

# Committee Report

**REGULAR CALENDAR**

**May 17, 2021**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Majority of the Committee on Health, Human Services and Elderly Affairs to which was referred SB 149-FN,**

**AN ACT adopting omnibus legislation on health and human services. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.**

**Rep. Mark Pearson**

**FOR THE MAJORITY OF THE COMMITTEE**

## **MAJORITY COMMITTEE REPORT**

Committee:	<b>Health, Human Services and Elderly Affairs</b>
Bill Number:	<b>SB 149-FN</b>
Title:	<b>adopting omnibus legislation on health and human services.</b>
Date:	<b>May 17, 2021</b>
Consent Calendar:	<b>REGULAR</b>
Recommendation:	<b>OUGHT TO PASS WITH AMENDMENT 2021-1295h</b>

### **STATEMENT OF INTENT**

Part I. clarifies Medicaid spend-down requirements by including mental health expenditures as medical expenditures and requiring a report to the Oversight Committee on Health and Human Services to be made by October 1, 2021. The report is to include a description of how the revised spend-down requirements were addressed in remedial staff training and in changes to the policy manual and department publications. Part II allows automated pharmacy systems at long term care facilities and hospices. The amendment removes language granting authority which the Pharmacy Board already has. Part III holds harmless health facilities which provided care in the Covid-19 emergency in accordance with applicable emergency orders. This section does not apply to those actions taken by facilities or by caregivers that were not related to the practice of medicine outside of the current emergency order or rule, or to future actions once the order or rule is no longer in effect. The majority believes that due to the emergency nature of the pandemic, those making good faith efforts in what are uncharted waters should be protected. The question was raised as to the limiting of the hold harmless provisions to just the COVID-19 pandemic. This narrow focus was done intentionally with the thought that legislation addressing future pandemics resulting in emergency orders would best be done separately from the emergency we are currently in. The original Senate bill had a section addressing the proposal for a harm reduction and overdose program in the Department of Health and Human Services. Some were of the belief that this section duplicated legislation already before the Senate. Others believed that this program would be controversial, and rather than risk causing the entire omnibus bill to be defeated, determined that the program should be addressed in a stand-alone bill.

Vote 18-2.

Rep. Mark Pearson  
FOR THE MAJORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Health, Human Services and Elderly Affairs

**SB 149-FN**, adopting omnibus legislation on health and human services. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Mark Pearson for the **Majority** of Health, Human Services and Elderly Affairs. Part I. clarifies Medicaid spend-down requirements by including mental health expenditures as medical expenditures and requiring a report to the Oversight Committee on Health and Human Services to be made by October 1, 2021. The report is to include a description of how the revised spend-down requirements were addressed in remedial staff training and in changes to the policy manual and department publications. Part II allows automated pharmacy systems at long term care facilities and hospices. The amendment removes language granting authority which the Pharmacy Board already has. Part III holds harmless health facilities which provided care in the Covid-19 emergency in accordance with applicable emergency orders. This section does not apply to those actions taken by facilities or by caregivers that were not related to the practice of medicine outside of the current emergency order or rule, or to future actions once the order or rule is no longer in effect. The majority believes that due to the emergency nature of the pandemic, those making good faith efforts in what are uncharted waters should be protected. The question was raised as to the limiting of the hold harmless provisions to just the COVID-19 pandemic. This narrow focus was done intentionally with the thought that legislation addressing future pandemics resulting in emergency orders would best be done separately from the emergency we are currently in. The original Senate bill had a section addressing the proposal for a harm reduction and overdose program in the Department of Health and Human Services. Some were of the belief that this section duplicated legislation already before the Senate. Others believed that this program would be controversial, and rather than risk causing the entire omnibus bill to be defeated, determined that the program should be addressed in a stand-alone bill. **Vote 18-2.**

Original: House Clerk

Cc: Committee Bill File

**REGULAR CALENDAR**

**May 17, 2021**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Minority of the Committee on Health, Human Services and Elderly Affairs to which was referred SB 149-FN,**

**AN ACT adopting omnibus legislation on health and human services. 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. Jim Kofalt**

**FOR THE MINORITY OF THE COMMITTEE**

## **MINORITY COMMITTEE REPORT**

Committee:	<b>Health, Human Services and Elderly Affairs</b>
Bill Number:	<b>SB 149-FN</b>
Title:	<b>adopting omnibus legislation on health and human services.</b>
Date:	<b>May 17, 2021</b>
Consent Calendar:	<b>REGULAR</b>
Recommendation:	<b>INEXPEDIENT TO LEGISLATE</b>

### **STATEMENT OF INTENT**

This omnibus legislation addresses three unrelated topics. Part III of the bill shields health facilities from liability in cases relating to a state of emergency declared under state and/or federal law in response to COVID-19, including liability arising from a patient's death, injury, or damage to property; provided that it happened as a result of compliance with, or reasonable attempts to comply with, emergency orders. Shielding medical professionals from liability shifts their priorities away from patient care and toward compliance with state mandates, making it less likely that they will push back against potentially harmful emergency orders. The minority believes that patients and their families should have access to the same legal remedies that they would have under any other circumstances, that legal criteria already exists to establish whether liability exists, and that no extraordinary exemption from liability is justified in this case.

Rep. Jim Kofalt  
FOR THE MINORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Health, Human Services and Elderly Affairs

**SB 149-FN**, adopting omnibus legislation on health and human services. **INEXPEDIENT TO LEGISLATE.**

Rep. Jim Kofalt for the **Minority** of Health, Human Services and Elderly Affairs. This omnibus legislation addresses three unrelated topics. Part III of the bill shields health facilities from liability in cases relating to a state of emergency declared under state and/or federal law in response to COVID-19, including liability arising from a patient's death, injury, or damage to property; provided that it happened as a result of compliance with, or reasonable attempts to comply with, emergency orders. Shielding medical professionals from liability shifts their priorities away from patient care and toward compliance with state mandates, making it less likely that they will push back against potentially harmful emergency orders. The minority believes that patients and their families should have access to the same legal remedies that they would have under any other circumstances, that legal criteria already exists to establish whether liability exists, and that no extraordinary exemption from liability is justified in this case.

Original: House Clerk

Cc: Committee Bill File

Amendment to SB 149-FN

1 Amend the bill by replacing Part II with the following:

2

3

PART II

4

Relative to automated pharmacy systems.

5

1 New Section; Pharmacies; Automated Pharmacy Systems. Amend RSA 318 by inserting after  
6 section 42 the following new section:

6

7

318:42-a Automated Pharmacy Systems; Long-term Care Facilities, Hospices, or State  
8 Correctional Institutions.

8

9

I. A pharmacy may provide pharmacy services to a long-term care facility or hospice licensed  
10 under RSA 151 or to a state correctional institution through the use of an automated pharmacy  
11 system that need not be located at the same location as the pharmacy.

10

11

12

II. The board shall adopt rules governing the use of an automated pharmacy system under  
13 this section, not later than January 1, 2022, which shall specify:

13

14

(a) Recordkeeping requirements;

15

(b) Security requirements; and

16

(c) Labeling requirements.

17

2 Effective Date. Part II of this act shall take effect 60 days after its passage.



# Voting Sheets



STATE OF NEW HAMPSHIRE  
OFFICE OF THE HOUSE CLERK



1/22/2021 10:06:45 AM  
Roll Call Committee Registers  
Report

2021 SESSION

**Health, Human Services and Elderly Affairs**

Bill #: SB 149-FN      Motion: OTP      AM #: 2021-1295h      Exec Session Date: 5/17/2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Pearson, Mark A. Chairman	20		
Marsh, William M. Vice Chairman	1		
McMahon, Charles E.	2		
Nelson, Bill G.	3		
Acton, Dennis F.	4		
Gay, Betty I.	5		
Cushman, Leah P.	6		
Folsom, Beth A. Clerk	7		
Kelsey, Niki	8		
King, Bill C.	9		
Kofalt, Jim	10		
Weber, Lucy M.	11		
MacKay, James R.	12		
Snow, Kendall A.	13		
Knirk, Jerry L.	14		
Salloway, Jeffrey C.	15		
Cannon, Gerri D.			absent
Nutter-Upham, Frances E.	16		
Schapiro, Joe	17		
Woods, Gary L.	18		

STATE OF NEW HAMPSHIRE  
OFFICE OF THE HOUSE CLERK



1/22/2021 10:06:45 AM  
Roll Call Committee Registers  
Report

2021 SESSION

Health, Human Services and Elderly Affairs

Bill #: SB 149-FN Motion: OTP AM #: 2021-1295h Exec Session Date: 5/17/2021

Query,		19		
<b>TOTAL VOTE:</b>		20	0	1

STATE OF NEW HAMPSHIRE  
OFFICE OF THE HOUSE CLERK



1/22/2021 10:06:45 AM  
Roll Call Committee Registers  
Report

2021 SESSION

**Health, Human Services and Elderly Affairs**

Bill #: SB 149-FN      Motion: OTPA      AM #: \_\_\_\_\_      Exec Session Date: 5/17/2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Pearson, Mark A. Chairman	18		
Marsh, William M. Vice Chairman	1		
McMahon, Charles E.	2		
Nelson, Bill G.	3		
Acton, Dennis F.	4		
Gay, Betty I.	5		
Cushman, Leah P.		1	
Folsom, Beth A. Clerk	6		
Kelsey, Niki	7		
King, Bill C.	8		
Kofalt, Jim		2	
Weber, Lucy M.	9		
MacKay, James R.	10		
Snow, Kendall A.	11		
Knirk, Jerry L.	12		
Salloway, Jeffrey C.	13		
Cannon, Gerri D.			absent
Nutter-Upham, Frances E.	14		
Schapiro, Joe	15		
Woods, Gary L.	16		

STATE OF NEW HAMPSHIRE  
OFFICE OF THE HOUSE CLERK



1/22/2021 10:06:45 AM  
Roll Call Committee Registers  
Report

2021 SESSION

Health, Human Services and Elderly Affairs

Bill #:	SB 149-FN	Motion:	OTPA	AM #:		Exec Session Date:	5/17/2021
Query,						17	
<b>TOTAL VOTE:</b>						18	2 1

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(a) Recordkeeping requirements;

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17

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# Hearing Minutes



**HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS**

**PUBLIC HEARING on Bill # SB 149-FN**

**BILL TITLE:** An Act adopting omnibus legislation on health and human services.

**DATE:** May 3, 2021

**ROOM:** LOB 306-8

**Time Public Hearing Called to Order:** 9:10 am

**Time Adjourned:** 10:20 am

**Committee Members:** Reps. M. Pearson, Marsh, Folsom, McMahan, Nelson, Acton, Gay, Cushman, Kelsey, B. King, Kofalt, Weber, MacKay, Query, Knirk, Salloway, Cannon, Nutter-Upham, Schapiro, Woods and Merchant

**TESTIMONY**

Senator Sherman, Grant Bosse, Majority policy staff member spoke on behalf of Sen. Sherman  
Part One - Clarifying in statute that Behavioral Health Services/Mental Health Costs are included in the Medicare spend down. This is not an expansion.

Part Two - Technical changes in pharmacy service systems - Sen. Carson's portion of the bill.

Part Three - Provides health care facilities limited liability protection for actions during a declared emergency when normal rules may be suspended. - Sen. Gray

Part One - no further testimony

Part Two - Henry Veilleux, Jody Fenelon, Partners Pharmacy - This gives statutory authority to the board to make rules regarding this program.

Controlled and non-controlled substances are included.

Stringent reconciliation practices.

Machine dispenses individual doses per patient at the correct time intervals. Lock downs on timing can be used.

Covers 170+ different drugs and doses.

Speeds up process of medication delivery

They would be comfortable with an amendment removing sections 2,3,4

They would still deliver stat/urgent meds within the normal 2-3 hours time frame.

Part Three

John Friberg, Solution Health in favor, healthcare facility waivers, deferring/delay non-emergency care, telehealth, alternative sites not previously authorized, protection of civil liability as long as the follow Covid practices. You cant legislate for every possible thing that could happen in a pandemic. It is assumed that practitioners and facilities take all reasonable efforts to maintain highest level of care during a pandemic.

David Creer - BIA of NH, lobbyist, business in Industry facilities are doing their best to comply

Marissa Chase - NH Assoc. for Justice - approve limited language regarding declared emergency orders.

Paula Minnehan - the NH Atty General weighed in on the language and amendments in Senate.

Melissa St.Cyr - CMS gave many blanket waivers during pandemic. These are federal regulations, and should be included.

Additional testimony on original bill as introduced.

Sen. Gray - The whole portion of the bill on overdose protection provision was amended out as it was covered under another bill - no one knew about any such bill.

Laura Byrne - a member of the public asked that it be reinserted.

Sen. Watters sponsor of the deleted portion spoke to the fact that this provision of safe spaces is similar to a needle exchange program. It would allow local municipalities to decide whether or not to implement program. He also knows of no other bill with this provision.

fmr. Rep. Jo Hannon - has sent Sen. Salloway language for the amendment. It was also suggested that it be heard by an existing commission on drug overdose prevention.

# House Remote Testify

## Health, Human Services and Elderly Affairs Committee Testify List for Bill SB149 on 2021-05-03

Support: 40 Oppose: 2 Neutral: 2 Total to Testify: 14

Export to Excel

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Rosenwald, Cindy	Concord, NH cindy.rosenwald@leg.state.nh.us	An Elected Official	SD 13	Support	Yes (5m)	No	4/20/2021 10:50 AM
Watters, Senator David	Dover, NH david.watters@leg.state.nh.us	An Elected Official	Myself (SD 4)	Support	Yes (5m)	No	4/30/2021 11:02 AM
Shagoury, Andrew	CENTER TUFTONBORO, NH a.shagoury@tuftonboro.org	A Member of the Public	Myself	Oppose	Yes (5m)	No	4/30/2021 5:06 PM
Carson, Sharon	Londonderry, NH deborah.chroniak@leg.state.nh.us	An Elected Official	SD 4, PART II - PRIME	Support	Yes (5m)	No	5/1/2021 9:05 PM
Hannon, Joe	Lee, NH Joeannon4nh@gmail.com	A Member of the Public	Myself	Neutral	Yes (5m)	Yes	5/2/2021 10:11 PM
Gray, James	Rochester, NH james.gray@leg.state.nh.us	An Elected Official	Senator Gray PART III	Support	Yes (5m)	No	5/2/2021 9:03 AM
Veilleux and Fenelon, Henry and Jody	Concord, NH hveilleux@sheehan.com	A Lobbyist	Partners Pharmacy	Support	Yes (4m)	No	5/2/2021 6:37 PM
Byrne, Laura	Lebanon, NH laura@h2rc.org	A Member of the Public	Myself and my agency	Support	Yes (4m)	No	4/30/2021 1:12 PM
Fowler, Ryan	Claremont, NH rfowler@h2rc.org	A Member of the Public	Myself	Support	Yes (3m)	No	4/30/2021 1:07 PM
Friberg, John	Manchester, NH john.friberg@solutionhealth.org	A Member of the Public	Solution Health	Support	Yes (3m)	No	4/30/2021 3:33 PM
Creer, David	Concord, NH dcreer@BIAofNH.com	A Lobbyist	BIA of NH	Support	Yes (2m)	No	4/30/2021 11:39 AM
Chase, Marissa	Manchester, NH mchase@nhaj.org	A Lobbyist	NH Association for Justice	Support	Yes (2m)	No	5/2/2021 5:18 PM
Minnehan, Paula	Hopkinton, NH pminnehan@nhha.org	A Lobbyist	NH Hospital Association	Support	Yes (2m)	No	4/30/2021 4:23 PM

Elhuni, Asma	Lebanon, NH asma@radnh.org	A Lobbyist	Rights and Democracy	Support	Yes (0m)	No	5/2/2021 11:27 PM
Wazir, Safiya	Merrimack, NH s.wazir@leg.state.nh.us	An Elected Official	My Constituents	Support	No	No	5/3/2021 7:20 AM
Rich, Cecilia	Not Hispanic or Latino, NH cecilia.rich@leg.state.nh.us	An Elected Official	Myself	Support	No	No	5/3/2021 7:42 AM
Stockwell, Heather	Dublin, NH heather@radnh.org	A Lobbyist	Rights & Democracy NH	Support	No	No	4/29/2021 3:53 PM
Chambers, Lauren	Franklin, NH ldustin@bu.edu	A Member of the Public	Myself	Support	No	No	4/30/2021 3:43 PM
Oxenham, Lee	Plainfield, NH leeoxenham@comcast.net	An Elected Official	Sullivan Co., District 1	Support	No	No	5/2/2021 1:56 PM
Gilman, Representative Julie	Exeter, NH julie.gilman@leg.state.nh.us	An Elected Official	Town of Exeter	Support	No	No	5/2/2021 8:46 PM
Bixby, Peter	Dover, NH peter.bixby@leg.state.nh.us	An Elected Official	Myself	Support	No	No	5/3/2021 9:26 AM
Stevens, Holly	Concord, NH hstevens@new-futures.org	A Lobbyist	New Futures	Support	No	No	5/3/2021 9:30 AM
Harriott-Gathright, Linda	Nashua, NH linda.HarriottGathright@leg.state.nh.us	An Elected Official	Myself	Support	No	No	5/3/2021 4:32 PM
Hamblet, Joan	PORTSMOUTH, NH joan.hamblet@leg.state.nh.us	An Elected Official	Myself	Support	No	No	5/2/2021 8:15 PM
perez, maria	Milford, NH mariaeli63@gmail.com	An Elected Official	District 23	Support	No	No	5/3/2021 8:15 AM
Hamer, Heidi	Manchester, NH heidi.hamer@leg.state.nh.us	An Elected Official	Myself	Support	No	No	5/3/2021 8:16 AM
Dontonville, Roger	Enfield, NH rdontonville@gmail.com	An Elected Official	Myself	Support	No	No	5/3/2021 8:16 AM
Sherman, Senator Tom	SD24, NH jennifer.horgan@leg.state.nh.us	An Elected Official	SD24	Support	No	No	5/3/2021 8:28 AM
Berry, Robert	Concord, NH robert.f.berry@dhhs.nh.gov	State Agency Staff	NH DHHS	Neutral	No	No	5/3/2021 8:36 AM
Chase, Wendy	Rollinsford, NH wendy.chase@leg.state.nh.us	An Elected Official	Myself	Support	No	No	5/1/2021 2:53 PM
Booras, Hon. Efstathia	nashua, NH efstathiab73@gmail.com	An Elected Official	Constituents	Support	No	No	5/3/2021 10:41 AM

LaFreniere, Emilie	Hanover, NH emlafren@gmail.com	A Member of the Public	Myself	Support	No	No	5/3/2021 10:52 AM
Bruce, Susan	Concord, NH susanb.red@mac.com	A Member of the Public	Myself	Oppose	No	No	5/2/2021 7:03 PM
Horgan, Kate	CONCORD, NH khorgan@dupontgroup.com	A Lobbyist	NH Association of Counties	Support	No	No	4/30/2021 11:30 AM
Almy, Susan	Lebanon, NH susan.almy@comcast.net	An Elected Official	Myself	Support	No	No	5/2/2021 9:28 PM
Grassie, Chuck	Rochester, NH chuck.grassie@leg.state.nh.us	An Elected Official	Strafford 11	Support	No	No	5/2/2021 10:54 PM
Ropp, Elizabeth	Manchester, NH arunareiki@gmail.com	A Member of the Public	Myself	Support	No	No	5/2/2021 8:44 AM
Baranes, Sarah	Lebanon, NH sarah.m.baranes.med@dartmouth.edu	A Member of the Public	Myself	Support	No	No	5/1/2021 12:39 PM
Vail, Suzanne	Nashua, NH Suzanne.vail@leg.state.nh.us	An Elected Official	Hillsborough County 30	Support	No	No	4/30/2021 9:23 PM
Casino, Joanne	Concord, NH joannecasino@comcast.net	A Member of the Public	Myself	Support	No	No	5/1/2021 9:25 AM
Klee, Patricia	Nashua, NH Patricia.Klee@leg.state.nh.us	An Elected Official	Myself	Support	No	No	5/1/2021 9:34 AM
Wright, Betty Jean	Exeter, NH Jeaneewright2021@gmail.com	A Member of the Public	Myself	Support	No	No	4/30/2021 8:08 AM
Oxenham, Evan	Plainfield, NH evan.oxenham@gmail.com	A Member of the Public	Myself	Support	No	No	5/2/2021 2:58 PM
Weston, Joyce	NH, NH jweston14@roadrunner.com	An Elected Official	Myself	Support	No	No	5/2/2021 3:08 PM

# Testimony

**The file contains archived copy of 5 item(s) from folder .**

**The attachments of an item are attached to the PDF file in the package associated to the item.**

**The date of archiving is Thursday, June 3, 2021.**



April 30, 2021

The Honorable Mark Pearson  
Chair  
Health, Human Services and Elderly Affairs Committee  
New Hampshire House of Representatives  
Legislative Office Building 205  
Concord, NH 03031

Dear Chairman Pearson,

My name is John Friberg, and I am the Chief Legal Officer for SolutionHealth, the not-for-profit parent organization of Elliot Health System and Hospital in Manchester and Southern New Hampshire Health System and Medical Center in Nashua.

I appreciate the opportunity to testify in support of SB 149, Omnibus legislation on health and human services, Part III "Health facilities providing care in the declared emergency."

SB 149 will clearly confirm the Legislature's intent regarding the applicability of New Hampshire's Emergency Management statute, RSA 21-P, to licensed healthcare facilities and their personnel when they have followed a COVID-19 related emergency order, rule or waiver from state or federal authorities. The bill will codify the Attorney General's opinion of April 22, 2020 and will make the state of New Hampshire law undeniably clear that such actions are Emergency Management activities and thereby immune from civil liability arising with compliance with such an emergency order, rule or waiver.

Since the sudden and unexpected onset of our current public health emergency in March of 2020, healthcare organizations and personnel have been provided with guidance and direction from state and federal authorities, designed to slow the spread of the virus and to ensure that we maximize our ability to respond effectively to patient surges. These emergency orders, rules and waivers encouraged or required healthcare providers to, for example:

- Cancel elective procedures, to support stay-at-home orders and preserve resources for COVID response.
- Maximize the use of tele-health visits for the same reasons.
- Expand the locations at which healthcare is delivered, to Alternative Care Sites (ACSs) and into areas of our facilities not previously licensed for such services.
- Limit or prohibit visitors.
- Allow for ER triage screening in new places and ways.
- Source and utilize increasingly scarce Personal Protective Equipment (PPE) in non-traditional ways.
- Adjust documentation and discharge planning requirements.



Compliance with such guidance and directives has caused the healthcare system to deliver care in non-traditional ways in order to meet the COVID-19 challenge head on.

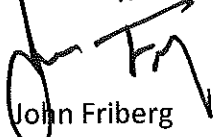
A concern of many doctors and nurses is whether these very actions, in order comply with governmental guidance and directives, could give rise to potential civil tort liability, based on an assertion that such actions in compliance fall below the standard of care, and are therefore indicative of or constitute negligence. The language in SB 149 Part III is narrowly tailored and drafted to simply ensure that those specific actions in compliance with such governmental guidance and/or directives, during the state of emergency, may not give rise to civil liability.

Appropriate and necessary Emergency Management activities should not later give rise to civil tort liability exposure. This is why RSA 21-P conveys immunity from such claims in cases where healthcare personnel are acting within the scope of that statutory scheme.

While New Hampshire's healthcare providers are certainly grateful to the Department of Justice for the Opinion of the Attorney General from last spring, opining that RSA 21-P does confer such immunity to such activities, a clear and succinct confirmation of the *Legislature's* intent, in agreement with this analysis, provides significantly greater comfort, clarity and protection. This is the sole purpose of SB 149 Part III and I would respectfully ask for your support.

Thank you for your attention and support for this important effort to ensure that New Hampshire's healthcare providers are not later penalized, in the context of civil litigation, for what they were called upon to do in order to protect our communities from this unprecedented public health emergency.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Friberg', written over a circular stamp or mark.

John Friberg  
Chief Legal Officer  
SolutionHealth

**318:42 Dealing in or Possessing Prescription Drugs. –**

It shall be unlawful for any person who is not a licensed pharmacist in a pharmacy registered in accordance with the provisions of this chapter to manufacture, compound, dispense, sell, offer for sale or have in possession any prescription drug as defined in RSA 318:1, XVII, provided that this section shall not prevent the following:

XV. The placement of automated pharmacy systems in long-term care facilities, hospices, and state correctional institutions, for the purpose of storage and dispensing of controlled and non-controlled prescription drugs under the supervision and control of a licensed pharmacist. Only pharmacies registered by the Federal Drug Enforcement Administration may provide controlled substances for storage in and dispensing from automated pharmacy systems.

**318:5-a Rulemaking Authority. –**

The board shall adopt rules, pursuant to RSA 541-A, relative to:

XII. Procedures for the use, documentation, security, maintenance, and monitoring of automated pharmacy systems, including the placement of automated pharmacy systems in long-term care facilities, hospices, and state or county correctional institutions, for the purposes of storage and dispensing of controlled and non-controlled prescription drugs.

SB 149-FN - AS INTRODUCED

2021 SESSION

21-1074

10/04

SENATE BILL        **149-FN**

AN ACT            adopting omnibus legislation on health and human services.

SPONSORS:        Sen. Sherman, Dist 24

COMMITTEE:      Health and Human Services

---

ANALYSIS

This bill adopts legislation relative to:

I. Nursing home standards.

II. Clarifying Medicaid spend-down requirements and requiring a report to the oversight committee on health and human services.

III. Establishing a harm reduction and overdose prevention program in the department of health and human services.

IV. Automated pharmacy systems.

V. Establishing a rehabilitation bed pilot program.

VI. Health facilities providing care in the declared emergency.

VII. Confidential sharing of information under the controlled drug prescription health and safety program.

---

Explanation:      Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struckthrough.~~]  
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 Twenty One*

AN ACT                    adopting omnibus legislation on health and human services.

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

1            1 Sponsorship. This act consists of the following proposed legislation:

2            Part I. LSR 21-0208, relative to nursing home standards, sponsored by Sen. Ward,  
3 Prime/Dist 8.

4            Part II. LSR 21-0427, clarifying Medicaid spend-down requirements and requiring a report  
5 to the oversight committee on health and human services, sponsored by Sen. Rosenwald, Prime/Dist  
6 13; Sen. Hennessey, Dist 1; Sen. Whitley, Dist 15; Sen. Sherman, Dist 24; Sen. Bradley, Dist 3; Rep.  
7 Guthrie, Rock. 13; Rep. McMahon, Rock. 7; Rep. Marsh, Carr. 8; Rep. Knirk, Carr. 3; Rep. Mullen,  
8 Hills. 7.

9            Part III. LSR 21-0837, establishing a harm reduction and overdose prevention program in  
10 the department of health and human services, sponsored by Sen. Watters, Prime/Dist 4; Sen.  
11 Sherman, Dist 24; Sen. Whitley, Dist 15; Sen. D'Allesandro, Dist 20; Rep. Amanda Bouldin, Hills 12;  
12 Rep. Woods, Merr. 23; Rep. Conley, Straf. 13.

13            Part IV. LSR 21-0936, relative to automated pharmacy systems, sponsored by Sen. Carson,  
14 Prime/Dist 14.

15            Part V. LSR 21-0997, establishing a rehabilitation bed pilot program, sponsored by Sen.  
16 Bradley, Prime/Dist 3.

17            Part VI. LSR 21-1006, relative to health facilities providing care in the declared emergency,  
18 sponsored by Sen. Gray, Prime/Dist 6.

19            Part VII. LSR 21-0833, relative to confidential sharing of information under the controlled  
20 drug prescription health and safety program, sponsored by Sen. Giuda, Prime/Dist 2; Sen.  
21 Rosenwald, Dist 13; Sen. Carson, Dist 14; Sen. Prentiss, Dist 5; Sen. D'Allesandro, Dist 20; Sen.  
22 Soucy, Dist 18; Rep. M. Pearson, Rock. 34; Rep. Marsh, Carr. 8; Rep. Merchant, Sull. 4.

23            2 Legislation Enacted. The general court hereby enacts the following legislation:

24

25

PART I

26

Relative to nursing home standards.

27            1 New Section; Nursing Home Facilities. Amend RSA 151 by inserting after section 12-b the  
28 following new section:

29            151:12-c Placement in Nursing Home Facilities. A resident of New Hampshire who receives  
30 Medicaid and who requires nursing home care shall not be placed in any out-of-state facility which  
31 does not meet the requirements of this chapter and other standards of care under New Hampshire

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**- Page 2 -**

1       2 Effective Date. Part I of this act shall take effect January 1, 2022.

2  
3                                   **PART II**

4                               **Clarifying Medicaid spend-down requirements**

5                               and requiring a report to the oversight committee on health and human services.

6               1 New Section; Spend-Down Requirements for Medical Expenses. Amend RSA 167 by inserting  
7 after section 4-d the following new section:

8               167:4-e Spend-down Requirements for Medical Expenses. For the purposes of off-setting the  
9 Medicaid spend-down requirements, mental health expenses shall be included as medical expenses.

10              2 Report to Oversight Committee on Health and Human Services.

11              I. The department of health and human services shall submit an interim report on or before  
12 October 1, 2021, to the oversight committee on health and human services, established pursuant to  
13 RSA 126-A:13, relative to actions taken to ensure the uniform application of spend-down  
14 requirements. The report shall include a description of how spend-down requirements were  
15 addressed in remedial staff training programs, updates to the policy manual, and updates to the  
16 brochure and any other department publications.

17              II. The department shall submit a final report by October 1, 2022, on the application of  
18 spend-down requirements. The report shall include data indicating how spend-down requirements  
19 have been applied since the interim report was filed.

20              3 Effective date. Part II of this act shall take effect upon its passage.

21  
22                                   **PART III**

23                               **Establishing a harm reduction and overdose prevention program**  
24   **in the department of health and human services.**

25              1 Findings. The legislature finds and declares all of the following:

26              I. Overdose deaths in New Hampshire are an urgent public health crisis. For many years,  
27 overdose has been the leading cause of accidental death in the United States and in New Hampshire.

28              II. Harm reduction and overdose prevention programs (OPPs) are an evidence-based harm  
29 reduction strategy that allow individuals to consume drugs in a hygienic environment under the  
30 supervision of trained staff, who are able to intervene if the patient overdoses. OPPs also provide  
31 sterile consumption equipment and offer general medical advice and referrals to drug treatment and  
32 other community social services.

33              III. There are approximately 165 overdose prevention programs operating in 10 countries  
34 around the world, and numerous peer-reviewed studies have confirmed that those programs are  
35 effective in reducing overdose deaths and HIV transmission, and in increasing access to counseling,  
36 treatment, and other risk reduction services. Research has also demonstrated that those programs

1 decrease use of emergency medical services, reduce public drug use, reduce syringe debris, and do  
2 not increase crime or drug use.

3 IV. An analysis published in the Journal of Drug Issues in 2016, OPPs in New Hampshire  
4 would save the state and municipalities substantial funds by reducing other costs due to opioid use  
5 and overdose.

6 V. An increase in overdose deaths was observed nationwide in 2020 according to the Office  
7 of National Drug Control Policy, rising 16.6 percent, based on a comparison of January to April,  
8 inclusive, of 2019 with the same time frame of 2020.

9 VI. As demands for reform of the criminal legal system reverberate around the country,  
10 OPPs offer an alternative framework for addressing both drug use as well as the enforcement of drug  
11 laws. OPPs bring people inside to a safe and therapeutic space, instead of leaving them vulnerable  
12 to police intervention, arrest, and incarceration.

13 VII. It is the intent of the legislature to promote the health and safety of communities by  
14 evaluating the health impacts of OPPs. It is the intent of the legislature to prevent fatal and  
15 nonfatal drug overdoses, reduce drug use by providing a pathway to drug treatment, as well as  
16 medical and social services for high-risk drug users, many of whom are homeless or uninsured or  
17 very low income, prevent the transmission of HIV and hepatitis C, reduce nuisance and public safety  
18 problems related to public use of controlled substances, reduce emergency room use and hospital  
19 utilization related to drug use, reserving precious space, including intensive care beds, for treatment  
20 of COVID-19, and other life-threatening conditions.

21 VIII. Further, it is the intent of the legislature that OPPs should be evaluated in New  
22 Hampshire municipalities that authorize them, as OPPs show great promise to save lives, enhance  
23 public safety, improve access to drug treatment, medical care, and related services, reduce  
24 emergency department and hospital utilization related to drug overdose, and reduce the human,  
25 social, and financial costs of epidemics of drug misuse, homelessness, and COVID-19.

26 2 New Subdivision; Harm Reduction and Overdose Prevention Programs. Amend RSA 318-B by  
27 inserting after section 45 the following new subdivision:

Harm Reduction and Overdose Prevention Programs

29 318-B:45-a Harm Reduction and Overdose Prevention Programs

30 I.(a) Notwithstanding any other law, a New Hampshire municipality may approve entities  
31 within its jurisdiction to establish and operate overdose prevention programs for persons 18 years of  
32 age or older that satisfy the requirements set forth in paragraph IV.

33 II. Prior to approving an entity within its jurisdiction pursuant to paragraph I, a  
34 municipality shall provide local law enforcement officials, local public health officials, and the public  
35 with an opportunity to comment in a public meeting. The notice of the meeting to the public shall be  
36 sufficient to ensure adequate participation in the meeting by the public. The meeting shall be

1 noticed in accordance with all state laws and local ordinances, and as local officials deem  
2 appropriate.

3 III.(a) The following entities, if self-funded, may operate an OPP upon approval of the  
4 municipality's governing body in New Hampshire to prevent the transmission of disease and reduce  
5 morbidity and mortality among individuals who inject drugs:

- 6 (1) Federally qualified health centers.
- 7 (2) Community health centers.
- 8 (3) Public health networks.
- 9 (4) AIDS service organizations.
- 10 (5) Substance misuse support or treatment organizations.
- 11 (6) Community based organizations.

12 (b) The commissioner of the department of health and human services shall adopt rules,  
13 pursuant to RSA 541-A, further defining the entities which may operate an overdose prevention  
14 program.

15 IV. Any entity operating an OPP in New Hampshire shall:

16 (a) Provide a hygienic space supervised by health care professionals where people who  
17 use drugs can consume pre-obtained drugs. For purposes of this paragraph, "health care  
18 professional" includes, but is not limited to, a physician, physician assistant, nurse practitioner,  
19 licensed vocational nurse, registered nurse, psychiatrist, psychologist, licensed clinical social worker,  
20 licensed professional clinical counselor, mental health provider, social service provider, or substance  
21 use disorder provider, trained in overdose recognition and reversal.

22 (b) Provide sterile consumption supplies, collect used hypodermic needles and syringes,  
23 and provide secure hypodermic needle and syringe disposal services.

24 (d) Administer first aid, if needed, monitor participants for potential overdose, and  
25 provide treatment as necessary to prevent fatal overdose.

26 (e) Provide referral and linkage to HIV, viral hepatitis, and substance use disorder  
27 prevention, care, and treatment services, as appropriate.

28 (f) Coordinate and collaborate with other local agencies, organizations, and providers  
29 involved in comprehensive prevention programs for people who inject drugs to minimize duplication  
30 of effort.

31 (g) Attempt to be a part of a comprehensive service program that may include, as  
32 appropriate:

33 (1) Providing sterile needles, syringes, and other drug preparation equipment and  
34 disposal services.

35 (2) Educating and counseling to reduce sexual, injection, and overdose risks.

36 (3) Providing condoms to reduce risk of sexual transmission of viral hepatitis, HIV,  
37 or other STDs.

1 (4) Screening for HIV, viral hepatitis, STDs, and tuberculosis.

2 (5) Providing naloxone to reverse opioid overdoses.

3 (6) Providing referral and linkage to HIV, viral hepatitis, STD and tuberculosis  
4 prevention, treatment, and care services, including antiretroviral therapy for hepatitis C virus  
5 (HCV) and HIV, pre-exposure prophylaxis (PrEP), post-exposure prophylaxis (PEP), prevention of  
6 mother-to-child transmission, and partner services.

7 (7) Providing referral and linkage to hepatitis A virus (HAV) and hepatitis B virus  
8 (HBV) vaccination.

9 (8) Providing referral and linkage to and provision of substance use disorder  
10 treatment including medication assisted treatment for opioid use disorder which combines drug  
11 therapy such as methadone, buprenorphine, or naltrexone with counseling and behavioral therapy.

12 (9) Providing referral to medical care, mental health services, and other support  
13 services.

14 (h) Post its address, phone number, program contact information, if appropriate, hours  
15 of operation, and services offered on its Internet website.

16 (i) Provide reasonable security of the program site.

17 (j) Establish operating procedures for the program, made available to the public either  
18 through an Internet website or upon request, that are publicly noticed, including, but not limited to,  
19 standard hours of operation, a minimum number of personnel required to be on site during those  
20 hours of operation, the licensing and training standards for staff present, an established maximum  
21 number of individuals who can be served at one time, and an established relationship with the  
22 nearest emergency department of a general acute care hospital, as well as eligibility criteria for  
23 program participants.

24 (k) Train staff members to deliver services offered by the program.

25 (l) Establish a good neighbor policy that facilitates communication from and to local  
26 businesses and residences, to the extent they exist, to address any neighborhood concerns and  
27 complaints.

28 (m) Establish a policy for informing local government officials and neighbors about the  
29 approved entity's complaint procedures, and the contact number of the director, manager, or  
30 operator of the approved entity.

31 (n) Register with the department of health and human services and confirm registration  
32 annually on or before November 1 of each subsequent year; provided however, the registration  
33 process shall be limited to notification to the department for data collection purposes only.

34 (o) Report quarterly to the department, which report shall include the following  
35 information regarding the program's activities:

36 (1) The number of program participants.

37 (2) Aggregate information regarding the characteristics of program participants.



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- 1 (3) The number of hypodermic needles and syringes distributed for use on site.
- 2 (4) The number of overdoses experienced and the number of overdoses reversed on
- 3 site.
- 4 (5) The number of persons referred to substance misuse treatment/services.
- 5 (6) The number of individuals directly and formally referred to other services and
- 6 the type of service.

7 V. Notwithstanding any other law, a person or entity, including, but not limited to, property  
8 owners, managers, employees, volunteers, clients or participants, and employees of the New  
9 Hampshire municipalities, state agencies, hospitals, or overdose prevention programs, acting in the  
10 course and scope of employment, shall not be arrested, charged, or prosecuted under RSA 318-B:2 for  
11 possession of controlled substances, possession of drug paraphernalia, or allowing drug use on  
12 premises, including for attempt, aiding and abetting, or conspiracy to commit a violation of any of  
13 those offenses, or otherwise be penalized solely for actions, conduct, or omissions on the site of a  
14 harm reduction and overdose prevention program approved under this section, or for conduct  
15 relating to the approval of an entity to operate an OPP, or the inspection, licensing, or other  
16 regulation of an OPP approved under this section.

17 VI. Notwithstanding any other law, a person or entity, including, but not limited to,  
18 property owners, managers, employees, volunteers, clients or participants, and employees of  
19 overdose prevention programs acting in the course and scope of employment shall not be subject to  
20 civil, administrative, disciplinary, employment, credentialing, professional discipline, contractual  
21 liability, or medical staff action, sanction, or penalty or other liability, or have their property subject  
22 to forfeiture, solely for actions, conduct, or omissions in compliance with an OPP approved under this  
23 section or for conduct relating to the approval of an entity to operate an OPP, or the inspection,  
24 licensing, or other regulation of an OPP approved pursuant to this section.

25 VII. Nothing in this section shall be construed to prohibit the department of health and  
26 human services from administering and/or disbursing federal or other funds to harm reduction and  
27 overdose prevention programs authorized under this section. The use of state general funds shall be  
28 prohibited unless otherwise appropriated by the general court.

29 VIII. No overdose prevention program shall be located within a drug-free school zone as  
30 defined in RSA 193-B:1, II. Exceptions to this prohibition may be granted by the applicable district  
31 school board when a request is initiated by a overdose prevention program administrator.

32 3 Syringe Service Programs; reference Added. Amend RSA 318-B:44 to read as follows:

33 318-B:44 Syringe Service Programs; Affirmative Defense. It is an affirmative defense, as  
34 provided in RSA 626:7, to prosecution for possession of a hypodermic syringe or needle that the item  
35 was obtained through participation in a syringe service program or an overdose prevention program  
36 under RSA 318-B:45-a. Nothing in this section shall be construed as an affirmative defense for any  
37 offense other than as set forth under RSA 318-B:26, [II(f)] II(e).

1 4 Effective Date. Part III of this act shall take effect 60 days after its passage.

2  
3 PART IV

4 Relative to automated pharmacy systems.

5 1 Pharmacies; Definitions; Automated Pharmacy System. Amend RSA 318:1, XXII to read as  
6 follows:

7 XXII. "Automated pharmacy system" means mechanical systems that perform operations or  
8 activities, other than compounding or administration, relative to the storage, packaging, dispensing,  
9 ~~[or]~~ distribution, **counting, labeling, and delivery** of medications, and which collects, controls, and  
10 maintains all transaction information.

11 2 New Section; Pharmacies; Automated Pharmacy Systems. Amend RSA 318 by inserting after  
12 section 42 the following new section:

13 318:42-a Automated Pharmacy Systems.

14 I. In this section:

15 (a) "Provider pharmacy" means a pharmacy that provides pharmacy services by using an  
16 automated pharmacy system at a remote site.

17 (b) "Remote site" means a long term care facility, hospice, or state or county correctional  
18 institution, that is not located at the same location as the provider pharmacy, at which pharmacy  
19 services are provided using an automated pharmacy system.

20 II.(a) A provider pharmacy may provide pharmacy services to a long term care facility,  
21 hospice, or state or county correctional institution through the use of an automated pharmacy  
22 system.

23 (b) An automated pharmacy system shall only be used to provide pharmacy services to  
24 an inpatient or a resident of the remote site.

25 (c) Supervision of the automated pharmacy system shall be the responsibility of a  
26 licensed pharmacist employed by the provider pharmacy.

27 (d) Every medicinal drug stored in the automated pharmacy system shall be owned by  
28 the provider pharmacy.

29 (e) An automated pharmacy system shall be under the supervision of a pharmacist  
30 employed by the provider pharmacy. The pharmacist need not be physically present at the remote  
31 site if the system is supervised electronically.

32 (f) A provider pharmacy shall have policies and procedures to ensure adequate security.

33 III.(a) The pharmacist shall ensure that the automated pharmacy system complies with  
34 state and federal laws relating to the regulation of controlled substances, for each automated  
35 pharmacy system that contains a controlled substance.

36 (b) The pharmacist shall ensure that the use of an automated pharmacy system does not  
37 compromise patient confidentiality.

1 (c) The pharmacist or a designee shall:

2 (1) Authorize or deny access to the data from an automated pharmacy system or to a  
3 drug stored inside the automated pharmacy system.

4 (2) Document the training of each person who has access to the data from an  
5 automated pharmacy system or to a drug stored inside the automated pharmacy system.

6 IV.(a) A medicinal drug stored in bulk or unit-of-use in an automated pharmacy system is  
7 part of the inventory of the provider pharmacy and is not part of the inventory of any other  
8 pharmacy permit for the facility.

9 (b) A medicinal drug may be removed from an automated pharmacy system for  
10 administration to a patient only after a prescription or order has been received and approved by a  
11 pharmacist at the provider pharmacy.

12 (c) A pharmacist at the provider pharmacy shall control all operations of the automated  
13 pharmacy system and approve release of the initial dose of a prescription or order. A subsequent  
14 dose from an approved prescription or order may be released without additional approval of a  
15 pharmacist. However, any change made in a prescription or order shall require a new approval by a  
16 pharmacist to release the drug.

17 (d) A pharmacist at the provider pharmacy shall comply with the patient record  
18 requirements in this chapter and in rules of the board and RSA 318-B for every medicinal drug  
19 delivered through an automated pharmacy system.

20 (e) If the facility where pharmacy services are being provided maintains a medication  
21 administration record that includes directions for use of the medication, a unit dose medication may  
22 be utilized if the provider pharmacy or the automated pharmacy system identifies and records the  
23 dispensing pharmacy, the prescription or order number, the name of the patient, and the name of  
24 the prescribing practitioner for each medicinal drug delivered.

25 (f)(1) The stocking or restocking of a medicinal drug in an automated pharmacy system  
26 at the remote site shall be completed by a pharmacist or other licensed personnel, except as provided  
27 in subparagraph (2).

28 (2) If the automated pharmacy system uses removable cartridges or containers to  
29 store the drug, the stocking or restocking of the cartridges or containers may occur at the provider  
30 pharmacy and be sent to the remote site to be loaded by personnel designated by the pharmacist if:

31 A. A pharmacist verifies the cartridge or container has been properly filled and  
32 labeled.

33 B. The individual cartridge or container is transported to the remote site in a  
34 secure, tamper-evident container.

35 C. The automated pharmacy system uses bar code verification, electronic  
36 verification, or similar process to assure that the cartridge or container is accurately loaded into the  
37 automated pharmacy system.

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1 (g) A medicinal drug that has been removed from the automated pharmacy system shall  
2 not be replaced into the system unless a pharmacist has examined the medication, the packaging,  
3 and the labeling and determined that reuse of the medication is appropriate.

4 (h) Medication to be returned to the provider pharmacy's stock shall meet the  
5 requirements in rules adopted by the board.

6 V.(a) If a provider pharmacy intends to store a controlled substance in an automated  
7 pharmacy system:

8 (1) It shall maintain a separate DEA registration for each remote site at which a  
9 controlled substance is stored.

10 (2) It may utilize one DEA registration to include multiple automated pharmacy  
11 systems located at a single address.

12 (b) A provider pharmacy shall only store a medicinal drug at a remote site within an  
13 automated pharmacy system which is locked by a mechanism that prevents access to a drug or to  
14 data by unauthorized personnel.

15 (c) Access to the drugs shall be limited to a pharmacist, authorized technician, or  
16 licensed advanced pharmacy technician, employed by the provider pharmacy or licensed personnel in  
17 the facility or institution who are authorized to administer medication.

18 (d) An automated pharmacy system that contains a controlled substance shall prohibit  
19 simultaneous access to multiple drug entities, drug strengths, or dosage forms of controlled  
20 substances.

21 VI.(a) The record of transactions with the automated pharmacy system shall be maintained  
22 in a readily retrievable manner.

23 (b) The record shall be available to the board or the board's authorized agent.

24 (c) The record shall include:

25 (1) Name or identification of the patient or resident.

26 (2) Name, strength and dosage form of the drug product released.

27 (3) Quantity of drug released.

28 (4) Date and time of each release of a drug.

29 (5) Name of provider pharmacy.

30 (6) Prescription number or order number.

31 (7) Name of prescribing practitioner.

32 (8) Identity of the pharmacist who approved the prescription or order.

33 (9) Identity of the person to whom the drug was released.

34 (d) A record of every transaction with the automated pharmacy system shall be  
35 maintained for 4 years.

36 3 Effective Date. Part IV of this act shall take effect 60 days after its passage.

37

PART V

Establishing a rehabilitation bed pilot program.

1 New Paragraph; Rehabilitation Bed Program. Amend RSA 151:2 by inserting after paragraph VI the following new paragraph:

VII.(a) Notwithstanding the provisions of paragraph VI, any acute care or critical access hospital shall be permitted to apply for a license to operate rehabilitation care services. Such application shall be made on or before June 30, 2023; provided, however, that the hospital shall demonstrate in advance that its geometric mean length of stay as determined by the Centers for Medicare and Medicaid Services has remained no less than 110 percent during a consecutive 6 month period in the 12 months prior to the hospital's demonstration.

(b) Upon receipt of a hospital's geometric mean length of stay percentage, the department within 15 days shall certify through inquiry to the Center for Medicare and Medicaid Services the accuracy of such percentage and shall inform the applicant of the results of the inquiry.

(c) Upon receipt of confirmation from the department of the geometric mean length of stay percentage, a hospital may file its license application.

(d) The initial term of the pilot program shall end June 30, 2023 and the program will automatically renew.

2 Repeal. RSA 151:2, VII, relative to the rehabilitation program, is repealed.

3 Effective Date.

I. Section 2 of this part shall take effect December 31, 2024.

II. The remainder of this part shall take effect 60 days after its passage.

PART VI

Relative to health facilities providing care in the declared emergency.

1 New Section; Novel Coronavirus Disease (COVID-19) Outbreak; Health Facilities. Amend RSA 21-P by inserting after section 42 the following new section:

21-P:42-a Novel Coronavirus Disease (COVID-19) Outbreak; Health Facilities. Acute care hospitals, assisted living facilities, long-term care facilities, nursing facilities, residential care facilities, ambulatory care clinics (as defined in RSA 151, RSA 151-A, RSA 151-D, RSA 151-E and RSA 151-H), and any other similar facilities providing care to elderly or infirm patients, referred to in this section as "health facilities," and the employees, agents and volunteers of such health facilities, are deemed to have been engaged in preparing for and carrying out emergency management functions for the purposes of RSA 21-P:35 when taking actions to comply, or reasonably attempting to comply, with any executive order, agency order or rule (including but not limited to waivers from the Centers for Medicare and Medicaid Services (CMS)) both issued as blanket waivers by CMS and as requested the department of health and human services pertaining to the state of emergency declared under state or federal law in response to the Novel Coronavirus Disease

1 (COVID-19) Outbreak. All such orders and rules are deemed to constitute orders, rules, or  
2 regulations adopted pursuant to RSA 21-P.

3 2 Effective Date. Part VI of this act shall take effect upon its passage.  
4

5 PART VII

6 Relative to confidential sharing of information

7 under the controlled drug prescription health and safety program.

8 1 New Paragraph; Controlled Drug Prescription Health and Safety Program Established.  
9 Amend RSA 318-B:32 by inserting after paragraph I the following new paragraph:

10 I-a. The office may enter into agreements or contracts to facilitate the confidential sharing of  
11 information relating to the prescribing and dispensing of schedule II-IV controlled substances, by  
12 practitioners within the state and to establish secure connections between the program and a  
13 practitioner's electronic health record keeping system. The electronic health record keeping system  
14 may allow for the query and retrieval of program information for display and retention in the  
15 patient's medical information; provided that nothing in this section shall allow the electronic health  
16 record keeping system owner or license holder to perform data queries unrelated to individuals  
17 under the practitioner's care. The electronic health record keeping system owner or license holder  
18 shall be responsible for ensuring that only authorized individuals have access to program  
19 information.

20 2 New Paragraph; Controlled Drug Prescription Health and Safety Program; Confidentiality.  
21 Amend RSA 318-B:34 by inserting after paragraph II the following new paragraph:

22 II-a. A practitioner who intends to request and use information from the program about a  
23 patient shall post a sign that can be easily viewed by the public that discloses to the public that the  
24 practitioner may access and use information contained in the program. In lieu of posting a sign, the  
25 practitioner may provide such notice in written material provided to the patient.

26 3 Effective Date. Part VII of this act shall take effect upon its passage.

LBA  
21-1074  
2/8/21

**SB 149-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT                    adopting omnibus legislation on health and human services

**FISCAL IMPACT:**

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill, as introduced, as it is awaiting information from the Department of Health and Human Services and Office of Professional Licensure and Certification. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

**AGENCIES CONTACTED:**

Department of Health and Human Services and Office of Professional Licensure and Certification



**HOUSE HEALTH AND HUMAN SERVICES COMMITTEE**

**May 3, 2021**

**SB 149 – Adopting Omnibus Legislation on Health and Human Services**

**Testimony**

Good afternoon, Chairman, and members of the committee. My name is Paula Minnehan, Senior VP, State Government Relations with the New Hampshire Hospital Association (NHHA), representing all 26 of the state's community hospitals as well as all specialty hospitals.

The NHHA wishes to comment on Part III of SB 149. NHHA is supportive of Part III, regarding health facilities providing care in the declared emergency. Part III essentially codifies the NH Attorney General Opinion No. 2021-01 that was issued on April 22, 2020 to DHHS Commissioner Shibinette. In the interest of time, I am providing the link to the letter: <https://www.doi.nh.gov/public-documents/documents/opinion-2020-01-immunity.pdf> This provision, which is limited in scope to COVID-19, is very important to our hospitals that are providing care to patients during the pandemic.

NHHA is in support of Part III of SB 149 and we ask for your support as well. Thank you for the opportunity to provide our comments.





**BUSINESS & INDUSTRY ASSOCIATION**  
New Hampshire's Statewide  
Chamber of Commerce

**Testimony of David Creer**  
**Business & Industry Association**  
**SB 149**  
**House Health, Human Services and Elderly Affairs Committee**  
**May 3, 2021**

Dear Members of the House Health, Human Services and Elderly Affairs Committee, my name is David Creer and I'm director of public policy for the Business and Industry Association (BIA), New Hampshire's statewide chamber of commerce and leading business advocate. BIA represents more than 400 members in a variety of industries. Member firms employ 89,000 people throughout the state, which represents one in seven private workforce jobs, and contribute \$4.5 billion annually to the state's economy.

BIA supports Part III of SB 149, adopting omnibus legislation on health and human services. This section of the bill clarifies that health care facilities are deemed to have been operating under emergency management functions when complying with the emergency orders related to COVID-19. This will protect them from lawsuits from any reduced standard of care that was necessary to help the state manage coronavirus infections. Health care facilities should not face threat of lawsuits while trying to reduce the impact of the ongoing coronavirus pandemic.

Thank you for your consideration and I would be happy to answer any questions.

Bill as  
Introduced

SB 149-FN - AS AMENDED BY THE SENATE

03/18/2021 0788s  
04/01/2021 1055s

2021 SESSION

21-1074  
10/04

SENATE BILL **149-FN**

AN ACT adopting omnibus legislation on health and human services.

SPONSORS: Sen. Sherman, Dist 24

COMMITTEE: Health and Human Services

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AMENDED ANALYSIS

This bill adopts legislation relative to:

I. Clarifying Medicaid spend-down requirements and requiring a report to the oversight committee on health and human services.

II. Automated pharmacy systems.

III. Health facilities providing care in the declared emergency.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struckthrough.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 149-FN - AS AMENDED BY THE SENATE

03/18/2021 0788s

04/01/2021 1055s

21-1074

10/04

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty One*

AN ACT adopting omnibus legislation on health and human services.

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

1 1 Sponsorship. This act consists of the following proposed legislation:

2 Part I. LSR 21-0427, clarifying Medicaid spend-down requirements and requiring a report to  
3 the oversight committee on health and human services, sponsored by Sen. Rosenwald, Prime/Dist 13;  
4 Sen. Hennessey, Dist 1; Sen. Whitley, Dist 15; Sen. Sherman, Dist 24; Sen. Bradley, Dist 3; Rep.  
5 Guthrie, Rock. 13; Rep. McMahon, Rock. 7; Rep. Marsh, Carr. 8; Rep. Knirk, Carr. 3; Rep. Mullen,  
6 Hills. 7.

7 Part II. LSR 21-0936, relative to automated pharmacy systems, sponsored by Sen. Carson,  
8 Prime/Dist 14.

9 Part III. LSR 21-1006, relative to health facilities providing care in the declared emergency,  
10 sponsored by Sen. Gray, Prime/Dist 6.

11 2 Legislation Enacted. The general court hereby enacts the following legislation:

12 PART I

13 Clarifying Medicaid spend-down requirements

14 and requiring a report to the oversight committee on health and human services.

15 1 New Section; Spend-Down Requirements for Medical Expenses. Amend RSA 167 by inserting  
16 after section 4-d the following new section:

17 167:4-e Spend-down Requirements for Medical Expenses. For the purposes of off-setting the  
18 Medicaid spend-down requirements, mental health expenses shall be included as medical expenses.

19 2 Report to Oversight Committee on Health and Human Services.

20 I. The department of health and human services shall submit an interim report on or before  
21 October 1, 2021, to the oversight committee on health and human services, established pursuant to  
22 RSA 126-A:13, relative to actions taken to ensure the uniform application of spend-down  
23 requirements. The report shall include a description of how spend-down requirements were  
24 addressed in remedial staff training programs, updates to the policy manual, and updates to the  
25 brochure and any other department publications.

26 II. The department shall submit a final report by October 1, 2022, on the application of  
27 spend-down requirements. The report shall include data indicating how spend-down requirements  
28 have been applied since the interim report was filed.

29 3 Effective date. Part I of this act shall take effect upon its passage.

30 PART II

**SB 149-FN - AS AMENDED BY THE SENATE**

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1 Relative to automated pharmacy systems.

2 1 New Section; Pharmacies; Automated Pharmacy Systems. Amend RSA 318 by inserting after  
3 section 42 the following new section:

4 318:42-a Automated Pharmacy Systems; Long-term Care Facilities, Hospices, or State  
5 Correctional Institutions.

6 I. A pharmacy may provide pharmacy services to a long-term care facility or hospice licensed  
7 under RSA 151 or to a state correctional institution through the use of an automated pharmacy  
8 system that need not be located at the same location as the pharmacy.

9 II. Medicinal drugs stored in bulk or unit of use in an automated pharmacy system servicing  
10 a long-term care facility, hospice, or correctional institution are part of the inventory of the  
11 pharmacy providing pharmacy services to that facility, hospice, or institution, and drugs delivered by  
12 the automated pharmacy system are considered to have been dispensed by that pharmacy.

13 III. The operation of an automated pharmacy system shall be under the supervision of a  
14 New Hampshire-licensed pharmacist. To qualify as a supervisor for an automated pharmacy  
15 system, the pharmacist need not be physically present at the site of the automated pharmacy system  
16 and may supervise the system data electronically. The New Hampshire-licensed pharmacist shall be  
17 required to develop and implement policies and procedures designed to verify that the medicinal  
18 drugs delivered by the automated dispensing system are accurate and valid and that the machine is  
19 properly restocked.

20 IV. This section is not intended to limit the current practice of pharmacy in this state. This  
21 section is intended to allow automated pharmacy systems to enhance the ability of a pharmacist to  
22 provide pharmacy services in locations that do not employ a full-time pharmacist. This section does  
23 not limit or replace the use of a consultant pharmacist.

24 V. The board shall adopt rules governing the use of an automated pharmacy system under  
25 this section, not later than January 1, 2022, which shall specify:

26 (a) Recordkeeping requirements;

27 (b) Security requirements; and

28 (c) Labeling requirements.

29 2 Effective Date. Part II of this act shall take effect 60 days after its passage.

30 **PART III**

31 Relative to health facilities providing care in the declared emergency.

32 1 New Section; Department of Safety; Homeland Security and Emergency Management; Novel  
33 Coronavirus Disease (COVID-19); Health Facilities. Amend RSA 21-P by inserting after section 42  
34 the following new section:

35 21-P:42-a Novel Coronavirus Disease (COVID-19); Health Facilities. Acute care hospitals,  
36 assisted living facilities, long-term care facilities, nursing facilities, residential care facilities,  
37 ambulatory care clinics (as defined in RSA 151, RSA 151-A, RSA 151-D, RSA 151-E and RSA 151-H),

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1 and any other similar facilities providing care to elderly or infirm patients (“health facilities”), and  
2 the employees, agents and volunteers of such health facilities, are deemed to have been engaged in  
3 preparing for and/or carrying out “emergency management” functions for the purposes of RSA 21-  
4 P:35 when complying, or reasonably attempting to comply, with any executive order, agency order or  
5 rule (including but not limited to waivers from the Centers for Medicare and Medicaid Services  
6 (CMS) both issued as blanket waivers by CMS and as requested by New Hampshire department of  
7 health and human services pertaining to the state of emergency declared under state and/or federal  
8 law in response to the Novel Coronavirus (COVID-19). All such orders and rules are deemed to  
9 constitute orders and/or rules adopted and/or regulations promulgated pursuant to RSA 21-P.  
10 Accordingly, no such organization or person shall be liable for the death of or injury to persons, or for  
11 damage to property, as a result of such compliance or reasonable attempts to comply with such an  
12 emergency order or rule under this section. This section shall not apply to actions of health care  
13 facilities, employees, agents, or volunteers of such facilities that are not related to compliance or  
14 reasonable attempts at compliance with an emergency order or rule. This section shall not apply to  
15 actions performed after such an emergency order or rule is no longer in effect.

16       2 Effective Date. Part III of this act shall take effect upon its passage.

LBA  
21-1074  
2/8/21

**SB 149-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT                    adopting omnibus legislation on health and human services

**FISCAL IMPACT:**

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill, as introduced, as it is awaiting information from the Department of Health and Human Services and Office of Professional Licensure and Certification. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

**AGENCIES CONTACTED:**

Department of Health and Human Services and Office of Professional Licensure and Certification

# Fiscal Notes



**SB 149-FN FISCAL NOTE  
AS AMENDED BY THE SENATE (AMENDMENTS #2021-0788s and #2021-1055s)**

AN ACT                    adopting omnibus legislation on health and human services.

**Part I Clarifying Medicaid spend-down requirements and requiring a report to the oversight committee on health and human services.**

Part I of the proposed legislation clarifies Medicaid spend-down requirements and requires the Department of Health and Human Services report to the Committee on Health and Human Services. The Department of Health and Human Services states that Part I will have no fiscal impact.

**Part II Relative to automated pharmacy systems.**

**FISCAL IMPACT:**     State             County             Local             None

STATE:	Estimated Increase / Decrease			
	FY 2021	FY 2022	FY 2023	FY 2024
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	Indeterminable	Indeterminable	Indeterminable	Indeterminable
<b>Funding Source:</b>	<input type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other

Part II of the proposed legislation would automate pharmacy systems.

The Office of Professional Licensure states that the fiscal impact of Part II is indeterminable as it is not clear how many automated pharmacy systems will be established. Pharmacy inspectors will have to inspect automated pharmacy systems, taking 45 minutes to an hour to inspect each unit, excluding travel time. The inspector will need to review records concerning replenishment, delivery, discrepancy reports, temperature log review, training, and certification of staff, as well as numerous policies. Additional licensing revenue will not be generated as an additional permit or license is not required by this bill.

**Part III Relative to health facilities providing care in the declared emergency.**

Part III of the proposed legislation provides that acute care hospitals, assisted living facilities, long-term care facilities, and other similar facilities providing care to elderly or infirm patients, and the employees, agents, and volunteers of such health facilities, are deemed to have been engaged in preparing for and carrying out emergency management functions when taking actions to comply with any executive order, agency order, or rule pertaining to the state of emergency declared under state or federal law in response to the Novel Coronavirus Disease. The Department of Health and Human Services states that Part III will have no fiscal impact.

**AGENCIES CONTACTED:**

Department of Health and Human Services and Office of Professional Licensure and Certification