

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

7.34.3.1 ISSUING AGENCY: New Mexico Department of Health, Public Health Division.
[7.34.3.1 NMAC - N, 12/15/2008]

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 - N, 12/15/2008]

7.34.3.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the secretary of the department of health, pursuant to the general authority granted under Section 9-7-6 (E) NMSA 1978, as amended; Section 53-8-1 et seq. NMSA 1978; and the Lynn and Erin Compassionate Use Act, Section 26-2B-1 et seq. NMSA 1978. Although federal law currently prohibits any use of marijuana, the laws of Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, New Jersey, Oregon, Rhode Island, Vermont and Washington permit the medical use and cultivation of marijuana. 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 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 - N, 12/15/2008]

7.34.3.4 DURATION: Permanent.
[7.34.3.4 NMAC - N, 12/15/2008]

7.34.3.5 EFFECTIVE DATE: 12/15/2008, unless a later date is cited at the end of a section.
[7.34.3.5 NMAC - N, 12/15/2008]

7.34.3.6 OBJECTIVE: The objective of this rule is to ensure the safe use and possession of marijuana for individuals living with debilitating medical conditions, and the safe possession and administration of marijuana 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 - N, 12/15/2008]

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. "Administrative review committee" means an intra-department committee that reviews qualified patient or primary caregiver application denials, licensed producer denials by the medical cannabis program coordinator or designee, or the imposition of a summary suspension. The administrative review committee shall consist of the medical director for the department's public health division (or a designee), the medical cannabis program coordinator (or a designee), and a third representative of the department.

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

D. "Adequate supply" means an amount of marijuana, derived solely from an intrastate source and 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 the department to be no more than reasonably necessary to ensure the uninterrupted availability of marijuana for a period of three (3) months. An adequate supply shall not exceed six (6) ounces of useable marijuana, and with a producer license only, four (4) mature plants and twelve (12) seedlings, or a three (3) month supply of topical treatment. An amount greater than six (6) ounces of useable marijuana may be allowed, at the department's discretion, upon proof of special need as evidenced by a practitioner letter explaining why a larger dose is indicated. Any such allowance shall be reviewed

for approval by a medical director designated by the department, who shall consider standards for exceptions to the adequate supply requirements that are approved by the advisory board. A qualified patient and primary caregiver may also possess cannabis seeds.

E. “Adverse action” includes the denial of any application, immediate revocation of the qualified patient or primary caregiver’s registry identification card, licensed producer revocation, referral to state or local law enforcement and loss of all lawful privileges under the act.

F. “Advisory board” means the medical cannabis advisory board consisting of eight (8) practitioners representing the fields of neurology, pain management, medical oncology, psychiatry, infectious disease, family medicine and gynecology.

G. “Applicant” means any person applying to participate in the medical use of marijuana program as a qualified patient, primary caregiver or licensed producer.

H. “Cannabis” means all parts of the plant cannabis sativa and cannabis indica, whether growing or not, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin.

I. “Consent to release of medical information form” means a signed qualified patient or primary caregiver authorization form to release specific medical information relating to the use of marijuana.

J. “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 marijuana could be of benefit.

K. “Deficiency” means a violation of or failure to comply with a provision of these requirements.

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

N. “Division” means the public health division of the department of health.

O. “Facility” means any building or grounds licensed for the production, possession and distribution of marijuana in any form.

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

Q. “License” means the document issued by the department granting the legal right to produce and distribute medical marijuana for a specified period of time.

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

S. “Licensure” means the process by which the department grants permission to an applicant to produce or possess marijuana.

T. “Marijuana” means cannabis.

U. “Mature plant” means a harvestable female marijuana plant that is (1) flowering, (2) greater than twelve inches in height, or (3) greater than twelve inches in diameter.

V. “Medical cannabis program coordinator” means the administrator of the New Mexico department of health, public health division medical cannabis program.

W. “Medical cannabis program” means the administrative body of the New Mexico public health division charged with the management of the medical cannabis program, to include issuance of registry identification cards, licensing of producers and distribution systems, administration of public hearings and administration of informal administrative reviews.

X. “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.

Y. “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 marijuana.

Z. “Minor” means an individual less than eighteen (18) years of age.

AA. “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 into the human body.

BB. “Participant enrollment form” means the registry identification card application form for adult qualified patient applicants provided by the medical cannabis program.

CC. “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 marijuana.

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

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

FF. “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).

GG. “Primary caregiver” means a resident of New Mexico who is at least eighteen (18) years of age and who has been designated by the qualified patient or 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, NMSA 1978, Section [26-2B-1 et seq.](#)

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

II. “Private entity” means a private, non-profit organization that applies to become or is licensed as a producer and distributor of marijuana.

JJ. “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.

KK. “Registry identification card” means a document issued by the department which identifies a qualified patient authorized to engage in the use of marijuana 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 marijuana for the sole use of the qualified patient.

LL. “Representative” means an individual designated as the petitioner’s agent, guardian, surrogate, or other legally appointed or authorized health care decision maker pursuant to the Uniform Health Care Decisions Act, Sections 24-7A-1 *et seq.* (NMSA 2007).

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

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

OO. “Security alarm system” means any device or series of devices, 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 an unauthorized intrusion.

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

QQ. “Seedling” means a cannabis plant that has no flowers and that is less than twelve (12) inches in height and less than twelve (12) inches in diameter.

RR. “Submission date” means the date of submission of the last item in an application, petition or proposal.

SS. “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.

TT. “Topical treatment” means a transcutaneous therapeutic marijuana extract formulation.

UU. “Usable marijuana” means the dried leaves and flowers of the female marijuana plant and any mixture or preparation thereof, including ointments, but does not include the seedlings, seeds, stalks, or roots of the plant.

[7.34.3.7 NMAC - N, 12/15/2008]

7.34.3.8 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. 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.

(1) An attached original medical provider certification for patient eligibility form shall contain:

- (a) the name, address and telephone number of the practitioner;
- (b) the practitioner's clinical licensure;
- (c) the patient applicant's name and date of birth;
- (d) 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;
- (e) an attestation that the practitioner's primary place of practice is located within the state of New Mexico;
- (f) the practitioner's signature and the date;
- (g) the name, address and date of birth of the applicant;
- (g) the name, address and telephone number of the applicant's practitioner;
- (h) a reasonable 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;
- (i) documented parental consent, if applicable, to the applicant;
- (j) the applicant's debilitating medical condition;
- (k) the length of time the applicant has been under the care of the practitioner providing the medical provider certification for patient eligibility;
- (l) the applicant's signature and date; and
- (m) 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.

B. Qualified minor: The department shall issue a registry identification card to an applicant under the age of eighteen (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 marijuana to both the applicant and parent or representative of the applicant; and

(2) the applicant's parent or representative consents to:

- (a) allow the applicant's use of marijuana;
- (b) serve as the applicant's primary caregiver; and
- (c) control the acquisition of the marijuana, dosage and the frequency of the use of marijuana by the applicant.

C. 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 (4) 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 eighteen (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 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.

D. Primary caregiver application requirements:

(1) Criminal history screening requirements.

(a) All primary caregiver applicants are required to consent to a nationwide and statewide 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.

(b) 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 (3) 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 (1) 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 marijuana registry identification card.

E. 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 non-profit 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 marijuana by the primary caregiver for the qualified patient. No other cost associated with the possession of medical use marijuana by the primary caregiver for the qualified patient, including the cost of labor, shall be reimbursed or paid. All medical marijuana possessed by a primary caregiver for a qualified patient is the property of the qualified patient.

F. 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) A practitioner may be prohibited from certifying a patient's application 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

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

[7.34.3.8 NMAC - N, 12/15/2008]

7.34.3.9 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, the department 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 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 use cannabis program.

(2) The department shall approve or deny an application within thirty (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 (5) business days of approving an application. A registry identification card shall contain 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 division 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 (1) year from the date of issuance and shall expire at midnight on the day indicated on the registry identification card as the expiration date.

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 ten (10) calendar days of the change. An extension shall be granted by the medical cannabis program coordinator or designee upon the showing of good cause. Failure to provide notification of any change shall 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 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 department, within its sole discretion and based on medical records from a medical provider of the applicant, determines that the use of cannabis by the applicant would more likely than not be detrimental to the applicant's health or that the approval of the application is otherwise medically contraindicated. 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 (6) 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 may request a record review.

E. Registry identification card renewal application: Each registry identification card issued by the department is valid for one (1) year from the date of issuance. A qualified patient or primary caregiver shall apply for a registry identification card renewal no less than thirty (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 ninety (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 thirty (30) calendar days prior to withdrawal.

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 (5) business days after discovery. An extension shall be granted by the medical cannabis program coordinator upon the showing of good cause. Upon notification, the medical cannabis program coordinator 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.

[7.34.3.9 NMAC - N, 12/15/2008]

7.34.3.10 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 thirty (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.

[7.34.3.10 NMAC - N, 12/15/2008]

7.34.3.11 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. Twenty-four (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 licensure and referral to state or local law enforcement.

B. Corrective action:

(1) If violations of these requirements are cited, the qualified patient or primary caregiver shall be provided with an official written report of the findings within seven (7) 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 (5) 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 (7) 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 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 coordinator 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 thirty (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 thirty (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.

[7.34.3.11 NMAC - N, 12/15/2008]

7.34.3.12 PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON THE USE OF CANNABIS BY QUALIFIED PATIENTS

A. Participation in the medical cannabis program by a qualified patient or primary caregiver does not relieve the qualified patient or primary caregiver from:

(1) criminal prosecution or civil penalties for activities not authorized in this rule and act;

(2) liability for damages or criminal prosecution arising out of the operation of a vehicle while under the influence of marijuana; or

(3) criminal prosecution or civil penalty for possession, distribution or transfers of marijuana or use of marijuana:

(a) in a school bus or public vehicle;

(b) on school grounds or property;

(c) in the workplace of the qualified patient's or primary caregiver's employment;

(d) at a public park, recreation center, youth center or other public place;

(e) to a person not approved by the department pursuant to this rule;

(f) outside New Mexico or attempts to obtain or transport marijuana from outside New Mexico;

or

(g) that exceeds the allotted amount of useable medical use marijuana.

[7.34.3.12 NMAC – A, xxxxxxxxx]

7.34.3.13 SUMMARY SUSPENSION, REVOCATION, AND APPEAL PROCESS:

A. Suspension or revocation of registry identification card: Violation of any provision of this rule may result in either the summary suspension of a qualified patient's or primary caregiver's registry identification card or a notice of contemplated action to suspend or revoke the qualified patient's or primary caregiver's registry identification card, and the revocation of all lawful privileges under the Lynn and Erin Compassionate Use Act, NMSA 1978, Section 26-2B-1 *et seq.*

B. Grounds for revocation or suspension of enrollment or denial of renewal application: A patient or primary caregiver's registry identification card may be revoked or suspended and a renewal application may be denied, for:

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

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

- (3) failure to allow inspection and monitoring by an authorized representative of the department;
- (4) any instance of diversion of cannabis, as determined by the department;
- (5) threatening or harming an employee of a producer, a medical practitioner, a patient, or an employee of the department;
- (6) for primary caregivers: any determination by the primary caregiver's licensing body that the primary caregiver has engaged in unprofessional or dishonorable conduct;
- (7) for primary caregivers: conviction of the primary caregiver of any of the disqualifying convictions identified by department rule;
- (8) for patients: failure of the patient to satisfy any criterion identified by the secretary as a prerequisite to eligibility for a condition approved by the secretary; or
- (9) for patients: if the department, within its sole discretion and based on medical records from a medical 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 or that the approval of the application is otherwise medically contraindicated.

C. Request for hearing: A qualified patient or primary caregiver whose enrollment has been summarily suspended, or who has received a notice of contemplated action to suspend or revoke their enrollment, may request a hearing in writing, in addition to a request for a record review, for the purpose of review of such action. The appellant shall file the request for hearing within thirty (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;
- include a statement of the facts relevant to the review of the action;
- (3) include a statement of the provision of the act and the rules promulgated under the act that are relevant to the review of the action;
 - (4) include a statement of the arguments that the appellant considers relevant to the review of the action; and
 - (5) include any other relevant evidence.

D. 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.

E. Scheduling: The department shall schedule and hold the hearing no later than sixty (60) calendar days from the date the department receives the appellant's request for hearing. The hearing examiner may extend the sixty (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;
- (3) a short and plain statement of the matters of fact and law asserted; and
- (4) all necessary telephone numbers if a telephonic hearing shall be conducted.

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

G. 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.

H. Transcription of the proceedings: A party requesting a transcript shall bear the cost of transcription, to include any duplication costs.

I. Procedures and evidence:

(1) Any party may be represented by a person licensed to practice law in New Mexico, or may represent himself or herself.

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

(3) Documentary and other physical evidence shall be authenticated or identified by any reasonable means that shows that the matter in question is what the proponent claims it to be.

(4) 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.

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

L. 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 on the merits and the appellee may make a statement of the defense or reserve the statement until presentation of that party's case;

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

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

(4) upon conclusion of the department's case in chief, the appellant may present rebuttal argument;

(5) upon conclusion of the parties' cases in chief and rebuttal arguments (if any), the parties may present closing arguments; and

(6) thereafter, the matter shall be considered submitted for recommendation by the hearing examiner.

M. 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.

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

O. Telephonic hearings:

(1) Any party requesting a telephonic hearing shall do so within ten (10) business days of the date of the notice of the hearing. Notice of the telephonic hearing shall be made 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.

P. 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 more than thirty (30) calendar days after the last submission by a party, the hearing examiner shall submit to the secretary a written decision containing a 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 accept, reject or modify the hearing examiner's recommendation no later than thirty (30) calendar days after receipt of the hearing examiner's recommendation. The final decision or order shall be issued in writing and shall include a statement of findings and conclusions, and shall identify the final action to be 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.

[7.34.3.12 NMAC - N, 12/15/2008]

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

A. 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 does not exceed an adequate supply.

B. 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 does not exceed an adequate supply.

C. A qualified patient or a primary caregiver shall be granted the full legal protections provided under the Lynn and Erin Compassionate Use Act, NMSA 1978, Section 26-2B-1 *et seq.*, 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.

D. 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.

E. 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, 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.

F. 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.
[7.34.3.13 NMAC - N, 12/15/2008]

7.34.3.15 QUALIFIED PATIENT, PRIMARY CAREGIVER, AND CERTIFYING 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 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 coordinator 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 certifying 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 coordinator 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 coordinator or designee has reason to believe that a primary caregiver or certifying provider may have violated an applicable law

(3) as provided in the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 and applicable state and federal regulations.

[7.34.3.14 NMAC - N, 12/15/2008]

7.34.3.16 DISPOSAL OF UNUSED MARIJUANA: Unused marijuana in the possession of the qualified patient or 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.

[7.34.3.15 NMAC - N, 12/15/2008]

7.34.3.17 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 these regulations. 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.
[7.34.3.16 NMAC - N, 12/15/2008]

7.34.3.18 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.
[7.34.3.17 NMAC - N, 12/15/2008]

HISTORY OF 7.34.3 NMAC: [RESERVED]