

Therapeutic Use of Cannabis Advisory Council
HB 573, Chapter 242:1–6, Laws of 2013, RSA 126-X
Annual Report 2015
(Prepared September 2016)

Council Membership^{1,2}

Andelman, Robert, MD – NH Board of Medicine
Chaffee, Devon – NH Civil Liberties Union
Duhaime, Robert – NH Board of Nursing¹
Encarnacao, John, Lt. – Department of Safety
Glassman, Stuart, MD – NH Medical Society
Gosline, Peter – Community Hospital (Upper Connecticut Valley Hospital)¹
Holt, Michael – Department of Health and Human Services (Clerk)
Horgan, Colette – NH Hospital (Exeter Hospital)¹
Hunter, Jill, APRN – NH Nurse Practitioner’s Association
Keshen, Barbara – Public Member
MacKay, James – House (Chair)
Nelsen, Bill – House
Reagan, John – Senate
Shagoury, Andrew – NH Association of Chiefs of Police
Vara, James – Attorney General’s Office¹
Vincent, Richard – Qualifying Patient

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.

¹ Current vacant positions include: NH Board of Nursing; Community Hospital; New Hampshire Hospital; NH Attorney General.

² Former Advisory Council members who served in 2015 include: Kenneth Nielson (public member); Lisa Kilar (qualifying patient).

(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.

(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

January 9, 2015

September 25, 2015

October 9, 2015

November 20, 2015

Council Meeting Summaries

January 9, 2015

DHHS Update

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

- The development of administrative rules governing the patient and caregiver registry (He-C 401), which were adopted on the legislative deadline of July 23, 2014.
- The development of administrative rules regulating governing the registration and regulation of alternative treatment centers, which were adopted and made effective on November 24, 2014, two months earlier than the legislative deadline of January 23, 2015.
 - Regarding the timing of the issuance of registry identification cards to patients and caregivers, Director Castelli explained that, while administrative rule He-C 401 was adopted with an effective date of August 1, 2015 (due to the NH Attorney General's memorandum dated February 13, 2014), that effective date and the date that DHHS would begin to accept applications for registry identification cards is subject to change based on the operational status of the alternative treatment centers.
- The development of the Request for Applications (RFA) to Operate an Alternative Treatment Center. The RFA was published on December 19, 2014. The application submission deadline is January 28, 2015.

Legislative Update

Mr. Holt, DHHS Administrative Rules Coordinator, Office of Operations Support, presented DHHS proposed legislation regarding the Therapeutic Cannabis Program, including the following. DHHS did not request, nor did the Council take, any action on the proposed legislation.

- Addressing the ability of laboratories licensed in NH under RSA 151 to test cannabis, including protection of laboratories and laboratory employees from arrest and prosecution for possessing cannabis for the purpose of testing, allowing laboratory employees an affirmative defense, granting DHHS specific rulemaking authority relative to laboratory testing of cannabis, and expanding the scope of a laboratory's function licensed under RSA 151 to include testing of cannabis.
- Requiring the photograph of patients and caregivers to be provided with an initial application and every five years thereafter, or sooner if substantially changed. (Current law requires an annual photo submission.)
- For designated caregivers, requiring a state and federal criminal records check to be completed with an initial application, followed by an annual attestation of no felony convictions. (Current law requires an annual criminal records check.)
- Removing the requirement that a designated caregiver's registry identification card contain the identification numbers of the qualifying patients for whom he or she is providing care.
- Addressing the issue of satellite dispensaries, including a grant of rulemaking authority for DHHS to establish and regulate such satellite dispensaries.

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

Public Participation

Traci Fowler, Regional Substance Misuse Prevention Coordinator, Lakes Region Partnership for Public Health, and Chair of the Prevention Task Force of the Governor's Commission on Substance Abuse Prevention, Treatment and Recovery, offered thoughts on outcomes measurement, indicating that our state's public health and prevention systems are already tracking outcome measures that relate to priority health indicators. She offered that one of her partners, the NH Center for Excellence, could provide the Council with a presentation on tracking outcomes. She asked about the educational materials that ATCs would be required to provide to qualifying patients and caregivers, and offered that, again, our state's public health and prevention systems had materials available related to substance abuse, prevention, treatment, and recovery supports. She provided her contact information to DHHS representatives.

Tricia Lucas, Advocacy Director, New Futures, asked clarifying questions about the proposed language regarding satellite dispensaries.

Denis Acton, patient survivor and advocate said that he has received anecdotal reports from physicians who say that they have been threatened with being kicked out of the larger provider networks if they certify a patient for the therapeutic use of cannabis, and asked if anyone on the Council was aware of such occurrences or such restrictions on physicians? Neither Collette Horgan (Exeter Hospital) nor Dr. Glassman (NH Medical Society) had heard of this being an issue.

September 25, 2015

DHHS Update

Mary Castelli, DHHS Senior Division Director, Office of Operations Support, and John Martin, Manager, Bureau of Licensing and Certification, outlined program achievements including: selection of three entities to run four ATCs; ATC selection of locations for operations and public input meetings in six of the seven selected communities; proposed rule changes to allow conditional registration certificates and

pre-registration of qualifying patients and designated caregivers; finalizing database for ATCs, qualifying patient and designated caregivers; development of all required forms, criminal record check process, inspection process, and the law enforcement protocol.

Administrative Rules Review

Mr. Holt, DHHS Administrative Rules Coordinator, Office of Operations Support, explained proposed rule changes relative to the Therapeutic Cannabis Program.

- Amendments to He-C 401, Patient Registry
Incorporates changes from HB 476 and SB 22 into the rules. Adding new qualifying conditions; certain changes to registry identification cards, the proposed pre-registration process, prohibits extraction by any process other than water or food based by qualifying patients and designated caregivers, and delays the process of considering qualifying conditions on case by case basis until January 2017.
- Amendments to He-C 402, Alternative Treatment Centers
Creates the conditional registration process for ATCs; implements changes from SB 22 relative to zoning; updates the application process; and aligns cannabis infused products portion of the rule with the changes that were made in the He-C 401 rules.

Alternative Treatment Center (ATC) Presentations

- Prime Alternative Treatment Centers of NH
John Glowik, CEO, introduced himself and Brett Sicklick, COO, to the Council. He highlighted the accomplishments of the members of the Board of Directors overseeing the ATCs, and some key executive personnel. Mr. Glowik explained the mission of Prime ATC is to provide pharmaceutical grade product for the residents of New Hampshire.
- Sanctuary ATC
Jason Sidman, CEO, introduced himself and Josh Weaver, CFO, to the Council. Mr. Sidman described the key personnel of the organization. Mr. Weaver explained that he and Mr. Sidman were from a regulatory background and were comfortable operating within the strict regulations of the program.
- Temescal Wellness
Brandon Pollock, Vice President, introduced himself to the Council. Mr. Pollock described the members of the Board of the Directors of the organization, and the key executive personnel. Temescal described itself as a pharmaceutical model with alternative delivery models. The ATC will use Patient Treatment Advisors who meet with the patients and help determine the most appropriate treatment.

Public Participation

Matt Simon, New England Policy Director for the Marijuana Policy Project identified two issues as important to patients: legal protection (protection from arrest) and legal access to the cannabis. Mr. Simon encouraged the Council to support House Bill 593 allowing home grow, and the bill to amend the condition by condition provision of the statute such that it would be considered patient by patient. Mr. Simon encouraged home delivery in outlying areas and requested the Council support this option.

Richard Vincent, leader of an MS support group, spoke of his interest in becoming a member of the Council.

October 9, 2015

Discussion on Potential Legislation for 2016

Mr. Holt, DHHS Administrative Rules Coordinator, Office of Operations Support, distributed a copy of the Department's proposed legislation to the Council, including the following proposals:

- Expand of the definition of “provider” in RSA 126-X:1, VII(a), so that physicians and advanced practice registered nurses from bordering states (Massachusetts, Maine, and Vermont) would be allowed to issue written certifications for therapeutic cannabis to NH patients. Also, require the DHHS to report concerns regarding provider conduct to the appropriate regulatory entity in Maine, Massachusetts, or Vermont for an out-of-state provider.
- Enact a technical fix to legislative change from the 2014 session regarding the Alternative Treatment Center registration number being removed from the qualifying patient’s registry identification card.
- Eliminate the current limit on the number of seedlings that an ATC can have. Mr. Holt introduced representatives from Prime Alternative Treatment Centers of NH, to further discuss the issue.

Chief Shagoury distributed a copy of suggested legislative items to the Council, including:

- Cannabis should remain in the sealed container until delivered to the patient, and it should be in a locked container when transported.
- The Department should be providing 24 hour access to the Registry to law enforcement.
- Present RSA language on the seizure of cannabis is also a problem for law enforcement in that only usable cannabis is allowed to be seized, and law enforcement must return seized marijuana in some cases.
- Reduce the amount of allowable cannabis to 2 ounces per month.

November 20, 2015

DHHS Update

Mary Castelli, DHHS Senior Division Director, Office of Operations Support, and John Martin, Manager, Bureau of Licensing and Certification, outlined program achievements including:

- Completion of public input meetings for the siting of Alternative Treatment Centers.
- JLCAR approval of rules changes: pre-registration for qualifying patients and designated caregivers; testing protocol for cannabis; and conditional registrations for cultivation sites.
- Hiring two individuals as dedicated TCP employees: one for the patient/caregiver registry, and the other for ATC inspections.
- Release of patient and caregiver applications, on October 30, 2015.
- On November 2, 2015, beginning to receive applications from potentially qualifying patients and designated caregivers.
- The single most common issue from the public has been a request for assistance in locating medical providers willing to complete written certifications.
- A law enforcement communication plan has been drafted and shared with law enforcement and the ACLU.
- A bill has been introduced this session to:
 - allow medical providers from adjoining states to issue certifications;
 - allow the criminal records checks (designated caregivers and ATC potential employees/volunteers) to show only that there is or is not a felony conviction instead of releasing the actual record;
 - add an exemption for requests from law enforcement to 91-A; and
 - remove limits on the number of cannabis plants for ATCs.

General Discussion on Outcome Measurements

Seddon Savage, M.D., introduced a sample outcomes measurement survey to the Council for discussion and consideration. She also introduced Jacob Vardosky, Ph.D. student at Dartmouth College, to assist with the discussion.

Advisory Council Member Updates/Public Participation

- Mr. Vincent described the contact he had had with various members of the public, who raised concerns about the cost of the marijuana, the lack of a home grow option under the law, and the possibility of waiving the \$50 application fee.
- A member of the public talked about knowing three patients who have died waiting for medical marijuana to become a reality.
- A member of the public questioned the wisdom of the Attorney General's office spending money to fight the case of Linda Horan, an individual with terminal lung cancer, who was seeking access to medical marijuana in Maine. He requested the Council take a position that the card should be issued.
- A member of the public said that he is concerned that the lawsuit being pursued by the Attorney General's office will have a chilling effect on other patients.
- Attorney Keshen asked if the Council disagreed with the position being taken by the Attorney General's office in pending litigation would the Council be able to inform the AG's office of their disagreement. Rep. MacKay responded that the Council is advisory to the Department, not the Attorney General, so any opinions are more properly directed to the Commissioner. Director Castelli explained that the Department sought assistance from the Attorney General's office when the law was first passed regarding the issuance of the cards. The advice that was given is what has been followed. Attorney Twomey explained that the court is likely to issue its opinion in the near future, and an opinion issued to the Attorney General's office would probably be unnecessary.
- APRN Hunter suggested that a lack of knowledge in the medical community about the program was an issue. Providers were concerned about being held liable for bad outcomes and had other issues related to the certification process.
- Dr. Glassman offered that the medical society has offered two programs on the topic and has online resources for providers.
- Ms. Horgan noted that Exeter Hospital is working on a policy to not allow physicians/APRNs to issue certifications.
- Attorney Chaffee questioned the justification for the prohibition by institutions on medical providers.
- Dr. Glassman explained that the certification form may not be prescribing, but the provider knows that the individual intends to use cannabis. He said that the Medical Society has been working on developing an informed consent sheet for patients to sign that providers may elect to use.
- Denis Acton, patient survivor and advocate, described a process he has developed to work with providers who are barred from writing certifications.