

LEGISLATIVE COMMITTEE MINUTES

SB373

Bill as
Introduced

SB 373 - AS INTRODUCED

2022 SESSION

22-3070

11/08

SENATE BILL

373

AN ACT

relative to coverage for certain mental illnesses.

SPONSORS:

Sen. Bradley, Dist 3; Rep. Potucek, Rock. 6

COMMITTEE:

Health and Human Services

ANALYSIS

This bill requires submission of the federal comparative analysis for certain mental illnesses and removes the mandate for rules to regulate this type of specific insurance coverage.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to coverage for certain mental illnesses.

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

1 1 Coverage for Certain Biologically-Based Mental Illnesses. Amend RSA 417-E:1, V-a to read as
2 follows:

3 V-a. [~~Under examination authority in RSA 400-A:37, the~~] **The** commissioner shall
4 periodically [~~examine and evaluate~~] **require** health insurers, health service corporations, and health
5 maintenance organizations **to submit the comparative analysis described in 42 U.S.C. section**
6 **300gg-26(a)(8)(A) for review to ensure** compliance with this chapter and with the Act. [~~Such~~
7 ~~examination and evaluation shall include provider reimbursement practices. The result of such~~
8 ~~examinations and evaluations shall be made public to the fullest extent allowed under RSA 400-~~
9 ~~A:37.~~]

10 2 Coverage for Treatment of Pervasive Developmental Disorder or Autism. Amend RSA 417-
11 E:2, III-V to read as follows:

12 III. [~~The policy, contract, or certificate may limit coverage for applied behavior analysis to~~
13 ~~\$36,000 per year for children 0 to 12 years of age, and \$27,000 from ages 13 to 21. An insurer may~~
14 ~~not apply payments for coverage unrelated to autism spectrum disorders to any maximum benefit~~
15 ~~established under this paragraph.~~

16 ~~IV.]~~ Nothing in this section shall be construed to affect any obligation by a school district or
17 the state of New Hampshire to provide services to an individual under an individualized family
18 service plan or an individualized education program, as required under the federal Individuals With
19 Disabilities Education Act, the state children's health insurance program authorized by 42 U.S.C.
20 section 1397aa et seq., or the provision of services to an individual under any other federal or state
21 law.

22 ~~V.]~~ IV. The commissioner [~~shall~~] **may** adopt rules, pursuant to RSA 541-A, relative to the
23 insurance coverage requirements established under this section.

24 3 Effective Date. This act shall take effect 60 days after its passage.

SB 373 - AS AMENDED BY THE SENATE

02/16/2022 0464s

2022 SESSION

22-3070

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COMMITTEE: Health and Human Services

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7 *extent allowable under state and federal law, such analysis shall be made public.* [~~Such~~
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21 section 1397aa et seq., or the provision of services to an individual under any other federal or state
22 law.

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CHAPTER 337
SB 373 - FINAL VERSION

02/16/2022 0464s

2022 SESSION

22-3070
11/08

SENATE BILL

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SPONSORS: Sen. Bradley, Dist 3; Rep. Potucek, Rock. 6

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CHAPTER 337
SB 373 - FINAL VERSION

02/16/2022 0464s

22-3070
11/08

STATE OF NEW HAMPSHIRE

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4 ~~[examine and evaluate]~~ **require** health insurers, health service corporations, and health maintenance
5 organizations **to submit the comparative analysis described in 42 U.S.C. section 300gg-26(a)(8)(A)** for
6 **review to ensure** compliance with this chapter and with the Act. **To the extent allowable under state and**
7 **federal law, such analysis shall be made public.** ~~[Such examination and evaluation shall include provider~~
8 ~~reimbursement practices. The result of such examinations and evaluations shall be made public to the~~
9 ~~fullest extent allowed under RSA 400-A:37.]~~

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11 E:2, III-V to read as follows:

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17 state of New Hampshire to provide services to an individual under an individualized family service plan or
18 an individualized education program, as required under the federal Individuals With Disabilities Education
19 Act, the state children's health insurance program authorized by 42 U.S.C. section 1397aa et seq., or the
20 provision of services to an individual under any other federal or state law.

21 ~~IV.]~~ **IV.** The commissioner ~~[shall]~~ **may** adopt rules, pursuant to RSA 541-A, relative to the
22 insurance coverage requirements established under this section.

337:3 Effective Date. This act shall take effect 60 days after its passage.

Approved: July 25, 2022
Effective Date: September 23, 2022

Amendments

Amendment to SB 373

1 Amend RSA 417-E:1, V-a as inserted by section 1 of the bill by replacing it with the following:

2

3 V-a. ~~[Under examination authority in RSA 400-A:37, the]~~ ***The*** commissioner shall
4 periodically ~~[examine and evaluate]~~ ***require*** health insurers, health service corporations, and health
5 maintenance organizations ***to submit the comparative analysis described in 42 U.S.C. section***
6 ***300gg-26(a)(8)(A) for review to ensure*** compliance with this chapter and with the Act. ***To the***
7 ***extent allowable under state and federal law, such analysis shall be made public.*** ~~[Such~~
8 ~~examination and evaluation shall include provider reimbursement practices. The result of such~~
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10 ~~A:37.]~~

Committee Minutes

SENATE CALENDAR NOTICE
Health and Human Services

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

Date: January 18, 2022

HEARINGS

Wednesday	02/02/2022
(Day)	(Date)
Health and Human Services	Legislative Office Building 101 9:00 a.m.
(Name of Committee)	(Place) (Time)
9:00 a.m. SB 422-FN	establishing an adult dental benefit under the state Medicaid program.
10:00 a.m. SB 391	relative to the operation of a state forensic psychiatric hospital.
10:15 a.m. SB 287	relative to balance billing for certain health care services.
10:30 a.m. SB 372	relative to employee leasing companies working under contract with a hospital.
10:45 a.m. SB 373	relative to coverage for certain mental illnesses.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

SB 422-FN

Sen. Rosenwald
Sen. Gannon
Sen. Avar
Sen. Watters
Sen. Giuda
Rep. Marsh

Sen. Sherman
Sen. Reagan
Sen. Cavanaugh
Sen. Perkins Kwoka
Rep. McMahon
Rep. Espitia

Sen. Hennessey
Sen. D'Allesandro
Sen. Bradley
Sen. Kahn
Rep. Nordgren

Sen. Soucy
Sen. Whitley
Sen. Ward
Sen. Prentiss
Rep. Wallner

SB 391

Sen. Rosenwald
Sen. Whitley

Sen. Bradley
Rep. Wallner

Sen. Sherman
Rep. Umberger

Sen. Avar
Rep. Cushing

SB 287

Sen. Bradley

Sen. Sherman

Rep. Bartlett

SB 372

Sen. Bradley

SB 373

Sen. Bradley

Rep. Potucek

Cameron Lapine 271-2104

Jeb Bradley
Chairman

Senate Health and Human Services Committee

Cameron Lapine 271-2104

SB 373, relative to coverage for certain mental illnesses.

Hearing Date: February 2, 2022

Time Opened: 11:48 a.m.

Time Closed: 12:00 p.m.

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

Members of the Committee Absent: None

Bill Analysis: This bill requires submission of the federal comparative analysis for certain mental illnesses and removes the mandate for rules to regulate this type of specific insurance coverage.

Sponsors:

Sen. Bradley

Rep. Potucek

Who supports the bill: Senator Jeb Bradley (Senate District 3), Ken Norton (NAMI New Hampshire), Tyler Brannen (NHID), Marty Mobley (NHID), Joan Pageak (NH Association of INS Agents), Paula Rogers (Anthem), Representative John Potucek (Rockingham County District 6), Bonnie Dunham, and Wiltrud Mott-Smith.

Who opposes the bill: None.

Who is neutral on the bill: None.

Summary of testimony presented in support:

Senator Jeb Bradley

Senate District 3

- Senator Bradley said that he was sponsoring SB 373 for the New Hampshire Insurance Department (NHID).
- Senator Bradley said that SB 373 would require insurers to submit a mental health benefit comparison analysis consistent with federal regulations.
- Senator Bradley said that SB 373 also removes a state permissible maximum coverage cap for autism. He said that this was pre-empted by the Affordable Care Act (ACA) but it could be confusing to continue to have the law on the books in New Hampshire.

- Senator Bradley said that SB 373 removes the requirement for the Commissioner of Insurance to develop rules for autism coverage. Senator Bradley added that federal regulations provide an appropriate structure.

Tyler Brannen

Director of Life and Health, NHID

- Director Brannen said that NHID requested SB 373, and he said that he supports the bill.
- Director Brannen said that there are three parts of the bill, and two of those parts are administrative in nature.
- Director Brannen said that the first aspect of SB 373 is a fundamental change in compliance with parity laws. He said that most of these laws were in federal law from 2008 and the ACA expanded, and raised, benefit richness.
- Director Brannen said that NHID does currently have the authority to enforce both laws and the Department needed a state-level change for this authority.
- Director Brannen said that it was assumed by NHID that the best way to figure out if New Hampshire carriers were in compliance was to do a market conduct examination, not an enforcement action.
- Director Brannen said that there are downsides to exams, as these exams are now very resource intensive for NHID and New Hampshire carriers.
- Director Brannen said NHID has five employees working on market conduct examinations, which take two years for the completion of an exam. He said that several red flags were found in one exam and it took two more years to review. Director Brannen said that the monitoring period for that exam was extended for another year due to COVID-19.
- Director Brannen said that all exams are confidential, and the specific time frames change often, which doesn't lend well to transparency.
- Director Brannen said that the federal Department of Labor (DOL) is charged with requiring employers and carriers to submit a comparative analysis on parity. He said that quantitative analysis is easy to pin down and a non-quantitative analysis is harder, but, since DOL is involved, the Department wants to piggy-back on this work. He said that DOL has more than 5 people in their market conduct division.
- Director Brannen said that DOL makes a lot of information public and the Department takes advantage of their economies of scale. He said that this public information either demonstrates compliance or prompts the undertaking of an enforcement action.
- Director Brannen said he did not have a lot to say regarding the autism provisions of SB 373. He said that, before the maximum limit of coverage was set by the ACA, the state already had a limit on the maximum coverage in law. He said that, at one point, NHID had an insurance carrier submit a plan with those caps in it. He said that taking the language out of the statute will increase clarity.
- Director Brannen said that a requirement for NHID to make rules regarding autism coverage has never been requested by a carrier but NHID was called out in a Legislative Budget Assistant audit for not having those rules. He said that a change and rules may be needed but it is not required at this point.

- Senator Sherman asked if, in Lines 7 - 9, examinations are still being conducted but access to results are being taken out.
 - Director Brannen said that NHID avoids the expectation that examinations will be the way that information is made public. He said that it is not necessary to work with DOL, but it will be much clearer. He said that the exam process is confidential and there is information at the end that could be released to the public later.
- Senator Sherman asked if Director Brannen would object to the sentence being rephrased to say that results shall be made public. Senator Sherman was worried about results being swept under the rug.
 - Director Brannen said that this notion came up in the House on a different parity law and said that there was concern over having to making something public if it was confidential under federal law. He said he did not see a reason to object if “to the extent allowable” was inserted.
- Senator Sherman asked if, in lines 22 and 23, New Hampshire was going to be relying on the federal government for enforcement.
 - Director Brannen said that New Hampshire did pass legislation saying that NHID had the power to enforce, which is mostly tied to the autism section of the ACA.

Ken Norton

NAMI

- Mr. Norton said that Director Brannen covered most of what he was going to say, and he brought up historical reference to parity. He said that New Hampshire had its first parity laws in the 1990's and despite this, parity remains elusive.
- Mr. Norton said that evidence shown by market conduct analysis shows significant disparities, and agreement is still ongoing. He said that consumers and people who receive services are impacted by the multiple challenges facing them.
- Mr. Norton said that as a member of the NHID Mental Health and Addiction Services Advisory Committee, he supports SB 373 and its efforts regarding parity.

Summary of testimony presented in opposition: None.

Neutral Information Presented: None.

Speakers

Senate Remote Testify

Health and Human Services Committee Testify List for Bill SB373 on 2022-02-
Support: 3 Oppose: 0

<u>Name</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>
Potucek, Representative John	An Elected Official	Myself & My Constituents	Support
Dunham, Bonnie	A Member of the Public	Myself	Support
Mott-Smith, Wiltrud	A Member of the Public	Myself	Support

Testimony



National Alliance on Mental Illness

NAMI | New Hampshire

February 2, 2022

Honorable Chairman Jeb Bradley
Senate Health and Human Services Committee
Legislate Office Building Room 101
North Main St., Concord, NH 03301

RE: NAMI NH Support of SB 373

Dear Chairman and Committee Members:

Thank you for the opportunity to testify today. My name is Holly Stevens, and I am the Director of Public Policy at NAMI New Hampshire, the National Alliance on Mental Illness. On behalf of NAMI NH, I am here today to speak in support of SB 373, relative to coverage for certain mental illnesses. First, NAMI NH would like to thank the New Hampshire Insurance Department (NHID) for asking that this bill be brought forward.

Under current federal law, self-funded plans must “perform and document comparative analyses of the design and application” of nonquantitative treatment limitations (NQTLs) and make them available to the government agency that oversees the administration of the plans. SB 373 would allow the NHID to require fully insured plans to submit these same comparative analysis reports to the NHID. Since the insurance plans are already doing the analysis and compiling the report, there should be no additional burden on plans that offer both fully insured and self-funded plans.

The NHID recently performed a market conduct exam regarding mental health parity and released a report in January 2020. The report stated that there was a “strong indicator of potential non-compliance with non-quantitative treatment limitation...requirements.” Allowing the NHID to have access to reports that the self-funded plans are already submitting to the federal government would provide it with one more tool to assure that NH’s fully insured plans are complying with federal mental health parity requirements.

Given the importance of parity enforcement, NAMI NH urges the committee to vote ought to pass on SB 373. I am happy to answer any questions that you may have.

Sincerely,

Holly A. Stevens, Esq.

Reflecting on 40 Years: Continuing Our Journey to Hope, Help, and Health

NAMI New Hampshire • 85 North State Street • Concord, NH 03301

InfoLine: 800-242-6264 • Tel. 603-225-5359 • Fax 603-228-8848 • info@naminh.org / www.NAMINH.org

Voting Sheets

Senate Health and Human Services Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # SB 373

Hearing date: 2-2-22

Executive Session date: 2-2-22

Motion of: Committee Amendment Vote: 5-0

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

Motion of: OTPA Vote: 5-0

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

Motion of: Consent Vote: 5-0

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

Reported out by: Sen. Sherman

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Friday, February 4, 2022

THE COMMITTEE ON Health and Human Services
to which was referred **SB 373**

AN ACT relative to coverage for certain mental illnesses.

Having considered the same, the committee recommends that the Bill
OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 0464s

Senator Tom Sherman
For the Committee

SB 373 is a request from the Insurance Department which will require submission of the federal comparative analysis for certain mental illnesses and removes the mandate for rules to regulate this type of specific insurance coverage. These changes will help to ensure maximum efficiency with respect to ensuring parity in the coverage of mental illnesses. SB 373 also removes the statute setting caps for the coverage for autism, which are outdated and superseded by federal law. Additionally, it changes the statute to enabling legislation for rulemaking for autism coverage. The Committee Amendment clarifies that, to the extent allowable, comparative reports done by the Insurance Department should be public.

Cameron Lapine 271-2104

FOR THE CONSENT CALENDAR

HEALTH AND HUMAN SERVICES

SB 373, relative to coverage for certain mental illnesses.

Ought to Pass with Amendment, Vote 5-0.

Senator Tom Sherman for the committee.

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General Court of New Hampshire - Bill Status System

Docket of SB373

Docket Abbreviations

Bill Title: relative to coverage for certain mental illnesses.*Official Docket of SB373.:*

Date	Body	Description
12/17/2021	S	To Be Introduced 01/05/2022 and Referred to Health and Human Services; SJ 1
1/19/2022	S	Hearing: 02/02/2022, Room 101, LOB, 10:45 am; SC 4
2/7/2022	S	Committee Report: Ought to Pass with Amendment #2022-0464s , 02/16/2022; Vote 5-0; CC; SC 7
2/16/2022	S	Committee Amendment #2022-0464s , AA, VV; 02/16/2022; SJ 3
2/16/2022	S	Ought to Pass with Amendment 2022-0464s, MA, VV; OT3rdg; 02/16/2022; SJ 3
3/23/2022	H	Introduced 03/17/2022 and referred to Commerce and Consumer Affairs
3/30/2022	H	Public Hearing: 04/07/2022 01:30 pm LOB 302-304
4/5/2022	H	Subcommittee Work Session: 04/14/2022 10:00 am LOB 302-304
4/13/2022	H	Executive Session: 04/20/2022 01:00 pm LOB 302-304
4/22/2022	H	Committee Report: Ought to Pass (Vote 18-0; CC)
5/4/2022	H	Ought to Pass: MA VV 05/04/2022 HJ 11
5/27/2022	H	Enrolled (in recess of) 05/26/2022 HJ 14
5/27/2022	S	Enrolled Adopted, VV, (In recess 05/26/2022); SJ 13
7/26/2022	S	Signed by the Governor on 07/25/2022; Chapter 0337; Effective 09/23/2022

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: SB 373

Senate Committee: HHS

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

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

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

- amendment # 0464 - 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:

Cameron M. Zepine
Committee Aide

6-23-22
Date

Senate Clerk's Office AK