HOUSE BILL 573-FN

AN ACT relative to the use of marijuana for medicinal purposes.


COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill permits the use of marijuana for medicinal purposes in New Hampshire.

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Explanation: Matter added to current law appears in bold italics. Matter removed from current law appears [in brackets and struckthrough.] Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to the use of marijuana for medicinal purposes.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Findings.

I. Modern medical research has discovered beneficial uses for marijuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions, as found by the National Academy of Sciences' Institute of Medicine in March 1999.

II. Subsequent studies since the 1999 National Academy of Sciences' Institute of Medicine report continue to show the therapeutic value of marijuana in treating a wide array of debilitating medical conditions. These include relief of the neuropathic pain caused by multiple sclerosis, HIV/AIDS, and other illnesses that often fails to respond to conventional treatments and relief of nausea, vomiting, and other side effects of drugs used to treat HIV/AIDS and hepatitis C, increasing the chances of patients continuing on life-saving treatment regimens.

III. Marijuana has many currently accepted medical uses in the United States, having been recommended by thousands of licensed physicians to at least 500,000 patients in states with medical marijuana laws. Marijuana's medical utility has been recognized by a wide range of medical and public health organizations, including the American Academy of HIV Medicine, the American College of Physicians, the American Nurses Association, the American Public Health Association, the Leukemia & Lymphoma Society, and many others.

IV. Data from the Federal Bureau of Investigation's Uniform Crime Reports and the Compendium of Federal Justice Statistics shows that approximately 99 out of every 100 marijuana arrests in the United States are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill patients who have a medical need to use marijuana.

V. Alaska, California, Colorado, the District of Columbia, Hawaii, Maine, Michigan, Montana, Nevada, New Mexico, New Jersey, Oregon, Vermont, Rhode Island, and Washington have removed state-level criminal penalties from the medical use and cultivation of marijuana. New Hampshire joins in this effort for the health and welfare of its citizens.

VI. States are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. Therefore, compliance with this act does not put the state of New Hampshire in violation of federal law.

VII. State law should make a distinction between the medical and non-medical uses of marijuana. Hence, the purpose of this act is to protect patients with debilitating medical conditions, as well as their physicians and designated caregivers, from arrest and prosecution, criminal and
other penalties, and property forfeiture if such patients engage in the medical use of marijuana.

VIII. The people of the state of New Hampshire declare that they enact this act pursuant to the police power to protect the health of its citizens that is reserved to the state of New Hampshire and its people under the 10th Amendment to the United States Constitution.

2 New Chapter; Use of Marijuana for Medicinal Purposes. Amend RSA by inserting after chapter 126-V the following new chapter:

CHAPTER 126-W

USE OF MARIJUANA FOR MEDICINAL PURPOSES

126-W:1 Definitions. In this chapter:

I. “Alternative treatment center” means a not-for-profit entity registered under RSA 126-W:8 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies, or dispenses marijuana, or related supplies and educational materials, to a registered qualifying patient who has designated it, either by dispensing it directly to the registered qualifying patient or by dispensing it to his or her registered designated caregiver.

II. “Alternative treatment center agent” means a principal officer, board member, employee, manager, or volunteer of a registered alternative treatment center who is 21 years of age or older.

III. “Cardholder” means a qualifying patient, a designated caregiver, or an alternative treatment center agent who has been issued and possesses a valid registry identification card.

IV. “Chronic or terminal disease” means 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, or multiple sclerosis.

V. “Debilitating medical condition” means the presence of both:

(a) A chronic or terminal disease; and

(b) Symptoms or treatment results that include at least one of the following: cachexia or wasting syndrome, severe pain that has not responded to previously prescribed medication or surgical measures for more than 3 months, severe nausea, severe vomiting, seizures, or severe, persistent muscle spasms.

VI. “Department” means the department of health and human services.

VII. “Designated caregiver” means an individual who is at least 21 years of age including a licensed health care professional, but who is not a qualifying patient, and who has agreed to assist with a patient’s medical use of marijuana, including acquiring medical marijuana from an alternative treatment center and delivering it to the qualifying patient, and who has never been convicted of any drug-related offense. Except for a licensed health care professional, a designated caregiver may serve as a designated caregiver for only one qualifying patient at a time.

VIII. “Marijuana” means 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 does 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.

IX. “Medical use” means the acquisition, possession, preparation, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered qualifying patient’s debilitating medical condition or symptoms or results of treatment associated with the registered qualifying patient’s debilitating medical condition.

X. “Physician” means an individual licensed to prescribe drugs to humans under RSA 329 and who possesses certification from the United States Drug Enforcement Administration to prescribe controlled substances, except that in relation to a visiting qualifying patient, “physician” means 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.

XI. “Qualifying patient” means an individual who has been diagnosed by a physician as having a debilitating medical condition.

XII. “Registry identification card” means a document issued by the department that identifies an individual as a qualifying patient, a designated caregiver, or a registered alternative treatment center agent.

XIII. “Seedling” means a marijuana plant that has no flowers and is less than 12 inches in height and less than 12 inches in diameter. A seedling shall meet all three criteria set forth in this paragraph.

XIV. “Usable marijuana” means the dried leaves and flowers of the marijuana 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-marijuana ingredients combined with marijuana and prepared for consumption as food or drink.

XV. “Visiting qualifying patient” means a patient with a debilitating medical condition who is not a resident of New Hampshire or who has been a resident of New Hampshire for fewer than 30 days.

XVI. “Written certification” means a document signed by a physician stating that in the physician’s professional opinion, after having completed a full assessment of the qualifying patient’s medical history and current medical condition made in the course of a bona fide physician-patient relationship as defined in RSA 329:1-c of at least 3 months in duration, the qualifying patient has a debilitating medical condition, and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient. The written certification shall be valid for up to one year and shall specify the qualifying patient’s debilitating medical condition, which also
shall be noted in the qualifying patient's medical records.

126-W:2 Protections for the Medical Use of Marijuana.

I. A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty, or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for the medical use of marijuana in accordance with this chapter, if the qualifying patient possesses an amount of usable marijuana that does not exceed 2 ounces. A qualifying patient shall remain subject to the provisions of RSA 126-W:5.

II. A designated caregiver who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of usable marijuana in accordance with this chapter, if the designated caregiver possesses an amount of marijuana that does not exceed 2 ounces of usable marijuana. A designated caregiver shall remain subject to the provisions of RSA 126-W:5.

III. (a) A qualifying patient is presumed to be lawfully engaged in the medical use of marijuana in accordance with this chapter if the qualifying patient possesses a registry identification card and possesses an amount of marijuana that does not exceed the amount allowed under this chapter.

(b) A designated caregiver is presumed to be lawfully engaged in assisting with the medical use of marijuana in accordance with this chapter if the designated caregiver possesses a registry identification card and possesses an amount of marijuana that does not exceed the amount allowed under this chapter.

(c) The presumptions made in subparagraphs (a) and (b) may be rebutted by evidence that conduct related to marijuana was not for the purpose of treating or alleviating the registered qualifying patient's debilitating medical condition or symptoms or effects of the treatment associated with the debilitating medical condition, in accordance with this chapter.

IV. (a) An alternative treatment center may accept marijuana seeds, seedlings, plants, or usable marijuana from other registered alternative treatment centers in New Hampshire. An alternative treatment center may transfer or sell marijuana seeds, seedlings, plants, or usable marijuana to other registered alternative treatment centers in New Hampshire.

(b) An alternative treatment center may accept a donation of marijuana seeds or seedlings, without compensation, from individuals and entities from jurisdictions outside of New Hampshire who are authorized to cultivate medical marijuana in their home state.

(c) Individuals and entities from jurisdictions outside of New Hampshire who are authorized to cultivate medical marijuana in their home state shall not be subject to arrest, prosecution, or penalty, or denied any right or privilege for donating marijuana seeds or seedlings to
alternative treatment centers in New Hampshire.

V.(a) No school or landlord may refuse to enroll or lease to, or otherwise penalize, an individual solely for his or her status as a registered qualifying patient or a designated caregiver, unless failing to do so would put the school or landlord in violation of federal law or regulations.

(b) For the purposes of medical care, including organ transplants, a registered qualifying patient’s authorized use of marijuana in accordance with this chapter shall be considered the equivalent of the authorized use of any other medication used at the direction of a physician, and shall not constitute the use of an illicit substance.

(c) Unless a failure to do so would constitute a violation of federal law or federal regulations, an employer shall not discriminate against an individual in hiring, termination, or any term or condition of employment, or otherwise penalize an individual, based upon either of the following:

(1) The individual’s status as a registered qualifying patient or registered designated caregiver; or

(2) A registered qualifying patient’s positive drug test for marijuana components or metabolites, unless the patient used or possessed, or was under the influence of or impaired by marijuana on the premises of the place of employment. For purposes of this chapter, “impaired” includes but is not limited to instances where the registered qualifying patient is not able to safely perform essential job tasks.

VI. A person otherwise entitled to custody of, or visitation or parenting time with, a minor shall not be denied such a right solely for conduct allowed under this chapter and there shall be no presumption of neglect or child endangerment.

VII. A registered designated caregiver who is a licensed health care professional may receive compensation for costs associated with assisting a registered qualifying patient who has designated the designated caregiver to assist him or her with the medical use of marijuana. Such compensation shall not constitute the sale of controlled substances.

VIII. A physician shall not be subject to arrest, prosecution, or penalty, or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by the New Hampshire board of medicine or any other occupational or professional licensing board or bureau, solely for providing written certifications or for otherwise stating that, in the physician’s professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient’s debilitating medical condition or symptoms or effects of treatment associated with the debilitating medical condition, provided that nothing shall prevent a professional licensing board from sanctioning a physician for failing to properly evaluate a patient’s medical condition or otherwise violating the standard of care.

IX. Any marijuana, marijuana paraphernalia, licit property, or interest in licit property that is possessed, owned, or used in connection with the medical use of marijuana as allowed under this
chapter, or acts incidental to such use, shall not be seized or forfeited.

X. An individual shall not be subject to arrest, prosecution, or penalty, or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, simply for being in the presence or vicinity of the medical use of marijuana as allowed under this chapter.

XI. A 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 marijuana for medical purposes, shall have the same force and effect as a registry identification card issued by the department, provided that a debilitating medical condition as defined in RSA 126-W:1, V exists.

XII. Any cardholder who transfers marijuana to an individual who is not a cardholder under this chapter shall be guilty of a class B felony, shall have his or her registry identification card revoked, and shall be subject to other penalties as provided in RSA 318-B:26. The department may revoke the registry identification card of any cardholder who violates any provision of this chapter, and the cardholder shall be subject to any other penalties established in law for the violation.

XIII. The protections provided to cardholders in this section shall exist only upon presentation of a valid registry identification card.

126-W:3 Departmental Administration.

I. Except as provided for in paragraphs II and III, the department shall issue registry identification cards to qualifying patients who submit all of the following information:

(a) Written certification as defined in RSA 126-W:1, XVI.
(b) Application or renewal fee.
(c) Name, residential and mailing address, and date of birth of the qualifying patient, except that if the applicant is homeless, no residential address is required.
(d) Name, address, and telephone number of the qualifying patient’s physician.
(e) Name, address, and date of birth of the qualifying patient’s designated caregiver, if any.
(f) Name and address of the alternative treatment center that the qualifying patient designates; a qualifying patient may designate no more than one alternative treatment center at any time.
(g) A statement signed by the qualifying patient, pledging not to divert marijuana to anyone who is not allowed to possess marijuana pursuant to this chapter and acknowledging that their diversion of marijuana is punishable by a class B felony and revocation of one’s registry identification card, in addition to other penalties for the illegal sale of marijuana.
(h) A complete set of fingerprints for the qualifying patient’s designated caregiver, if any.
(i) A signed statement from the designated caregiver, if any, agreeing to be designated as the patient’s designated caregiver and pledging not to divert marijuana to anyone who is not
allowed to possess marijuana pursuant to this chapter and acknowledging that their diversion of
marijuana is punishable by a class B felony and revocation of one's registry identification card, in
addition to other penalties for the illegal sale of marijuana.

II. The department shall not issue a registry identification card to a qualifying patient who
is under the age of 18 unless:

(a) The qualifying patient’s physician has explained the potential risks and benefits of
the medical use of marijuana to the custodial parent or legal guardian with responsibility for health
care decisions for the qualifying patient; and

(b) The custodial parent or legal guardian with responsibility for health care decisions
for the qualifying patient consents in writing to:

(1) Allow the qualifying patient’s medical use of marijuana;
(2) Serve as the qualifying patient’s designated caregiver;
(3) Control the acquisition of the marijuana and the frequency of the medical use of
marijuana by the qualifying patient; and

(c) The custodial parent or legal guardian completes an application on behalf of the
minor.

III. The department shall verify the information contained in an application or renewal
submitted pursuant to this section, and shall approve or deny an application or renewal within 15
days of receiving it. The department may deny an application or renewal only if the applicant did
not provide the information required pursuant to this section, the applicant previously had a registry
identification card revoked for violating the provisions of this chapter, or if the department
determines that the information provided was falsified. An applicant who is aggrieved by a
department decision may request an administrative hearing at the department.

IV. The department shall require a state and federal criminal records check on each person
who is applying to be a designated caregiver or an alternative treatment center agent. The
department shall request the department of safety to perform the state and federal criminal records
check and the department of safety shall complete such records checks and convey the findings of
such checks to the department within 30 days of the request. The department and the department of
safety may exchange necessary data including fingerprint data with the Federal Bureau of
Investigation without disclosing that the records check is related to the provisions of RSA 126-W and
acts permitted by it. The department and the department of safety shall destroy each set of
fingerprints obtained pursuant to this chapter after the criminal records check is complete.

V. The department shall issue a registry identification card to the designated caregiver, if
any, who is named in a qualifying patient’s approved application and who qualifies under this
chapter. The department shall notify the qualifying patient who has designated someone to serve as
his or her designated caregiver if a registry identification card will not be issued to the individual.

VI. The department shall issue registry identification cards to qualifying patients and to the
designated caregivers within 5 days of approving an application or renewal. Each registry identification card shall expire one year after the date of issuance, unless the physician states in the written certification that he or she believes the qualifying patient would benefit from medical marijuana only until a specified earlier date, then the registry identification card shall expire on that date.

(a) In the case of qualified patients and designated caregivers, registry identification cards shall contain all of the following:

1. Name, mailing address, and date of birth of the qualifying patient.
2. If the cardholder is a designated caregiver, the designated caregiver’s name, address, and date of birth.
3. The date of issuance and expiration date of the registry identification card.
4. A random 10-digit identification number, containing at least 4 numbers and at least 4 letters, that is unique to the cardholder.
5. A photograph of the cardholder.
6. A statement that the cardholder is permitted under state law to possess marijuana pursuant to this chapter for the medical use of the qualifying patient.

(b) In the case of a registered alternative treatment center agent, registry identification cards shall contain all of the following:

1. Name, mailing address, and date of birth of the cardholder.
2. The name and address of the alternative treatment center.
3. The date of issuance and expiration date of the registry identification card.
4. A random 10-digit identification number, containing at least 4 numbers and at least 4 letters, that is unique to the cardholder.
5. A photograph of the cardholder.
6. A statement that the cardholder is permitted to engage in activities for the alternative treatment center to cultivate and provide medical marijuana to qualified patients and designated caregivers in accordance with this chapter and a designation as to whether the person is a principal officer, board member, employee, or volunteer.

VII. The department shall track the number of registered qualifying patients who have designated each alternative treatment center and issue a monthly written statement to the alternative treatment center identifying the number of registered qualifying patients who have designated that alternative treatment center along with the registry identification numbers of each patient and each patient’s designated caregivers.

VIII. In addition to the monthly reports, the department shall also provide written notice to an alternative treatment center which identifies the names and registration identification numbers of a qualifying patient and his or her designated caregivers whenever any of the following events occur:
(a) A qualifying patient designates the alternative treatment center to serve his or her needs under this chapter;

(b) An existing registered qualifying patient revokes the designation of the alternative treatment center because he or she has designated a different alternative treatment center instead; or

(c) A registered qualifying patient who has designated the alternative treatment center loses his or her status as a registered qualifying patient under this chapter.

IX. The following notifications and department responses are required:

(a) A registered qualifying patient shall notify the department of any change in his or her name, address, or designated caregiver within 10 days of such change.

(b) A registered qualifying patient or alternative treatment center agent who fails to notify the department of any of these changes shall be guilty of a violation, punishable by a fine of no more than $150. If the qualifying patient’s certifying physician notifies the department in writing that either the qualifying patient has ceased to suffer from a debilitating medical condition or that the physician no longer believes the patient would receive benefit from the medical use of marijuana, the card is null and void upon notification by the department to the qualifying patient.

(c) A registered designated caregiver or alternative treatment center agent shall notify the department of any change in his or her name or address within 10 days of such change. A registered designated caregiver or alternative treatment center agent who fails to notify the department of any of these changes shall be guilty of a violation, punishable by a fine of no more than $150.

(d) When a qualifying patient, designated caregiver, or alternative treatment center agent notifies the department of any change to a name, address, alternative treatment center, or designated caregiver, the department shall issue the cardholder a new registry identification card with a new random 10-digit identification number within 15 days of receiving the updated information and a $10 fee.

(e) A registered qualifying patient who no longer has a debilitating medical condition and the patient’s registered designated caregiver and alternative treatment center shall return all registry identification cards associated with that qualifying patient to the department within 48 hours of receiving the diagnosis by the patient’s physician. When a registered qualifying patient dies, the family or designated caregiver shall notify the designated alternative treatment center within 24 hours, the alternative treatment center shall make arrangements to pick up any remaining supply of marijuana within 48 hours of receiving such notification, and the protections of this chapter shall no longer apply.

(f) If a cardholder loses his or her registry identification card, he or she shall notify the department and submit a $10 fee within 10 days of losing the card. Within 5 days after such notification, the department shall issue a new registry identification card with a new random 10-
digit identification number.

X. Mere possession of, or application for, a registry identification card shall not constitute probable cause or reasonable suspicion, nor shall it be used to support the search of the individual or property of the individual possessing or applying for the registry identification card. The possession of, or application for, a registry identification card shall not preclude the existence of probable cause if probable cause exists on other grounds.

XI.(a) The department shall create and maintain a confidential registry of registered qualifying patients, designated caregivers, and alternative treatment center agents who have applied for and are entitled to receive a registry identification card in accordance with the provisions of this chapter.

(b)(1) Except as specifically provided in this chapter, no person shall be permitted to gain access to any information about qualifying patients, designated caregivers, and alternative treatment center agents in the department's confidential registry, or any information otherwise maintained by the department about physicians and alternative treatment centers, except for authorized employees of the department in the course of their official duties and authorized employees of local and state law enforcement agencies who have stopped or arrested an individual who claims to be engaged in the medical use of marijuana. Authorized employees of local and state law enforcement agencies shall be granted access to the information within the department's confidential registry only for the purpose of verifying that an individual who has presented a registry identification card to the state or local law enforcement official is lawfully in possession of such card. In addition, if a state or local law enforcement agent has obtained a search or arrest warrant for a specific individual or address for which the law enforcement agent has probable cause to believe possesses, cultivates, or distributes marijuana, the department shall confirm or deny whether the individual or location is a registered qualifying patient, designated caregiver, or alternative treatment center agent.

(2) An employer, landlord, court, administrative hearings officer, or health care provider that has been presented with a registry identification card by a person asserting that they are entitled to protections under RSA 126-W:2 may contact the department to verify the validity of the registry identification card. The department shall verify a registry identification card to an employer, landlord, court, or health care provider who requests verification pursuant to this paragraph, provided that the employer, landlord, court, or health care provider provides the random identification card number on the registry identification card. In verifying the validity of a registry identification card, the department shall confirm only whether a card bearing the random identification card number is valid and the name of the person to whom it was issued.

(c) An individual shall be guilty of a class B misdemeanor for breaching the confidentiality of information obtained pursuant to this chapter, except that department employees shall be exempt for notifying law enforcement officials about falsified or fraudulent information
submitted to the department, provided the employee who suspects that falsified or fraudulent
information has been submitted confers with his or her supervisor, and both agree that
circumstances exist that warrant the notification.

XII. The department shall submit to the legislature an annual report that does not disclose
any identifying information about qualifying patients, designated caregivers, or physicians, but does
contain, at a minimum, all of the following information:

(a) The number of applications and renewals filed for registry identification cards.
(b) The number of qualifying patients and designated caregivers approved in the state.
(c) The number of alternative treatment centers registered in the state.
(d) The nature of the debilitating medical conditions of the qualifying patients.
(e) The number of registry identification cards revoked.
(f) The number of physicians providing written certifications for qualifying patients.

XIII. Where a state or local law enforcement agency encounters an individual who, during
the course of an investigation, credibly asserts that he or she is a registered qualifying patient or
registered designated caregiver or encounters a registered alternative treatment center, the law
enforcement agency shall not provide any information from any marijuana-related investigation of
the individual or entity to any law enforcement authority that does not recognize the protection of
this chapter and any prosecution of the individual or entity for a violation of this chapter shall be
conducted pursuant to the laws of this state. This paragraph shall not apply in cases where the state
or local law enforcement agency has probable cause to believe the person is distributing marijuana to
a person who is not allowed to possess it under this chapter, nor shall it prevent the sharing of
information if the primary offense is unrelated to marijuana.

XIV. The application for qualifying patients’ registry identification cards shall include a
question asking whether the patient would like the department to notify him or her of any clinical
studies regarding marijuana’s risk or efficacy that seek human subjects. The department shall
inform those patients who answer in the affirmative of any such studies it is notified of that will be
conducted in the United States.

126-W:4 Department Rules. Not later than one year after the effective date of this chapter, the
department shall adopt rules, pursuant to RSA 541-A, governing the manner in which it shall
consider applications for issuance and renewals of registry identification cards for qualifying
patients and designated caregivers. The department’s rules shall establish application and renewal
fees for registry identification cards in accordance with the following:

I. The fee structure by the department for alternative treatment centers and registry
identification cards shall generate revenues sufficient to offset all state expenses of implementing
and administering this chapter; however,

II. The department may accept donations from private sources without the approval of the
governor and council in order to reduce the application and renewal fees.
126-W:5 Prohibitions, Restrictions, and Limitations on the Use of Medical Marijuana.

I. A registered qualifying patient may use medical marijuana on privately-owned real property only with the permission of the property owner or in the case of leased property with the permission of the tenant in possession of the property, except that a tenant shall not allow a qualified patient to smoke medical marijuana on rented property if smoking on the property violates the lease or the lessor’s rental policies that apply to all tenants at the property. However, a tenant in possession may permit a qualified patient to use medical marijuana on leased property by ingestion or inhalation through vaporization even if smoking is prohibited by the lease or rental policies. For purposes of this chapter, vaporization shall mean the inhalation of marijuana without the combustion of the marijuana.

II. Nothing in this chapter shall exempt any person from arrest or prosecution for:
   (a) Being under the influence of marijuana while:
       (1) Operating a motor vehicle, commercial vehicle, boat, or vessel, or any other vehicle propelled or drawn by power other than muscular power;
       (2) In his or her place of employment, without the written permission of the employer; or
       (3) Operating heavy machinery or handling a dangerous instrumentality.
   (b) The use or possession of marijuana by a qualified patient or other cardholder:
       (1) For purposes other than alleviating symptoms as permitted by this chapter; or
       (2) In a manner that endangers the health, well-being, or safety of another person.
   (c) The smoking of marijuana in any public place, including:
       (1) A school bus, public bus, or other public vehicle;
       (2) A workplace or place of employment, without the written permission of the employer;
       (3) The grounds of any preschool or primary or secondary school;
       (4) Any correctional facility; or
       (5) Any public park, public beach, public recreation center, public field, or youth center.

III. Nothing in this chapter shall be construed to require:
   (a) A governmental, private, or any other health insurance provider, health care plan, or medical assistance program to be liable for any claim for reimbursement for the medical use of marijuana.
   (b) Any individual or establishment in lawful possession of property to allow a guest, client, customer, or other visitor to use marijuana on or in that property. This chapter shall not limit an individual or entity in lawful possession of property, or an agent of such individual or entity, from expelling an individual who uses marijuana without permission from their property and from seeking civil and criminal penalties for the unauthorized use of marijuana on their property.
(c) Any accommodation of any medical use of marijuana on the property or premises of any place of employment or on the property or premises of any jail, correctional facility, or other type of penal institution where prisoners reside or persons under arrest are detained. This chapter shall in no way limit an employer’s ability to discipline an employee for ingesting marijuana in the workplace or working while under the influence of marijuana.

(d) A landlord to permit a qualified patient to use marijuana in any common areas of leased property.

(e) A landlord to permit a qualified patient to smoke marijuana on any or in any leased property, except that a landlord may not prohibit the medical use of marijuana on leased property by a qualified patient through means other than smoking, including but not limited to the ingestion of medical marijuana or the inhalation through vaporization, as long as the tenant in possession of the property provides permission to the qualified patient to use medical marijuana in the rented property.

IV. Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution shall be punishable by a fine of $500, which shall be in addition to any other penalties that may apply for making a false statement or for the use of marijuana other than use undertaken pursuant to this chapter.

126-W:6 Affirmative Defense. Except as provided in RSA 126-W:5, it is an affirmative defense to any prosecution of an offense involving marijuana intended for medical use that:

I. The defendant is a qualifying patient in possession of a valid registry identification card and at the time of arrest or prosecution was in possession of a quantity of marijuana that was not more than is allowed under this chapter; or

II. The defendant is a designated caregiver in possession of a valid registry identification card and at the time of arrest or prosecution was in possession of a quantity of marijuana that was not more than is allowed under this chapter; and

III. The qualifying patient or the qualifying patient’s designated caregiver was engaged in the acquisition, possession, preparation, use, or transportation of marijuana, paraphernalia, or both, relating to the administration of marijuana solely to treat or alleviate the qualifying patient’s debilitating medical condition or symptoms or effects of treatment associated with the qualifying patient’s debilitating medical condition.

126-W:7 Enforcement.

I. If the department fails to issue a valid registry identification card in response to a completed application for issuance or renewal submitted by a qualifying patient by certified mail pursuant to this chapter within 20 days of the application for issuance or renewal, the registry identification card shall be deemed granted, and a copy of the registry identification application or renewal shall be deemed a valid registry identification card.

II. If the department fails to issue a valid registry identification card in response to a
completed application for issuance or renewal submitted by an alternative treatment center agent or
a designated caregiver by certified mail pursuant to this chapter within 45 days of the application for
issuance or renewal, the registry identification card shall be deemed granted, and a copy of the
registry identification application or renewal shall be deemed a valid registry identification card.

III. If at any time after one year following the effective date of this chapter the department
is not accepting applications, including if it has not adopted rules allowing qualifying patients to
submit applications, a notarized statement by a qualifying patient containing the information
required in an application, pursuant to RSA 126-W:3, I together with a written certification shall be
deemed a valid registry identification card.

126-W:8 Alternative Treatment Centers.

I. An alternative treatment center registered under this section may acquire, possess,
cultivate, manufacture, deliver, transfer, transport, supply, or dispense marijuana, marijuana
paraphernalia, and related supplies and educational materials, to registered qualifying patients who
have designated it as their alternative treatment center and to their registered designated caregivers
for the registered qualifying patients’ medical use. An alternative treatment center may receive
consideration for providing the goods and services allowed by this section. An alternative treatment
center may cultivate and possess whichever of the following quantities is greater: (a) 96 marijuana
plants, 96 seedlings, and 32 ounces of usable marijuana; or (b) 6 plants, 6 seedlings, and 2 ounces for
each registered qualifying patient who has designated the alternative treatment center to provide
him or her with marijuana for medical use. An alternative treatment center may also possess
marijuana seeds, stalks, and unusable roots.

II.(a) Not later than one year 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,
including, but not necessarily limited to, rules governing:

(1) The form and content of registration and renewal applications.
(2) Oversight requirements.
(3) Security requirements, which shall include at a minimum, lighting, physical
security, video security, alarm requirements, measures to prevent loitering, and on-site parking.
(4) Sanitary requirements.
(5) Electrical safety requirements.
(6) The specification of acceptable forms of picture identification that an alternative
treatment center may accept when verifying a sale.
(7) Personnel requirements including how many volunteers an alternative treatment
center is permitted to have and requirements for supervision.
(8) Labeling standards.
(9) Procedures for suspending or terminating the registration of alternative
treatment centers that violate the provisions of this section or the rules adopted pursuant to this
section, procedures for appealing penalties, and a schedule of penalties.

(10) Procedures for inspections and investigations.

(11) Advertising restrictions, including a prohibition of misrepresentation and unfair
practices.

(12) Permissible hours of operation.

(13) The fees for the processing and review of applications for registration as an
alternative treatment center for the registration and regulation of an alternative treatment center
after it has been approved by the department. Such fees shall be established in an amount that
covers all costs of the department and other state agencies, as applicable, for the review,
registration, and regulation of alternative treatment centers.

(14) Such other matters as are necessary for the fair, impartial, stringent, and
comprehensive administration of this chapter.

(b) The department shall adopt rules with the goal of protecting against diversion and
theft, without imposing an undue burden on the registered alternative treatment centers or
compromising the confidentiality of registered qualifying patients and their registered designated
caregivers.

(c) Within 30 days of the adoption of rules, the department shall begin accepting
applications for the operation of alternative treatment centers.

(d) Within 18 months of the effective date of this section, provided that at least 3
applications have been submitted that score sufficiently high to receive a certificate, the department
shall issue alternative treatment center registration certificates to the three highest-scoring
applicants.

(e) Any time an alternative treatment center registration certificate is revoked, is
relinquished, or expires, the department shall accept applications for a new alternative treatment
center and issue registration certificates to the applicant who scores the highest.

(f) If at any time after one year after the effective date of this section, fewer than 3
alternative treatment centers hold valid registration certificates in New Hampshire, the department
shall accept applications for a new alternative treatment center. Except as provided in
subparagraph (g), no more than 3 alternative treatment centers may hold valid registration
certificates at one time.

(g) If at any time after 2 years after the effective date of this section, the report issued
pursuant to RSA 126-W:9 determines that 3 alternative treatment centers are not sufficient to
ensure access to registered qualifying patients throughout the state, the department shall accept
applications for up to 2 additional alternative treatment centers and issue registration certificates to
the appropriate number of applicants who score the highest. The number of additional alternative
treatment centers shall be determined by the department, based on the report issued pursuant to
III. (a) An alternative treatment center applicant must submit a completed department-approved application form with all required documentation and a non-refundable fee in an amount set by department rule. The alternative treatment center application and supporting materials must include, at a minimum:

1. The legal name, articles of incorporation, and bylaws of the alternative treatment center.

2. The proposed physical address of the alternative treatment center, if a precise address has been determined, or, if not, the general location where it would be located. This may include a second location for the cultivation of medical marijuana.

3. A description of the enclosed, locked facility that would be used in the cultivation of marijuana by the alternative treatment center.

4. The name, address, and date of birth of each principal officer and board member of the alternative treatment center and a complete set of fingerprints for each of them. The board of directors for the non-profit must include at least one physician, nurse, or pharmacist licensed to practice in New Hampshire and at least 3 patients qualified to register as registered qualifying patients.

5. Proposed security and safety measures that comply with the rules issued pursuant to 126-W:8, II (a)(4), including a description of interior and exterior lighting and security systems.

6. Written procedures, including for cultivation, inventory control, food preparation, if any, quality control, record keeping and incident reporting.

7. Copies of educational materials that would be provided.

8. The distance from any pre-existing private or public school.

9. A copy of the proposed policy regarding services to registered patients who cannot afford to purchase marijuana for medical purposes.

10. Information demonstrating the applicant’s knowledge of organic growing methods to be used in their growing and cultivation of marijuana.

11. Steps that will be taken to ensure the quality of the marijuana, including purity and consistency of dose.

12. A start-up timetable which provides an estimated time from registration of the dispensary to full operation, and the assumptions used for the basis of those estimates.

13. Information showing the applicant’s experience running a non-profit or other business.

14. A full description of a staffing plan that will provide accessible business hours, safe growing and cultivation, and maintenance of confidential information regarding grow sites and the identity of patient information.
(15) A description of any additional services that will be available to patients.

(b) Any time one or more alternative treatment center registration applications are being considered, the department shall also allow for comment by the public and shall solicit input from registered qualifying patients, registered designated caregivers, and the towns or cities where the applicants would be located.

(c) Each time an alternative treatment center certificate is granted, the decision shall be based on the overall health needs of qualified patients and the safety of the public. The department shall evaluate applications for alternative treatment center registration certificates using an impartial and numerically scored competitive bidding process developed by the department in accordance with this chapter. The department shall require applicants to meet a minimum score to be considered. The registration considerations shall include the following criteria:

(1) The suitability of the proposed location or locations, including compliance with any local zoning laws and geographic convenience to patients from throughout the state of New Hampshire to alternative treatment centers if the applicant were approved.

(2) The proposed alternative treatment center’s plan for operations and services, including its staffing and training plans, whether it has sufficient capital to operate, and ability to provide a steady supply of marijuana to the registered qualifying patients in the state.

(3) The principal officer and board members’ character and relevant experience, including any training or professional licensing related to medicine, pharmaceuticals, natural treatments, botany, or marijuana cultivation and preparation and their experience running a non-profit organization or business.

(4) The applicant’s plan for making medical marijuana available on an affordable basis to registered qualifying patients enrolled in Medicaid or receiving Supplemental Security Income or Social Security Disability Insurance.

(5) The applicant’s plan for safe and accurate packaging and labeling of medical marijuana, including the applicant’s plan for ensuring that all medical marijuana is free of contaminants.

(6) The sufficiency of the applicant’s plans for record keeping and inventory control. Records shall be considered confidential health care information under New Hampshire law and are intended to be deemed protected health care information for purposes of the federal Health Insurance Portability and Accountability Act of 1996, as amended. Any dispensing records that a registered alternative treatment center is required to keep shall keep track of transactions according to registered qualifying patients’, registered designated caregivers’, and registered alternative treatment centers’ registry identification numbers, rather than their names, to protect their confidentiality.

(7) The sufficiency of the applicant’s plans for safety and security, including proposed location and security devices employed.
(8) Whether the entity possesses or has the right to use sufficient land, buildings, and equipment to properly carry out its duties as an alternative treatment center.

(d) After an alternative treatment center is approved, but before it begins operations, it shall submit the registration and regulation fee paid to the department in accordance with the rules adopted by the department.

(e) Except as provided in subparagraph (h), the department shall issue each alternative treatment center agent a registry identification card or renewal card within 15 days of receipt of the person's name, address, and date of birth and a fee in an amount established by the department. Each card shall specify that the cardholder is a principal officer, board member, agent, volunteer, or employee of an alternative treatment center and shall contain the following:

(1) The name, address, and date of birth of the alternative treatment center agent.

(2) The legal name of the alternative treatment center with which the alternative treatment center agent is affiliated.

(3) A random identification number that is unique to the cardholder.

(4) The date of issuance and expiration date of the registry identification card.

(5) A photograph of the cardholder.

(f) Except as provided in this section, the department shall not issue a registry identification card to any principal officer, board member, agent, volunteer, or employee of an alternative treatment center who has been convicted of a drug-related offense. The department shall conduct a background check of each principal officer, board member, agent, volunteer, or employee in order to carry out this provision. The department shall notify the alternative treatment center in writing of the reason for denying the registry identification card. The department may grant such person a registry identification card if the department determines that the offense was for conduct that occurred prior to the effective date of this chapter or that was prosecuted by an authority other than the state of New Hampshire and for which the provisions of this chapter would otherwise have prevented a conviction.

(g) A registration identification card of an alternative treatment center agent shall expire one year after its issuance, or upon the expiration of the registered organization's registration certificate, whichever occurs first.

(h) Notwithstanding any other provision of law, information required to be submitted to the department on an application for an alternative treatment center identifying the locations where marijuana is proposed to be grown, cultivated, harvested, and otherwise prepared for distribution to registered qualifying patients, registered caregivers, and alternative treatment centers, if such location is different from the location of the alternative treatment center, and any other department records identifying such location, shall be considered to be confidential information and not subject to disclosure pursuant to RSA 91-A, provided that such information may be disclosed to a law enforcement agency upon request for purposes of enforcement under this chapter.
IV.(a) An alternative treatment center’s registration shall expire 2 years after its registration certificate is issued. The alternative treatment center may submit a renewal application beginning 60 days prior to the expiration of its registration certificate.

(b) The department shall grant an alternative treatment center’s renewal application within 30 days of its submission if the following conditions are all satisfied:

1. The alternative treatment center submits the required fee, which shall be refunded within 30 days if the renewal application is rejected.
2. The department has not suspended the alternative treatment center’s registration for violations of this chapter or rules adopted pursuant to this chapter.
3. The alternative treatment center is complying with the requirements in paragraph VI.
4. The inspections authorized by paragraph V and the report, provided pursuant to subparagraph VI(h), do not raise serious concerns about the continued operation of the alternative treatment center applying for renewal.

(c) If the department determines that any of the conditions listed in subparagraphs (b)(1)-(4) do not exist, the department shall begin an open application process for the operation of an alternative treatment center. In granting a new registration certificate, the department shall consider factors listed in subparagraphs III(a) and III(c).

(d) The department shall issue a 30-day temporary registration certificate to an alternative treatment center after that center’s registration would otherwise expire if the following conditions are all satisfied:

1. The alternative treatment center has applied for a renewal, but the department has not yet come to a decision.
2. The alternative treatment center requested a temporary registration certificate.
3. The alternative treatment center has not had its registration certificate revoked due to violations of this chapter or rules adopted pursuant to this chapter.

V. Alternative treatment centers shall be subject to reasonable inspection by the department of health and human services. During an inspection, the department may review the alternative treatment center’s records, including its confidential dispensing records, which shall track transactions according to registered qualifying patients’ registry identification numbers to protect their confidentiality.

VI.(a) An alternative treatment center shall be operated on a not-for-profit basis for the benefit of its patients. An alternative treatment center need not be recognized as a tax-exempt organization by the Internal Revenue Service.

(b) An alternative treatment center may not be located in a residential district or within 500 feet of the property line of a pre-existing public or private school or playground.

(c) An alternative treatment center shall notify the department within 10 days of when
an alternative treatment center agent ceases to be associated with and/or work at the alternative
treatment center. His or her registry identification card shall be deemed null and void and the
person shall be liable for any other penalties that may apply to the person’s non-medical use of
marijuana.

(d) An alternative treatment center shall notify the department in writing of the name,
address, and date of birth of any proposed new alternative treatment center agent and shall submit
a fee in an amount established by the department for a new registry identification card before a new
agent or employee begins working at the alternative treatment center, and shall submit a complete
set of fingerprints for the prospective alternative treatment center agent.

(e) An alternative treatment center shall implement appropriate security measures to
deter and prevent the unauthorized entrance into areas containing marijuana and the theft of
marijuana, and shall ensure that each location has an operational security alarm system.

(f) The operating documents of an alternative treatment center shall include procedures
for the oversight of the alternative treatment center and procedures to ensure accurate record
keeping.

(g) Each alternative treatment center shall keep the following records, dating back at
least one year:

   (1) Records of the disposal of marijuana that is not distributed by the alternative
treatment center to registered patients who have designated the alternative treatment center to
cultivate for them.

   (2) A record of each transaction, including the amount of marijuana dispensed, the
amount of consideration, and the registry identification number of the registered qualifying patient
or registered designated caregiver.

(h) Each alternative treatment center shall:

   (1) Conduct an initial comprehensive inventory of all medical marijuana, including
usable marijuana available for dispensing and mature marijuana plants at each authorized location
on the date the alternative treatment center first dispenses medical marijuana.

   (2) Conduct a monthly comprehensive inventory of all medical marijuana, including
usable marijuana available for dispensing, mature marijuana plants, and seedlings at each
authorized location on the date the alternative treatment center first dispenses medical marijuana.

(i) An alternative treatment center shall submit a department-approved incident report
form on the next business day after it discovers a reportable incident. The report shall indicate the
nature of the breach and the corrective actions taken by the alternative treatment center. For
purposes of reporting, an incident includes:

   (1) Confidential information accessed or disclosed in violation of department rules;

   (2) Loss of inventory by theft or diversion;

   (3) Unauthorized intrusion into the alternative treatment center or the one
permitted additional location, if any;

(4) Any known violation of this chapter or department rules by an alternative treatment center agent; and

(5) Any other incident that the department by rule requires to be reported.

(j) Alternative treatment centers cannot use pesticides in marijuana cultivation unless pesticides become authorized for application on marijuana.

(k) No marijuana or paraphernalia at an alternative treatment center shall be visible from any public or other property.

(l) An alternative treatment center is prohibited from acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying, or dispensing marijuana for any purpose except to assist patients who are allowed to use marijuana pursuant to this chapter with the medical use of marijuana directly or through the registered qualifying patients’ designated caregivers.

(m) An alternative treatment center shall submit an annual report to the department which shall provide information required by the department in order to allow the department to evaluate whether the alternative treatment center is adequately providing patients with access to medical marijuana

VII.(a) Each time an alternative treatment center agent dispenses marijuana to a registered qualifying patient directly or through the qualifying patient’s registered designated caregiver, he or she shall consult the alternative treatment center’s records to verify that the records do not indicate that the dispensing of marijuana would cause the registered qualifying patient to receive more marijuana than is permitted in a 10-day period. Each time marijuana is dispensed, the alternative treatment center agent shall record the date the marijuana was dispensed and the amount dispensed. All records shall be kept according to the registry identification number of the registered qualifying patient and registered designated caregiver, if any.

(b) Except as provided in subparagraph (c), a registered qualifying patient is not allowed to obtain more than one ounce of usable marijuana directly or through the qualifying patient’s registered designated caregiver during a 10-day period.

(c) After providing an opportunity for patients, experts, researchers, and physicians to be heard, the department may issue a rule adjusting the limit specified in subparagraph (a) to an amount that is reasonably necessary for a 10-day supply.

VIII.(a) No registered alternative treatment center shall be subject to the following:

(1) Prosecution for the acquisition, possession, cultivation, manufacture, delivery, transfer, transport, sale, supply, or dispensing of marijuana, or related supplies for medical purposes in accordance with the provisions of this chapter and any rule adopted by the department pursuant to this chapter.

(2) Inspection and search by a law enforcement agency, except pursuant to
paragraph V or upon a search warrant issued by a court or judicial officer.

(3) Seizure of marijuana, except upon any order issued by a court or judicial officer.

(4) Imposition of any penalty or denied any right or privilege including, but not limited to, imposition of a civil penalty or disciplinary action by an occupational or professional licensing board or entity, solely for acting in accordance with this chapter to assist registered qualifying patients or registered designated caregivers with the medical use of marijuana.

(b) No alternative treatment center agent shall be subject to arrest, prosecution, search, seizure, or penalty in any manner, or denied any right or privilege including, but not limited to, civil penalty or disciplinary action by a business, occupational, or professional licensing board or entity, solely for working for or with an alternative treatment center to engage in acts permitted by this chapter.

(1) Except when transporting marijuana in accordance with subparagraphs (2) or (3), registered alternative treatment center agents are only allowed to possess and manufacture marijuana at the registered alternative treatment center location or locations for which the alternative treatment center agent is registered. Volunteers are only allowed to possess and manufacture marijuana at a registered alternative treatment center location. Volunteers cannot dispense marijuana.

(2) Distributions of marijuana for medical use to a registered qualifying patient or a registered caregiver for use by a registered qualifying patient shall be labeled with a trip ticket to identify the alternative treatment center, the patient’s registry number, or the caregiver’s number, the amount and form, the time and date of origin, and destination of the product.

(3) An alternative treatment center with a growing location in addition to the location of the alternative treatment center shall label the marijuana that is being moved between the growing location and the alternative treatment center with a trip ticket that identifies the alternative treatment center by registry number, the time, date, origin, and destination of the material being transported, and the amount and form of marijuana and marijuana material that is being transported. Marijuana shall be transported only by a registered alternative treatment center agent who is not a volunteer.

IX.(a)(1) An alternative treatment center shall not possess an amount of marijuana that exceeds whichever of the following quantities is greater: (a) 96 marijuana plants, 96 seedlings, and 32 ounces of useable marijuana; or (b) 6 plants, 6 seedlings, and 2 ounces for each registered qualifying patient who has designated the alternative treatment center to provide him or her with marijuana for medical use.

(2) An alternative treatment center may possess marijuana seeds, stalks, and unusable roots.

(b) An alternative treatment center or registered alternative treatment center agent shall not dispense, deliver, or otherwise transfer marijuana to a person other than:
(1) A registered qualifying patient who has designated the relevant alternative treatment center; or

(2) Such patient’s registered designated caregiver.

(c) A person found to have violated subparagraph (b) of this section shall not be a registered alternative treatment center agent, and such person’s registry identification card shall be immediately revoked.

(d) Except as provided in subparagraph III(f), no person who has been convicted of a drug-related offense shall be a registered alternative treatment center agent unless the department has determined that the person’s conviction was for the medical use of marijuana or assisting with the medical use of marijuana and issued the person a registry identification card as provided under subparagraph III(g). A person who is employed by or is an agent, volunteer, principal officer, or board member of an alternative treatment center who violates this paragraph shall be guilty of a violation punishable by a fine of up to $1,000. A subsequent violation of this paragraph shall be a misdemeanor.

(e) All cultivation of marijuana shall take place in an enclosed, locked facility, which can only be accessed by alternative treatment center agents.

X. All marijuana dispensed by an alternative treatment center shall include a label specifying the percent of tetrahydrocannabinol contained in the marijuana, the weight of the marijuana, and any other information the department requires to appear on the label. The label shall also specify that the marijuana is for medical use and that diversion is a class B felony requiring revocation of one’s registry identification card.

XI. An alternative treatment center must provide educational materials about marijuana to registered patients and their registered primary caregivers. Each alternative treatment center shall have an adequate supply of up-to-date educational material available for distribution. Educational materials shall be available for inspection by the department upon request. The educational material shall at least include information about the following:

(a) Strains of marijuana, routes of administration, and their different effects. Alternative treatment centers shall have educational materials available to assist in the selection of prepared marijuana. Alternative treatment centers shall provide tracking sheets to registered patients and registered primary caregivers who request them to keep track of the strains used and their effects.

(b) How to achieve proper dosage for different modes of administration. Emphasis shall be on using the smallest amount possible to achieve the desired effect. The impact of potency must also be explained.

(c) Information on tolerance, dependence, and withdrawal must be provided. Alternative treatment centers are not required to continue to furnish marijuana for medical purposes if it is believed that a registered qualifying patient or designated caregiver is abusing marijuana or other
substances.

(d) Information regarding substance abuse signs and symptoms must be available, as well as referral information.

(e) Information on whether the alternative treatment center’s marijuana and associated products meet organic certification standards.

(f) An alternative treatment center shall provide to each registered qualifying patient and registered designated caregiver receiving marijuana a safety insert, which the department may, at its discretion, inspect and approve, which shall include but not be limited to: (1) methods for administration of medical marijuana; and (2) a description of potential side effects qualifying patients could experience while using medical marijuana.

XII. Each alternative treatment center shall develop, implement, and maintain on the premises employee and agent policies and procedures to address the following requirements:

(a) A job description or employment contract developed for all employees and a volunteer agreement for all volunteers, which includes duties, authority, responsibilities, qualifications, and supervision.

(b) Training in and adherence to confidentiality laws.

(c) The proper use of security measures and controls that have been adopted.

(d) Specific procedural instructions on how to respond to an emergency.

XIII. Each alternative treatment center shall maintain a personnel record for each alternative treatment center agent that includes an application for employment or to volunteer and a record of any disciplinary action taken.

XIV. Each alternative treatment center shall develop, implement, and maintain on the premises an on-site training curriculum, or enter into contractual relationships with outside resources capable of meeting employee training needs, which includes, but is not limited to, the following topics:

(a) Professional conduct, ethics, and patient confidentiality; and

(b) Developments in the field of the medical use of marijuana.

XV. All alternative treatment centers shall prepare training documentation for each employee and have employees sign a statement indicating the date, time, and place the employee received said training and topics discussed, to include name and title of presenters. The alternative treatment center shall maintain documentation of an employee’s and a volunteer’s training for a period of at least 6 months after termination of an employee’s period of employment or the volunteer’s period of voluntary service.

XVI. A physician shall not:

(a) Accept, solicit, or offer any form of pecuniary remuneration from or to an alternative treatment center, except if the physician is employed by an alternative treatment center.

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

(c) Examine a patient for purposes of diagnosing a debilitating medical condition at a location where medical marijuana is sold or distributed.

(d) Hold an economic interest in an alternative treatment center if the physician certifies the debilitating medical condition of a patient for participation in the medical marijuana program.

126-W:9 Annual Report. The commissioner of the department of health and human services shall report annually on the medical marijuana program established under this chapter to the oversight committee on health and human services established under RSA 126-A:13. The report shall be filed with the chairperson of the committee by November 1 of each year beginning with November 1, 2013. The commissioner’s report shall include the following areas:

I. The ability of registered qualifying patients and registered designated caregivers in all areas of the state to obtain timely access to medical marijuana.

II. The effectiveness of alternative treatment centers individually and together in serving the needs of registered qualifying patients and registered caregivers, including the provision of educational and support services.

III. Physician participation in the medical marijuana program.

IV. The number of designated caregivers and the number of registered qualifying patients, by county.

V. Sufficiency of the regulatory and security safeguards contained in this chapter to ensure that access to and use of marijuana cultivated is provided only to cardholders authorized for such purposes.

VI. Any illegal distribution or diversion of marijuana cultivated pursuant to this chapter to individuals who are not cardholders.

VII. Any other issues related to the implementation of the medical use of marijuana permitted under this chapter that the committee shall request.

VIII. A detailed summary of the reports submitted by alternative treatment centers as required under RSA 126-W:8, VI(i).

126-W:10 Severability. If any provision of this chapter or the application thereof to any individual or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

3 Effective Date. This act shall take effect upon its passage.
AN ACT relative to the use of marijuana for medicinal purposes.

FISCAL IMPACT:
The Judicial Branch, Judicial Council, New Hampshire Association of Counties, New Hampshire Municipal Association, and the Departments of Corrections, Safety and Health and Human Services state this bill, as introduced, will have an indeterminable fiscal impact on state, county and local expenditures, and state and local revenue in FY 2013 and each year thereafter. There will be no impact on county revenue.

METHODOLOGY:
The Judicial Branch states this bill would enact RSA 126-W relative to the use of marijuana for medicinal purposes. The Branch identified seven sections in the bill that may result in additional costs and four sections of the bill that could result in savings to the Branch.

The potential costs could arise from the following:

- Proposed RSA 126-W:2, XII makes it a class B felony to sell marijuana to an individual who is not a cardholder;
- Proposed RSA 126-W:3, III provides for administrative hearings in the Department of Health and Human Services if an individual is aggrieved by a Department decision. Such hearings could result in appeals to the Supreme Court which has discretionary review of such appeals;
- Proposed RSA 126-W:3, IX(b) and (c) make it a violation with a maximum fine of $150 for a qualifying patient or designated caregiver to fail to notify the Department of any change in name or address;
- Proposed RSA 126-W:3, XI(c) makes it a class B misdemeanor to breach the confidentiality of information obtained pursuant to the chapter;
- Proposed RSA 126-W:5, IV provides for a $500 fine for a fraudulent representation to a law enforcement official of any fact or circumstance relating to the use of medicinal marijuana to avoid arrest or prosecution;
- Proposed RSA 126-W:6 allows medical use of marijuana to be an affirmative defense in any prosecution of an offense involving marijuana. This defense has the potential to elongate trials; and
Proposed RSA 126-W:8, IX(d) makes it a violation for the first offense and a misdemeanor for subsequent offense for any agent, volunteer, officer, or board member of an alternative treatment center to have been convicted of a drug-related offense.

Potential savings could result from the following:

- Proposed RSA 126-W:2, I provides that a qualifying patient is not subject to arrest, prosecution, or penalty for the medical use of marijuana if the patient has no more than two ounces of marijuana;
- Proposed RSA 126-W:2, II provides a designated caregiver is not subject to arrest, prosecution, or penalty for the medical use of marijuana if the caregiver has no more than two ounces of marijuana;
- Proposed RSA 126-W:2, IV provides that an alternative treatment center may accept marijuana seeds, seedlings, plants or usable marijuana; and
- Proposed RSA 126-W:8, VIII provides no registered alternative treatment center, nor one of its agents, shall be subject to arrest, or prosecution for any marijuana related offense provided the center or agent was acting in accordance with the chapter.

The Branch has no information on which to estimate the bill’s impact on the number of felonies, misdemeanors, or violations that would be tried or avoided, and therefore cannot provide an accurate estimate of the fiscal impact on state revenue and expenditures. The Branch can, however, provide information on the cost of processing each type of case. The Branch states the average cost of processing a routine felony case in the superior court will be $405.37 in FY 2014 and $415.78 in FY 2015. In the district division of the circuit court, the average cost of processing a class A misdemeanor will be $62.71 in FY 2014 and $64.40 in FY 2015; the average cost of processing a class B misdemeanor will be $44.32 in FY 2014 and $45.84 in FY 2015; and the average cost of processing a violation-level offense will be $42.85 in FY 2014 and $44.36 in FY 2015. The Branch states these cost estimates are based on data that is more than seven years old and does not reflect the changes to the courts over that same period of time or the impact these changes may have on the processing of these types of cases. Additionally, the Branch states that if a single case were to be appealed to the New Hampshire Supreme Court, the fiscal impact would be in excess of $10,000.

The Judicial Council states the bill may slightly increase Council expenditures. The Council assumes a very small number of people who suffer from a debilitating medical condition are currently prosecuted each year for either the possession or manufacture of marijuana. The Council also assumes a very small number of severely ill people with the types of serious medical conditions and chronic pain issues who would be eligible for prescription marijuana under the bill would divert properly prescribed marijuana in order to sell the drug for material
gain. The Council therefore expects the legalization of marijuana possession for medicinal purposes to have no impact on Council expenditures. The Council states, however, that there is no way of knowing to what extent the introduction of licensed commercial marijuana production facilities will lead to collateral crimes unrelated to the dispensing of prescription marijuana. Should such additional crimes occur, and should arrested individuals be eligible for appointed counsel at state expense, a flat fee of $756.25 per felony is charged by a public defender or contract attorney. If an assigned counsel attorney is used the fee is $60 per hour with a cap of $1,400 for a misdemeanor charge and $4,100 for a felony charge. The Council also states additional costs could be incurred if an appeal is filed. The public defender, contract attorney, and assigned counsel rates for Supreme Court appeals are $2,000 per case, with many assigned counsel attorneys seeking permission to exceed the fee cap. Requests to exceed the fee cap are seldom granted. Finally, expenditures would increase if services other than counsel are requested and approved by the court during the defense of a case or during an appeal. The Council cannot determine the fiscal impact as it cannot predict the number of cases which may occur.

The New Hampshire Association of Counties states to the extent fewer individuals are charged, convicted, and sentenced to incarceration in a county correctional facility, the counties may have decreased expenditures. The Association is unable to determine the number of individuals who might be charged, convicted or incarcerated as a result of this bill to determine an exact fiscal impact. The average annual cost to incarcerate an individual in a county correctional facility is approximately $35,000. There is no impact on county revenue.

The New Hampshire Municipal Association states that while the bill may impact local law enforcement officials, it is unable to determine the fiscal impact.

The Department of Corrections states it is not able to determine the fiscal impact of this bill because it does not have sufficient detail to predict the number of individuals who would be subject to this legislation. The Department states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2012 was $35,071. The cost to supervise an individual by the Department’s division of field services for the fiscal year ending June 30, 2012 was $608.

The Department of Safety states the proposed legislation requires a criminal record check through the FBI criminal records database and a New Hampshire criminal history check for all caregivers, alternative treatment center agents, principle officers, board members, and employees. The Department is not able to determine the number of additional criminal background checks that would result from the bill and cannot estimate the fiscal impact. The
The Department of Health and Human Services assumes the revenue generated by application fees, fines, and private donations will be sufficient to offset the cost of implementing and administering its responsibilities under the bill, however the Department is unable to estimate the potential revenue and states the revenue would not be available until FY 2014. The Department states it does not have existing staff to perform the responsibilities and assumes two additional full-time positions would be necessary. The Department’s responsibilities would include the following:

- Process applications and issue and renew I.D. cards within 15 days of receiving an application;
- Issue photo I.D. cards to qualifying patients and named designated caregivers within 5 days of approving an application;
- Issue replacement I.D. cards within 5 days when cards are lost or when there is a change in name or address;
- Require a state and federal criminal record check, through the Department of Safety, for designated caregivers, principal officers, agents, and employees or volunteers of alternative treatment centers. On an annual basis, conduct annual state and federal criminal record checks and reissue I.D. cards to principal officers, agents, and employees or volunteers of alternative treatment centers;
- Create and maintain a database of qualifying patients, designated caregivers, and principal officers, agents, and employees or volunteers of alternative treatment centers;
- Issue monthly written statements to alternative treatment centers providing: the number of qualifying patients who have designated the center, registration numbers for the patient and designated caregiver, and an update of certain changes;
- Provide written notices to each treatment center as qualifying patients designate or revoke designation for that center;
- Verify the validity of a registration I.D. card for law enforcement, employer, landlord court, administrative hearing officer, or health care provider;
- Submit an annual report to the legislature providing comprehensive data on the program;
- Adopt administrative rules for the program and accept applications for alternative treatment centers within 30 days of the adoption of rules;
- Inspect alternative treatment centers to review dispensing records and receive incident reports concerning rules violations, and loss of inventory by theft or diversion;
- Provide an annual report to the Health and Human Services Oversight Committee as described in RSA 126-W:10; and
- Determine and enforce civil infractions for violations of the chapter.

The Department estimates program costs as follows:

<table>
<thead>
<tr>
<th></th>
<th>FY 2014</th>
<th>FY 2015</th>
<th>FY 2016</th>
<th>FY 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Build and maintain a database and voice response telephone system for law enforcement to verify I.D. cards</td>
<td>$85,000</td>
<td>$5,000</td>
<td>$5,000</td>
<td>$5,000</td>
</tr>
<tr>
<td>Licensing clerk salary (LG 11)</td>
<td>$25,584</td>
<td>$26,540</td>
<td>$27,515</td>
<td>$28,646</td>
</tr>
<tr>
<td>Licensing clerk benefits</td>
<td>$21,232</td>
<td>$22,851</td>
<td>$24,580</td>
<td>$26,475</td>
</tr>
<tr>
<td>Program specialist salary (LG 25)</td>
<td>$44,753</td>
<td>$46,722</td>
<td>$48,770</td>
<td>$50,915</td>
</tr>
<tr>
<td>Program specialist benefits</td>
<td>$25,023</td>
<td>$26,846</td>
<td>$28,785</td>
<td>$30,880</td>
</tr>
<tr>
<td><strong>Total Cost to State</strong></td>
<td><strong>$201,592</strong></td>
<td><strong>$127,959</strong></td>
<td><strong>$134,650</strong></td>
<td><strong>$141,916</strong></td>
</tr>
</tbody>
</table>