

26-2B-3. Definitions.

As used in the Lynn and Erin Compassionate Use Act:

A. "adequate supply" means an amount of cannabis, in any 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 rule of the department to be no more than reasonably necessary to ensure the uninterrupted availability of cannabis for a period of three months and that is derived solely from an intrastate source;

B. "cannabis":

(1) means all parts of the plant *Cannabis sativa* L. containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and

(2) does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; the sterilized seed of the plant that is incapable of germination; the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink or another product; or hemp;

C. "cannabis consumption area" means an area within a licensed premises approved by the department where cannabis may be consumed that complies with rule as established by the department;

D. "cannabis courier" means a person that is licensed by the department to transport usable cannabis and cannabis products within the state from a cannabis establishment to:

- (1) a qualified patient;
- (2) a primary caregiver; or
- (3) another cannabis establishment;

E. "cannabis establishment" means:

- (1) a licensed cannabis courier;
- (2) a licensed cannabis testing facility;

- (3) a licensed cannabis manufacturer;
- (4) a licensed cannabis producer; or
- (5) such other person that the department may by rule approve for participation in the medical cannabis program;

F. "cannabis manufacturer" means a person that is licensed by the department to:

- (1) manufacture cannabis products;
- (2) package, transport or courier cannabis products;
- (3) have cannabis products tested by a cannabis testing facility;
- (4) purchase, obtain, sell and transport cannabis products to other cannabis establishments; and
- (5) prepare products for personal production license holders;

G. "cannabis producer" means a person that is licensed by the department to possess, produce, dispense, distribute and manufacture cannabis and cannabis products and sell wholesale or by direct sale to qualified patients and primary caregivers;

H. "cannabis product":

- (1) means a product that contains cannabis, including edible or topical products that may also contain other ingredients; and
- (2) does not include the weight of any other ingredient combined with cannabis or cannabis extract to prepare topical or oral administrations, food, drink or another product;

I. "cannabis testing facility" means a person that is licensed by the department to perform tests of cannabis products to analyze the strength or purity of the items and to collect cannabis samples and transport cannabis products to the cannabis testing facility from cannabis establishments;

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) seizure disorder, including 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;
- (8) amyotrophic lateral sclerosis;
- (9) Crohn's disease;
- (10) hepatitis C infection;
- (11) Huntington's disease;
- (12) inclusion body myositis;
- (13) inflammatory autoimmune-mediated arthritis;
- (14) intractable nausea or vomiting;
- (15) obstructive sleep apnea;
- (16) painful peripheral neuropathy;
- (17) Parkinson's disease;
- (18) posttraumatic stress disorder;
- (19) severe chronic pain;
- (20) severe anorexia or cachexia;
- (21) spasmodic torticollis;
- (22) ulcerative colitis; or
- (23) any other medical condition, medical treatment or disease as approved by the department;

K. "department" means the department of health;

L. "hemp" means the plant cannabis sativa L. and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol concentration of no more than three-tenths percent on a dry weight basis;

M. "license" means a license issued pursuant to the Lynn and Erin Compassionate Use Act;

N. "licensee" means a person that holds a license;

O. "licensee representative" means an owner, director, officer, manager, employee, agent or other representative of a licensee, to the extent that person acts in a representative capacity;

P. "manufacture" means to prepare a cannabis product;

Q. "medical cannabis program" means the program established pursuant to the Lynn and Erin Compassionate Use Act for authorization and regulation of the medical use of cannabis in the state;

R. "personal production license" means a license issued to a qualified patient or to a qualified patient's primary caregiver participating in the medical cannabis program to permit the qualified patient or the qualified patient's primary caregiver to produce cannabis for the qualified patient's use at an address approved by the department;

S. "practitioner" means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act;

T. "primary caregiver" means a resident of New Mexico who is at least eighteen years of age and who has been designated by the patient's practitioner as being necessary to take responsibility for managing the well-being of a qualified patient with respect to the medical use of cannabis pursuant to the provisions of the Lynn and Erin Compassionate Use Act;

U. "produce" means to engage in any activity related to the planting or cultivation of cannabis;

V. "qualified patient" means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card pursuant to the Lynn and Erin Compassionate Use Act on the basis of having been diagnosed, in person or via telemedicine, by a practitioner as having a debilitating medical condition; provided that a practitioner may only issue a written certification on the basis of an evaluation conducted via telemedicine if the practitioner has previously examined the patient in person;

W. "reciprocal participant" means an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo;

X. "registry identification card" means a document that the department issues:

(1) to a qualified patient that identifies the bearer as a qualified patient and authorizes the qualified patient to use cannabis for a debilitating medical condition; or

(2) to a primary caregiver that identifies the bearer as a primary caregiver authorized to engage in the intrastate possession and administration of cannabis for the sole use of a qualified patient who is identified on the document;

Y. "safety-sensitive position" means a position in which performance by a person under the influence of drugs or alcohol would constitute an immediate or direct threat of injury or death to that person or another;

Z. "telemedicine" means the use of telecommunications and information technology to provide clinical health care from a site apart from the site where the patient is located, in real time or asynchronously, including the use of interactive simultaneous audio and video or store-and-forward technology, or off-site patient monitoring and telecommunications in order to deliver health care services;

AA. "THC" means delta-9-tetrahydrocannabinol, a substance that is the primary psychoactive ingredient in cannabis; and

BB. "written certification" means a statement made on a department-approved form and signed by a patient's practitioner that indicates, in the practitioner's professional opinion, that the patient has a debilitating medical condition and the practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the patient.

History: [Laws 2007, ch. 210, § 3](#); [2019, ch. 247, § 3](#); [2020, ch. 4, § 1](#).

ANNOTATIONS

The 2020 amendment, effective February 20, 2020, limited the definition of "qualified patient," as used in the Lynn and Erin Compassionate Use Act, to residents of New Mexico; and in Subsection V, after "means a", deleted "person" and added "resident of New Mexico".

The 2019 amendment, effective June 14, 2019, defined certain terms related to medical cannabis and medical cannabis programs as used in the Lynn and Erin Compassionate Use Act; added new Subsections B through I and redesignated former Subsections B and C as Subsections J and K, respectively; in Subsection J, in Paragraph J(5), after the paragraph designation, added "seizure disorder, including", added new Paragraphs J(8) through J(22) and redesignated former Paragraph J(8) as

Paragraph J(23); deleted Subsection D, which defined "licensed producer"; added new Subsections L through R and redesignated former Subsections E and F as Subsections S and T, respectively; added new Subsection U and redesignated former Subsection G as Subsection V; in Subsection V, after "means a", deleted "resident of New Mexico" and added "person", and after "Lynn and Erin Compassionate Use Act", deleted "and" and added "on the basis of having been diagnosed, in person or via telemedicine, by a practitioner as having a debilitating medical condition; provided that a practitioner may only issue a written certification on the basis of an evaluation conducted via telemedicine if the practitioner has previously examined the patient in person"; added new Subsections W through AA and redesignated former Subsection H as Subsection BB; and in Subsection BB, after "means a statement", deleted "in a patient's medical records or a statement" and added "made on a department-approved form and", and after "health risks for the patient", deleted "A written certification is not valid for more than one year from the date of issuance".

Temporary provisions. — [Laws 2019, ch. 247, § 15](#) provided that a licensed producer, as defined in the Lynn and Erin Compassionate Use Act prior to the enactment of Laws 2019, ch. 247 shall be considered to be a cannabis producer, as defined by Laws 2019, ch. 247.

Written certification is the functional equivalent of a prescription. — Under the Lynn and Erin Compassionate Use Act, the written certification required by a person licensed in New Mexico to prescribe and administer controlled substances is the functional equivalent of a prescription as defined in the Worker's Compensation Act, [52-1-1 NMSA 1978 et seq. *Maez v. Riley Industrial*, 2015-NMCA-049](#).

26-2B-4. Exemption from criminal and civil penalties for the medical use of cannabis.

A. A qualified patient or a qualified patient's primary caregiver shall not be subject to arrest, prosecution or penalty in any manner for the possession of or the medical use of cannabis if the quantity of cannabis does not exceed an adequate supply; provided that a qualified patient or the qualified patient's primary caregiver may possess that qualified patient's harvest of cannabis.

B. A reciprocal participant shall not be subject to arrest, prosecution or penalty in any manner for the possession of or the medical use of cannabis if the quantity of cannabis does not exceed the limit identified by department rule.

C. The following conduct is lawful and shall not constitute grounds for detention, search or arrest of a person or for a violation of probation or parole, and cannabis products that relate to the conduct are not contraband or subject to seizure or forfeiture pursuant to the Controlled Substances Act or the Forfeiture Act [[31-27-1](#) to [31-27-8](#) NMSA 1978]:

(1) a qualified patient or primary caregiver possessing or transporting not more than an adequate supply or a reciprocal participant possessing or transporting not more than the limit identified by department rule;

(2) a qualified patient or primary caregiver purchasing or obtaining not more than an adequate supply from a lawful source or a reciprocal participant purchasing or obtaining not more than the limit identified by department rule;

(3) a qualified patient using or being under the influence of cannabis; provided that the qualified patient is acting consistent with law;

(4) a qualified patient or primary caregiver transferring, without financial consideration, to a qualified patient or primary caregiver not more than two ounces of cannabis; or

(5) with respect to cannabis cultivated under a personal production license, a qualified patient or primary caregiver possessing, planting, cultivating, harvesting, drying, manufacturing or transporting cannabis plants or cannabis products as allowed by department rule; provided that a qualified patient or primary caregiver who possesses a personal production license shall not manufacture cannabis products using an oil extractor solvent that is stored under pressure unless the qualified patient or primary caregiver holds a separate license from the department permitting the person to manufacture cannabis products using an oil extractor solvent that is under pressure.

D. Subsection A of this section shall not apply to a qualified patient under the age of eighteen years, unless:

(1) the qualified patient's practitioner has explained the potential risks and benefits of the medical use of cannabis to the qualified patient and to a parent, guardian or person having legal custody of the qualified patient; and

(2) a parent, guardian or person having legal custody consents in writing to:

(a) allow the qualified patient's medical use of cannabis;

(b) serve as the qualified patient's primary caregiver; and

(c) control the dosage and the frequency of the medical use of cannabis by the qualified patient.

E. A qualified patient or a primary caregiver shall be granted the full legal protections provided in this section if the qualified patient or primary caregiver is in possession of a registry identification card. If the qualified patient or primary caregiver is not in possession of a registry identification card, the qualified patient or primary caregiver shall be given an opportunity to produce the registry identification card before any arrest or criminal charges or other penalties are initiated.

F. A practitioner shall not be subject to arrest or prosecution, penalized in any manner or denied any right or privilege for recommending the medical use of cannabis

or providing written certification for the medical use of cannabis pursuant to the Lynn and Erin Compassionate Use Act.

G. A licensee or licensee representative shall not be subject to arrest, prosecution or penalty, in any manner, for the production, possession, manufacture, distribution, dispensing or testing of cannabis pursuant to the Lynn and Erin Compassionate Use Act. Conduct by a licensee or a licensee representative that is allowed pursuant to a license and conduct by a person that allows property to be used by a licensee or a licensee representative for conduct allowed pursuant to a license is lawful, is not a violation of state or local law and is not a basis for seizure or forfeiture of property or assets under state or local law.

H. Any property interest that is possessed, owned or used in connection with the medical use of cannabis, or acts incidental to such use, shall not be harmed, neglected, injured or destroyed while in the possession of 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 the Lynn and Erin Compassionate Use Act, as may be evidenced by a failure to actively investigate the case, a decision not to prosecute, the dismissal of charges or acquittal.

I. state or local government shall not impose a criminal, civil or administrative penalty on a licensee or a licensee representative, or on a person that allows property to be used by a licensee or a licensee representative pursuant to a license, solely for conduct that is allowed pursuant to a license.

J. A person shall not be subject to arrest or prosecution for a cannabis-related offense for simply being in the presence of the medical use of cannabis as permitted under the provisions of the Lynn and Erin Compassionate Use Act.

History: [Laws 2007, ch. 210, § 4](#); [2019, ch. 247, § 4](#)

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, revised provisions related to the exemption of the medical use of cannabis from criminal and civil penalties; in Subsection A, after "qualified patient", added "or a qualified patient's primary caregiver", and after "adequate supply;", added "provided that a qualified patient or the qualified patient's primary caregiver may possess that qualified patient's harvest of cannabis"; deleted former Subsection B, added new Subsections B and C and redesignated former Subsections C through G as Subsections D through H, respectively; in Subsection E, added "qualified" preceding each occurrence of "patient" and added "primary" preceding each occurrence of "caregiver"; in Subsection G, after "A", deleted "licensed producer" and added "licensee or licensee representative", after "possession", added

"manufacture", after "dispensing", added "testing", and added the last sentence; and added a new Subsection I and redesignated former Subsection H as Subsection J.

26-2B-5. Prohibitions, restrictions and limitations on the medical use of cannabis; criminal penalties.

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

(1) criminal prosecution or civil penalties for activities not authorized in the Lynn and Erin Compassionate Use Act;

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

(3) criminal prosecution or civil penalty for possession or use of cannabis:

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

(b) at a public park, recreation center, youth center or other public place.

B. A person who makes a fraudulent representation to a law enforcement officer about the person's participation in a medical use of cannabis program to avoid arrest or prosecution for a cannabis-related offense is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section [31-19-1 NMSA 1978](#).

C. If a licensee or the licensee's representative sells, distributes, dispenses or transfers cannabis to a person not approved by the department pursuant to the Lynn and Erin Compassionate Use Act or obtains or transports cannabis outside New Mexico, the licensee or the licensee's representative shall be subject to arrest, prosecution and civil or criminal penalties pursuant to state law.

History: [Laws 2007, ch. 210, § 5](#); [2019, ch. 247, § 5](#); [2019, ch. 247, § 5](#); [2019, ch. 261, § 2](#).

ANNOTATIONS

2019 Multiple Amendments. – [Laws 2019, ch. 247, § 5](#) and [Laws 2019, ch. 261, § 2](#), both effective June 14, 2019, enacted different amendments to this section that can be reconciled. Pursuant to [12-1-8 NMSA 1978](#), [Laws 2019, ch. 261, § 2](#), as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by [Laws 2019, ch. 247, § 5](#) and [Laws 2019, ch. 261, § 2](#) are described below. To view the session laws in their entirety, see the 2019 session laws on [NMOneSource.com](#).

The nature of the difference between the amendments is that [Laws 2019, ch. 247, § 5](#), removed certain restrictions related to the use or possession of cannabis, and [Laws](#)

2019, ch. 261, § 2, removed certain restrictions related to the use or possession of cannabis.

Laws 2019, ch. 247, § 5, effective June 14, 2019, removed certain restrictions related to the use or possession of cannabis; in Subsection A, Paragraph A(3), deleted Subparagraphs A(3)(a) and A(3)(b) and redesignated former Subparagraphs A(3)(c) and A(3)(d) as Subparagraphs A(3)(a) and A(3)(b), respectively; and in Subsection C, after "If a", deleted "licensed producer" and added "licensee or the licensee's representative", and after "outside New Mexico", deleted "in violation of federal law, the licensed producer" and added "the licensee or the licensee's representative".

Laws 2019, ch. 261, § 2, effective June 14, 2019, removed certain restrictions related to the use or possession of cannabis; and in Subsection A, Paragraph A(3), deleted Subparagraphs A(3)(a) and A(3)(b) and redesignated former Subparagraphs A(3)(c) and A(3)(d) as Subparagraphs A(3)(a) and A(3)(b), respectively.

26-2B-6. Advisory board created; duties.

The secretary of health shall establish an advisory board consisting of nine practitioners knowledgeable about the medical use of cannabis. The members shall be chosen for appointment by the secretary from a list proposed by the New Mexico medical society, the New Mexico nurses association, the New Mexico academy of family physicians, the New Mexico academy of physician assistants, the New Mexico pharmacists association or the New Mexico Hispanic medical association. A quorum of the advisory board shall consist of five members. The advisory board shall:

- A. review and recommend to the department for approval additional debilitating medical conditions that would benefit from the medical use of cannabis;
- B. 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;
- C. convene at least twice per year to conduct public hearings and to evaluate petitions, which shall be maintained as confidential personal health information, to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis;
- D. issue recommendations concerning rules to be promulgated for the issuance of the registry identification cards;
- E. recommend quantities of cannabis that are necessary to constitute an adequate supply for qualified patients and primary caregivers;
- F. recommend formulation or preparations of cannabis or cannabis products; and
- G. recommend quantities of cannabis that a reciprocal participant may obtain and possess.

History: Laws 2007, ch. 210, § 6; 2019, ch. 247, § 6.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, increased the number of members of the advisory board, provided that additional entities may propose members to be appointed to the advisory board, and required the advisory board to recommend formulation or preparations of cannabis and to recommend quantities of cannabis that a reciprocal participant may obtain and possess; in the introductory paragraph, after "consisting of", deleted "eight" and added "nine", after "practitioners", deleted "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", after "New Mexico medical society,", added "the New Mexico nurses association, the New Mexico academy of family physicians, the New Mexico academy of physician assistants, the New Mexico pharmacists association or the New Mexico Hispanic medical association", and after "shall consist of", deleted "three" and added "five"; and added new Subsections F and G.

26-2B-6.1. Program regulation and administration; fees; limitations; rulemaking; licensure; issuance; reporting.

A. The department shall:

- (1) regulate and administer the medical cannabis program; and
- (2) collect fees from licensees; provided that the department shall not charge a fee relating to the medical cannabis registry.

B. By December 20, 2019, the secretary of health shall adopt and promulgate rules to establish fees for licenses for cannabis producers, cannabis manufacturers, cannabis couriers, cannabis testing facilities or any other cannabis establishments whose operations are authorized pursuant to the Lynn and Erin Compassionate Use Act.

C. The department shall establish application and licensing fees applicable to licenses for activity related to the medical cannabis program.

D. The department shall administer licensure for medical cannabis program activity provided for in the Lynn and Erin Compassionate Use Act, which shall include personal production licenses and licenses for:

- (1) cannabis couriers;
- (2) cannabis manufacturers;
- (3) cannabis producers;

- (4) cannabis testing facilities; and
- (5) any other activity or person as deemed necessary by the department.

E. The department shall not issue any other license provided for in this section to a cannabis testing facility licensee.

F. In consultation with qualified patients and primary caregivers, the department shall produce an assessment report annually, which shall be published to the public and that includes at a minimum an evaluation of:

- (1) the affordability of and accessibility to medical cannabis pursuant to the Lynn and Erin Compassionate Use Act; and
- (2) the needs of qualified patients who live in rural areas, federal subsidized housing or New Mexico Indian nations, tribes or pueblos.

G. The department shall allow for the smoking, vaporizing and ingesting of cannabis products within a cannabis consumption area on the premises if:

- (1) access is restricted to qualified patients and their primary caregivers;
- (2) cannabis consumption is not visible from any public place or from outside the cannabis consumption area; and
- (3) qualified patients who consume cannabis on the premises have a designated driver or other means of transportation consistent with current law.

History: [Laws 2019, ch. 247, § 8](#)

ANNOTATIONS

Effective dates. — Laws 2019, ch. 247 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 14, 2019, 90 days after the adjournment of the legislature.

26-2B-7. Registry identification cards; department rules; duties; reciprocity.

A. After consultation with the advisory board, the department shall promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to implement the purpose of the Lynn and Erin Compassionate Use Act. The rules shall:

- (1) govern the manner in which the department will consider applications for registry identification cards and for the renewal of identification cards for qualified patients and primary caregivers;

(2) define the amount of cannabis that is necessary to constitute an adequate supply, including amounts for topical treatments;

(3) identify criteria and set forth procedures for including additional medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis. Procedures shall include a petition process and shall allow for public comment and public hearings before the advisory board;

(4) set forth additional medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis as recommended by the advisory board;

(5) identify requirements for the licensure of cannabis producers and cannabis production facilities, cannabis couriers, cannabis manufacturers, cannabis testing facilities and any other cannabis establishments that the department may license and set forth procedures to obtain licenses;

(6) develop a distribution system for the medical cannabis program that provides for:

(a) cannabis production facilities within New Mexico housed on secured grounds and operated by licensees; and

(b) distribution of cannabis to qualified patients or their primary caregivers to 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 that were in existence in that location before the licensee distributing medical cannabis nearby was licensed; provided that this distance requirement shall not apply to distribution at the home of the qualified patient or primary caregiver;

(7) identify requirements for testing and labeling of cannabis and cannabis products for quality assurance. The department shall adopt and promulgate rules pursuant to this paragraph by December 20, 2019;

(8) determine additional duties and responsibilities of the advisory board; and

(9) be revised and updated as necessary.

B. The department shall issue registry identification cards to a patient and to the primary caregiver for that patient, if any, who submit the following, in accordance with the department's rules:

(1) a written certification;

(2) the name, address and date of birth of the patient;

- (3) the name, address and telephone number of the patient's practitioner; and
- (4) the name, address and date of birth of the patient's primary caregiver, if any.

C. The department shall verify the information contained in an application submitted pursuant to Subsection B of this section and shall approve or deny an application within thirty days of receipt. The department may deny an application only if the applicant did not provide the information required pursuant to Subsection B of this section or if the department determines that the information provided is false. A person whose application has been denied shall not reapply for six months from the date of the denial unless otherwise authorized by the department.

D. The department shall issue a registry identification card within five days of approving an application, and a card shall expire three years after the date of issuance.

E. A registry identification card shall contain:

- (1) the name and date of birth of the qualified patient and primary caregiver, if any;
- (2) the date of issuance and expiration date of the registry identification card; and
- (3) other information that the department may require by rule.

F. A person who possesses a registry identification card shall notify the department of any change in the person's name, qualified patient's practitioner, qualified patient's primary caregiver or change in status of the qualified patient's debilitating medical condition within ten days of the change.

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

H. The department shall maintain a confidential file containing the names and addresses of the persons who have either applied for or received a registry identification card. 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 Lynn and Erin Compassionate Use Act;

(2) to authorized employees of state or local law enforcement agencies, but only for the purpose of verifying that a person is lawfully in possession of a registry identification card; or

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

I. By March 1, 2020, the secretary of health shall adopt and promulgate rules relating to medical cannabis program reciprocity. The department may identify requirements for the granting of reciprocity, including provisions limiting the period of time in which a reciprocal participant may participate in the medical cannabis program.

J. A reciprocal participant:

(1) may participate in the medical cannabis program in accordance with department rules;

(2) shall not be required to comply with the registry identification card application and renewal requirements established pursuant to this section and department rules;

(3) shall at all times possess proof of authorization to participate in the medical cannabis program of another state, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo and shall present proof of that authorization when purchasing cannabis from a licensee; and

(4) shall register with a licensee for the purpose of tracking sales to the reciprocal participant in an electronic system that is accessible to the department.

History: [Laws 2007, ch. 210, § 7](#); [2019, ch. 247, § 7](#).

ANNOTATIONS

Cross references. — For the Federal Health Insurance Portability and Accountability Act of 1996, see 42 U.S.C. § 300gg et seq.

The 2019 amendment, effective June 14, 2019, provided additional duties for the department of health; in the section heading, added "reciprocity"; in Subsection A, in the introductory paragraph, deleted "No later than October 1, 2007, and", in Paragraph A(5), after "licensure of", added "cannabis", and after "production facilities", added "cannabis couriers, cannabis manufacturers, cannabis testing facilities and any other cannabis establishments that the department may license", in Paragraph A(6), after "medical cannabis", added "program", in Subparagraph A(6)(b), after "daycare center", added "that were in existence in that location before the licensee distributing medical cannabis nearby was licensed; provided that this distance requirement shall not apply to distribution at the home of the qualified patient or primary caregiver", added a new Paragraph A(7) and redesignated former Paragraphs A(7) and A(8) as Paragraphs A(8) and A(9), respectively; in Subsection D, after "shall expire", deleted "one year" and

added "three years"; added new subsection designation "E." and redesignated former Subsections E through G as Subsections F through H, respectively; and added Subsections I and J.

26-2B-7.1. Registry identification card; registration; renewal; written certification.

The department shall require a qualified patient to reapply for a registry identification card no sooner than two years and eleven months from the date the patient's current registry identification card is issued; provided that, in order to remain eligible for participation in the medical cannabis program established pursuant to the Lynn and Erin Compassionate Use Act, a qualified patient shall submit annually to the department a statement from a practitioner indicating that:

A. the practitioner has examined the qualified patient during the preceding twelve months;

B. the qualified patient continues to have a debilitating medical condition; and

C. the practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the qualified patient.

History: [Laws 2019, ch. 247, § 9.](#)

ANNOTATIONS

Effective dates. — Laws 2019, ch. 247 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 14, 2019, 90 days after the adjournment of the legislature.

26-2B-8. THC content; no limitation.

The department shall not limit the amount of THC concentration in a cannabis product; provided that the department may by rule adopt requirements for apportionment and packaging of cannabis products.

History: [Laws 2019, ch. 247, § 10.](#)

ANNOTATIONS

Effective dates. — Laws 2019, ch. 247 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 14, 2019, 90 days after the adjournment of the legislature.

26-2B-9. Employment protections.

A. Unless a failure to do so would cause the employer to lose a monetary or licensing-related benefit under federal law or federal regulations, it is unlawful to take an

adverse employment action against an applicant or an employee based on conduct allowed under the Lynn and Erin Compassionate Use Act.

B. Nothing in this section shall:

(1) restrict an employer's ability to prohibit or take adverse employment action against an employee for use of, or being impaired by, medical cannabis on the premises of the place of employment or during the hours of employment; or

(2) apply to an employee whose employer deems that the employee works in a safety-sensitive position.

History: [Laws 2019, ch. 247, § 11.](#)

ANNOTATIONS

Effective dates. — Laws 2019, ch. 247 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 14, 2019, 90 days after the adjournment of the legislature.

Medical marijuana is not an accommodation that must be provided for by employer. — Where plaintiff filed a complaint with the New Mexico human rights division alleging unlawful discrimination by defendant tractor supply company, and where evidence at trial established that plaintiff applied for a management position with defendant, and where, during the interview process, plaintiff advised defendant's hiring manager of his diagnosis of HIV/AIDS and of his participation in the medical cannabis program, and where, after being hired for the job, defendant was required to report to a testing facility to undergo a drug test, the results of which indicated a positive test for cannabis metabolites, and where defendant discharged plaintiff on the basis of the positive drug test, defendant's motion to dismiss was granted because the Lynn and Erin Compassionate Use Act, §§ 26-2B-1 through § [26-2B-10](#) NMSA 1978, which authorizes New Mexico's medical cannabis program, combined with the New Mexico Human Rights Act, §§ 28-1-1 through § [28-1-14](#) NMSA 1978, does not provide a cause of action for plaintiff, as medical marijuana is not an accommodation that must be provided for by the employer. *Garcia v. Tractor Supply Company*, 154 F.Supp.3d 1225 (D.N.M. 2016).

26-2B-10. Persons under state supervision; protections.

A person who is serving a period of probation or parole or who is in the custody or under the supervision of the state or a local government pending trial as part of a community supervision program shall not be penalized for conduct allowed under the Lynn and Erin Compassionate Use Act.

History: [Laws 2019, ch. 247, § 12.](#)

ANNOTATIONS

Effective dates. — Laws 2019, ch. 247 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 14, 2019, 90 days after the adjournment of the legislature.