



# Nebraska Medical Cannabis Regulations Comments

Feb. 26, 2026

**Re: Major revisions are needed to medical cannabis regulations, which eviscerate, rather than implement, Nebraska’s voter-enacted initiatives**

Dear Nebraska Medical Cannabis Commission:

My name is Karen O’Keefe. I am an attorney and the director of state policies at the non-profit Marijuana Policy Project, where I have analyzed and advocated for medical cannabis laws for over 20 years. I have worked with numerous patients and families of patients who found medical cannabis dramatically improved their quality of life, including veterans with PTSD, patients who found seizure control from cannabis, cancer patients, and individuals with merciless pain.

On November 5, 2024, Nebraska voters overwhelmingly decided patients would be allowed to use and safely access medical cannabis. In landslide votes of 71% and 67% in favor, voters approved the Nebraska Medical Cannabis Patient Protection Act (Initiative 437) and the Nebraska Medical Cannabis Regulation Act (Initiative 438).

Rather than faithfully implementing the people’s laws, the proposed regulations contradict and eviscerate them, depriving patients of the relief voters authorized. While the initiatives allow patients to possess and purchase raw cannabis, vaporized products, and edibles, the regulations ban all of those modes of administration. The regulations also allow about 1/28th of the amount of cannabis allowed by the initiatives. The regulations also impose numerous burdens that will deter medical practitioner participation that are contrary to the law, ban telemedicine recommendations, and cap the total number of plants even if it is insufficient to meet demand.

The Nebraska Medical Cannabis Commission’s role is to *implement* the people’s law and ensure safe, regulated access to medical cannabis. We strongly urge the commission to abide by the will of the people and dramatically revise the regulations when issuing permanent regulations, including by making the following changes:

**I. Remove the ban on raw, botanical cannabis, edibles, concentrates, and vaporized cannabis.**

Nebraska’s voter-enacted medical cannabis laws clearly allow cannabis in its raw, botanical form. Voters also authorized vaporization, edibles, concentrates, and accessories for inhalation. Under the Nebraska State Constitution, a two-thirds vote of the Legislature is required to amend a voter-initiated law. The Legislature chose not to do so. Yet, the proposed rules attempt to amend and eviscerate the voters’ law by prohibiting medical cannabis businesses from selling all of these types of cannabis that are allowed by the voter-initiated laws.

Rule 013.09(B) prohibits dispensaries from selling “raw plant material,” “any product administered by smoking, combustion, or vaping,” and “food or drink that has cannabis baked, mixed, or otherwise

infused into it.” Instead, Rule 013.09(A) only allows a handful of extracted preparations, “oral tablets,” gels, lotions, and other topical applications, suppositories, transdermal patches, and liquids or oils for nebulizers or inhalers.

These unacceptable changes prohibit medical cannabis and products that are authorized by the voter-enacted laws.

Cannabis is defined in both initiatives as “*all parts of the plant of the genus cannabis* whether growing or not, the seeds thereof, 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.” The initiatives clearly allow actual, raw cannabis. Yet, rule 013.09(B) prohibits the sale of raw cannabis.

Meanwhile, Initiative 438 defined “cannabis products” as “products that are comprised of cannabis, cannabis concentrate, or cannabis extract, and other ingredients, and that are intended for use or consumption, such as, but not limited to, *edible products*, ointments, and tinctures.” (emphasis added). Here, too, the rules ban the sale of what the initiatives clearly allow — edibles.

Rule 015.01 (B) (vi) also caps cannabis products at 60% THC. In contrast, both initiatives explicitly allow “concentrated cannabis” with no cap.

The initiatives also clearly allow inhalation and vaporization, while the rules prohibit these products’ sales. In the voter-approved statute, cannabis accessories, which may be lawfully sold, are defined as “any equipment, products, or materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, *vaporizing*, or containing cannabis, or for ingesting, *inhaling*, or otherwise introducing cannabis into the human body.” In contrast, rule 013.09(B) prohibits dispensaries from selling “raw plant material,” and “any product administered by smoking, combustion, or vaping.”

Limiting patients to extracts is not only an affront to voters, it will deprive many patients of the treatment option that works best for them. Botanical cannabis includes more than 100 cannabinoids, which work synergistically to provide relief through the “entourage effect.”

Numerous studies have found the efficacy of smoked and vaporized cannabis, including in alleviating migraines, neuropathic pain, induced pain, nausea, and spasticity from multiple sclerosis. While smoking tobacco — which is legal for adults in Nebraska — kills over 480,000 Americans per year, cannabis smoke does not carry the same risks. Cannabis smoking has not been shown to cause lung cancer or COPD.

Meanwhile, smoked and vaporized cannabis allows for almost immediate relief. Rapid relief is crucial for releasing spasms, preventing an oncoming seizure, quelling nausea, and relieving attacks of debilitating pain. Peak THC levels are reached in only 6-10 minutes after inhalation. In contrast, oral administration takes 30-60 minutes to take effect, with peak levels at between 1.5 hours and three hours post-administration. People who are nauseated, paralyzed on the floor with a spasm, or writhing in pain should not be forced to suffer.

Because it is so fast-acting, inhalation also allows for precise dose titration. For obvious reasons, modes of administration that take up to two hours do not allow for precise dosing based on the needs of the patient.

Raw cannabis is also typically far less expensive than extracts, which is vital since insurance does not cover medical cannabis and people with serious illnesses typically have very limited incomes.

Rule 015.01 caps products at 60% THC. Some patients with extreme pain, cancer, and other ailments find relief from very-high THC products. Moreover, this cap may force additives to be inhaled in nebulizers. Inhaling additives, specifically vitamin E acetate, was the culprit in the EVALI lung crisis.

To respect the will of voters and comport with the statutes, the bans on the sale of raw cannabis, edibles, concentrates, and products that can be vaporized, combusted, or smoked needs to be removed. Under Initiative 437, patients can possess cannabis regardless of the source. These undemocratic bans will drive many patients across state lines to get the product they are legally entitled to and that helps them, wasting their time and gas money.

## **II. Remove limitations, burdens, and restrictions on practitioners.**

The Nebraska Medical Cannabis Regulation Act creates the Nebraska Medical Cannabis Commission to regulate “the possession, manufacture, distribution, delivery, and dispensing of cannabis for medical purposes by registered cannabis establishments.” Under the Nebraska Medical Cannabis Regulation Act, “[c]annabis for medical purposes means cannabis, cannabis products, and cannabis accessories intended for qualified patients pursuant to any law enacted contemporaneously with the adoption of the Nebraska Medical Cannabis Regulation Act ... ” — in other words, the Nebraska Patient Protection Act.

The Nebraska Medical Cannabis Regulation Act does *not* grant the commission the power to regulate patients, caregivers, or healthcare practitioners, which are covered by the Nebraska Patient Protection Act.

Yet, the rules add numerous burdens and limitations on practitioners, including ones that explicitly contradict the Nebraska Patient Protection Act. This exceeds the Commission’s authority.

### **A. Remove the requirement that practitioners practice in Nebraska.**

Rule 019.01 requires recommending practitioners to “primarily practice medicine in Nebraska” to certify patients to acquire medical cannabis in Nebraska. This is at odds with the voter-enacted law, which allows practitioners from any states to recommend cannabis to patients if they are in compliance with the Uniform Credentialing Act.

Neb.Rev.St. § 71-24,108 provides, “Health care practitioner means a physician, an osteopathic physician, a physician assistant, or a nurse practitioner licensed under the Uniform Credentialing Act ***or who is licensed in any state and practicing in compliance with the Uniform Credentialing Act.***”

The rule needs to be revised to mirror Neb.Rev.St. § 71-24,108.

### **B. Remove “written orders,” including removing the requirement that practitioners specify products, dosage, and the dispensary.**

In keeping with other states’ medical cannabis laws, the Nebraska Patient Protection Act allows a qualifying patient to use and possess a specific amount of cannabis (up to five ounces) with a physician, nurse practitioner, or physician assistant’s recommendation. These recommendations are

First Amendment-protected speech.

However, the rules, including rules 019.03, 013.05, 020.07 (the second section with this number) depart dramatically from this approach by requiring a healthcare practitioner to complete a “written order” including the recommended product, potency, number of doses, directions for use, and the dispensary to obtain it from. These requirements are impractical, inconsistent with the initiatives, and likely to seriously deter practitioners’ participation due to federal law.

Under the Nebraska Patient Protection Act, patients may possess cannabis with a recommendation — with no added requirement of a “written order” with the form of cannabis or dosage being included. As is the case with many of the other burdens in the regulations, this will drive patients to Missouri, Colorado, and the illicit market, where they can make their own decisions about products. This language needs to be removed and it needs to be restored to the initiative.

**C. If “written orders” are not removed, the rules need to allow refills.**

Rule 013.08 reads, “NO REFILLS. A dispensary may not sell or transfer medical cannabis to the same qualified patient for the same written order more than once.” This requires a doctor to write a new order every 30 days for time that is not covered by insurance. This is absurdly burdensome, cost-prohibitive, and will drive patients across state lines to get cannabis.

**D. If “written orders” are not removed, remove the requirement that they specify the dispensary.**

The second rule listed as 020.07, (F), requires “written orders” to include the specific dispensary where they can be filled. If the dispensary runs out of stock, or the patient cannot afford its prices, the patient would have to wait another 30 days to get their medicine. This requirement needs to be removed.

**E. Remove the registration and CME requirement.**

Initiative 437 does not have a continuing medical education requirement or registry requirement for recommending cannabis to patients. Yet rules 019.01 and 019.02 require recommending practitioners to enroll in a Recommending Health Care Practitioner Directory and complete 10 hours of CMEs within a year, plus two per year thereafter. This would apply even if the practitioner only certified a few patients, meaning they would have to spend vastly more time on the CMEs than with medical cannabis patients. There is no state-mandated CME requirement for the vast majority of other specific medications.

**F. Allow telemedicine for medical cannabis.**

Americans are increasingly relying on telemedicine, which is legal in Nebraska. However, the second rule listed as 020.07, (J), only allows a practitioner to issue a “written order” for cannabis if it includes “A statement that the recommending health care practitioner met with the qualified patient in-person at least once in the last twelve (12) months.” There is no such restriction in the voter-enacted laws. Other rules also mandate in-person consultations.

Many healthcare providers are not knowledgeable about medical cannabis. Some patients cannot drive or are homebound. This adds a new burden for medical cannabis that was not in the initiatives and is not consistent with other medicines, which are often far more dangerous.

These burdens on practitioners, which are not in the voter-approved laws, need to be removed. The Nebraska Medical Cannabis Regulation Act did not grant the commission the authority to add new burdens on healthcare practitioners who recommend medical cannabis according to the Nebraska Patient Protection Act.

### **III. Allow enough cannabis to meet patients' needs.**

Rule 014.06 creates a hard cap of 1,250 plants per cultivator. Meanwhile, rule 005.11 allows only four cultivators. "If during any calendar year the Commission finds the number of licensed cultivators is not sufficient to meet the demand for medical cannabis or medical cannabis products, the Commission may grant an additional one (1) cultivator license during the following year." This guarantees a shortage if there are a significant number of patients enrolled in the program.

In the likely event that 5,000 plants are insufficient to meet demand, patients will suffer without the medicine voters authorized for them. Only those patients who can afford the highest prices will have access to their medicine in their home state.

If the four licensees with 1,250 plants each was 12,500 plants too low to meet demand, it would take 10 years to license enough cultivation to meet the shortage. And it takes a couple of years for most licensees to get up and running.

In New Hampshire, medical cannabis establishments may cultivate a set amount of cannabis or three mature cannabis plants and 12 seedlings per patient, whichever is greater. The Commission could take this approach.

The Commission needs to be required to promptly authorize an adequate supply. One timely way of doing so would be to provide it must authorize more plants from existing growers if the cap will not be sufficient to meet demand.

### **IV. Eliminate the inadequate cap on how much cannabis is allowed.**

Rule 013.07 caps the total amount any patient can receive at five *grams* of THC every 90 days. The Nebraska Patient Protection Act allows five *ounces* of cannabis, which includes "all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, *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." (The limit "does not include the weight of any other ingredient combined with cannabis.")

There are about 28.35 grams per ounce. The rules thus restrict patients to purchasing about 1/28th of the amount of cannabis they are allowed to possess under the Nebraska Patient Protection Act. The rules would also only allow them to purchase this amount every *three months*.

In addition to ignoring the will of voters, this will cause needless suffering by depriving many patients of the amount of cannabis they need.

In Ohio, the Board of Pharmacy considered expert testimony and literature and came up with the following as a maximum 90-day supply, given the different absorption rates of different products:

- Medical cannabis flower: 5.3 or 8 ounces, depending on its potency.
- Oils, tinctures, edibles: 9.9 grams of THC.

- Oils for vaporization: 53.1 grams of THC.
- Topicals (lotions, patches, creams): 26.55 grams of THC.

The permanent rules must reflect the possession limit in the Nebraska Patient Protection Act.

#### **V. Ensure the laboratory requirement is not a catch-22.**

MPP supports public health regulations, including laboratory testing. However, we are concerned that the requirements related to laboratory testing would create a catch-22 because the rules include no provisions for licensing laboratories. All requirements related to laboratory testing need to be contingent on there being a licensed, operational laboratory. (For example, rules 015.0 and all rules under 016.) Whether there are operational laboratories is outside of licensees' control.

#### **VI. Remove or revise the bar for those with any controlled substances conviction.**

We urge the removal of the bar on applicants, officers, directors, and operators with any controlled substances-related conviction in the past 10 years. (See: 010.03) This applies even to simple possession of cannabis, including when it was for medical use. Even simple possession of cannabis remains federally illegal. People should not be barred from having experience with the plant they are applying to produce or sell.

#### **VII. Remove or revise the bar for anyone with any cannabis-related fine.**

The regulations bar a registration from being issued or renewed to anyone who “had any citation, fine, sanction, injunction or court judgment levied against the person, or a business owned by the person, involving cannabis or cannabinoid related operations or sales.”(004.07(G)) This turns every minor penalty, including a fine, into a permanent ban.

This is excessive and would be extremely disruptive to access given the small number of licensees. For example, failing to renew a license of a grower would shut down one-quarter or one-fifth of the entire state supply, depriving product manufacturers of the supplies they need and depriving patients of the medicine they need.

#### **VIII. Remove ban on pregnant patients.**

Regulation 013.10 provides, “A dispensary shall not dispense any medical cannabis product to any qualified patient that is pregnant ..” The Nebraska Medical Cannabis Patient Protection Act has no exception for pregnant patients.

Moreover, a dispensary will have no way of knowing if a person is pregnant, and there is no *mens rea* — requiring it to be “willing” or “knowingly.” Would each dispensary have to force each patient to submit to a pregnancy test before filling an order? Doing so would be profoundly expensive to women, while also being discriminatory, invasive, time-consuming, and wasteful. No other medications have such a requirement, nor do any of the thousands of alcohol licensees.

#### **IX. Home delivery should be allowed.**

Regulation 013.04 prohibits the delivery of cannabis and requires all transfers to occur on the licensed property. Other medications are delivered to the homes of patients throughout Nebraska. The same should be true of medical cannabis. Some patients are unable to drive due to epilepsy and other

ailments. Some live in nursing homes or assisted living facilities. Prohibiting home delivery deprives patients of access to the medicine voters approved.

#### **X. The cultivator cap is too low.**

Rule 005.11 allows only four cultivators in the state, which are limited to 1,250 plants each. If that proves inadequate, only a single additional cultivator is allowed each year. This is far lower than most medical cannabis programs. At a minimum, the plant cap and license cap needs to be allowed to increase as much as is needed to meet demand.

As I mentioned above, if the four licensees with 1,250 plants each was 12,500 plants too low to meet demand, it would take 10 years to license enough cultivation to meet the shortage. And it takes a couple of years for most licensees to get up and running.

Neighboring South Dakota, which has less than half of Nebraska's population, has 33 licensed cultivation facilities.

#### **XI. The product manufacturer cap is too low.**

Rule 006.11 allows only four product manufacturers. If that proves inadequate, only a single additional product manufacturer is allowed. This is far lower than most medical cannabis programs. The Commission should approve as many additional licensees are needed to meet demand, including requiring them to approve applicants who would provide products that are not available at the time.

#### **XII. The dispensary cap is too low.**

Rule 004.11 allows only one dispensary per District Court Judicial District, for a total of 12. If the amount is insufficient, a second dispensary may be added per district the year after it finds the single dispensary is insufficient.

Neighboring South Dakota has more than 60 dispensaries. South Dakota is slightly smaller than Nebraska, and has less than half of Nebraska's population. Nebraska also has a broader medical cannabis law by allowing physicians' discretion to certify patients for medical cannabis.

The Commission should be allowed to license as many dispensaries as are needed to serve demand and ensure reasonable access and competition statewide.

#### **XIII. The 1,000-foot buffer for many locations should be pared down.**

The rules ban dispensaries and other cannabis businesses within 1,000 feet of any "covered location," which includes schools, churches, licensed daycares, hospitals, and mental health and substance use treatment centers. (002.10, 004.08, 006.08, 002.11) A 1,000-foot buffer from this wide array of locations may be excessive. It may prohibit dispensaries in any commercial area in some towns and cities. At a minimum, cities and towns should be able to reduce the buffer for locations.

In addition, the buffer from a hospital should be reduced to 300 feet or eliminated. Cannabis is now recognized as a medicine under Nebraska law, and pharmacies are located in hospitals.

#### **XIV. The ban on vertical integration should be removed.**

Rule 004.01 provides, "Vertical licensing is not permitted. An applicant may not possess more than

one license type authorized by this chapter.” Vertical integration should be allowed, but not required. At a minimum, manufacturers should also be allowed to be cultivators to ensure they have an adequate supply of cannabis to produce products from.

#### **XV. Cultivators should not be restricted regarding where they obtain seeds.**

Rule 014.09 dramatically reduces the options for where seeds can be obtained, which would prevent cultivators from obtaining them from federally legal sources and dramatically restrict genetics. It provides, “A cultivator may only obtain cannabis seeds, immature cannabis plants, or cannabis genetic material from another Nebraska licensed cultivator or a cultivator authorized to operate in another state of the United States.”

It should be revised to: “A cultivator may only obtain immature cannabis plants, or cannabis genetic material other than seeds, from another Nebraska licensed cultivator or a cultivator authorized to operate in another state of the United States. A cultivator may obtain cannabis seeds from any source.”

#### **XVI. Prompt deadlines are needed for licensing.**

The rules don’t include deadlines for accepting applications or issuing licenses. The permanent rules should ensure that licenses are issued swiftly, but that each application window is open for at least 30 days. There should also be a firm deadline for it to begin accepting all remaining types of applications, which should be in 2025.

The first two cultivation licenses have been issued. It is essential to the financial welfare of the licensees that they have manufacturers and dispensaries where their products can be sold in a timely manner. In addition, the short deadlines show voters clearly intended to provide timely access to medical cannabis.

#### **XVII. Minors should be allowed to accompany parents in dispensaries.**

Rule 12.05 bars minors from all cannabis facilities. Children are allowed at pharmacies, and they should be allowed to accompany their parents to dispensaries. Barring children requires many parents to pay for child care, adding unnecessary costs.

### **Concluding Comments**

Nebraska’s proposed rules thwart the will of voters, which included allowing patients in-state access to an array of medical cannabis products. The rules deprive patients of the most commonly used modes of administering cannabis, edibles and raw cannabis (flower), despite those options being clearly allowed in the people’s initiatives. The rules also add onerous burdens on healthcare practitioners that increase costs, create legal risks, and deter participation, despite the Commission having no authority to regulate recommending practitioners. The rules undermine the people’s laws in a myriad of ways and deprive patients of the relief voters intended.

The Commission has no authority to issue regulations for the Nebraska Patient Protection Act, which legalizes patients’ possession and use of up to five ounces of cannabis (not counting the weight of other ingredients) with a practitioner’s recommendation. The Commission’s burdensome approach will drive many away from Nebraska dispensaries and across state lines, wasting time and money, and causing more suffering and pain.

In issuing permanent rules, the Commission must remove these burdens and respect the voter-enacted laws. The right to voter initiatives is enshrined in the Nebraska State Constitution, which requires a two-thirds legislative super-majority to amend them. The Commission has no authority to administratively do what the Legislature cannot do without a two-thirds supermajority. Your role is to implement, not eviscerate, the will of the people.