



Medical Marijuana in New Hampshire

FAQ'S: Frequently Asked Questions

I. ISSUES RELATED TO THE REGISTRATION, LOCATION, AND MANNER OF LOCAL INVOLVEMENT FOR MEDICAL MARIJUANA FACILITIES

Q: Who is authorized to distribute medical marijuana to a patient or caregiver?

A: An Alternative Treatment Center registered with the State of New Hampshire under RSA 126-X:7 may sell, supply, and dispense medical marijuana and related supplies and educational materials to qualifying patients, caregivers, and other Alternative Treatment Centers.

Q: How many Alternative Treatment Centers are going to be licensed for operation?

A: No more than 4 (four) Alternative Treatment Centers shall hold valid registration certificates at one time. However, each Alternative Treatment Center may have a second location for the cultivation of marijuana. Accordingly, there could be up to 8 (eight) locations where medical marijuana may be dispensed or cultivated. RSA 126-X: (III) & (IV) (a) (2).

Q: Will there be statewide dispersal of Alternative Treatment Centers?

A: The four possible Alternative Treatment Centers will be distributed into four geographic regions of the state as follows:

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

(2) "Geographic area 2" means Hillsborough and Merrimack counties;

(3) "Geographic area 3" means Cheshire and Sullivan counties and the Town of Hanover and the City of Lebanon in Grafton County; and

(4) "Geographic area 4" means Carroll, Coos, and Grafton counties, not including the Town of Hanover and the City of Lebanon in Grafton County. NH Admin Code He-C 402.03.

Q: Where are Alternative Treatment Centers prohibited?

A: An Alternative Treatment Center shall not be located in a residential zoning district or within 1,000 feet of the property line of a pre-existing public or private elementary or secondary school or designated drug-free school zones. RSA 126-X:8 (II).

Q: Must a proposed Alternative Treatment Center demonstrate compliance with local regulations?

- A:**
- (1) The health officer must verify that the applicant complies with all applicable local health requirements, drinking water and wastewater requirements;
 - (2) The building official must verify that the applicant complies with all applicable state building codes and local building ordinances;
 - (3) The zoning officer must verify that the applicant complies with all applicable local zoning ordinances; and,
 - (4) The fire chief must verify that the applicant complies with the state fire code, including, but not limited to, the applicable chapter of NFPA 101 as adopted by the department of safety, and local fire ordinances applicable for an agricultural processing and retail sales facility. NH Admin Code He-C 402.05.

Q: Will the concerns of local officials and residents be considered when an Alternative Treatment Center is proposed for a particular location?

A: RSA 126-X:7 (IV) (b) requires the Department of Health and Human Services to partner with the local governing body of the town or city where a proposed Alternative Treatment Center would be located in order to solicit input from qualifying patients, designated caregivers, and the residents of the town or city.

Q: May an Alternative Treatment Center be banned as a prohibited use by a municipality?

A: No. RSA Chapter 126-X constitutes a comprehensive and detailed scheme showing that the State of New Hampshire intended to occupy the entire area of the licensing and regulation of medical marijuana Alternative Treatment Centers. Local regulation that would have the effect of thwarting the geographic distribution of the 4 (four) Alternative Treatment Centers as proposed by NH Admin Code He-C 402.03 would likely be preempted by RSA Chapter 126-X. However, RSA Chapter 126-X does not preempt regulation through site plan review. As the NH Supreme Court said in *Stablex v. Town of Hooksett*, 122 NH 1091 (1982), a use that cannot be prohibited for zoning purposes due to a comprehensive scheme of state regulation is still subject to site plan review by the Planning Board.

Q: What are some of the attributes that will be appraised by HHS when evaluating Alternative Treatment Center applications?

- A:**
- (1) The distance from any pre-existing private or public school.
 - (2) Information demonstrating the applicant's knowledge of organic growing methods to be used in the growing and cultivation of marijuana.
 - (3) The suitability of the proposed location, including compliance with any local zoning laws. The applicant's plan for making marijuana available on an affordable basis to qualifying patients enrolled in Medicaid or receiving Supplemental Security Income or Social Security Disability Insurance.
 - (4) The sufficiency of the applicant's plans for safety and security, including proposed location and security devices employed.

Q: What legal protections are afforded Alternative Treatment Centers?

A: An Alternative Treatment Center and its agents are not subject to prosecution, search, inspection (except by the HHS), seizure, or penalty by acquiring, possessing, cultivating, manufacturing, or transporting medical marijuana. An Alternative Treatment Center is legally authorized to deliver, transfer, supply, sell, or dispense medical marijuana and related supplies and educational materials to qualifying patients who have designated the Alternative Treatment Center to provide for them, to designated caregivers on behalf of the qualifying patients who have designated the Alternative Treatment Center, or to other Alternative Treatment Centers. RSA 126-X:2 (IX) & (X)

Q: How much medical marijuana may be in the possession of each Alternative Treatment Center?

A: Each center may possess:

- (1) Three mature marijuana plants, 12 seedlings, and 6 ounces of usable marijuana for each qualifying patient who has designated the Alternative Treatment Center to provide him or her with marijuana for therapeutic use; and,
- (2) Up to an additional 80 mature marijuana plants, 160 seedlings, and 80 ounces of usable marijuana, including for start-up operations, to assist with a failed batch of marijuana, to allow sufficient quantity of marijuana for new qualifying patients, or to fill requests for the sale of marijuana from other Alternative Treatment Centers.

II. ISSUES RELATED TO WHERE AND WHEN MEDICAL MARIJUANA MAY BE POSSESSED OR CONSUMED

Q: Where may medical marijuana be consumed?

A: A qualifying patient may use marijuana on privately-owned real property only with written permission of the property owner or, in the case of leased property, with the permission of the tenant in possession of the property, except that a tenant shall not allow a qualifying patient to

smoke 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.

Q: Where is the use of medical marijuana prohibited?

A: The smoking or vaporization of medical marijuana is prohibited in any public place, including:

- (1) A public bus or other public vehicle; or,
- (2) Any public park, public beach, or public field. RSA 126-X:3 (II) (c).

Q: Where is the possession of medical marijuana prohibited?

A: The possession of medical marijuana is prohibited in any of the following places:

- (1) The building and grounds of any preschool, elementary, or secondary school, which are located in an area designated as a drug free zone;
- (2) A place of employment, without the written permission of the employer;
- (3) Any correctional facility;
- (4) Any public recreation center or youth center; or,
- (5) Any law enforcement facility. RSA 126-X:3 (II)(d).

Q: When is being under the influence of medical marijuana prohibited?

A: Being under the influence of medical marijuana is prohibited while:

- (1) Operating a motor vehicle, commercial vehicle, boat, vessel, or any other vehicle propelled or drawn by power other than muscular power;
- (2) In a place of employment, without the written permission of the employer; or
- (3) Operating heavy machinery or handling a dangerous instrumentality. 126-X:3 (II) (a).

Q: Are employers or property owners required to accommodate the use or possession of medical marijuana?

A: An owner or occupier of property is not required to allow a guest, client, customer, or other visitor to use marijuana on or in that property. An employer is not required to accommodate the therapeutic use of medical 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. Employers are free to discipline an employee for ingesting marijuana in the workplace or for working while under the influence of marijuana. RSA 126-X:3 (III) (b) & (c).

III. PATIENT AND CAREGIVER ISSUES

Q: Who is allowed to have and use medical marijuana and how much marijuana may be possessed?

A: A person who has a qualifying medical condition (e.g., cancer, HIV, multiple sclerosis) and who has been issued a Registry Identification Card by the NH Department of Health and Human Services (HHS) may have up to two ounces of medical marijuana in her possession. In addition, a designated caregiver who has been issued a Registry Identification Card may have in his possession up to two ounces of medical marijuana for each qualifying patient he is assisting, up to a total of five (5) patients or 10 ounces of medical marijuana. RSA 126-X:2 (I) & (II)

Q: How does a patient obtain a Registry Identification Card?

A: A physician who is authorized to prescribe controlled substances issued by the US Drug Enforcement Administration, including advanced practice registered nurse, must issue a certification that a patient has qualifying medical condition. That certification must be based upon a complete assessment of the patient's medical history and current medical condition made in the course of a provider-patient relationship of at least 3 months in duration. RSA 126-X: 1 (XVII).

Q: Who is permitted to cultivate medical marijuana?

A: Only Alternative Treatment Centers may cultivate medical marijuana. Qualifying patients and designated caregivers may not cultivate marijuana. See, RSA 126-X:1 (XIII).

Q: What legal protections are afforded to patients and designated caregivers?

A: Qualifying patients and designated caregivers are not subject to arrest, prosecution, or penalty or denied any right or privilege for the therapeutic use of marijuana in accordance with RSA Chapter 126-X.