

LEGISLATIVE COMMITTEE MINUTES

HB223

Bill as Introduced

HB 223 - AS INTRODUCED

2023 SESSION

23-0392
05/08

HOUSE BILL **223**
AN ACT relative to prescription refills.
SPONSORS: Rep. D. McGuire, Merr. 14; Rep. Merchant, Sull. 6
COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill creates an exception to the 34-day limit on prescription refills of schedule III topical androgens if the prescription specifies it is being used for the treatment of chronic low testosterone replacement therapy.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to prescription refills.

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

1 1 Controlled Drugs; Sale by Pharmacists. Amend RSA 318-B:9, IV to read as follows:

2 IV. No prescription shall be filled for more than a 34-day supply upon any single filling for
3 controlled drugs of schedules II or III; provided, however, that for controlled drugs, in schedules II or
4 III, that are commercially packaged for dispensing directly to the patient, such as metered sprays
5 and inhalers, liquids packaged in bottles with calibrated droppers, and certain topical preparations
6 packaged with metered dispensing pumps may be filled for greater than a 34-day supply, but not
7 more than 60 days, utilizing the smallest available product size, in order to maintain the dosing
8 integrity of the commercially packaged containers; and, provided that:

9 **(a)** With regard to amphetamines and methylphenidate hydrochloride, a prescription
10 may be filled for up to a 90-day supply if either such prescription specifies it is being used for the
11 treatment of attention deficit disorder, attention deficit disorder with hyperactivity, or narcolepsy;
12 **and**

13 **(b)** *With regard to a topically applied androgen, a prescription may be filled for*
14 *up to a 90-day supply if the prescription specifies it is being used for the treatment of*
15 *chronic low testosterone replacement therapy.*

16 2 Effective Date. This act shall take effect January 1, 2024.

HB 223 - VERSION ADOPTED BY BOTH BODIES

2023 SESSION

23-0392

05/08

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COMMITTEE: Health, Human Services and Elderly Affairs

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13 (b) *With regard to a topically applied androgen, a prescription may be filled for*
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CHAPTER 22
HB 223 - FINAL VERSION

2023 SESSION

23-0392
05/08

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HB 223 - FINAL VERSION

23-0392
05/08

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15 *chronic low testosterone replacement therapy.*

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Approved: May.04, 2023
Effective Date: January 01, 2024

Committee Minutes

SENATE CALENDAR NOTICE

Health and Human Services

Sen Regina Birdsell, Chair
Sen Kevin Avard, Vice Chair
Sen Jeb Bradley, Member
Sen Rebecca Whitley, Member
Sen Suzanne Prentiss, Member

Date: March 15, 2023

HEARINGS

Wednesday

03/22/2023

(Day)

(Date)

Health and Human Services

Legislative Office Building 101 9:00 a.m.

(Name of Committee)

(Place)

(Time)

9:00 a.m.	HB 66	establishing a committee to study non-pharmacological treatment options for patients with chronic pain.
9:15 a.m.	HB 188	relative to the duration of physical therapy.
9:30 a.m.	HB 223	relative to prescription refills.
9:45 a.m.	HB 500	relative to prescribing opioids via telehealth medicine.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 66

Rep. Merchant

Rep. Nagel

HB 188

Rep. Popovici-Muller

Rep. Layon

Rep. Rochefort

Rep. McMahon

Rep. Read

Rep. Kuttub

Rep. Nagel

Rep. Wheeler

HB 223

Rep. D. McGuire

Rep. Merchant

HB 500

Rep. Hakken-Phillips

Rep. J. Murphy

Cameron Lapine 271-2104

Regina Birdsell
Chairman

Senate Health and Human Services Committee
Cameron Lapine 271-2104

HB 223, relative to prescription refills.

Hearing Date: March 22, 2023

Time Opened: 9:30 a.m.

Time Closed: 9:33 a.m.

Members of the Committee Present: Senators Birdsell, Avard, Bradley, Whitley and Prentiss

Members of the Committee Absent: None

Bill Analysis: This bill creates an exception to the 34-day limit on prescription refills of schedule III topical androgens if the prescription specifies it is being used for the treatment of chronic low testosterone replacement therapy.

Sponsors:

Rep. D. McGuire

Rep. Merchant

Who supports the bill: Representative Dan McGuire (Merrimack County District 14), Representative Gary Merchant (Sullivan County District 6), and Representative Daniel Popvici-Muller (Rockingham County District 17).

Who opposes the bill: None.

Who is neutral on the bill: None.

Summary of testimony presented in support:

Representative Dan McGuire
Merrimack County District 14

- Representative McGuire said HB 223 would provide an exception for a topical ointment used to treat chronic low testosterone levels. He said this ointment is categorized with other chemicals that can be abused, but that this product is extremely difficult to abuse. He said it would require an individual to fill a bathtub with the ointment and soak their entire body in it. He said this was unlikely due to the cost of a typical bottle.
- Rep. McGuire shared his personal experience with the usage of this ointment. He said it is a gel that comes in a pump-bottle and is applied to the skin. He said a bottle of ointment lasts him for about three weeks.
- Rep. McGuire said he must order this \$200 bottle of ointment between 15 and 16 times a year, which amounts to 15 or 16 copays. He said that once an individual begins to take testosterone medication, they will rely on it for the rest of their life.
- Rep. McGuire said HB 223 would allow for a patient to purchase a 90-day supply of the ointment. He said a 34-day supply is the maximum purchase amount under current law. He said HB 223 would save the 1,000 to 2,000 New Hampshire patients

approximately 10 to co-pays per year.

Summary of testimony presented in opposition: None.

Neutral Information Presented: None.

cml

Date Hearing Report completed: March 24, 2023

Speakers

Senate Health & Human Services Committee

SIGN-IN SHEET

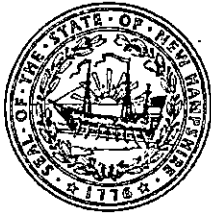
Date: Wednesday March 22nd, 2023 Time: 9:30 a.m.

HB 223 AN ACT relative to prescription refills.

Name/Representing (please print neatly)

	Support	Neutral	Oppose	Speaking?	Yes	No
Rep. Dan McGuire (Epsom)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Prime	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. JAVIER POPOVICI-MULLEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
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	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>

Testimony



State of New Hampshire

REPRESENTATIVE GARY MERCHANT
SULLIVAN, DISTRICT 6

Testimony HB 223
House Health, Human Services and Elderly Affairs
January 25, 2023

Good morning, mister Chairman, members of the Health, Human Services and Elderly Affairs committee, and members of the public. For the record, I am Representative Gary Merchant for Sullivan County, District #6, Claremont, and Croydon.

I come before this committee today in support of HB 223. HB 223 will allow prescriber to write for a 90-day supply of a topical androgen and for a patient to obtain a 90-day supply of a topical androgen. A common topical androgen is testosterone. This bill addresses two interrelated regulatory concerns – abuse and pharmacist’s corresponding responsibility.

Abuse - Androgens are potent drugs requiring a prescription for valid medical indications or off-label reasons as well as being abused without prescription for illicit nonmedical application for performance or image enhancement. Androgen abuse originated during the Cold War as an epidemic of androgen doping among elite athletes for performance enhancement before the 1980s when it crossed over into the general community to become an endemic variant of drug abuse in sufficiently affluent communities that support an illicit drug industry geared to bodybuilding and aiming to create a hypermasculine body physique and image. For these reasons, Congress passed the Anabolic Steroids Act of 1990 that placed these drugs in Schedule III of the Controlled Substances Act regulated by the Drug Enforcement Agency (DEA).

Illicit use and abuse of androgens typically occurs with the injectable form of a drug.

DEA Corresponding Responsibility – Drug Enforcement Agency Pharmacist’s Manual 2022

A pharmacist has corresponding responsibility for the proper dispensing of controlled substances. An order purporting to be a prescription that is not issued for a legitimate medical purpose in the usual course of professional treatment or in legitimate and authorized research is an invalid prescription within the meaning and intent of the Controlled Substance Act. The person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances. 21 U.S.C. 841(a)(1), 21 U.S.C. 842(a)(1), and 21 CFR 1306.04(a).

272 Pleasant Street
Claremont, NH 03743
603-558-1389
gary.merchant@leg.state.nh.us

A pharmacist is required to exercise sound professional judgment, and to adhere to professional standards, when making a determination about the legitimacy of a controlled substance prescription. 21 CFR 1306.04(a) and 1306.06. Such a determination is made before the prescription is dispensed. The law does not require a pharmacist to dispense a prescription of doubtful, questionable, or suspicious medical legitimacy. To the contrary, the pharmacist who deliberately ignores the high probability that a prescription was not issued for a legitimate medical purpose and fills the prescription, may be prosecuted along with the issuing practitioner, for knowingly and intentionally distributing controlled substances. *United States v. Veal*, 23 F.3d 985 (6th Cir.1994). Such action is a felony offense, which upon conviction, may result in a term of imprisonment and a fine. 21 U.S.C. 841(b). Unlawful dispensing of controlled substances by a pharmacist may also be subject to criminal actions against the pharmacy or pharmacist, and to civil enforcement actions against the pharmacy or pharmacist for money penalties or injunctions. 21 U.S.C. 842 and 843. Moreover, DEA may revoke a pharmacy's registration based on a finding that its pharmacists have violated the corresponding responsibility rule and both the pharmacy and pharmacists may be the subject of proceedings against their state licenses. *Jones Total Healthcare, L.L.C., v. DEA*, 881 F.3d 823 (11th Cir. 2018).

The Federal 1970 Comprehensive Drug Abuse and Control Act limits the number of refills to 5 within 6 months. It does not limit a day supply of a prescription; however, state law does limit the day supply to 34-days. A pharmacist may question the legitimacy of a single prescription for greater than 180 days or combination of first and subsequent refills exceeding 180 days under DEA corresponding responsibility.

By requiring a prescriber to include this phrase on a prescription for a quantity greater than 34-day supply – ***“for use to treat chronic low testosterone replacement therapy associated with a medical condition”*** it informs the pharmacist that the prescription is for a legitimate medical reason, alleviating most of this concern related to DEA corresponding responsibility.

This bill addresses these two related regulatory concerns while allowing a patient to obtain a cost effective and practical 90-day supply of a topical testosterone. I support HB 223 for these reasons.

Respectfully submitted,

Gary Merchant

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Claremont, NH 03743
603-558-1389
gary.merchant@leg.state.nh.us

Voting Sheets

Senate Health and Human Services Committee

EXECUTIVE SESSION RECORD

2023-2024 Session

Bill # HB 223

Hearing date: 3-22-23

Executive Session date: 3-22-23

Motion of: OTP Vote: 5-0

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

Motion of: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Birdsell, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Avard, Vice Chair	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Prentiss	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Sen. Avard

Notes: _____

Committee Report

FOR THE CONSENT CALENDAR

HEALTH AND HUMAN SERVICES

HB 223, relative to prescription refills.

Ought to Pass, Vote 5-0.

Senator Kevin Avaré for the committee.

HB 223 creates an exception to the 34-day limit on prescription refills of schedule III topical androgens if the prescription specifies it is being used for the treatment of chronic low testosterone replacement therapy. This is a very specific carve out for a very specific prescription for a very specific condition, affecting between 1,000 and 2,000 men in New Hampshire. Making this change will save those patients from having to go to the pharmacy and pay a co-pay every couple of weeks, saving them time and money.

General Court of New Hampshire - Bill Status System

Docket of HB223

Docket Abbreviations

Bill Title: relative to prescription refills.*Official Docket of HB223.:*

Date	Body	Description
1/9/2023	H	Introduced (in recess of) 01/05/2023 and referred to Health, Human Services and Elderly Affairs HJ 2 P. 7
1/18/2023	H	Public Hearing: 01/25/2023 10:15 am LOB 210-211
1/18/2023	H	==CANCELLED== Executive Session: 01/25/2023 02:00 pm LOB 210-211
2/2/2023	H	Executive Session: 02/08/2023 01:30 pm LOB 210-211
2/15/2023	H	Committee Report: Ought to Pass 02/08/2023 (Vote 20-0; CC) HC 12 P. 5
2/22/2023	H	Ought to Pass: MA VV 02/22/2023 HJ 6 P. 7
3/7/2023	S	Introduced 02/22/2023 and Referred to Health and Human Services; SJ 9
3/15/2023	S	Hearing: 03/22/2023, Room 101, LOB, 09:30 am; SC 14
3/22/2023	S	Committee Report: Ought to Pass, 03/30/2023; Vote 5-0; CC; SC 15
3/30/2023	S	Ought to Pass: MA, VV; OT3rdg; 03/30/2023; SJ 12
4/26/2023	S	Enrolled Adopted, VV, (In recess 04/13/2023); SJ 14
4/26/2023	H	Enrolled (in recess of) 04/06/2023
5/8/2023	H	Signed by Governor Sununu 05/04/2023; Chapter 22; eff: 01/01/2024

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB 223

Senate Committee: HHS

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

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

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

Committee Action Documents: {Legislative Aides}

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

___ - amendment # ___ ___ - amendment # ___
___ - amendment # ___ ___ - amendment # ___

- Executive Session Sheet
- Committee Report

Floor Action Documents: {Clerk's Office}

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

___ - amendment # ___ ___ - amendment # ___
___ - amendment # ___ ___ - amendment # ___

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

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

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

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

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

Cameron M. Joplin
Committee Aide

8/3/23
Date

Senate Clerk's Office AK