

HB 573-FN – AS INTRODUCED

2013 SESSION

13-0279
04/01

HOUSE BILL ***573-FN***

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

SPONSORS: Rep. Schlachman, Rock 18; Rep. Vaillancourt, Hills 15; Rep. Robertson, Ches 6;
Rep. Wright, Carr 8; Rep. Renzullo, Hills 37; Rep. LeBrun, Hills 32;
Rep. DeSimone, Rock 14; Rep. Kidder, Merr 5; Rep. Gale, Hills 28; Rep. Lovejoy,
Rock 36; Sen. Woodburn, Dist 1; Sen. Reagan, Dist 17; Sen. Fuller Clark, Dist 21;
Sen. Cataldo, Dist 6

COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

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

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 1 Findings.

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

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

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

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

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

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

29 VII. State law should make a distinction between the medical and non-medical uses of
30 marijuana. Hence, the purpose of this act is to protect patients with debilitating medical conditions,
31 as well as their physicians and designated caregivers, from arrest and prosecution, criminal and

1 other penalties, and property forfeiture if such patients engage in the medical use of marijuana.

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

5 2 New Chapter; Use of Marijuana for Medicinal Purposes. Amend RSA by inserting after
6 chapter 126-V the following new chapter:

7 CHAPTER 126-W

8 USE OF MARIJUANA FOR MEDICINAL PURPOSES

9 126-W:1 Definitions. In this chapter:

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

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

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

19 IV. “Chronic or terminal disease” means cancer, glaucoma, positive status for human
20 immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C currently receiving
21 antiviral treatment, amyotrophic lateral sclerosis, muscular dystrophy, Crohn’s disease, agitation of
22 Alzheimer’s disease, or multiple sclerosis.

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

24 (a) A chronic or terminal disease; and

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

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

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

36 VIII. “Marijuana” means all parts of any plant of the Cannabis genus of plants, whether
37 growing or not; the seeds thereof; the resin extracted from any part of such plant; and every

1 compound, salt, derivative, mixture, or preparation of such plant, its seeds, or resin. Such term does
2 not include the mature stalks of such plants, fiber produced from such stalks, oil, or cake made from
3 the seeds of such plants, any other compound, salt, derivative, mixture, or preparation of such
4 mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seeds of such
5 plants which are incapable of germination.

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

10 X. “Physician” means an individual licensed to prescribe drugs to humans under RSA 329
11 and who possesses certification from the United States Drug Enforcement Administration to
12 prescribe controlled substances, except that in relation to a visiting qualifying patient, “physician”
13 means an individual licensed to prescribe drugs to humans in the state of the patient’s residence and
14 who possesses certification from the United States Drug Enforcement Administration to prescribe
15 controlled substances.

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

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

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

24 XIV. “Usable marijuana” means the dried leaves and flowers of the marijuana plant and any
25 mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant and does
26 not include the weight of any non-marijuana ingredients combined with marijuana and prepared for
27 consumption as food or drink.

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

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

1 shall be noted in the qualifying patient’s medical records.

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

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

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

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

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

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

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

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

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

1 alternative treatment centers in New Hampshire.

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

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

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

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

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

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

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

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

36 IX. Any marijuana, marijuana paraphernalia, licit property, or interest in licit property that
37 is possessed, owned, or used in connection with the medical use of marijuana as allowed under this

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1 chapter, or acts incidental to such use, shall not be seized or forfeited.

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

6 XI. A registry identification card, or its equivalent, that is issued under the laws of another
7 state, district, territory, commonwealth, or insular possession of the United States that allows, in the
8 jurisdiction of issuance, a visiting qualifying patient to possess marijuana for medical purposes, shall
9 have the same force and effect as a registry identification card issued by the department, provided
10 that a debilitating medical condition as defined in RSA 126-W:1, V exists.

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

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

18 126-W:3 Departmental Administration.

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

21 (a) Written certification as defined in RSA 126-W:1, XVI.

22 (b) Application or renewal fee.

23 (c) Name, residential and mailing address, and date of birth of the qualifying patient,
24 except that if the applicant is homeless, no residential address is required.

25 (d) Name, address, and telephone number of the qualifying patient's physician.

26 (e) Name, address, and date of birth of the qualifying patient's designated caregiver, if
27 any.

28 (f) Name and address of the alternative treatment center that the qualifying patient
29 designates; a qualifying patient may designate no more than one alternative treatment center at any
30 time.

31 (g) A statement signed by the qualifying patient, pledging not to divert marijuana to
32 anyone who is not allowed to possess marijuana pursuant to this chapter and acknowledging that
33 their diversion of marijuana is punishable by a class B felony and revocation of one's registry
34 identification card, in addition to other penalties for the illegal sale of marijuana.

35 (h) A complete set of fingerprints for the qualifying patient's designated caregiver, if any.

36 (i) A signed statement from the designated caregiver, if any, agreeing to be designated
37 as the patient's designated caregiver and pledging not to divert marijuana to anyone who is not

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1 allowed to possess marijuana pursuant to this chapter and acknowledging that their diversion of
2 marijuana is punishable by a class B felony and revocation of one's registry identification card, in
3 addition to other penalties for the illegal sale of marijuana.

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

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

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

11 (1) Allow the qualifying patient's medical use of marijuana;

12 (2) Serve as the qualifying patient's designated caregiver;

13 (3) Control the acquisition of the marijuana and the frequency of the medical use of
14 marijuana by the qualifying patient; and

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

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

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

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

37 VI. The department shall issue registry identification cards to qualifying patients and to the

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

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

8 (1) Name, mailing address, and date of birth of the qualifying patient.

9 (2) If the cardholder is a designated caregiver, the designated caregiver's name,
10 address, and date of birth.

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

12 (4) A random 10-digit identification number, containing at least 4 numbers and at
13 least 4 letters, that is unique to the cardholder.

14 (5) A photograph of the cardholder.

15 (6) A statement that the cardholder is permitted under state law to possess
16 marijuana pursuant to this chapter for the medical use of the qualifying patient.

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

19 (1) Name, mailing address, and date of birth of the cardholder.

20 (2) The name and address of the alternative treatment center.

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

22 (4) A random 10-digit identification number, containing at least 4 numbers and at
23 least 4 letters, that is unique to the cardholder.

24 (5) A photograph of the cardholder.

25 (6) A statement that the cardholder is permitted to engage in activities for the
26 alternative treatment center to cultivate and provide medical marijuana to qualified patients and
27 designated caregivers in accordance with this chapter and a designation as to whether the person is
28 a principal officer, board member, employee, or volunteer.

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

34 VIII. In addition to the monthly reports, the department shall also provide written notice to
35 an alternative treatment center which identifies the names and registration identification numbers
36 of a qualifying patient and his or her designated caregivers whenever any of the following events
37 occur:

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1 (a) A qualifying patient designates the alternative treatment center to serve his or her
2 needs under this chapter;

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

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

8 IX. The following notifications and department responses are required:

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

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

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

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

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

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

1 digit identification number.

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

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

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

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

35 (c) An individual shall be guilty of a class B misdemeanor for breaching the
36 confidentiality of information obtained pursuant to this chapter, except that department employees
37 shall be exempt for notifying law enforcement officials about falsified or fraudulent information

1 submitted to the department, provided the employee who suspects that falsified or fraudulent
2 information has been submitted confers with his or her supervisor, and both agree that
3 circumstances exist that warrant the notification.

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

7 (a) The number of applications and renewals filed for registry identification cards.

8 (b) The number of qualifying patients and designated caregivers approved in the state.

9 (c) The number of alternative treatment centers registered in the state.

10 (d) The nature of the debilitating medical conditions of the qualifying patients.

11 (e) The number of registry identification cards revoked.

12 (f) The number of physicians providing written certifications for qualifying patients.

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

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

28 126-W:4 Department Rules. Not later than one year after the effective date of this chapter, the
29 department shall adopt rules, pursuant to RSA 541-A, governing the manner in which it shall
30 consider applications for issuance and renewals of registry identification cards for qualifying
31 patients and designated caregivers. The department's rules shall establish application and renewal
32 fees for registry identification cards in accordance with the following:

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

36 II. The department may accept donations from private sources without the approval of the
37 governor and council in order to reduce the application and renewal fees.

1 126-W:5 Prohibitions, Restrictions, and Limitations on the Use of Medical Marijuana.

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

11 II. Nothing in this chapter shall exempt any person from arrest or prosecution for:

12 (a) Being under the influence of marijuana while:

13 (1) Operating a motor vehicle, commercial vehicle, boat, or vessel, or any other
14 vehicle propelled or drawn by power other than muscular power;

15 (2) In his or her place of employment, without the written permission of the
16 employer; or

17 (3) Operating heavy machinery or handling a dangerous instrumentality.

18 (b) The use or possession of marijuana by a qualified patient or other cardholder:

19 (1) For purposes other than alleviating symptoms as permitted by this chapter; or

20 (2) In a manner that endangers the health, well-being, or safety of another person.

21 (c) The smoking of marijuana in any public place, including:

22 (1) A school bus, public bus, or other public vehicle;

23 (2) A workplace or place of employment, without the written permission of the
24 employer;

25 (3) The grounds of any preschool or primary or secondary school;

26 (4) Any correctional facility; or

27 (5) Any public park, public beach, public recreation center, public field, or youth
28 center.

29 III. Nothing in this chapter shall be construed to require:

30 (a) A governmental, private, or any other health insurance provider, health care plan, or
31 medical assistance program to be liable for any claim for reimbursement for the medical use of
32 marijuana.

33 (b) Any individual or establishment in lawful possession of property to allow a guest,
34 client, customer, or other visitor to use marijuana on or in that property. This chapter shall not limit
35 an individual or entity in lawful possession of property, or an agent of such individual or entity, from
36 expelling an individual who uses marijuana without permission from their property and from
37 seeking civil and criminal penalties for the unauthorized use of marijuana on their property.

1 (c) Any accommodation of any medical use of marijuana on the property or premises of
2 any place of employment or on the property or premises of any jail, correctional facility, or other type
3 of penal institution where prisoners reside or persons under arrest are detained. This chapter shall
4 in no way limit an employer’s ability to discipline an employee for ingesting marijuana in the
5 workplace or working while under the influence of marijuana.

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

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

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

18 126-W:6 Affirmative Defense. Except as provided in RSA 126-W:5, it is an affirmative defense
19 to any prosecution of an offense involving marijuana intended for medical use that:

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

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

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

31 126-W:7 Enforcement.

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

37 II. If the department fails to issue a valid registry identification card in response to a

1 completed application for issuance or renewal submitted by an alternative treatment center agent or
2 a designated caregiver by certified mail pursuant to this chapter within 45 days of the application for
3 issuance or renewal, the registry identification card shall be deemed granted, and a copy of the
4 registry identification application or renewal shall be deemed a valid registry identification card.

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

10 126-W:8 Alternative Treatment Centers.

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

22 II.(a) Not later than one year after the effective date of this section, the department shall
23 adopt rules, pursuant to RSA 541-A, governing alternative treatment centers and the manner in
24 which it shall consider applications for registration certificates for alternative treatment centers,
25 including, but not necessarily limited to, rules governing:

26 (1) The form and content of registration and renewal applications.

27 (2) Oversight requirements.

28 (3) Security requirements, which shall include at a minimum, lighting, physical
29 security, video security, alarm requirements, measures to prevent loitering, and on-site parking.

30 (4) Sanitary requirements.

31 (5) Electrical safety requirements.

32 (6) The specification of acceptable forms of picture identification that an alternative
33 treatment center may accept when verifying a sale.

34 (7) Personnel requirements including how many volunteers an alternative treatment
35 center is permitted to have and requirements for supervision.

36 (8) Labeling standards.

37 (9) Procedures for suspending or terminating the registration of alternative

1 treatment centers that violate the provisions of this section or the rules adopted pursuant to this
2 section, procedures for appealing penalties, and a schedule of penalties.

3 (10) Procedures for inspections and investigations.

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

6 (12) Permissible hours of operation.

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

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

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

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

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

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

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

32 (g) If at any time after 2 years after the effective date of this section, the report issued
33 pursuant to RSA 126-W:9 determines that 3 alternative treatment centers are not sufficient to
34 ensure access to registered qualifying patients throughout the state, the department shall accept
35 applications for up to 2 additional alternative treatment centers and issue registration certificates to
36 the appropriate number of applicants who score the highest. The number of additional alternative
37 treatment centers shall be determined by the department, based on the report issued pursuant to

1 RSA 126-W:9.

2 III.(a) An alternative treatment center applicant must submit a completed department-
3 approved application form with all required documentation and a non-refundable fee in an amount
4 set by department rule. The alternative treatment center application and supporting materials must
5 include, at a minimum:

6 (1) The legal name, articles of incorporation, and bylaws of the alternative treatment
7 center.

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

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

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

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

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

23 (7) Copies of educational materials that would be provided.

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

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

27 (10) Information demonstrating the applicant's knowledge of organic growing
28 methods to be used in their growing and cultivation of marijuana.

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

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

33 (13) Information showing the applicant's experience running a non-profit or other
34 business.

35 (14) A full description of a staffing plan that will provide accessible business hours,
36 safe growing and cultivation, and maintenance of confidential information regarding grow sites and
37 the identity of patient information.

1 (15) A description of any additional services that will be available to patients.

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

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

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

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

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

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

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

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

36 (7) The sufficiency of the applicant's plans for safety and security, including
37 proposed location and security devices employed.

1 (8) Whether the entity possesses or has the right to use sufficient land, buildings,
2 and equipment to properly carry out its duties as an alternative treatment center.

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

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

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

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

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

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

16 (5) A photograph of the cardholder.

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

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

30 (h) Notwithstanding any other provision of law, information required to be submitted to
31 the department on an application for an alternative treatment center identifying the locations where
32 marijuana is proposed to be grown, cultivated, harvested, and otherwise prepared for distribution to
33 registered qualifying patients, registered caregivers, and alternative treatment centers, if such
34 location is different from the location of the alternative treatment center, and any other department
35 records identifying such location, shall be considered to be confidential information and not subject
36 to disclosure pursuant to RSA 91-A, provided that such information may be disclosed to a law
37 enforcement agency upon request for purposes of enforcement under this chapter.

1 IV.(a) An alternative treatment center’s registration shall expire 2 years after its
2 registration certificate is issued. The alternative treatment center may submit a renewal application
3 beginning 60 days prior to the expiration of its registration certificate.

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

6 (1) The alternative treatment center submits the required fee, which shall be
7 refunded within 30 days if the renewal application is rejected.

8 (2) The department has not suspended the alternative treatment center’s
9 registration for violations of this chapter or rules adopted pursuant to this chapter.

10 (3) The alternative treatment center is complying with the requirements in
11 paragraph VI.

12 (4) The inspections authorized by paragraph V and the report, provided pursuant to
13 subparagraph VI(h), do not raise serious concerns about the continued operation of the alternative
14 treatment center applying for renewal.

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

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

22 (1) The alternative treatment center has applied for a renewal, but the department
23 has not yet come to a decision.

24 (2) The alternative treatment center requested a temporary registration certificate.

25 (3) The alternative treatment center has not had its registration certificate revoked
26 due to violations of this chapter or rules adopted pursuant to this chapter.

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

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

35 (b) An alternative treatment center may not be located in a residential district or within
36 500 feet of the property line of a pre-existing public or private school or playground.

37 (c) An alternative treatment center shall notify the department within 10 days of when

1 an alternative treatment center agent ceases to be associated with and/or work at the alternative
2 treatment center. His or her registry identification card shall be deemed null and void and the
3 person shall be liable for any other penalties that may apply to the person's non-medical use of
4 marijuana.

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

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

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

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

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

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

24 (h) Each alternative treatment center shall:

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

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

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

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

36 (2) Loss of inventory by theft or diversion;

37 (3) Unauthorized intrusion into the alternative treatment center or the one

1 permitted additional location, if any;

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

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

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

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

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

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

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

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

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

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

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

37 (2) Inspection and search by a law enforcement agency, except pursuant to

1 paragraph V or upon a search warrant issued by a court or judicial officer.

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

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

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

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

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

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

29 IX.(a)(1) An alternative treatment center shall not possess an amount of marijuana that
30 exceeds whichever of the following quantities is greater: (a) 96 marijuana plants, 96 seedlings, and
31 32 ounces of useable marijuana; or (b) 6 plants, 6 seedlings, and 2 ounces for each registered
32 qualifying patient who has designated the alternative treatment center to provide him or her with
33 marijuana for medical use.

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

36 (b) An alternative treatment center or registered alternative treatment center agent
37 shall not dispense, deliver, or otherwise transfer marijuana to a person other than:

1 (1) A registered qualifying patient who has designated the relevant alternative
2 treatment center; or

3 (2) Such patient’s registered designated caregiver.

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

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

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

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

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

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

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

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

1 substances.

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

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

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

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

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

16 (b) Training in and adherence to confidentiality laws.

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

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

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

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

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

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

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

34 XVI. A physician shall not:

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

37 (b) Offer a discount or other thing of value to a patient who uses or agrees to use a

1 particular alternative treatment center.

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

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

6 126-W:9 Annual Report. The commissioner of the department of health and human services
7 shall report annually on the medical marijuana program established under this chapter to the
8 oversight committee on health and human services established under RSA 126-A:13. The report
9 shall be filed with the chairperson of the committee by November 1 of each year beginning with
10 November 1, 2013. The commissioner's report shall include the following areas:

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

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

16 III. Physician participation in the medical marijuana program.

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

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

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

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

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

28 126-W:10 Severability. If any provision of this chapter or the application thereof to any
29 individual or circumstance is held invalid, such invalidity shall not affect other provisions or
30 applications of the chapter which can be given effect without the invalid provision or application, and
31 to this end the provisions of this chapter are declared to be severable.

32 3 Effective Date. This act shall take effect upon its passage.

HB 573-FN - FISCAL NOTE

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 and 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 care giver 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

Department states that if the volume of record requests becomes significant, additional personnel may be needed. The Division of State Police assumes any reduction in the number of drug cases handled by the laboratory would allow resources to be reallocated to other cases that may have been delayed, resulting in no fiscal impact to the lab.

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:

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