

THERAPEUTIC USE OF CANNABIS ADVISORY COUNCIL
Friday, February 21, 1:00-4:00
Legislative Office Building Rooms 205-207
MINUTES

Members in attendance were as follows:

Representative James R. MacKay (Chair)
Representative Donald “Ted” Wright
Senator Jeff Woodburn
Michael Holt, NH Department of Health and Human Services (Clerk)
Robert Andelman, MD, NH State Board of Medicine
Devon Chaffee, Esquire, NH Civil Liberties Union
Kelly DeFeo, APRN, NH Nurse Practitioner Assoc.
Stuart Glassman, MD, NH Medical Society
Peter Gosline, Monandnock Community Hospital
Andrew Shagoury, Public Member
James Vara, NH Dept of Justice
Christopher Casco, NH Department of Safety (alternate for Lt. John Encarnacao)

Members absent were as follows:

Robert Duhaime, Board of Nursing
Lisa Kilar, Qualifying Patient
Colette Horgan, Exeter Hospital

Review and Approval of Minutes

The minutes from the December 19th, 2013 meeting were approved. Vote to approve minutes, unanimous.

Review of Attorney General’s Opinion on Issuance of Cards and Additional Qualifying Conditions

Mary Castelli, Senior Division Director, Office of Operations Support, DHHS, and Frank Fredericks, Attorney, Office of the Attorney General, spoke of the opinion regarding the timing of issuance of registry identification cards. The Attorney General’s opinion is that the Department should not issue identification cards prior to the operation of the Alternative Treatment Centers (ATCs). Since the ATCs are the only means for patients and caregivers to lawfully acquire therapeutic cannabis, the issuance of cards before they are operational would be premature. There is no specific date that the Department is required to issue cards in the statute except for the adoption of rules regarding identification cards one year from the effective date of the law; if the legislature intended a specific date it would have required that in the statute.

Discussion: Devon Chaffee questioned why the Attorney General’s office felt the Department lacked authority to do so. Attorney Fredericks said the legislation is clear that there is no other ways to get cannabis except at ATCs so it does not make sense for the cards to be issued before the ATCs are created. Devon Chaffee asked what the legislature could have intended by establishing two separate tracks and timeframes for rulemaking: one year from passage of the law for patient registry rules and 18 months from passage of the law for ATC rules. James Vara offered that the Attorney General’s office is not the final arbiter of legislative intent. Representative MacKay asked Attorney Castelli whether the Department is working on moving forward with efforts. She stated the Department was moving forward

with required action and although she cannot give a specific date when ATCs will be up and running, they are working hard to do so. The Department has given themselves a deadline of October to issue rules for the ATCs but would like to move even faster since the RFP process is likely to take a while.

Devon Chaffee said that while she appreciates the Department's work getting the ATCs up and running, her concern is that even by meeting the legislative deadlines it will still take years for the clients to get their cards. She also asked whether Attorney Fredericks looked at other states like Delaware that issued cards before the ATCs were operational. He said that they did look at some other states but mainly examined what NH's RSA said.

Rep. Wright stated that the legislative intent was to protect patients and he would like Attorney Fredericks to come back and tell the Council why there is a 6-month gap between issuance of cards and creation of ATCs in the legislation. Rep. Wright also expressed concern about zoning issues and municipalities prohibiting the locating of ATCs in certain communities. Attorney Fredericks (later in the meeting when this question came up again), suggested that the gap between tracks may be because of the removal of the home cultivation provision from HB 573.

Attorney Fredericks then reviewed the Attorney General's response to the second question regarding the inclusion of additional conditions to the list of qualifying medical conditions. Part (a) of the law restricts to certain diagnoses, conditions, and symptoms. Part (b) of the law allows additional conditions to be included by the department upon request. The means for doing this is really left up to the Department. Attorney Chaffee asked if the Department could hold something like a hearing to determine this.

Attorney Castelli replied that other states have a petition process and the Department has included in the rule a process like that. This gives an opportunity for provider, family members, etc., to present condition and what are the benefits to using cannabis in a more uniform way.

Devon Chaffee asked how the department plans to assure the confidentiality of patients' protected information through such an open petition process. Mary Castelli responded that personal, identifying information would be redacted from all documents.

Devon Chaffee said that he proposed process does not meet the legislative intent of an case-by-case review of an individual person. Under the proposed process, if one condition is denied, then all subsequent applicants with the same condition would be barred from the petition process despite different individual manifestations of the same condition. Mary Castelli said that the intent of the legislature as evidenced by the law is supported by the proposed process which allows for a case-by-case review of conditions, if not individual applicants, and would also potentially relieve the burden of subsequent applicants from having to go through the petition process for a condition that has been already added.

Kelly DeFeo asked for confirmation that, once approved, a condition would be available to everyone who applied. Mary Castelli said yes, and that the petition process won't be just about a specific person's experience but that specific health condition and the nature of condition in relation to the symptoms.

Rep. Wright asked if HB 1622, allowing the home cultivation of cannabis, would address some of the issues raised here. Attorney Fredericks said that he would have to look into that before being able to answer.

Chief Shagoury asked if there would be a process in rule for removing a condition added through the petition process. Mary Castelli said that this idea would be taken under consideration.

Discussion on Administrative Rules

Mary Castelli and John Martin introduced a draft of He-C 401 Therapeutic Use of Cannabis Program – Registry Rules. A notice of a Request for Advance Public Comment on the rules has been filed with the Office of Legislative Services and will be published in the February 27, 2014 edition of the *Rulemaking Register*. The draft rule will be also published on the Department’s website and made available to the public for advance comment prior to entering formal rulemaking.

Devon Chaffee questioned how the current status of the rules are aligning with the timeline proposed earlier. Michael Holt answered that the Department is a month behind the schedule as originally proposed at the October 2013 Advisory Council meeting, but that the Department is still on track to target the June JLCAR meeting (in advance of the legislative deadline of July 23).

Mr. Holt reviewed rules page by page with members of the Council.

- 402.02(h). Dr. Andelman suggested that there should be language regarding physician review of relevant tests and consultations included in various places in the rule, including the definitions [He-C 402.02(h)]. Mr. Holt thought that could be added in the provider section, Section He-C 402.06.
- Chief Shagoury. “Diversion” is used in the rule, so it should be defined.
- Attorney Chaffee. Statute allows an exception for homeless applicants from providing a physical address. Why isn’t that statutory exemption in rule in He-C 401.04? The Department will add this exception.
- Chief Shagoury. In He-C 401.04, how does a minor provide lease agreement? If an applicant is under the age 13 they won’t have IDs. The Department will look at this issue.
- Attorney Chaffee. He-C 401.04. She questioned the need for both a home and work phone number in the application when the statute just states a phone number. Mr. Holt stated that asking for this type of information is standard across Department programs for administrative convenience and a quick turn around of applications. Chaffee is concerned about sensitive nature of including a work phone numbers and would prefer that not be required. Attorney Castelli stated that information on application is confidential. Attorney Chaffee is still concerned about discrimination of patients in the workplace, which has occurred in other states.
- Mr. Holt noted that He-C 401.05, regarding criminal records checks, does not reflect current statute but rather the proposed amendment to the law in SB 234.
- Dr. Andelman. In He-C 401.06, paragraph (b)(2) should include review of records and consultation. Also, some patients are going to have chronic pain. Board of Medicine has excellent guidelines on treating chronic pain and these should be referenced. Also (b)(6) states “reasonably able to provide follow up care.” Dr. Andelman suggests language be “follow appropriately at reasonable intervals” instead of “reasonably able”.
- Dr. Glassman. Suggests that the rule be more prescriptive and require a mandatory physician follow-up at 30 days.

- He-C 401.06(b)(10) implies “prescribing” with regard to “instructions” being issued. The provider cannot “prescribe” cannabis.
- Glassman. Other states have a registry of doctors who are willing to participate; can we do something like that. Mr. Holt said that this is not in the current statute so it can’t put in rule but this may be a consideration for new legislation. Attorney Castelli said this is something the Department may be able to do more informally through an outside organization’s website.
- Chief Shagoury raised issues regarding minors. Will legal guardianship of a minor be verified? Attorney Castelli said that it may be difficult if a court order is not in place. Chief Shagoury suggested that the state requires certification and that they can attest that is the case. He asked what happens if two parents disagree about their child’s care.
- James Vara inquired about the risk to providers if they complete a written certification form for a patient before there is an ATC. Attorney Chaffee stated this concern is the reason why written certification of a condition is the requirement and not the prescribing of cannabis.
- Attorney Chaffee also stated that He-C 401.06 puts additional requirements on physicians not included in the law (ie, Department access to medical records, sending physician instructions to an ATC, notice to Department if patient no longer suffers from a qualifying condition. She emphasized that she sees no justification or authority for Department access to a patient’s medical record. Mary Castelli said that the statute authorizes this by requiring the Department to “verify” all application materials. Ms. Chaffee thought this a very broad interpretation of “verify”. She is also concerned about additional requirements of showing a patient/provider relationship beyond by 3 month requirement. She stated that there should be no additional provider requirements not included in the statute. Dr. Andelman strongly disagreed and feels like medical/patient relationship needs to be clear and was supportive the Department’s ability to look at medical records.
- Dr Andelman inquired about provider relationship with the ATC in He-C 401.06(h). He believes a provider should not be employed by ATC. Attorney Castelli agrees that is should come out.
- Dr. Andelman. He-C 401.07(b)(1). Clarify section regarding the 60 day time frame. Mr. Holt said that the burden of the 60 day requirement is not on provider but the patient.
- Dr. Glassman. He-C 401.08. He asked if a minor has to go to pediatrician even if they have a family physician/primary care provider. The response was yes because it is required in statute.
- Dr. Glassman. He-C 401.09. He asked if the Department would create a form for the petition process described in the rule. Attorney Castelli said yes. He asked if the Department would list all conditions that are approved under this section. Attorney Castelli said that they would be included on updated versions of the Written Certification form.
- Chief Shagoury. He-C 401.09. He reiterates his suggestion that there should be a process for petitioning the removal of a newly added condition.
- Chief Shagoury. He-C 401.11. The statute says a card is valid for one year but the rule says one year from the last day of the month it is issued. Mr. Holt responded that this is standard practice across Departmental programs for administrative efficiency and that other Department rules include similar provisions. Chief Shagoury said that this is not within the four corners of statute.
- Chief Shagoury. He-C 401.12(b). Grounds for revocation of a card should include any violation of RSA 318-B.

- He-C 401.13. The question was posed that if a patient gets certification from one physician and that physician moves away there are other requirements for the new physician in statute. This may presents concerns regarding how this may affect patient care.
- Chief Shagoury. He-C 401.14. He noted that the Department could issue a fine and a person could also be found criminally guilty and receive another fine.
- Chief Shagoury. All forms, and associated rules, should include reference to RSA 641-B, regarding penalties for unsworn falsification.
- Chief Shagoury. He-C 401.15. Should be clarified that it is “the” qualifying patient not just “any” qualifying patient. Paragraph (c) does not accurately reflect statute and release of information to law enforcement. Mr. Holt responded that the Department will look at this.

Devon Chaffee said that Rep. Shlachman (sponsor of HB 573) sent a letter to Representative MacKay asking the Council to not accept the previously discussed Attorney General’s interpretation. She also asked that the minutes reflect that three members of the legislature—Rep. Schlachman, via the letter, Rep. Wright, and Sen. Reagan—expressed at this meeting that the AG’s opinion does not reflect the intent of the legislature in passing HB 573.

Legislative Update

Discussion of bills filed. Hearings have been held and committee action has been taken on most, except for SB 234, a hearing for which has not yet been scheduled.

HB 1296, adding a member to the therapeutic use of cannabis advisory council [endorsed by Council]

HB 1616, Rep. Wright, making changes to the therapeutic cannabis laws.

HB 1622, Rep. Wright, permitting qualifying patients and registered caregivers to cultivate cannabis for therapeutic use.

HB 1623, prohibiting a licensed alternative treatment center from advertising therapeutic cannabis

SB 234. It contains technical corrections on two issues: criminal records check and confidentiality of ATC locations. As endorsed by the Council at the October 2013 meeting, a 15 day timeframe was needed once both the criminal record check results and application was received. Further amendment is needed which would align the criminal records check process with that used by the Department’s Child Care Licensing Unit, by requiring the applicant to go to the Dept. of Safety first for a criminal record check, and have the results sent to the DHHS. The amendment also requires that fingerprints be electronic. Attorney Chaffee asked if electronic fingerprinting is accessible statewide. Jeffrey Kellett from the Criminal Records Unit of the Dept. of Safety’s Division of State Police said that there are locations across the state that do electronic fingerprinting. He listed the locations.

The Council lost its quorum so could not endorse legislation, but Mr. Holt suggested that the Council could take this up again at the next meeting, and endorse the legislation, perhaps prior to the House hearing the bill.

Public Participation

Matt Simon, from the Marijuana Policy Project, handed out a statement on the Attorney General's opinion regarding the timing of the issuance of registry identification cards. He said that the legislative intent was for patients to have the cards, and relief and protection from arrest by July 2014 and he is concerned that this intent not being taken into consideration by the Department. Regarding the AG opinion on conditions **and** symptoms being recognized, Mr. Simon indicated that NH is the only state that requires a patient to have both a condition **and** a symptoms.

Meeting adjourned at approximately 4:00 p.m.