

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.” This rule addresses the department’s actions in the prevention of non-medical marijuana use, in an effort to prevent abuse or misuse of the act and its purpose. 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.
- B. “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 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 after consultation with the advisory board created under the act.
- C. “Administrative review committee”** means an intra-department committee appointed by the secretary, selected for the purposes of reviewing qualified patients or primary caregivers application denial, licensed producer denial, or the imposition of a summary suspension. The administrative review committee shall consist of the medical director, medical cannabis program manager, a social worker, registered nurse and attorney.

- D. “Administrative withdrawal”** means the procedures for the voluntary withdrawal of a qualified patient or primary caregiver from the medical cannabis program.
- 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. “Applicant”** means any person applying to participate in the medical use of marijuana program as a qualified patient, primary caregiver or licensed producer.
- G. “Cannabis”** see “marijuana.”
- H. “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) admittance 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.
- I. “Deficiency”** means a violation of or failure to comply with a provision of these requirements.
- J. “Department”** mean the New Mexico department of health.
- K. “Division”** means the public health division of the New Mexico department of health.
- L. “Facility”** means any building or grounds licensed for the production, possession and distribution of marijuana in any form.
- M. “Intrastate”** means existing or occurring within the state boundaries of New Mexico.
- N. “License”** means the document issued by the department pursuant to this rule granting the legal right to produce and distribute medical marijuana for a specified period of time not to exceed one (1) year.
- O. “Licensed producer”** means any person or entity licensed by this rule.
- P. “Licensing Authority”** means the medical cannabis program of the department.
- Q. “Licensure”** means the process by which the department grants permission to an applicant to produce or possess marijuana.
- R. “Marijuana”** means all parts of the plant cannabis sativa, family cannabaceae, 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.
- S. “Mature plant”** means a harvestable female marijuana plant that is flowering and is greater than twelve inches in height and twelve inches in diameter.
- T. “Medical cannabis program”** means the administrative body of the New Mexico public health division charged with the management of the medical marijuana program, including the issuance of registry identification cards, licensing of producers and distribution systems, administration of public hearings and administration of informal administrative reviews.
- U. “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.
- V. “Minor”** means an individual less than eighteen (18) years of age.
- W. “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 marijuana into the human body.
- X. “Personnel record”** means an individual personnel employment file of any employee of a licensed producer containing, but not limited to, the employee’s education, work history, training, licensure, certification, performance evaluation, salary, job title and job description.
- Y. “Policy”** means a written statement of principles that guides and determines present and future decisions and actions of the licensed producer.
- Z. “Practitioner”** means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act, Section 30-31-1 et seq. NMSA 1978.
- AA. “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 [26-2B-1 NMSA 1978].

BB. “Private entity” means a private, non-profit organization that meets the requirements under this rule for licensure as a producer and distributor of marijuana.

CC. “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 medical use of marijuana registry identification cards rule.

DD. “Record review” means an informal non-adversarial administrative review of written documentation submitted by an applicant who has been denied status as a qualified patient or a primary caregiver, one who has been denied a license to produce and distribute marijuana, or the process for expedited review of a summary suspension.

EE. “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.

FF. “Representative” means an individual designated as the qualified patient’s agent, guardian, surrogate, or other legally appointed or authorized health care decision maker pursuant to the Uniform Health Care Decisions Act, Section 24-7A-1 et seq. NMSA 1978.

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

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

II. “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.

JJ. “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.

KK. “Seedling” means a marijuana plant that has no flowers and is less than twelve (12) inches in height and less than twelve (12) inches in diameter. A seedling must meet all three (3) criteria set forth above.

LL. “Topical treatment” means a transcutaneous therapeutic marijuana extract formulation comprising of water, short carbon chains alcohol, dimethylsulfoxide, polyethylene glycol, polypropylene glycol, glycerin, mineral oil and mixtures thereof.

MM. “Usable marijuana” means the dried leaves and flowers of the female marijuana plant, any mixture or preparation thereof, including ointments, but does not include the seeds, stalks and roots of the plant. [7.34.4.7 NMAC - N, 12/15/2008]

7.34.4.8 LICENSED PRODUCER APPLICATION REQUIREMENTS:

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
- (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 that reflects current patient needs, and that shall sell marijuana with a consistent unit price, without volume discounts.

B. Application for licensure as either a qualified patient or private entity.

(1) The issuance of an application form is in no way a guarantee that the completed application shall 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 by falsifying information presented in the licensing process shall have its license denied by the licensing authority.

(2) The number of licenses issued by the department to private entities is at the discretion of the secretary.

C. The secretary shall consider the overall health needs of qualified patients and the safety of the public in deciding on the number and location of licenses to produce marijuana issued to private entities, including, but not limited to, the following factors:

- (1) the sufficiency of the overall supply available to qualified patients statewide;
- (2) 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.;
- (3) the applicant’s skill and knowledge of organic growing methods to ensure a safe product;

- (4) the quality of the security plan proposed including location, security devices employed and staffing;
- (5) the quality assurance plans in place including provision for periodic testing; and
- (6) the experience and expertise of the non-profit board members.

D. Location of licensed producer: Distribution of marijuana by a non-profit entity to qualified patients or primary caregiver shall not take place at locations that are within three hundred (300) feet of any school, church or daycare center.

E. Qualified patients must provide the following in order to be considered for a license to produce marijuana:

- (1) appropriate non-refundable fees, except the fees may be waived upon a showing of need;
- (2) a description of the facility that shall be used in the production of marijuana;
- (3) a written plan that ensures that the marijuana production shall not be visible from the street or other public areas;
- (4) a description of any device or series of devices that shall be used to provide security and proof of the secure grounds;
- (5) written acknowledgement of the limitations of the right to use and possess marijuana for medical purposes in New Mexico; and
- (6) the department may verify information on each application and accompanying documentation by:
 - (a) contacting the applicant by telephone or by 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 that the department deems necessary.

F. A private non-profit entity must provide the following in order to be considered for a license to produce marijuana:

- (1) acknowledgement that, at any time, production shall not exceed ninety-five (95) mature plants and seedlings and an inventory of usable marijuana that reflects current patient needs;
- (2) proof that the private entity is a non-profit corporation pursuant to, Section 53-8-1 et seq. NMSA 1978;
- (3) appropriate non-refundable fees;
- (4) verification that the board of the non-profit includes, at a minimum, one (1) physician, a nurse or other health care provider, and three (3) patients currently qualified under the Lynn and Erin Compassionate Use Act;
- (5) a description of the facility that shall be used in the production of marijuana;
- (6) proof that the facility is not within three hundred (300) feet of any school, church or daycare center;
- (7) a description of the means the private non-profit shall employ to make qualified patients or the primary caregiver aware of the quality of the product;
- (8) a description of the means the private non-profit shall employ to safely dispense the marijuana to qualified patients or the qualified patient's primary caregivers;
- (9) a description of ingestion options of useable marijuana provided by the private non-profit entity;
- (10) a description of safe smoking techniques that shall be provided to qualified patients;
- (11) a description of potential side effects and how this shall be communicated to qualified patients and the qualified patient's primary caregivers;
- (12) 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;
- (13) a description 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;
- (14) a description of the private non-profit entity's confidential sale records, ensuring that quantities purchased do not suggest re-distribution; both clients and the department shall have access to this information at any time;
- (15) a description of the private non-profit entity's policy on the right of the entity to refuse service;
- (16) a description of the device or series of devices that shall be used to provide security;
- (17) a written description of the private non-profit entity's security policies, safety and security procedures, personal safety and crime prevention techniques;

(18) copies of the entity's articles of incorporation and by-laws;
(19) a list of all persons or business entities having direct or indirect authority over the management or policies of the facility;

(20) 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 profits, land or building, including owners of any business entity which owns all or part of the land or building;

(21) the identities of all creditors holding a security interest in the premises, if any;

(22) criminal history screening requirements:

(a) all persons associated with a non-profit private entity production facility must consent to 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; all applicable fees associated with the nationwide and statewide criminal history screening background check shall be paid by the individual or production facility;

(b) individuals convicted of a felony violation of Section 30-31-20, 30-31-21, or 30-31-22 NMSA 1978 are 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, and the final completion of the entirety of the associated sentence of such felony conviction has been less than five (5) years from the date of the individual's anticipated association with the production facility, then the individual is prohibited from serving in his or her role on the board or for the entity; the individual shall be notified by registered mail 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, the individual shall be notified by registered or certified mail 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 will result in the immediate revocation of any privilege granted under this rule and the act;

(23) the department may verify information on each application and accompanying documentation by:

(a) contacting the applicant by telephone or by 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 that the department deems necessary;

(24) cooperation with the department upon notice by the department of the intent to review the licensed producer application; failure of the private entity to cooperate with the department's request may result in the application being declared incomplete or denied; and

(25) such other information as the private entity wishes to provide or that the licensing authority shall request.

G. Private entity policies and procedures: Distribution criteria documentation. The private non-profit entity shall develop, implement and maintain on the premises, policies and procedures relating to the marijuana program. The policies and procedures shall at a minimum include the following criteria:

(1) develop distribution criteria for qualified patients or primary caregivers appropriate for marijuana services;

(2) qualified patient's or the primary caregiver's distribution criteria shall include a clear identifiable photocopy of all qualified patient's or the primary caregiver's registry identification card served by the private entity; and

(3) alcohol and drug free work place policy; the private non-profit entity shall develop, implement and maintain on the premises, policies and procedures relating to an alcohol and drug free workplace program;

(4) employee policies and procedures; the private non-profit entity shall develop, implement and maintain on the premises, employee policies and procedures to address the following requirements:

(a) a job description or employment contract developed for all employees, which includes duties, authority, responsibilities, qualifications and supervision; and

(b) training in, and adherence, to state confidentiality laws;

(5) the licensed producer shall maintain a personnel record for each employee that includes an application for employment and a record of any disciplinary action taken; and

(6) the private non-profit entity shall develop, implement and maintain on the premises on-site training curriculum, or enter into contractual relationships with outside resources capable of meeting employee training needs, which includes, but is not limited to, the following topics:

- (a) professional conduct, ethics and patient confidentiality; and
 - (b) informational developments in the field of medical use of marijuana;
- (7) employee safety and security training; the private non-profit entity shall provide each employee, at the time of his or her initial appointment, training in the following:
- (a) the proper use of security measures and controls that have been adopted; and
 - (b) specific procedural instructions on how to respond to an emergency, including robbery or a violent accident.

(8) all private non-profit entities shall prepare training documentation for each employee and have employees sign a statement indicating the date, time and place the employee received said training and topics discussed, to include name and title of presenters; the 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.

H. Annual license: An annual license is issued for a one (1) year period to a licensed producer that has met all requirements of this rule.

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

J. Application for renewal of an annual license: Each licensed producer shall apply for renewal of its annual license thirty (30) calendar days prior to expiration by submitting a renewal application to the licensing authority.

- (1) Qualified patients must 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) appropriate non-refundable fees, except the fees may be waived upon a showing of need.
- (2) Private entities must submit:
 - (a) an application for renewal of license; and
 - (b) appropriate non-refundable fees.

K. 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.

L. Automatic expiration of license:

(1) A license shall expire at midnight on the day indicated on the license as the expiration date, unless 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.

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

7.34.4.9 SECURITY REQUIREMENTS FOR LICENSED PRODUCERS: Private entities licensed to produce marijuana shall comply with the following requirements to ensure that production facilities are located on secure grounds. **Security alarm system:** The private non-profit entity shall provide and maintain in each facility a fully operational security alarm system. The private non-profit entity shall:

A. 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

B. 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. Record review: All applicants whose initial application for a licensed producer 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 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;

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

(2) If the applicant wishes to submit and have considered additional documentations, such additional documentation must be included with the request for a record review.

C. Record review proceeding: The review proceeding is intended to be an informal non-adversarial administrative review of written documentation. It shall be conducted by an administrative review committee designated for that purpose by the division. In cases where the administrative review committee finds the need for additional or clarifying information, the review committee may 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, sign and enter 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 by registered or certified mail to the applicant.

E. Judicial review: Judicial review of the administrative review committee's final decision is permitted to the extent provided by law. The party requesting the appeal shall bear the cost of such appeal.

[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 marijuana in accordance with Section 40-5A-6 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 USE MARIJUANA AND CRIMINAL PENALTIES:

A. Participation in a medical use of marijuana 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 marijuana to qualified patients or their primary caregivers shall take place at locations that are designated by the department and that are not 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 a 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 marijuana to a person not approved by the department pursuant to this rule and the act, or obtains or transports marijuana 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 will be provided to licensed producers who are qualified patients 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.

(3) The department may review any and all employee, qualified patient or primary caregiver's 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. Corrective action:

(1) If violations of these requirements are cited as a result of monitoring, 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.

C. 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 all lawful privileges under the act.

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 any provisions of these requirements;

(2) failure to allow a monitoring visit by authorized representatives of the department;

(3) the discovery of repeated violations of these requirements during monitoring visits.

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 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 include the following:

(1) a statement of the facts relevant to the review of the action;

(2) a statement of the provision of the act and the rules promulgated under the act that are relevant to the review of the action;

(3) a statement of the arguments that the appellant considers relevant to the review of the action; and

(4) any other evidence considered relevant.

D. Hearing process:

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

(2) Except for telephonic hearings, hearings shall be conducted in Albuquerque or, upon written request by an aggrieved person, in the place or area affected.

(3) All hearings held pursuant to this section shall be open to the public.

(4) The hearing shall be recorded on audiotape or other means of sound reproduction, or by a certified court reporter. The decision as to the type of recording shall be at the discretion of the department.

(5) Any hearing provided for in this rule may be held telephonically, in the interest of a speedy resolution.

E. 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. 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 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 and such evidence shall be sufficient in itself to support a finding if the evidence is reliable, regardless of the existence of any statutory or common law rule that shall make admission of such evidence improper in a civil action. Irrelevant, immaterial or unduly repetitious evidence may be excluded by the hearing examiner at a party's request or on the hearing examiner's own initiative.

(3) Documentary evidence shall be received in evidence in the form of true copies of the original.

(4) 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.

(5) The experience, technical competence and specialized knowledge of the hearing examiner, the department or the department's staff shall be used in the evaluation of evidence.

(6) Evidence on which the hearing examiner shall base his or her decision is limited to the following:

(a) all evidence, including any records, investigation reports and documents in the department's possession of which the department desires to avail itself as evidence in making a decision that is offered and made a part of the record of the proceeding; and

(b) testimony and exhibits introduced by the parties.

J. The record shall include all briefs, proposed findings and exceptions and shall show the ruling on each finding, exception or conclusion presented.

K. A party to a hearing shall submit to the hearing examiner and to all other parties to the hearing all documents to be introduced at the hearing no later than five (5) business days from the scheduled hearing date to insure the hearing examiner and other parties receive the documents prior to the hearing.

L. Conduct of proceeding: Unless the hearing examiner reasonably determines 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.

M. Burden of proof: The appellant bears the burden of showing by a preponderance of the evidence that the decision made by the department or an agent of the department shall be reversed or modified.

N. 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.

O. Telephonic hearings:

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

(2) Any party that has agreed to a telephonic hearing, but subsequently requests an in-person hearing shall do so in writing to the hearing examiner no later than ten (10) calendar days before the scheduled date of the hearing. The decision to grant or deny the request for an in-person hearing shall be at the discretion of the hearing examiner for good cause shown. The hearing examiner's decision to grant or deny the hearing shall be issued in writing and shall include the specific reasons for granting or denying the request. Should the hearing examiner grant the request, the hearing shall be rescheduled to a time convenient for all parties. Should the hearing examiner deny the request, the telephonic hearing shall proceed as scheduled.

(3) The location or locations of the parties during the hearing shall have a speaker telephone and facsimile machine available so that all shall hear the proceedings and documents shall be transmitted between witnesses and the hearing examiner.

(4) 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.

(5) 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.

P. 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. Should the hearing examiner request briefs or grant a party's motion to submit briefs, the hearing shall be continued until the hearing examiner has given the briefs sufficient consideration and brings the hearing to a close. The hearing, however, shall be completed no later than forty-five (45) calendar days from the date of continuance.

(2) No more than thirty (30) calendar days after completion of the hearing, 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 or the department's agent.

(3) 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 the specific action taken to sustain, modify or reverse the initial decision of the department or the department's agent. Service shall be made by registered or certified mail.

(4) The final decision or order shall be public information and shall become a part of the record.
[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 MARIJUANA:

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 dispensing of marijuana in accordance with this rule and the act.

B. Any property interest that is possessed, owned or used in connection with the production of marijuana 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. Marijuana, paraphernalia or other property seized from a qualified patient or primary caregiver in connection with the claimed medical use of marijuana 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 marijuana 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 MARIJUANA: Unused marijuana 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]