

Bill as Introduced

HB 219 - AS INTRODUCED

2009 SESSION

09-0715
09/03

HOUSE BILL **219**

AN ACT relative to hearings for incapacitated persons admitted to state institutions by their guardians.

SPONSORS: Rep. L. Weber, Ches 2

COMMITTEE: Judiciary

ANALYSIS

This bill establishes certain time frames and procedures for probate courts holding hearings on incapacitated persons admitted to state institutions by their guardians without approval of the Merrimack county probate court prior to the admission.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to hearings for incapacitated persons admitted to state institutions by their guardians.

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

1 1 Powers and Duties of Guardians of Incapacitated Persons; Admission to State Institution.

2 Amend RSA 464-A:25, I(a)(2) to read as follows:

3 (2) A guardian may admit a ward to a state institution without prior approval of the
4 probate court upon written certification by a physician licensed in the state of New Hampshire, or, in
5 the case of placement in New Hampshire hospital, by a psychiatrist licensed in the state of
6 New Hampshire, that the placement is in the ward's best interest and is the least restrictive
7 placement available. Within 36 hours, excluding Saturdays, Sundays, and legal holidays, of such an
8 admission of a ward to a state institution, the guardian shall submit to the *Merrimack county*
9 probate court notice of the admission and the reasons therefor, together with a copy of the certificate
10 by the physician or psychiatrist. *Within 14 business days of receipt of the notice of admission*
11 *the court shall [promptly] examine the filing to determine whether on its face the filing*
12 *justifies an admission, and shall* appoint counsel for the ward [and], provide copies of the notice
13 and related documents to the ward and the appointed counsel, *and schedule a hearing on the*
14 *matter. The hearing shall be held within 5 business days of receipt of the guardian's notice*
15 *of admission. At such hearing, the guardian shall have the burden of proving, beyond a*
16 *reasonable doubt, that the placement is in the ward's best interest and is the least*
17 *restrictive placement available. Immediately following the hearing, the probate court*
18 *shall issue findings on the question of whether the placement is in the ward's best interest*
19 *and whether it is the least restrictive placement available. If the court finds that the*
20 *placement is either not in the best interest of the ward or is not the least restrictive*
21 *available placement, the court shall order the release of the ward from the placement.*
22 *With the assistance of counsel, a ward may waive the hearing by filing an express written*
23 *waiver with the probate court.* For purposes of proceedings under this subparagraph, the ward
24 shall have the right to legal counsel in the same manner as provided in RSA 464-A:6. The court
25 shall also provide the ward a notice stating that the ward has the right to appointed counsel, the
26 right to oppose the admission by the guardian, and the right to a hearing and to present evidence at
27 that hearing. A guardian may not admit a ward to a state institution for more than 60 days for any
28 single admission or more than 90 days in any 12-month period upon certification of a physician or
29 psychiatrist without filing a petition requesting approval of the probate court.

1 2 Jurisdiction and Venue; Guardianship Proceedings. Amend RSA 464-A:3, II(a) to read as
2 follows:

3 (a) *Except as provided in RSA 464-A:25, I(a)(2)*, venue for guardianship proceedings
4 for a proposed ward is in the county where the proposed ward resides, or the county in which the
5 proposed ward is physically present when the proceedings are commenced.

6 3 Effective Date. This act shall take effect January 1, 2010.

Amendments

Rep. L. Weber, Ches. 2
February 10, 2009
2009-0277h
09/03

IF this amendment is adopted
by the Committee, please
deliver to the House Clerk
(Room 317) or Senate Clerk
(Senate Chamber), the 2
originals and 2 copies.

Amendment to HB 219

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Rep. L. Weber, Ches. 2
March 9, 2009
2009-0688h
09/03

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31 any 12-month period upon certification of a physician or psychiatrist without filing a petition
32 requesting approval of the probate court.

Rep. G. Richardson, Merr. 4
Rep. L. Weber, Ches. 2
November 9, 2009
2009-2490h
09/04

Amendment to HB 219

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Powers and Duties of Guardians of Incapacitated Persons; Admission to State Institution.
4 RSA 464-A:25, I(a) is repealed and reenacted to read as follows:

5 (a) To the extent that it is consistent with the terms of any order by a court of competent
6 jurisdiction relating to detention or commitment of the ward, the guardian shall be entitled to
7 custody of the ward and may establish the ward's place of abode within or without this state.
8 Admission to a state institution shall be in accordance with the following:

9 (1) A guardian may admit a ward to a state institution with prior approval of the
10 probate court if, following notice and hearing, the court finds beyond a reasonable doubt that the
11 placement is in the ward's best interest and is the least restrictive placement available.
12 Authorization for such admission shall not be time limited unless the court so orders. Authority to
13 admit a ward to a state institution with prior approval under this subparagraph shall not be subject
14 to the limitations contained in RSA 464-A:25, I(a)(2) through (7).

15 (2) A guardian may admit a ward to a state institution without prior approval of the
16 probate court upon written certification by a physician licensed in the state of New Hampshire, or, in
17 the case of placement in New Hampshire hospital, by a psychiatrist licensed in the state of
18 New Hampshire, that the placement is in the ward's best interest and is the least restrictive
19 placement available. Within 36 hours, excluding days when the court is closed, of such an admission
20 of a ward to a state institution, the guardian shall submit to the Merrimack county probate court
21 notice of the admission and the reasons therefor, together with a copy of the certificate by the
22 physician or psychiatrist.

23 (3) The Merrimack County probate court shall review the guardian's notice within
24 48 hours of the filing of the notice, excluding days when the court is closed, to determine whether the
25 notice on its face appears to establish that the placement is in the ward's best interest and is the
26 least restrictive placement available. If the court concludes that the notice is insufficient, the court
27 shall order the immediate release of the ward from the state institution. If the court concludes that
28 the notice is sufficient, counsel for the ward shall be appointed no later than 48 hours following the
29 court's review of the guardian's notice, excluding days when the court is closed. Notice of the
30 appointment shall be transmitted to the ward, to the guardian, and to counsel. Counsel's notice

Amendment to HB 219

- Page 2 -

1 shall be transmitted in writing and electronically or in another manner which is likely to give actual
2 notice of the appointment to counsel at the earliest practicable time. For purposes of proceedings
3 regarding admissions to state institutions without prior court approval, the ward shall have the
4 right to legal counsel in the same manner as provided in RSA 464-A:6. The court shall also provide
5 the ward a notice stating that the ward has the right to appointed counsel, the right to oppose the
6 admission by the guardian, and the right to a hearing and to present evidence at that hearing.

7 (4) Counsel for a ward admitted to a state institution who has been appointed
8 pursuant to subparagraph (3) shall deliver a written report to the court within 5 days of his or her
9 appointment which shall declare whether the ward requests a hearing on the propriety of the
10 admission. Unless the ward waives a hearing, counsel's report shall include a request for a hearing
11 on behalf of the ward. A copy of counsel's report shall be sent to the ward and to the guardian. If the
12 court does not receive a written report from counsel within 5 days of counsel's appointment, the court
13 shall order an appropriate sanction, which may include substitution of counsel, an order to show
14 cause, or scheduling of a hearing on the propriety of the admission without awaiting a report from
15 counsel.

16 (5) Upon receipt of a request for a hearing, the court shall schedule a hearing on the
17 admission to a state institution without prior approval of the probate court, at which the guardian
18 shall have the burden of proving, beyond a reasonable doubt, that the placement is in the ward's best
19 interest and is the least restrictive placement available. The hearing shall be held within 10 days,
20 excluding days when the court is closed, from the date that the request is received.

21 (6) A guardian may not admit a ward to a state institution for more than 60 days for
22 any single admission or more than 90 days in any 12-month period upon certification of a physician
23 or psychiatrist without filing a petition requesting approval of the probate court.

24 (7) At any time, the ward or counsel for the ward may request a hearing on the
25 admission to a state institution without prior approval of the probate court, at which the guardian
26 shall have the burden of proving, beyond a reasonable doubt, that the placement is in the ward's best
27 interest and is the least restrictive placement available. The hearing shall be held within 15 days,
28 excluding days when the court is closed, from the date that the hearing is requested.

29 2 Jurisdiction and Venue; Guardianship Proceedings. Amend RSA 464-A:3, II(a) to read as
30 follows:

31 (a) *Except as provided in RSA 464-A:25, I(a)*, venue for guardianship proceedings for
32 a proposed ward is in the county where the proposed ward resides, or the county in which the
33 proposed ward is physically present when the proceedings are commenced.

34 3 Effective Date. This act shall take effect January 1, 2011.

2009-2490h

AMENDED ANALYSIS

This bill establishes certain time frames and procedures for probate courts holding hearings on incapacitated persons admitted to state institutions by their guardians.

Committee Minutes

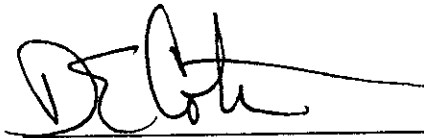
HOUSE COMMITTEE ON JUDICIARY

BILL NUMBER: HB 219

BILL TITLE: relative to hearings for incapacitated persons
admitted to state institutions by their guardians.

DATE: Mar. 5, 2009

THE COMMITTEE HAS VOTED TO RETAIN THIS BILL.

A handwritten signature in black ink, appearing to read "D. E. Cote", with a long horizontal line extending to the right from the end of the signature.

David E. Cote, Chairman

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 219

BILL TITLE: relative to hearings for incapacitated persons admitted to state institutions by their guardians.

DATE: FEB 19, 2009

LOB ROOM: 208 **Time Public Hearing Called to Order:** 10:14A

Time Adjourned: 11:30A

(please circle if present)

Committee Members Reps. D. Cote, Wah, Potter, Hacke, P. Preston, G. Richardson, L. Weber, B. Browne, Nixon, Thompson, Watrous, Rowe, N. Elliott, DiFruscia, W. O'Brien, Hagan, L. Perkins, Silva, W. Smith and Mead.

Bill Sponsors: Rep. L. Weber, Ches 2

TESTIMONY

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

Rep. Weber, amendment specifies MC probate court.

Rep. Elliott-what are we trying to accomplish?-The bill requires review of admissions to state hospital.

Rep. Mead- Line 15 of the bill. Hearing within 15 days? Figures were reversed by mistake.

Rep. Rowe-Intended to cover state hospital and private? As written only state. Also fiscal questions need to be considered.

Rep. Hagan-How des this compare to criminal process? Don't know.

Rep. Smith-How reasonable 2 days? Don't know. Beyond reasonable doubt? If taking away liberty, should have at least as much protection.

Micheal Skibbie-Disabilities Rights Center

3 ways to NHH

- 1.) 135c involuntray commit-require hearing within 3 days by D.C. then proceedings in P.C.
- 2.) PC hearing within 15 business day full hearing
- 3.) Under guardianship.
 - a.) guardian requests approval first
 - b.) guardian without prior approval
 - (1) need appointment of council
 - (2) need a hearing if requested.

So-can drag out long time from admission to hearing. Sometimes a month or more.

Guardianship of RA Nov 21

Admit hearing Jan 12 slip opinion Dec March 20, 2007

2nd attempt to fix. 1st one-no hearing unless requested. But if so, judge review within 3 ½ days, appoint counsel, schedule a hearing within 3 weeks. Most cases will waive hearings. In other context, a judge reviews in very short time limit, This is 3 weeks which is longer than most. There needs to be prompt review of these situations.

Guardianship can involve a range of ability. So not sufficient to say guardianship order itself was sufficient. Due process requires opportunity to review.

Rep. Rowe-How many per year? NESH says several hundred admits per year.

OPG admits a couple per week. Number of private institutions? Don't know. Practical consequences of including private institutions? Don't know. Want to limit to NESH. Yes

Rep. Smith-Beyond reasonable doubt same standard for guardianship? Same as current law.

Rep. Mead-Danger to self or others? Not the standard for placements.

Dr. Alexander deNesnera, NESH & NH Psychiatric Society

Reservations about the bill. Staff aware of need for certificate of examination within 36 hours of admission. These hearings held if ward desires. HB 219 every admit would need a hearing. Anxiety for hearing.

Check prior to admit:

- 1.) guardian needs to discuss with MD and get signature.
- 2.) If direct admit, guardian needs to discuss with NESH.
- 3.) If admit, treating psychiatrist must fill out certificate of admission within 36 hours.

These checks are thorough and adequate discussion.

Rep. Smith-oppose entirely, system adequate.

Rep. Richardson-Typical delay? Ward can't work with attorney. They inform me they don't disagree with being in hospital. Within 36 hours there is a determination.

Rep. Hackel-Ward can waive hearing? Bill says "shall" waiver? Don't know.

Rep. Mead-Abuses? Not aware of any. Lots of clinical checks in my opinion.

John MacIntosh-Office of Public Guardian

We file 34-36 per year not the higher number. I regularly represent both sides. Bill not necessary. No abuses. No clear examples. In one RA individual admitted. Fired his attorney. Cause of delay. Problem is mandatory scheduling of a hearing regardless of this waiver we need to prepare. Can't wait.

Linda Mallon, Office of Public Guardian, opposed. Executive Director of non profit. Concerns about the bill. This is humane alternative to the other method of admission: no handcuffs. Doesn't meet stringent criteria of involuntary admit. Guardian must have treating psychiatrist, least restrictive. NESH makes its own determination. No rubber stamp. MD admits not guardian. Attorney always appointed. If hearing requested 7-14 days usually. Most do not. Just a handful request a hearing. Of the 35 admits some are extended but just 35. Unnecessary and cumbersome.

Rep. Hagan-Clinician makes the decision. Who refers the attorney? The Ward.

Peggy Kraft-Merrimack Probate Court for Jane Bradsheet-opposed.

Lots of notices (see file). Reads statement (see file). R.A. the judge also had to receive himself.

Claire Ebel-NHCLU.

If they don't request a hearing is not evidence that they don't need one. They have already been found incapacitated. They have fewer rights than anyone else in the system. If not pass, retain and work on it. Don't let it slide. This is important.

Rep. Hagan-How valuable is the guardianship? OPG under funded. Matter of due process.

Rep. O'Brien-Could bring a writ of habeas corpus? Irrelevant. They don't have capacity to represent themselves. If not able to do habeas, how can they function elsewhere? Some are so medicated they can't participate. If not on meds they could function. Standards to incarcerate? Might be eccentric? Illustrates the issue. That's why we need protections.

Pat Quigley-for Judge David being opposed.

No problem demonstrated. Major problem is that a hearing must be scheduled in every case. 53 involve admit by guardian in 2007. FN should have been attached. 3-4 hour hearings. Court docket tight. Blocking out judges is tight. We block out time and then hearing gets cancelled. Amended bill-great concerns about judge review file within 2 business days. Only 3 of 10 PCs have full time. Limited guardianship. No ward can admit himself. Attorney is appointed in every case. Governor Lynch said we need to lower costs. Bill would increase our costs.

Rep. Elliott-Does law regulate letting person know of right to hearing? Yes they are given a copy of pleading. Meds? No regulations on meds.

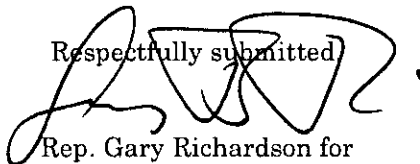
Rep. Rowe-Guardianship over money. Guardian of estate can't admit.

Rep. O'Brien-Notice and oppose to be heard if property is being taken, but no time to schedule a hearing on liberty. Is property more important than freedom? No

Nina Gardner, Executive Director of NH Judicial Council

Lack of Judicial note. Judicial Council pays for guardianship where ward is indigent. If a commitment and automatic hearing. Bill is important and deserves study.

Respectfully submitted



Rep. Gary Richardson for
Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 219

BILL TITLE: relative to hearings for incapacitated persons admitted to state institutions by their guardians.

DATE: FEB 19, '09

LOB ROOM: 208

Time Public Hearing Called to Order: 10:14 AM

Time Adjourned: 11:35 AM

(please circle if present)

Committee Members: Reps. D. Cota, Wall, Potter, Hackel, P. Preston, G. Richardson, L. Weber, B. Browne, Nixon, Thompson, Watrous, Stowe, N. Elliott, DiFruscia, W. O'Brien, Pearson, Hagan, L. Perkins, Silva and W. Smith. Mead

Bill Sponsors: Rep. L. Weber, Ches 2

TESTIMONY

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

Rep Weber introduces bill & amendment.

2/19/09

HB 219

Rep Weber - amendment specifies MC probate court. describes the bill as amended.

Rep Elliott - what are we trying to accomplish? - The bill requires review of admissions to state hospital

Rep Mead - 6:15 hearing w/in 15 days? Figures were reversed by mistake.

Rep Rowe - intended to cover state hosp & private? As written only state. Also fiscal questions need to be considered.

Rep Hagan - how does this compare to crim. process? Don't know

Rep Smith - how res. is 2 days? Don't know. Beyond res. doubt? If taking away liberty, should have at least as much protection.

Michael Shiblee DRC

2 ways to NH5H.

- 1) 135C invol committ. - req. hearing w/in 3 days by D.C. Then proceedings in P.C.

2) PC by w/in 15 business days
full hearing

3) under guardianship

a) guardian requests approval first

b) guardian w/o prior approval

(1) need appointment of counsel

(2) need a hearing if requested

filed leads
w/

So - can drop out long time
from admission to hearing. Some-
times a month or more.

Guardianship of R.H. Nov 21
admit hearing Jan 12 slip of
Dec March 20, 2007

2d attempt to fix. 1st was to just
reduce time limits. This one -
no by unless requested. But if
so, judge must review w/in 3 1/2
days, appt counsel, schedule
a hearing w/in 3 weeks. Most cases
will waive hearings.

In other contexts, a judge
reviews in very short time limit.
This is 3 wks which is longer
than most.

There needs to be prompt review of these situations.

Guardianship can involve a range of ability. So not suff. to say guardianship order itself was sufficient. Due process requires opportunity to review.

Rep Rowe
how many per yr?

→ N H S H say several hundred admits per year.

O P B admits a couple / wk.

Number of private institutions? Don't know. Practical consequences of

included: private institutions? Don't know. Want to limit to N H S H.

Yes

Rep Smith - Beyond reasonable doubt same standard for guardianship? Same as current law.

Rep Mead - danger to self or others > Not the standard for placements. ~~It~~

Nina Gardner

Dr De Nesnera N H S H + N H Psych Society - reservation about the bill Staff aware of need for cert. of examination w/in 36 hours of)

admission. These hearings, if ward ^{held} desires. HR 219 every admit would need a hearing. Anxiety for hearing.

Checks prior to admit:

- 1) guardian needs to discuss w/ MD & get signature.
- 2) if direct admit, guard. needs to discuss w/ NHBH.
- 3) if admit, treating psych must fill out of adm. w/in 36 hrs.

These checks are thorough & adequate discussion.

Rep Smith - opposed entirely? Syst

Rep Richardson - typical delay? Meet w/ lawyer, fire lawyer, Ward can't work w/ atty. They inform me they don't disagree w/ being in hosp w/in 36 hours there is a determination

Rep Hackel - ward can waive hearing? Bill ~~to~~ says "shall". Waiver? Don't know.

Rep Mead - abuses? Not aware of any. Lots of clinical checks in my opinion.

John Macintosh - O.P.G. we file
 34-36 / year not the higher #
 I regularly represent both sides.
 Bill not necessary. No abuses.
 No clear examples. In re RA
 individual admitted. Fined his
 atty. Cause of delay. Problem is
 mandatory scheduling of a hearing
 regardless of the waiver we need to
 prepare. Can't wait.

Linda Mellon O.P.G. ^{opposed.} Executive Director
 Non profit. Concerns about the bill.
 This is humane alternative to the
 other methods of admission: no
 handcuffs. Doesn't meet stringent
 criteria of involuntary admit.
 Guardian must have treating psych,
 least restrictive. N.H.S.A. makes
 its own determination. No rubber
 stamp. M.D. admits not guardian.
 Atty always appointed. If req.
 requested 7-14 days unobj.
 Most do not. Just a hand-
 ful request a hearing. Of the
 5 admits some are extended
 but just 35.

Unnecessary + cumbersome.

Rep Hagan - clinician makes the decision.
Who refuses the atty? The ward

Peggy Kraft - MC Probate Ct for
Jay Bradstreet. Opposed. Lots of
Notices (see file). Reads statement (see
file). R.A. the judge also had to
recess himself.

Rep Smith - object to 14 days? Presently 84?

Chire Ebel - NHCHU. If they don't
request a hearing is not evidence that
they don't need one. They have already
been found incapacitated. They have
fewer rights than anyone else in
the system. If not pass, retain
and work on it. Don't let it slide.
This is important.

Rep Hagan - how valuable is the guardian-
ship? OPG undefended. Matter
of due process

Rep O'Brien - could bring a writ of
habeas corpus? Relevant. They
don't have capacity to represent
themselves. If not able to do
habeas, how can they function

elsewhere. Some are so medicated they can't participate. If not on meds they could function. Standards to incarcerate? Might be eccentric? Illustrates the issue. That's why we need protections

Pat Quigley - for Judge David King. Opposed. No problem demonstrated. Major prob is that a hrg must be scheduled in every case. 53 invol. adm. by guardian in 202. FN should have been attached. 3-4 hour hearings. Court docket tight. Blocking out judges is tight. We block out time & then hearing gets cancelled. Amended bill - great concerns about judge review file w/in 2 business days. Only 3 of 10 to PC, have full time, limited guardianship. No ward ~~to~~ can admit himself. Atty is appointed in every case. For Lynch said we need to lower costs. Bill would increase our costs. Rep Elliott - does law req letting pers know of right to hearing.

Yes they are given a copy of pleading.
4 Mds? - No req. \$ or mds

Rep Rowe - guardianship ver \$.
Guardian of estate can't admit.

Rep O'Brien - notice & opp to be
heard if prop is being taken, but no
time to schedule a hearing on liberty.

Prop more important than freedom?

No

Nina Gardner E.D. NH Food Council
Lack of fiscal note. Food Council
pays for guardianship where ward
is indigent. If a commitment
& automatic hearing. Study is Bill
is important & deserves study.

Jerry B. P.
acting clerk

2/19/09

Sub-Committee Minutes

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON HB 219

BILL TITLE: relative to hearings for incapacitated persons admitted to state institutions by their guardians.

DATE: October 6, 2009

Subcommittee Members: Reps. Richardson, Hackel, Potter, Elliott, and Mead

Comments and Recommendations: Will meet again October 20th at 10:30 a.m.

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep.

Seconded by Rep.

Vote:

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Richardson
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON HB 219

BILL TITLE: relative to hearings for incapacitated persons admitted to state institutions by their guardians.

DATE: October 6, 2009

Subcommittee Members: Reps Richardson, Hackel, Potter, Elliott, and Mead

Comments and Recommendations: Will not give - 10/20 @ 10:30am.

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

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

Moved by Rep.

Seconded by Rep.

Vote:

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON HB 219

BILL TITLE: relative to hearings for incapacitated persons admitted to state institutions by their guardians.

DATE: November 3, 2009

Subcommittee Members: Reps. Richardson, Hackel, Potter, Elliott, and Mead

Comments and Recommendations:

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

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

Moved by Rep.

Seconded by Rep.

Vote:

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON HB 219

BILL TITLE: relative to hearings for incapacitated persons admitted to state institutions by their guardians.

DATE: November 17, 2009

Subcommittee Members: Reps. Richardson, Hackel, Potter, Elliott, and Mead

Comments and Recommendations:

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

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

Moved by Rep.

Seconded by Rep.

Vote:

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk



Amendment to HB 219

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Powers and Duties of Guardians of Incapacitated Persons; Admission to State Institution.

4 RSA 464-A:25, I(a) is repealed and reenacted to read as follows:

5 (a) To the extent that it is consistent with the terms of any order by a court of competent
6 jurisdiction relating to detention or commitment of the ward, the guardian shall be entitled to
7 custody of the ward and may establish the ward's place of abode within or without this state.

8 Admission to a state institution shall be in accordance with the following:

9 (1) A guardian may admit a ward to a state institution with prior approval of the
10 probate court if, following notice and hearing, the court finds beyond a reasonable doubt that the
11 placement is in the ward's best interest and is the least restrictive placement available.
12 Authorization for such admission shall not be time limited unless the court so orders. Authority to
13 admit a ward to a state institution with prior approval under this subparagraph shall not be subject
14 to the limitations contained in RSA 464-A:25, I(a)(2) through (7).

15 (2) A guardian may admit a ward to a state institution without prior approval of the
16 probate court upon written certification by a physician licensed in the state of New Hampshire, or, in
17 the case of placement in New Hampshire hospital, by a psychiatrist licensed in the state of
18 New Hampshire, that the placement is in the ward's best interest and is the least restrictive
19 placement available. Within 36 hours, excluding days when the court is closed, of such an admission
20 of a ward to a state institution, the guardian shall submit to the Merrimack county probate court
21 notice of the admission and the reasons therefor, together with a copy of the certificate by the
22 physician or psychiatrist.

23 (3) The Merrimack County probate court shall review the guardian's notice within
24 48 hours of the filing of the notice, excluding days when the court is closed, to determine whether the
25 notice on its face appears to establish that the placement is in the ward's best interest and is the
26 least restrictive placement available. If the court concludes that the notice is insufficient, the court
27 shall order the immediate release of the ward from the state institution. If the court concludes that
28 the notice is sufficient, counsel for the ward shall be appointed no later than 48 hours following the
29 court's review of the guardian's notice, excluding days when the court is closed. Notice of the
30 appointment shall be transmitted to the ward, to the guardian, and to counsel. Counsel's notice

1 shall be transmitted in writing and electronically or in another manner which is likely to give actual
2 notice of the appointment to counsel at the earliest practicable time. For purposes of proceedings
3 regarding admissions to state institutions without prior court approval, the ward shall have the
4 right to legal counsel in the same manner as provided in RSA 464-A:6. The court shall also provide
5 the ward a notice stating that the ward has the right to appointed counsel, the right to oppose the
6 admission by the guardian, and the right to a hearing and to present evidence at that hearing.

7 (4) Counsel for a ward admitted to a state institution who has been appointed
8 pursuant to subparagraph (3) shall deliver a written report to the court within 5 days of his or her
9 appointment which shall declare whether the ward requests a hearing on the propriety of the
10 admission. Unless the ward waives a hearing, counsel's report shall include a request for a hearing
11 on behalf of the ward. A copy of counsel's report shall be sent to the ward and to the guardian. If the
12 court does not receive a written report from counsel within 5 days of counsel's appointment, the court
13 shall order an appropriate sanction, which may include substitution of counsel, an order to show
14 cause, or scheduling of a hearing on the propriety of the admission without awaiting a report from
15 counsel.

16 (5) Upon receipt of a request for a hearing, the court shall schedule a hearing on the
17 admission to a state institution without prior approval of the probate court, at which the guardian
18 shall have the burden of proving, beyond a reasonable doubt, that the placement is in the ward's best
19 interest and is the least restrictive placement available. The hearing shall be held within 10 days,
20 excluding days when the court is closed, from the date that the request is received.

21 (6) A guardian may not admit a ward to a state institution for more than 60 days for
22 any single admission or more than 90 days in any 12-month period upon certification of a physician
23 or psychiatrist without filing a petition requesting approval of the probate court.

24 (7) At any time, the ward or counsel for the ward may request a hearing on the
25 admission to a state institution without prior approval of the probate court, at which the guardian
26 shall have the burden of proving, beyond a reasonable doubt, that the placement is in the ward's best
27 interest and is the least restrictive placement available. The hearing shall be held within 15 days,
28 excluding days when the court is closed, from the date that the hearing is requested.

29 2 Jurisdiction and Venue; Guardianship Proceedings. Amend RSA 464-A:3, II(a) to read as
30 follows:

31 (a) *Except as provided in RSA 464-A:25, I(a)*, venue for guardianship proceedings for
32 a proposed ward is in the county where the proposed ward resides, or the county in which the
33 proposed ward is physically present when the proceedings are commenced.

34 3 Effective Date. This act shall take effect January 1, 2011.



2009-2490h

AMENDED ANALYSIS

This bill establishes certain time frames and procedures for probate courts holding hearings on incapacitated persons admitted to state institutions by their guardians.

Testimony

House Bill 219

Ward admitted to state institution by guardian.

Merrimack County Probate Court

Peggy Kraft, Deputy Register FOR Jane Bradstreet, Register

I speak against this bill.

Merrimack County has approximately 850 open guardianships of incapacitated adults. During 2008 this court processed 28 actions of the ward being admitted to New Hampshire Hospital by guardian.

Let me describe to you how the process works under the existing statute.

Mail arrives at 11:00am

The notice of admission that the guardian has sent to the court is immediately given to the appropriate court assistant by the mail handler.

The court assistant will:

Get a Notice ready and re-appoint ward's attorney in the computer, have Register sign paper work to re-appt atty and sign the Notice Admit ward by Guardian, make 4 sets of copies of the Letter Admit ward by Guardian & Dr. Letter stating what prompted the Admission. This is Sent out by certified, return receipt mail - (see forms for Atty)

The ward is sent this notice – (see forms for Ward)- along with a copy of the notice letter from the guardian and the doctor's opinion. This too is Sent certified, return receipt mail.

The guardian gets copies of everything along with NHH-sent reg. mail

This process is completed: 90% of the time before the end of the day the notice arrived and 10% of the time the very next morning.

The Court Assistant will create a time standard to remind her to look for the return from the attorney within 7 days. If it does not arrive within 7 days, the Court Assistant calls the attorney to get us a report and remind the attorney to send the written report ASAP. If the attorney tells us the ward does not wish a hearing we file the case away. If the ward wants a hearing we schedule it as soon as possible within the 15 days allowed. To schedule the hearing we coordinate with the ward's attorney to make sure the date and time are possible for the attorney and the ward.

The **15-day requirement** right now is sometimes difficult to achieve. Our docket can be very full and the attorneys can be busy. We try hard to fit it into the docket within 15 days. Merrimack has a full time Judge, but with a **NEW statute of a 5-day requirement** would be a terrible hardship on our Court. **Even though Merrimack County has a full time Judge, he often is asked to sit in other Counties as needed**, which then affects the time on our calendar. Then if our Judge were to go on vacation, we would then have to request a Judge to hear those cases within the **5 day requirement** and that then puts a

strain on other Courts and their dockets. Those courts with a Judge one day a week would have an almost impossible time **complying with a 5-day hearing requirement.**

This bill dictates that Merrimack Probate will handle all these actions. This court does a large percentage of these actions but not all. When the guardianship is being supervised by another county that county must do the process. Merrimack does not have the case records for the guardianship if it is not our case. The other Counties case would not be in our computer case management system. Therefore we would not be able to send notice to all parties. This part of the bill needs to be changed.

When the guardianship is in Merrimack, we comply with the statute as it is now written. Only about 20 % of the wards admitted by guardian wish to have a hearing. These numbers do not reflect a problem with the civil rights of wards in New Hampshire that requires a change in our statute.

Thank you for your attention. Are there any questions that I can try to answer?

Richard A — Coos County —
app't - Atty - None by Judge
now done by Register's

The State of New Hampshire

MERRIMACK COUNTY

PROBATE COURT

TO: _____, Esq.

WHEREAS Tri-County CAP, Inc., Guardian has admitted their ward
to New Hampshire Hospital.

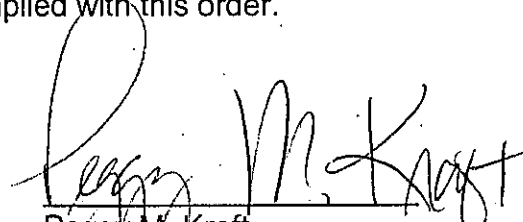
YOU ARE HEREBY appointed attorney for the said

You shall immediately contact and interview the ward to ascertain if the ward wishes to substitute other Counsel. You shall inform the ward she shall be liable for your attorney's fees unless she is found indigent by the Probate Court. If the ward is found to be indigent, you will be compensated for your services at the indigent fee rate.

You shall also inform the ward of her right to a hearing, the nature, purpose and legal effects of the proceedings; the duties of counsel during the proceedings and the ward's right to attend the hearing and to present evidence at the hearing.

You must file a certificate with the Probate Court within seven (7) days of this appointment showing that you have complied with this order.

Dated: February 17, 2009


Peggy M. Kraft
Deputy Register of Probate

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

PROBATE COURT

IN RE: _____

NOTICE OF ADMISSION
Pursuant to RSA 464-A:25,I(a)

NOW COMES Tri County CAP, Inc., Guardianship Services
guardian in the above-captioned matter and say:

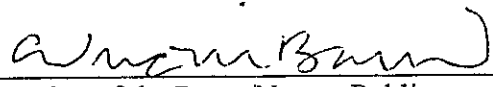
1. The ward has been admitted to New Hampshire Hospital, 36 Clinton Street, Concord, NH 03301.
2. The reasons for the admission are attached.
3. Attached hereto is a certificate of physician or psychiatrist that the placement is in the ward's best interest and is the least restrictive placement available.

Respectfully submitted,



 Joyce Garman for Tri-County CAP, Inc.
 Staff Guardian

Subscribed and sworn to before me the undersigned officer this 12th day of February,
 2009, by Joyce Garman
 Before me,



 Justice of the Peace/Notary Public

ANDREA M. BAIRD, Notary Public
 My Commission Expires December 1, 2009

RECEIVED
 2009 FEB 13 A 11: 15
 MERRIMACK COUNTY
 PROBATE COURT

The State of New Hampshire

MERRIMACK COUNTY

PROBATE COURT

**IN RE: GUARDIANSHIP OF
DOCKET #:**

WHEREAS this Court has been notified on February 13, 2009 of your Admission to New Hampshire Hospital on February 12, 2009 by *Tri-County CAP, Inc., Guardian* pursuant to the provisions of NH RSA 464-A:25, I (a). This will notify you that the Court has appointed _____ **Esq.**, whose address is _____, Concord, N.H. 03301 and phone number is (603) _____ as your legal Counsel.

THIS WILL NOTIFY YOU THAT

1. You have a right to appointed Counsel
2. The right to oppose your admission to New Hampshire Hospital by Tri-County CAP, Inc., Guardian.
3. The right to a hearing in this Court and to present evidence at that hearing

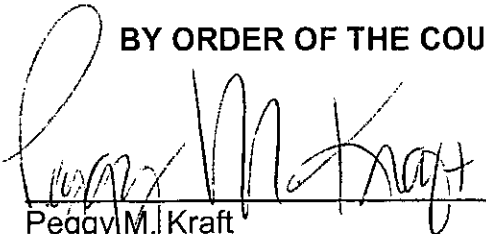
THE HEARING MUST BE REQUESTED BY EITHER YOU OR YOUR COUNSEL

WE ENCLOSE HEREWITH THE FOLLOWING DOCUMENTS:

1. Letter of Tri-County CAP, Inc., Guardian dated February 12, 2009 advising this Court of your admittance to New Hampshire Hospital, pursuant to NH RSA 464-A:25-I(a) and the reasons therefore.
2. The written opinion of Wendy Martin, MD dated February 12, 2009 certifying that in her opinion it would be in your best interests to be a patient at New Hampshire Hospital at this time and that this is the least restrictive alternative.

DATED: February 17, 2009

BY ORDER OF THE COURT


Peggy M. Kraft
Deputy Register of Probate

THE STATE OF NEW HAMPSHIRE
Merrimack Probate Court
163 N. Main Street
Concord, NH 03301
Telephone (603) 224-9589

FOR WARD

To: [redacted]
c/o N.H. Hospital
36 Clinton St.
Concord, NH 03301

RE: Guardianship of [redacted]

Docket No. [redacted]
formerly: [redacted]

Enclosed please find copies of the Notice to Admit ward to N.H. Hospital by guardian for the case named above.

[redacted], Esq. is re-appointed as counsel for the ward. Att [redacted] shall advise the Court in writing within seven (7) days whether the ward requests a hearing on this matter or not. Thank you

Date: 2/17/2009

Jane Bradstreet
Register of Probate

cc: Tri-County CAP, Inc.
New Hampshire Hospital
[redacted], Esq.

The State of New Hampshire

MERRIMACK COUNTY

PROBATE COURT

**IN RE: GUARDIANSHIP OF
DOCKET #:**

WHEREAS this Court has been notified on February 13, 2009 of your Admission to New Hampshire Hospital on February 12, 2009 by *Tri-County CAP, Inc., Guardian* pursuant to the provisions of NH RSA 464-A:25, I (a). This will notify you that the Court has appointed _____, *Esq.*, whose address is _____ Concord, N.H. 03301 and phone number is (603) _____ as your legal Counsel.

THIS WILL NOTIFY YOU THAT

1. You have a right to appointed Counsel
2. The right to oppose your admission to New Hampshire Hospital by Tri-County CAP, Inc., Guardian.
3. The right to a hearing in this Court and to present evidence at that hearing

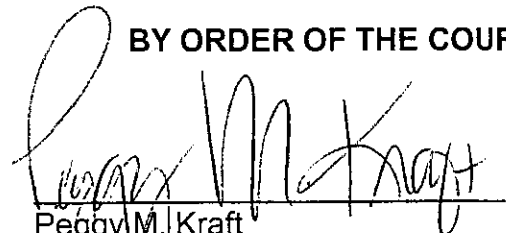
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2. The written opinion of Wendy Martin, MD dated February 12, 2009 certifying that in her opinion it would be in your best interests to be a patient at New Hampshire Hospital at this time and that this is the least restrictive alternative.

DATED: February 17, 2009

BY ORDER OF THE COURT


Peggy M. Kraft
Deputy Register of Probate

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

PROBATE COURT

IN RE: _____

NOTICE OF ADMISSION
Pursuant to RSA 464-A:25,I(a)

NOW COMES Tri County CAP, Inc., Guardianship Services
guardian in the above-captioned matter and say:

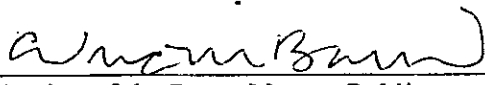
1. The ward has been admitted to New Hampshire Hospital, 36 Clinton Street, Concord, NH 03301.
2. The reasons for the admission are attached.
3. Attached hereto is a certificate of physician or psychiatrist that the placement is in the ward's best interest and is the least restrictive placement available.

Respectfully submitted,



 Joyce Garman for Tri-County CAP, Inc.
 Staff Guardian

Subscribed and sworn to before me the undersigned officer this 12th day of February,
 2009, by Joyce Garman
 Before me,



 Justice of the Peace/Notary Public

ANDREA M. BAIRD, Notary Public
 My Commission Expires December 1, 2009

RECEIVED
 2009 FEB 13 A 11:15
 MERRIMACK COUNTY
 PROBATE COURT

STATE OF NEW HAMPSHIRE

Merrimack S.S.

CERTIFICATE OF EXAMINATION

Pursuant to RSA 464 - A:25 I
Chapter 212 NH 1990

1. I am a licensed physician in the State of New Hampshire.
2. I am a licensed psychiatrist in the State of New Hampshire.
3. As the result of an examination on _____, _____, conducted on 2/12/09 at 3 a.m. (p.m.)

The above mentioned individual is in need of placement at New Hampshire Hospital. Said placement is in the ward's best interest and is the least restrictive placement available.

4. The results of my examination are as follows :

Ms. _____ is currently psychotic. She is experiencing auditory, visual, and tactile hallucinations. She is delusional, believing she is married and is grieving what she believes is a break-up of that "marriage." She is not showering, is malodorous, and is not engaging in any activities. She is very withdrawn and is not speaking with staff about her current concerns.

5. I understand that I may be called to testify as to this certification.

Dated this 12th day of Feb. A.D. 2009

W Martin, MD
Psychiatrist Signature

New Hampshire Hospital
36 Clinton Street
Concord, NH 03301

STATE OF NEW HAMPSHIRE MERRIMACK S.S.,

Subscribed and sworn to by WENNY MARTIN MD before me.

Diana C Ryan
DIANA C. RYAN, Justice of the Peace
Commission Expires May 3, 2011 Justice of the Peace / Notary Public

This certificate must be received by the Probate Court within 36 hours of admission excluding Saturdays, Sundays and legal holidays



New Hampshire Psychiatric Society

7 North State Street, Concord, NH 03301

Tel. 603/224-7083

February 19, 2009

To: House Judiciary Committee

From: Alexander de Nesnera, M.D.

Re: HB 219, An Act relative to hearings for incapacitated persons admitted to state institutions by their guardians.

Dear Mr. Chairman and Members of the Judiciary Committee:

My name is Alexander de Nesnera. I am a psychiatrist and have worked at New Hampshire Hospital for 19 years. I am currently the Associate Medical Director, and I am also the legislative representative for the New Hampshire Psychiatric Society, which is a branch of the American Psychiatric Association.

I'm here representing the New Hampshire Psychiatric Society and would like to express my reservations regarding this bill. As written, this bill establishes certain timeframes and procedures for probate courts holding hearings on incapacitated persons admitted to state institutions by their guardians without approval of the Merrimack County Probate Court prior to the admission. As a physician having run an acute inpatient unit at New Hampshire Hospital for many years, I have worked with a variety of guardians when they had their wards admitted "voluntary by guardian" for treatment at New Hampshire Hospital. The psychiatric staff at New Hampshire Hospital is acutely aware of the need to have the certificate of examination filled out promptly after the ward's admission and have been very effective in getting these certificates notarized and given to the guardian so that the probate court receives the certificate within 36 hours of admission to New Hampshire Hospital (excluding Saturdays, Sundays and legal holidays). The psychiatric staff has also been knowledgeable about the fact that, at times, hearings would be held regarding the "voluntary by guardian" admission and that they would be called on to testify as to their certification. These hearings, as currently written in the statute, definitely are held if the ward so wishes. Many times, however, the ward does not wish to participate in the hearing. Nevertheless, the option is still available to them.

If House Bill 219 passes as written, every "voluntary by guardian" admission would have to have a hearing and I do not believe this would be necessary. At times patients are very reluctant to participate in hearings for a variety of reasons, and there have been many instances where sending them to a hearing would be very anxiety provoking. In my experience, I have found that our system, as it currently is set up, allows for the ward to meet with a lawyer and determine whether, in fact, a hearing is something the ward wishes. I believe this should remain the way it is currently set up.

I would also like the committee to be aware of the checks that are currently in place prior to the ward being potentially admitted "voluntary by guardian" to New Hampshire Hospital. When a possible admission is entertained by the guardian for their ward, the guardian needs to discuss this with a physician, licensed in the State of New Hampshire, and obtain a written certification from that physician prior to the person being admitted to New Hampshire Hospital. At times the

outpatient physician may not feel that admission for the ward is appropriate and, in that case, the ward is not sent to New Hampshire Hospital. On other occasions, the guardian may wish to admit their ward directly to New Hampshire Hospital at which point the guardian needs to discuss the case with the New Hampshire Hospital Chief Medical Officer. There are instances where, in discussing the clinical situation with the Chief Medical Officer, the decision to admit the ward to New Hampshire Hospital is not found to be clinically necessary, and the ward is, therefore, not admitted to New Hampshire Hospital. Furthermore, if the ward is ultimately admitted to New Hampshire Hospital voluntarily by their guardian, the treating psychiatrist has to fill out, within 36 hours of the ward's admission (excluding Saturdays, Sundays and legal holidays), a certificate of examination that testifies to the ward needing placement at New Hampshire Hospital, and that the placement is in the ward's best interests and is the least restrictive placement available. The treating psychiatrist understands that he or she may be called to testify to this certification if a hearing is held.

All of these checks, in my experience, allow for a thorough assessment by clinicians, in discussions with the ward's guardian, to determine whether the ward needs to be hospitalized at New Hampshire Hospital. These checks are very appropriate and necessary to ensure that there is adequate discussion prior to the ward being sent to New Hampshire Hospital.

Given all of this information, I believe that the current system allows for appropriate discussion, consultation, and documentation to ensure that the incapacitated person's rights are not violated and that individuals that need admission to New Hampshire Hospital are provided the appropriate and essential care that they need.

Thank you very much for allowing me to share my thoughts with you. I would be happy to answer any of your questions.

Sincerely,



Alexander de Nesnera, MD
Legislative Liaison
New Hampshire Psychiatric Society
Associate Medical Director
New Hampshire Hospital

NOTICE: This opinion is subject to motions for rehearing under Rule 22 as well as formal revision before publication in the New Hampshire Reports. Readers are requested to notify the Reporter, Supreme Court of New Hampshire, One Charles Doe Drive, Concord, New Hampshire 03301, of any editorial errors in order that corrections may be made before the opinion goes to press. Errors may be reported by E-mail at the following address: reporter@courts.state.nh.us. Opinions are available on the Internet by 9:00 a.m. on the morning of their release. The direct address of the court's home page is: <http://www.courts.state.nh.us/supreme>.

THE SUPREME COURT OF NEW HAMPSHIRE

Coos County Probate Court
No. 2006-104

IN RE GUARDIANSHIP OF R.A.

Argued: February 22, 2007
Opinion Issued: March 20, 2007

Tarbell Professional Association, of Concord (Shane R. Stewart and Friedrich K. Moeckel on the brief, and Mr. Stewart orally), for the petitioner.

John D. MacIntosh, P.C., of Concord (John D. MacIntosh on the brief and orally), for the guardian.

GALWAY, J. The petitioner, R.A., appeals a decision of the Coos County Probate Court (Hampe, J.) authorizing his guardian to admit him to New Hampshire Hospital and consent to his medication. We affirm in part.

The record supports the following. In January 1998, the probate court appointed the Office of Public Guardian (OPG) as guardian over R.A. Michael Feinstein, an employee of OPG, personally served as R.A.'s guardian beginning in late 1999. On November 21, 2005, Feinstein admitted R.A. to New Hampshire Hospital's psychiatric facility, and also authorized medication for him. See RSA 464-A:25 (2004) (amended 2005). On November 23, 2005, Feinstein notified the probate court of R.A.'s admission. R.A. objected to his admission, and the probate court held a hearing on January 12, 2006. After the hearing, the probate court authorized R.A.'s guardian to admit him to New

Hampshire Hospital for a period not to exceed eight months and to consent to his medication.

R.A. appeals, arguing that, on November 21, 2005, his guardian did not have authority to admit him to New Hampshire Hospital or consent to his medication. This authority had ended by that time, R.A. argues, because RSA 464-A:25, I(c) required that the guardian's authority be reviewed by the court every five years, which had not been done. Once five years elapsed with no review of the guardian's authority, R.A. argues, the authority terminated. In response, OPG argues that it is RSA 464-A:25, I(a), not RSA 464-A:25, I(c), that governs a guardian's admission of a ward to New Hampshire Hospital, and subparagraph (a) does not require a five-year review of the guardian's authority.

Resolution of the issue before us requires statutory interpretation, which is a matter of law that we review de novo. In re Guardianship of Kapitula, 153 N.H. 492, 494 (2006). In matters of statutory interpretation, we are the final arbiter of the intent of the legislature as expressed in the words of the statute considered as a whole. Id. We begin our analysis by looking to the language of the statute itself. Id. If the language is plain and unambiguous, then we need not look beyond it for further indication of legislative intent. Id.

The version of RSA 464-A:25, I, that was in effect on November 21, 2005, provided, in pertinent part:

I. A guardian of an incapacitated person has the following powers and duties, except as modified by order of the court:

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the guardian shall be entitled to custody of the ward and may establish the ward's place of abode within or without this state. Admission to a state institution shall be in accordance with the following:

....

(2) A guardian may admit a ward to a state institution without prior approval of the probate court upon written certification by a . . . psychiatrist licensed in the state of New Hampshire, that the placement is in the ward's best interest and is the least restrictive placement available. Within 36 hours . . . of such an admission of a ward to a state institution, the guardian shall submit to the probate court notice of the admission and the reasons therefor The

court shall promptly appoint counsel for the ward The court shall also provide the ward a notice stating that the ward has the right to appointed counsel, the right to oppose the admission by the guardian, and the right to a hearing and to present evidence at that hearing.

. . . .

(c) A guardian of the person may give any necessary consent or approval to enable the ward to receive medical or other professional care, counsel, treatment, or service or may withhold consent for a specific treatment, provided that the court has previously authorized the guardian to have this authority, which authority shall be reviewed by the court every 5 years.

RSA 464-A:25, I.

We begin by addressing whether OPG had the authority to admit R.A. to New Hampshire Hospital on November 21, 2005. Based upon the plain language of RSA 464-A:25, I, it is clear that subparagraph (a) authorizes a guardian to admit a ward to New Hampshire Hospital. R.A. does not contend that Feinstein failed to comply with the requirements in subparagraph (a). Instead, he argues that Feinstein failed to comply with the five-year-review requirement present in subparagraph (c), as it read in November 2005.

Subparagraph (c), however, does not authorize the admission of a ward to a hospital. Subparagraph (c) authorizes a guardian to give “consent or approval to enable the ward to receive medical or other professional care” It is this authority “which . . . shall be reviewed by the court every 5 years.” Nothing in RSA 464-A:25 conditions the guardian’s authority to admit the ward to New Hampshire Hospital upon court review every five years. Accordingly, we decline to adopt R.A.’s interpretation of the version of RSA 464-A:25, I, in effect in November of 2005.

We next address R.A.’s argument that his guardian’s authority to consent to medical treatment had expired by November 21, 2005. At oral argument, both parties addressed whether the issue of Feinstein’s authority to consent to R.A.’s medical treatment on November 21, 2005, is moot. The doctrine of mootness is designed to avoid deciding issues that “have become academic or dead.” Sullivan v. Town of Hampton Bd. of Selectmen, 153 N.H. 690, 692 (2006) (quotation omitted). The question of mootness is not subject to rigid rules, but is regarded as one of convenience and discretion. Id. A decision upon the merits may be justified where there is a pressing public interest involved or future litigation may be avoided. Id.

If the version of RSA 464-A:25, I(c) that was in effect on November 21, 2005, were still in effect today, we might conclude that resolving whether Feinstein had the authority to consent to R.A.'s medical care on that date could prevent future litigation. RSA 464-A:25 was amended, however, effective January 1, 2006. As amended, RSA 424-A:25, I(c) (Supp. 2006) reads, in its entirety: "A guardian shall file an annual report with the probate court, unless the court finds that such report is not necessary." RSA 424-A:25, I(d) (Supp. 2006) reads, in pertinent part:

A guardian of the person may give any necessary consent or approval to enable the ward to receive medical or other professional care, counsel, treatment, or service or may withhold consent for a specific treatment, provided, that the court has previously authorized the guardian to have this authority, which authority shall be reviewed by the court as part of its review of the guardian's annual report.

(Emphasis added.) Thus, the amendment changed the period to review a guardian's authority to consent to a ward's medical care from every five years to every year, and added that such review would occur as part of the court's review of the guardian's annual report. Due to this change, even if we assume that OPG's authority to consent to the ward's medical treatment expired after five years because the probate court had not reviewed it, that would have little bearing on the authority of guardians today. Even if we were to so construe the former RSA 464-A:25, I(c), it does not necessarily follow that we would construe the current version in a similar manner. Moreover, it is undisputed that Feinstein submitted the annual report required by the current version of RSA 464-A:25, I(c) to the probate court in April 2006. Thus, we have no reason to consider at this time what effect, if any, a failure to obtain the annual review required by the current RSA 464-A:25, I(d) would have upon a guardian's authority to give consent for medical treatment. Because whether Feinstein was authorized to make medical decisions for R.A. in November 2005 will have no bearing on whether Feinstein, or other guardians, currently have such authority, we conclude that this issue is moot.

Affirmed in part; moot in part.

BRODERICK, C.J., and DALIANIS, DUGGAN and HICKS, JJ., concurred.

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 219

BILL TITLE: relative to hearings for incapacitated persons admitted to state institutions by their guardians.

DATE: MARCH 9, 2009

LOB ROOM: 208

Amendments:

Sponsor: Rep. WEBER	OLS Document #:	2009	0688h
Sponsor: Rep.	OLS Document #:		
Sponsor: Rep.	OLS Document #:		

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

Moved by Rep. WEBER

Seconded by Rep. WATROUS

Vote: 8-5 (Please attach record of roll call vote.)

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

Moved by Rep. WEBER-Withdrawn

Seconded by Rep. PRESTON-Withdrawn

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

REGULAR OR CONSENT CALENDAR: (please circle one)

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 219

BILL TITLE: relative to hearings for incapacitated persons admitted to state institutions by their guardians.

DATE: MARCH 9, 2009

LOB ROOM: 208

Amendments:

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

Motions: ~~OTP~~ *adopt 6826* OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. *Web*
Seconded by Rep. *Watrous*
Vote: *8/5* (Please attach record of roll call vote.)

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

Moved by Rep. *Weber* }
Seconded by Rep. *Preston* } *withdrawn*

Retained

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

REGULAR OR CONSENT CALENDAR: (please circle one)

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,
Phil Preston
Rep. Philip Preston, Clerk

JUDICIARY

Bill #: HB 219 Title: Relative to hearings for incapacitated persons admitted to state institutions by their guardians.

PH Date: 2, 19, 09

Exec Session Date: 3 19 09

Motion: ^{adopt} Amendment 688h

Amendment #: 688h

MEMBER	YEAS	NAYS
Cote, David E, Chairman	Y	
Wall, Janet G, V Chairman	a	
Potter, Frances D	Y	
Hackel, Paul L	Y	
Preston, Philip, Clerk	Y	
Richardson, Gary B	a	Y
Weber, Lucy M	Y	
Browne, Brendon S	a	
Nixon, David L	Y	
Thompson, Robert B	Y	
Watrous, Rick H	Y	
Rowe, Robert H		N
Elliott, Nancy J	a	
DiFruscia, Anthony R	a	
Mead, Robert D		N
O'Brien, William L		N
Hagan, Joseph M	a	
Perkins, Lawrence B	a	
Silva, Peter L		N
Smith, William B		N
TOTAL VOTE:	8	5

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 219

BILL TITLE: relative to hearings for incapacitated persons admitted to state institutions by their guardians.

DATE: November 17, 2009

LOB ROOM: 208

Amendments:

Sponsor: Rep. G. Richardson & L. Weber OLS Document #: 2009 2490h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. Richardson

Seconded by Rep. Nixon

Vote: 13-6 (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: NO

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 219

BILL TITLE: relative to hearings for incapacitated persons admitted to state institutions by their guardians.

DATE: November 17, 2009

LOB ROOM: 208

Amendments:

Sponsor: Rep. Richardson, Weber OLS Document #: 2009-2490h
Sponsor: Rep. OLS Document #: adopted 13/6
Sponsor: Rep. OLS Document #:

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

Moved by Rep. Richardson

Seconded by Rep. Nixon

Vote: 13/6 (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. Philip Preston, Clerk

Philip Preston

JUDICIARY

Bill #: HB 219 Title: relative to hearings for incapacitated persons...

PH Date: / / Exec Session Date: 11 / 17 / 09

Motion: adopt amendment Amendment #: 2009-24906

MEMBER	YEAS	NAYS
Cote, David E, Chairman	Y	
Wall, Janet G, V Chairman	Y	
Potter, Frances D	Y	
Hackel, Paul L	Y	
Preston, Philip, Clerk	Y	
Richardson, Gary B	Y	
Weber, Lucy M	Y	
Browne, Brendon S	Y	
Nixon, David L	Y	
Thompson, Robert B	Y	
Watrous, Rick H	Y	
Rowe, Robert H		N
Elliott, Nancy J		N
DiFruscia, Anthony R <i>abs</i>		N
Mead, Robert D		N
O'Brien, William L		N
Hagan, Joseph M	Y	
Perkins, Lawrence B	Y	
Silva, Peter L		N
Smith, William P Bates, David		N

TOTAL VOTE:
Printed: 2/11/2009

13

6

Committee Report

REGULAR CALENDAR

November 20, 2009

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on JUDICIARY to which
was referred HB219,**

**AN ACT relative to hearings for incapacitated persons
admitted to state institutions by their guardians.**

**Having considered the same, report the same with the
following amendment, and the recommendation that
the bill OUGHT TO PASS WITH AMENDMENT.**

Rep. Gary B Richardson

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee: **JUDICIARY**
Bill Number: **HB219**
Title: **relative to hearings for incapacitated persons
admitted to state institutions by their
guardians.**
Date: **November 20, 2009**
Consent Calendar: **NO**
Recommendation: **OUGHT TO PASS WITH AMENDMENT**

STATEMENT OF INTENT

HB 219 as amended establishes certain time frames and procedures for hearings on incapacitated persons admitted to state institutions by their guardians. Personal liberties are among the most important fundamental rights contained in our Constitution. The bill as amended ensures that procedural safeguards will be met within a reasonable timeframe to protect anyone being improperly held at a state institution. In addition, the amendment provides that all hearings shall be held in the Merrimack County Probate Court which is appropriate given the location of the New Hampshire Hospital.

Vote 13-6

Rep. Gary B Richardson
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

JUDICIARY

HB219, relative to hearings for incapacitated persons admitted to state institutions by their guardians. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Gary B Richardson for the **Majority** of JUDICIARY. HB 219 as amended establishes certain time frames and procedures for hearings on incapacitated persons admitted to state institutions by their guardians. Personal liberties are among the most important fundamental rights contained in our Constitution. The bill as amended ensures that procedural safeguards will be met within a reasonable timeframe to protect anyone being improperly held at a state institution. In addition, the amendment provides that all hearings shall be held in the Merrimack County Probate Court which is appropriate given the location of the New Hampshire Hospital. **Vote 13-6.**

Original: House Clerk
Cc: Committee Bill File

HB 219

OTP/A

HB 219 as amended establishes certain time frames and procedures for hearings on incapacitated persons admitted to state institutions by their guardians. Personal liberties are among the most important fundamental rights contained in our Constitution. The bill as amended ensures that procedural safeguards will be met within a reasonable timeframe to protect anyone being improperly held at a state institution. In addition, the amendment provides that all hearings shall be held in the Merrimack County Probate Court which is appropriate given the location of the New Hampshire Hospital.

Gary Richardson

HB 219 Blurb

I. Surveys

HB 219 as amended establishes certain time frames and procedures for hearings on incapacitated persons admitted to state institutions by their guardians. Personal liberty is ~~one of~~ the most important fundamental rights contained in our constitution. The bill as amended ensures that procedural safeguards will be met ~~in a timely fashion~~ to protect ~~individuals~~ from being improperly held at a state institution. In addition, the amendment provides that all hearings shall be held in the Merrimack County Probate Court which is appropriate given the location of the New Hampshire Hospital.

~~with~~
~~afford~~
~~to~~

with a reasonable advance

OK [Signature]

REGULAR CALENDAR

November 20, 2009

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Minority of the Committee on JUDICIARY to which
was referred HB219,**

**AN ACT relative to hearings for incapacitated persons
admitted to state institutions by their guardians.**

**Having considered the same, and being unable to agree
with the Majority, report with the following Resolution:
RESOLVED, That it is INEXPEDIENT TO LEGISLATE.**

Rep. Robert D Mead

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee: **JUDICIARY**
Bill Number: **HB219**
Title: **relative to hearings for incapacitated persons
admitted to state institutions by their
guardians.**
Date: **November 20, 2009**
Consent Calendar: **NO**
Recommendation: **INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

There is no need for this legislation. It is designed to strengthen the rights of the incapacitated persons (under guardianship) to assure a timely commitment hearing at the State Hospital. This is "feel good" legislation to correct a nonexistent problem. It was filed in response to a case in which a patient did not receive a prompt hearing, due to the fact that the patient fired three court appointed attorneys in a row, thus causing the delay in receiving a prompt hearing through his own actions. While the legislation does add additional safeguards to help assure a speedy hearing, they are cosmetic only as there are no penalties imposed for failure to meet them.

Rep. Robert D Mead
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

JUDICIARY

HB219, relative to hearings for incapacitated persons admitted to state institutions by their guardians. **INEXPEDIENT TO LEGISLATE.**

Rep. Robert D Mead for the **Minority** of JUDICIARY. There is no need for this legislation. It is designed to strengthen the rights of the incapacitated persons (under guardianship) to assure a timely commitment hearing at the State Hospital. This is "feel good" legislation to correct a nonexistent problem. It was filed in response to a case in which a patient did not receive a prompt hearing, due to the fact that the patient fired three court appointed attorneys in a row, thus causing the delay in receiving a prompt hearing through his own actions. While the legislation does add additional safeguards to help assure a speedy hearing, they are cosmetic only as there are no penalties imposed for failure to meet them.

Original: House Clerk
Cc: Committee Bill File

HOUSE BILL *219*

Representative Robert Mead for the minority of Judiciary.

There is no need for this legislation. It is designed to strengthen the rights of the incapacitated persons (under guardianship) to assure a timely commitment hearing at the State Hospital. This is "feel good" legislation to correct a nonexistent problem. It was filed in response to a case in which a patient did not received a prompt hearing, due to the fact that the patient fired three court appointed attorneys in a row, thus causing the delay in receiving a prompt hearing through his own actions. While the legislation does add additional safeguards to help assure a speedy hearing, they are cosmetic only as there are no penalties imposed for failure to meet them.