

# Therapeutic Cannabis Program

## General Program Information for Medical Providers

### Provider Participation

The law does not require medical providers to participate in the NH Department of Health and Human Services' Therapeutic Cannabis Program (Program), nor does it require medical providers to issue Written Certifications to Qualifying Patients.

A medical provider who chooses to participate in the Therapeutic Cannabis Program is not required to register with the State of New Hampshire, either with the Program or their licensing board.

The Program will not maintain a public list of medical providers who have issued, or have expressed willingness to issue, Written Certifications to Qualifying Patients.

In order to issue a Written Certification to a Qualifying Patient, a medical provider must:

- Either be a physician or an advanced practice registered nurse (APRN);
- Have an active license in good standing from the NH Board of Medicine or the NH Board of Nursing, or from the appropriate regulatory entity in the states of Maine, Massachusetts, or Vermont.\*
- Have an active registration in good standing from the US Drug Enforcement Agency to prescribe controlled substances; and
- Have a "provider patient relationship" with a patient for at least 3 months duration (unless the 3-month requirement does not apply as described below).

\*Certifying medical providers in Maine, Massachusetts, and Vermont must be "primarily responsible for the patient's care related to his or her qualifying medical condition." (See RSA 126-X:1, VII(a)(3))

### Provider Protections

State law does not require a medical provider to prescribe cannabis or recommend its use. Rather, state law allows a medical provider to certify that a patient has a qualifying medical condition under RSA 126-X:1, IX(a). The required Written Certification is not intended to be a prescription or medical recommendation for the therapeutic use of cannabis.

Pursuant to RSA 126-X:2, VIII, "a provider shall not be subject to arrest by state or local law enforcement, prosecution or penalty under state or municipal law, or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by the New Hampshire board of medicine or any other occupational or professional licensing entity, solely for providing written certifications, provided that nothing shall prevent a professional licensing entity from sanctioning a provider for failing to properly evaluate a patient's medical condition."

### Provider-Patient Relationship

A "provider-patient relationship" means at least a 3-month medical relationship between a licensed provider and a patient (unless the 3-month requirement does not apply as described below), during which the provider has conducted a full assessment of the patient's medical history and current medical condition.

A "full assessment," pursuant to He-C 401.06(b)(2), includes all of the following:

- An in-person physical examination of the patient, which shall not be via electronic means, such as over the phone or via the Internet;
- A medical history of the patient, including a prescription history;
- A review of laboratory testing, imaging, and other relevant tests;
- Appropriate consultations;
- A diagnosis of the patient's current medical condition; and
- The development of a treatment plan for the patient appropriate for the provider's specialty.

There is an exception to the 3-month duration requirement [He-C 401.06(b)(1)b.]. A medical relationship between the provider and the patient may be less than 3 months duration provided that the provider certifies on the Written Certification:

- That the onset or diagnosis of the patient's qualifying medical condition occurred within the past 3 months; and
- The certifying provider is primarily responsible for the patient's care related to his or her qualifying medical condition.

The certifying provider is required to explain the potential health effects of the therapeutic use of cannabis to the adult patient. In the case of a patient who is a minor, the provider must explain to the minor's custodial parent or legal guardian with responsibility for health care decisions for the minor patient the potential risks and benefits of the therapeutic use of cannabis as part of the potential health effects.

The certifying provider is required to follow the patient clinically at appropriate intervals at the discretion of the provider to provide follow-up care and treatment to the patient for his or her qualifying medical condition including, but not limited to, physical examinations, to determine the health effects of cannabis for treating the patient's qualifying medical condition or the symptom of the qualifying medical condition for which the written certification was issued.

### Qualifying Medical Conditions

The list of qualifying medical conditions for the therapeutic use of cannabis is established by law in RSA 126-X:1, IX(a), as follows. "Qualifying medical condition" means "the presence of:

(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C currently receiving antiviral treatment, amyotrophic lateral sclerosis, muscular dystrophy, Crohn's disease, multiple sclerosis, chronic pancreatitis, spinal cord injury or disease, traumatic brain injury, epilepsy, lupus, Parkinson's disease, Alzheimer's disease, ulcerative colitis, or one or more injuries that significantly interferes with daily activities as documented by the patient's provider\*; AND

(2) A severely debilitating or terminal medical condition or its treatment that has produced at least one of the following: elevated intraocular pressure, cachexia, chemotherapy-induced anorexia, wasting syndrome, agitation of Alzheimer's disease, severe pain that has not responded to previously prescribed medication or surgical measures or for which other treatment options produced serious side effects, constant or severe nausea, moderate to severe vomiting, seizures, or severe, persistent muscle spasms."

\*When completing the Written Certification form, you will be required to identify your patient's injury or injuries and describe in sufficient detail how it significantly interferes with your patient's daily activities.

In order to have a qualifying medical condition, as defined, a patient must have BOTH a condition listed in the first paragraph AND a symptom or side effect listed in the second paragraph.

A provider shall not consider a patient to have a qualifying medical condition if a patient who has had a diagnosis of a qualifying medical condition in the past no longer actively has a qualifying medical condition. A patient whose symptoms are mitigated by the therapeutic use of cannabis shall still be considered to have a qualifying symptom or side effect.

### Requirements for Patients who are Minors

Minors (under age 18) are permitted by law to engage in the therapeutic use of cannabis, and medical providers are permitted to issue Written Certifications to minors, under the following conditions:

- The Program must receive two Written Certifications for the minor patient, from two different medical providers. One of the Written Certifications must be issued by a pediatrician.
- Both medical providers must have a provider-patient relationship with the minor applicant of at least 3 months duration (unless the 3-month requirement does not apply as described above).
- The minor patient's custodial parent or legal guardian who is responsible for the health care decisions of the applicant must be approved as the minor patient's Designated Caregiver.

### Provider Recommendations for the Therapeutic Use of Cannabis

If you have recommendations for your patient's therapeutic use of cannabis, you may send such recommendations to the patient's designated Alternative Treatment Center (ATC) with your patient's approval. You must securely transmit such recommendations to the ATC. When dispensing cannabis to a qualifying patient, the ATC is required to follow any recommendations or instructions provided by that patient's certifying medical provider.

### Maintenance of Records

You must maintain medical records for all patients for whom you have issued a written certification which support the certification of a qualifying medical condition.

Two qualifying medical conditions require more specific documentation:

- If your patient has "one or more injuries that significantly interferes with daily activities," you must maintain records that document how your patient's injury or injuries significantly interferes with his or her daily activities.
- If your patient has "severe pain that has not responded to previously prescribed medication or surgical measures or for which other treatment options produced serious side effects," you must maintain records of all previously prescribed medication, surgical measures, and other treatments.

### Release of Records

As part of your patient's application to the Program, he or she will be required to sign a release of information which authorizes the release of medical information by the certifying medical provider to the Program if the Program determines that further information about the applicant's qualifying medical condition is required. For verification purposes, the Program may request, and you must supply, a copy of such records which support the certification of a qualifying medical condition. Refusal to supply such records may adversely affect your patient's ability to obtain or maintain a registry identification card.

### Written Certification Form Instructions

In addition to the instructions on the Written Certification form, please note the following:

- Give the completed Written Certification form to your patient to submit to the Program, and retain a copy for your records. Do not send the completed form directly to the Program; it must accompany the patient's application.
- The Program will not accept a Written Certification if it is dated more than 60 days prior to the date that the applicant submits his or her application to the Program.
- As part of the application review and verification process, the Program will contact your office to verify that you signed and issued the Written Certification Form. The certifying medical provider will not be required to personally verify this information; confirmation by office personnel will be considered sufficient. Without such confirmation, your patient's application will be considered incomplete.

### Renewals and Duration of a Written Certification

A patient must annually renew his or her registry identification card by submitting a new application to the Program, including the submission of a new Written Certification, each time the card is renewed.

A patient's registry identification card will be valid for one year from the date of issuance. If you determine that the patient's card should be valid for a shorter duration, then you may indicate on the Written Certification the number of months the card shall remain valid.

You may contact the Program at any time if, in your opinion, your patient should no longer be certified for the therapeutic use of cannabis, for whatever reason. Upon such notice the patient's card will be revoked or voided, as appropriate.

### Provider Notifications

A certifying medical provider, or the Qualifying Patient's new medical provider if there has been a change in the Qualifying Patient's medical provider, may notify the Program if the provider acquires information indicating that a Qualifying Patient (1) should no longer be certified for the therapeutic use of cannabis; (2) falsified information that was the basis of the provider's written certification; (3) no longer suffers from a qualifying medical condition; or (4) should discontinue using cannabis. Upon such notice, the patient's registry identification card will either be revoked or voided, as appropriate.

### Provider Restrictions

A provider issuing a Written Certification shall not delegate to any other health care professional or any other person, authority to diagnose a patient as having a qualifying medical condition.

A provider issuing a Written Certification shall not issue a Written Certification for him or herself or for the provider's immediate family members.

A provider shall not:

- Offer a discount or other thing of value to a patient who uses or agrees to use a particular ATC;
- Examine a patient in relation to issuing a written certification at a location where cannabis is sold or distributed; or
- Hold any economic interest in an ATC, including but not limited to employment at an ATC, if the provider issues Written Certifications to patients.

### Referrals to Regulatory Boards

The Program is required by law to refer to the NH Board of Medicine or the NH Board of Nursing concerns it has regarding provider conduct.

### Confidentiality

The Program will maintain the confidentiality of all information about applicants, Qualifying Patients, Designated Caregivers, certifying medical providers, and alternative treatment centers that is provided to the Program. The Program will not maintain a public list or publicly release the names of medical providers who have issued, or have expressed willingness to issue, Written Certifications to Qualifying Patients.

Some relevant exceptions include:

- The referrals described above regarding concerns the Department has regarding provider conduct.
- Information required to be reported to the Health and Human Services Oversight Committee, to the NH Board of Medicine, and the NH Board of Nursing in the department's annual data report required by RSA 126-X:10. Such information shall be de-identified, aggregate data required by RSA 126-X:10, IV.