

LEGISLATIVE COMMITTEE MINUTES

# **HB1659**

# Bill as Introduced

HB 1659-FN - AS AMENDED BY THE HOUSE

16Feb2022... 0532h

2022 SESSION

22-2630  
11/05

HOUSE BILL **1659-FN**

AN ACT relative to criminal history background checks for certain health care workers.

SPONSORS: Rep. Abrami, Rock. 19; Rep. McMahon, Rock. 7; Rep. Grote, Rock. 24; Rep. Schapiro, Ches. 16; Sen. Reagan, Dist 17; Sen. Ricciardi, Dist 9; Sen. Cavanaugh, Dist 16; Sen. Bradley, Dist 3

COMMITTEE: Health, Human Services and Elderly Affairs

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ANALYSIS

This bill establishes the provision for temporary employment in a residential care facility or as a licensed nursing assistant by persons awaiting the results of a criminal history background check.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

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

AN ACT relative to criminal history background checks for certain health care workers.

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

1 1 Residential Care and Health Facility Licensing; Employment. Amend RSA 151:2-d to read as  
2 follows:

3 151:2-d Criminal Record Check Required.

4 I. Every applicant for a license or certification to operate any facility or entity required to be  
5 licensed or certified under this chapter shall submit with the initial application for licensure or  
6 certification the results of a criminal records check [~~from the department of safety~~] for the applicant,  
7 the licensee, or certificate holder if other than the applicant, the administrator, and each household  
8 member 17 years of age or older, if any, who reside at the facility for which the application for a  
9 license is submitted at the time of application and, subsequently for the duration of licensure or  
10 certification, for each new household member 17 years of age or older.

11 II. [~~For the duration of licensure or certification~~] Every individual selected for employment  
12 with any facility or entity required to be licensed or certified under this chapter shall submit to the  
13 employer a public criminal history record information authorization, [~~form, as provided by the~~  
14 ~~division of state police, which authorizes the release of his or her public criminal history record~~  
15 ~~information to the facility pursuant to RSA 106 B:14~~] **which authorizes the release of his or her**  
16 **public criminal history record information to the facility.** This shall apply to any employee,  
17 including volunteers, whose scope of employment will involve direct contact with a client, client  
18 records or client tissue, body fluids, or other biological material. For the purposes of this paragraph,  
19 "volunteers" shall not include any person admitted to a facility or entity required to be licensed or  
20 certified under this chapter or who resides in an affiliated corporate entity that is an integral part of  
21 the same community.

22 III. [~~The licensee or certificate holder shall submit the public criminal history record~~  
23 ~~information authorization form to the division of state police after an applicant accepts a conditional~~  
24 ~~offer of employment.~~] The licensee or certificate holder shall review the results of the public criminal  
25 history record information check before making a final offer of employment. An employee shall not  
26 begin work before the final offer of employment is made, **however, pending the results of the**  
27 **criminal history record check an employer may employ a licensed nursing assistant on a**  
28 **conditional basis for up to 90 calendar days before the employer receives the results of the**  
29 **criminal history records check, if the conditional employee:**

1           (a) *Is under the direct on-site supervision of a licensed staff person, provided*  
2 *that this paragraph shall not be construed to waive any statutory requirement for direct*  
3 *supervision of a licensee or certificate holder;*

4           (b) *Has passed a criminal history record check within the prior 12 months as*  
5 *part of a nursing assistant education program approved by the board of nursing;*

6           (c) *Has provided the facility with a copy of the criminal history record check*  
7 *required under subparagraph (b); and*

8           (d) *Has provided a written attestation that no disqualifying criminal history*  
9 *exists.*

10           IV. ~~[(a) Upon receipt of a public criminal history record information authorization form from~~  
11 ~~a facility or entity licensed under this chapter, the division of state police shall conduct a public~~  
12 ~~criminal history record information check pursuant to RSA 106-B:14 and provide the results to the~~  
13 ~~licensee or certificate holder.~~

14           ~~(b)~~ The cost of criminal conviction record checks for such applicants shall be borne by  
15 the licensee or certificate holder, provided that the licensee or certificate holder may require an  
16 applicant to pay the actual cost of the criminal conviction record check.

17           V.(a) Any agency providing temporary or per diem staff to a facility or entity licensed or  
18 certified under this chapter shall conduct a criminal conviction record check pursuant to this section.  
19 The agency shall not offer the services of any person until the agency has reviewed the criminal  
20 history of the employee.

21           (b) The cost of criminal history record checks for such temporary or per diem staff shall  
22 be borne by the agency providing temporary or per diem staff to a home health care provider,  
23 provided that the agency providing per diem staffing may require the selected applicant for  
24 employment to pay the actual costs of the criminal conviction record check.

25           ~~[VI. The provisions of this section shall not apply to any person who is licensed by the board~~  
26 ~~of nursing pursuant to RSA 326-B and has already undergone a criminal background check.]~~

27           2 Nurse Practice Act; Temporary Licenses. Amend RSA 326-B:24 to read as follows:

28           326-B:24 Temporary Licenses; All Licensees.

29           I. The board ~~[may]~~ **shall** issue temporary licenses~~[, as provided in paragraph II,]~~ **pursuant**  
30 **to this section** to applicants who meet entry level licensing requirements in the license category. A  
31 temporary license shall expire on the date the board approves or denies the permanent license  
32 sought by the holder of the temporary license, or in 180 days, whichever is less.

33           II. The following applicants for licensure as RNs or LPNs ~~[may]~~ **shall** be issued temporary  
34 licenses:

35           (a) Unlicensed applicants for licensure under paragraph I and applicants for licensure  
36 under RSA 326-B who have met all requirements for licensure except that they have not yet taken  
37 the required examination or the results of the examination are not yet available to the board.

1 (b) If they can demonstrate proficiency in English, currently foreign-licensed applicants  
2 for licensure under RSA 326-B who have met all requirements for licensure except that they have  
3 not yet taken the required examination or the results of the examination are not yet available to the  
4 board.

5 (c) Applicants for licensure under RSA 326-B who have met all of the requirements of  
6 that paragraph and are awaiting the board's decision on their application for permanent licensure.

7 **III. Applicants for licenses as licensed nursing assistants shall be issued temporary**  
8 **licenses if they have passed the examination required pursuant to RSA 326-B:19 and are**  
9 **awaiting the results of the criminal history record check required pursuant to RSA 326-**  
10 **B:15, provided, however, that the applicant within the prior 12 months shall have passed a**  
11 **criminal history record check as part of a nursing assistant education program approved**  
12 **by the board.**

13 **IV.** Applicants described in paragraph II **and III** who have received temporary licenses  
14 shall practice only under the supervision of an RN currently licensed in New Hampshire.

15 3 Effective Date. This act shall take effect upon its passage.

**HB 1659-FN- FISCAL NOTE  
 AS INTRODUCED**

AN ACT relative to criminal history background checks for certain health care workers.

FISCAL IMPACT:  State  County  Local  None

| STATE:                 | Estimated Increase / (Decrease)             |                                    |                                  |                                |
|------------------------|---|------------------------------------|----------------------------------|--------------------------------|
|                        | FY 2022                                     | FY 2023                            | FY 2024                          | FY 2025                        |
| Appropriation          | \$0   | \$0                                | \$0                              | \$0                            |
| Revenue                | \$0   | \$0                                | \$0                              | \$0                            |
| Expenditures           | Indeterminable                              | Indeterminable                     | Indeterminable                   | Indeterminable                 |
| <i>Funding Source:</i> | <input checked="" type="checkbox"/> General | <input type="checkbox"/> Education | <input type="checkbox"/> Highway | <input type="checkbox"/> Other |

The Department of Safety was contacted for a fiscal note worksheet on 10/29/2021, which they have not provided as of 12/27/2021.

**METHODOLOGY:**

This bill removes the requirement that residential care or other health facilities licensed under RSA 151 be required to submit the results of licensee and employee criminal records checks performed specifically by the Department of Safety. Criminal records checks would still be required, but statute would no longer require the Department of Safety to be the exclusive entity conducting such checks. In addition, the bill would allow applicants for licenses as licensed nursing assistants to be issued temporary licenses provided they have met certain conditions.

The Department of Health and Human Services states the bill will have no fiscal impact to that Department.

**AGENCIES CONTACTED:**

Department of Health and Human Services and Department of Safety

CHAPTER 85  
HB 1659-FN - FINAL VERSION

16Feb2022... 0532h

2022 SESSION

22-2630  
11/05

HOUSE BILL

***1659-FN***

AN ACT

relative to criminal history background checks for certain health care workers.

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4 I. Every applicant for a license or certification to operate any facility or entity required to be  
5 licensed or certified under this chapter shall submit with the initial application for licensure or certification  
6 the results of a criminal records check [~~from the department of safety~~] for the applicant, the licensee, or  
7 certificate holder if other than the applicant, the administrator, and each household member 17 years of  
8 age or older, if any, who reside at the facility for which the application for a license is submitted at the time  
9 of application and, subsequently for the duration of licensure or certification, for each new household  
10 member 17 years of age or older.

11 II. [~~For the duration of licensure or certification~~] Every individual selected for employment with  
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14 ~~which authorizes the release of his or her public criminal history record information to the facility pursuant~~  
15 ~~to RSA 106-B:14~~] ***which authorizes the release of his or her public criminal history record information to***  
16 ***the facility.*** This shall apply to any employee, including volunteers, whose scope of employment will  
17 involve direct contact with a client, client records or client tissue, body fluids, or other biological material.  
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24 record information check before making a final offer of employment. An employee shall not begin work  
25 before the final offer of employment is made, ***however, pending the results of the criminal history record***  
26 ***check an employer may employ a licensed nursing assistant on a conditional basis for up to 90 calendar***  
27 ***days before the employer receives the results of the criminal history records check, if the conditional***  
28 ***employee:***

29 (a) ***Is under the direct on-site supervision of a licensed staff person, provided that this***  
30 ***paragraph shall not be construed to waive any statutory requirement for direct supervision of a licensee or***  
31 ***certificate holder,***

1           ***(b) Has passed a criminal history record check within the prior 12 months as part of a nursing***  
2 ***assistant education program approved by the board of nursing;***

3           ***(c) Has provided the facility with a copy of the criminal history record check required under***  
4 ***subparagraph (b); and***

5           ***(d) Has provided a written attestation that no disqualifying criminal history exists.***

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15 shall not offer the services of any person until the agency has reviewed the criminal history of the  
16 employee.

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38 paragraph and are awaiting the board's decision on their application for permanent licensure.

CHAPTER 85  
HB 1659-FN - FINAL VERSION  
- Page 3 -

1            *III. Applicants for licenses as licensed nursing assistants shall be issued temporary licenses if*  
2 *they have passed the examination required pursuant to RSA 326-B:19 and are awaiting the results of the*  
3 *criminal history record check required pursuant to RSA 326-B:15, provided, however, that the applicant*  
4 *within the prior 12 months shall have passed a criminal history record check as part of a nursing assistant*  
5 *education program approved by the board.*

6            *IV. Applicants described in paragraph II and III who have received temporary licenses shall*  
7 *practice only under the supervision of an RN currently licensed in New Hampshire.*

8            85:3 Effective Date. This act shall take effect upon its passage.

Approved: May 20, 2022  
Effective Date: May 20, 2022

# Committee Minutes

**SENATE CALENDAR NOTICE**  
**Health and Human Services**

Sen Jeb Bradley, Chair  
 Sen James Gray, Vice Chair  
 Sen Kevin Avard, Member  
 Sen Tom Sherman, Member  
 Sen Rebecca Whitley, Member

Date: March 9, 2022

**HEARINGS**

|                           | Wednesday           | 03/16/2022  |
|---------------------------|---------------------|---|
|                           | (Day)               | (Date)  |
| Health and Human Services |                     | Legislative Office Building 101 9:00 a.m.   |
|                           | (Name of Committee) | (Place) (Time)  |
| 9:00 a.m.                 | <b>HB 1327</b>      | including diabetes in the conditions listed for eligibility for a service animal. |
| 9:15 a.m.                 | <b>HB 1390</b>      | relative to access to language translation services in telemedicine.              |
| 9:30 a.m.                 | <b>HB 1659-FN</b>   | relative to criminal history background checks for certain health care workers.   |

**EXECUTIVE SESSION MAY FOLLOW**

**Sponsors:**

**HB 1327**

Rep. Schuett  
 Rep. Goley  
 Sen. Whitley

Rep. Moffett  
 Rep. Rogers  
 Sen. Carson

Rep. Sullivan  
 Rep. Booras

Rep. Graham  
 Rep. Baldasaro

**HB 1390**

Rep. M. Murray  
 Rep. Grossman  
 Sen. Prentiss

Rep. Espitia  
 Rep. Marsh

Rep. Query  
 Rep. Knirk

Rep. Wazir  
 Sen. Kahn

**HB 1659-FN**

Rep. Abrami  
 Sen. Reagan

Rep. McMahon  
 Sen. Ricciardi

Rep. Grote  
 Sen. Cavanaugh

Rep. Schapiro  
 Sen. Bradley

Cameron Lapine 271-2104

Jeb Bradley  
 Chairman

# Senate Health and Human Services Committee

*Cameron Lapine 271-2104*

**HB 1659-FN**, relative to criminal history background checks for certain health care workers.

**Hearing Date:** March 16, 2022

**Time Opened:** 9:33 a.m.\*

**Time Closed:** 10:28 a.m.

\* - The hearing was recessed at 9:38 AM and re-opened at 9:49 AM.

**Members of the Committee Present:** Senators Bradley, Gray, Avard, Sherman and Whitley

**Members of the Committee Absent:** None

**Bill Analysis:** This bill establishes the provision for temporary employment in a residential care facility or as a licensed nursing assistant by persons awaiting the results of a criminal history background check.

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**Sponsors:**

Rep. Abrami

Rep. McMahon

Rep. Grote

Rep. Schapiro

Sen. Reagan

Sen. Ricciardi

Sen. Cavanaugh

Sen. Bradley

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**Who supports the bill:** Representative Pat Abrami (Rockingham County District 19), Paula Minnehan (NH Hospital Association), Henry Veilleux (Home Care and Hospice), Teresa Rosenberger (NH Health Care Association), Senator Kevin Cavanaugh (Senate District 16), Senator Denise Ricciardi (Senate District 9), Senator John Reagan (Senate District 17), Senator Jeb Bradley (Senate District 3), and Jake Berry (New Futures).

**Who opposes the bill:** None.

**Who is neutral on the bill:** Victor Muzzey (DOS).

**Summary of testimony presented in support:**

**Representative Pat Abrami**

**Rockingham County District 19**

- Representative Abrami said that the intent of HB 1659-FN is to speed up the background check process for nursing homes and hospitals.
- Rep. Abrami said that HB 1659-FN is a bipartisan bill.

- Rep. Abrami said that there is a shortage of health care workers in hospitals and nursing homes. He said that the Rockingham County nursing home has 200 beds, but 95 of them are vacant because of a lack of staff to care for patients who would occupy said beds.
- Rep. Abrami said HB 1659-FN is a small part towards helping to address the larger health care workforce shortage.
- Rep. Abrami said that HB 1659-FN passed the House Health, Human Services, and Elderly Affairs Committee (HHSEA) with a few minor changes on the consent calendar.
- Rep. Abrami said that Teresa Rosenberger and Paula Minnehan could answer questions.
- Senator Sherman asked if the language on Page 2, Lines 6 and 7 should be repeated somewhere in Page 3, Lines 7 through 12.
  - Rep. Abrami said that he had no problem with that but said that the Committee should confirm with Ms. Rosenberger and Ms. Minnehan because they reworked the bill in HHSEA.
- Senator Sherman asked why Page 2, Lines 25 and 26 are stricken.
  - Rep. Abrami deferred the question to Ms. Rosenberger and Ms. Minnehan.

#### **Paula Minnehan and Teresa Rosenberger**

#### **Senior Vice President, State Government Relations, New Hampshire Hospital Association (NHHA) and Bernstein Shur, representing the New Hampshire Health Care Association (NHCA)**

- Ms. Rosenberger said that the General Court passed SB 152 (2017), which provided for a two year period for temporary employment of licensed nursing assistants (LNAs). She said that New Hampshire had a health care workforce shortage then and it has not gotten better. She said that the provisions of SB 152 (2017) sunset.
- Ms. Rosenberger said that SB 152 (2017) allowed for people who passed a LNA course and had applied for a license to work for 90 days under supervision. She said that LNAs are required to undergo background checks to enter their schooling, to apply for their license, and to be employed. She said that SB 152 (2017) allowed for someone who had graduated from a LNA program, and had a background check conducted, and applied for license to work temporarily in New Hampshire under someone who was licensed.
- Ms. Rosenberger said that HB 1659-FN is the same language of SB 152 (2017) that sunset except that the phrase “direct on-site supervision” had been added.
- Ms. Rosenberger said that Ms. Minnehan came to her and asked if the hospitals could be included in HB 1659-FN, using the same form of language.
- Ms. Minnehan said that workforce shortages have become more challenging because of the COVID-19 pandemic. She said that it is a time consuming, laborious process. She said that she supports the Department of Safety’s (DOS) background check portal, but the portal is only for state background checks.
- Ms. Minnehan said that HB 1659-FN amends RSA 151:2-d. She said that the bill also removes “from the Department of Safety” from the statute, enabling the use of third-party background check vendors.
- Ms. Minnehan said that third-party background check vendors can provide state and federal background checks at the same time. She said that HB 1659-FN does not

- preclude the use of DOS background checks but does allow options. She said that hospitals have used third-party vendors for years.
- Ms. Minnehan said that she had spent time with the Department of Health and Human Services (DHHS) and the Office of Professional Licensure and Certification (OPLC) and said that they are comfortable with the changes in HB 1659-FN as they relate to licensure.
  - Ms. Minnehan said that HB 1659-FN will expedite the ability of hospitals to get clinicians on the job as quickly as possible.
  - Senator Sherman asked if there was variable quality in third-party vendors. He asked if there was some way to ensure a certain level of quality. He asked if some third-party vendors were more expensive than others. He asked if there was a standard of practice that meant all third-party vendors were great. He asked if there needed to be a metric of some type to measure and compare third-party vendors.
    - Ms. Minnehan said the DOS provides state background checks but, if they do perform a Federal Bureau of Investigation (FBI) background check it is a separate process. She said that the DOS portal is for state background checks only. She said that hospitals have contracted with third-party vendors for years, and pay for them, so the quality is excellent and the hospitals do their due diligence.
  - Senator Sherman asked if there was some kind of standard for third-party vendors.
    - Ms. Minnehan said that that was correct.
  - Senator Sherman asked if the language on Page 2, Lines 6 and 7 should be repeated somewhere in Page 3, Lines 7 through 12.
    - Ms. Rosenberger said that Page 3, Lines 7 through 12 are directly taken from SB 152 (2017).
  - Senator Sherman said that Page 3, Lines 7 through 12 require a background check to be done but doesn't require a copy to be shared. He said that someone could say that they had a background check conducted but then not actually have one done.
    - Ms. Rosenberger said that she didn't think she would have a problem with that but suggested speaking with Pam DiNapoli and the New Hampshire Nurses Association or OPLC for their thoughts.
  - Senator Sherman asked if he should check with Ms. DiNapoli.
    - Senator Bradley said that he did not know why adding that language would be a problem.
    - Senator Sherman said trust but verify.
  - Ms. Minnehan said that, referencing Page 2, Lines 25 and 26, she questioned that language when reviewing the statute for HB 1659-FN. She said that the language goes back to a study committee many years ago. She said that she checked with the hospitals, nursing homes, and home care agencies and they told her that they did not use that language. She said that it did not make sense to her as to why to make that exclusion.



## **Henry Veilleux**

### **Home Care and Hospice**

- Mr. Veilleux said that his association supports HB 1659-FN. He said that they utilize third-party vendors for the screening of applicants.
- Mr. Veilleux said that most home care and hospice agencies will conduct a FBI background check if an applicant lives out of the state or has lived out of the state in the last seven year. He said that if they are hiring someone who has only lived in New Hampshire, they will use the DOS portal.
- Mr. Veilleux said that the provisions requiring the direct on-site supervision of LNAs is not applicable to home care agencies because they are supervised by offsite nurses.
- Senator Gray asked if it would be a good idea to take the language in Page 1, Line 1 and add it to Page 3, Lines 13 and 14.
  - Senator Bradley deferred the question to others.

## **Ms. Minnehan**

### **Speaking for a Second Time**

- Ms. Minnehan encouraged the Committee to not go down a rabbit hole. She said that the language in this statute is questionable and awkward at best.
- Ms. Minnehan encouraged the Committee not to complicate HB 1659-FN at this point.
- Ms. Minnehan said that the problem HB 1659-FN is aiming to solve is that the provisions of SB 152 (2017) have sunset.
- Senator Sherman asked if it was clear, in the common sense, that when the phrase “criminal history record check” is used, people understand what is meant.
  - Ms. Minnehan said that OPLC are the experts. She said that she believed OPLC rules mean a FBI background check and she did not see a reason to change that.

## **Ms. Rosenberger**

### **Speaking for a Second Time**

- Senator Gray asked about adding “direct on-site supervision” to the other section of HB 1659-FN.
  - Ms. Rosenberger said that that is at the discretion of Committee but she encouraged discussion with the Nurses Association. She said she did not see a problem with the nurse practice act but questioned if it impeded the ability of home care agencies to hire people.
- Ms. Rosenberger said that she understood Page 2, Lines 6 and 7 to mean that the individual would be providing the copy of the check with their employer. She said that that would not be a problem.
- Senator Sherman asked about “and III” on Page 3, Line 13.
  - Ms. Rosenberger said that Page 3 adds what was in SB 152 (2017).
- Senator Gray said that III has a change to licensure procedures and thinks that it is something to consider with respect to what a LNA can do during their temporary

licensure period. He said that he wanted the Nurses Association or OPLC to tell him that it wasn't a bad idea.

- Ms. Rosenberger said that that was appropriate.
- Ms. Rosenberger said that there are a lot of different terminologies used. She said that she spoken with former Assistant Commissioner of DOS Bob Dunn and he told her that it is very complicated and someone needs to sit down with DOS and iron out the terminologies. Ms. Rosenberger said that the Committee should not go down that rabbit hole and focus on getting LNAs on the job.

**Summary of testimony presented in opposition: None.**

### **Neutral Information Presented:**

#### **Captain Victor Muzzey**

#### **Criminal Records Unit, NH State Police, DOS**

- Senator Sherman asked if there was a backlog for background checks.
  - Captain Muzzey said that there was a backlog over the summer of 2021 but it does not exist any longer. He said that the turn around is currently a couple of days.
- Senator Sherman asked, if an employer was interested in the background of someone coming into New Hampshire, if DOS could provide background information from both New Hampshire and other states.
  - Cpt. Muzzey said that the word "background check" is confusing. He said that, through the portal, DOS offers a state criminal conviction check by collecting publicly available conviction records and certifying them for \$25. He said that "Phase I" of the DOS portal offers a state criminal convictions check with a FBI check. Cpt. Muzzey said that the FBI check is a check of the FBI records for what the FBI has on file. He said that the FBI has records for fingerprints involved in arrests and can be useful for confirming the identity of an applicant if they may have lied about their name when seeking a state criminal convictions check.
- Senator Sherman asked, if he did a DOS state and FBI background check, there could be a chance of missing something that might be available through a third-party but, if he did only a third-party background check, something could be missed for identity-related issues.
  - Cpt. Muzzey said that that was correct. He said that, in the case of HB 1659-FN, when there are three checks involved, the first check will confirm the identity of the individual using their fingerprints. He said that a concern would be going away from the initial, identity-confirming fingerprint check. He said that there is no reason to do the same background check three times, which leads to backlogs and missed opportunities.
- Senator Bradley asked if Cpt. Muzzey had heard the discussion regarding the language on Page 2, Lines 6 and 7 and Page 3, Lines 7 through 12. He said that it seemed to make sense to him.

- Cpt. Muzzey clarified if Senator Bradley was asking if adding that language should be added.
- Senator Bradley said he was asking if it should be added or if it was a problem.
- Cpt. Muzzey said that it would depend on the definition of “criminal history record check”. He said that if it is a federal check, he would need to check with the FBI about further sharing the records. He said that if it is a state check and the individual has authorized a check, then that would be fine. He said that it mattered if DOS or the individual were the ones doing the distribution.
- Senator Bradley asked Committee Staff to find the definition of criminal history record check in the RSAs.
  - Committee Staff found that RSA 151 (Residential Care and Health Facility Licensing) references RSA 106-B (State Police) in the context of a definition.
- Senator Sherman asked if subjects of a check are normally given the results of that check.
  - Cpt. Muzzey said that they were not. He said that a state agency is able to view records in the portal multiple times but he was unsure if they were able to print them, because of concerns over privacy.
- Senator Sherman asked if there was some kind of a certificate someone could have to prove that their record was clean.
  - Cpt. Muzzey said that there was.
- Senator Sherman asked about compliance with Page 2, Line 6 and 7’s requirement to provide a copy of the background check.
  - Cpt. Muzzey said that it depends on if the individual is giving it to the facility or if it is DOS.
- Senator Sherman asked if it was possible to add the language of Page 2, Lines 6 and 7 to Page 3, Lines 7 through 12.
  - Cpt. Muzzey said that it was.

**Cpt. Muzzey**

**Speaking for a Second Time**

- Cpt. Muzzey said that the hearing had turned into a larger conversation. He said that the General Court should probably define a state criminal conviction check and a fingerprint supported FBI check. He said that it was something to consider going forward.
- Senator Bradley asked if Cpt. Muzzey was suggesting the Committee work on those definitions in HB 1659-FN or do so in future legislation.
  - Cpt. Muzzey said future legislation would likely be better.

# Speakers



# Senate Remote Testify

## Health and Human Services Committee Testify List for Bill HB1659 on 2022-03

Support: 5 Oppose: 0

| <u>Name</u>               | <u>Title</u>        | <u>Representing</u> | <u>Position</u> |
|---------------------------|---------------------|---------------------|-----------------|
| Cavanaugh, Senator Kevin  | An Elected Official | Myself              | Support         |
| Ricciardi, Senator Denise | An Elected Official | Senate District 9   | Support         |
| Reagan, Senator John      | An Elected Official | Senate District 17  | Support         |
| Bradley, Senator Jeb      | An Elected Official | SD3                 | Support         |
| Berry, Jake               | A Lobbyist          | New Futures         | Support         |

# Testimony

**SENATE HEALTH AND HUMAN SERVICES COMMITTEE**

**Wednesday, March 16, 2022**

**HB 1659-FN –Relative to Criminal History Background Checks for Certain Health Care Workers**

**Testimony**

Good morning, Mr. Chairman, and members of the committee. My name is Paula Minnehan, Senior Vice President, 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 is in strong support on HB 1659-FN, and we want to thank the sponsor, Representative Abrami, as well as the co-sponsors, including Senator Bradley, for agreeing to sponsor this legislation. The bill before you would establish the provision for temporary employment for a licensed nursing assistant in a residential care facility while awaiting criminal history background checks. The bill would also allow for flexibility in obtaining criminal records checks by health care facilities. My testimony today is going to focus on this part of the bill.

Health care providers in the state have been struggling with workforce shortages for years but the last two years have been even more challenging, in part due to the COVID-19 pandemic.

The process to get health care clinicians licensed is time consuming and is further delayed by the Criminal Background Check (CBC) process. The Department of Safety has done a terrific job recently opening a portal for state criminal background checks for anyone, however, healthcare facilities must have national (FBI) as well as state background checks completed for all employees they hire. The Department of Safety portal only does New Hampshire criminal background checks.

This bill would allow for health care facilities to utilize a third-party vendor to complete the federal Criminal Background Check which is a requirement of health facilities licensing under RSA 151:2-d. These third-party vendors can do both federal and state checks in one process. The bill does not preclude a facility from using the NH Department of Safety, it just gives the facilities an option to use whoever they choose and is most expedient. Hospitals have been using third-party vendors for years. The issue to-date is that the law, as written, requires that they obtain the criminal records checks from the Department of Safety which is often duplicative of what they already receive from third party vendors.

This bill does not eliminate the requirement of health facilities to complete the Criminal Background Check process for all employees. It just removes the language in health facilities licensing statute to obtain the Criminal Background Check results from the Department of



**Safety. This small change will expedite the ability of these facilities to get health care clinicians on the job helping their patients faster.**

**NHHA is very supportive of HB 1659-FN, and we urge the committee to vote Ought to Pass. Thank you for the opportunity to provide our comments on HB 1659-FN. I am happy to answer any questions you may have.**

## Cameron Lapine

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**From:** Teresa Rhodes Rosenberger <trosenberger@bernsteinshur.com>  
**Sent:** Monday, March 21, 2022 5:57 PM  
**To:** James Gray  
**Cc:** jebebrad@metrocast.net; Kevin Avard; Tom Sherman; Cameron Lapine; Becky Whitley  
**Subject:** HB1659

Good afternoon Senator Gray,

I have spoken with the following stakeholders involved with HB1659. I have explicitly asked about adding language to the Nurse Practice Act to mirror the language in the Healthcare Facility Licensing statute ( see below).

Lindsey Courtney, the Executive Director of OPLC. She said they are doing as much as they can now with issuing temporary licenses. She would prefer we not add the language suggested below to the Nurse Practice Act under temporary licenses as she thinks it may well complicate what they are doing currently with issuing temporary licenses.

Pam DiNapoli and Shaun Thomas ( lobbyists) of the NH Nurses Association. They said it is best not to include the "direct on-site" language altogether in section III. They agree with the others that the language in the Nurse Practice Act section should stay as it is in HB 1659 if possible

Gina Balkus, the present of the Home care Association. Gina believe the language puts the board of Nursing in a difficult spot as it may behalf for them to verify they the applicant has given a copy of the latest criminal background check to the employer and also that the employer will be sure the temporary licenses employee has on site supervision. She refers the bill as it came to the Senate

What I am hearing from everyone is that these are 2 very separate statutes with very different purposes. One for licensing a facility ( the employer) and one for licensing an individual ( the employee) by the Board of Nursing. As much as it is always good to have consistency, in this case it may well complicate things particularly for the Board of Nursing in the issuing of temporary licenses.

Below is the suggestion I sent to the stakeholders. The bold is in HB 1659. The highlighted section is your suggested amendment language. Please note: the stakeholders prefer not to add the highlighted language.

2 Nurse Practice Act; Temporary Licenses. Amend RSA 326-B:24 to read as follows: 326-B:24 Temporary Licenses; All Licensees.

- I. The board [may] **shall** issue temporary licenses[, as provided in paragraph II,] **pursuant to this section** to applicants who meet entry level licensing requirements in the license category. A temporary license shall expire on the date the board approves or denies the permanent license sought by the holder of the temporary license, or in 180 days, whichever is less.
- II. The following applicants for licensure as RNs or LPNs [may] **shall** be issued temporary licenses:
  - (a) Unlicensed applicants for licensure under paragraph I and applicants for licensure under RSA 326-B who have met all requirements for licensure except that they have not yet taken the required examination or the results of the examination are not yet available to the board.
  - (b) If they can demonstrate proficiency in English, currently foreign-licensed applicants for licensure under RSA 326-B who have met all requirements for licensure except that they have not yet taken the required examination or the results of the examination are not yet available to the board.

(c) Applicants for licensure under RSA 326-B who have met all of the requirements of that paragraph and are awaiting the board's decision on their application for permanent licensure.

**III. Applicants for licenses as licensed nursing assistants shall be issued temporary licenses if they have passed the examination required pursuant to RSA 326-B:19 and are awaiting the results of the criminal history record check required pursuant to RSA 326-B:15, provided, however, that the applicant within the prior 12 months shall have passed a criminal history record check as part of a nursing assistant education program approved by the board, has provided the facility with a copy of the criminal history record check required under subparagraph (b); an is under the direct on-site supervision of a licensed staff person provided that this paragraph shall not be construed to waive any statutory requirement for direct supervision of a licensee or certificate holder.**

**IV. Applicants described in paragraph II and III who have received temporary licenses shall practice only under the supervision of an RN currently licensed in New Hampshire. 3 Effective Date. This act shall take effect upon its passage.**

Hope this is helpful.

Teresa

**Teresa Rhodes Rosenberger**

**Senior Advisor**  
603 665-8834 direct  
603 623-8700 main  
603 623-7775 fax  
[LinkedIn](#) | [Twitter](#)

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# Voting Sheets

# Senate Health and Human Services Committee

## EXECUTIVE SESSION RECORD

### 2021-2022 Session

Bill # HB 1659

Hearing date: 3-16-22

Executive Session date: 4-13-22

Motion of: OTP Vote: 5-0

| Committee Member      | Present                             | Made by                             | Second                              | Yes                                 | No                       |
|-----------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------|
| Sen. Bradley, Chair   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Sen. Gray, Vice Chair | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Sen. Avard            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Sen. Sherman          | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Sen. Whitley          | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Motion of: Consent Vote: 5-0

| Committee Member      | Present                             | Made by                             | Second                              | Yes                                 | No                       |
|-----------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------|
| Sen. Bradley, Chair   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Sen. Gray, Vice Chair | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Sen. Avard            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Sen. Sherman          | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Sen. Whitley          | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Motion of: \_\_\_\_\_ Vote: \_\_\_\_\_

| Committee Member      | Present                  | Made by                  | Second                   | Yes                      | No                       |
|-----------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Sen. Bradley, Chair   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Sen. Gray, Vice Chair | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Sen. Avard            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Sen. Sherman          | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Sen. Whitley          | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Reported out by: Sen. Avard

Notes: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

# Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE  
FOR THE CONSENT CALENDAR

Wednesday, April 13, 2022

THE COMMITTEE ON Health and Human Services

to which was referred **HB 1659-FN**

AN ACT

relative to criminal history background checks for  
certain health care workers.

Having considered the same, the committee recommends that the Bill

ought to pass

BY A VOTE OF: 5-0

Senator Kevin Avar  
For the Committee

HB 1659, as amended by the House, establishes the provision for temporary employment in a residential care facility or as a licensed nursing assistant by persons awaiting the results of a criminal history background check. This is essentially an extension of SB 152 (2017) and serves to help reduce the number of hoops people must jump through in order to fill the critical shortages in our health care setting.

Cameron Lapine 271-2104

FOR THE CONSENT CALENDAR

**HEALTH AND HUMAN SERVICES**

**HB 1659-FN**, relative to criminal history background checks for certain health care workers.

Ought to Pass, Vote 5-0.

Senator Kevin Avard for the committee.

HB 1659, as amended by the House, establishes the provision for temporary employment in a residential care facility or as a licensed nursing assistant by persons awaiting the results of a criminal history background check. This is essentially an extension of SB 152 (2017) and serves to help reduce the number of hoops people must jump through in order to fill the critical shortages in our health care setting.



## General Court of New Hampshire - Bill Status System

**Docket of HB1659**

Docket Abbreviations

**Bill Title:** relative to criminal history background checks for certain health care workers.*Official Docket of HB1659.:*

| <b>Date</b> | <b>Body</b> | <b>Description</b>  |
|-------------|-------------|---|
| 12/30/2021  | H           | <b>Introduced</b> 01/05/2022 and referred to Health, Human Services and Elderly Affairs |
| 1/12/2022   | H           | Public Hearing: 01/24/2022 03:15 pm LOB 210-211   |
| 2/9/2022    | H           | Executive Session: 01/24/2022 10:30 am LOB 210-211                                      |
| 2/10/2022   | H           | Committee Report: Ought to Pass with Amendment <b>#2022-0532h (Vote 19-1; CC)</b>       |
| 2/24/2022   | H           | Amendment <b>#2022-0532h: AA VV 02/16/2022 HJ 3</b>                                     |
| 2/16/2022   | H           | <b>Ought to Pass with Amendment</b> 2022-0532h: MA VV 02/16/2022 <b>HJ 3</b>            |
| 3/1/2022    | S           | Introduced 02/24/2022 and Referred to Health and Human Services; <b>SJ 5</b>            |
| 3/9/2022    | S           | <b>Hearing:</b> 03/16/2022, Room 101, LOB, 09:30 am; <b>SC 11</b>                       |
| 4/14/2022   | S           | Committee Report: Ought to Pass, 04/21/2022; Vote 5-0; CC; <b>SC 16</b>                 |
| 4/21/2022   | S           | <b>Ought to Pass:</b> MA, VV; OT3rdg; 04/21/2022; <b>SJ 9</b>                           |
| 5/13/2022   | S           | Enrolled Adopted, VV, (In recess 05/12/2022); <b>SJ 13</b>                              |
| 5/13/2022   | H           | Enrolled (in recess of) 05/12/2022  |
| 5/24/2022   | H           | Signed by Governor Sununu 05/20/2022; Chapter 85; Eff. 05/20/2022                       |

NH House

NH Senate

# Other Referrals

**Senate Inventory Checklist for Archives**

Bill Number: HB 1659-FN

Senate Committee: HHS

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

**Bill Hearing Documents: {Legislative Aides}**

- Bill version as it came to the committee
- All Calendar Notices
- Hearing Sign-up sheet(s)
- Prepared testimony, presentations, & other submissions handed in at the public hearing
- Hearing Report
- Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

**Committee Action Documents: {Legislative Aides}**

All amendments considered in committee (including those not adopted):

- amendment # \_\_\_\_\_  - amendment # \_\_\_\_\_
- amendment # \_\_\_\_\_  - amendment # \_\_\_\_\_
- Executive Session Sheet
- Committee Report

**Floor Action Documents: {Clerk's Office}**

All floor amendments considered by the body during session (only if they are offered to the senate):

- amendment # \_\_\_\_\_  - amendment # \_\_\_\_\_
- amendment # \_\_\_\_\_  - amendment # \_\_\_\_\_

**Post Floor Action: (if applicable) {Clerk's Office}**

- Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):
- Enrolled Bill Amendment(s)
- Governor's Veto Message

**All available versions of the bill: {Clerk's Office}**

- as amended by the senate  as amended by the house
- final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Ameron M. Zapone  
Committee Aide

6-21-22  
Date

Senate Clerk's Office AK