

TITLE 7 HEALTH
CHAPTER 34 MEDICAL USE OF CANNABIS
PART 3 REGISTRY IDENTIFICATION CARDS

7.34.3.1 ISSUING AGENCY: New Mexico Department of Health, Medical Cannabis Program.
[7.34.3.1 NMAC - Rp, 7.34.3.1 NMAC, 2/27/2015]

7.34.3.2 SCOPE: This rule governs the issuance of registry identification cards to qualified patients and primary caregivers as defined by the Lynn and Erin Compassionate Use Act, 26-2B-3(F) and (G) NMSA 1978. All requirements contained herein are necessary prerequisites to the state’s ability to distinguish between authorized use under the act and unauthorized use under the state’s criminal laws.
[7.34.3.2 NMAC - Rp, 7.34.3.2 NMAC, 2/27/2015]

7.34.3.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the secretary of the department of health pursuant to the authority granted under Section 9-7-6 (E) 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 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 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.
[7.34.3.3 NMAC - Rp, 7.34.3.3 NMAC, 2/27/2015]

7.34.3.4 DURATION: Permanent.
[7.34.3.4 NMAC - Rp, 7.34.3.4 NMAC, 2/27/2015]

7.34.3.5 EFFECTIVE DATE: February 27, 2015, unless a later date is cited at the end of a section.
[7.34.3.5 NMAC - Rp, 7.34.3.5 NMAC, 2/27/2015]

7.34.3.6 OBJECTIVE: Ensuring the safe use and possession of cannabis for individuals living with debilitating medical conditions, and the safe possession and administration of cannabis for medical use to those individuals by primary caregivers, as mandated under the Lynn & Erin Compassionate Use Act Sections 26-2B-1 *et seq.*, NMSA 2007.
[7.34.3.6 NMAC - Rp, 7.34.3.6 NMAC, 2/27/2015]

7.34.3.7 DEFINITIONS:

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

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

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

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

E. “Advisory board” means the medical cannabis advisory board consisting of eight practitioners representing the fields of neurology, pain management, medical oncology, psychiatry, infectious disease, family medicine, and gynecology.

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

G. “Approved laboratory” means a laboratory 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 harvested during a specified time period from a specified cultivation area, and with regard to concentrated and cannabis-derived product, means an identified quantity that is uniform, that is intended to meet specifications for identity, strength, and composition, and that is manufactured, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling protocol.

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

J. “Cannabis” means all parts of the plant, cannabis sativa, and cannabis indica, whether growing or not and the resin extracted from any part of the plant.

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.

N. “Debilitating medical condition” means:

- (1) cancer;
- (2) glaucoma;
- (3) multiple sclerosis;
- (4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;
- (5) epilepsy;
- (6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;
- (7) admission into hospice care in accordance with rules promulgated by the department; or
- (8) any other medical condition, medical treatment, or disease as approved by the department which results in pain, suffering, or debility for which there is credible evidence that medical use cannabis could be of benefit.

O. “Department” means the department of health or its agent.

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

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

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

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

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

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

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

W. “Male plant” means a male cannabis plant.

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

Y. “Manufacturer” means a business entity that manufactures cannabis-derived product that has been approved for this purpose by the medical cannabis program.

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

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

HH. “Personal production license” means a license issued to a qualified patient participating in the medical cannabis program, to permit the qualified patient to produce medical cannabis for the qualified patient's personal use, consistent with the requirements of department rule.

II. “Petitioner” means any New Mexico resident or association of New Mexico residents petitioning the advisory board for the inclusion of a new medical condition, medical treatment, or disease to be added to the list of debilitating medical conditions that qualify for the use of cannabis.

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

KK. “Policy” means a written statement of principles that guides and determines present and future decisions and actions of the licensed producer.

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

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

NN. “Primary caregiver application form” means the registry identification card application form provided by the medical cannabis program.

OO. “Private entity” means a private, non-profit organization that applies to become or is licensed as a producer and distributor of cannabis, concentrates, or cannabis-derived products.

PP. “Proficiency testing” means testing conducted by the department or its agent to determine the ability of a laboratory applicant or approved laboratory to accurately identify presence, quantity, or other factors pertaining to a given analyte.

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

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

SS. “Representative” means an individual designated as the applicant's or petitioner's agent, guardian, surrogate, or other legally appointed or authorized health care decision maker.

TT. “Secretary” means the secretary of the New Mexico department of health.

UU. “Secure grounds” means a facility that provides a safe environment to avoid loss or theft.

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

WW. “Security policy” means the instruction manual or pamphlet adopted or developed by the licensed producer containing security policies, safety and security procedures, and personal safety and crime prevention techniques.

XX. “Seedling” means a cannabis plant that has no flowers.

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

ZZ. “THC” means tetrahydrocannabinol, a cannabinoid that is the primary psychoactive ingredient in cannabis.

AAA. “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.

BBB. “Testing” means the process and procedures provided by an approved laboratory for testing of cannabis and cannabis derived products, consistent with provisions of this rule.

CCC. “Unit” means a quantity of usable cannabis, concentrate, or cannabis-derived product that is used in identifying the maximum supply that a qualified patient may possess for purposes of department rules.

DDD. “Usable cannabis” means the dried leaves and flowers of the female cannabis plant and cannabis-derived products, including concentrates, but does not include the seeds, stalks, or roots of the plant. [7.34.3.7 NMAC - Rp, 7.34.3.7 NMAC, 2/27/2015]

7.34.3.8 QUALIFYING DEBILITATING MEDICAL CONDITIONS:

A. Statutorily-approved conditions: As of the date of promulgation of this rule, specific qualifying debilitating medical conditions, diseases, and treatments (“qualifying conditions”) identified in the Lynn and Erin Compassionate Use Act, Section 26-2B-3(B) NMSA 1978, include:

- (1) cancer;
- (2) glaucoma;
- (3) multiple sclerosis;
- (4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;
- (5) epilepsy;
- (6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome; and
- (7) admission into hospice care in accordance with rules promulgated by the department.

B. Department-approved conditions: The department finds that the following additional qualifying conditions result in pain, suffering, or debility for which there is credible evidence that the medical use of cannabis could be of benefit, through the alleviation of symptoms, and the department accordingly approves these conditions as qualifying debilitating medical conditions for the participation of a qualified patient or primary caregiver in the medical cannabis program. The department-approved conditions include:

- (1) severe chronic pain:
 - (a) objective proof of the etiology of the severe chronic pain shall be included in the application; and
 - (b) a practitioner familiar with the patient’s chronic pain shall provide written certification that the patient has an unremitting severe chronic pain condition; for an initial patient application, this certification shall be made by a specialist with expertise in pain management or a specialist with expertise in the disease process that is causing the pain; for all subsequent patient applications, this certification may be made by a primary care provider.

(2) painful peripheral neuropathy: application to the medical cannabis program shall be accompanied by medical records that confirm the objective presence of painful peripheral neuropathy that has been refractory to other treatments;

- (3) intractable nausea/vomiting;
- (4) severe anorexia/cachexia;
- (5) hepatitis C infection currently receiving antiviral treatment: the written certification shall attest:

- (a) that the hepatitis C infection is currently being treated with antiviral drugs; and
- (b) to the anticipated duration of the hepatitis C antiviral treatment.

- (6) Crohn’s disease;
- (7) post-traumatic stress disorder (PTSD): each individual applying to the program for enrollment shall submit medical records that confirm the diagnosis of PTSD based upon the evaluation of a

psychiatrist, psychiatric nurse practitioner, or prescribing psychologist, and meeting the diagnostic criteria of the current *diagnostic and statistical manual of mental disorders*;

(8) inflammatory autoimmune-mediated arthritis: each individual applying to the program for enrollment shall submit medical records that confirm the diagnosis of inflammatory autoimmune-mediated arthritis based upon the evaluation of a rheumatologist who is board-certified in rheumatology by the American board of internal medicine;

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

(10) inclusion body myositis;

(11) spasmodic torticollis (cervical dystonia);

(12) Parkinson's disease;

(13) Huntington's disease;

(14) ulcerative colitis; and

(15) such other conditions as the secretary may approve.

C. Additional application requirements for department-approved conditions: A patient applying on the basis of having a department-approved qualifying condition shall submit written certification from the patient's practitioner which shall attest:

(1) to the diagnosis of the medical condition;

(2) that the condition is debilitating;

(3) that standard treatments have failed to bring adequate relief, unless the practitioner determines that standard treatments would be harmful to the patient's health; and

(4) that potential risks and benefits of the use of medical cannabis for the condition have been discussed with the patient, in accordance with this rule; a patient who applies on the basis of having a department-approved condition may also be required to satisfy additional eligibility criteria, as specified in this rule.

D. Modification or removal of department-approved conditions: The secretary may remove or modify a department-approved condition only if the secretary determines, on the basis of substantial credible medical and scientific evidence, and after an opportunity for review of the proposed removal or modification by the medical advisory board, that the use of cannabis by patients who have the approved condition would more likely than not result in substantial harm to the patients' health.

[7.34.3.8 NMAC - N, 2/27/2015]

7.34.3.9 QUANTITY OF USABLE CANNABIS THAT MAY BE POSSESSED BY A QUALIFIED PATIENT OR PRIMARY CAREGIVER:

A. Maximum quantity: A qualified patient and a qualified patient's primary caregiver may collectively possess within any three-month period a quantity of usable cannabis no greater than 230 total units. For purposes of department rules, this quantity is deemed an adequate supply. (For ease of reference: 230 units is equivalent to 230 grams, or approximately eight ounces, of dried usable cannabis plant material.) A qualified patient and primary caregiver may also possess cannabis seeds.

B. Calculation of units: For purposes of department rules, one unit of usable cannabis shall consist of one gram of the dried leaves and flowers of the female cannabis plant, or 0.2 grams (200 milligrams) of THC for cannabis-derived products.

C. Maximum THC content of concentrates: A qualified patient or primary caregiver shall not possess a concentrated cannabis-derived product that contains greater than seventy percent (70%) THC by weight.

D. Medical exception: A greater quantity of usable cannabis, not to exceed 115 additional units, may be allowed, and a concentrated cannabis-derived product with THC content greater than seventy percent (70%) by weight may be allowed, at the department's discretion, upon the submission of a statement by a medical practitioner explaining why a greater number of units of usable cannabis, or a higher concentration of THC in concentrated cannabis-derived product, is medically necessary. Any such allowance shall be reviewed for approval by the program's medical director.

[7.34.3.9 NMAC - N, 2/27/2015]

7.34.3.10 QUALIFIED PATIENT AND PRIMARY CAREGIVER REGISTRY IDENTIFICATION CARD APPLICATION REQUIREMENTS:

A. The department shall issue a registry identification card to an applicant for the purpose of participating in the medical cannabis program upon the written certification of the applicant's practitioner and supporting application documents. Certifications from certifying providers must be obtained within 90 calendar days prior to the expiration of the patient's registry identification card.

B. The department may require the submittal of a recent photograph from a patient applicant and primary caregiver applicant.

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

D. The following information shall be provided in (or as an attachment to) the participant enrollment form submitted to the department in order for a registry identification card to be obtained and processed. An attached original medical provider certification for patient eligibility form shall contain:

- (1) the name, address, and telephone number of the practitioner;
- (2) the practitioner's clinical licensure;
- (3) the patient applicant's name and date of birth;
- (4) the medical justification for the practitioner's certification of the patient's debilitating medical condition, which shall include but not be limited to a statement that, in the practitioner's professional opinion, the practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh health risks for the patient;
- (5) an attestation that the practitioner's primary place of practice is located within the state of New Mexico;
- (6) the practitioner's signature and the date;
- (7) the name, address, and date of birth of the applicant;
- (8) the name, address, and telephone number of the applicant's practitioner;
- (9) a legible photocopy of the applicant's New Mexico driver's license or comparable state of New Mexico or federal issued photo identification card verifying New Mexico residence;
- (10) documented parental consent, if applicable, to the applicant;
- (11) the applicant's debilitating medical condition;
- (12) the length of time the applicant has been under the care of the practitioner providing the medical provider certification for patient eligibility;
- (13) the applicant's signature and date; and
- (14) a signed consent for release of medical information related to the patient's debilitating medical condition, on a form provided by the medical cannabis program.

E. Qualified minor: The department shall issue a registry identification card to an applicant under the age of 18 for the purpose of participating in the medical cannabis program upon the medical provider certification for patient eligibility from the applicant's practitioner and supporting application documents required under this rule. The qualified minor parental consent form shall require the following information to be provided:

- (1) written documentation that the applicant's practitioner has explained the potential risks and benefits of the use of cannabis to both the applicant and parent or representative of the applicant; and
- (2) written consent of the applicant's parent or legal representative to:
 - (a) allow the applicant's use of cannabis and cannabis-derived products;
 - (b) serve as the applicant's primary caregiver; and
 - (c) control the acquisition of the cannabis, dosage, and the frequency of the use of cannabis and cannabis-derived products by the applicant.

F. Primary caregiver: The department shall issue a registry identification card to a primary caregiver applicant for the purpose of managing the well-being of up to four qualified patients pursuant to the requirements of this rule upon the completion and approval of the primary caregiver application form available from the medical cannabis program. In order for a registry identification card to be obtained and processed, the following information shall be submitted to the medical cannabis program:

- (1) New Mexico driver's license or comparable state of New Mexico or federal issued photo identification card verifying that the applicant is at least 18 years of age and is a resident of New Mexico;
- (2) written approval by each qualified patient, and written approval by at least one certifying practitioner for each qualified patient, authorizing the primary caregiver's responsibility for managing the well-being of the patient(s) with respect to the medical use of cannabis;
- (3) the name(s), address(es), telephone number(s), and date of birth(s) of the qualified patient(s);
- (4) the name, address, and telephone number of each qualified patient's practitioner;
- (5) the name, address, and telephone number of the applicant primary caregiver;
- (6) an attestation from the primary caregiver applicant that he or she is a resident of the state of New Mexico;
- (7) the applicant primary caregiver's signature and the date; and

(8) documentation of completed nationwide and statewide background checks conducted within six months of the application submission date.

G. Primary caregiver application requirements: Criminal history screening requirements.

(1) All primary caregiver applicants are required to consent to a nationwide and statewide department of public safety (DPS) criminal history screening background check. All applicable application fees associated with the nationwide and statewide criminal history screening background check shall be paid by the primary caregiver applicant.

(2) Individuals convicted of a felony violation of Section 30-31-20, 30-31-21, or 30-31-22 NMSA 1978, or a violation of any equivalent out-of-state statute in any jurisdiction are prohibited from serving as a primary caregiver. If an applicant has been convicted of a felony violation of Section 30-31-1 *et seq.* NMSA 1978, other than Sections 30-31-20 through 30-31-22, and the final completion of the entirety of the associated sentence of such felony conviction has been less than three years from the date of the applicant's application as a primary caregiver, then the applicant is prohibited from being a primary caregiver. The applicant and qualified patient shall be notified of his or her disqualification from being a primary caregiver. If the applicant has been convicted of more than one felony violation of Section 30-31-1 *et seq.* NMSA 1978 or a violation of an equivalent out-of-state statute in any jurisdiction, the applicant and qualified patient shall be notified that the applicant is permanently prohibited from being a primary caregiver and cannot be issued a medical use cannabis registry identification card.

H. Primary caregiver requirements:

(1) A primary caregiver applicant shall be a resident of New Mexico.

(2) A qualified patient's primary caregiver shall be permitted to obtain and transport medical cannabis from a licensed nonprofit to the qualified patient.

(3) The primary caregiver of a qualified patient who holds a personal production license may assist the qualified patient to produce medical cannabis at the designated licensed location, identified on the personal production license. The primary caregiver may not independently produce medical cannabis.

(4) A qualified patient shall only reimburse their primary caregiver for the cost of travel, supplies, or utilities associated with the possession of medical cannabis, or cannabis-derived products by the primary caregiver for the qualified patient. No other cost associated with the possession of medical cannabis, or cannabis-derived products by the primary caregiver for the qualified patient, including the cost of labor, shall be reimbursed or paid. All medical cannabis or cannabis-derived products possessed by a primary caregiver for a qualified patient are the property of the qualified patient.

(5) A qualified patient shall notify the medical cannabis program in the event that the qualified patient ceases to retain the services of a primary caregiver. A primary caregiver shall promptly dis-enroll from the medical cannabis program at the time that the primary caregiver's services are no longer used by a qualified patient in their care.

I. Certifying practitioner requirements:

(1) A patient may not be certified by a practitioner who is related to the patient within the second degree of consanguinity or the first degree of affinity, including a spouse, child, stepchild, parent, step-parent, sibling, grandparent, mother-in-law, father-in-law, son-in-law, or daughter-in-law of the patient.

(2) A practitioner's primary place of practice must be located within the state of New Mexico in order for the practitioner to certify a patient's eligibility.

(3) In order to certify a patient's application, a practitioner must have an actual physician-client relationship with the applicant or qualified patient, and shall conduct an in-person physical or mental evaluation of the applicant or qualified patient prior to issuing a certification.

(4) A practitioner may be prohibited from certifying patient applications for:

(a) failure to comply with any provision of this rule;

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

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

(d) any determination by the practitioner's licensing body that practitioner has engaged in unprofessional or dishonorable conduct.

J. Continuing education of certifying practitioners: The department encourages certifying practitioners to obtain at least two continuing medical education credit hours annually related to the medicinal use of cannabis.

[7.34.3.10 NMAC - Rp, 7.34.3.9 NMAC, 2/27/2015]

7.34.3.11 REGISTRY IDENTIFICATION CARDS:

A. Department inquiry:

(1) The department may verify information on each application and accompanying documentation by the following methods:

- (a) contacting each applicant by telephone or mail, or if proof of identity is uncertain, by requiring a face-to-face meeting, and the production of additional identification materials;
- (b) when applicable, contacting a minor's parent or legal representative;
- (c) contacting the New Mexico medical board, the New Mexico board of nursing, board of pharmacy, or other licensing agencies to verify that the practitioner is licensed to practice and prescribe controlled substances in New Mexico and is in good standing; and
- (d) contacting the practitioner to obtain further documentation to verify that the applicant's medical diagnosis and medical condition qualify the applicant for enrollment in the medical cannabis program.

(2) The department shall approve or deny an application within 30 calendar days of receipt of the completed application. A request by the department for additional information shall toll this period until such time as the requested information is received.

B. Department registry identification card: The department shall issue a registry identification card within five business days of approving an application. A registry identification card shall include the name, address, and date of birth of the qualified patient and primary caregiver (if any), the date of issuance and expiration, date of the registry identification card, and a code maintained by the program which identifies the qualified patient or primary caregiver. Unless renewed at an earlier date, suspended, or revoked, a registry identification card shall be valid for a period of one year from the date of issuance and shall expire at midnight on the day indicated on the registry identification card as the expiration date. A registry identification card is the property of the department, and shall be returned to the department upon the disenrollment, suspension, or revocation of a qualified patient or primary caregiver, and upon a change of address, or change of a qualified patient's primary caregiver.

C. Supplemental information requirement: A qualified patient or primary caregiver who possesses a registry identification card shall notify the department of any change in the person's name, address, qualified patient's primary caregiver, or change in status of the qualified patient's debilitating medical condition, within 10 calendar days of the change. Failure to provide notification of any change may result in the immediate revocation of the registry identification card and all lawful privileges provided under the act.

D. Registry identification card application denial: The medical director or designee shall deny an initial application if the application fails to satisfy any requirement of this rule, if the applicant fails to provide the information required, if the department determines that the information provided is false, if the patient does not have a debilitating medical condition eligible for enrollment in the program as determined by the medical director, or if the applicant's certifying provider(s) determine(s) that the use of cannabis by the patient would more likely than not be detrimental to the patient's health. The medical director or designee may also deny an application if the applicant has threatened or harmed an employee of a producer, a medical practitioner, a patient, or an employee of the department. A person whose application has been denied shall not reapply for six months from the date of the denial, unless otherwise authorized by the department, and is prohibited from all lawful privileges provided by this rule and act. A person whose application as a qualified patient or primary caregiver has been denied for failure to complete an application or failure to meet a submittal requirement of this rule may request a record review to be conducted by the medical cannabis program.

E. Registry identification card renewal application: Each registry identification card issued by the department is valid for one year from the date of issuance. A qualified patient or primary caregiver shall apply for a registry identification card renewal no less than 30 calendar days prior to the expiration date of the existing registry identification card in order to prevent interruption of possession of a valid (unexpired) registry identification card. Certifications from certifying providers must be obtained within 90 calendar days prior to the expiration of the patient's registry identification card.

F. Non-transferable registration of registry identification card: A registry identification card shall not be transferred by assignment or otherwise to other persons. Any attempt shall result in the immediate revocation of the registry identification card and all lawful privileges provided by this rule and act.

G. Automatic expiration of registry identification card by administrative withdrawal: Upon request of the qualified patient or primary caregiver, the qualified patient or primary caregiver may discontinue the medical cannabis program by an administrative withdrawal. A qualified patient or primary caregiver that intends to seek an administrative withdrawal shall notify the licensing authority no later than 30 calendar days prior to withdrawal and return the proof of registry identification to the program.

H. Lost or stolen registry identification card: The qualified patient or primary caregiver shall report a lost or stolen registry identification card to the medical cannabis program within five business days after discovery. Upon notification and receipt of the *information change or replacement card* form provided by the medical cannabis program, and remittance of the fifty dollar (\$50) replacement fee, the medical cannabis program manager or designee shall issue a new registry identification card. The patient or primary caregiver shall verify the accuracy of all documentation in the most recent application. Unless documentation in the most recent application has changed, the qualified patient or primary caregiver shall not be required to submit a new application. [7.34.3.11 NMAC - Rp, 7.34.3.10 NMAC, 2/27/2015]

7.34.3.12 DENIAL OF AN INITIAL PATIENT OR PRIMARY CAREGIVER APPLICATION:

A. Administrative review: All patient applicants or primary caregivers whose initial application for a registry identification card has been denied may request a record review from the department.

B. Procedure for requesting informal administrative review:

(1) An applicant given notice of an application denial may submit a written request for an administrative 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 qualified patient or primary caregiver;

(e) if the applicant is a potential primary caregiver, state the anticipated date of which service shall commence;

(f) provide a brief narrative rebutting the circumstances of the application denial, and

(g) if applicable, provide supplemental documentation from the applicant's practitioner supporting the debilitating medical condition as eligible for the program.

(2) If the applicant wishes to submit additional documentation for consideration, such additional documentation must be included with the request for an administrative review.

C. 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 proceeding is not an adjudicatory hearing, and an individual whose initial application for a registry identification card has been denied shall not be entitled to an adjudicatory hearing to contest the denial. 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.

D. Final determination:

(1) **Content:** The administrative review committee shall render a written decision setting forth the reasons for the decision and the evidence upon which the decision is based.

(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.

E. Judicial review: Except as otherwise provided by law, there shall be no right to judicial review of a decision by the administrative review committee.

[7.34.3.12 NMAC - Rp, 7.34.3.11 NMAC, 2/27/2015]

7.34.3.13 POSSESSION OF USABLE CANNABIS:

A. A qualified patient or primary caregiver shall ensure that that all cannabis, cannabis-derived products, and paraphernalia are kept secure and out of reach of children.

B. A qualified patient and primary caregiver shall ensure that all cannabis and cannabis-derived products that are purchased from a licensed non-profit producer remain in the package or container provided by the non-profit entity when not in use. If the package or container is damaged, the product label and any other identifying information from the package or container shall be kept and remain with the cannabis or cannabis-derived product upon transfer to another package or container.

C. A qualified patient or primary caregiver may transfer cannabis and cannabis derived products to an approved laboratory for testing purposes.

[7.34.3.13 NMAC - N, 2/27/2015]

7.34.3.14 MONITORING AND CORRECTIVE ACTIONS:

A. Monitoring:

(1) The department or its designee may perform on-site assessments of a qualified patient or primary caregiver to determine compliance with these rules. The department may enter the premises of a qualified patient or primary caregiver during business hours for purposes of monitoring and compliance. 24 hours notice will be provided to the qualified patient or primary caregiver prior to an on-site assessment except when the department has a 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.

(2) All qualified patients or primary caregivers shall provide the department or the department's designee immediate access to any material and information necessary for determining compliance with these requirements.

(3) Failure by the qualified patient or primary caregiver to provide the department access to the premises or information may result in the revocation of the qualified patient or primary caregiver enrollment and referral to state law enforcement.

(4) Any failure by a qualified patient or primary caregiver to adhere to these rules may result in sanction(s), including suspension, revocation, non-renewal, or denial of registration and referral to state or local law enforcement.

(5) The department may refer complaints involving alleged criminal activity made against a qualified patient or primary caregiver to the appropriate New Mexico state or local authorities.

B. Corrective action:

(1) If violations of these requirements are cited as a result of a monitoring visit, the qualified patient or primary caregiver shall be provided with an official written report of the findings within seven business days following the monitoring visit.

(2) Unless otherwise specified by the department, the qualified patient or primary caregiver 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 program manager or designee may issue a notice of contemplated action to revoke the enrollment of the qualified patient.

C. Suspension of enrollment without prior hearing: If immediate action is required to protect the health and safety of the general public, the qualified patient or primary caregivers, the medical cannabis program manager or designee may suspend the qualified patient or primary caregiver's enrollment in the medical cannabis program without notice.

(1) A qualified patient or primary caregiver whose enrollment has been summarily suspended is entitled to an administrative review not later than 30 calendar days after the enrollment is summarily suspended.

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

(3) The administrative review committee shall conduct the administrative review on the summary suspension by reviewing all documents submitted by both the participant and the department.

(4) The administrative review is not an adjudicatory hearing; rather, the sole issue in an administrative review of a summary suspension is whether the individual's enrollment shall remain suspended pending a final administrative adjudicatory hearing and decision.

(5) An enrollee given notice of summary suspension by the medical cannabis program may submit a written request for an administrative 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 notice issued by the department;

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

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

(d) provide a brief narrative rebutting the circumstances of the suspension; and

(e) be accompanied by any additional documentation offered in support of the

request.

[7.34.3.14 NMAC - Rp, 7.34.3.12 NMAC, 2/27/2015]

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

- A. criminal prosecution or civil penalties for activities not authorized in this rule and act;
- B. criminal prosecution or civil penalties for fraudulent representation to a law enforcement officer about the person's participation in the program to avoid arrest or prosecution;
- C. liability for damages or criminal prosecution arising out of the operation of a vehicle while under the influence of cannabis or cannabis-derived products; or
- D. criminal prosecution or civil penalty for possession, distribution, transfer, or use of cannabis or a cannabis-derived product:
 - (1) in a school bus or public vehicle;
 - (2) on school grounds or property;
 - (3) in the workplace of the qualified patient's or primary caregiver's employment;
 - (4) at a public park, recreation center, youth center, or other public place;
 - (5) to a person not approved by the department pursuant to this rule;
 - (6) outside New Mexico or attempts to obtain or transport cannabis, or cannabis-derived products from outside New Mexico; or
 - (7) that exceeds the allotted amount of usable medical cannabis, or cannabis-derived products.

[7.34.3.15 NMAC - Rp, 7.34.3.13 NMAC, 2/27/2015]

7.34.3.16 DISCIPLINARY ACTIONS AND APPEAL PROCESS:

- A. **Grounds for disciplinary action:** Disciplinary action may be taken against a qualified patient, patient-applicant, primary caregiver, or primary caregiver-applicant. Disciplinary action may include revocation, suspension, or denial, summary suspension, summary revocation, and other action. Disciplinary action may be imposed for:
 - (1) failure to comply with or satisfy any provision of this rule;
 - (2) falsification or misrepresentation of any material or information submitted to the department;
 - (3) failing to allow or impeding a monitoring visit by authorized representatives of the department;
 - (4) failure to adhere to any acknowledgement, verification, or other representation made to the department;
 - (5) failure to submit or disclose information required by this rule or otherwise requested by the department;
 - (6) failure to correct any violation of this rule cited as a result of a monitoring visit;
 - (7) diversion of cannabis or a cannabis-derived product, as determined by the department;
 - (8) threatening or harming a patient, a medical practitioner, or an employee of the department;
 - (9) for primary caregivers: any determination by the primary caregiver's licensing body that the primary caregiver has engaged in unprofessional or dishonorable conduct;
 - (10) for primary caregivers: conviction of the primary caregiver of any of the disqualifying convictions identified by department rule;
 - (11) for patients: failure of the patient to satisfy any criterion identified as a prerequisite to eligibility for a condition approved by the department;
 - (12) for patients: if a certifying provider of the patient determines that the use of cannabis by the patient would more likely than not be detrimental to the patient's health; and
 - (13) any other basis identified in this rule.
- B. **Request for hearing:** A qualified patient or primary caregiver who is the subject of disciplinary action, or an applicant who has received a notice of contemplated action to deny their application for any reason other than failure to submit a completed application or failure to meet a submittal requirement of this rule, may request a hearing in writing. The appellant shall file the request for hearing within 30 calendar days of the date the action is taken or the notice of contemplated action is received. The request shall:
 - (1) be properly addressed to the medical cannabis program;
 - (2) state the requestor's name, address, and telephone numbers; and

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

C. Hearing process:

(1) All formal adjudicatory hearings held pursuant to this regulation shall be conducted by a hearing examiner appointed by the secretary.

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

(3) Due to federal and state laws regarding the confidentiality of protected health information, all hearings held pursuant to this section shall be closed to the public.

(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.

D. Scheduling: The department shall schedule and hold the hearing no later than 60 calendar days from the date the department receives the appellant's request for hearing. The hearing examiner may extend the 60 day time period for good cause shown, or the parties may extend that period by mutual agreement. The department shall issue notice of the hearing, which shall include:

(1) a statement of the time, place, and nature of the hearing;

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

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

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

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

(1) all pleadings, motions, and rulings;

(2) evidence and briefs received or considered;

(3) a statement of any 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.

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

H. 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.

I. Conduct of proceeding: Unless the hearing examiner determines a different procedure to be appropriate, the hearing shall be conducted as follows:

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

(2) upon conclusion of any opening statements, the appellant shall present his or her case;

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

(4) upon conclusion of either party's case, the opposing party may present rebuttal evidence; and

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

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

K. 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.

L. 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) failure of an appellant to provide their correct telephone number or failure to be available at the commencement of the hearing shall be treated as a failure to appear and shall constitute a default;

(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.

M. 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, reversing, or modifying the 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 made a part of the patient or primary caregiver's file with the medical cannabis program.

[7.34.3.16 NMAC - Rp, 7.34.3.14 NMAC, 2/27/2015]

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

A. Possession of, or application for, a registry identification card shall not constitute probable cause or give rise to reasonable suspicion for any governmental agency to search the person or property of the person possessing or applying for the card.

B. A qualified patient shall not be subject to arrest, prosecution, or penalty in any manner by the state of New Mexico or a political subdivision thereof for the possession of or the use of medical cannabis if the quantity of cannabis, concentrates, or cannabis-derived products does not exceed an adequate supply as defined by rule.

C. A primary caregiver shall not be subject to arrest, prosecution, or penalty in any manner for the possession of cannabis by the state of New Mexico, or a political subdivision thereof, for the medical use by the qualified patient if the quantity of cannabis, concentrates, or cannabis-derived products does not exceed an adequate supply as defined by rule.

D. A qualified patient or a primary caregiver shall be granted the full legal protections provided under the Lynn and Erin Compassionate Use Act, Section 26-2B-1 *et seq.*, NMSA 1978, by the state of New Mexico if the qualified patient or primary caregiver is in possession of a valid registry identification card. If the qualified patient or primary caregiver is not in possession of a valid registry identification card, the qualified patient or primary caregiver shall be given an opportunity to produce the registry identification card before any arrest, or criminal charges, or other penalties are initiated.

E. A practitioner shall not be subject to arrest or prosecution, penalized in any manner, or denied any right or privilege by the state of New Mexico, or political subdivision thereof, for recommending the medical use of cannabis, or providing written certification for the medical use of cannabis pursuant to this rule and the act.

F. Any property interest that is possessed, owned, or used in connection with the medical use of cannabis, or acts incidental to such use, shall not be harmed, neglected, injured, or destroyed while in the possession of New Mexico state or local law enforcement officials. Any such property interest shall not be forfeited under any New Mexico state or local law providing for the forfeiture of property except as provided in the Forfeiture Act. Cannabis, cannabis-derived products, paraphernalia, or other property seized from a qualified patient or primary caregiver in connection with the claimed medical use of cannabis shall be returned immediately upon the determination by a court or prosecutor that the qualified patient or primary caregiver is entitled to the protections of the provisions of this rule and the act, as may be evidenced by a failure to actively investigate the case, a decision not to prosecute, the dismissal of charges, or acquittal.

G. A person shall not be subject to arrest or prosecution by the state of New Mexico, or political subdivision thereof, for a cannabis-related offense for being in the presence of the medical use of cannabis as permitted under the provisions of this rule and the act.

[7.34.3.17 NMAC - Rp, 7.34.3.15 NMAC, 2/27/2015]

7.34.3.18 QUALIFIED PATIENT, PRIMARY CAREGIVER, AND MEDICAL PROVIDER

CONFIDENTIALITY: The department shall maintain a confidential file containing the names and contact information of the persons who have either applied for or received a registry identification card, as well as the names and contact information of certifying and diagnosing providers.

A. Patient applicants and qualified patients: Names and contact information regarding a qualified patient or patient-applicant shall be confidential and shall not be subject to disclosure, except:

- (1) to 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;
- (2) to employees of New Mexico state or local law enforcement agencies, for the purpose of verifying that a person is lawfully enrolled in the medical cannabis program, or in the event that the medical cannabis program manager or designee has reason to believe that a qualified patient or patient-applicant may have violated an applicable law; and
- (3) as provided in the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 and applicable state and federal regulations.

B. Primary caregivers and certifying providers: Names and contact information regarding a primary caregiver or medical provider shall be confidential and shall not be subject to disclosure, except:

- (1) to applicable licensing bodies, for the purpose of verifying the practitioner's licensure status, or in the event that the medical cannabis program manager or designee has reason to believe that a practitioner may have violated licensing requirements or an applicable law;
- (2) to employees of New Mexico state or local law enforcement agencies, in the event that the medical cannabis program manager or designee has reason to believe that a primary caregiver or medical provider may have violated an applicable law; and
- (3) as provided in the federal HIPAA of 1996 and applicable state and federal regulations.

[7.34.3.18 NMAC - Rp, 7.34.3.16 NMAC, 2/27/2015]

7.34.3.19 DISPOSAL OF UNUSED CANNABIS: Unused cannabis, concentrate, or cannabis-derived product in the possession of a qualified patient or primary caregiver that is no longer needed for the patient's needs may be disposed of by transporting the unused portion to a state or local law enforcement office, or by destroying the unused cannabis. Transfer to a qualified patient, primary caregiver, or nonprofit entity is prohibited.

[7.34.3.19 NMAC - Rp, 7.34.3.17 NMAC, 2/27/2015]

7.34.3.20 PROGRAM COOPERATION WITH LAW ENFORCEMENT:

A. The medical cannabis program shall be accessible via telephone 24-hours per day for state and local law enforcement to contact the program to determine the enrollment status of a patient, consistent with this rule, and shall make available a telephone number for this purpose. State and local law enforcement may obtain this telephone number by contacting the medical cannabis program's main number, or by visiting the medical cannabis program website.

B. The medical cannabis program shall cooperate with state and local law enforcement to provide education and training regarding the Lynn and Erin Compassionate Use Act and department rules.

[7.34.3.20 NMAC - N, 2/27/2015]

7.34.3.21 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. Failure to promulgate rules or implement any provision of these rules shall not interfere with the remaining protections provided by these rules and the act.

[7.34.3.21 NMAC - Rp, 7.34.3.19 NMAC, 2/27/2015]

HISTORY OF 7.34.3 NMAC:

History of Repealed Material:

7.34.3 NMAC, Registry Identification Cards (filed 12/01/2008) repealed 12/30/2010.

7.34.3 NMAC, Registry Identification Cards (filed 12/16/2010) repealed 2/27/2015.

NMAC History:

7.34.3 NMAC, Registry Identification Cards (filed 12/01/2008) was and replaced by 7.34.3 NMAC, Registry Identification Cards, effective 12/30/2010.

7.34.3 NMAC, Registry Identification Cards (filed 12/16/2010) was replaced by 7.34.3 NMAC, Registry Identification Cards, effective 2/27/2015.