

Summary of Medical Cannabis Program Rule Amendments to 7.34.4.28 (“Reciprocity”)

The purpose of the proposed amendments to 7.34.4.28 NMAC is to revise requirements for participation as a “reciprocal participant” in the New Mexico Medical Cannabis Program, as described in more detail below.

7.34.4.28, “Reciprocity”: Amendment to first paragraph would add sentence stating, “A qualified patient may not be registered or participate as a reciprocal participant in the New Mexico medical cannabis program.”

This amendment is proposed to ensure that persons who are enrolled as qualified patients do not become registered or attempt to participate in the Program as reciprocal participants. As described herein, reciprocity is intended to enable residents of other jurisdictions to obtain medicine when traveling to New Mexico. Reciprocity is not intended as an alternate designation for enrolled patients.

(A)(3)(a), “Residency requirements”: Amendment would require that “[a] person who is not a resident of New Mexico may participate in the medical cannabis program as a reciprocal participant, provided that the reciprocal participant’s place of residence is consistent with their place of enrollment.”

This amendment is proposed to address a concerning trend in which persons have been allowed to participate reciprocally in the New Mexico Medical Cannabis Program on the basis of an authorization to participate in the medical cannabis program of a state that is different than their state of residence.

The Department finds that it was not the intention of the New Mexico Legislature to permit an individual to participate in the New Mexico Medical Cannabis Program as a reciprocal participant on the basis of an authorization issued by a jurisdiction other than the person’s place of residence. Rather, the purpose of reciprocity was to enable a person who travels to New Mexico from their home state to obtain medicine during their visit, based upon the authorization of their home state. The Department has proposed to amend the rule, consistent with that legislative purpose.

The Department finds that to permit a person to participate reciprocally in NM’s Medical Cannabis Program on the basis of an authorization from a state that is not the person’s state of residence would not be consistent with the legislative purpose of reciprocity, and would encourage abuses of the Program.

Ensuring that a person’s residence matches their place of enrollment not only helps to verify that the individual is who they claim to be and that they are truly enrolled in the medical cannabis program of another jurisdiction, but also tends to verify that the person is actually participating in the medical cannabis program in which they are enrolled.

(A)(3)(b), “New Mexico residents”: Amendment would require that “[a] New Mexico resident who is not a member of a New Mexico Indian nation, tribe, or pueblo shall not participate in the medical cannabis program as a reciprocal participant, but may pursue enrollment as a qualified patient in accordance with rule 7.34.3 NMAC.”

This amendment is being proposed to address another, related trend in which New Mexico residents have utilized authorizations to participate in medical cannabis programs of *other* states to participate reciprocally in New Mexico, effectively bypassing the enrollment requirements that would otherwise apply to them.

The Department finds that reciprocity was not created in the statute to enable New Mexico residents to circumvent the enrollment criteria of the Lynn and Erin Compassionate Use Act, NMSA 1978, §§ 26-2b-1 through 26-2b-10 and associated Department regulations at 7.34.3 NMAC.

(B), “Reciprocal limit”: Amendment would modify the reciprocal limit from 230 units for 3 months, to 230 units for one year. The amendment is proposed in recognition of the fact that reciprocity, as explained, was intended to allow persons from other jurisdictions to visit New Mexico and participate temporarily in the New Mexico Medical Cannabis Program while visiting the state. The Lynn and Erin Compassionate Use Act at NMSA 1978, § 26-2B-7(l) expressly authorizes the Department to “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.” Here, the Department has proposed to limit the amount of cannabis that a reciprocal participant can obtain, without decreasing the time period in which a person can participate reciprocally. This change will help to ensure that supplies of medical cannabis are reserved to qualified patients who are enrolled in the Program.

(C), “Registration; verification; tracking”:

(2): Amendment would require licensed nonprofit producers to compare a person’s proof of authorization to participate in the medical cannabis program of another jurisdiction to their government-issued photo identification card, and verify that the information, including but not limited to place of residence, is consistent.

This amendment is proposed consistent with the purposes described above, to require that the jurisdiction in which a person’s medical cannabis authorization was issued is consistent with the person’s place of residence.

(C)(4): Amendment would require that “[a] licensed non-profit producer shall not register an employee or board member of the producer as a reciprocal participant.” This amendment is intended to avoid conflicts of interest for licensed non-profit producers in registering reciprocal participants.

(C)(5): Amendment would require that, “[a]t the time of registration, a licensed non-profit producer shall electronically upload a copy of the reciprocal participant’s proof of authorization, and a copy of the reciprocal participant’s government issued photo identification which indicates the person’s place of residence, into the electronic tracking system specified by the department.” This is intended to ensure that appropriate documentation concerning a reciprocal participant is kept on file.

(C)(6): Amendment would require that “[a] licensed non-profit producer shall ensure the individual registering as a reciprocal participant is not already registered as a reciprocal participant or a qualified patient in the New Mexico medical cannabis program, before entering registration information for the individual.” The amendment would further provide that “repeated registration of a reciprocal participant who was previously registered may result in disciplinary action in accordance with this rule.” These amendments are intended to ensure that reciprocal participants are not registered multiple times, or permitted to purchase medical cannabis under duplicate registrations.

(C)(7): Amendment would require that licensed nonprofit producers ensure, when registering a reciprocal participant, that the reciprocal participant signs their registration in the electronic tracking system, acknowledging that the individual understands participation requirements in the Program. This would also expressly prohibit producers from substituting any signature for that of the reciprocal participant,

subject to potential disciplinary action. These provisions are intended to ensure that reciprocal participants acknowledge their understanding of Program requirements, and to ensure that the reciprocal participant's acknowledgement is appropriately documented.

(D), "Proof of authorization": Amendment would specify that "[p]roof of authorization to participate in the medical cannabis program of another jurisdiction (an 'originating jurisdiction') shall consist of a card or other physical document issued by a governmental entity authorized by law to enroll the applicant in the medical cannabis program in the originating jurisdiction." This passage would also specify that "permission from a medical practitioner shall not in itself be deemed proof of authorization to participate in the medical cannabis program of another jurisdiction".

The Department finds that a letter from a medical practitioner, taken alone, is not sufficient to demonstrably prove that an individual has been authorized to participate in the medical cannabis program of another jurisdiction. A letter that is issued by a medical practitioner can easily be falsified, and a letter, taken alone, does not afford the same degree of proof as a card or other legal document that is issued by the originating jurisdiction to authorize participation in that jurisdiction's medical cannabis program.

A letter from a medical practitioner, taken alone, also does not provide any verification that the practitioner who signed the letter is in good standing with their licensing body; whereas a card or other authorization issued from a governmental entity in the originating state provides greater assurance that the reciprocal participant has met the eligibility requirements of the originating jurisdiction.

Accordingly, the Department interprets the expression "proof of authorization", as it is used at NMSA 1978, § 26-2b-7, as a card or other physical document issued by a governmental entity authorized by law to enroll the applicant in the medical cannabis program in the originating jurisdiction. The Department proposes to modify the rule to reflect this understanding, consistent with the agency's statutory authority to establish "requirements for the granting of reciprocity." NMSA 1978, § 26-2B-7(l).