

LEGISLATIVE COMMITTEE MINUTES

SB347

Bill as
Introduced

SB 347-FN - AS INTRODUCED

2022 SESSION

22-3105
04/11

SENATE BILL

347-FN

AN ACT

relative to the use of protected health information by employers.

SPONSORS:

Sen. Daniels, Dist 11; Rep. Layon, Rock. 6; Rep. Potucek, Rock. 6; Rep. Wuelper, Straf. 3; Rep. Cushman, Hills. 2; Rep. Erf, Hills. 2

COMMITTEE:

Commerce

ANALYSIS

This bill prohibits an employer from inquiring, either verbally or in writing, about an employee's protected health information as a requirement for initial or continued employment.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to the use of protected health information by employers.

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

1 1 New Section; Labor: Protective Legislation; Discrimination in the Workplace. Amend RSA 275
2 by inserting after section 37-d the following new section:

3 275:37-e Protected Health Information.

4 I. No employer shall inquire, either verbally or in writing, about an employee's protected
5 health information, as that term is defined in 45 C.F.R section 160.103, as a requirement for initial
6 or continued employment. An employer who violates this prohibition shall be guilty of a violation.

7 II. An employer may inquire, either verbally or in writing, about an employee's protected
8 health information as defined in paragraph I because such information is or would be relevant to the
9 employee's ability to perform his or her job duties. This paragraph shall not be construed to require
10 an employee to disclose any protected health information to an employer.

11 2 Effective Date. This act shall take effect 60 days after its passage.

**SB 347-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to the use of protected health information by employers.

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	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Expenditures	\$0	\$0	\$0	\$0
<i>Funding Source:</i>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill prohibits an employer from inquiring, either verbally or in writing, about an employee's protected health information as a requirement for initial or continued employment.

The Department of Labor does not anticipate this bill would have an appreciable impact on revenues at the county or local levels. It is possible there could be an indeterminable increase in state revenues as if the Department were to process penalties for an employer acting in violation of the proposed statute, with said revenues possibly passing to the general fund. Such a possible revenue increase is indeterminable because it is not possible to credibly estimate.

The Department states it is unlikely that this bill would have a material impact on expenditures at the state, county or local level. The Department does not anticipate the bill would impact the operational costs of the Department in administering Protective Legislation.

It is assumed that any fiscal impact would occur after FY 2022.

AGENCIES CONTACTED:

Department of Labor

Committee Minutes

SENATE CALENDAR NOTICE

Commerce

Sen Harold French, Chair
 Sen Bill Gannon, Vice Chair
 Sen Jeb Bradley, Member
 Sen Donna Soucy, Member
 Sen Kevin Cavanaugh, Member

Date: December 20, 2021

HEARINGS

	Tuesday	01/18/2022
	(Day)	(Date)
Commerce		State House 100
(Name of Committee)		9:00 a.m.
9:00 a.m.	SB 207	relative to administrative fee credit for insurance company external review.
9:15 a.m.	SB 208	relative to life insurance.
9:30 a.m.	SB 331	relative to waivers of deductibles in automobile insurance policies.
9:45 a.m.	SB 347-FN	relative to the use of protected health information by employers.
10:00 a.m.	SB 354	relative to insurance adjuster licensing, insurance producer licensing fees, and the sale of credit life and credit accident and health insurance policies by banks.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

SB 207

Sen. French
 Sen. Gannon
 Rep. Potucek

Sen. Hennessey
 Sen. Carson

Sen. Reagan
 Sen. Soucy

Sen. Avard
 Rep. Hunt

SB 208

Sen. Cavanaugh

Sen. Bradley

Rep. Hunt

Rep. Abel

SB 331

Sen. Soucy

Sen. Cavanaugh

SB 347-FN

Sen. Daniels
 Rep. Cushman

Rep. Layon
 Rep. Erf

Rep. Potucek

Rep. Wuelper

SB 354

Sen. Soucy
 Rep. Potucek

Sen. Bradley

Sen. Cavanaugh

Rep. Bartlett

Aaron Jones 271-4063

Harold F. French
 Chairman

Senate Commerce Committee

Aaron Jones 271-4063

SB 347-FN, relative to the use of protected health information by employers.

Hearing Date: January 18, 2022

Time Opened: 9:50 a.m.

Time Closed: 10:21 a.m.

Members of the Committee Present: Senators French, Gannon, Bradley, Soucy and Cavanaugh

Members of the Committee Absent : None

Bill Analysis: This bill prohibits an employer from inquiring, either verbally or in writing, about an employee's protected health information as a requirement for initial or continued employment.

Sponsors:

Sen. Daniels
Rep. Wuelper

Rep. Layon
Rep. Cushman

Rep. Potucek
Rep. Erf

Who supports the bill: 177 people signed up in support of the bill. Full sign in sheets available upon request.

Who opposes the bill: Representative Timothy Horrigan, Natch Greyes (NH Municipal Association), Curtis Barry (NH Retail Association), Paula Minnehan (NH Hospital Association), Curtis Howland, Lyn Lindpaintner, Kristine Stoddard (Bi-State Primary Care Association), Jeanne Torpey, Suellen Davidson, Gina Balkus (Granite State Home Health & Hospice Association), Nancy Brennan, Susan Richman, Annie Rettew, Ruth Perencevich, Claudia Damon, Cindy Raspiller, Howard Brown, Denise Clark, Barbara Zaenglein, Eric Zaenglein, Lynne Walsh, Elizabeth Lewis, Kevin O'Neill, Nan O'Neill, Claire Naylor, Cheri Falk, Courtney Tanner (Dartmouth-Hitchcock Health), Margaret Keeler, Renia Woods, Andrew Jones, Gregory Davis, Matthew Gould

Who is neutral on the bill: Peter MacKenna (NH Department of Labor), Jonathan Eriquezzo

Summary of testimony presented in support:

Senator Gary Daniels

- This bill would prohibit an employer from inquiring about an employee's protected health information as a requirement for their initial and continued employment; thus, preventing and curtailing discrimination, which Senator Daniels said has taken place in NH.
- Currently, employees are given the ultimatum to get vaccinated or be terminated without letting an employee make their own health care decisions.
- Individuals being terminated include those who have worked for decades at one company as well as medical providers who have put their lives on the line throughout the pandemic.
- Senator Daniels stated that vaccination status has been the primary driver of discrimination. However, according to Senate counsel, employers are not restricted from seeking other protected health information that might not have anything to do with an employee's ability to do their job. Inquiries could be made on whether an employee has diabetes, high blood pressure, or had an abortion.
- Senator Daniels said that asking for protected health information, which is unrelated to an individual's job, is wrong and intrusive. There are instances where it may be necessary to ask, such as whether a retail employee can lift a certain weight or whether a linesmen can walk a certain distance.
- This bill would not prevent NH employers from self-regulating their work environments. For example, an employer could still require employees to wear face masks.
- This bill would continue the Legislature's tradition of being diligent in ensuring that NH workers enjoy an environment that is free from discrimination.
- Article 2-b of the NH Constitution states that "an individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent." Thus, Senator Daniels wondered why it was not appropriate for the government to ask this information, yet it was appropriate for an employer to.
- **Senator Gannon** wondered if Senator Daniels saw that there might be a conflict between the rights of both an employer and an employee. He asked, for example, what if he started a small business and he was concerned with having people in his office due to the health of himself and his family. Under that example, he wondered if this bill would take away his liberty rights as a business.
 - **Senator Daniels** said that the owner might be fearful of anyone walking through the door with any disease. In terms of COVID-19, Senator Daniels said that an individual can still catch and transmit it regardless of their vaccination status. He said that the vaccine had done nothing besides prevent an individual from being hospitalized.

- **Senator Gannon** asked if it were usually argued that a business should be able to run itself the way it wants to.
 - **Senator Daniels** responded it is. This bill would prohibit an employer from asking if an individual has been vaccinated. While employers are allowed to self-regulate their environments, RSA 275:37 specifies that asking about or retaliating against smoking, flexibility in the workplace, and criminal records is discrimination. This bill would add protected health information to what cannot be asked about or retaliated against in the workplace.

Summary of testimony presented in opposition:

Paula Minnehan, NH Hospital Association

- The Association believed the language of this bill was confusing and contradictory.
- This bill would equate protected health information, as defined by the federal HIPAA law, with something an employer cannot request or maintain for its employees. In most instances, employers are not subject to HIPAA.
- In C.F.R section 160.103, protected health information excludes individually identifiable health information in employment records held by a covered entity in their role as an employer.
- This exclusion would allow healthcare providers, insurers, and healthcare data clearinghouses to maintain employment records separate and apart from HIPAA rules.
- According to the federal DHHS, only healthcare providers, insurers, and healthcare data clearinghouses are subjected to HIPAA.
- Under HIPAA, healthcare providers, insurers, and healthcare data clearinghouses are prevented from sharing a patient's medical records without their explicit consent.
- HIPAA is not related to the health status of an employee; thus, it is not a violation for an employer to request the vaccination status of an employee nor does it protect medical information that the employee has decided to share.
- Ms. Minnehan concluded that this bill would inappropriately intertwine all employers as being covered by the federal HIPAA definition.
- **Senator Bradley** thought the passage of HB 220 made it clear that the government could not mandate vaccination, but employers were given the ability to request a vaccination as part of their terms of employment. He wondered if this bill would be consistent with HB 220.
 - **Ms. Minnehan** believed there would be some inconsistency, especially regarding HIPAA. If an employer determined it is appropriate, they have the right to require their employees, patients, guests, or clients to be vaccinated. As of January 17th, 409 patients were hospitalized and struggling with COVID-19. 147 patients were recovering, but they were

too sick to leave the ICU. The latter patients are not counted in the COVID-19 numbers because they no longer have the diagnosis. 16 patients were still waiting in the emergency room because there were no available hospital spaces. Ms. Minnehan said that the vaccine has and continues to prevent serious illness, hospitalization, and death; thus, they continued to support requiring vaccines in the employer setting.

- At a previous hearing, **Senator Bradley** said it stuck in his mind on how high the percentage of those in the ICU were unvaccinated. He wondered if Ms. Minnehan could testify on the percentage of patients in the hospital who were vaccinated versus those who were unvaccinated.
 - **Ms. Minnehan** said she did not have the current data, but she would e-mail it to the Committee. Last week, she believed that 43% of those in the hospital were unvaccinated, 17% had an unknown status, roughly 23% to 26% were fully vaccinated, and the remaining balance were partially vaccinated. Partially vaccinated is defined as a person having only 1 or 2 shots, but not a booster. Over 70% of those in the ICU who are struggling on ventilators are unvaccinated.
- **Senator Bradley** believed that the highest number of COVID-19 patients that the 26 hospitals had in their facilities was about 470. Those numbers are down 15% right now, but he wondered where Ms. Minnehan saw the trendline going since the holidays have passed.
 - **Ms. Minnehan** said she would get the Committee more information, but she thought the trendline was important. Until recently, there had been underreporting of patients in the hospital recovering from COVID-19. A person is considered recovering after either 2 weeks or 21 days. Hospitals provide information during a daily huddle to ensure people are being admitted and cared for. During a recent huddle, for example, a patient who was awaiting an ICU bed in the North Country was transferred to the Seacoast.
- **Senator Bradley** said it has been a long haul for hospitals, so he thanked Ms. Minnehan and all of the frontline workers who have worked so hard.

Natch Greyes, NH Municipal Association

- The Association was confused on how paragraphs 1 and 2 of the bill are related to what information an employer could obtain.
- Under existing labor law, there are instances where an employer is required to make a reasonable accommodation for a disability or some other condition.
- Under this bill, it would be unclear when that accommodation is required.
 - For example, an employer might have a notification policy for when an employee becomes pregnant.
 - In a manufacturing facility, this notification might be necessary to prevent chemical exposure.

- For municipalities, first responders often respond to dangerous situations, so it might be necessary to make an accommodation to prevent them from being sent into harm's way.
- Mr. Greyes reiterated it is not clear when an employer can obtain this type of information; therefore, the Association is concerned that employees might become harmed.

Curtis Barry, on behalf of the NH Retail Association

- **Senator Bradley** asked Mr. Barry to describe for the Committee why the Association is opposed to this bill.
 - **Mr. Barry** said the Association is opposed to mandates from the government in this area. They believe that employers, including retailers, are responsible for the health and safety of their workplace on behalf of their employees and customers. Secondly, there are circumstances where certain questions are required. For example, an employee may have to make a delivery to a nursing home or to a home that is considered at risk; however, it could be difficult to schedule a delivery if an employer is unable to ask an employee if they are vaccinated.
- **Senator Bradley** asked if he testified on the non-germane amendment to SB 155-FN.
 - **Mr. Barry** believed that was correct. The bill was in House ED&A.
- **Senator Bradley** asked if Mr. Barry wanted to comment on the consistency between HB 220 and this bill.
 - **Mr. Barry** said the Association took no position on HB 220 while it was in the Legislature, but what has since been enacted is consistent with their position. This bill would seem to prohibit employers from doing what they think is best for the health and safety of their workplace.

Neutral Information Presented:

Peter MacKenna, Attorney, NH Department of Labor

- The Department had no position on this bill, but they raised two issues.
 - First, as Ms. Minnehan indicated, the definition of protected health information is pulled from 45 C.F.R. 160.103. This definition would only cover written information that is transmitted or maintained in an electronic media, or that is transmitted or maintained in some other form. Under this definition, there may be information that is not written down; therefore, an employer would not know they are asking about protected health information. For example, an unvaccinated individual may not have their status written in any medical document or medical card; therefore, it would not qualify as protected health information.
 - **Senator Daniels** responded that protected health information means individually identified health information that is

transmitted or maintained by electronic media, or transmitted or maintained in any other form or media. He contended that this definition would include verbal information as well.

- Second, there are situations where an employer would need to ask about protected health information. These situations may be covered by paragraph 2 of Section 1; however, it was unclear if this would fit the carve outs related to an employee's ability to perform their duties. For ADA or Family Medical Leave accommodations, an employee would need to provide some necessary information. If passed, an employee might request an accommodation for a medical condition, but an employer might not be able to ask why an accommodation is needed.

AJ

Date Hearing Report completed: January 21, 2022

Speakers

Senate Commerce Committee SIGN-IN SHEET

Date: 01/18/2022

Time: 9:45 a.m.

SB 347-FN An ACT relative to the use of protected health information by employers.

Name/Representing (please print neatly)

PAULA Minnehan NHH Hospital Association	Support <input type="checkbox"/>	Oppose <input checked="" type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
SEN. GARY DANIELS - DISTRICT # 11	Support <input checked="" type="checkbox"/>	Oppose <input type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Curtis J. Barry RUI RETAIL ASSOCIATION	Support <input type="checkbox"/>	Oppose <input checked="" type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Natch Greys NHMA	Support <input type="checkbox"/>	Oppose <input checked="" type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Rep. Timothy Harrison Stafford	Support <input type="checkbox"/>	Oppose <input checked="" type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Peter Mackenna Labor	Support <input type="checkbox"/>	Oppose <input type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
	Support <input type="checkbox"/>	Oppose <input type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Support <input type="checkbox"/>	Oppose <input type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Support <input type="checkbox"/>	Oppose <input type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Support <input type="checkbox"/>	Oppose <input type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Support <input type="checkbox"/>	Oppose <input type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Support <input type="checkbox"/>	Oppose <input type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Support <input type="checkbox"/>	Oppose <input type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Support <input type="checkbox"/>	Oppose <input type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Support <input type="checkbox"/>	Oppose <input type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Support <input type="checkbox"/>	Oppose <input type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Support <input type="checkbox"/>	Oppose <input type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Support <input type="checkbox"/>	Oppose <input type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Support <input type="checkbox"/>	Oppose <input type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Senate Remote Testify

Commerce Committee Testify List for Bill SB347 on 2022-01-18

Support: 168 Oppose: 28

<u>Name</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>
Pauer, Eric	A Member of the Public	Myself	Support
Pauer, Diane	An Elected Official	Myself	Support
Dunlap, Elisabeth	A Member of the Public	Myself	Support
Manuse, Andrew J	A Member of the Public	Myself	Support
Pouliot, Cheryl	A Member of the Public	Myself	Support
White, Robert	A Member of the Public	Myself	Support
Takekoshi, Christy	A Member of the Public	Myself	Support
Pumilia, MaryAnn	A Member of the Public	Myself	Support
Beatrice, Donna	A Member of the Public	Myself	Support
Potucek, John	An Elected Official	Myself	Support
Brown, Kathleen	A Member of the Public	Myself	Support
Jellison, Catherine	A Member of the Public	Myself	Support
Beatrice, John	A Member of the Public	Myself	Support
Surman, Elizabeth	A Member of the Public	Myself	Support
DeBourke, Sheana	A Member of the Public	Myself	Support
Doughty, Patrick	A Member of the Public	Myself	Support
Ward, Bryan	A Member of the Public	Myself	Support
Ward, Deborah	A Member of the Public	Myself	Support
Smith, Julie	A Member of the Public	Myself	Support
Pollak, Tracy	A Member of the Public	Myself	Support
Brewer, Claire	A Member of the Public	Myself	Support
Howland, Curtis	A Member of the Public	Myself	Oppose
Loew, jenny	A Member of the Public	Myself	Support
Williams, Bill	A Member of the Public	Myself	Support
Kaminski, Marie	A Member of the Public	Myself	Support
Enos, Liz	A Member of the Public	Myself	Support
Anderson, Shayla	A Member of the Public	Myself	Support
Guyen, Taci	A Member of the Public	Myself	Support
Tyszka, Matthew	A Member of the Public	Myself	Support
Lincoln, Chantel	A Member of the Public	Myself	Support
Leone, John	A Member of the Public	Myself	Support
Darrow, Linda	A Member of the Public	Myself	Support
Haidaichuk, Cheri	A Member of the Public	Myself	Support
Howes, Linda	A Member of the Public	Myself	Support
graustein, alan	A Member of the Public	Myself	Support
Delano, Janie	A Member of the Public	Myself	Support
Skinner, Paula	A Member of the Public	Myself	Support
glidden, deborah	A Member of the Public	Myself	Support
Mazur, Brian	A Member of the Public	Myself	Support
TOWER, SHARON	A Member of the Public	Myself	Support
Berling, Mark	A Member of the Public	Myself	Support
CONCORDIA, NICOLE	A Member of the Public	Myself	Support
ANGELIS, CHERYL	A Member of the Public	Myself	Support
Fenner-Lukaitis, Elizabeth	A Member of the Public	Myself	Support
Roy, Lucy	A Member of the Public	Myself	Support
Young, Susan	A Member of the Public	Myself	Support
Sylvain, Barbara	A Member of the Public	Myself	Support

Millet, Daniel	A Member of the Public	Myself	Support
S, Julie	A Member of the Public	Myself	Support
Perkins, Caryn	A Member of the Public	Myself	Support
Gagnert, Tracey	A Member of the Public	Myself	Support
Trexler, Larisa	A Member of the Public	Myself	Support
Trexler, Ryan	A Member of the Public	Myself	Support
Pedone, Jennifer	A Member of the Public	Myself	Support
Rousseau, Michael	A Member of the Public	Myself	Support
Lindpaintner, Lyn	A Member of the Public	Myself	Oppose
Cedolin, Alexandra	A Member of the Public	Myself	Support
Cedolin, Bradley	A Member of the Public	Myself	Support
Wilson, Audra	A Member of the Public	Myself	Support
Stoddard, Kristine	A Lobbyist	Bi-State Primary Care Association	Oppose
Wilson, Rock	A Member of the Public	Myself	Support
Lozito, Patrick	A Member of the Public	Myself	Support
Lozito, Viola Marie	A Member of the Public	Myself	Support
LaPointe, Susan	A Member of the Public	Myself	Support
Carpenter, Penny	A Member of the Public	Myself	Support
Kudlik, Cindy	An Elected Official	Myself	Support
Collins, Kelly	A Member of the Public	Myself	Support
Timmins, Courtney	A Member of the Public	Myself	Support
Timmins, Jeremiah	A Member of the Public	Myself	Support
Hillis, Rebecca	A Member of the Public	Myself	Support
Hillis, John	A Member of the Public	Myself	Support
Carter, Kathleen	A Member of the Public	Myself	Support
Kishinevsky, Rebecca	A Member of the Public	Myself	Support
Salafia, Matthew	A Member of the Public	Myself	Support
McClennen, Sarah P	A Member of the Public	Myself	Support
Reed, Sarah	A Member of the Public	Myself	Support
Reed, William	A Member of the Public	Myself	Support
Mahoney, Elisabeth	A Member of the Public	Myself	Support
Kepich, Jenna	A Member of the Public	Myself	Support
Torpey, Jeanne	A Member of the Public	Myself	Oppose
White, Melissa	A Member of the Public	Myself	Support
Marino, John	A Member of the Public	Myself	Support
Porter, Jandee	A Member of the Public	Myself	Support
Dudak, Breanna	A Member of the Public	Myself	Support
Dudak, Colemann	A Member of the Public	Myself	Support
Davidson, Suellen	A Member of the Public	Myself	Oppose
Hagenow, Janice	A Member of the Public	Myself	Support
Dolpies, Michael	A Member of the Public	Myself	Support
Ferrantello, Anthony	A Member of the Public	Myself	Support
Thibodeau, Marie	A Member of the Public	Myself	Support
Thibodeau, Frank	A Member of the Public	Myself	Support
Schwab, Rebecca	A Member of the Public	Myself	Support
House, Nancy	A Member of the Public	Myself	Support
STARRING, JAN	A Member of the Public	Myself	Support
McBride, Rose	A Member of the Public	Myself	Support
Janiak, Stephanie	A Member of the Public	Myself	Support
Griffin, Amy	A Member of the Public	Myself	Support
Early, Robert	A Member of the Public	Myself	Support
Balkus, Gina	A Lobbyist	Granite State Home Health & Hospice Association	Oppose
Lalone, Edward	A Member of the Public	Myself	Support
Mayo, Kathy	A Member of the Public	Myself	Support
Brisson, Angel	A Member of the Public	Myself	Support
Brisson, David	A Member of the Public	Myself	Support

Cushman, Stephen	A Member of the Public	Myself	Support
Tyner, Robin	A Member of the Public	Myself	Support
Brennan, Nancy	A Member of the Public	Myself	Oppose
Allard, David	A Member of the Public	Myself	Support
Walston, Robin	A Member of the Public	Myself	Support
Allard, Linda	A Member of the Public	Myself	Support
Rojas, Cali	A Member of the Public	Myself	Support
Pauer, Rep. Diane	An Elected Official	Myself	Support
Jorgensen, Patricia	A Member of the Public	Myself	Support
Rojas, Emily	A Member of the Public	Myself	Support
Fay, Chris	A Member of the Public	Myself	Support
Avard, Paul	A Member of the Public	Myself	Support
Nadreau, Courtney	A Member of the Public	Myself	Support
Nadreau, Todd	A Member of the Public	Myself	Support
Lev-Hod, Hila	A Member of the Public	Myself	Support
McCartney, Michelle	A Member of the Public	Myself	Support
McCartney, Evan	A Member of the Public	Myself	Support
Merner, Kelly	A Member of the Public	Myself	Support
Minchart, Will	A Member of the Public	Myself	Support
Wilmot, Kyle	A Member of the Public	Myself	Support
Richman, Susan	A Member of the Public	Myself	Oppose
Rettew, Annie	A Member of the Public	Myself	Oppose
Lewis, Alice	A Member of the Public	Myself	Support
perencevich, ruth	A Member of the Public	Myself	Oppose
Methot, Jennifer	A Member of the Public	Myself	Support
Damon, Claudia	A Member of the Public	Myself	Oppose
Hammerman, Samuel	A Member of the Public	Myself	Support
Tavanyar, Yvonne	A Member of the Public	Myself	Support
Tavanyar, Simon	A Member of the Public	Myself	Support
Petrusewicz, Carol	A Member of the Public	Myself	Support
Melvin, Daniel	A Member of the Public	Myself	Support
Raspiller, Cindy	A Member of the Public	Myself	Oppose
Brown, Howard	A Member of the Public	Myself	Oppose
Clark, Denise	A Member of the Public	Myself	Oppose
landry, rosemary	A Member of the Public	Myself	Support
Peschiera, Rafael	A Member of the Public	Myself	Support
Zaenglein, Barbara	A Member of the Public	Myself	Oppose
Zaenglein, Eric	A Member of the Public	Myself	Oppose
Lloyd, Gisela	A Member of the Public	Myself	Support
Moschetto, Grace	A Member of the Public	Myself	Support
Bender, Lorie	A Member of the Public	Myself	Support
Vanderheiden, Nicole	A Member of the Public	Myself	Support
Moore, Kristen	An Elected Official	Myself	Support
Bowers, Danielle	A Member of the Public	Myself	Support
Bemis, Ashley	A Member of the Public	Myself	Support
Cushman, Leah	An Elected Official	Myself	Support
Owens, Kimberly	A Member of the Public	Myself	Support
Comstock, Nancy	A Member of the Public	Myself	Support
Bowers, Steven	A Member of the Public	Myself	Support
Walsh, Lynne	A Member of the Public	Myself	Oppose
Peternel, Catherine	A Member of the Public	Myself	Support
Lewis, elizabeth	A Member of the Public	Myself	Oppose
McKinney, Carolyn	A Member of the Public	Myself	Support
Johnson, Debra	A Member of the Public	Myself	Support
O'Neill, Kevin	A Member of the Public	Myself	Oppose
O'Neill, Nan	A Member of the Public	Myself	Oppose

Halsey, George	A Member of the Public	Myself	Support
Eriquezzo, Jonathan	A Member of the Public	Myself	Neutral
Greene, Bob	An Elected Official	Myself	Support
Naylor, Claire	A Member of the Public	Myself	Oppose
LaClair, Donna	A Member of the Public	Myself	Support
Couture, Laurie A.	A Member of the Public	Myself	Support
Falk, Cheri	A Member of the Public	Myself	Oppose
Loveless, Eric	A Member of the Public	Myself	Support
Larose, Donna	A Member of the Public	Myself	Support
VanPatten, Emily	A Member of the Public	Myself	Support
Sweeney, Margaret	A Member of the Public	Myself	Support
Tanner, Courtney	A Lobbyist	Dartmouth-Hitchcock Health	Oppose
Erlebacher, Frances	A Member of the Public	Myself	Support
Ketteler, Claire	A Member of the Public	Myself	Support
Condon, Laura	A Member of the Public	Myself	Support
Keeler, Margaret	A Member of the Public	Myself	Oppose
Beaudoin, Sherry	A Member of the Public	Myself	Support
Romito, Susan	State Agency Staff	Myself	Support
Woods, Renia	A Member of the Public	Myself	Oppose
Barth, Katherine	A Member of the Public	Myself	Support
Cates, Tammy	A Member of the Public	Myself	Support
Cates, William	A Member of the Public	Myself	Support
Cates, Bethany	A Member of the Public	Myself	Support
Cates, Tyler	A Member of the Public	Myself	Support
Cates, Sahriah	A Member of the Public	Myself	Support
Saba, Robin	A Member of the Public	Myself	Support
Comeau, Olga	A Member of the Public	Myself	Support
Cormier, Jennifer	A Member of the Public	Myself	Support
Jones, Andrew	A Member of the Public	Myself	Oppose
Davis, Gregory	A Member of the Public	Myself	Oppose
Van Arsdale, Linda	A Member of the Public	Myself	Support
Macpherson, Christine	A Member of the Public	Myself	Support
Kono, Jacqueline	A Member of the Public	Myself	Support
Gould, Matthew	A Member of the Public	Myself	Oppose
McNamara, JM	A Member of the Public	Myself	Support
McQueen, Lauri	A Member of the Public	Myself	Support
McQueen, Stephen	A Member of the Public	Myself	Support
T, Joe	A Member of the Public	Myself	Support

Testimony



Dartmouth-Hitchcock
One Medical Center Drive
Lebanon, NH 03756
Phone (603) 650-5000
partnersforcommunitywellness.org

Chairman Harold French
Commerce Committee
Sent Electronically

February 1, 2022

Dear Chairman French and Honorable Members of the Commerce Committee,

I am writing on behalf of Partners for Community Wellness in opposition of SB347.

Partners for Community Wellness is a network of individuals who work with Dartmouth-Hitchcock Health to improve the health of their communities through education, advocacy and philanthropy. These are neighbors, business leaders, teachers and parents who live throughout the state of New Hampshire and who care about the health of their communities and believe we all need to work together to make our region the healthiest place it can be.

In support of its mission of building healthier communities, Partners for Community Wellness has established a statement of policy principles that we hope you will consider as you debate SB347. COVID-19 has undeniably impacted the health of NH in many ways, and we urge you consider the principles and values outlined in the attached letter as you cast your vote. The letter is signed by 22 New Hampshire residents and members of Partners for Community Wellness.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nicole Coleman".

Nicole Coleman
Senior Community Health Partnership Coordinator
Population Health
Dartmouth-Hitchcock

Partners for Community Wellness is a network of people working with Dartmouth-Hitchcock Health to improve the health of communities through education and outreach. We believe that improving health is not just the responsibility of our doctors and healthcare providers, but of every person who is living and working in the State of New Hampshire. As public service officials, we hope you share this responsibility as well.

As we continue to navigate the pandemic, our health systems are strained and our neighbors are struggling to obtain routine and emergent care. Active cases in New Hampshire are at a record high right now; there are around 2700 active cases each day, compared to 790 this time last year. As you debate legislation this session, we urge you to consider the potential health impacts of any legislation you consider this year.

The undersigned members of Partners for Community Wellness strongly believe in the following principles and encourage you to consider them as you represent the people and communities of New Hampshire during this turbulent and unprecedented time.

We believe the following:

New Hampshire should respect and listen to its healthcare leaders and scientists when voting on health policy, including legislation that seeks to address COVID-19.

COVID-19 vaccines save lives and prevent hospitalization. COVID-19 vaccines should be easily accessible to everyone in New Hampshire. We need to prioritize continued outreach and education to ensure fair and equitable access for all.

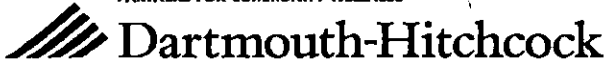
Private entities, including hospitals and private businesses, should have the right to decide what is best for their patients, patrons and/or employees. Private entities should maintain the right to mandate COVID-19 vaccination, testing and/or masking.

Things can change quickly in a pandemic like this one. We should not legislate medicine, because as medicine evolves, our providers need to be able to evolve as well.

Thank you,

Bethany Ames, MD	Hanover	Elizabeth Boucher	Dunbarton
James B. Ames, MD	Hanover	Sanders Burstein, MD	Exeter
Catherine Bardier	Newbury	Polly Champion	Etna
Scott Bardier	Newbury	Ann S. Christiano, APRN	Lyme
Richard D. Baughman, MD	Etna	Sue Conaty	Sunapee
Taralyn Bielaski	Newbury	Jane Difley	Webster

PARTNERS FOR COMMUNITY WELLNESS



Dartmouth-Hitchcock

One Medical Center Drive

Lebanon, NH 03756

Phone (603) 650-5000

partnersforcommunitywellness.org

Ken Dolkart

Al Griggs

Bill Helm

Karry Lahaye

Jill Lord, RN

Jonathan M Ross, MD

Nancy Serrell

Jane Vance

Jon W. Wahrenberger, MD

John E. Xiggoros

Grantham

Sunapee

New London

Lebanon

Cornish

Hanover

Hanover

New London

Hanover

Hooksett

February 1, 2022

Senator Harold French, Chairman
Senate Commerce Committee
State House, Room 100
Concord, New Hampshire 03301

Re: SB 347 - relative to the use of protected health information by employers.

Dear Chairman French and Members of the Senate Commerce Committee:

The Department of Health and Human Services (Department), New Hampshire Hospital is providing written testimony to express our serious concerns and opposition to Senate Bill (SB) 347 as introduced. Of note, although we appreciate the Department of Labor's fiscal input to the LBA, our agency was not requested to submit our fiscal analysis on the impact of this proposed legislation for a more complete picture for the Legislature's consideration. Specifically, the Department's concerns are set forth as follows:

Introduction

SB 347 prohibits an employer from inquiring, either verbally or in writing, about an employee's protected health information as a requirement for initial or continued employment. The bill does allow employers to inquire about an employee's protected health information if it is pertinent to the individual's job duties, but this allowance makes clear that although the employer can inquire, **the employee is not required to provide the requested information.**

As written, it is the Department's understanding that this bill would prevent New Hampshire Hospital and Glencliff Home from collecting employee health information that is used to prevent the spread and transmission of infectious diseases such as measles, mumps, rubella, tuberculosis, and COVID-19.

The risks of this legislation to New Hampshire Hospital and Glencliff Home are as follows:

Infection prevention: Requiring various aspects of health information as a condition of employment has been standard practice in the healthcare industry for decades. Proof of vaccinations, tuberculosis testing, and other forms of testing are often employed by healthcare facilities to ensure patients do not contract infectious diseases when seeking treatment. By allowing employees to refuse to provide this information as a condition of employment, SB 347 will disrupt infection prevention practices at New Hampshire Hospital and Glencliff Home.

Loss of accreditation: This bill may prevent New Hampshire Hospital and Glencliff Home from complying with the Center for Medicare and Medicaid Services (CMS) COVID-19 vaccine mandate, which was recently upheld by the United States Supreme Court. According to CMS COVID-19 vaccine mandate guidance, healthcare institutions are required to have formal policies and procedures in place to ensure they can track COVID-19 vaccine information for their staff. Failure to do so can result in



progressive disciplinary measures, including loss of hospital or nursing home accreditation. If SB 347 is signed into law and staff refuse to provide this information, New Hampshire Hospital and Glencliff Home may become non-compliant with the CMS COVID-19 vaccine mandate, which would put both organization's accreditation at risk.

The risks of not being an accredited healthcare institution are significant. The accreditation process ensures healthcare facilities are managed to a comprehensive list of clinical and operational standards. Without this process, much of healthcare operations at New Hampshire Hospital and Glencliff Home would go unregulated.

It is also worth noting that significant staff turnover may occur if these facilities were no longer accredited.

Loss of non-general funds: By giving employees the option to decline providing health information that is necessary for their employment in healthcare facilities, SB 347 would make it nearly impossible for New Hampshire Hospital or Glencliff Home to comply with the CMS COVID-19 vaccine requirements, resulting in the potential loss of all Medicare, Medicaid, DSH, and commercial insurance revenues. These financial challenges would require a general fund appropriation to supplant existing non-general fund revenues, in an amount that would be dependent upon the date in which this bill becomes effective.

It is worth noting that the same financial risks will also apply to Hampstead Hospital once the state closes on its purchase of the facility, and as such that facility would also have to be 100% general funded should SB 347 be signed into law.

Summary

SB 347 will likely prevent New Hampshire Hospital and Glencliff Home from implementing the CMS COVID-19 vaccine mandate. In being non-compliant, the accreditation of both facilities will be at risk, potentially resulting in a significant funding loss, a lack of regulatory oversight, and a potential exodus of staff during a time when mental health services are needed most. SB 347 could also upend healthcare facility infection prevention practices that have been established for decades. For these reasons, New Hampshire Hospital and Glencliff Home respectfully provide this testimony in opposition of SB 347.

Respectfully submitted,

Heather Moquin, Chief Executive Officer
New Hampshire Hospital & Glencliff Home

CC: Senator Gary Daniels



Aaron Jones

From: Heather Ochieng <heatherochieng@yahoo.com>
Sent: Sunday, January 16, 2022 5:54 PM
To: Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones
Subject: Support SB 347-FN

Dear Senate Committee,

I'm writing to request you support SB 347-FN, prohibiting an employer from inquiring, either verbally or in writing, about an employee's protected health information as a requirement for initial or continued employment. In fact, I believe an employer should be prohibited from inquiring about an employee's PHI in general – even when not related to a requirement. We have labor and employment laws that prevent discrimination, and this bill would further prevent discrimination.

Thanks for your consideration,

Heather Ochieng

Hollis, NH

Aaron Jones

From: Paul DeKoning <pauldekoning7@gmail.com>
Sent: Sunday, January 16, 2022 7:52 PM
To: Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones
Cc: pauldekoning7@gmail.com
Subject: Upcoming legislation

I want to, as a New Hampshire resident, voice my support of HB 1022 and SB 347-FN.

As a physician I have done the research that so many in medicine have been unwilling or even prevented from doing: ivermectin is safe and effective in the treatment of COVID-19, especially early on. Countries around the world including Japan and India have shown remarkable drops in Covid after the mass implementation of ivermectin. Additionally employers have absolutely no business inquiring about vaccination status as a condition of employment. HIPAA should protect employees and with the supreme court striking down the Biden mandates, businesses have no right to take it into their own hands. Workers rights should be protected by New Hampshire law.

Similarly I oppose 1369. Performing arts centers have no authority, expertise, or knowledge base with which to make their own rules for entry. Individual rights protected under the constitution do not take a back seat in the theater.

Thank you for your service to granite staters.

Sincerely,
Paul DeKoning

Sent from my iPhone

Aaron Jones

From: Alan Graustein <alangraustein@gmail.com>
Sent: Sunday, January 16, 2022 8:15 PM
To: Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones
Subject: SupportSB347-FN

Committee Members,

Please protect the rights and freedom of NH citizens by supporting SB347-FN.

Thank you,

Alan Graustein
Sanbornton, NH

Aaron Jones

From: Ron Roy <rnroy03570@ne.rr.com>
Sent: Monday, January 17, 2022 7:18 AM
To: Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones

Please Support SB 347-FN, relative to the use of protected health information by employers. This bill would prohibit an employer from inquiring about an employee's protected health information as a condition of employment.

Ronald N. Roy
166 East Milan Road
Berlin, NH 03570
(603) 752-3738

Aaron Jones

From: Debbi Schaefer <debbischaef@hotmai.com>
Sent: Monday, January 17, 2022 8:25 AM
To: Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones
Subject: Support SB 347-FN

I am writing to ask that when this bill comes up for vote on Tuesday 1/18/22 that you **SUPPORT SB 347-FN**. As a NH business owner, I would never ask my employee for any of his private health information, he is in fact protected at the moment by law that I may not use that information against him as to whether I will keep him on or not.

Also, if I were hiring a new employee, I would respect their privacy and their protected right to not have to disclose whether they are vaccinated or not or any other medical history. Please uphold our freedom that we have here in NH so that we may be a state that listens to the voice of its people who are the very ones that elect its government employees.

I ask this respectfully,
Debbi Schaefer

Aaron Jones

From: Francine Caroselli <fcaroselli@outlook.com>
Sent: Monday, January 17, 2022 9:36 AM
To: Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones
Subject: SB 347-FN

To All Committee Members,

Thank you for this opportunity to speak.

I support SB 347-FN prohibiting employers from asking about protected, personal and private health information as a condition of employment.

I ask that each of you would consider the same and vote in support of this bill.

Respectfully,

Francine Caroselli
Laconia

Aaron Jones

From: Bikers <bikeerz@comcast.net>
Sent: Monday, January 17, 2022 9:55 AM
To: Aaron Jones
Subject: SB 347-FN

Dear Senator Jones,

Please protect health information privacy. It's our fundamental right and your duty to protect our constitution and serve the people. Please take this opportunity to show integrity.

Regards,

Lucy Roy

North Hampton, NH

Sent from my iPad

Aaron Jones

From: Jenna Pedone <jennapedone@gmail.com>
Sent: Monday, January 17, 2022 10:24 AM
To: Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones
Subject: Please support SB347-FN

Dear Senators,

Please support SB347-FN to not allow for protected health information to be shared.

Warm regards,

Jenna Pedone
2200 Elm St
Manchester NH 03104

Aaron Jones

From: nmcewan <nmcewan@comcast.net>
Sent: Monday, January 17, 2022 10:24 AM
To: Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones
Subject: SB347-FN

Please support this bill. Employers are mandating employees that work 100% remotely from NH get vaccinated and even boosted when they are young and healthy and already had covid. There is no justification what so ever for this. They are also requiring employees who go the office check in with an app every morning reporting temp and symptoms. The app requires employees not to use fever reducing medication such as NSAIDS within 6 hours of reporting on the app. What if you have a chronic condition that you take NSAIDS for? You have to withhold to comply with corp app? This is crazy.

We need our legislators to protect us from this corporate fascism.

Sincerely,

Nicole & Robert McEwan
Chester

Sent from Samsung tablet

Aaron Jones

From: enidmack@comcast.net
Sent: Monday, January 17, 2022 11:38 AM
To: enidmack@comcast.net
Subject: Please Support SB 347-FN

Hello committee member,

With our freedom continually being eroded, I am asking you to support **SB 347-FN** to prohibit an employer from inquiring about an employee's health information as a condition of employment. On this day when we celebrate the life of Martin Luther King Jr, it is shameful that the unvaccinated are being discriminated against and treated like second class citizens.....think Nazi Germany....how quickly we forget the lessons of history!

Thank you for all the work you do on behalf of NH citizens....and don't forget we are not subjects.....I grew up in a country where I was a subject. I never take my citizenship lightly and I'm thankful every day that the Constitution bestows on me the blessings of liberty.

Best regards,
Enid Mackenzie
Goffstown



January 18, 2022

Honorable Harold French, Chair
Senate Commerce Committee
State House
Concord, New Hampshire

Via Electronic Delivery Only

Re: SB 347, prohibiting an employer from inquiring, either verbally or in writing, about an employee's protected health information as a requirement for initial or continued employment

Dear Senator French:

The New Hampshire Municipal Association opposes SB 347, prohibiting an employer from inquiring, either verbally or in writing, about an employee's protected health information as a requirement for initial or continued employment. Although the bill does allow an employer to inquire about an employee's protected health information when it is relevant for a job in Paragraph II, it is unclear how that would function in relation to Paragraph I, which prohibits such an inquiry.

Employers, including municipalities, must frequently inquire about an employee's protected health information. For example, an employer engaged in manufacturing processes may have a standard policy regarding notification of pregnancy as the nature of the work may expose employees to compounds that pregnant women should not work with, and the employer would seek to reassign pregnant employees to other duties. In the context of municipalities, disabilities or (in the case of first responders) injuries may require the municipality to provide reasonable accommodations and/or take actions to prevent further harm. Limiting the information that an employer can obtain from employees would inhibit the ability of the employer to take these reasonable steps.

Municipalities, like other employers, are deeply concerned about the health and wellbeing of their workforce and want to ensure that they are legally able to obtain the information that they need to keep their employees safe and provide reasonable accommodations. As such, we ask the committee to vote SB 347 Inexpedient to Legislate.

Thank you for your consideration.

Sincerely,

Natch Greyes

Natch Greyes
Government Affairs Counsel

cc: Committee members

Aaron Jones

From: Andrea G. Chatfield <a.chatfield@clrm.com>
Sent: Monday, January 17, 2022 4:28 PM
To: Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones
Cc: Andrea G. Chatfield
Subject: RE: Opposition to SB 347 - relative to the use of protected health information
Importance: High

Dear Honorable Senators:

Please accept this email as written testimony on behalf of the **HR State Council of New Hampshire** which is a membership organization made up of over 1,000 Human Resource professionals in our State. The State Council is affiliated with the national SHRM (Society of Human Resource Management) organization and works to be a resource on workplace issues in New Hampshire. Our members are the front lines for workplace law compliance in their respective workplaces. This includes working with employees who have health challenges and maintaining employees' health information.

The HR State Council opposes SB 347 and its prohibition on employers being able to inquire about employees' protected health information. Such a broad ban is an unnecessary attempt by the State to micromanage employers and will significantly impair HR professionals from being able to do their jobs for the following reasons:

SB 347 will prohibit employers from complying with other laws: There are many situations where employers either must or should inquire about the health conditions of job candidates and employees, but may be prohibited from doing so under SB 347:

- Employers with self-funded medical plans for employees regularly make inquiries about employees' protected health information for purposes of administering coverage.
- Employers could not provide wellness programs because such programs make inquiries about employees' protected health information.
- Employers with physically demanding jobs use medical screenings and physical examinations to ensure employees are healthy to withstand such the physical demands.
- In order to qualify for benefits through the State's second injury fund for work-related injuries, employers must ask about a new employee's medical history.
- Employers, especially those that serve vulnerable populations or interact with the general public, inquire about employees' immunization status to prevent or mitigate transmission of contagious diseases.
- If an employee requests medical leave, employers need information about the medical condition in order to ensure the leave qualifies under the Federal Family and Medical Leave Act or other leave policies.
- Employers who have an employee who requests or needs reasonable accommodation due to a disability are obligated to engage in an interactive process with the employee to identify effective accommodation. Information about the employee's disability is crucial to helping the employer understand the employee's needs and challenges.
- Sometimes employees are eager to return to work from a medical leave and do not disclose the physical requirements of their job to their treating provider, nor all the doctor's restrictions to the employer. If an employer knows the employee's diagnosis, the employer can work closely with the employee and their provider to ensure they receive needed support.
- Healthcare employers are required by state law to screen certain candidates and employees for tuberculosis and other communicable diseases.

- Employers of employees with commercial driver's licenses must have such employees undergo medical exams.
- Employers that are subject to certain Federal regulations, have safety-sensitive positions, and/or have positions which involve handling of controlled substances, must be able to test employees for the presence of drugs in their systems.
- Employers of employees who have violated drug-free workplace policies many times require the employee to provide proof they have attended or are attending treatment for drug abuse as a condition of continued employment.

While SB 347 states that employers can ask about protected health information related to employees' ability to do their jobs, it is not always clear whether information fits this exception. Screening for tuberculosis is not necessarily about the ability to perform a job, but rather whether the individual is qualified for the position. Information about immunizations, the presence of drugs, treatments received, likewise are not directly about the ability to perform a job but whether the employee poses a safety risk to others or they can safely or effectively perform the job. The State should not be restricting employers from ensuring safety and health in these situations.

The purpose of SB 347 is unclear and not necessary. It is not clear why there is a need for SB 347. The Americans With Disabilities Act (the ADA) already requires employers to maintain employee medical information in a confidential manner separate from the employee's main personnel file, and prohibits disclosure of such information except in very limited circumstances. The ADA also restricts the types of inquiries employers can make about employee's physical and mental conditions. HIPAA likewise protects the use and disclosure of protected health information. Within the existing legal landscape, it is not necessary for the State to mandate such a broad ban on employers' ability to ask about protected health information, especially where the ban prevents employers from ensuring a safe and healthy workplace.

For all the reasons stated above, the HR State Council respectfully requests you to vote SB 347 as inexpedient to legislate. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely, Andrea Chatfield, Esq.
State Council Government Relations & Legislative Chair

CC: Tina Sharby, SHRM-CP, State Council Director
David Twitchell, SHRM-SCP, CCP, CBP, State Council Director-Elect

My contact information:
Andrea G. Chatfield, Esq.
Cook, Little, Rosenblatt & Manson, pllc
Manchester, NH 03101
office: (603) 621-7118
cell: (603) 305-0289
a.chatfield@clrm.com

Aaron Jones

From: Anthony Ferrantello <ajfnino@gmail.com>
Sent: Monday, January 17, 2022 5:15 PM
To: Aaron Jones
Subject: Support for SB 347

By supporting SB 347, you would protect employees health information from infringement and from employer coercion. As employees health information is private, it should not be used as a condition of employment.

I urge you to support SB 347.

Thank You.
Anthony Ferrantello
Keene, NH

Aaron Jones

From: Robin Saba <rbrooks230@hotmail.com>
Sent: Monday, January 17, 2022 5:39 PM
To: Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones
Subject: Support for SB 347-FN

Hello,

I'd like to register my support for SB 347-FN, which prohibits an employer from requesting an employee's protected health information as a condition of initial or continued employment.

Having worked for nearly 25 years in the medical technology field, I'm very sensitive to how important it is to protect individual's health information. It is critical for privacy and protection against discrimination.

The only time I would see the need for an employer to know this information is if it relates to the ability of the employee to perform the job duties or if the employer needs to provide disability accommodations, which I believe is addressed in paragraph II of the bill. Outside of that, in my opinion there is no reason for employers to request or have access to this info other than to discriminate.

I ask for your support of this measure to protect citizens from health discrimination of any kind, especially when it relates to their employment and ability to provide for themselves and their families.

Thank you,
Robin Saba
230 Patten Hill Rd
Candia, NH 03034

Sent from [Mail](#) for Windows

GRANITE STATE HOME HEALTH & HOSPICE ASSOCIATION

January 18, 2022

Senator Harold French
Chairman, Senate Commerce Committee
State House
Concord, NH 03301

Re: SB 347, the use of protected health information by employers

Senator French and Members of the Committee:

I am writing on behalf of the Granite State Home Health & Hospice Association which advocates for home care agencies, hospices, palliative care providers and the people they serve. We are opposed to SB 347, re: the use of protected health information by employers.

SB 347 would prevent employers from requesting health information from employees. If requested for reasons relevant to employment, SB 347 proposes that an employee would not be required to provide health information.

This bill references the federal HIPAA rule, which does not apply to employers. HIPAA applies to health care providers, insurers and business associates and governs how individually identifiable *patient* health information is protected and shared among those covered entities. HIPAA specifically does not apply to employment records of covered entities.

Home care and hospice agencies are licensed facilities under NH RSA 151. We are *required by state regulations* (He-P 809, He-P 822, He-P 823, and He-P 824) to obtain the results of a physical exam or health screening, including TB tests, before any employee interacts with a patient. Home care and hospice agencies that are Medicare-certified and provide services to Medicare and Medicaid beneficiaries are subject to the Center for Medicare and Medicaid Services (CMS) Vaccine Mandate. This means we must inquire about the vaccine status of all employees. If agencies do not comply, they may lose Medicare certification and be unable to care for Medicare and Medicaid patients.

Home care and hospice agencies were founded on a public health model that focuses on preventing disease and promoting wellness. The health and safety of our employees, patients, clients, and communities is an essential part of our work. We expect employees to report an illness that could put patients and fellow employees at risk, such as COVID-19, and to follow appropriate protocols for isolation and quarantine.

SB 347 is contrary to state and federal requirements and would negatively impact efforts to prevent the spread of disease. The Granite State Home Health & Hospice Association urges you to recommend SB 34 as "inexpedient to legislate."

Respectfully



Gina Balkus
Chief Executive Officer

Aaron Jones

From: ajohnston16@comcast.net
Sent: Monday, January 17, 2022 6:23 PM
To: Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones
Subject: Regarding SB 347 FN (Johnston Family, Bedford New Hampshire)

To the distinguished committee members of Senate Bill 347:

My family and I support Senate Bill 347-FN. We should not attempt a mass conformation of society with a blanket execution of diversity. Allowing personal information concerning our health decisions to be part of employment criteria sets a very dangerous precedent. If this was allowed what is the next logical step, can my employer ask if I support gun rights, the abolition of guns, gay marriage or tax reform as a matter of employment. This is the very essence of discrimination and allowing intimate health matters such as vaccination status, is nothing short of legislative endorsed discrimination.

Sincerely,
The Johnston Family
Bedford, New Hampshire

Aaron Jones

From: Peter Geremia <p.geremia@icloud.com>
Sent: Monday, January 17, 2022 7:30 PM
To: Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones
Subject: Please Support SB 347-FN

Hello,

I am asking you to please SUPPORT SB 347-FN. This bill will prohibit an employer from inquiring about an employee's protected health information as a condition of employment. What is going on around this country with employers asking for vaccine status is pretty much unbelievable. We can no longer allow this and it starts at the STATE LEVEL. This is another step in protecting NH citizens from a total breach in personal health privacy. I am asking for you to please support SB 347-FN.

Thank You,

Peter P. Geremia
315 Maplewood Ave.
Portsmouth, NH 03801
603-531-3102

Aaron Jones

From: Valerie <valeriea86@gmail.com>
Sent: Monday, January 17, 2022 8:21 PM
To: Harold French; Jeb Bradley; William Gannon; Kevin Cavanaugh; Donna Soucy; Aaron Jones
Subject: Please support SB-347-FN

Dear Committee Members,

I am emailing to ask you to please support the bill SB-347-FN. We must protect the privacy of the people of New Hampshire and keep their health information protected from employers who want to overstep boundaries and inquire on private health information. There can be no room for medical discrimination of any kind. Please protect our people.

Thank you for your time.

Sincerely,
Valerie Burkett
Manchester NH

Sent from my iPhone

Aaron Jones

From: Bonnie Faulkner <bstonge1021@gmail.com>
Sent: Monday, January 17, 2022 9:32 PM
To: Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones
Subject: Fwd: Support SB 347-FN

----- Forwarded message -----

From: Bonnie Faulkner <bstonge1021@gmail.com>
Date: Mon, Jan 17, 2022 at 9:24 PM
Subject: Support SB 347-FN
To: <Harold.French@leg.state.nh.us>, <+William.Gannon@leg.state.nh.us>, <+Kevin.Cavanaugh@leg.state.nh.us>, <+Jeb.Bradley@leg.state.nh.us>, <+Donna.Soucy@leg.state.nh.us>, <+aaron.jones@leg.state.nh.us>

Good evening, Congressmen:

Thank you for your service. As a resident who works at Catholic Medical Center, I have been affected by having to give my personal health information as terms of employment. I am asking that you please support the SB 347-FN. What I put in my body is personal, and should not have to be disclosed in order for me to provide for my family.

Thank you for your time and service,

Bonnie St.Onge

Aaron Jones

From: Peter de Bruyn Kops <dbk@acugen.com>
Sent: Monday, January 17, 2022 10:36 PM
To: Aaron Jones
Subject: OTP SB347

Please vote OTP SB347 regarding protected health information.

525 Clinton Street
Bow, NH 03304
Voice: 603-228-2830
Fax: 603-228-2464



61 Elm Street
Montpelier, VT 05602
Voice: 802-229-0002
Fax: 802-223-2336

January 18, 2022

Senator Harold French, Chairman
Senate Commerce Committee
State House, Room 100
107 N. Main Street
Concord, NH 03301

RE: Senate Bill 347-FN relative to the use of protected health information by employers

Dear Chairman French and Members of the Senate Commerce Committee:

Bi-State Primary Care Association and our members respectfully request SB 347-FN relative to the use of protected health information by employers be recommended inexpedient to legislate. Bi-State staff and our members will not attend legislative hearings due to the risk of COVID-19, and we thank you for the opportunity to submit written testimony to your committee electronically. Bi-State and our members write to you in strong opposition of SB 347-FN.

Bi-State Primary Care Association (Bi-State) is a 501(c)3 nonprofit organization, formed by two health and social service leaders in 1986 to advance access to comprehensive primary care and preventive services for all, with special emphasis on those most in need in New Hampshire and Vermont. Today, Bi-State represents 28 member organizations across both states that provide comprehensive primary care services to over 300,000 patients at 146 locations. Our members include community health centers, federally qualified health centers, area health education center programs, and Planned Parenthood of Northern New England. New Hampshire's 13 health centers serve approximately 112,000 patients at locations across the state, including in those districts represented by the senators on the Commerce Committee.

Bi-State and our members, particularly New Hampshire's community health centers, oppose SB 347-FN because it will eliminate every employer's, including health care organizations', ability to maintain safe workplaces and needlessly endanger the health and welfare of patients. While we oppose SB 347-FN for many reasons, we will provide you with specific examples of why federally qualified health centers cannot comply with the SB 347-FN as introduced.

New Hampshire's federally qualified health centers (FQHCs) are part of a national network of health centers established in federal law and regulated by the Health Services and Resources Administration (HRSA). Our FQHCs serve more than 88,000 Granite Staters who made approximately 387,000 patient visits in 2020, including over 100,000 telehealth visits. These health centers must serve patients regardless of ability to pay or insurance status; however, approximately 35% of their patients are commercially insured. Federal statute establishes the array of services FQHCs must provide, including basic primary care services, voluntary family planning services, immunizations against vaccine-preventable diseases, appropriate cancer

screenings, pharmaceutical services, mental health services, substance use disorder treatment, translation services, and transportation services.¹

Federally qualified health centers are governed by patient-majority boards, meaning members of the communities served by the FQHCs approve the policies and procedures the FQHC must utilize. The HRSA conducts site visits at least every three years, to ensure the FQHCs comply with the federal rules and regulations governing FQHCs. Health centers are required to “provide services....so that such services are available and accessible promptly, as appropriate, and in a manner that will assure continuity of services to the residents of the center’s catchment area.”² In order to demonstrate compliance with the clinical staffing requirements of FQHCs, an FQHC must have procedures in place to grant and renew privileges for clinical staff members who are “health center employees, individual contractors, or volunteers.”³ The procedures for privileging clinicians include verifying immunization and communicable disease status. If SB 347-FN were to become law, the FQHCs in New Hampshire would be in violation of state statute. If the FQHCs were in violation of the RSA §275:37-e as written in SB 347-FN, would they be forced to shut the doors to the more than 88,000 Granite Staters who rely upon the FQHCs for their primary care, substance use disorder treatment, mental health services, and pediatric care?⁴ Where would their patients turn for health care needs? Where would the citizens of Berlin and Gorham find primary care if their local FQHC shut its doors? Coos County Family Health Services is the only primary care provider in their area and provides much needed oral health services to those communities as well.

Further, SB 347-FN uses *protected health information* as defined by the Health Insurance Portability and Accountability Act when it cross references 45 CFR § 160.103, and in turn, the definition of *covered entity*. A *covered entity* is defined as: “1) a health plan; 2) a health care clearinghouse; or 3) a health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.” The Health Insurance Portability and Accountability Act’s Privacy Rule (the HIPAA Privacy Rule) pertains to the disclosure of protected health information. It does not prohibit employers from asking employees health information because the Privacy Rule does not apply to an individual’s disclosures about their own health information. Instead, “the Privacy Rule regulates how and when covered entities and business associates are permitted to use and disclose protected health information.”⁵ The Privacy Rule cited in SB 347-FN does not prohibit an employer from inquiring about an employee’s health status because it does not apply to employment records.

For these reasons and more, Bi-State Primary Care Association and our members respectfully request the Committee recommend SB 347-FN be inexpedient to legislate.

Sincerely,

Kristine E. Stoddard, Esq.
Senior Director of NH Public Policy
kstoddard@bistatepca.org
(603) 228-2830 ext. 113

¹ 42 USC §254b (2020).

² See Health Center Program Compliance Manual, Ch. 5: Clinical Staffing, 28 (2018)

³ *Id.* at 29.

⁴ S.B. 347-FN, 2022 Leg., 2nd Reg. Sess. (Nh. 2022)

⁵ HIPAA, COVID-19 Vaccination, and the Workplace (September 30, 2021), https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/hipaa-covid-19-vaccination-workplace/index.html#footnote2_mrlj86be

Aaron Jones

From: Claire Ketteler <cketteler@tds.net>
Sent: Tuesday, January 18, 2022 11:11 AM
To: Aaron Jones
Subject: Support SB347

Dear Senate Commerce Committee

I support SB347. There is no reason for an employer to have access to protected health information of a current or potential employee if the employee does not want to share the information.

This also includes employment in the health care setting, such as hospitals, clinics and doctor's offices. Sharing any health information is a decision that each person should be allowed to make.

The NH Bill of Rights [Art.] 2-b. [Right of Privacy.] An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent. December 5, 2018

You as the Senate Commerce Committee in voting to pass this bill are guaranteeing this freedom to NH citizens. This is your duty as elected officials to protect NH citizens' rights. Thank you for your service.

Sincerely,
Claire Ketteler
Newbury NH

SB347 Testimony

Good morning, Mr. Chairman, and members of the Committee. For the record I am State Senator Gary Daniels of District 11, representing the towns of Amherst, Merrimack, Milford, and Wilton, and am the prime sponsor of SB347, relative to discrimination in the workplace.

This bill prohibits an employer from inquiring about an employee's protected health information as a requirement for initial or continued employment, thereby preventing and curtailing the discrimination that is currently taking place in our state, to the detriment of our constituents.

This issue is one that we really have not encountered until the past couple years, but the door to discrimination in the workplace has been opened by employers asking their employees for their person health information, that is whether or not they have been vaccinated, and if the answer is in the negative, issuing an ultimatum to the employee to get vaccinated or be terminated.

While vaccination status is the primary driver of this discrimination, I am told by Senate Counsel that employers are not restricted from asking for protected health information, including whether or not a person was diabetic, if they have high blood pressure, if a woman has had an abortion, if the person has been vaccinated, or had a booster, or two, or any other number of probing questions that may have nothing to do with the individual's ability to do the job in question.

SB347 simply states that an employer cannot ask for protected health information if it is not directly related to the individual's ability to do the job. If a person is applying for a job in a stockroom or delivering furniture, the employer could legitimately ask if the person could lift a certain weight. Likewise, an applicant for

a linesman position could be asked if they could walk a certain distance. But asking for personal health information unrelated to the person's ability to do the job is just plain wrong, and intrusive.

The situation we currently have in state is that people are being terminated for no reason other than they have chosen, for whatever reason, to pursue a personal healthcare path that is different than that desired for them by another person who has not the full knowledge of the individual's personal health information. This includes individuals who have worked successfully at companies for well over 20 years, as well as the state's medical providers, the very ones who put their lives on the line to treat us during the on-going pandemic.

With a few exceptions, New Hampshire employers are free to self-regulate their work environments. This bill would not prevent an employer from requiring its employees to wear masks. The bill focuses on the discrimination that is now taking place because some employers are using protect health information unrelated to the job as a basis for termination.

The NH legislature has been diligent in ensuring that New Hampshire workers enjoy a work environment that is free from discrimination. SB347 will continue that tradition and eliminate one factor that is contributing to worker shortage in the state.

Thank you, Mr. Chairman.

[Art.] 2-b. of the New Hampshire Constitution, [Right of Privacy], which states "An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent



SENATE COMMERCE COMMITTEE

Tuesday, January 18, 2022

SB 347 – Relative to the use of Protected Health Information by Employers

Testimony

Good morning, Mr. Chairman and members of the committee. My name is Paula Minnehan, Senior Vice President with the New Hampshire Hospital Association (NHHA), representing all 26 of the state's community hospitals as well as all specialty hospitals.

The NHHA has concerns with SB 347, as drafted. The bill before you would prohibit an employer from inquiring, either verbally or in writing, about an employee's protected health information as a requirement for initial or continued employment.

The language of the bill, as drafted, is confusing and seems to be contradictory.

We read this bill language as trying to equate protected health information, as defined by the federal Health Insurance Portability and Accountability Act (HIPAA), with something an employer cannot request or maintain of its employees. This is an incorrect use of HIPAA as employers are not subject to HIPAA, in most situations.

The bill points to the definition of protected health information as defined by HIPAA, specifically 45 C.F.R section 160.103. Here is that definition and note the highlighted exclusion from HIPAA:

Protected health information means individually identifiable health information:

- (1) **Except as provided in paragraph (2) of this definition**, that is:
 - (i) Transmitted by electronic media;
 - (ii) Maintained in electronic media; or
 - (iii) Transmitted or maintained in any other form or medium.
- (2) Protected health information excludes individually identifiable health information:
 - (i) In education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g;
 - (ii) In records described at 20 U.S.C. 1232g(a)(4)(B)(iv);
 - (iii) **In employment records held by a covered entity in its role as employer**; and

(iv) Regarding a person who has been deceased for more than 50 years.

This exclusion allows healthcare providers, insurers and health data clearinghouses (known as covered entities) to maintain employment records separate and apart from the HIPAA rules.

In addition, as noted in the attached FAQs, HIPAA does not apply to any employer (healthcare or otherwise) in their role of managing employees. Only healthcare providers, insurers and health data clearinghouses are covered entities that are subject to HIPAA – not all employers. In addition, HIPAA is narrow in that it prevents healthcare providers, insurers and health data clearinghouses from sharing a patient's medical records without their explicit consent. HIPAA has nothing to do with asking an individual about their health status. In fact, HIPAA would not be violated if an employer requested their employees' health status, including vaccination status, because HIPAA doesn't protect medical information that an employee shares about themselves. HIPAA only applies to how covered entities **protect** the health information they receive.

The bill's attempt at intertwining all employers as being covered by HIPAA's definition of protected health information is an inappropriate application of the federal law.

Thank you for the opportunity to provide our comments to SB 347.

[HHS](#) > [HIPAA Home](#) > [For Professionals](#) > [Privacy](#) > [Guidance Materials](#) > HIPAA, COVID-19 Vaccination, and the Workplace

1

HIPAA, COVID-19 Vaccination, and the Workplace (#footnote1_zqanadg)

1. Does the HIPAA Privacy Rule prohibit businesses or individuals from asking whether their customers or clients have received a COVID-19 vaccine?

No. The Privacy Rule (#footnote2_mrj86be) does not prohibit **any person** (e.g., an individual or an entity such as a business), including HIPAA covered entities and business associates, from asking whether an individual has received a particular vaccine, including COVID-19 vaccines.

First, the Privacy Rule (#footnote3_lf63g99) applies **only to covered entities** (#footnote4_k85j9j) (health plans, health care clearinghouses, and health care providers that conduct standard electronic transactions) and, to some extent, their **business associates**. (#footnote5_ja44nh1)

Second, the Privacy Rule **does not regulate** the ability of covered entities and business associates to request information from patients or visitors. Rather, the Privacy Rule regulates how and when covered entities and business associates are permitted to use (#footnote6_hhhlwkl) and disclose (#footnote7_8umzjtz) **protected health information** (#footnote8_fbo6900) (**PHI**) (e.g., PHI about whether an individual has received a COVID-19 vaccine) that covered entities and business associates create, receive, maintain, or transmit. Thus, the Privacy Rule **does not prohibit** a covered entity (e.g., a covered doctor, hospital, or health plan) or business associate from asking whether an individual (e.g., a patient or visitor) has received a particular vaccine, including COVID-19 vaccines, although it does regulate how and when a covered entity or its business associate may use or disclose information about an individual's vaccination status.

Additional examples. The Privacy Rule **does not apply** when an individual:

- Is asked about their vaccination status by a school, (#footnote9_oqvffz0) employer, store, restaurant, entertainment venue, or another individual.
- Asks another individual, their doctor, or a service provider whether they are vaccinated.
- Asks a company, such as a home health agency, whether its workforce members are vaccinated.

Other state or federal laws address whether individuals are required to disclose whether they have received a vaccine under certain circumstances.

2. Does the HIPAA Privacy Rule prevent customers or clients of a business from disclosing whether they have received a COVID-19 vaccine?

No. The Privacy Rule does not prevent any individual from disclosing whether that individual has been vaccinated against COVID-19 or any other disease. The Privacy Rule does not apply to individuals' disclosures about their own health information. It applies **only to covered entities** ¹⁰ and, to some extent their **business associates**. ¹¹ Therefore, the Privacy Rule does not apply when an individual tells another person, such as a colleague or business owner, about their own vaccination status.

3. Does the HIPAA Privacy Rule prohibit an employer from requiring a workforce member to disclose whether they have received a COVID-19 vaccine to the employer, clients, or other parties?

No. The Privacy Rule does not apply to employment records, including employment records held by covered entities ¹² or business associates ¹³ in their capacity as employers. ¹⁴ Generally, the Privacy Rule does not regulate what information can be requested from employees as part of the terms and conditions of employment that an employer may impose on its workforce. ¹⁵ However, other federal or state laws do address terms and conditions of employment. ¹⁶ For example, federal anti-discrimination laws do not prevent an employer from choosing to require that all employees physically entering the workplace be vaccinated against COVID-19 and provide documentation or other confirmation that they have met this requirement, subject to reasonable accommodation provisions and other equal employment opportunity considerations. ¹⁷ Documentation or other confirmation of vaccination, however, must be kept confidential and stored separately from the employee's personnel files under Title I of the Americans with Disabilities Act (ADA). ¹⁸

4. Does the HIPAA Privacy Rule prohibit a covered entity or business associate from requiring its workforce members to disclose to their employers or other parties whether the workforce members have received a COVID-19 vaccine?

No. The Privacy Rule does not apply to employment records, including employment records held by covered entities ¹⁹ and business associates ²⁰ acting in their capacity as employers. ²¹ Thus, the Privacy Rule generally **does not** regulate what information can be requested from employees as part of the terms and conditions of employment that a covered entity or business associate may impose on its workforce, ²² such as the ability of a covered entity or business associate ²³ to require its workforce members to provide documentation of their vaccination against COVID-19 or to disclose whether they have been vaccinated to their employer, other workforce members, patients, or members of the public.

For example, the Privacy Rule **does not prohibit** a covered entity or business associate from requiring or requesting each workforce member to:

- Provide documentation of their COVID-19 or flu vaccination to their current or prospective employer.
- Sign a HIPAA authorization for a covered health care provider to disclose the workforce member's COVID-19 or varicella vaccination record to their employer. ²⁴ (#footnote24_wacqa6u)
- Wear a mask—while in the employer's facility, on the employer's property, or in the normal course of performing their duties at another location.
- Disclose whether they have received a COVID-19 vaccine in response to queries from current or prospective patients.

Other federal or state laws address whether an employer may require a workforce member to obtain any vaccinations as a condition of employment and provide documentation or other confirmation of vaccination. These laws also address how employers must treat medical information that they obtain from employees. For example, documentation or other confirmation of vaccination must be kept confidential and stored separately from the employee's personnel files under Title I of the Americans with Disabilities Act (ADA).

4. Does the HIPAA Privacy Rule prohibit a doctor's office from disclosing an individual's protected health information (PHI), including whether they have received a COVID-19 vaccine, to the individual's employer or other parties?

Generally, yes. The Privacy Rule prohibits covered entities ²⁵ (#footnote25_ienkiel) and their business associates ²⁶ (#footnote26_mfikhxe) from using or disclosing an individual's PHI ²⁷ (#footnote27_6gdopah) (e.g., information about whether the individual has received a vaccine, such as a COVID-19 vaccine; the individual's medical history or demographic information) except with the individual's authorization or as otherwise expressly permitted or required by the Privacy Rule.

Generally, where a covered entity or business associate is permitted to disclose PHI, it is limited to disclosing the PHI that is reasonably necessary to accomplish the stated purpose for the disclosure. ²⁸

(#footnote28_s9fbg0i)

For example, if consistent with other law and applicable ethical standards, under the Privacy Rule:

- A covered physician **is permitted** to disclose PHI relating to an individual's vaccination to the individual's health plan as necessary to obtain payment for the administration of a COVID-19 vaccine. ²⁹

(#footnote29_dw1y1ht)

- A covered pharmacy **is permitted** to disclose PHI relating to an individual's vaccination status (e.g., that an individual has received a COVID-19 vaccination, the date of vaccination, the vaccine manufacturer) to a public health authority, such as a state or local public health agency. [30](#) ([#footnote30_17sr04e](#))
In such situations, the covered pharmacy may rely, if such reliance is reasonable under the circumstances, on a representation by the public health authority that the information requested constitutes the minimum necessary for the stated purpose(s) of the disclosure (e.g., to track and compare the effectiveness of different COVID-19 vaccines). [31](#) ([#footnote31_flyfwa0](#))
- A health plan **is permitted** to disclose an individual's vaccination status where required to do so by law. [32](#) ([#footnote32_j1hhhd0](#))
- A covered nurse practitioner **is permitted** to provide PHI relating to an individual's COVID-19 vaccination status to the individual. [33](#) ([#footnote33_qpd5i7e](#))
- A covered clinician who is an investigator in a COVID-19 vaccine clinical trial **is permitted** to use or disclose PHI to the vaccine manufacturer and FDA about clinical trial participants for the purpose of activities related to the quality, safety, or effectiveness of the COVID-19 vaccine. [34](#) ([#footnote34_2zozypp](#)) Such purposes include:
 - To collect or report adverse events, product defects or problems (including problems with the use or labeling of a product), or biological product deviations.
 - To track FDA-regulation products, including COVID-19 vaccines.
 - To enable product recalls, repairs, replacement, or lookback (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of lookback).
 - To conduct post-marketing surveillance.
- A covered hospital **is permitted** to disclose PHI relating to an individual's vaccination status to the individual's employer so that the employer may conduct an evaluation relating to medical surveillance of the workplace (e.g., surveillance of the spread of COVID-19 within the workforce) or to evaluate whether the individual has a work-related illness, [35](#) ([#footnote35_1d94ixc](#)), [36](#) ([#footnote36_58fkue6](#)) **and** all of the following conditions are met:
 - The covered hospital is providing the health care service to the individual at the request of the individual's employer or as a member of the employer's workforce. [37](#) ([#footnote37_kxnlb3l](#))
 - The PHI that is disclosed consists of findings concerning work-related illness or workplace-related medical surveillance.

- The employer needs the findings in order to comply with its obligations under the legal authorities of the Occupational Safety and Health Administration (OSHA), the Mine Safety and Health Administration (MSHA), or state laws having a similar purpose (e.g., under OSHA's recordkeeping requirements, worker side effects from vaccination constitute a "recordable illness," and thus, employers are responsible for recording such side effects in certain circumstances ³⁸ ([#footnote38_wq74l8p](#))). ³⁹ ([#footnote39_r579lyh](#)), ⁴⁰ ([#footnote40_m8kdrke](#))
- The covered health care provider provides written notice to the individual that the PHI related to the medical surveillance of the workplace and work-related illnesses will be disclosed to the employer. (This can be accomplished by providing the individual with a copy of the notice at the time the health care is provided, or by posting the notice in a prominent place at the location where the health care is provided if the health care is being provided on the work site of the employer.) ⁴¹ ([#footnote41_s9nn0l2](#))

In other circumstances, the Privacy Rule generally requires a covered entity to obtain an individual's written authorization before disclosing the individual's PHI, ⁴² ([#footnote42_qc9l159](#)), such as disclosure of whether the individual has received a vaccine, to, for example:

- A sports arena or entertainment purveyor.
- A hotel, resort, or cruise ship.
- An airline or car rental agency.

NOTE: The Privacy Rule **does not** prohibit an individual from choosing to provide any of these individuals or entities with information regarding their vaccination status.

For additional information on the Privacy Rule and its application, visit <https://www.hhs.gov/hipaa/for-individuals/index.html> (<https://www.hhs.gov/hipaa/for-individuals/index.html>).

Resources

The CDC issued "Updated Healthcare Infection Prevention and Control Recommendations in Response to COVID-19 Vaccination," available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-after-vaccination.html> (<https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-after-vaccination.html>).

OSHA, at the U.S. Department of Labor, published "Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace", available at <https://www.osha.gov/coronavirus/safework> (<https://www.osha.gov/coronavirus/safework>). Additional guidance and resources on COVID-19 and the workplace, are available at <https://www.osha.gov/coronavirus> (<https://www.osha.gov/coronavirus>).

The U.S. Equal Employment Opportunity Commission issued guidance entitled, “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws,” available at <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>).

Footnotes

1. [↪ \(#footnoteref1_zqanadg\)](#). The HHS Office for Civil Rights (OCR) is issuing these FAQs to address questions about when and how the HIPAA Rules apply to uses and disclosures of COVID-19 vaccination-related information. However, the information in the FAQs concerning the HIPAA Rules is applicable to all vaccinations, regardless of the disease or condition being addressed or whether the vaccine has been fully approved or authorized via an emergency use authorization (EUA).
2. [↪ \(#footnoteref2_mri86be\)](#). The “Privacy Rule” refers to the privacy regulations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR part 160 and subparts A and E of part 164. OCR administers the HIPAA Privacy, Security, Breach Notification, and Enforcement Rules (collectively known as the HIPAA Rules), 45 CFR parts 160 and 164. This guidance focuses on the Privacy Rule, which regulates uses and disclosures of protected health information (PHI).
3. [↪ \(#footnoteref3_t63g99\)](#). The HIPAA Privacy, Security, and Breach Notification Rules, 45 CFR Parts 160 and 164.
4. [↪ \(#footnoteref4_k85ji9j\)](#). See 45 CFR 160.103 (definition of “Covered entity”). See also <https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html> (<https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html>).
5. [↪ \(#footnoteref5_ja44nh1\)](#). See 45 CFR 160.103 (definition of “Business associate”). See also Direct Liability of Business Associates Fact Sheet at <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/factsheet/index.html> (<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/factsheet/index.html>). Examples of business associates include health care claims processing services, medical transcriptionists, and accounting firms that have access to protected health information.
6. [↪ \(#footnoteref6_hhhlwkl\)](#). See 45 CFR 160.103 (definition of “Use”).
7. [↪ \(#footnoteref7_8umzjz\)](#). See 45 CFR 160.103 (definition of “Disclosure”).
8. [↪ \(#footnoteref8_fbo6900\)](#). See 45 CFR 160.103 (definition of “Protected health information”).
9. [↪ \(#footnoteref9_oqwfz0\)](#). While the Privacy Rule does not regulate whether schools can ask individuals whether they have received a vaccine, the HIPAA Rules may regulate how the information is handled once it is in the possession of a school when that school is subject to the HIPAA Rules (*i.e.*, when the school is a covered entity) and the health information does not meet the definition of “education records” covered by the Family Educational Rights and Privacy Act (FERPA). See 45 CFR 160.103 excluding individually identifiable health information in education records covered under FERPA from the definition of “protected health information.” See also Joint Guidance on the Application of the *Family Educational Rights and Privacy Act (FERPA) And the Health Insurance Portability and Accountability Act of 1996 (HIPAA)* to Student Health Records, US Department of Health and Human Services and US Department of Education (December 2019), available at <https://www.hhs.gov/sites/default/files/2019-hipaa-ferpa-joint-guidance.pdf> - PDF (<https://www.hhs.gov/sites/default/files/2019-hipaa-ferpa-joint-guidance.pdf>), describing what types of institutions FERPA applies to and what information is included in “education records.”
10. [↪ \(#footnoteref10_5wznbwc\)](#). See 45 CFR 160.103 (definition of “Covered entity”).
11. [↪ \(#footnoteref11_708j20r\)](#). See 45 CFR 160.103 (definition of “Business associate”).
12. [↪ \(#footnoteref12_ztxldah\)](#). See 45 CFR 160.103 (definition of “Covered entity”).
13. [↪ \(#footnoteref13_sowtq4t\)](#). See 45 CFR 160.103 (definition of “Business associate”).
14. [↪ \(#footnoteref14_bmjmruz\)](#). See 45 CFR 160.103 (definition of “Protected health information”). HHS addressed questions regarding the application of the HIPAA Privacy Rule to employers in the preambles to the 2000 Privacy Rule and the 2002 Modifications to the HIPAA Privacy Rule. “With regard to employers, we do not have statutory authority to regulate them. Therefore, it is beyond the scope of this regulation to prohibit employers from requesting or obtaining protected health information.” 65 FR 82426, 82592 (December 28, 2000). “[T]he Department must remain within the boundaries set by the statute, which does not include employers per se as covered entities. Thus, we cannot regulate employers, even when it is a covered entity acting as an employer.” 67 FR 53182, 53192 (August 14, 2002).
15. [↪ \(#footnoteref15_98islxh\)](#). See 45 CFR 160.103 (definition of “Workforce”).

16. ↪ (#footnoteref16_jegiaqc). See EEOC, *What* (<https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>). You Should Know about COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws, § K (June 28, 2021), available at <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>). See generally Shen, Wen W. (2019). "Legal Sidebar: An Overview of State and Federal Authority to Impose Vaccination Requirements" (CRS Report No. 3B10300), available at <https://crsreports.congress.gov/product/pdf/L/SB/L/SB10300> (<https://crsreports.congress.gov/product/pdf/L/SB/L/SB10300>). See also information about state vaccination laws on the websites of the Centers for Disease Control and Prevention (<https://www.cdc.gov/vaccines/imz-managers/laws/index.html>) (CDC) and the National Conference of State Legislators (<https://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx>) (NCSL).
17. ↪ (#footnoteref17_gchgsfs). See EEOC, *What You Should Know*, at § K.
18. ↪ (#footnoteref18_1mrs72). See *id.*, § K.4.
19. ↪ (#footnoteref19_izfs4kp). See 45 CFR 160.103 (definition of "Covered entity").
20. ↪ (#footnoteref20_ya5q3ad). See 45 CFR 160.103 (definition of "Business associate").
21. ↪ (#footnoteref21_2257f48). See 45 CFR 160.103 (definition of "Protected health information").
22. ↪ (#footnoteref22_jmqsb7c). See 45 CFR 160.103 (definition of "Workforce"). For additional information, see FAQ 301, <https://www.hhs.gov/hipaa/for-professionals/faq/301/does-the-hipaa-public-health-provision-permit-health-care-providers-to-disclose-information-from-pre-employment-physicals/index.html> (<https://www.hhs.gov/hipaa/for-professionals/faq/301/does-the-hipaa-public-health-provision-permit-health-care-providers-to-disclose-information-from-pre-employment-physicals/index.html>).
23. ↪ (#footnoteref23_t66g5u1). See 45 CFR 160.103 (definitions of "Business associate" and "Covered entity"). See also <https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html> (<https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html>).
24. ↪ (#footnoteref24_wacqa6u). See 45 CFR 164.508(b)(4)(iii).
25. ↪ (#footnoteref25_ienkiel). See 45 CFR 160.103 (definition of "Covered entity").
6. ↪ (#footnoteref26_mfikhxe). See 45 CFR 160.103 (definition of "Business associate").
27. ↪ (#footnoteref27_6gdopah). See 45 CFR 160.103 (definition of "Protected health information").
28. ↪ (#footnoteref28_s9fbg0i). See 45 CFR 164.514(d)(3).
29. ↪ (#footnoteref29_dw1y1ht). See 45 CFR 164.506(c)(1).
30. ↪ (#footnoteref30_17sr048). See 45 CFR 164.512(b)(1)(i).
31. ↪ (#footnoteref31_flyfwa0). See 45 CFR 164.514(d)(3)(iii)(A).
32. ↪ (#footnoteref32_j1hhhd0). See 45 CFR 164.512(a).
33. ↪ (#footnoteref33_qpd5i7o). See 45 CFR 164.502(a)(1)(i) (permitting a covered entity to use or disclose an individual's PHI to the individual). Note, when an individual, or their personal representative, requests access to the individual's PHI, in addition to the disclosure being permissible, it is also required under an individual's right of access. See 45 CFR 164.524 (providing individuals with the right of access to inspect and obtain a copy of PHI about the individual in a designated record set).
34. ↪ (#footnoteref34_2zozypo). See 45 CFR 164.512(b)(1)(iii).
35. ↪ (#footnoteref35_1d94ixc). See 29 CFR 1904.5 (definition of "Work-related illness"). See also OSHA's [website](http://www.osha.gov/coronavirus) (<http://www.osha.gov/coronavirus>) for guidance on the application of OSHA requirements to COVID-19.
36. ↪ (#footnoteref36_58fkue6). See 45 CFR 164.512(b)(1)(v). See also FAQ 301, <https://www.hhs.gov/hipaa/for-professionals/faq/301/does-the-hipaa-public-health-provision-permit-health-care-providers-to-disclose-information-from-pre-employment-physicals/index.html> (<https://www.hhs.gov/hipaa/for-professionals/faq/301/does-the-hipaa-public-health-provision-permit-health-care-providers-to-disclose-information-from-pre-employment-physicals/index.html>).
37. ↪ (#footnoteref37_kxnlb3l). See 45 CFR 164.512(b)(1)(v)(A).
38. ↪ (#footnoteref38_wq74l8p). See OSHA, *Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace*, at § 9 (June 10, 2021), available at <https://www.osha.gov/coronavirus/safework> (<https://www.osha.gov/coronavirus/safework>) (describing recording and reporting requirements related <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/hipaa-covid-19-vaccination-workplace/index.html>

to COVID-19 infections and deaths and the current exception to requirements to record worker side effects from COVID-19 vaccination through May 2022).

39. [↪ \(#footnoteref39_r579lyh\)](#). See 45 CFR 164.512(b)(1)(v)(C).

40. [↪ \(#footnoteref40_m8kdrkc\)](#). Covered entities must implement policies and procedures with respect to PHI that are designed to comply with the requirements of the Privacy Rule, which would include, if applicable to the covered entity, a policy and procedure to ensure that disclosures to an employer under 45 CFR 164.512(b)(1)(v) meet the conditions specified in that paragraph. See 45 CFR 164.530(i)(1).

41. [↪ \(#footnoteref41_s9nn0t2\)](#). See 45 CFR 164.512(b)(1)(v)(D).

42. [↪ \(#footnoteref42_qc9l159\)](#). Subject to the permissions for disclosures required by law and those necessary to lessen or prevent a serious and imminent threat. See 45 CFR 164.512(a) and 164.512(j).

Office for Civil Rights Headquarters

U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201
Toll Free Call Center: 1-800-368-1019
TTD Number: 1-800-537-7697

Aaron Jones

From: Sonja Caldwell
Sent: Tuesday, January 18, 2022 11:51 AM
To: Aaron Jones
Subject: FW: SB 347-FN

I think this was sent to the Capital Budget committee by mistake.

From: Russell Payne <russandmamie@icloud.com>
Sent: Monday, January 17, 2022 12:02 PM
To: John Reagan <john.reagan111@gmail.com>; Jeb Bradley <Jeb.Bradley@leg.state.nh.us>; David Watters <David.Watters@leg.state.nh.us>; Lou D'Allesandro <dalas@leg.state.nh.us>; Gary Daniels <Gary.Daniels@leg.state.nh.us>; Sonja Caldwell <Sonja.Caldwell@leg.state.nh.us>
Subject: SB 347-FN

Dear Members of Senate Committee Committee:

We should Prohibit employers from inquiring about an employee's private health information as a condition of employment. This will stop an ugly "can of worms" that will only be an asset to those who lust for power in government. Personal health information is at this time protected by HIPPA laws. As far as I know HIPPA laws protecting privacy have not been negated by congressional law. I urge you to vote OTP on SB 347-FN.

Sincerely & Respectfully

Russ Payne Merrimack

Aaron Jones

From: Christine Macpherson <outlook_1A34BD171E41EC16@outlook.com>
Sent: Tuesday, January 18, 2022 5:46 PM
To: Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones
Subject: Please Protect NH Privacy: Support SB347

Dear Representatives,

I am writing to urge you to support SB347. No one should ever have to reveal private health information unless they wish to do so. This is a fundamental right that just 10 years ago never would have been questioned. Please uphold basic human decency and privacy and help stop the erosion of individuals' rights and privacy in our country and state.

Thank you,
Christine Macpherson
Chesterfield

Sent from Mail for Windows

Voting Sheets

Senate Commerce Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # SB 347-FN

Hearing date: 1/18/22

Executive Session date: 2/10/22

Motion of: IS Vote: 3-2

Committee Member	Made by	Second	Yes	No
Sen. French, Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Cavanaugh	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. Soucy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. French, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Cavanaugh	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. French, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Cavanaugh	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: SEN GANNON

Notes: _____

Committee Report

COMMERCE

SB 347-FN, relative to the use of protected health information by employers.

Interim Study, Vote 3-2.

Senator Bill Gannon for the committee.

Docket of SB347

Docket Abbreviations

Bill Title: relative to the use of protected health information by employers.

Official Docket of SB347.:

Date	Body	Description
12/15/2021	S	To Be Introduced 01/05/2022 and Referred to Commerce; SJ 1
12/20/2021	S	Hearing: 01/18/2022, Room 100, SH, 09:45 am; SC 50
2/10/2022	S	Committee Report: Referred to Interim Study, 02/16/2022; SC 7
2/16/2022	S	Refer to Interim Study, MA, VV; 02/16/2022; SJ 3

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: SB 347-EN

Senate Committee: Commerce

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

N/A 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:

ACORN JONES
Committee Aide

7/8/22
Date

Senate Clerk's Office AK