

SB 163-FN - AS INTRODUCED

2017 SESSION

17-0404

06/09

SENATE BILL ***163-FN***

AN ACT relative to live medical testimony in courts.

SPONSORS: Sen. Lasky, Dist 13; Sen. Reagan, Dist 17; Sen. Soucy, Dist 18; Rep. Wall, Straf. 6; Rep. Hynes, Hills. 21; Rep. Walz, Merr. 23; Rep. Keans, Straf. 23; Rep. McBeath, Rock. 26

COMMITTEE: Judiciary

ANALYSIS

This bill permits certain medical and dental records and reports to be admissible in civil proceedings as evidence of the necessity of and charges for certain medical and dental services, the diagnosis and prognosis of a physician or dentist, and certain opinions of physicians and dentists.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struck through]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seventeen

AN ACT relative to live medical testimony in courts.

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

1 1 Statement of Purpose.

2 I. The general court finds that:

3 (a) In the trial of lawsuits alleging bodily injury, requiring live testimony from
4 physicians and other medical professionals adds significantly to the cost of litigation for all parties.

5 (b) Introducing live medical testimony is time consuming and adds significantly to the
6 cost to the judicial system of conducting such trials.

7 (c) Requiring live medical testimony burdens physicians and other medical
8 professionals by taking them away from their already-busy medical practices for hours or even days
9 at a time, reducing their ability to provide needed attention and care to their patients.

10 (d) Requiring live medical testimony can strain the physician-patient relationship,
11 possibly affecting the quality of care. Many physicians refuse to give testimony; some refuse to
12 treat patients for whom later testimony might be needed.

13 (e) Live medical testimony is often unnecessary as the information contained within the
14 medical provider's records and reports adequately addresses the issues to be decided.

15 (f) Live medical testimony is not required, and typically is not offered, in hearings held
16 pursuant to RSA 281-A:43 with regard to workers' compensation claims, with no ill consequences in
17 terms of the department of labor's ability to reach fair and equitable decisions efficiently.

18 II. The purpose of this act is to reduce the costs to the parties and to the judicial system,
19 and to reduce the burdens on medical practitioners and their patients, of requiring live medical
20 testimony in trials of tort claims seeking damages on account of bodily injury.

21 2 New Section; Competency of Witnesses; Medical and Hospital Records, Bills, and Reports;
22 Evidence in Certain Civil Cases. Amend RSA 516 by inserting after section 29-b the following new
23 section:

24 516:29-c Medical and Hospital Records, Bills, and Reports; Evidence in Certain Civil Cases.

25 I. In any civil proceeding before a court, commission, or an agency, except as provided in
26 paragraph V, hospital medical records, physician's and dentist's records' reports relating to medical,
27 dental, or hospital services; prescriptions, orthopedic appliances rendered to or prescribed for an
28 injured person, reports of any medical or dental examination of such injured person, and itemized
29 medical or hospital bills reflecting the amounts charged for such services, prescriptions, or
30 appliances, which are subscribed and sworn to under the penalties of perjury by the physician,
31 dentist, authorized agent of the hospital or health maintenance organization rendering such

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1 services, or the pharmacist or retailer of orthopedic appliances, shall be admissible, subject to the
2 court's discretion, as evidence of:

3 (a) The reasonable necessity of such services or treatments and the fair and reasonable
4 charge for such services;

5 (b) The diagnosis and prognosis of the physician or dentist;

6 (c) The opinion of such physician or dentist as to the proximate cause of the diagnosed
7 condition; and

8 (d) The opinion of such physician, dentist, or medical provider as to disability or
9 incapacity, if any, proximately resulting from the diagnosed condition.

10 II. Written notice of the intention to offer such record, report, or bill as evidence, together
11 with a copy of such report or bill, shall be given to the opposing party or parties, or to their
12 attorneys, on or before the date established for disclosure of expert testimony pursuant to
13 RSA 516:29-b or such other time as may be set by the court.

14 III. Nothing in this section shall be construed to limit the right of any party to the action or
15 proceeding to summon, at his or her own expense, such physician, dentist, pharmacist, retailer of
16 orthopedic appliances, or agent of such hospital or health maintenance organization, or the records
17 of such physician, dentist, hospital, or health maintenance organization, for the purpose of cross-
18 examination with respect to such record, report, or bill, or to rebut the contents thereof, or for any
19 other purpose, nor to limit the right of any party to the action or proceeding to summon any other
20 person to testify in respect to such record, report, or bill, or for any other purpose.

21 IV. Nothing in this section shall be construed to render admissible any facts, opinions, or
22 information that would not be admissible if testified to by a live witness.

23 V. This section shall not apply to any action for medical injury as defined in RSA 507-E:1.
24 Nor shall this section apply to any action to recover for bodily injuries in which the plaintiff claims
25 to have incurred medical expenses in excess of \$25,000.

26 VI. In this section:

27 (a) "Physician" and "dentist" shall include any person who is licensed to practice as such
28 under the laws of the jurisdiction within which such services were rendered, and shall include
29 medical doctors, chiropodists, chiropractors, optometrists, osteopaths, physical therapists,
30 podiatrists, psychologists, and other medical personnel licensed to practice under the laws of the
31 jurisdiction within which services were rendered.

32 (b) "Hospital" means any hospital licensed under RSA 151:2, or licensed or regulated by
33 the laws of any other state, or by the laws and regulations of the United States of America,
34 including hospitals of the Veterans Administration or similar type institutions, whether
35 incorporated or not.

36 (c) "Health maintenance organization" means a public or private organization,
37 organized under the laws of any state or the federal government which:

38 (1) Provides or otherwise makes available to enrolled participants health care

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1 services, including at least the following basic health care services: usual physician services,
2 hospitalization, laboratory, x-ray, emergency and preventive services, and out-of-area coverage; and

3 (2) Is compensated, except for co-payments, for the provision of the basic health care
4 services listed in subparagraph (1) to enrolled participants on a predetermined periodic basis
5 without regard to the date on which health care services are provided; a predetermined periodic
6 basis shall be fixed with out regard to the frequency, extent, or kind of health care service actually
7 provided; and

8 (3) Provides physician services primarily:

9 (A) Directly through physicians who are either employees or partners of such
10 organization;

11 (B) Through arrangements with individual physicians or one or more groups of
12 physicians organized in a group practice or individual basis; or

13 (C) Through a combination of (A) and (B).

14 3 Effective Date. This act shall take effect January 1, 2018.

**SB 163-FN- FISCAL NOTE
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AN ACT relative to live medical testimony in courts.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2018	FY 2019	FY 2020	FY 2021
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill allows certain medical and dental records to be admissible in certain civil cases as evidence of the necessity of and charges for the services, the diagnosis and prognosis, the opinion of the physician or dentist as to cause of the diagnosed condition and the opinion of the provider as to disability or incapacity proximately resulting from the diagnosed condition. The proposed new section does not apply to medical injury actions under RSA 507-E:1 or to any claim where the medical expenses are in excess of \$25,000.

The Judicial Branch states that given the limited applicability of the proposed bill and the fact that attorneys already reach agreement in many cases to submit medical evidence in lieu of live testimony when the issues are not contested, the Judicial Branch concludes that the fiscal impact of the proposed bill on the Branch will be minimal.

The Department of Justice states the fiscal impact of this bill on the Department is likely to be limited. While there may be instances where the law change would impact a civil lawsuit defended by the Department, given that it is difficult to estimate if any of these cases would result in additional resources or funds, no fiscal impact under these circumstance can be projected. Further it is expected that any fiscal impact to the Department of Justice would be absorbed using existing resources.

The Judicial Council states this bill will not impact its operating budget.

The New Hampshire Association of Counties states this bill will not impact counties.

AGENCIES CONTACTED:

Judicial Branch, Department of Justice, Judicial Council, and New Hampshire Association of
Counties