CHAPTER 26
Drugs and Cosmetics

ARTICLE 1
General Provisions

26-1-1. Short title.

Chapter 26, Article 1 NMSA 1978 may be cited as the "New Mexico Drug, Device and Cosmetic Act".

History: 1953 Comp., § 54-6-26, enacted by Laws 1967, ch. 23, § 1; 1987, ch. 270, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1987, ch. 270, § 8 provided that references to the New Mexico Drug and Cosmetic Act shall be construed as references to the New Mexico Drug, Device and Cosmetic Act.

Cross references. — For drug product selection, *see* Article 3 of this chapter.

For provisions of the Controlled Substances Act, *see* 30-31-1 NMSA 1978 et seq.

The 1987 amendment, effective June 19, 1987, substituted the present catchline for the former catchline, which read "Title of act"; substituted "Chapter 26, Article 1 NMSA 1978" for "This act"; and inserted "Device."

Objective of article, in general, is to help establish a closed regulatory system for the legitimate handlers of controlled drugs. *Pharmaceutical Mfrs. Ass'n v. N.M. Bd. of Pharmacy*, 1974-NMCA-038, 86 N.M. 571, 525 P.2d 931, cert. quashed, 86 N.M. 657, 526 P.2d 799.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics, and Poisons §§ 1, 2, 8, 9, 10, 14, 15, 17, 19, 33, 69, 72, 75, 76, 98, 100, 130, 141, 191, 206.

Products liability: sufficiency of evidence to support product misuse defense in actions concerning food, drugs, and other products intended for ingestion, 58 A.L.R.4th 7.

Products liability: sufficiency of evidence to support product misuse defense in actions concerning cosmetics and other personal care products, 58 A.L.R.4th 40.

Products liability: mascara and other eye cosmetics, 63 A.L.R.4th 105.

Products liability of endorser, trade association, certifier, or similar party who expresses approval of product, 1 A.L.R.5th 431.

28 C.J.S. Supp. Drugs and Narcotics §§ 1 to 9.

26-1-2. Definitions.

As used in the New Mexico Drug, Device and Cosmetic Act:

A. "board" means the board of pharmacy or its duly authorized agent;

B. "person" includes an individual, partnership, corporation, association, institution or establishment;

C. "biological product" means any of the following that is applicable to the prevention, treatment or cure of a disease or condition of human beings:

(1) a virus;

(2) a therapeutic serum;

(3) a toxin;

(4) an antitoxin;

(5) a vaccine;

(6) blood;

(7) a blood component or derivative;

(8) an allergenic product;

(9) a protein, except any chemically synthesized polypeptide;

(10) a product that is analogous to any of the products listed in Paragraphs (1) through (9) of this subsection; or

(11) arsphenamine, a derivative of arsphenamine or any other trivalent organic arsenic compound;

D. "biosimilar" or "biosimilarity" means, in reference to a biological product that the federal food and drug administration has licensed, that:

(1) the biological product is highly similar to the reference product notwithstanding minor differences in clinically inactive components; and

(2) there are no clinically meaningful differences between the biological product and the reference product in terms of the safety, purity and potency of the product;

E. "controlled substance" means a drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978];

F. "drug" means articles:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals and includes the domestic animal biological products regulated under the federal Animal Virus, Serum, Toxin, Antitoxin Act, 37 Stat 832-833, 21 U.S.C. 151-158, and the biological products applicable to humans regulated under Federal 58 Stat 690, as amended, 42 U.S.C. 216, Section 351, 58 Stat 702, as amended, and 42 U.S.C. 262;

(3) other than food, that affect the structure or any function of the human body or the bodies of other animals; and

(4) intended for use as a component of Paragraph (1), (2) or (3) of this subsection, but "drug" does not include devices or their component parts or accessories;

G. "dangerous drug" means a drug, other than a controlled substance enumerated in Schedule I of the Controlled Substances Act, that because of a potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use cannot be prepared. "Adequate directions for use" means directions under which the layperson can use a drug or device safely and for the purposes for which it is intended. A drug shall be dispensed only upon the prescription or drug order of a practitioner licensed by law to administer or prescribe the drug if it:

(1) is a habit-forming drug and contains any quantity of a narcotic or hypnotic substance or a chemical derivative of such substance that has been found under the federal act and the board to be habit forming;

(2) because of its toxicity or other potential for harmful effect or the method of its use or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner licensed by law to administer or prescribe the drug;

(3) is limited by an approved application by Section 505 of the federal act to the use under the professional supervision of a practitioner licensed by law to administer or prescribe the drug;

(4) bears the legend: "Caution: federal law prohibits dispensing without prescription.";

(5) bears the legend: "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or

(6) bears the legend "Rx only";

H. "counterfeit drug" means a drug that is deliberately and fraudulently mislabeled with respect to its identity, ingredients or sources. Types of such pharmaceutical counterfeits may include:

(1) "identical copies", which are counterfeits made with the same ingredients, formulas and packaging as the originals but not made by the original manufacturer;

(2) "look-alikes", which are products that feature high-quality packaging and convincing appearances but contain little or no active ingredients and may contain harmful substances;

(3) "rejects", which are drugs that have been rejected by the manufacturer for not meeting quality standards; and

(4) "relabels", which are drugs that have passed their expiration dates or have been distributed by unauthorized foreign sources and may include placebos created for late-phase clinical trials;

I. "device", except when used in Subsection R of this section and in Subsection G of Section 26-1-3, Subsection L and Paragraph (4) of Subsection A of Section 26-1-11 and Subsection C of Section 26-1-24 NMSA 1978, means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, that is:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease in humans or other animals; or

(3) intended to affect the structure or a function of the human body or the bodies of other animals and that does not achieve any of its principal intended purposes through chemical action within or on the human body or the bodies of other animals and that is not dependent on being metabolized for achievement of any of its principal intended purposes;

J. "prescription" means an order given individually for the person for whom prescribed, either directly from a licensed practitioner or the practitioner's agent to the pharmacist, including by means of electronic transmission, or indirectly by means of a written order signed by the prescriber, and bearing the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue;

K. "practitioner" means a certified advanced practice chiropractic physician, physician, doctor of oriental medicine, dentist, veterinarian, euthanasia technician, certified nurse practitioner, clinical nurse specialist, pharmacist, pharmacist clinician, certified nurse-midwife, physician assistant, prescribing psychologist, dental hygienist, optometrist, naturopathic doctor or other person licensed or certified to prescribe and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act. "Practitioner" also means a registered lay midwife licensed by the department of health who is certified or licensed in accordance with department of health rules to procure, carry and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act;

L. "cosmetic" means:

(1) articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; and

(2) articles intended for use as a component of any articles enumerated in Paragraph (1) of this subsection, except that the term shall not include soap;

M. "interchangeable biological product" means a biological product that the federal food and drug administration has licensed and:

(1) has determined that the biological product is biosimilar to the reference product and can be expected to produce the same clinical result as the reference product in any given patient;

(2) for a biological product that is administered more than once to an individual and:

(a) has determined to have been administered more than once to the individual; or

(b) for which the risk in terms of safety or diminished efficacy of alternating or switching between use of the biological product and the reference product is not greater than the risk of using the reference product without alternation or switching; or

(3) has determined to be therapeutically equivalent as set forth in the latest edition or supplement to the federal food and drug administration's approved drug products with therapeutic equivalence evaluations;

N. "official compendium" means the official United States pharmacopeia and national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them;

O. "label" means a display of written, printed or graphic matter upon the immediate container of an article. A requirement made by or under the authority of the New Mexico Drug, Device and Cosmetic Act that any word, statement or other information appear on the label shall not be considered to be complied with unless the word, statement or other information also appears on the outside container or wrapper, if any, of the retail package of the article or is easily legible through the outside container or wrapper;

P. "immediate container" does not include package liners;

Q. "labeling" means all labels and other written, printed or graphic matter:

(1) on an article or its containers or wrappers; or

(2) accompanying an article;

R. "misbranded" means a label to an article that is misleading. In determining whether the label is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or any combination of the foregoing, but also the extent to which the label fails to reveal facts material in the light of such representations or material with respect to consequences that may result from the use of the article to which the label relates under the conditions of use prescribed in the label or under such conditions of use as are customary or usual;

S. "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of drugs, devices or cosmetics;

T. "antiseptic", when used in the labeling or advertisement of an antiseptic, shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder or such other use as involves prolonged contact with the body;

U. "new drug" means a drug:

(1) the composition of which is such that the drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and efficacy of drugs, as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling thereof; or

(2) the composition of which is such that the drug, as a result of investigation to determine its safety and efficacy for use under such conditions, has become so recognized, but that has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions;

V. "contaminated with filth" applies to a drug, device or cosmetic not securely protected from dirt, dust and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations, or a drug, device or cosmetic found to contain dirt, dust, foreign or injurious contamination or infestation;

W. "selling of drugs, devices or cosmetics" shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale and the sale and the supplying or applying of any such article in the conduct of a drug or cosmetic establishment;

X. "color additive" means a material that:

(1) is a dye, pigment or other substance made by a process of synthesis or similar artifice or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, mineral, animal or other source; or

(2) when added or applied to a drug or cosmetic or to the human body or a part thereof, is capable, alone or through reaction with other substances, of imparting color thereto; except that such term does not include any material that has been or hereafter is exempted under the federal act;

Y. "federal act" means the Federal Food, Drug, and Cosmetic Act;

Z. "restricted device" means a device for which the sale, distribution or use is lawful only upon the written or oral authorization of a practitioner licensed by law to administer, prescribe or use the device and for which the federal food and drug administration requires special training or skills of the practitioner to use or prescribe. This definition does not include custom devices defined in the federal act and exempt from performance standards or premarket approval requirements under Section 520(b) of the federal act;

AA. "prescription device" means a device that, because of its potential for harm, the method of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed in this state to direct the use of such device and for which "adequate directions for use" cannot be prepared, but that bears the label: "Caution: federal law restricts this device to sale by or on the order of a

_____", the blank to be filled with the word "physician", "physician assistant", "certified advanced practice chiropractic physician", "doctor of oriental medicine", "dentist", "veterinarian", "euthanasia technician", "certified nurse practitioner", "clinical nurse specialist", "pharmacist", "pharmacist clinician", "certified nurse-midwife", "dental hygienist", registered lay midwife, "optometrist" or "naturopathic doctor" or with the descriptive designation of any other practitioner licensed in this state to use or order the use of the device;

BB. "valid practitioner-patient relationship" means a professional relationship, as defined by the practitioner's licensing board, between the practitioner and the patient;

CC. "pedigree" means the recorded history of a drug;

DD. "drug order" means an order either directly from a licensed practitioner or the practitioner's agent to the pharmacist, including by means of electronic transmission or indirectly by means of a written order signed by the licensed practitioner or the practitioner's agent, and bearing the name and address of the practitioner and the practitioner's license classification and the name and quantity of the drug or device ordered for use at an inpatient or outpatient facility; and

EE. "reference product" means the single biological product against which a biosimilar was evaluated in its marketing application to the federal food and drug administration.

History: 1953 Comp., § 54-6-27, enacted by Laws 1967, ch. 23, § 2; 1971, ch. 245, § 2; 1972, ch. 84, § 43; 1977, ch. 117, § 1; 1987, ch. 270, § 2; 1997, ch. 240, § 1; 1997, ch. 244, § 1; 1997, ch. 253, § 2; 1999, ch. 298, § 1; 2001, ch. 50, § 1; 2002, ch. 100, § 1; 2005, ch. 152, § 1; 2008, ch. 9, § 3; 2008, ch. 44, § 4; 2009, ch. 102, § 1; 2011, ch. 113, § 1; 2013, ch. 157, § 1; 2015, ch. 131, § 6; 2017, ch. 48, § 1; 2019, ch. 11, § 1; 2019, ch. 244, § 14.

ANNOTATIONS

Cross references. — For the Federal Food, Drug and Cosmetic Act, *see* 21 U.S.C.S. §§ 301 to 393.

For Section 505 of the federal act, *see* 21 U.S.C.S. § 355.

For Section 520(b) of the federal act, *see* 21 U.S.C.S. § 360j(b).

2019 Multiple Amendments. — Laws 2019, ch. 11, § 1 and Laws 2019, ch. 244, § 14, 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. 244, § 14, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2019, ch. 11, § 1 and Laws 2019, ch. 244, § 14 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. 11, § 1, added registered lay midwives licensed by the department of health to the list of "practitioners" subject to all the privileges and responsibilities conferred by the New Mexico Drug, Device and Cosmetic Act, and made certain technical amendments, and Laws 2019, ch. 244, § 14, added "naturopathic doctor" within the definition of "practitioner", and included "naturopathic doctor" in the provision related to the use of a prescription device.

Laws 2019, ch. 11, § 1, effective June 14, 2019, added registered lay midwives licensed by the department of health to the list of "practitioners" subject to all the privileges and responsibilities conferred by the New Mexico Drug, Device and Cosmetic Act, and made certain technical amendments; in Subsection F, after "federal", deleted "Virus-Serum Toxin" and added "Animal Virus, Serum, Toxin, Antitoxin"; in Subsection K, added the last sentence of the subsection; in Subsection N, after "United States" deleted "pharmacopoeia" and added "pharmacopeia and"; and in Subsection AA, after "'dental hygienist'", added "'registered lay midwife'".

Laws 2019, ch. 244, § 14, effective June 14, 2019, added "naturopathic doctor" within the definition of "practitioner", and included "naturopathic doctor" in the provision related to the use of a prescription device; in Subsection F, Paragraph F(2), after "federal", deleted "Virus-Serum Toxin" and added "Animal Virus, Serum, Toxin, Antitoxin"; in Subsection K, after "optometrist", added "naturopathic doctor"; and in Subsection AA, after "'optometrist'", added "or 'naturopathic doctor'".

The 2017 amendment, effective June 16, 2017, defined "biosimilar", "biosimilarity", "interchangeable biological product", and "reference product", and rewrote the definition for "biological product"; deleted former Subsection C, which defined "biological product", added new Subsections C and D, and redesignated former Subsections D through K as Subsections E through L, respectively; added a new Subsection M and redesignated former Subsections L through BB as Subsections N through DD, respectively; in Subsection AA, after "'certified nurse-midwife'", deleted "or", and after "'dental hygienist'", added "or"; and added Subsection EE.

The 2015 amendment, effective June 19, 2015, included "optometrist" within the meanings of "practitioner" and "prescription device" as used in the New Mexico Drug, Device and Cosmetic Act; in Subsection J, after "dental hygienist", added "optometrist"; and in Subsection Y, after "'dental hygienist'", added "'optometrist'".

The 2013 amendment, effective June 14, 2013, added terms to allow pharmacists to fill a practitioner's drug order; in Subsection F, in the third sentence, after "upon the prescription", added "or drug order"; and added Subsection BB.

The 2011 amendment, effective June 17, 2011, in Subsection Y, permitted dental hygienists to order prescription devices.

The 2009 amendment, effective June 19, 2009, in Subsection J, added "euthanasia technician" and in Subsection Y, added "euthanasia technician".

The 2008 amendment, effective May 14, 2008, added "certified advanced practice chiropractic physician" in Subsection J and added "physician assistant" and "certified advanced practice chiropractic physician" in Subsection Y.

The 2005 amendment, effective June 17, 2005, redefined "counterfeit drug" in Subsection G to mean a drug that is deliberately and fraudulently mislabeled with respect to its identity, ingredients or sources and gives examples of counterfeits included in the definition; replaced "prescriber" with "a licensed practitioner or practitioner's agent" and provided that a prescription may include an order given by means of electronic transmission in the definition of "prescription" in Subsection I; added the definition of "valid practitioner-patient relationship" in Subsection Z to mean the relationship defined by the practitioner's licensing board; and added the definition of "pedigree" in Subsection AA to mean the recorded history of a drug.

The 2002 amendment, effective July 1, 2002, inserted "physician assistant, prescribing psychologist" in Subsection J.

The 2001 amendment, effective June 15, 2001, inserted "pharmacist" in the definition of "practitioner" in Subsection J and inserted "'pharmacist'" near the end of Subsection Y.

The 1999 amendment, effective June 18, 1999, deleted "but is not limited to" before "filterable viruses" in Subsection C(1), added Subsection F(6), added doctors of oriental medicine, certified nurse practitioners, clinical nurse specialists, and pharmacist clinicians to the definition of "practitioner" in Subsection J and to the list of practitioners allowed to use or order the use of prescription devices in Subsection Y.

The 1997 amendment, effective June 20, 1997, inserted "certified nurse-midwife" in Subsections J and Y and "or certified" following "licensed" in Subsection J, and made stylistic changes throughout the section.

The 1987 amendment, effective June 19, 1987, substituted "New Mexico Drug, Device and Cosmetic Act" for "New Mexico Drug and Cosmetic Act" in the introductory language and in Subsection J; in Subsection E deleted "Title 21 Part 600" from the end; in the third sentence in Subsections F(2) and F(3) inserted "or prescribe" following "administer"; in Subsection F(1) deleted "of pharmacy" following "board"; rewrote Subsection H; in Subsection K(2) inserted "enumerated in Paragraph (1) of this subsection"; in Subsection L inserted "national formulary or the" and deleted "official national formulary" preceding "or any supplement"; in Subsections S(1) and (2) inserted

"and efficacy"; in Subsection S(1) inserted "and effective"; added Subsections X and Y; and made minor stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Products liability: liability of manufacturer or seller as affected by failure of subsequent party in distribution chain to remedy or warn against defect of which he knew, 45 A.L.R.4th 777.

Products liability: perfumes, colognes, or deodorants, 46 A.L.R.4th 1197.

Liability of manufacturer of oral live polio (Sabin) vaccine for injury or death from its administration, 66 A.L.R.4th 83.

What is "device" within the meaning of § 201(h) of Federal Food, Drug and Cosmetic Act (21 U.S.C.S. § 321(h)), 129 A.L.R. Fed. 343.

What is "new drug" within meaning of § 201(p) of Federal Food, Drug, and Cosmetic Act (21 U.S.C.S. § 321(p)), 133 A.L.R. Fed. 229.

26-1-3. Prohibited acts.

The following acts are prohibited:

A. the sale of any drug or device that is adulterated, misbranded or a counterfeit drug which is not a controlled substance;

B. the adulteration or misbranding of any drug or device;

C. the receipt or delivery in commerce of any drug or device that is adulterated, misbranded or a counterfeit drug which is not a controlled substance;

D. the dissemination of any false advertisement;

E. the giving of a false guaranty or undertaking, except by a person who relied on a guaranty or undertaking as attested by label or labeling from whom he received in good faith the drug or device for sale;

F. any act with respect to a drug or device when the act is done while the drug or device is held for sale and results in the drug or device being misbranded or adulterated;

G. the creation, sale, disposition, possession or concealment of any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint, device of another or any likeness of any of the foregoing upon any drug or container or labeling so as to render the drug a counterfeit drug;

H. concealment, disposition or possession with intent to sell or preparation with intent to defraud of a counterfeit drug;

I. in the case of a dangerous drug distributed or offered for sale in this state, the failure of the manufacturer or repackager to transmit, to any practitioner licensed to administer the drug who makes a written request for information, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold or such other printed matter as is approved under the federal act. Nothing in this subsection shall be construed to exempt any person from any labeling requirement imposed under other provisions of the New Mexico Drug, Device and Cosmetic Act [26-1-1 NMSA 1978] and the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978]; and

J. except as provided in Sections 26-3-1 through 26-3-3 NMSA 1978, dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the express permission in each case of the person ordering or prescribing.

History: 1953 Comp., § 54-6-28, enacted by Laws 1967, ch. 23, § 3; 1972, ch. 84, § 44; 1976, ch. 60, § 1; 1987, ch. 270, § 3.

ANNOTATIONS

Cross references. — For definitions, *see* 26-1-2 NMSA 1978.

For adulteration of drug or device, *see* 26-1-10 NMSA 1978.

For adulteration of cosmetics, *see* 26-1-25 NMSA 1978.

For penalties, *see* 26-1-26 NMSA 1978.

For the definition of "federal act", *see* 26-1-2W NMSA 1978.

The 1987 amendment, effective June 19, 1987, deleted "or cosmetic" following "drug or device" throughout the section; in the last sentence in Subsection I inserted "Device"; in Subsection J substituted "Sections 26-3-1 through 26-3-3 NMSA 1978" for "Sections 54-6-28.1 through 54-6-28.3 NMSA 1953"; and made minor stylistic changes throughout the section.

26-1-3.1. Repealed.

History: 1978 Comp., § 26-1-3.1, enacted by Laws 1987, ch. 270, § 4; repealed Laws 2005, ch. 152, § 11.

ANNOTATIONS

Repeals. — Laws 2005, ch. 152, § 11, repealed 26-1-3.1 NMSA 1978, as enacted by Laws 1987, ch. 270, § 4, relating to other prohibited acts, effective June 30, 2007. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

26-1-3.2. Prescription drug donation.

A. As used in this section:

(1) "donor" means a person who donates unused prescription drugs to an eligible recipient for the purpose of redistribution to patients;

(2) "eligible recipient" means a person who registers with the board to participate in the collection of donated drugs and is:

(a) licensed pursuant to Section 61-11-14 NMSA 1978 to receive and distribute prescription drugs;

(b) a health care facility licensed by the health care authority pursuant to the Health Care Code [Chapter 24A NMSA 1978]; or

(c) a practitioner licensed to prescribe prescription drugs;

(3) "patient" means an individual who voluntarily receives donated prescription drugs; and

(4) "tamper-evident" means a device or process that makes unauthorized access to protected pharmaceutical packaging easily detected.

B. The board shall adopt and promulgate rules for the donation of unused prescription drugs. Any person, including persons from other states, may donate unexpired and unused prescription drugs to an eligible recipient, and an eligible recipient may accept and redistribute the donated prescription drugs in accordance with rules promulgated by the board. Donated prescription drugs shall only be redistributed to a patient if the drugs will not expire before the patient is able to completely use the drugs, based on the directions for use given by the patient's prescribing health care professional.

C. The board shall promulgate rules to establish:

(1) procedures to allow the donation and redistribution of certain prescription drugs, including refrigerated drugs, that:

(a) ensure that the redistribution process is consistent with public health and safety standards;

(b) exclude controlled substances; and

(c) allow in-state and out-of-state pharmacies that are experienced in managing donated prescription drugs to distribute donated prescription drugs to patients, either at a physical pharmacy location or through a mail-order pharmacy;

(2) standards and procedures for accepting, storing, labeling and redistributing donated prescription drugs;

(3) standards and procedures for inspecting donated prescription drugs to determine that the packaging is tamper-evident and that the donated prescription drugs are unadulterated, safe and suitable for redistribution;

(4) a form to be signed by the patient specifying:

(a) knowledge that the donor took reasonable care of the donated prescription drug;

(b) knowledge that the donated prescription drugs have been inspected prior to being dispensed and that there is no reason to believe that the donated prescription drug was improperly handled or stored;

(c) that any person who exercises reasonable care in donating, accepting or redistributing pursuant to this section shall be immune from civil or criminal liability or professional disciplinary action of any kind for any related injury, death or loss; and

(d) that the immunity provided by this section shall not decrease or increase the civil or criminal liability of a drug manufacturer, distributor or dispenser that would have existed but for the donation;

(5) information required to be provided by the donor verifying that:

(a) the donated prescription drug has been properly stored and the container has not been opened or tampered with;

(b) the donated prescription drug has not been adulterated or misbranded; and

(c) the donor is voluntarily donating the prescription drug;

(6) a handling fee not to exceed the reasonable costs of participating in the collection of donated prescription drugs that may be charged to the patient by the eligible recipient to cover the costs of inspecting, storing, labeling and redistributing the donated prescription drug; and

(7) any other standards deemed necessary by the board.

D. The board shall maintain and publish a current listing of eligible recipients.

E. Before redistributing donated prescription drugs, the eligible recipient shall:

(1) comply with all applicable federal laws and the laws of the state that deal with the inspection, storage, labeling and redistribution of donated prescription drugs; and

(2) examine the donated prescription drug to determine that it has not been adulterated or misbranded and certify that the drug has been stored in compliance with the requirements of the product label.

F. Any person who exercises reasonable care in donating, accepting or redistributing prescription drugs pursuant to this section shall be immune from civil or criminal liability or professional disciplinary action of any kind for any related injury, death or loss.

G. The immunity provided by this section shall not decrease or increase the civil or criminal liability of a drug manufacturer, distributor or dispenser that would have existed but for the donation.

H. A manufacturer shall not be liable for failure to transfer or communicate product consumer information or the expiration date of the donated prescription drug pursuant to this section.

I. This section does not restrict the authority of an appropriate governmental agency to regulate or ban the use of any prescription drugs.

History: Laws 2011, ch. 119, § 1; 2025, ch. 116, § 1.

ANNOTATIONS

The 2025 amendment, effective June 20, 2025, expanded the prescription drug donation program to allow more donors and recipients to participate in the donation, collection and redistribution of unused prescription drugs, defined "eligible recipient" as used in this section, and deleted certain definitions; in Subsection A, deleted Paragraph A(1), which defined "clinic", and redesignated former Paragraph A(2) as Paragraph A(1), in Paragraph A(1), after "prescription drugs to" deleted the remainder of the paragraph; deleted former Paragraph A(3), which defined "participating practitioner", added a new Paragraph A(2) and redesignated former Paragraphs A(4) and A(5) as Paragraphs A(3) and A(4), respectively, and in Paragraph A(3), substituted "recipient" with "patient"; in Subsection B, after the subsection designation, added "The board shall adopt and promulgate rules for the donation of", after "prescription drugs" added "Any person, including persons from other states", after "may" deleted "be donated" and added "donate unexpired and unused prescription drugs", after "to" deleted "a clinic or a participating practitioner, and a clinic or a participating practitioner" and added "an eligible recipient, and an eligible recipient", and after "by the board", added the remainder of the subsection; in Subsection C, Paragraph C(1), added new

Subparagraph C(1)(c), in Paragraph C(4), in the introductory clause, replaced "recipient" with "patient", in Subparagraph C(4)(b), after "knowledge that the" deleted "donor is known to the clinic or the participating practitioner" and added "donated prescription drugs have been inspected prior to being dispensed", in Paragraph C(5), after the paragraph designation, deleted "a form to be signed" and added "information required to be provided", in Paragraph C(6), after "not to exceed" deleted "twenty dollars ($20.00)" and added "the reasonable costs of participating in the collection of donated prescription drugs", and replaced "recipient" with "patient", and "clinic or the participating practitioner" with "eligible recipient"; in Subsection D and E, replaced "clinic or the participating practitioner" with "eligible recipient".

26-1-4. Power to enjoin violations.

In addition to the remedies provided the board is authorized to apply to the district court for, and the court shall have jurisdication [jurisdiction] upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any other person from violating any provision of Section 3 [26-1-3 NMSA 1978] of the New Mexico Drug and Cosmetic Act [New Mexico Drug Device and Cosmetic Act], irrespective of whether or not there exists an adequate remedy at law.

History: 1953 Comp., § 54-6-29, enacted by Laws 1967, ch. 23, § 4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1987, ch. 270, § 8 provided that references to the New Mexico Drug and Cosmetic Act shall be construed as references to the New Mexico Drug, Device and Cosmetic Act.

Cross references. — For warnings for minor violations, *see* 26-1-8 NMSA 1978.

For penalties generally, *see* 26-1-26 NMSA 1978.

No authority to charge at board meeting and then collect fine. — The pharmacy board has no authority to charge druggists or wholesalers at a meeting of the board and then set out and collect a fine for any violation or violations of the pharmacy laws at said meeting from said druggists or wholesalers. 1953 Op. Att'y Gen. No. 53-5865 (opinion rendered under former law).

26-1-5. Penalty; exemptions.

No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor or seller of the article to which a false advertisement relates, shall be liable under this section [act] by reason

of dissemination by him of such false advertisement, unless he has refused, on the request of the board, to furnish the board the name and post-office address of the manufacturer, packer, distributor, seller or advertising agency, who cause [caused] him to disseminate such advertisement.

History: 1953 Comp., § 54-6-30, enacted by Laws 1967, ch. 23, § 5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

The words "this section" apparently refer to "this act," the New Mexico Drug, Device and Cosmetic Act, which is compiled as this article.

Cross references. — For definition of "advertisement", *see* 26-1-2Q NMSA 1978.

No authority to charge at board meeting and then collect fine. — The pharmacy board has no authority to charge druggist or wholesalers at a meeting of the board and then set out and collect a fine for any violation or violations of the pharmacy laws at said meeting from said druggists or wholesalers. 1953 Op. Att'y Gen. No. 53-5865 (opinion rendered under former law).

26-1-6. Detection of drugs, devices or cosmetic believed adulterated, misbranded or counterfeit; condemnation; destruction or correction of defect; forfeiture and sale.

A. Whenever an authorized agent of the board has probable cause to believe that any drug, device or cosmetic is adulterated, misbranded or counterfeit, he shall affix to such article appropriate marking, giving notice that the article is suspected of being adulterated, misbranded or counterfeit and has been detained or embargoed, and warning all persons not to remove or dispose of such article until permission for removal or disposal is given by the agent or the court. It is unlawful for any person to remove or dispose of such detained or embargoed article without such permission.

B. When an article detained or embargoed has been found by the agent to be adulterated, misbranded or counterfeit he shall petition the judge of the district court in whose jurisdiction the article is detained or embargoed for a libel for condemnation of such article. When the agent has found that an article so detained or embargoed is not adulterated, misbranded or counterfeit he shall remove the marking.

C. If the court finds that a detained or embargoed article is adulterated or misbranded or counterfeit, the article shall, after entry of the decree, be destroyed at the expense of the claimant under the supervision of the agent, and all court costs and fees, and storage and other proper expenses shall be taxed against the claimant of the article or his agent. However, when the adulteration or misbranding can be corrected by proper

labeling or processing of the article, the court, after entry of the decree and after costs, fees and expenses have been paid and a sufficient bond has been executed, conditioned that the article shall be so labeled or processed, may by order direct that the article be delivered to the claimant for labeling or processing under the supervision of an agent of the board. The expense of the supervision shall be paid by the claimant. The bond shall be returned to the claimant of the article on representation to the court by the board that the article is no longer in violation of the New Mexico Drug and Cosmetic Act [New Mexico Drug Device and Cosmetic Act] and that the expenses of the supervision have been paid.

D. The following may be seized by a duly authorized law enforcement official of the state whenever he has reasonable grounds to believe they are:

(1) a drug other than a controlled substance, that is counterfeit;

(2) a container of a counterfeit drug;

(3) any punch, die, plate, stone, labeling, container or other thing used or designed for use in making a counterfeit drug or drugs.

E. When an article, equipment or other thing is seized under Section 6D [26-1-6D NMSA 1978] of the New Mexico Drug and Cosmetic Act [New Mexico Drug Device and Cosmetic Act], the proceedings shall be brought in the name of the state by the prosecuting attorney of the county in which the article was seized, and the libel shall be verified by a duly authorized agent of the state in a manner required by the law of this state. The libel shall describe the merchandise, state its location, state the name of the person in actual possession, state the name of the owner, if known to the duly authorized agent of the state, allege the essential elements of the violation which is claimed to exist and shall conclude with a prayer of due process to enforce the forfeiture. Upon the filing of libel the court shall properly cause process to issue to the authorized law enforcement official commanding him to seize the goods described in the libel and to hold the same for further order of the court. The authorized law enforcement official shall at the time of seizure serve a copy of said process upon the owner of said merchandise. Such service may be made personally, by mail or by publication according to the rules governing the service of civil process in this state. At the expiration of twenty days after such seizure, if no claimant has appeared to defend the libel, the court shall order the authorized law enforcement official to dispose of said merchandise.

F. Any person having an interest in the alleged article, equipment or other thing proceeded against, or any person against whom a civil or criminal liability would exist if said merchandise is in violation of Section 3 [26-1-3 NMSA 1978] of the New Mexico Drug and Cosmetic Act [New Mexico Drug Device and Cosmetic Act] may, within twenty days following the authorized law enforcement official's seizure, appear and file answer or demurrer to the libel. The answer or demurrer shall allege the interest or liability of

the party filing it. In all other respects the issue shall be made up as in other civil actions.

G. Any article, equipment or other thing condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct and the proceeds, if sold, less the legal costs and charges, shall be paid to the general fund; but such article, equipment or other thing shall not be sold under such decree contrary to provisions of the New Mexico Drug and Cosmetic Act [New Mexico Drug Device and Cosmetic Act]. Whenever in any proceedings under this section the condemnation of any equipment or other thing, other than a drug, is decreed, the court shall allow the claim of any claimant, to the extent of such claimant's interest, for remission or mitigation of such forfeiture if such claimant proves to the satisfaction of the court that he has not committed or caused to be committed any prohibited act referred to in this section and has no interest in any drug referred to therein; that he has an interest in such equipment or other thing as owner or lienor or otherwise, acquired by him in good faith; and that he at no time had any knowledge or reason to believe that such equipment or other thing was being or would be used in, or to facilitate, the violation of the laws of this state relating to counterfeit drugs.

H. When a decree of condemnation is entered against the article, equipment or other thing, court costs and fees and storage and other proper expenses may be awarded against the person, if any, intervening as claimant of the article.

History: 1953 Comp., § 54-6-31, enacted by Laws 1967, ch. 23, § 6; 1971, ch. 241, § 1; 1972, ch. 84, § 45.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1987, ch. 270, § 8 provided that references to the New Mexico Drug and Cosmetic Act shall be construed as references to the New Mexico Drug, Device and Cosmetic Act.

Cross references. — For definition of "counterfeit drug", *see* 26-1-2G NMSA 1978.

For definition of "misbranded", *see* 26-1-2P NMSA 1978.

For adulteration, *see* 26-1-10 and 26-1-25 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 C.J.S. Adulteration §§ 3 to 5.

26-1-7. Attorney general or district attorney to institute prosecutions.

It is the duty of the attorney general or the various district attorneys of this state to whom the board reports any violation of the New Mexico Drug, Device and Cosmetic Act to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History: 1953 Comp., § 54-6-32, enacted by Laws 1967, ch. 23, § 7; 2005, ch. 152, § 2.

ANNOTATIONS

Cross references. — For duties generally of attorney general, *see* 8-5-2 NMSA 1978.

The 2005 amendment, effective June 17, 2005, deleted the provision that requires the board to permit the person against whom criminal proceedings are contemplated to present his or her views to the board before a violation is reported to the district attorney.

No authority to charge at board meeting and then collect fine. — The pharmacy board has no authority to charge druggist or wholesalers at a meeting of the board and then set out and collect a fine for any violation or violations of the pharmacy laws at said meeting from said druggists or wholesalers. 1953 Op. Att'y Gen. No. 53-5865 (opinion rendered under former law).

26-1-8. Minor violations of act; warnings authorized.

Nothing in the New Mexico Drug and Cosmetic Act [New Mexico Drug, Device and Cosmetic Act] shall be construed as requiring the board to report for the institution of proceedings, minor violations of the New Mexico Drug and Cosmetic Act [New Mexico Drug, Device and Cosmetic Act], whenever the board believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

History: 1953 Comp., § 54-6-33, enacted by Laws 1967, ch. 23, § 8.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1987, ch. 270, § 8 provided that references to the New Mexico Drug and Cosmetic Act shall be construed as references to the New Mexico Drug, Device and Cosmetic Act.

26-1-9. Addition of poisonous or deleterious substances; color additives.

A. The board may adopt regulations authorizing color additives.

B. Any added poisonous or deleterious substance or any color additive, shall with respect to any particular use or intended use be deemed unsafe for the purpose of

application of Section 10A [26-1-10 NMSA 1978] of the New Mexico Drug and Cosmetic Act [New Mexico Drug, Device and Cosmetic Act] with respect to any drug or device or Section 25A [26-1-25 NMSA 1978] of the New Mexico Drug and Cosmetic Act [New Mexico Drug, Device and Cosmetic Act] with respect to any cosmetic unless there is in effect a regulation pursuant to Subsection C of this section limiting the quantity of such substance, and the use or intended use of such substance conform [conforms] to the terms prescribed by such regulation. While such regulation relating to such substance is in effect, drug or cosmetic shall not, by reason of bearing or containing such substance in accordance with the regulation be considered adulterated within the meaning of Section 10 or Section 25 of the New Mexico Drug and Cosmetic Act [New Mexico Drug, Device and Cosmetic Act].

C. The board, whenever public health or other considerations in the state so require, is authorized to adopt, amend or repeal regulations whether or not in accordance with regulations promulgated under the federal act, prescribing the conditions under which a color additive may be safely used and exemptions where such color additive is to be used solely for investigational or experimental purposes, upon its own motion or upon the petition of any interested party requesting that such a regulation be established, and it shall be incumbent upon the petitioner to establish by data submitted to the board of pharmacy that a necessity exists for such regulation, and that its effect will not be detrimental to public health. If the data furnished by the petitioner is not sufficient to allow the board to determine whether such regulation should be promulgated, the board may require additional data to be submitted and failure to comply with the request shall be sufficient grounds to deny the request. In adopting, amending or repealing regulations relating to such substances, the board shall consider among other relevant factors, the following which the petitioner, if any, shall furnish:

(1) the name and all pertinent information concerning such substance including where available, its chemical identity and composition, a statement of conditions of the proposed use, including directions, recommendations and suggestions and including specimens of proposed labeling, all relevant data bearing on the physical or other technical effect and the quantity required to produce such effect;

(2) the probable composition of, or the relevant exposure from the article and of any substance formed in or on a drug or cosmetic resulting from the use of such substance;

(3) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of such substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

(4) the availability of any needed practicable methods of analysis for determining the identity and quantity of:

(a) such substance in or on an article;

(b) any substance formed in or on such article because of the use of such substance; and

(c) the pure substance and all intermediates and impurities; and

(5) facts supporting a contention that the proposed use of such substance will serve a useful purpose.

History: 1953 Comp., § 54-6-34, enacted by Laws 1967, ch. 23, § 9.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1987, ch. 270, § 8 provided that references to the New Mexico Drug and Cosmetic Act shall be construed as references to the New Mexico Drug, Device and Cosmetic Act.

Cross references. — For the definition of "federal act", *see* 26-1-2W NMSA 1978 and notes thereto.

26-1-10. Drug or device adulteration.

A drug or device shall be deemed to be adulterated:

A. if it consists in whole or in part of any filthy, putrid or decomposed substance; or if it has been produced, prepared, packed or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or if it is a drug and the methods used in, or the facilities of controls used for, its manufacture, processing, packing or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of the New Mexico Drug and Cosmetic Act [New Mexico Drug, Device and Cosmetic Act] as to safety and has the identity and strength, and meets the quality and purity characteristics which it purports or is represented to possess; or if it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or if it is a drug and it bears or contains for purposes of coloring only a color additive which is unsafe within the meaning of the federal act or it is a color additive the intended use of which in drugs is for the purposes of coloring only, and is unsafe within the meaning of the federal act;

B. if it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality and purity shall be made in accordance with the tests or methods of assay set forth in such compendium or in the absence of or inadequacy of such tests or methods of assay, those prescribed under the authority of the federal act. No drug defined in an

official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality or purity therefor set forth if such standard is plainly stated on its label. Whenever a drug is recognized both in the United State [States] Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not those of the United States Pharmacopoeia;

C. if it is not subject to the provisions of Subsection B of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess; or

D. if it is a drug and any substance has been mixed or packed therewith so as to reduce its quality or strength; or substituted wholly or in part therefor.

History: 1953 Comp., § 54-6-35, enacted by Laws 1967, ch. 23, § 10.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1987, ch. 270, § 8 provided that references to the New Mexico Drug and Cosmetic Act shall be construed as references to the New Mexico Drug, Device and Cosmetic Act.

Cross references. — For definition of "contaminated with filth", *see* 26-1-2T NMSA 1978.

For definition of "color additive", *see*26-1-2V NMSA 1978.

For definition of "federal act", *see* 26-1-2W NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 C.J.S. Adulteration § 2; 28 C.J.S. Drugs and Narcotics § 9.

26-1-11. Drug or device; misbranding.

A. A drug or device shall be deemed to be misbranded:

(1) if its labeling is false or misleading in any particular;

(2) if in package form, unless it bears a label containing the name and place of the business of the manufacturer, packer or distributor and an accurate statement of the quantity of the contents in terms of weight, measure or numerical count; provided

that reasonable variations shall be permitted and exemptions as to small packages shall be allowed in accordance with regulations prescribed by the board or issued under the federal act;

(3) if it is a drug subject to the restrictions on sale contained in Subparagraph 1 of Subsection (b) of 21 U.S.C. Section 353, which provisions describe those substances commonly referred to as "legend drugs", and if the drug is in package form, unless it bears a label on its immediate container, and on any outer container if such there be, including the name and place of the business of the manufacturer of the finished dosage form and the name and place of business of the packer or distributor and an accurate statement of the quantity of the contents in terms of weight, measure or numerical count;

(4) if any word, statement or other information required by or under authority of the New Mexico Drug, Device and Cosmetic Act to appear on the label or labeling is not prominently placed with such conspicuousness, as compared with other words, statements, designs or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(5) if it is for use by man and contains any quantity of a narcotic or hypnotic substance or any chemical derivative of such substance, which derivative after investigation has been found to be and designated as habit-forming by regulations issued pursuant to Section 502(d) or 511 of the federal act, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning - May be habit-forming" and meets labeling requirements of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970; or

(6) if it is a drug, unless the label bears, to the exclusion of any other nonproprietary name except the applicable systematic chemical name or the chemical formula, the established name, as defined in this section, of the drug, and in case it is fabricated from two or more active ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, antipyrine, amidropyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glycosides, mercury, ouabain, strophanthin, strychnine, thyroid or any derivative or preparation of any such substances contained therein; provided that the requirements for stating the quantity of the active ingredients, other than the quantity of those specifically named in this section, shall apply only to prescription drugs; provided, further, that to the extent that compliance with the requirements of this section is impracticable, exemptions shall be allowed under regulations promulgated by the board or under the federal act.

B. As used in this section, the term "established name" with respect to a drug or ingredient means:

(1) the applicable official name designated pursuant to Section 508 of the federal act; or

(2) if there is no such name and such drug or such ingredient is an article recognized in an official compendium, then the official title in such compendium or if neither applies, then the common or usual name, if any, of such drug or of such ingredient; provided that where an article is recognized in the United States pharmacopoeia and in the homeopathic pharmacopoeia under different official titles, the official title used in the United States pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the homeopathic pharmacopoeia shall apply.

C. A drug or device shall be deemed to be misbranded unless its labeling bears adequate directions for use and such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users; provided that where adequate directions for use as applied to any drug or device are not necessary for the protection of the public health, the board shall promulgate regulations exempting such drug or device from such requirements; provided, further, that articles exempted under regulations issued under Section 502(f) of the federal act may also be exempt.

D. A drug or device shall be deemed to be misbranded if it purports to be a drug the name of which is recognized in an official compendium unless it is packed and labeled as prescribed therein; provided that the method of packing may be modified with the consent of the board. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States and not those of the United States pharmacopoeia; provided, further, that in the event of inconsistency between the requirements of this subsection and those of Paragraph (6) of Subsection A of this section as to the name by which the drug or its ingredients shall be designated, the requirements of Paragraph (6) of Subsection A of this section shall prevail.

E. A drug or device shall be deemed to be misbranded if it has been found by the board or under the federal act to be a drug liable to deterioration unless it is packaged in such form and manner and its label bears the statement of such precautions as the regulations issued by the board or under the federal act require as necessary for the protection of public health. No regulation shall be established for any drug recognized in an official compendium until the board has informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body has failed within a reasonable time to prescribe such requirements.

F. A drug or device shall be deemed to be misbranded if it is a drug and its container is so made, formed or filled as to be misleading or if it is an imitation of another drug or if it is offered for sale under the name of another drug or if it bears a copy, counterfeit or colorable imitation of a trademark, label, container or identifying name or design of another drug.

G. A drug or device shall be deemed to be misbranded if it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended or suggested in the labeling.

H. A drug or device shall be deemed to be misbranded if it is or purports to be or is represented as a drug composed wholly or partly of insulin unless it is from a batch with respect to which a certificate or release has been issued pursuant to Section 506 of the federal act and such certificate or release is in effect with respect to such drug.

I. A drug or device shall be deemed to be misbranded if it is or purports to be or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin or any other antibiotic drug or any derivative thereof unless it is from a batch with respect to which a certificate or release has been issued pursuant to Section 507 of the federal act and such certificate or release is in effect with respect to such drug; provided that this subsection shall not apply to any drug or class of drugs exempted by regulations promulgated under Section 507(c) or (d) of the federal act. For the purpose of this subsection, the term "antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by a microorganism and which has the capacity to inhibit or destroy microorganisms in dilute solution, including the chemically synthesized equivalent of any such substance.

J. A drug or device shall be deemed to be misbranded if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, prescribed under the provisions of Subsection C of Section 26-1-9 NMSA 1978 or of the federal act.

K. A drug or device shall be deemed to be misbranded, in the case of any dangerous drug distributed or offered for sale in this state, unless the manufacturer, packer, distributor or retailer thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer or distributor or retailer with respect to that drug a true statement of:

(1) the established name as defined in Paragraph (6) of Subsection A of this section;

(2) the formula showing quantitatively each ingredient of the drug to the extent required for labels under Section 502(e) of the federal act; and

(3) such other information in brief summary relating to side effects and contraindications as are required in regulations issued under the federal act.

L. A drug or device shall be deemed to be misbranded if a trademark, trade name or other identifying mark, imprint or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

M. Drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally packaged in accordance with requirements of the New Mexico Drug, Device and Cosmetic Act shall be deemed to be misbranded unless such drugs or devices are being delivered, manufactured, processed, labeled, repacked or otherwise held in compliance with regulations issued by the board or under the federal act.

N. A dangerous drug, except for drugs declared dangerous pursuant to Subsection B of Section 26-1-18 NMSA 1978, shall be deemed to be misbranded if, at any time prior to dispensing, its label fails to bear either of the following legends:

(1) "Caution: federal law prohibits dispensing without prescription."; or

(2) "RX only".

History: 1953 Comp., § 54-6-36, enacted by Laws 1967, ch. 23, § 11; 1972, ch. 84, § 46; 1975, ch. 103, § 1; 1999, ch. 298, § 2.

ANNOTATIONS

Cross references. — For definition of "misbranded", *see* 26-1-2 NMSA 1978.

For the definition of "federal act", *see* 26-1-2W NMSA 1978.

For the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, *see* 21 U.S.C. § 801 et seq.

The 1999 amendment, effective June 18, 1999, substituted "New Mexico Drug, Device and Cosmetic Act" for "New Mexico Drug and Cosmetic Act" in Subsections A(4) and M, added "A drug or device shall be deemed to be misbranded" to the beginning of Subsections C to L, substituted "Section 507 of" for "Section 507 or" in Subsection I, substituted "Subsection C of Section 26-1-9 NMSA 1978" for "Section 9C of the New Mexico Drug and Cosmetic Act" in Subsection J, substituted "shall be deemed to be misbranded unless such" for "provided, that such" in Subsection M, and inserted "except for drugs declared dangerous pursuant to Subsection B of Section 26-1-18 NMSA 1978," and rewrote Subsection N, adding the exception near the beginning of the subsection and adding the legend, "RX only".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 28 C.J.S. Drugs and Narcotics § 9.

26-1-12. False advertising.

A. An advertisement of a drug, device or cosmetic shall be deemed to be false if it is false or misleading in any particular.

B. For the purpose of the New Mexico Drug and Cosmetic Act [New Mexico Drug, Device and Cosmetic Act] the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, small pox [smallpox], tuberculosis, tumors, typhoid, uremia, veneral [venereal] disease, shall also be deemed to be false, except that no advertisement not in violation of Subsection A shall be deemed to be false under this subsection if it is disseminated only to members of the pharmacy, medical, dental or veterinary profession or appears only in the scientific periodicals of those professions or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices; provided, that whenever the board determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, [the] board shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the board may deem necessary in the interests of public health; provided, that this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

C. In the case of any dangerous drug distributed or offered for sale in this state by a manufacturer, packer, distributor or retailer, all advertisement with respect to that drug shall contain a true statement of the established or official name, together with any trade or brand name; the formula as represented on the label, in the same order of listing and with all listed warnings and cautions; the dosage form and strength; such other information in brief summary relating to its use, side effects, contraindications and the name of the manufacturer, packer or distributor; provided, that no advertisement prepared in accordance with Section 502(n) of the federal act and disseminated only to practitioners and dispensers shall be in violation of this subsection.

History: 1953 Comp., § 54-6-37, enacted by Laws 1967, ch. 23, § 12.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1987, ch. 270, § 8 provided that references to the New Mexico Drug and Cosmetic Act shall be construed as references to the New Mexico Drug, Device and Cosmetic Act.

Cross references. — For definition of "advertisement", *see* 26-1-2 Q NMSA 1978.

For the definition of "federal act", *see* 26-1-2W NMSA 1978.

26-1-13. Packaging and labeling requirements; proprietary preparations.

A. The principal display panel of an over-the-counter packaged drug or device shall bear as one of its principal features a statement of the identity of the commodity. The statement shall include the established name of the drug or the common name of the device and an accurate statement of the general pharmacological category of the drug or the principal intended action of the drug or device in terms meaningful to the layman.

B. In the case of an over-the-counter drug that is a mixture with no established name, a conspicuous enumeration of each active ingredient that is a mixture with no established name and a conspicuous enumeration of each active ingredient immediately followed by an accurate statement of the general pharmacological category of the ingredients or of its principal intended action in terms that are meaningful to the layman.

C. This section shall not apply to any drug or class of drugs exempted by regulations promulgated under the federal Fair Packaging and Labeling Act.

D. The label of an over-the-counter packaged drug or device shall bear a declaration of the net quantity of its contents.

E. Dangerous drugs or over-the-counter preparations subject to the federal Poison Prevention Packaging Act of 1970 shall meet the safety closure standards and regulations promulgated pursuant to the federal Poison Prevention Packaging Act of 1970.

History: 1953 Comp., § 54-6-38, enacted by Laws 1972, ch. 84, § 47.

ANNOTATIONS

Repeals and reenactments. — Laws 1972, ch. 84, § 47 repealed 54-6-38, 1953 Comp., relating to depressant, stimulant and hallucinogenic drugs, and enacted a new section.

Cross references. — For the federal Fair Packaging and Labeling Act, *see* 15 U.S.C. § 1451 et seq.

For the federal Poison Prevention Packaging Act of 1970, *see* 15 U.S.C. § 1471.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability of manufacturer or seller for injury or death allegedly caused by failure to warn regarding danger in use of vaccine or prescription drug, 94 A.L.R.3d 748.

Promotional efforts directed toward prescribing physician as affecting prescription drug manufacturer's liability for product-caused injury, 94 A.L.R.3d 1080.

Strict products liability: liability for failure to warn as dependent on defendant's knowledge of danger, 33 A.L.R.4th 368.

26-1-14. New drugs and devices; prerequisites to sale, delivery or giving away; exceptions.

A. No person shall sell, deliver, offer for sale, hold for sale or give away any new drug or device unless:

(1) an application has been approved for the drug and approval has not been withdrawn under Section 505 of the federal act;

(2) when the drug is not subject to the federal act, the drug has been tested and has been found to be safe for use under the conditions prescribed, recommended or suggested in the labeling, and, prior to selling or offering for sale, there has been filed with the board an application setting forth full reports of investigations which have been made to show whether or not the drug is safe for use; a full list of the articles used as components of the drug; a full statement of the composition of the drug; a full description of the methods used in and the facilities and controls used for the manufacture, processing and packing of the drug; such samples of the drug and of the articles used as components of the drug as the board may require; and specimens of the labeling proposed to be used for the drug; or

(3) the device has met the requirements of classification, performance standards and premarket approval, where applicable, under Sections 513 through 520 of the federal act.

B. An application provided for in Paragraph (2) of Subsection A of this section shall become effective on the one hundred eightieth day after filing except that if the board finds, after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe for the use under the conditions prescribed, recommended or suggested in the proposed labeling, it shall, prior to the effective date of application, issue an order refusing to permit the application to become effective.

C. An order refusing to permit an application under this section to become effective may be revoked by the board.

D. This section shall not apply:

(1) to a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs, provided the drug is plainly labeled in compliance with the regulations issued by the board or pursuant to Section 505(i) or 507(d) of the federal act;

(2) to any drug which is subject to Subsection I of Section 26-1-11 NMSA 1978;

(3) to any device for use pursuant to the order of an individual practitioner qualified by law in this state to use or prescribe the device, which device:

(a) is not generally available in finished form for purchase or for dispensing upon prescription and is not offered through labeling or advertising by the manufacturer for commercial distribution;

(b) is intended for use by an individual patient named in the order of the prescribing practitioner and is to be made in a specific form for the patient or is intended to meet the special needs of the practitioner in the course of the practitioner's professional practice; and

(c) is not generally available to or generally used by other practitioners; or

(4) is exempt under Section 520(g) of the federal act for investigational use by experts qualified by scientific training and experience to test the safety and effectiveness of the device by controlled investigation and evaluation.

History: 1953 Comp., § 54-6-39, enacted by Laws 1967, ch. 23, § 14; 1977, ch. 117, § 2; 1987, ch. 270, § 5.

ANNOTATIONS

Cross references. — For definition of "new drug", *see* 26-1-2 NMSA 1978.

For the definition of "federal act", *see* 26-1-1W NMSA 1978.

For Sections 505, 507 and 513 through 520 of the federal act, *see* 21 U.S.C. §§ 355, 357 and 360c to 360j.

The 1987 amendment, effective June 19, 1987, inserted "or device" near the beginning of Subsection A; in Subsection A(1) deleted "with respect thereto" following "an application" and inserted "for the drug"; added Subsection A(3); in Subsection B inserted "Paragraph (2) of" near the beginning; in Subsection D(2) substituted "is subject to Subsection I of Section 26-1-11 NMSA 1978" for "is subject to Section 11I of

the New Mexico Drug and Cosmetic Act"; added Subsections D(3) and (4); and made minor stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — What is "new drug" within meaning of § 201(p) of Federal Food, Drug, and Cosmetic Act (21 USCS § 321(p)), 133 A.L.R. Fed. 229.

26-1-15. Dangerous drugs; veterinary use; limitations.

A. A dangerous drug intended for veterinary use which is not safe for animal use except under the direct supervision of a licensed veterinarian and for which adequate directions for use cannot be prepared, shall bear the legend "CAUTION: federal law restricts this drug to use by or on the order of a licensed veterinarian" and the label shall meet the requirements of the federal act. Such drugs may be sold or distributed by a person possessing a limited license issued by the board under Subsection B of Section 61-11-14 NMSA 1978, on the order of a licensed veterinarian, provided adequate records of receipt and distribution are kept as required in the New Mexico Drug and Cosmetic Act [New Mexico Drug, Device and Cosmetic Act].

B. Drugs which are exempted by the federal act for veterinary use without a prescription shall be labeled to indicate that the drug is for veterinary use and the label shall meet the requirements of the federal act.

History: 1953 Comp., § 54-6-40, enacted by Laws 1972, ch. 84, § 48; 1973, ch. 217, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1987, ch. 270, § 8 provided that references to the New Mexico Drug and Cosmetic Act shall be construed as references to the New Mexico Drug, Device and Cosmetic Act.

Repeals and reenactments. — Laws 1972, ch. 84, § 48, repealed 54-6-40, 1953 Comp., relating to enumeration of dangerous drugs, and enacted a new 26-1-15 NMSA 1978.

Cross references. — For definition of dangerous drugs under the New Mexico Drug, Device and Cosmetic Act, *see* 26-1-2F NMSA 1978.

For definition of federal act, *see* 26-1-2W NMSA 1978.

26-1-16. Dangerous drugs; conditions for sale; prescription refilling; limitations.

A. It is unlawful for a person to sell, dispose of or possess any dangerous drugs, except:

(1) manufacturers, wholesalers or distributors, their agents or employees licensed by the board to ship dangerous drugs into the state; or

(2) distributors, wholesalers, hospitals, nursing homes, clinics or pharmacies and other authorized retailers of dangerous drugs in this state licensed by the board, and appropriate records of dangerous drugs receipt and disposition are kept. These records shall be open to inspection by any enforcement officer of this state.

B. Practitioners licensed in this state may prescribe, provide samples of and dispense any dangerous drug to a patient where there is a valid practitioner-patient relationship. A record of all such dispensing shall be kept showing the date the drug was dispensed and bearing the name and address of the patient to whom dispensed. It is the duty of every licensed physician, dentist, veterinarian, pharmacist or person holding a limited license issued under Subsection B of Section 61-11-14 NMSA 1978, when dispensing any dangerous drug, to mark on the dispensing container the name of the patient, the date dispensed, the name and address of the person dispensing the drug, the name and strength of the drug, expiration date where applicable, adequate directions for use and the prescription number when applicable. All official compendium requirements for the preservation, packaging, labeling and storage of dangerous drugs are applicable where drugs are held for dispensing to the public, whether by a pharmacy, clinic, hospital or practitioner.

C. Pharmacists are prohibited from selling or dispensing a dangerous drug except on prescription or drug order of a practitioner and except as such sale or possession is authorized under Subsection A of this section. It is the duty of all pharmacists to keep an accurate record of all disposals, which record shall be open to inspection by an enforcement officer of this state.

D. No enforcement officer having knowledge by virtue of office of a prescription, order or record shall divulge such knowledge except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party.

E. It is unlawful, except as otherwise authorized under Subsection A of this section or the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] and except for the college of pharmacy of the university of New Mexico or a public health laboratory, for a person to possess any dangerous drug unless such substance has been dispensed to the person either directly by a practitioner or on a prescription.

F. All records required to be kept under the provisions of the New Mexico Drug, Device and Cosmetic Act shall be preserved for a period of three years, provided that records requirements do not apply to the administration of a drug to a patient upon

whom the practitioner personally attends, and provided that records of controlled substances shall be kept in accordance with the provisions of the Controlled Substances Act.

G. A prescription shall not be filled:

(1) as a refill if it is marked by the issuing practitioner to indicate that the prescription is not to be refilled;

(2) except in compliance with the provisions of the Controlled Substances Act if the drug is a controlled substance;

(3) unless the fill is made in accordance with the provisions of this section; and

(4) when the practitioner does not indicate fill instructions on the original prescription calling for a dangerous drug, unless:

(a) the practitioner is contacted orally, by telephone or other means of communication for instruction; and

(b) if authorization to fill is given the pharmacist, the following information will be immediately transferred to the original prescription: 1) date; 2) name of person authorizing the fill; 3) pharmacist's initials; and 4) amount dispensed if different from the amount indicated on the original prescription.

H. Nothing in this section shall prevent the owner of livestock or the owner's consignee or their employees to be in possession of drugs for their use in performing routine, accepted livestock management practices in the care of livestock belonging to the owner, and the drugs are labeled as being restricted to animal use only; provided, that if such drugs bear the legend: "CAUTION: federal law restricts this drug to use by or on the order of a licensed veterinarian", the drugs may be used or distributed only as provided in Subsection A of Section 26-1-15 NMSA 1978.

I. When, on the original prescription calling for a dangerous drug that is not a controlled substance, a practitioner indicates a specific number of fills or a specific period of time during which a prescription may be filled, a drug may be filled the number of times or for the period of time that the prescription indicates if the following information is provided with the prescription:

(1) the date of fill;

(2) the initials of the pharmacist filling the prescription; and

(3) the amount of drug dispensed, if it differs from the amount called for on the original prescription.

J. A pharmacist may dispense a quantity not to exceed a ninety-day supply of a dangerous drug by combining valid fills when:

(1) an indication on the prescription or label does not specifically prohibit a combined fill; and

(2) the dangerous drug to be filled is not a controlled substance.

K. When the practitioner indicates on the original prescription calling for dangerous drugs that it may be filled "prn", the pharmacist may fill it within the limits of the dosage directions for a period of twelve months, provided the date of filling and the initials of the pharmacist are recorded on the original prescription. At the expiration of the twelve-month period, the practitioner must be contacted for a new prescription; provided that this is not to be construed to apply to those drugs regulated by the Controlled Substances Act.

L. The board may adopt and promulgate regulations to permit the use of computer systems for the storage and retrieval of prescriptions, records for the purpose of filling prescriptions, receipt records, drug distribution records, drug withdrawals from stock, drug compounding records, drug disposition records and drug disposal records.

M. As used in this section, "fill" means a dispensing of a drug for the first time or as a refill.

History: 1953 Comp., § 54-6-41, enacted by Laws 1967, ch. 23, § 16; 1972, ch. 84, § 49; 1973, ch. 217, § 2; 1979, ch. 41, § 1; 1987, ch. 270, § 6; 2005, ch. 152, § 3; 2013, ch. 157, § 2.

ANNOTATIONS

Cross references. — For definition of "dangerous drugs", *see* 26-1-2 NMSA 1978.

The 2013 amendment, effective June 14, 2013, allowed pharmacists to fill a practitioner’s drug order; in Subsection C, in the first sentence, after "prohibited from selling or", deleted "disposing of any" and added "dispensing a"; and added Subsections G through M.

The 2005 amendment, effective June 17, 2005, added wholesalers to the list of persons who may lawfully sell, dispose of or possess dangerous drugs in Subsections A(1) and (2); changed "physician" to "practitioner" in Subsection B; and authorized the board to adopt rules and regulations to permit the use of computers for the storage and retrieval of receipt records, drug distribution records drug withdrawals from stock, drug compounding records drug disposition records and drug disposal records Subsection G(5).

The 1987 amendment, effective June 19, 1987, rewrote Subsection B; deleted former Subsection F, relating to the duty of persons dispensing dangerous drugs to mark certain information on the dispensing container; redesignated subsequent subsections accordingly; in Subsection F inserted "Device" near the beginning and added the proviso at the end of the subsection; and made minor stylistic changes throughout the section.

Denial of equal protection not substantiated. — Since there are no New Mexico drug manufacturers, there is no factual basis for the claim that Subsection A(1) denies state residents equal protection. *Pharmaceutical Mfrs. Ass'n v. N.M. Bd. of Pharmacy*, 1974-NMCA-038, 86 N.M. 571, 525 P.2d 931, cert. quashed, 86 N.M. 657, 526 P.2d 799.

Applicability of article. — This article applies to legitimate handlers of controlled drugs, but also to others similarly situated who are not involved in the authorized use of such substances. *State v. Reams*, 1981-NMCA-158, 98 N.M. 372, 648 P.2d 1185, *aff'd in part, rev'd in part*, 1982-NMSC-075, 98 N.M. 215, 647 P.2d 417.

Licensing of detailmen allowed. — Reviewing courts overturn the administrative interpretation of statute by appropriate agencies only if they are clearly incorrect. Since detailmen handle controlled drugs and are part of the interstate drug shipment operation, even though they do not ship drugs themselves, the interpretation by the board of pharmacy of this section to allow licensing of detailmen is not clearly erroneous and will not be overturned by a reviewing court. *Pharmaceutical Mfrs. Ass'n v. N.M. Bd. of Pharmacy*, 1974-NMCA-038, 86 N.M. 571, 525 P.2d 931, cert. quashed, 86 N.M. 657, 526 P.2d 799.

Methaqualone. — The legislature has not specifically designated methaqualone (the generic name for quaalude) as a "controlled substance" or "dangerous drug" under either the Controlled Substances Act or this article, but has authorized the board of pharmacy to add this substance by administrative regulation to the list of substances controlled under these acts. *State v. Reams*, 1981-NMCA-158, 98 N.M. 372, 648 P.2d 1185, *aff'd in part, rev'd in part*, 1982-NMSC-075, 98 N.M. 215, 647 P.2d 417.

Section 30-31-22 NMSA 1978, and not this section, is the appropriate legislation under which defendants are to be prosecuted for allegedly unauthorized distribution of quaalude. *State v. Reams*, 98 N.M. 215, 647 P.2d 417 (1982).

Requirements applicable to providing drug "samples". — This section should not be construed as allowing a physician to provide a drug "sample" without complying with the recordkeeping and labeling requirements that apply to "dispensing". 1988 Op. Att'y Gen. No. 88-50.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Right of medical patient to obtain, or physician to prescribe, laetrile for treatment of illness - State cases, 5 A.L.R.4th 219.

State law criminal liability of licensed physician for prescribing or dispensing drug or similar controlled substance, 13 A.L.R.5th 1.

26-1-16.1. Opioids; requiring practitioners to obtain and review reports from the prescription monitoring program.

A. For purposes of this section:

(1) "opioid" means the class of drugs that includes the natural derivatives of opium, which are morphine and codeine, and related synthetic and semi-synthetic compounds that act upon opioid receptors;

(2) "practitioner" does not include a pharmacist, veterinarian or euthanasia technician;

(3) "prescription monitoring program" means a program that includes a centralized system to collect, monitor and analyze electronically, for Schedule II through V controlled substances, prescribing and dispensing data submitted by dispensers; and

(4) "Schedule II through V controlled substance" means a substance listed in Schedule II, III, IV or V pursuant to the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] or the federal controlled substances regulation, pursuant to 21 U.S.C. 812.

B. Before a practitioner prescribes or dispenses an opioid for the first time to a patient, the practitioner shall obtain and review a report from the state's prescription monitoring program for such patient for the previous twelve calendar months. If the practitioner has access to a similar report from an adjacent state for the patient, the practitioner shall also obtain and review that report. The provisions of this subsection shall not apply to the prescription or dispensing of an opioid for a supply of four days or less.

C. A practitioner shall obtain and review a report from the state's prescription monitoring program and similar reports from an adjacent state, if any, no less than once every three months for each established patient for whom the practitioner continuously prescribes or dispenses opioids.

D. A practitioner shall document the receipt and review of reports required by this section in the patient's medical record.

E. Nothing in this section shall be construed to prevent a practitioner from obtaining and reviewing a report regarding a practitioner's patient from the state's prescription monitoring program or a similar report from another state with greater frequency than that required by this section, in accordance with the practitioner's professional judgment.

F. Nothing in this section shall be construed to require a practitioner to obtain a prescription monitoring report when prescribing an opioid to a patient in a nursing facility or in hospice care.

G. The professional licensing board of each category of practitioner that is licensed or otherwise authorized to prescribe or dispense an opioid shall promulgate rules to implement the provisions of this section. Nothing in this section shall be construed to prevent a professional licensing board from requiring by rule that practitioners obtain prescription monitoring program reports with greater frequency than that required by this section.

History: Laws 2016, ch. 46, § 1.

ANNOTATIONS

Effective dates. — Laws 2016, ch. 46, § 2 makes Laws 2016, ch. 46, § 1 effective January 1, 2017.

26-1-17. Testing laboratory.

The college of pharmacy of the university of New Mexico shall serve as the testing laboratory for samples collected for examination pursuant to the provisions of the New Mexico Drug and Cosmetic Act [New Mexico Drug, Device and Cosmetic Act].

History: 1953 Comp., § 54-6-42, enacted by Laws 1967, ch. 23, § 17.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1987, ch. 270, § 8 provided that references to the New Mexico Drug and Cosmetic Act shall be construed as references to the New Mexico Drug, Device and Cosmetic Act.

26-1-18. Promulgating regulations; procedure.

A. The board may promulgate regulations for the efficient enforcement of the New Mexico Drug, Device and Cosmetic Act. The board shall conform the regulations promulgated under the New Mexico Drug, Device and Cosmetic Act, insofar as practical, with regulations promulgated under the federal act as defined in Section 26-1-2 NMSA 1978.

B. The board shall, by regulation, declare a substance a "dangerous drug" when necessary, and notification shall be sent to all registered pharmacies in the state within sixty days of the adoption of the regulation.

C. The board shall promulgate the requirements for a pedigree.

D. All regulations promulgated by the board shall be in accordance with the Uniform Licensing Act.

History: 1953 Comp., § 54-6-43, enacted by Laws 1972, ch. 84, § 50; 2005, ch. 152, § 6.

ANNOTATIONS

Repeals and reenactments. — Laws 1972, ch. 84, § 50, repealed 54-6-43, 1953 Comp., relating to procedure for promulgating regulations, and enacted a new section.

Cross references. — For the definition of federal act, *see* 26-1-2 NMSA 1978 and notes thereto.

For the definition of "dangerous drug", *see* 26-1-2 NMSA 1978.

The 2005 amendment, effective June 17, 2005, added Subsection C to require the board to promulgate requirement for pedigree as defined in Section 26-1-2AA NMSA 1978.

Due process not violated. — The regulations propounded under this section and Section 30-31-11 NMSA 1978 of the Controlled Substances Act do not violate due process since New Mexico has a legitimate interest in the control of dangerous drugs sold or distributed in the state and New Mexico has not brought within the orbit of state power matters unrelated to any local interests. *Pharmaceutical Mfrs. Ass'n v. N.M. Bd. of Pharmacy*, 1974-NMCA-038, 86 N.M. 571, 525 P.2d 931, cert. quashed, 86 N.M. 657, 526 P.2d 799.

Commerce clause not violated. — Although the regulations adopted pursuant to this section and Section 30-31-11 NMSA 1978 of the Controlled Substances Act include a license fee to cover administrative costs, their primary purpose is the protection of the public from dangerous drugs, a purpose within the traditional definition of police power; and where the burden of a small fee does not outweigh the substantial state benefit derived from the control, and the regulations do not discriminate against interstate commerce since there are no drug manufacturers within the state, there is no violation of the commerce clause. *Pharmaceutical Mfrs. Ass'n v. N.M. Bd. of Pharmacy*, 1974-NMCA-038, 86 N.M. 571, 525 P.2d 931, cert. quashed, 86 N.M. 657, 526 P.2d 799.

Licensing of detailmen allowed. — Reviewing courts overturn the administrative interpretation of statute by appropriate agencies only if they are clearly incorrect. Since detailmen handle controlled drugs and are part of the interstate drug shipment operation, even though they do not ship drugs themselves, the interpretation by the board of pharmacy of Section 26-1-16 NMSA 1978 to allow licensing of detailmen is not clearly erroneous and will not be overturned by a reviewing court. *Pharmaceutical Mfrs. Ass'n v. N.M. Bd. of Pharmacy*, 1974-NMCA-038, 86 N.M. 571, 525 P.2d 931, cert. quashed, 86 N.M. 657, 526 P.2d 799.

In propounding regulations board of pharmacy need not make formal findings. The only requirements which it must meet are that the public and the reviewing courts are informed as to the reasoning behind the regulation. The comments of the one board member suffice in this regard. *Pharmaceutical Mfrs. Ass'n v. N.M. Bd. of Pharmacy*, 1974-NMCA-038, 86 N.M. 571, 525 P.2d 931, cert. quashed, 86 N.M. 657, 526 P.2d 799.

Methaqualone. — The legislature has not specifically designated methaqualone as a "controlled substance" or "dangerous drug" under either the Controlled Substances Act or this article, but has authorized the board of pharmacy to add this substance by administrative regulation to the list of substances controlled under these acts. *State v. Reams*, 1981-NMCA-158, 98 N.M. 372, 648 P.2d 1185, *aff'd in part, rev'd in part*, 1982-NMSC-075, 98 N.M. 215, 647 P.2d 417.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Right of medical patient to obtain, or physician to prescribe, laetrile for treatment of illness - State cases, 5 A.L.R.4th 219.

26-1-18.1. Prescription drug prior authorization protocols.

A. After January 1, 2014, a prescribing practitioner seeking prior authorization from a health insurer may use the uniform prior authorization form developed pursuant to Sections 2 [59A-2-9.8 NMSA 1978] and 3 [61-11-6.2 NMSA 1978] of this 2013 act.

B. As used in this section:

(1) "health insurer" means a health insurer; a nonprofit health service provider; a health maintenance organization; a managed care organization; or a provider service organization. "Health insurer" does not include:

(a) a person that delivers, issues for delivery or renews an individual policy intended to supplement major medical group-type coverages such as medicare supplement, long-term care, disability income, specified disease, accident-only, hospital indemnity or other limited-benefit health insurance policy;

(b) a physician or a physician group to which a health insurer has delegated financial risk for prescription drugs and that does not use a prior authorization process for prescription drugs; or

(c) a health insurer or its affiliated providers if the health insurer owns and operates its pharmacies and does not use a prior authorization process for prescription drugs; and

(2) "prescribing practitioner" means a person that is licensed or certified to prescribe and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act.

History: Laws 2013, ch. 170, § 4.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 170 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

26-1-19. Power to make inspections and secure samples.

The board or its duly authorized agent shall have free access at all reasonable hours to any factory, warehouse or establishment in which drugs, devices or cosmetics are manufactured, processed, packed or held for introduction into commerce, or to enter any vehicle being used to transport or hold such drugs, devices or cosmetics in commerce, for the purpose of inspecting such factory, warehouse, establishment or vehicle to determine if any of the provisions of the New Mexico Drug and Cosmetic Act [New Mexico Drug, Device and Cosmetic Act] are being violated, and to secure samples or specimens of any drug, device or cosmetic after paying or offering to pay for such sample. It shall be the duty of the board to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of the New Mexico Drug and Cosmetic Act [New Mexico Drug, Device and Cosmetic Act] is being violated.

History: 1953 Comp., § 54-6-44, enacted by Laws 1967, ch. 23, § 19.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1987, ch. 270, § 8 provided that references to the New Mexico Drug and Cosmetic Act shall be construed as references to the New Mexico Drug, Device and Cosmetic Act.

26-1-20. Personnel.

The board shall employ such personnel for the administration and enforcement of the provisions of the New Mexico Drug and Cosmetic Act [New Mexico Drug, Device and Cosmetic Act] as may be necessary.

History: 1953 Comp., § 54-6-45, enacted by Laws 1967, ch. 23, § 20.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1987, ch. 270, § 8 provided that references to the New Mexico Drug and Cosmetic Act shall be construed as references to the New Mexico Drug, Device and Cosmetic Act.

26-1-21. Power of board to publish reports and disseminate information.

A. The board may cause to be published from time to time reports summarizing all judgments, decrees and court orders which have been rendered, including the nature of the charge and the disposition thereof.

B. The board may also cause to be disseminated such information regarding drugs, devices and cosmetics as the board deems necessary in the interest of the public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the board from collecting, reporting and illustrating the results of the investigations of the board.

History: 1953 Comp., § 54-6-46, enacted by Laws 1967, ch. 23, § 21.

ANNOTATIONS

Generally. — A statute such as this one authorizes or permits the pharmacy board to make public, through the pharmaceutical association drug store "El Boticario," an item pertaining to the sale of a legendary drug to a nondrug store, if a conviction or convictions have been obtained in the courts of the state of New Mexico, but not otherwise. 1953 Op. Att'y Gen. No. 53-5865 (opinion rendered under former law).

The board is permitted and authorized to disseminate all reports and other information, and the fact that the firms, persons or agencies named in said item are published in an outside publication would not incriminate the board or agency mentioned in all cases where conviction or convictions have been obtained in the courts of this state, but not otherwise. 1953 Op. Att'y Gen. No. 53-5865 (opinion rendered under former law).

26-1-22. Unlawful means of obtaining dangerous drugs enumerated.

It shall be unlawful for any person to obtain or attempt to obtain any dangerous drug or to procure or attempt to procure the administration of any dangerous drugs other than a controlled substance:

A. by fraud, deceit, misrepresentation or subterfuge; or

B. by forgery or alteration of a prescription or of any written order; or

C. by the concealment of a material fact; or

D. by the use of a false name or the giving of a false name or the giving of a false address.

History: 1953 Comp., § 54-6-47, enacted by Laws 1967, ch. 23, § 22; 1972, ch. 84, § 51.

ANNOTATIONS

Cross references. — For definition of "dangerous drugs", *see* 26-1-2 NMSA 1978.

26-1-23. False statements; false pretenses; forgery of labels or prescriptions prohibited.

It shall be unlawful for any person to:

A. willfully make a false statement in any prescription, order, report or record required by the New Mexico Drug and Cosmetic Act [New Mexico Drug, Device and Cosmetic Act];

B. falsely assume the title of or represent himself to be a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian or other authorized person for the purpose of obtaining any of the dangerous drugs;

C. make or utter any false or forged label to a package containing any of the dangerous drugs; or

D. make or utter any false or forged prescription or false or forged written order for dangerous drugs other than controlled substances.

History: 1953 Comp., § 54-6-48, enacted by Laws 1967, ch. 23, § 23; 1972, ch. 84, § 52.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1987, ch. 270, § 8 provided that references to the New Mexico Drug and Cosmetic Act shall be construed as references to the New Mexico Drug, Device and Cosmetic Act.

Cross references. — For definition of "prescription", *see* 26-1-2I NMSA 1978.

For definition of "label", *see* 26-1-2M NMSA 1978.

26-1-24. Cosmetics; misbranding.

A cosmetic shall be deemed to be misbranded:

A. if its labeling is false or misleading in any particular;

B. if in package form unless it bears a label containing:

(1) the name and place of business of the manufacturer, packer or distributor; and

(2) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count; provided, that reasonable variations shall be permitted, and exemptions made for information pertaining to weight, measure or numerical count as to small packages, shall be established by regulations prescribed by the board;

C. if any word, statement or other information required by or under the authority of the New Mexico Drug and Cosmetic Act [New Mexico Drug, Device and Cosmetic Act] to appear on the label or labeling is not prominently placed thereon with such conspicuousness as compared with other words, statements, designs or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of the purchase and use;

D. if its container is so made, formed or filled as to be misleading; or

E. if it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act. This section shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes bearing required label.

History: 1953 Comp., § 54-6-49, enacted by Laws 1967, ch. 23, § 24.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1987, ch. 270, § 8 provided that references to the New Mexico Drug and Cosmetic Act shall be construed as references to the New Mexico Drug, Device and Cosmetic Act.

Cross references. — For definition of "misbranded", *see* 26-1-2 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Products liability: perfumes, colognes, or deodorants, 46 A.L.R.4th 1197.

26-1-25. Cosmetics; adulteration.

A cosmetic shall be deemed to be adulterated:

A. if it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisements thereof, or under such conditions of use as are customary or usual;

provided, that this provision shall not apply to coal-tar dye, the label of which bears the following legend conspicuously displayed thereon: "CAUTION: This product contains ingredients which may cause skin irritations on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate directions for such preliminary testing. For the purpose of this paragraph and Subsection E the term "hair dye" shall not include eyelash dyes or eyebrow dyes;

B. if it consists in whole or in part of any filthy, putrid or decomposed substance;

C. if it has been produced, prepared, packed or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

D. if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

E. if it is not a hair dye, and it bears or contains a color additive which is unsafe within the meaning of the federal act.

History: 1953 Comp., § 54-6-50, enacted by Laws 1967, ch. 23, § 25.

ANNOTATIONS

Cross references. — For definition of "contaminated with filth", *see* 26-1-2 NMSA 1978.

For definition of "color additive", *see* 26-1-2 NMSA 1978.

For definition of "federal act", *see* 26-1-2 NSMA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Products liability: perfumes, colognes, or deodorants, 46 A.L.R.4th 1197.

2 C.J.S. Adulteration § 2.

26-1-26. Penalties.

A. Any person who knowingly violates any of the provisions of Subsection A, B, C, F, G or H of Section 26-1-3, Section 26-1-14, 26-1-16, 26-1-22 or 26-1-23 NMSA 1978 is guilty of a fourth degree felony and shall be punished by a fine of not less than one thousand dollars ($1,000) or more than five thousand dollars ($5,000) or by imprisonment for not less than one year or both.

B. Except as provided in Subsection A of this section, any person violating any of the provisions of the New Mexico Drug, Device and Cosmetic Act is guilty of a misdemeanor for the first offense and for second and subsequent offenses is guilty of a fourth degree felony.

History: 1953 Comp., § 54-6-51, enacted by Laws 1967, ch. 23, § 26; 1971, ch. 245, § 4; 1972, ch. 84, § 53; 1987, ch. 270, § 7.

ANNOTATIONS

The 1987 amendment, effective June 19, 1987, in Subsection A, updated the statutory references, deleted "a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than one year for the first offense and for second and subsequent offenses is guilty of" following "is guilty of," and added the language at the end of the subsection following "fourth degree felony"; and, in Subsection B, inserted "Device," deleted "petty" preceding "misdemeanor," and made a minor stylistic change.

Methaqualone. — The legislature has not specifically designated methaqualone as a "controlled substance" or "dangerous drug" under either the Controlled Substances Act or this article, but has authorized the board of pharmacy to add this substance by administrative regulation to the list of substances controlled under these acts. *State v. Reams*, 1981-NMCA-158, 98 N.M. 372, 648 P.2d 1185, *aff'd in part, rev'd in part*, 1982-NMSC-075, 98 N.M. 215, 647 P.2d 417.

26-1-27. Prohibition of discrimination against 340B entities. (Effective January 1, 2026.)

A. As used in this section:

(1) "340B drug" means a drug that is purchased at a discount in accordance with the 340B program requirements;

(2) "340B program" means the federal drug pricing program created pursuant to 42 U.S.C. Section 256b;

(3) "affiliate" means a person that directly or indirectly controls, is controlled by or is under common control with a manufacturer;

(4) "applicable entity" means an organization that receives federal grant funding and is recognized by the federal health resources and services administration as a federally qualified health center or a federally qualified health center lookalike; and

(5) "manufacturer" means an entity licensed to manufacture prescription drugs pursuant to the Pharmacy Act [Chapter 61, Article 11 NMSA 1978].

B. A manufacturer, a manufacturer's agent or an affiliate of a manufacturer shall not directly or indirectly:

(1) deny, restrict, prohibit or interfere with the acquisition of a 340B drug by, or delivery of a 340B drug to, a pharmacy contractually obligated with an applicable entity and is authorized to receive and dispense 340B drugs on behalf of the applicable entity unless receipt of the 340B drugs is prohibited by the United States department of health and human services;

(2) interfere with the ability of a pharmacy contracted with an applicable entity to dispense 340B drugs to the applicable entity's eligible patients; or

(3) require an applicable entity to submit any claims, utilization, purchasing or other data as a condition for allowing the acquisition of a 340B drug by, or delivery of a 340B drug to, an applicable entity unless the sharing of claims or utilization data is required by federal law.

History: *Laws 2025, ch. 91, § 1.*

ANNOTATIONS

Effective dates. *— Laws 2025, ch. 91, § 2 made Laws 2025, ch. 91, § 1 effective January 1, 2026.*

ARTICLE 2
Drug Abuse (Repealed, Recompiled.)

26-2-1 to 26-2-4. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 270, § 10 repealed 26-2-1 to 26-2-4 NMSA 1978, as enacted by Laws 1971, ch. 244, §§ 1 to 3 and as amended by Laws 1987, ch. 265, § 4, relating to the Drug Abuse Act, effective July 1, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 9-7-6.1 to 9-7-6.3 NMSA 1978.

26-2-4.1. Recompiled.

ANNOTATIONS

Recompilations. — Laws 1999, ch. 270, § 9 recompiled 26-2-4.1 NMSA 1978, relating to the substance abuse education fund, as 9-7-17 NMSA 1978, effective July 1, 1999.

26-2-5 to 26-2-14. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 270, § 10 repealed 26-2-5 to 26-2-14 NMSA 1978, as enacted by Laws 1971, ch. 244, §§ 5 to 12, Laws 1971, ch. 296, § 1 and Laws 1972, ch. 10, § 1, and as amended by Laws 1972, ch. 84, § 54, relating to drug abuse services, effective July 1, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, see 9-7-6.1 to 9-7-6.3 NMSA 1978.

ARTICLE 2A
Controlled Substances Therapeutic Research

26-2A-1. Short title.

Sections 1 through 7 [26-2A-1 to 26-2A-7 NMSA 1978] of this act may be cited as the "Controlled Substances Therapeutic Research Act".

History: 1953 Comp., § 54-15-1, enacted by Laws 1978, ch. 22, § 1.

26-2A-2. Purpose.

The legislature finds that recent research has shown that the use of marijuana may alleviate the nausea and ill-effects of cancer chemotherapy, and, additionally, may alleviate the ill-effects of glaucoma. The legislature further finds that there is a need for further research and experimentation with regards to the use of marijuana under strictly controlled circumstances. It is for this purpose that the Controlled Substances Therapeutic Research Act is hereby enacted.

History: 1953 Comp., § 54-12-2, enacted by Laws 1978, ch. 22, § 2.

26-2A-3. Definitions.

As used in the Controlled Substances Therapeutic Research Act:

A. "administrator" means the secretary, or his designee, of health and environment;

B. "marijuana" means marijuana, tetrahydrocannabinols or a chemical derivative of tetrahydrocannabinol; and

C. "practitioner" means a physician licensed to prescribe and administer drugs which are subject to the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978].

History: 1953 Comp., § 54-12-3, enacted by Laws 1978, ch. 22, § 3.

ANNOTATIONS

Compiler's notes. — Laws 1991, ch. 25, § 16 repealed former 9-7-4 NMSA 1978, relating to the health and environment department, and enacted a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 created the department of environment. Under 9-7-5 NMSA 1978, the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978, the administrative head of the department of environment is the secretary of environment.

26-2A-4. Lynn Pierson therapeutic research program established; participation.

A. There is established in the health and environment department [department of health] the "Lynn Pierson therapeutic research program". The program shall be administered by the administrator. The department shall promulgate rules and regulations necessary for the proper administration of the Controlled Substances Therapeutic Research Act. In such promulgation, the department shall take into consideration those pertinent rules and regulations promulgated by the drug enforcement administration, food and drug administration and the national institute on drug abuse.

B. Except as provided in Subsection C of Section 5 [26-2A-5 NMSA 1978] of the Controlled Substances Therapeutic Research Act, the Lynn Pierson therapeutic research program shall be limited to cancer chemotherapy patients and glaucoma patients, who are certified to the patient qualification review board by a physician as being involved in a life-threatening or sense-threatening situation and who are not responding to conventional controlled substances or where the conventional controlled substances administered have proven to be effective but where the patient has incurred severe side effects.

History: 1953 Comp., § 54-12-4, enacted by Laws 1978, ch. 22, § 4; 1979, ch. 11, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1991, ch. 25, § 16 repealed former 9-7-4 MNSA 1978, relating to the health and environment department, and enacted a new 9-7-4 NMSA 1978, creating the department of health.

26-2A-5. Patient qualification review board; composition; powers and duties.

A. The administrator, upon the recommendation of the New Mexico medical society, shall appoint a patient qualification review board to serve at his pleasure. The patient qualification review board shall be comprised of:

(1) a physician licensed to practice medicine in New Mexico and certified by the American board of ophthalmology;

(2) a physician licensed to practice medicine in New Mexico and certified by the American board of internal medicine and also certified in the subspecialty of medical oncology; and

(3) a physician licensed to practice medicine in New Mexico and certified in psychiatry by the American board of psychiatry and neurology.

Members of the board may be reimbursed for their attendance at meetings at the rate of forty dollars ($40.00) per day.

B. The patient qualification review board shall review all applicants for the Lynn Pierson therapeutic research program and their licensed physicians and certify their participation in the program.

C. The patient qualification review board may include other disease groups for participation in the Lynn Pierson therapeutic research program after pertinent medical data have been presented by a physician to both the administrator and the board and after receiving the necessary approval of the food and drug administration, the drug enforcement administration and the national institute on drug abuse.

History: 1953 Comp., § 54-12-5, enacted by Laws 1978, ch. 22, § 5; 1979, ch. 11, § 2.

26-2A-6. Lynn Pierson therapeutic research program; distribution.

A. The administrator shall obtain marijuana through whatever means he deems most appropriate, consistent with regulations promulgated by the national institute on drug abuse, the food and drug administration and the drug enforcement administration and pursuant to the provisions of the Controlled Substances Therapeutic Research Act.

B. The administrator shall cause such marijuana to be transferred to a certified state-operated licensed pharmacy for distribution to the certified patient pursuant to the Controlled Substances Therapeutic Research Act.

History: 1953 Comp., § 54-12-6, enacted by Laws 1978, ch. 22, § 6; 1979, ch. 11, § 3.

26-2A-7. Report.

The administrator, in conjunction with the patient qualification review board, shall each year report his findings and recommendations to the governor and the legislature regarding the effectiveness of the Lynn Pierson therapeutic research program.

History: 1953 Comp., § 54-12-7, enacted by Laws 1978, ch. 22, § 7; 1979, ch. 11, § 4.

ANNOTATIONS

Compiler's notes. — Laws 1979, ch. 11, § 5, effective March 7, 1979, repealed Laws 1978, ch. 22, § 10, which would have repealed the Controlled Substances Therapeutic Research Act (26-2A-1 to 26-2A-7 NMSA 1978) effective July 1, 1979.

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 [Chapter 26, Article 2C 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.

ARTICLE 2C
Cannabis Regulation

26-2C-1. Short title.

Chapter 26, Article 2C NMSA 1978 may be cited as the "Cannabis Regulation Act".

History: Laws 2021 (1st S.S.), ch. 4, § 1; 2024, ch. 38, § 1.

ANNOTATIONS

The 2024 amendment, effective July 1, 2024, changed "Sections 1 through 42 of this act" to "Chapter 26, Article 2C NMSA 1978".

Temporary provisions. — Laws 2021 (1st S.S.), ch. 4, § 71 provided:

A. The legislative finance committee shall study the fiscal and economic impacts of the Cannabis Regulation Act for fiscal years 2023 through 2027 and provide a report to the revenue stabilization and tax policy committee on or before December 1, 2027.

B. The report shall include:

(1) the impacts on budgets and staffing of the regulation and licensing department and the department of health;

(2) the impacts on general fund revenue and expenses;

(3) the impacts on potential funds created by the Cannabis Regulation Act;

(4) the impacts on the medical cannabis program;

(5) the impacts on local and state law enforcement; and

(6) the economic impact on the state, including:

(a) job creation;

(b) tourism; and

(c) other economic impacts.

26-2C-2. Definitions.

As used in the Cannabis Regulation Act:

A. "cannabis":

(1) means all parts of the plant genus 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:

(a) 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; or the sterilized seed of the plant that is incapable of germination; or

(b) the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink or other product;

B. "cannabis consumption area" means an area of a licensed premises where cannabis products may be served and consumed;

C. "cannabis courier" means a person that transports commercial or medical cannabis products to consumers;

D. "cannabis establishment" means:

(1) a cannabis testing laboratory;

(2) a cannabis manufacturer;

(3) a cannabis producer;

(4) a cannabis retailer;

(5) a cannabis research laboratory;

(6) a vertically integrated cannabis establishment;

(7) a cannabis producer microbusiness;

(8) an integrated cannabis microbusiness; or

(9) a cannabis consumption area;

E. "cannabis extract":

(1) means a product obtained by separating resins, tetrahydrocannabinols or other substances from cannabis by extraction methods approved by the division; 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;

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

G. "cannabis manufacturer" means a person that:

(1) manufactures cannabis products;

(2) packages cannabis products for resale; or

(3) purchases, acquires, sells or transports wholesale cannabis products to other cannabis establishments;

H. "cannabis producer" means a person that:

(1) cultivates cannabis plants;

(2) transports unprocessed cannabis only to other cannabis establishments; or

(3) sells cannabis wholesale;

I. "cannabis producer microbusiness" means a cannabis producer at a single licensed premises that possesses no more than two hundred total mature cannabis plants at any one time;

J. "cannabis product" means a product that is or that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients;

K. "cannabis research laboratory" means a facility that produces or possesses cannabis products and all parts of the plant genus *Cannabis* for the purpose of studying cannabis cultivation, characteristics or uses;

L. "cannabis retailer" means a person that sells cannabis products to consumers;

M. "cannabis testing laboratory" means a facility that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing;

N. "commercial cannabis activity":

(1) means the cultivation, production, possession, manufacture, storage, testing, researching, packaging and labeling, transportation, couriering, purchase for resale, sale or consignment of cannabis products; and

(2) does not include activities related only to the medical cannabis program or to the personal cultivation or use of cannabis products;

O. "consumer" means a person twenty-one years of age or older who legally purchases, acquires, owns, possesses or uses a commercial cannabis product not for resale or a person who holds a medical cannabis program registry identification card issued by the department of health or is a reciprocal participant;

P. "contaminant" means pesticides and other foreign material, such as hair, insects or other similar adulterants, in harvested cannabis;

Q. "controlling person":

(1) means a person that controls a financial or voting interest of ten percent or more of, or an officer or board member of, a cannabis establishment; and

(2) does not include a bank or licensed lending institution;

R. "cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis;

S. "department" means the regulation and licensing department;

T. "director" means the director of the division;

U. "division" means the cannabis control division of the department;

V. "dry weight basis", when used in the context of regulation of commercial cannabis activity, 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 by a licensee and with no moisture added to the harvested plant;

W. "facility" means a building, space or grounds licensed for the production, storage, testing, manufacturing, distribution, sale or consumption of cannabis products;

X. "financial consideration" means value that is given or received, directly or indirectly, through sales, barter, trade, fees, charges, dues, contributions or donations;

Y. "homegrown" or "homemade" means grown or made for purposes that are not for resale;

Z. "illegal cannabis product" means a cannabis product that is:

(1) produced or manufactured outside New Mexico;

(2) produced, manufactured, distributed or sold in New Mexico by a person not licensed to produce, manufacture, distribute or sell the cannabis product; or

(3) produced, manufactured, distributed or sold by a person acting outside the limits of the person's license; provided that "illegal cannabis product" does not include homegrown or homemade cannabis products that comply with the provisions of the Cannabis Regulation Act;

AA. "immature cannabis plant" means a cannabis plant that has no observable flowers or buds;

BB. "industry standards" means the prevailing customary standards of business practice in the cannabis industry in jurisdictions within the United States;

CC. "integrated cannabis microbusiness" means a person that is licensed to conduct one or more of the following:

(1) production of cannabis at a single licensed premises; provided that the person shall not possess more than two hundred total mature cannabis plants at any one time;

(2) manufacture of cannabis products at a single licensed premises;

(3) sales and transportation of cannabis products produced or manufactured by that person or another cannabis producer microbusiness or integrated cannabis microbusiness;

(4) operation of only one retail establishment; and

(5) couriering of cannabis products to consumers;

DD. "licensed premises" means a location that includes:

(1) all enclosed public and private areas at the location that are used in the business and includes cannabis consumption areas, offices, kitchens, restrooms and storerooms;

(2) all areas outside of a building that are specifically included in the license;

(3) all areas of a standalone cannabis consumption area, including retail and other areas, whether in enclosed or outside spaces, and including private or members-only clubs where cannabis products are available for sale or consumption; and

(4) with respect to a location that is specifically licensed for the production of cannabis outside of a building, the amount of land that the licensee owns, leases or has a right to occupy that is identified in the application for licensure for cultivation of cannabis; provided that the licensed premises may be decreased but shall not be increased without permission of the division;

EE. "local jurisdiction" means a municipality, including a home rule municipality, or county;

FF. "manufacture" means to compound, blend, extract, infuse, package and label or otherwise prepare a cannabis product;

GG. "medical cannabis" means cannabis products used by a qualified patient or reciprocal participant in accordance with the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978];

HH. "medical cannabis program" means the program created pursuant to the Lynn and Erin Compassionate Use Act;

II. "medical cannabis registry" means the system by which the department of health approves or denies applications and issues and renews registry identification cards for qualified patients and primary caregivers;

JJ. "primary caregiver" means a resident of New Mexico who is at least eighteen years of age and who is responsible for managing the well-being of a qualified patient with respect to the medical use of cannabis pursuant to the Lynn and Erin Compassionate Use Act;

KK. "public space" means any place to which the general public has access;

LL. "qualified patient" means a resident of New Mexico who holds a registry identification card pursuant to the Lynn and Erin Compassionate Use Act;

MM. "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;

NN. "residence" or "household" means a housing unit and includes any place in or around the housing unit that is not a public space and at which an occupant of the housing unit produces, manufactures, keeps or stores homegrown or homemade cannabis products or stores legally purchased cannabis;

OO. "retail establishment" means a location at which cannabis products are sold directly to consumers;

PP. "superintendent" means the superintendent of regulation and licensing;

QQ. "unprocessed" means unaltered from an original, raw or natural state; and

RR. "vertically integrated cannabis establishment" means a person that is authorized to act as one or more of the following:

(1) a cannabis courier;

(2) a cannabis manufacturer;

(3) a cannabis producer; and

(4) a cannabis retailer.

History: Laws 2021 (1st S.S.), ch. 4, § 2; 2024, ch. 38, § 2.

ANNOTATIONS

The 2024 amendment, effective July 1, 2024, defined "illegal cannabis product" and "residence", removed the definitions of "advertisement", "cannabis server permit", cannabis server permit education provider" and "cannabis training and education program" and revised the definitions of certain terms, as used in the Cannabis Regulation Act; deleted former Subsection A, which provided the definition for "advertisement" and redesignated former Subsections B through M as Subsections A through L, respectively; in Subsection B, after "means an area" added "of a licensed premises"; in Subsection C, after "transports" added "commercial or medical" and deleted "qualified patients, primary caregivers or reciprocal participants or directly to"; in Subsection D, added Paragraph D(9); in Subsection G, deleted former Paragraph (3); in Subsection H, deleted former Paragraph (2); in Subsection L, deleted "qualified patients, primary caregivers or reciprocal participants or directly to"; deleted former Subsections N and O, which defined "cannabis server permit" and "cannabis server permit education provider" respectively, and redesignated former Subsection P as

Subsection M; in Subsection M, after "means a" deleted "person" and added "facility"; deleted former Subsection Q, which defined "cannabis training and education program" and redesignated former Subsections R through CC as Subsections N through Y, respectively; in Subsection N, Paragraph N(1), after "researching" added "packaging and", in Paragraph N(2), after "cannabis program" deleted "to cannabis training and education programs" and after "use of cannabis" added "products"; in Subsection O, after "older who" added "legally", after "uses a" added "commercial", after "cannabis product" deleted "for a purpose other than" and added "not for" and added "or a person who holds a medical cannabis program registry identification card issued by the department of health or is a reciprocal participant"; in Subsection W, after "production" deleted "possession" and added "storage", after "distribution" added "sale or consumption" and after "of" deleted "cannabis, cannabis extracts or"; in Subsection Y, deleted "dependent or conditioned upon the provision or receipt of financial consideration" and added "for resale"; deleted former Subsection DD; added a new Subsection Z and redesignated former Subsections EE through QQ as Subsections AA through MM, respectively; in Subsection CC, after "a person that is" deleted "authorized" and added "licensed", in Paragraph CC(3), after "transportation of" deleted "only", and added "or another cannabis producer microbusiness or integrated cannabis microbusiness,", and in Paragraph CC(5), deleted "to qualified patients, primary caregivers or reciprocal participants or directly"; in Subsection DD, Paragraph DD(1), after "includes" added "cannabis consumption areas", in Paragraph DD(2), deleted "for the production, manufacturing, wholesale sale or retail sale of cannabis products; and", added a new Paragraph DD(3) and redesignated the succeeding paragraph accordingly, and in Paragraph DD(4), added "that is identified in the application for licensure for cultivation of cannabis; provided that the licensed premises may be decreased but shall not be increased without permission of the division"; in Subsection EE, after "municipality" added "including a"; in Subsection FF, after "package" added "and label"; in Subsection II, after "qualified patients" added "and primary caregivers"; in Subsection KK, after "public" deleted "place" and added "space" and deleted "and includes hallways, lobbies and other parts of apartment houses and hotels that do not constitute rooms or apartments designed for actual residence; highways; streets; schools; places of amusement; parks; playgrounds; and places used in connection with public passenger transportation"; added a new Subsection NN and redesignated former Subsections RR through UU as Subsections OO through RR, respectively; in Subsection OO, deleted "to qualified patients, primary caregivers and reciprocal participants and"; and in Subsection RR, after "act as," deleted "any" and added "one or more".

26-2C-3. Division; powers and duties; rulemaking; advisory committee created; membership; duties.

A. The "cannabis control division" is created in the department to administer the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978] and rules promulgated in accordance with those acts. Rules shall be adopted and promulgated as provided in the State Rules Act [Chapter 14, Article 4 NMSA 1978].

B. No later than January 1, 2022, the division shall promulgate rules that are consistent with industry standards necessary for the division to carry out its duties pursuant to the Cannabis Regulation Act as follows:

(1) qualifications and procedures for licensure; provided that qualifications shall be directly and demonstrably related to the operation of the applicable cannabis establishment;

(2) security requirements for a cannabis establishment;

(3) requirements related to:

(a) inspection and monitoring of a cannabis establishment;

(b) a cannabis establishment's recordkeeping and tracking of cannabis from seed until sale;

(c) prevention of the sale or diversion of cannabis products in commercial cannabis activity to a person under the age of twenty-one;

(d) labeling of cannabis products packaged, sold or distributed by a cannabis establishment; and

(e) language for labels of cannabis products regarding potential adverse effects;

(4) rules providing that:

(a) a person who is twenty-one years old or older shall not purchase more than two ounces of cannabis, sixteen grams of cannabis extract and eight hundred milligrams of edible cannabis at one time; and

(b) as to commercial cannabis activity: 1) a consumer shall not possess more than two ounces of cannabis, sixteen grams of cannabis extract and eight hundred milligrams of edible cannabis outside the consumer's private residence; 2) any cannabis in excess of the amounts described in Item 1) of this subparagraph shall be stored in the person's residence and shall not be visible from a public place; and 3) the division shall not limit the amount of tetrahydrocannabinol concentration in a cannabis product; provided that the division may adopt requirements for apportionment and packaging of cannabis products;

(5) rules on advertising and marketing of cannabis products;

(6) rules on how a licensee may display cannabis products for sale;

(7) procedures that promote and encourage full participation in the cannabis industry governed by the Cannabis Regulation Act by representatives of communities that have been disproportionately harmed by rates of arrest through the enforcement of cannabis prohibitions in law and policy, rural communities likely to be impacted by cannabis production and agricultural producers from economically disadvantaged communities;

(8) procedures that promote and encourage racial, ethnic, gender and geographic diversity and New Mexico residency among license applicants, licensees and cannabis industry employees;

(9) rules for a certification process to identify cannabis products for consumers from integrated cannabis microbusinesses or cannabis producer microbusinesses or owned by representatives of communities that have been disproportionately harmed by rates of arrest through the enforcement of cannabis prohibitions in law and policy and underserved communities that include tribal, acequia, land grant-merced and other rural historic communities;

(10) in consultation with the economic development department, development of a technical assistance resource guide for rural New Mexico residents who are seeking to establish vertically integrated cannabis establishments, cannabis producer microbusinesses or integrated cannabis microbusinesses;

(11) in consultation with the department of environment, rules to establish:

(a) health and safety standards applicable to the research, production and manufacture of cannabis products;

(b) standards for food and product safety applicable to cannabis products; and

(c) which additives are approved for and prohibited from inclusion in cannabis products; provided that nicotine shall be prohibited;

(12) in consultation with the New Mexico department of agriculture and the department of environment, rules to establish standards for quality control, inspection and testing of cannabis products for potency and contaminants, except for cannabis produced or harvested for research purposes and not for ingestion; provided that all such rules and standards shall be consistent with the rules and standards for testing of medical cannabis products; and

(13) in consultation with the state fire marshal's office of the homeland security and emergency management department, rules with regard to health and safety.

C. No later than January 1, 2022, the division shall promulgate rules that are consistent with industry standards relating to cannabis training and education programs, including:

(1) qualifications and procedures for licensure; and

(2) physical security, cybersecurity and, if applicable, security of information collected under the federal Health Insurance Portability and Accountability Act of 1996 requirements.

D. No later than January 1, 2022, the division shall promulgate rules in consultation with the New Mexico department of agriculture, the department of environment and the office of the state engineer to establish:

(1) environmental protections; and

(2) protocols to ensure licensees' compliance with state and local laws and ordinances governing food and product safety, occupational health and safety, environmental impacts, natural resource protection, water use and quality, water supply, hazardous materials, pesticide use and wastewater discharge.

E. No later than January 1, 2022, the division shall adopt rules in consultation with the department of health to establish standards and determinations on requirements for reserving cannabis products for sale to qualified patients, primary caregivers and reciprocal participants.

F. The division shall collect and publish annually on the division's website, and present to the appropriate interim committee of the legislature, a report describing demographic data on license applicants, controlling persons and employees of cannabis establishments, including race, ethnicity, gender, age, residential status and whether the applicants, persons, employees or the locations where the cannabis products are produced, manufactured, sold, tested or researched are located in an underserved rural community, including tribal, acequia, land grant-merced or other rural historic communities.

G. The "cannabis regulatory advisory committee" shall be created no later than September 1, 2021. The committee shall advise the division on the development of rules pursuant to the Cannabis Regulation Act, including best practices and the promotion of economic and cultural diversity in licensing and employment opportunities and protection of public health and safety while ensuring a regulated environment for commercial cannabis activity that does not impose unreasonable barriers that would perpetuate, rather than reduce and eliminate, the illicit market for cannabis. A person appointed to the cannabis regulatory advisory committee shall not hold any ownership interest or investment in a licensed person pursuant to the Cannabis Regulation Act; provided that the superintendent may appoint a person who holds an ownership interest

in a licensed person as a nonvoting member. The committee shall consist of the following members:

(1) the chief public defender or the chief public defender's designee;

(2) a district attorney appointed by the New Mexico district attorney association;

(3) a municipal police chief appointed by the New Mexico association of chiefs of police;

(4) a county sheriff appointed by the executive director of the New Mexico association of counties; and

(5) one member for each of the following groups or professional qualifications, appointed by the superintendent:

(a) a cannabis policy advocacy organization;

(b) a labor organization;

(c) a qualified patient;

(d) a state or local agency with relevant expertise as the director and the superintendent deem appropriate;

(e) an Indian nation, tribe or pueblo with relevant expertise as the director and the superintendent deem appropriate;

(f) expertise in public health;

(g) expertise in regulating commercial activity for adult-use intoxicating substances;

(h) expertise and experience in cannabis laboratory science;

(i) expertise in environmental science;

(j) expertise in small business development;

(k) expertise in water resources;

(l) expertise in other relevant areas as the director and the superintendent deem appropriate; and

(m)previous experience as a cannabis retailer, cannabis producer or cannabis manufacturer and who is a nonvoting member.

H. The cannabis regulatory advisory committee shall elect from among its members a chair and such other officers as it deems necessary. The committee shall meet at the call of the chair, the director or the superintendent. A majority of members currently serving constitutes a quorum for the conduct of business. Members shall serve at the pleasure of the superintendent.

I. Public voting members of the cannabis regulatory advisory committee are entitled to receive per diem and mileage as provided for state employees pursuant to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

J. The division shall:

(1) monitor the supply and demand of cannabis products produced in New Mexico by licensees and present annually to the appropriate interim committee of the legislature the impacts of supply on illicit cannabis products markets and adequate supply of cannabis products for qualified patients and reciprocal participants;

(2) request the department of public safety to enforce the provisions of the Cannabis Regulation Act as deemed necessary; and

(3) undertake studies and conduct courses of instruction for division employees that will improve the operations of the division and advance its purposes.

History: Laws 2021 (1st S.S.), ch. 4, § 3.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

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.

No provision of New Mexico law authorizes the secretary of state to convert a nonprofit corporation medical cannabis producer to a domestic profit corporation or a limited liability company. — The Nonprofit Corporation Act (NCA), 53-8-1 to 53-8-99 NMSA 1978, provides that nonprofit corporations can undergo specific types of transformations, namely a merger or consolidation into another nonprofit corporation, and the Limited Liability Company Act (LLC Act), 53-19-1 to 53-19-74 NMSA 1978, contains specific references to conversions from one business entity type to another, namely a corporation, partnership or limited partnership may be converted to a limited liability company (LLC) or an LLC may be converted to a corporation, partnership or limited partnership, but no provision of the NCA, LLC Act, or other provision of New Mexico law provides for other types of entity transformations, such as a conversion of a nonprofit corporation to another type of business entity like a profit corporation or LLC. Accordingly, the secretary of state cannot convert previously licensed nonprofit corporation medical cannabis producers to domestic profit corporations or LLCs. *Conversion of Medical Cannabis Distributors Nonprofits* (8/27/21), Att'y Gen. Adv. Ltr. 2021-10.

26-2C-3.1. Criminal history background checks; processes and procedures.

A. As used in this section:

(1) "director" means a person who serves on the corporate board of directors of a corporation licensed by the division as a cannabis establishment;

(2) "member and manager" includes those persons who are members in or managers of a limited liability company licensed by the division as a cannabis establishment and who are responsible for the operations of the limited liability company;

(3) "officer" means a president, one or more vice presidents, a secretary, a treasurer or a secretary-treasurer or a member of the executive committee, if different from these named officers, of a corporation licensed by the division as a cannabis establishment; and

(4) "partner" means a person who is a co-owner of a business licensed by the division as a cannabis establishment.

B. The division shall adopt rules providing the procedures to be followed for submission of an applicant's biometric data to the department of public safety to conduct a state criminal history background check and for its submission of the biometric data to the federal bureau of investigation to conduct a national criminal history background check for the following cannabis establishments:

(1) cannabis courier;

(2) cannabis manufacturer;

(3) cannabis producer;

(4) cannabis producer microbusiness;

(5) cannabis research laboratory;

(6) cannabis retailer;

(7) cannabis testing laboratory;

(8) integrated cannabis microbusiness;

(9) vertically integrated cannabis establishment; and

(10) cannabis consumption licensees if different from cannabis retailer.

C. The division shall require state and national criminal history background checks for the following persons:

(1) if an applicant for licensure is a sole proprietor business, the sole proprietor;

(2) if an applicant for licensure is a limited partnership, each partner of the limited partnership;

(3) if the applicant for licensure is a limited liability company, each member and manager of the limited liability company;

(4) if the applicant for licensure is a corporation, each director and officer of the corporation; and

(5) any controlling person of the applicant for licensure, as defined in Section 26-2C-2 NMSA 1978.

D. The division shall use the information from the criminal history background check to evaluate the applicant's qualifications for licensure.

E. Arrest record information received from the federal bureau of investigation and the department of public safety shall be confidential, shall not be considered a public record pursuant to the Public Records Act [Chapter 14, Article 3 NMSA 1978] and shall not be disclosed to persons not directly involved in the decision affecting the applicant.

History: Laws 2024, ch. 38, § 5.

ANNOTATIONS

Effective dates. — Laws 2024, ch. 38, § 20 made Laws 2024, ch. 38, § 5 effective July 1, 2024.

26-2C-4. Department of health; duties; public health and safety advisory committee.

A. The department of health shall monitor emerging scientific and medical information relevant to the health effects associated with the use of cannabis products and shall monitor changes in cannabis product use, opioid use and alcohol use patterns for children and adults within the state, broken down by county, race and ethnicity.

B. No later than September 1, 2021, the secretary of health shall appoint a "public health and safety advisory committee" composed of no more than fifteen professionals with expertise related to cannabis products through work, training or research in public health, epidemiology, medicine, medical toxicology, poison control, road safety, occupational safety, environmental safety and emergency medicine.

C. Beginning December 1, 2024, the public health and safety advisory committee shall provide to the legislature, and the department of health shall publish on its website, an annual report on the health effects of legalizing cannabis products for adult use. The report shall include the following elements relating to cannabis product use and, as applicable, the demographics of persons who are the subject of an element:

(1) child access;

(2) road safety and driving while impaired;

(3) workplace safety;

(4) the percentage of emergency room visits and outcomes;

(5) educational needs for children and adults;

(6) consumer and product safety;

(7) the percentage of poison control center calls; and

(8) the impact of cannabis use on rates of alcohol, opioid and other substance abuse.

D. In consultation with qualified patients and primary caregivers, the department of health shall publish an annual assessment report that shall include at a minimum an evaluation of the affordability and accessibility of medical cannabis.

E. Public members of the public health and safety advisory committee are entitled to per diem and mileage as provided for state employees pursuant to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: Laws 2021 (1st S.S.), ch. 4, § 4.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

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.

26-2C-5. Department of health; duties; transfer of licensing duties.

Except for administration of the medical cannabis registry, the power, duty and authority of the department of health related to the medical cannabis program shall be transferred to the division on the effective date of the Cannabis Regulation Act.

History: Laws 2021 (1st S.S.), ch. 4, § 5.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

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.

26-2C-6. Licensing cannabis activities; limitations; medical cannabis legacy licensing; cannabis shortage for medical program; conversion of nonprofit medical cannabis corporations.

A. The division shall regulate the following in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], unless otherwise provided in the Cannabis Regulation Act:

(1) commercial cannabis activity;

(2) the medical cannabis program, except for the medical cannabis registry; and

(3) all aspects of cannabis relating to cannabis training and education programs.

B. The division may issue, renew, deny, suspend or revoke licenses or discipline licensees for the following:

(1) cannabis consumption areas;

(2) cannabis couriers;

(3) cannabis manufacturers;

(4) cannabis producer microbusinesses;

(5) cannabis producers;

(6) cannabis research laboratories;

(7) cannabis retailers;

(8) cannabis servers;

(9) cannabis testing laboratories;

(10) cannabis training and education programs;

(11) integrated cannabis microbusinesses; and

(12) vertically integrated cannabis establishments.

C. The division shall include a clear designation on all licenses that indicates whether the license is for medical cannabis activity, commercial cannabis activity or both.

D. The division shall issue a license to a cannabis retailer applicant at a discount if the applicant provides documentation of an agreement to accept cannabis products on consignment from a cannabis producer microbusiness or an integrated cannabis microbusiness.

E. A license is valid for twelve months from the date the license is issued and may be renewed annually. A licensee shall notify the division when the licensee begins or ends operations pursuant to the license.

F. The director shall not renew a license until the director receives notification from the secretary of taxation and revenue or the secretary's designee that on a certain date:

(1) the licensee is not a delinquent taxpayer pursuant to Section 7-1-16 NMSA 1978 only with respect to the cannabis excise tax or the gross receipts tax; and

(2) there are no unfiled tax returns due with respect to the cannabis excise tax or the gross receipts tax.

G. A license shall not be transferable or assignable from a licensee to another person. The division shall not allow a person that is licensed as any type of cannabis establishment other than a cannabis research laboratory to hold, directly or indirectly, a cannabis testing laboratory license.

H. A license shall not be subject to execution, attachment, a security transaction, liens or receivership.

I. Except for verification of age, the division shall not require licensees to request information from consumers or impose any residency requirement upon consumers for the purchase of commercial cannabis products. The division may require licensees to request information from consumers for the purchase of medical cannabis products, which may include the presentation of legal identification issued by an authorized governmental entity or other documents as required by the medical cannabis program.

J. Except as otherwise provided in the Cannabis Regulation Act, the division shall not limit the number of licensed premises a licensee may occupy or operate under a license. Multiple licensees may occupy a single licensed premises, and the division shall not place any restriction or prohibition on the number of licensees occupying a single licensed premises or on the number of licensed premises of a cannabis

establishment except as otherwise specifically provided for by that act. A licensee may conduct any lawful activity or any combination of lawful activities at a licensed premises except that a cannabis licensee shall not occupy any premises that also houses a business holding a license under the Liquor Control Act [60-3A-1 NMSA 1978] that allows the sale or giving away of alcoholic beverages by the glass or package, including growlers, to the public or to members of a private club or otherwise allows consumption of alcohol on the premises.

K. Smoking in a cannabis consumption area on a licensed premises shall be allowed only if the cannabis consumption area is in a designated smoking area or in a standalone building from which smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act [Chapter 24, Article 16 NMSA 1978].

L. Licensees are specifically allowed to conduct other licensed activities, including activities pursuant to the Hemp Manufacturing Act [Chapter 76, Article 24 NMSA 1978] and the Liquor Control Act except for co-location as specified in Subsection J of this section.

M. A person properly licensed and in good standing pursuant to the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978] on the effective date of the Cannabis Regulation Act may continue to operate pursuant to that license for medical cannabis until comparable licenses for commercial cannabis activity are available. The division shall determine when retail sales of commercial cannabis products begin, but no later than April 1, 2022. A facility of such a licensee, upon issuance of the applicable cannabis establishment license, shall constitute licensed premises of the licensee and the licensee shall be entitled to continued and uninterrupted operations of the licensed premises. As to activity under the medical cannabis program, the licensee shall continue to operate under rules promulgated for the medical cannabis program until the division promulgates rules for medical cannabis activity, and a qualified patient, primary caregiver or reciprocal participant shall not be prohibited from purchasing and obtaining cannabis products through the medical cannabis program.

N. To address a shortage of cannabis supply in the medical cannabis program, the division may:

(1) require all cannabis establishment licensees to ensure that at least ten percent of their cannabis in stock on a monthly basis is designated for sale to qualified patients, primary caregivers and reciprocal participants;

(2) initially take reasonable measures to expeditiously incentivize increased production of cannabis plants to remedy a shortage of cannabis supply in the medical cannabis program;

(3) after having first exhausted measures to increase production of cannabis plants to address the shortage of cannabis supply in the medical cannabis program, exclude commercial cannabis activity from the scope of new licenses issued to initial applicants for a vertically integrated cannabis establishment, cannabis producer, integrated cannabis microbusiness, cannabis producer microbusiness or cannabis manufacturer license, which limitation shall be in force for a period of at least six months; and

(4) require licensees who are licensed to produce cannabis to produce a specified quota of mature cannabis plants to be designated for use in the medical cannabis program; provided that:

(a) the division may require a licensee to devote no more than twenty-five percent of the licensee's cultivated cannabis plants on a monthly basis for use in the medical cannabis program; and

(b) the division may require specific tracking of cannabis plants.

O. As used in this section, "shortage of cannabis supply in the medical cannabis program" means that the average number of cannabis plants in production in the medical cannabis program per qualified patient after June 29, 2021 is substantially less than the average number of cannabis plants in production in the medical cannabis program per qualified patient as of June 29, 2021, where:

(1) the average number of cannabis plants in production after June 29, 2021 is measured over a period of three consecutive months; and

(2) the average number of cannabis plants in production as of June 29, 2021 is measured over a period of three consecutive months immediately preceding June 29, 2021.

P. A person who is a member of the New Mexico senate or the New Mexico house of representatives on the effective date of the Cannabis Regulation Act shall not apply for or be granted a license to engage in any commercial cannabis activity prior to July 1, 2026.

Q. A medical cannabis legacy nonprofit corporation that was required by the department of health to organize under the provisions of the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] in order to qualify for a medical cannabis license may be converted into a corporation under the Business Corporation Act [Chapter 53, Articles 11 through 18 NMSA 1978], a limited liability company under the Limited Liability Company Act [Chapter 53, Article 19 NMSA 1978], a limited partnership under the Uniform Revised Limited Partnership Act [Chapter 54, Article 2A NMSA 1978] or a partnership under the Uniform Partnership Act (1994) [54-1A-101 to 54-1A-1206 NMSA 1978] upon the nonprofit corporation's filing with the secretary of state of restated articles of incorporation, articles of organization, certificate of limited partnership or

statement under Section 54-1A-105 NMSA 1978. The conversion shall be approved pursuant to an agreement of conversion in the manner provided for the conversion of a limited liability company in Section 53-19-60.1 NMSA 1978.

History: Laws 2021 (1st S.S.), ch. 4, § 6; 2023, ch. 85, § 24; 2024, ch. 38, § 3.

ANNOTATIONS

The 2024 amendment, effective July 1, 2024, clarified that the cannabis control division must follow the provisions of the Uniform Licensing Act when conducting its regulatory duties; required licensees to notify the division when the licensee begins or ends operations, provided that licenses are not subject to execution, attachment, a security transaction, liens or receiverships, prohibited licensed liquor and licensed cannabis activities on the same premises, authorized a person to hold both a cannabis license issued by the cannabis control division and a liquor license issued by the alcohol beverage control division, subject to the same premises restriction, allowed non-profit organizations licensed under the department of health's medical cannabis program to convert their corporate structures to for-profit legal entities upon compliance with existing laws governing that process; in the section heading, added "conversion of nonprofit medical cannabis corporations"; in Subsection A, deleted "and administer and may collect fees in connection with the administration of" and added "the following in accordance with the Uniform Licensing Act, unless otherwise provided in the Cannabis Regulation Act", in Paragraph A(1), after "activity" deleted "and licensing related to commercial cannabis activity"; in Subsection B, deleted "shall follow the provisions of the Uniform Licensing Act when licensing or permitting" and added "may issue, renew, deny, suspend or revoke licenses or discipline licensees for"; in Subsection C, after "activity or both" deleted "or for cannabis training and education programs"; in Subsection D, after "microbusiness" deleted "licensed pursuant the Cannabis Regulation Act"; in Subsection E, deleted "except that a license issued for a cannabis training and education program is valid until terminated by the licensee or suspended or revoked by the division" and added "A licensee shall notify the division when the licensee begins or ends operations pursuant to the license."; added a new Subsection H and redesignated former Subsections H and I as Subsections I and J, respectively; in Subsection I, after the first occurrence of "the purchase of" added "commercial" after "cannabis products" deleted "pursuant to the commercial cannabis activity authorized by the Cannabis Regulation Act" after the second occurrence of "the purchase of" added "medical" and after the next occurrence of "cannabis products" deleted "pursuant to the medical cannabis program"; in Subsection J, after "licensed premises" deleted "provided that the licensee is not a licensee pursuant to the Liquor Control Act" and added the remainder of the subsection; redesignated former Subsections J through N as Subsections L through P, respectively; in Subsection L, after "Hemp Manufacturing Act" deleted "except for sales of alcoholic beverages" and added "and the Liquor Control Act except for co-location as specified in Subsection J of this section"; and added Subsection Q.

The 2023 amendment, effective July 1, 2023, provided that certain licenses shall not be issued or renewed if the licensee is a delinquent taxpayer for certain taxes; and in Subsection F, Paragraph F(1), after "delinquent taxpayer", added "pursuant to Section 7-1-16 NMSA 1978 only with respect to the cannabis excise tax or the gross receipts tax", and in Paragraph F(2), after "unfiled tax returns due", deleted "from engaging in business authorized by the license" and added "with respect to the cannabis excise tax or the gross receipts tax".

26-2C-7. Cannabis activity licensing; application; issuance and denial of a license; suspension and revocation.

A. In carrying out its commercial cannabis activity licensing duties, the division shall:

(1) no later than September 1, 2021, accept and begin processing license applications for cannabis producers, cannabis producer microbusinesses and any person properly licensed and in good standing as a licensed cannabis producer pursuant to the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978];

(2) no later than January 1, 2022, accept and begin processing license applications for all license types;

(3) if a cannabis producer or cannabis producer microbusiness, require as a condition of licensing that the applicant demonstrate that the applicant has a legal right to a commercial water supply, water rights or other source of water sufficient to meet the water needs as determined by the division related to the license as evidenced by documentation from the office of the state engineer of a valid water right or from a water provider that the use of water for cannabis production is compliant with that water provider's rules; and

(4) for any type of cannabis producer or manufacturer license, require the applicant to submit a plan to use, or demonstrate to the division that the applicant cannot feasibly use, energy or water reduction opportunities, including:

(a) for a cannabis producer, drip irrigation and water collection;

(b) natural lighting and energy efficiency measures; and

(c) renewable energy generation.

B. Once the division deems an application complete, the division has ninety days to issue or deny a license application.

C. The division shall deny an application for an initial license or renewal if the application does not include information required by the division or the applicant does

not meet the requirements of the Cannabis Regulation Act or rules promulgated in accordance with that act.

D. The division may refuse to issue, suspend or revoke a license in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] of any person who does not meet the qualifications for licensure, who is not in compliance with the Cannabis Regulation Act or rules promulgated in accordance with that act or for whom one or more of the following are substantially related to the qualifications, functions or duties of the applicant's or licensee's business in New Mexico:

(1) a tax lien related to cannabis activity in this or another state;

(2) a pending investigation or a felony indictment or conviction of the applicant or licensee or a controlling person of the applicant or licensee in this state or another state or by the federal government involving fraud, deceit or embezzlement;

(3) a pending investigation or a felony indictment or conviction of the applicant or licensee or a controlling person of the applicant or licensee involving producing, manufacturing, distributing, selling or giving away illegal cannabis products;

(4) the denial, suspension or revocation of a cannabis license in another state that would have the same result if occurring in New Mexico;

(5) a pending investigation or a felony indictment or conviction for hiring, employing or otherwise using a person younger than eighteen years of age or a person of any age who is a victim of trafficking, forced labor or other exploitation to produce, manufacture, transport or sell cannabis or a controlled substance;

(6) a licensee or controlling person that after a notice of noncompliance issued by the division refuses to follow division licensing requirements, state or local operational rules, public health and safety laws or rules or other provisions of state law pertaining to cannabis products; or

(7) any other governmental action pending or taken against an applicant, licensee or controlling person that in the division's determination makes the person unqualified to be licensed or involved in a cannabis business in New Mexico.

E. Production, manufacture, distribution, sale or possession of illegal cannabis product is grounds for denial, suspension or revocation of a license or for taking any other disciplinary action allowed by law or rule of the division.

F. If the division determines after a review of pertinent circumstances provided in Subsection D of this section that the applicant, licensee or controlling person otherwise meets the qualifications for licensure and that issuing a license does not compromise the state's cannabis program or the public health or safety, the division shall issue the license or close the suspension or revocation case.

G. A conviction for which the related sentence, including any term of probation or parole, has been completed for the production, possession, use, manufacture, distribution or sale or the possession with the intent to manufacture, distribute or sell cannabis is not considered substantially related to the qualifications, functions or duties of a person seeking a license and shall not be the sole ground on which an application is denied. The provisions of the Uniform Licensing Act and the Criminal Offender Employment Act [Chapter 28, Article 2 NMSA 1978] shall govern consideration of criminal records required or permitted by the Cannabis Regulation Act.

H. The division shall deny an application if an applicant, a controlling person or the premises for which a license is sought does not qualify for licensure pursuant to the Cannabis Regulation Act.

I. The division shall not license a person who has had a license that was issued pursuant to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act revoked by the division or the department of health in the three years immediately preceding the date on which the person filed a new application.

J. Unless otherwise provided in the Cannabis Regulation Act, a person whose license has been revoked may reapply for a license after a period of three years. The division may consider all of the circumstances resulting in the revocation in determining whether to issue a new license.

History: Laws 2021 (1st S.S.), ch. 4, § 7; 2024, ch. 38, § 4.

ANNOTATIONS

The 2024 amendment, effective July 1, 2024, clarified that the condition of licensing requiring legal right to sufficient water only applies to cannabis producers and cannabis producer microbusinesses, revised provisions related to the cannabis control division's authority to deny, suspend and revoke licenses issued pursuant to the Cannabis Regulation Act; in the section heading, deleted "Commercial" and added "suspension and revocation"; deleted former Subsection A and redesignated former Subsection B as Subsection A; in Subsection A, Paragraph A(3), added "if a cannabis producer or cannabis producer microbusiness" and deleted former Paragraph (5); in Subsection C, added "applicant does not meet the requirements of the Cannabis Regulation Act or rules promulgated in accordance with that act"; in Subsection D, Paragraph D(2), added "a pending investigation or a felony indictment or conviction of the", deleted "has been convicted of an offense that is substantially related to the qualifications, functions or duties of the applicant's business provided that", and added "or licensee in this state or another state or by the federal government involving fraud, deceit or embezzlement", and added Paragraphs D(3) through D(7); added a new Subsection E; in Subsection F, after "does not compromise" added "the state's cannabis program or the", after "public" added "health or" and deleted "conduct a thorough review of the conviction, including the nature of the offense, surrounding circumstances and, any evidence of the applicant's or controlling person's rehabilitation following the conviction, and based on

that review determine whether the applicant should be issued a license" and added "issue the license or close the suspension or revocation case"; deleted former Subsection E and redesignated former Subsections F through I as Subsections G through J, respectively; in Subsection G, after "provisions of the" added "Uniform Licensing Act and the" and after "Criminal Offender Employment Act" added "shall govern consideration of criminal records required or permitted by the Cannabis Regulation Act"; and deleted former Subsections J through M.

26-2C-8. Licensees; disciplinary actions; sanctions; civil penalty.

A. A violation of the provisions of the Cannabis Regulation Act by a licensee is grounds for disciplinary action.

B. The division may:

(1) impose an intermediate sanction established by rule;

(2) impose a directed plan of correction;

(3) assess a civil monetary penalty established by rule; provided that a civil monetary penalty shall not exceed ten thousand dollars ($10,000) per violation; and provided further that penalties and interest recovered pursuant to the Cannabis Regulation Act on behalf of the state shall be remitted to the state treasurer for deposit in the current school fund; or

(4) suspend or revoke the license.

C. The division shall promulgate rules specifying the criteria for imposition of sanctions and civil monetary penalties.

D. The provisions of this section do not apply to occupational health and safety rules promulgated pursuant to Section 3 [26-2C-3 NMSA 1978] of the Cannabis Regulation Act.

E. A person aggrieved by an action taken by the division pursuant to this section may request and receive a hearing with the superintendent for the purpose of reviewing the action in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

History: Laws 2021 (1st S.S.), ch. 4, § 8.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-9. Application and licensing fees.

A. Every application for the issuance or renewal of the following licenses shall be accompanied by a license fee in the following specified amounts:

(1) a cannabis courier license, up to one thousand five hundred dollars ($1,500) per year and an additional fee of up to one thousand dollars ($1,000) per year for each additional licensed premises of the licensee;

(2) a cannabis testing laboratory license, up to two thousand five hundred dollars ($2,500) per year and an additional fee of up to one thousand dollars ($1,000) per year for each additional licensed premises of the licensee;

(3) a cannabis manufacturer license, two thousand five hundred dollars ($2,500) per year and an additional fee of one thousand dollars ($1,000) per year for each additional licensed premises of the licensee;

(4) a cannabis producer license, two thousand five hundred dollars ($2,500) per year and an additional fee of one thousand dollars ($1,000) per year for each additional licensed premises of the licensee;

(5) a cannabis retailer license, two thousand five hundred dollars ($2,500) per year and an additional fee of one thousand dollars ($1,000) per year for each additional licensed premises of the licensee;

(6) a cannabis research laboratory license, two thousand five hundred dollars ($2,500) per year and an additional fee of one thousand dollars ($1,000) per year for each additional licensed premises of the licensee;

(7) a vertically integrated cannabis establishment license, seven thousand five hundred dollars ($7,500) per year and an additional fee of one thousand dollars ($1,000) per year for each licensed premises of the licensee;

(8) a cannabis producer microbusiness license, up to one thousand dollars ($1,000) per year;

(9) an integrated cannabis microbusiness license, up to two thousand five hundred dollars ($2,500) per year and an additional fee of five hundred dollars ($500) per year for each licensed premises of the licensee; and

(10) a cannabis consumption area, up to two thousand five hundred dollars ($2,500) per year.

B. Except for cannabis producer microbusinesses and integrated cannabis microbusinesses, a licensee cultivating cannabis plants shall be assessed an additional

annual fee no greater than fifty dollars ($50.00) per mature cannabis plant at the time of licensing or renewal.

C. A licensee may increase the number of mature plants licensed at the time of renewal and one other time per year in increments of five hundred mature plants. Fees may be prorated for the remainder of the licensing year.

D. The initial application fee and the annual renewal fee for a vertically integrated cannabis establishment license shall not exceed one hundred twenty-five thousand dollars ($125,000) for a license for both medical cannabis activity and commercial cannabis activity. The initial application fee and the annual renewal fee for a license or renewal of a license that authorizes only medical cannabis activity shall be one-half the fee applicable to a license authorizing both medical cannabis activity and commercial cannabis activity.

E. If a cannabis producer microbusiness or an integrated cannabis microbusiness enters into a business arrangement with another licensee with the purpose or having the effect of evading the limitations of the licensee's license, such licensee shall not be eligible for the lower fee prescribed in Subsection A of this section and shall pay the per-plant fee prescribed in Subsection B of this section.

F. The division shall collect all renewal fees, including the renewal fees for all licensed premises, at the time of renewal of a license.

G. The fee for the issuance of a cannabis server permit shall not exceed thirty-five dollars ($35.00).

H. The division shall deposit all fees collected pursuant to the Cannabis Regulation Act in the cannabis regulation fund.

History: Laws 2021 (1st S.S.), ch. 4, § 9.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-10. Cannabis training and education programs; registration with division.

A New Mexico public post-secondary educational institution may offer a practical or academic curriculum designed to prepare students for participation in the cannabis industry. The institution shall register its cannabis training and education program with the division, which shall include the information about the program on its website.

History: Laws 2021 (1st S.S.), ch. 4, § 10; repealed and reenacted by Laws 2024, ch. 38, § 6.

ANNOTATIONS

Repeals and reenactments. — Laws 2024, ch. 38, § 6 repealed former 26-2C-10 NMSA 1978 and enacted a new section, effective July 1, 2024.

26-2C-11. Cannabis server permits; cannabis servers; permit required; applications; education program approval required; issuance or denial of a permit or approval; penalties.

A. The division shall promulgate rules consistent with this section and industry standards for issuance of a cannabis server permit and licenses for a cannabis consumption area. A cannabis research laboratory or an employee of the laboratory is not required to obtain or possess a cannabis server permit while performing activities authorized pursuant to a cannabis research laboratory.

B. The division shall issue cannabis server permits to persons twenty-one years of age or older who satisfy the requirements of this section and rules promulgated by the division. An applicant shall provide proof of satisfactory completion of a program provided by a cannabis server permit education provider approved by the division. A person shall not be employed as a cannabis server on a licensed premises unless that person obtains a cannabis server permit within thirty days of employment.

C. The cannabis server education program curriculum shall include the following subjects:

(1) the effect cannabis products have on the body and behavior, including the effect on a person's ability to operate a motor vehicle when under the influence of cannabis products;

(2) the effect cannabis products have on a person when used in combination with alcohol or legal or illegal drugs;

(3) state laws concerning cannabis licensure, cannabis liability issues and driving under the influence of cannabis;

(4) methods of recognizing problem cannabis product users and techniques for intervening with problem cannabis product users;

(5) methods of identifying false driver's licenses and other documents used as evidence of age and identity to prevent the sale of cannabis products to a person under twenty-one years of age pursuant to the Cannabis Regulation Act; and

(6) harm reduction practices related to cannabis use.

D. A cannabis server permit is the property of the state and shall be immediately returned to the division upon suspension or revocation or denial of renewal of a permit.

E. Cannabis server permits shall be valid for a period of three years from the date the permit is issued and may be renewed upon providing proof that the permit holder has successfully completed up to four and one-half hours of continuing education and an examination as determined by the division.

F. In addition to any other penalties provided by law, the following penalties may be imposed for sales, service or dispensing a cannabis product to a person under twenty-one years of age in violation of the provisions of the Cannabis Regulation Act or rules of the division:

(1) the division may suspend a cannabis server permit for a period of thirty days if the director finds that the cannabis server is guilty of a first offense of selling, serving or dispensing a cannabis product to a person under twenty-one years of age;

(2) the division shall suspend a cannabis server permit for a period of one year when the division finds that the cannabis server is guilty of a second offense of selling, serving or dispensing a cannabis product to a person under twenty-one years of age in violation of the Cannabis Regulation Act arising separately from the incident giving rise to the cannabis server's first offense;

(3) the division shall permanently revoke a cannabis server permit when it finds that the cannabis server is guilty of a third offense of selling, serving or dispensing a cannabis product to a person under twenty-one years of age in violation of the Cannabis Regulation Act arising separately from the incidents giving rise to the cannabis server's first and second offenses; and

(4) no person whose cannabis server permit is suspended pursuant to the provisions of this section shall offer, sell, serve or dispense a cannabis product as part of commercial cannabis activity in a cannabis consumption area during the period of suspension.

History: Laws 2021 (1st S.S.), ch. 4, § 11.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-12. Local control.

A. A local jurisdiction may:

(1) adopt time, place and manner rules that do not conflict with the Cannabis Regulation Act or the Dee Johnson Clean Indoor Air Act [Chapter 24, Article 16 NMSA 1978], including rules that reasonably limit density of licenses and operating times consistent with neighborhood uses; and

(2) allow for the smoking, vaporizing and ingesting of cannabis products within an indoor or outdoor cannabis consumption area if:

(a) unless licensed pursuant to the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978], access to the cannabis consumption area is restricted to persons twenty-one years of age and older; and

(b) the cannabis establishment or integrated cannabis microbusiness is located at a minimum distance from a school or daycare center as determined by the local jurisdiction, but which minimum distance shall not be set at any more than three hundred feet from a school or daycare center that was in existence at the time the establishment or microbusiness was licensed.

B. A local jurisdiction shall not:

(1) prevent transportation of cannabis products on public roads by a licensee that transports cannabis products in compliance with the Cannabis Regulation Act;

(2) completely prohibit the operation of a licensee;

(3) prohibit or limit signage attached to or located on licensed premises that identifies the premises as a cannabis establishment;

(4) require a licensed premises or a cannabis consumption area to be any more than three hundred feet from a school or daycare center that was in existence at the time the cannabis establishment or integrated cannabis microbusiness was licensed;

(5) require an existing licensee at a licensed premises to relocate; or

(6) prohibit a person from producing homegrown cannabis as provided for in the Cannabis Regulation Act.

History: Laws 2021 (1st S.S.), ch. 4, § 12.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-13. Licensee protections.

A. 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, not a violation of state or local law and is not a basis for seizure or forfeiture of any property or assets under state or local law.

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

History: Laws 2021 (1st S.S.), ch. 4, § 13.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-14. Protection of underage persons; providing cannabis products to minors; penalties.

A. Except as allowed pursuant to the Cannabis Regulation Act, it is a violation of that act for a person, including a person licensed pursuant to the provisions of that act, or an employee, agent or lessee of that person, if the person knows or has reason to know that the person is violating the provisions of this section, to knowingly and intentionally:

(1) sell, serve or give cannabis products to a person under twenty-one years of age or allow a person under twenty-one years of age to consume cannabis products on the licensed premises;

(2) buy cannabis products for or procure the sale or service of cannabis products to a person under twenty-one years of age;

(3) deliver cannabis products to a person under twenty-one years of age; or

(4) aid or assist a person under twenty-one years of age to buy, otherwise procure or be served cannabis products.

B. A licensee shall not employ a person younger than twenty-one years of age to engage in a commercial cannabis activity.

C. The division shall suspend or revoke the license and may fine the licensee in an amount not to exceed ten thousand dollars ($10,000), or both, when the division finds that a licensee or the licensee's employee or agent knowingly has sold, served or given any cannabis product to a person under twenty-one years of age.

D. The establishment of all of the following facts by a licensee prosecuted for a violation of Subsection D of this section and a cannabis server for a violation of Subsection F of Section 11 [26-2C-11 NMSA 1978] of the Cannabis Regulation Act shall constitute a defense:

(1) that the purchaser falsely represented in writing; by producing a driver's license bearing the purchaser's photograph; by producing a photographic identification card issued by the motor vehicle division of the taxation and revenue department; or by producing a similar identification card issued pursuant to the laws of this state, another state, the federal government or the government of an Indian nation, tribe or pueblo that the person was twenty-one years of age or older;

(2) that the purchaser's appearance was such that an ordinary, prudent person would believe that the purchaser was twenty-one years of age or older; and

(3) that the sale was made in good faith, relying upon the purchaser's false written representation, driver's license or identification card produced as provided in Paragraph (1) of this subsection, and with the reasonable belief that the purchaser was actually twenty-one years of age or older.

E. Nothing in this section shall be construed or interpreted to prevent:

(1) the division from enforcing its rules against a licensee;

(2) a state agency from enforcing a law or rule that does not conflict with the Cannabis Regulation Act or rules promulgated pursuant to that act; or

(3) a local jurisdiction from enforcing a local ordinance that does not conflict with the Cannabis Regulation Act or rules promulgated pursuant to that act.

History: Laws 2021 (1st S.S.), ch. 4, § 14.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-15. Transport via courier.

A. A vertically integrated cannabis establishment, cannabis retailer or integrated cannabis microbusiness may courier cannabis products.

B. A courier may accept payment for services using any legal method of payment or payment on delivery.

History: Laws 2021 (1st S.S.), ch. 4, § 15.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-16. Packaging and labeling.

Before sale or transport via cannabis courier of a cannabis product, the cannabis product shall be labeled and packaged as provided in Section 17 [26-2C-17 NMSA 1978] of the Cannabis Regulation Act.

History: Laws 2021 (1st S.S.), ch. 4, § 16.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-17. Cannabis products; packaging and labeling; division rulemaking.

A. Cannabis or cannabis extract included in a cannabis product that is manufactured in compliance with applicable law is not considered to be an adulterant under state law.

B. The division shall promulgate rules consistent with industry standards for cannabis products that establish labeling and packaging requirements, including that:

(1) packages shall be resealable and child-resistant;

(2) packages and labels shall not be designed to be appealing to a child and shall not mimic the brand, design, name, logo or colorway of a non-cannabis consumer product marketed to children;

(3) packages and labels shall not use cartoons or symbols or images, including images of celebrities or celebrity likenesses, that are commonly used to market to children;

(4) packages containing edible cannabis products shall be opaque; and

(5) labels shall include:

(a) for a package containing only cannabis leaf or flower, the net weight of cannabis in the package;

(b) identification of the licensee or licensees that produced or manufactured the cannabis product, the date on which the cannabis was harvested, the type of cannabis product and the date on which the cannabis product was manufactured and packaged;

(c) potency and pesticide use;

(d) a list of pharmacologically active ingredients;

(e) for cannabis products containing non-cannabis ingredients, a list of all ingredients and a disclosure of nutritional information for the product or cannabis extract disclosed in the same manner required under federal law for nutritional labeling for food for human consumption;

(f) a warning if nuts or other known allergens are used in the item or in its manufacture;

(g) a logo designed by the division that is distinctive in design, color, size and location such that the logo notifies a reasonable person that the package contains cannabis;

(h) a warning of possible adverse effects of consumption and the New Mexico poison and drug information center phone number;

(i) an expiration date; and

(j) other information as required by rules promulgated in accordance with the Cannabis Regulation Act.

History: Laws 2021 (1st S.S.), ch. 4, § 17; 2024, ch. 38, § 7.

ANNOTATIONS

The 2024 amendment, effective July 1, 2024, removed a provision requiring packaging to be compostable and recyclable, and strengthened provisions restricting packaging

and labelling designed to appeal to children; and in Subsection B, Paragraph B(1), after "resistant" deleted "compostable and recyclable or made from recycled materials", in Paragraph B(2), added "and shall not mimic the brand, design, name, logo or colorway of a non-cannabis consumer product marketed to children", and added new Paragraphs B(3) and B(4) and redesignated former Paragraph B(3) as Paragraph B(5).

26-2C-17.1. When cannabis deemed misbranded.

Cannabis is deemed to be misbranded if:

A. its labeling is false or misleading in any particular;

B. it is offered for sale under the name of another cannabis product;

C. it is an imitation of another cannabis product, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately following, the name of the cannabis product imitated;

D. its container is so made, formed or filled as to be misleading; or

E. the label otherwise does not conform to the requirements of Section 26-2C-17 NMSA 1978 and labeling rules promulgated by the division.

History: Laws 2024, ch. 38, § 12.

ANNOTATIONS

Effective dates. — Laws 2024, ch. 38, § 20 made Laws 2024, ch. 38, § 12 effective July 1, 2024.

26-2C-18. Testing cannabis products; health and safety of employees and consumers.

A. A cannabis testing laboratory's testing of cannabis products shall comply with the requirements set forth in applicable law and rules.

B. In consultation with the department of environment and consistent with industry standards, the division shall promulgate rules to:

(1) require all cannabis producers and cannabis manufacturers to have their cannabis products tested prior to distribution to cannabis retailers or for sales by integrated cannabis microbusinesses;

(2) specify how often licensees shall test cannabis products;

(3) specify which persons bear the cost of testing commercial or medical cannabis products;

(4) provide for recordkeeping;

(5) establish chain of custody protocols for the transportation of testing samples;

(6) ensure that testing samples are transported and stored in a manner that prevents degradation, contamination, tampering or diversion;

(7) specify protocols for testing sample collection that ensure accurate test results, including requiring that testing samples be collected by laboratory staff trained in the collection of testing samples; and

(8) require destruction of a tested batch of cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards promulgated by the division, unless remedial measures can bring the cannabis products into compliance with the standards or the cannabis products can be used for research purposes.

C. Beginning no later than April 1, 2022, the division shall identify, in consultation with the department of environment, a set of updated certified reference materials that laboratory testing shall be measured against.

D. The division shall work cooperatively with the department of environment to implement inspection of cannabis establishments to ensure the health and safety of employees in accordance with the Occupational Health and Safety Act [50-9-1 to 50-9-25 NMSA 1978], to determine compliance with rules promulgated by the environmental improvement board and to protect the health and safety of consumers.

History: Laws 2021 (1st S.S.), ch. 4, § 18; 2024, ch. 38, § 8.

ANNOTATIONS

The 2024 amendment, effective July 1, 2024, required all cannabis producers and cannabis manufacturers to have their cannabis products tested prior to distribution; in the section heading, added "and consumers"; and in Subsection B, Paragraph B(1), deleted "ensure that testing of cannabis products occurs" and added "require all cannabis producers and cannabis manufacturers to have their cannabis products tested", and in Paragraph B(3), after "cost of testing" added "commercial or medical" and after "cannabis products" deleted "and medical cannabis".

26-2C-18.1. When cannabis product deemed adulterated.

A cannabis product is deemed to be adulterated if:

A. it bears or contains mold, mildew or other deleterious or poisonous substance that may render it injurious to health;

B. it consists in whole or in part of a diseased, contaminated, filthy, impure or infested ingredient or putrid or decomposed substance or if it is otherwise unfit for consumption;

C. it has been produced, prepared, packed or held under unsanitary conditions so that it may have been contaminated with filth or rendered diseased, unwholesome or injurious to health;

D. its container is composed in whole or in part of a poisonous or deleterious substance that may render the contents injurious to health;

E. a valuable constituent has been, in whole or in part, omitted or abstracted from the cannabis product;

F. a substance has been substituted in whole or in part that is contrary to the ingredient list on the package unless a notification of substitution is adhered to the packaging;

G. damage or inferiority has been concealed in any manner;

H. a substance has been added so as to increase the cannabis product's bulk or weight, reduce its quality or strength or make it appear better or of greater value than it is; or

I. the cannabis product is a confectionery, it contains alcohol or other non-nutritive article or substance except harmless coloring, flavoring, natural gum, pectin or resinous glaze not in excess of four-tenths of one percent; provided that a confectionary may include less than two and one-fourth percent by weight of alcohol derived solely from the use of flavoring extracts or to any chewing gum by reason of its containing harmless non-nutritive masticatory substances.

History: Laws 2024, ch. 38, § 11.

ANNOTATIONS

Effective dates. — Laws 2024, ch. 38, § 20 made Laws 2024, ch. 38, § 11 effective July 1, 2024.

26-2C-19. Researching cannabis; recordkeeping.

A. A cannabis research laboratory's research of cannabis shall comply with the requirements set forth in applicable law and rules.

B. The division shall develop rules and procedures consistent with industry standards to provide for recordkeeping to ensure that cannabis products are not removed from the cannabis research laboratory premises.

History: Laws 2021 (1st S.S.), ch. 4, § 19.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-20. Advertising and marketing restrictions.

A. As used in this section, "advertising" does not mean:

(1) a sign or outdoor display or other statement permanently affixed to a licensed premises that is intended to induce the sale of a cannabis product produced, manufactured or sold on the licensed premises;

(2) a label affixed to a cannabis product or the covering, wrapper or container of a cannabis product; or

(3) an editorial or other material printed in a publication when the publication of the editorial or material was not paid for by a licensee and was not intended to promote the sale of cannabis products by a particular brand or company.

B. The division shall promulgate rules consistent with industry standards that:

(1) prohibit the advertisement and marketing of cannabis products:

(a) on radio, television or other broadcast media, internet pop-ups and mass transit vehicles; provided that the division shall not prohibit advertising and marketing to: 1) subscribers of subscription-based radio, television or other broadcast media who are twenty-one years of age or older; or 2) persons twenty-one years of age or older who have solicited the advertising or marketing;

(b) that are false, deceptive or misleading, including making unproven health benefit claims;

(c) that are on billboards, posters, handbills or other visual media that are located or can be viewed within three hundred feet of a school, daycare center or church;

(d) that depict consumption by children or other persons who appear to be younger than twenty-one years of age;

(e) that use predatory marketing and advertising practices targeting minors; or

(f) that are designed using cartoon characters or to mimic any other product brand; and

(2) require:

(a) all advertisements and marketing to accurately and legibly identify all persons responsible for its content; and

(b) advertisements in print and digital communications to be placed only where the audience is reasonably expected to be twenty-one years of age or older as determined by reliable, current audience composition data.

History: Laws 2021 (1st S.S.), ch. 4, § 20; 2024, ch. 38, § 9.

ANNOTATIONS

The 2024 amendment, effective July 1, 2024, provided exceptions to the definition of "advertising"; added a new Subsection A; and redesignated former Subsection A as Subsection B.

26-2C-21. Contracts.

A contract related to the operation of a license is enforceable, and a contract entered into by a licensee or a licensee representative for conduct allowed pursuant to a cannabis establishment license or entered into by a person who allows property to be used by a licensee or a licensee representative for conduct allowed pursuant to a license shall not be deemed unenforceable on the basis that the conduct allowed pursuant to the license is prohibited by federal law.

History: Laws 2021 (1st S.S.), ch. 4, § 21.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-22. Provision of professional services.

An attorney, accountant, insurance agent, real estate agent, security guard or other person engaged in a profession subject to state licensure shall not be subject to disciplinary action by a professional association, a state professional board or a state licensing entity because the professional provides professional services or assistance to prospective or licensed cannabis establishments or another person in connection with

activity that the professional reasonably believes complies with the Cannabis Regulation Act and rules promulgated pursuant to that act.

History: Laws 2021 (1st S.S.), ch. 4, § 22.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-23. Medical cannabis provisions unaffected.

Nothing in the Cannabis Regulation Act shall be construed to limit a privilege or right of a qualified patient, a primary caregiver or a reciprocal participant participating in the medical cannabis program or the use, dispensing, possession, prescribing, storage or transport of a prescription drug containing cannabis that is approved pursuant to the Federal Food, Drug, and Cosmetic Act.

History: Laws 2021 (1st S.S.), ch. 4, § 23.

ANNOTATIONS

Cross references. — For the Federal Food, Drug and Cosmetic Act, *see* 21 U.S.C.S.

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-24. Protections for the use of cannabis.

A. Conduct allowed pursuant to the Cannabis Regulation Act shall not in itself constitute grounds for a holder of a professional or occupational license to be subject to professional discipline for providing advice or services related to cannabis establishments or applications to operate cannabis establishments on the basis that cannabis is illegal under federal law.

B. An applicant for a professional or occupational license shall not be denied a license based solely on previous employment related to cannabis establishments.

C. A person shall not be denied parental rights or custody of or visitation with a minor child by the state or local government based solely on conduct that is lawful pursuant to the Cannabis Regulation Act. Nothing in this subsection prevents law enforcement, the children, youth and families department or the courts from acting in the best interests of the minor child.

D. A person currently under parole, probation or other state supervision or released awaiting trial or other hearing shall not be punished or otherwise penalized based solely on conduct that is lawful pursuant to the Cannabis Regulation Act unless prohibition on the use or possession of cannabis has been a specific condition of parole, probation or other state supervision or release awaiting trial or other hearing.

E. A person shall not be denied eligibility in public assistance programs or denied health care based solely on conduct that is lawful pursuant to the Cannabis Regulation Act unless required by federal law.

History: Laws 2021 (1st S.S.), ch. 4, § 24.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-25. Personal use of cannabis.

A. The following conduct is lawful for a person who is twenty-one years of age or older and shall not constitute grounds for detention, search or arrest of a person or search of property, 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) possessing, using, being under the influence of, displaying, purchasing, obtaining or transporting not more cannabis than authorized by the Cannabis Regulation Act or the medical cannabis program;

(2) possessing in excess of two ounces of cannabis, sixteen grams of cannabis extract and eight hundred milligrams of edible cannabis if the excess is stored in the person's private residence and not visible from a public place;

(3) transferring, without financial consideration, to a person who is twenty-one years of age or older not more than the amount of cannabis lawfully purchased and obtained pursuant to the Cannabis Regulation Act or the medical cannabis program;

(4) ingesting or otherwise consuming cannabis or cannabis products purchased and obtained pursuant to the Cannabis Regulation Act or the medical cannabis program;

(5) possessing, using, displaying, purchasing, obtaining or manufacturing cannabis extract using nonvolatile solvents, alcohol or carbon dioxide or no solvents;

(6) manufacturing, transporting or giving away to a person twenty-one years of age or older cannabis paraphernalia;

(7) assisting another person who is twenty-one years of age or older in, or allowing property to be used in, any of the acts described in Paragraphs (1) through (6) of this subsection;

(8) smoking cannabis or cannabis products in an area authorized pursuant to the Cannabis Regulation Act or a local jurisdiction;

(9) possessing, planting, cultivating, harvesting, drying, manufacturing cannabis products using nonvolatile solvents, alcohol or carbon dioxide or no solvents or transporting not more than six mature cannabis plants and six immature cannabis plants per person; provided that despite a household having multiple residents, no more than twelve mature cannabis plants may be present in one household; and provided further that if the person does not exceed the maximum number of cannabis plants, the person may possess the cannabis produced by the cannabis plants notwithstanding any weight limits; and

(10) transporting homegrown cannabis or mature or immature cannabis plants when the person is moving the person's residence to another location or for purposes of testing or manufacturing.

B. Paragraph (6) of Subsection A of this section is intended to meet the requirements of 21 U.S.C. Section 863(f) by authorizing under state law any person in compliance with this section to manufacture, possess or distribute cannabis paraphernalia.

C. None of the following shall, individually or in combination with each other, constitute reasonable articulable suspicion of a crime and is not a basis to stop, detain or search a person:

(1) the odor of cannabis or cannabis extract or of burnt cannabis or cannabis extract;

(2) the possession of or the suspicion of possession of cannabis without evidence of quantity in excess of two ounces of cannabis, sixteen grams of cannabis extract or eight hundred milligrams of edible cannabis; or

(3) the possession of multiple containers of cannabis without evidence of quantity in excess of two ounces of cannabis, sixteen grams of cannabis extract or eight hundred milligrams of edible cannabis.

D. Paragraph (1) of Subsection A and Subsection C of this section shall not apply when a law enforcement officer is investigating whether a person is operating a vehicle

or watercraft while intoxicated or under the influence of or impaired by alcohol or a drug or any combination thereof in violation of Section 66-8-102 or 66-13-3 NMSA 1978.

History: Laws 2021 (1st S.S.), ch. 4, § 25.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

Rule, that the smell of marijuana alone can satisfy the probable cause requirement for a warrantless search of a vehicle, applied in a post-decriminalization, pre-legalization setting. — Where a police officer lawfully stopped a truck driven by defendant after observing defendant commit a series of traffic offenses, and where, upon approaching the driver's side window, the officer detected a strong odor of marijuana emanating from the vehicle, the probable cause requirement for a warrantless search was satisfied, because the odor of marijuana in defendant's vehicle was inherently incriminating, and possession of marijuana during the post-decriminalization, pre-legalization period, in any quantity was illegal. *State v. Perry*, 2025-NMSC-043.

26-2C-26. Limits on personal use; penalties.

A. Nothing in Section 25 [26-2C-25 NMSA 1978] of the Cannabis Regulation Act shall be construed to:

(1) allow a person to smoke cannabis products in a public place, except in a cannabis consumption area; or

(2) restrict the ability of a person to prohibit conduct otherwise allowed in the Cannabis Regulation Act on the person's privately owned property.

B. A person who violates Paragraph (1) of Subsection A of this section shall be subject to a civil penalty of fifty dollars ($50.00).

C. As used in this section, "smoke" means to inhale, exhale, burn or carry any lighted or heated device or pipe or any other lighted or heated cannabis products intended for inhalation, whether natural or synthetic, in any manner or in any form.

D. A person less than eighteen years of age, the family of a person less than eighteen years of age or a person legally obligated to care for and support a person less than eighteen years of age who is subject to the fines pursuant to Subsection B of this section shall not be required to pay any fees or fines pursuant to the Cannabis Regulation Act.

History: Laws 2021 (1st S.S.), ch. 4, § 26.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-27. Personal production of cannabis; penalties.

A. Unless otherwise provided in the Cannabis Regulation Act, it is unlawful for a person without a license to intentionally produce cannabis products except as provided in this section.

B. A person twenty-one years of age or older who intentionally produces:

(1) more than six and up to twelve mature or immature cannabis plants shall be issued a penalty assessment pursuant to Section 31-19A-1 NMSA 1978 and is subject to a fine of fifty dollars ($50.00); and

(2) more than twelve mature or immature cannabis plants is guilty of a fourth degree felony and may be sentenced as provided in Section 31-18-15 NMSA 1978.

C. A person who is eighteen years of age or older but less than twenty-one years of age who intentionally produces:

(1) up to six mature or immature cannabis plants shall be issued a penalty assessment pursuant to Section 31-19A-1 NMSA 1978 and is subject to a fine of fifty dollars ($50.00);

(2) more than six mature or immature cannabis plants and up to twelve mature or immature cannabis plants is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978; and

(3) more than twelve mature or immature cannabis plants is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. A person who is less than eighteen years of age who intentionally produces cannabis products is guilty of a civil violation and shall be subject to:

(1) attendance at a four-hour evidence-based drug education and legal rights program at no cost to the minor; or

(2) four hours of community service.

History: Laws 2021 (1st S.S.), ch. 4, § 27.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-28. Trafficking cannabis products; penalties.

A. As used in this section, "trafficking cannabis products" means to:

(1) produce, manufacture, distribute, courier or sell illegal cannabis products; or

(2) possess with intent to manufacture, distribute, courier or sell illegal cannabis products.

B. Trafficking cannabis products applies only to quantities of more than fifteen ounces of cannabis flower, one hundred twenty grams of cannabis extract or six grams of edibles.

C. Unless otherwise provided in the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978], it is unlawful for a person to intentionally traffic cannabis products.

D. In addition to the penalties provided in the Delinquency Act [Chapter 32A, Article 2 NMSA 1978], a person under eighteen years of age who violates Subsection C of this section shall be subject to:

(1) attendance at a four-hour evidence-based drug education and legal rights program at no cost to the person; or

(2) four hours of community service.

E. Except as otherwise provided in Section 26-2C-14 NMSA 1978, a person between eighteen and twenty-one years of age who violates Subsection C of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

F. A person twenty-one years of age or older who traffics cannabis products is guilty of a fourth degree felony for a first offense. A person who traffics cannabis products is guilty of a third degree felony for a second and subsequent offense. Sentencing pursuant to this subsection shall be as provided in Section 31-18-15 NMSA 1978.

G. The provisions of the Forfeiture Act [Chapter 31, Article 27 NMSA 1978] apply to the seizure, forfeiture and disposal of such property.

History: Laws 2021 (1st S.S.), ch. 4, § 28; 2024, ch. 38, § 10.

ANNOTATIONS

The 2024 amendment, effective July 1, 2024, revised the elements of the crime of trafficking cannabis products, revised the definition of "trafficking cannabis products", increased the penalties for certain trafficking crimes, and provided that the provisions of the Forfeiture Act apply to this section; in the section heading, deleted "Unlicensed sales of" and added "trafficking"; in Subsection A, after "As used in this section" deleted "'traffic' means the (1) distribution, sale, barter or giving away of" and added "'trafficking cannabis products' means to", in Paragraph A(1), added "produce, manufacture, distribute, courier or sell illegal", in Paragraph A(2), after "intent to" added "manufacture", after "distribute" added "courier or", and after "sell" deleted "barter or give away" and added "illegal"; added a new Subsection B and redesignated former Subsections B through D as Subsections C through E, respectively; in Subsection C, after "unlawful for a person" deleted "without a license"; in Subsection D, added "In addition to the penalties provided in the Delinquency Act", and after "Subsection" changed "B" to "C"; in Subsection E, after "a person" added "between", after "eighteen" added "and twenty-one", after "years of age" deleted "or older", and after "Subsection" changed "B" to "C"; and deleted former Subsections E through G.

26-2C-29. Cannabis within restricted area; penalty.

Unless otherwise allowed in the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978], a person shall not possess or intentionally distribute any amount of a cannabis product on the premises of a school or daycare center unless the person is a qualified patient, a primary caregiver or a reciprocal participant; provided that this section shall not apply to a person who possesses a cannabis product for authorized purposes on the premises of a licensed cannabis training and education program. A person who violates this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2021 (1st S.S.), ch. 4, § 29.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-30. Unlawful possession of cannabis; penalties.

Except as allowed in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978]:

A. a person under twenty-one years of age shall not possess cannabis products. A person who violates this subsection is guilty of a civil violation and shall be subject to:

(1) attendance at a four-hour evidence-based drug education and legal rights program at no cost to the person; or

(2) four hours of community service; and

B. a person twenty-one years of age or older shall not possess more than two ounces of cannabis, sixteen grams of cannabis extract and eight hundred milligrams of edible cannabis in public. A person who violates this subsection with respect to:

(1) more than two but not more than eight ounces of cannabis, more than sixteen grams of cannabis extract and more than eight hundred milligrams of edible cannabis is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978; or

(2) more than eight ounces of cannabis, sixty-four grams of cannabis extract or three thousand two hundred milligrams of edible cannabis is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 2021 (1st S.S.), ch. 4, § 30.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-31. Unlicensed manufacturing of cannabis extract; penalty.

It is unlawful for a person to manufacture cannabis extract without a license issued pursuant to the Cannabis Regulation Act unless the person produces and manufactures cannabis extract from homegrown cannabis using nonvolatile solvents, alcohol or carbon dioxide or no solvents. The use of any other solvent or process is expressly prohibited unless it is approved by the division. A person who violates this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 2021 (1st S.S.), ch. 4, § 31.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-32. Exemption from criminal and civil penalties; researchers.

A person shall not be subject to arrest or prosecution, penalized in any manner or denied any right or privilege solely because the person produced, possessed, distributed, dispensed or purchased cannabis products if the person produced, possessed, distributed, dispensed or purchased the cannabis products solely for the purpose of research conducted pursuant to the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978] or the Cannabis Regulation Act.

History: Laws 2021 (1st S.S.), ch. 4, § 32.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-33. Reporting requirements for cannabis-related violations.

A. Within sixty days following the end of each fiscal year, every police and sheriff's department shall report on a form approved by the department of public safety the total number of arrests, citations and penalty assessments for cannabis-related violations broken down by:

(1) category and penalty level; and

(2) race, ethnicity, age and gender.

B. Each law enforcement agency shall submit its annual report to the department of public safety.

C. The department of public safety shall compile the reports submitted and shall issue by November 1 of each year an annual report of all cannabis-related violations in the state. The report shall aggregate the data for the state and shall disaggregate the data by agency, race, ethnicity, age and gender. The department of public safety shall make all annual reports submitted for previous fiscal years available on the department of public safety's website.

D. For purposes of this section, "cannabis-related violation" means a violation of any of Sections 27 through 31 [26-2C-27 to 26-2C-31 NMSA 1978] of the Cannabis Regulation Act or a violation of Section 66-8-102 or 66-13-3 NMSA 1978 if the basis for the arrest or citation is impairment due to the use of cannabis products.

History: Laws 2021 (1st S.S.), ch. 4, § 33.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-34. Employer protections; exemptions.

A. Unless there is an agreement between the employer and employee, nothing in the Cannabis Regulation Act shall:

(1) restrict an employer's ability to prohibit or take an adverse employment action against an employee for impairment by or possession or use of intoxicating substances at work or during work hours;

(2) require an employer to commit any act that would cause the employer to be noncompliant with or in violation of federal law or federal regulations or that would result in the loss of a federal contract or federal funding; or

(3) prevent or infringe upon the rights of an employer to adopt and implement a written zero-tolerance policy regarding the use of cannabis products. A zero-tolerance policy may permit the discipline or termination of an employee on the basis of a positive drug test that indicates any amount of delta-9-tetrahydrocannabinol or delta-9-tetrahydrocannabinol metabolite.

B. The Cannabis Regulation Act does not apply to an employee of an employer subject to the provisions of Title 2 of the federal Railway Labor Act.

C. Nothing in the Cannabis Regulation Act shall be construed to invalidate, diminish or otherwise interfere with any collective bargaining agreement nor shall it be construed to invalidate, diminish or otherwise interfere with any party's power to collectively bargain such an agreement, or to an employer or employee.

D. As used in this section, "adverse employment action" means refusing to hire or employ a person; barring or discharging a person from employment; requiring a person to retire from employment; or discriminating against an employee in compensation or in terms, conditions or privileges of employment.

History: Laws 2021 (1st S.S.), ch. 4, § 34.

ANNOTATIONS

Cross references. — For the federal Railway Labor Act, *see* 15 U.S.C. §§ 21, 45; 18 U.S.C. § 373; 28 U.S.C. §§ 1291 to 1294 and 45 U.S.C. §§ 151 to 163, 181 to 188.

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-35. Appeal of rules.

A person who is or may be affected by a rule promulgated by the division or other state agency pursuant to the Cannabis Regulation Act may appeal to the district court.

History: Laws 2021 (1st S.S.), ch. 4, § 35.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-36. Public records and open meetings.

Records of the division are public records subject to the Inspection of Public Records Act [Chapter 14, Article 3 NMSA 1978], except as provided in this section and other applicable provisions of law; provided that the presence of nonpublic information that identifies confidential sources or confidential information may be redacted from a written record or digitally obscured in a visual or audio record. A source who communicates information is confidential if the identity of the source is disclosed in the context of reporting an alleged violation of the Cannabis Regulation Act to the division. Information is confidential if it is developed or obtained by the division during an enforcement investigation or inspection related to violations of the Cannabis Regulation Act. Sources and information cease to be confidential upon the issuance of a notice of contemplated action by the division. If a notice of contemplated action is not issued within thirty days of the disclosure of the identity of the source in the context of reporting an alleged violation of the Cannabis Regulation Act to the division, the source shall not be confidential. If a notice of contemplated action is not issued within thirty days of the initiation of an enforcement investigation or inspection related to violations of the Cannabis Regulation Act, the information developed or obtained by the division during the enforcement investigation or inspection shall not be confidential. Rulemaking and other hearings of the division are subject to the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

History: Laws 2021 (1st S.S.), ch. 4, § 36; 2024, ch. 38, § 13.

ANNOTATIONS

The 2024 amendment, effective July 1, 2024, created an exception to the Inspection of Public Records Act for information developed or obtained by the cannabis control division during an enforcement investigation; rewrote the section completely.

26-2C-37. Intrastate source.

Except as provided in Section 38 [26-2C-38 NMSA 1978] of the Cannabis Regulation Act, all cannabis products shall be derived from a source originating within New Mexico.

History: Laws 2021 (1st S.S.), ch. 4, § 37.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-38. Imports and exports.

A. Notwithstanding the provisions of Section 37 [26-2C-37 NMSA 1978] of the Cannabis Regulation Act or any other provision of law, the governor shall enter into agreements with other jurisdictions within or outside of the United States for the purposes of cross-jurisdictional delivery of cannabis products between this state and the other jurisdictions. Such agreements shall:

(1) ensure enforceable public health and safety standards;

(2) include a system to regulate and track the interstate or international delivery of cannabis products; and

(3) ensure that any cannabis products delivered into this state, prior to sale to a consumer, are tested, packaged and labeled pursuant to New Mexico laws and rules.

B. Notwithstanding any other provision of law and in accordance with an agreement described in Subsection A of this section, a person licensed to:

(1) courier cannabis products may deliver cannabis products to a person located in, and authorized to receive cannabis products by, another jurisdiction in the United States; and

(2) receive cannabis products may receive cannabis products from a person located in, and authorized to export cannabis products by, another jurisdiction in the United States or internationally.

C. This section shall take effect on the earlier date on which:

(1) federal law is amended to allow for the interstate or international transfer of cannabis products between authorized cannabis-related businesses; or

(2) the United States department of justice issues an opinion or memorandum allowing or tolerating the interstate or international transfer of cannabis products between cannabis-related businesses as authorized by state law.

History: Laws 2021 (1st S.S.), ch. 4, § 38.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-39. Cannabis regulation fund.

A. The "cannabis regulation fund" is created in the state treasury. The fund consists of appropriations, gifts, grants, donations and fees collected by the division pursuant to the Cannabis Regulation Act and the medical cannabis program administered by the division. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall revert to the general fund.

B. Money in the cannabis regulation fund is subject to appropriation by the legislature to fund the division, the department of health, the department of environment, the New Mexico department of agriculture, the taxation and revenue department and the department of public safety for the purposes of carrying out the provisions of the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978].

History: Laws 2021 (1st S.S.), ch. 4, § 39.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

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.

26-2C-40. Plant limit.

No later than September 1, 2021, and each September 1 thereafter, the division shall by rule limit, by plant count, canopy or square footage, the number of cannabis plants that a licensee that is not an integrated cannabis microbusiness or a cannabis producer microbusiness may produce. The rule shall set the number of allowed cannabis plants per licensee to meet an average national market demand for cannabis products in states where adult and medical cannabis are authorized during the preceding year using a consumer base of no less than twenty percent of the adult population of New Mexico.

History: Laws 2021 (1st S.S.), ch. 4, § 40.

ANNOTATIONS

Repeals. — Laws 2024, ch. 38, § 19 repealed Laws 2021 (1st S.S.), ch. 4, § 73, that provided for the repeal of 26-2C-40 NMSA 1978, effective December 31, 2025.

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-41. Indian nations, tribes and pueblos; intergovernmental agreements.

A. The department may enter into one or more intergovernmental agreements with any tribal government to efficiently coordinate the cross-jurisdictional administration of the laws of this state and the laws of tribal governments relating to the use of cannabis products set forth in the Cannabis Regulation Act and the Lynn and Erin

Compassionate Use Act [Chapter 26, Article 2B NMSA 1978]. The agreements may include, without limitation, provisions relating to:

(1) criminal and civil law enforcement;

(2) regulatory issues relating to the possession, delivery, production, processing or use of cannabis products;

(3) the administration of laws relating to taxation;

(4) any immunity, preemption or conflict of law relating to the possession, delivery, production, processing or use of cannabis products; and

(5) the resolution of any disputes between a tribal government and the state, which may include, without limitation, the use of mediation or other nonjudicial processes.

B. An agreement entered into pursuant to this section shall:

(1) provide for the preservation of public health and safety;

(2) ensure the security of cannabis establishments and the corresponding facilities on tribal land;

(3) establish provisions regulating business involving cannabis that passes between tribal land and non-tribal land in New Mexico; and

(4) be negotiated in good faith, which shall respect and protect state and tribal sovereign immunity.

C. As used in this section, "tribal government" means a federally recognized Indian nation, tribe or pueblo located wholly or partially in the state.

History: Laws 2021 (1st S.S.), ch. 4, § 41.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-42. Cooperation of agencies.

All state agencies shall cooperate with the division in carrying out the provisions of the Cannabis Regulation Act.

History: Laws 2021 (1st S.S.), ch. 4, § 42.

ANNOTATIONS

Effective dates. — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

26-2C-43. Enforcement; division and enforcement bureau; orders restricting movement of goods; embargo and recall, seizure and condemnation; procedures; penalties.

A. The division and the enforcement bureau shall enforce the provisions of the Cannabis Regulation Act and may carry out announced and unannounced inspections.

B. The division may:

(1) respond to tips or allegations of wrongdoing or initiate an investigation on the division's own initiative of an alleged or suspected violation of the Cannabis Regulation Act; provided that the division shall refer possible criminal violations to the enforcement bureau and shall assist that bureau in investigations and inspections;

(2) in the course of inspections conducted pursuant to this subsection, for the purpose of laboratory testing, collect and take custody of samples of items suspected to contain cannabis products when those items are suspected of being adulterated, dangerously or fraudulently misbranded or possessed in violation of the Cannabis Regulation Act or other laws of the state; and

(3) issue an order restricting the movement of cannabis products that are or are suspected of being adulterated or dangerously or fraudulently misbranded.

C. The enforcement bureau may:

(1) embargo or take possession of a cannabis product reasonably suspected of being an illegal cannabis product or a cannabis product that is adulterated or so misbranded as to be dangerous or fraudulent;

(2) take control pursuant to a warrant issued by a court of competent jurisdiction of the premises where a cannabis product is produced, manufactured or stored; and

(3) petition the district court for injunctive or other equitable relief.

D. The division shall give sufficient notice to the licensee of the division's decision to issue an order restricting the movement of the licensee's cannabis products. Such an order shall not be in place for longer than necessary to complete the division's or the

enforcement bureau's investigation; provided that an order restricting the movement of misbranded cannabis products that are not considered dangerous or fraudulent shall last only as long as it takes the licensee to relabel and repackage the cannabis products as ordered by the division.

E. The division may issue a recall order for cannabis products embargoed or subject to an order restricting movement due to adulteration or dangerous or fraudulent misbranding.

F. When the enforcement bureau embargoes a cannabis product, the division shall affix or cause the licensee to affix to the cannabis product a tag or other appropriate marking giving notice that the cannabis product is or is suspected of being an illegal cannabis product or is adulterated or dangerously or fraudulently misbranded and that the cannabis product shall not be sold, removed or otherwise disposed of.

G. When the enforcement bureau embargoes a cannabis product or seizes a cannabis product or a premises, the bureau shall give written notice to the licensee of the grounds for the embargo or seizure.

H. Neither the division nor the enforcement bureau shall be required to care for embargoed or seized cannabis products.

I. A licensee aggrieved by an embargo, seizure or recall undertaken pursuant to Subsection B, C or E of this section may request an administrative hearing within ten calendar days from the date that the embargo, seizure or recall was executed. The hearing shall be held before a hearing officer as provided by rule. The final agency decision may be appealed pursuant to Section 39-3-1.1 NMSA 1978.

J. When the determination is made that an embargoed or seized cannabis product is illegal, adulterated or dangerously or fraudulently misbranded, the division shall petition the district court for condemnation of the cannabis product.

K. If the district court orders condemnation, the department shall destroy the cannabis product at the licensee's expense. If the district court does not order condemnation, the enforcement bureau shall have the restrictive tags or markings removed and the affected products released or returned to the licensee or other owner of the products.

L. The New Mexico department of agriculture, the department of environment and other state agencies with relevant knowledge and expertise shall cooperate with the division and the enforcement bureau at the regulation and licensing department's request.

M. A person who intentionally, knowingly or recklessly:

(1) removes, conceals, destroys or disposes of a cannabis product subject to an order restricting the movement or embargo is guilty of a fourth degree felony and shall be sentenced as provided in Section 31-18-15 NMSA 1978; and

(2) sells, delivers or transfers a cannabis product subject to recall to another person is guilty of a fourth degree felony and shall be sentenced as provided in Section 31-18-15 NMSA 1978.

N. In addition to the actions provided in this section, after an administrative hearing pursuant to the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], the division may take disciplinary action against a licensee, including:

(1) suspension or revocation of the license;

(2) imposition of an administrative penalty not to exceed ten thousand dollars ($10,000) per violation; or

(3) any other disciplinary action allowed under that act or rule of the division.

O. As used in this section:

(1) "embargo" means to place in a secure location, accessible only by the licensee, the division and the enforcement bureau, that has continuous video monitoring; and

(2) "enforcement bureau" means the enforcement bureau of the department.

History: Laws 2025, ch. 85, § 3.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 85, § 4 made Laws 2025, ch. 85, § 3 effective July 1, 2025.

ARTICLE 2D
Medical Psilocybin

26-2D-1. Short title.

Sections 1 through 11 [26-2D-1 to 26-2D-11 NMSA 1978] of this act may be cited as the "Medical Psilocybin Act".

History: Laws 2025, ch. 73, § 1.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 73 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

26-2D-2. Purpose of act.

The purpose of the Medical Psilocybin Act is to allow the beneficial use of psilocybin in a regulated system for alleviating qualified medical conditions.

History: Laws 2025, ch. 73, § 2.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 73 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

26-2D-3. Definitions.

As used in the Medical Psilocybin Act:

A. "board" means the medical psilocybin advisory board;

B. "clinician" means an approved health care provider licensed in New Mexico who holds a permit from the department to provide medical services to qualified patients;

C. "department" means the department of health;

D. "medical services" means services provided to a patient in an approved setting before, during and after the ingestion of psilocybin and includes a preparation session, an administration session and an integration session;

E. "producer" means a person who has a permit from the department to grow and harvest or prepare psilocybin from psilocybin-producing mushrooms, including to compound, convert, process or manufacture psilocybin products directly or indirectly from psilocybin mushrooms and to package or repackage or label or relabel the products;

F. "program" means the medical use of psilocybin program;

G. "psilocybin" means the naturally occurring psychedelic compound 4-phosphoryloxy-N,N-dimethyltryptamine, also known as 4-PO-DMT, and its pharmacologically active metabolite psilocin, 4-hydroxy-N,N-dimethyltryptamine, found in certain mushrooms, but does not include synthetic or synthetic analogs of psilocybin;

H. "qualified patient" means a patient whose clinician has judged the patient to be a medically appropriate candidate for the use of medical psilocybin based on being diagnosed with a qualifying condition;

I. "qualifying condition" includes:

(1) major treatment-resistant depression;

(2) posttraumatic stress disorder;

(3) substance use disorders;

(4) end-of-life care; and

(5) other conditions approved by the department; and

J. "secretary" means the secretary of health.

History: Laws 2025, ch. 73, § 3.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 73 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

26-2D-4. Applicability.

Federal food and drug administration-approved products that contain psilocybin shall be exempt from the Medical Psilocybin Act, with the exception that such products shall be authorized for use:

A. in any research conducted by state research universities or health care providers pursuant to grants awarded through the medical psilocybin research fund; and

B. by qualified patients whose treatments may be funded through the medical psilocybin treatment equity fund.

History: Laws 2025, ch. 73, § 4.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 73 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

26-2D-5. Exemption from criminal and civil penalties for the medical use of psilocybin.

A. A producer, clinician or qualified patient shall not be subject to arrest, prosecution or penalty for participating in the program.

B. 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 psilocybin that relates to the conduct is 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 producer or clinician possessing or transporting not more than an adequate supply of psilocybin for medical purposes as defined by department rule; and

(2) a clinician administering or a qualified patient taking psilocybin in an approved setting in accordance with the Medical Psilocybin Act or rules promulgated in accordance with that act.

C. A clinician shall not be subject to arrest or prosecution or denied any right or privilege for recommending the program or providing medical services authorized in the Medical Psilocybin Act.

D. A person shall not be subject to arrest or prosecution for a psilocybin-related offense for simply being in the presence of the medical use of psilocybin as allowed under the provisions of the Medical Psilocybin Act.

E. The Medical Psilocybin Act does not apply to federal food and drug administration-approved clinical trials.

History: Laws 2025, ch. 73, § 5.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 73 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

26-2D-6. Prohibitions, restrictions and limitations on the use of psilocybin; criminal penalties.

A. Participation in the program by a producer, clinician or qualified patient does not relieve the producer, clinician or qualified patient from:

(1) criminal prosecution or civil penalties for activities not authorized in the Medical Psilocybin Act; or

(2) liability for damages or criminal prosecution arising out of the operation of a motor vehicle if driving while under the influence of psilocybin.

B. A person who makes a fraudulent representation to a law enforcement officer about the person's participation in the program to avoid arrest or prosecution for a psilocybin-related offense is guilty of a petty misdemeanor and shall be sentenced as provided in Section 31-19-1 NMSA 1978.

History: Laws 2025, ch. 73, § 6.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 73 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

26-2D-7. Department; program.

A. The "medical use of psilocybin program" is created in the department. In developing the program, the department shall establish:

(1) appropriate qualifying conditions for qualified patients;

(2) necessary initial and ongoing training for producers and clinicians;

(3) treatment protocols, including patient selection criteria, medical service standards, dosage standards and approved settings for administration of psilocybin to patients;

(4) safety protocols for producing psilocybin from mushrooms, transporting, storing and handling psilocybin and treating patients;

(5) other best practices for producers and clinicians;

(6) requirements for data collection to evaluate the program and the use of best practices by producers and clinicians; and

(7) other requirements, restrictions and limitations promulgated by the department to ensure an efficacious program.

B. The department shall monitor producers and clinicians to ensure compliance with the Medical Psilocybin Act and rules promulgated in accordance with that act.

C. The department shall collaborate with the board, state higher education institutions and health care providers to collect and analyze data to develop best practices, including best settings for administration of psilocybin, and, by December 31, 2027, implement the program. When developing the program, the department shall engage in tribal consultation as provided in the State-Tribal Collaboration Act [Chapter 11, Article 18 NMSA 1978].

History: Laws 2025, ch. 73, § 7.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 73 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

26-2D-8. Advisory board created; duties.

A. The secretary shall establish the "medical psilocybin advisory board", consisting of nine members who are knowledgeable about the medical use of psilocybin. At least one member shall be an enrolled member of an Indian nation, tribe or pueblo located wholly or partially in New Mexico; one member shall be licensed to provide behavioral health care services in New Mexico; one member shall be a mental or behavioral health equity advocate; one member shall be a representative of the health care authority; and at least one member shall be a veteran of the United States armed forces. A majority of the members constitutes a quorum, and a quorum of the members present and a majority vote are needed to take any action.

B. The board shall:

(1) review and recommend to the department for approval medical conditions that may benefit from the medical use of psilocybin;

(2) accept and review petitions to add medical conditions to the list of medical conditions that qualify for the medical use of psilocybin;

(3) convene at least twice per year to conduct public hearings and to evaluate petitions, which shall be maintained as confidential personal health information;

(4) recommend patient qualifications;

(5) recommend formulation or preparation rules and dosage standards for psilocybin; and

(6) assist the department in establishing, monitoring and evaluating best practices for producers and clinicians.

History: Laws 2025, ch. 73, § 8.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 73 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

26-2D-9. Assessment reporting.

The department shall promulgate rules for the collection of data from producers, clinicians and qualified patients as a means to evaluate the efficacy of the medical use of psilocybin and publish an annual assessment of the program. The assessment shall consider the needs of qualified patients who live in rural areas, federal subsidized housing or on reservations of New Mexico Indian nations, tribes or pueblos, as long as the qualified patient's place of residence is wholly within the exterior boundaries of the state. Data shall be reported in such a way that an individual qualified patient cannot be identified.

History: Laws 2025, ch. 73, § 9.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 73 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

26-2D-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 participation in the program.

History: Laws 2025, ch. 73, § 10.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 73 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

26-2D-11. Funds; created.

A. The "medical psilocybin treatment equity fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants and donations. The fund shall be used to fund treatments of qualified patients who meet income

requirements determined by rule of the department. The department shall administer the fund, and money in the fund is subject to appropriation by the legislature. Expenditures from the fund shall be by warrants signed by the secretary of finance and administration on vouchers signed by the secretary of health or the secretary's authorized representative.

B. The "medical psilocybin research fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants and donations. The fund shall be used to provide grants to state research universities and health care providers that are studying any facet of the medical use of psilocybin. The department shall administer the fund, and money in the fund is subject to appropriation by the legislature. Expenditures from the fund shall be by warrants signed by the secretary of finance and administration on vouchers signed by the secretary of health or the secretary's authorized representative.

History: Laws 2025, ch. 73, § 11.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 73 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

ARTICLE 3
Drug Product Selection

26-3-1. Short title.

Sections 26-3-1 through 26-3-3 NMSA 1978 may be cited as the "Drug Product Selection Act."

History: 1953 Comp., § 54-6-28.1, enacted by Laws 1976, ch. 60, § 2.

26-3-2. Purpose.

It is the purpose of the Drug Product Selection Act to assure that all New Mexico citizens continue to receive high quality drugs at a reasonable cost.

History: 1953 Comp., § 54-6-28.2, enacted by Laws 1976, ch. 60, § 3.

ANNOTATIONS

Cross references. — For provisions relating to the New Mexico Drug Device and Cosmetic Act, *see* 26-1-1 NMSA 1978.

26-3-3. Drug and biological product selection permitted; conditions; exception for prohibition; labeling.

A. Upon receipt of a prescription written by a licensed practitioner who may prescribe drugs or biological products for a drug or biological product for which one or more multiple-source drugs or interchangeable biological products are recognized, listed as final determinations and published in the federal register by the federal department of health and human services, a pharmacist may dispense any one of the drugs or interchangeable biological products that satisfies the final determinations so recognized and listed by the federal department of health and human services and is sold at a lower cost than the drug or biological product listed in the prescription.

B. Upon receipt of a prescription written by a licensed practitioner for a drug or biological product that appears on the federal food and drug administration's approved prescription drug products with therapeutic equivalence evaluation list as supplemented, or for a biological product that is listed as interchangeable on the lists of the federal food and drug administration's lists of licensed biological products with reference product exclusivity and biosimilarity or interchangeability evaluations, as supplemented, a pharmacist may dispense any of the listed therapeutically equivalent drugs or interchangeable biological products that is lower in cost than the prescribed drug or biological product.

C. Drug and biological product selection shall be permitted only under circumstances and conditions set forth in Subsections A and B of this section unless the licensed practitioner prescribing prohibits drug or biological product selection. A licensed practitioner shall prohibit drug or biological product selection by making an entry that is electronically accessible that includes the words "no substitution" or the diminution "no sub" on a prescription.

D. If drug or biological product selection occurs as permitted in Subsections A and B of this section, the pharmacist shall indicate on the label of the dispensed container the brand of drug or the specific biological product prescribed and the name of the drug or interchangeable biological product dispensed.

E. A pharmacist who selects an interchangeable biological product shall inform the patient or the patient's representative.

F. A pharmacist shall not select a therapeutically equivalent drug or interchangeable biological product unless the substitution is in accordance with the provisions of Subsection A of this section.

G. Within five business days following the dispensing of a biological product, the dispensing pharmacist or the pharmacist's designee shall make an entry of the specific product provided to the patient, including the name of the product and the manufacturer. The communication shall be conveyed by making an entry that is electronically accessible to the prescriber through:

(1) an interoperable electronic medical records system;

(2) an electronic prescribing technology;

(3) a pharmacy benefit management system; or

(4) a pharmacy record.

H. Entry into an electronic medical records system pursuant to Subsection G of this section is presumed to provide notice to the prescriber. Otherwise, the pharmacist shall communicate to the prescriber what biological product was dispensed, using facsimile, telephone, electronic transmission or other prevailing means; provided that communication shall not be required when:

(1) there is no interchangeable biological product that has been approved by the federal food and drug administration for the product prescribed; or

(2) a refill prescription is not changed from the product dispensed on the prior filling of the prescription.

I. The board shall maintain a link on its website to the current lists of all biological products that the federal food and drug administration has determined to be interchangeable biological products.

J. For purposes of this section:

(1) "multiple-source drug" means a drug marketed or sold by two or more manufacturers, formulators or labelers; and

(2) "therapeutically equivalent" means drug products that have the same amount of the active drug in the same dosage form that when administered can be expected to provide the same therapeutic effect.

History: 1953 Comp., § 54-6-28.3, enacted by Laws 1976, ch. 60, § 4; 1982, ch. 26, § 1; 2005, ch. 152, § 4; 2017, ch. 48, § 2.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, provided for the regulation of biosimilar products, including authorizing pharmacists to substitute biosimilar and interchangeable biosimilar biologic products for another biologic product that has been prescribed by a physician, placed certain duties on pharmacists who select an interchangeable biological product, required the board of pharmacy to maintain a link on its website to the current lists of all biological products that the federal food and drug administration has determined to be interchangeable biological products, and redefined "therapeutically equivalent"; added "and biological", "or biological", "or biological

products" and "or interchangeable biological products" throughout the section; in the catchline, added "and biological"; in Subsection B, after "supplemented", added "or for a biological product that is listed as interchangeable on the lists of the federal food and drug administration's lists of licensed biological products with reference product exclusivity and biosimilarity or interchangeability evaluations, as supplemented", after "a pharmacist may dispense any of the", added "listed", after "that", deleted "appears on that list and which", after "lower in cost than the", added "prescribed", and after the next occurrence of "drug", deleted "listed in the prescription"; in Subsection C, after "product selection by", deleted "writing with his hand" and added "making an entry that is electronically accessible that includes", and after "'no sub' on", deleted "the face of"; in Subsection D, after "brand of drug", added "or the specific biological product"; deleted former Subsection E; added new Subsections E through I, and redesignated former Subsection F as Subsection J; in Subsection J, added the paragraph designation "(1)", and added Paragraph J(2); and deleted former Paragraph G, which defined "therapeutically equivalent".

The 2005 amendment, effective June 17, 2005, deleted Subsection E, which required a pharmacist to notify the prescribing practitioner if the pharmacist changes the drug dispensed after the drug selection has occurred and relettered the subsequent subsections.

ARTICLE 4
Wholesale Prescription Drug Importation

26-4-1. Short title.

Chapter 26, Article 4 NMSA 1978 may be cited as the "Wholesale Prescription Drug Importation Act".

History: Laws 2020, ch. 45, § 1; 2024, ch. 39, § 57.

ANNOTATIONS

The 2024 amendment, effective July 1, 2024, changed "This act" to "Chapter 26, Article 4 NMSA 1978".

26-4-2. Definitions.

As used in the Wholesale Prescription Drug Importation Act:

A. "Canadian supplier" means a manufacturer, wholesale distributor or pharmacy that is appropriately licensed or permitted under Canadian federal or provincial laws and rules to manufacture, distribute or dispense prescription drugs;

B. "committee" means the prescription drug importation advisory committee;

C. "department" or "authority" means the health care authority department;

D. "eligible prescription drug" means a drug eligible for importation that:

(1) meets the United States food and drug administration's standards related to safety, effectiveness, misbranding and adulteration;

(2) does not violate federal patent laws;

(3) is expected to generate cost savings; and

(4) is not a controlled substance;

E. "program" means the wholesale prescription drug importation program; and

F. "state drug wholesaler" means a licensed wholesale drug distributor that contracts with the state to import eligible prescription drugs from a Canadian supplier.

History: Laws 2020, ch. 45, § 2; 2024, ch. 39, § 58.

ANNOTATIONS

The 2024 amendment, effective July 1, 2024, in Subsection C, after "'department'" added "or authority", after "means the" deleted "department of", and after "health" added "care authority department".

26-4-3. Advisory committee created; membership; duties.

A. The "prescription drug importation advisory committee" is created as an interagency advisory committee of the health care authority. The committee consists of:

(1) the secretary of health care authority, who shall serve as the chair of the committee;

(2) the executive director of the board of pharmacy;

(3) the superintendent of insurance;

(4) the secretary of health; and

(5) the secretary of general services.

B. Members may appoint designees.

C. The committee shall advise the health care authority in developing and implementing the program. The committee shall consult with interested stakeholders

and appropriate federal officials as necessary in shaping its advice to the authority. The health care authority shall hold a public hearing on the proposed program prior to submitting the program for federal approval.

History: Laws 2020, ch. 45, § 3; 2024, ch. 39, § 59.

ANNOTATIONS

The 2024 amendment, effective July 1, 2024, substituted references to the department of health with the health care authority, and substituted the secretary of human services with the secretary of health as a member of the prescription drug importation advisory committee; in Subsection A, after "committee of the" deleted "department" and added "health care authority", in Paragraph A(4), after "the secretary of" deleted "human services" and added "health"; and in Subsection C, substituted each occurrence of "department" with "health care authority" or "authority".

26-4-4. Wholesale prescription drug importation program created.

The department, in consultation with the committee, shall design a "wholesale prescription drug importation program" that complies with the applicable requirements of 21 U.S.C. Section 384, including the requirements regarding safety and cost savings. The department shall explore all potential mechanisms, to the extent allowable under law, for the importation of eligible prescription drugs. The program design shall:

A. contract with one or more state drug wholesalers to seek federal certification and approval to import safe, eligible prescription drugs from Canadian suppliers and provide significant prescription drug cost savings to New Mexico consumers;

B. allow the importation of eligible prescription drugs sold by Canadian suppliers;

C. ensure that only eligible prescription drugs meeting the United States food and drug administration's safety, effectiveness and other standards are imported by or on behalf of the state;

D. import only those eligible prescription drugs expected to generate substantial savings for New Mexico consumers;

E. ensure that, with respect to eligible prescription drugs to be imported pursuant to the program, the program and the state drug wholesaler comply with the tracking, tracing, verification and identification requirements of 21 U.S.C. Sections 360eee and 360eee-1;

F. prohibit the distribution, dispensing or sale of eligible prescription drugs imported pursuant to the Wholesale Prescription Drug Importation Act outside the exterior boundaries of the state;

G. recommend a charge per prescription or another method of support to ensure that the program is funded adequately in a manner that does not jeopardize significant consumer savings; and

H. include an audit function.

History: Laws 2020, ch. 45, § 4.

ANNOTATIONS

Emergency clauses. — Laws 2020, ch. 45, § 11 contained an emergency clause and was approved March 4, 2020.

26-4-5. Monitoring for anti-competitive behavior.

The department shall consult with the attorney general to identify the potential, and to monitor, for anti-competitive behavior in industries that would be affected by the program.

History: Laws 2020, ch. 45, § 5.

ANNOTATIONS

Emergency clauses. — Laws 2020, ch. 45, § 11 contained an emergency clause and was approved March 4, 2020.

26-4-6. Federal compliance.

On or before December 15, 2020, the department shall submit a formal request to the secretary of the United States department of health and human services for certification of the state's program.

History: Laws 2020, ch. 45, § 6.

ANNOTATIONS

Emergency clauses. — Laws 2020, ch. 45, § 11 contained an emergency clause and was approved March 4, 2020.

26-4-7. Implementation.

Upon certification of approval by the secretary of the United States department of health and human services, the department shall begin implementing the program and begin operating the program within six months of that approval. As part of the implementation process, the department shall:

A. enter into contracts in accordance with the Procurement Code [13-1-28 to 13-1-199 NMSA 1978] with one or more state drug wholesalers and New Mexico licensed drug distributors and contract with one or more approved Canadian suppliers;

B. consult with interested stakeholders, including the committee, the legislature, health insurance plans, employers, pharmacies, health care providers and consumers;

C. develop a registration process for health insurance plans, pharmacies and prescription drug administering health care providers who choose to participate in the program;

D. make a list of imported eligible prescription drugs and their prices and make that list available to all participating entities and the general public;

E. create an outreach and marketing plan to generate program awareness;

F. create and staff a helpline to answer questions and address the needs of consumers, employers, health insurance plans, pharmacies, health care providers and other affected sectors;

G. require annual and special audits of the program; and

H. carry out other duties in accordance with the Wholesale Prescription Drug Importation Act that the department, in consultation with the board of pharmacy, determines to be necessary for successful implementation of the program.

History: Laws 2020, ch. 45, § 7.

ANNOTATIONS

Emergency clauses. — Laws 2020, ch. 45, § 11 contained an emergency clause and was approved March 4, 2020.

26-4-8. Annual reporting.

Annually, after implementation, the department shall report to the governor and the legislature regarding the operation of the program during the previous year, including:

A. which eligible prescription drugs and Canadian suppliers are included in the program;

B. the number of participating pharmacies, health care providers and health insurance plans;

C. the number of prescriptions dispensed through the program;

D. the estimated savings to consumers, health plans, employers and the state during the previous year and to date;

E. information regarding implementation of the audit plan and the correction plans for audit findings; and

F. any other information requested by the governor or the legislature or that the secretary of health deems relevant.

History: Laws 2020, ch. 45, § 8.

ANNOTATIONS

Emergency clauses. — Laws 2020, ch. 45, § 11 contained an emergency clause and was approved March 4, 2020.

26-4-9. Wholesale prescription drug importation fund.

The "wholesale prescription drug importation fund" is created as a nonreverting fund in the state treasury. The fund consists of money received by the state through the implementation of the program pursuant to the Wholesale Prescription Drug Importation Act and appropriations, gifts, grants, donations to the fund and income from investment of the fund. The department shall administer the fund, and money in the fund is subject to appropriation by the legislature and shall be expended only as provided in the appropriation. Expenditures shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of health or the secretary's authorized representative.

History: Laws 2020, ch. 45, § 9.

ANNOTATIONS

Emergency clauses. — Laws 2020, ch. 45, § 11 contained an emergency clause and was approved March 4, 2020.

26-4-10. Countries other than Canada allowed by federal law.

The provisions of the Wholesale Prescription Drug Importation Act may be extended to any other country allowed by federal law to import prescription drugs into the United States, at the discretion of the department.

History: Laws 2020, ch. 45, § 10.

ANNOTATIONS

Emergency clauses. — Laws 2020, ch. 45, § 11 contained an emergency clause and was approved March 4, 2020.