

SB 409-FN – VERSION ADOPTED BY BOTH BODIES

03/28/12 1416s
03/28/12 1494s
25Apr2012... 1751h
16May2012... 2143h
06/06/12 2441CofC
06/06/12 2510EBA

2012 SESSION

12-2994
04/10

SENATE BILL ***409-FN***

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

SPONSORS: Sen. Forsythe, Dist 4; Sen. White, Dist 9; Sen. Gallus, Dist 1; Rep. Merrick, Coos 2;
Rep. Jennifer Coffey, Merr 6; Rep. MacKay, Merr 11

COMMITTEE: Health and Human Services

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

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

3 CHAPTER 126-W

4 USE OF MARIJUANA FOR MEDICINAL PURPOSES

5 126-W:1 Definitions. In this chapter:

6 I. "Provider-patient relationship" means a relationship between a provider and a patient
7 that includes:

8 (a) Taking a medical history;

9 (b) Performing a relevant physical examination;

10 (c) Reviewing prior treatment and treatment response;

11 (d) Obtaining and reviewing relevant diagnostic test results;

12 (e) The provider being available for and offering follow-up care and treatment to the
13 patient, including but not limited to patient examinations;

14 (f) Creating and maintaining patient records; and

15 (g) Notifying the patient's primary care provider when appropriate.

16 II. "Cultivation location" means a locked and enclosed site, under the control of the
17 qualifying patient or designated caregiver who has reported the location of the site to the
18 department, where marijuana is cultivated in accordance with the provisions of this chapter.

19 III.(a) "Qualifying medical condition" means the presence of both:

20 (1) A severely debilitating or terminal disease; and

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

25 (b) "Severely debilitating or terminal disease" means:

26 (1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired
27 immune deficiency syndrome, hepatitis C currently receiving antiviral treatment, amyotrophic

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1 lateral sclerosis, muscular dystrophy, Crohn’s disease, agitation of Alzheimer’s disease, multiple
2 sclerosis, inflammatory autoimmune-mediated arthritis, Parkinson’s disease, systemic lupus
3 erythematosus, quadriplegia, paraplegia, sickle cell disease, cerebral palsy, epilepsy, severe spinal
4 cord injury, intractable skeletal muscular spasticity, traumatic brain injury, Tourette’s Syndrome,
5 spinal cord disease, chronic pancreatitis with cysts, one or more injuries that significantly interfere
6 with daily activities as documented by the patient’s treating provider, or painful peripheral
7 neuropathy only if the application is accompanied by medical records that confirm the objective
8 presence of painful peripheral neuropathy that has been refractory to other treatments; or

9 (2) A medical condition which is not listed in subparagraph (1) and which the
10 commissioner determines, on a case by case basis, is severely debilitating or terminal, based upon
11 the written request of a person who furnishes written certification to the commissioner and who
12 demonstrates the symptoms or treatment results listed in subparagraph (a)(2).

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

14 V. “Designated caregiver” means an individual:

15 (a) Who is at least 21 years of age; and

16 (b) Who has agreed to assist with a qualifying patient’s medical use of marijuana; and

17 (c) Who has never been convicted of any drug-related offense; and

18 (d) Who possesses a valid registry identification card issued pursuant to RSA 126-W:4

19 VI. “Marijuana” means all parts of any plant of the Cannabis genus of plants, whether
20 growing or not; the seeds thereof; the resin extracted from any part of such plant; and every
21 compound, salt, derivative, mixture, or preparation of such plant, its seeds, or resin. Such term shall
22 not include the mature stalks of such plants, fiber produced from such stalks, oil, or cake made from
23 the seeds of such plants, any other compound, salt, derivative, mixture, or preparation of such
24 mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seeds of such
25 plants which are incapable of germination.

26 VII. “Medical use” means the acquisition, possession, cultivation, preparation, use, delivery,
27 transfer, or transportation of marijuana or paraphernalia relating to the administration of
28 marijuana to treat or alleviate a qualifying patient’s qualifying medical condition or symptoms or
29 results of treatment associated with the qualifying patient’s qualifying medical condition. It shall
30 not include the use of marijuana by a designated caregiver who is not a qualifying patient.

31 VIII. “Medicinal use certificate” means a certificate issued by the commissioner of health
32 and human services indicating that a donation has been made to the registry identification card fund
33 established in RSA 126-W:7. The commissioner shall establish the minimum donation amount each
34 year in an amount sufficient to cover the costs associated with this chapter, but not to exceed \$200.
35 The donor shall receive one medicinal use certificate for each donation of the minimum amount and
36 may transfer the certificate to any person applying as a qualified patient or a designated caregiver.

37 IX. “Provider” means a physician licensed to prescribe drugs to humans under RSA 329 and

1 who possesses certification from the United States Drug Enforcement Administration to prescribe
2 controlled substances. For a visiting qualifying patient, “provider” means an individual licensed to
3 prescribe drugs to humans in the state of the patient’s residence and who possesses certification
4 from the United States Drug Enforcement Administration to prescribe controlled substances.

5 X. “Qualifying patient” means an individual who has been diagnosed by a provider as having
6 a qualifying medical condition and who possesses a valid registry identification card issued pursuant
7 to RSA 126-W:4.

8 XI. “Registry identification card” means a document issued by the department pursuant to
9 RSA 126-W:4 that identifies an individual as a qualifying patient or a designated caregiver.

10 XII. “Seedling” means a marijuana plant that has no flowers and is less than 12 inches in
11 height and less than 12 inches in diameter.

12 XIII. “Unusable marijuana” means any marijuana, other than usable marijuana, including
13 the seeds, stalks, and roots of the plant.

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

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

20 XVI. “Written certification” means a document signed by a provider stating that in the
21 provider’s professional opinion, after having completed a full assessment of the patient’s medical
22 history and current medical condition made in the course of a provider-patient relationship of at
23 least 3 months in duration, the patient has a qualifying medical condition, and the potential benefits
24 of the medical use of marijuana would likely outweigh the health risks for the qualifying patient. If
25 the patient’s qualifying medical condition is of recent or sudden onset and the certifying provider is
26 primarily responsible for the patient’s care related to his or her qualifying medical condition, the 3-
27 month requirement for the provider-patient relationship required in this paragraph shall not apply.
28 The written certification shall be valid for up to one year. The date of expiration and the patient’s
29 qualifying medical condition shall be specified on the written certification.

30 126-W:2 Possession of Medical Marijuana by a Qualifying Patient or Designated Caregiver.

31 I. A qualifying patient shall not be subject to arrest, prosecution, or penalty, or denied any
32 right or privilege for the medical use of marijuana in accordance with this chapter, if the qualifying
33 patient possesses, cultivates, or possesses and cultivates, an amount of marijuana that does not
34 exceed the following:

35 (a) If the qualifying patient does not have a designated caregiver for the possession and
36 cultivation of marijuana that occurs at the cultivation location reported to the department, or while
37 transporting marijuana and marijuana plants and seedlings to a new cultivation location that has

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1 been reported to the department within the prior 21 days:

2 (1) Six ounces of usable marijuana; and

3 (2) Any amount of unusable marijuana; and

4 (3) Four mature marijuana plants and 12 seedlings, with a total canopy of no more
5 than 100 square feet.

6 (b) If the qualifying patient is not at the cultivation location reported to the department:

7 (1) Two ounces of usable marijuana; and

8 (2) Any amount of unusable marijuana.

9 II. A designated caregiver shall not be subject to arrest, prosecution, or penalty, or denied
10 any right or privilege for the medical use of marijuana in accordance with this chapter on behalf of a
11 qualifying patient if the designated caregiver possesses or cultivates, or both, an amount of
12 marijuana that does not exceed the following:

13 (a) If at the cultivation location reported to the department, or while transporting
14 marijuana and marijuana plants and seedlings to a new cultivation location that has been reported
15 to the department within the prior 21 days:

16 (1) Six ounces of usable marijuana; and

17 (2) Any amount of unusable marijuana; and

18 (3) Four mature marijuana plants and 12 seedlings, with a total canopy of no more
19 than 100 square feet.

20 (b) If not at the cultivation location reported to the department:

21 (1) Two ounces of usable marijuana; and

22 (2) Any amount of unusable marijuana.

23 III. A qualifying patient or designated caregiver shall not be subject to arrest, prosecution,
24 or penalty for giving marijuana to a qualifying patient or a visiting qualifying patient where nothing
25 of value is transferred in return, or for offering to do the same, if the person giving the marijuana
26 does not knowingly cause the recipient to possess more marijuana than is permitted by this section.

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

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

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

1 qualifying medical condition, in accordance with this chapter.

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

5 VI. Notwithstanding paragraph III, a designated caregiver may receive compensation for
6 costs, not including labor, associated with assisting a qualifying patient who has designated the
7 designated caregiver to assist him or her with the medical use of marijuana. Such compensation
8 shall not constitute the sale of controlled substances.

9 VII. A provider shall not be subject to arrest, prosecution, or penalty, or denied any right or
10 privilege, including but not limited to a civil penalty or disciplinary action by the New Hampshire
11 board of medicine or any other occupational or professional licensing entity, solely for providing written
12 certifications or for otherwise stating that, in the provider's professional opinion, and in the context of a
13 provider-patient relationship, a patient is likely to receive therapeutic or palliative benefit from the
14 medical use of marijuana, provided that nothing shall prevent a professional licensing entity from
15 sanctioning a provider for failing to properly evaluate a patient's medical condition.

16 VIII. Any marijuana, marijuana paraphernalia, licit property, or interest in licit property
17 that is possessed, owned, or used in connection with the medical use of marijuana as allowed under
18 this chapter, or acts incidental to such use, shall not be seized or forfeited if the basis for the seizure
19 or forfeiture is activity related to marijuana that is exempt from state criminal penalties under this
20 chapter.

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

25 X. A valid registry identification card, or its equivalent, that is issued under the laws of
26 another state, district, territory, commonwealth, or insular possession of the United States that
27 allows, in the jurisdiction of issuance, a visiting qualifying patient to possess marijuana for medical
28 purposes, shall have the same force and effect as a valid registry identification card issued by the
29 department in this state, provided that:

30 (a) The visiting qualifying patient shall also produce a statement from his or her
31 provider stating that the visiting qualifying patient has a qualifying medical condition as defined in
32 RSA 126-W:1, III; and

33 (b) A visiting qualifying patient shall not cultivate marijuana in New Hampshire.

34 XI.(a) Any qualifying patient or registered caregiver who sells marijuana to another person
35 who is not a qualifying patient or registered caregiver under this chapter shall be subject to the
36 penalties specified in RSA 318-B:26, IX-a, shall have his or her registry identification card revoked,
37 and shall be subject to other penalties as provided in RSA 318-B:26.

1 (b) The department may revoke the registry identification card of a qualifying patient or
2 registered caregiver who violates any other provision of this chapter, and the qualifying patient or
3 registered caregiver shall be subject to any other penalties established in law for the violation.

4 XII. Where a state or local law enforcement agency encounters an individual who, during
5 the course of an investigation, credibly asserts that he or she is a qualifying patient or designated
6 caregiver, the law enforcement agency shall not provide any information from any marijuana-related
7 investigation of the individual or entity to any law enforcement agency that does not recognize the
8 protection of this chapter, and any prosecution of the individual or entity for a violation of this
9 chapter shall be conducted pursuant to the laws of this state. This paragraph shall not apply in
10 cases where the state or local law enforcement agency has probable cause to believe the person is
11 distributing marijuana to a person who is not allowed to possess it under this chapter.

12 XIII. A person who ceases to be a qualifying patient or designated caregiver shall have 10
13 days after notification by the department to dispose of marijuana in one of the following ways:

14 (a) If the person was a designated caregiver and the qualifying patient who designated
15 the caregiver is still a qualifying patient, but has designated a new caregiver or will cultivate plants
16 himself or herself, the designated caregiver may transfer marijuana to the new person who will
17 cultivate for the qualifying patient;

18 (b) The person may notify local law enforcement and request that they dispose of the
19 marijuana;

20 (c) The person may dispose of marijuana, after mixing marijuana with other ingredients
21 such as soil to render it unusable; or

22 (d) The person may donate usable marijuana to a qualifying patient.

23 XIV. For the purposes of medical care, including organ transplants, a registered qualifying
24 patient's authorized use of marijuana in accordance with this chapter shall be considered the
25 equivalent of the authorized use of any other medication used at the direction of a provider, and shall
26 not constitute the use of an illicit substance.

27 126-W:3 Prohibitions and Limitations on the Use of Medical Marijuana.

28 I. A qualifying patient may use medical marijuana on privately owned real property only
29 with the permission of the property owner.

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

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

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

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

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

36 (b) The use or possession of marijuana by a qualified patient or designated caregiver for
37 purposes other than for medical use as permitted by this chapter.

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- 1 (c) The smoking of marijuana in any public place, including:
2 (1) A school bus, public bus, or other public vehicle; or
3 (2) A place of employment, without the written permission of the employer; or
4 (3) The grounds of any preschool, elementary, or secondary school; or
5 (4) Any correctional facility; or
6 (5) Any public park, public beach, public recreation center, public field, or youth center.

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

8 (a) Any health insurance provider, health care plan, or medical assistance program to be
9 liable for any claim for reimbursement for the medical use of marijuana; or

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

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

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

24 V. A qualifying patient or designated caregiver who is found to be in possession of marijuana
25 outside of his or her home and is not in possession of his or her registry identification card, may be
26 subject to a \$100 fine.

27 126-W:4 Departmental Administration.

28 I. Except as provided in paragraph V, the department shall issue a registry identification
29 card to a person applying as a qualifying patient who submits all of the following information:

- 30 (a) Written certification as defined in RSA 126-W:1.
31 (b) An application or a renewal application accompanied by a medicinal use certificate.
32 (c) Name, residential and mailing address, and date of birth of the applicant, except that
33 if the applicant is homeless, no residential address is required.
34 (d) Name, address, and telephone number of the applicant's provider.
35 (e) Name, address, and date of birth of the applicant's designated caregiver, if any. A
36 qualifying patient shall have only one designated caregiver.
37 (f) Street address of the cultivation location, if the qualifying patient does not have a

1 designated caregiver.

2 (g) A statement signed by the applicant, pledging not to divert marijuana to anyone who
3 is not allowed to possess marijuana pursuant to this chapter and acknowledging that his or her
4 diversion of marijuana is punishable as a class B felony and revocation of his or her registry
5 identification card, in addition to other penalties for the illegal sale of marijuana.

6 II.(a) Except as provided in paragraph V, the department shall issue a registry identification
7 card to a person applying as a designated caregiver who submits all of the following information:

8 (1) An application or a renewal application accompanied by a medicinal use
9 certificate.

10 (2) Name, residential and mailing address, and date of birth of the applicant.

11 (3) Name, residential and mailing address, and date of birth of the qualifying patient
12 for whom the applicant will act as designated caregiver, except that if the qualifying patient is
13 homeless, no residential address is required. A designated caregiver shall act on behalf of only one
14 qualifying patient.

15 (4) A complete set of fingerprints.

16 (5) Street address of the cultivation location.

17 (6) A statement indicating the applicant's preference as to whether the applicant
18 requests the department to retain his or her fingerprints on file for any renewal application or
19 whether the applicant requests the department to destroy his or her fingerprints and acknowledges
20 that the applicant shall resubmit fingerprints if the applicant applies for renewal as a designated
21 caregiver.

22 (7) A signed statement from the applicant agreeing to act as the designated
23 caregiver for the qualifying patient named in the application and pledging not to divert marijuana to
24 anyone who is not allowed to possess marijuana pursuant to this chapter and acknowledging that
25 the diversion of marijuana is punishable as a class B felony and revocation of one's registry
26 identification card, in addition to other penalties for the illegal sale of marijuana.

27 (b) A person who is applying to be a designated caregiver shall submit to a state and federal
28 criminal records check. The department shall request the department of safety to perform the state and
29 federal criminal records check and the department of safety shall complete such records checks and
30 convey the findings of such checks to the department within 30 days of the request. The department and
31 the department of safety may exchange necessary data including fingerprint data with the Federal
32 Bureau of Investigation without disclosing that the records check is related to the provisions of this
33 chapter and acts permitted by it. Unless the applicant stated that he or she prefers his or her
34 fingerprints to be kept on file for any renewal, the department and the department of safety shall destroy
35 each set of fingerprints obtained pursuant to this chapter after the criminal records check is complete.

36 III. The department shall verify the information contained in an application or renewal
37 submitted pursuant to this section. The department shall approve or deny an application or renewal

1 for a qualifying patient within 15 days of receipt of the application. The department shall approve or
2 deny an application or renewal to serve as a designated caregiver within 45 days of receipt of the
3 application. The department may deny an application or renewal only if the applicant did not
4 provide the information required pursuant to this section, or the applicant previously had a registry
5 identification card revoked for violating the provisions of this chapter, or if the department
6 determines that the information provided was falsified. The department shall notify an applicant of
7 the denial of an application. An applicant who is aggrieved by a department decision may request an
8 administrative hearing at the department.

9 IV. The department shall issue registry identification cards to persons applying as a
10 qualifying patient or designated caregiver within 5 days of approving an application or renewal.
11 Each registry identification card shall expire one year after the date of issuance, unless the provider
12 states in the written certification that he or she believes the qualifying patient would benefit from
13 medical marijuana only until a specified earlier date, then the registry identification card shall
14 expire on that date. Registry identification cards shall contain all of the following:

15 (a) Name, mailing address, and date of birth of the qualifying patient or designated
16 caregiver.

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

18 (c) A random 10-digit identification number, containing at least 4 numbers and at least 4
19 letters, that is unique to the qualifying patient or the designated caregiver.

20 (d) A designation that the person is either a “qualifying patient” or a “designated
21 caregiver.” If the person is a designated caregiver, the identification card shall include the random
22 10-digit identification number of the qualifying patient for whom he or she is providing care.

23 (e) A photograph of the qualifying patient or designated caregiver.

24 (f) A statement that the qualifying patient or designated caregiver is permitted under
25 state law to possess marijuana pursuant to this chapter for the medical use of the qualifying patient.

26 (g) For a qualifying patient’s registry identification card, a statement that either:

27 (1) The person is a qualifying patient who has not designated a caregiver and is
28 therefore exempt from state penalties for cultivating marijuana; or

29 (2) The person is a qualifying patient who has designated a caregiver, and therefore
30 shall not be permitted to cultivate marijuana.

31 V. The department shall not issue a registry identification card to an applicant under 18
32 years of age who is applying as a qualifying patient unless:

33 (a) The applicant’s provider has explained the potential risks and benefits of the medical
34 use of marijuana to the custodial parent or legal guardian with responsibility for health care
35 decisions for the applicant; and

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

- 1 (1) Allow the applicant’s medical use of marijuana; and
2 (2) Control the acquisition of the marijuana and the frequency of the medical use of
3 marijuana by the applicant; and

4 (c) The custodial parent or legal guardian completes an application in accordance with the
5 requirements of paragraph I on behalf of the applicant.

6 VI. The department shall provide each approved qualifying patient and caregiver a statement
7 with the registry identification card explaining federal law on the possession of marijuana and that
8 possession of a state registry identification card does not protect a person from federal criminal
9 penalties.

10 VII.(a) A qualifying patient shall notify the department of any change in his or her name,
11 address, or designated caregiver within 10 days of such change. If the qualifying patient’s certifying
12 provider notifies the department in writing that either the qualifying patient no longer suffers from a
13 qualifying medical condition or that the provider no longer believes the qualifying patient would
14 receive benefit from the medical use of marijuana, the registry identification card shall become void
15 upon notification by the department to the qualifying patient.

16 (b) When a qualifying patient or a designated caregiver notifies the department of any
17 change to a name or address, the department shall issue the qualifying patient or designated
18 caregiver a new registry identification card with a new random 10-digit identification number within
19 15 days of receiving the updated information.

20 (c) If a qualifying patient notifies the department of a change in his or her designated
21 caregiver and the prospective designated caregiver meets the requirements of this chapter, the
22 department shall issue the designated caregiver a registry identification card with a new random 10-
23 digit identification number within 45 days of receiving the designated caregiver’s application.

24 (d) A qualifying patient or designated caregiver who fails to notify the department of any
25 changes to his or her name, address, designated caregiver, or cultivation location shall be guilty of a
26 violation and may be subject to a fine not to exceed \$150.

27 (e) If a qualifying patient or designated caregiver loses his or her registry identification
28 card, he or she shall notify the department within 10 days of losing the card. Within 5 days after
29 such notification, the department shall issue a new registry identification card with a new random
30 10-digit identification number.

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

36 IX.(a) The department shall create and maintain a confidential registry of each individual
37 who has applied for and received a registry identification card as a qualifying patient or a designated

1 caregiver in accordance with the provisions of this chapter. Each entry in the registry shall contain
2 the qualifying patient's or designated caregiver's name, mailing address, date of birth, date of
3 registry identification card issuance, date of registry identification card expiration, random 10-digit
4 identification number, street address at which the marijuana plants will be cultivated or possessed,
5 and the effective date of any change of cultivation location. The confidential registry and the
6 information contained in it shall be exempt from disclosure under RSA 91-A.

7 (b)(1) Except as specifically provided in this chapter, no person shall have access to any
8 information about qualifying patients or designated caregivers in the department's confidential
9 registry, or any information otherwise maintained by the department about providers, except for
10 authorized employees of the department in the course of their official duties and local and state law
11 enforcement personnel who have detained or arrested an individual who claims to be engaged in the
12 medical use of marijuana.

13 (2) If a local or state law enforcement officer submits a sworn affidavit to the
14 department affirming that they have probable cause to believe marijuana is possessed or cultivated
15 at a specific address, an authorized employee for the department may disclose whether the location
16 is associated with a qualifying patient, designated caregiver, or a cultivation location.

17 (3) If a local or state law enforcement officer submits a sworn affidavit to the
18 department affirming that they have probable cause to believe a specific individual possesses or
19 cultivates marijuana, an authorized employee for the department may disclose whether the person is
20 a qualifying patient or a designated caregiver, provided that the law enforcement officer provides the
21 person's name and address or name and date of birth.

22 (4) Counsel for the department may notify law enforcement officials about falsified
23 or fraudulent information submitted to the department where counsel has made a legal
24 determination that there is probable cause to believe the information is false or falsified.

25 X. Within 5 days of learning of the death of a qualifying patient, a surviving family member,
26 caretaker, executor, or the patient's designated caregiver shall notify the department that the
27 qualifying patient has died. Within 5 days of learning of the death of a qualifying patient, the
28 surviving family member, caretaker, executor, or the patient's designated caregiver shall either
29 request that the local law enforcement agency remove any remaining marijuana or shall dispose of
30 the marijuana in a manner that is specified by the department by rule.

31 XI. The department shall submit to the legislature an annual report that shall not disclose
32 any identifying information about qualifying patients, designated caregivers, or providers, but shall
33 contain, at a minimum, the following information:

- 34 (a) The number of applications and renewals filed for registry identification cards.
35 (b) The number of qualifying patients and designated caregivers approved in the state.
36 (c) The nature of the qualifying medical conditions of the qualifying patients.
37 (d) The number of registry identification cards revoked.

1 (e) The number of providers providing written certifications for qualifying patients.
2 126-W:5 Affirmative Defense.

3 I. Except as provided in RSA 126-W:3, it is an affirmative defense to any prosecution for an
4 offense involving marijuana or marijuana paraphernalia intended for medical use that:

5 (a) The defendant is a qualifying patient in possession of a valid registry identification
6 card and at the time of arrest or prosecution was in possession of a quantity of marijuana that was
7 not more than allowed under this chapter, and the qualifying patient was engaged in the medical use
8 of marijuana in accordance with the provisions of this chapter; or

9 (b)(1) The defendant is a designated caregiver in possession of a valid registry
10 identification card and at the time of arrest or prosecution was in possession of a quantity of
11 marijuana that was not more than allowed under this chapter; and

12 (2) The designated caregiver was engaged in the medical use of marijuana on behalf
13 of a qualifying patient in accordance with the provisions of this chapter.

14 (c) If a defendant proves the elements of the affirmative defense listed in subparagraph
15 (I)(a) or (b), the charges shall be dismissed with prejudice.

16 II. A person who is arrested for possession, cultivation, or transportation of marijuana, or
17 possession of marijuana paraphernalia, may raise as an affirmative defense that he or she is person
18 with a qualifying medical condition who is not yet in possession of a valid registry identification card
19 if:

20 (a) Prior to the arrest, the person submitted to the department a valid application to
21 become a qualifying patient, complete with a written certification, but the person had not yet
22 received a registry identification card from the department; and

23 (1) The person does not possess more than 2 ounces of usable marijuana and any
24 amount of unusable marijuana, if the marijuana is not on the person's property; or

25 (2) If the marijuana is on the person's property, the person does not possess more
26 than 6 ounces of usable marijuana and any amount of unusable marijuana and is not cultivating
27 more than 4 mature marijuana plants and 12 seedlings, which shall be in a locked and enclosed
28 location on the person's property.

29 (b) The affirmative defense under this section shall not be available to a person who has
30 violated any of the provisions of RSA 126-W:3, I-IV.

31 (c) If a defendant proves the elements of the affirmative defense listed in this paragraph,
32 the defendant shall be acquitted of any charge to which the defendant proved the affirmative
33 defense.

34 III. A person who is arrested for possession, cultivation, or transportation of marijuana, or
35 possession of marijuana paraphernalia, prior to the date on which the department begins accepting
36 registry identification card applications may raise as an affirmative defense that he or she is a
37 person with a qualifying medical condition who is not yet in possession of a valid registry

1 identification card if:

2 (a) The person produces a written statement signed by a provider stating that in the
3 provider's professional opinion, after having completed a full assessment of the person's medical
4 history and current medical condition made in the course of a provider-patient relationship of at
5 least 3 months duration, unless the person's qualifying medical condition is of recent or sudden onset
6 in which case the 3-month time requirement shall not apply, the person has a qualifying medical
7 condition and the potential benefits of the medical use of marijuana would likely outweigh the health
8 risks for the person; and

9 (1) The person does not possess more than 2 ounces of usable marijuana and any
10 amount of unusable marijuana, if the marijuana is not on the person's property; and

11 (2) If the marijuana is on the person's property, the person does not possess more
12 than 6 ounces of usable marijuana and any amount of unusable marijuana, and does not possess or
13 is not cultivating more than 4 mature marijuana plants and 12 seedlings which shall be in a locked
14 and enclosed location.

15 (b) The affirmative defense under this section shall not be available to a person who has
16 violated any of the provisions of RSA 126-V:3, I-IV.

17 (c) If a defendant proves the elements of the affirmative defense listed in this paragraph,
18 the defendant shall be acquitted of any charge to which the defendant proved the affirmative
19 defense.

20 126-W:6 Rulemaking.

21 I. Not later than 90 days after the effective date of this chapter, the department shall adopt
22 rules, pursuant to RSA 541-A, governing the manner in which it shall consider and process
23 applications for issuance and renewals of registry identification cards for qualifying patients and
24 designated caregivers and for the processing of medicinal use certificates.

25 II. The department may accept gifts, grants, donations, or other funds from private sources
26 without the approval of the governor and council.

27 126-W:7 Registry Identification Card Fund. There is hereby established in the office of the state
28 treasurer a fund to be known as the registry identification card fund which shall be kept separate
29 and distinct from all other funds. The fund is established to pay for the operational expenses of the
30 program for permitting the use of marijuana for medicinal purposes as established in this chapter.
31 The moneys in this fund shall be nonlapsing and continually appropriated to the department.
32 Interest on fund balances shall accrue to the fund. All fines and other income received by the
33 department and all monetary gifts, grants, and donations received by the department pursuant to
34 this chapter shall be deposited in the fund.

35 2 New Subparagraph; Application of Receipts; Registry Identification Card Fund. Amend
36 RSA 6:12, I(b) by inserting after subparagraph (307) the following new subparagraph:

37 (308) Moneys deposited in the registry identification card fund established in

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1 RSA 126-W:7.

2 3 New Paragraph; Controlled Drug Act; Acts Prohibited. Amend RSA 318-B:2 by inserting after
3 paragraph I-a the following new paragraph:

4 I-b. It shall be unlawful for a qualifying patient or designated caregiver as defined under
5 RSA 126-W:1 to sell marijuana to another person who is not a qualifying patient or designated
6 caregiver. A conviction for the sale of marijuana to a person who is not a qualifying patient or
7 designated caregiver shall not be construed to preclude or limit a prosecution or conviction of any
8 person for sale of marijuana or any other offense defined in this chapter.

9 4 New Paragraph; Controlled Drug Act; Penalties. Amend RSA 318-B:26 by inserting after
10 paragraph IX the following new paragraph:

11 IX-a. A qualifying patient or designated caregiver as defined in RSA 126-W:1 who is
12 convicted of selling marijuana to a person who is not a qualifying patient or designated caregiver
13 shall be guilty of a class B felony and shall be sentenced to a maximum term of imprisonment of not
14 more than 7 years, a fine of not more than \$300,000, or both.

15 5 Repeal. The following are repealed:

16 I. RSA 126-W:1 through RSA 126-W:7, relative to use of marijuana for medicinal purposes.

17 II. RSA 6:12, I(b)(308), relative to the registry identification card fund.

18 III. RSA 318-B:2, I-b, relative to selling marijuana to a person who is not a qualifying
19 patient or a designated caregiver.

20 IV. RSA 318-B:26, IX-a, relative to the penalty for selling marijuana to a person who is not a
21 qualifying patient or a designated caregiver.

22 6 Applicability. The provisions of RSA 126-W:1-4 as inserted by section 1 of this act shall take
23 effect on the earlier of July 1, 2013 or upon certification by the commissioner of the department of
24 health and human services to the secretary of state and the director of the office of legislative
25 services that sufficient funds are available in the registry identification card fund established in RSA
26 126-W:7 to meet the expenses of the use of marijuana for medicinal purposes program established in
27 RSA 126-W from the effective date of this section until July 1, 2013.

28 7 Effective Date.

29 I. RSA 126-W:1-4 as inserted by section 1 of this act shall take effect as provided in section 6
30 of this act.

31 II. Section 5 of this act shall take effect July 1, 2015.

32 III. The remainder of this act shall take effect upon its passage.

LBAO
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409-FN - FISCAL NOTE

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

FISCAL IMPACT:

The Department of Health and Human Services, Judicial Branch, Judicial Council, New Hampshire Association of Counties, New Hampshire Municipal Association, and the Departments of Justice, Corrections, and Safety state this bill will have an indeterminable fiscal impact on state, county and local expenditures, and state and local revenue. There will be no impact on county revenue.

METHODOLOGY:

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 2013. 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;
- Issue photo I.D. cards to qualifying patients and named designated caregivers;
- Issue replacement I.D. cards 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;
- Create and maintain a database for use as a confidential registry of qualifying patients and designated caregivers;
- 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;
- No later than one year after the effective date of the bill, adopt administrative rules governing the manner in which DHHS processes applications and renewals for registry identification cards for qualifying patients and designated caregivers; and

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- Determine and enforce civil infractions for violations of the chapter including revocation of registry identification cards and imposing fines.

The Department estimates the program costs as follows:

	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>
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
Salary and benefits for full-time Licensing Clerk (LG 11) and Program Specialist (LG 25)	<u>\$119,439</u>	<u>\$119,439</u>	<u>\$119,439</u>	<u>\$119,439</u>
Total Expenditures:	\$204,439	\$124,439	\$124,439	\$124,439

The bill does not establish positions or contain an appropriation.

The Judicial Branch states this bill would enact RSA 126-V relative to the use of marijuana for medicinal purposes. The Branch identified six sections in the bill that may result in additional costs, and two sections of the bill that could result in savings to the Branch.

The potential costs could arise from the following:

- Proposed RSA 126-V:2, XI makes it a class B felony for a cardholder to sell marijuana to an individual who is not a Cardholder;
- Proposed RSA 126-V:4, 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-V:4, VII(c) makes 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-V:4, IX(c) makes it a class B misdemeanor to breach the confidentiality of information obtained pursuant to the chapter;
- Proposed RSA 126-V:3, 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; and
- Proposed RSA 126-V:5 allows medical use of marijuana to be an affirmative defense in any prosecution of an offense involving marijuana. This defense has the potential to extend trials.

Potential savings could result from the following:

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- Proposed RSA 126-V: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 six ounces of marijuana; and
- Proposed RSA 126-V: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 six ounces of marijuana.

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 Judicial Council states this bill may result in a minimal reduction in indigent defense costs. Based on anecdotal data from the public defender there are about 10 cases annually in which marijuana is grown and used for medicinal purposes. The Council assumes some of those individuals could now apply to be registered users and obtain the drug legally, resulting in a decrease in felony cases prosecuted. The Council states if an individual is found to be indigent, the 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 \$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 is \$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 no longer 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 there may be both positive and negative impacts resulting from the bill, including local law enforcement considerations, however, the fiscal impact on municipalities is indeterminable.

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The Department of Justice states the Attorney General's Drug Task Force investigates offenses under the Controlled Drug Act, including the possession of marijuana. The Department indicates, to the extent this bill results in fewer investigations concerning marijuana, investigative efforts would be shifted to the illegal possession and sale of other controlled substances. The Department states this bill would have no fiscal impact on the Department of Justice.

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 of Corrections states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2011 was \$33,698. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2010 was \$672.

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 designated caregivers. 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, 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.