

FACILITY CAREGIVER
**LEGAL PROTECTIONS FOR FACILITIES LICENSED UNDER RSA 151 THAT WISH TO ASSIST
QUALIFYING PATIENTS IN THE THERAPEUTIC USE OF CANNABIS**

[SB 419](#) became effective on June 10, 2016. This bill made a number of changes to the Therapeutic Cannabis statute (RSA 126-X) including changes that provide legal protection to certain facilities licensed under RSA 151 that wish to assist a resident or patient with the therapeutic use of cannabis. The facilities include: Hospitals (He-P 802); Nursing Homes (He-P 803); Hospice Houses (He-P 824); and Residential Care Facilities, including Assisted Living Residential Care Facilities licensed under He-P 804, Supported Residential Health Care Facilities licensed under He-P 805, Residential Treatment and Rehabilitation Facilities licensed under He-P 807, and Community Residences licensed under He-P 814. In addition, [SB 26](#) (from the 2017 legislative session) added community residences certified under RSA 126-A:19 and RSA 126-A:20 to the list of facility types (He-M 1001 and 1002).

Under the law as amended by SB 419 and SB 26, a facility identified above can designate itself as a “facility caregiver.” A facility caregiver is defined as a facility “which has agreed to allow one or more qualifying patients who are residents or patients of the facility to utilize therapeutic cannabis obtained by the resident or the resident’s designated caregiver from an Alternative Treatment Center, and which has agreed to assist such residents in the therapeutic use of their cannabis in accordance with a policy developed by the facility and in accordance with rules adopted by the commissioner of health and human services.”

In accordance with RSA 126-X:2, XVI, a facility caregiver and those employees designated by the facility to assist qualifying patients, shall not be subject to arrest by state or local law enforcement, prosecution or penalty under state or municipal law, or search, for acting pursuant to RSA 126-X to possess cannabis on the premises of the facility for the purpose of assisting a qualifying patient who is a resident or patient of the facility in the therapeutic use of the qualifying patient’s cannabis.

In accordance with RSA 126-X:3, III(c), a facility is not required to accommodate the use of therapeutic cannabis by a qualifying patient, but it may choose to do so if it wishes. A facility that chooses to accommodate its use is required to develop and implement a policy regarding therapeutic cannabis in accordance with the Department’s administrative rules (see attached template rule language). In accordance with RSA 126-X:3, VII, a facility caregiver shall treat cannabis in a manner *similar to* medications with respect to its storage, security, and administration when assisting qualifying patients with the therapeutic use of cannabis. In addition, a facility may prohibit certain means of administration of therapeutic cannabis, for example, the smoking of cannabis.

It is important to note that RSA 126-X allows a facility caregiver only to possess cannabis products within the facility itself and only for the purpose of assisting one or more of its residents or patients in the therapeutic use of cannabis products. Employees of a facility caregiver are not permitted to purchase cannabis products at an Alternative Treatment Center. Only a qualifying patient or the qualifying patient’s designated caregiver can purchase cannabis products and transport them to the facility. However, an employee of the facility caregiver could apply to become a qualifying patient’s designated caregiver so long as the qualifying patient is willing to designate the employee as his or her designated caregiver.

Application forms and other forms and information can be found at the DHHS Therapeutic Cannabis Program website at: <http://www.dhhs.nh.gov/oos/tcp/applications-forms.htm>.

Facility Caregiver – Statutory Citations

Link to Therapeutic Cannabis law: [RSA 126-X](#).

RSA 126-X:1 Definitions. –

VI-a. "Facility caregiver" means a residential care facility, nursing home, hospital, or hospice house licensed under RSA 151 which has agreed to allow one or more qualifying patients who are residents or patients of the facility to utilize therapeutic cannabis obtained by the resident or the resident's designated caregiver from an alternative treatment center, and which has agreed to assist such residents in the therapeutic use of their cannabis in accordance with a policy developed by the facility, and in accordance with rules adopted by the commissioner of health and human services pursuant to RSA 541-A. "Facility caregiver" shall also include community living facilities certified under RSA 126-A:19 and RSA 126-A:20.

RSA 126-X:2 Therapeutic Use of Cannabis Protections. –

XVI. A facility caregiver and those employees designated by the facility to assist qualifying patients, shall not be subject to arrest by state or local law enforcement, prosecution or penalty under state or municipal law, or search, for acting pursuant to this chapter and department rules to possess cannabis on the premises of the facility for the purpose of assisting a qualifying patient who is a resident or patient of the facility in the therapeutic use of the qualifying patient's cannabis.

RSA 126-X:3 Prohibitions and Limitations on the Therapeutic Use of Cannabis. –

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

(c) Any accommodation of the therapeutic use of cannabis on the property or premises of any place of employment or on the property or premises of any residential care facility, nursing home, hospital or hospice house, jail, correctional facility, or other type of penal institution where prisoners reside or persons under arrest are detained. This chapter shall in no way limit an employer's ability to discipline an employee for ingesting cannabis in the workplace or for working while under the influence of cannabis.

VIII. A facility caregiver shall treat cannabis in a manner similar to medications with respect to its storage, security, and administration when assisting qualifying patients with the therapeutic use of cannabis.

Facility Caregiver - Template Rule Language

(a) The therapeutic use of cannabis by individuals who are qualifying patients possessing a registry identification card shall be permitted at a facility provided:

- (1) The facility designates itself as a facility caregiver as allowed by RSA 126-X:2, XVI; or
- (2) The facility permits an individual to possess and use cannabis at the licensed premises, the individual is able to self-administer medication without assistance, and the cannabis remains in the possession of the individual.

(b) A facility that permits the therapeutic use of cannabis in accordance with (a) above shall develop, maintain, and implement a general policy relative to individual use of cannabis at the licensed premises, including storage, security, and administration.

(c) A facility that designates itself as a facility caregiver according to (a)(1) above shall:

- (1) Have an individual-specific policy relative to the therapeutic use of cannabis that identifies how the cannabis will be obtained, stored, and administered to the individual; and
- (2) Treat cannabis in a manner similar to medications with respect to its storage and security when assisting a qualifying patient with the therapeutic use of cannabis.

(d) A facility shall not permit the smoking of cannabis if smoking is not allowed on the facility premises.