Nebraska Medical Cannabis Rules Comments

July 14, 2025

Dear Nebraska Medical Cannabis Commission:

Re: Comment on medical cannabis emergency rules

My name is Karen O'Keefe. I am an attorney and the director of state policies at Marijuana Policy Project, where I have analyzed and advocated for medical cannabis laws for over 20 years. I have worked with numerous patients and parents 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 agreed that patients should be allowed to use and safely access medical cannabis. In landslide votes of 71% and 67% in favor, they approved the Nebraska Medical Cannabis Patient Protection Act (Initiative 437) and the Nebraska Medical Marijuana Regulation Initiative (Initiative 438).

We appreciate your work to issue draft regulations for Initiative 438 by the July 1 deadline, but we have serious concerns about some of the provisions, which will drive up costs for patients, exclude product types many need for relief, and otherwise create burdens to compassionate access in Nebraska. We strongly urge you to make revisions before issuing final rules, to ensure patients receive the relief voters intended.

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

Nebraska's voter-enacted medical cannabis laws allow medical cannabis in its raw, plant form. They also authorize vaporizers, hashish, and accessories for inhalation. Yet raw cannabis, vaporized cannabis, and smoked cannabis would be prohibited in emergency rules.

Emergency rule 012.07 prohibits dispensaries from selling "raw plant material." Instead, it only allows a handful of extracted preparations — pills, suppositories, tinctures, topicals, patches, unpalatable lozenges or gelatinous cubes, and oils for nebulizers or inhalers. Rule 012.07 (B) bans "Any product administered by smoking, combustion, or vaping." These unacceptable changes would deprive patients of preparations that work best for them. The rule is directly at odds with the will of voters.

The Nebraska Medical Cannabis Patient Protection Act allows patients to possess up to "five ounces of cannabis." Both initiatives authorize cannabis accessories which they define as including "products .. intended for use ... vaporizing ... cannabis ... or inhaling ... cannabis." Both define cannabis as including marijuana, hashish, and "all parts of the plant of the genus cannabis whether growing or not."

Botanical cannabis includes more than 100 cannabinoids which work synergistically to provide relief through the "entourage effect." Limiting patients to extracts will deprive many patients of the

treatment option that works best for them. Raw cannabis can be consumed raw, in smoothies or other preparations, in addition to being inhaled.

Studies have found the efficacy of smoked and vaporized cannabis, including at alleviating migraines, neuropathic pain, induced pain, and spasticity from multiple sclerosis. While smoking tobacco — which is legal for adults in Nebraska — kills over 450,000 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.

While rules provide for nebulization, which may also be fast-acting, nebulized cannabis has not been subject to the the studies that smoked and vaporized cannabis have been. Many patients may be more comfortable with modes of administration that have been studied for decades.

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.

Initiative 437 allows patients with practitioners' recommendations to "use, possess, and acquire an allowable amount of cannabis and cannabis accessories." (Neb. Rev. St. 71-24,105.) A ban on the sale of these products will not change that they are legal for patients to possess. The rules would drive many patients across the border to Colorado or Missouri — and to the illicit market — to purchase forms of cannabis they are legally entitled to use and access.

Please respect the will of voters and eliminate the ban on the sale of raw cannabis and other products that can be vaporized, combusted, or smoked.

II. Remove other excessive restrictions on cannabis product types.

The draft regulations add several other unwarranted restrictions to product types that are contrary to the language of the initiatives, and that would deprive patients of products that they will tolerate.

Initiative 437 allows cannabis to be added to food and drink. Its definition of cannabis includes "preparation[s]" of cannabis plant and it provides that the five ounces of cannabis allowed "does not include the weight of any other ingredient combined with cannabis as part of topical or oral administrations, food, drink, or other preparations."

Rule 012.06 allows "Non-sugarcoated gelatinous cubes, gelatinous rectangular cuboids, or lozenges in a cube or rectangular cuboid shape"

While 012.07 prohibits:

“(iii) Any product containing artificial flavoring, natural flavoring, or coloring;

(iv) A food or drink that has cannabis baked, mixed, or otherwise infused into it”

Banning flavoring deprives patients of palatable medicine and reduces adherence. As a journal article in Clinical Therapeutics noted, “The unpalatable flavor of the medicine can thwart the benefits of even the most powerful of drugs. Failure to consume medication may do the child harm and can even be life-threatening.”

Many of the most dedicated advocates for medical cannabis in Nebraska have been parents of children with devastating seizure disorders. Seizures can cause catastrophic injuries, problems with memory, thinking, and emotional well-being, and brain damage. Every year, 3,000 Americans die from sudden unexpected death in epilepsy (SUDEP). The hazards of uncontrolled seizures are extreme. Patients need medications that are palatable. As with all medications, they should be in childproof packaging and need to be stored safely.

Limiting edible and drinkable products to gelatinous cubes and lozenges is also unduly restrictive. Lozenges may be a choking hazard for young and geriatric patients and some may not like gelatinous cubes. Medical conditions can require a person to be on a liquid diet short- or long-term, making drinkable options important.

Please remove these unnecessary restrictions that conflict with the voter-initiatives laws.

III. Eliminate the requirement providers specify products and dosage.

In keeping with other medical cannabis laws, Initiative 437 allows a patient to use and possess a specific amount of cannabis (up to five ounces) with a physician, nurse practitioner, or physician assistant’s recommendation. Emergency rule 012.03 departs dramatically from this approach by requiring dispensaries to only dispense cannabis if the recommendation includes the product recommended, dosage, potency, number of doses, and directions for use. This onerous requirement is impractical and inconsistent with the initiatives.

Due to federal restrictions, there is limited research on the wide array of cannabinoids, terpenes, and medical cannabis products. Physicians will not have knowledge of every available product and how it will work for an individual patient. Patients use trial-and-error to find the product or products that work best for them. Some patients use a variety of products and strains depending on which symptoms are present and whether it is daytime or nighttime. What dosage is needed will depend on how severe symptoms are, which is not something a physician can anticipate.

In addition to being impractical and contrary to the best interests of patients, rule 012.03 puts practitioners at risk and will thus depress their participation. A federal circuit court ruled recommending cannabis is protected First Amendment speech, and that doctors’ authority to prescribe controlled substances could not be revoked based on such a recommendation. However, it noted doing so with the specific intent that the recommendation be used to acquire cannabis would not be protected. Specifying what products and how much a patient could obtain would show a specific intent the recommendation be used to purchase cannabis, and thus put the physician at legal risk. Many physicians would be unwilling to participate if their livelihood could be put in jeopardy for doing so.

Under Initiative 437, patients may possess cannabis with a recommendation — with no added

requirement about the form of cannabis or dosage being included. This onerous restriction on dispensaries will drive patients to Missouri, Colorado, and the illicit market, where they can make their own decisions about products.

IV. The dispensary cap is far too low.

Rule 003.12 allows only one dispensary per District Court Judicial District, for a total of 12. This is insufficient.

In comparison, 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.

Rule 003.12 gives each dispensary a local monopoly. It also requires many patients and caregivers to make a long and burdensome journey to get to the nearest dispensary. Many patients have medical conditions that make car rides excruciatingly painful or risky.

Please increase the number of dispensaries. One possibility would be to initially allow one dispensary per state Senate district, for a total of 49. Every two years, the commission should hear from patients, dispensaries, and other stakeholders and reassess if more are needed.

It is also important that a sufficient number of manufacturers and growers are licensed to ensure an adequate supply with healthy competition and product choices for patients.

V. Concerns about the buffer: "Daycare" is vague, 1,000-feet may be excessive.

The emergency rules ban dispensaries and other cannabis businesses within 1,000 feet of any school, daycare, church, or hospital. "Daycare" is not defined in the rule and it may include even home daycares, where three or fewer children are cared for without a license pursuant to Neb. Rev. St. § 71-1911. Dispensary applicants would have no way of knowing where those locations are.

At a minimum, "daycare" should be changed to "Child care licensed pursuant to Neb. Rev. St. § 71-1911."

In addition, a 1,000-foot buffer from any school, daycare, church, or hospital may be excessive. With the large number of locations — schools, daycares, churchs, and hospitals, this 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. The buffer from a hospital should be reduced to 300 feet or eliminated.

VI. The ban on vertical integration should be removed.

Rule 003.01 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.

VII. Recordkeeping requirements are onerous.

Rules 012.08, 013.07, and 014.09 impose onerous recordkeeping requirements on licensees. Under

the rules, licensees are required to maintain records for seven years, including receipts and invoices. Dispensaries must record and keep 12 different pieces of information, including purchasers' names and addresses.

Entities that manufacture and dispense controlled substances in Nebraska are required to keep more limited records for five years. Medical cannabis records should be no more onerous than under existing statute.

VIII. Cultivators should not be restricted regarding where they obtain seeds.

Cannabis seeds have under 0.3% THC. Under federal law, they are thus "hemp" and can be legally transferred. However, rule 013.06 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 federally legal source, from another Nebraska licensed cultivator or a cultivator authorized to operate in another state of the United States."

IX. Prompt deadlines are needed for licensing.

The emergency rules don't include deadlines for accepting applications or issuing licenses. Initiative 438 required the commission to begin granting business registrations by October 1, 2025. The final rules should ensure that licenses are issued on time. It should also include a firm deadline for it to begin accepting applications, with at least 30 days for reviewing applications.

X. Application and licensing fees should be reasonable for small businesses.

The emergency rules don't include application or licensing fees or other details about how licenses would be determined. Application fees need to be modest enough that those who do not have extremely deep pockets can afford to apply. Licensing fees should also be reasonable for small businesses. Application fees should not exceed $2,500 and licensing fees should not exceed $10,000.

Thank you for your consideration and public service. Please revise the rules before issuing permanent rules to respect the will of voters and ensure an accessible, affordable medical cannabis program.

Please don't hesitate to reach out if you have any questions or if I can be of any assistance.

Sincerely,

Karen O'Keefe, JD
Director of State Policies
kokeefe@mpp.org

1 Neb. Rev. St. 71-24,104 (1), 71-24,105.

2 Neb. Rev. St. 71-24,104 (3) Neb. Rev. St. 71-24,1074 (3).

3 Neb. Rev. St. 71-24,104 (2), 71-24,107 (1).

4 See: Dr. Sanjay Gupta, "Medical marijuana and ‘the entourage effect’," CNN, March 11, 2014.

5 See: Schuster NM, Wallace MS, Marcotte TD, Buse DC, Lee E, Liu L, Sexton M. (2024). Vaporized cannabis versus placebo for acute migraine: A randomized controlled trial. MedRxiv, Epub Feb 18;

Abrams DI, Jay CA, Shade SB, Vizoso H, Reda H, Press S, Kelly ME, Rowbotham MC, Petersen KL. Cannabis in painful HIV-associated sensory neuropathy: A randomized placebo-controlled trial. Neurology. 2007 Feb 13;68(7):515-21; Corey-Bloom J, Wolfson T, Gamst A, Jin S, Marcotte T, Bentley H, Gouaux B. (2012). Smoked cannabis for spasticity in multiple sclerosis: a randomized, placebo-controlled trial. CMAJ. 2012 Jul 10;184(10):1143-50. doi: 10.1503/cmaj.110837. Epub 2012 May 14; Wallace M, Schulteis G, Atkinson JH, Wolfson T, Lazzaretto D, Bentley H, Gouaux B, Abramson I (November 2007) Dose-dependent Effects of Smoked Cannabis on Capsaicin-induced Pain and Hyperalgesia in Healthy Volunteers. Anesthesiology. 2007 Nov;107(5):785-96; Wallace MS, Marcotte TD, Umlauf A, Gouaux B, Atkinson JH. (2015). Efficacy of Inhaled Cannabis on Painful Diabetic Neuropathy. J Pain. 2015 Jul;16(7):616-27. doi: 10.1016/j.jpain.2015.03.008. Epub 2015 Apr 3; Journal Article Wilsey B, Marcotte T, Deutsch R, Gouaux B, Sakai S, Donaghe H. (2013). Low-Dose Vaporized Cannabis Significantly Improves Neuropathic Pain. J Pain. 2013 Feb;14(2):136-48. doi: 10.1016/j.jpain.2012.10.009. Epub 2012 Dec 11.

6 Inhaled marijuana and the lung, The Journal of Allergy and Clinical Immunology: In Practice, 2022 (“On balance, the available evidence at least thus far does not suggest that marijuana smoking poses an increased risk of lung cancer when adjustments are made for concomitant tobacco smoking.”); National Academy of Sciences, The Health Effects of Cannabis and Cannabinoids, 2017 (“There is moderate evidence of no statistical association between cannabis use and incidence of lung cancer [or] incidence of head and neck cancer.”);Quantitative and qualitative imaging in marijuana users and smokers, Current Problems in Diagnostic Radiology, 2025 (It appears that, in general, marijuana users do not … develop emphysema or pulmonary hyperinflation.); Impact of marijuana smoking on COPD progression in a cohort of middle-aged and older persons. Chronic Obstructive Pulmonary Diseases. 2023 ("Among SPIROMICS participants with or without COPD, neither former nor current marijuana smoking of any lifetime amount was associated with evidence of COPD progression or its development.")

7 See: Chayasirisobhon S. Mechanisms of Action and Pharmacokinetics of Cannabis. Perm J. 2020 Dec;25:1-3. doi: 10.7812/TPP/19.200. PMID: 33635755; PMCID: PMC8803256.

8 Schlienz NJ, Spindle TR, Cone EJ, Herrmann ES, Bigelow GE, Mitchell JM, Flegel R, LoDico C, Vandrey R. Pharmacodynamic dose effects of oral cannabis ingestion in healthy adults who infrequently use cannabis. Drug Alcohol Depend. 2020 Mar 21;211:107969. doi: 10.1016/j.drugalcdep.2020.107969. Epub ahead of print. PMID: 32298998; PMCID: PMC8221366.

9 Neb. Rev. St. 71-24,104 (1).)

10 Mennella JA, Beauchamp GK. Optimizing oral medications for children. Clin Ther. 2008 Nov;30(11):2120-32. doi: 10.1016/j.clinthera.2008.11.018. PMID: 19108800; PMCID: PMC2744307.

11 https://medlineplus.gov/ency/patientinstructions/000206.htm

12 Contant v. Walters, 309 F. 3d 629 (9th Cir. 2002).

13 https://medcannabis.sd.gov/Establishments/CertifiedEstablishments.aspx

14 Neb. Rev. St. 28-410

15 See: "The DEA Acknowledged That Cannabis Seeds Are Legal to Sell. So, What Does That Mean for the Industry?" Cannabis Business Times, November 1, 2022.