

CHAPTER 211
HB 187 - FINAL VERSION

24Feb2021... 0161h
7Apr2021... 0952h
05/20/2021 1444s
24Jun2021... 2036CofC

2021 SESSION

21-0173
04/05

HOUSE BILL **187**

AN ACT relative to the emergency powers of the commissioner of health and human services and relative to the membership of the oversight committee on health and human services.

SPONSORS: Rep. Marsh, Carr. 8; Rep. Lang, Belk. 4; Rep. Baldasaro, Rock. 5; Rep. Edwards, Rock. 4; Rep. Craig, Coos 4; Rep. Prout, Hills. 37; Rep. J. Osborne, Rock. 4; Rep. Salloway, Straf. 5; Rep. Blasek, Hills. 21

COMMITTEE: Health, Human Services and Elderly Affairs

AMENDED ANALYSIS

This bill makes various changes to the powers of the commissioner of the department of health and human services during a public health emergency; authorizes the legislature to review, and rescind by a 2/3 vote, emergency orders issued by the commissioner; gives a person subject to a treatment order for a communicable disease a right to a hearing on the order; and amends the membership and duties of the ethics oversight advisory committee. The bill also amends the membership on the health and human services oversight committee.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to the emergency powers of the commissioner of health and human services and relative to the membership of the oversight committee on health and human services.

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

1 211:1 Department of Safety; Public Health Emergency Management Powers. Amend RSA 21-
2 P:53 to read as follows:

3 21-P:53 Public Health Powers and Duties. During the existence of a state of emergency under
4 this chapter, the commissioner of health and human services shall have the following powers and
5 duties, subject to the direction and control of the governor, which are in addition to those set forth in
6 RSA 141-C; provided that such powers and duties shall be limited to the specific nature of the
7 emergency, its geographic limits, and the conditions that brought it about, as specified in the
8 declaration of the state of emergency:

9 I. The commissioner shall have the responsibility and authority to carry out all public health
10 activities within the state in cooperation and collaboration with the division of homeland security
11 and emergency management.

12 II. The commissioner may, without the approval of the ~~[governor's]~~ **executive** council or the
13 legislative fiscal committee, and notwithstanding the provisions of RSA 4:45, 9:13-d, and 9:19, ~~[and~~
14 ~~any other law to the contrary,]~~ purchase and distribute anti-toxins, serums, vaccines, immunizing
15 agents, antibiotics, and other pharmaceutical agents that the commissioner deems to be in the
16 interest of public health.

17 III. If there is a statewide or regional shortage or threatened shortage of any anti-toxins,
18 serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents, the
19 commissioner may control, ~~[restrict]~~ **prioritize**, and ration the use, sale, dispensing, distribution, or
20 transportation of such products as necessary to best protect the health, safety, and welfare of the
21 people of this state. In making rationing or other supply and distribution decisions, the
22 commissioner shall determine high risk or critical need groups that shall receive priority for such
23 products.

24 **III-a. The commissioner shall have no power to restrict the ability of a licensed**
25 **practitioner to prescribe pursuant to RSA 329 and RSA 326-B.**

26 **III-b. If during a public health emergency, a treatment or vaccination becomes**
27 **available which is anticipated to be in limited supply, the commissioner shall develop, in**

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1 *consultation with the ethics oversight advisory committee, established in RSA 141-C:27, a*
2 *plan for its distribution.*

3 IV. The commissioner may investigate any incident or imminent threat of any disease or
4 health condition that may be caused by a natural disaster, radiation or chemical exposure, or the
5 release of any microorganism, infectious substance, or naturally occurring or manufactured
6 biological product, that poses a risk of a significant number of human fatalities or incidents of
7 permanent or long-term disability. Such investigations may include requiring information from any
8 health care provider or other person affected by, or having information related to, the incident or
9 threat, inspections of buildings and conveyances and their contents, laboratory analysis of samples
10 collected during the course of such inspections, and requiring a physical examination and the
11 provision of specimens of body secretions, excretions, fluids, and discharges for laboratory
12 examination of any person having a disease or health condition that necessitates an investigation
13 under this paragraph.

14 V. The commissioner may order a person to undergo such medical care as may be necessary
15 to treat or prevent an incident or threat of disease or other health condition prompting an
16 investigation pursuant to paragraph IV. Such care may include immunization of individuals as
17 necessary to prevent the spread of contagious disease, except that an individual may refuse
18 treatment or immunization pursuant to the provisions of ~~[RSA 141-C:15, VI]~~ ***RSA 141-C:16 and***
19 ***RSA 141-C:20-c.***

20 VI. Any order compelling an investigation, physical examination, the provision of specimens,
21 medical treatment or care, or immunization, and any other order of the commissioner under this
22 chapter, shall be subject to the due process requirements of RSA 141-C:14-a.

23 VII. The department of health and human services shall acquire and retain only the
24 minimum amount of information, specimens, and samples relating to individuals necessary to carry
25 out its obligations under this section. Any genetic testing of specimens and samples shall be limited
26 to the viruses, bacteria, fungi, or other microorganisms therein. Personally identifiable information
27 shall not be acquired or retained unless necessary for the department to carry out its responsibilities
28 under this section, RSA 141-C, or any other provision of law. Such information shall not be retained
29 beyond the duration of the state of emergency without the approval of the governor and executive
30 council, which information shall be subject to the confidentiality provisions of RSA 141-C:10.

31 ***VIII. As soon as practicable, the commissioner shall notify the speaker of the house***
32 ***of representatives, the senate president, the chair of the house committee on health, human***
33 ***services and elderly affairs and the chair of the senate committee on health and human***
34 ***services of the impending issuance of emergency orders under this section and provide a***
35 ***description of such orders.***

36 ***IX. The legislature may terminate an emergency order issued under this chapter by***
37 ***a majority vote of both the senate and the house of representatives. A majority vote shall***

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1 *consist of a majority of members present and voting in each chamber acting separately.*
2 *The commissioner's power to renew an emergency order under this chapter shall terminate*
3 *upon a majority vote of both chambers under this section; provided, however, that such vote*
4 *shall not preclude the commissioner from issuing a new emergency order during the state*
5 *of emergency for different circumstances.*

6 211:2 Communicable Disease; Ethics Committee. Amend RSA 141-C:27 to read as follows:

7 141-C:27 Ethics ***Oversight Advisory*** Committee.

8 I. There is hereby established an ethics ***oversight advisory*** committee to offer advice to the
9 commissioner relative to the ethical issues that may be identified in the course of planning for, and
10 responding to, outbreaks of communicable disease that threaten to become epidemic or pandemic
11 ***and to review and provide recommendations for investigations, orders, and treatment***
12 ***ordered by the commissioner.***

13 II. The committee shall:

14 (a) Consider the ethical implications of any of the powers that may be exercised by the
15 commissioner under the provisions of this chapter including, but not limited to, the confiscation,
16 distribution, and rationing of anti-toxins, serums, vaccines, immunizing agents, antibiotics, and
17 other pharmaceutical agents, and mechanical equipment; the issuance and enforcement of orders of
18 isolation, quarantine, medical examination, and medical treatment; issues relative to information
19 sharing and confidentiality; and the provisions for due process for orders issued pursuant to this
20 chapter.

21 (b) ***Review, at least annually, a report of investigations conducted pursuant to***
22 ***RSA 141-C:9 and orders issued under RSA 21-P:53, V and VI, and provide recommendations***
23 ***to the department. Any information furnished to the committee shall be aggregated and***
24 ***de-identified. The department shall not share any confidential information with the***
25 ***committee.***

26 (c) ***Consider the competing rights of disabled persons who might be unable to***
27 ***comply with certain orders, health care workers who are entitled to a safe workplace, and***
28 ***the need to protect the public from communicable disease, and may recommend***
29 ***modification of orders to address specific concerns.***

30 (d) ***Consider both the need to protect the most vulnerable members of society as***
31 ***well as the need for the most efficacious means to control a public health emergency when***
32 ***consulting with the commissioner pursuant to RSA 21-P:53, III-b in developing a plan for***
33 ***the distribution of a new treatment or vaccination.***

34 III. The members of the committee shall be as follows:

35 (a) ***Two members of the house or representatives, one of whom shall be from the***
36 ***minority party, appointed by the speaker of the house of representatives.***

37 (b) ***One member of the senate, appointed by the senate president.***

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1 (c) The director of the *department of health and human services*, division of public
2 health services.

3 ~~(b)~~ (d) The state epidemiologist.

4 ~~(e)~~ (e) The attorney general, or designee.

5 ~~(d)~~ (f) A representative of a public health network, appointed by the commissioner.

6 ~~(e)~~ (g) A representative from a college or university public health program, appointed
7 by the commissioner.

8 ~~(f)~~ (h) A chief of police or a police officer of a local police department, appointed by the
9 New Hampshire Association of Chiefs of Police.

10 ~~(g)~~ (i) A chief of a local fire department, appointed by the New Hampshire Association
11 of Fire Chiefs.

12 ~~(h)~~ (j) A physician, licensed under RSA 329, appointed by the New Hampshire Medical
13 Society.

14 ~~(i)~~ (k) The commissioner of the department of safety, or designee.

15 ~~(j)~~ (l) A member of a fire department with a minimum of EMT-B certification,
16 appointed by the Professional Firefighters of New Hampshire.

17 ~~(k)~~ (m) A representative of a hospital, appointed by the New Hampshire Hospital
18 Association.

19 ~~(l) A county representative, appointed by the New Hampshire Association of Counties.]~~

20 (n) *The commissioner of the department of labor, or designee.*

21 (o) *A representative of the Disability Rights Center of New Hampshire,*
22 *appointed by the center.*

23 IV. ~~[The commissioner shall appoint a member of the committee to act as chairperson.]~~ *The*
24 *committee shall elect one of the legislative members as chairperson. Legislative members*
25 *of the committee shall receive mileage at the legislative rate when attending to the duties*
26 *of the committee.* The committee shall meet initially within 30 days of the effective date of this
27 section and then as regularly as the chairperson shall direct.

28 V. The commissioner may at any time direct questions to the committee or request guidance
29 on ethical issues.

30 VI. The committee ~~[shall be solely advisory in nature and any guidance, guidelines, or~~
31 ~~protocols issued by the committee shall not be binding on the commissioner]~~ *may provide advisory*
32 *opinions, including draft guidance, guidelines, or protocols, which shall not be binding on*
33 *the commissioner or any member of the public.*

34 211:3 Department of Health and Human Services; Oversight Committee. Amend RSA 126-A:13,
35 I to read as follows:

36 I. There shall be an oversight committee on health and human services consisting of ~~[5]~~ *the*
37 *following* members ~~[as follows]:~~

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1 (a) [~~Two~~] **Three** members of the senate, at least one of whom shall be a member of the
2 senate health and human services committee and one of whom shall be a member of the senate
3 finance committee, appointed by the president of the senate~~;~~ ~~and~~.

4 (b)(1) [~~Three~~] **Five** members of the house of representatives, [2] **3** of whom shall be from
5 the health, human services and elderly affairs committee, and one of whom shall be from the house
6 finance committee ***division responsible for the department of health and human services***,
7 appointed by the speaker of the house of representatives.

8 (2) ***Two members of the house of representatives, one of whom shall be***
9 ***appointed by the speaker of the house of representatives, and one of whom shall be***
10 ***appointed by the leader of the minority party of the house of representatives, shall be***
11 ***available to serve, at the request of the committee chairperson, as an alternate member for***
12 ***an absent committee member. An alternate member shall have full voting authority while***
13 ***servng for an absent committee member.***

211:4 Effective Date. This act shall take effect upon its passage.

Approved: Enacted in accordance with Part II, Article 44 of the N.H. Constitution, without the
signature of the Governor, August 11, 2021

Effective Date: August 11, 2021