

ARTICLE 2B Lynn and Erin Compassionate Use Act

26-2B-1. Short title.

Chapter 26, Article 2B NMSA 1978 may be cited as the "Lynn and Erin Compassionate Use Act" in honor of Lynn Pierson and Erin Armstrong.

History: Laws 2007, ch. 210, § 1; 2019, ch. 247, § 2.

ANNOTATIONS

Severability. — Laws 2007, ch. 210, §11 provided for the severability of the Lynn and Erin Compassionate Use Act if any part or application thereof is held invalid.

The 2019 amendment, effective June 14, 2019, changed "Sections 1 through 7 of this act" to "Chapter 26, Article 2B NMSA 1978".

26-2B-2. Purpose of act.

The purpose of the Lynn and Erin Compassionate Use Act is to allow the beneficial use of medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments.

History: Laws 2007, ch. 210, § 2.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 210, § 12 made the Lynn and Erin Compassionate Use Act effective July 1, 2007.

Severability. — Laws 2007, ch. 210, §11 provided for the severability of the Lynn and Erin Compassionate Use Act if any part or application thereof is held invalid.

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 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 extract":

(1) means a product obtained by separating resins from cannabis by solvent extraction using solvents other than vegetable glycerin, such as butane, hexane, isopropyl alcohol, ethanol or carbon dioxide; and

(2) does not include the weight of any other ingredient combined with cannabis extract to prepare topical or oral administrations, food, drink or another product;

D. "cannabis flowers" means only the flowers of a cannabis plant;

E. "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;

F. "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;

G. "department" means the department of health;

H. "division" means the cannabis control division of the regulation and licensing department;

I. "dry weight basis" means a process by which delta—9-tetrahydrocannabinol concentration is measured relative to the aggregate weight of all parts of the plant genus *Cannabis*, whether growing or not, including the leaves of the plant, the flowers and buds of the plant, the seeds of the plant, the resin of the plant and the stalks of the plant, at the point of harvest and with no moisture added to the harvested plant;

J. "hemp" means the plant genus *Cannabis* 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;

K. "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;

L. "practitioner" means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978];

M. "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;

N. "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;

O. "reciprocal participant" means a person who is not a resident of New Mexico and who holds proof of enrollment by a governmental regulatory authority to participate in the medical cannabis program of another state of the United States, the District of Columbia or a territory or commonwealth of the United States in which the person resides or a person who holds proof of enrollment by a governmental regulatory authority of a New Mexico Indian nation, tribe or pueblo to participate in its medical cannabis program;

P. "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;

Q. "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;

R. "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;

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

T. "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; 2021 (1st S.S.), ch. 4, § 58.

ANNOTATIONS

The 2021 (1st S.S.) amendment, effective June 29, 2021, defined "cannabis extract", "cannabis flowers", "division", and "dry weight basis", revised the definitions of "qualified patient" and "reciprocal participant", and removed the definitions of "cannabis consumption area", "cannabis courier", "cannabis establishment", "cannabis manufacturer", "cannabis producer", "cannabis testing facility", "license", "licensee", "licensee representative", "manufacture", "personal production license" and "produce", as used in the Lynn and Erin Compassionate Use Act; deleted former Subsections C through G; added new Subsections C and D and redesignated former Subsection H as Subsection E; deleted former Subsection I and redesignated former Subsections J and K as Subsections F and G, respectively; added new Subsections H and I and redesignated former Subsection L as Subsection J; deleted former Subsections M through P and redesignated former Subsection Q as Subsection K; deleted former Subsection R and redesignated former Subsections S and T as

Subsections L and M, respectively; deleted former Subsection U and redesignated former Subsections V through BB as Subsections N through T, respectively; in Subsection N, after "debilitating medical condition", deleted "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"; and in Subsection O, after "means", deleted "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" and added the remainder of the subsection.

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 [Chapter 30, Article 31 NMSA 1978] or the Forfeiture Act [Chapter 31, Article 27 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 or reciprocal participant using or being under the influence of cannabis; provided that the qualified patient or reciprocal participant is acting consistent with law; or
- (4) a qualified patient, primary caregiver or reciprocal participant transferring, without financial consideration, to a qualified patient, primary caregiver or reciprocal participant not more than two ounces of cannabis, sixteen grams of cannabis extract and eight hundred milligrams of edible cannabis.

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 other person having legal custody of the qualified patient; and
- (2) a parent, guardian or other 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. 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. 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, primary caregiver or reciprocal participant 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, primary caregiver or reciprocal participant 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.

H. 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 allowed under the provisions of the Lynn and Erin Compassionate Use Act.

History: **Laws 2007, ch. 210, § 4; 2019, ch. 247, § 4; 2021 (1st S.S.), ch. 4, § 59.**

ANNOTATIONS

The 2021 (1st S.S.) amendment, effective June 29, 2021, made amendments to conform the Lynn and Erin Compassionate Use Act with the newly enacted Cannabis Regulation Act; in Subsection C, Paragraph C(3), added "or reciprocal participant" after each occurrence of "qualified patient"; in Paragraph C(4), added "or reciprocal participant" after each occurrence of "primary caregiver", after "two ounces of cannabis", added "sixteen grams of cannabis extract and eight hundred milligrams of edible cannabis", and deleted former Paragraph C(5); deleted former Subsection G and redesignated former Subsection H as new Subsection G; in Subsection G, added "or reciprocal participant" after each occurrence of "primary caregiver"; and deleted former Subsection I and redesignated former Subsection J as Subsection H.

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, primary caregiver or reciprocal participant does not relieve the qualified patient, primary caregiver or reciprocal participant 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, primary caregiver's or reciprocal participant'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.

History: [Laws 2007, ch. 210, § 5](#); [2019, ch. 247, § 5](#); [2019, ch. 247, § 5](#); [2019, ch. 261, § 2](#); [2021 \(1st S.S.\), ch. 4, § 60](#).

ANNOTATIONS

The 2021 (1st S.S.) amendment, effective June 29, 2021, made amendments to conform the Lynn and Erin Compassionate Use Act with the newly enacted Cannabis Regulation Act; in Subsection A, added "or reciprocal participant" after each occurrence of "primary caregiver"; and deleted former Subsection C, which related to criminal penalties for selling, distributing, dispensing or transferring cannabis.

2019 Amendments. — [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. Assessment reporting.

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:

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

History: [Laws 2019, ch. 247, § 8](#); [2021 \(1st S.S.\), ch. 4, § 61](#).

ANNOTATIONS

The 2021 (1st S.S.) amendment, effective June 29, 2021, made amendments to conform the Lynn and Erin Compassionate Use Act with the newly enacted Cannabis Regulation Act; in the section heading, deleted "Program regulation and administration; fees; limitations; rulemaking; licensure; issuance" and added "Assessment"; deleted former Subsections A through E; deleted subsection designation "F" and placed the language from former Subsection F as the introductory clause and redesignated former Paragraphs F(1) and F(2) as Subsections A and B, respectively; and deleted former Subsection G.

Temporary provisions. — [Laws 2021 \(1st S.S.\), ch. 4, § 70](#) provided:

- A. On June 29, 2021, all functions, personnel, money, appropriations, records, furniture, equipment and other property of the department of health's medical cannabis program that are not part of the department's medical cannabis registry powers and duties shall be transferred to the regulation and licensing department.
- B. On June 29, 2021, all contractual obligations and other agreements of the department of health as they pertain to the department's medical cannabis program that are not part of the department's medical cannabis registry powers and duties are binding on the regulation and licensing department.
- C. Statutory references to the department of health that pertain to the department's medical cannabis program that are not part of the department's medical cannabis registry powers and duties shall be deemed to be references to the cannabis control division of the regulation and licensing department.
- D. On June 29, 2021, any unexpended or unencumbered balance in the medical cannabis fund is transferred to the cannabis regulation fund.
- E. Except to the extent any administrative rules are inconsistent with the provisions of this act, any administrative rules adopted by an officer, agency or other entity whose responsibilities have been transferred pursuant to the provisions of this act to another officer, agency or other entity remain in force until amended by the officer, agency or other entity to which the responsibility for the adoption of the rules has been transferred. To the extent any administrative rules are inconsistent with the provisions of this act, such rules are null and void.

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) determine additional duties and responsibilities of the advisory board; and
- (6) 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 two 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;
- (3) to the division; or
- (4) 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 person licensed pursuant to the Cannabis Regulation Act [26-2C-1 to 26-2C-42 NMSA 1978]; and
- (4) shall register with a person licensed pursuant to the Cannabis Regulation Act 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; 2021 (1st S.S.), ch. 4, § 62; 2023, ch. 108, § 1.

ANNOTATIONS

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

The 2023 amendment, effective June 16, 2023, changed the period of validity for a medical cannabis patient registry identification card; and in Subsection D, after "shall expire", changed "three" to "two".

The 2021 (1st S.S.) amendment, effective June 29, 2021, revised rule requirements and duties of the department of health due to the newly enacted Cannabis Regulation Act; in Subsection A, deleted former Paragraphs A(5) through A(7) and redesignated former Paragraphs A(8) and A(9) as Paragraphs A(5) and A(6), respectively; in Subsection H, added a new Paragraph H(3) and redesignated former Paragraph H(3) as Paragraph H(4); and in Subsection J, Paragraphs J(3) and J(4), deleted "licensee" and added "person licensed pursuant to the Cannabis Regulation Act".

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 thirty days before the date the patient's current registry identification card expires; 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 to the department together with the qualified patient's application for a registry card 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; 2023, ch. 108, § 2.

ANNOTATIONS

The **2023 amendment**, effective June 16, 2023, changed the application period for renewal of a medical cannabis patient registry identification card; and after "no sooner than", deleted "two years and eleven months from" and added "thirty days before", after "current registry identification card", deleted "is issued" and added "expires", after "shall submit", deleted "annually", and after "to the department", added "together with the qualified patient's application for a registry card".

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.