

TITLE 7 HEALTH
CHAPTER 34 MEDICAL USE OF MARIJUANA
PART 4 LICENSING REQUIREMENTS FOR PRODUCERS, PRODUCTION FACILITIES AND DISTRIBUTION

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

7.34.4.2 SCOPE: This rule applies to all licensed producers of medical use marijuana, defined in Section 26-2B-3 (D) NMSA 1978 as “any person or association of persons within New Mexico that the department determines to be qualified to produce, possess, distribute and dispense cannabis pursuant to the Lynn and Erin Compassionate Use Act and that is licensed by the department.” All requirements contained herein are necessary prerequisites to the state’s ability to distinguish between authorized use under this act and unauthorized use under the state’s criminal laws.
[7.34.4.2 NMAC - N, 12/15/2008]

7.34.4.3 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, and the authority granted under Sections 24-1-2(D), 24-1-3(I) and 24-1-5, NMSA 1978, of the Public Health Act, as amended, Section 53-8-1 et seq. NMSA 1978, and the Lynn and Erin Compassionate Use Act. Although federal law currently prohibits any use of marijuana, the laws of Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, Oregon, 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 for the beneficial use of medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments,” while at the same time ensuring proper enforcement of any criminal laws for behavior that has been deemed illicit by the state.
[7.34.4.3 NMAC - N, 12/15/2008]

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

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

7.34.4.6 OBJECTIVE: Ensuring the safe production, distribution and dispensing of marijuana for the sole purpose of medical use for alleviating symptoms caused by debilitating medical conditions in a regulated system.
[7.34.4.6 NMAC - N, 12/15/2008]

7.34.4.7 DEFINITIONS:

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

B. “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.

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

7.34.4.8 PRODUCER LICENSING; GENERAL PROVISIONS:

A. The department may license two classes of producers:

(1) a qualified patient who shall produce no more than an adequate supply of marijuana for the qualified patient's personal use only; and who may obtain from licensed non-profit producers a total of no more than sixteen (16) seeds in a three-month period.

(2) a non-profit private entity that operates a facility and, at any one time, is limited to a total of ninety-five (95) mature plants and seedlings and an inventory of usable marijuana and seeds that reflects current patient needs, and that shall sell marijuana with a consistent unit price, without volume discounts.

B. Processing of production applications:

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

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

(3) A non-profit private entity whose application for licensure is not approved by the secretary shall not be entitled to further review.

(4) The secretary may periodically declare either "open" or "closed" application periods when private entities' applications for licensure will or will not be received and considered by the department. That determination shall be at the sole discretion of the secretary and shall not be subject to review. An application that is submitted by a private entity outside of the "open" applications period shall not be considered by the department.

C. Factors considered: The secretary shall consider the overall health needs of qualified patients and the safety of the public in determining the number of licenses to be issued to non-profit private entities and in determining whether to open or close the applications period for private entities and may further consider:

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

(2) the location of the applicant;

(3) the applicant's plan to ensure purity, consistency of dose, and the various forms of applications to be provided; i.e., topical, oral, tinctures, etc.;

(4) the applicant's skill and knowledge of organic growing methods to ensure a safe product;

(5) the quality of the security plan proposed, including location, security devices employed and staffing;

(6) the quality assurance plans in place, including provision for periodic testing;

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

(8) such other factors as the secretary may deem relevant.

D. Distribution of medical cannabis by a licensed non-profit private entity: Distribution of medical cannabis by a non-profit private entity to a qualified patient or primary caregiver shall take place at locations described in the non-profit entity's distribution plan approved by the department, and shall not take place at locations that are within three hundred (300) feet of any school, church or daycare center.

E. Verification of application information: The department may verify information contained in each application and accompanying documentation by:

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

(b) conducting an on-site visit;

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

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

F. Cooperation with the department: Upon submitting an application, an applicant shall fully cooperate with the department and shall timely respond to requests for information or documentation; failure to cooperate with a request of the department may result in the application being denied or otherwise declared incomplete.

G. Non-profit private entity criminal history screening requirements: All persons associated with a non-profit private entity production facility shall consent to and undergo a nationwide and statewide criminal history screening background check. This includes board members, persons having direct or indirect authority over management or policies, and employees.

(1) **Criminal history screening fees:** All applicable fees associated with the nationwide and statewide criminal history screening background checks shall be paid by the individual or the non-profit private entity.

(2) **Disqualifying convictions:** 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 federal statute or equivalent statute from any other jurisdiction, shall be prohibited from participating or being associated with a production facility licensed under this rule. If an individual 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, or has been convicted of any equivalent federal statute or equivalent statute from any other jurisdiction, and the final completion of the entirety of the associated sentence of such conviction has been less than five (5) years from the date of the individual's anticipated association with the production facility, then the individual shall be prohibited from serving on the board or working for the entity. An individual who is disqualified shall be notified of his or her disqualification. If the individual has been convicted of more than one (1) felony violation of Section 30-31-1 *et seq.* NMSA 1978 or an equivalent federal statute or equivalent statute from any other jurisdiction, the individual shall be notified that he or she is permanently prohibited from participating or being associated with a production facility licensed under this rule. Any violation of this subsection shall result in the immediate revocation of any privilege granted under this rule and the act.

H. Board membership requirements for private entities: The executive board of a private non-profit applicant or licensee shall include at a minimum five (5) members, including one (1) medical provider limited to a physician (MD or DO), a registered nurse, nurse practitioner, licensed practical nurse or physician assistant, and three (3) patients currently qualified under the Lynn and Erin Compassionate Use Act.

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

(2) Executive board members of a non-profit private entity shall be residents of New Mexico.

(3) No non-profit producer organization may have more than two (2) executive board members who also serve on other licensed non-profit producer executive boards.

(4) No member of the non-profit producer's executive board may serve on more than two separate executive boards of licensed non-profit producers.

(5) Patients and medical providers designated as members of the non-profit producer's executive board as required by this rule may not be persons employed by the non-profit producer.

I. Private entity policies and procedures: The private non-profit entity shall develop, implement and maintain on the premises policies and procedures relating to the medical cannabis program, which shall at a minimum include the following:

(1) distribution criteria for qualified patients or primary caregivers appropriate for marijuana services, to include clear identifiable photocopies of the registry identification card of every qualified patient or primary caregiver served by the private entity;

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

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

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

(b) training materials concerning adherence to state confidentiality laws;

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

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

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

(b) informational developments in the field of medical use of marijuana;

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

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

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

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

(a) safety and security procedures;

(b) personal safety; and

(c) crime prevention techniques;

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

(9) a written policy regarding the right of the private entity to refuse service.

J. Retention of training documentation: A private non-profit entity shall maintain documentation of an employee's training for a period of at least six (6) months after termination of an employee's employment. Employee training documentation shall be made available within twenty-four (24) hours of a department representative's request; the twenty-four (24) hour period shall exclude holidays and weekends.

K. Licensure periods:

(1) **Licensure period for private entities:** The licensure period of a private entity shall be from January 1st (or the date of approval of the licensure application, if later) through December 31st of a given year. A license that was issued prior to the promulgation of this provision that is scheduled to expire before December 31, 2010 shall be extended to that date.

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

L. Amended license: A licensed producer shall submit to the department an application form provided by the department for an amended license, together with a non-refundable required fee, prior to:

(1) change of location of a qualified patient who also holds a license as a producer;

(2) change of location of the private non-profit entity, change of ownership, private entity name, capacity or any physical modification or addition to the facility;

(3) an application for change of the licensed producer shall be submitted within thirty (30) business days prior to the change; and

(4) a licensed producer shall not increase production, possession or institute changes in plans to distribute or dispense marijuana until the department has approved the increase and issued a license for the increased production or possession or approved changes to the manner of distribution or dispensing of marijuana.

M. Application for renewal of an annual license:

(1) **Deadline for private entities:** Each licensed producer shall apply for renewal of its annual license no later than December 1st of each year by submitting a renewal application to the department.

(2) **Deadline for qualified patients:** Each patient licensed for a personal production license shall apply for renewal of their annual license no later than 30 days prior to the expiration of the license by submitting a renewal application to the department.

(3) **General submission requirements for qualified patients:** Qualified patients shall submit:

(a) an application for renewal of license that includes an updated recommendation from their primary care physician stating that the applicant continues to meet criteria as a qualified patient and that medical use of marijuana shall be of benefit; and

(b) applicable non-refundable fees, except the fees may be waived upon a showing of need.

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

(a) an application for renewal of license; and

(b) applicable non-refundable fees.

N. Non-transferable registration of license:

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

(a) ownership of the facility changes;

(b) location change;

(c) change in licensed producer;

(d) the discontinuance of operation; or

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

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

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

(b) two (2) or more corporations merge and the originally licensed corporation survives.

(3) Management agreements are generally not considered a change in ownership if the licensed producer continues to retain ultimate authority for the operation of the facility. However, if the ultimate authority is surrendered and transferred from the licensed producer to a new manager, then a change of ownership has occurred.

O. Automatic expiration of license:

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

(2) A private entity that intends to voluntarily close shall notify the licensing authority no later than thirty (30) calendar days prior to closure. All private non-profit entities shall notify all qualified patients or the primary caregivers prior to expiration of the license. Any unused medical marijuana must be turned over to local law enforcement.

P. Display of license: The licensed producer shall maintain the license in a safe location and be able to produce the license immediately upon request by the department or law enforcement.

Q. Fees applicable to applicants and licensees:

(1) **Private non-profit application fee:** A non-profit producer shall submit with its initial application a non-refundable application fee of one thousand dollars (\$1,000).

(2) **Private non-profit annual fee:** A non-profit producer shall additionally submit to the medical cannabis program as a non-refundable annual fee an amount equivalent to seven percent (7%) of the producer's total annual gross receipts for the prior year. The producer shall submit the annual fee no later than January 31st of each year.

(3) **Qualified patient producer fees:** A qualified patient shall submit with each initial and renewal application for licensure a fee of thirty dollars (\$30).

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

R. Department testing

(1) The department or its designee may require a non-profit or patient medical cannabis producer to provide samples of medical cannabis for testing for the presence of mold, bacteria or other contaminants. Producers may be required to provide samples of medical cannabis to the department or its designee for the purpose of testing. Producers shall bear the cost of any testing required by the department. Medical cannabis program employees or their designees may possess those medical cannabis samples for the sole purpose of testing. The department shall comply with the following testing requirements:

(a) The department shall maintain chain of custody documentation for any medical cannabis sample taken;

(b) A written receipt shall be given to the LNPP or patient for all testing samples;

(c) All testing samples shall be placed into a sealed container and clearly labeled;

(d) All testing samples shall be tested by DOH or a designated testing facility;

(e) No more than sixteen (16) grams of medical cannabis shall be gathered for testing purposes from a non-profit medical cannabis producer on any single occasion;

(f) No more than two (2) grams of medical cannabis shall be gathered for testing purposes from a patient producer on any single occasion.

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

7.34.4.9 QUALIFIED PATIENT PRODUCTION APPLICATION REQUIREMENTS: Qualified patients shall provide the following in order to be considered for a license to produce medical cannabis:

A. Appropriate non-refundable fees, unless the fees are waived on a showing of need.

B. A description of the facility that shall be used in the production of marijuana.

C. A written plan that ensures that the marijuana production shall not be visible from the street or other public areas.

D. A description of any device or series of devices that shall be used to provide security and proof of the secure grounds; and

E. A written acknowledgement of the limitations of the right to use and possess marijuana for medical purposes in New Mexico.

7.34.4.10 NON-PROFIT PRIVATE ENTITY PRODUCTION APPLICATION REQUIREMENTS: A private non-profit entity shall provide the following in order to be considered for a license to produce medical cannabis.

A. Organizational information and materials: A private non-profit entity shall submit to the department:

(1) proof that the private entity is a non-profit corporation pursuant to Section 53-8-1 *et seq.* NMSA 1978;

- (2) copies of the entity's articles of incorporation;
 - (3) copies of the entity's by-laws;
 - (4) verification that the executive board of the non-profit includes, at a minimum, five (5) members, including one (1) medical provider limited to a physician (MD or OD), a registered nurse, nurse practitioner, licensed practical nurse or physician assistant, and three (3) patients currently qualified under the Lynn and Erin Compassionate Use Act, NMSA 1978, Section 26-2B-1 *et seq.*;
 - (5) a signed attestation from each member of the non-profit's executive board verifying that the member does not serve on more than two separate executive boards of licensed non-profit producers;
 - (6) a list of all persons or business entities having direct or indirect authority over the management or policies of the facility;
 - (7) a list of all persons or business entities having five percent or more ownership in the facility, whether direct or indirect and whether the interest is in land, building, or other material, including owners of any business entity which owns all or part of the land or building;
 - (8) the identities of all creditors holding a security interest in the premises of the private entity, if any;
- and
- (9) a brief business plan showing how the private entity will fund operations during the first two years of licensing, including funding sources.

B. Production and distribution information and materials: A private non-profit entity shall submit to the department:

- (1) an acknowledgement that production, at any time, shall not exceed a total of ninety-five (95) mature plants, seedlings, cuttings, and clones, as well as an inventory of usable marijuana that reflects current patient needs;
- (2) a written set of distribution criteria for qualified patients or primary caregivers appropriate for marijuana services that describes the method by which and locations at which distribution will occur, and that includes a clear identifiable photocopy of all qualified patient's or the primary caregiver's registry identification card served by the private entity; and
- (3) a complete written description of the means that the private non-profit shall employ to safely dispense the marijuana to qualified patients or the qualified patient's primary caregivers; and
- (4) a description and sample of the packaging of the useable marijuana that the private non-profit entity shall be utilizing, including a label that shall contain the name of the strain, batch, quantity and a statement that the product is for medical use and not for resale.

C. Facility information: A private non-profit entity shall submit to the department:

- (1) a description of the facility that shall be used in the production of marijuana;
- (2) proof that the facility is not within three hundred (300) feet of any school, church or daycare center; and
- (3) a description of the device or series of devices that shall be used to provide security.

D. Educational methods and materials: A private non-profit entity shall submit to the department:

- (1) a description of the private entity's means for educating the qualified patient and the primary caregiver on the limitation of the right to possess and use marijuana;
- (2) a description of the means the private entity shall employ to make qualified patients or the primary caregiver aware of the quality of the product;
- (3) a description of ingestion options of useable marijuana provided by the private entity;
- (4) a description of safe smoking techniques that shall be provided to qualified patients; and
- (5) a description of potential side effects and how the private entity will educate qualified patients and the qualified patient's primary caregivers regarding potential side effects.

E. Sales records: A private non-profit entity shall submit to the department a description and sample of the private entity's confidential sales records, ensuring in part that quantities purchased do not suggest re-distribution.

F. Policies and procedures: A private non-profit entity shall submit to the department copies of policies and procedures developed, implemented and maintained on the premises of the private entity's facility.

G. Personnel records: A private non-profit entity shall submit to the department:

- (1) nationwide and statewide criminal history screening documentation for all individuals associated with the private entity's production facility, to include board members, persons having direct or indirect authority over management or policies, employees, and volunteers;

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

(a) a sample application for employment;
(b) a sample record of any disciplinary action taken;
(c) a sample written job descriptions or employment contracts developed for all employee positions, to include duties, authority, responsibilities, qualifications and supervision;

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

(a) state and federal confidentiality laws, including HIPAA;
(b) professional conduct and ethics;
(c) informational developments in the field of medical use of marijuana; and
(d) employee safety and security training addressing, at a minimum, the proper use of the security measures and controls that have been adopted, and specific procedural instructions on how to respond to an emergency, including a robbery or violent accident; and

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

H. Other materials: A private non-profit entity shall submit to the department such other information as the private entity wishes to provide or such information as the department may request.

7.34.4.9 SECURITY REQUIREMENTS FOR LICENSED PRODUCERS: Private entities licensed to produce medical cannabis shall comply with the following requirements to ensure that production facilities are located on secure grounds. .

A. The licensed private non-profit entity shall provide and maintain in each facility a fully operational security alarm system;

B. The licensed private non-profit entity shall conduct a monthly maintenance inspection and make all necessary repairs to ensure the proper operation of the alarm system and, in the event of an extended mechanical malfunction that exceeds an eight (8) hour period, provide alternative security that shall include closure of the premises; and

C. The licensed private non-profit entity shall maintain documentation for a period of at least twenty-four (24) months of all inspections, servicing, alterations and upgrades performed on the security alarm system; all documentation shall be made available within twenty-four (24) hours of a department representative's request; failure to provide equipment maintenance documentation within the twenty-four (24) hour period shall subject the licensed producer to the sanctions and penalties provided for in this rule; the twenty-four (24) hour period shall not include holidays and weekends.

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

7.34.4.10 DENIAL OF AN INITIAL PRODUCER LICENSE:

A. Administrative review of license application denials: An applicant whose initial application for a producer license is denied by the medical cannabis program coordinator or designee may request an administrative review by the administrative review committee.

B. No review of determinations made by the secretary: An applicant whose initial application for a producer license was for any reason not approved by the secretary shall not be entitled to further review, but may reapply at a later date.

C. Procedure for requesting informal administrative review:

(1) An applicant given notice of an application denial by the medical cannabis program coordinator or designee may submit a written request for a record 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 licensed producer; and

(e) provide a brief narrative rebutting the circumstances of the application denial.

(2) If the applicant wishes to submit additional documentation for consideration, the applicant shall include such additional documentation when submitting the request for administrative review.

D. Administrative review proceeding: The administrative review proceeding shall be a closed proceeding that is limited to an administrative review of written application materials and documents offered to verify eligibility. The administrative review is not an adjudicatory hearing. The administrative review shall be conducted by the administrative review committee. In cases where the administrative review committee finds the need for additional or clarifying information, the review committee shall request that the applicant supply such additional information within the time set forth in the committees' request.

E. Final determination:

(1) Content: The administrative review committee shall render a written decision setting forth the reasons for the decision.

(2) Effect: The decision of the administrative review committee is the final decision of the informal administrative review proceeding.

(3) Notice: A copy of the decision shall be mailed to the applicant.

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

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

7.34.4.11 PARENTAL RESPONSIBILITY ACT: The failure to comply with a judgment or order for child support, or subpoena or warrants relating to paternity or child support proceedings, is grounds for the denial, suspension or revocation of a private entity's license to produce medical cannabis in accordance with Section 40-5A-6, NMSA 1978, of the Parental Responsibility Act.

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

7.34.4.12 PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON THE PRODUCTION OF MEDICAL CANNABIS AND CRIMINAL PENALTIES:

A. Participation in the medical cannabis licensing program by a licensed producer, or the employees of a licensed producer, does not relieve the producer or employee from criminal prosecution or civil penalties for activities not authorized in this rule and the act.

B. Distribution of medical cannabis to qualified patients or their primary caregivers shall take place at locations described in the non-profit entity's distribution plan approved by the department, and shall not take place at locations that within three hundred feet of any school, church or daycare center.

C. Fraudulent misrepresentation: Any person who makes a fraudulent representation to a law enforcement officer about the person's participation in the medical cannabis program to avoid arrest or prosecution for a marijuana-related offense is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 *et seq.*, NMSA 1978.

D. Unlawful distribution: If a licensed producer or employee of a licensed producer sells, distributes, dispenses or transfers cannabis to a person not approved by the department pursuant to this rule and the act, or obtains or transports cannabis outside New Mexico in violation of federal law, the licensed producer or employee of the licensed producer shall be subject to arrest, prosecution and civil or criminal penalties pursuant to state law.

E. Revocation of registry identification card, licensed primary caregiver card, license to produce or distribute: Violation of any provision of this rule may result in the immediate revocation of any privilege granted under this rule and the act.

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

7.34.4.13 MONITORING AND CORRECTIVE ACTIONS:

A. Monitoring:

(1) The department or its designee may perform on-site assessments of a licensed producer to determine compliance with these rules. The department may enter a facility at any time to assess or monitor.

(2) Twenty-four (24) hours' notice shall be provided to licensed producers who are qualified patients prior to an on-site assessment except when the department has reasonable suspicion to believe that providing notice will result in the destruction of evidence or that providing such notice will impede the department's ability to enforce these regulations.

(3) The department may review any and all employee, qualified patient or primary caregiver records or conduct interviews with employees, qualified patients, primary caregivers or private licensed producers for the purpose of determining compliance with these requirements.

(4) All licensed producers shall provide the department or the department's designee immediate access to any material and information necessary for determining compliance with these requirements.

(5) Failure by the licensed producer to provide the department access to the premises or information may result in the revocation of the licensed producer's license and referral to state law enforcement.

(6) Any failure to adhere to these rules documented by the department during monitoring may result in sanction(s), including suspension, revocation, non-renewal or denial of licensure and referral to state or local law enforcement.

(7) The department shall refer non-frivolous complaints involving alleged criminal activity made against a licensed producer to the appropriate New Mexico state or local authorities.

B. Financial records: A licensed non-profit private entity shall maintain detailed confidential sales records in a manner and format approved by the department.

(1) **Access:** The department or its agents shall have complete access to the sales and other financial records of a private entity licensee, and shall be granted immediate access to those records upon request. Patients shall be granted access to de-identifying (i.e., redacted) sales records upon request.

(2) **Audit:** The department may, within its sole discretion, periodically require the audit of a non-profit private entity's financial records by an independent certified public accountant (CPA) approved by the department. A licensed non-profit entity that is required to be audited shall bear all costs related to such audit. A requested audit shall be concluded within a reasonable period, as determined by the department. Results of a required audit shall be forwarded to the medical cannabis program coordinator or designee.

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

C. Corrective action:

(1) If violations of requirements of this rule are cited as a result of monitoring or review of financial records, the licensed producer shall be provided with an official written report of the findings within seven (7) business days following the monitoring visit.

(2) Unless otherwise specified by the department, the licensed producer 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 producer's license.

D. Suspension of license without prior hearing: In accordance with the Public Health Act, Section 24-1-5 (H) NMSA 1978, if immediate action is required to protect the health and safety of the general public, the qualified patient or primary caregivers, the department may suspend the qualified patient, primary caregiver or licensed producer's license without notice.

(1) A licensee whose license has been summarily suspended is entitled to a record review not later than thirty (30) calendar days after the license was summarily suspended.

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

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

(4) The sole issue at a record review on a summary suspension is whether the licensee's license shall remain suspended pending a final adjudicatory hearing and ruling.

(5) A licensee given notice of summary suspension by the division may submit a written request for a record 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 applicant's name, address, and telephone numbers;

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

(e) such additional documentation must be included with the request for a record review.

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

7.34.4.14 SUMMARY SUSPENSION, REVOCATION AND APPEAL PROCESS:

A. Revocation of producer license: Violation of any provision of this rule may result in either the summary suspension of the producer's license or a notice of contemplated action to suspend or revoke the

producer's license and revoke 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 license, denial of renewal application for license.

A license may be revoked or suspended, and a renewal application may be denied, for:

- (1) failure to comply with or satisfy any provision of this rule;
- (2) failure to allow a monitoring visit by authorized representatives of the department;
- (3) falsification of any material or information submitted to the department;
- (4) diversion of cannabis, as determined by the department;
- (5) threatening or harming a patient, a medical practitioner, or an employee of the

department.

C. Request for hearing: A producer whose license has been summarily suspended or who has received a notice of contemplated action to suspend or revoke may request a hearing, in addition to a request for an administrative review of written materials (as applicable), 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;
- a statement of the facts relevant to the review of the action;
- (2) state the requestor's name, address and telephone numbers;
 - (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, NM or, with the consent of the parties, in another location.
- (3) Due to federal and state confidentiality laws, hearings held pursuant to this section 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 as soon as practicable, however; in any event no later than sixty (60) calendar days from the date the department receives the appellant's request for hearing. The hearing examiner shall extend the sixty (60) day time period upon motion for good cause shown or the parties shall extend the sixty (60) day time period by mutual agreement. The department shall issue notice of 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;
- (4) notice to any other parties to give prompt notice of issues controverted in fact or law; and
- (5) 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) questions and offers of proof, objections and rulings thereon;
- (5) proposed findings and conclusions; and
- (6) any action recommended by the hearing examiner.

H. A party may request a transcription of the proceedings: The party requesting the transcript shall endure the cost of transcription.

I. Procedures and evidence:

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

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

(1) the appellant shall present an opening statement on the merits and the appellee shall make a statement of the defense or reserve the statement until presentation of that party's case;

(2) after the opening statements, if made, the appellant shall present its case in chief in support of the appellant's petition;

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

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

(5) after presentation of the evidence by the parties, the appellant shall present a closing argument; the appellee then shall present his or her closing argument and the appellant shall present a rebuttal argument; and

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

K. 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.

L. Continuances: The hearing examiner shall not grant a continuance except for good cause shown. A motion to continue a hearing shall be made at least ten (10) calendar days before the hearing date.

M. Telephonic hearings:

(1) Any party requesting a telephonic hearing shall do so within ten (10) business days of the date of the notice. Notice of the telephonic hearing shall be made to all parties and shall include all necessary telephone numbers.

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

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

N. Recommended action and final decision:

(1) At the request of the hearing examiner or upon motion by either party granted by the hearing examiner and before the hearing examiner recommends action by the secretary, the parties shall submit briefs including findings of fact and conclusions of law for consideration by the hearing examiner. The hearing examiner holds the discretion to request briefs or grant a motion to submit briefs on any point of law deemed appropriate by the hearing examiner. Briefs submitted shall include supporting reasons for any findings or legal conclusions and citations to the record and to relevant law. (2) No more than thirty (30) calendar days after after the last submission by a party, the hearing examiner shall prepare a written decision containing his or her recommendation of action to taken by the secretary. The recommendation shall propose to sustain, modify or reverse the initial decision of the department.

(2) The secretary shall accept, reject or modify the hearing examiner's recommendation no later than ten (10) 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 the reasons thereof, on all material issues of fact, law or discretion involved, together with a statement of the specific action taken to sustain, modify or reverse the initial decision of the hearing examiner. Service shall be made by mail.

(3) The final decision or order shall be made a part of the patient or primary caregiver's file with the medical cannabis program.

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

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

A. No licensed producer or employee of the licensed producer, qualified patient licensed as a producer or licensed primary caregiver shall be subject to arrest, prosecution or penalty, in a manner for the production, possession, distribution or dispensation of cannabis in accordance with this rule and the act.

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

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

7.34.4.16 LICENSED PRODUCER CONFIDENTIALITY: The department shall maintain a confidential file containing the names, addresses and telephone numbers of the persons who have either applied for or received a registry identification card or license for the purpose of producing cannabis for medical use. Individual names on the list shall be confidential and not subject to disclosure, except:

A. to authorized employees or agents of the department as necessary to perform the duties of the department pursuant to the provisions of this rule and the act;

B. to authorized employees of state or local law enforcement agencies, but not only for the purpose of verifying that a person is lawfully in possession of the license to produce; or

C. as provided in the federal Health Insurance Portability and Accountability Act of 1996.

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

7.34.4.17 DISPOSAL OF UNUSED CANNABIS: Unused cannabis in the possession of the licensed producer may be disposed of by transporting the unused portion to a state or local law enforcement office.

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

7.34.4.18 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 must contain de-identified data upon which the assessment is based.

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

7.34.4.19 SEVERABILITY: If any part or application of these rules is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of these rules legally severed shall not interfere with the remaining protections provided by these rules and the act.

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

HISTORY OF 7.34.4 NMAC: [RESERVED]