

# Bill as Introduced

HB 1666-FN - AS INTRODUCED

2010 SESSION

10-2126  
01/09

HOUSE BILL            **1666-FN**

AN ACT                requiring licensing of outpatient abortion facilities.

SPONSORS:            Rep. N. Elliott, Hills 19; Rep. Baldasaro, Rock 3; Rep. Hagan, Rock 7;  
Rep. Dumaine, Rock 3; Rep. Hogan, Hills 25; Sen. Roberge, Dist 9

COMMITTEE:          Health, Human Services and Elderly Affairs

---

ANALYSIS

This bill requires licensing of outpatient abortion facilities with the department of health and human services.

-----

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT                    requiring licensing of outpatient abortion facilities.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1            1 Findings and Purposes.

2            I. The general court finds that:

3            (a) Most abortions are performed in clinics devoted solely to providing abortions and  
4 family planning services. Most women who seek abortions at these facilities do not have any  
5 relationship with the physician who performs the abortion, before or after the procedure. They do  
6 not return to the facility for postsurgical care. In most instances, the woman's only actual contact  
7 with the physician occurs simultaneously with the abortion procedure, with little opportunity to ask  
8 questions about the procedure, potential complications, and proper follow-up care.

9            (b) "The medical, emotional, and psychological consequences of an abortion are serious  
10 and can be lasting ...." *H.L. v. Matheson*, 450 U.S. 398, 411 (1981).

11            (c) "The abortion decision is more than a philosophic exercise. Abortion is a unique act.  
12 It is an act fraught with consequences for others: for the woman who must live with the implications  
13 of her decision; for the spouse, family, and society which must confront the knowledge that these  
14 procedures exist, procedures some deem nothing short of an act of violence against innocent human  
15 life; and, depending on one's beliefs, for the life or potential life that is aborted." *Planned  
16 Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 852 (1992).

17            (d) Abortion is an invasive, surgical procedure that can lead to numerous and serious  
18 medical complications. Potential complications for first trimester abortions include, among others,  
19 bleeding, hemorrhage, infection, uterine perforation, blood clots, cervical tears, incomplete abortion  
20 (retained tissue), failure to actually terminate the pregnancy, free fluid in the abdomen, acute  
21 abdomen, missed ectopic pregnancies, cardiac arrest, sepsis, respiratory arrest, reactions to  
22 anesthesia, fertility problems, emotional problems, and even death.

23            (e) The risks for second trimester abortions are greater than for first trimester abortions.  
24 The risk of hemorrhage, in particular, is greater, and the resultant complications may require a  
25 hysterectomy, other reparative surgery, or a blood transfusion.

26            (f) The state of New Hampshire has a legitimate concern for the public's health and  
27 safety. *Williamson v. Lee Optical*, 348 U.S. 483, 486 (1985).

28            (g) The state of New Hampshire "has legitimate interests from the outset of pregnancy  
29 in protecting the health of women." *Planned Parenthood of Southeastern Pennsylvania v. Casey*,  
30 505 U.S. 833, 847 (1992).

1 (h) More specifically, the state of New Hampshire “has a legitimate concern with the  
2 health of women who undergo abortions.” *Akron v. Akron Ctr. for Reproductive Health, Inc.*, 462  
3 U.S. 416, 428-29 (1983).

4 (i) The state of New Hampshire has “a legitimate interest in seeing to it that abortion,  
5 like any other medical procedure, is performed under circumstances that ensure maximum safety for  
6 the patient.” *Roe v. Wade*, 410 U.S. 113, 150 (1973).

7 (j) Since the Supreme Court’s decision in *Roe v. Wade*, courts have recognized that for  
8 the purposes of regulation, abortion services are rationally distinct from other routine medical  
9 services, because of the “particular gravitas of the moral, psychological, and familial aspects of the  
10 abortion decision.” *Greenville Women’s Clinic v. Bryant*, 222 F.3d 157, 173 (4<sup>th</sup> Cir. 2000), cert.  
11 denied, 531 U.S. 1191 (2001).

12 (k) In adopting an array of regulations that treat the often relatively simple medical  
13 procedures of abortion more seriously than other medical procedures, the state of New Hampshire  
14 recognizes the importance of the abortion practice while yet permitting it to continue, as protected by  
15 the Supreme Court’s cases on the subject. *Greenville Women’s Clinic v. Bryant*, 222 F.3d 157, 175  
16 (4<sup>th</sup> Cir. 2000), cert. denied, 531 U.S. 1191 (2001).

17 II. Based on the findings in paragraph I, it is the purpose of this act to:

18 (a) Regulate abortion consistent with and to the extent permitted by the decisions of the  
19 Supreme Court of the United States.

20 (b) Provide for the protection of public health through the development, establishment,  
21 and enforcement of standards of care of individuals in abortion clinics.

22 2 New Chapter; Licensure of Outpatient Abortion Clinics. Amend RSA by inserting after  
23 chapter 126-S the following new chapter:

24 CHAPTER 126-T

25 LICENSURE OF OUTPATIENT ABORTION CLINICS

26 126-T:1 Women’s Health Protection Act. This chapter shall be known as the “women’s health  
27 protection act.”

28 126-T:2 Definitions. In this chapter:

29 I. “Abortion” means the act of using or prescribing any instrument, machine, or device with  
30 the intent to terminate a woman’s pregnancy for reasons other than to increase the probability of a  
31 live birth, to preserve the life or health of the child after live birth, to terminate an ectopic  
32 pregnancy, or to remove a dead fetus. Abortion does not include birth control devices or oral  
33 contraceptives.

34 II. “Abortion clinic” means a facility, other than an accredited hospital, in which 5 or more  
35 first trimester abortions in any month or any second or third trimester abortions are performed.

36 III. “Commissioner” means the commissioner of the department of health and human  
37 services.

1 IV. "Conception" and "fertilization" each mean the fusion of the human spermatozoon with a  
2 human ovum.

3 V. "Department" means the department of health and human services.

4 VI. "Gestation" means the time that has elapsed since the first day of the woman's last  
5 menstrual period.

6 VII. "Licensee" means an individual, a partnership, an association, a limited liability  
7 company, or a corporation authorized by the department to operate an abortion clinic.

8 VIII. "Physician" means a person licensed under RSA 329.

9 126-T:3 Licensure Requirements.

10 I. All abortion clinics shall be licensed by the department. Any existing abortion clinic shall  
11 make application for license within 90 days.

12 II. An application for a license shall be made to the department on forms provided by it and  
13 shall contain such information as the department reasonably requires, which may include  
14 affirmative evidence of the ability to comply with this chapter and the rules adopted pursuant to this  
15 chapter.

16 III. Following receipt of an application for license, the department shall issue a license if the  
17 applicant and the facility meet the requirements established by this chapter for a period of one year.  
18 A temporary or provisional license may be issued to an abortion clinic for a period of 6 months in  
19 cases where sufficient compliance with this chapter requires an extension of time, if a disapproval  
20 has not been received from any other state or local agency otherwise authorized to inspect such  
21 facilities. The failure to comply shall not be detrimental to the health and safety of the public.

22 IV. A license shall apply only to the location and licensee stated on the application, and such  
23 license, once issued, shall not be transferable from one place to another or from one person to  
24 another. If the location of the facility is changed, the license shall be automatically revoked. A new  
25 application form shall be completed prior to all license renewals.

26 V. An application for a license or renewal to operate an abortion clinic shall be accompanied  
27 by a fee of \$100.

28 VI. A license issued under this chapter shall be for a period of one year from the date of  
29 issuance unless sooner revoked, shall be on a form prescribed by the department, and may be  
30 renewed annually upon application and payment of the license fee as in the case of procurement of  
31 the original license.

32 VII. The commissioner may deny, suspend, revoke, or refuse to renew a license in any case  
33 in which it finds that there has been a substantial failure of the applicant or licensee to comply with  
34 the requirements of this chapter or the rules adopted pursuant to this chapter. In such case, the  
35 commissioner shall furnish the person, applicant, or licensee 30 days' notice specifying reasons for  
36 the action.

1 VIII. Any person, applicant, or licensee aggrieved by the action of the commissioner in  
2 denying, suspending, revoking, or refusing to renew a license may appeal the commissioner's action  
3 in accordance with RSA 541.

4 IX. Any person, applicant, or licensee aggrieved by the action of the department may, within  
5 30 days after notification of such action, appeal to the supreme court.

6 X. The department shall establish minimum standards and administrative rules for the  
7 licensing and operation of abortion clinics.

8 126-T:4 Inspections and Investigations.

9 I. The commissioner shall establish policies and procedures for conducting pre-licensure and  
10 re-licensure inspections of abortion clinics. Prior to issuing or reissuing a license, the department  
11 shall conduct an on-site inspection to ensure compliance with this chapter.

12 II. The commissioner shall also establish policies and procedures for conducting inspections  
13 and investigations pursuant to complaints received by the department and made against any  
14 abortion clinic. The department shall receive, record, and dispose of complaints in accordance with  
15 rules adopted pursuant to RSA 541-A.

16 126-T:5 Rulemaking.

17 I. The commissioner shall adopt rules, pursuant to RSA 541-A. At a minimum these rules  
18 shall include:

19 (a) Adequate private space that is specifically designated for interviewing, counseling,  
20 and medical evaluations.

21 (b) Dressing rooms for staff and patients.

22 (c) Appropriate lavatory areas.

23 (d) Areas for pre-procedure hand washing.

24 (e) Private procedure rooms.

25 (f) Adequate lighting and ventilation for abortion procedures.

26 (g) Surgical or gynecologic examination tables and other fixed equipment.

27 (h) Post-procedure recovery rooms that are supervised, staffed, and equipped to meet the  
28 patients' needs.

29 (i) Emergency exits to accommodate a stretcher or gurney.

30 (j) Areas for cleaning and sterilizing instruments.

31 (k) Adequate areas for the secure storage of medical records and necessary equipment  
32 and supplies.

33 (l) The display in the abortion clinic, in a place that is conspicuous to all patients, of the  
34 clinic's current license issued by the department.

35 II. The commissioner shall adopt rules, pursuant to RSA 541-A, to prescribe abortion clinic  
36 supplies and equipment standards, including supplies and equipment that are required to be  
37 immediately available for use in an emergency. At a minimum these rules shall:

1 (a) Prescribe required equipment and supplies, including medications, required for the  
2 conduct, in an appropriate fashion, of any abortion procedure that the medical staff of the clinic  
3 anticipates performing and for monitoring the progress of each patient throughout the procedure and  
4 recovery period.

5 (b) Require that the number or amount of equipment and supplies at the clinic is  
6 adequate at all times to assure sufficient quantities of clean and sterilized durable equipment and  
7 supplies to meet the needs of each patient.

8 (c) Prescribe required equipment, supplies, and medications that shall be available and  
9 ready for immediate use in an emergency and requirements for written protocols and procedures to  
10 be followed by staff in an emergency, such as the use of a backup generator in case of a loss of  
11 electrical power.

12 (d) Prescribe required equipment and supplies for required laboratory tests and  
13 requirements for protocols to calibrate and maintain laboratory equipment at the abortion clinic or  
14 operated by clinic staff

15 (e) Require ultrasound equipment in those facilities that provide abortions after 12  
16 weeks' gestation.

17 (f) Require that all equipment is safe for the patient and the staff, meets applicable  
18 federal standards, and is checked annually to ensure safety and appropriate calibration.

19 III. The commissioner shall adopt rules, pursuant to RSA 541-A, relating to abortion clinic  
20 personnel. At a minimum these rules shall require that:

21 (a) The abortion clinic designate a medical director of the abortion clinic who is licensed  
22 to practice medicine and surgery in the state of New Hampshire.

23 (b) Physicians performing surgery are licensed to practice medicine and surgery in the  
24 state of New Hampshire, demonstrate competence in the procedure involved, and are acceptable to  
25 the medical director of the abortion clinic.

26 (c) A physician with admitting privileges at an accredited hospital in this state is  
27 available.

28 (d) If a physician is not present, a registered nurse, nurse practitioner, licensed practical  
29 nurse, or physician's assistant is present and remains at the clinic where abortions are performed to  
30 provide postoperative monitoring and care until each patient who had an abortion that day is  
31 discharged.

32 (e) Surgical assistants receive training in counseling, patient advocacy, and the specific  
33 responsibilities of the services the surgical assistants provide.

34 (f) Volunteers receive training in the specific responsibilities of the services the  
35 volunteers provide, including counseling and patient advocacy, as provided in the rules adopted by  
36 the commissioner for different types of volunteers based on their responsibilities.

1           IV. The commissioner shall adopt rules, pursuant to RSA 541-A, relating to the medical  
2 screening and evaluation of each abortion clinic patient. At a minimum these rules shall require:

3           (a) A medical history including the following:

4               (1) Reported allergies to medications, antiseptic solutions, or latex.

5               (2) Obstetric and gynecologic history.

6               (3) Past surgeries.

7           (b) A physical examination including a bimanual examination estimating uterine size  
8 and palpation of the adnexa.

9           (c) The appropriate laboratory tests including:

10               (1) For an abortion in which an ultrasound examination is not performed before the  
11 abortion procedure, urine or blood tests for pregnancy performed before the abortion procedure.

12               (2) A test for anemia.

13               (3) Rh typing, unless reliable written documentation of blood type is available.

14               (4) Other tests as indicated from the physical examination.

15           (d) An ultrasound evaluation for all patients who elect to have an abortion after  
16 12 weeks gestation. The rules shall require that if a person who is not a physician performs an  
17 ultrasound examination, that person shall have documented evidence that the person completed a  
18 course in the operation of ultrasound equipment. The physician or other health care professional  
19 shall review, at the request of the patient, the ultrasound evaluation results with the patient before  
20 the abortion procedure is performed, including the probable gestational age of the fetus.

21           (e) That the physician is responsible for estimating the gestational age of the fetus based  
22 on the ultrasound examination and obstetric standards in keeping with established standards of care  
23 regarding the estimation of fetal age as defined in rule and shall write the estimate in the patient's  
24 medical history. The physician shall keep original prints of each ultrasound examination of a  
25 patient in the patient's medical history file.

26           V. The commissioner shall adopt rules, pursuant to RSA 541-A, relating to the abortion  
27 procedure. At a minimum these rules shall require:

28           (a) That medical personnel is available to all patients throughout the abortion  
29 procedure.

30           (b) Standards for the safe conduct of abortion procedures that conform to obstetric  
31 standards in keeping with established standards of care regarding the estimation of fetal age as  
32 defined in rule.

33           (c) Appropriate use of local anesthesia, analgesia, and sedation if ordered by the  
34 physician.

35           (d) The use of appropriate precautions, such as the establishment of intravenous access  
36 at least for patients undergoing second or third trimester abortions.



1           (e) The use of appropriate monitoring of the vital signs and other defined signs and  
2 markers of the patient's status throughout the abortion procedure and during the recovery period  
3 until the patient's condition is deemed to be stable in the recovery room.

4           VI. The commissioner shall adopt rules, pursuant to RSA 541-A, that prescribe minimum  
5 recovery room standards. At a minimum these rules shall require that:

6           (a) Immediate postprocedure care consists of observation in a supervised recovery room  
7 for as long as the patient's condition warrants.

8           (b) The clinic arrange hospitalization if any complication beyond the management  
9 capability of the staff occurs or is suspected.

10          (c) A licensed health professional who is trained in the management of the recovery area  
11 and is capable of providing basic cardiopulmonary resuscitation and related emergency procedures  
12 remains on the premises of the abortion clinic until all patients are discharged.

13          (d) A physician with admitting privileges at an accredited hospital in this state remains  
14 on the premises of the abortion clinic until all patients are stable and are ready to leave the recovery  
15 room and to facilitate the transfer of emergency cases if hospitalization of the patient or viable fetus  
16 is necessary. A physician shall sign the discharge order and be readily accessible and available until  
17 the last patient is discharged.

18          (e) A physician discusses RhO(d) immune globulin with each patient for whom it is  
19 indicated and assures it is offered to the patient in the immediate postoperative period or that it will  
20 be available to her within 72 hours after completion of the abortion procedure. If the patient refuses,  
21 a refusal form approved by the department shall be signed by the patient and a witness and included  
22 in the medical record.

23          (f) Written instructions with regard to post abortion coitus, signs of possible problems,  
24 and general aftercare are given to each patient. Each patient shall have specific instructions  
25 regarding access to medical care for complications, including a telephone number to call for medical  
26 emergencies.

27          (g) There is a specified minimum length of time that a patient remains in the recovery  
28 room by type of abortion procedure and duration of gestation.

29          (h) The physician assures that a licensed health professional from the abortion clinic  
30 makes a good faith effort to contact the patient by telephone, with the patient's consent, within 24  
31 hours after surgery to assess the patient's recovery.

32          (i) Equipment and services are located in the recovery room to provide appropriate  
33 emergency resuscitative and life support procedures pending the transfer of the patient or viable  
34 fetus to the hospital.

35          VII. The commissioner shall adopt rules, pursuant to RSA 541-A, that prescribe standards  
36 for follow-up care. At a minimum these rules shall require that:

1 (a) A postabortion medical visit is offered and, if requested, scheduled for 2 to 3 weeks  
2 after the abortion, including a medical examination and a review of the results of all laboratory tests.

3 (b) A urine pregnancy test is obtained at the time of the follow-up visit to rule out  
4 continuing pregnancy. If a continuing pregnancy is suspected, the patient shall be evaluated and a  
5 physician who performs abortions shall be consulted.

6 VIII. The commissioner shall adopt rules, pursuant to RSA 541-A, to prescribe minimum  
7 abortion clinic incident reporting. At a minimum these rules shall require that:

8 (a) The abortion clinic records each incident resulting in a patient's or viable fetus'  
9 serious injury occurring at an abortion clinic and shall report them in writing to the department  
10 within 10 days after the incident. For the purposes of this paragraph, "serious injury" means an  
11 injury that occurs at an abortion clinic and that creates a serious risk of substantial impairment of a  
12 major body organ.

13 (b) If a patient's death occurs, other than a fetal death properly reported pursuant to  
14 law, the abortion clinic reports it to the department not later than the next department work day.

15 (c) Incident reports are filed with the department and appropriate professional  
16 regulatory boards.

17 (d) For patients receiving 3 or more abortions, it shall be assumed that there is a  
18 probability of abuse or human trafficking and the abortion clinic personnel shall report such fact to  
19 law enforcement authorities.

20 **126-T:6 Confidentiality.**

21 I. The department shall not release personally identifiable patient or physician information.

22 II. The rules adopted by the commissioner pursuant to RSA 126-T:5 shall not limit the  
23 ability of a physician or other health professional to advise a patient on any health issue.

24 **126-T:7 Criminal Penalties.**

25 I. Whoever operates an abortion clinic without a valid license issued by the department shall  
26 be guilty of a class A misdemeanor.

27 II. Any person who intentionally, knowingly, or recklessly violates this chapter or any rules  
28 adopted under this chapter shall be guilty of a class A misdemeanor.

29 **126-T:8 Civil Penalties and Fines.**

30 I. Any violation of this chapter or any rules adopted under this chapter may be subject to a  
31 civil penalty or fine up to \$250. Each day of violation constitutes a separate violation for purposes of  
32 assessing civil penalties or fines. In deciding whether and to what extent to impose fines, the  
33 department shall consider the following factors:

34 (a) Gravity of the violation, including the probability that death or serious physical harm  
35 to a patient or individual will result or has resulted;

36 (b) Size of the population at risk as a consequence of the violation;

37 (c) Severity and scope of the actual or potential harm;

- 1 (d) Extent to which the provisions of the applicable statutes or regulations were violated;
- 2 (e) Any indications of good faith exercised by licensee;
- 3 (f) The duration, frequency, and relevance of any previous violations committed by the
- 4 licensee; and
- 5 (g) Financial benefit to the licensee of committing or continuing the violation.

6 II. The department of justice may institute a legal action to enforce collection of any civil  
7 penalties or fines levied pursuant to this chapter.

8 126-T:9 Injunctive Remedies. In addition to any other penalty provided by law, whenever in the  
9 judgment of the commissioner, any person has engaged, or is about to engage, in any acts or  
10 practices which constitute, or will constitute, a violation of this chapter, or any rule and regulation  
11 adopted under the provision of this chapter, the commissioner shall make application to any court of  
12 competent jurisdiction for an order enjoining such acts and practices, and upon a showing by the  
13 commissioner that such person has engaged, or is about to engage, in any such acts or practices, an  
14 injunction, restraining order, or such other order as may be appropriate shall be granted by such  
15 court without bond.

16 126-T:10 Construction. Nothing in this chapter shall be construed as creating or recognizing a  
17 right to abortion. It is not the intention of this law to make lawful an abortion that is currently  
18 unlawful.

19 126-T:11 Right of Intervention. The general court, by joint resolution, may appoint one or more  
20 of its members who sponsored or cosponsored this chapter in his or her official capacity, to intervene  
21 as a matter of right in any case in which the constitutionality of this chapter is challenged.

22 126-T:12 Severability. If any provision of this chapter or the application thereof to any person or  
23 circumstance is held invalid, the invalidity does not affect other provisions or applications of the  
24 chapter which can be given effect without the invalid provisions or applications, and to this end the  
25 provisions of this chapter are severable.

26 3 Effective Date. This act shall take effect January 1, 2011.

LBAO  
10-2126  
12/18/09

**HB 1666-FN - FISCAL NOTE**

AN ACT requiring licensing of outpatient abortion facilities.

**FISCAL IMPACT:**

The Department of Health and Human Services, Department of Justice, Judicial Branch, and Judicial Council state this bill may increase state revenue and expenditures, and county expenditures by an indeterminable amount in FY 2011 and each year thereafter. This bill will have no fiscal impact on local expenditures, or county and local revenue.

**METHODOLOGY:**

The Department of Health and Human Services (DHHS) states this bill will require the licensing of all abortion clinics. Abortion clinics would be required to pay a fee of \$100 for an application for license or renewal. The term abortion clinic is defined as, "a facility, other than an accredited hospital, which 5 or more first trimester abortions in any month or any second or third trimester abortions are performed." Abortions that are not performed in a hospital are typically performed in either outpatient clinics or physician's offices. Although RSA 151 exempts physician's offices from licensure, the definition contained in this bill would require certain offices to be considered abortion clinics and as such be inspected and licensed by the Department. The Department is unable to determine how many physician's offices would fall under the proposed definition, and cannot estimate the exact fiscal impact on state revenue or expenditures at this time.

The Department of Justice states if DHHS requires assistance with rulemaking, it anticipates the process of drafting rules and creating a statewide training program would require approximately 500 hours of time of an assistant attorney general in the Civil Bureau. There would also be a fiscal impact to the Department in instances when an enforcement action taken by DHHS was appealed. The bill also authorizes DHHS to seek injunctive relief in a court, but such remedies are typically sought by the Department of Justice, not other agencies. It is not possible to determine how many cases would be generated, and therefore is not possible to project how much additional time would be needed to investigate and prosecute violations of the act. Criminal violations under this bill would be prosecuted by the county or local prosecutor. There would be some fiscal impact to the Department of Justice in instances when an appeal would be taken to the supreme court from a prosecution. The Department is unable to determine the exact fiscal impact at this time.

LBAO  
10-2126  
12/18/09

The Judicial Branch states this bill would add RSA chapter 126-T requiring the licensing of outpatient abortion clinics. Four provisions of this proposed bill have a potential fiscal impact on the Branch. These are: 1.) appeal to the supreme court of actions of the commissioner and the Department of Health and Human Services pursuant to proposed RSA 126-T:3, VIII and IX; 2.) class A misdemeanor penalties pursuant to proposed RSA 126-T:7; 3.) legal action by the attorney general to enforce collection of civil penalties and fines pursuant to proposed RSA 126-T:8, II; and 4.) petitions for injunctive relief pursuant to proposed RSA 126-T:9. Regarding appeals to the supreme court from various department decisions on the regulation of abortion clinics, the Branch has no information on how many such appeals may arise. The supreme court has discretionary review of such appeals; therefore, a variable is whether the court accepts the appeal for full appellate review, accepts it for more limited review, or declines the appeal. Such appeals are too speculative to arrive at a conclusion regarding fiscal impact. The second potential for fiscal impact is in the criminal penalties of proposed RSA 126-T:8, which provides for class A misdemeanors for operating an abortion clinic without a license and for violating RSA chapter 126-T or any rules adopted pursuant to it. The cost to the Branch of an average class A misdemeanor charge in the district court is \$51.14 in FY 2010 and beyond, without consideration of any salary increases or decreases that may occur. One caveat is in order. The per charge costs dramatically rise if an appeal is taken to either the superior court for a jury trial or to the supreme court or to both. Since class A misdemeanors involve the possibility of incarceration, they can be appealed to the superior court for a jury trial and then to the supreme court or directly to the supreme court following the district court. Appeals can bring the cost of even a single charge to at or in excess of the \$10,000 fiscal note threshold. Given the controversy surrounding and the notoriety of this issue, one case is likely to cross that threshold. The last two potential fiscal impacts involve court action on the civil side, namely collection actions by the attorney general's office to collect fines and civil penalties and potential injunction actions pursuant to proposed RSA 126-T:9. The Branch has no information on which to estimate how many, if any, collection or injunction cases there will be. The Branch is unable to determine the exact fiscal impact at this time.

The Judicial Council states if there is a right to counsel, the flat fee of \$275 per misdemeanor would be charged by a public defender or contract attorney. If an assigned counsel attorney is

LBAO  
10-2126  
12/18/09

used the fee is \$60 per hour with a cap of \$1,400 for a misdemeanor. 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 exact fiscal impact cannot be determined at this time.

The Departments of Corrections states this bill will have no fiscal impact on the Department.

# Speakers





# Hearing Minutes

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

PUBLIC HEARING ON HB 1666-FN

**BILL TITLE:** requiring licensing of outpatient abortion facilities.

**DATE:** January 19, 2010

**LOB ROOM:** 205      **Time Public Hearing Called to Order:** 1:02 PM

**Time Adjourned:** 1:45 PM

(please circle if present)

**Committee Members:** Reps. Rosenwald, Donovan, French, Schulze, Tilton, Butcher, Bridgham, E. Merrick, C. Russell, DiPentima, Miller, Batula, C. McMahon, Pilliod, Emerson, Case, Millham, Wells, Debrowski and Kotowski.

**Bill Sponsors:** Rep. N. Elliott, Hills 19; Baldasaro, Rock 3; Hagan, Rock 7; dumaine, Rock 3; Hogan, Hills 25, Sen. Roberge, Dist 9

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

**Representative Nancy Elliott, prime sponsor – supports.** There is currently no regulation covering this service. This is a serious concern. Pretty much anyone can open a clinic. Abortions will likely be covered with new Health Coverage. This bill follows model legislation, don't remember the group.

**Kurt Wollper, NH Right to Life – supports.** He doesn't support abortion but supports this bill. It needs medical restraints. Thirty one percent of post aborters have health problems, etc. Psychological consequences are great, multiple disorders and regrets, suicides, eating disorders, etc. Women deserve medical protection, licensing of clinics is a major step to protecting women's health.

**\*Kary Nealle Jencks, Public Affairs Director of Planned Parenthood of Northern New England – opposes.** See written testimony. Compliant with RSA 151. Not all six of the facilities provide abortion care. License and regulations already exist.

**Mary Ann Manoog, Concord Feminist Health Center – opposes.** Regulations are in place in New Hampshire. HHS has gone through the rule making process. Rules for patient services are followed. The staff has appropriate training and adheres to confidentiality, annual licensing practices, CLIA, etc. RSA 151 must be followed for all clinics.

**Senator Sheila Roberge, co sponsor – supports.** Clinics who are already providing services and following regulations shouldn't object to this bill. All clinics should be held to the same standards. She doesn't know why the bill was written under RSA 126.

**Claire Ebel, NHCLU – opposes.** She believes the doctors who provide abortions in their office will be identified. Their lives will be in jeopardy.

Page 2  
HB 1666-FN

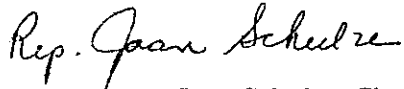
**Janet Monahan, New Hampshire Medical Society.** They oppose page 6, the lines regarding rules. The NH Medical society doesn't take a stand on this bill.

**Ellen Kolb, Cornerstone Action – supports.** Extensive legislative research should be done.

**Representative Elliott –** Doctors are covered by the Board of Medicine. Others provide abortions i.e. nurses. Legislative services put the bill under RSA 126. We need a complete set of rules for abortions.

**Representative Al Baldasaro, co sponsor – supports.** There is no set of regulations for abortions.

Respectfully submitted,

A handwritten signature in cursive script that reads "Rep. Joan Schulze".

Representative Joan Schulze, Clerk

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

PUBLIC HEARING ON HB 1666-FN

BILL TITLE: requiring licensing of outpatient abortion facilities.

DATE: January 19, 2010

LOB ROOM: 205 Time Public Hearing Called to Order: 1:02 pm

Time Adjourned: 1:45 pm

(please circle if present)

Committee Members: Reps. Rosenwald, Donovan, French, Schulze, Tilton, Butcher, Bridgham, E. Merrick, T. Russell, DiPentima, Miller, Batula, C. McMahon, Pilliod, Emerson, Case, Millham, Wells, Cebrowski and Kotowski

Bill Sponsors: Rep. N. Elliott, Hills 19; Baldasaro, Rock 3; Hagan, Rock 7; dumaine, Rock 3; Hogan, Hills 25, Sen. Roberge, Dist 9

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

Rep. Nancy Elliott prime sponsor there is currently no regulation covering this service. This is a serious concern. Pretty much anyone can open a clinic. Abortions will likely be covered with new Health Coverage. This bill is fallows model legislation don't remember the group.

Kurt Hallper. NN. Right to Life. don't support abortion but support this bill, need medical restraints 31% of post abortion (sp?) suffer health problems, etc. psychological consequences are great. multiple disorders and regrets, suicides, eating disorders, etc. Women deserve medical protection, licensing of clinics is a major step to protecting women's health

\* Mary Kealle. Jencks. PPNED Public Affairs Director compliant with RSA 151 Not all sit of facilities provide abortion care. License & Regulations already exist. oppose this bill

Mary Ann Manogion - Concord Feminist Health Ctr.

Regulations are in place in N.H.

HHS has gone through rule making process

oppose this bill  
He-P 806 Rules for out patient services } are followed  
He-P 808  
He-P 817

Staff has appropriate training, adhere to confidentiality, annual licensing practices. CLIA, etc.

RSA 151 must be followed for all clinics

Senator Sheila Roberge - supports this bill. Clinics who are already providing services and following regulations shouldn't object to this bill. All clinics should be held to the same standards.

Don't know why bill was written under RSA 126

Claire Ebel opposes this bill

Believe M.D.s who provide abortions in their office will be identified - Their lives will be in jeopardy

Janet Monahan N.H. Medical Society

opposes page 6 clinics regarding rules

N.H. Med. Soc. doesn't take a stand on this bill

Ellen Kolb Cornerstone Actions

Supports this bill. Extensive Legislative Research should be done

Rep. Elliott ~~Doctors~~ Doctors are covered by Bd. of Medicine. Others

provide abortions i.e. nurses

Legislative services put the bill under RSA 126

Need a complete set of rules for abortions

Rep. Baldasaro - There are no set of regulations for abortions

# Testimony

File  
HB 1666-FN



## NARAL Pro-Choice New Hampshire

HB 1666: An act requiring licensing of outpatient abortion facilities.

Pro-Choice Position: **Opposed**

- **HB 1666 is a Targeted Regulation of Abortion Providers (“TRAP”) bill designed to increase the cost and limit, or eliminate altogether, the accessibility of abortion care in New Hampshire.**
- **HB 1666 is unnecessary because all health-care providers, including those who provide abortion care, are already required to comply with a variety of federal and state regulations.** These include NH RSA 151, the federal Clinical Laboratory Improvement Amendments (CLIA), Health Insurance Portability and Accountability Act (HIPAA), and Occupational Safety and Health Administration (OSHA) requirements, as well as local building and fire codes.
- **Physicians and clinicians who work in abortion care are already required to maintain professional standards and licenses and complete continuing medical education courses.**
- **This bill could require any provider—including private physicians, those who only prescribe medication abortions (RU-486), or doctors who provide abortion care only in the case of rape or incest—to become licensed as an abortion clinic.** This is an attempt to target doctors who provide their patients with the full range of reproductive-health care services.
- **This bill leaves unanswered too many questions about the specific regulations the Department of Health and Human Services might adopt.** Because HB 1666 allows the DHHS wide latitude to promulgate rules and regulations at a future date, it is unclear how onerous a set of restrictions the legislature would be approving if it voted to pass this bill.
- **HB 1666 threatens patient privacy. HB 1666 enables DHHS to gather patient-specific information in the course of its inspection.**
- **This bill is medically unnecessary – because legal abortion is among the safest medical procedures in the United States.** Legal abortion entails half the risk of death involved in a tonsillectomy and one-hundredth the risk of death involved in an appendectomy.<sup>1</sup> The risk of death from abortion is lower than that from a shot of penicillin.<sup>2</sup> Anti-choice lawmakers’ attempts to paint legal abortion as unregulated or unsafe simply have no basis in fact.
- **In fact, this bill, like other TRAP measures, threatens women’s health because it could have the effect of driving abortion providers out of business, making safe abortion more difficult to obtain in New Hampshire.** When safe abortion is difficult to obtain, women often wait longer for the procedure, which increases the gestational age at which the induced pregnancy termination occurs and thereby increases the risk.

<sup>1</sup> Warren M. Hern, *Abortion Practice* (Philadelphia: J.B. Lippincott Co., 1984), 23-24, citing JE Wennberg et al., “The Need for Assessing the Outcome of Common Medical Practices,” *Ann. Rev. Public Health*, vol. 1 (1980): 291.

<sup>2</sup> Nancy Felipe Russo, “Unwanted Childbearing, Abortion, and Women’s Mental Health: Research Findings, Policy Implications,” Summary of Presidential Address, *Rocky Mountain Psychologist* (1992): 9.

**NEW HAMPSHIRE PUBLIC AFFAIRS OFFICE**  
18 Low Avenue, Concord, NH 03301  
Phone 603-225-2925 ■ Fax 603-225-4195

**HB 1666-FN AN ACT requiring licensing of outpatient abortion facilities with the Department of Health and Human Services.**

**Position: OPPOSE**  
**Committee: Health, Human Services and Elderly Affairs**  
**Hearing Date: January 19, 2010**  
**Contact: Kary Nealle Jencks, Public Affairs Director**



- Planned Parenthood of Northern New England (PPNNE) is committed to full and affordable access to comprehensive reproductive health care and education that will improve the lives of women, teens and families in Maine, New Hampshire, and Vermont.
- As one of the largest Planned Parenthood Affiliates in the U.S., PPNNE currently serves approximately 55,000 women, men and teens in Maine, NH and Vermont.
- PPNNE is the largest provider of reproductive health services in New Hampshire with health centers located in
  - Claremont,
  - Derry,
  - Exeter,
  - Manchester,
  - Keene,
  - and West Lebanon.
- For many NH citizens, reproductive health centers such as PPNNE are their **only source of health care** and the only place where they can go to get **health referrals, education, cancer screenings, and disease testing**.
- In New Hampshire, Planned Parenthood is on the front lines of the health care delivery system, providing basic preventive health care to nearly 18,000 patients every year in 6 health centers statewide. **PPNNE promotes good overall health** by serving as a gateway to the health care system.
- **Approximately 97% of Planned Parenthood's services are related to prevention** – including contraception, breast and cervical cancer screenings, and sexually transmitted infection testing and treatment.
- PPNNE services include:
  - ✓ annual exams,
  - ✓ family planning information and supplies,
  - ✓ preconception education,
  - ✓ pregnancy testing and non-biased options counseling,
  - ✓ Referrals to preventive health and social services such as primary care, nutrition services, immunizations, prenatal care,
  - ✓ abortion care,



✓ testing and treatment for sexually transmitted infections.

- PPNNE is also a leading provider of sexuality education and training services working with youth, parents, teachers and professionals throughout the region on topics such as sexual violence prevention, self-esteem, family planning, and sexuality and disability. In 2008 PPNNE provided approximately 1,110 programs and trainings which reached an estimated 23,000 participants.
- All PPNNE health centers are fully licensed and regulated in accordance to Federal and State laws.
- PPNNE opposes such anti-choice provisions in HB 1666 because they represent a calculated attempt to severely restrict women's rights to choice and privacy in New Hampshire and serves no legitimate health care purpose.
- **The regulations proposed in HB 1666 are unnecessary because all health-care providers, including those who provide abortion care, are already required to comply with a variety of federal and state regulations.** These include the federal Clinical Laboratory Improvement Amendments (CLIA), Health Insurance Portability and Accountability Act (HIPAA), Occupational Safety and Health Administration (OSHA) requirements, Planned Parenthood Federation of America standards, and Title X, as well as state and local regulations including Pharmacy Board regulations and building and fire code. Additionally, physicians and clinicians who work in abortion care are already required to maintain professional standards and licenses and complete continuing medical education courses.

**Planned Parenthood of Northern New England is OPPOSED to HB 1666-FN**

**and does not support any amendments.**

**Please vote Inexpedient To Legislate on HB 1666-FN.**

For more information, contact Kary Nealle Jencks at [kjencks@ppnne.org](mailto:kjencks@ppnne.org) or at 603.225.2925 ext. 1

# Voting Sheets

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

EXECUTIVE SESSION on HB 1666-FN

**BILL TITLE:** requiring licensing of outpatient abortion facilities.

**DATE:** January 26, 2010

**LOB ROOM:** 205

**Amendments:**

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. A. Millham

Seconded by Rep. R. DiPentima

Vote: 14-4 (Please attach record of roll call vote.)

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

**CONSENT CALENDAR VOTE:**

(Vote to place on Consent Calendar must be unanimous.)

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep. Joan H. Schulze, Clerk

*Rep. Joan H. Schulze*

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

EXECUTIVE SESSION on HB 1666-FN

BILL TITLE: requiring licensing of outpatient abortion facilities.

DATE: 1/26/2010

LOB ROOM: 205

Amendments:

Sponsor: Rep. *Millham* OLS Document #:  
Sponsor: Rep. OLS Document #:  
Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. *Millham*

Seconded by Rep. *DePentima*

Vote: 14-4 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

*Regular*

Respectfully submitted,

Rep. Joan H. Schulze, Clerk

HEALTH, HUMAN SERVICES & ELDERLY AFFAIRSBill #: NB 1666-FN Title: requiring licensing of outpatient abortion facilities.PH Date: 11/19/2010Exec Session Date: 11/24/2010Motion: JJL Amendment #: \_\_\_\_\_

MEMBER	YEAS	NAYS
Rosenwald, Cindy, Chairman	14	
Donovan, Thomas E, V Chairman	1	
French, Barbara C	2	
Schulze, Joan H, Clerk	3	
Tilton, Joy K	4	
Butcher, Suzanne S	5	
Bridgham, Robert G	6	
Merrick, Evalyn S	-	
Russell, Trinkia T	7	
DiPentima, Rich T	8	
Miller, Kate W	9	
Batula, Peter L		1
McMahon, Charles E	10	
Pilliod, James P	11	
Emerson, Susan		2
Case, Frank G	12	
Millham, Alida I	12	
Wells, Roger G	13	
Cebrowski, John W	-	3
Kotowski, Frank R		4
		14 4
TOTAL VOTE:		

# Committee Report

**REGULAR CALENDAR**

**February 3, 2010**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on HEALTH, HUMAN SERVICES & ELDERLY AFFAIRS to which was referred HB1666-FN,**

**AN ACT requiring licensing of outpatient abortion facilities. Having considered the same, report the same with the following Resolution: RESOLVED, That it is INEXPEDIENT TO LEGISLATE.**

**Rep. Alida I Millham**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	<b>HEALTH, HUMAN SERVICES &amp; ELDERLY AFFAIRS</b>
Bill Number:	<b>HB1666-FN</b>
Title:	<b>requiring licensing of outpatient abortion facilities.</b>
Date:	<b>January 26, 2010</b>
Consent Calendar:	<b>NO</b>
Recommendation:	<b>INEXPEDIENT TO LEGISLATE</b>

### STATEMENT OF INTENT

This 12 page bill is a detailed proposal to license abortion clinics. All NH outpatient clinics are currently licensed under RSA151. Clinics that provide abortion services are already required to comply with a variety of state and federal regulations, including the Health Insurance Portability and Accountability Act (HIPAA), Occupational Safety and Health Administration (OSHA) requirements, the federal Clinical Laboratory Improvement Amendments (CLIA) and Title X of the Public Health Service Act. All physicians and other medical practitioners are licensed and governed by the State of NH and practice under clear professional practice laws. Therefore, further licensure is not necessary to protect patient care and health. This bill, however, puts into statute detailed requirements for medical practice that are not only subject to change as best practices evolve, but are also unprecedented and essentially allow the Legislature to practice medicine without a license. In addition, among other things, this bill: 1. Presumes a crime of human trafficking or abuse when a person has 3 or more abortions and requires such persons be reported to law enforcement officials. 2. Allows for a "Right of Intervention" which gives special privilege to the sponsors of this legislation if the constitutionality of this chapter is challenged. 3. Has an undetermined fiscal impact on both the Department of Health and Human Services and the Department of Justice that could be significant. In summary, the majority of the Health and Human Services and Elderly Affairs Committee has determined this bill requires unnecessary licensing as well as establishing criteria that interfere with the provision of medical care.

Vote 14-4.

Original: House Clerk  
Cc: Committee Bill File



Rep. Alida I Millham  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

### HEALTH, HUMAN SERVICES & ELDERLY AFFAIRS

#### **HB1666-FN, requiring licensing of outpatient abortion facilities. INEXPEDIENT TO LEGISLATE.**

Rep. Alida I Millham for HEALTH, HUMAN SERVICES & ELDERLY AFFAIRS. This 12 page bill is a detailed proposal to license abortion clinics. All NH outpatient clinics are currently licensed under RSA151. Clinics that provide abortion services are already required to comply with a variety of state and federal regulations, including the Health Insurance Portability and Accountability Act (HIPAA), Occupational Safety and Health Administration (OSHA) requirements, the federal Clinical Laboratory Improvement Amendments (CLIA) and Title X of the Public Health Service Act. All physicians and other medical practitioners are licensed and governed by the State of NH and practice under clear professional practice laws. Therefore, further licensure is not necessary to protect patient care and health. This bill, however, puts into statute detailed requirements for medical practice that are not only subject to change as best practices evolve, but are also unprecedented and essentially allow the Legislature to practice medicine without a license. In addition, among other things, this bill: 1. Presumes a crime of human trafficking or abuse when a person has 3 or more abortions and requires such persons be reported to law enforcement officials. 2. Allows for a "Right of Intervention" which gives special privilege to the sponsors of this legislation if the constitutionality of this chapter is challenged. 3. Has an undetermined fiscal impact on both the Department of Health and Human Services and the Department of Justice that could be significant. In summary, the majority of the Health and Human Services and Elderly Affairs Committee has determined this bill requires unnecessary licensing as well as establishing criteria that interfere with the provision of medical care.

**Vote 14-4.**

Original: House Clerk  
Cc: Committee Bill File

This 12 page bill is a detailed proposal to license abortion clinics. All NH outpatient clinics are currently licensed under RSA151. Clinics that provide abortion services are already required to comply with a variety of state and federal regulations, including the Health Insurance Portability and Accountability Act (HIPAA), Occupational Safety and Health Administration (OSHA) requirements, the federal Clinical Laboratory Improvement Amendments (CLIA) and Title X of the Public Health Service Act. All physicians and other medical practitioners are licensed and governed by the State of NH and practice under clear professional practice laws. Therefore, further licensure is not necessary to protect patient care and health. This bill, however, puts into statute detailed requirements for medical practice that are not only subject to change as best practices evolve, but are also unprecedented and essentially allow the Legislature to practice medicine without a license. In addition, among other things, this bill: 1. Presumes a crime of human trafficking or abuse when a person has 3 or more abortions and requires such persons be reported to law enforcement officials. 2. Allows for a "Right of Intervention" which gives special privilege to the sponsors of this legislation if the constitutionality of this chapter is challenged. 3. Has an undetermined fiscal impact on both the Department of Health and Human Services and the Department of Justice that could be significant. In summary, the majority of the Health and Human Services and Elderly Affairs Committee has determined this bill requires unnecessary licensing as well as establishing criteria that interfere with the provision of medical care.

This 12 page bill is a detailed proposal to license abortion clinics. All NH outpatient clinics are currently licensed under RSA151. Clinics that provide abortion services are already required to comply with a variety of state and federal regulations, including the Health Insurance Portability and Accountability Act (HIPAA), Occupational Safety and Health Administration (OSHA) requirements, the federal Clinical Laboratory Improvement Amendments (CLIA) and Title X of the Public Health Service Act. All physicians and other medical practitioners are licensed and governed by the State of NH and practice under clear professional practice laws. Therefore, further licensure is not necessary to protect patient care and health. This bill, however, puts into statute detailed requirements for medical practice that are not only subject to change as best practices evolve, but are also unprecedented and essentially allow the Legislature to practice medicine without a license. In addition, among other things, this bill: 1. Presumes a crime of human trafficking or abuse when a person has 3 or more abortions and requires such persons be reported to law enforcement officials. 2. Allows for a "Right of Intervention" which gives special privilege to the sponsors of this legislation if the constitutionality of this chapter is challenged. 3. Has an undetermined fiscal impact on both the Department of Health and Human Services and the Department of Justice that could be significant. In summary, the majority of the Health and Human Services and Elderly Affairs Committee has determined this bill requires unnecessary licensing as well as establishing criteria that interfere with the provision of medical care.

CR

# COMMITTEE REPORT

COMMITTEE: WHS

BILL NUMBER: SB 1666-FX

TITLE: requiring licensing of outpatient abortion facilities.

DATE: 1/26/2010      CONSENT CALENDAR:    YES     NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No.  
\_\_\_\_\_

## STATEMENT OF INTENT:

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

COMMITTEE VOTE: 14-4

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. *Chris Hill*  
For the Committee