

THERAPEUTIC USE OF CANNABIS ADVISORY COUNCIL
Friday, January 9, 2015, 1:00 PM
Legislative Office Building, Rooms 305

MINUTES

Members in attendance:

Devon Chaffee, NH Civil Liberties Union
Lt. John Encarnacao, Department of Safety
Stuart Glassman, MD, NH Medical Society
Michael Holt, Department of Health and Human Services (Clerk)
Collette Horgan, Exeter Hospital
Representative James MacKay (Chair)
Senator John Reagan
Andrew Shagoury, New Hampshire Association of Chiefs of Police

Members absent:

Robert Andelman, MD, NH Board of Medicine
Robert Duhaime, NH Board of Nursing
Peter Gosline, Monadnock Community Hospital
Lisa Kilar, Qualifying Patient
James Vara, Department of Justice
Vacant, Public Member
Vacant, NH Nurse Practitioner Association
Vacant, House of Representatives Member

Call to Order

Rep. MacKay called the meeting to order at 1:08 p.m.

Council Membership

Rep. MacKay announced his reappointment to the Council just prior to the meeting.

Michael Holt relayed information he received from the Governor's office that the Council's qualifying patient member has been contacted to ask about continuing her Council membership, and that the Council's public member is in the process of being approved and appointed. The NH Nurse Practitioner Association is currently seeking a replacement for Kelley DeFeo, who has resigned membership on the Council.

Review and Approval of Minutes

Senator Reagan moved approval of the minutes from Council meetings on June 27, 2014, and August 15, 2014; Ms. Collette Horgan seconded. The vote to approve the minutes was unanimous.

Annual Report

Rep. McKay initiated the discussion of the Council's 2014 Annual Report.

Michael Holt provided the Council with a summary of the Annual Report including sections addressing membership, Council meeting summaries, and three attachments to the report: (1) the NH Attorney General's memorandum, dated February 13, 2014; (2) results of the Herbal Marijuana Survey of NH physicians and APRNs conducted by the NH Medical Society; and (3) the certified DHHS administrative rules He-C 401 Therapeutic

Cannabis Program – Registry Rules and He-C 402 Alternative Treatment Centers. An electronic copy of the Annual Report was e-mailed to Council members and was made available at the meeting to members of the public.

Rep. MacKay postponed discussion of this item until later in the meeting, once a full quorum was present.

DHHS Update

Mary Castelli, DHHS Senior Division Director, Office of Operations Support, and John Martin, Manager, Bureau of Licensing and Certification, summarized the Department's timelines and achievements of the past year regarding the establishment of the NH Therapeutic Cannabis Program. The Department's presentation outlined achievements including:

- The development of a DHHS webpage devoted to the Therapeutic Cannabis Program, to include program updates and information for the public, as of December 2013.
- The development of administrative rules governing the patient and caregiver registry (He-C 401), which were adopted on the legislative deadline of July 23, 2014.
- The development of administrative rules governing the registration and regulation of alternative treatment centers, which were adopted and made effective on November 24, 2014, two months earlier than the legislative deadline of January 23, 2015.
 - For both sets of rules DHHS solicited, received, and considered input from the Council and the public at large, both prior to and during the official rulemaking process.
 - Regarding the timing of the issuance of registry identification cards to patients and caregivers, Director Castelli explained that, while administrative rule He-C 401 was adopted with an effective date of August 1, 2015 (due to the NH Attorney General's memorandum dated February 13, 2014), that effective date and the date that DHHS would begin to accept applications for registry identification cards is subject to change based on the operational status of the alternative treatment centers. DHHS will be in close contact with the ATCs as they are developed and anticipates DHHS will begin to accept registry identification card applications approximately 4 to 6 weeks prior to an ATC being fully operational (ready to dispense cannabis).
- The development of the Request for Applications (RFA) to Operate an Alternative Treatment Center, which could not be finalized until He-C 402 was approved by the Joint Legislative Committee on Administrative Rules (JLCAR), because much of the rule was needed to be incorporated into the RFA. The RFA was published on December 19, 2014. Due to its complexity, DHHS provided potential applicants approximately 6 weeks to submit applications. The application submission deadline is 2:00 p.m. on January 28, 2015. DHHS hopes to select four ATCs.
 - In accordance with He-C 402, selected applicants will be required to submit a portion of the registration fee within 10 days of the entity being selected to operate an ATC. Such entity will also have 90 days from notice of selection to provide DHHS its registration application, including the location of the ATC, copies of all local approvals including zoning approval, floor plans, and other details to show that the ATC is ready to go on to the next stage. The ATCs will be inspected by DHHS prior to issuing a registration certificate and prior to opening their doors to patients. The Department's hope is for ATCs to be operational within 6 months after their selection.
- The development of the Therapeutic Cannabis Program Registry Database, which will be a confidential, in-house database that will have the ability to track patient and caregiver information. On January 5, 2015, DHHS received a demonstration of how the database will be set up and how it will operate, and DHHS anticipates that it will be fully functional prior to applications for registry identification cards being accepted.
- Mr. Martin noted the extensive research DHHS completed prior to and during the rulemaking process and RFA process. He expressed confidence that, after a review of rules of other states with therapeutic cannabis programs and other states' RFAs, DHHS chose the best pieces of those other states' programs and will have a strong program.

- Director Castelli complimented the Council on its work and assistance with the rulemaking process and noted with appreciation the assistance of the NH Attorney General’s Office throughout the development of the rules and the RFA.

Questions/Comments on DHHS Update

Q. Rep. MacKay commented that the \$80,000 fee is a large registration fee, and asked how DHHS arrived at the figure.

A. Director Castelli explained that the program is required to be entirely self-funded and self-sustaining, including all start-up and development costs. The Department completed a financial analysis of projected costs to operate the program to be self-funded, and the fees reflect the estimated cost to administer the program. In anticipation of potential concerns for locating an ATC in Geographic Area 4 (North Country), DHHS lowered the registration for that region to \$40,000.

Q. Devon Chaffee asked what if applications were not received for the North Country, would the Department consider another location in order to meet the four ATCs envisioned by RSA 126-X?

A. Director Castelli and Mr. Martin addressed the question. DHHS is proposing legislation this session (SB 22) that would allow an ATC to have a secondary location for the purposes of dispensing only (called a “satellite dispensary”) in order to meet the needs of the state, particularly in the North Country. These locations would be required to meet the same security requirements of the primary location. Also, DHHS tried to incentivize the North Country by lowering the registration fee by half. To incentivize the western part of the state, and as described in the RFA, DHHS will allow an entity to receive two of the four registration certificates so long as one of them is the western region. Director Castelli reiterated that the patient selects which ATC to use without restriction.

Q. Chief Shagoury asked how many staff does DHHS anticipate needing to operate the Therapeutic Cannabis Program?

A. Director Castelli said that this is not yet determined, but that she believes two full time staff and an individual from the health facilities licensing unit who would have the additional responsibility of conducting inspections of the ATCs.

Q. Chief Shagoury followed up with additional comments about the registration fee, noting that he was aware of other states have even higher registration fees and tax funding support.

Q. Devon Chaffee asked if the Department would provide a presentation to the Council once the registry database is completed as to how it will ensure confidentiality and privacy of patients, caregivers, and providers.

A. Director Castelli agreed to provide a presentation regarding confidentiality once the database is operational.

Q. Chief Shagoury noted that NH law does not allow law enforcement to have 24-hour access to the registry database to verify the validity of registry identification cards. He asked what will the process be for law enforcement to verify their validity?

A. Director Castelli indicated that she would need to review the law before answering, but that the process would be consistent with that described in the law and in the rule.

Q. Rep. MacKay commented about the seriousness that DHHS has taken in the project, including the attention of senior DHHS personnel like Director Castelli. He noted that Michael Holt was a tremendous asset to the Council. He expressed concerns about the timeline, but acknowledged the procedural and resource limitations faced by DHHS.

Annual Report (continued)

Rep. McKay re-initiated the discussion of the Council’s 2014 Annual Report. Mr. Holt provided the Council (for members who had arrived late) with a summary of the Annual Report as described in the minutes above.

Chief Shagoury commented on the description of the public comment presented by Matt Simon of the Marijuana Policy Project on page 3 of the Annual Report, and asked why it was in boldface type. Mr. Holt indicated that the boldface type was present in the approved minutes, and that this emphasis was carried over to the Annual Report. Chief Shagoury requested that either the comment or the emphasis be stricken because he believes that the statement is factually inaccurate. Ms. Devon Chaffee agreed that the comment might be factually inaccurate, but stated that the report is a true record of what was stated by the public, and should remain in the report. Chief Shagoury moved to strike the statement, which passed 5-3.

Chief Shargoury then moved to approve the 2014 Annual Report as amended, seconded by Sen. Reagan, and the motion was unanimously approved.

DHHS Legislative Update

Mr. Holt presented DHHS proposed legislation regarding the Therapeutic Cannabis Program, which included the following topics for consideration. DHHS did not request, nor did the Council take, any action on the proposed legislation.

- Addressing the ability of laboratories licensed in New Hampshire under RSA 151 to test cannabis, including protection of laboratories and laboratory employees from arrest and prosecution for possessing cannabis for the purpose of testing, allowing laboratory employees an affirmative defense, granting DHHS specific rulemaking authority relative to laboratory testing of cannabis, and expanding the scope of a laboratory's function licensed under RSA 151 to include testing of cannabis.
- Requiring the photograph of patients and caregivers to be provided with an initial application and every five years thereafter, or sooner if substantially changed. (Current law requires an annual photo submission.)
- For designated caregivers, requiring a state and federal criminal records check to be completed with an initial application, followed by an annual attestation of no felony convictions. (Current law requires an annual criminal records check.)
- Removing the requirement that a designated caregiver's registry identification card contain the identification numbers of the qualifying patients for whom he or she is providing care.
- Addressing the issue of satellite dispensaries, including a grant of rulemaking authority for DHHS to establish and regulate such satellite dispensaries, with the following restrictions:
 - DHHS must first establish a need for such a satellite; a registered ATC will not be permitted to simply ask to open another dispensary location.
 - A registered ATC will not be permitted to open more than one satellite.
 - DHHS shall approve the geographic location of the satellite.
 - The satellite shall not be permitted to cultivate or process cannabis, only dispense.
 - The satellites shall be subject to rules promulgated by DHHS.

Questions/Comments on DHHS Legislative Update

Q. Chief Shagoury asked if the affirmative defense of laboratory employees was restricted to when possessing cannabis at the laboratory.

A. Mr. Holt answered that, yes, that the protection would only extend to laboratory employees acting pursuant to RSA 126-X to possessing cannabis on the premises of a laboratory for the purposes of testing in accordance with administrative rule.

Q. Chief Shagoury asked about the grant of rulemaking authority relative to laboratory testing of cannabis.

A. Mr. Holt responded that the proposed legislation would provide DHHS a specific grant of rulemaking authority relative to laboratory testing, and that it was DHHS' intent to amend the laboratory licensing rule (He-P 808), if needed, to add additional requirements to ensure that there is proper oversight and proper security measures in place. It was noted that labs would be required to possess only the smallest quantity of cannabis necessary to perform required testing.

Q. Chief Shagoury asked what is the meaning of “substantially changed” with regard to the annual photo requirement for qualifying patients and designated caregivers?

A. Mr. Holt indicated that this would need further consideration.

Q. Devon Chaffee offered that “substantially changed” might mean a change of hair style or color, and asked if that was what is intended.

A. Mr. Holt indicated that this would need further consideration.

Q. Chief Shagoury noted that the annual attestation language, regarding the criminal records check process, should include additional language to include Washington, D.C., and other US territories and possessions.

A. Mr. Holt indicated that this would need further consideration.

Q. Chief Shagoury indicated that because NH law does not allow law enforcement to have 24-hour access to the registry database to verify the validity of registry identification cards, law enforcement would prefer that the registration identification numbers of patients be maintained on the designated caregivers’ cards in order to match the patient registration number with the number on the packaged cannabis.

A. Director Castelli indicated that DHHS would require, through rules, designated caregivers to keep in their possession documentation of the patient registry identification numbers, but that DHHS would prefer this to not be on the card itself.

Q. General discussion on the matter of satellite dispensaries focusing on the issues of geographic need and protections and limitations.

Note: The Council did not take any action on DHHS’ proposed legislation.

Q. Rep. MacKay mentioned other legislation that has been or will be proposed this session regarding the therapeutic cannabis law, including: allowing physician assistants the ability to issue written certifications for the therapeutic use of cannabis; expanding the definition of “qualifying medical condition” by adding various conditions and symptoms; allowing home cultivation; and requiring DHHS to issue registry identification cards by a date certain. The Council did not take any action or offer an opinion on any of these additional pieces of legislation.

Q. Dr. Glassman asked about the mechanism the Council would take to measure the outcomes of the therapeutic cannabis program, and asked how other states are measuring outcomes?

A. All agree that this is important to consider.

Public Participation

- Traci Fowler, Regional Substance Misuse Prevention Coordinator, Lakes Region Partnership for Public Health, and Chair of the Prevention Task Force of the Governor's Commission on Substance Abuse Prevention, Treatment and Recovery, offered thoughts on outcomes measurement, indicating that our state's public health and prevention systems are already tracking outcome measures that relate to priority health indicators. She offered that one of her partners, the NH Center for Excellence, could provide the Council with a presentation on tracking outcomes. She asked about the educational materials that ATCs would be required to provide to qualifying patients and caregivers, and offered that, again, our state's public health and prevention systems had materials available related to substance abuse, prevention, treatment, and recovery supports. She provided her contact information to DHHS representatives.
- Tricia Lucas, Advocacy Director, New Futures, asked a clarifying question about the DHHS handout, in that the proposed language regarding satellite dispensaries appears to have changed from the proposed LSR language. Mr. Holt clarified that the new language, which is more limiting and protective than the original

language, will be proposed as an amendment at the bill's public hearing. Ms. Lucas asked if a satellite dispensary would still be subject to local rule if DHHS has ability to approve the location of the satellite dispensary. Would there be an allowance for community input, such as zoning approval. Director Castelli indicated that the same restrictions that apply to the ATC's primary location would apply to any satellite locations, including local zoning approval and restrictions on locating in a residential area or a drug-free school zone.

- Denis Acton, patient survivor and advocate, spoke next. He indicated that he had originally sought to become an applicant for an ATC registration in Epping, NH, but has now decided to stay in patient advocacy. He said that he has received anecdotal reports from physicians who say that they have been threatened with being kicked out of the larger provider networks if they certify a patient for the therapeutic use of cannabis, and asked if anyone on the Council was aware of such occurrences or such restrictions on physicians? Neither Collette Horgan nor Dr. Glassman had heard of this being an issue.

Sen. Reagan moved to adjourn the meeting. The meeting was adjourned at 2:45 p.m.