

**Therapeutic Use of Cannabis Advisory Council**  
**HB 573, Chapter 242:1–6, Laws of 2013, RSA 126-X**  
**Annual Report 2014**  
**January 1, 2015**

**Council Membership**<sup>1,2</sup>

Andelman, Robert, MD – NH Board of Medicine  
Chaffee, Devon – NH Civil Liberties Union  
Duhaime, Robert – NH Board of Nursing  
Encarnacao, John, Lt. – Department of Safety  
Glassman, Stuart, MD – NH Medical Society  
Gosline, Peter – Community Hospital (Upper Connecticut Valley Hospital)  
Holt, Michael – Department of Health and Human Services (Clerk)  
Horgan, Colette – NH Hospital (Exeter Hospital)  
Kilar, Lisa – Qualifying Patient  
MacKay, James – House (Chair)  
Reagan, John – Senate  
Shagoury, Andrew – NH Association of Chiefs of Police<sup>3</sup>  
Vara, James – Attorney General’s Office

**Council Charge**

RSA 126-X:9

II. The advisory council shall:

- (a) Assist the department in adopting and revising rules to implement this chapter.
- (b) Collect information, including:
  - (1) Satisfaction of qualifying patients with the therapeutic use of cannabis program.
  - (2) Any effect the therapeutic use of cannabis law has had on referrals to regulatory boards.
  - (3) Best practices in other states that allow the therapeutic use of cannabis.
  - (4) The ability of qualifying patients in all areas of the state to obtain timely access to high-quality cannabis.
  - (5) Any research studies regarding health effects of cannabis for patients.
  - (6) The effectiveness of New Hampshire’s therapeutic use of cannabis program.
  - (7) Efforts to educate New Hampshire physicians and advanced practice registered nurses about research relating to the therapeutic use of cannabis.
  - (8) The effectiveness of alternative treatment centers, individually and collectively, in serving the needs of qualifying patients, including the therapeutic effectiveness of available products, the provision of educational and support services, the reasonableness of their fees, whether they are generating any complaints or security problems, and the sufficiency of the number operating to serve the registered qualifying patients of New Hampshire.
  - (9) The sufficiency of the regulatory and security safeguards contained in this chapter and adopted by the department to ensure that access to and use of cannabis cultivated is provided only to persons authorized for such purposes.

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<sup>1</sup> Current vacant positions include: one member of the House of Representatives; NH Nurse Practitioner Association appointee; and public member.

<sup>2</sup> Former Advisory Council members who served in 2014 include: Kelly DeFeo, APRN – NH Nurse Practitioner Association; Representative Mariellen MacKay; Senator Jeff Woodburn; and Representative Donald “Ted” Wright.

<sup>3</sup> New position created by HB 1296, Chapter 98:2, Laws of 2014, eff. Aug. 10, 2014. Chief Shagoury previously served on the Advisory Council as the public member.

(10) Any illegal distribution or diversion of cannabis cultivated pursuant to this chapter to individuals who are not alternative treatment center agents, qualifying patients, or designated caregivers.

(11) Any statutory issues related to the certification of qualifying patients including, but not limited to, the definition of qualifying medical conditions, the certification process, and the number and location of providers willing and able to certify qualifying patients.

(c) Make recommendations to the legislature and the department for any additions or revisions to the department rules or this chapter.

(d) Five years after the effective date of this chapter, issue a formal opinion on whether the program should be continued or repealed.

IV. On or before January 1 of each year, the advisory council shall provide a report to the department of health and human services and the health and human services oversight committee established under RSA 126-A:13, the board of medicine and the board of nursing on its findings.

### **Council Meeting Dates**

February 21, 2014

March 28, 2014

June 27, 2014

August 15, 2014

### **Council Meeting Summaries**

#### **February 21, 2014**

##### **Review of Attorney General's Opinion on Issuance of Registry Identification Cards and Additional Qualifying Conditions**

Mary Castelli, Senior Division Director, Office of Operations Support, DHHS, and Frank Fredericks, Attorney, Office of the Attorney General, spoke of the Attorney General's opinion regarding the timing of issuance of registry identification cards. The Attorney General's opinion is that the Department should not issue identification cards prior to the operation of the Alternative Treatment Centers (ATCs). Since the ATCs are the only means for patients and caregivers to lawfully acquire therapeutic cannabis, the issuance of cards before they are operational would be premature. Further, the statute does not include a specific date that the Department is required to issue cards, only a requirement for the adoption of rules regarding identification cards one year from the effective date of the law (i.e., July 23, 2014); if the legislature intended a specific date it would have required that in the statute. Members of the Council offered divergent opinions regarding the legislative intent on this issue.

Attorney Fredericks reviewed the Attorney General's opinion regarding the inclusion of additional conditions to the list of qualifying medical conditions. He described that part (a) of the law restricts to certain diagnoses, conditions, and symptoms, and part (b) of the law allows additional conditions to be included by the department upon request. The means for doing this, Fredericks explained, is left up to the Department. Senior Division Director Castelli explained that other states have established a petition process and the Department has included in the rule a similar process. Ms. Castelli further explained that the intent of the legislature, as evidenced by the law, is supported by the proposed process, which allows for a case-by-case review of conditions, if not individual applicants, and would also potentially relieve the burden of subsequent applicants from having to go through the petition process for a condition that has been already added.

Devon Chaffee said that the proposed process does not meet the legislative intent of an case-by-case review of an individual person. She further requested that the minutes reflect that three members of the legislature—Rep. Schlachman, via a letter to Rep. James MacKay, Rep. Wright, and Sen. Reagan—

expressed at this meeting that the Attorney General's opinion does not reflect the intent of the legislature in passing HB 573.

#### Discussion on Administrative Rules

Senior Division Director Castelli and John Martin, Manager, Bureau of Licensing and Certification, DHHS, introduced a draft of He-C 401 Therapeutic Use of Cannabis Program – Registry Rules, and explained that the Department will begin to solicit advance public comment on the proposed draft prior to entering formal rulemaking. Michael Holt, Office of Operations Support, Administrative Rules Coordinator, DHHS, reviewed the draft rule page by page with members of the Council, and answered questions and accepted feedback from Council members.

#### Legislative Update

Bills filed relative to the therapeutic use of cannabis law were discussed:

- HB 1296, adding a member to the therapeutic use of cannabis advisory council [endorsed by Council]
- HB 1616, making changes to the therapeutic cannabis law
- HB 1622, permitting qualifying patients and registered caregivers to cultivate cannabis for therapeutic use
- HB 1623, prohibiting a licensed alternative treatment center from advertising therapeutic cannabis
- SB 234, regarding technical corrections on two issues relative to the therapeutic cannabis program: criminal records checks and confidentiality of ATC locations

#### Public Participation

Matt Simon, Marijuana Policy Project, provided a statement on the Attorney General's opinion regarding the timing of the issuance of registry identification cards. He explained that the legislative intent was for patients to have registry identification cards, and relief and protection from arrest, by July 2014, and he is concerned that this intent not being taken into consideration by the Department.

### **March 28, 2014**

#### Discussion on Administrative Rule Changes for He-C 401 Therapeutic Use of Cannabis Program – Registry Rules

The revised draft of He-C 401 Therapeutic Cannabis Program – Registry Rules, was distributed, along with a corresponding grid containing comments received and Department responses/action to those comments. Michael Holt, Office of Operations Support, Administrative Rules Coordinator, DHHS, walked through the changes made to the rule based on comments received by the Advisory Council and the general public. John Martin, Manager, Bureau of Licensing and Certification, DHHS, and Mary Castelli, Senior Division Director, Office of Operations Support, DHHS, assisted with the presentation of the rule changes and with answering questions from the Council members.

#### Legislative Update

SB 234, regarding technical corrections on two issues: criminal records checks and confidentiality of ATC locations, was unanimously endorsed by the Council.

#### Presentation: NH Therapeutic Use of Cannabis Law; the Patient's Perspective – Matt Simon, Marijuana Policy Project

Matt Simon, Marijuana Policy Project, presented the patient's perspective on the NH Therapeutic Use of Cannabis Law, identifying problems with the NH law, requesting the Council to support HB 1622 relative to the home cultivation of cannabis, and urging the Department to begin to issue registry identification cards and amend its case-by-case policy on adding additional qualifying medical conditions.

## **June 27, 2014**

### NH Medical Society, Therapeutic Cannabis Survey Results

Dr. Seddon Savage, MD, MS, presented the results of a survey of New Hampshire physicians and advance practice registered nurses conducted by the NH Medical Society regarding medical marijuana. The goals of the survey were to learn current and anticipated engagement by NH clinicians in the use of herbal marijuana for therapeutic purposes, and to assess clinician understanding of marijuana effects and side effects. There was an approximate 13% response rate to the survey. Key results of the survey include:

- Education is needed to enhance clinician understanding of (1) potential effects and side effects and (2) possible risks;
- Patient counseling is needed to ensure understanding of (1) potential effects and side effects and (2) possible risks; and
- Data collection and research are needed to determine actual effects, side effects, and risks.

## **August 15, 2014**

### Discussion on Administrative Rule He-C 402 Alternative Treatment Centers

Michael Holt, Office of Operations Support, Administrative Rules Coordinator, DHHS, Mary Castelli, Senior Division Director, Office of Operations Support, DHHS, John Martin, Manager, Bureau of Licensing and Certification, DHHS, and Rodney Bascom, Chief, Health Facilities Administration, DHHS, discussed the proposed timeline for entering rulemaking with He-C 402 Alternative Treatment Centers, including the solicitation of advance public comment prior to entering formal rulemaking, presented the draft proposed rule, and answered questions and accepted feedback from Council members.

### Attachments List

- Attorney General's Memorandum, dated February 13, 2014
- NH Medical Society, Herbal Marijuana Survey, dated June 15, 2014
- He-C 401 Therapeutic Cannabis Program – Registry Rules (certified rule)
- He-C 402 Alternative Treatment Centers (certified rule)

**State of New Hampshire**  
**Inter-Department Communication**

**DATE:** February 13, 2014

**FROM:** Michael K. Brown Senior Assistant Attorney General  
Attorney General's Office  
Frank C Fredericks, Attorney  
Attorney General's Office

**SUBJECT:** Request for Advice on Interpretation of Therapeutic Cannabis Law, RSA 126-X

**TO:** Mary P. Castelli, Department of Health and Human Services, Senior Director,  
Office of Operations Support

**I. Introduction**

On February 5, 2014, the New Hampshire Department of Health and Human Services ("the Department"), Office of Operation Support requested from the New Hampshire Office of the Attorney General advice on the interpretation of New Hampshire's Therapeutic Cannabis Law, RSA 126-X. Specifically, the Department requests advice on two issues of law:

1. Whether under RSA 126-X, the Department should issue qualifying patient and designated caregiver registry identification cards prior to the availability of a lawful source from which New Hampshire residents may obtain cannabis; and
2. How may the Department implement RSA 126-X:1, IX(b), which provides for the recognition of qualifying medical conditions that are not expressly enumerated in RSA 126-X:1, IX(a)'s list of medical conditions that qualify for the therapeutic cannabis use?

In response to question one, it is the opinion of the Office of the Attorney General that the Department should not issue qualifying patient and designated caregiver registry identification cards prior to the availability of a lawful source of cannabis in New Hampshire as RSA 126-X does not contemplate the purchase or sale of cannabis from any source other than an alternative treatment center ("ATC"), as defined by RSA 126-X:1, I. In response to question two, it is the opinion of the Office of the Attorney General that the Department should develop a procedure through which citizens whose medical conditions do not fall within the express terms RSA 126-X, IX(a) can formally request review of their condition and their need for therapeutic cannabis use.

## II. Analysis

### A. The Issuance of Qualifying Patient Registry Identification Cards

#### i. Timeframes Under RSA 126-X

RSA 126-X:6, I provides, in relevant part, that “Not later than one year after the effective date of this chapter, the department shall adopt rules pursuant to RSA 541-A governing:

- (a) The form and content of applications for the issuance and renewals of registry identification cards for qualifying patients and designated caregivers;
- (b) The form and content of providers’ written certifications; [and]
- (c) Procedures for considering, approving, and denying applications for issuance and renewals of registry identification cards, and for revoking registry identification cards; . . .

RSA 126-X:6, I(a)-(c). Thus, while the above statutory mandate pertains to the development of the form and content of applications and procedures for considering applications by July 23, 2014, it does not establish a date by which the Department must begin to accept applications or issue registry identification cards.

Similarly, RSA 126-X:6, III(a) sets forth that “Not later than 18 months after the effective date of this section, the department shall adopt rules, pursuant to RSA 541-A, governing alternative treatment centers and the manner in which it shall consider applications for registration certificates for alternative treatment centers . . . .” Thus like RSA 126-X:6’s establishment of a July 23, 2014 deadline by which the Department is to create rules regarding the application process for patient and caregiver registration identification cards, RSA 126-X:6, III provides for a January 23, 2015, deadline by which the Department must produce rules regarding the governing of ATCs and application process for obtaining ATC registration certificates. RSA 126-X:6, therefore, provides dates by which the Department must have certain evaluative procedures and processes in place, but does not establish a date by which the Department must issue the resultant qualifying patient and designated caregiver registry identification cards or ATC registration certificates.

RSA 126-X:7, I supplies such a deadline for the Department’s issuance of ATC registration certificates stating that “Within 18 months of the effective date of this section, provided that at least 2 applications have been submitted that score sufficiently high to receive a certificate, the department shall issue alternative treatment center registration certificates to the 2 highest-scoring applicants.” Therefore, while RSA 126-X:7 establishes a date by which the Department must issue two ATC registration certificates, there is no such temporal requirement regarding the Department’s issuance of qualifying patient and designated caregiver registry identification cards.

**ii. The Department is Not Required to Accept or Issue Patient and Caregiver Registry Identification Cards Until the ATCs are Operational**

**1. RSA 126-X Does Not Provide for Any Form of Cannabis Cultivation or Sale Other than By ATCs**

RSA 126-X:1, I defines ATC as “a not-for-profit entity registered under RSA 126-X:7 that acquires, possesses, cultivates, manufacturers, delivers, sells, supplies, and dispenses cannabis, and related supplies and educational materials, to qualifying patients and alternative treatment centers.” The statute does not grant any other person or entity the right to engage in cultivating, manufacturing, selling, supplying, or dispensing cannabis. *See generally* RSA 126-X. Without operational ATCs, there is no legal means for a qualifying patient or designated caregiver to obtain cannabis. Therefore, the Department’s issuance of qualifying patient and designated caregiver registry identification cards prior to the opening of any ATC would have the effect of prematurely entitling persons to RSA 126-X:5’s affirmative defense to cannabis-related crimes before the medication is made available through a lawful and accountable source.

**2. RSA 126-X Provides for the Close Regulation of ATCs Further Indicating the Legislature’s Intent that Only These Centers Are Permitted to Cultivate and Sell Cannabis Under the Law**

An examination of RSA 126-X:8, I–XVIII demonstrates that the legislature aimed to subject ATCs to comprehensive regulation and significant state oversight in order to: carefully control distribution; prevent diversion; maintain quality control; and develop a database regarding the effectiveness of particular cannabis strains and methods of delivery. This extensive regulation of the cannabis produced and distributed in New Hampshire pursuant to RSA 126-X:8, further indicates that the legislature intended the state-sanctioned and Department-monitored ATCs to be the sole legal cultivators and dispensers of cannabis in this state.

For example, in regard to control of cannabis distribution, RSA 126-X: 8, IV(c) provides that in moving cannabis from a cultivation site to the ATC, the ATC agent must label the transported cannabis with the ATC’s name, registry number as well as the time, date, origin, and destination of the cannabis and the amount and form of the cannabis. Additionally, in regard to prevention of diversion, RSA 126-X: 8, XV(c) requires that “All cultivation of cannabis shall take place in an enclosed, locked facility registered with the department . . . .” Further, in regard to quality control, RSA 126-X: 8, X, mandates that ATCs only use organic pesticides in cannabis. Finally, with regard to data collection, RSA 128-X:8, XVI(b) requires ATCs to “collect data on strains used and methods of delivery for qualifying conditions and symptoms, any side effects experienced and therapeutic effectiveness for each patient . . . .”

Based on the examples provided above, which are merely a few of the numerous controls that ATCs must comply with under RSA 126-X, it is evident that the legislature did not intend for qualifying patients to receive cannabis from any source not held to these high standards.

Consequently, until ATCs are operational the Department should refrain from issuing qualifying patient and designated caregiver registry identification cards.

### **3. Therapeutic Use, as Defined by RSA 126-X:1, XIII, Does Not Extend to Beyond ATCs, Qualifying Patients, and Designated Caregivers**

RSA chapter 126-X protects only the “therapeutic use” of cannabis. RSA 126-X:2, I(A). Under the statute, therapeutic use is defined as “the acquisition, possession, cultivation, preparation, use, delivery, transfer, or transportation of cannabis . . . relating to the administration of cannabis to treat or alleviate a qualifying patient’s qualifying medical condition.” RSA 126-X:1, XIII. RSA chapter 126-X, therefore, only envisions three therapeutic users of cannabis that may legally acquire cannabis in this state: 1) ATCs; 2) qualifying patients; and 3) designated caregivers.<sup>1</sup> RSA 126-X:1, I, VI, X. Cultivation of cannabis by qualifying patients and designated caregivers is expressly prohibited. RSA 126-X:1, XIII. Cultivation is, therefore, reserved entirely to ATCs. Similarly, the definition of ATC includes the phrase “sells, supplies, and dispenses cannabis” and the term “manufacture,” while the definitions of qualifying patient, designated caregiver, and therapeutic use do not. RSA 126-X:1, I, VI, X. Thus, under RSA chapter 126-X, only ATCs can engage in the acts of cultivating, manufacturing, selling, supplying, and dispensing cannabis and, as a result, until the ATCs are operational, cannabis cannot be legally cultivated, sold, supplied or dispensed in New Hampshire. As stated above, until a legal source exists by which qualifying patients and designated caregivers can obtain cannabis, the Department need not issue registry identification cards.

#### **B. Recognition of Qualifying Medical Conditions that are Not Expressly Enumerated in RSA 126-X:1, IX(a)’s List of Permitted Medical Conditions**

##### **i. Qualifying Medical Conditions**

RSA 126-X:1, IX establishes a two-prong test to determine whether a patient’s medical condition qualifies for the therapeutic use of cannabis. The first prong consists of a list of specified qualifying medical diagnoses. These include: cancer, glaucoma, muscular dystrophy and several other medical diagnoses. RSA 126-X:1, IX(a)(1). A patient satisfies the first prong if a physician has diagnosed the patient with one of these specific illnesses. *See id.* The second prong consists of a list of qualifying symptoms/conditions that are coincident with a diagnosis from prong one and is severely debilitating or terminal.<sup>2</sup> These include, for example, elevated intraocular pressure, wasting syndrome, and severe pain that has not responded to previously prescribed medication or surgical measures. RSA 126-X:1, IX(a)(2). Therefore, if the patient has a diagnosis from prong one and a symptom/condition from prong two that is severely

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<sup>1</sup> RSA 126-X does permit some limited therapeutic use by visiting qualifying patients, however, this does not include the right to purchase or obtain cannabis in this state. *See* RSA 126-X:2, V (“A visiting qualifying patient shall not cultivate or purchase cannabis in New Hampshire or obtain cannabis from alternative treatment centers or from a qualifying New Hampshire patient.”)

<sup>2</sup> The qualifying symptom/condition under the second prong may also result from the treatment of a diagnosed illness provided for under the first prong. RSA 126-X:1, IX(a)(2).

debilitating or terminal, the Department may approve the patient's application for therapeutic use of cannabis.

In addition to the two-prong test delineated above, RSA 126-X:1, IX(b) provides that "the department may include a medical condition that is not listed in subparagraph (a) that the department determines, on a case by case basis, is severely debilitating or terminal, based upon written request of the provider who furnishes written certification to the department." Therefore, the Department need not limit qualifying patients to those who suffer from the express list of diagnoses provided in RSA 126-X:1, IX(a)(1), but may expand the qualifying conditions on a case by case basis. *See* RSA 126-X:1, IX(b).

The Department requests guidance on how it should interpret and implement RSA 126-X:1, IX(b)'s elasticity in regard to qualifying medical conditions. When examining RSA 126-X, IX as a whole, two legislative considerations are apparent. First, the legislature's explicit enumeration of qualifying conditions in RSA 126-X:1, IX(a)(1) evidences an intent that the Department not take an all inclusive approach expanding the qualifying conditions under RSA 126-X:1, IX(b). If, for example, the Department accepted without further examination every physician certification averring that cannabis is required to treat a severely debilitating condition, the RSA 126-X:1, IX(b) exception would swallow RSA 126-X:1, IX(a)'s deliberate limitations on qualifying medical conditions. While this is the case, the existence of RSA 126-X:1, IX(b) as a means of permitting therapeutic use of cannabis for medical conditions not provided in RSA 126-X:1, IX(a) indicates that the legislature sought to ensure that those who could demonstrate a true medical need for cannabis are not foreclosed from obtaining the medication by an overly rigid interpretation of the law.

The Department should, therefore, create a procedure that strikes a balance between: 1) limiting the therapeutic use of cannabis to conditions that medical professionals have firmly established as treatable by cannabis; and 2) those circumstances where medical research is still developing or where medical professionals believe that the therapeutic use of cannabis will provide benefit in a specific case and have valid scientific evidence to support this conclusion.

## **ii. Connecticut Procedure**

The procedure developed by the State of Connecticut is instructive. Similar to RSA 126-X:1, XI(a) discussed above, Connecticut's palliative use of marijuana statute defines its qualifying medical conditions by listing specific diagnoses and conditions that are approved for the therapeutic use of cannabis, and like RSA 126-X:1, XI(b) also includes language that permits expansion of the list with agency approval. More specifically, the statute reads:

Debilitating medical condition means (A) cancer, glaucoma, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, Parkinson's disease, multiple sclerosis, damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, epilepsy, cachexia, wasting syndrome, Crohn's disease, posttraumatic stress disorder, or (B) any medical condition, medical treatment or disease approved by the Department of Consumer Protection pursuant to regulations adopted under section 21a-408m.

Conn. Gen. Stat. § 21a-408(2)(A)-(B).

The Connecticut regulation cited in the statute provides for the creation of a board designated to review written petitions to the commissioner of the Department of Consumer Protection and, following such review, to author a written recommendation as to whether the commissioner should add the condition at issue to the list of debilitating medical conditions under the Connecticut law. *See* Conn. Agencies Reg. § 21a-408-12(a)-(b). Under the Connecticut regulation the petition must include:

- (1) The extent to which the medical condition, medical treatment or disease is generally accepted by the medical community and other experts as a valid, existing medical condition, medical treatment or disease;
- (2) If one or more treatments for the condition, rather than the condition itself, are alleged to be the cause of a patient's suffering, the extent to which the treatments causing suffering are generally accepted by the medical community and other experts as valid treatments for the condition;
- (3) The extent to which the condition or the treatments thereof cause severe or chronic pain, severe nausea, spasticity or otherwise substantially limits one or more major life activities of the patient;
- (4) The availability of conventional medical therapies, other than those that cause suffering, to alleviate suffering caused by the condition or the treatment thereof;
- (5) The extent to which evidence that is generally accepted among the medical community and other experts supports a finding that the use of marijuana alleviates suffering caused by the condition or the treatment thereof;
- (6) Any information or studies known to the petitioner regarding any beneficial or adverse effects from the use of marijuana in patients with the medical condition, medical treatment or disease that is the subject of the petition; and
- (7) Letters of support from physicians or other licensed health care professionals knowledgeable about the condition, treatment or disease.

§ 21a-408-12(c)(1-7).

If a written petition satisfies the above requirements, “the commissioner shall refer the written petition to the board for a public hearing at the next board meeting.” Conn. Agencies Reg. § 21a-408-12(e). Following the public hearing, “the board shall consider the public comments and any additional information or expertise made available to the board for each proposed debilitating medical condition considered at the hearing.” § 21a-408-12(i). In its written recommendation to the commissioner the board includes:

- (1) Whether the medical condition, medical treatment or disease is debilitating;
- (2) Whether marijuana is more likely than not to have the potential to be beneficial to treat or alleviate the debilitation associated with the medical condition, medical treatment or disease; and
- (3) Other matters that the board considers relevant to the approval or the denial of the petition.

*Id.* Based on the recommendation of the board, the commissioner determines whether to accept the condition at issue as a debilitating medical condition for which the therapeutic use of cannabis is warranted and permitted. *See* § 21a-408-12(k).

The Department is not, pursuant to RSA 126-X, IX(b), required to utilize a procedure identical to the Connecticut system set out above when considering whether a medical condition not expressly provided for under RSA 126-X, IX(b) justifies the therapeutic use of cannabis. In fact, differences would likely be required as the New Hampshire statute refers to expansion on a case by case basis whereas the Connecticut law appears to refer to expansion on a condition or diagnosis basis.<sup>3</sup> The Connecticut regulation is merely an illustration of a procedure that balances the need for clinical support of the efficacy of the therapeutic use of cannabis as to particular condition with the need to maintain an avenue through which citizens whose conditions do not fall within the express terms RSA 126-X, IX(a) can formally request review of their condition and their need for therapeutic cannabis use.

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<sup>3</sup> The case by case basis requirement will also likely require the Department to take steps to ensure that the patient-applicant’s medical information is kept confidential throughout the process.

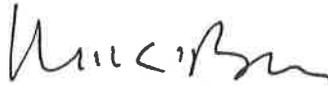
III. Conclusion

For the reasons provided above, it is the opinion of the Office of the Attorney General that:

1. The Department should not issue patient and caregiver registry identification cards prior to the availability of a lawful source of cannabis in New Hampshire as RSA 126-X does not contemplate the purchase of cannabis from any source other than an ATC, as defined by RSA 126-X:1, I; and

2. The Department should develop a procedure through which citizens whose medical conditions do not fall within the express terms RSA 126-X, IX(a) can formally request review of their condition and their need for therapeutic cannabis use.

Sincerely,



Michael K. Brown  
Senior Assistant Attorney General  
Civil Bureau  
(603) 271-3650

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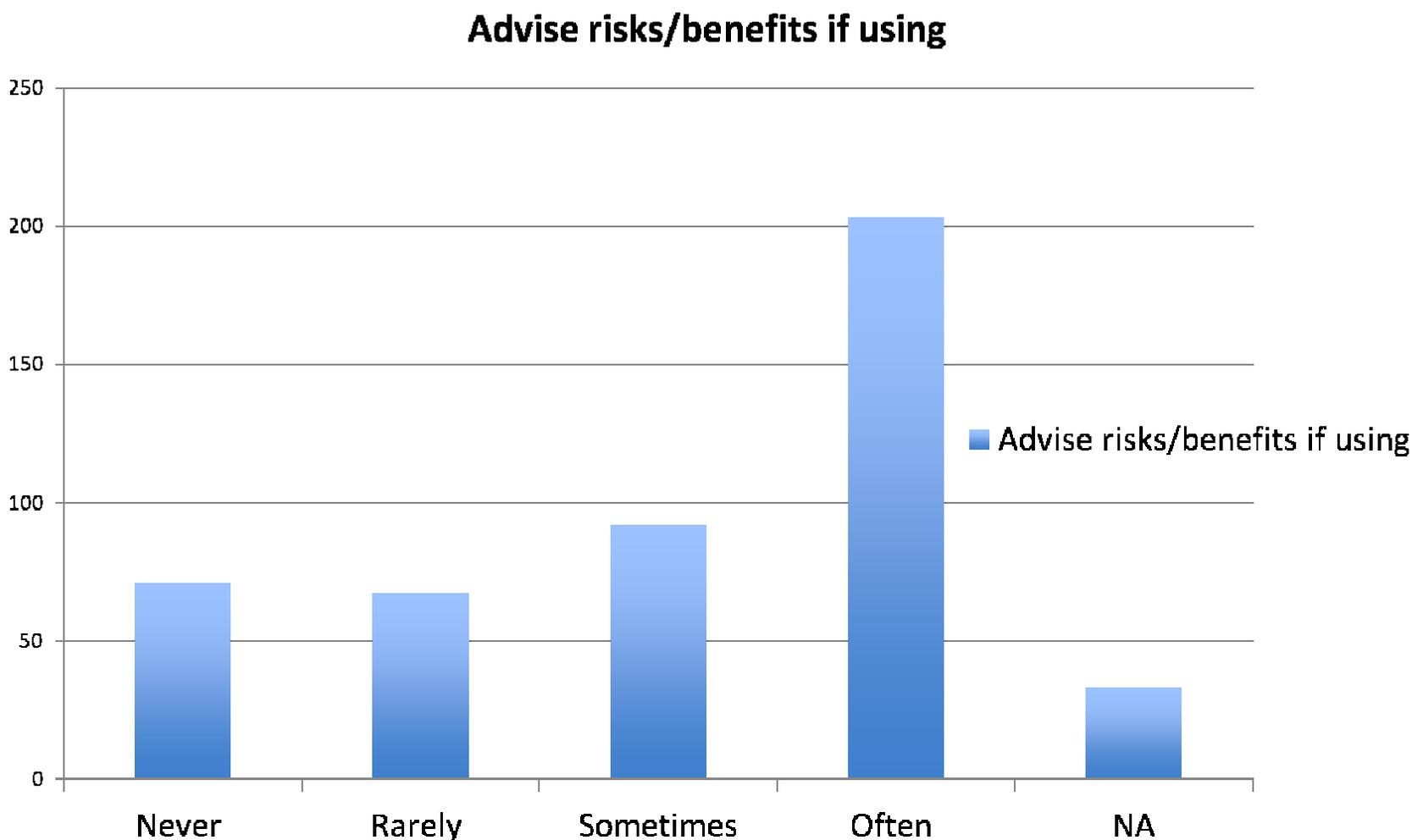
NH Medical Society  
Herbal Marijuana Survey

# Survey Goals

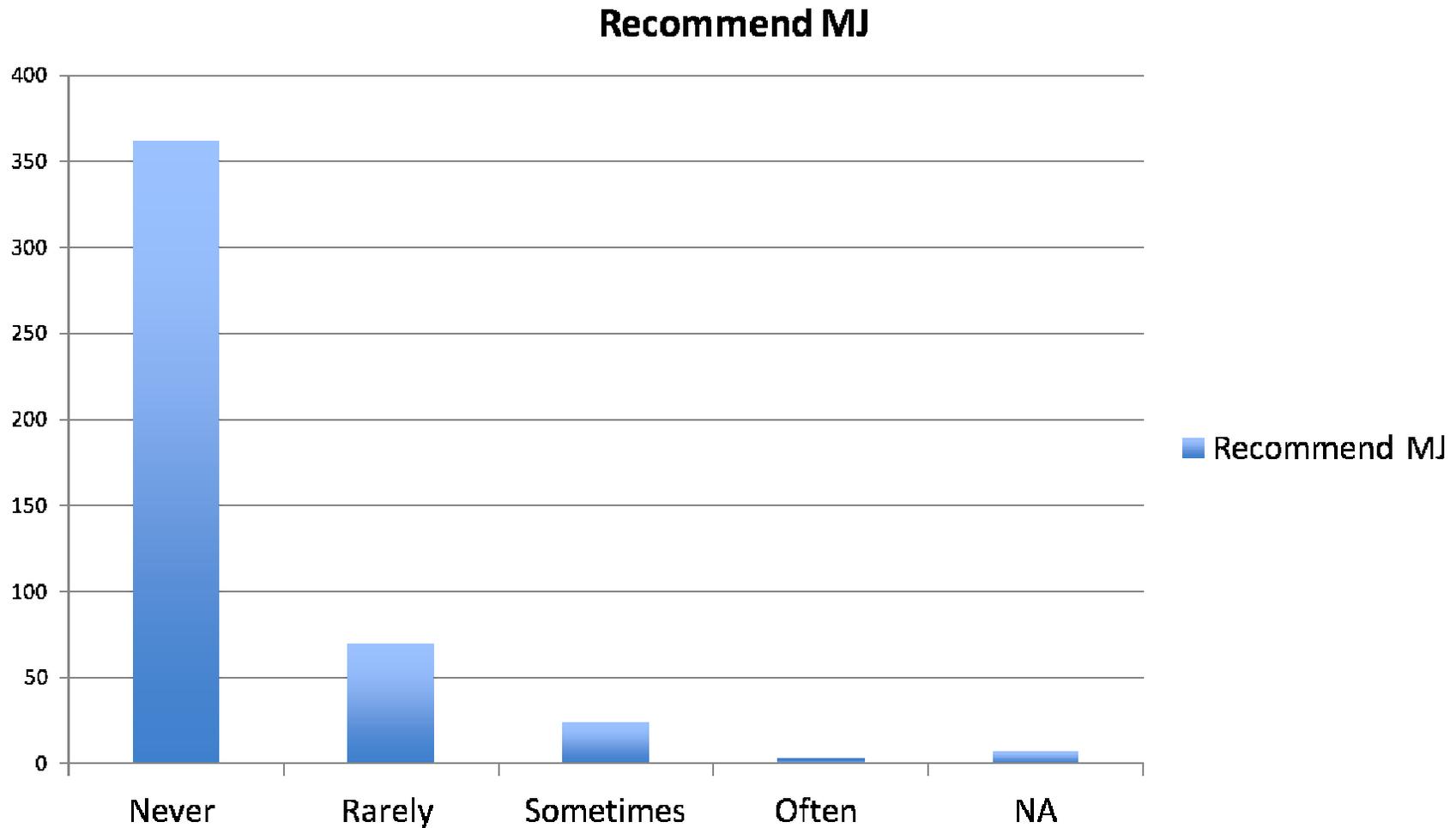
- Learn current and anticipated engagement by NH clinicians in use of herbal marijuana for therapeutic purposes
- Assess clinician understanding of marijuana effects and side effects

- Link mailed to
  - 2642 physicians with four reminders
  - 900 APNPs on one occasion
  - Total 3540
- 467 responses
  - 239 physicians
  - 64 APRNs
  - 164 unknowns
- Response rate overall: 13.2%

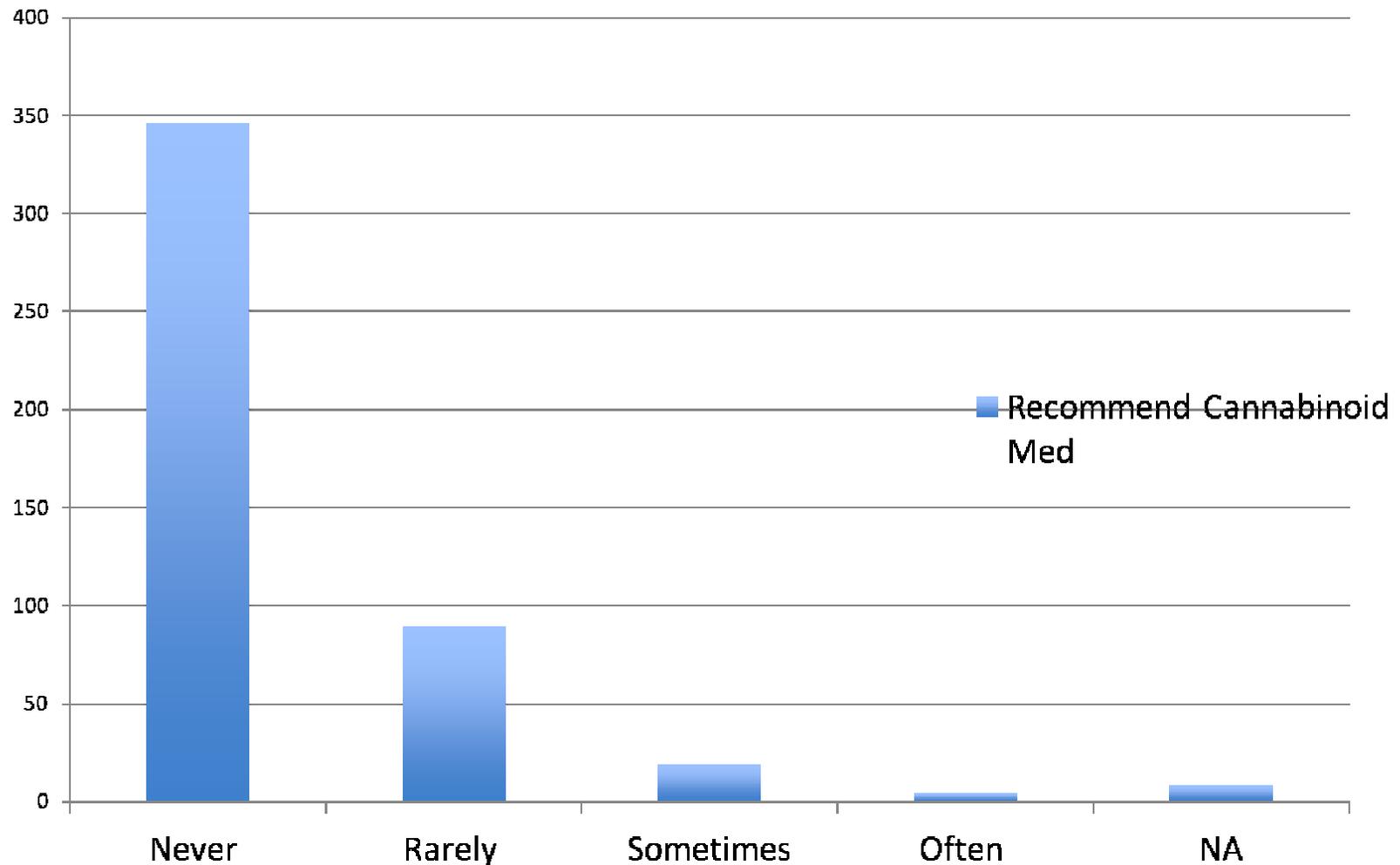
If you know a patient uses or want to try MJ, how often do you advise them on risks & benefits



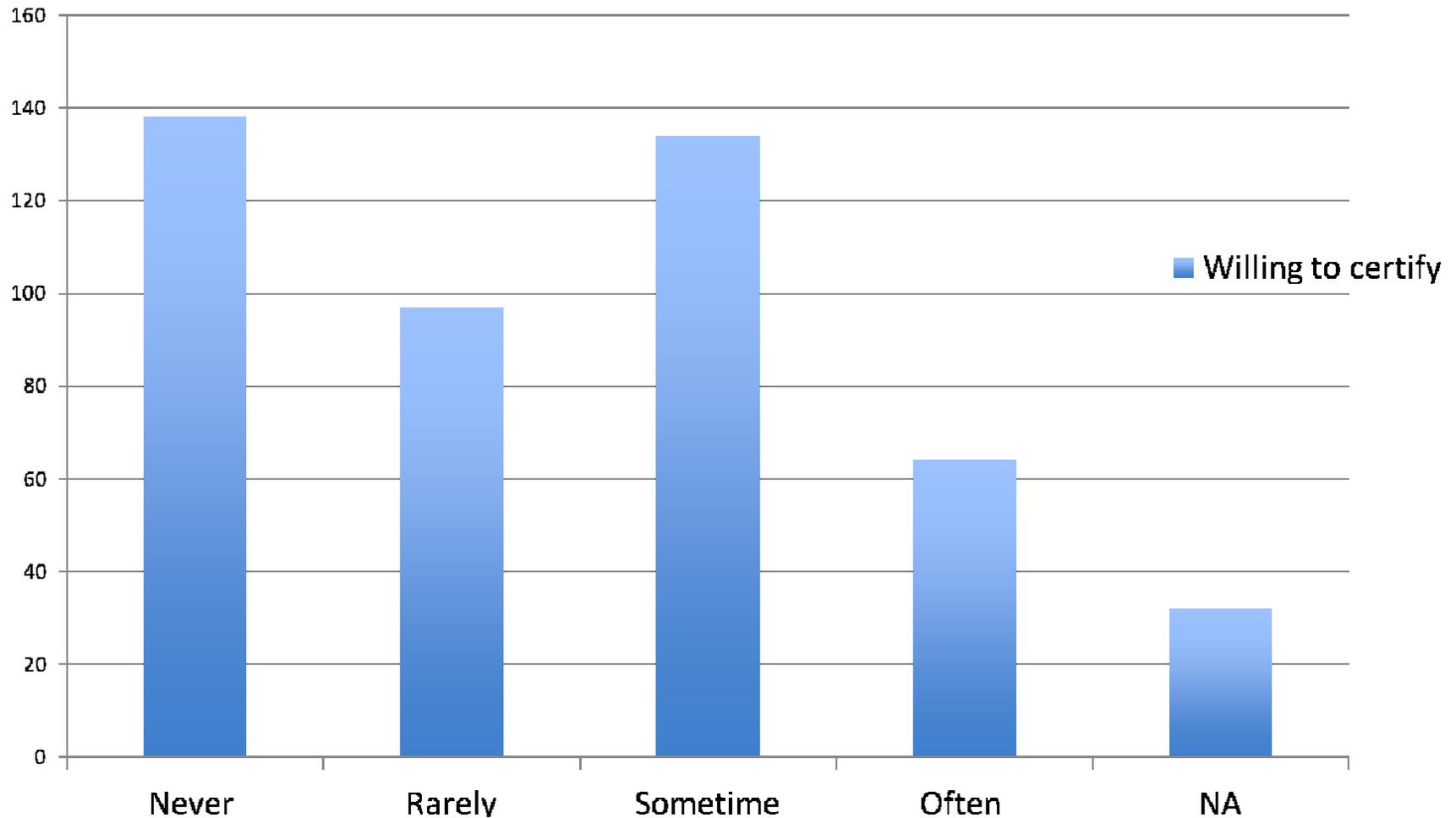
# How often have you recommended a trial of marijuana for clinical purpose



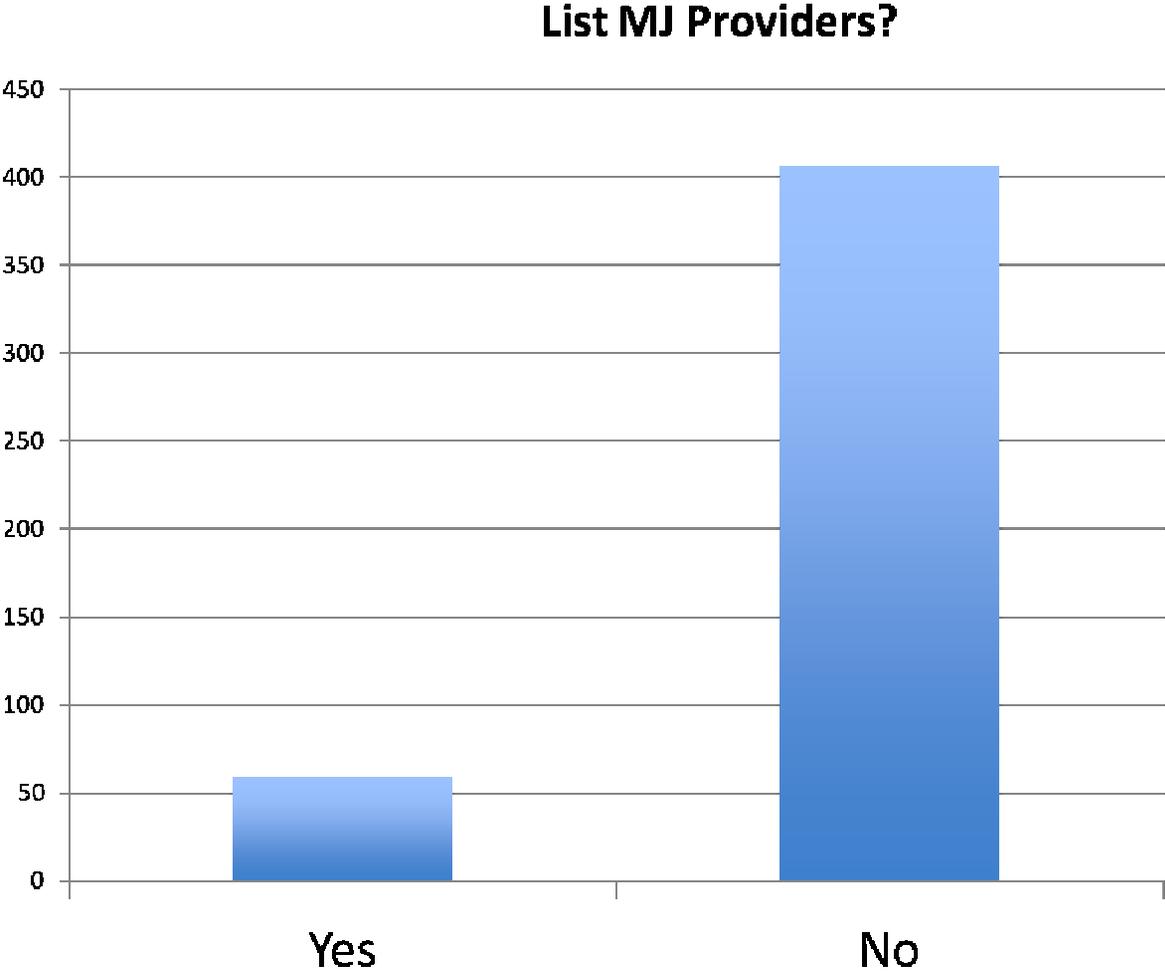
# How often have you recommended a trial of cannabinoid medications?



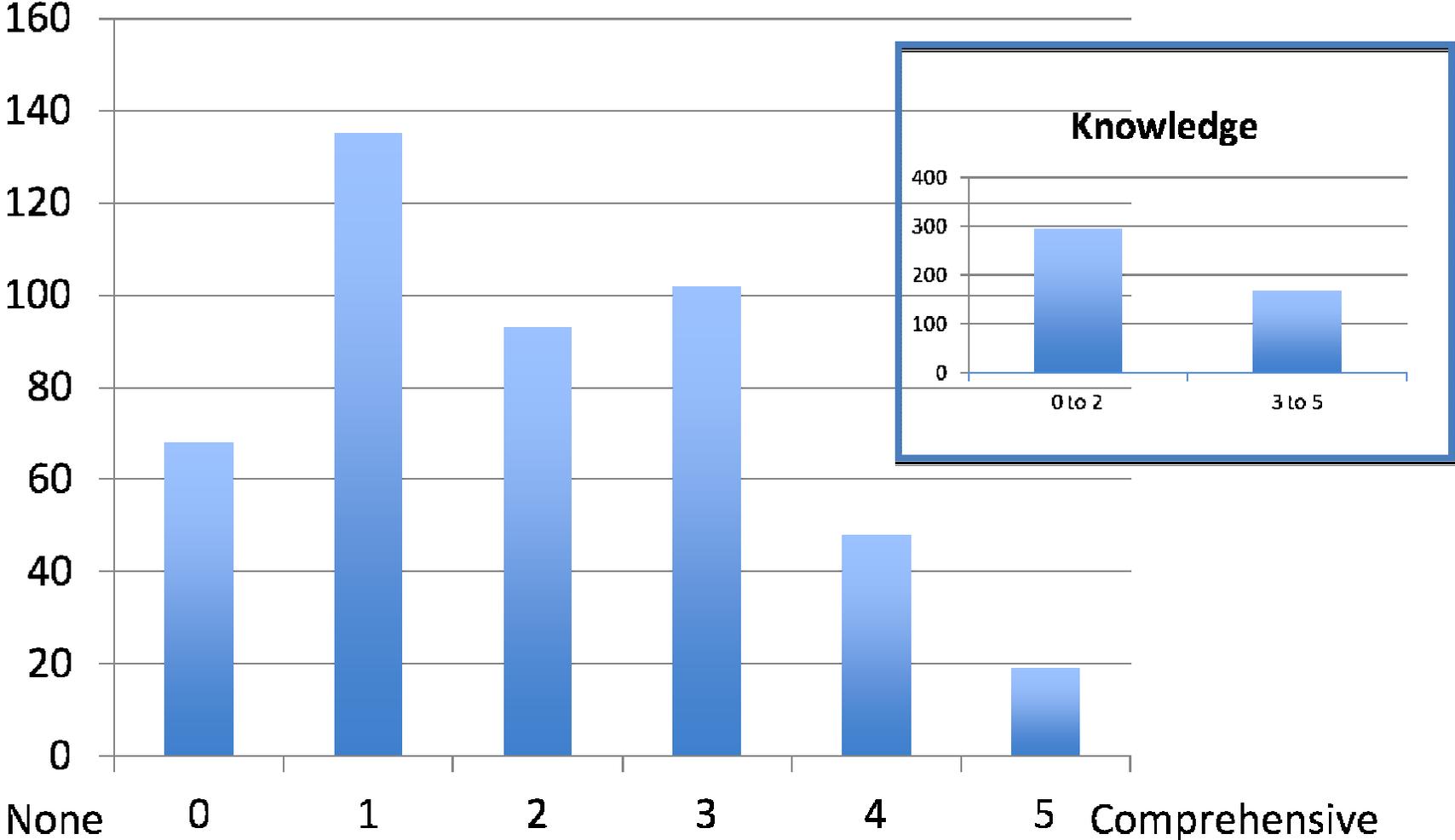
# Will you be willing to certify a patient's medical condition and symptoms for certification to use MJ?



# Would you want to be on a list of physicians willing to certify patients for Clinical Cannabis?



# How would you rate your knowledge of herbal marijuana/cannabis effects?



# Marijuana Knowledge Challenges

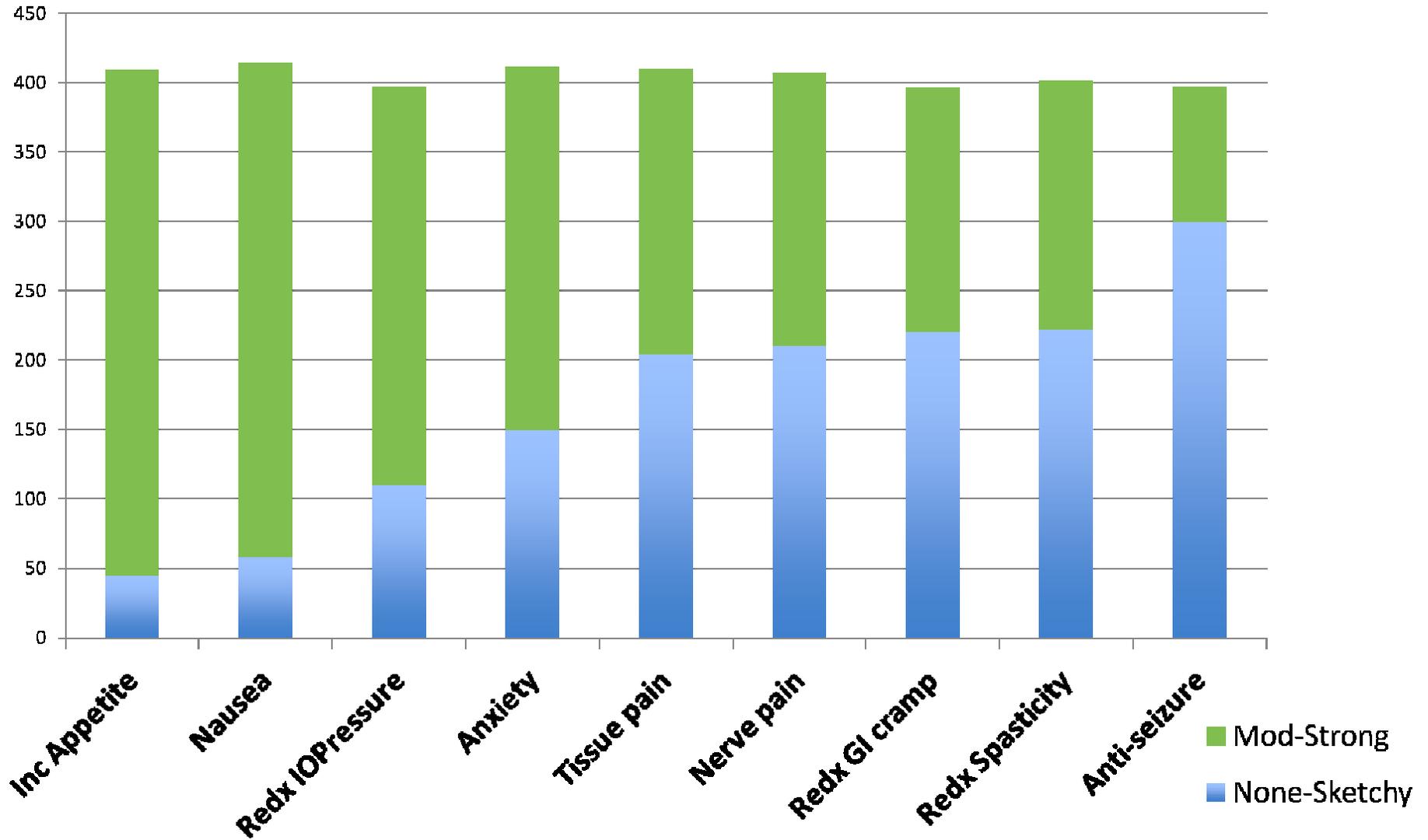
- Herbal marijuana primarily studied in terms of outcomes and effects of illicit use
- Cannabinoids studied in terms of therapeutic effects and side effects
- Less research on therapeutic effects of herbal MJ
  - Highly variable herb with 50-200 biologically active chemicals (>50 cannabinoids all with different actions)
- Cannot extrapolate from research on cannabinoids to herbal marijuana
- Cannot extrapolate from one strain of marijuana to another strain

# Marijuana

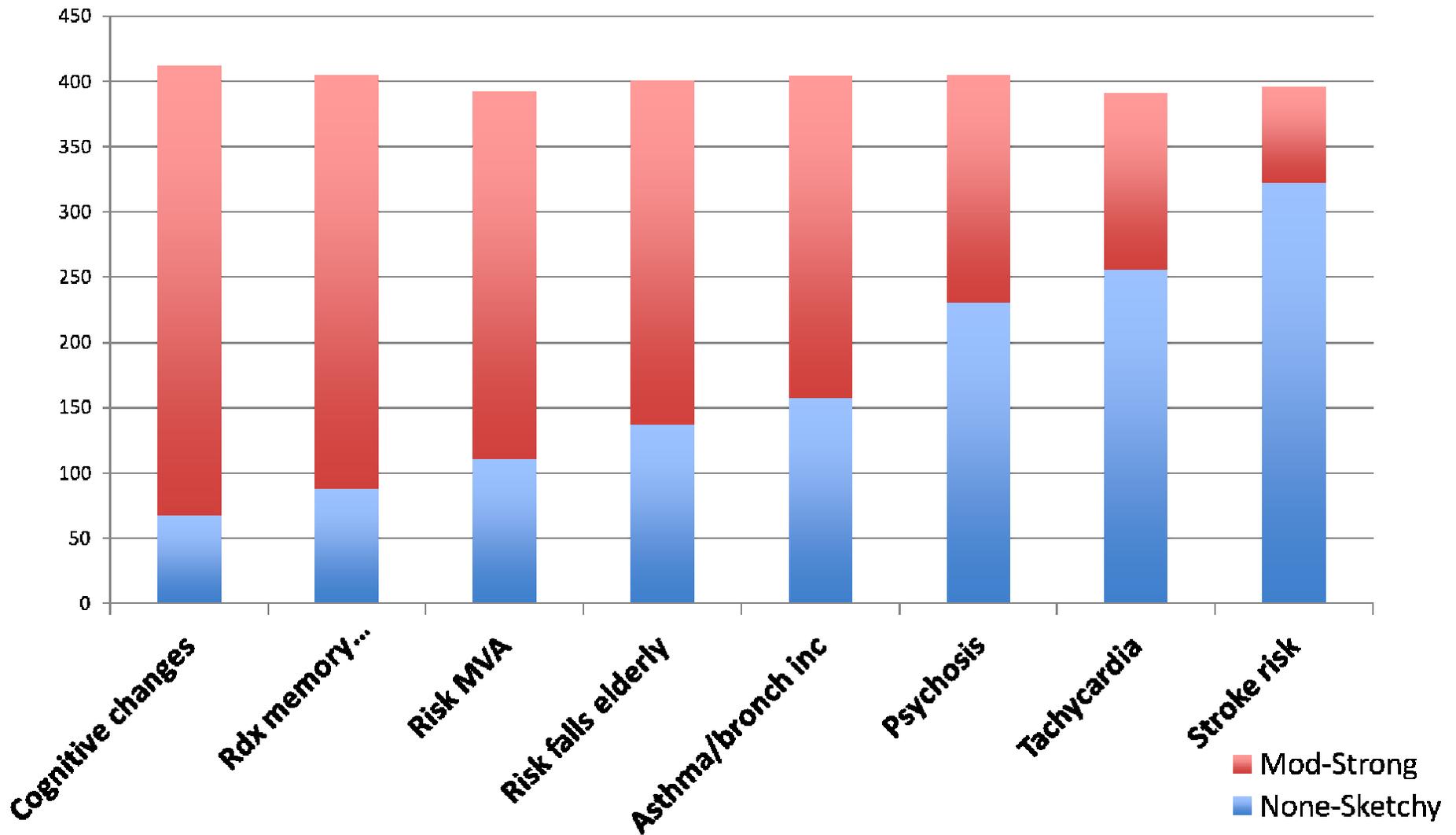
## Sources of “Evidence”

- Research related to illicit use
- Few research studies of therapeutic use
  - Few randomized controlled clinical trials
- Observation and experience
- Clinical case reports in popular media
- Extrapolation from cannabinoid research
- Expert consensus reached by any or all of above

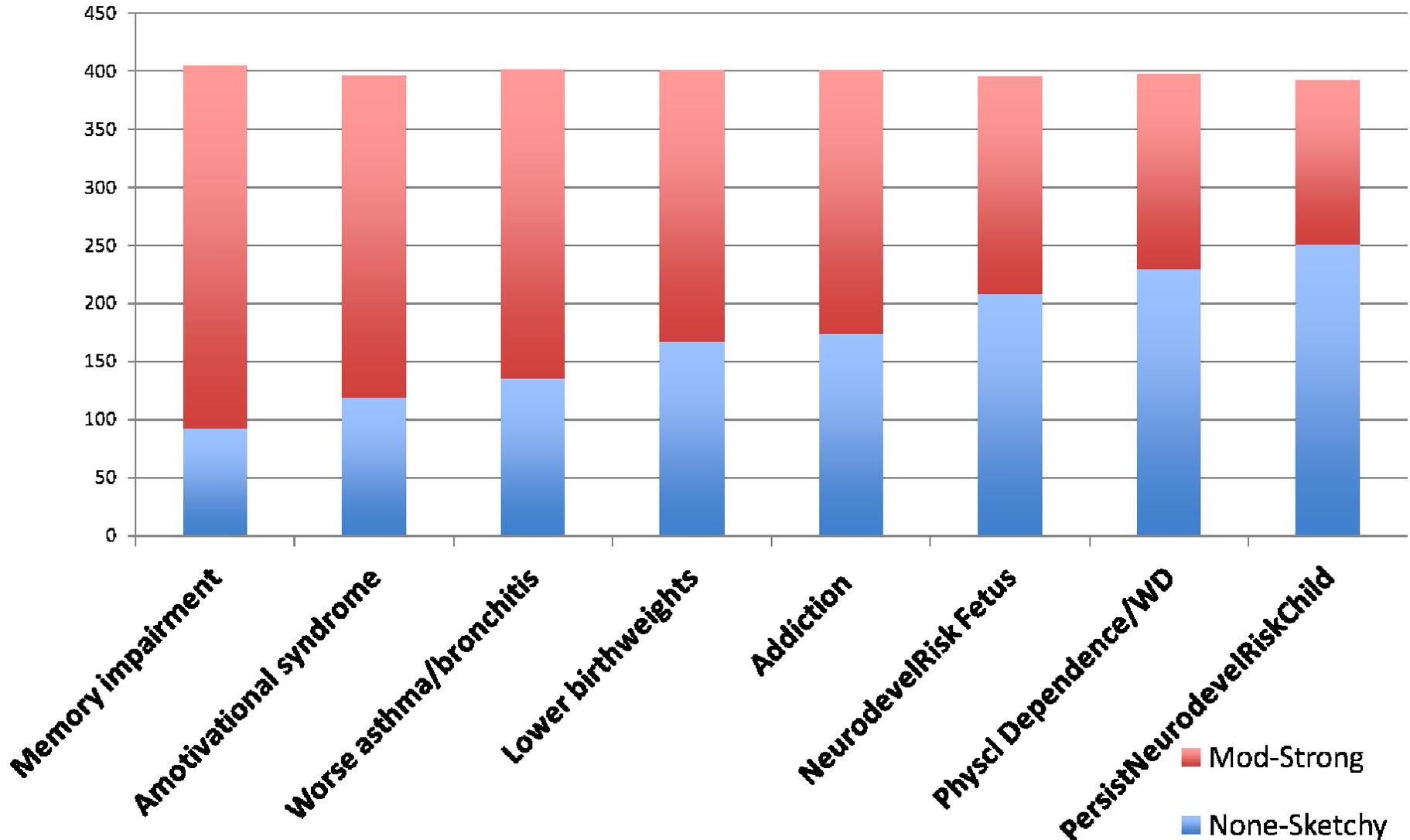
# Perception of Evidence Acute Therapeutic Effects



# Perception of Evidence Acute Side-Effects



# Perception of Evidence Chronic Side-Effects



# Key Messages

- Education is needed to enhance clinician understanding of
  - Potential effects and side effects
  - Possible risks
- Patient counseling is needed to ensure understanding
  - Potential effects and side effects
  - Possible risks
- Data collection and research are needed to determine actual effects, side-effects & risks

- Thank you to NHMS for launching survey

CHAPTER He-C 400 THERAPEUTIC CANNABIS PROGRAM

PART He-C 401 THERAPEUTIC CANNABIS PROGRAM – REGISTRY RULES

Statutory Authority: RSA 126-X:6, I

REVISION NOTE:

Document #10646 contained new rule He-C 401 on registry rules for the therapeutic cannabis program, which were adopted by the Commissioner of the Department of Health and Human Services on 7-23-14 and filed the same day pursuant to RSA 541-A:14, III with the Director of Legislative Services. Pursuant to RSA 541-A:14, IV, the Commissioner specified in a letter to the Director an effective date of 8-1-15.

Pursuant to RSA 541-A:14, IV, the effective date may still be modified by the Commissioner by “providing a statement to the director of legislative services which shall indicate the new effective date and all reasons for modifying the date. The statement shall be published by the director of legislative services in the rulemaking register. No modified effective date shall occur earlier than the date of publication in the rulemaking register.”

He-C 401.01 Purpose and Scope.

(a) The purpose of these rules is to establish the requirements for issuing registry identification cards to qualifying patients and their designated caregivers for the therapeutic use of cannabis.

(b) Individuals who are not legal residents of the State of New Hampshire shall not be eligible to receive registry identification cards as qualifying patients.

Source. (See Revision Note at part heading for He-C 401)  
#10646, eff 8-1-15

He-C 401.02 Definitions.

(a) “Alternative treatment center” means “alternative treatment center” as defined in RSA 126-X:1, I, namely, “a not-for-profit entity registered under RSA 126-X:7 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies, and dispenses cannabis, and related supplies and educational materials, to qualifying patients and alternative treatment centers.”

(b) “Cannabis” means “cannabis” as defined in RSA 126-X:1, III, namely, “all parts of any plant of the Cannabis genus of plants, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, salt, derivative, mixture, or preparation of such plant, its seeds, or resin. Such term shall not include the mature stalks of such plants, fiber produced from such stalks, oil, or cake made from the seeds of such plants, any other compound, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seeds of such plants which are incapable of germination.”

(c) “Commissioner” means the commissioner of the New Hampshire department of health and human services, or his or her designee.

(d) “Department” means the New Hampshire department of health and human services.

(e) “Diversion” means the obtaining or transferring of cannabis from a legal possession or use to an illegal use or to a person not authorized to use or obtain cannabis under RSA 126-X or He-C 401.

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(f) “Designated caregiver” means “designated caregiver” as defined in RSA 126-X:1, VI, namely, “an individual who:

(a) Is at least 21 years of age;

(b) Has agreed to assist with one or more (not to exceed 5) qualifying patient’s therapeutic use of cannabis, except if the qualifying patient and designated caregiver each live greater than 50 miles from the nearest alternative treatment center, in which case the designated caregiver may assist with the therapeutic use of cannabis for up to 9 qualifying patients;

(c) Has never been convicted of a felony or any felony drug-related offense; and

(d) Possesses a valid registry identification card issued pursuant to RSA 126-X:4.”

(g) “Minor” means an applicant who is under 18 years of age.

(h) “Provider” means:

(1) A physician licensed to prescribe drugs to humans under RSA 329 and who possesses an active registration from the United States Drug Enforcement Administration to prescribe controlled substances; or

(2) An advanced practice registered nurse licensed to prescribe drugs to humans under RSA 326-B:18 and who possesses an active registration from the United States Drug Enforcement Administration to prescribe controlled substances.

(i) “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 in accordance with He-C 401.06(b)(1)b., during which the provider has conducted a full assessment of the patient’s medical history and current medical condition in accordance with He-C 401.06(b)(2).

(j) “Qualifying medical condition” means “qualifying medical condition” as defined in RSA 126-X:1, IX(a), namely, “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, agitation of Alzheimer’s disease, multiple sclerosis, chronic pancreatitis, spinal cord injury or disease, traumatic brain injury, 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, 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.”

(k) “Qualifying patient” means “qualifying patient” as defined in RSA 126-X:1, X, namely “a resident of New Hampshire who has been diagnosed by a provider as having a qualifying medical condition and who possesses a valid registry identification card issued pursuant to RSA 126-X:4.”

(l) “Registry identification card” means “registry identification card” as defined in RSA 126-X:1, XI, namely, “a document indicating the date issued and expiration date by the department pursuant to RSA 126-X:4 that identifies an individual as a qualifying patient or a designated caregiver.”

(m) “Therapeutic use” means “therapeutic use” as defined in RSA 126-X:1, XIII, namely, “the acquisition, possession, cultivation, preparation, use, delivery, transfer, or transportation of cannabis or paraphernalia relating to the administration of cannabis to treat or alleviate a qualifying patient’s qualifying medical condition or symptoms or results of treatment associated with the qualifying patient’s qualifying medical condition. It shall not include:

- (1) The use of cannabis by a designated caregiver who is not a qualifying patient; or
- (2) Cultivation or purchase by a visiting qualifying patient; or
- (3) Cultivation by a designated caregiver or qualifying patient.”

(n) “Visiting qualifying patient” means “visiting qualifying patient” as defined in RSA 126-X:1, XVI, namely, “a patient with a qualifying medical condition who is not a resident of New Hampshire or who has been a resident of New Hampshire for fewer than 30 days and is not eligible to purchase therapeutic cannabis in New Hampshire or receive cannabis from a qualifying New Hampshire patient.”

(o) “Written certification” means documentation of a qualifying medical condition by a provider for the purpose of issuing registry identification cards, after having completed a full assessment of the patient’s medical history and current medical condition in accordance with He-C 401.06(b)(2) and made in the course of a provider-patient relationship, and which includes the date of issuance, the patient’s qualifying medical condition, symptoms or side effects, the certifying provider’s name, medical specialty, and signature.

Source. (See Revision Note at part heading for He-C 401)  
#10646, eff 8-1-15

He-C 401.03 Registry Identification Card Required.

(a) In order to receive legal protection for the therapeutic use of cannabis as authorized by RSA 126-X, an individual shall apply for and receive a registry identification card for the therapeutic use of cannabis.

(b) A qualifying patient or designated caregiver shall be in possession of his or her registry identification card at all times while in possession of cannabis outside his or her home.

(c) Pursuant to RSA 126-X:3, V, a qualifying patient or designated caregiver who is found to be in possession of cannabis outside of his or her home and is not in possession of his or her registry identification card shall be subject to a fine of up to \$100.

Source. (See Revision Note at part heading for He-C 401)  
#10646, eff 8-1-15

He-C 401.04 Initial Application Requirements for Qualifying Patients.

(a) Applicants for a qualifying patient registry identification card shall submit a completed application, “Application for the Therapeutic Use of Cannabis – Qualifying Patient,” to the department, which includes the following:

- (1) Indication whether it is an initial or renewal application, and if a renewal application, the applicant’s current registry identification number;
- (2) The following applicant information:
  - a. Full name;
  - b. Mailing address;

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- c. Physical address if different than mailing address, except that if the applicant is homeless this shall not be required;
  - d. Telephone number;
  - e. Date of birth; and
  - f. NH driver's license number or state or federal government-issued identification card number, if a copy of this documentation is provided as proof of NH residency in accordance with (b)(4) below, except that if the applicant is a minor this information shall be provided for the applicant's custodial parent or legal guardian who is the applicant's designated caregiver;
- (3) The following information about the applicant's certifying provider(s):
- a. Full name;
  - b. Business address; and
  - c. Telephone number;
- (4) A signed and dated release authorizing the release of relevant medical information by the certifying provider to the department if further information about the applicant's qualifying medical condition is required by the department;
- (5) The following information about the applicant's designated caregiver, if the applicant has designated a caregiver:
- a. Full name;
  - b. Mailing address;
  - c. Physical address if different than mailing address;
  - d. Telephone number; and
  - e. Date of birth;
- (6) The name and city or town of the applicant's designated alternative treatment center;
- (7) If the applicant is a minor, the attestations, consents, and certifications required by He-C 401.08(h)-(j);
- (8) The initialing of the following acknowledgements:
- a. "I understand that if my application is approved, my Registry Identification Card is valid for one year, unless a shorter time period is indicated by my provider. I must renew my Registry Identification Card every year by submitting another application and paying a \$50 fee.";
  - b. "I understand that if I am notified of a denial I have 30 days to appeal this decision from the time I receive notice of the denial, and that if a request for a hearing is not made within that timeframe then I will be deemed to have waived my right to a hearing and the action of the Department shall become final.";

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- c. “I understand that if my application is approved and I am in possession of a Registry Identification Card, I may not possess, between myself and my Designated Caregiver, more than two ounces of usable cannabis.”;
- d. “I understand that if my application is approved, I may only use therapeutic cannabis for the purpose of treating or alleviating my qualifying medical condition, as defined in RSA 126-X:1, IX, or symptoms or effects of the treatment associated with my qualifying medical condition.”;
- e. “I understand that if my application is approved, I may not be under the influence of therapeutic cannabis: (1) while operating a motor vehicle, commercial vehicle, boat, vessel, or any other vehicle propelled or drawn by power other than muscular power; (2) in my place of employment, without the written permission of my employer; or (3) while operating heavy machinery or handling a dangerous instrumentality.”;
- f. “I understand that if my application is approved, I may not smoke or vaporize therapeutic cannabis in any public place, including a public bus or other public vehicle, or any public park, public beach, or public field.”;
- g. “I understand that if my application is approved, I may not be in possession of therapeutic cannabis in any of the following locations: (1) the building and grounds of any preschool, elementary, or secondary school, which are located in an area designated as a drug free zone; (2) a place of employment, without the written permission of the employer; (3) any correctional facility; (4) any public recreation center or youth center; or (5) any law enforcement facility.”;
- h. “I understand that if my application is approved, I may use cannabis on privately-owned real property only with written permission of the property owner or, in the case of leased property, with the permission of the tenant in possession of the property.”;
- i. “I have instructed a family member, caretaker, executor, and my Designated Caregiver that, in the event of my death, the Department shall be notified within 5 days, that I have died. Within 5 days of learning of the death of a Qualifying Patient, the surviving family member, caretaker, executor, or the patient's Designated Caregiver shall either request that the local law enforcement agency remove any remaining cannabis or dispose of the cannabis in a manner that is specified in RSA 126-X:2, XIV.”;
- j. “I understand that if I am found to be in possession of therapeutic cannabis outside of my home and I am not in possession of my Registry Identification Card, I will be subject to a fine of up to \$100.”;
- k. “I understand that any person(s) who makes a fraudulent representation to a law enforcement official of any fact or circumstance relating to the therapeutic use of cannabis to avoid arrest or prosecution shall be guilty of a violation and may be fined \$500, which shall be in addition to any other penalties that may apply for making a false statement to a law enforcement officer or for the use of cannabis other than use undertaken pursuant to this chapter.”;
- l. “I understand that the protections conferred by RSA 126-X for the therapeutic use of cannabis are applicable only within New Hampshire.”; and
- m. “I understand that I must be in compliance with RSA 126-X, Use of Cannabis for Therapeutic Purposes, and with administrative rules adopted thereunder, and that the

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Department may revoke my Registry Identification Card for any violation of any provision of RSA 126-X or any violation of the administrative rules adopted thereunder.”;

(9) A signed certification that:

- a. The applicant is a resident of New Hampshire;
- b. The facts as stated in the application are accurate to the best of the applicant’s knowledge and belief; and
- c. The applicant understands that any false statements made on the application are punishable as unsworn falsification under RSA 641:3; and

(10) A signed pledge not to divert cannabis to anyone who is not allowed to possess cannabis pursuant to RSA 126-X and acknowledgement that diversion of cannabis is punishable as a class B felony and shall result in revocation of his or her registry identification card, in addition to other penalties for the illegal sale of cannabis;

(b) In addition to (a) above, applicants shall provide to the department the following supporting documentation:

(1) A “Written Certification for the Therapeutic Use of Cannabis” completed by the patient’s provider in accordance with He-C 401.07, except that a written certification completed more than 60 days prior to the date of the applicant’s application submission shall not be accepted;

(2) A non-refundable fee in accordance with He-C 401.14(b)(1) or (2);

(3) A recent passport style photograph of the applicant’s face in natural color, which meets the following requirements:

- a. A digital photograph, in .jpg format, supplied on a compact disc (CD) which is labeled with the applicant’s name and date of birth;
- b. Taken against a white backdrop;
- c. The photograph shall contain a front image of the applicant’s full face;
- d. The applicant’s face shall take up at least 70% of the photograph;
- e. The applicant shall not wear a hat, sunglasses, or any other item that might alter or disguise the overall features of the face; and
- f. The photograph shall have been taken not more than 30 days prior to the date of the application; and

(4) Proof of New Hampshire residency, as follows, except that if the applicant is a minor this information shall be provided for the applicant’s custodial parent or legal guardian who is the applicant’s designated caregiver:

- a. A copy of the applicant’s New Hampshire driver’s license;
- b. A copy of the applicant’s state or federal government-issued identification card that shows the applicant’s name and address; or

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c. If documentation in a. and b. above is unavailable, other documentation that contains the applicant's name and current address and which indicates New Hampshire residency, such as:

1. A current lease agreement;
2. Tax documents from the previous calendar year; or
3. A utility bill issued within the previous 2 months of the date of the application.

(c) The applicant shall mail or hand-deliver the documents in (a) and (b) above to:

New Hampshire Department of Health and Human Services  
Therapeutic Cannabis Program – Registry  
129 Pleasant Street  
Concord, NH 03301

Source. (See Revision Note at part heading for He-C 401)  
#10646, eff 8-1-15

He-C 401.05 Initial Application Requirements for Designated Caregivers.

(a) Applicants for a designated caregiver registry identification card shall submit a completed application, "Application for the Therapeutic Use of Cannabis – Designated Caregiver," to the department, which includes the following:

- (1) Indication whether it is an initial or renewal application, and if a renewal application, the applicant's current registry identification number;
- (2) The following applicant information:
  - a. Full name;
  - b. Mailing address;
  - c. Physical address if different than mailing address;
  - d. Telephone number; and
  - e. Date of birth;
- (3) The following qualifying patient information for each qualifying patient the applicant will be assisting with the therapeutic use of cannabis, which shall not exceed 5 qualifying patients, except that additional qualifying patients shall be allowed, up to a maximum of 9, if both the designated caregiver and the additional qualifying patients each live greater than 50 miles from the nearest alternative treatment center:
  - a. Full name;
  - b. Mailing address;
  - c. Physical address if different than mailing address, except that if the qualifying patient is homeless this shall not be required;
  - d. Telephone number;

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e. Date of birth; and

f. The name and city or town of the alternative treatment center the qualifying patient has designated;

(4) The initialing of the following acknowledgements:

a. "I understand that if my application is approved, my Registry Identification Card is valid for one year, unless a shorter duration is indicated. I must renew my Registry Identification Card every year by submitting another application and paying a \$50 fee.";

b. "I understand that if I am notified of a denial, I have 30 days to appeal this decision from the time I receive notice of the denial, and that if a request for a hearing is not made within that timeframe then I will be deemed to have waived my right to a hearing and the action of the Department shall become final.";

c. "I understand that if my application is approved and I am in possession of a Registry Identification Card, I may not possess, between myself and my Qualifying Patient(s), more than two ounces of usable cannabis per Qualifying Patient.";

d. "I understand that as a Designated Caregiver I am not permitted to use therapeutic cannabis, unless I am also a Qualifying Patient, and may be subject to criminal penalties if I do so.";

e. "I understand that as a Designated Caregiver I am not permitted to possess any cannabis for purposes other than its therapeutic use as permitted by RSA 126-X.";

f. "I understand that if my application is approved, I may not be in possession of therapeutic cannabis in any of the following locations: (1) the building and grounds of any preschool, elementary, or secondary school, which are located in an area designated as a drug free zone; (2) a place of employment, without the written permission of the employer; (3) any correctional facility; (4) any public recreation center or youth center; or (5) any law enforcement facility.";

g. "I understand that in the event of my Qualifying Patient's death, I will, within five days of his or her death: (1) notify the Program of his or her death; and (2) either request that the local law enforcement agency remove any remaining cannabis or dispose of the remaining cannabis in a manner that is specified in RSA 126-X:2, XIV.";

h. "I understand that if I am found to be in possession of therapeutic cannabis outside of my home and I am not in possession of my Registry Identification Card, I may be subject to a fine of up to \$100.";

i. "I understand that any person(s) who makes a fraudulent representation to a law enforcement official of any fact or circumstance relating to the therapeutic use of cannabis to avoid arrest or prosecution shall be guilty of a violation and may be fined \$500, which shall be in addition to any other penalties that may apply for making a false statement to a law enforcement officer or for the use of cannabis other than use undertaken pursuant to this RSA 126-X.";

j. "I understand that the protections conferred by RSA 126-X for the therapeutic use of cannabis are applicable only within New Hampshire."; and

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k. "I understand that I must be in compliance with RSA 126-X, Use of Cannabis for Therapeutic Purposes, and with administrative rules adopted thereunder, and that the Department may revoke my Registry Identification Card for any violation of any provision of RSA 126-X or any violation of the administrative rules adopted thereunder.";

(5) A signed certification that:

a. The applicant agrees to act as the designated caregiver for the qualifying patient named in the application;

b. The facts as stated in the application are accurate to the best of the applicant's knowledge and belief; and

c. The applicant understands that any false statements made on the application are punishable as unsworn falsification under RSA 641:3; and

(6) A signed pledge not to divert cannabis to anyone who is not allowed to possess cannabis pursuant to RSA 126-X and acknowledgement that diversion of cannabis is punishable as a class B felony and shall result in revocation of his or her registry identification card, in addition to other penalties for the illegal sale of cannabis.

(b) In addition to (a) above, applicants shall provide to the department the following supporting documentation:

(1) A non-refundable fee in accordance with He-C 401.14(b)(1) or (2); and

(2) A recent passport style photograph of the applicant's face in natural color, which meets the following requirements:

a. A digital photograph, in .jpg format, supplied on a compact disc (CD) which is labeled with the applicant's name and date of birth;

b. Taken against a white backdrop;

c. The photograph shall contain a front image of the applicant's full face;

d. The applicant's face shall take up at least 70% of the photograph;

e. The applicant shall not wear a hat, sunglasses, or any other item that might alter or disguise the overall features of the face; and

f. The photograph shall have been taken not more than 30 days prior to the date of the application.

(c) In addition to the materials in (a) and (b) above, for each applicant the department shall also receive the results of a state and federal criminal history records check from the division of state police, department of safety. An application shall not be considered complete without the results of a state and federal criminal history records check.

(d) In order for the department to receive the results of a state and federal criminal history records check, an applicant shall submit to the division of state police the following:

(1) A notarized criminal history record release form, as provided by the division of state police, which authorizes the release of the applicant's criminal history record, if any, to the department;

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- (2) A complete set of electronic fingerprints taken by a qualified law enforcement agency or an authorized employee of the department of safety; and
  - (3) The required fee.
- (e) In the event that, after 2 attempts, the applicant's electronic fingerprints are invalid due to insufficient pattern:
- (1) The applicant shall obtain a police clearance from the local police department of each town, city, or county where the applicant has lived during the past 5 years;
  - (2) The applicant shall submit the police clearances obtained in (1) above to the division of state police; and
  - (3) The department shall receive from the division of state police the results of the police clearance check process.
- (f) The applicant shall mail or hand-deliver the documents in (a) and (b) above to:
- New Hampshire Department of Health and Human Services  
Therapeutic Cannabis Program – Registry  
129 Pleasant Street  
Concord, NH 03301

Source. (See Revision Note at part heading for He-C 401)  
#10646, eff 8-1-15

He-C 401.06 Provider Requirements.

- (a) The department shall accept written certifications for the therapeutic use of cannabis only from providers who hold:
- (1) An active license, in good standing, pursuant to RSA 329 for physicians or pursuant to RSA 326-B:18 for advanced practice registered nurses; and
  - (2) An active federal Drug Enforcement Administration controlled substance registration in good standing.
- (b) A provider issuing a written certification shall:
- (1) Have a provider-patient relationship with the patient, as defined in He-C 401.02(i), as indicated by the existence of either:
    - a. At least a 3-month medical relationship between the provider and the patient; or
    - b. A medical relationship between the provider and the patient that is less than 3 months duration provided that the provider certifies on the "Written Certification for the Therapeutic Use of Cannabis" 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;
  - (2) Conduct a full assessment of the patient's medical history and current medical condition which includes:
    - a. An in-person physical examination of the patient, which shall not be via electronic means, such as over the phone or via the Internet;

- b. A medical history of the patient, including a prescription history;
- c. A review of laboratory testing, imaging, and other relevant tests;
- d. Appropriate consultations;
- e. A diagnosis of the patient's current medical condition; and
- f. The development of a treatment plan for the patient appropriate for the provider's specialty;

(3) Diagnose the patient as having a qualifying medical condition, as defined in He-C 401.02(j) and RSA 126-X:1, IX(a), or as approved in accordance with He-C 401.09;

(4) Explain the potential health effects of the therapeutic use of cannabis:

- a. To the patient; or
- b. In the case of a patient who is a minor, to the minor's custodial parent or legal guardian with responsibility for health care decisions for the patient, which shall be inclusive of potential risks and benefits of the therapeutic use of cannabis;

(5) 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;

(6) Maintain medical records for all patients for whom the provider has issued a written certification which support the certification of a qualifying medical condition;

(7) Make a copy of such records which support the certification of a qualifying medical condition available to the department, and otherwise provide information to the department upon request about the patient's qualifying medical condition, to ensure compliance with RSA 126-X and He-C 401; and

(8) If the provider has recommendations for the therapeutic use of cannabis for the patient, the provider may send such recommendations to the patient's designated alternative treatment center with the patient's approval. Such recommendations shall be securely transmitted.

(c) 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, unless the symptoms related to such qualifying medical condition are mitigated by the therapeutic use of cannabis.

(d) If the patient's qualifying medical condition pursuant to RSA 126-X:1, IX(a)(2), is severe pain, the provider shall:

- (1) Either:
  - a. Document previously prescribed medication or surgical measures to which the severe pain has not responded; or
  - b. Document previously prescribed other treatment options which have produced serious side effects; and

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(2) Maintain medical records of all previously prescribed medication, surgical measures, and other treatments.

(e) 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 debilitating medical condition.

(f) A provider issuing a written certification shall not issue a written certification for him or herself or for the provider's immediate family members.

(g) A provider shall not:

(1) Offer a discount or other thing of value to a patient who uses or agrees to use a particular alternative treatment center;

(2) Examine a patient in relation to issuing a written certification at a location where cannabis is sold or distributed; or

(3) Hold any economic interest in an alternative treatment center, including but not limited to employment at an alternative treatment center, if the provider issues written certifications to patients.

(h) Nothing in He-C 401 shall prohibit a provider from notifying the department 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.

Source. (See Revision Note at part heading for He-C 401)  
#10646, eff 8-1-15

He-C 401.07 Written Certification Requirements.

(a) The patient's provider shall complete a "Written Certification for the Therapeutic Use of Cannabis," which includes the following:

(1) The following patient information:

- a. Full name;
- b. Mailing address;
- c. Telephone number; and
- d. Date of birth;

(2) The following provider information:

- a. Full name;
- b. Office mailing address;

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- c. Office telephone number;
  - d. NH provider license number;
  - e. Indication that the provider is a physician or an advance practice registered nurse;
  - f. Active US Drug Enforcement Administration (DEA) registration number; and
  - g. Medical specialty.
- (b) On the “Written Certification for the Therapeutic Use of Cannabis,” the provider shall:
- (1) Certify that his or her patient has a qualifying medical condition, as defined in He-C 401.02(j) and RSA 126-X:1, IX(a), or as approved in accordance with He-C 401.09, which includes both a condition and symptoms or side effects, by:
    - a. Providing the patient’s name;
    - b. Indicating which condition the patient has;
    - c. If the patient’s condition is “one or more injuries that significantly interferes with daily activities,” identifying the injury or injuries and describing in detail how it significantly interferes with the patient’s daily activities;
    - d. Indicating which symptom(s) or side effect(s) the condition, or its treatment, has produced in the patient; and
    - e. Signing and dating the certification;
  - (2) Certify that he or she has a provider-patient relationship with the patient, as follows:
    - a. “I have completed a full assessment of the patient’s medical history and current medical condition in accordance with He-C 401.06(b)(2) and made in the course of a provider-patient relationship of at least 3 months in duration”; or
    - b. “I have completed a full assessment of the patient’s medical history and current medical condition in accordance with He-C 401.06(b)(2), but I do not have a provider-patient relationship of at least 3 months in duration. The onset or diagnosis of my patient’s qualifying condition occurred within the past 3 months, and I am primarily responsible for the patient’s care related to his or her qualifying medical condition”;
  - (3) Provide and certify the dates of the provider-patient relationship in (2) above;
  - (4) Certify that the he or she has explained the potential health effects of the therapeutic use of cannabis:
    - a. To the patient; or
    - b. In the case of a patient who is a minor, to the patient’s custodial parent or legal guardian with responsibility for health care decisions for the patient, which shall be inclusive of the potential risks and benefits of the therapeutic use of cannabis;
  - (5) Certify that he or she holds an active license in good standing with the state of New Hampshire and is either:

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a. A physician licensed in New Hampshire to prescribe drugs to humans under RSA 329 and who possesses an active registration from the United States Drug Enforcement Administration to prescribe controlled substances; or

b. An advance practice registered nurse licensed in New Hampshire to prescribe drugs to humans under RSA 326-B:18 and who possesses an active registration from the United States Drug Enforcement Administration to prescribe controlled substances;

(6) Certify that the facts as stated in the written certification are accurate to the best of his or her knowledge and belief and that he or she understands that any false statements made on the written certification are punishable as unsworn falsification under RSA 641:3; and

(7) Indicate the duration for which the registry identification card shall be valid, either for one year from the date of issuance or the number of months if less than one year from the date of issuance.

(c) The completed “Written Certification for the Therapeutic Use of Cannabis” shall be provided to the qualifying patient for submission with the application materials, as required by He-C 401.04(b)(1).

Source. (See Revision Note at part heading for He-C 401)  
#10646, eff 8-1-15

He-C 401.08 Additional Requirements for Applicants Who Are Minors.

(a) The minor applicant’s custodial parent or legal guardian who is responsible for the health care decisions of the applicant shall submit the “Application for the Therapeutic Use of Cannabis – Qualifying Patient” required by He-C 401.04(a) on behalf of the applicant.

(b) In cases where parents share legal custody of a minor applicant, the parent submitting an application shall notify the other parent with legal custody of the minor applicant in advance of submitting the application to the department by providing to the other parent the completed application and the completed written certification.

(c) In cases where a minor applicant’s legal guardian is not a custodial parent, the legal guardian shall submit with the application proof of legal guardianship.

(d) The applicant’s custodial parent or legal guardian who is responsible for the health care decisions of the applicant shall submit 2 written provider certifications, one of which shall be from a pediatrician.

(e) The applicant’s custodial parent or legal guardian who is responsible for the health care decisions of the applicant shall serve as the applicant’s designated caregiver by:

(1) Submitting the “Application for the Therapeutic Use of Cannabis – Designated Caregiver” required by He-C 401.05(a) to be a designated caregiver; and

(2) Being approved to be the applicant’s designated caregiver.

(f) The patient application in (a) above shall not be considered complete, and shall not be processed, if it is not accompanied by the designated caregiver application in (e)(1) above.

(g) If the applicant’s custodial parent or legal guardian who is responsible for the health care decisions of the applicant is not approved to be the applicant’s designated caregiver, the applicant’s application to be a qualifying patient shall be denied.

(h) The applicant's custodial parent or legal guardian who is responsible for the health care decisions of the applicant shall attest, by initials and dated signature on the "Application for the Therapeutic Use of Cannabis – Qualifying Patient," that:

- (1) He or she is the custodial parent or legal guardian of the applicant;
- (2) He or she is responsible for the applicant's health care decisions;
- (3) The applicant's health care provider has explained to the parent or legal guardian who is responsible for the health care decisions of the applicant the potential risks and benefits of the therapeutic use of cannabis;
- (4) He or she understands that if his or her application to be a designated caregiver is not approved, then the applicant's application to be a qualifying patient shall not be approved; and
- (5) If he or she shares legal custody of the applicant, that he or she has notified the other parent with legal custody in advance of submitting the application to the department by providing to the other parent a copy of the completed "Application for the Therapeutic Use of Cannabis – Qualifying Patient" and the completed "Written Certification for the Therapeutic Use of Cannabis."

(i) The applicant's custodial parent or legal guardian who is responsible for the health care decisions of the applicant shall consent, by initials and dated signature on the "Application for the Therapeutic Use of Cannabis – Qualifying Patient":

- (1) To allow the applicant's therapeutic use of cannabis;
- (2) To serve as the applicant's designated caregiver; and
- (3) To control the acquisition of the cannabis and the frequency of the therapeutic use of cannabis by the applicant.

(j) The applicant's custodial parent or legal guardian who is responsible for the health care decisions of the applicant shall certify, by dated signature on the "Application for the Therapeutic Use of Cannabis – Qualifying Patient," that:

- (1) The paragraphs initialed by the custodial parent or legal guardian are true;
- (2) The custodial parent or legal guardian agrees to comply with all requirements of the therapeutic cannabis program; and
- (3) That the custodial parent or legal guardian understands that any false statements made on the application are punishable as unsworn falsification under RSA 641:3.

Source. (See Revision Note at part heading for He-C 401)  
#10646, eff 8-1-15

He-C 401.09 Approval of a Severely Debilitating or Terminal Medical Condition Not Listed as a Qualifying Medical Condition.

(a) A provider may request the department to include a medical condition not listed in He-C 401.02(j)(1) and RSA 126-X:1, IX(a)(1):

- (1) If the medical condition, or the treatment thereof, is severely debilitating or terminal;

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- (2) If the medical condition, or the treatment thereof, manifests in one or more of the symptoms included in He-C 401.02(j)(2) and RSA 126-X:1, IX(a)(2); and
  - (3) By submitting a written petition to the department for consideration.
- (b) The department shall accept petitions in the months of January and July of each year.
- (c) The department shall consider a petition only if it includes the following information:
- (1) A detailed justification for including a new medical condition as a qualifying medical condition;
  - (2) A description of the extent to which the medical condition is generally accepted by the medical community as a valid, existing medical condition, and is considered severely debilitating or terminal;
  - (3) If one or more treatments for the condition, rather than the condition itself, are alleged to be the cause of suffering, a description of the extent to which the treatments causing suffering are generally accepted by the medical community as valid treatments for the condition;
  - (4) A description of the symptoms caused by the condition or treatments thereof and the extent to which the condition or the treatments thereof cause elevated intraocular pressure, cachexia, chemotherapy-induced anorexia, wasting syndrome, 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. Such symptoms may be either related to a specific patient or those typically experienced by patients who have the condition or are receiving treatments therefor;
  - (5) A description of the availability, or lack thereof, of conventional medical treatments, other than those that cause suffering, to alleviate suffering caused by the condition or the treatment thereof;
  - (6) A description of the extent to which evidence that is generally accepted among the medical community and other experts supports a finding that the use of cannabis alleviates suffering caused by the condition or the treatment thereof; and
  - (7) A description of any information or studies known to the petitioner regarding health effects, including any beneficial or adverse effects, from the use of cannabis in patients with the medical condition that is the subject of the petition.
- (d) Information contained in a petition that identifies a specific patient or patients shall be confidential and exempt from disclosure under RSA 91-A.
- (e) If a medical condition in a petition has been previously considered and rejected by the department, the department shall not accept the petition for further consideration unless the petition contains new scientific evidence or research, or describes substantially different symptoms, not previously considered in an earlier petition.
- (f) The department shall provide written notice to the petitioner whether the petition is accepted or rejected for consideration.
- (g) The department shall conduct a public hearing to evaluate any petitions it has accepted.

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(h) No less than 20 days before each public hearing, the department shall provide notice of such hearing by publishing on its Internet website the date, time and location of the hearing, and the medical condition(s) that will be considered.

(i) In addition to information provided in a petition and at the public hearing, the department shall consider scientific, medical or other evidence and research pertaining to the petition, and shall consider information provided, in person or in writing, from other persons knowledgeable about the medical condition from within and without the department, including members of the therapeutic cannabis advisory council, as established pursuant to RSA 126-X:9.

(j) Following the public hearing, the department shall consider the petition, the public comments, and any additional information or expertise described in (i) above for each proposed medical condition considered at the hearing.

(k) Within 120 days of the receipt of a petition accepted by the department for consideration, the department shall issue a written decision about each medical condition for which a petition was accepted for consideration.

(l) The department shall include in the written decision the following:

- (1) Matters that the department considers relevant to the decision made about the petition; and
- (2) Whether the medical condition will now be included as a qualifying medical condition for the therapeutic use of cannabis.

(m) A medical condition that has been approved by the department as a qualifying medical condition for the therapeutic use of cannabis in accordance with (a) through (k) above shall be available to all individuals who apply for a registry identification card as a qualifying patient.

(n) A petitioner may appeal a denial of the petition to the commissioner by submitting a request for an appeal within 30 days of the issuance of a decision.

(o) Pursuant to RSA 126-A:5, VIII(c)-(e), the commissioner shall not delegate, but shall retain, his or her decision making authority on all appeals made under this section.

Source. (See Revision Note at part heading for He-C 401)  
#10646, eff 8-1-15

He-C 401.10 Processing of Applications and Issuance of Registry Identification Cards.

(a) An application for initial approval as a qualifying patient or a designated caregiver shall be complete when the department determines that all information and supporting documentation required by He-C 401.04 or He-C 401.05, or both in the case of a minor patient applicant, have been received.

(b) If an application does not contain all of the items required by He-C 401.04 or He-C 401.05, or both in the case of a minor patient applicant, the department shall notify the applicant in writing within 10 business days specifying any information or supporting documentation required to be submitted before the application can be processed.

(c) If after written notice in (b) above the applicant fails to provide the missing information or supporting documentation, including payment of the required fee, within 30 days of such notice:

- (1) The application shall be considered incomplete and shall not be processed; and

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(2) The applicant may reapply by submitting a new initial application in accordance with He-C 401.04 or He-C 401.05.

(d) The department shall approve an applicant as a qualifying patient if the department determines that:

(1) The applicant has submitted to the department a complete application and required supporting documentation in accordance with He-C 401.04;

(2) The applicant is a resident of New Hampshire;

(3) The applicant's medical provider has completed a written certification that meets the requirements of He-C 401.07 and has certified that the applicant has a qualifying medical condition which meets the definition in He-C 401.02(j);

(4) All information submitted is accurate;

(5) No basis for denial, as established in He-C 401.12(a), exists; and

(6) In the case of a minor patient, all requirements in He-C 401.08 have been met.

(e) The department shall approve an applicant as a designated caregiver if the department determines that:

(1) The applicant has submitted to the department a complete application and required supporting documentation in accordance with He-C 401.05;

(2) The applicant is at least 21 years old;

(3) Based upon the results of the criminal history records or the police clearances released to the department by the division of state police, the applicant has never been convicted of a felony;

(4) The qualifying patient(s) listed on the caregiver application has designated the caregiver applicant as the qualifying patient's caregiver;

(5) The number of qualifying patients listed on the caregiver application does not exceed 5, except that additional qualifying patients shall be allowed, up to a maximum of 9, if both the designated caregiver and the additional qualifying patients each live greater than 50 miles from the nearest alternative treatment center;

(6) All information submitted is accurate; and

(7) No basis for denial, as established in He-C 401.12(a), exists.

(f) Pursuant to RSA 126-X:4, III, the department shall act on a complete application, including all supporting documentation and required fee, for either a qualifying patient or a designated caregiver within 15 calendar days of its receipt.

(g) Within 5 calendar days of the determination to approve an application for either a qualifying patient or a designated caregiver, the department shall issue to the applicant a registry identification card.

Source. (See Revision Note at part heading for He-C 401)  
#10646, eff 8-1-15

He-C 401.11 Registry Identification Card Expirations and Procedures for Renewals.

(a) A registry identification card shall be valid on the date of issuance and expire one year later on the last day of the month it was issued unless a completed application for renewal has been received or a shorter time period is established in accordance with (e) or (f) below.

(b) Each qualifying patient and designated caregiver shall complete and submit to the department application materials pursuant to He-C 401.04 or He-C 401.05 at least 30 days prior to the expiration of his or her current registry identification card.

(c) If the qualifying patient or designated caregiver fails to submit a complete application for renewal prior to the expiration of his or her current registry identification card:

(1) The qualifying patient or designated caregiver's registry identification card shall expire in accordance with (a) above; and

(2) Any subsequent application for a registry identification card shall be as an initial applicant.

(d) Applications for renewal shall be processed and registry identification cards shall be reissued in accordance with He-C 401.10.

(e) Exceptions to (a) above shall be as follows:

(1) If the qualifying patient's certifying medical provider indicates in the written certification that the certification should expire at an earlier specified date, then the registry identification card shall expire on that date; and

(2) If the qualifying patient's certifying medical provider notifies the department in writing that the qualifying patient no longer suffers from a qualifying medical condition or should discontinue using cannabis, the registry identification card shall become void upon notification by the department to the qualifying patient.

(f) A designated caregiver's registry identification card shall become void upon notification by the department to the designated caregiver that all the qualifying patients for whom he or she is acting as designated caregiver either have lost their status as qualifying patients or have rescinded or otherwise ended the designation.

(g) A registry identification card that has been voided by the department, or has otherwise expired, shall be surrendered by returning the card to the department in accordance with He-C 401.13.

Source. (See Revision Note at part heading for He-C 401)  
#10646, eff 8-1-15

He-C 401.12 Denial of an Application, Enforcement Actions, and Administrative Appeals.

(a) The department may deny an initial or renewal application for a registry identification card if:

(1) The applicant previously had a registry identification card revoked for violating the provisions of RSA 126-X or He-C 401;

(2) The department determines that the information provided in the application or supporting material was misleading, false, or fraudulent;

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(3) The applicant previously had a registry identification card denied for providing in the application or supporting material information that was determined to be misleading, false, or fraudulent; or

(4) The department determines that the information provided in the application or supporting documentation did not meet the requirements of RSA 126-X or He-C 401.

(b) The department shall revoke a qualifying patient or designated caregiver's registry identification card for any of the following:

(1) Violation of any provision of RSA 126-X or He-C 401;

(2) Submission of misleading, false, or fraudulent information in the application or supporting documentation;

(3) Fraudulent use of a registry identification card;

(4) Selling, distributing, or giving cannabis to any unauthorized person;

(5) Tampering, falsifying, altering, modifying, duplicating, or allowing another person to use, tamper, falsify, alter, modify, or duplicate a registry identification card;

(6) Failure to notify the department within 10 days after becoming aware that the registry identification card has been lost, stolen, or destroyed;

(7) Failure to notify the department within the required timeframes of other situations described in He-C 401.13(a) and (b);

(8) A designated caregiver has been convicted of a felony in this or any other state;

(9) A qualifying patient or designated caregiver has become an inmate at a correctional facility;

(10) A qualifying patient is no longer a resident of New Hampshire; and

(11) A qualifying patient has used cannabis in a manner that puts others at risk of their health, safety, or welfare, or has failed to take reasonable precautions to avoid putting others at such risk.

(c) At the time of denying an application for a registry identification card, revoking a registry identification card, or issuing a fine in accordance with He-C 401.14(d), the department shall send to the applicant or cardholder written notice that sets forth:

(1) The action to be taken by the department;

(2) The reason(s) for the action; and

(3) The right of an applicant or cardholder to a hearing in accordance with He-C 200 before the enforcement action becomes final.

(d) An applicant or cardholder shall have 30 days after receipt of the notice of enforcement action to request a hearing to contest the action.

(e) If a request for a hearing is not made pursuant to (d) above, the applicant or cardholder shall be deemed to have waived his or her right to a hearing.

(f) Hearings under this section shall be conducted in accordance with He-C 200.

(g) A qualifying patient or designated caregiver who has had his or her registry identification card revoked shall surrender his or her card by returning it to the department within 10 days of the department's decision to revoke the card becoming final.

Source. (See Revision Note at part heading for He-C 401)  
#10646, eff 8-1-15

He-C 401.13 Requirements for Notifications.

(a) A qualifying patient shall notify the department in writing of any of the following:

- (1) A change to the qualifying patient's name or address, within 10 days of such change;
- (2) The designation of a caregiver if he or she has not already done so in an initial or renewal application;
- (3) A change to the qualifying patient's designated caregiver, prior to the change;
- (4) A change to the qualifying patient's designated alternative treatment center, prior to the change; or
- (5) A registry identification card has been lost, stolen, or destroyed, within 10 days of the discovery of the loss, theft, or destruction.

(b) A designated caregiver shall notify the department in writing of any of the following:

- (1) A change to the designated caregiver's name or address, within 10 days of such change;
- (2) A change to the designated caregiver's qualifying patient(s), prior to the change;
- (3) A registry identification card has been lost, stolen, or destroyed, within 10 days of the discovery of the loss, theft, or destruction; or
- (4) Immediately upon being convicted of a felony conviction in this or any other state.

(c) A qualifying patient's 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 department in writing that the qualifying patient no longer suffers from a qualifying medical condition or should discontinue using cannabis.

(d) After notice in (c) above:

- (1) The qualifying patient's registry identification card shall become void upon receiving notice from the department; and
- (2) The voided registry identification card shall be returned to the department within 10 days of the notice in (1) above.

(e) Upon learning of the death of a qualifying patient, a surviving family member, caretaker, executor, and the qualifying patient's designated caregiver shall:

- (1) Notify the department that the qualifying patient has died, within 5 days of the death;
- (2) Return the qualifying patient's registry identification card to the department, within 10 days of the death; and

(3) Within 5 days, dispose of any remaining cannabis by either:

- a. Requesting a local law enforcement agency to remove the remaining cannabis; or
- b. Mixing the remaining cannabis with other ingredients such as soil to render it unusable. in accordance with RSA 126-X:4, XII.

(f) As applicable, the department shall notify a qualifying patient or designated caregiver of any changes described in (a) through (e) above regarding his or her designated caregiver or qualifying patient, respectively.

(g) A new registry identification card, including a new identification number, shall be issued within 20 days for any change to a qualifying patient's or designated caregiver's name, address, or alternative treatment center.

(h) A new registry identification card, but not a new identification number, shall be issued to a designated caregiver for any change to the identification number of a designated caregiver's qualifying patient or if a qualifying patient has newly designated the caregiver.

(i) If a newly designated caregiver applies for a registry identification card in accordance with He-C 401.05 and is approved in accordance with He-C 401.10, a new registry identification card, including a new identification number, shall be issued to the designated caregiver.

(j) If a qualifying patient or designated caregiver loses his or her registry identification card, whether due to loss, theft, or destruction, he or she shall notify the department in writing within 10 days of losing the card and be subject to a fee pursuant to RSA 126-X:4, IX(f), and in accordance with He-C 401.14(b)(3). Within 5 days of such notification, the department shall issue a new registry identification card, including a new identification number.

(k) A registry identification card with outdated information, whether due to a change of information or a renewal, shall be surrendered by returning it to the department within 10 business days of the person's receipt of the new registry identification card.

(l) Failure to timely surrender the outdated card to the department shall be grounds for the department to void a newly issued card until such time that the outdated card is returned to the department.

(m) A designated caregiver's registry identification card shall become void upon notification by the department to the designated caregiver that all the qualifying patients for whom he or she is acting as designated caregiver either have lost their status as qualifying patients or have rescinded or otherwise ended the designation.

(n) An voided registry identification card in (m) above:

(1) Shall be surrendered to the department within 10 business days of the department's notification; and

(2) Shall:

a. Be reactivated and reissued if a new qualifying patient designates the caregiver within the caregiver's current approval period; and

b. Not be reactivated and reissued if a new qualifying patient designates the caregiver within the caregiver's current approval period until such time that the caregiver returns the voided card.

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(o) In all cases, a registry identification card that is outdated, has expired, has been voided, or has been revoked shall be surrendered by returning the card to the department.

(p) In all cases a registry identification card shall remain the property of the department.

Source. (See Revision Note at part heading for He-C 401)  
#10646, eff 8-1-15

He-C 401.14 Schedule and Payment of Fees and Fines.

(a) All fees and fines required by this part shall be paid as follows:

(1) By check or money order for the exact amount of the fee or fine made payable to “Treasurer – State of New Hampshire”;

(2) A money order or certified check shall be required when payment has been made to the department by check, and such check was returned for insufficient funds; and

(3) Any payment submitted to the department in the form of a check or money order and returned to the state for any reason shall be processed in accordance with RSA 6:11-a.

(b) The department shall charge the following fee amounts:

(1) For an initial application, as required by He-C 401.04(b)(2) and He-C 401.05(b)(1), \$50;

(2) For a renewal application, as required by He-C 401.04(b)(2) and He-C 401.05(b)(1), \$50; and

(3) For issuance of a replacement registry identification card, \$25, except that if a designated caregiver is issued a new card due to a change in his or her current qualifying patient’s registry identification number, there shall be no fee charged.

(c) All fees shall be non-refundable.

(d) The department shall issue a fine in the amount of \$150 to a qualifying patient or designated caregiver for failing to notify the department of any changes to his or her name or address within 10 days of such change in accordance with He-C 401.13(a)(1) or (b)(1), or for failing to notify the department of any change to a qualifying patient’s designated caregiver prior to such change in accordance with He-C 401.13(a)(3).

Source. (See Revision Note at part heading for He-C 401)  
#10646, eff 8-1-15

He-C 401.15 Confidentiality.

(a) The department shall maintain the confidentiality of all information about applicants, qualifying patients, designated caregivers, certifying medical providers, and alternative treatment centers that is contained in the department’s registry, as provided by RSA 126-X and He-C 401.

(b) Notwithstanding (a) above, information in (a) above shall be released by the department to:

(1) Authorized employees of the department in the course of their official duties;

(2) An individual or entity pursuant to an order from a court of competent jurisdiction;

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(3) Law enforcement personnel in accordance with RSA 126-X:4, XI(b)(1)-(3), but such information shall be limited to:

- a. The location associated with a qualifying patient, designated caregiver, or alternative treatment center; and
- b. Whether a person is a qualifying patient or a designated caregiver;

(4) Law enforcement personnel in accordance with RSA 126-X:4, XI(b)(4), regarding information related to falsified or fraudulent information submitted to the department where counsel has made a legal determination that there is probable cause to believe the information is false or falsified;

(5) The NH board of medicine or the NH board of nursing pursuant to RSA 126-X:4, VII(b), and RSA 126-X:2:VIII, but such information shall be related to the conveyance of concerns regarding provider conduct;

(6) The health and human services oversight committee established under RSA 126-X:13, 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, except that only deidentified, aggregate data required by RSA 126-X:10, IV, shall be released; and

(7) To a qualifying patient, a qualifying patient's certifying provider, or a patient's designated caregiver for the purposes of carrying out these rules.

(c) In order for information to be released to law enforcement personnel in accordance with (b)(3) above, the following shall have occurred:

(1) Local or state law enforcement personnel shall have detained or arrested an individual who claims to be engaged in the therapeutic use of cannabis;

(2) A local or state law enforcement officer shall have submitted a sworn affidavit to the department affirming that he or she has probable cause to believe cannabis is possessed at a specific address; or

(3) A local or state law enforcement officer shall have submitted a sworn affidavit to the department affirming that he or she has probable cause to believe a specific individual possesses cannabis, and has also provided the person's name and address or name and date of birth.

(d) In accordance with RSA 126-X:4, II(g), the department shall maintain the confidentiality of all criminal history records information received.

Source. (See Revision Note at part heading for He-C 401 #10646, eff 8-1-15)

He-C 401.16 Visiting Qualifying Patients.

(a) For a visiting qualifying patient, "provider" means, pursuant to RSA 126-X:1, VII(b), "an individual licensed to prescribe drugs to humans in the state of the patient's residence and who possesses certification from the United States Drug Enforcement Administration to prescribe controlled substances."

(b) Pursuant to RSA 126-X:2, V, a valid registry identification card, or its equivalent, that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States that allows, in the jurisdiction of issuance, a visiting qualifying patient to possess cannabis for therapeutic

purposes, shall have the same force and effect as a valid registry identification card issued by the department in this state, provided that:

- (1) The visiting qualifying patient shall also produce a statement from his or her provider stating that the visiting qualifying patient has a qualifying medical condition as defined in RSA 126-X:1; and
- (2) A visiting qualifying patient shall not cultivate or purchase cannabis in New Hampshire or obtain cannabis from alternative treatment centers or from a qualifying New Hampshire patient.

Source. (See Revision Note at part heading for He-C 401)  
#10646, eff 8-1-15

He-C 401.17 Waivers.

(a) An individual seeking waivers of specific rules in He-C 401 shall submit a written request for a waiver to the department that includes:

- (1) The specific reference to the rule for which a waiver is being sought;
- (2) A full explanation of why a waiver is necessary;
- (3) A full explanation of alternatives proposed, which shall be equally as protective of public and patient health and safety as the rule from which a waiver is sought; and
- (4) The period of time for which the waiver is sought.

(b) Waivers shall not exceed 12 months, or the current registration identification card expiration date.

(c) A request for waiver shall be granted if the department determines that the alternative proposed by the applicant or licensee:

- (1) Meets the objective or intent of the rule for which the waiver is sought; and
- (2) Does not negatively impact the health or safety of any qualifying patient or the public.

(d) The individual's subsequent compliance with the alternatives approved in the waiver shall be considered equivalent to complying with the rule from which waiver was sought.

(e) No provision or procedure prescribed by statute shall be waived.

Source. (See Revision Note at part heading for He-C 401)  
#10646, eff 8-1-15

PART He-C 402 ALTERNATIVE TREATMENT CENTERS

He-C 402.01 Purpose. The purpose of this part is to set forth the registration requirements for alternative treatment centers (ATCs) pursuant to RSA 126-X.

Source. #10731, eff 11-25-14

He-C 402.02 Scope. This part shall relate to the application, registration, and operation of ATCs and related matters pursuant to RSA 126-X.

Source. #10731, eff 11-25-14

He-C 402.03 Definitions.

(a) “Administrative remedy” means an action imposed upon an ATC in response to non-compliance with RSA 126-X or He-C 402.

(b) “Administrator” means the individual appointed by the ATC to be responsible for all aspects of the daily operation of the registered premises.

(c) “Advertisement” means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of cannabis or cannabis infused products (CIPs).

(d) “Alternative treatment center (ATC)” means “alternative treatment center” as defined in RSA 126-X:1, I, namely, “a not-for-profit entity registered under RSA 126-X:7 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies, and dispenses cannabis, and related supplies and educational materials, to qualifying patients, designated caregivers and ATCs.” For the purpose of this definition, “not-for-profit” means a corporation that is registered with the NH secretary of state under RSA 292 and is a charitable trust pursuant to RSA 7:19 et seq for the benefit of qualifying patients.

(e) “Applicant” means a not-for-profit corporation seeking a registration to operate an ATC pursuant to RSA 126-X.

(f) “ATC agent (agent)” means “alternative treatment center agent” as defined in RSA 126-X:1, II, namely, “a principal officer, board member, employee, manager, or volunteer of an alternative treatment center who is 21 years of age or older and has not been convicted of a felony or any felony drug-related offense.” This term includes executive employees and corporate officers.

(g) “ATC technician (technician)” means an employee of the ATC who has been trained to dispense cannabis to qualifying patients and their designated caregivers.

(h) “Batch number” means any distinct group of numbers, letters, or symbols, or any combination thereof, assigned to a specific harvest batch of cannabis or a specific batch of cannabis concentrate.

(i) “Cannabinoid profile” means the concentration, measured in percent by weight or milligrams per gram or ounce, of tetrahydrocannabinol (THC), tetrahydrocannabivarian (THCV), cannabichromene (CBC), cannabidiol (CBD), cannabidivarin (CBDV), cannabigerol (CBG), and cannabiol (CBN) contained in the cannabis sample or saleable cannabis product.

(j) “Cannabis” means “cannabis” as defined in RSA 126-X:1, III, namely, “all parts of any plant of the Cannabis genus of plants, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, salt, derivative, mixture, or preparation of such plant, its seeds, or resin. Such term shall not include the mature stalks of such plants, fiber produced from such stalks, oil, or cake made from the seeds of such plants, any other compound, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seeds of such plants which are incapable of germination.”

(k) “Cannabis concentrate” means any form of cannabinoid extracted from usable cannabis plant material using an extraction method, such as water, food, carbon dioxide, alcohol, or other chemical solvent as allowed by He-C 402.16(j)(1)c.

(l) “Cannabis-infused product (CIP)” means a product infused with cannabis that is intended for use or consumption, other than by smoking, including but not limited to edible products, ointments, aerosols, oils, and tinctures. These products, when created or sold by an ATC, shall not be considered a food or a drug.

(m) “Child-resistant” means packaging that is:

- (1) Designed or constructed to be significantly difficult for children under 5 years of age to open and not difficult for adults to use properly;
- (2) Opaque so that the product cannot be seen from outside the packaging; and
- (3) Closable for any product intended for more than a single use or containing multiple servings.

(n) “Commissioner” means the commissioner of the New Hampshire department of health and human services, or his or her designee.

(o) “Compliance monitoring” means an on-site inspection of the registered premises by the department to verify the implementation of a plan of correction which addresses a deficiency that has the potential to negatively impact the health or safety of ATC agents, qualifying patients, designated caregivers, or the general public, or a deficiency that is related to the theft or diversion of cannabis.

(p) “Container” means the sealed package in which cannabis or CIP is placed for dispensing and which has been labeled according to the requirements set forth in He-C 402.19.

(q) “Contaminant” means mold, fungus, bacterial diseases, rot, pests, non-organic pesticides, mildew, and any chemical listed in He-C 402.34, Table 402.1.

(r) “Cultivation” means a method or process of growing cannabis regardless of whether the growing medium is soil, soil-based, hydroponic, aeroponic, aquaponic, or other method.

(s) “Cultivation location” means a locked, indoor, and enclosed site under the control of an ATC where cannabis is cultivated, and which is secured with one or more locks or other security devices in accordance with RSA 126-X and He-C 402.24, and which can be at a separate location from the dispensing portion of the ATC.

(t) “Days” means calendar days unless otherwise specified in the rule.

(u) “Deficiency” means any action, failure to act, or other set of circumstances that causes an ATC to be out of compliance with RSA 126-X, He-C 402, or other state law or local ordinance.

(v) “Department” means the New Hampshire department of health and human services.

(w) “Designated caregiver” means “designated caregiver” as defined in RSA 126-X:1, VI, namely, “an individual who:

- (a) Is at least 21 years of age;
- (b) Has agreed to assist with one or more (not to exceed 5) qualifying patient’s therapeutic use of cannabis, except if the qualifying patient and designated caregiver each live greater than 50 miles from the nearest ATC, in which case the designated caregiver may assist with the therapeutic use of cannabis for up to 9 qualifying patients;
- (c) Has never been convicted of a felony or any felony drug-related offense; and
- (d) Possesses a valid registry identification card issued pursuant to RSA 126-X:4.”

(x) “Directed plan of correction” means a plan developed and written by the department that specifies the actions the ATC shall take to correct identified deficiencies.

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(y) “Dispense” means to distribute, give away, or sell one or more doses of cannabis or CIP to a qualifying patient or designated caregiver to be administered or taken at a different location than the ATC.

(z) “Dispensing error” means an error related to the dispensing of cannabis including, but not limited to, dispensing a quantity of cannabis that exceeds the amount a qualifying patient is allowed to obtain in a 10-day period, dispensing cannabis to a person who has not designated the ATC, or dispensing cannabis that is mislabeled.

(aa) “Diversion” means the obtaining or transferring of cannabis from a legal possession or use to an illegal use or to a person not authorized to use or obtain cannabis under RSA 126-X or He-C 401 or 402.

(ab) “Duress alarm” means a silent security alarm system signal generated by the entry of a designated code into an arming station in order to signal that the alarm user is being forced to turn off the system.

(ac) “Emergency plan” means a document outlining the responsibilities of ATC personnel in an emergency.

(ad) “Executive employee” means an individual who is responsible for the operations of the ATC, such as the chief executive officer (CEO) or executive director (ED), chief operations officer (COO) or director of operations, chief financial officer (CFO) or director of finance, administrator, director of human resources, chief medical officer, and any other individual involved in the oversight and business management of the ATC operations.

(ae) “Geographic area” means an area of the state of New Hampshire designated for use in the request for application process to encourage the geographic separation of ATCs throughout the state, but which does not limit in any way the choice of a qualifying patient to register with any ATC, and includes:

(1) “Geographic area 1” means Belknap, Rockingham, and Strafford counties;

(2) “Geographic area 2” means Hillsborough and Merrimack counties;

(3) “Geographic area 3” means Cheshire and Sullivan counties, and the town of Hanover and the city of Lebanon in Grafton County; and

(4) “Geographic area 4” means Carroll, Coos, and Grafton counties, not including the town of Hanover and the city of Lebanon in Grafton County.

(af) “Harvest batch” means a specifically identified quantity of processed cannabis, every portion or package of which is uniform in strain, cultivated using the same herbicides, pesticides, and fungicides, and harvested at the same time.

(ag) “Holdup alarm” means a silent alarm signal generated by the manual activation of a device intended to signal a robbery in progress.

(ah) “Inspection” means the process followed by the department to determine an applicant’s or an ATC’s compliance with RSA 126-X and He-C 402 or to respond to allegations of non-compliance with RSA 126-X or He-C 402.

(ai) “Known allergen” means milk, egg, fish, crustacean, shellfish, tree nuts, wheat, peanuts, and soybeans.

(aj) “Limited access area” means a building, room, or other contiguous area of the registered premises where cannabis or CIP is grown, cultivated, stored, packaged, processed for sale, or disposed, and where access is limited to authorized personnel to enhance security.

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(ak) “Panic alarm” means an audible security alarm system signal generated by the manual activation of a device intended to signal a life threatening or emergency situation requiring a law enforcement response.

(al) “Paraphernalia” means accessories, devices, and other equipment, such as smoking pipes or vaporizers, that facilitate the use of cannabis for therapeutic purposes.

(am) “Plan of correction (POC)” means a plan developed and written by the ATC, which specifies the actions that will be taken to correct identified deficiencies.

(an) “Procedure” means an ATC’s written, standardized method of performing duties and providing services.

(ao) “Provider” means a physician or an advanced practice registered nurse licensed to prescribe drugs to humans under RSA 329 or 326-B:18, respectively, and who possesses certification from the United States Drug Enforcement Administration to prescribe controlled substances.

(ap) “Qualifying medical condition” means “qualifying medical condition” as defined in RSA 126-X:1, IX(a).

(aq) “Qualifying patient” means “qualifying patient” as defined in RSA 126-X:1, X, namely “a resident of New Hampshire who has been diagnosed by a provider as having a qualifying medical condition and who possesses a valid registry identification card issued pursuant to RSA 126-X:4.”

(ar) “Registered premises” means the building(s) that comprises the physical location(s) that the department has approved for the registered ATC to conduct operations in accordance with its registration to include the cultivation, processing, storage, and dispensing of cannabis, CIP, and the sale of paraphernalia.

(as) “Registration certificate” means the document issued to an applicant or registrant at the start of operation as an ATC which authorizes operation in accordance with RSA 126-X and He-C 402, and includes the name of the ATC, the name of the business, the physical address, the effective dates, the name of the ATC administrator, and the registration number.

(at) “Registry identification card” means “registry identification card” as defined in RSA 126-X:1, XI, namely, “a document indicating the date issued and expiration date by the department pursuant to RSA 126-X:4 that identifies an individual as a qualifying patient or a designated caregiver.”

(au) “Reportable incident” means:

- (1) Confidential information accessed or disclosed in violation RSA 126-X or He-C 402;
- (2) Loss of or discrepancies in cannabis inventory including but not limited to theft or diversion;
- (3) Unauthorized intrusion or entry into the registered premises;
- (4) When there is reason to believe there is a violation of RSA 126-X or department rules by an ATC or its agents;
- (5) Alarm activation requiring a response by public safety personnel;
- (6) Failure of the security alarm system for a period greater than 8 hours;
- (7) Any accident occurring during transport of cannabis or CIP; or
- (8) Dispensing errors.

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(av) “Seedling” means “seedling” as defined in RSA 126-X:1, XII, namely, “a cannabis plant that has no flowers and is less than 12 inches in height and less than 12 inches in diameter.”

(aw) “Statement of findings” means a document issued by the department following an inspection or investigation identifying areas in which the ATC is not in compliance with He-C 402 or RSA 126-X and which sets forth the evidence that supports the findings of noncompliance.

(ax) “Therapeutic use” means “therapeutic use” as defined in RSA 126-X:1, XIII, namely, “the acquisition, possession, cultivation, preparation, use, delivery, transfer, or transportation of cannabis or paraphernalia relating to the administration of cannabis to treat or alleviate a qualifying patient’s qualifying medical condition or symptoms or results of treatment associated with the qualifying patient’s qualifying medical condition. It shall not include:

- (1) The use of cannabis by a designated caregiver who is not a qualifying patient; or
- (2) Cultivation or purchase by a visiting qualifying patient; or
- (3) Cultivation by a designated caregiver or qualifying patient.”

(ay) “Unusable cannabis” means “unusable cannabis” as defined in RSA 126-X:1, XIV, namely, “any cannabis, other than usable cannabis, including the seeds, stalks, and roots of the plant.”

(az) “Usable cannabis” means “usable cannabis” as defined in RSA 126-X:1, XV, namely, “the dried leaves and flowers of the cannabis plant and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant and does not include the weight of any non-cannabis ingredients combined with cannabis and prepared for consumption as food or drink.”

(ba) “Visiting qualifying patient” means “visiting qualifying patient” as defined in RSA 126-X:1, XVI, namely, “a patient with a qualifying medical condition who is not a resident of New Hampshire or who has been a resident of New Hampshire for fewer than 30 days and is not eligible to purchase therapeutic cannabis in New Hampshire or receive cannabis from a qualifying New Hampshire patient.”

(bb) “Written certification” means documentation of a qualifying medical condition by a provider for the purpose of issuing registry identification cards, after having completed a full assessment of the patient’s medical history and current medical condition in accordance with He-C 401.06(b)(2) and made in the course of a provider-patient relationship, and which includes the date of issuance, the patient’s qualifying medical condition, symptoms or side effects, the certifying provider’s name, medical specialty, and signature.

Source. #10731, eff 11-25-14

He-C 402.04 Fees. Fees for ATCs shall be non-refundable, made payable to the “Treasurer, State of New Hampshire”, and shall be as follows:

- (a) The request for application (RFA) submission fee shall be \$3000;
- (b) The initial registration fee for entities selected in geographic areas 1, 2, and 3 shall be \$80,000, payable as follows:
  - (1) A fee of \$20,000 due within 10 days of selection;
  - (2) A fee of \$30,000 due with the registration application; and
  - (3) A fee of \$30,000 due upon the issuance of the notice of registration approval as per He-C 402.05(j) and (k);

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(c) The initial registration fee for the entity selected in geographic area 4 shall be \$40,000, payable as follows:

- (1) A fee of \$10,000 due within 10 days of selection;
- (2) A fee of \$15,000 due with the registration application; and
- (3) A fee of \$15,000 due upon the issuance of the notice of registration approval as per He-C 402.05 (j) and (k);

(d) The annual renewal fee for ATCs in geographic areas 1, 2, and 3 shall be \$80,000, payable as follows:

- (1) A fee of \$40,000 due with the renewal registration application; and
- (2) A fee of \$40,000 due upon the issuance of the notice of registration approval as per He-C 402.06(d) and (e);

(e) The annual renewal fee for the ATC in geographic area 4 shall be \$40,000, payable as follows:

- (1) A fee of \$20,000 due with the renewal registration application; and
- (2) A fee of \$20,000 due upon the issuance of the notice of registration approval as per He-C 402.06(d) and (e);

(f) For a change in name, the fee shall be \$250;

(g) For a change in administrator, the fee shall be \$250;

(h) The fee for compliance monitoring to verify the implementation of a plan of correction shall be \$1000; and

(i) For a change in location, the fee shall be as follows:

- (1) For the ATC in geographic areas 1, 2, and 3, the fee shall be \$30,000; and
- (2) For the ATC in geographic area 4, the fee shall be \$15,000.

Source. #10731, eff 11-25-14

He-C 402.05 Registration of ATCs.

(a) Only an ATC that is currently registered by the department and has been issued a registration certificate may dispense cannabis, CIP, or paraphernalia to qualified patients and designated caregivers who have been issued a registry identification card from the department.

(b) Each ATC selected as part of the RFA process shall provide to the department the fee of \$20,000 in accordance with He-C 402.04(b)(1) or \$10,000 in accordance with He-C 402.04(c)(1) within 10 days of the department's notice that the entity has been selected. Failure to provide the fee within the required timeframe shall result in forfeiture of the selection and shall prevent the entity from submitting an application in (c) below.

(c) Each ATC selected as part of the RFA process shall submit the following to the department within 90 days of the department's notice that the entity has been selected:

- (1) A completed application:

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- a. Signed by the applicant or 2 of the corporate officers affirming the following:

“I affirm that I have read and understand the requirements of RSA 126-X and the rules adopted thereunder and that the premises are in compliance with that statute and rule. I understand that providing false or misleading information shall be grounds for denial, suspension, or revocation of the registration and the imposition of a fine.”; and

- b. Containing the following information:

1. The name of the ATC;
2. The physical address of the ATC and, if applicable, the physical address of a second location for cultivation and processing operated by the ATC;
3. The mailing address of the ATC if different from the physical address;
4. The telephone number of the ATC;
5. The name of the ATC’s administrator; and
6. The email address for the ATC’s administrator, and for the ATC if different;

(2) A “Certificate of Good Standing” issued by the NH secretary of state authorizing the ATC to do business as a not-for-profit corporation in the state of New Hampshire;

(3) A copy of the ATC’s articles of agreement;

(4) A copy of the ATC’s bylaws;

(5) A statement detailing any instances in which a prospective board member who ran a business or managed or sat on the board of directors of a corporation was convicted, fined, censured, or had a registration, certification, or license suspended or revoked in any administrative or judicial proceeding, or any instances in which the business or corporation itself was subject to such an action;

(6) A floor plan of the prospective ATC, to include a complete description and layout of the indoor, enclosed, locked facility, in which all limited access areas are clearly indicated in the diagram of the registered premises, reflecting walls, partitions, counters, and all areas of entry and exit. Said diagram shall also show all propagation, vegetation, flowering, processing, production, storage, disposal, and retail sales areas;

(7) The application fee of \$30,000 in accordance with He-C 402.04(b)(2) or \$15,000 in accordance with He-C 402.04(c)(2);

(8) Resumes identifying the qualifications of:

- a. The executive employees of the ATC; and
- b. The ATC board members and corporate officers;

(9) The name, address, and date of birth of each executive employee and corporate officer of the ATC;

(10) The name, address, and date of birth of each member of the board of directors of the ATC, which shall:

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- a. Include at least one physician, advance practice registered nurse, or pharmacist licensed to practice in New Hampshire, except that such medical professional shall not maintain an ownership interest in the ATC;
- b. Include at least one patient qualified to register as a qualifying patient; and
- c. Consist of a majority of New Hampshire residents;

(11) Written local approvals as follows:

- a. For an existing building, the following written local approvals shall be obtained no more than 90 days prior to submission of the application, from the following local officials or if there is no such official(s), from the board of selectmen or mayor:
  - 1. The health officer verifying that the applicant complies with all applicable local health requirements, drinking water and wastewater requirements;
  - 2. The building official verifying that the applicant complies with all applicable state building codes and local building ordinances;
  - 3. The zoning officer verifying that the applicant complies with all applicable local zoning ordinances; and
  - 4. The fire chief verifying that the applicant complies with the state fire code, including, but not limited to, the applicable chapter of NFPA 101 as adopted by the department of safety, and local fire ordinances applicable for an agricultural processing and retail sales facility; and
- b. For a building under construction, the written approvals required by a. above shall be submitted upon completion of the construction project;

(12) The results of a federal and NH state criminal records check for every corporate officer, board member, and executive employee pursuant to RSA 126-X:8, IV(a), and RSA 126-X:4, II-a;

(13) If the ATC uses a private water supply, documentation that the water supply has been tested in accordance with and meets the requirements of RSA 485 and Env-Dw 700;

(14) The distance, in feet, from the property line or extended drug-free zone of any pre-existing private or public preschool, kindergarten elementary or secondary school located within 1320 feet of the registered premises;

(15) A list of all persons or entities having direct or indirect authority over the management or policies of the ATC, including the members of the not-for-profit corporation, and a list of all persons or entities contributing 5% or more of the initial capital to operate an ATC, including capital that is in the form of land or buildings; and

(16) Documentation of liability insurance coverage in the amount of 2 million dollars.

(d) The applicant shall mail or hand-deliver the documents in (c) above to:

Department of Health and Human Services  
Health Facilities Administration  
Therapeutic Cannabis Program  
129 Pleasant Street  
Concord, NH 03301

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(e) An application for an initial registration shall be complete when the department determines that all items required by (c) above have been received.

(f) If an application does not contain all of the items required by (c) above, the department shall notify the applicant in writing of the items required before the application can be processed.

(g) Any fees submitted to the department in the form of a check or money order and returned to the state for any reason, shall be processed in accordance with RSA 6:11-a.

(h) Registration fees shall not be transferable to any other application(s).

(i) The department shall deny a registration certificate request in accordance with RSA 126-X:8,V, after reviewing the information in (c)(12) above if it determines that a corporate officer, a board member, or executive employee has been convicted of a felony in this or any other state.

(j) Following an inspection, a notice of registration approval shall be issued if the department determines that an applicant requesting an initial registration is in full compliance with RSA 126-X and He-C 402.

(k) Upon receipt of the notice of registration approval in (j) above, the entity shall submit the final \$30,000 of the initial registration fee in accordance with He-C 402.04(b)(3) or the final \$15,000 of the initial registration fee in accordance with He-C 402.04(c)(3).

(l) A registration shall be effective on the date of issue and for a period of one year from the last day of the month in which it is issued.

Source. #10731, eff 11-25-14

He-C 402.06 Renewal Requirements for ATCs.

(a) The registration in He-C 402.05 shall expire the following year on the last day of the month in which the registration was issued unless a completed application for renewal is received prior to the expiration of the current registration.

(b) Each ATC shall complete and submit to the department an application form at least 120 days prior to the expiration of the current registration.

(c) The ATC shall submit with the renewal application:

(1) The materials required by He-C 402.05(c)(1);

(2) The renewal application fee of \$40,000 pursuant to He-C 402.04(d)(1), or \$20,000 pursuant to He-C 402.04(e)(1);

(3) If the ATC uses a private water supply, documentation that the water supply has been tested in accordance with and meets the requirements of RSA 485 and Env-Dw 700;

(4) The current registration number;

(5) A request for renewal of any existing non-permanent waiver previously granted by the department, in accordance with He-C 402.26, if applicable; and

(6) A copy of any existing, non-permanent variances and any new variances applied for or granted by the state fire marshal, in accordance with Saf-C 6005.03 and Saf-C 6005.04.

(d) Following an inspection as described in He-C 402.28, a notice of registration renewal shall be issued if the department determines that the ATC:

- (1) Submitted an application containing all the items required by (c) above as applicable, prior to the expiration of the current registration;
- (2) Has submitted a POC that has been accepted by the department and implemented by the ATC if deficiencies were cited at the last inspection or investigation; and
- (3) Is in compliance with RSA 126-X and He-C 402.

(e) The ATC shall submit the final \$40,000 of the renewal registration fee in accordance with He-C 402.04(d)(2) or the final \$20,000 of the renewal registration fee in accordance with He-C 402.04(e)(2) upon receipt of the notice of registration approval in (d) above.

Source. #10731, eff 11-25-14

He-C 402.07 Requirements for Organizational or Service Changes.

(a) The ATC shall provide the department with written notice at least 30 days prior to changes in mailing address or name.

(b) In the case of a change in physical location, at least 90 days prior to the move, an ATC shall submit the information required by He-C 402.05(c)(1), (6), (7), (11), (13), and (14) for the new location, and a new registration certificate shall be issued by the department in accordance with He-C 402.05(i)-(j). An ATC shall not open at the new location until final approval is provided by the department.

(c) In the case of a change in physical location, the current registration certificate shall expire and a new registration certificate shall be issued for the new location by the department which shall be valid until the expiration date of the prior registration certificate.

(d) When there is a change in the name, the ATC shall submit to the department a copy of the certificate of amendment from the New Hampshire secretary of state, if applicable.

(e) An inspection by the department shall be conducted in accordance with He-C 402.28 prior to operation for changes in the physical location of the ATC.

(f) A change of ownership of the ATC shall not be allowed.

(g) The ATC shall notify the department whenever there is a proposed change in corporate officers, board members, or executive employees.

(h) The results of a federal and NH state criminal records check shall be submitted to the department for any change in corporate officers, board members, or executive employees of an ATC.

(i) The ATC shall inform the department in writing with 30 days advance notice or as soon as practicable when there is a change in administrator and provide the department with a resume identifying the name and qualifications of the new administrator.

(j) A revised registration certificate shall be issued for changes in the ATC name, location, administrator, mailing address, or when a waiver is granted.

(k) The ATC shall notify the department at least 90 days in advance of any renovations or new construction that alter the floor plan of the registered premises.

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(l) Renovations or new construction at the ATC shall comply with all local and state building and fire codes based on the intended use of the registered premises.

(m) Local approvals shall be required for the fire department, building code enforcement, and zoning for all renovations and new construction at the ATC.

(n) An ATC shall provide notice of closure or cessation of services as follows:

(1) Written notice shall be provided to the department, and to all qualifying patients and designated caregivers registered with the ATC, no later than 60 days prior to the intended closure;

(2) Written notice provided to qualifying patients and designated caregivers shall be mailed in non-descript envelopes that do not identify the ATC in any way; and

(3) Notice of the closure shall be prominently posted in the ATC.

Source. #10731, eff 11-25-14

He-C 402.08 Prohibitions.

(a) An ATC may not dispense or otherwise transfer cannabis to a person other than a registered qualifying patient or his or her designated caregiver except that it may acquire cannabis from or sell cannabis to another New Hampshire ATC as allowed by RSA 126-X:8, XV(b)(3), and pursuant to He-C 402.

(b) Only an ATC technician may dispense cannabis, CIP, or paraphernalia to qualifying patients and designated caregivers.

(c) No ATC agent shall dispense cannabis samples to any person.

(d) No ATC agent shall sell anything other than cannabis, CIP, paraphernalia, and educational materials about cannabis.

(e) No ATC or ATC agent shall violate the confidentiality provisions of He-C 402.25.

(f) No cannabis or CIP shall be consumed on the registered premises or grounds of the ATC.

(g) An ATC shall not dispense cannabis or CIP unless labeled and packaged in accordance with He-C 402.19.

(h) No ATC technicians, employees, or agents shall make home deliveries of cannabis, CIP, or paraphernalia, or dispense such products anywhere except at the ATC.

(i) An ATC shall not adulterate cannabis or CIP, including with drugs or medication, alcohol, psychoactive additives, or illicit substances, except that alcohol may be used in the extraction process to create a cannabis concentrate and may be present as necessary in CIPs that are tinctures.

(j) The ATC shall not advertise their location or product in a manner prohibited by He-C 402.23.

(k) ATC agents shall not falsify any documentation required by law or provide false or misleading information to the department.

(l) No ATC agent or persons connected to an ATC shall:

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- (1) Accept or solicit any form of pecuniary remuneration from a provider, or offer any form of pecuniary remuneration to a provider except if the provider is employed by the ATC and the provider does not issue written certifications to patients;
- (2) Offer a discount or other thing of value to a patient who uses or agrees to use a particular provider;
- (3) Permit a provider to examine a patient in relation to issuing a written certification at a location where cannabis is sold or distributed; or
- (4) Provide an economic benefit to a provider who issues written certifications to patients.

(m) No ATC shall be located in a zoned residential district or within 1000 feet of the drug-free zone of a pre-existing public or private preschool, kindergarten, elementary, or secondary school.

Source. #10731, eff 11-25-14

### He-C 402.09 Policies and Procedures.

- (a) Each ATC shall comply with all relevant state and local laws, rules, codes, and ordinances as applicable.
- (b) Each ATC shall have and follow a set of detailed written operating procedures and policies, to include, but not limited to, the following:
  - (1) Security measures in compliance with RSA 126-X, He-C 402.17(a) and He-C 402.24;
  - (2) Employee security policies, including personal safety and crime prevention techniques;
  - (3) A description of the ATC's hours of operation and after-hours contact information, that is updated as changes occur and shall be provided to the department and made available to law enforcement officials upon request;
  - (4) Storage of cannabis in compliance with He-C 402.17;
  - (5) Description of the various strains of cannabis to be cultivated and dispensed, and the types of CIP to be dispensed;
  - (6) Procedures to ensure accurate recordkeeping, including inventory protocols;
  - (7) Plans for quality control, including procedures to avoid contaminants in compliance with He-C 402.14 through He-C 402.18;
  - (8) Personnel policies which govern all ATC agents, including volunteers, and which comply with He-C 402.31;
  - (9) Personnel records and a staffing plan that will ensure staffing that covers business hours and meets operational requirements;
  - (10) Emergency procedures, including a disaster plan, with procedures to be followed in case of fire or other emergencies, and a plan for continuing operations in the case of such an event;
  - (11) A mandatory policy that prohibits the consumption of alcohol, tobacco, and illicit drugs in the workplace;

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- (12) A plan describing how confidential information will be maintained and the method by which release of information from a qualifying patient's record shall occur in accordance with He-C 402.25;
- (13) A description of the ATC's patient education activities in accordance with RSA 126-X and He-C 402.21;
- (14) The procedures by which the ATC determines the price it charges for cannabis, CIP, and paraphernalia, and a record of the prices charged, which records shall be maintained as required by He-C 402.32(a);
- (15) Written policies and procedures for the production and distribution of cannabis and CIP, which shall include but not be limited to:
- a. Methods for identifying, recording, and reporting diversion, theft, or loss, and for correcting all errors and inaccuracies in inventories;
  - b. A procedure for handling voluntary and mandatory recalls of cannabis. Such procedure shall be adequate to deal with recalls due to any action initiated at the request or order of the department, and any voluntary action by an ATC to remove defective or potentially defective cannabis from the market, as well as any action undertaken to promote public health and safety;
  - c. A procedure for ensuring that any outdated, damaged, deteriorated, mislabeled, or contaminated cannabis is segregated from other cannabis and destroyed pursuant to He-C 402.22. This procedure shall provide for written documentation of the disposition of the cannabis; and
  - d. Policies and procedures for the transfer, acquisition, or sale of cannabis between ATCs;
- (16) A policy for the discipline of ATC agents who engage in unsafe practices with regard to the operation of the ATC, including the immediate dismissal of any agent who diverts cannabis; and
- (17) The applicant's plan for making cannabis, CIP, and paraphernalia available on an affordable basis to qualifying patients with verified financial hardship:
- a. Which shall include qualifying patients enrolled in Medicaid or receiving Supplemental Security Income or Social Security Disability Insurance;
  - b. Which identifies the extent to which the plan includes other qualifying patients with verified financial hardship, and if so, the method by which financial hardship is determined; and
  - c. Which shall include the alternate price list.

Source. #10731, eff 11-25-14

He-C 402.10 Operational Requirements.

- (a) An ATC shall be required to be a not-for-profit corporation registered under RSA 292 and in good standing with the NH secretary of state.
- (b) An ATC shall operate on a not-for-profit basis for the benefit of qualifying patients.

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(c) An ATC shall ensure that its property, real and personal, revenue, and expenses are managed and controlled in furtherance of its not-for-profit purpose and that the board and all persons delegated by the board to manage and control its property, real and personal, revenue, and expenses shall have a fiduciary duty to benefit its patients and further its not-for-profit purpose.

(d) All transactions, financial or otherwise, shall be consistent with the not-for-profit provisions of RSA 126-X and for the benefit of qualifying patients.

(e) An ATC shall have bylaws that, at a minimum, include:

(1) Mission or purpose;

(2) Criteria for and composition of the board of directors, terms, and meetings;

(3) Procedures for the selection and replacement of corporate officers, their governance and duties;

(4) Provisions relative to dissolution of the not-for profit corporation's assets, which shall ensure that they are treated in accord with its not-for-profit purpose and for the benefit of qualifying patients;

(5) A conflict of interest policy governing the board and corporate officers; and

(6) A financial policy governing financial transactions, that ensures they are in the corporation's best interest and are consistent with the not-for-profit purpose of the corporation and RSA 7:19-a.

(f) The ATC shall be open for business for a sufficient number of hours to meet the needs of qualifying patients and designated caregivers, at a minimum of 20 hours per week. Such hours shall be posted at the ATC and published on the ATC's website, if the ATC maintains a website.

(g) The ATC shall ensure the presence of an ATC technician whenever a qualifying patient or designated caregiver is in the dispensing area.

(h) At no time shall there be fewer than 2 ATC agents at each location of the registered premises during all hours of operation.

(i) An ATC shall have an identification system in place for all ATC agents that meets the requirements of He-C 402.31.

(j) An ATC shall limit access to the registered premises to only those persons authorized to have access in accordance with He-C 402.24.

(k) The ATC shall post the current registration certificate issued in accordance with RSA 126-X, the most recent statement of findings as specified in RSA 126-X, the price list, and hours of operation in a public and conspicuous area of the dispensing area.

(l) The ATC shall immediately report the diversion, loss, or theft of any cannabis to the appropriate law enforcement authority and to the department.

(m) Any disciplinary action taken against an agent pursuant to He-C 402.09(b)(16) shall be reported to the department.

(n) An ATC shall submit an incident report to the department no later than the next business day after it discovers a reportable incident.

(o) Incident reports shall include the following:

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- (1) The ATC name and contact information;
  - (2) A description of the incident, including its cause, and identification of injuries, if applicable;
  - (3) The name(s) of agents or other persons involved in the incident, if applicable;
  - (4) The date and time of the incident;
  - (5) The action taken in direct response to the incident;
  - (6) The identity of any law enforcement or emergency personnel contacted or allowed into the registered premises as a result of the incident; and
  - (7) The signature of the person reporting the incident.
- (p) The ATC shall maintain a current database of qualifying patients and designated caregivers who have registered with the ATC, which shall be updated to include:
- (1) The list transmitted by the department on a monthly and as-needed basis to the ATC, which includes a list of the names and registry identification numbers of qualifying patients and designated caregivers who have registered with that ATC or who are no longer registered with that ATC; and
  - (2) Any other updates provided by the department.
- (q) The ATC shall submit an annual report to the department containing the following information:
- (1) The strains of cannabis dispensed, the forms of prepared cannabis dispensed, and the effectiveness, as reported by the qualifying patient or designated caregiver, of cannabis used by patient registration number;
  - (2) Satisfaction of qualifying patients with the therapeutic cannabis program;
  - (3) Any product recalls and cannabis batches destroyed, including the date, amount, and reasons therefor;
  - (4) A description of the ATC efforts to educate qualifying patients and designated caregivers;
  - (5) The annual financial report of the ATC including the revenue received for the sale of cannabis by strain of cannabis and type of CIP sold and the expenditures, liabilities, and monetary reserves available;
  - (6) A report of the total number of qualifying patients and designated caregivers served;
  - (7) A description of the ATC's program for reduced cost for qualifying patients with documented financial hardship to include the number of qualifying patients eligible for the reduction, the amount of the reductions, and the total amount of the discounts provided;
  - (8) Information about security issues, including an aggregate report of all reportable incidents;
  - (9) Information about best practices, including any recommendations for program improvement; and

(10) Information about any complaints received by the ATC from qualifying patients, designated caregivers, or the general public.

Source. #10731, eff 11-25-14

He-C 402.11 Acquisition and Transportation of Cannabis.

- (a) An ATC may acquire cannabis from, or sell cannabis to, another New Hampshire ATC.
- (b) Transportation of cannabis shall be permitted as follows:
  - (1) Between ATCs;
  - (2) From an ATC to a laboratory for testing;
  - (3) From an ATC to a waste disposal site; and
  - (4) To and from different locations of the registered ATC.
- (c) Transportation of cannabis shall be conducted by at least 2 agents, one of whom shall be an ATC technician.
- (d) An ATC shall create a transport manifest for each transportation event, to include:
  - (1) Departure date and time of departure;
  - (2) Name, location address, and registration certificate number of the originating ATC;
  - (3) Name, location address, and registration certificate number, as applicable, of the destination entity;
  - (4) Product type and quantity, in weight, of all product to be transported;
  - (5) Estimated time of arrival, which shall be the on same date as the product's departure; and
  - (6) Names of the ATC agents transporting the product.
- (e) The originating ATC shall transmit a copy of the transport manifest to the destination entity prior to transport.
- (f) The transport manifest shall be signed and dated by an ATC authorized employee, other than the driver, upon departure and by an authorized employee of the receiving entity upon arrival.
- (g) The destination entity shall verify and document the type and quantity of the transported product against the transport manifest and return a copy of the signed and verified transport manifest to the originating ATC.
- (h) All cannabis transported shall be tracked as inventory in accordance with He-C 402.13.
- (i) All cannabis transported shall be packaged in sealed containers.
- (j) All cannabis shall be transported in such a manner so as not to be visible or recognizable from outside the vehicle.
- (k) The vehicle shall not bear any markings to indicate that the vehicle is transporting cannabis nor shall it bear the name of the ATC.

- (l) Vehicles shall travel directly to the receiving entity.
- (m) When circumstances require the vehicle to stop, a detailed log shall be created describing:
  - (1) The reason for the stop;
  - (2) The duration of the stop;
  - (3) The location of the stop; and
  - (4) The activities of those persons exiting the vehicle.
- (n) In no case shall a vehicle transporting cannabis be left unattended by at least one ATC agent at any time.
- (o) ATC agents transporting cannabis shall have communication access with personnel at the originating entity at all times that the vehicle contains cannabis.
- (p) All records required by this section shall be maintained for a minimum of 4 years.

Source. #10731, eff 11-25-14

He-C 402.12 Permitted Quantities of Cannabis at an ATC.

- (a) An ATC shall not possess or cultivate cannabis in excess of the following quantities:
  - (1) Three mature cannabis plants, 12 seedlings, and 6 ounces of usable cannabis for each qualifying patient who has designated the ATC to provide him or her with cannabis for therapeutic use; and
  - (2) Up to an additional 80 mature cannabis plants, 160 seedlings, and 80 ounces of usable cannabis, including for start-up operations, to assist with a failed batch of cannabis, to allow sufficient quantity of cannabis for new qualifying patients, or to fill requests for the sale of cannabis to other ATCs.
- (b) The quantities in (a) above shall be inclusive of all cannabis or CIP possessed or being cultivated at all registered premises under the control of the ATC.

Source. #10731, eff 11-25-14

He-C 402.13 Inventory.

- (a) The ATC shall establish ongoing inventory controls and procedures for the conduct of inventory reviews and comprehensive inventories of cannabis, which shall enable the ATC to detect any diversion, theft, or loss in a timely manner.
- (b) An ATC shall limit its inventory of cannabis plants and usable cannabis to reflect the projected needs of registered qualifying patients as required by He-C 402.12.
- (c) An ATC shall conduct an initial comprehensive inventory on the date it first dispenses cannabis and maintain a real-time record of its inventory of cannabis plants, including mature plants, seedlings, and clones, usable cannabis ready for dispensing, and CIP, to include at a minimum:
  - (1) The date and time of the inventory;
  - (2) The summary of inventory findings; and

(3) The names of the employee(s) conducting the inventory.

(d) An ATC shall also maintain a real-time record of its inventory of all damaged, defective, expired, or contaminated cannabis and CIP prepared for waste disposal, but this inventory shall not be included in the cannabis inventory limit established in He-C 402.12.

(e) An ATC shall be able to reconcile all on-premises and in-transit cannabis each day at the close of business.

(f) An ATC shall establish inventory controls and procedures for the conduct of inventory reviews, which shall include a monthly comprehensive inventory.

(g) An ATC shall utilize an electronic inventory tracking system.

(h) All scales used to weigh usable cannabis for purposes of assessing inventory shall be certified annually by a licensed NH service technician in accordance with RSA 438 and Agr 1400.

(i) If an ATC uses an extraction method to produce cannabis concentrates for use in the production of CIP, the amount of cannabis used to create the concentrate, and not the amount of the concentrate itself, shall be the amount that is included in the inventory limit established in He-C 402.12.

Source. #10731, eff 11-25-14

He-C 402.14 Cultivation and General Processing.

(a) Only an ATC shall be permitted to cultivate cannabis.

(b) All phases of the cultivation of cannabis shall take place in designated, locked, indoor, limited access areas that are monitored by a surveillance camera system in accordance with He-C 402.24.

(c) Safe growing methods that are consistent with U.S. Department of Agriculture organic requirements at 7 CFR Part 205 shall be used.

(d) The cultivation process shall be designed to limit contamination, including, but not limited to, mold, fungus, bacterial diseases, rot, pests, non-organic pesticides, mildew, and any other harmful contaminant.

(e) A pesticide product may be applied to cannabis if:

(1) It is approved for organic cultivation in accordance with the requirements of the national organic program, 7 CFR Part 205; and

(2) The active ingredients contained in the pesticide product are exempt from federal registration under Section 25(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

(f) Only persons who are licensed in accordance with RSA 430:33 shall be permitted to apply those pesticides in (e) above to cannabis.

(g) No chemical listed in He-C 402.34 shall be used in any way in the cultivation of cannabis.

(h) An ATC shall process only the leaves and flowers of the female cannabis plant, which shall be:

(1) Well cured and reasonably free of seeds and stems;

(2) Free of dirt, sand, debris, and other foreign matter;

- (3) Free of contamination by mold, mildew, rot, other fungus, bacterial diseases, pests, pest wastes, and any other harmful contaminant; and
- (4) Prepared and handled on food-grade stainless steel tables.

Source. #10731, eff 11-25-14

He-C 402.15 Testing.

(a) Each batch of cannabis harvested and each batch of cannabis concentrate produced shall be tested in accordance with this section.

(b) Each batch of cannabis harvested and each batch of cannabis concentrate produced shall be tested for its cannabinoid profile, to include at a minimum, THC, THCV, CBC, CBD, CBDV, CBN, and CBG, by an independent laboratory located in New Hampshire that is:

- (1) Accredited to International Organization for Standardization (ISO) 17025 by a third party accrediting body such as American Association for Laboratory Accreditation (A2LA) or ANSI-ASQ National accreditation Board (ACLASS); or
- (2) Certified under the Clinical Laboratory Improvement Act (CLIA).

(c) An ATC shall be required to have CIP tested for its cannabinoid profile when the department determines that there is reason to believe that the cannabinoid profile on the label of the CIP does not accurately reflect the actual CIP cannabinoid profile. Copies of the testing results shall be sent to the department from the laboratory.

(d) Where testing under (c) above indicates that the cannabinoid profile on the label does not accurately reflect its contents, the department shall be authorized to place conditions on the sale of such product, such as requiring disclaimers or notifications, or to seize, order recalls, or order destruction of such cannabis or CIP.

(e) Each batch of solvent-based cannabis concentrate shall be tested for residual solvents, which, except for ethanol and isopropanol, shall not exceed 500 parts per million per gram.

(f) The ATC shall maintain the results of all testing for no less than 4 years.

(g) The department shall require additional testing, copies of results for which shall be sent to the department, order recalls, or order destruction of cannabis or CIP:

- (1) In the event it has evidence of tampering or product contamination;
- (2) In order to determine the presence or absence of contaminants; or
- (3) In order to verify the accuracy of labeling.

(h) Prior to transferring a cannabis sample to a laboratory for testing, the ATC shall require the testing laboratory to supply documentation of the test sample size requirements, for all analytes tested, to determine a minimum yet adequate amount of cannabis required by the laboratory to perform the testing required by (b), (c), or (e) above.

(i) Laboratories and laboratory employees shall be permitted to possess cannabis on the premises of the laboratory for the purpose of testing in accordance with this section.

(j) ATCs shall be responsible for all costs associated with the testing of cannabis samples.

(k) No ATC agent shall have any financial or other interest in a laboratory providing testing services in accordance with this section.

(l) No individual employee of a laboratory providing testing services for ATCs may receive direct financial compensation from any ATC.

(m) All storage of cannabis at a laboratory providing cannabis-testing services shall comply with He-C 402.17.

Source. #10731, eff 11-25-14

He-C 402.16 Production of Cannabis-Infused Products.

(a) Except for registered qualifying patients or designated caregivers, only a registered ATC shall be permitted to produce CIP.

(b) An ATC, which chooses to produce CIP, shall do so in accordance with this section.

(c) CIP shall not be considered food and CIP production facilities shall not be considered food service establishments for the purpose of food service licensure under RSA 143.

(d) Production of CIP shall take place in a designated and separate limited access area of the registered premises.

(e) All edible CIP shall be prepared, handled, and stored in compliance with the sanitation requirements in He-P 2309.03, Sanitary Production and Distribution of Food, Food Processing Plant Standards.

(f) All ingredients of edible CIP shall be of food-grade quality.

(g) An ATC shall provide adequate refrigeration for perishable CIP that will be consumed.

(h) An ATC shall ensure that its production processes are designed so that the cannabinoid content of any edible CIP is homogenous.

(i) Edible CIP shall be individually packaged at the point of preparation except that smaller items may be packaged into larger quantities in a single wrapped package provided that the packaging meets the requirements of He-C 402.19(b)(1).

(j) An ATC that chooses to produce cannabis concentrate shall be subject to the following:

(1) The following shall be permitted categories of cannabis concentrate:

- a. Water-based cannabis concentrate;
- b. Food-based cannabis concentrate; and
- c. Solvent-based cannabis concentrate, using only the following solvents:
  1. Acetone;
  2. Butane;
  3. Carbon dioxide (CO<sub>2</sub>);
  4. Ethanol;

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5. Heptane;
6. Isopropanol; and
7. Propane;

(2) The use of any solvent not listed in (1)c. above shall be expressly prohibited;

(3) An ATC that engages in the production of cannabis concentrate, regardless of the method of extraction or category of cannabis concentrate being produced, shall:

- a. Ensure that the space in which any cannabis concentrate is to be produced is a fully enclosed room and clearly designated on the current diagram of the registered premises;
- b. Ensure that the standard operating procedure for each method used to produce a cannabis concentrate at the ATC includes step-by-step instructions on how to safely and properly conduct all aspects of the process;
- c. Establish written quality control procedures designed to maximize safety and minimize potential product contamination;
- d. Establish written emergency procedures to be followed in case of a fire, chemical spill, or other emergency; and
- e. Provide, document, and verify comprehensive training for all ATC agents involved in the cannabis concentrate production process to include:
  1. All standard operating procedures for each method of cannabis concentrate production used at that ATC;
  2. The ATC's quality control procedures;
  3. The ATC's emergency procedures;
  4. The proper use of any necessary safety or sanitation equipment;
  5. The hazards presented by all solvents used within the ATC as described in the material safety data sheet for each solvent;
  6. Clear instructions on the safe use of all equipment involved in each process and in accordance with manufacturer's instructions, where applicable; and
  7. Any additional periodic cleaning required to comply with all applicable sanitation and safety rules;

(4) An ATC that engages in the production of water-based or food-based cannabis concentrate shall:

- a. Meet the requirements of (e) above;
- b. Ensure that all equipment, counters, and surfaces used in the production of cannabis concentrate are thoroughly cleaned after the completion of each batch of cannabis concentrate;
- c. Ensure that any room in which dry ice is stored or used in processing cannabis concentrate is well ventilated to prevent the accumulation of dangerous levels of CO<sub>2</sub>;

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- d. Ensure that the necessary safety or sanitation equipment, including personal protective equipment, is provided and properly used by all agents involved in the process;
  - e. Ensure that, if used, only food-grade propylene glycol or glycerin is used in the production of food-based cannabis concentrate; and
  - f. Comply with (5) below related to the production of solvent-based cannabis concentrate if a pressurized system is used in the production process; and
- (5) An ATC that engages in the production of solvent-based cannabis concentrate shall:
- a. Comply with all state fire and building codes, including but not limited to the national electric code, all local ordinances, and with He-C 402.33(j)-(l) for the cannabis concentrate production area(s);
  - b. Obtain a material safety data sheet for each solvent used or stored in the cannabis concentrate production area and keep them in a book that is readily accessible to all agents working in the cannabis concentrate production area and is readily accessible outside the cannabis concentrate production area as well;
  - c. Determine and post the maximum amount of all solvents and/or flammable chemicals that are permitted both in the storage and work areas of the cannabis concentrate production area in accordance with Saf-C 6000;
  - d. Ensure that all solvent-based extractions using flammable solvents are performed under a static free fume hood, which shall be certified and inspected in accordance with the manufacturer's instructions, which shall be at least annually, to meet manufacturer's stated operational requirements;
  - e. Install throughout the registered premises an approved, supervised, automatic sprinkler system;
  - f. Install throughout the registered premises 110 Volt carbon monoxide detectors and a fire alarm system:
    - 1. Where initiation of the fire alarm system shall be by manual means in accordance with section 9.6.2 of NFPA 101 and by means of any required sprinkler system waterflow alarms, detection devices, or detection systems; and
    - 2. Which automatically notifies occupants in accordance with section 9.6.3 of NFPA 101;
  - g. Have portable fire extinguishers, appropriate for the area and use, in accordance with section 9.7.4.1 of NFPA 101;
  - h. Ensure that all equipment, counters, and surfaces used in the production process are food-grade and shall not react adversely with any of the solvents to be used in the ATC;
  - i. Ensure that the room in which the cannabis concentrate is produced has a properly functioning emergency eye-wash station;
  - j. Ensure that all solvents used in cannabis concentrate production are food grade or at least 99% pure;

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k. Ensure that every batch of cannabis concentrate is tested for residual solvents which, except for ethanol and isopropanol, shall not exceed 500 parts per million per gram;

l. For ethanol and isopropanol, if residual solvents exceed 500 parts per million per gram, add a warning to the product label stating the amount of residual solvent, in parts per million per gram, contained in the product; and

m. Not use denatured alcohol in any part of the production process.

(k) A complete list of solvents and chemicals used in the production of any cannabis concentrate shall be made available to the department or a qualifying patient or designated caregiver upon request.

(l) No chemical listed in He-C 402.34 shall be used in any way in the production of CIP.

Source. #10731, eff 11-25-14

He-C 402.17 Storage.

(a) All cannabis and CIP in the process of cultivation, processing, transport, and testing, and all saleable product, shall be kept and stored in such a manner as to prevent diversion, theft, or loss, including that:

(1) Such cannabis shall be accessible only to the number of specifically authorized ATC agents essential for efficient operation;

(2) Such cannabis shall be returned to a secure location immediately after completion of the process or at the end of the scheduled business day; and

(3) If a process is not completed at the end of a business day, the tanks, vessels, bins, or bulk containers containing cannabis or CIP shall be locked inside a secure area.

(b) All cannabis and CIP in the process of cultivation, processing, transport, and testing, and all saleable product, shall be kept and stored:

(1) Under conditions that will protect it against physical, chemical, and microbial contamination as well as against deterioration of the product and its container;

(2) In areas that shall be maintained in a clean, orderly, and well-ventilated condition; and

(3) In storage areas that shall be free from infestation by insects, rodents, birds, and pests of any kind.

(c) ATCs shall maintain a separate secure storage area for cannabis or CIP that is outdated, damaged, deteriorated, mislabeled, or contaminated, or whose containers or packaging have been opened or breached, until such products are destroyed.

Source. #10731, eff 11-25-14

He-C 402.18 General Sanitation Requirements. The ATC shall take all reasonable measures and precautions to ensure the following:

(a) That any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an infectious illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with cannabis and CIP shall be excluded from any operations which might be expected to result in contamination until the condition is corrected;

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- (b) That hand-washing facilities shall be:
  - (1) Furnished with running water at a suitable temperature;
  - (2) Located in the registered premises and also where good sanitary practices require employees to wash or sanitize their hands, including in CIP preparation areas; and
  - (3) Equipped with effective hand cleaning and sanitizing preparations and sanitary towel service or suitable drying devices;
- (c) That all persons working in direct contact with cannabis and CIP shall conform to hygienic practices while on duty, including, but not limited to:
  - (1) Maintaining personal cleanliness; and
  - (2) Washing hands thoroughly in a hand-washing area(s) before starting work and at any other time when the hands might have become soiled or contaminated;
- (d) That litter and waste are removed and the operating systems for waste disposal are maintained so that they do not constitute a source of contamination in areas where cannabis and CIP are exposed;
- (e) That floors, walls, and ceilings are constructed in such a manner that they may be cleaned and that each is kept clean and in good repair;
- (f) That there is lighting in all areas where cannabis and CIPs are processed, stored, or sold, and where equipment or utensils are cleaned, sufficient to ensure that proper sanitation methods can be applied;
- (g) That the ATC provides screening or other protection against the entry of pests, including that rubbish is disposed of so as to minimize the development of odor and the potential for the waste becoming an attractant, harborage, or breeding place for pests;
- (h) That any buildings, fixtures, and other facilities are maintained in a sanitary condition;
- (i) That toxic cleaning compounds, sanitizing agents, and other potentially harmful chemicals shall be identified, held, and stored in a manner that protects against contamination of cannabis and CIP and in a manner that is in accordance with any applicable local, state, or federal law, rule, regulation, or ordinance;
- (j) That all contact surfaces, utensils, and equipment used in the production of cannabis and CIP shall be maintained in a clean and sanitary condition, including that such surfaces, utensils, and equipment shall be cleaned and sanitized as frequently as necessary to protect against contamination, using a sanitizing agent registered by the U.S. Environmental Protection Agency (EPA), in accordance with labeled instructions;
- (k) That the ATC's water supply shall be sufficient for necessary operations;
- (l) That plumbing shall be of adequate size and design, and adequately installed and maintained, to carry sufficient quantities of water to required locations throughout the ATC and remove waste without cross-contamination;
- (m) That employees have readily accessible toilet facilities that are maintained in a sanitary condition and good repair; and
- (n) That cannabis and CIP that can support the rapid growth of undesirable microorganisms are held in a manner that prevents the growth of these microorganisms.

Source. #10731, eff 11-25-14

He-C 402.19 Packaging and Labeling Requirements.

(a) The dispensing of cannabis or CIP shall be prohibited unless the cannabis is placed within a container and labeled by an ATC technician in accordance with this section.

(b) All cannabis or CIP to be dispensed shall be packaged as follows:

(1) Cannabis or CIP shall be packaged in plain, opaque, tamper-proof, and child-resistant containers, except that the container shall not be required to be child-resistant if the qualifying patient or designated caregiver has affirmed in writing that he or she would have difficulty opening a child-resistant container and that there are no young children living in his or her household;

(2) Cannabis or CIP shall be packaged in a manner that is not attractive to children;

(3) Depictions of the product, cartoons, or images other than the ATC's logo shall not be permitted on the packaging; and

(4) The packaging of edible CIP shall not bear a reasonable resemblance to any commercially available product.

(c) The ATC shall not use any product name that:

(1) Is identical to, or confusingly similar to, the name of an existing non-cannabis product;

(2) Is identical to, or confusingly similar to, the name of an unlawful product or substance;

(3) Is obscene or indecent, such as product names that are sexually suggestive, include curse words, are ethnic in nature, or are otherwise offensive to the sensibilities of a reasonable person;

(4) Might encourage the use of cannabis or CIP for recreational purposes;

(6) Might encourage the use of cannabis or CIP for a condition other than a qualifying medical condition;

(7) Is customarily associated with persons under the age of 18; or

(8) Is related to the benefits, safety, or efficacy of the cannabis product unless supported by substantial evidence or substantial clinical data.

(d) All cannabis or CIP dispensed shall meet the following labeling requirements:

(1) The ATC shall place a legible, firmly affixed label on all cannabis or CIP dispensed, which contains, at a minimum, the following information:

a. The qualifying patient's registry identification number;

b. If the cannabis or CIP is being dispensed to a designated caregiver on behalf of a qualifying patient, the designated caregiver's registry identification number;

c. The qualifying patient's address;

d. The name, registration number, address, and phone number of the ATC that dispensed the cannabis or CIP;

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- e. The quantity, in ounces, of usable cannabis dispensed, which, for CIP that is produced by using a cannabis concentrate, shall be the amount of cannabis used to create the amount of concentrate included in the CIP;
  - f. The date and time that the ATC dispensed the cannabis or CIP;
  - g. The unique batch number of the cannabis or CIP dispensed;
  - h. The strain(s) of cannabis dispensed or otherwise used in the production of the CIP;
  - i. The cannabinoid profile of the cannabis or CIP dispensed;
  - j. This statement, including capitalization: “This product has not been analyzed or approved by the FDA. It is not certified to be free of contaminants. There is limited information on the side effects of using this product, and there may be associated health risks. Do not drive or operate heavy machinery when under the influence of this product. KEEP THIS PRODUCT AWAY FROM CHILDREN.”; and
  - k. This statement: “This cannabis or CIP is for therapeutic use only. Diversion of this product is a class B felony and shall result in the revocation of one’s registry identification card.”;
- (2) In addition to (1) above, the ATC shall place a legible, firmly affixed label on all CIP including the following information:
- a. The type of the product;
  - b. A list of ingredients;
  - c. The net weight of the product;
  - d. A warning if nuts or other known allergens are contained in the product;
  - e. The date of product creation and the recommended “use by” or expiration date;
  - f. A statement that the CIP, if perishable, should be refrigerated;
  - g. Directions for use of the product if relevant; and
  - h. The estimated time the CIP may take to go into effect;
- (3) In addition to (1) and (2) above, for any CIP that contains an ethanol- or isopropanol-based cannabis concentrate with a residual solvent level that exceeds 500 parts per million per gram, the ATC shall add a warning to the label stating the amount of residual solvent, in parts per million per gram, contained in the product;
- (4) Labeling text shall not include any false or misleading statements regarding health or physical benefits to the consumer; and
- (5) Multiple labels on a container shall be allowed, however, labels shall be unobstructed and conspicuous in that no information required by these rules shall be obstructed.

Source. #10731, eff 11-25-14

He-C 402.20 Dispensing Cannabis or CIP.

- (a) The dispensing of cannabis or CIP shall meet the requirements of this section.
- (b) Only ATC technicians shall be permitted to dispense cannabis.
- (c) Cannabis or CIP shall be dispensed only to those qualifying patients and designated caregivers who have been positively identified, as follows:
  - (1) A qualifying patient or designated caregiver shall produce his or her valid and active registry identification card designating the ATC and valid proof of identification;
  - (2) Valid proof of identification shall be limited to one of the following, which contains the person's name, photograph, and date of birth:
    - a. A driver's license;
    - b. A government-issued identification card;
    - c. A military identification card; or
    - d. A passport; and
  - (3) The ATC technician shall verify that the qualifying patient or designated caregiver's registry identification number is on the list of registry identification numbers provided to the ATC and updated by the department in accordance with He-C 401.10(p).
- (d) The ATC shall not dispense cannabis or CIP to a qualifying patient who is a minor. Instead, cannabis or CIP intended for a minor qualifying patient shall only be dispensed to the patient's designated caregiver.
- (e) The ATC shall limit the amount of cannabis or CIP dispensed to a qualifying patient, or through his or her designated caregiver, as follows:
  - (1) A qualifying patient shall not obtain more than 2 ounces of usable cannabis during any 10-day period, including if a qualifying patient has newly registered with a different ATC;
  - (2) The ATC technician shall consult the ATC's records to verify that the dispensing of the cannabis would not cause the qualifying patient to receive more cannabis than is permitted in (1) above; and
  - (3) The ATC technician shall document each dispensing of cannabis or CIP by maintaining a transaction record that includes, at a minimum:
    - a. The date, time, and amount of cannabis or CIP dispensed and amount paid;
    - b. The type, strain, and batch number of cannabis dispensed;
    - c. The registry identification number of the qualifying patient and the designated caregiver, as applicable; and
    - d. That each transaction shall be verified and initialed by the ATC technician.
- (f) All scales used to weigh usable cannabis for dispensing purposes shall be certified annually by a licensed NH service technician in accordance with RSA 438 and Agr 1400.

(g) When dispensing cannabis or CIP, an ATC shall follow any instructions or recommendations provided by the qualifying patient's provider.

(h) With each dispensing of cannabis or CIP, the ATC shall make available to the qualifying patient or designated caregiver educational materials as described in He-C 402.21.

(i) An ATC shall not dispense cannabis or CIP to a visiting qualifying patient.

(j) An ATC technician who is also a designated caregiver or qualifying patient shall not dispense cannabis to him or herself.

Source. #10731, eff 11-25-14

He-C 402.21 Educational Requirements.

(a) An ATC shall maintain and make available educational materials about cannabis and CIP and their use to qualifying patients, their designated caregivers, and their certifying providers.

(b) Each ATC shall have an adequate supply of current educational materials available for distribution to registered qualifying patients and their designated caregivers, including any materials supplied by the department to be made available.

(c) Educational materials shall be available for inspection by the department upon request.

(d) The educational materials shall include, at a minimum, information about the following:

(1) Strains of cannabis, routes of administration, and their different effects in order to assist in the selection of prepared cannabis;

(2) How to achieve proper dosage for different routes of administration with an emphasis on using the smallest amount of cannabis possible to achieve the desired effect, and the impact of potency;

(3) Substance use disorder information on tolerance, dependence, and withdrawal;

(4) Substance misuse signs and symptoms;

(5) Referral information to substance abuse treatment programs;

(6) Possible side effects from the use of cannabis for therapeutic purposes;

(7) The extent to which the ATC's cannabis and CIP meet or do not meet organic certification standards, other information concerning organic growing methods used by the ATC, and information concerning other methods used for cultivation and processing;

(8) The warning information required to be included on the label as per He-C 402.19(d)(1)j. and k. and (d)(2)h.; and

(9) The materials in (1)-(8) above shall be available in languages accessible to all patients served by the ATC including for the visually and hearing impaired.

(e) ATCs shall offer tracking sheets to qualifying patients and their designated caregivers to keep track of the strains of cannabis used, the form of prepared cannabis used, and the effects of cannabis and CIP used.

(f) ATCs shall keep a record for each qualifying patient, which includes:

- (1) The strains of cannabis dispensed, including potency; and
- (2) The form of prepared cannabis or CIP dispensed.

(g) In addition to the information in (f) above, the ATC shall collect data from each qualifying patient who is willing to provide it regarding:

- (1) Strains used and routes of administration as they relate to qualifying conditions and symptoms;
- (2) Any side effects experienced;
- (3) Therapeutic effectiveness; and
- (4) Overall satisfaction with the therapeutic cannabis program.

(h) The data collected under (f) and (g) above shall be maintained using the qualifying patient's registry identification number and shall be made available to the department upon request.

(i) Upon request from the qualifying patient, and after the qualifying patient provides a signed release to the ATC, the ATC may share information collected under (f) and (g) with the qualifying patient's certifying provider.

Source. #10731, eff 11-25-14

He-C 402.22 Cannabis Waste Disposal Requirements.

(a) Cannabis and CIP waste shall be stored, secured, and managed in accordance with all applicable state and local statutes, regulations, ordinances, or other requirements.

(b) Disposal of hazardous and chemical waste shall be conducted in a manner consistent with federal, state, and local laws.

(c) Cannabis and CIP waste shall be made unusable and unrecognizable prior to leaving the registered premises.

(d) Cannabis and CIP waste shall be rendered unusable and unrecognizable and disposed of as follows:

(1) Cannabis and CIP waste shall be ground and incorporated with non-consumable solid wastes listed below such that the resulting mixture is at least 50 percent non-cannabis waste:

- a. Paper waste;
- b. Plastic waste;
- c. Cardboard waste;
- d. Food waste;
- e. Grease or other compostable oil waste;
- f. Bokashi, or other compost activators;
- g. Other wastes that will render the cannabis and CIP waste unusable and unrecognizable as cannabis; or

h. Soil; and

(2) After the cannabis and CIP waste is made unusable and unrecognizable, then the rendered waste shall be:

- a. Disposed of at a legal state-approved solid waste site and disposal facility;
- b. Deposited at a state-approved compost facility; or
- c. Composted on-site at a facility owned by the generator of the waste.

(e) An ATC shall not dispose of cannabis and CIP waste in an unsecured waste receptacle not in possession and control of the ATC.

(f) An ATC shall accept at no charge unused, excess, or contaminated cannabis from a registered qualifying patient or designated caregiver, and shall destroy it as provided in (d) above, and shall maintain a written record of such disposal, including the name of the supplying registered qualifying patient or designated caregiver as applicable, as well as the date, the quantity, and type of cannabis returned.

(g) When cannabis or CIP waste is disposed of, the ATC shall create and maintain a written record of the date, the time, the type and quantity, the manner of disposal, and the names and signatures of the persons present during the disposal. ATCs shall keep disposal records for at least 4 years.

(h) Cannabis and CIP waste disposal shall be witnessed by no less than 2 ATC employees, one of whom shall be an ATC technician.

(i) Cannabis and CIP waste shall be included in the overall inventory of cannabis possessed by the ATC, but shall not be included in the maximum allowed cannabis inventory limits.

Source. #10731, eff 11-25-14

He-C 402.23 Advertising Restrictions.

(a) An ATC shall be prohibited from advertising its products or services except as allowed in this section.

(b) The following shall not be considered advertising and shall be allowed:

(1) A business name and logo to be used in labeling, signage, and other materials, however, the use of medical symbols, images of cannabis or cannabis products, related cannabis paraphernalia, and colloquial references to cannabis or marijuana shall be prohibited from use in the business name or logo;

(2) An exterior sign on the ATC building, which displays the business name and logo, and which meets the following additional requirements:

- a. Such signage shall be designed to assist qualifying patients and designated caregivers to find the ATC without drawing undue attention to the ATC such as through the use of flashing lights;
- b. Such signage shall not be illuminated during non-business hours; and
- c. A second location for cultivation and processing which is separate from the location of the dispensary area of the ATC, shall not be permitted to have such an exterior sign;

(3) An ATC may maintain a website for its business, which contains the following information:

- a. ATC name and location;
- b. Contact information;
- c. Hours of operation;
- d. Services provided;
- e. Strains of cannabis available;
- f. Products available;
- g. Prices of products; and
- h. Any other information related to the ATC that does not induce, or is likely to induce, directly or indirectly, the purchase of cannabis; and

(4) E-mail communication to its existing qualifying patients and designated caregivers containing information permitted by (3) above.

(c) Any displays of merchandise, signs, or any other exhibit depicting the activities of the ATC placed within the interior of the registered premises shall be arranged or screened to prevent public viewing from outside such building or premises.

Source. #10731, eff 11-25-14

#### He-C 402.24 Security Requirements

(a) An ATC shall implement security measures to deter and prevent unauthorized entrance into areas containing cannabis or CIP and to prevent diversion, loss, and theft of cannabis or CIP at the ATC or during transport of cannabis or CIP.

(b) Security measures to protect the registered premises, registered qualifying patients, designated caregivers, and agents of the ATC shall include but are not limited to the following:

- (1) The ATC shall limit access to the registered premises as described in (c) and (g) below;
- (2) The ATC shall establish limited access areas accessible only to specifically authorized personnel, and only the number of employees or ATC agents essential for efficient operation;
- (3) The ATC shall dispose of all cannabis containing waste including unused portions of the plant, contaminated cannabis product, and excess cannabis in accordance with He-C 402.19;
- (4) The ATC shall store all finished cannabis in a secure, locked safe, vault, or storage unit in such a manner as to prevent diversion, theft, and loss;
- (5) The ATC shall keep all safes, vaults, storage units, and any other equipment or areas used for the production, cultivation, harvesting, processing, or storage of cannabis and CIP securely locked and protected from entry, except for the actual time required to remove or replace cannabis;
- (6) The ATC shall keep all locks and security equipment in good working order;

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- (7) Keys, and other access devices, as applicable, shall not be left in the locks, or stored or placed in a location accessible to persons other than specifically authorized personnel;
  - (8) The ATC shall prohibit accessibility of security measures, such as combination numbers, passwords, or electronic or biometric security systems, to persons other than specifically authorized personnel;
  - (9) The outside perimeter of the ATC shall be sufficiently lit to facilitate surveillance;
  - (10) The ATC shall ensure that trees, bushes, and other foliage outside of the registered premises do not allow for a person or persons to conceal themselves from sight;
  - (11) The ATC shall develop emergency policies and procedures for securing all product following any instance of diversion, theft, or loss of cannabis or CIP, and conduct an assessment to determine whether additional safeguards are necessary; and
  - (12) The ATC shall develop additional safeguards as directed by the department for registered premises or areas of operations that present security concerns.
- (c) An ATC shall not permit any person to enter the ATC unless:
- (1) Such person is an ATC agent, is on duty, and is visibly displaying his or her badge;
  - (2) Such person is a qualifying patient or designated caregiver possessing a registry identification card issued by the department pursuant to He-C 401 and whose access shall be limited to the dispensing area of the ATC;
  - (3) The person is an outside vendor or contractor whose responsibilities require access to the ATC and then only to the specific areas necessary and for only as long as necessary to perform the person's job duties;
  - (4) Such person is authorized by law, rule, or in writing by the commissioner to be in the registered premises; or
  - (5) Such person(s) are emergency responders in the course of responding to an emergency and the ATC documents the names, times, and dates of each responder at the time of the incident or as soon as is practicable after the emergency, as required by the incident report in He-C 402.10(n).
- (d) The requirements of (c) above shall not be construed to prohibit access to authorized law enforcement personnel or local officials acting within their lawful jurisdiction.
- (e) The ATC shall document:
- (1) The dates and times that all agents are either in the registered premises or offsite transporting cannabis or CIP for testing or disposal, between registered premises, or to another ATC;
  - (2) The registry identification numbers, dates, and times that all registered qualifying patients and designated caregivers are in the registered premises for either education or purchase of cannabis or CIP;
  - (3) Access to the registered premises by other authorized persons, including the name, signature, date, times, stated purpose, and the name of the employee providing escort; and

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(4) The signature and employee escort requirements in (3) above shall not apply for emergency responders in the event of a reportable incident.

(f) For all authorized persons who do not have either a registry identification card issued by the department or an identification badge issued by the ATC, the ATC shall:

(1) Issue a temporary numbered visitor's badge that shall be worn for the duration of the visit to the ATC and returned prior to exit; and

(2) Provide an ATC employee who shall escort the authorized person(s) at all times while they are in the limited access areas of the registered premises.

(g) The limited access areas described in (b)(2) above shall be identified by the posting of a sign that shall be a minimum of 12" X 12" and which states: "Do Not Enter – Limited Access Area - Access Limited to Authorized Personnel Only" in lettering no smaller than one inch in height.

(h) An ATC shall have a security system designed to prevent and detect diversion, theft, or loss of cannabis and unauthorized intrusion, which shall, at a minimum, include:

(1) A perimeter alarm on all entry points and perimeter windows;

(2) A failure notification system that provides an audible, text, or visual notification of any failure in the surveillance system which alerts designated employees of the ATC within 5 minutes after the failure, either by telephone, email, or text message;

(3) A duress alarm, panic alarm, and holdup alarm connected to local public safety or law enforcement authorities or to an alarm monitoring company;

(4) Video cameras in all areas that may contain cannabis, at all points of entry and exit, on the entrance to the video surveillance room, and in any parking lot, which shall be appropriate for the normal lighting conditions of the area under surveillance. The cameras shall be directed at all safes, vaults, sales areas, and areas where cannabis is cultivated, harvested, processed, prepared, stored, handled, or dispensed. Cameras shall be angled so as to allow for the capture of clear and certain identification of any person entering or exiting the ATC or area;

(5) 24-hour recordings from all video cameras that are available for immediate viewing by the department upon request and that are retained for at least 90 calendar days. Recordings shall not be destroyed or altered, and shall be retained as long as necessary if the ATC is made aware of a pending criminal, civil, or administrative investigation, or legal proceeding for which the recording might contain relevant information;

(6) The ability to immediately produce a clear, color, still photo either live or from a recording;

(7) A date and time stamp embedded on all recordings which shall be synchronized, set correctly, and shall not obscure the picture;

(8) A video recording that allows for the exporting of still images in an industry standard image format, including .jpg, .bmp, and .gif. Exported video shall have the ability to be archived in a proprietary format that ensures authentication of the video and guarantees that no alteration of the recorded image has taken place. Exported video shall also have the ability to be saved in an industry standard file format that can be played on a standard computer operating system. All recordings shall be erased or destroyed prior to disposal; and

(9) The functionality that the security system shall remain operational during a power outage.

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(i) In addition to the requirements listed in (h) above, each registered premises shall have a backup alarm system that shall detect unauthorized entry during times when the registered premises are closed and that shall be provided by a company which shall not be the same company providing the primary security system.

(j) All security system equipment and recordings shall be maintained in a secure location so as to prevent theft, loss, destruction, and alterations.

(k) Access to surveillance areas shall be limited to persons that are essential to surveillance operations, law enforcement authorities acting within their lawful jurisdiction, security system service personnel, and the department. A current list of authorized employees and service personnel that have access to the surveillance room shall be available to the department upon request. If located on-site, surveillance rooms shall remain locked and shall not be used for any other function.

(l) Video surveillance records and recordings of point-of-sale areas shall be confidential, except that the ATC may provide such records and recordings, with notice to the department, to state or local law enforcement agency(s) if requested in connection with a law enforcement investigation or proceeding, or pursuant to a court order.

(m) All policies, procedures, practices, plans, and physical layout pertaining to security, and the address of a second site for cultivation and processing if separate from the dispensing location, shall be confidential except that they shall be provided to the department upon request and as otherwise allowed by He-C 402.

(n) All security equipment shall be in good working order and shall be inspected and tested at regular intervals, of at least every 30 calendar days.

(o) Documentation of the inspection and testing in (n) above shall be maintained by the ATC.

(p) At all points of ingress and egress, the ATC shall ensure the use of commercial-grade, non-residential door locks.

(q) ATCs shall develop written security protocols which they shall share with local police department(s) having jurisdiction at the address(es) of the registered premises. The ATC shall document the efforts made to engage local police departments.

Source. #10731, eff 11-25-14

### He-C 402.25 Confidentiality.

(a) All individually identifiable patient health or cannabis information which an ATC creates, receives, maintains, or transmits in an electronic form shall be deemed protected health care information for the purposes of the federal Health Insurance Portability and Accountability Act of 1996 as amended.

(b) All information held by the ATC which identifies certifying providers, registered qualifying patients, and designated caregivers shall be confidential pursuant to RSA 126-X and shall not be released except as provided by (e) below.

(c) The ATC shall have an electronic record keeping system that provides password protected restricted access to confidential information to only those ATC technicians who require access to perform the duties of their position.

(d) The electronic record keeping system in (c) above shall at a minimum:

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(1) Be structured so that dispensing, data collection records, and any product effectiveness records shall be tracked according to qualifying patients' registry identification numbers to protect their confidentiality; and

(2) Have the capability of pairing the registry identification numbers with registered qualifying patient demographics when necessary to send reports to persons as identified by (e) below, such as providers.

(e) Information held by the ATC about registered qualifying patients, designated caregivers, and certifying providers may be released by the ATC to:

(1) The subject individual to whom the information applies, his or her designated caregiver, or his or her authorized representative;

(2) Persons designated in writing by the registered qualifying patient;

(3) Department staff for the purpose of carrying out official duties; and

(4) An individual or entity pursuant to an order from a court of competent jurisdiction.

(f) All ATC agents shall sign a statement of confidentiality that they have read and understand the policies required by He-C 402.09(b)(12) prior to the start of any duties within the ATC.

Source. #10731, eff 11-25-14

He-C 402.26 Waivers.

(a) Applicants or ATCs seeking waivers of specific rules in He-C 402 shall submit a written request for a waiver to the department that includes:

(1) The specific reference to the rule for which a waiver is being sought;

(2) A full explanation of why a waiver is necessary; and

(3) The period of time for which the waiver is sought if less than permanent.

(b) No provision of statute shall be waived by the department.

(c) A waiver shall be permanent unless the department specifically places a time limit on the waiver.

(d) A request for waiver shall be granted if the department determines that the alternative proposed by the applicant or ATC:

(1) Meets the objective or intent of the rule;

(2) Does not negatively impact the health, safety, or well-being of the qualifying patients or public; and

(3) Does not affect the quality of qualifying patient services.

(e) The ATC's subsequent compliance with the alternatives approved in the waiver shall be considered equivalent to complying with the rule from which waiver was sought.

(f) Waivers shall not be transferable.

(g) When an ATC wishes to renew a time limited waiver beyond the approved period of time, the ATC shall apply for a new waiver by submitting the information required by (a) above:

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- (1) When the ATC submits its application for registration renewal pursuant to He-C 402.06(b) and (c); or
  - (2) At least 15 days prior to the expiration of the waiver if the waiver expires on a date other than the expiration date of the registration.
- (h) The request to renew a waiver shall be subject to (b) through (f) above.

Source. #10731, eff 11-25-14

He-C 402.27 Complaints.

- (a) The department shall investigate complaints that allege a violation of RSA 126-X or He-C 402.
- (b) Complaints that allege that an individual or entity is operating as an ATC without being registered shall be turned over to the state or local law enforcement.
- (c) When practicable the complaint shall be in writing and contain the following information:
  - (1) The name and address of the ATC, or the alleged unregistered individual or entity;
  - (2) The name, address, and telephone number of the complainant; and
  - (3) A description of the allegations that supports the complaint and the alleged violation(s) of RSA 126-X or He-C 402.
- (d) For an ATC, the department shall:
  - (1) Provide written notification of the results of the investigation to the ATC along with a statement of findings if deficiencies were found as a result of the investigation; and
  - (2) Notify any other state or local agencies of suspected violations of their statutes or rules based on the results of the investigation, as appropriate.
- (e) If the investigation results in deficiencies being cited, the ATC shall be subject to an administrative remedy in accordance with He-C 402.29 and an enforcement action in accordance with He-C 402.30.
- (f) Any statement of findings issued as a result of a complaint investigation shall be considered public information, however, complaint investigation files shall be confidential in accordance with RSA 126-X, and shall not be disclosed publicly.
- (g) Such files shall be released by the department on written request only:
  - (1) To the department of justice when relevant to a specific investigation;
  - (2) To law enforcement when relevant to a specific criminal investigation;
  - (3) When a court of competent jurisdiction orders the department to release such information; or
  - (4) When used by the department as exhibits in prosecuting an enforcement action in an administrative or judicial hearing.

Source. #10731, eff 11-25-14

He-C 402.28 Inspections.

(a) For the purpose of determining compliance with RSA 126-X and He-C 402, as authorized by RSA 126-X:7, IX, the ATC shall admit and allow any authorized department representative at any time to inspect the following:

- (1) The registered premises;
- (2) All programs and services provided by the ATC; and
- (3) Any records required by RSA 126-X or He-C 402.

(b) At a minimum, the department shall conduct an inspection to determine full compliance with RSA 126-X and He-C 402, prior to:

- (1) The issuance of an initial registration;
- (2) Resumption of business after a change in the physical location of the ATC;
- (3) Occupation of space after construction, renovations, or alterations; or
- (4) The renewal of a registration.

(c) In addition to (b) above, the department shall retain the right to conduct an inspection to verify the implementation of any POC accepted or issued by the department.

(d) A statement of findings shall be issued when, as a result of any inspection, the department determines that the ATC is in violation of any of the provisions of He-C 402, RSA 126-X, or any applicable code.

(e) If the inspection results in deficiencies being cited, the ATC shall be subject to a plan of correction in accordance with He-C 402.29, an enforcement action in accordance with He-C 402.30, or both.

Source. #10731, eff 11-25-14

He-C 402.29 Plans of Correction.

(a) When the department issues a statement of findings, the ATC shall submit a POC that addresses the areas of noncompliance cited in the statement.

(b) A POC shall be developed and enforced in the following manner:

- (1) Upon receipt of a statement of findings, the ATC shall submit a POC containing:
  - a. How the ATC intends to correct each area of noncompliance;
  - b. What corrective action will be implemented and maintained to ensure that the noncompliance does not recur; and
  - c. The date by which each area of noncompliance shall be corrected;
- (2) The ATC shall submit a POC to the department within 21 calendar days of the date on the cover letter that transmitted the statement of findings unless the ATC requests, either verbally or in writing, and the department agrees, to extend that deadline, based on the following criteria:
  - a. The ATC demonstrates that he or she has made a good faith effort to develop and submit the POC within the 21 calendar day period but has been unable to do so; and

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- b. The department determines that the health, safety, or well-being of qualifying patients or the public will not be jeopardized as a result of granting the extension;
- (3) The department shall review and accept each POC that:
- a. Will achieve compliance with RSA 126-X and He-C 402;
  - b. Corrects all findings of noncompliance as cited in the statement of findings;
  - c. Does not create a new violation of RSA 126-X or He-C 402 as a result of the implementation of the POC; and
  - d. Specifies the date upon which the deficiencies will be corrected;
- (4) If the POC is acceptable, the department shall issue a registration certificate or provide written notification of acceptance of the POC, whichever is applicable;
- (5) If the POC is not acceptable:
- a. The department shall notify the ATC in writing of the reason for rejecting the POC;
  - b. The ATC shall develop and submit a revised POC within 14 days of the date of the written notification from the department that states the original POC was rejected unless, within the 14 day period, the ATC requests an extension, either verbally or in writing, and the department grants the extension, based on the following criteria:
    - 1. The ATC demonstrates that he or she has made a good faith effort to develop and submit the POC within the 14 day period but has been unable to do so; and
    - 2. The department determines that the health, safety or well being of qualifying patients or the public will not be jeopardized as a result of granting the waiver;
  - c. The revised POC shall comply with (b)(1) above and be reviewed in accordance with (b)(3) above; and
  - d. If the revised POC is not acceptable to the department, or is not submitted within 14 days of the date of the written notification from the department that states the original POC was rejected, the ATC shall be subject to a directed POC in accordance with (c) below and a fine in accordance with He-C 402.30(c)(8);
- (6) The department shall verify the implementation of any POC that has been submitted and accepted by:
- a. Reviewing materials submitted by the ATC;
  - b. Conducting a follow-up inspection; or
  - c. Reviewing compliance during the next annual inspection;
- (7) Verification of the implementation of any POC shall only occur after the date of completion specified by the ATC in the plan; and
- (8) If the POC or revised POC has not been implemented by the completion date at the time of the next inspection, the ATC shall be issued a directed POC in accordance with (c) below and shall be subject to a fine, as appropriate, in accordance with He-C 402.30(c)(9).

(c) The department shall develop and impose a directed POC that specifies corrective actions for the applicant or ATC to implement when:

- (1) As a result of an inspection, areas of noncompliance were identified that require immediate corrective action to protect the health and safety of the qualifying patients, designated caregivers, ATC agents, or the public;
- (2) A POC is not submitted within 21 days of the written notification from the department;
- (3) A revised POC is not submitted within 14 days of the written notification from the department; or
- (4) A revised POC submitted by the ATC has not been accepted.

(d) If at the time of the next inspection the directed POC referenced in (c) above has not been implemented by the completion date stated in the directed POC, the department shall, as appropriate:

- (1) Impose a fine;
- (2) Deny the application for a renewal of a registration; or
- (3) Revoke the registration in accordance with He-C 402.30.

(e) The department shall offer an opportunity for informal dispute resolution to any registrant who disagrees with a deficiency cited by the department on a statement of findings, provided that the registrant submits a written request for an informal dispute resolution.

(f) The informal dispute resolution shall be requested in writing by the registrant no later than 14 days from the date the statement of findings was issued by the department.

(g) The department shall review the evidence presented and provide a written notice to the registrant of its decision.

(h) An informal dispute resolution shall not be available for any registrant against whom the department has initiated action to impose a fine, suspend, revoke, deny or refuse to issue or renew a registration.

Source. #10731, eff 11-25-14

He-C 402.30 Enforcement Actions and Hearings.

(a) The department shall impose administrative remedies for violations of RSA 126-X or He-C 402 including:

- (1) Imposing conditions upon an ATC including suspending any or all portions of the ATC's operations, such as its ability to cultivate cannabis or produce CIP;
- (2) Imposing administrative fines upon an ATC;
- (3) Denying an application for an ATC registration;
- (4) Suspension of a registration certificate; or
- (5) Revocation of a registration certificate.

(b) When taking enforcement action against an applicant or registrant, the department shall send to the applicant or registrant a written notice that sets forth:

- (1) The action to be taken by the department;
- (2) The reasons for the proposed action;
- (3) The right of an applicant or registrant to a hearing in accordance with RSA 541-A:30, III, or He-C 200, as applicable, before the enforcement action becomes final; and
- (4) The automatic reduction of a fine by 25% if the fine is paid within 10 days of the date on the written notice from the department and the deficiency has been corrected, or a POC has been accepted and approved by the department.

(c) The department shall impose fines as follows:

- (1) For a failure to cease operations after a registration is revoked or after receipt of an order to cease and desist immediately, in violation of RSA 126-X:7, VII and VIII, and RSA 541-A:30, the fine for an applicant or an ATC shall be \$2000.00 for each day operations continue following the effective date of the order of revocation or the issuance of the cease and desist order;
- (2) For violating the advertising restrictions or requirements of He-C 402.23, the fine for an applicant or ATC shall be \$2000.00;
- (3) For a failure to submit a renewal application for a registration at least 120 days prior to the expiration date, in violation of He-C 402.06(b), the fine for an ATC shall be \$1000.00;
- (4) For the use or possession of any chemical prohibited in He-C 402.34, the fine shall be \$2000.00 for each chemical used or possessed;
- (5) For a failure to notify the department of closure or cessation of services at least 60 days prior to the intended closure, in violation of He-C 402.07(n)(1), the fine for an ATC shall be \$5000.00;
- (6) For a failure to notify the department prior to a change in physical location, in violation of He-C 402.07(c), the fine for an ATC shall be \$2000.00 per day from the effective date of the change in location until the date the department learns of the change;
- (7) For a failure to allow access by the department to the ATC's registered premises, programs, services, or records, in violation of He-C 402.28(a), the fine for an applicant or ATC shall be \$10,000.00;
- (8) For a failure to submit a POC or revised POC, within 21 or 14 days, respectively, of the date on the letter that transmits the statement of findings, in violation of He-C 402.29(b)(2) and (5), the fine for an ATC shall be \$1000.00;
- (9) For a failure to implement any POC that has been accepted or issued by the department, in violation of He-C 402.29(b)(8), the fine for an ATC shall be \$2000.00;
- (10) For the commission of any act prohibited under He-C 402.08, the fine for an ATC shall be \$2000.00;
- (11) For a failure to establish, implement, or comply with ATC policies, as required by He-C 402.09(b), the fine for an ATC shall be \$1000.00 per policy not established, implemented, or complied with;

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- (12) For exceeding inventory capacity, in violation of He-C 402.13, the fine for an ATC shall be \$3000.00;
- (13) For providing false, misleading, or deceptive information to the department including verbally to agents of the department, on an application, or on any records required to be maintained by the ATC, in violation of He-C 402.32, the fine for an applicant or ATC shall be \$5000.00 per offense;
- (14) For making false, misleading, or deceptive representations to the public, the fine shall be \$1000.00;
- (15) For employing an administrator or other personnel who do not meet the qualifications for the position, in violation of He-C 402.31, the fine for an ATC shall be \$1000.00;
- (16) For engaging an ATC agent who has a felony conviction, in violation of RSA 126-X:8, IV(a), the fine shall be \$3000.00;
- (17) For failure to notify the department of a reportable incident as required by He-C 402.10(n) and (o) by the required date, the fine shall be \$2000.00;
- (18) For failure to maintain effective controls against diversion, theft, or loss of cannabis or CIP the fine shall be \$5000.00;
- (19) For failure to keep accurate records of all cannabis or CIP dispensed to qualifying patients or designated caregivers, transported, or disposed of, the fine shall be \$5000.00;
- (20) When an inspection determines that a violation of RSA 126-X or He-C 402 has the potential to jeopardize the health, safety, or well-being of a qualifying patient, designated caregiver, ATC agent, or the public, in addition to any other enforcement actions taken by the department, the fines assessed shall be as follows:
- a. If the same deficiency is cited within 2 years of the original deficiency, an additional fine of \$5000.00 shall be imposed; or
  - b. If the same deficiency is cited a third time within 5 years of being fined in a. above, an additional fine of \$10,000.00 shall be imposed; and
- (21) Each day that the individual or ATC continues to be in violation of the provisions of RSA 126-X or He-C 402 shall constitute a separate violation warranting additional fines in accordance with this section.
- (d) Payment of any imposed fine to the department shall meet the following requirements:
- (1) Payment shall be made in the form of check or money order made payable to the “Treasurer, State of New Hampshire” in the exact amount due;
  - (2) Money order or certified check shall be required when an applicant or ATC has issued payment to the department by check, and such check was returned for insufficient funds; and
  - (3) All funds received under the cannabis program shall be deposited to the non-lapsing registry identification card and certificate account.
- (e) The department shall revoke or deny a registration certificate if the department determines that:

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- (1) An applicant or a registrant violated a provision of RSA 126-X or He-C 402 which poses a risk of harm to a qualifying patient's, designated caregiver's, ATC agent's, or the public's health, safety, or well-being;
  - (2) The ATC failed to maintain effective controls against diversion, theft, or loss of cannabis or CIP;
  - (3) The ATC failed to keep accurate records of all cannabis or CIP dispensed to qualifying patients or designated caregivers, transported, or disposed of;
  - (4) An applicant or registrant has failed to pay an administrative fine or fee imposed by the department;
  - (5) The applicant, registrant, or any representative or employee of the applicant or registrant:
    - a. Provides false or misleading information to the department;
    - b. Prevents, interferes, or fails to cooperate with any inspection or investigation conducted by the department; or
    - c. Fails to provide requested files or documents to the department;
  - (6) The registrant failed to implement or continue to implement a POC that has been accepted or imposed by the department in accordance with He-C 402.29(b), (c) and (d);
  - (7) The registrant is cited a third time under RSA 126-X or He-C 402 for the same violation within 5 years;
  - (8) Upon inspection, the applicant or registrant's registered premises or operations are not in compliance with RSA 126-X or He-C 402;
  - (9) A diversion of cannabis has occurred under circumstances that indicate complicity or negligence on the part of the ATC; or
  - (10) A corporate officer, a board member, or an executive employee has been convicted of a felony in this or any other state.
- (f) An applicant or registrant shall have 30 days after receipt of the notice of enforcement action to request a hearing to contest the action.
- (g) If a written request for a hearing is not made pursuant to (f) above, the action of the department shall become final.
- (h) The department shall order the immediate suspension of a registration, the cessation of operations, and the transfer of qualifying patients when it finds that the public health, safety or well-being requires such emergency action in accordance with RSA 541:A-30, III.
- (i) If an immediate suspension is upheld, the ATC shall not resume operating until the department determines through inspection that compliance with RSA 126-X and He-C 402 is achieved.
- (j) Hearings under this section shall be conducted in accordance with RSA 541-A and He-C 200.
- (k) No ongoing enforcement action shall preclude the imposition of any remedy available to the department under RSA 126-X, RSA 541-A:30, III, or He-C 402.

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(l) An ATC that has had its registration revoked shall not be eligible to apply to be an ATC for a period of 5 years.

(m) If an application for an initial registration is denied pursuant to He-C 402.30(e), the applicant shall not be eligible to apply to be an ATC for a period of 5 years.

Source. #10731, eff 11-25-14

He-C 402.31 Personnel.

(a) The ATC shall employ a full-time administrator who shall be responsible for all aspects of the daily operation of the registered premises.

(b) Each ATC shall develop a job description for all employees and a volunteer agreement for all volunteers, which includes duties, authority, responsibilities, qualifications, and supervision.

(c) All ATC agents shall be at least 21 years of age.

(d) An ATC shall conduct a state and federal criminal records check for corporate officers, board members, and executive employees before they are chosen, and for volunteers and employees before they begin working at the ATC.

(e) Prior to the ATC conducting a state and federal criminal records check on a prospective ATC agent, the ATC shall notify the department, in writing, of its intent to hire or otherwise engage such person.

(f) An ATC shall not allow any person to be an ATC agent who has been convicted of a felony.

(g) In order to satisfy the requirement of (d) above:

(1) Prospective ATC agents shall submit directly to the department of safety:

a. A notarized criminal history records release form, as provided by the New Hampshire division of state police, authorizing the release of his or her criminal history record, if any, to the department;

b. A complete set of electronic fingerprints taken by a qualified law enforcement agency or an authorized employee of the department of safety; and

c. Any associated fee;

(2) The division of state police shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation;

(3) Upon completion of the records check, the division of state police shall release a copy of the criminal history records to the department;

(4) In the event that the first set of fingerprints is invalid for whatever reason, a second set of fingerprints shall be necessary in order to complete the criminal history records check; and

(5) In the event that, after 2 attempts, the applicant's electronic fingerprints are invalid due to insufficient pattern:

a. The applicant shall obtain a police clearance from the local police department of each town, city, or county where the applicant has lived during the past 5 years;

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b. The applicant shall submit the police clearances obtained in a. above to the division of state police; and

c. The department shall receive from the division of state police the results of the police clearance check process.

(h) Upon receipt of the results of a criminal history records check or a police clearance check, the department shall notify the ATC whether or not the ATC is prohibited or permitted to hire or otherwise engage such person.

(i) Annually thereafter, the ATC agent shall sign an affidavit, which states that he or she has not been convicted of a felony.

(j) All agents shall notify the ATC upon conviction of a felony.

(k) ATCs shall create and issue identification badges for each ATC agent as follows:

(1) The badges shall include the ATC's registration certificate number, a unique number for each agent, his or her name, and a photo of the agent;

(2) No agent, who has not been issued a badge, shall possess, cultivate, or transport cannabis;

(3) An ATC agent shall wear his or her badge at all times while at the registered premises and when transporting cannabis;

(4) Badges shall be properly displayed by wearing the badge in a plainly visible manner, at or above the waist;

(5) The agent shall not alter, obscure, damage, or deface the badge in any manner; and

(6) An agent shall return his or her badge to the ATC when no longer employed by, or otherwise engaged with, the ATC.

(l) Within the first 7 days of employment, ATC employees and volunteers shall receive a tour of the ATC and an orientation that includes training on the following:

(1) The ATC's confidentiality policy;

(2) The duties and responsibilities of the position;

(3) Employee security policies, including personal safety and crime prevention techniques;

(4) Emergency procedures, including a disaster plan with procedures for fire or other emergencies;

(5) Procedures to ensure accurate recordkeeping, including inventory protocols; and

(6) Alcohol, smoke and drug-free workplace policies.

(m) All employees and volunteers shall receive training tailored to the roles and responsibilities of the job function of each ATC agent and at a minimum shall receive 8 hours of on-going training annually.

(n) In addition to the training required by (l) and (m) above, employees who will be dispensing cannabis shall have training to include:

(1) Knowledge of all ATC policies for security and tracking the sale of cannabis;

- (2) Maintenance of qualifying patient and designated caregiver records;
- (3) Knowledge of all labeling and dispensing requirements as described in He-C 402.16 and He-C 402.17; and
- (4) Patient educational materials.

(o) Except when transporting cannabis, an ATC agent shall only possess cannabis at the ATC location where he or she is employed. This shall not prohibit an ATC agent who is a qualifying patient or designated caregiver from possessing cannabis outside the ATC as permitted by RSA 126-X.

(p) The following shall apply to volunteers:

- (1) Volunteers shall be supervised by an ATC employee;
- (2) At no time shall there be more volunteers on the ATC registered premises than is necessary for the efficient operation of the ATC;
- (3) Volunteers shall not dispense cannabis; and
- (4) Volunteers shall not transport cannabis.

Source. #10731, eff 11-25-14

He-C 402.32 Record Requirements.

- (a) The ATC shall maintain all required records for a minimum of 4 years.
- (b) The ATC shall maintain a current and accurate record for each qualifying patient and designated caregiver registered with the ATC.
- (c) At a minimum, qualifying patient and designated caregiver records shall contain the following:
  - (1) Identification data, including:
    - a. The qualifying patient and designated caregiver's name, date of birth, and registry identification number;
    - b. The name, address, registry identification number, and contact information for the qualifying patient's designated caregiver, if applicable;
    - c. The name, address and telephone number of the qualifying patient's certifying medical provider;
  - (2) Dispensing documentation for each dispensing transaction, tracked by using the qualifying patient's and designated caregiver's registry identification number, to include:
    - a. The date, amounts of cannabis and/or CIP dispensed, and amount charged;
    - b. The form of cannabis or CIP dispensed;
    - c. The strain of cannabis dispensed; and
    - d. Whether the cannabis was dispensed to the qualifying patient or the designated caregiver;

(3) For qualifying patients who are willing to provide it, the ATC shall document, by the qualifying patient's registry identification number, any side effects and the effectiveness of the cannabis product used;

(4) Documentation verifying the qualifying patient's eligibility to purchase cannabis at a reduced cost, if applicable;

(5) Documentation of educational material provided to the qualifying patient or designated caregiver; and

(6) Documentation of any reportable incident involving the qualifying patient or designated caregiver.

(d) Qualifying patient and designated caregiver's records in (c) above shall be considered confidential and only be released in accordance with He-C 402.25 and other applicable law.

(e) Qualifying patient and designated caregiver's records shall be safeguarded against loss or unauthorized use or access.

(f) Records shall be retained for 4 years after a qualifying patient is no longer registered with the ATC, except that when the qualifying patient is a minor, records shall be retained until the minor reaches the age of 19, but no less than 4 years after the qualifying patient is no longer registered with the ATC.

(g) The ATC shall arrange for storage of, and access to, qualifying patient and designated caregiver's records as required by (e) above in the event the ATC ceases operation.

(h) An ATC shall transfer a qualifying patient's dispensing records to the qualifying patient's newly designated ATC as follows:

(1) Upon department notice that the qualifying patient has registered with a new ATC, the original ATC shall transfer the qualifying patient's dispensing records for the 10 days prior to the date of the qualifying patient's request to designate a new ATC through the date that the new ATC is designated; or

(2) Upon department notice that the qualifying patient has registered with a new ATC, and upon written authorization from the qualifying patient or the qualifying patient's legally authorized representative, the original ATC shall transfer all of the qualifying patient's dispensing records.

(i) The ATC shall maintain legible, current, and accurate records for inventory tracking as required by He-C 402.13.

(j) The ATC shall maintain legible, current, and accurate security records as required by He-C 402.24.

(k) The ATC shall maintain personnel records for each ATC agent that include:

(1) The name, address, and contact information for the agent;

(2) A photocopy of the agent's identification badge;

(3) The written notification from the department indicating that the agent has not been found guilty of a felony in this or any other state and can work for the ATC;

(4) Documentation of verification of references;

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- (5) The annual affidavit signed by the agent stating that the agent has not been found guilty of a felony in this or any other state;
  - (6) Documentation of required training for ATC policies in security, safety, and confidentiality, which shall include the signature of the individual receiving training, the date, time, and place of training, topics discussed, and the name and title of the presenter;
  - (7) The resume or completed application for each ATC agent;
  - (8) A job description for each ATC employee and a volunteer agreement for each volunteer which shall include duties, authority, responsibilities, qualifications, and supervision;
  - (9) Documentation of required training for all ATC technicians dispensing cannabis, which shall include the signature of the individual receiving training, the date, time, and place of training, topics discussed, and the name and title of the presenter, to include:
    - a. Knowledge of all ATC policies for security and tracking the sale of cannabis;
    - b. Maintenance of qualifying patient records required by (b) above; and
    - c. Knowledge of all labeling and dispensing requirements as described in He-C 402.16 and 402.17;
  - (10) A record of any disciplinary actions; and
  - (11) Documentation of periodic performance evaluations.
- (l) Personnel records shall be kept for a minimum of 4 years after the agent is no longer associated with the ATC.
- (m) The ATC shall maintain documentation for all personnel of the dates and times worked.
- (n) The ATC shall keep documentation of any reportable incident as required by He-C 402.10(n) and (o).
- (o) The ATC shall maintain access documentation in accordance with He-C 402.24(e).
- (p) The ATC shall maintain business records, which shall include manual or computerized records of:
- (1) Assets and liabilities;
  - (2) Monetary transactions;
  - (3) Books of accounts, which shall include journals, ledgers, and supporting documents, agreements, checks, invoices, and vouchers; and
  - (4) Salary and wages paid to each employee, stipend paid to each board member, and any executive compensation, bonus, benefit, or item of value paid to any individual affiliated with an ATC, including members of the non-profit corporation.

Source. #10731, eff 11-25-14

He-C 402.33 Fire Safety and Emergency Preparedness.

- (a) The registrant shall comply with all federal, state, and local laws, rules, codes, and ordinances for:

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- (1) Buildings;
  - (2) Health;
  - (3) Fire; and
  - (4) Waste disposal.
- (b) The ATC shall have all entrances and exits to the registered premises accessible at all times.
- (c) The ATC shall be clean and maintained in a safe manner and good repair and kept free of hazards.
- (d) All supplies shall be stored in enclosed storage areas.
- (e) All corridors shall be free from obstruction.
- (f) Cleaning solutions, compounds, and substances, which might be considered hazardous or toxic materials, as defined in RSA 147-A:2, VII, shall be:
- (1) Distinctly labeled and legibly marked so as to identify the contents;
  - (2) Stored in a place separate from food and supplies; and
  - (3) Kept in an enclosed section separated from other cleaning materials.
- (g) Toxic materials shall not be used in a way that contaminates equipment or in any way that constitutes a hazard to personnel or other persons, or in any way other than in full compliance with the manufacturer's labeling.
- (h) The registrant shall, as soon as practicable and no later than 24 hours, notify the department by phone, fax, or e-mail, and in writing within 72 hours, of any fire or situation, excluding a false alarm, that requires the evacuation of the registered premises.
- (i) The written notification under (h) above shall include:
- (1) The date and time of the incident;
  - (2) A description of the location and extent of the incident, including any damage;
  - (3) A description of events preceding and following the incident;
  - (4) The name of any personnel who required medical treatment as a result of the incident, if applicable; and
  - (5) The name of the individual the registrant wishes the department to contact if additional information is required.
- (j) Flammable gases and liquids shall be stored in metal fire retardant cabinets as required by the department of safety in Saf-C 6000.
- (k) Quantities of flammable gases and liquids under 500 milliliters may be retained at the bench work area when directly in use.
- (l) If the ATC chooses to produce solvent-based cannabis concentrates using flammable chemicals such as acetone, butane, ethanol, heptane, isopropanol, or propane, it shall be performed under a static free hood, which shall be certified and inspected annually to meet manufacturer's stated operational requirements.

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(m) A written plan for fire safety, evacuation and emergencies covering all hazards shall be adopted and available in multiple locations throughout the ATC and shared with the local fire department.

Source. #10731, eff 11-25-14

He-C 402.34 Prohibited Chemicals. The chemicals listed in Table 402.1 below shall be prohibited from use in the cultivation and processing of cannabis and from being possessed and maintained on the ATC registered premises.

Table 402.1 – Prohibited Chemicals

<b>Chemical Name</b>	<b>CAS<sup>1</sup> Registry Number (or EDF<sup>2</sup> Substance ID)</b>
ALDRIN	309-00-2
ARSENIC OXIDE (3)	1327-53-3
ASBESTOS (FRIABLE)	1332-21-4
AZODRIN	6923-22-4
1,4-BENZOQUINONE, 2,3,5,6-TETRACHLORO-	118-75-2
BINAPACRYL	485-31-4
2,3,4,5-BIS (2-BUTENYLENE) TETRAHYDROFURFURAL	126-15-8
BROMOXYNIL BUTYRATE	EDF-186
CADMIUM COMPOUNDS	CAE750
CALCIUM ARSENATE [2ASH3O4.2CA]	7778-44-1
CAMPHECHLOR	8001-35-2
CAPTAFOL	2425-06-1
CARBOFURAN	1563-66-2
CARBON TETRACHLORIDE	56-23-5
CHLORDANE	57-74-9
CHLORDECONE (KEPONE)	143-50-0
CHLORDIMEFORM	6164-98-3
CHLOROBENZILATE	510-15-6
CHLOROMETHOXYPROPYLMERCURIC ACETATE [CPMA]	EDF-183
COPPER ARSENATE	10103-61-4
2,4-D, ISOCTYL ESTER	25168-26-7
DAMINOZIDE	1596-84-5
DDD	72-54-8
DDT	50-29-3
DI(PHENYLMERCURY)DODECENYLSUCCINATE [PMDS]	EDF-187
1,2-DIBROMO-3-CHLOROPROPANE (DBCP)	96-12-8
1,2-DIBROMOETHANE	106-93-4
1,2-DICHLOROETHANE	107-06-2
DIELDRIN	60-57-1
DIMETHYL SULFOXIDE	67-68-5
4,6-DINITRO-O-CRESOL	534-52-1
DINITROBUTYL PHENOL	88-85-7
ENDRIN	72-20-8
EPN	2104-64-5
ETHYLENE OXIDE	75-21-8
FLUOROACETAMIDE	640-19-7

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GAMMA-LINDANE	58-89-9
HEPTACHLOR	76-44-8
HEXACHLOROBENZENE	118-74-1
1,2,3,4,5,6-HEXACHLOROCYCLOHEXANE (MIXTURE OF ISOMERS)	608-73-1
1,3-HEXANEDIOL, 2-ETHYL-	94-96-2
LEAD ARSENATE	7784-40-9
LEPTOPHOS	21609-90-5
MERCURY	7439-97-6
METHAMIDOPHOS	10265-92-6
METHYL PARATHION	298-00-0
MEVINPHOS	7786-34-7
MIREX	2385-85-5
NITROFEN	1836-75-5
OCTAMETHYLDIPHOSPHORAMIDE	152-16-9
PARATHION	56-38-2
PENTACHLOROPHENOL	87-86-5
PHENYLMERCURIC OLEATE [PMO]	EDF-185
PHOSPHAMIDON	13171-21-6
PYRIMINIL	53558-25-1
SAFROLE	94-59-7
SODIUM ARSENATE	13464-38-5
SODIUM ARSENITE	7784-46-5
2,4,5-T	93-76-5
TERPENE POLYCHLORINATES (STROBANE <sup>6</sup> )	8001-50-1
THALLIUM(I) SULFATE	7446-18-6
2,4,5-TP ACID (SILVEX)	93-72-1
TRIBUTYLTIN COMPOUNDS	EDF-184
2,4,5-TRICHLOROPHENOL	95-95-4
VINYL CHLORIDE	75-01-4

<sup>1</sup> CAS – Chemical Abstracts Service; <sup>2</sup> EDF – Environmental Defense Fund

Source. #10731, eff 11-25-14

## APPENDIX

<b>RULE</b>	<b>STATUTE</b>
He-C 401.01	RSA 126-X
He-C 401.02	RSA 126-X:1
He-C 401.03	RSA 126-X:2, IV(a)-(b); RSA 126-X:3, V
He-C 401.04	RSA 126-X:4, I
He-C 401.04(b)(4)	RSA 126-X:1, X
He-C 401.05	RSA 126-X:4, II
He-C 401.05(a)(3)	RSA 126-X:1, VI(b)
He-C 401.05(b)(1)	RSA 126-X:6, I(d)
He-C 401.06	RSA 126-X:1, VII(a), VIII, XVII
He-C 401.06(b)(1)b.	RSA 126-X:1, XVII
He-C 401.06(b)(4) & (5)	RSA 126-X:4, V
He-C 401.06(g)	RSA 126-X:8, XVIII
He-C 401.07	RSA 126-X:1, XVII
He-C 401.07(c)(4)	RSA 126-X:4, V(b)
He-C 401.08	RSA 126-X:4, V
He-C 401.09	RSA 126-X:1, IX(b)
He-C 401.10	RSA 126-X:4, I-IV
He-C 401.11	RSA 126-X:4, I-IV
He-C 401.11(e)(2)	RSA 126-X:4, IX(b)
He-C 401.12	RSA 126-X:4, III; RSA 126-X:3, VI-VII
He-C 401.13	RSA 126-X:4, IX
He-C 401.13(d)	RSA 126-X:4, XII
He-C 401.13(e)(3)	RSA 126-X:4, XII; RSA 126-X:2, XIV(b)-(c)
He-C 401.14	RSA 126-X:4, I(b); RSA 126-X:6: I(d); RSA 126-X:4, IX(f)
He-C 401.14(d)	RSA 126-X:4, IX(e)
He-C 401.15	RSA 126-X:4, XI
He-C 401.15(b)(5)	RSA 126-X:4, VII(a)(2)
He-C 401.15(b)(6)	RSA 126-X:10
He-C 401.15(d)	RSA 126-X:4, II(g)
He-C 401.16	RSA 126-X:1, XVI; RSA 126-X:1, VII(b); RSA 126-X:2, V
He-C 401.17	RSA 541-A:22, IV
He-C 402.01 – 402.03	RSA 126-X
He-C 402.04	RSA 126-X:6, III(a)(14); RSA 126-X:7, IV(a); RSA 126-X:7, V
He-C 402.05	RSA 126-X:7, IV(a); RSA 126-X:7, IX
He-C 402.06	RSA 126-X:6, III(a)(1); RSA 126-X:7, V; RSA 126-X:7, IX
He-C 402.07	RSA 126-X:6, III(a)(2)
He-C 402.08	RSA 126-X:3
He-C 402.09	RSA 126-X:6, III(a)(2)
He-C 402.10	RSA 126-X:6, III(a)(2)
He-C 402.11	RSA 126-X:2, IX(a)-(b); RSA 126-X:8, XV(b); RSA 126-X:8, XIV
He-C 402.12	RSA 126-X:8, XV(a)
He-C 402.13	RSA 126-X:8, VIII

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He-C 402.14	RSA 126-X:7, IV(a)(8); RSA 126-X:8, X, XV(c)
He-C 402.15	RSA 126-X:6, III(a)(5); RSA 126-X:7, IV(a)(9), IV(c)(5)
He-C 402.16	RSA 126-X:1, III, XV
He-C 402.17	RSA 126-X:6, III(a)(5), III(b)
He-C 402.18	RSA 126-X:6, III(a)(5)
He-C 402.19	RSA 126-X:6, III(a)(9); RSA 126-X:8, XIV(b); RSA 126-X:8, XVI(a)
He-C 402.20	RSA 126-X:8, VII(b); RSA 126-X:8, XIII
He-C 402.21	RSA 126-X:8, XVI(b)-(c)
He-C 402.22	RSA 126-X:8, VII(a)
He-C 402.23	RSA 126-X:6, III(a)(12)
He-C 402.24	RSA 126-X:6, III(a)(3); RSA 126-X:7, IV(a)(5), (c)(7); RSA 126-X:8, III
He-C 402.25	RSA 126-X:6, III(b); RSA 126-X:7, IV(c)(6), IX; RSA 126-X:8, XVI(b)
He-C 402.26	RSA 541-A:22, IV
He-C 402.27	RSA 126-X:6, III(a)(2), (a)(11)
He-C 402.28	RSA 126-X:6, III(a)(iii); RSA 126-X:7, IX
He-C 402.29	RSA 126-X:6, III(a)(2)
He-C 402.30	RSA 126-X:6, III(a)(2), (a)(10); RSA 126-X:7, VII-VIII
He-C 402.31	RSA 126-X:6, III(a)(8); RSA 126-X:8, IV, V, XVII
He-C 402.32	RSA 126-X:7, IV(a)(13), IX; RSA 126-X:8, VI-VII; RSA 126-X:8, XVII(c)
He-C 402.33	RSA 126-X:6, III(a)(2), (a)(6)
He-C 402.34	RSA 126-X:7, IV(a)(9), IV(c)(5)