This amendment creates a new rule section at 7.34.4.28 NMAC, effective February 25, 2020.

7.34.4.28 RECIPROCITY: Beginning July 1, 2020, 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 may lawfully purchase and possess cannabis, provided that the quantity of cannabis does not exceed the reciprocal limit identified in this section.

A. Reciprocal participation:
   (1) General requirements: A reciprocal participant:
      (a) may participate in the medical cannabis program in accordance with department rules;
      (b) shall not be required to comply with the registry identification card application and renewal requirements established pursuant to this section and department rules;
      (c) 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
      (d) shall register with a licensed non-profit producer for the purpose of tracking sales to the reciprocal participant in an electronic system specified by the department.

   (2) Minors: In the event that a reciprocal participant is a minor, a licensed non-profit producer shall not sell or transfer cannabis to the minor, but may sell or transfer cannabis to a parent or legal guardian of the minor who holds proof of authorization to purchase cannabis on the minor’s behalf that was issued by 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.

B. Reciprocal limit: A reciprocal participant may collectively possess within any three-month period a quantity of usable cannabis no greater than 230 total units. For purposes of department rules, this quantity is deemed the reciprocal limit. (For ease of reference: 230 units is equivalent to 230 grams, or approximately eight ounces, of dried usable cannabis plant material.)

C. Registration; verification; tracking: A licensed non-profit producer shall require the submittal of a reciprocal participant’s contact information for registration purposes, to include the individual’s full name, date of birth, mailing address, and the enrollment number specified in the individual’s medical cannabis program enrollment card (if applicable); and shall record that information in an electronic tracking system specified by the department. The licensed non-profit producer shall confirm the accuracy of a reciprocal participant’s contact information prior to each transaction. A licensed non-profit producer that registers a reciprocal participant or that sells or transfers cannabis or a cannabis product to a reciprocal participant shall first verify the reciprocal participant’s identity by viewing the individual’s proof of authorization from the other state, territory or tribe, and also viewing the reciprocal participant’s government-issued photo identification card. A licensed non-profit producer that sells or otherwise transfers cannabis or a cannabis product to a reciprocal participant shall track the sale or transfer using an electronic system specified for that purpose by the department.

D. Refusal of service: A non-profit producer that reasonably suspects that either a person’s proof of authorization or identification card is falsified may refuse to dispense cannabis to cannabis to that individual.

E. Informational materials: At the time of a sale or transfer of cannabis to a reciprocal participant, a non-profit producer shall provide informational materials to the reciprocal participant that include, at a minimum, a notice of the time and quantity limits for reciprocity under this section, and a notice concerning state and federal prohibitions against the transport of cannabis across state and international boundaries.

[7.34.4.28 NMAC – N, 02/25/2020]
NM AC
Transmittal Form

Volume: XXXI  Issue: 4  Publication date: 102/25/2020  Number of pages: 1  (ALD Use Only)  Sequence No.: 

Issuing agency name and address:
Department of Health, P.O. Box 26110, Santa Fe, NM 87502-6110

Contact person's name: Andrea Sundberg  Phone number: 505-827-2318  E-mail address: andrea.sundberg@state.nm.us

Type of rule action:
New X  Amendment  □  Repeal  □  Emergency  □  Renumber  □

Most recent filing date:

Title number: 7  Title name: HEALTH

Chapter number: 34  Chapter name: MEDICAL USE OF CANNABIS

Part number: 4  Part name: LICENSING REQUIREMENTS FOR PRODUCERS, COURIERS, MANUFACTURERS AND LABORATORIES

Amendment description (If filing an amendment): Creating new rule section

Amendment's NM AC citation (If filing an amendment): Section 7.34.4.28 NM AC

Are there any materials incorporated by reference?  Yes □  No X □

Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received?  Yes □  No □  Public domain □

Specific statutory or other authority authorizing rulemaking:
This rulemaking by the Secretary of the Department of Health is made in accordance with the following authorities: Sections 9-7-6, 26-2b-7, 26-2b-2, and 24-1-3 NMSA 1978.

Notice date(s): N/A  Hearing date(s): N/A  Rule adoption date: 02/13/2020  Rule effective date: 02/25/2020
Concise Explanatory Statement For Rulemaking Adoption:
Findings required for rulemaking adoption:

Findings MUST include:
- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

The findings in support of this amendment are as stated in the attached Statement of Reasons for Adoption of the rule, which is hereby incorporated by reference.

Issuing authority (If delegated, authority letter must be on file with ALD):
Name:  
Kathleen M. Kunkel
Title:  
Cabinet Secretary
Signature:  
7/1/2019
Date signed:  
02/13/2020
STATE OF NEW MEXICO
BEFORE THE SECRETARY OF HEALTH

IN THE MATTER OF THE PROPOSED
NEW RULE SECTION 7.34.4.28 NMAC

STATEMENT OF REASONS
FOR ADOPTION OF NEW RULE SECTION 7.34.4.28 NMAC

The Cabinet Secretary for the New Mexico Department of Health ("Department"), Kathyleen M. Kunkel, hereby adopts an amendment to Medical Cannabis Program rule 7.34.4 NMAC, to add a new section 7.34.4.28 NMAC, concerning Medical Cannabis Program reciprocity. This decision is based on the entire record in this matter, which includes Exhibits 1 through 29, the audio recording of the hearing, and the Report and Recommendation of the Hearing Officer, Craig Erickson, Esq., dated January 30, 2020 and received by the Cabinet Secretary on January 31, 2020 via Federal Express.

In further support of this action, the Cabinet Secretary finds the following:

1. The Department of Health is authorized to promulgate rules as may be necessary to carry out the duties of the Department and its divisions. NMSA 1978, § 9-7-6(E).

2. The Department is also authorized to promulgate rules to implement the purpose of the Lynn and Erin Compassionate Use Act. NMSA 1978, § 26-2b-7.

3. The Lynn and Erin Compassionate Use Act was amended in 2019 to include provisions for granting Medical Cannabis Program reciprocity for persons who hold 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 the statute requires that the Department adopt and promulgate rules relating to reciprocity by March 1, 2020. NMSA 1978, § 26-2b-7(I).
4. By a letter dated October 7, 2019, the Cabinet Secretary designated Mr. Erickson to serve as Hearing Officer for the purposes of conducting the hearing, receiving and reviewing public comment, and submitting a recommendation regarding the proposed rule amendments.

5. In accordance with NMSA 1978, Section 9-7-6(E) and NMSA 1978, § 14-4-5.2, notice of the November 22, 2019 hearing for the proposed rule changes was provided to the public, which included publication in the Albuquerque Journal newspaper on October 15, 2019, and publication in the New Mexico Register on October 15, 2019.

6. In accordance with NMSA 1978, Section 9-7-6(E) and NMSA 1978, § 14-4-5.2, notice of the January 16, 2020 hearing for the proposed rule changes was provided to the public, which included publication in the Albuquerque Journal newspaper on December 17, 2019, and publication in the New Mexico Register on December 17, 2019.

7. Public rule hearings were held at the Harold Runnels Building Auditorium at 1190 Saint Francis Drive in Santa Fe, New Mexico, on November 22, 2019 and January 16, 2020 in accordance with NMSA 1978, Section 9-7-6(E).

8. Members of the public were afforded the opportunity to submit data, views and arguments on the proposed rules orally and in writing, and those comments were received by the Hearing Officer until the close of each respective hearing.

9. The Department initially proposed to repeal and replace 7.34.4 NMAC to include various revisions, including the addition of Section 7.34.4.28 NMAC, and also proposed to amend 7.34.2.7 NMAC and 7.34.3.7 NMAC.

10. The Department now adopts 7.34.4.28 NMAC as an amendment to 7.34.4 NMAC; the rulemaking concerning the repeal and replacement of 7.34.4 NMAC, as well as the proposed amendment of 7.34.2.7 NMAC and 7.34.3.7 NMAC, remains ongoing.
11. The Cabinet Secretary has familiarized himself with the record, including the Report and Recommendation of the Hearing Officer, and finds that the Hearing Officer has appropriately considered the proposed rule changes and the substantive comments made through public comment; and the Secretary adopts the Hearing Officer’s recommendations concerning the proposed rule changes.

12. The Cabinet Secretary finds that the proposed rule changes are appropriate and consistent with authorizing laws, and accordingly, the proposed new rule section 7.34.4.28 NMAC is hereby adopted.

NEW MEXICO DEPARTMENT OF HEALTH

Kathleen M. Kunkel, Cabinet Secretary

Date 2/13/20
Billing Information Sheet

Your agency must complete the following:

Publish in the *New Mexico Register*

Volume: XXXI  Issue: 4  Publication date: 2/25/2020

Agency’s 3-digit DFA code: 665

Purchase order 15-digit number: 0000163239

Agency name: Department of Health
Division name (if applicable): Medical Cannabis Program
Street address or P.O. Box: P.O. Box 26110
City, State and Zip code: Santa Fe, NM 87502-6110

Contact person’s name: Andrea Sundberg
Contact person’s phone number: (505) 827-2318
Contact person’s e-mail address: andrea.sundberg@state.nm.us

Notice name (if submitting a notice):
Example: Notice of Rulemaking Hearing

New Rule Section

**Or** Rule NMAC number and rule name (if filing an amendment, repeal & replace, repeal, new rule etc.)
Example: 19.31.3 NMAC, Hunting and Fishing License Application

7.34.4.28 NMAC, Reciprocity

Electronic file name(s):
(ALD Use Only)

Analyst’s initials:
(ALD Use Only)
CPR - ALD 7/1/2018
State of New Mexico
Purchase Order

PO Number to be on all Invoices and Correspondence

Page: 1

Department of Health
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Santa Fe NM 87502-6110
United States

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STATE RECORDS CENTER & ARCHIVES
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P. O. Box 26110
Santa Fe NM 87502-6110
United States

Bill To: 1190 St. Francis Dr
P. O. Box 26110
Santa Fe NM 87502-6110
United States

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Heath Roybal

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Item Total: $4,500.00

Total PO Amount: $4,500.00

Agency Approval:
I certify that the proposed purchase represented by this document is authorized by and is made in accordance with all State (and if applicable Federal) legislation rules and regulations. I further certify that adequate unencumbered cash and budget expenditure authority exists for this proposed purchase and all other outstanding purchase commitments and accounts payable.

Authorized Signature

[Signature]
NOTIFICATION OF MINOR, NON-SUBSTANTIVE CORRECTION

February 13, 2020

To: Kathleen Kunkel, Secretary  
c/o Chris Woodward, General Counsel Office

From: Matthew Ortiz, Administrative Law Division  
by designation for the State Records Administrator

Re: 7.34.4 NMAC – Licensing Requirements for Producers, Couriers, Manufacturers and Laboratories, filed on February 13, 2020, to be published and effective on February 25, 2020.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

For all official rules and agency copies of the above rules, the transmittal form incorrectly identified the type of rule action as “New” when as a matter of law the type of rule action is “Amendment”. In addition, the notice date and the hearing date are incorrectly identified as “N/A”. In fact, for this rule filing, the notice date is “10/15/2019” and the hearing date is “11/22/2019”.

A copy of this Notification will be filed with the official version of each of the above rules.
NOTIFICATION OF MINOR, NON-SUBSTANTIVE CORRECTION

February 14, 2020

To: Kathleen Kunkel, Secretary
c/o Chris Woodward, General Counsel Office

From: Matthew Ortiz, Administrative Law Division
by designation for the State Records Administrator

Re: 7.34.4 NMAC – Licensing Requirements for Producers, Couriers, Manufacturers and Laboratories, filed on February 13, 2020, to be published and effective on February 25, 2020.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

For all official rule and agency copies of the above rule, the transmittal form and amendment incorrectly identified the new section number as “28”. The section number has been corrected as “30” in all places where the section number is located.

A copy of this Notification will be filed with the official version of each of the above rules.