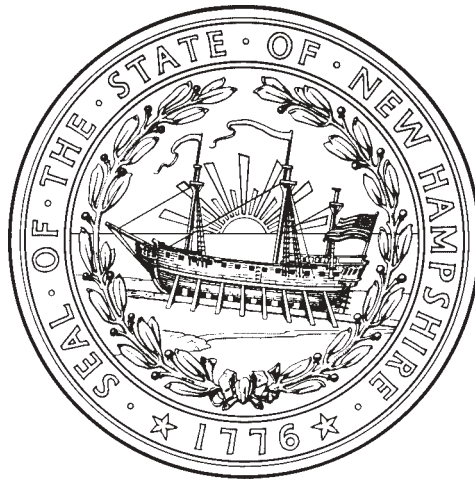


April 7, 2005
Nos. 11 - 12

STATE OF NEW HAMPSHIRE

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Legislative

SENATE JOURNAL

ADJOURNMENT – MARCH 31, 2005 SESSION
COMMENCEMENT – APRIL 7, 2005 SESSION

SENATE JOURNAL 11 *(Cont.)*

March 31, 2005

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill(s) sent down from the Senate:

SJR 1, declaring the month of April 2005 to be Boston Red Sox Month.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

SJR 1, declaring the month of April 2005 to be Boston Red Sox Month.

Senator D'Allesandro moved adoption.

Adopted.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 469, regulating disputes between homeowners and contractors relative to residential construction defects.

HB 478-FN-A, making an appropriation for "Newslines for the Blind."

HB 480, relative to innovative land use controls.

HB 481, establishing a commission to study the location of the secure psychiatric unit and places to which persons are committed under RSA 651:8-b, RSA 135-C, RSA 171-B, and RSA 623:1.

HB 487-FN, establishing a volunteer lake assessment program in the department of environmental services.

HB 532, relative to the licensure of dentists by the board of dental examiners.

HB 547-FN, changing the funding limit for on-premise-use fuel oil storage facilities.

HB 549, modifying notice requirements for the acceptance of unanticipated funds by a school district, city, town, or public library.

HB 557, relative to the submission of data to the department of education.

HB 560, relative to timber harvesting.

HB 561, relative to reasonable accommodation by employers under the state law against discrimination.

HB 570, relative to preliminary site plan review and the definition of inclusionary zoning.

HB 573, establishing a commission to study automobile recycling issues, including disposal fees.

HB 580, establishing a commission to study the procedures for the formation and dissolution of solid waste management districts under RSA 53-B and the procedures for the dissolution of an interstate waste compact under RSA 53-D.

HB 594-FN, relative to retirement system classification for department of corrections correctional line personnel.

HB 595-FN, establishing the position of state meat inspector.

HB 599-FN, requiring disclosure to consumers of the presence of event data recording devices in new motor vehicles.

HB 611-FN, relative to small group insurers.

HB 618-FN-L, relative to persons acting as volunteers to a state agency.

HB 619-FN, relative to skier safety and ski area responsibility.

HB 637-FN, relative to licensure of alcohol and drug abuse professionals.

HB 683-FN, relative to reporting of motor vehicle offenses by driver education instructors and drivers' school licensees.

HB 721, prohibiting the department of education and the state board of education from adopting a definition of an adequate education.

HCR 2, a resolution declaring October 27 to be Boston Red Sox Day.

HCR 4, urging Congress to find that the Piscatqua River and Portsmouth Harbor lie within the state of New Hampshire.

HCR 8, a resolution urging the Congress of the United States to place a moratorium on new free trade agreements, to investigate and review current free trade agreements and policies of the United States, to investigate and review participation of the United States with international trade organizations and to ensure that such agreements, policies, and participation are in the best interests of the citizens of the state of New Hampshire and the United States.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 469 to HCR 8, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

HB 469, regulating disputes between homeowners and contractors relative to residential construction defects. Public and Municipal Affairs

HB 478-FN-A, making an appropriation for "Newslite for the Blind." Finance

HB 480, relative to innovative land use controls. Public and Municipal Affairs

HB 481, establishing a commission to study the location of the secure psychiatric unit and places to which persons are committed under RSA 651:8-b, RSA 135-C, RSA 171-B, and RSA 623:1. Executive Departments and Administration

HB 487-FN, establishing a volunteer lake assessment program in the department of environmental services. Environment and Wildlife

HB 532, relative to the licensure of dentists by the board of dental examiners. Executive Departments and Administration

HB 547-FN, changing the funding limit for on-premise-use fuel oil storage facilities. Environment and Wildlife

HB 549, modifying notice requirements for the acceptance of unanticipated funds by a school district, city, town, or public library. Public and Municipal Affairs

HB 557, relative to the submission of data to the department of education. Education

HB 560, relative to timber harvesting. Energy and Economic Development

HB 561, relative to reasonable accommodation by employers under the state law against discrimination. Banks and Insurance

HB 570, relative to preliminary site plan review and the definition of inclusionary zoning. Public and Municipal Affairs

HB 573, establishing a commission to study automobile recycling issues, including disposal fees. Transportation and Interstate Cooperation

HB 580, establishing a commission to study the procedures for the formation and dissolution of solid waste management districts under RSA 53-B and the procedures for the dissolution of an interstate waste compact under RSA 53-D. Energy and Economic Development

HB 594-FN, relative to retirement system classification for department of corrections correctional line personnel. Banks and Insurance

HB 595-FN, establishing the position of state meat inspector. Finance

HB 599-FN, requiring disclosure to consumers of the presence of event data recording devices in new motor vehicles. Transportation and Interstate Cooperation

HB 611-FN, relative to small group insurers. Banks and Insurance

HB 618-FN-L, relative to persons acting as volunteers to a state agency. Internal Affairs

HB 619-FN, relative to skier safety and ski area responsibility. Banks and Insurance

HB 637-FN, relative to licensure of alcohol and drug abuse professionals. Executive Departments and Administration

HB 683-FN, relative to reporting of motor vehicle offenses by driver education instructors and drivers' school licensees. Transportation and Interstate Cooperation

HB 721, prohibiting the department of education and the state board of education from adopting a definition of an adequate education. Education

HCR 2, a resolution declaring October 27 to be Boston Red Sox Day. Public and Municipal Affairs

HCR 4, urging Congress to find that the Piscatqua River and Portsmouth Harbor lie within the state of New Hampshire. Public and Municipal Affairs

HCR 8, a resolution urging the Congress of the United States to place a moratorium on new free trade agreements, to investigate and review current free trade agreements and policies of the United States, to investigate and review participation of the United States with international trade organizations and to ensure that such agreements, policies, and participation are in the best interests of the citizens of the state of New Hampshire and the United States. Internal Affairs

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 468, relative to provisions for permissible contact between the agent of the defendant subject to a protective order and a plaintiff.

HB 490, relative to law enforcement access to financial records under the New Hampshire right to privacy act.

HB 491, relative to the inherent dangers of OHRV operation and limiting landowner liability for certain fish and game related land uses.

HB 510, relative to financial affidavits in domestic relations cases.

HB 511, relative to the confidentiality of records pertaining to the support of dependent children.

HB 533-FN, relative to penalties for aggravated felonious sexual assault.

HB 558, relative to the circumstances constituting sexual assault.

HB 562, relative to eliminating certain mercury-added products.

HB 567, relative to mediation in family law cases involving children.

HB 583, establishing an oversight committee to study medical malpractice insurance rates in this state.

HB 584, relative to evidence of admissions of liability in medical injury actions.

HB 585, relative to grounds for termination of parental rights.

HB 586, relative to the periodic review of child support guidelines.

HB 640, relative to parental rights and responsibilities.

HB 672-FN, relative to notaries public, justices of the peace, and adopting the Uniform Law on Notarial Acts.

HB 702-FN, relative to the screening and mediation of medical malpractice claims.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 468 to 702, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

HB 468, relative to provisions for permissible contact between the agent of the defendant subject to a protective order and a plaintiff. Judiciary

HB 490, relative to law enforcement access to financial records under the New Hampshire right to privacy act. Banks and Insurance

HB 491, relative to the inherent dangers of OHRV operation and limiting landowner liability for certain fish and game related land uses. Environment and Wildlife

HB 510, relative to financial affidavits in domestic relations cases. Judiciary

HB 511, relative to the confidentiality of records pertaining to the support of dependent children. Judiciary

HB 533-FN, relative to penalties for aggravated felonious sexual assault. Judiciary

HB 558, relative to the circumstances constituting sexual assault. Judiciary

HB 562, relative to eliminating certain mercury-added products. Environment and Wildlife

HB 567, relative to mediation in family law cases involving children. Judiciary

HB 583, establishing an oversight committee to study medical malpractice insurance rates in this state. Judiciary

HB 584, relative to evidence of admissions of liability in medical injury actions. Judiciary

HB 585, relative to grounds for termination of parental rights. Health and Human Services

HB 586, relative to the periodic review of child support guidelines. Health and Human Services

HB 640, relative to parental rights and responsibilities. Judiciary

HB 672-FN, relative to notaries public, justices of the peace, and adopting the Uniform Law on Notarial Acts. Executive Departments and Administration

HB 702-FN, relative to the screening and mediation of medical malpractice claims. Judiciary

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 56, relative to food safety in restaurants.

HB 68, relative to the enforcement of disorderly conduct by reason of noise.

HB 114, relative to the regulation of pharmacists and pharmacy technicians by the pharmacy board.

HB 125, relative to ignition interlock devices.

HB 126, relative to a public employee right of free speech.

HB 132, relative to the grounds for dismissal of a teacher.

HB 170, relative to unemployment compensation.

HB 177, relative to home improvement contracts.

HB 205, relative to licensing requirements for certain drivers.

HB 214, permitting the parents or legal guardian of a sexual assault victim to remain with the victim during the legal proceedings.

HB 215-FN, relative to water management.

HB 220, establishing a committee to study the ability of homeless youth in New Hampshire to make a successful transition to adulthood.

HB 244-FN, relative to statutory liens by the department of safety.

HB 246, establishing a committee to study the classification of employees as independent contractors.

HB 248, authorizing semi-annual payments of school building aid.

HB 255, establishing a committee to study the pricing of milk.

HB 272-FN-A, making an appropriation to the barn preservation fund.

HB 275, defining farmers' market.

HB 293, establishing a commission to study the feasibility of developing a materials resource and recovery facility in Sullivan county.

HB 294, relative to annulment of arrest records.

HB 299, establishing a committee to study state laws governing liens for labor and materials.

HB 301-L, relative to parent advisory councils for pupils with educational disabilities.

HB 307, establishing a committee to study the feasibility of licensing residential building and remodeling contractors.

HB 311-L, enabling towns to establish revolving funds for certain purposes.

HB 315, relative to best available technology for air pollution control.

HB 323-FN, relative to excluding social security numbers and other information from documents filed with registries of deeds.

HB 329, establishing the crime victim employment leave act.

HB 342, establishing a commission to study the barriers to the establishment of all-terrain vehicle trails on public and private lands.

HB 343, establishing a commission to study accessibility for New Hampshire citizens to the water bodies in the state.

HB 346-L, relative to the procedure for withdrawal from a cooperative school district.

HB 348, relative to real and personal property conveyances made under powers of attorney.

HB 354, relative to the review, approval, and adoption of agency rules.

HB 359, defining "unnecessary hardship" for purposes of zoning variances.

HB 366, relative to maintenance of voter checklists.

HB 381-FN, relative to special elections, voter lists, and conduct of elections.

HB 383, relative to vital records administration.

HB 389, relative to the duties of the postsecondary education commission.

HB 393, establishing a committee to study methods for requiring employers to permit voluntary and paid on-call emergency first responders to respond to calls.

HB 394, relative to real estate tax lien procedures for tax collectors.

HB 401-FN-A, making an appropriation to the Seacoast Shipyard Association.

HB 404, permitting employees to request a wage deduction for contributions to a political action committee.

HB 406, revising certain provisions of the home education statutes.

HB 420, relative to receiving and addressing complaints against licensees by the board of mental health practice.

HB 421, relative to effective dates.

HB 424-FN, prohibiting the receipt of cash gifts by elected officials.

HB 428, relative to clarifying the authority of the Pease development authority and the division of ports and harbors.

HB 429, relative to representation by nonattorneys before the board of tax and land appeals and relative to condemnation proceedings conducted by the board of tax and land appeals.

HB 432-FN, relative to the septage handling and treatment facilities grant program and the septage and sludge land application restrictions.

HB 435, establishing a separate high school civics graduation requirement.

HB 437, relative to the disposition of municipal records.

HB 440, relative to hearing ear dogs, guide dogs, and service dogs.

HB 465-FN, authorizing the board of medicine to take non-disciplinary remedial action against physicians.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 111 to 465, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

HB 56, relative to food safety in restaurants. Health and Human Services

HB 68, relative to the enforcement of disorderly conduct by reason of noise. Judiciary

HB 114, relative to the regulation of pharmacists and pharmacy technicians by the pharmacy board. Executive Departments and Administration

HB 125, relative to ignition interlock devices. Transportation and Interstate Cooperation

HB 126, relative to a public employee right of free speech. Public and Municipal Affairs

HB 132, relative to the grounds for dismissal of a teacher. Education

HB 170, relative to unemployment compensation. Banks and Insurance

HB 177, relative to home improvement contracts. Public and Municipal Affairs

HB 205, relative to licensing requirements for certain drivers. Transportation and Interstate Cooperation

HB 214, permitting the parents or legal guardian of a sexual assault victim to remain with the victim during the legal proceedings. Judiciary

HB 215-FN, relative to water management. Energy and Economic Development

HB 220, establishing a committee to study the ability of homeless youth in New Hampshire to make a successful transition to adulthood. Health and Human Services

HB 244-FN, relative to statutory liens by the department of safety. Transportation and Interstate Cooperation

HB 246, establishing a committee to study the classification of employees as independent contractors. Public and Municipal Affairs

HB 248, authorizing semi-annual payments of school building aid. Education

HB 255, establishing a committee to study the pricing of milk. Public and Municipal Affairs

HB 272-FN-A, making an appropriation to the barn preservation fund. Finance

HB 275, defining farmers' market. Public and Municipal Affairs

HB 293, establishing a commission to study the feasibility of developing a materials resource and recovery facility in Sullivan county. Energy and Economic Development

HB 294, relative to annulment of arrest records. Judiciary

HB 299, establishing a committee to study state laws governing liens for labor and materials. Judiciary

HB 301-L, relative to parent advisory councils for pupils with educational disabilities. Education

HB 307, establishing a committee to study the feasibility of licensing residential building and remodeling contractors. Public and Municipal Affairs

HB 311-L, enabling towns to establish revolving funds for certain purposes. Internal Affairs

HB 315, relative to best available technology for air pollution control. Energy and Economic Development

HB 323-FN, relative to excluding social security numbers and other information from documents filed with registries of deeds. Judiciary

HB 329, establishing the crime victim employment leave act. Banks and Insurance

HB 342, establishing a commission to study the barriers to the establishment of all-terrain vehicle trails on public and private lands. Environment and Wildlife

HB 343, establishing a commission to study accessibility for New Hampshire citizens to the water bodies in the state. Environment and Wildlife

HB 346-L, relative to the procedure for withdrawal from a cooperative school district. Education

HB 348, relative to real and personal property conveyances made under powers of attorney. Judiciary

HB 354, relative to the review, approval, and adoption of agency rules. Internal Affairs

HB 359, defining "unnecessary hardship" for purposes of zoning variances. Public and Municipal Affairs

HB 366, relative to maintenance of voter checklists. Internal Affairs

HB 381-FN, relative to special elections, voter lists, and conduct of elections. Internal Affairs

HB 383, relative to vital records administration. Executive Departments and Administration

HB 389, relative to the duties of the postsecondary education commission. Education

HB 393, establishing a committee to study methods for requiring employers to permit voluntary and paid on-call emergency first responders to respond to calls. Transportation and Interstate Cooperation

HB 394, relative to real estate tax lien procedures for tax collectors. Ways and Means

HB 401-FN-A, making an appropriation to the Seacoast Shipyard Association. Finance

HB 404, permitting employees to request a wage deduction for contributions to a political action committee. Internal Affairs

HB 406, revising certain provisions of the home education statutes. Education

HB 420, relative to receiving and addressing complaints against licensees by the board of mental health practice. Executive Departments and Administration

HB 421, relative to effective dates. Executive Departments and Administration

HB 424-FN, prohibiting the receipt of cash gifts by elected officials. Internal Affairs

HB 428, relative to clarifying the authority of the Pease development authority and the division of ports and harbors. Executive Departments and Administration

HB 429, relative to representation by nonattorneys before the board of tax and land appeals and relative to condemnation proceedings conducted by the board of tax and land appeals. Judiciary

HB 432-FN, relative to the septage handling and treatment facilities grant program and the septage and sludge land application restrictions. Environment and Wildlife

HB 435, establishing a separate high school civics graduation requirement. Education

HB 437, relative to the disposition of municipal records. Public and Municipal Affairs

HB 440, relative to hearing ear dogs, guide dogs, and service dogs. Environment and Wildlife

HB 465-FN, authorizing the board of medicine to take non-disciplinary remedial action against physicians. Executive Departments and Administration

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 111, establishing a commission to study the elimination of cervical cancer in the state of New Hampshire.

HB 152-FN, establishing a commission to study the uses of biodiesel for home heating and vehicular transportation.

HB 195, establishing a committee to study the department of insurance.

HB 202, directing the commissioner of the department of environmental services to review options for reducing diesel engine exhaust emissions.

HB 230-L, relative to default budgets.

HB 247, extending the law regarding receivership of care facilities for a certain length of time.

HB 259, relative to medical assistance for home care for children with severe disabilities.

HB 260-FN, relative to motor vehicle equipment and registration.

HB 261, relative to title to salvage vehicles.

HB 267, relative to requests for services other than counsel for indigent defendants.

HB 268 - FN, increasing certain motor vehicle fees.

HB 279, relative to the classification of Spofford Lake in Chesterfield, New Hampshire.

HB 306, relative to mandatory education for crossbow hunters.

HB 326, relative to motorcycle noise levels and mufflers.

HB 332, relative to harassment by telephone.

HB 351, relative to the time for counting absentee ballots.

HB 357, relative to negligent driving.

HB 362, relative to statutes to be posted at polling places.

HB 363, relative to parking at polling places.

HB 365, relative to recount fees.

HB 372, relative to notification of interested parties in medical parole cases.

HB 386, relative to agricultural best management practices.

HB 408, relative to the sale of town-owned land.

HB 415, excepting installation of heating equipment from regulation by the electrician's board.

HB 431-FN-L, relative to competing articles and official ballot voting.

HB 447-FN, relative to black bear license and tag fees.

HB 449-FN, relative to special wild turkey seasons and permits.

HB 450-FN-A, extending the commission to study child support and related child custody issues and relative to hiring economists to assist in revising the child support guidelines and making an appropriation therefor.

HB 457, relative to excavating and dredging permit exemptions for water conveyance systems.

HB 467, relative to naming private roads.

HB 472, relative to the definition of recreational program.

HB 498, establishing a study committee relative to the sale of fire-safe cigarettes.

HB 504, relative to the assessment or refund of real estate transfer taxes, and the recording of plans with the register of deeds.

HB 505, relative to recording mailing addresses on property deeds.

HB 514, establishing the New Hampshire health care quality assurance commission.

HB 521, relative to medical insurance coverage for members of the Manchester employees' contributory retirement system.

HB 522, establishing a committee to study gaming options for New Hampshire.

HB 546, relative to the status of the board of trustees of the retirement system.

HB 582, relative to the policy for records management.

HB 602-FN-A, relative to the unbundling of communications services for purposes of the application of the communications services tax.

HB 628-FN, relative to the authority of law enforcement officers to close an area for the purpose of abating a threat to public health or safety.

HB 647-FN, relative to restructuring the department of revenue administration.

HB 681-FN, relative to training, quality assurance, and licensing of assisted living facilities.

HB 696-FN, relative to enhanced penalties for certain crimes against the elderly and persons with disabilities.

HB 697-FN, establishing a commission to study medicaid reimbursement rates for pharmacy providers.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 111 to 697, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

HB 111, establishing a commission to study the elimination of cervical cancer in the state of New Hampshire. Health and Human Services

HB 152-FN, establishing a commission to study the uses of biodiesel for home heating and vehicular transportation. Transportation and Interstate Cooperation

HB 195, establishing a committee to study the department of insurance. Banks and Insurance

HB 202, directing the commissioner of the department of environmental services to review options for reducing diesel engine exhaust emissions. Transportation and Interstate Cooperation

HB 230-L, relative to default budgets. Internal Affairs

HB 247, extending the law regarding receivership of care facilities for a certain length of time. Health and Human Services

HB 259, relative to medical assistance for home care for children with severe disabilities. Health and Human Services

HB 260-FN, relative to motor vehicle equipment and registration. Transportation and Interstate Cooperation

HB 261, relative to title to salvage vehicles. Transportation and Interstate Cooperation

HB 267, relative to requests for services other than counsel for indigent defendants. Judiciary

HB 268 - FN, increasing certain motor vehicle fees. Transportation and Interstate Cooperation

HB 279, relative to the classification of Spofford Lake in Chesterfield, New Hampshire. Energy and Economic Development

HB 306, relative to mandatory education for crossbow hunters. Environment and Wildlife

HB 326, relative to motorcycle noise levels and mufflers. Transportation and Interstate Cooperation

HB 332, relative to harassment by telephone. Judiciary

HB 351, relative to the time for counting absentee ballots. Internal Affairs

HB 357, relative to negligent driving. Transportation and Interstate Cooperation

HB 362, relative to statutes to be posted at polling places. Internal Affairs

HB 363, relative to parking at polling places. Internal Affairs

HB 365, relative to recount fees. Internal Affairs

HB 372, relative to notification of interested parties in medical parole cases. Judiciary

HB 386, relative to agricultural best management practices. Environment and Wildlife

HB 408, relative to the sale of town-owned land. Internal Affairs

HB 415, excepting installation of heating equipment from regulation by the electrician's board. Executive Departments and Administration

HB 431-FN-L, relative to competing articles and official ballot voting. Internal Affairs

HB 447-FN, relative to black bear license and tag fees. Environment and Wildlife

HB 449-FN, relative to special wild turkey seasons and permits. Environment and Wildlife

HB 450-FN-A, extending the commission to study child support and related child custody issues and relative to hiring economists to assist in revising the child support guidelines and making an appropriation therefor. Health and Human Services

HB 457, relative to excavating and dredging permit exemptions for water conveyance systems. Energy and Economic Development

HB 467, relative to naming private roads. Public and Municipal Affairs

HB 472, relative to the definition of recreational program. Health and Human Services

HB 498, establishing a study committee relative to the sale of fire-safe cigarettes. Public and Municipal Affairs

HB 504, relative to the assessment or refund of real estate transfer taxes, and the recording of plans with the register of deeds. Ways and Means

HB 505, relative to recording mailing addresses on property deeds. Public and Municipal Affairs

HB 514, establishing the New Hampshire health care quality assurance commission. Health and Human Services

HB 521, relative to medical insurance coverage for members of the Manchester employees' contributory retirement system. Banks and Insurance

HB 522, establishing a committee to study gaming options for New Hampshire. Ways and Means

HB 546, relative to the status of the board of trustees of the retirement system. Banks and Insurance

HB 582, relative to the policy for records management. Executive Departments and Administration

HB 602-FN-A, relative to the unbundling of communications services for purposes of the application of the communications services tax. Energy and Economic Development

HB 628-FN, relative to the authority of law enforcement officers to close an area for the purpose of abating a threat to public health or safety. Judiciary

HB 647-FN, relative to restructuring the department of revenue administration. Banks and Insurance

HB 681-FN, relative to training, quality assurance, and licensing of assisted living facilities. Health and Human Services

HB 696-FN, relative to enhanced penalties for certain crimes against the elderly and persons with disabilities. Judiciary

HB 697-FN, establishing a commission to study medicaid reimbursement rates for pharmacy providers. Health and Human Services

Out of Recess.

LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

SENATE JOURNAL 12

April 7, 2005

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Gracing God, fix our eyes upon what matters. Save us all from our own ongoing vocational malpractice, and show us and then remind us over and again whose ultimate vote it is that really matters. Amen

Senator Foster led the Pledge of Allegiance.

INTRODUCTION OF GUESTS**COMMITTEE REPORTS**

SB 22, authorizing the Holden School of Nursing to confer degrees. Education Committee. Re-refer to committee, Vote 4-1. Senator Foster for the committee.

Committee report of re-refer is adopted.

SB 170, revising the nurse practice act. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 6-0. Senator Kenney for the committee.

Senate Executive Departments and Administration

March 30, 2005

2005-0976s

08/10

Amendment to SB 170

Amend the bill by replacing all after the enacting clause with the following:

1 Nurse Practice Act. RSA 326-B is repealed and reenacted to read as follows:

**CHAPTER 326-B
NURSE PRACTICE ACT**

326-B:1 Purpose. In order to safeguard the life, health, and public welfare of the people of New Hampshire and in order to protect the people of the state from the unauthorized, unqualified, and improper application of services by individuals in the practice of nursing, it is necessary that a regulatory authority be established and adequately funded. To further this policy, the practice of nursing shall be regulated through the New Hampshire board of nursing, and such board shall have the power to enforce the provisions of this chapter. Licensees under this chapter are accountable to clients, the nursing profession, and the board for complying with the requirements of this act and the quality of nursing care rendered, and for recognizing limits of knowledge and experience and planning for management of situations beyond the nurse's experience.

326-B:2 Definitions. In this chapter:

I. "Advanced registered nurse practitioner" or "ARNP" means a registered nurse currently licensed by the board under RSA 326-B:19.

II. "Board" means the New Hampshire board of nursing established in RSA 326-B:3.

III. "Competence development" means the method by which a licensee gains, maintains, or refines practice knowledge, skills, and abilities. This development may occur through a formal education program, continuing education, and clinical practice, and is expected to continue throughout the practitioners' career.

IV. "Licensed nursing assistant" or "LNA" means an individual who holds a current license to provide client care under the direction of a registered nurse or licensed practical nurse.

V. "Licensed practical nurse" or "LPN" means an individual who holds a current license to practice practical nursing as defined in paragraph XII.

VI. "Medication nursing assistant" means a licensed nursing assistant holding a currently valid certificate authorizing the delegation to the nursing assistant of tasks of medication administration.

VII. "Nursing" means assisting clients or groups of clients to attain or maintain optimal health by implementing a strategy of care to accomplish defined goals and by evaluating responses to nursing care and medical treatment. Nursing includes basic health care that helps both clients and groups of clients cope with difficulties in daily living associated with their actual or potential health or illness status and also those nursing activities that require a substantial amount of scientific knowledge or technical skill. Nursing also includes, but is not limited to:

- (a) Promoting an environment conducive to well-being.
- (b) Planning and implementing independent nursing strategies and prescribed treatment in the prevention and management of illness, injury, and disability and the achievement of a dignified death.
- (c) Providing health counseling and teaching.
- (d) Collaborating on aspects of the health regimen.
- (e) Advocating for the client's medical needs.

VIII. "Nursing-related activities" means client care provided by a licensed nursing assistant directed by an ARNP, an RN, or an LPN.

IX. "Practical nursing" means the practice of nursing as defined in paragraph VII by a person who:

- (a) Uses sound nursing judgment based on preparation, knowledge, skills, understanding, and past nursing experience.
- (b) Works under the direction of a registered nurse, advanced registered nurse practitioner, dentist, or physician.
- (c) Functions as a member of a health care team and contributes to the assessment, planning, implementation, and evaluation of client care.

X. "Registered nurse" or "RN" means an individual who holds a current license to practice registered nursing as defined in paragraph XI.

XI. "Registered nursing" means the application of nursing knowledge, judgment, and skill drawn from broad in-depth education in the biological, psychological, social, and physical sciences in assessing and diagnosing the health status of a client, and in planning, implementing, and evaluating client care which promotes the optimum health, wellness, and independence of the individual, the family, and the community.

326-B:3 Board of Nursing.

I. The board of nursing shall comprise 11 members to be appointed by the governor with the consent of the council. Any interested individual, association, or entity may make recommendation to the governor. The members of the board shall include 5 registered nurses, one of whom shall be an advanced registered nurse practitioner, 2 licensed practical nurses, 2 licensed nursing assistants, one of whom shall be a medication licensed nursing assistant if possible, and 2 representative members of the public. The terms of members shall be staggered as determined by the governor and council. All terms shall be for 3 years, and no member of the board shall be appointed to more than 3 consecutive terms.

II. Each RN member shall be a resident of this state, licensed in good standing under the provisions of this chapter, and currently engaged in the practice of nursing as an RN and shall have no fewer than 5 years of experience as an RN, at least 3 of which shall have immediately preceded appointment. RN members of the board shall represent the various areas of nursing practice including education, administration, and clinical practice.

III. The LPN members of the board shall be residents of this state, licensed in good standing under the provisions of this chapter, and currently engaged in the practice of nursing and shall have had no fewer than 5 years of experience as an LPN, at least 3 of which shall have immediately preceded the date of appointment.

IV. The LNA members of the board shall be residents of this state, licensed in good standing under the provisions of this chapter, and currently engaged in nursing-related activities. These members shall have a minimum of 5 years of experience as an LNA, at least 3 of which shall have immediately preceded the date of their appointment.

V. The public members shall be residents of the state of New Hampshire who are not, and never have been, members of the nursing profession or the spouse of any such person. The public members shall not have, and shall never have had, a material financial interest in either the provision of nursing services or an activity directly related to nursing, including the representation of the board or its predecessor or the profession for a fee at any time during the 5 years preceding the date of appointment.

VI. No more than one board member shall be associated with a particular agency, corporation, or other enterprise or subsidiary at one time.

VII. Each member of the board shall be compensated at the rate of \$100 for attendance at a regular board meeting and \$50 for each other day actually engaged in official duties of the board, and shall be reimbursed for actual and necessary expenses incurred in the discharge of official duties, including travel at the state employee mileage rate.

VIII. An appointee to a full term on the board shall be appointed by the governor with the consent of the council before the expiration of the term of the member being succeeded and shall become a member of the board on the first day following the appointment expiration date of the previous appointee. Appointees to unexpired portions of full terms shall become members of the board on the day following such appointment, and shall serve the unexpired term and then be eligible to serve 3 full 3-year terms.

IX. The governor may remove any member from the board for neglect of any duty under RSA 326-B:4 or for incompetence or unprofessional or dishonorable conduct. Any person may file a complaint against a board member with the department of health and human services. The provisions of RSA 4:1 controlling the removal of public officials from office shall be followed in dismissing board members.

X. All members of the board and its agents or employees shall enjoy immunity from individual civil liability while acting within the scope of their duties as board members, agents, or employees, as long as they are not acting in a wanton or reckless manner.

XI. Board meetings shall be open to the public. In accordance with RSA 91-A:3, the board may conduct part of a meeting in nonpublic session.

XII. The board shall be administratively attached, under RSA 21-G:10, to the department of health and human services.

326-B:4 Powers and Duties of the Board. The board may:

I. Establish reasonable and uniform standards for nursing practice.

II. Provide consultation regarding nursing practice for institutions and agencies and investigate reports of illegal practice.

III. Examine, license, and renew the licenses of duly qualified individuals. The board shall select an appropriate nationally approved licensing examination.

IV. Gather and report to the public statistical information regarding, but not limited to, the education and licensure of registered and practical nurses.

V. Conduct investigations, hearings, and proceedings concerning alleged violations of this chapter or of rules adopted under this chapter.

VI. Subpoena witnesses, records, and documents, as needed, and administer oaths to those testifying at hearings.

VII. Determine and enforce appropriate disciplinary action against all individuals found guilty of violating this chapter or the rules adopted under this chapter.

VIII. Deny or withdraw approval of nursing educational programs that do not meet the minimum requirements of this chapter.

IX. Maintain records of proceedings as required by the laws of New Hampshire.

X. Conduct conferences, forums, studies, and research on nursing practice and education.

XI. Obtain legal counsel, hearing officers, accountants and such other employees, assistants, and agents as may be necessary, in the opinion of the board to administer and enforce the provisions of this chapter.

XII. Prescribe the duties of a qualified registered nurse to serve as executive director and request such additional staff positions as may be necessary to administer and enforce the provisions of this chapter.

XIII. Establish and collect fees, under rules adopted by the board pursuant to RSA 541-A, relative to applicants seeking any type of license issued by the board under this chapter, including fees for applications for temporary licenses, reinstatement of inactive licenses, license by examinations, renewal of licenses, and multistate licenses, as well as fees for verifying license status, program graduation, or computerized lists.

XIV. Require a registered nurse or a licensed practical nurse licensed in the state of New Hampshire to obtain a multistate license if the registered nurse or licensed practical nurse practices in a remote state. The board may charge an additional fee for such a multistate license.

XV. In accordance with state due process laws, limit the multistate licensure privilege of any registered nurse or licensed practical nurse to practice in New Hampshire and may take any other actions under applicable state laws necessary to protect the health and safety of New Hampshire citizens. If the board does take such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such action taken by the state of New Hampshire.

326-B:5 Administration By Executive Director.

I. The executive director shall have at least the following qualifications:

- (a) Be eligible for licensure to practice as an RN in this state; and
- (b) Hold a master's degree in nursing or hold a master's degree in a related field and a baccalaureate degree in nursing.

II. The executive director shall be responsible for:

- (a) The performance of the administrative responsibilities of the board.
- (b) Employment of personnel needed to carry out the functions of the board.
- (c) The performance of any other duties the board may direct.

326-B:6 Collection and Expenditure of Funds. The board shall receive and expend funds provided such funds are received and expended for the pursuit of the objectives authorized by this chapter. Fees, fines, and administrative charges other than those collected pursuant to RSA 326-B:8 shall be deposited in the general fund.

326-B:7 Nursing Assistant Fees and Fines; Continual Appropriation.

I. The nursing assistant fund is established in the state treasury and continually appropriated to the board which shall administer the fund. The fund shall be used only for administration of the nursing assistant component and expenses relating to that component.

II. All fees, charges, and fines relating to nursing assistants shall be credited to the fund.

326-B:8 Fees; Charges.

I. The board shall charge fees for the issuance, renewal, and reinstatement of all licenses, specialty licenses, and certificates authorized by this chapter. The board shall recover at least 125 percent of its direct expenses through licensee fees, fines, and administrative charges.

II. The board may provide the following services and make administrative charges for:

- (a) The administration of examinations required by this chapter.
- (b) Verification of licensure status.
- (c) The sale of lists of licensees who have given their written authorization to have their names included on such lists.
- (d) The actual costs of a criminal conviction record check required pursuant RSA 326-B:16.
- (e) The actual cost of collection of statistical data provided to private entities.

326-B:9 Public Hearings on Fees.

I. The board shall be exempt from the requirements, procedures, and provisions of RSA 541-A with respect to the establishment of fees.

II. The board shall review all fees on a biannual basis.

III. The board shall hold at least one public hearing on all proposed changes to such fees.

326-B:10 Rulemaking Authority. The board shall adopt rules, in accordance with RSA 541-A, relative to the following:

I. Application procedures and eligibility requirements for the issuance of all initial, temporary, and renewal licenses, specialty licenses, and certificates issued by the board, including the issuance of such licenses to applicants holding a currently valid license or other authorization to practice in another jurisdiction.

II. Application procedures and eligibility requirements for the reinstatement of licenses after lapse and after disciplinary action.

III. Recognition of national certifying bodies issuing specialty certifications required for licensure as an ARNP.

IV. The standards to be met by, and the process for approval of, education programs designed to prepare applicants to qualify for licensure or certification in any of the disciplines regulated by the board, including the time period within which noncompliance must be corrected before such approval is withdrawn.

V. The standards to be met by, and the process for approval of, education programs designed to prepare LPNs in intravenous therapy and by programs designed to prepare LNAs to perform tasks not addressed in the basic curriculum required for licensure.

VI. The determination of disciplinary sanctions authorized by this chapter, including the determination of administrative fines.

VII. The administration of examinations authorized by this chapter, and the manner in which information regarding the contents of any licensing examinations may be disclosed, solicited, or compiled.

VIII. Ethical standards for the practice of nursing and nursing-related activities.

IX. Competence development requirements.

X. Designations that may be used by persons regulated by the board and retired persons regulated by the board.

XI. The implementation and coordination of the nurse licensure compact adopted in RSA 326-B:47. The board shall use model rules developed for the nurse licensure compact by the National Council of State Boards of Nursing as the basis for adopting rules which shall be modified as necessary to comply with state statutes.

326-B:11 Joint Health Council.

I.(a) The joint health council shall consist of 9 members as follows: 3 licensed, practicing ARNPs, appointed by the board of nursing; 3 licensed, practicing physicians who work with ARNPs, appointed by the board of medicine; and 3 licensed clinical pharmacists who are practicing clinical pharmacists, appointed by the board of pharmacy. In no case shall a member of the joint health council be a member of the member's appointing board.

(b) The chairmanship of the council shall rotate annually among the appointees of the 3 respective boards. Administrative expenses shall be assumed, and administrative support services provided, by the board of nursing.

(c) Members of the council shall be appointed for 3-year terms and shall serve no more than 2 terms.

II. The council shall meet not less than once every 3 months to discuss matters pertinent to the ARNP formulary and matters of mutual concern to the board of medicine, the board of nursing, and the board of pharmacy, unless there are no agenda items. Any council member may submit items to be considered by the council. Any council member may request that an item submitted for consideration by the council include relevant scientific information from recognized professional publications. A denial of a request to include a drug in the formulary or a decision to further restrict a drug already approved by the council shall be issued in writing and shall include relevant scientific information from recognized professional publications.

III. The duties of the joint health council shall include, but not be limited to, determining the type of ARNP formulary, exclusionary, inclusionary, or other, and adding to or altering the list of controlled and non-controlled molecular entities in the ARNP formulary. The council shall render decisions on such additions or alterations within 3 months of initial consideration unless there is a request for additional scientific information. Appeals of decisions shall be submitted to the council in writing for further deliberation by the council. The ARNP formulary shall be updated at least annually and shall be available in paper and electronic format from the board of nursing, the board of medicine, and the board of pharmacy.

IV. Meetings of the joint health council shall be open to the public and conducted in accordance with the provisions of RSA 91-A. Meetings shall be conducted in a building owned or leased by the state and situated in Concord. Notice of the time and place of each meeting shall be posted in the house and senate calendars at least 30 days prior to the meeting date.

326-B:12 Scope of Practice and Authority; Advanced Registered Nurse Practitioner.

I. Advanced registered nursing practice by nurse practitioners, nurse anesthetists, nurse midwives, or clinical nurse specialists shall consist of a combination of knowledge and skills acquired in basic nursing education; licensure as a registered nurse; and graduation from or completion of a graduate level ARNP program accredited by a national certifying body in the appropriate ARNP role and specialty.

II. The ARNP scope of practice, with or without compensation or personal profit, shall include the registered nurse scope of practice. The scope of practice of an ARNP includes but is not limited to performing acts of advanced assessment, diagnosing, prescribing, selecting, administering, and dispensing therapeutic measures, including over-the-counter drugs, legend drugs, and controlled substances.

III. An ARNP shall practice within standards established by the board. Each ARNP shall be accountable to clients and the board:

- (a) For complying with this chapter and the quality of advanced nursing care rendered;
- (b) For recognizing limits of knowledge and experience, planning for the management of situations beyond the ARNP's expertise; and
- (c) For consulting with or referring clients to other health care providers as appropriate.

IV. An ARNP shall have authority to possess, compound, prescribe, administer, and dispense and distribute to clients controlled and non-controlled drugs in accordance with the formulary established by the joint health council and within the scope of the ARNP's practice as defined by this chapter. Such authority may be denied, suspended, or revoked by the board after notice and the opportunity for hearing, upon proof that the authority has been abused.

326-B:13 Scope of Practice; Registered Nurse.

I. An RN shall, with or without compensation or personal profit, practice nursing that incorporates caring for all clients in all settings, is guided by nursing standards and evidence-based practice guidelines developed by a national certifying body and approved by the board, and shall include but is not limited to:

- (a) Providing comprehensive nursing assessment of the health status of clients, families, groups, and communities.
- (b) Collaborating with a health care team to develop an integrated client-centered plan of health care.
- (c) Developing a plan of nursing strategies to be integrated within the client-centered health care plan that establishes nursing diagnoses, setting goals to meet identified health care needs, prescribing nursing interventions, and implementing nursing care through the execution of independent nursing strategies and prescribed medical regimen.
- (d) Delegating and assigning nursing interventions to implement the plan of care.
- (e) Providing for the maintenance of safe and effective nursing care rendered directly or indirectly.
- (f) Promoting a safe and therapeutic environment.
- (g) Providing health teaching and counseling to promote, attain, and maintain the optimum health level of clients, families, groups, and communities.
- (h) Advocating for clients, families, groups, and communities by attaining and maintaining what is in the best interest of the client or group.

- (i) Evaluating responses to interventions and the effectiveness of the plan of care.
- (j) Communicating and collaborating with other health care professionals in the management of health care and the implementation of the total health care regimen within and across care settings.
- (k) Acquiring and applying critical new knowledge and technologies to the practice of nursing.
- (l) Managing, supervising, and evaluating the practice of nursing.
- (m) Teaching the theory and practice of nursing.
- (n) Participating in the development of policies, procedures, and systems to support the client.
- (o) Other nursing services that require education and training prescribed by the board and in conformance with national nursing standards. Additional nursing services shall be commensurate with the RN's experience, continuing education, and demonstrated competencies.

II. Each RN is accountable to clients, the nursing profession, and the board for complying with the requirements of this act and the quality of nursing care rendered, and for recognizing limits of knowledge and experience and planning for management of situations beyond the nurse's experience.

326-B:14 Scope of Practice; Licensed Practical Nurse.

I. An LPN shall, with or without compensation or personal profit, practice under the supervision of an RN, ARNP, licensed physician, or other health care provider authorized to delegate health care activities and functions. Such practice is guided by nursing standards developed by a national certifying body and approved by the board, and shall include, but is not limited to:

- (a) Collecting data and conducting nursing assessments of the health status of clients.
- (b) Planning nursing care for clients with stable conditions.
- (c) Participating in the development and modification of the comprehensive plan of care for all types of clients.
- (d) Implementing appropriate aspects of the strategy of care within the LPN scope of practice.
- (e) Participating in nursing care management through delegating, assigning, and directing nursing interventions that may be performed by others, including other LPNs, that do not conflict with this chapter.
- (f) Maintaining safe and effective nursing care rendered directly or indirectly.
- (g) Promoting a safe and therapeutic environment.
- (h) Participating in health teaching and counseling to promote, attain, and maintain the optimum health level of clients.
- (i) Serving as an advocate for the client by communicating and collaborating with other health service personnel.
- (j) Participating in the evaluation of client responses to interventions.
- (k) Communicating and collaborating with other health care professionals.
- (l) Providing input into the development of policies and procedures.

(m) Other nursing services that require education and training prescribed by the board and in conformance with national nursing standards. Additional nursing services shall be commensurate with the LPN's experience, continuing education, and demonstrated LPN competencies.

II. Each nurse is accountable to clients, the nursing profession, and the board for complying with the requirements of this chapter and the quality of nursing care rendered and for recognizing limits of knowledge and experience and planning for management of situations beyond the nurse's expertise.

III. LPNs who have successfully completed the curriculum of a board-approved LPN intravenous therapy course may administer intravenous solutions under the direction of a physician or dentist, or as delegated by an RN.

326-B:15 Scope of Practice; Licensed Nursing Assistant.

I. An LNA shall, with or without compensation or personal profit, practice under the supervision of an RN, ARNP, or LPN.

II. An LNA is responsible for competency in the nursing assistant curriculum approved by the board. LNAs are authorized to administer medication when they hold a currently valid certificate of medication administration and under the circumstances established by the board through rules adopted pursuant to RSA 541-A.

III. Following successful completion of the curriculum, a nursing assistant shall be able to:

- (a) Form a relationship, communicate, and interact effectively with individuals and groups in a nursing environment.
- (b) Demonstrate comprehension related to individuals' emotional, mental, physical, and social health needs through skillful, direct nursing-related activities.
- (c) Assist individuals to attain and maintain functional independence in a home or health care facility.
- (d) Exhibit behaviors supporting and promoting care recipients' rights.
- (e) Demonstrate observational and documenting skills required for reporting of people's health, safety, welfare, physical and mental condition, and general well-being.
- (f) Provide safe nursing-related activities under the supervision of an RN or an LPN.

IV. LNAs may perform tasks not addressed in the basic curriculum required for licensure if they obtain additional training in the performance of such tasks through programs approved by the board. Additional tasks may be delegated provided:

- (a) The task has been properly delegated to the nursing assistant by the supervising licensed nurse pursuant to RSA 326-B:29.
- (b) The task has not been made exempt from nursing assistant practice.
- (c) The policies of the employing health care facility allow the delegation of the task to an LNA.

326-B:16 Criminal Record Checks.

I. Every applicant for initial licensure or license renewal or reinstatement shall submit to the board a notarized criminal conviction record release authorization form, as provided by the division of state police, which authorizes the release of his or her criminal conviction record to the board pursuant to RSA 106-B:14.

II. Upon receipt of a notarized criminal conviction record release authorization form from the board or from an applicant for licensure or license renewal or reinstatement, the division of state police shall conduct a criminal conviction record check pursuant to RSA 106-B:14 and provide the results to the board.

III. The board shall review the criminal record information prior to making a licensing decision and shall maintain the confidentiality of all criminal conviction records received pursuant to this section.

326-B:17 Licensure; All Applicants. All applicants shall:

- I. Submit a completed application and fees as established by the board.
- II. Have the ability to read and write in the English language.
- III. Report any pending criminal charges, criminal convictions, or plea arrangement in lieu of convictions.
- IV. Have committed no acts or omissions which are grounds for disciplinary action as set forth in this chapter, or, if such acts have been committed and would be grounds for disciplinary action, the board has found, after investigation, that sufficient restitution has been made.
- V. Meet competence development requirements as defined in rules adopted under RSA 541-A.
- VI. Meet other criteria as established by the board.

326-B:18 Registered Nurse and Licensed Practical Nurse; Initial License by Examination.

- I. The board shall administer the examination to applicants for licensure as RN's or LPN's.
- II. The board may employ, contract, and cooperate with any entity in the preparation and process for determining results of a valid, reliable, legally defensible and uniform licensure examination. When such an examination is utilized, the board shall restrict access to questions and answers.
- III. The board shall determine whether a license examination may be repeated, the frequency of reexamination, and any requisite education prior to reexamination.

IV. An applicant for licensure by examination to practice as an RN or LPN who successfully meets the requirements of this section shall be entitled to licensure as an RN or LPN, whichever is applicable.

V. Applicants for licensure by exam as an RN or LPN shall graduate from or verify successful completion and eligibility for graduation from a board approved nursing education program or a program that meets criteria comparable to those established by the board.

VI. An internationally educated applicant for RN or LPN licensure by examination shall meet the requirements as established by the board.

326-B:19 Advanced Registered Nurse Practitioner; Licensure.

I. An applicant for initial ARNP licensure shall:

- (a) Hold a current license as a registered nurse;
- (b) Have graduated with a graduate degree earned in an accredited advanced registered nurse practitioner education program;
- (c) Be currently certified by a board-recognized national certifying body in the specialty for which the applicant was educated; and
- (d) Meet other criteria as established by the board.

II. The board may issue one or more licenses to applicants meeting the qualifications established in paragraph I.

326-B:20 Licensed Nursing Assistant; Licensure by Examination. Applicants for an initial LNA license shall:

I. Submit documentation of successful completion and certification from a board approved nursing assistant education program.

II. Pass an examination approved by the board.

III. Meet other criteria as established by the board.

326-B:21 Registered Nurse and Licensed Practical Nurse; Licensure by Endorsement. An applicant for licensure by endorsement to practice as an RN or LPN who is currently licensed or certified in any other state or jurisdiction shall:

I. Hold an active unencumbered license as an RN or LPN.

II. Have committed no acts or omissions which are grounds for disciplinary action in another jurisdiction, or, if such acts have been committed and would be grounds for disciplinary action as set forth in this chapter, the board has found, after investigation, that sufficient restitution has been made.

III. Pass an examination approved by the board.

IV. Submit verification of licensure status directly from the jurisdiction of licensure by examination.

V. Meet other criteria established by the board.

326-B:22 Licensed Nursing Assistant; Licensure by Endorsement. An applicant for licensure by endorsement as a licensed nursing assistant who is currently licensed or certified in any other state or jurisdiction shall:

I. Provide proof of current and original licensing, certification, or nursing assistant registry status;

II. Have committed no acts or omissions which are grounds for disciplinary action as set forth in this chapter, or, if such acts have been committed and would be grounds for disciplinary action, the board has found, after investigation, that sufficient restitution has been made; and

III. Meet other criteria as established by the board.

326-B:23 License Renewal; All Licensees:

I. Any person licensed who intends to continue practicing as a nurse or nursing assistant shall:

(a) By midnight on his or her date of birth in the renewal year submit a completed application and fees as established by the board;

(b) Report any pending criminal charges, criminal convictions, or plea arrangements in lieu of convictions;

(c) Have committed no acts or omissions which are grounds for disciplinary action as set forth in this chapter, or, if such acts have been committed and would be grounds for disciplinary action, the board has found, after investigation, that sufficient restitution has been made;

(d) Meet competence development requirements as defined in rules adopted under RSA 541-A;

(e) For those licensees applying for renewal following disciplinary action, comply with all board licensure requirements as well as any specific requirements set forth in the board's discipline order; and

(f) Meet other criteria as established by the board.

II. Failure to renew the license shall result in forfeiture of the ability to practice nursing in the state of New Hampshire.

326-B:24 License Reinstatement; All licensees. An individual whose license has lapsed by failure to renew may apply for reinstatement by meeting all requirements for renewal, or satisfying the following conditions:

I. An individual who applies for license reinstatement who does not meet the competence development requirements shall demonstrate current nursing or nursing assistant knowledge and skill.

II. For those licensees applying for reinstatement following disciplinary action, compliance with all board licensure requirements as well as any specific requirements set forth in the board's discipline order.

326-B:25 Temporary Licenses; All Licensees. The board may issue temporary licenses to applicants who meet entry level licensing requirements in the license category. A temporary license shall expire on the date the board approves or denies the permanent license sought by the holder of the temporary license, or in 120 days, whichever is less.

326-B:26 Modified License; Registered Nurse or Licensed Practical Nurse. The board may issue a modified license to an individual who has met licensure requirements and who is able to practice without compromising public safety within a modified scope of practice or with accommodations or both as specified by the board.

326-B:27 Licensed Nursing Assistant Registry. The board shall maintain a registry of nursing assistants licensed who qualify pursuant to 42 C.F.R. section 483.156. Nursing assistants who are registered or licensed shall comply with all provisions of the Omnibus Reconciliation Act (OBRA) of 1987, sections 1819 and 1919 of the Social Security Act, and all provisions of this chapter.

326-B:28 Certificate of Medication Administration for Licensed Nursing Assistants.

I. The board may issue a certificate of medication administration to a current LNA who:

(a) Has participated in and completed a board-approved medication administration education program;

(b) Has passed an examination approved by the board; and

(c) Has paid the certification fee.

II. Certification may be renewed on a biennial basis.

326-B:29 Delegation of Nursing Activities and Tasks. A nurse holding a currently valid license as an RN or an LPN may delegate specific nursing activities and tasks under the circumstances, and in accordance with the constraints, set forth in rules of the board adopted under RSA 541-A.

326-B:30 Delegation; Circumstances Not Subject to Disciplinary Action.

I. A licensee who delegates or has delegated a specific nursing activity or task in compliance with this chapter shall not be subject to disciplinary action because of the performance of the person to whom the nursing activity or task is or was delegated.

II. No person may coerce an RN or an LPN into compromising client safety by requiring the nurse to delegate a nursing activity or task when the nurse determines that it is inappropriate to do so. A licensee shall not be subject to disciplinary action for refusing to delegate, or refusing to accept delegated nursing activities or tasks or refusing to provide training related to such delegation when the licensee has determined that such delegation may compromise client safety.

326-B:31 Obligations of Licensees.

I. In response to board inquiries relevant to a licensee's status or practice of nursing or nursing-related activities, each licensee shall provide complete and truthful information.

II. Each licensee shall notify the board if a license is lost or stolen.

III. Each licensee shall notify the board of a change of name or address within 10 days.

IV. Each licensee shall report to the board those acts or omissions which are violations of this chapter or grounds for disciplinary action.

326-B:32 Continuing Education. Applicants for license renewal and license reinstatement after lapse shall complete continuing education as follows:

I. An LNA shall complete 12 hours of continuing education in programs approved by the board each year, provided that licensees who hold a certificate of medication administration shall complete at least 4 hours of those 12 hours in medication administration.

II. An LPN or an RN shall complete 30 hours of continuing education every 2 years.

III. An ARNP, in addition to the continuing education requirements to renew or reinstate a license as an RN, shall complete 30 hours of continuing education every 2 years, 20 hours of which shall be specific to the specialty for which renewal or reinstatement is sought, and 5 hours of which shall be training in pharmacology appropriate to the specialty for which license renewal or reinstatement is sought.

326-B:33 Education Programs.

I. The board shall establish standards for the establishment and outcomes for nursing and nursing assistant education programs, including clinical learning experiences, and approve such programs that meet the requirements of this chapter.

II. The board shall establish the process for determining nursing and nursing assistant education program compliance.

III. The board:

(a) Shall set requirements for establishment of new nursing and nursing assistant programs.

(b) Shall periodically review nursing and nursing assistant education programs and require such programs to submit evidence of compliance with standards.

(c) Shall grant continuing approval if, upon review of evidence, the board determines that the program meets the established standards. The board shall publish a list of approved programs.

(d) May deny or withdraw approval or take such action as deemed necessary when nursing or nursing assistant education programs fail to meet the standards established by the board.

(e) Shall reinstate approval of a nursing or nursing assistant education program upon submission of satisfactory evidence that its program meets the standards established by the board.

(f) Shall establish the process for nursing and nursing assistant programs that cease operation.

IV. Any education program conducted in another state shall be deemed to be an education program approved by the board if that program meets the requirements for approval established by this section and the program has been approved by the regulatory authority of its state.

326-B:34 Duty to Warn of Violent Acts of Client; Civil Liability.

I. A psychiatric/mental health ARNP, defined in paragraph V of this section, or other ARNP licensed under this chapter has a duty to warn of, or to take reasonable precautions to provide protection from, a patient's violent behavior when the patient has communicated to such psychiatric/mental health ARNP or other ARNP licensed under this chapter a serious threat of physical violence against a clearly identified or reasonably identifiable person or persons, or a serious threat of substantial damage to real property.

II. The duty may be discharged by, and no monetary liability or cause of action may arise against, a psychiatric/mental health ARNP or other ARNP licensed under this chapter if the psychiatric/mental health ARNP or other ARNP licensed under this chapter makes reasonable efforts to communicate the threat to the person or persons, notifies the police department closest to the patient's or potential victim's residence, or obtains civil commitment of the patient to the state mental health system.

III. No monetary liability and no cause of action may arise concerning patient privacy or confidentiality against a psychiatric/mental health ARNP or other ARNP licensed under this chapter for information disclosed to third parties in an effort to discharge a duty under paragraph II.

IV. For purposes of this section, “psychiatric/mental health ARNP or other ARNP licensed under this chapter” shall include persons providing treatment under the supervision of a psychiatric/mental health ARNP or other ARNP licensed under this chapter.

V. For the purposes of this section, “psychiatric/mental health ARNP “ means an individual who is defined by and whose scope of practice is described under the rules adopted pursuant to this chapter and which apply to this special category.

326-B:35 Duties of Licensees Relating to Reports of Sexual Relations.

I. If, during the course of diagnosis or treatment by a licensee, a client alleges that another mental health counselor or health care practitioner licensed by the board of nursing or another state licensing or certifying agency has engaged with the client in sexual relations, the licensee shall have a duty to inform the client that the act reported by the client may be unprofessional or unethical and may subject the actor to disciplinary action by the actor’s licensing or certifying agency.

II. No liability for breach of client confidentiality, slander, or defamation, or other civil or criminal liability, shall arise from the disclosure by a licensee of information related to reported sexual relations between a client and any mental health counselor or health care licensee of a state licensing or certifying agency when the disclosure is made in good faith and made to the board or any other state licensing or certifying agency.

326-B:36 Privileged Communications Between Licensees and Their Clients.

I. Confidential communications between licensees and their clients are privileged in the same manner as those provided by law between physician and patient, and, except as otherwise provided by law, no licensee shall be required to disclose such privileged communications. Confidential communications between a client of a licensee and any person working under the supervision of such licensee to provide services that are customary and necessary for diagnosis and treatment are privileged to the same extent as would be the same communications between the supervising licensee and the client.

II. This section shall not apply to disciplinary proceedings conducted by:

- (a) The board;
- (b) The board of examiners of nursing home administrators under RSA 151-A:11; or
- (c) Any other statutorily-created health care occupational licensing board conducting disciplinary proceedings.

III. This section shall not apply to hearings conducted pursuant to RSA 135-C or RSA 464-A.

326-B:37 Emergency Treatment; Assisting the Board; Immunity From Civil Liability.

I. No person licensed to practice under this chapter or under the laws of any other state who, in good faith, renders emergency care at the scene of an emergency, which occurs outside both the place and the course of employment, shall be liable for any civil damages as a result of acts or omissions in rendering such emergency care, or as a result of any act or failure to act to provide or arrange for further medical treatment or care.

II. Any person acting in good faith shall be immune from civil liability to a licensee or an applicant for licensure for making any report or other information available to the board or assisting the board in carrying out any of its duties.

III. Nurses licensed in other states who respond to emergencies in New Hampshire during a civil disaster event shall be immune from civil liability and board action for acts or omissions in rendering such emergency care, or as a result of any act or failure to act to provide or arrange for further medical treatment or care.

326-B:38 Disciplinary Action; Misconduct.

I. The board may undertake investigations and disciplinary proceedings:

- (a) Upon its own initiative.
- (b) Upon written complaint of any person which charges that a licensee has committed any acts of misconduct under this section and which specifies the grounds for such complaint.

II. The board may discipline a licensee or applicant for any one or a combination of the following grounds:

- (a) Failing to demonstrate the qualifications or satisfy the requirements.
- (b) Conduct that violates the security of the examination, including, but not limited to:

- (1) Copying, disseminating, or receiving any portion of an examination.
 - (2) Having unauthorized possession of any portion of a future, current, or previously administered examination.
 - (3) Violating test administration.
 - (4) Permitting an impersonator to take the examination on one's behalf or impersonating an examinee.
- (c) Convictions by a court or any plea to a crime in any jurisdiction that relates adversely to the practice of nursing or to the ability to practice nursing.
- (d) Employing fraud or deceit in procuring or attempting to procure a license to practice nursing, in filing any reports or completing client records, in representation of oneself to the board or public, in authenticating any report or records in the nurse's capacity as an ARNP, RN, LPN or LNA, or in submitting any information or record to the board.
- (e) Unethical conduct including but not limited to conduct likely to deceive, defraud, or harm the public or demonstrating a willful or careless disregard for the health or safety of a client. Actual injury need not be established.
- (f) If a nurse's license to practice nursing or a multi-state privilege or another health care related license or other credential has been denied, revoked, suspended, or restricted, or the licensee has been otherwise disciplined in this or any other state.
- (g) Conduct including but not limited to failure or inability to perform nursing or nursing assistant practice as defined in this chapter, with reasonable skill and safety.
- (h) Unprofessional conduct including but not limited to:
- (1) A departure from or failure to conform to nursing standards, including improper management of client records.
 - (2) Delegating or accepting the delegation of a nursing function or a prescribed health function when the delegation or acceptance could reasonably be expected to result in unsafe or ineffective client care.
 - (3) Failure to supervise the performance of acts by any individual working at the nurse's delegation or assignment.
 - (4) Failure of a clinical nursing instructor to supervise student experiences.
- (i) Failure of a chief administrative nurse to follow appropriate and recognized standards and guidelines in providing oversight of the nursing organization and nursing services of a health care delivery system.
- (j) Failure to practice within a modified scope of practice or with the required accommodations, as specified by the board in granting a modified license under this act.
- (k) Any nursing practice that may create unnecessary danger to a client's life, health, or safety. Actual injury to a client need not be established.
- (l) Inability to practice safely, including demonstration of actual or potential inability to practice nursing with reasonable skill and safety to clients by reason of illness or as a result of any mental or physical condition.
- (m) Actions or conduct that include, but are not limited to falsifying reports, client documentation, agency records or other essential health documents, failure to cooperate with a lawful investigation conducted by the board, failure to maintain professional boundaries with clients or family members, use of excessive force upon or mistreatment or abuse of any client, engaging in sexual conduct with a client, touching a client in a sexual manner, requesting or offering sexual favors or language or behaviors suggestive of same, or threatening or violent behavior in the workplace.
- (n) Diversion or attempts to divert drugs or controlled substances.
- (o) Failure of a licensee to comply with terms of any alternative program agreement made with the board.
- (p) Other drug-related actions or conduct that include but are not limited to:

(1) Use of any controlled substance or any drug or device or alcoholic beverages to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that such use may impair his or her ability to conduct with safety to the public the practice of nursing.

(2) Falsification or making incorrect, inconsistent, or unintelligible entries in any agency, client, or other record pertaining to drugs or controlled substances.

(3) A positive drug screen for which there is no lawful prescription.

(q) Actions or conduct that include but are not limited to:

(1) Knowingly aiding, assisting, advising, or allowing an unlicensed person to engage in the practice of nursing.

(2) Violating a rule adopted by the board under RSA 541-A, an order of the board, a state or federal law relating to the practice of nursing, or a state or federal narcotics or controlled substance law.

(3) Practicing beyond the scope of practice as stated in this chapter, and failing to report violations of this chapter.

(r) Upon notification by the licensing authority of another jurisdiction that a licensee has been disciplined.

III. The board may refuse to renew or reinstate a license on disciplinary grounds, or take disciplinary action in any one or more of the following ways:

(a) By reprimand or by suspension, limitation, conditions, or probation of a licensee for a period of time as determined reasonable by the board.

(b) By revocation of a license.

(c) By requiring licensees to participate in educational or rehabilitative programs in the area or areas in which they have been found deficient or incompetent.

(d) By requiring the licensee to submit to the care, counseling, or treatment of a physician, counseling service, health care facility, professional assistance program, or any comparable person or facility approved by the board.

(e) By requiring the person to practice under the direct supervision of an RN for a period of time specified by the board.

(f) By imposition, after notice and the opportunity for hearing, of fines not to exceed \$1,000 for each violation or, in the case of a continuing violation, \$100 for each day the violation continues.

IV. In cases involving imminent danger to public health, safety, or welfare, the board may order the immediate suspension of a license pending an adjudicative proceeding. The board shall commence this adjudicative proceeding not later than 10 working days after the date of the board order suspending the license. The licensee may waive the 10-day commencement requirement to allow for additional time to prepare for a hearing. If the licensee waives the requirement, the license shall remain suspended until the completion of the hearing. A record of the proceeding shall be made by a certified court reporter provided by the board. Unless expressly waived by the licensee, board failure to commence an adjudicative proceeding within 10 working days shall mean that the suspension order is automatically vacated. The board shall not again suspend the license for the same conduct which formed the basis of the vacated suspension without granting the licensee prior notice and an opportunity for an adjudicative proceeding.

V. Every individual, agency, facility, institution, or organization that employs licensed nursing personnel within the state shall report to the board within 30 days any action by a licensee that willfully violates any provision of paragraph II. The board shall have authority, after notice and the opportunity for hearing, to impose civil penalties of up to \$1,000 per violation upon persons found to have willfully violated the reporting requirements of this paragraph.

326-B:39 Investigations and Hearings.

I. The board shall investigate possible misconduct by licensees and other matters governed by the provisions of this chapter. Investigations shall be conducted with or without the issuance of a board order setting forth the general scope of the investigation. Board investigations and any information obtained by the board pursuant to such investigations shall be exempt from the public disclosure provisions of RSA 91-A,

unless such information subsequently becomes part of a public disciplinary hearing. However, the board may disclose information acquired in an investigation to law enforcement or health licensing agencies in this state or any other jurisdiction, or in accordance with specific statutory requirements or court orders.

II. The board may appoint legal counsel, health care advisors, or other investigators to assist with any investigation and with adjudicative hearings.

III. The form taken by an investigation is a matter within the discretion of the board. The board may conduct investigations on an ex parte basis.

IV.(a) The board may administer oaths or affirmations, preserve testimony, and issue subpoenas for witnesses, documents, and things, relative to investigations or adjudicative hearings, except that subpoenas for records issued pursuant to paragraph V may be issued at any time.

(b) The board may serve a subpoena on any licensee by certified mail, but shall serve a subpoena on any other person in accordance with the procedures and the fee schedules established by the superior court.

(c) A person licensed by the board shall not be entitled to a witness fee or mileage expenses for travel within the state related to his or her appearance at a hearing or investigatory proceeding.

(d) In order to be valid, any subpoena issued by the board, except one issued to a licensee, shall be annotated "Fees guaranteed by the New Hampshire board of nursing."

(e) A minimum of 48 hours' notice shall be given for compliance with a subpoena issued under this paragraph.

V. The board may at any time subpoena a licensee's health care records, employment records, and nursing education academic records in the possession of its licensees, nursing education programs licensed by the board, or hospitals, and other health care providers and facilities regulated in this state, except that it may not subpoena quality assurance records of health facilities licensed under RSA 151. Subpoenas shall be served by certified mail or personal delivery to the address currently on file with the board in the case of delivery to a licensee. No witness or other fee shall be required. A minimum of 15 days' advance notice shall be allowed for complying with a subpoena issued under this paragraph.

VI. Complaints of licensee misconduct shall be in writing and shall be treated as petitions for the commencement of a disciplinary hearing. The board shall determine whether a complaint alleges misconduct sufficient to support disciplinary proceedings. If the board determines that it does, the board shall forward a copy of the complaint to the licensee complained against within 5 business days of its determination. If the board determines that it does not, the board shall send the complainant a written notice of dismissal of the complaint. Some or all of the allegations in a complaint may be consolidated with another complaint or with issues the board wishes to investigate or hear on its own motion. If an investigation of a complaint results in an offer of settlement by the licensee, the board may settle the allegations against the licensee without the consent of a complainant, provided that material facts are not in dispute.

VII. At any time during an investigation of a complaint, and without issuing a subpoena, the board may mail a copy of a complaint to the licensee named in the complaint, and may require in a written request that the licensee and the licensee's employer provide detailed and good faith written responses to allegations identified by the board and also provide copies of all records concerning any client identified in the complaint. The licensee and others receiving inquiries from the board shall respond within a reasonable time period of not less than 15 days as the board may specify. This procedure may also be used in connection with matters the board has undertaken to investigate on its own motion.

VIII. The board may hold adjudicative hearings concerning allegations of misconduct or other matters within the scope of this chapter. Such hearings shall be public proceedings. Any member of the board other than the public members, or any other qualified person appointed by the board, shall have authority to preside at such a hearing and to issue oaths or affirmations to witnesses.

IX. The board shall give the respondent and the complainant, if any, at least 15 days' written notice of the date, time, and place of a hearing, except as otherwise provided in this chapter. Such notice shall comply with RSA 541-A and include an itemization of the issues to be heard, and, in the case of a disciplinary hearing, a statement as to whether the action has been initiated by a written complaint or upon the board's own motion, or both. If a written complaint is involved, the notice shall provide the complainant with a reasonable opportunity to intervene as a party. Such notice shall be sent by certified mail return receipt requested to the complainant and to the respondent at the address provided by respondent currently on file at the board offices. Notice mailed in compliance with this section shall be deemed served.

X. The board may at any time dispose of allegations in a complaint, investigation, or disciplinary hearing by settlement, default, or consent order, by issuing an order of dismissal for failing to state a proper basis for disciplinary action, or by summary judgment order based upon undisputed material facts. In disciplinary hearings, the board may hold prehearing conferences which shall be exempt from the provisions of RSA 91-A, but any final disciplinary action or decision which occurs without holding a public hearing shall be publicly released at the time it is served upon the parties.

XI. Final disciplinary actions and other adjudicative decisions made by the board shall be in writing and served upon the parties. Such decisions shall not be released to the public until they are served upon the parties.

XII. Any person appearing at a board hearing or investigation may be represented by legal counsel or other representative, but the board shall have no obligation or authority to appoint or provide such representation.

XIII. The board shall hear any complaint not resolved at or prior to a preliminary hearing.

XIV. In the case of sanctions for discipline in another jurisdiction, the decision of the other jurisdiction's disciplinary authority may not be collaterally attacked and the board may impose any of the sanctions set forth in this chapter, but shall provide notice and an opportunity to be heard if it intends to impose sanctions above those imposed by the other jurisdiction.

326-B:40 Rehearing; Appeals.

I. Any person who has been refused a license by the board or has been disciplined by the board shall have the right to petition for a rehearing within 30 days after the original decision.

II. Appeals from a decision on rehearing shall be by appeal pursuant to RSA 541.

III. No sanction shall be stayed by the board during an appeal.

326-B:41 Injunctive Relief. The attorney general, the board of nursing, any citizen, or the prosecuting attorney of any county or municipality where the act occurs may maintain an action to enjoin a person not currently licensed to do so from practicing, or purporting to practice, nursing or nursing-related activities. The action to enjoin shall not replace any other civil, criminal, or regulatory remedy. An injunction without bond is available to the board.

326-B:42 Unlawful Acts. It shall be unlawful for any person or entity to:

I. Sell or fraudulently obtain or furnish any nursing diploma, license, or record, or to aid and abet in such an act.

II. Practice as a licensee when the license to do so has been revoked or suspended or when the license to do so has lapsed.

III. Use, in connection with the individual's name, any designation tending to imply licensure as an RN, an LPN, or an LNA unless so licensed.

IV. Represent or imply that the person or entity is conducting a nursing education program or a program for the education of nursing assistants which has been approved by the board when the program has not been so approved.

V. Disclose, solicit, or compile information regarding the contents of any licensing examinations relative to this chapter, except as authorized by the board.

326-B:43 Persons Licensed Under Previous Laws. Any person authorized to practice nursing by authority of this state as of the effective date of this section shall continue to be licensed under the provisions of this chapter and shall be eligible for license renewal pursuant to this chapter.

326-B:44 Exemptions. The provisions of this chapter shall not prohibit or limit:

I. The employment in federal government institutions and agencies of nurses who are members of federal agencies and are currently licensed in some state of the United States.

II. The practice of nursing by persons enrolled in nursing programs approved by the board when such practice is part of their program of study.

III. The furnishing of nursing assistance in an emergency.

IV. Nursing services by anyone when done in accordance with the practice of the religious principles or tenets of any well-recognized church or denomination which relies upon prayer or spiritual means alone for healing.

V. The practice of nursing in this state by any nurse currently licensed by another state engaged to accompany and care for a person passing through or temporarily residing in this state, during the period of one visit not to exceed 2 months.

VI. The administration of medications, by any person employed or under contract, to provide direct care to clients receiving community-based services pursuant to RSA 135-C or RSA 171-A, provided that persons delivering such care who administer medications shall have successfully completed a medication administration educational program conducted by an RN and approved by the board under rules adopted pursuant to RSA 541-A. The commissioner of health and human services, in consultation with the board, shall adopt rules under RSA 541-A establishing criteria for the administration of medications, and for the process of approving an RN to conduct the medication administration educational program.

VII. The practice of any nurse currently licensed in another state who is in this state on a non-routine basis to provide nursing consulting services.

326-B:45 Midwifery Not the Practice of Nursing. Midwives certified under RSA 326-D, and practicing midwifery as defined by RSA 326-D:2, V, shall not be construed as practicing nursing.

326-B:46 Direct Care in Community-Based Services. The administration of medications, by non-licensees to individuals receiving community-based services pursuant to RSA 135-C or RSA 171-A shall not be construed as practicing nursing.

326-B:47 Nurse Licensure Compact. The nurse licensure compact is adopted and entered into with all other jurisdictions that legally join the compact, which is substantially as follows:

ARTICLE I

Findings and Declaration of Purpose

(a) The party states find that:

(1) The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

(2) Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

(3) The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

(4) New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex; and

(5) The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

(b) The general purposes of this compact are to:

(1) Facilitate the states' responsibility to protect the public's health and safety;

(2) Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

(3) Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;

(4) Promote compliance with the laws governing the practice of nursing in each jurisdiction; and

(5) Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

ARTICLE II

Definitions

In this compact:

(a) "Adverse action" means a home or remote state action.

(b) "Alternative program" means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board.

(c) "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.

(d) "Current significant investigative information" means:

(1) Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(2) Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

(e) "Home state" means the party state which is the nurse's primary state of residence.

(f) "Home state action" means any administrative, civil, equitable, or criminal action permitted by the home state's laws which are imposed on a nurse by the home state's licensing board or other authority including actions against an individual's license such as: revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

(g) "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

(h) "Multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical/vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as: revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

(i) "Nurse" means a registered nurse or licensed practical/vocational nurse, as those terms are defined by each party's state practice laws.

(j) "Party state" means any state that has adopted this compact.

(k) "Remote state" means a party state, other than the home state:

(1) Where the patient is located at the time nursing care is provided; or

(2) In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located.

(l) "Remote state action" means:

(1) Any administrative, civil, equitable, or criminal action permitted by a remote state's laws which are imposed on a nurse by the remote state's licensing board or other authority including actions against an individual's multistate licensure privilege to practice in the remote state; and

(2) Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof.

(m) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(n) "State practice laws" means those individual party's state laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. The term state practice laws does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III

General Provisions and Jurisdiction

(a) A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure

privilege to practice as a licensed practical/vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

(b) Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their states and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(c) Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

(d) This compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

(e) Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

ARTICLE IV

Applications for Licensure in a Party State

(a) Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

(b) A nurse in a party state shall hold licensure in only one party state at a time, issued by the home state.

(c) A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after a nurse provides evidence of change in primary state of residence satisfactory to the new home state's licensing board.

(d) When a nurse changes primary state of residence by:

(1) Moving between 2 party states, and obtains a license from the new home state, the license from the former home state is no longer valid;

(2) Moving from a nonparty state to a party state, and obtains a license from the new home state, the individual state license issued by the nonparty state is not affected and will remain in full force if so provided by the laws of the nonparty state;

(3) Moving from a party state to a nonparty state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

ARTICLE V

Adverse Actions

In addition to the general provisions described in Article III, the following provisions apply:

(a) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

(b) The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate action, and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

(c) A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state.

(d) For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

(e) The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

(f) Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain nonpublic if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

ARTICLE VI

Additional Authorities Invested in Party State Nurse Licensing Boards

Notwithstanding any other powers, party state nurse licensing boards shall have the authority to:

(a) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse;

(b) Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located;

(c) Issue cease and desist orders to limit or revoke a nurse's authority to practice in their states;

(d) Promulgate uniform rules and regulations as provided for in Article VIII(c).

ARTICLE VII

Coordinated Licensure Information System

(a) All party states shall participate in a cooperative effort to create a coordinated data base of all licensed registered nurses and licensed practical/vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(b) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials, to the coordinated licensure information system.

(c) Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(d) Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

(e) Any personally identifiable information obtained by a party states' licensing board from the coordinated licensure information system may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(f) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information, shall also be expunged from the coordinated licensure information system.

(g) The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

ARTICLE VIII

Compact Administration and Interchange of Information

(a) The head of the nurse licensing board, or his or her designee, of each party state shall be the administrator of this compact for his or her state.

(b) The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this compact.

(c) Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. These uniform rules shall be adopted by party states, under the authority invested under Article VI (d).

ARTICLE IX

Immunity

No party state or the officers or employees or agents of a party state's nurse licensing board who act in accordance with the provisions of this compact are liable on account of any act or omission in good faith while engaged in the performance of their duties under this compact. Good faith in this article does not include willful misconduct, gross negligence, or recklessness.

ARTICLE X

Entry into Force, Withdrawal, and Amendment

(a) This compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 6 months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

(b) No withdrawal affects the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

(c) Nothing contained in this compact may be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

(d) This compact may be amended by the party states. No amendment to this compact becomes effective and binding upon the party states unless and until it is enacted into the laws of all party states.

ARTICLE XI

Construction and Severability

(a) This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance may not be affected thereby. If this compact is held contrary to the constitution of any state party thereto, the compact remains in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

(b) In the event party states find a need for settling disputes arising under this compact:

(1) The party states may submit the issues in dispute to an arbitration panel which will be comprised of an individual appointed by the compact administrator in the home state; an individual appointed by the compact administrator in the remote state or states involved; and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute; and

(2) The decision of a majority of the arbitrators shall be final and binding.

2 Nursing Assistant Fund. Amend RSA 6:12, I(b)(24), to read as follows:

(24) Money received under RSA ~~[326-B:29]~~ **326-B:7**, which shall be credited to the board of nursing's nursing assistant fund.

3 Residential Care and Facility Licensing; Disciplinary Actions; Report to Board of Nursing Added. Amend RSA 151:6-b to read as follows:

151:6-b Report of Disciplinary Action. Every facility administrator, or designee, for any health care facility licensed under this chapter shall report to the board of medicine *or the board of nursing* any disciplinary or adverse action[;] **taken against a licensee of the board. Such report shall be made** within 30 days after such action is taken[; including]. **Actions reported shall only involve misconduct sufficient to support disciplinary proceedings by the board and shall include all** situations in which allegations of misconduct are settled by voluntary resignation without adverse action[; ~~against a person licensed by the board~~].

4 Residential Care and Facility Licensing; Rules. Amend RSA 151:9, I(k) to read as follows:

(k) Procedures for reviewing documentation of the mandatory completion of a state approved program under RSA ~~[326-B:4-a]~~ **326-B** for assistants to nurses in facilities licensed under RSA 151:2, who may not assume the responsibility of the position of an assistant to nurses prior to completion of the appropriate course required by this chapter.

5 Privileged Communication. Amend RSA 316-A:27 to read as follows:

316-A:27 Privileged Communications. The confidential relations and communications between any person licensed under provisions of this chapter and such licensed person's patient are placed on the same basis as those provided by law between attorney and client, and, except as otherwise provided by law, no such doctor of chiropractic shall be required to disclose such privileged communications. Confidential relations and communications between a patient and any person working under the supervision of a doctor of chiropractic that are customary and necessary for diagnosis and treatment are privileged to the same extent as though those relations or communications were with such supervising doctor of chiropractic. This section shall not apply to disciplinary hearings or actions conducted under RSA 316-A:22, relative to the board of chiropractic examiners, RSA ~~[326-B:12]~~ **326-B**, relative to the board of nursing, RSA 151-A:11, relative to the board of examiners of nursing home administrators, or any other statutorily created medical occupational licensing board conducting disciplinary proceedings. This section shall not apply to hearings conducted pursuant to RSA 135-C:27-54.

6 Pharmacies; Definitions. Amend RSA 318:1, I-a to read as follows:

I-a. "Advanced registered nurse practitioner" means a person licensed to practice as an advanced registered nurse practitioner in this state pursuant to RSA ~~[326-B:10]~~ **326-B:19**.

7 Pharmacies; Possessing Prescription Drugs. Amend RSA 318:42, VII(b) to read as follows:

(b) The drugs appear on the current formulary approved pursuant to RSA ~~[326-B:10; H]~~ **326-B**.

8 Controlled Drug Act; Definitions. Amend RSA 318-B:1, I-b to read as follows:

I-b. "Advanced registered nurse practitioner" means a person licensed to practice as an advanced registered nurse practitioner in this state pursuant to RSA ~~[326-B:10]~~ **326-B:19**.

9 Respiratory Care Practice Act; Definitions. Amend RSA 326-E:1, V to read as follows:

V. "Nurse practitioner" means a person licensed to practice as an advanced registered nurse practitioner in this state pursuant to RSA ~~[326-B]~~ **326-B:19**.

10 Mental Health Practice; Definitions. Amend RSA 330-A:2, VIII to read as follows:

VIII. "Psychotherapist" means a psychologist, clinical social worker, pastoral psychotherapist, clinical mental health counselor, or marriage and family therapist licensed under this chapter who performs or purports to perform psychotherapy. This definition shall include psychiatrists licensed as physicians under RSA 329 and advanced registered nurse practitioners licensed under RSA ~~[326-B:10]~~ **326-B:19** as psychiatric nurse practitioners.

11 Mental Health Practice; Penalties. Amend RSA 330-A:23, I to read as follows:

I. Except as provided in RSA 330-A:34, it shall be unlawful for any person to be engaged in mental health practice unless that person is licensed by the board, working as a candidate under the direct supervision of a person licensed by the board, or engaged in the practice of other mental health services as an

alternative provider as defined in RSA 330-A:2, I. The license or the registration of such person shall be current and valid. It shall be unlawful for any person to practice as or to refer to oneself as a psychologist, a pastoral psychotherapist, a clinical social worker, a clinical mental health counselor, or a marriage and family therapist, or use the word "psychotherapist," or any variation thereof, in such person's title unless that person is licensed by the board or working as a candidate under the direct supervision of a person licensed by the board. Psychiatrists licensed under RSA 329 and psychiatric nurse practitioners licensed under RSA ~~[326-B:10]~~ **326-B:19** may refer to themselves as psychotherapists.

12 Mental Health Practice; Persons Exempted. Amend RSA 330-A:34, I(e) to read as follows:

(e) The psychotherapy activities and services of physicians licensed under RSA 329, and advanced registered nurse practitioners, licensed under RSA ~~[326-B:10]~~ **326-B:19**.

13 Insurance; Coverage for Mental or Nervous Conditions. Amend RSA 415:18-a, V(d) to read as follows:

(d) "Psychiatric/mental health advanced registered nurse practitioner" means an individual who is licensed as an advanced registered nurse practitioner in psychiatric mental health nursing under RSA ~~[326-B:10]~~ **326-B:19**, who is defined by and whose scope of practice is described under the rules adopted pursuant to RSA 326-B, and who is a licensed registered nurse, educationally prepared in nursing at a minimum of the master's level, and certified in the specialty by a recognized national certifying agency, such as the American Nurses Credentialing Center.

14 Effective Date. This act shall take effect July 1, 2005.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 34-FN, relative to reimbursement rates for child care. Finance Committee. Inexpedient to Legislate, Vote 6-1. Senator Morse for the committee.

MOTION TO TABLE

Senator Morse moved to have SB 34 laid on the table.

Adopted.

LAIID ON THE TABLE

SB 34-FN, relative to reimbursement rates for child care.

SB 38-FN, relative to school building aid for certain receiving districts. Finance Committee. Ought to Pass, Vote 7-0. Senator D'Allesandro for the committee.

Adopted.

Ordered to third reading.

SB 79, relative to the governance of the regional community-technical colleges. Finance Committee. Ought to Pass, Vote 7-0. Senator D'Allesandro for the committee.

Adopted.

Ordered to third reading.

SB 101-FN, relative to developmentally disabled services for persons under 21 years of age. Finance Committee. Ought to pass with amendment, Vote 6-0. Senator D'Allesandro for the committee.

Senate Finance

March 30, 2005

2005-0973s

05/10

Amendment to SB 101-FN

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph Eligibility for Residential Services. Amend RSA 171-A:6 by inserting after paragraph V the following new paragraph:

VI. A person age 18 through age 21 who has received services pursuant to RSA 186-C, or the person's legal guardian if any, at any time may make application under this section for residential services for which the person is not eligible pursuant to RSA 186-C. Eligibility and entry for such person shall be subject to the requirements of this chapter. Under no circumstance shall the department or area agency be responsible for special education services under RSA 186-C.

2 Effective Date. This act shall take effect July 1, 2005.

2005-0973s

AMENDED ANALYSIS

This bill permits a person between 18 and 21 with a developmental disability who received special education services to apply for residential services from an area agency.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 125-FN, repealing health status and geographic location as small group rating factors, clarifying certain other issues relating to small group insurance, and establishing a reinsurance mechanism. Finance Committee. Ought to pass with amendment, Vote 5-1. Senator Clegg for the committee.

Senate Finance

March 28, 2005

2005-0972s

01/04

Amendment to SB 125-FN

Amend RSA 420-G:4, I(e) as inserted by section 5 of the bill by inserting after subparagraph (8) the following new subparagraph:

(9) Upon the renewal of a small employer policy, a carrier is prohibited from increasing the total premium rate by more than 25 percent of the rate that was charged in the preceding year including utilization trend or; if the policy has been in force for longer than one year; by more than 50 percent of the rate including utilization trend that was charged by that carrier in the year prior to the year immediately preceding renewal.

Amendment failed.

Senator Gatsas offered a floor amendment.

Sen. Gallus, Dist. 1

Sen. Burling, Dist. 5

Sen. Green, Dist. 6

Sen. Roberge, Dist. 9

Sen. Gottesman, Dist. 12

Sen. Foster, Dist. 13

Sen. Larsen, Dist. 15

Sen. Gatsas, Dist. 16

Sen. Barnes, Dist. 17

Sen. D'Allesandro, Dist. 20

Sen. Estabrook, Dist. 21

Sen. Hassan, Dist. 23

Sen. Fuller Clark, Dist. 24

April 7, 2005

2005-1049s

01/09

Floor Amendment to SB 125-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Small Group Health Insurance; Definitions Added. RSA 420-G:2, I is repealed and reenacted to read as follows:

I. "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual acceptable to the commissioner that a small employer health carrier is in compliance with the provisions of and the rules adopted by the commissioner, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer health carrier in establishing premium rates for applicable health benefit plans.

I-a. "Case characteristics" means demographic or other relevant characteristics of a small employer group that may be considered by the health carrier in the determination of premium rates for that group.

2 New Paragraph; Definition Added. Amend RSA 420-G:2 by inserting after paragraph II the following new paragraph:

II-a. "Composite billing" means a method of calculating premium rates for small employer groups in which each enrolled employee's rate varies only by the enrolled employee's family composition.

3 New Paragraph; Definition Added. Amend RSA 420-G:2 by inserting after paragraph VII the following new paragraph:

VII-a. "Family composition" means health plan membership type, including: enrollee only; enrollee and spouse; enrollee and children; enrollee, spouse, and children; and other similar membership types.

4 Definition Changed. Amend RSA 420-G:2, IX-a to read as follows:

IX-a. "Health coverage plan rate" means a rate that is uniquely determined for each of the coverages or health benefit plans a health carrier writes and that is derived from the [base] **market** rate through the application of **plan** factors that reflect actuarially demonstrated differences in expected utilization ~~[or cost]~~ **and health care costs** attributable to differences in the coverage design and/or the provider contracts that support the coverage **and by including provisions for administrative costs and loads. The health coverage plan rate is periodically adjusted to reflect expected changes in the market rate, utilization, health care costs, administrative costs, and loads.**

5 Definition Added. Amend RSA 420-G:2, XII-a to read as follows:

XII-a. **"List billing" means a method of calculating premium rates for small employer groups in which each enrolled employee's rate varies only by the enrolled employee's attained age and the enrolled employee's family composition.**

XII-b. "Loss information" means the aggregate claims experience and shall include, but not be limited to, the number of covered lives, the amount of premium received, the amount of total claims paid, and the claims loss ratio. "Loss information" shall not include any information or data pertaining to the medical diagnosis, treatment, or health status that identifies an individual covered under the group contract or policy. Catastrophic claim information shall be provided as long as the provision of this information would not compromise any covered individual's privacy.

6 New Paragraph; Definition Added. Amend RSA 420-G:2 by inserting after paragraph XII-b the following new paragraph:

XII-c. "Market rate" means a single rate reflecting the carrier's average cost of actual or anticipated claims for all health coverages or health benefit plans the carrier writes and maintains in a market, including the nongroup individual health insurance market and, separately, the small employer group health insurance market, and which is periodically adjusted by the carrier to reflect changes in actual or anticipated claims.

7 New Paragraph; Definition Added. Amend RSA 420-G:2 by inserting after paragraph XIV-a the following new paragraph:

XIV-b. "Premium rate" means the rates used by a carrier to calculate the premium. For group coverage, premium rates shall be expressed as a rate per enrolled employee

8 New Paragraph; Definition Added. Amend RSA 420-G:2 by inserting after paragraph XV the following new paragraph:

XV-a. "Rating period" means the time period for which the premium rate charged by a health carrier to an individual or a small employer for a health benefit plan is in effect.

9 Premium Rates. Amend RSA 420-G:4, I(a) to read as follows:

(a) All [premiums] **premium rates** charged shall be guaranteed for a rating period of at least 12 months, ~~[unless otherwise allowed by the commissioner]~~ **and shall not be changed for any reason, including but not limited to a change in the group's case characteristics.**

10 Small Group Insurance; Premium Rates. Amend RSA 420-G:4, I(e) and (f) to read as follows:

(e) In establishing the premium charged, health carriers ~~[providing]~~ **offering** coverage to small employers shall calculate ~~[a rate]~~ **premium rates** that ~~[is]~~ **are** derived from the health coverage plan rate ~~[through the application of rating factors that the carrier chooses to utilize for age, group size, industry classification, geographic location, and health status]~~ **by making adjustments to reflect one or more case characteristics**. Such ~~[factors]~~ **adjustments from the health coverage plan rate** may be ~~[utilized]~~ **made** only in accordance with the following limitations:

(1) ~~[Carriers may use the attained age of covered persons as a rating factor. However, the maximum premium differential for age as determined by ratio shall be 4 to 1 beginning with age 19].~~ **In establishing the premium rates, health carriers offering coverage to small employers may use only age, group size, and industry classification as case characteristics. No consideration shall be given to health status, claim experience, duration of coverage, geographic location, or any other characteristic of the group.**

(2) Carriers ~~[modifying such average premium]~~ **making adjustments from the health coverage plan rate** for age may do so only by using the following age brackets:

- 0 - 18
- 19 - 24
- 25 - 29
- 30 - 34
- 35 - 39
- 40 - 44
- 45 - 49
- 50 - 54
- 55 - 59
- 60 - 64
- 65 +

(3) ~~[Carriers may use group size as a rating factor. However, the highest factor based on group size shall not exceed the lowest factor based on group size by more than 20 percent; provided that for groups of one, an additional 10 percent rating factor shall be allowed from the highest factor.~~

(4) ~~Carriers may use the small employer group's industry classification as a rating factor. However, the highest factor based on industry classification shall not exceed the lowest factor based on industry classification by more than 20 percent.~~

(5) ~~Carriers may use the small employer group's geographic location as a rating factor. However, the highest factor based on geographic location shall not exceed the lowest factor based on geographic location by more than 15 percent.~~

(6) Carriers may use the health status of the small employer group as a rating factor. However, the application of a health status factor shall be subject to the following limitations:

(A) The health status factor may reflect health status of covered persons, the small employer's claim experience, or the duration of coverage since health statements were last provided.

(B) Variations from the arithmetic average of the highest rate charged to the lowest rate charged shall not exceed 25 percent.

(C) Upon the renewal of a small employer policy, any increase in the premium rate that is solely attributable to changes in the health status factor from the prior year shall be no more than 15 percent.

(7) Upon the renewal of a small employer policy, a carrier is prohibited from increasing the premium rate by more than 25 percent of the rate that was charged in the preceding year. Such rate increase limitation shall not include any premium rate increase that is based on a carrier's annual cost and utilization trends or changes in the rating factor for attained age of covered persons.] **The maximum pre-**

mium rate differential after adjusting for all case characteristics as determined by ratio shall be 3.5 to 1. This limitation shall not apply for determining premium rates for covered persons whose attained age is less than 19.

(4) In establishing the premium rates, health carriers offering coverage to small employers may make further adjustments based on family composition.

(5) The small employer health carrier shall set premium rates to small employers after consideration of case characteristics of the small employer group as well as family composition. No small employer health carrier shall inquire regarding health status or claims experience of the small employer or its employees or dependents until after the premium rates have been agreed upon by the carrier and the employer.

(6) Carriers may calculate premium rates using either list billing or composite billing. Carriers shall use the same billing method in all succeeding rating periods unless the small employer agrees to allow the carrier to change the methodology.

(7) The percentage increase in the premium rates used by a health carrier for a new rating period shall not exceed 20 percent of the premium rates used by that carrier in the preceding rating period. Such rate increase limitation shall not include any premium rate increase that is based on changes in the health coverage plan rate.

(f) Each rating factor that a carrier chooses to utilize ***in the individual market*** shall be reflective of claim cost variations that correlate with that factor independently of claim cost variations that correlate with any of the other allowable factors.

11 Medical Underwriting. Amend RSA 420-G:5, I to read as follows:

I. Health carriers providing health coverage for individuals [~~or small employer groups~~] may perform medical underwriting, including the use of health statements or screenings or the use of prior claims history, to the extent necessary to establish or modify premium rates as provided in RSA 420-G:4. The commissioner may allow group carriers to use standardized health statements. ***Small group carriers may use the standard reinsurance underwriting form for their reinsurance ceding decisions to the New Hampshire small employer health reinsurance pool, established in RSA 420-K:2, after premium prices have been agreed upon by the carrier and the small employer.***

12 New Chapter; Small Employer Health Reinsurance Pool. Amend RSA by inserting after chapter 420-J the following new chapter:

CHAPTER 420-K SMALL EMPLOYER HEALTH REINSURANCE POOL

420-K:1 Definitions. In this chapter:

- I. "Assessment" means the liability of the member insurer to the reinsurance pool.
- II. "Board" means the board of directors of the small employer health reinsurance pool.
- III. "Commissioner" means the insurance commissioner.
- IV. "Covered lives" means "covered lives" as defined in RSA 404-G:2, V.
- V. "Health carrier" means any entity licensed pursuant to RSA 402, RSA 420-A, or RSA 420-B that delivers, issues for delivery or maintains in force policies of health insurance in New Hampshire.
- VI. "Health insurance" means "health insurance" as defined in RSA 404-G:2, VII.
- VII. "Plan of operation" means the plan of operation of the small employer health reinsurance pool, including articles, bylaws and operating rules, procedures and policies approved by the commissioner and adopted by the pool.
- VIII. "Pool" means the small employer health reinsurance pool.
- IX. "Small employer" means "small employer" as defined in RSA 420-G:2, XVI.
- X. "Standard health benefit plan" means a health benefit plan developed pursuant to RSA 420-K:4, I.

420-K:2 Establishment of the Pool.

I. There is established a nonprofit entity to be known as the "New Hampshire small employer health reinsurance pool." All health carriers, writers of health insurance, and other insurers issuing or maintaining health insurance in this state shall be members of the pool.

II. On or before July 1, 2005, the commissioner shall give notice to all members of the pool of the time and place for the initial organizational meeting, which shall take place by July 15, 2005. The members shall select the initial board, subject to approval by the commissioner. The board shall consist of at least 5 and not more than 9 representatives of members. There shall be no more than one board member representing any one member company. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. The vote shall be proportional to the member's covered lives. To the extent possible, at least 2/3 of the members of the board shall be small employer health carriers. At least one member shall be a small employer health carrier with less than \$100,000,000 in net small employer health insurance premium in this state. The commissioner, or designee, shall be an ex-officio member of the board. In approving selection of the board, the commissioner shall assure that all members are fairly represented. The membership of all boards subsequent to the initial board shall be approved by the commissioner and shall, to the extent possible, reflect the same distribution of representation as is described in this paragraph.

III. If the initial board is not elected at the organizational meeting, the commissioner shall appoint the initial board within 15 days of the organizational meeting.

IV. Within 60 days after the appointment of such initial board, the board shall submit to the commissioner a plan of operation and thereafter any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the pool. The commissioner shall, after notice and hearing, approve the plan of operation provided he or she determines it to be suitable to assure the fair, reasonable, and equitable administration of the pool, and provides for the sharing of pool gains or losses on an equitable proportionate basis in accordance with the provisions of paragraph VI of this section. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on which the coverage under this section shall be made available. If the board fails to submit a suitable plan of operation within 60 days after its appointment, or at any time thereafter fails to submit suitable amendments to the plan of operation, the commissioner shall, after notice and hearing, adopt and promulgate a plan of operation or amendments no later than October 1, 2005. The commissioner shall amend any plan adopted by him or her, as necessary at the time a plan of operation is submitted by the board and approved by the commissioner.

V. The board shall select reinsurance pool administrators through a competitive bidding process to administer the pool. The board shall evaluate bids submitted based on criteria established by the board. Each month, total payments to administrators shall not exceed the larger of \$2,500 or an amount equal to \$10 per life for which the reinsurance pool has any potential claims liability.

VI. The plan of operation shall establish procedures for:

- (a) Handling and accounting of assets and moneys of the pool, and for annual fiscal reporting to the commissioner.
- (b) Filling vacancies on the board, subject to the approval of the commissioner.
- (c) Selecting an administrator and setting forth the powers and duties of the administrator.
- (d) Reinsuring risks in accordance with the provisions of this chapter.
- (e) Collecting assessments from all members to provide for claims reinsured by the pool and for administrative expenses incurred or estimated to be incurred during the period for which the assessment is made.
- (f) Any additional matters at the discretion of the board.

420-K:3 Powers of the Pool.

I. The pool shall have the general powers and authority granted under the laws of New Hampshire to insurance companies licensed to transact health insurance.

II. In addition, the pool shall have the specific authority to:

(a) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter, including the authority, with the approval of the commissioner, to enter into contracts with programs of other states for the joint performance of common functions, or with persons or other organizations for the performance of administrative functions.

(b) Sue or be sued, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against members.

- (c) Take such legal action as necessary to avoid the payment of improper claims against the pool.
- (d) Define the array of health coverage products for which reinsurance will be provided, and to issue reinsurance policies, in accordance with the requirements of this chapter.
- (e) Establish rules, conditions, and procedures pertaining to the reinsurance of members' risks by the pool.
- (f) Establish appropriate rates, rate schedules, rate adjustments, rate classifications, and any other actuarial functions appropriate to the operation of the pool.
- (g) Assess members in accordance with the provisions of this chapter, and to make advance interim assessments as may be reasonable and necessary for organizational and interim operating expenses. Any such interim assessments shall be credited as offsets against any regular assessments due following the close of the fiscal year.
- (h) Appoint from among the members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, policy, and other contract design, and any other function within the authority of the pool.
- (i) Borrow money to effectuate the purposes of the pool. Any notes or other evidence of indebtedness of the pool not in default shall be legal investments for insurers and may be carried as admitted assets.
- (j) Develop a standard health benefit plan.

420-K:4 Standard Health Benefit Plan.

I. The board shall:

- (a) Develop a standard health benefit plan which shall contain benefit and cost sharing levels that reflect the health coverages most commonly sold by small employer carriers in the state.
- (b) Develop base reinsurance premium rates for the standard health benefit plan. The base reinsurance premium rates shall be set at levels which reasonably approximate gross premiums charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard health benefit plan. The base premium rates shall be subject to approval of the commissioner.
- (c) Establish a methodology for determining premium rates to be charged by the pool to reinsure small employer groups and individuals. The methodology shall include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in establishing premium rates.

II. The standard health benefit plan, base reinsurance premium rates and the rating methodology shall be submitted to the commissioner for approval within 45 days after the appointment of the board and shall subsequently be revised as necessary and appropriate.

420-K:5 Eligibility, Coverage, and Rates. Beginning January 1, 2006, members may reinsure with the pool health coverage provided to small employers as follows:

I. The pool shall reinsure the level of coverage provided up to, but not exceeding, the level of coverage provided in the standard health benefit plan or the actuarial equivalent thereof as defined and authorized by the board.

II. The pool shall not reimburse a ceding carrier with respect to claims of a reinsured employee or dependent until the carrier has incurred an initial level of claims for such employee or dependent of at least \$5,000 in a calendar year for benefits covered by the standard health benefit plan. The amount of the deductible shall be periodically reviewed by the board and may be adjusted upward as determined by the board.

III. A member may reinsure an entire small employer group within a period of 60 days following the small employer's health insurance policy issue or renewal date.

IV. A member may reinsure an eligible employee or dependent of a small employer group within a period of 60 days following the small employer's health insurance policy issue or renewal date.

V. A member may reinsure a newly eligible employee or dependent of a small employer group within a period of 60 days following the commencement of his or her coverage.

VI. Reinsurance coverage may be terminated for each reinsured employee or dependent on any plan anniversary.

VII. Reinsurance of newborn dependents shall be allowed only if the mother of any such dependent is reinsured as of the date of birth of such child, and all newborn dependents of reinsured persons shall be automatically reinsured as of their date of birth.

VIII. Notwithstanding the provisions of paragraphs III and IV:

(a) Coverage for eligible employees and their dependents provided under a group policy covering 2 or more small employers shall not be eligible for reinsurance when such coverage is discontinued and replaced by a group policy of another carrier covering 2 or more small employers, unless coverage for such eligible employees or dependents was reinsured by the prior carrier; and

(b) At the time coverage is assumed for such group by a succeeding carrier, such carrier shall notify the pool of its intention to provide coverage for such group and shall identify the employees and dependents whose coverage will continue to be reinsured. The time limitations for providing such notice shall be established by the pool.

IX. The board, as part of the plan of operation, shall establish a methodology for determining premium rates to be charged for reinsuring small employers and individuals. The methodology shall include a system for classification of small employers that reflects the way case characteristics are commonly used by small employer carriers in the state. Pool reinsurance premiums shall be established at the following percentages of the base reinsurance premium rate established by the pool for that classification of small employers with similar case characteristics:

(a) An entire small employer group consisting of 2 or more employees may be reinsured for a rate that is 150 percent of the applicable base reinsurance premium rate for the group established pursuant to RSA 420-K:4, II; and

(b) An eligible employee or dependent may be reinsured for a rate that is 500 percent of the applicable base reinsurance premium rate for the individual established pursuant to RSA 420-K:4, II.

X. On or before December 1, 2005, the board shall establish, subject to the approval of the commissioner, a standard reinsurance underwriting form for use by small employer carriers in ceding risks to the pool. The form may be amended from time to time as the board deems necessary, subject to the approval of the commissioner.

420-K:6 Assessments.

I. Following the close of each fiscal year, the administrator shall determine the net premiums, the pool expenses of administration and the incurred losses for the year, taking into account investment income and other appropriate gains and losses.

(a) Each member's assessment for the reinsurance pool shall be based on its number of covered lives times a specified assessment rate. The board of directors shall specify the basis used to set the assessment rate. The board of directors shall establish a regular assessment rate, which shall be:

(1) Calculated on a calendar year basis based on the net losses from the audited financial statements of the prior fiscal year;

(2) Established no later than November 1 in the current fiscal year; and

(3) Anticipated to be sufficient to meet the pool's funding needs.

(b) In addition to the regular assessment rate, the board may establish a special assessment rate for organizational expenses. Notwithstanding RSA 420-G:4, a writer of health insurance may increase the premiums charged by the amount of the special assessment. Any assessment may appear as a separate line item on a policyholder's bill.

(1) The board shall only establish an interim assessment if the board determines that its funds are or will become insufficient to pay the reinsurance pool's expense in a timely manner.

(2) The regular assessment rate, and any special assessment rate, shall be subject to the approval of the commissioner. The commissioner shall approve the rate if he or she finds that the amount is required to fulfill the purpose of the reinsurance pool. For the purpose of making this determination, the commissioner may, at the expense of the pool, seek independent actuarial certification of the need for the proposed rate.

(c) The board shall impose and collect assessments on members of the pool.

(d) If the assessment exceeds the amount actually needed, the excess shall be held and invested and, with the earnings and interest thereon, be used to offset future net losses. Each covered life shall be included in the assessment on an aggregate basis and procedures shall be maintained to ensure that no covered life is counted more than once.

II. Provision shall be made in the plan of operation for the imposition of an interest penalty for late payment of assessments.

III. The board may defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in this chapter. The member insurer receiving such deferral shall remain liable to the pool for the amount deferred. The board may attach appropriate conditions to any such deferral.

420-K:7 Immunity and Indemnification.

I. Neither the participation in the pool as members, the establishment of rates, forms, or procedures, nor any other joint or collective action required by this chapter shall be the basis of any legal action against the pool or any of its members.

II. Any person or member made a party to any action, suit, or proceeding because the person or member served on the board or on a committee or was an officer or employee of the pool shall be held harmless and be indemnified by the program against all liability and costs, including the amounts of judgments, settlements, fines or penalties, and expenses and reasonable attorney's fees incurred in connection with the action, suit, or proceeding. The indemnification shall not be provided on any matter in which the person or member is finally adjudged in the action, suit or proceeding to have committed a breach of duty involving gross negligence, dishonesty, willful misfeasance, or reckless disregard of the responsibilities of office. Costs and expenses of the indemnification shall be prorated and paid for by all members. The commissioner may retain actuarial consultants necessary to carry out his or her responsibilities pursuant to this chapter and such expenses shall be paid by the pool established in this chapter.

13 Repeal. RSA 420-G:4, I(e)(7), relative to increasing the premium rate for small employers at successive rating periods, is repealed.

14 New Hampshire Small Employer Health Reinsurance Pool; Ceding at Renewal Restricted. Amend RSA 420-K:5, III and IV to read as follows:

III. A member may reinsure an entire small employer group within a period of 60 days following the small employer's health insurance policy issue ~~[or renewal]~~ date.

IV. A member may reinsure an eligible employee or dependent of a small employer group:

(a) Within a period of 60 days following the small employer's health insurance policy issue ~~[or renewal]~~ date; **or**

(b) On the first plan anniversary after the coverage has been in effect for a period of 3 years, and every third plan anniversary thereafter; provided, that reinsurance pursuant to this subparagraph shall only be permitted with respect to eligible employees and their dependents of a small employer which has no more than 5 eligible employees as of the applicable anniversary.

15 Reference Change. Amend RSA 420-G:4, I(b) to read as follows:

(b) ~~[Base rate]~~ **Market rate** shall be established by each health carrier for all of its health coverages offered to individuals and, separately, for all of its health coverages offered to small employers.

16 Effective Date.

I. Section 12 of this act shall take effect July 1, 2005.

II. Sections 13 and 14 of this act shall take effect January 1, 2007.

III. The remainder of this act shall take effect January 1, 2006.

2005-1049s**AMENDED ANALYSIS**

This bill makes certain changes in the small employer health insurance law, including:

- I. Repealing health status and geographic location as rating factors for small group health insurance.
- II. Adding a definition of case characteristics and certain other definitions.
- III. Clarifying overall premium rate variability in the small group health insurance market.
- IV. Clarifying the small group health insurance law regarding premium rates for small employer groups with similar case characteristics.
- V. Establishing the New Hampshire small employer health reinsurance pool to offer pool coverage to eligible employees of small employers.

The question is on the adoption of the floor amendment.

A roll call was requested by Senator Barnes.

Seconded by Senator Gatsas.

The following Senators voted Yes: Gallus, Burling, Green, Roberge, Bragdon, Gottesman, Foster, Larsen, Gatsas, Barnes, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Johnson, Kenney, Boyce, Flanders, Odell, Eaton, Clegg, Letourneau, Morse.

Yeas: 15 - Nays: 9

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 131-FN, establishing a school choice certificate program. Finance Committee. Re-refer to committee, Vote 4-2. Senator Morse for the committee.

MOTION TO TABLE

Senator Estabrook moved to have SB 131-FN laid on the table.

A division vote was requested.

Yeas: 9 - Nays: 14

Motion failed.

The question is on the committee report of re-refer.

Committee report of re-refer is adopted.

SB 145-FN, establishing a medical/vision advisory board. Finance Committee. Ought to Pass, Vote 6-0. Senator D'Allesandro for the committee.

Adopted.

Ordered to third reading.

SB 146-FN-A-L, establishing a civil legal services fund consisting of court filing fee surcharges for the purpose of establishing and operating a New Hampshire Legal Assistance office in Nashua and to provide for additional staff in other New Hampshire Legal Assistance offices. Finance Committee. Ought to Pass, Vote 6-1. Senator Clegg for the committee.

Adopted.

Ordered to third reading.

Senator Barnes is in opposition to the passage of SB 146-FN-A-L.

SB 147-FN-L, relative to eligibility for local assistance. Finance Committee. Ought to Pass, Vote 7-0. Senator Clegg for the committee.

Adopted.

Ordered to third reading.

SB 193, relative to Occupational Safety and Health Administration Certification requirements for state contracts. Finance Committee. Inexpedient to Legislate, Vote 5-2. Senator Morse for the committee.

The question is on committee report of inexpedient to legislate.

A roll call was requested by Senator Larsen.

Seconded by Senator Clegg.

The following Senators voted Yes: Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Clegg, Barnes, Martel, Letourneau, Morse.

The following Senators voted No: Gallus, Burling, Green, Gottesman, Foster, Larsen, Gatsas, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 12 - Nays: 11

Senator Bragdon rule #42.

Committee report of inexpedient to legislate is adopted.

SB 26, requiring identification to obtain a ballot. Internal Affairs Committee. Re-refer to committee, Vote 3-0. Senator Boyce for the committee.

Committee report of re-refer is adopted.

MOTION TO REMOVE FROM THE TABLE

Senator Estabrook moved to take SB 171 off the table.

Adopted.

SB 171, establishing a committee to study HIV/AIDS service delivery. Health and Human Services Committee. Ought to pass with amendment. Senator Estabrook for the committee.

The question is on the adoption of the committee amendment (0889).

Amendment failed.

Senator Estabrook offered a floor amendment.

Sen. Estabrook, Dist. 21

April 5, 2005

2005-1017s

01/04

Floor Amendment to SB 171

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a committee to study HIV/AIDS service delivery systems.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the senate, 2 of whom shall be from the health and human services committee, appointed by the president of the senate.

(b) Three members of the house of representatives, 2 of whom shall be from the health, human services and elderly affairs committee, appointed by the speaker of the house of representatives.

II. The committee shall solicit information from the commissioner of the department of health and human services, state aids services organizations, and any other person or entity the committee deems relevant to its study.

III. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall:

I. Assess the care needs of persons living with HIV/AIDS in New Hampshire.

II. Investigate service delivery system models and associated fiscal issues of designation and distribution of funding in the other 5 New England states.

III. Research an effective service delivery system model for people living with HIV/AIDS in New Hampshire including levels of funding necessary to implement a model system.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2005.

6 Effective Date. This act shall take effect upon its passage.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 43, relative to the administration of estates of persons presumed dead. Judiciary Committee. Ought to pass with amendment, Vote 6-0. Senator Foster for the committee.

Senate Judiciary

March 31, 2005

2005-0984s

01/09

Amendment to SB 43

Amend the bill by replacing sections 3 and 4 with the following:

3 Administration of Estates. RSA 553:18 is repealed and reenacted to read as follows:

553:18 Administration of Estate of Person Presumed Dead.

I. The judge, following a hearing, may appoint an administrator of the estate of a person, with such limitations and powers as the judge deems appropriate:

(a) Presumed dead pursuant to RSA 553:19, I; or

(b) A person who has left his or her home and has not been heard of or from directly or indirectly for 6 months and whom the judge believes to be dead.

II. Prior to appointment of an administrator of the estate of a person not heard of, notice shall be published in a newspaper with statewide distribution which is also published on the Internet and one printed in the county in which the person had last lived for one year. Such notice shall be published at least once per week for 4 consecutive weeks. Such other notice shall be given to relatives as the judge may order. The notice shall give the name, age, and such other characteristics and descriptions as shall identify the person, and shall call for information concerning him or her.

4 Administration of Estates. RSA 553:19 is repealed and reenacted to read as follows:

553:19 Presumption of Death. In the absence of a death certificate, the fact of death may be established after an evidentiary hearing if the court finds by clear and convincing evidence:

I. That the person is presumed to have been killed as a result of some catastrophic event but his or her body could not be recovered; or

II. That the person has been absent for a continuous period of 3 years, during which time he or she has not been heard of or from, and whose absence is not satisfactorily explained after diligent search or inquiry. The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 134, relative to medical decision making for those adults without capacity to make health care decisions for themselves and establishing procedures for Do Not Resuscitate Orders. Judiciary Committee. Ought to pass with amendment, Vote 5-1. Senator Gottesman for the committee.

Senate Judiciary

March 30, 2005

2005-0970s

01/09

Amendment to SB 134

Amend the title of the bill by replacing it with the following:

AN ACT relative to medical decision making for those adults without capacity to make health care decisions for themselves and establishing procedures for Do Not Resuscitate Orders.

Amend the bill by replacing all after the enacting clause with the following:

1 Medical Decision Making for Adults Without Capacity to Make Health Care Decisions for Themselves. RSA 137-J is repealed and reenacted to read as follows:

CHAPTER 137-J

MEDICAL DECISION MAKING FOR ADULTS WITHOUT CAPACITY TO MAKE HEALTH CARE DECISIONS

137-J:1 Purpose and Policy.

I. The state of New Hampshire recognizes that a person has a right, founded in the autonomy and sanctity of the person, to control the decisions relating to the rendering of his or her own medical care. In order that the rights of persons may be respected even after such persons lack the capacity to make health care decisions for themselves, and to encourage communication between patients and their attending physicians or ARNPs, the general court declares that the laws of this state shall recognize the right of a competent person to make a written declaration:

(a) Delegating to an agent the authority to make health care decisions on the person's behalf, in the event such person is unable to make those decisions for himself or herself, either due to permanent or temporary lack of capacity to make health care decisions;

(b) Instructing his or her attending physician or ARNP to provide, withhold, or withdraw life-sustaining treatment, in the event such person is near death or is permanently unconscious.

II. All persons have a right to make health care decisions, including the right to refuse cardiopulmonary resuscitation. It is the purpose of the "Do Not Resuscitate" provisions of this chapter to ensure that the right of a person to self-determination relating to cardiopulmonary resuscitation is protected, and to give direction to emergency services personnel and other health care providers in regard to the performance of cardiopulmonary resuscitation.

137-J:2 Definitions. In this chapter:

I. "Advance directive" means a document allowing a person to give directions about future medical care or to designate another person to make medical decisions if he or she should lose the capacity to make health care decisions. The term "advance directives" shall include living wills and durable powers of attorney for health care.

II. "Advanced registered nurse practitioner" or "ARNP" means a registered nurse who is licensed in good standing in the state of New Hampshire as having specialized clinical qualifications as provided in RSA 326-B:10.

III. "Agent" means an adult to whom authority to make health care decisions is delegated under an advance directive.

IV. "Artificial nutrition and hydration" means invasive procedures such as, but not limited to the following: nasogastric tubes; gastrostomy tubes; intravenous feeding or hydration; and hyperalimentation. It shall not include the natural ingestion of food or fluids by eating and drinking.

V. "Attending physician or ARNP" means the physician or advanced registered nurse practitioner, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient. If more than one physician or advanced registered nurse practitioner shares that responsibility, any one of those physicians or advanced registered nurse practitioners may act as the attending physician or ARNP under the provisions of this chapter.

VI. "Capacity to make health care decisions" means the ability to understand and appreciate generally the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care.

VII. "Cardiopulmonary resuscitation" means those measures used to restore or support cardiac or respiratory function in the event of a cardiac or respiratory arrest.

VIII. "Commissioner" means the commissioner of the department of health and humans services.

IX. "Do not resuscitate identification" means a standardized identification necklace, bracelet, card, or written medical order that signifies that a "Do Not Resuscitate Order" has been issued for the principal.

X. "Do not resuscitate order" or "DNR order" (also known as "Do not attempt resuscitation order" or "DNAR order") means an order that, in the event of an actual or imminent cardiac or respiratory arrest, chest compression and ventricular defibrillation will not be performed, the patient will not be intubated or manually ventilated, and there will be no administration of resuscitation drugs.

XI. "Durable power of attorney for health care" means a document delegating to an agent the authority to make health care decisions executed in accordance with the provisions of this chapter. It shall not mean forms routinely required by health and residential care providers for admissions and consent to treatment.

XII. "Emergency services personnel" means paid or volunteer firefighters, law-enforcement officers, emergency medical technicians, paramedics or other emergency services personnel, providers, or entities acting within the usual course of their professions.

XIII. "Health care decision" means informed consent, refusal to give informed consent, or withdrawal of informed consent to any type of health care, treatment, admission to a health care facility, any service or procedure to maintain, diagnose, or treat an individual's physical or mental condition except as prohibited in this chapter or otherwise by law.

XIV. "Health care provider" means an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care, for profit or otherwise, in the ordinary course of business or professional practice.

XV. "Life-sustaining treatment" means any medical procedures or interventions which utilize mechanical or other artificial means to sustain, restore, or supplant a vital function which, in the written judgment of the attending physician or ARNP, would serve only to artificially postpone the moment of death, and where the person is near death or is permanently unconscious. "Life-sustaining treatment" includes, but is not limited to, the following: mechanical respiration, kidney dialysis or the use of other external mechanical or technological devices, drugs to maintain blood pressure, blood transfusions, and antibiotics. "Life-sustaining treatment" shall not include the administration of medication, natural ingestion of food or fluids by eating and drinking, or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.

XVI. "Living will" means a document which, when duly executed, contains the express direction that no life-sustaining treatment be given when the person executing said document has been diagnosed and certified in writing by the attending physician or ARNP to be near death or permanently unconscious, without hope of recovery from such condition and is unable to actively participate in the decision-making process.

XVII. "Near death" means an incurable condition caused by injury, disease, or illness which is such that death is imminent and the application of life-sustaining treatment would, to a reasonable degree of medical certainty, as determined by the attending physician or ARNP, only postpone the moment of death.

XVIII. "Permanently unconscious" means a lasting condition, indefinitely without improvement, in which thought, awareness of self and environment, and other indicators of consciousness are absent as determined to a reasonable degree of medical certainty by the attending physician or ARNP.

XIX. "Physician" means a medical doctor licensed in good standing to practice in the state of New Hampshire pursuant to RSA 329.

XX. "Principal" means a person 18 years of age or older who has executed an advance directive pursuant to the provisions of this chapter.

XXI. "Residential care provider" means a "facility" as defined in RSA 161-F:11, IV, a "nursing home" as defined in RSA 151-A:1, IV, or any individual or facility licensed, certified, or otherwise authorized or permitted by law to operate, for profit or otherwise, a residential care facility for adults, including but not limited to those operating pursuant to RSA 420-D.

XXII. "Witness" means a person 18 years or older who is present when the principal signs an advance directive.

137-J:3 Freedom From Influence.

I. No health care provider or residential care provider, and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan shall charge a person a different rate because of the existence or non-existence of an advance directive or do not resuscitate order, or require any person to execute an advance directive or require the issuance of a do not resuscitate order as a condition of admission to a hospital, nursing home, or residential care home, or as a condition of being insured for, or receiving, health or residential care services. Health or residential care services shall not be refused because a person is known to have executed an advance directive or have a do not resuscitate order.

II. The execution of an advance directive or issuance of a do not resuscitate order pursuant to this chapter shall not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired, modified or invalidated in any manner by the withholding or withdrawal of life-sustaining treatment from an insured person notwithstanding any term of the policy to the contrary.

137-J:4 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not affect any other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Advance Directives

137-J:5 Scope and Duration of Agent's Authority.

I. Subject to the provisions of this chapter and any express limitations set forth by the principal in an advance directive, the agent shall have the authority to make any and all health care decisions on the principal's behalf that the principal could make.

II. An agent's authority under an advance directive shall be in effect only when the principal lacks capacity to make health care decisions, as certified in writing by the principal's attending physician or ARNP, and filed with the name of the agent in the principal's medical record. When and if the principal regains capacity to make health care decisions, such event shall be certified in writing by the principal's attending physician or ARNP, noted in the principal's medical record, the agent's authority shall terminate, and the authority to make health care decisions shall revert to the principal.

III. If the principal has no attending physician or ARNP for reasons based on the principal's religious or moral beliefs as specified in his or her advance directive, the advance directive may include a provision that a person designated by the principal in the advance directive may certify in writing, acknowledged before a notary or justice of the peace, as to the lack of decisional capacity of the principal. The person so designated by the principal shall not be the agent, or a person ineligible to be the agent.

IV. The principal's attending physician or ARNP shall make reasonable efforts to inform the principal of any proposed treatment, or of any proposal to withdraw or withhold treatment. Notwithstanding that an advance directive is in effect and irrespective of the principal's lack of capacity to make health care decisions at the time, treatment may not be given to or withheld from the principal over the principal's objection.

V. Nothing in this chapter shall be construed to give an agent authority to:

- (a) Consent to voluntary admission to any state institution;
- (b) Consent to a voluntary sterilization; or

(c) Consent to withholding life-sustaining treatment from a pregnant principal, unless, to a reasonable degree of medical certainty, as certified on the principal's medical record by the attending physician or ARNP and an obstetrician who has examined the principal, such treatment or procedures will not maintain the principal in such a way as to permit the continuing development and live birth of the fetus or will be physically harmful to the principal or prolong severe pain which cannot be alleviated by medication.

137-J:6 Requirement to Act in Accordance with Principal's Wishes and Best Interests. After consultation with the attending physician or ARNP and other health care providers, the agent shall make health care decisions in accordance with the agent's knowledge of the principal's wishes and religious or moral beliefs, as stated orally or otherwise communicated by the principal, or, if the principal's wishes are unknown, in accordance with the agent's assessment of the principal's best interests and in accordance with accepted medical practice.

137-J:7 Provider's Responsibilities.

I. A principal's health care provider or residential care provider, and employees thereof, having knowledge of the principal's advance directive shall be bound to follow the directives of the principal's designated agent to the extent they are consistent with this chapter and the advance directive, and to the extent they are within the bounds of responsible medical practice.

(a) An attending physician or ARNP, or other health care provider or residential care provider, who is requested to do so by the principal shall make the principal's advance directive or a copy of such document a part of the principal's medical record.

(b) Any person having in his or her possession a duly executed advance directive or a revocation thereof, if it becomes known to that person that the principal executing the same is in such circumstances that the terms of the advance directive might become applicable, shall forthwith deliver the same to the health care provider or residential care provider with which the principal is a patient.

II. A principal's health care provider or residential care provider who is aware of the principal's execution of an advance directive shall, as appropriate to the principal's medical condition and without delay, take the necessary steps to provide for written verification of the principal's lack of capacity to make health care decisions, and/or near death or permanently unconscious condition, as applicable, so that the principal's agent may be authorized to act pursuant to this chapter.

III. Prior to the agent making a health care decision for the principal, the principal's health care provider or residential care provider shall provide the agent with the following information regarding the agent's responsibilities:

(a) The agent shall, at all times, make health care decisions that are consistent with what the principal would have wanted, if reasonably known, had the principal had the capacity to make health care decisions.

(b) If the principal's wishes cannot reasonably be ascertained, the agent shall, in consultation with the attending physician or ARNP, make health care decisions that are in the best interest of the principal, which may include withholding or withdrawing treatment.

(c) The agent shall be informed by the principal's attending physician or ARNP regarding any health care decision the agent makes for the principal, and the agent shall consider the nature and consequences, including the risks, benefits and reasonable alternatives of that health care decision.

IV. When the direction of an agent requires an act or omission contrary to the moral or ethical principles or other standards of a health care provider or residential care provider of which the principal is a patient or resident, the health care provider shall allow for the transfer of the principal and the appropriate medical records to another health care provider chosen by the principal or by the agent and shall incur no liability for its refusal to carry out the terms of the direction by the agent; provided, that, the health care provider or residential care provider shall inform the agent of its decision not to participate in such an act or omission.

137-J:8 Restrictions on Who May Act as Agent. A person may not exercise the authority of agent while serving in one of the following capacities:

I. The principal's health care provider or residential care provider.

II. A nonrelative of the principal who is an employee of the principal's health care provider or residential care provider.

137-J:9 Confidentiality and Access to Protected Health Information.

I. Health care providers, residential care providers, and persons acting for such providers or under their control, shall be authorized to;

(a) Communicate to an agent any medical information about the principal, if the principal lacks the capacity to make health care decisions, necessary for the purpose of assisting the agent in making health care decisions on the principal's behalf.

(b) Provide copies of the principal's advance directives as necessary to facilitate treatment of the principal.

II. Subject to any limitations set forth in the advance directive by the principal, an agent whose authority is in effect shall be authorized, for the purpose of making health care decisions, to:

(a) Request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including, but not limited to, medical and hospital records.

(b) Execute any releases or other documents which may be required in order to obtain such medical information.

(c) Consent to the disclosure of such medical information.

137-J:10 Withholding or Withdrawal of Life-Sustaining Treatment.

I. In the event a health care decision to withhold or withdraw life-sustaining treatment, including artificial nutrition and hydration, is to be made by an agent, and the principal has not executed the "Living Will" component of the advance directive document, the following additional conditions shall apply:

(a) The principal's attending physician or ARNP shall certify in writing that the principal lacks the capacity to make health care decisions.

(b) The principal's attending physician or ARNP shall certify in writing that the principal is near death or is permanently unconscious.

(C) NOTWITHSTANDING THE CAPACITY OF AN AGENT TO ACT, THE AGENT SHALL MAKE A GOOD FAITH EFFORT TO EXPLORE ALL AVENUES REASONABLY AVAILABLE TO DISCERN THE DESIRES OF THE PRINCIPAL INCLUDING, BUT NOT LIMITED TO, THE PRINCIPAL'S ADVANCE DIRECTIVE, THE PRINCIPAL'S WRITTEN OR SPOKEN EXPRESSIONS OF WISHES, AND THE PRINCIPAL'S KNOWN RELIGIOUS OR MORAL BELIEFS.

II. The withholding or withdrawal of life-sustaining treatment pursuant to the provisions of this chapter shall at no time be construed as a suicide or murder for any legal purpose. Nothing in this chapter shall be construed to constitute, condone, authorize, or approve suicide, assisted suicide, mercy killing, or euthanasia, or permit any affirmative or deliberate act or omission to end one's own life or to end the life of another other than to permit the natural process of dying of those near death or in a permanently unconscious condition as provided in this chapter. The withholding or withdrawal of life-sustaining treatment in accordance with the provisions of this chapter, however, shall not relieve any individual of responsibility for any criminal acts that may have caused the principal's condition.

III. Nothing in this chapter shall be construed to condone, authorize, or approve:

(a) The withholding of life-sustaining treatment from or to permit any affirmative or deliberate act or omission to end the life of a pregnant woman by an attending physician or ARNP when such attending physician or ARNP has knowledge of the woman's pregnant condition, unless, to a reasonable degree of medical certainty, as certified on the principal's medical record by the attending physician or ARNP and an obstetrician who has examined the principal, such treatment or procedures will not maintain the principal in such a way as to permit the continuing development and live birth of the fetus or will be physically harmful to the principal or prolong severe pain which cannot be alleviated by medication.

(b) The arbitrary withholding or withdrawing of life-sustaining treatment from mentally incompetent or developmentally disabled persons.

IV. Nothing in this chapter shall impair or supersede any other legal right or responsibility which any person may have to effect life-sustaining treatment in any lawful manner.

V. Nothing in this chapter shall be construed to revoke or adversely affect the privileges or immunities of health care providers or residential care providers and others to provide treatment to persons in need thereof in an emergency, as provided for under New Hampshire law.

VI. This chapter shall not be construed to create a presumption that in the absence of an advance directive, a person wants life-sustaining treatment to be either taken or withdrawn. Nor shall this chapter be construed to supplant any existing rights and responsibilities under the law of this state governing the conduct of physicians or ARNPs in consultation with patients or their families or legal guardians in the absence of an advance directive.

137-J:11 Liability for Health Care Costs. Liability for the cost of health care provided pursuant to the agent's decision shall be the same as if the health care were provided pursuant to the principal's decision.

137-J:12 Immunity.

I. No person acting as agent pursuant to an advance directive shall be subjected to criminal or civil liability for making a health care decision on behalf of the principal in good faith pursuant to the provisions of this chapter and the terms of the advance directive if such person exercised such power in a manner consistent with the requirements of this chapter and New Hampshire law.

II. No health care provider or residential care provider, or any other person acting for the provider or under the provider's control, shall be subjected to civil or criminal liability or be deemed to have engaged in unprofessional conduct for:

(a) Any act or intentional failure to act, if the act or intentional failure to act is done pursuant to the dictates of an advance directive, the directives of the principal's agent, and the provisions of this chapter, and said act or intentional failure to act is done in good faith and in keeping with reasonable medical standards pursuant to the advance directive and in accordance with this chapter; or

(b) Failure to follow the directive of an agent if the health care provider or residential care provider or other such person believes in good faith and in keeping with reasonable medical standards that such directive exceeds the scope of or conflicts with the authority of the agent under this chapter or the contents of the principal's advance directive.

III. Nothing in this section shall be construed to establish immunity for the failure to exercise due care in the provision of services or for actions contrary to the requirements of this chapter or other laws of the state of New Hampshire.

IV. For purposes of this section, "good faith" means honesty in fact in the conduct of the transaction concerned.

137-J:13 Use of Statutory Forms.

I. Every person wishing to execute an advance directive shall be provided with a disclosure statement substantially in the form set forth in RSA 137-J:18 prior to execution. The principal shall be required to sign a statement acknowledging that he or she has received the disclosure statement and has read and understands its contents.

II. An advance directive executed on or after the effective date of this chapter shall be substantially in the form set forth in RSA 137-J:19.

III. Artificial nutrition and hydration shall not be withdrawn or withheld under an advance directive unless there is a clear expression of such power in the document.

137-J:14 Execution and Witnesses.

I. The advance directive shall be signed by the principal in the presence of either of the following:

(a) Two or more subscribing witnesses, neither of whom shall, at the time of execution, be the agent, the principal's spouse or heir at law, attending physician or ARNP, or person acting under the direction or control of the attending physician or ARNP. No more than one such witness may be the principal's health

or residential care provider or such provider's employee. The witnesses shall affirm that the principal appeared to be of sound mind and free from duress at the time the advance directive was signed and that the principal affirmed that he or she was aware of the nature of the document and signed it freely and voluntarily; or

(b) A notary public or justice of the peace, who shall acknowledge the principal's signature pursuant to the provisions of RSA 456 or RSA 456-A.

II. If the principal is physically unable to sign, the advance directive may be signed by the principal's name written by some other person in the principal's presence and at the principal's express direction.

137-J:15 Revocation.

I. An advance directive consistent with the provisions of this chapter shall be revoked:

(a) By written revocation delivered to the agent or to a health care provider or residential care provider expressing the principal's intent to revoke, signed, and dated by the principal; by oral revocation in the presence of 2 or more witnesses, none of whom shall be the principal's spouse or heir at law; or by any other act evidencing a specific intent to revoke the power, such as by burning, tearing, or obliterating the same or causing the same to be done by some other person at the principal's direction and in the principal's presence;

(b) By execution by the principal of a subsequent advance directive;

(c) By the filing of an action for divorce, legal separation, annulment or protective order, where both the agent and the principal are parties to such action, except when there is an alternate agent designated, in which case the designation of the primary agent shall be revoked and the alternate designation shall become effective. Re-execution or written re-affirmation of the advance directive following a filing of an action for divorce, legal separation, annulment or protective order shall make effective the original designation of the primary agent under the advance directive; or

(d) By a determination by a court under RSA 506:7 that the agent's authority has been revoked.

II. A principal's health or residential care provider who is informed of or provided with a revocation of an advance directive shall immediately record the revocation, and the time and date when he or she received the revocation, in the principal's medical record and notify the agent, the attending physician or ARNP, and staff responsible for the principal's care of the revocation. An agent who becomes aware of such revocation shall inform the principal's health or residential care provider of such revocation. Revocation shall become effective upon communication to the attending physician or ARNP.

137-J:16 Documents from Other States; Documents Executed Prior to Enactment. Nothing in this chapter limits the enforceability of a durable power of attorney for health care or living will or similar instrument validly executed under prior New Hampshire law or in another state or jurisdiction in compliance with the law of that state or jurisdiction. However, any exercise of power under such a previously valid or foreign advance directive or similar instrument shall be restricted by and in compliance with the requirements of this chapter and the laws of the state of New Hampshire.

137-J:17 Naming of Multiple Agents. If the principal lists more than one person as the agent in a durable power of attorney for health care document, the agents shall have authority in priority of the order in which their names are listed on the document.

137-J:18 Durable Power of Attorney; Disclosure Statement. The disclosure statement which must accompany a durable power of attorney for health care shall be in substantially the following form:

INFORMATION CONCERNING THE DURABLE POWER OF ATTORNEY FOR HEALTH CARE THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING IT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

Except if you say otherwise in the document, this document gives the person you name as your health care agent the power to make any and all health care decisions for you when you lack the capacity to make health care decisions for yourself (in other words, you no longer have the ability to understand and appreciate generally the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care). "Health care" means any treatment, service or procedure to maintain, diagnose or treat your physical or mental condition. Your health care agent, there-

fore, will have the power to make a wide range of health care decisions for you. Your health care agent may consent (in other words, give permission), refuse to consent, or withdraw consent to medical treatment, and may make decisions about withdrawing or withholding life-sustaining treatment. Your health care agent cannot consent to or direct any of the following: commitment to a state institution, sterilization, or termination of treatment if you are pregnant and if the withdrawal of that treatment is deemed likely to terminate the pregnancy, unless the treatment will be physically harmful to you or prolong severe pain which cannot be alleviated by medication.

You may explain in this document any treatment you do not want, or any treatment you want to be sure you receive. Your health care agent's power will begin when your doctor certifies that you lack the capacity to make health care decisions (in other words, that you are not able to make health care decisions). If for moral or religious reasons you do not want to be treated by a doctor or to be examined by a doctor to certify that you lack capacity, you must say so in the document and you must name someone who can certify your lack of capacity. That person cannot be your health care agent or alternate health care agent or any person who is not eligible to be your health care agent. You may attach additional pages to the document if you need more space to state your wishes.

If you want to give your health care agent power to withhold or withdraw artificial nutrition and hydration, you must say so in your document. Otherwise, your health care agent will not be able to direct that. Under no conditions will your health care agent be able to direct the withholding of food and drink that you are able to eat and drink normally.

Your health care agent will be guided by your oral and written instructions in this document when making decisions for you. Unless you state otherwise in the document, your agent will have the same power to make decisions about your health care as you would have had, if those decisions by your health care agent are made consistent with state law.

It is important that you discuss this document with your doctor or other health care providers before you sign it, to make sure that you understand the nature and range of decisions which could be made for you by your health care agent. If you do not have a health care provider, you should talk with someone else who is knowledgeable about these issues and can answer your questions. Check with your community hospital or hospice for trained staff. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you choose as your health care agent should be someone you know and trust, and he or she must be at least 18 years old. If you choose your health or residential care provider (such as your doctor, advanced registered nurse practitioner, or an employee of a hospital, nursing home, home health agency, or residential care home, other than a relative), that person will have to choose between acting as your health care agent or as your health or residential care provider, because the law does not allow a person to do both at the same time.

You should consider choosing an alternate health care agent, in case your health care agent is unwilling, unable, unavailable or not eligible to act as your health care agent. Any alternate health care agent you choose will then have the same authority to make health care decisions for you.

You should tell the person you choose that you want him or her to be your health care agent. You should talk about this document with your health care agent and your doctor or advanced registered nurse practitioner and give each one a signed copy. You should write on the document itself the people and institutions who will have signed copies. Your health care agent will not be liable for health care decisions made in good faith on your behalf.

EVEN AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS FOR YOURSELF AS LONG AS YOU ARE ABLE TO DO SO, AND TREATMENT CANNOT BE GIVEN TO YOU OR STOPPED OVER YOUR CLEAR OBJECTION. You have the right to revoke the power given to your health care agent by telling him or her, or by telling your health care provider, orally or in writing, that you no longer want that person to be your health care agent.

This document cannot be changed or modified. If you want to make changes, you must make an entirely new document.

THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR TWO (2) OR MORE QUALIFIED WITNESSES, WHO MUST BOTH BE PRESENT WHEN YOU SIGN AND WHO WILL ACKNOWLEDGE YOUR SIGNATURE ON THE DOCUMENT. THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:

- ___ The person you have designated as your health care agent;
- ___ Your spouse or heir at law;
- ___ Your attending physician or ARNP, or person acting under the direction or control of the attending physician or ARNP;

ONLY ONE OF THE TWO WITNESSES MAY BE YOUR HEALTH OR RESIDENTIAL CARE PROVIDER OR ONE OF YOUR PROVIDER'S EMPLOYEES.

137-J:19 Advance Directive; Durable Power of Attorney and Living Will; Form. An advance directive in its individual "Durable Power of Attorney for Healthcare" and "Living Will" components shall be in substantially the following form:

NEW HAMPSHIRE ADVANCE DIRECTIVE

NOTE: This form has two sections.

You may complete both sections, or only one section.

I. DURABLE POWER OF ATTORNEY FOR HEALTH CARE

I, _____, hereby appoint _____ of _____ (Please choose only one person. If you choose more than one agent, they will have authority in priority of the order their names are listed.) as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document or as prohibited by law. This durable power of attorney for health care shall take effect in the event I lack the capacity to make my own health care decisions.

In the event the person I appoint above is unable, unwilling or unavailable, or ineligible to act as my health care agent, I hereby appoint _____ of _____ as alternate agent. (Please choose only one person. If you choose more than one alternate agent, they will have authority in priority of the order their names are listed.)

STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS REGARDING HEALTH CARE DECISIONS.

For your convenience in expressing your wishes, some general statements concerning the withholding or removal of life-sustaining treatment are set forth below. (Life-sustaining treatment is defined as procedures without which a person would die, such as but not limited to the following: mechanical respiration, kidney dialysis or the use of other external mechanical and technological devices, drugs to maintain blood pressure, blood transfusions, and antibiotics.) There is also a section which allows you to set forth specific directions for these or other matters. If you wish, you may indicate your agreement or disagreement with any of the following statements and give your agent power to act in those specific circumstances.

A. LIFE-SUSTAINING TREATMENT.

1. If I am near death and permanently lack the capacity to make health care decisions, I authorize my agent to direct that:

(Initial beside your choice of (a) or (b).)

___ (a) life-sustaining treatment not be started, or if started, be discontinued.

-or-

___ (b) life-sustaining treatment continue to be given to me.

2. Whether near death or not, if I become permanently unconscious I authorize my agent to direct that:

(Initial beside your choice of (a) or (b).)

___ (a) life-sustaining treatment not be started, or if started, be discontinued.

-or-

___ (b) life-sustaining treatment continue to be given to me.

B. ARTIFICIAL NUTRITION AND HYDRATION.

1. I realize that situations could arise in which the only way to allow me to die would be to not start or to discontinue artificial feeding (artificial nutrition and hydration). In carrying out any instructions I have given in this document, I authorize my agent to direct that:

(Initial beside your choice of (a) or (b).)

____ (a) artificial nutrition and hydration not be started or, if started, be discontinued.

-or-

____ (b) even if all other forms of life-sustaining treatment have been withdrawn, artificial nutrition and hydration continue to be given to me.

(If you fail to complete item B, your agent will not have the power to direct the withholding or withdrawal of artificial nutrition and hydration.)

C. ADDITIONAL INSTRUCTIONS.

Here you may include any specific desires or limitations you deem appropriate, such as when or what life-sustaining treatment you would want used or withheld, or instructions about refusing any specific types of treatment that are inconsistent with your religious beliefs or are unacceptable to you for any other reason. You may leave this question blank if you desire.

(attach additional pages as necessary)

I hereby acknowledge that I have been provided with a disclosure statement explaining the effect of this document. I have read and understand the information contained in the disclosure statement.

The original of this document will be kept at _____ and the following persons and institutions will have signed copies:

Signed this ____ day of _____, 2____

Principal's Signature: _____

[If you are physically unable to sign, this document may be signed by someone else writing your name, in your presence and at your express direction.]

THIS POWER OF ATTORNEY DOCUMENT MUST BE SIGNED BY TWO WITNESSES OR A NOTARY PUBLIC.

We declare that the principal appears to be of sound mind and free from duress at the time the durable power of attorney for health care is signed and that the principal affirms that he or she is aware of the nature of the document and is signing it freely and voluntarily.

Witness: _____

Address: _____

Witness: _____

Address: _____

STATE OF NEW HAMPSHIRE

COUNTY OF _____

The foregoing durable power of attorney for health care was acknowledged before me this ____ day of _____, 20____, by _____ ("the Principal").

Notary Public / Justice of the Peace

My commission expires:

II. LIVING WILL

Declaration made this ____ day of _____, 20____.

I, _____, being of sound mind, willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

If at any time I should have an incurable injury, disease, or illness and I am certified to be near death or in a permanently unconscious condition by my attending physician or ARNP, and my attending physician or ARNP has determined that my death will occur whether or not life-sustaining treatment is utilized or that I will remain in a permanently unconscious condition and where the application of life-sustaining treatment would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, the natural ingestion of food or fluids by eating and drinking, or the performance of any medical procedure deemed necessary to provide me with comfort care. I realize that situations could arise in which the only way to allow me to die would be to discontinue artificial nutrition and hydration.

In carrying out any instruction I have given under this section, I authorize that:

(Initial beside your choice of (a) or (b).)

____ (a) artificial nutrition and hydration not be started or, if started, be discontinued,

-or-

____ (b) even if all other forms of life-sustaining treatment have been withdrawn, artificial nutrition and hydration continue to be given to me.

In the absence of my ability to give directions regarding the use of such life-sustaining treatment, it is my intention that this declaration shall be honored by my family and health care providers as the final expression of my right to refuse medical or surgical treatment and accept the consequences of such refusal.

I understand the full import of this declaration, and I am emotionally and mentally competent to make this declaration.

Signed this ____ day of _____, 2____

Principal's Signature: _____

[If you are physically unable to sign, this document may be signed by someone else writing your name, in your presence and at your express direction.]

THIS LIVING WILL DOCUMENT MUST BE SIGNED BY TWO WITNESSES OR A NOTARY PUBLIC.

We declare that the principal appears to be of sound mind and free from duress at the time the living will is signed and that the principal affirms that he or she is aware of the nature of the document and is signing it freely and voluntarily.

Witness: _____

Address: _____

Witness: _____

Address: _____

STATE OF NEW HAMPSHIRE

COUNTY OF _____

The foregoing living will was acknowledged before me this ____ day of _____, 20____,
by _____ ("the Principal").

Notary Public / Justice of the Peace

My commission expires:

137-J:20 Effect of Appointment of Guardian; Inconsistency.

I. On motion filed in connection with a petition for appointment of a guardian or on petition of a guardian if one has been appointed, the probate court shall consider whether the authority of an agent designated pursuant to an advance directive should be suspended or revoked. In making its determination, the probate

court shall take into consideration the preferences of the principal as expressed in the advance directive. No such consideration shall change the procedures or burden of proof involved in the guardianship process as otherwise provided by law or procedures. In such consideration, the advance directive and agent appointed shall be presumed to be in the best interest of the principal and valid, absent clear and convincing evidence to the contrary.

II. To the extent that a durable power of attorney for health care, or such component of an advance directive as set forth in RSA 137-J:19, conflicts with a terminal care document or living will, or such component of an advance directive as set forth in RSA 137-J:19, the durable power of attorney for health care shall control.

137-J:21 Civil Action.

I. The principal or any person who is a near relative of the principal, or who is a responsible adult who is directly interested in the principal by personal knowledge and acquaintance, including, but not limited to a guardian, social worker, physician, or clergyman, may file an action in the probate court of the county where the principal is located at the time:

(a) Requesting that the authority granted to an agent by an advance directive be revoked on the grounds that the principal was not of sound mind or was under duress, fraud, or undue influence when the advance directive was executed, and shall have all the rights and remedies provided by RSA 506:7 which shall apply to documents executed under this chapter and persons acting pursuant to this chapter.

(b) Challenging the right of any agent who is acting or who proposes to act as such pursuant to this chapter and naming another person, who agrees to so act, to be appointed guardian over the person of the principal for the sole purpose of making health care decisions, as provided for in RSA 464-A.

II. A copy of any such action shall be given in hand to the principal's attending physician or ARNP and, as applicable, to the principal's health care provider or residential care provider. To the extent they are not irreversibly implemented, health care decisions made by a challenged agent shall not thereafter be implemented without an order of the probate court or a withdrawal or dismissal of the court action.

III. The probate court in which such a petition is filed shall hold a hearing as expeditiously as possible.

137-J:22 Penalty. A person who knowingly and falsely makes, alters, forges, or counterfeits, or knowingly and falsely causes to be made, altered, forged, or counterfeited, or procures, aids or counsels the making, altering, forging, or counterfeiting, of an advance directive or revocation of same with the intent to injure or defraud a person shall be guilty of a class B felony, notwithstanding any provisions in title LXII.

Do Not Resuscitate

137-J:23 Applicability. The provisions of this subdivision apply to all persons regardless of whether or not they have completed an advance directive.

137-J:24 Presumed Consent to Cardiopulmonary Resuscitation; Health Care Providers and Residential Care Providers Not Required to Expand to Provide Cardiopulmonary Resuscitation.

I. Every person shall be presumed to consent to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest, unless one or more of the following conditions, of which the health care provider or residential care provider has actual knowledge, apply:

(a) A do not resuscitate order in accordance with the provisions of this chapter has been issued for that person;

(b) A completed advance directive for that person is in effect, pursuant to the provisions of this chapter, in which the person indicated that he or she does not wish to receive cardiopulmonary resuscitation, or his or her agent has determined that the person would not wish to receive cardiopulmonary resuscitation;

(c) A person who lacks capacity to make health care decisions is admitted to a health care facility and the person's agent is not reasonably available or capable of making a decision regarding a do not resuscitate order, and the attending physician or ARNP, and a concurring second physician, have determined that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards, and the attending physician or ARNP has completed a do not resuscitate order; or

(d) A person is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof.

II. Nothing in this section shall be construed to revoke any statute, regulation, or law otherwise requiring or exempting a health care provider or residential care provider from instituting or maintaining the ability to provide cardiopulmonary resuscitation or expanding its existing equipment, facilities, or personnel to provide cardiopulmonary resuscitation.

137-J:25 Issuance of a Do Not Resuscitate Order; Order to be Written by the Attending Physician or ARNP.

I. An attending physician or ARNP may issue a do not resuscitate order for a person if the person, or the person's agent, has consented to the order. A do not resuscitate order shall be issued in writing in the form as described in this section for a person not present or residing in a health care facility. For persons present in health care facilities, a do not resuscitate order shall be issued in accordance with the policies and procedures of the health care facility or in accordance with the provisions of this chapter.

II. A person may request that his or her attending physician or ARNP issue a do not resuscitate order for the person.

III. An agent may consent to a do not resuscitate order for a person who lacks the capacity to make health care decisions. A do not resuscitate order written by the attending physician or ARNP for such a person with the consent of the agent is valid and shall be respected by health care providers and residential care providers.

IV. If an agent is not reasonably available or capable of making a decision regarding a do not resuscitate order, an attending physician or ARNP may issue a do not resuscitate order for a person who lacks capacity to make health care decisions and who is admitted to a health care facility if a second physician who has personally examined the person concurs in the opinion of the attending physician or ARNP that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

V. For persons not present or residing in a health care facility, the do not resuscitate order shall be noted on a medical orders form or in substantially the following form on a card suitable for carrying on the person:

Do Not Resuscitate Order

As attending physician or ARNP of _____ and as a licensed physician or advanced registered nurse practitioner, I order that this person SHALL NOT BE RESUSCITATED in the event of cardiac or respiratory arrest.

This order has been discussed with _____ (or, if applicable, with his/her agent,) _____, who has given consent as evidenced by his/her signature below.

Attending physician or ARNP Name _____

Attending physician or ARNP Signature _____

Address _____

Person Signature _____

Address _____

Agent Signature (*if applicable*) _____

Address _____

VI. For persons residing in a health care facility, the do not resuscitate order shall be reflected in at least one of the following forms:

(a) Forms required by the policies and procedures of the health care facility;

(B) THE DO NOT RESUSCITATE CARD AS SET FORTH IN PARAGRAPH V; OR

(c) The medical orders form.

137-J:26 Compliance with a Do Not Resuscitate Order.

I. Health care providers and residential care providers shall comply with the do not resuscitate order when presented with one of the following:

(a) A do not resuscitate order completed by the attending physician or ARNP on a form as specified in RSA 137-J:25;

(b) Do not resuscitate identification as set forth in RSA 137-J:32;

(c) A do not resuscitate order for a person present or residing in a health care facility issued in accordance with the health care facility's policies and procedures; or

(d) A medical orders form on which the attending physician or ARNP has documented a do not resuscitate order.

II. Pursuant to this chapter, health care providers shall respect do not resuscitate orders for persons in health care facilities, ambulances, homes, and communities within this state.

137-J:27 PROTECTION OF PERSONS CARRYING OUT IN GOOD FAITH A DO NOT RESUSCITATE ORDER; NOTIFICATION OF AGENT BY ATTENDING PHYSICIAN OR ARNP REFUSING TO COMPLY WITH DO NOT RESUSCITATE ORDER.

I. No health care provider or residential care provider, or any person acting for the provider or under the provider's control, or any emergency services personnel, shall be subjected to criminal or civil liability, or be deemed to have engaged in unprofessional conduct, for carrying out in good faith a do not resuscitate order authorized by this chapter on behalf of a person as instructed by the person, or the person's agent, or for those actions taken in compliance with the standards and procedures set forth in this chapter.

II. No health care provider or residential care provider, or any other person acting for the provider or under the provider's control, or emergency services personnel, or other individual who witnesses a cardiac or respiratory arrest shall be subjected to criminal or civil liability for providing cardiopulmonary resuscitation to a person for whom a do not resuscitate order has been issued; provided, that such provider or individual:

(a) Reasonably and in good faith is unaware of the issuance of a do not resuscitate order; or

(b) Reasonably and in good faith believed that consent to the do not resuscitate order has been revoked or canceled.

III. Any attending physician or ARNP who refuses to issue a do not resuscitate order at a person's request or to comply with a do not resuscitate order issued pursuant to this chapter shall take reasonable steps to advise promptly the person or agent of the person that such attending physician or ARNP is unwilling to effectuate the order. The attending physician or ARNP shall thereafter at the election of the person or agent permit the person or agent to obtain another attending physician or ARNP.

137-J:28 Revocation of Do Not Resuscitate Order.

I. At any time a person in a health care facility may revoke his or her previous request for or consent to a do not resuscitate order by making either a written, oral, or other act of communication to the attending physician or ARNP or other professional staff of the health care facility.

II. At any time a person residing at home may revoke his or her do not resuscitate order by destroying such order and removing do not resuscitate identification on his or her person. The person is responsible for notifying his or her attending physician or ARNP of the revocation.

III. At any time an agent may revoke his or her consent to a do not resuscitate order for a person who lacks capacity to make health care decisions who is admitted to a health care facility by notifying the attending physician or ARNP or other professional staff of the health care facility of the revocation of consent in writing, or by orally notifying the attending physician or ARNP in the presence of a witness 18 years of age or older.

IV. At any time an agent may revoke his or her consent for a person who lacks capacity to make health care decisions who is residing at home by destroying such order and removing do not resuscitate identification from the person. The agent is responsible for notifying the person's attending physician or ARNP of the revocation.

V. The attending physician or ARNP who is informed of or provided with a revocation of consent pursuant to this section shall immediately cancel the do not resuscitate order if the person is in a health care facility and notify the professional staff of the health care facility responsible for the person's care of the revocation and cancellation. Any professional staff of the health care facility who is informed of or provided with a revocation of consent pursuant to this section shall immediately notify the attending physician or ARNP of such revocation.

VI. Only a physician or advanced registered nurse practitioner may cancel the issuance of a do not resuscitate order.

137-J:29 Not Suicide or Murder. The withholding of cardiopulmonary resuscitation from a person in accordance with the provisions of this chapter shall not, for any purpose, constitute suicide or murder. The withholding of cardiopulmonary resuscitation from a person in accordance with the provisions of this chapter, however, shall not relieve any individual of responsibility for any criminal acts that may have caused the person's condition. Nothing in this chapter shall be construed to legalize, condone, authorize, or approve mercy killing or assisted suicide.

137-J:30 Interinstitutional Transfers. If a person with a do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of a do not resuscitate order to the receiving facility prior to the transfer. The written do not resuscitate order, the do not resuscitate card as described in RSA 137-J:25, or the medical orders form shall accompany the person to the health care facility receiving the person and shall remain effective until a physician at the receiving facility issues admission orders. The do not resuscitate card or the medical orders form shall be kept as the first page in the person's transfer records.

137-J:31 Preservation of Existing Rights.

I. Nothing in this chapter shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding of cardiopulmonary resuscitation in any lawful manner. In such respect, the provisions of this chapter are cumulative.

II. Nothing in this chapter shall be construed to preclude a court of competent jurisdiction from approving the issuance of a do not resuscitate order under circumstances other than those under which such an order may be issued pursuant to the provisions of this chapter.

137-J:32 Do Not Resuscitate Identification. Do not resuscitate identification as set forth in this chapter may consist of either a medical condition bracelet or necklace with the inscription of the person's name, date of birth in numerical form and "NH Do Not Resuscitate" or "NH DNR" on it. Such identification shall be issued only upon presentation of a properly executed do not resuscitate order form as set forth in RSA 137-J:25, a medical orders form in which a physician or advanced registered nurse practitioner has documented a do not resuscitate order, or a do not resuscitate order properly executed in accordance with a health care facility's written policy and procedure.

2 Emergency Care; Reference Change. Amend RSA 153-A:20, II to read as follows:

II. Protocols recommended by the emergency medical services medical control board for provision of emergency medical care, which shall provide for the provision of local options under medical control. The protocols shall address living wills established under RSA [137-H] **137-J**, durable powers of attorney for health care established under RSA 137-J, and patient-requested, physician generated orders relative to resuscitation.

3 Guardians; Reference Change. Amend RSA 464-A:25, I(d) to read as follows:

(d) If a ward has previously executed a valid living will, under RSA [137-H] **137-J**, a guardian shall be bound by the terms of such document, provided that the court may hold a hearing to interpret any ambiguity in such document. If a ward has previously executed a valid durable power of attorney for health care, RSA 137-J shall apply.

4 Jurisdiction; Reference Change. Amend RSA 547:3, (j) to read as follows:

(j) The interpretation and effect of living wills under RSA [137-H] **137-J**.

5 Repeal. RSA 137-H, relative to living wills, is hereby repealed.

6 Effective Date. This act shall take effect January 1, 2006.

2005-0970s

AMENDED ANALYSIS

This bill revises the laws relative to living wills and durable powers of attorney for health care. This bill also establishes procedures for Do Not Resuscitate Orders.

MOTION TO TABLE

Senator Clegg moved to have SB 134 laid on the table.

Adopted.

LAID ON THE TABLE

SB 134, relative to medical decision making for those adults without capacity to make health care decisions for themselves and establishing procedures for Do Not Resuscitate Orders.

SB 158, relative to the disclosure of department of revenue administration records for purposes of assisting the state in the recovery of medical assistance. Judiciary Committee. Inexpedient to Legislate, Vote 5-0. Senator Clegg for the committee.

Committee report of inexpedient to legislate is adopted.

SB 169, relative to access to confidential court records. Judiciary Committee. Ought to Pass, Vote 6-0. Senator Green for the committee.

Adopted.

Ordered to third reading.

SB 186, allowing probate court judges and district court justices to sit on probate or district court cases. Judiciary Committee. Ought to pass with amendment, Vote 6-0. Senator Letourneau for the committee.

Senate Judiciary

March 31, 2005

2005-0987s

09/01

Amendment to SB 186

Amend the bill by replacing sections 1 and 2 with the following:

1 New Section; Assignment of Justices. Amend RSA 502-A by inserting after section 5 the following new section:

502-A:5-a Assignment of Judges. After assessing caseload needs and requirements under exigent circumstances and consulting with the administrative judges, the chief justice of the supreme court may assign any district justice to hear cases in the probate court.

2 New Section; Assignment of Judges. Amend RSA 547 by inserting after section 37 the following new section:

547:38 Assignment of Judges. After assessing caseload needs and requirements under exigent circumstances and consulting with the administrative judges, the chief justice of the supreme court may assign any probate court judge to hear cases in the district court.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 196, establishing a joint legislative committee to study medical malpractice insurance rates. Judiciary Committee. Ought to pass with amendment, Vote 4-2. Senator Foster for the committee.

Senate Judiciary

March 31, 2005

2005-0985s

06/09

Amendment to SB 196

Amend the title of the bill by replacing it with the following:

AN ACT requiring a hearing when medical malpractice insurance rates change.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Rate Filings; Medical Malpractice. Amend RSA 412:16 by inserting after paragraph XIII the following new paragraph:

XIV.(a) For medical malpractice insurance, regardless of whether the market is competitive or noncompetitive, the commissioner shall notify the public of any filing for a rate change when the proposed rate adjustment increases the then applicable rate by more than 15 percent or when the proposed rate adjustment decreases the then applicable rate by more than 15 percent.

(b) The commissioner shall hold a hearing on the rate adjustment upon receipt of a timely request.

(c) The rate change shall be deemed approved under rules established according to the provisions of RSA 412:43 unless the rate filing is disapproved by the commissioner.

(d) Public notice under subparagraph (a) shall be made through distribution to the news media and to any member of the public who requests placement on a mailing list for that purpose.

2 New Paragraphs; Rulemaking Authority. Amend RSA 412:43 by inserting after paragraph II the following new paragraphs:

III. The commissioner shall adopt rules under RSA 541-A relative to the conduct of hearings under RSA 412:16, XIV which shall include the definition of a timely request for a hearing, timelines for scheduling hearings, and procedures to prevent delays in commencing or continuing the hearings.

IV. The commissioner shall adopt rules under RSA 541-A relative to time periods for approvals of filings under RSA 412:16, XIV.

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

2005-0985s

AMENDED ANALYSIS

This bill requires the commissioner of insurance to hold a public hearing, if requested, when medical malpractice insurance rates change by more than 15 percent from the currently applicable rates.

The question is on the adoption of the committee amendment.

A roll call was requested by Senator Gatsas.

Seconded by Senator Clegg.

The following Senators voted Yes: Gallus, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.

The following Senators voted No: Johnson.

Yeas: 23 - Nays: 1

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 205, relative to private actions under the consumer protection act. Judiciary Committee. Inexpedient to Legislate, Vote 4-0. Senator Foster for the committee.

Committee report of inexpedient to legislate is adopted.

SB 214, relative to screening panels for medical injury claims. Judiciary Committee. Ought to pass with amendment, Vote 4-2. Senator Foster for the committee.

Senate Judiciary

April 5, 2005

2005-1019s

06/01

Amendment to SB 214

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; Screening Panels for Medical Injury Claims. Amend RSA by inserting after chapter 519-A the following new chapter:

CHAPTER 519-B

SCREENING PANELS FOR MEDICAL INJURY CLAIMS

519-B:1 Findings, Purpose, and Intent.

I. Availability and affordability of insurance against liability for medical injury is essential for the protection of patients as well as assuring availability of and access to essential medical and hospital care. This

chapter affirms the intent of the general court to contain the costs of the medical injury reparations system and to promote availability and affordability of insurance against liability for medical injury. Claims for medical injury should be resolved as early and inexpensively as possible to contain system costs. Claims that are resolved before court determination cost less to resolve than claims that must be resolved by a court. Meritorious claims should be identified as quickly as possible, as should non-meritorious claims. Defendants should consider paying or compromising meritorious claims and plaintiffs should consider withdrawing or compromising non-meritorious claims, as soon as the merits of the claims are known to the parties. Presentation of claims to a medical review panel is intended to help identify both meritorious and non-meritorious claims without the delay and expense of a court trial. It is essential to the effectiveness of the panel process that panel proceedings be confidential unless and until a matter heard by a panel proceeds to trial. It is equally essential to the effectiveness of the panel process that a panel's unanimous findings be presented to the jury in any matter that is not resolved prior to trial. The panel process will encourage the prompt resolution of claims, because both sides will be given an objective view of the merits. If the panel finds that a claim has merit, the defendant will be more likely to pay the claim or negotiate a compromise that is favorable to the claimant. If the panel finds that the claim lacks merit, the claimant is more likely to withdraw the claim or accept a nominal settlement.

II. The purposes of pretrial screening panels are:

(a) To identify claims of professional negligence which merit compensation and to encourage early resolution of those claims prior to commencement of a lawsuit; and

(b) To identify claims of professional negligence and to encourage early withdrawal or dismissal of nonmeritorious claims.

519-B:2 Definitions. In this chapter:

I. "Action for medical injury" means an action for medical injury as defined in RSA 507-E:1, I.

II. "Medical care provider" means a medical care provider as defined in RSA 507-E:1, II.

III. "Medical injury" means a medical injury as defined in RSA 507-E:1, III.

519-B:3 Formation and Procedure.

I. The chief justice of the superior court shall maintain a list of retired judges, persons with judicial experience, and other qualified persons to serve on screening panels under this chapter, from which he or she shall choose a panel chairperson under paragraph II of this section. The chief justice of the superior court shall maintain lists of health care practitioners, and attorneys with litigation experience primarily representing plaintiffs in actions for personal injury, recommended by their respective professional organizations and associations, or otherwise volunteering to serve on screening panels under this chapter. As required by the chief justice, the professional organizations and associations shall inform the chief justice of the names of volunteers to serve on panels.

II. Screening panel members shall be selected as follows:

(a) Upon the entry of a medical injury case, the clerk of the superior court in which the medical injury case is filed shall notify the chief justice of the superior court.

(b) Within 14 days following the return date, the chief justice shall choose a retired judge, a person with judicial experience, or other qualified person from the list maintained by the chief justice to serve as chairperson of the panel to screen the claim. If at any time a chairperson chosen under this paragraph is unable or unwilling to serve, the chief justice shall appoint a replacement following the procedure in this paragraph for the initial appointment of a chairperson.

(c) The chief justice shall notify the clerk of the name of the person designated to serve as chairperson and shall provide the clerk with the lists of health care practitioners, health care providers, and attorneys maintained under this section. Upon notification of the chief justice's choice of chairperson, the clerk shall notify the chairperson and the parties, and provide them with the lists of health care practitioners, health care providers, and attorneys. The chairperson shall choose 2 additional panel members as follows:

(1) One attorney.

(2) One health care practitioner.

(3) When agreed upon by all the parties, the list of available panel members may be enlarged in order to select a panel member who is agreed to by the parties but who is not on the chief justice's list.

III. The screening panel process shall not delay or postpone the trial of a medical injury case except by agreement of the parties. The superior court may establish a trial date at a structuring conference, or other scheduling conference, and all interim deadlines as it would in any other case.

IV. The chief justice of the superior court shall establish the compensation of the panel chairperson if he or she is not otherwise compensated by the state of New Hampshire. Other panel members shall serve without compensation or payment of expenses.

V. The clerk of the superior court in the county in which a medical injury case is filed shall, with the consent of the chief justice of the superior court, provide clerical and other assistance to the panel chairperson.

VI.(a) Only challenges for cause shall be allowed. Each panel member shall provide a curriculum vitae to counsel for the litigants and disclose any connection the member may have with the litigants or their counsel.

(b) If a panel member other than the chairperson is challenged for cause, the party challenging the member shall notify the panel chairperson. If the panel chairperson finds cause for the challenge, he or she shall replace the panel member.

(c) If the chairperson is challenged for cause, the party challenging the chairperson shall notify the chief justice of the superior court. If the chief justice finds cause for the challenge, he or she shall replace the chairperson.

519-B:4 Panel Procedures.

I. All documents filed with the court in a medical injury action that are part of the screening process are confidential.

II. Within 20 days after the return date, the person or persons against whom the action has been brought shall contact the claimant's counsel and by agreement shall designate a timetable for the exchange of all the relevant medical and provider records necessary to a determination by the panel. If the parties are unable to agree on a timetable within 40 days of the return date, the claimant shall notify the chairperson of the panel. The chairperson shall then establish a timetable for the exchange of all relevant records, which shall be exchanged no later than 90 days from the return date. The hearing shall be no later than 6 months from the return date, unless agreed to by the parties.

III. The pretrial screening may be bypassed if all parties agree upon a resolution of the claim by trial.

IV. All parties to a claim may, by written agreement, submit a claim to the binding determination of the panel. Both parties may agree to bypass the panel for any reason, or may request that certain preliminary legal affirmative defenses or issues be litigated prior to submission of the case to the panel. The panel shall have no jurisdiction to hear or decide, absent agreement of the parties, dispositive legal affirmative defenses, other than comparative negligence.

V. Except as otherwise provided in this section, there shall be one combined hearing for all claims under this section arising out of the same set of facts. Where a medical injury case has been filed against more than one person accused of medical injury based on the same facts, the parties may, upon agreement of all parties, require that hearings be separated.

VI. All requests for extensions of time under this section shall be made to the panel chairperson. The chairperson may extend any time period for good cause, except that the chairperson may not extend any time period that would result in the hearing being held more than 7 months following the return date unless misconduct of the plaintiff makes the hearing impractical or acts or events occur which the panel determines are beyond the control of the litigants. If the hearing cannot be held within the 7-month time period due to any other reason, it shall be deemed to have been waived.

VII.(a)(1) On failure of the plaintiff to prosecute or to comply with rules or any order of the chairperson, or if the plaintiff fails to attend a properly scheduled hearing, and on motion by the chairperson or any party, after notice to all parties has been given and the party against whom sanctions are proposed has had the opportunity to be heard and show good cause, the chairperson may order appropriate sanctions, which may include dismissal of the case. If any sanctions are imposed, the chairperson shall state the sanctions in writing and include the grounds for the sanctions.

(2) Unless the chairperson or the panel in an order for dismissal specifies otherwise, a dismissal under this subparagraph is with prejudice for purposes of proceedings before the panel. A dismissal with prejudice is the equivalent of a finding for the defendant on all issues before the panel.

(b)(1) On failure of a defendant to comply with the rules or any order of the chairperson, or if a defendant fails to attend a properly scheduled hearing, and on motion by the chairperson or any party, after notice to all parties has been given and the party against whom sanctions are proposed has had the opportunity to be heard and show good cause, the chairperson may order appropriate sanctions, which may include default. If any sanctions are imposed, the chairperson shall state the sanctions in writing and include the grounds for the sanctions.

(2) Unless the chairperson or the panel in its order for default specifies otherwise, a default under this paragraph is the equivalent of a finding against the defendant on all issues before the panel.

(c) Any person aggrieved by a chairperson's ruling regarding sanctions may appeal to the superior court, which shall defer to the chairperson's factual findings unless they are clearly erroneous.

519-B:5 Hearing.

I.(a) The claimant or a representative of the claimant shall present the case before the panel by offer of proof and submission of expert witness reports. The person accused of professional negligence or that person's representative shall make a responding presentation by offer of proof and submission of his or her expert witness reports. Any report to be submitted shall be exchanged at least 45 days prior to the hearing and an additional report may be prepared by the opposing expert in reply.

(b) After presentation by the parties, the panel may request additional facts, records, or other information from either party to be submitted in writing within 14 days.

II. The panel shall maintain a tape-recorded record. Except as provided in RSA 519-B:8, the record may not be made public and the hearings may not be public without the consent of all parties.

III. The chairperson of the panel shall attempt to mediate any differences of the parties before proceeding to findings.

519-B:6 Findings by Panel.

I. At the conclusion of the presentations, the panel shall make its findings regarding negligence and causation in writing within 30 days by answering the following questions:

(a) Whether the acts or omissions complained of constitute a deviation from the applicable standard of care by the medical care provider charged with that care;

(b) Whether the acts or omissions complained of proximately caused the injury complained of; and

(c) If fault on the part of the medical care provider is found, whether any fault on the part of the patient was equal to or greater than the fault on the part of the provider.

II. In considering the questions under paragraph I, the panel shall credit the party bringing the medical injury claim with all reasonable inferences that can be drawn from the evidence.

519-B:7 Notification of Findings. The panel's findings, signed by the panel members, indicating their vote, shall be sent by registered or certified mail to the parties within 7 days of the date of the findings. The findings and record of the hearing shall be preserved until 30 days after final judgment or final resolution of the case, after which time it shall be destroyed. All medical and provider records shall be returned to the party providing them to the panel.

519-B:8 Confidentiality and Admissibility.

I. Except as provided in this section, all proceedings before the panel, including its final determinations, shall be treated as private and confidential by the panel and the parties to the claim.

(a) The findings and other writings of the panel and any evidence and statements made by a party or a party's representative during a panel hearing are not admissible in court and shall not be submitted or used for any purpose in a subsequent trial and shall not be publicly disclosed, except as follows:

(1) Any testimony or writings made under oath may be used in subsequent proceedings for purposes of impeachment.

(2) The party who made a statement or presented evidence may agree to the submission, use, or disclosure of that statement or evidence.

(b) In the reasonable discretion of the trial court, if the panel findings as to any question under RSA 519-B:6 are unanimous and unfavorable to the plaintiff, the findings are admissible in any subsequent trial of the medical injury case.

II. The confidentiality provisions of this section shall not apply if the findings were influenced by fraud.

III. The deliberations and discussion of the panel shall be privileged and confidential, and no panel member may be asked or compelled to testify at a later court proceeding concerning the deliberations, discussions, or findings, except such deliberation and discussion as may be required to prove an allegation of fraud.

519-B:9 Mandatory Instructions.

I. When panel findings are offered and admitted into evidence in a subsequent court action in accordance with RSA 519-B:8, I(b), the trial court shall provide the following information to the jury to provide a basis for the jury to understand the nature of the panel findings and to put the panel findings in context in evaluating all of the evidence presented at the trial:

(a) The panel process is a preliminary procedural step through which malpractice claims proceed.

(b) The panel in this case consisted of (insert the name and identity of the members).

(c) The panel conducts a summary hearing based on offers of proof and review of documentary evidence only without the benefit of live witness testimony and is not bound by the rules of evidence.

(d) The hearing is not a substitute for a full trial and did not include all of the evidence that is presented at the trial.

(e) The jury is not bound by the findings of the panel and it is the jurors' duty to reach their own conclusions based on all of the evidence presented to them.

(f) The panel proceedings are privileged and confidential. Consequently, the parties may not comment on the panel findings or proceedings except as provided in subparagraphs (a) through (e).

II. The information specified in paragraph I shall be provided to the jury when the findings are admitted into evidence and when the court instructs the jury prior to submitting the case to the jury.

519-B:10 Effect of Panel Findings. Unanimous findings entered by the panel under RSA 519-B:6, I shall be implemented as follows.

I. If findings are in the plaintiff's favor, the defendant may promptly enter into negotiations to pay the claim or admit liability. If liability is admitted, the claim may be submitted to the panel, upon agreement of the parties, for determination of damages.

II. If the findings are in the defendant's favor, the plaintiff shall release the claim or claims based on the findings, without payment, or be subject to the admissibility of those findings in the discretion of the trial court, under RSA 519-B:8, I(b).

519-B:11 Medical Malpractice Panel and Insurance Oversight Committee Established.

I. There is established a committee to study medical malpractice insurance rates in this state and the mandatory panels for medical injury claims process.

II. The committee shall consist of 4 members of the senate appointed by the senate president, and 4 members of the house of representatives, appointed by the speaker of the house of representatives. The house members shall include at least:

(a) One member of the house judiciary committee.

(b) One member of the house health, human services and elderly affairs committee.

(c) One member of the house commerce committee.

III. The members of the committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Five members of the committee shall constitute a quorum.

IV. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

V. The committee shall review and analyze information provided by the administrative office of the courts and the insurance department related to medical injury liability claim activity in order to determine the effectiveness of mandatory screening panels for medical injury claims established in this chapter. The committee's review shall include, but not be limited to, whether medical malpractice insurance premiums have been affected and whether there has been any limitation of access to the courts by injured parties.

VI.(a) The committee shall make an interim report of its findings about medical liability insurance rates and the mandatory panel process and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before December 1, 2008.

(b) The committee shall make a final report of its findings about medical liability insurance rates and the mandatory panel process and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before December 1, 2010. The report shall include a recommendation to terminate, continue, or amend RSA 519-B.

519-B:12 Reports.

I.(a) The administrative office of the courts shall collect data on medical injury claims and submit a report on the screening panel process to the committee established in RSA 519-B:11 and to the insurance commissioner on or before September 30 of each year.

(b) The report required by this paragraph shall include the number of medical injury cases filed, pending, and resolved; and the number of panel hearings and the number of panel hearing days during the fiscal year ending on the June 30 preceding the report date.

(c) The report required by this paragraph shall also include, for medical injury cases resolved during the fiscal year:

(1) The mean and median lengths of time from initial filing to final resolution.

(2) The number and average settlement amount of cases that were resolved prior to the panel hearing.

(3) The number and average settlement amount of cases that were resolved after a panel hearing but before a trial.

(4) The number and average settlement amount of cases that were resolved by or after a jury verdict.

(d) The report required by this paragraph shall also include, for medical injury cases in which a panel made findings during the fiscal year, the number of cases that fell into each category of possible results of a panel hearing (unanimous for the plaintiff; majority for the plaintiff; unanimous for the defendant; majority for the defendant), the status, and, if applicable, the results of the cases in each category.

(e) To the extent possible, the report required by this paragraph shall include comparative data from the previous 5 years.

II.(a) The insurance commissioner shall report to the committee established in RSA 519-B:11 annually, on or before November 1 of each year, on the medical malpractice market and the effects of the panel process established in this chapter. Such reports shall include, but not be limited to, the average rates of medical liability insurance for categories of medical providers and specialties identified by the insurance commissioner, the frequency and severity of medical injury claims, and the time for resolution of medical injury claims from first notice to final resolution.

(b) The insurance commissioner may adopt rules to collect the data from insurers necessary to prepare the report required by this paragraph. To the extent the commissioner collects information from insurers regarding individual claims, loss adjustment and other expenses, reserves, indemnity payments, or other financial information that is not otherwise reported to the commissioner and available to the public, such information shall be treated as examination materials, kept confidential, and not be subject to RSA 91-A.

2 Repeal. RSA 519-A, relative to professional malpractice claims, is repealed.

3 Repeal. The following are repealed:

I. RSA 519-B:11, relative to the medical malpractice panel and insurance oversight committee.

II. RSA 519-B:12, relative to reports.

4 Effective Date.

I. Section 3 of this act shall take effect December 31, 2010.

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

The question is on the adoption of the committee amendment.

A roll call was requested by Senator Clegg.

Seconded by Senator Green.

The following Senators voted Yes: Burling, Eaton, Gottesman, Foster, Clegg, Larsen, Letourneau, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Bragdon, Gatsas, Barnes, Martel, Morse.

Yeas: 11 - Nays: 13

Amendment failed.

The question is on the motion of ought to pass.

A roll call was requested by Senator Gatsas.

Seconded by Senator Larsen.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Bragdon, Larsen, Gatsas, Barnes, Martel, Estabrook, Morse, Fuller Clark.

The following Senators voted No: Eaton, Gottesman, Foster, Clegg, Letourneau, D'Allesandro, Hassan.

Yeas: 17 - Nays: 7

Adopted.

Ordered to third reading.

SB 81, providing recourse for homeowners in manufactured housing parks who are confronted with unjustifiable rent increases. Public and Municipal Affairs Committee. Inexpedient to Legislate, Vote 4-2. Senator Barnes for the committee.

The question is on the committee report of inexpedient to legislate.

A roll call was requested by Senator Flanders.

Seconded by Senator Green.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Odell, Roberge, Eaton, Bragdon, Gottesman, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.

The following Senators voted No: Burling, Green, Flanders, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 15 - Nays: 9

Committee report of inexpedient to legislate is adopted.

SB 88, relative to emergency medical transportation. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 6-0. Senator Burling for the committee.

**Public and Municipal Affairs
March 30, 2005
2005-0971s
10/05**

Amendment to SB 88

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 New Paragraph; Emergency Medical and Trauma Services; Exception. Amend RSA 153-A:16 by inserting after paragraph II the following new paragraph:

III. If a physician determines that an inter-facility transfer of a critical access hospital patient is urgent and the availability of 2 licensed emergency medical services providers exceeds 30 minutes, a registered nurse, certified in emergency nursing and advanced cardiac life support and after completion of an inter-facility training module, may act as the responsible provider for the patient during the transfer.

Amendment adopted.

The question is on the adoption of the bill as amended.

Senator Burling moved to divide the question.

The question was divided without objection.

The question is on the adoption of section one.

Motion failed.

The question is on the adoption of sections two and three.

Adopted.

Ordered to third reading.

SB 225-FN-A, establishing video lottery. Ways and Means Committee. Ought to Pass, Vote 3-1. Senator D'Allesandro for the committee.

The question is on the motion of ought to pass.

A roll call was requested by Senator D'Allesandro.

Seconded by Senator Roberge.

The following Senators voted Yes: Gallus, Eaton, Clegg, Martel, D'Allesandro, Morse.

The following Senators voted No: Johnson, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Bragdon, Gottesman, Foster, Larsen, Gatsas, Barnes, Letourneau, Estabrook, Hassan, Fuller Clark.

Yeas: 6 - Nays: 18

Motion failed.

Senator Morse re-refer to committee.

The question is on the motion of re-refer.

A roll call was requested by Senator Gatsas.

Seconded by Senator Morse.

The following Senators voted Yes: Gallus, Burling, Green, Flanders, Eaton, Gottesman, Foster, Clegg, Larsen, Gatsas, Martel, D'Allesandro, Estabrook, Morse, Hassan.

The following Senators voted No: Johnson, Kenney, Boyce, Odell, Roberge, Bragdon, Barnes, Letourneau, Fuller Clark.

Yeas: 15 - Nays: 9

Adopted.

SB 225 is re-referred to the Ways and Means Committee.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION**Third Reading and Final Passage**

SB 38-FN, relative to school building aid for certain receiving districts.

SB 43, relative to the administration of estates of persons presumed dead.

SB 79, relative to the governance of the regional community-technical colleges.

SB 88, relative to emergency medical transportation.

SB 101-FN, relative to developmentally disabled services for persons under 21 years of age.

SB 125-FN, repealing health status and geographic location as small group rating factors, clarifying certain other issues relating to small group insurance, and establishing a reinsurance mechanism.

SB 145-FN, establishing a medical/vision advisory board.

SB 146-FN-A-L, establishing a civil legal services fund consisting of court filing fee surcharges for the purpose of establishing and operating a New Hampshire Legal Assistance office in Nashua and to provide for additional staff in other New Hampshire Legal Assistance offices.

SB 147-FN-L, relative to eligibility for local assistance.

SB 169, relative to access to confidential court records.

SB 170, revising the nurse practice act.

SB 171, establishing a committee to study HIV/AIDS service delivery.

SB 186, allowing probate court judges and district court justices to sit on probate or district court cases.

SB 196-FN, requiring a hearing when medical malpractice insurance rates change.

SB 214, relative to screening panels for medical injury claims.

ANNOUNCEMENTS**RESOLUTION**

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, and processing enrolled bill reports.

Adopted.

In recess to the Call of the Chair.

SB 43, relative to the administration of estates of persons presumed dead.

SB 79, relative to the governance of the regional community-technical colleges.

SB 88, relative to emergency medical transportation.

SB 101-FN, relative to developmentally disabled services for persons under 21 years of age.

SB 125-FN, repealing health status and geographic location as small group rating factors, clarifying certain other issues relating to small group insurance, and establishing a reinsurance mechanism.

SB 145-FN, establishing a medical/vision advisory board.

SB 146-FN-A-L, establishing a civil legal services fund consisting of court filing fee surcharges for the purpose of establishing and operating a New Hampshire Legal Assistance office in Nashua and to provide for additional staff in other New Hampshire Legal Assistance offices.

SB 147-FN-L, relative to eligibility for local assistance.

SB 169, relative to access to confidential court records.

SB 170, revising the nurse practice act.

SB 171, establishing a committee to study HIV/AIDS service delivery.

SB 186, allowing probate court judges and district court justices to sit on probate or district court cases.

SB 196-FN, requiring a hearing when medical malpractice insurance rates change.

SB 214, relative to screening panels for medical injury claims.

ANNOUNCEMENTS

RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, and processing enrolled bill reports.

Adopted.

In recess to the Call of the Chair.