February 25
Issue 5	February 27	March 10
Issue 6	March 12	March 24
Issue 7	March 26	April 7
Issue 8	April 9	April 21
Issue 9	April 23	May 5
Issue 10	May 7	May 19
Issue 11	May 28	June 9
Issue 12	June 11	June 23
Issue 13	July 6	July 14
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Issue 20	October 15	October 27
Issue 21	October 29	November 10
Issue 22	November 13	November 24
Issue 23	December 3	December 15
Issue 24	December 17	December 29

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