

THERAPEUTIC USE OF CANNABIS ADVISORY COUNCIL
Friday, October 27, 2017, 1:00 PM
Legislative Office Building, Room 205-207

DRAFT MINUTES

Members in attendance:

Devon Chaffee, NH Civil Liberties Union
Burt Dibble, MD, NH Board of Medicine
Lt. John Encarnacao, Department of Safety
Michael Holt, Department of Health and Human Services (Clerk)
Jill Hunter, APRN, NH Nurse Practitioner Association
Representative James MacKay (Chairman)
Representative Bill Nelson, House of Representatives Member
Senator John Reagan, Senate Member
Richard Vincent, Qualifying Patient

Members absent:

Stuart Glassman, MD, NH Medical Society
Barbara Keshen, Public Member
Andrew Shagoury, NH Association of Chiefs of Police
NH Board of Nursing Member (vacant)
NH Attorney General's Office Member (vacant)
Community Hospital Member (vacant)
NH Hospital Member (vacant)

Call to Order

Representative James MacKay called the meeting to order at 1:06 p.m.

Approval of Minutes

Senator Reagan moved approval of the minutes from the October 27, 2016 meeting, with a second by Lt. Encarnacao. Council voted 9-0 to approve the minutes.

Council Membership

Michael Holt, Department of Health and Human Services, identified 4 vacancies on the Council [see "Members absent" above]. Mr. Holt said that Eliot Gault, Governor's Office, Director of Appointments, indicated that the Governor's Office is open to suggestions for the two Governor-appointed vacancies.

DHHS Update

General Update

Mr. Holt, Department of Health and Human Services, provided the following general update.

- All of the Alternative Treatment Centers (ATCs), including 3 cultivation and 4 dispensaries are fully operational.
- Past and current numbers of active qualifying patients, designated caregivers, and certifying medical providers are as follows:

	2016 Report (Dec. 19, 2016)	2017 Report (June 30, 2017)	Current (Oct. 27, 2017)

Qualifying Patients	2089	3493	4382
Designated Caregivers	129	258	303
Certifying Providers	560	703	791

- The increase in participation between June and October could be attributed to the addition of new qualifying conditions approved by the legislature which became effective in August, such as PTSD and chronic pain.
- The TCP 2017 Annual Data report for 2017 is currently being worked on.

Questions

Jill Hunter, APRN. Are the applications still being processed within the 20 day timeframe even with the increase in the number of applications being submitted to the program?

- Mr. Holt responded that in recent months it has been a struggle to meet the timeframes due to loss of staff, but as of last week the Department had achieved compliance with meeting the statutory timeframes. The vacant staff position will be filled, as well as potentially another new staff position.

Proposed Rule Changes to He-C 402 Alternative Treatment Centers

Mr. Holt explained that the current rules were largely written in 2014, prior to program implementation, and that over time issues have been identified by the public, the ATCs, and by the Department which need to be addressed and clarified.

Mr. Holt indicated that a summary sheet of proposed rule changes had been sent to the Council in advance of the meeting, and that the document was available at the meeting for the public as well.

As an example of a change that will have the most positive impact on qualifying patients, Mr. Holt described a change to allow the qualifying patient to have a support person enter the dispensary with them who is not necessarily a designated caregiver. This support person could be a spouse or friend that would act as a second set of ears, learn about therapeutic cannabis from the ATC technicians, and participate in the intake process, similar to a spouse or friend who is allowed to participate in a doctor’s office visit. Currently a support person is not allowed to enter the dispensary with the qualifying patient if the person is not a designated caregiver. Many patients learn that they cannot be accompanied inside an ATC only once they arrive at the dispensary.

Representative James MacKay asked Mr. Holt to discuss other significant proposed changes.

Mr. Holt described in detail two of the more substantive policy changes, proposed at the request of the ATCs:

- The rule currently requires two ATC agents, one of whom must be an ATC technician, to transport cannabis. This rule has created a financial burden to ATCs considering available staff and staffing costs. A proposed change would allow one ATC agent to transport the cannabis.
- The proposed rule establishes that the amount of usable cannabis contained in cannabis-infused products be based on the concentration of total active cannabinoids—as defined by the cannabinoid profile in He-C 402.03(j)—contained in the cannabis concentrate used to produce the CIP, and not by weight of the cannabis used to produce such concentrate. The proposed equivalency ratio is 250 mg of total active cannabinoid = 1 gram of usable cannabis.
 - This will ensure consistency of products for qualifying patients relative to the degree to which a particular CIP counts towards their 10-day limit.
 - This will ensure equity between ATCs regarding their annual fee paid to the Department to offset the state’s expenses to administer the program, which, pursuant to rule, are based on the amount of usable cannabis sold by each ATC per year, regardless of the efficiency of an ATC’s extraction methods.

Rep. MacKay clarified that the Department is not looking for an endorsement from the Council, but that the Department would welcome questions and comments now and during the formal rulemaking process.

Questions and Comments

Representative Bill Nelson. How does the participation of NH citizens in the Therapeutic Cannabis Program compare to other states?

- Mr. Holt responded that he did not know the answer, but offered that he would look into it. He thought there might be lower participation in NH, at least to start, considering NH began their program with a very narrow list of qualifying conditions.

Kate Frey, Vice President of Advocacy, New Futures. What is the timeframe for the proposed rulemaking?

- Mr. Holt responded that a schedule had not been established, but that he hoped to target the January 2018 JLCAR meeting.

Ms. Frey also expressed concerned about information posted on one of the ATC's websites. Ms. Frey provided copies of the posted information to the Council members and read some examples. She alleged that the information was a form of restricted advertising per the current rules. Ms. Frey expressed belief that such information induced the sale of cannabis and disagreed that this type of information should be allowed to be posted on the ATCs' websites or social media sites.

- No Council member had comments or questions for Ms. Frey on this issue.

Representative Renny Cushing. He stated that he was permitted by the Department to tour the dispensary operated by Prime ATC in Merrimack, NH, along with other state representatives from the Criminal Justice Committee and the Health and Human Services and Elderly Affairs Committee. The tour was impressive and eye-opening. He agreed with the proposed rule that would allow a support person who is not a designated caregiver to enter the dispensary with a qualifying patient.

- John Glowik, Jr., CEO of Prime ATC Centers of NH, Inc. He responded by agreeing with the proposed changes discussed at today's meeting: allowing a support person to enter the ATC dispensary with the qualifying patient to assist them; allowing one ATC agent to transport cannabis instead of two agents; and changing how the amount of cannabis used in CIP is calculated.
- Mr. Holt responded by asking if the Council was interested in tour of one of the ATC dispensaries.
- Devon Chaffee, American Civil Liberties Union–NH, expressed interest in such a tour, as did other Council members.
- Mr. Holt stated he would work on setting up a tour, which would need to be approved by the DHHS Commissioner.

Representative MacKay. He stated he has been impressed by the strong support from DHHS to perform the therapeutic cannabis work without additional staff or money appropriated by the legislature. He stated that DHHS did this enthusiastically, and that the amount of work was huge for DHHS staff, including Mr. Holt, Mr. John Martin, former Manager, Bureau of Licensing and Certification, and other DHHS staff.

Jill Hunter, APRN. She asked Mr. Holt to clarify the 3-month relationship requirement between a patient and the certifying provider. She expressed concern that there was an unnecessary barrier to access the program for patients under the care of certain medical practices who share responsibility for the care of patients.

- Mr. Holt responded that the 3-month provider-patient relationship is established in the law, that this concern is raised regularly by both providers and patients, and this may be an issue that the legislature could revisit.
- Senator John Reagan responded that Ms. Hunter should contact him directly with suggested language.

- Public attendee, Dr. Gilbert Fanciullo, Board Member of Prime ATC Centers of NH, Inc., but speaking as a recently retired physician reiterated that this was certainly an issue in medical practices where medical staff work closely together, and that it is an unnecessary barrier to accessing the program.
- Ms. Hunter, stated the patients at her facility are very sick, and time is of the essence for many patients.
- Dr. Fanciullo stated that VT allows practicing medical partners to certify and recertify qualifying patients.
- Ms. Chaffee, American Civil Liberties Union–NH, offered to do the research on this.

Advisory Council Member Updates

No member updates were provided.

Discussion on Potential Legislation

Representative Cushing. He stated that a bill is being proposed for the upcoming 2018 legislative session for the home cultivation of cannabis for qualifying patients and designated caregivers, and that the bill language is being worked on with the Department. He provided copies to Council members of the proposed legislation.

- Mr. Holt clarified that the Department’s work on this bill was at the direction of Senator Bradley, based on technical and administrative issues raised by the Department when HB 472 was considered during the 2017 session.

Mr. Holt introduced Department-requested legislation for the upcoming 2018 legislative session regarding the Therapeutic Cannabis Program, and he thanked Senator Reagan for agreeing to sponsor that legislation. The proposed legislation would:

- Repeal the Department’s authority for conducting a case by case review in RSA 126-X:1, IX(b). This process is made obsolete considering legislative changes to the qualifying conditions in 2017.
- Remove requirement in RSA 126-X:4, IX(c), (d) & (f) for a new registry identification card number upon issuance of a new card.
- Allow two designated caregivers for minor patients, both of whom must be a parent or legal guardian. [RSA 126-X:4, (I)(f)]

Mr. Holt raised an issue for a potential legislative change, but one that was not included in the Department-requested legislation discussed earlier. It was unclear if naturopathic doctors licensed in NH could or should be allowed to issue written certifications to their patients for the therapeutic use of cannabis since they were not licensed under RSA 329, as required by RSA 126-X.

General Discussion on the Council’s Statutory Responsibilities

Representative MacKay stated that at the end of 5 years (from the effective date of the law) the Therapeutic Cannabis Program will be evaluated as to whether to continue it or not. He is looking for input on how this can be done and is open to thoughts.

Jill Hunter, APRN, asked if any patient surveys were being done, collected, and analyzed.

- Mr. Holt responded that all patient surveys being conducted are voluntary. The extent to which there is patient participation in these surveys is unknown. They are being kept at the ATCs, and the information has not been collected and collated.
- Ms. Chaffee asked for how long have the surveys been done?
 - Mr. Holt responded that the surveys have been done since day one. Feedback to DHHS from the ATCs has been that the intake and quarterly surveys are burdensome to patients.
 - Mr. Holt stated that there is also a patient satisfaction survey that is conducted, the results of which are published in the program’s annual data report. Results were published in the 2016 report. In the 2017 survey a question was added to regarding a patient’s ability to decrease prescription medication usage. Of course, this is self-reported information. The 2017 report is currently being worked on.

- Representative Nelson asked how are the surveys were handled?
 - Mr. Holt responded they are kept at the ATC in the patients' files. The Department has not had the time or resources to do anything with these reports.

Ms. Hunter, APRN, asked if the crime rate has increased since the start of the program.

- Lt. John Encarnacao, Department of Safety, responded he has heard nothing negative about the Program. He has not been notified regarding any issues, any concerns regarding diversion, and that he has no reason to vote the Program should not continue.

Mr. Holt stated that July 2018 is the statutory deadline for the Council to recommend if the Program should continue or be repealed. What should the Council do to accomplish this systematically, in the time remaining, with the limited resources available, to get the best possible answer to this question.

Representative MacKay recommended that the Council form a subcommittee for this purpose. He wanted various points of view on the subcommittee to maintain balance.

Volunteers for the subcommittee included: Senator Reagan, Representative MacKay; Mr. Holt, Ms. Hunter, and Lt. Encarnacao.

Representative MacKay emphasized that subcommittee meetings will be open to the public and anyone can attend and participate.

Public Comments

Public attendee comment. It was asked if the Council should be sunset after the recommendation to continue or repeal the program was made. It was noted that the law does not have a specific sunset provision.

Public attendee comment. She is a wife of a qualifying patient and is supportive of the proposed rule to allow a support person who is not a designated caregiver to accompany the qualifying patient into the dispensary.

Meeting Adjourned

Meeting adjourned at 2:18 p.m.