

TITLE 7 HEALTH
CHAPTER 34 MEDICAL USE OF MARIJUANA
PART 2 ADVISORY BOARD RESPONSIBILITIES AND DUTIES

7.34.2.1 ISSUING AGENCY: New Mexico Department of Health, Public Health Division.
[7.34.2.1 NMAC - N, 04/15/2008]

7.34.2.2 STATUTORY AUTHORITY: These requirements set forth herein are promulgated by the secretary of the department of health, pursuant to the authority granted under the Department of Health Act, Section 9-7-6E and the Lynn and Erin Compassionate Use Act, Sections 26-2B-1 through 26-2B-7, (NMSA 2007).
[7.34.2.2 NMAC - N, 04/15/2008]

7.34.2.3 SCOPE: This part governs the membership, duties, responsibilities and public hearing proceedings of the medical marijuana advisory board.
[7.34.2.3 NMAC - N, 04/15/2008]

7.34.2.4 DURATION: Permanent.
[7.34.2.4 NMAC - N, 04/15/2008]

7.34.2.5 EFFECTIVE DATE: 04/15/2008, unless a later date is cited at the end of a section.
[7.34.2.5 NMAC - N, 04/15/2008]

7.34.2.6 OBJECTIVE: The objective of this part is to establish membership, duties, responsibilities, and public hearing procedures that govern the medical marijuana advisory board proceedings.
[7.34.2.6 NMAC - N, 04/15/2008]

7.34.2.7 DEFINITIONS:

A. "Act" means the Lynn and Erin Compassionate Use Act, Sections 26-2B-1 through 26-2B-7, (NMSA 2007).

B. "Adequate supply" means an amount of marijuana, in any form approved by the department, possessed by a qualified patient or collectively possessed by a qualified patient and the qualified patient's designated 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 which is derived solely from an intrastate source. An adequate supply shall not exceed six (6) ounces of useable marijuana, four (4) mature plants and twelve (12) seedlings or a three (3) month supply of topical treatment.

C. "Advisory board" means the medical marijuana advisory board consisting of eight (8) practitioners representing the fields of but not limited to neurology, pain management, medical oncology, psychiatry, infectious disease, family medicine and gynecology.

D. "Consent to release of medical information form (MCP-62007-006)" means a signed qualified patient or designated caregiver authorization form to release specific medical information relating to the use of marijuana.

E. "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) admitted 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; and
- (9) which results in pain, suffering or debility for which there is credible evidence that medical use marijuana could be of benefit.

F. "Department" means the department of health.

G. "Designated caregiver" means a resident of New Mexico who is at least eighteen (18) years of age and who has been designated by the patient's practitioner or qualified patient as being necessary to take

responsibility for managing the well-being of a qualified patient with respect to the use of marijuana pursuant to the provisions of the act.

H. “Designated caregiver application form (MCP-62007-003)” means the registry identification card application form provided by the medical cannabis program.

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

J. “Mature plant” means a harvestable female marijuana plant that is flowering.

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

L. “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.

M. “Medical provider certification for patient eligibility form (MCP-62007-002)” 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.

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

O. “Participant enrollment form (MCP-62007-001)” means the registry identification card application form for adult qualified patient applicants provided by the medical cannabis program.

P. “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.

Q. “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).

R. “Usable marijuana” means the dried leaves and flowers of the female marijuana plant, topical treatment or mixture or preparation thereof, but does not include the seedlings, seeds, stalks, and roots of the plant.

S. “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 this part.

T. “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).

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

V. “Seedling” means a male or female marijuana plant that is not flowering.

W. “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.

X. “Topical treatments” means a transcutaneous therapeutic marijuana extract formulation comprised of water, short carbon chains alcohol, dimethylsulfoxide, polyethylene glycol, polypropylene glycol, glycerin, mineral oil and mixtures thereof.
[7.34.2.7 NMAC - N, 04/15/2008]

7.34.2.8 ADVISORY BOARD MEMBERSHIP REQUIREMENTS AND RESPONSIBILITIES:

A. Advisory board membership. The advisory board shall consist of eight (8) practitioners representing the fields of neurology, pain management, medical oncology, psychiatry, infectious disease, family medicine and gynecology. The practitioners shall be nationally board-certified in their area of specialty and knowledgeable about the use of marijuana. The members shall be chosen for appointment by the secretary from a list proposed by the New Mexico medical society.

B. Duties and responsibilities. The advisory board shall convene at least twice (2) per year to review and recommend to the department for approval additional debilitating medical conditions that would benefit from the medical use of cannabis; issue recommended quantities of cannabis that are necessary to constitute an adequate supply for qualified patients and designated caregivers; and to accept and review petitions to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis and all lawful privileges under the act and implementing rules.

C. Advisory board membership term. Each member of the advisory board shall serve a term of two (2) years from the date of appointment by the secretary. No member may be removed prior to the expiration of his or her term with out a showing of good cause by the secretary.

D. Chairperson elect. The advisory board shall elect by majority vote cast of the eight (8) member board a chairperson and alternate. The chairperson or alternate shall exercise all powers and duties prescribed or delegated under the act or this part.

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

(2) Voting rights. The chairperson shall only vote in cases of a tie among advisory board members.

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

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

[7.34.2.8 NMAC - N, 04/15/2008]

7.34.2.9 PETITIONS REQUIREMENTS:

A. Petition requirements. The advisory board may accept and review petitions from any individual or association of individuals requesting the addition of a new medical condition, medical treatment or disease for the purpose of participating in the medical cannabis program and all lawful privileges under the act. Except as otherwise provided, a petitioner filing a petition shall file the originals and eight (8) copies with the medical cannabis coordinator by either personal delivery, express or first class mail. In order for a petition to be processed and forwarded to the advisory board the following information shall be submitted to the medical cannabis program coordinator.

(1) Petition format. Unless otherwise provided by this part or by order of the hearing officer, all documents, except exhibits, shall be prepared on 8 1/2 x 11-inch white paper, printed double-sided, if possible, and where appropriate, the first page of every document shall contain a heading and caption. The petitioner shall include in the petition documents a narrative address to the advisory board, which includes:

(a) petition caption stating the name, address and telephone number of the petitioner and the medical condition, medical treatment or disease sought to be added to the existing debilitating medical conditions;

(b) an introductory narrative of the individual or association of individuals requesting the inclusion of a new medical condition, medical treatment or disease to include the individual or association of individuals' relationship or interest for the request whether that interest is professional or as a concerned citizen;

(c) the proposed benefits from the medical use of cannabis specific to the medical condition, medical treatment or disease sought to be added to the existing debilitating medical conditions listed under the act; and

(d) any additional supporting medical, testimonial, or scientific documentation.

(2) Statement of intent to present technical evidence. If the petitioner wishes to present technical evidence at the hearing the petition shall include a statement of intent. The statement of intent to present technical evidence shall include:

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

(b) the name of each witness;

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

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

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

B. Qualified patient applicant petitioner. If the petitioner is submitting their requests as a potential qualified patient applicant the petitioner shall attach an original medical practitioner's certification for patient eligibility form (MCP-62007-002) provided by the medical cannabis program coordinator which includes the following information.

(1) The name, address, telephone number and clinical licensure of the petitioner's practitioner.

(2) The petitioner's name, date of birth.

(3) The medical justification for practitioner's certification of the petitioner's debilitating medical condition.

(4) The practitioner's signature and date of signature.

- (5) The name, address and date of birth of the petitioner.
- (6) The name, address and telephone number of the petitioner's practitioner.
- (7) The name, address and date of birth of the petitioner's designated caregivers, if applicable.
- (8) A reasonable xerographic copy of the petitioner's New Mexico driver's license photograph or comparable New Mexico state or federal issued photo identification card verifying New Mexico residence.
- (9) Documented parental consent if applicable to the petitioner.
- (10) If applicable the petitioner's potential debilitating medical condition.
- (11) The length of time the petitioner has been under the care of the practitioner providing the medical provider certification for patient eligibility.
- (12) The petitioner's signature and date.
- (13) A signed consent for release of medical information form (MCP-62007-006) provided by the medical cannabis program.

C. Petitioner confidentiality. The department shall maintain a confidential file containing the names and addresses of the persons who have either applied for or received a public hearing petition request. Individual names on the list shall be confidential and not subject to disclosure, except:

- (1) to authorized employees or agents of the department as necessary to perform the duties of the department pursuant to the provisions of the act or this part;
- (2) as provided in the federal Health Insurance Portability and Accountability Act of 1996.

D. Department notification. The medical cannabis program coordinator shall review each petition request and within reasonable time after receipt issue notice of docketing by certified mail upon the petitioner, each advisory board member, and the advisory board legal counsel. The notice of docketing shall contain the petition caption and docket number, the date upon which the petition was received and scheduling date of the advisory board public hearing. A copy of this rule shall be included with a notice of docketing sent to the petitioner.

E. Examination allowed. Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any public hearing proceeding. Inspection shall be permitted in accordance with the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 et seq., (NMSA 1978), but may be limited by the Health Insurance Portability and Accountability Act of 1996. Documents subject to inspection shall be made available by the medical cannabis program coordinator, as appropriate. Unless waived by the department, the cost of duplicating documents or tapes filed in any public hearing proceeding shall be borne by the person seeking the copies.

F. Notice of withdrawal. A petitioner may withdraw a petition at any time prior to a decision by the advisory board by filing a notice of withdrawal with the medical cannabis program coordinator.
[7.34.2.9 NMAC - N, 04/15/2008]

7.34.2.10 ADVISORY BOARD PUBLIC HEARING PROCEDURES:

A. Public hearing requirement. The advisory board shall convene by public hearing at least twice (2) per year to accept and review petitions requesting the inclusion of medical conditions, medical treatments or diseases to the list of debilitating medical conditions. Any meeting consisting of a quorum of the advisory board members held for the purpose of evaluating, discussing or otherwise formulating specific opinions concerning the recommendation of a petition filed pursuant to this rule, shall be declared a public hearing open to the public at all times.

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

C. Public hearing notice. The medical cannabis program coordinator shall, upon direction from the advisory board chairperson, prepare a notice of public hearing setting forth the date, time and location of the hearing, a brief description of the petition, and information on the requirements for public comment or statement of intent to present technical evidence, and:

- (1) no later than thirty (30) days prior to the hearing date, send copies, with requests for publication, to at least one newspaper of general circulation and other means the department determines an acceptable manner of notice;
- (2) mail a copy to each interested participant who has filed an entry of appearance for public comment or who has expressed, in writing to the department or the advisory board, an interest in the public hearing that is the subject of the petition;
- (3) immediately upon receipt of an entry of appearance to present public comment or technical evidence that is received after the initial mailing, mail a copy to such interested participant; and

(4) file an affidavit certifying how and when notice was given with a copy of the notice of hearing and affidavits of publication attached.

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

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

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

- (1) the name of the person filing the statement;
- (2) indication of whether the person filing the statement supports or opposes the petition at issue;
- (3) the name of each witness;
- (4) an estimate of the length of the direct testimony of each witness;
- (5) a list of exhibits, if any, to be offered into evidence at the hearing; and
- (6) a summary or outline of the anticipated direct testimony of each witness.

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

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

(1) A quorum of the advisory board shall consist of three (3) voting members.

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

- (a) introduction of the advisory board members;
- (b) statutory authority of the board;
- (c) statement of the public hearing agenda; and
- (d) recognition of the petitioner.

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

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

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

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

I. Recorded minutes. Unless the advisory board orders otherwise the hearing will be tape recorded. The advisory board shall keep recorded minutes of all its public hearings. The recorded minutes shall include at a minimum the date, time and place of the public hearing, the names of board members in attendance and those absent, the substance of the petition considered and a record of any decisions and votes taken that show how each member voted. Any person, other than the advisory board, desiring a copy of a transcript must order a copy from the medical cannabis program coordinator. Any person, other than the advisory board, desiring a copy of hearing tapes must arrange copying with the medical cannabis program coordinator at their expense.

[7.34.2.10 NMAC - N, 04/15/2008]

7.34.2.11 ADVISORY BOARD RECOMMENDATION TO THE DEPARTMENT:

A. Advisory board recommendation. Upon final determination the advisory board shall provide to the secretary a written report of finding, which recommends either the approval or denial of the petitioner's request. The written report of findings shall include a medical justification for the recommendation based upon the individual or collective expertise of the advisory board membership. The medical justification shall delineate between the findings of fact made by the advisory board and scientific conclusions of credible medical evidence.

B. Department final determination. The department shall notify the petitioner by certified mail within ten (10) days of the secretary's determination. A denial by the secretary regarding the inclusion of a medical conditions, medical treatments or diseases to the existing list of debilitating medical conditions contained under the act shall not represent a permanent denial by the department. Any individual or association of individuals may upon good cause re-petition the advisory board. All requests shall present new supporting findings of fact, or scientific conclusions of credible medical evidence not previously examined by the advisory board.
[7.34.2.11 NMAC - N, 04/15/2008]

7.34.2.12 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.
[7.34.2.12 NMAC - N, 04/15/2008]

HISTORY OF 7.34.2 NMAC: [RESERVED]