

# Senate Health and Human Services Committee

*Kirsten Koch 271-3266*

**HB 220**, establishing medical freedom in immunizations.

**Hearing Date:** April 14, 2021

**Time Opened:** 10:21 a.m.

**Time Closed:** 12:27 p.m.

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

**Members of the Committee Absent :** None

**Bill Analysis:** This bill establishes the policy for medical freedom in immunizations for communicable diseases.

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**Sponsors:**

Rep. Lang

Rep. Nunez

Rep. Rouillard

Rep. Pearl

Rep. Binford

Rep. Harvey-Bolia

Rep. Rice

Rep. Notter

Rep. Bordes

Rep. Pauer

Sen. Avard

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**Who supports the bill:** There are 506 names signed in support of this bill. To view the sign in sheet please contact the Legislative Aide to the Senate Health and Human Services Committee, Kirsten Koch, at [kirsten.koch@leg.state.nh.us](mailto:kirsten.koch@leg.state.nh.us)

**Who opposes the bill:** Dr. Christine Arsnow, NH Pediatric Society & NH Medical Society; Dr. Gary Sobelson, NH Medical Society; Beth Daly, NH DHHS; Neo Phoenix; Phyllis Nash; Patricia Anastasia; Courtney Tanner; Dorothy Ellis; Karen Testerman; Holly Atwell; Dede Walsh; Sandie Lee Brooks; Hridaya Sivalingam; Susan Bruce; Paula Minnehan, NH Hospital Association; Erik Shessler; Patricia Hess; Elizabeth Sargent, NH Society of Health-System Pharmacists; Richard Cohen, NH Pharmacist Association; Tejasinha Sivalingam; Alexandra Menella; Seana Ceplo; Natlie Brinely; Janet Lucas; Lucy Carter.

**Who is neutral on the bill:** Kenneth Norton, The National Alliance on Mental Illness (NAMI-NH).

**Summary of Testimony Presented:**

**Representative Leah Cushman, Hillsborough 2**

- Rep. Cushman introduced and testified in support of this bill.
- Rep. Cushman said, individuals have the right to treat their own bodies, and the right to accept or decline treatment without coercion.

- Rep. Cushman said, as amended by the House, there are exceptions to the bill:
  - This bill does not supersede school vaccination requirements.
  - There are some accommodation conditions for state law.
  - Under this bill involuntarily submission of the mentally ill for treatment can still be done.
  - Vaccines for communicable diseases are still required.
- Rep. Cushman said, this bill requires due process for right to use. Patient self-determination is valuable. This bill declares that bodily autonomy is important. The government cannot mandate medical decisions.

#### **Representative Tim Lang, Belknap 4**

- Rep. Lang testified in support of this bill.
- Rep. Lang said he did not want to see this bill intervene with important procedures, for example, the life-saving work of first responders or required vaccinations for schools. This bill, as amended, is a good compromise.
- Rep. Lang said, this bill protects the inherent right to bodily integrity for the citizens of NH.
- Sen. Avard asked, can schools require parents at graduations to get vaccines to attend?
- Senator Avard referenced the UNH graduation.
  - Rep. Lang, my inclination is no. I serve on the Governor's re-opening task force. They have guidance available to them to safely host a large event.
- Sen. Bradley asked, would you have objection if we made this bill effective upon passage?
  - Rep. Lang did not have an objection.
- Sen. Avard asked, what is the penalty if someone violates this bill?
  - Rep. Lang said, I imagine it would be a civil penalty. We did not put one in here. I assume the Attorney General would decide that.
- Sen. Sherman asked, how does this address minors?
  - Rep. Lang, what does the section say?
- Sen. Sherman referenced Section 1 and said, suppose a child has a curable cancer and the recommendation is that they undergo standard chemo. The family wants to take the child elsewhere for different treatment. The state has a compelling obligation to protect the child. How does this bill protect the minor when there is a conflict with the parents and the medical providers?
  - Rep. Lang said, I would think federal law would override state law and there would be judicial intervention in that case.
- Sen. Sherman asked, would you be amenable to an amendment to protect a minor?
  - Rep. Lang said, I would not object to an amendment that clarifies that so long as it does not get into parental rights.
- Sen. Whitley asked, is this a problem in NH? Are there forced vaccinations?
  - Rep. Lang said, this bill came before the COVID-19 pandemic. If you want to be a foster parent, you and your family all must be vaccinated. Religious exemptions did not count there. You must be vaccinated. I believe that was an infringement on what could be perfectly good foster families.
- Sen. Avard said, would you be amenable to a fine for if someone violates this law?

- Rep. Lang said yes.
- Sen. Bradley said, would you and members of the House be amenable to an amendment that made this for a person of the age of majority (18+ years old)?
  - Rep. Lang said, no, similar to Section 3, I would reference federal guidance in extreme cases. We do not want narrow guidance. I do not want it to infringe on parental rights.
- Sen. Sherman said, if you are a private commercial entity and you do not believe it is safe for people who are not vaccinated come onto your property, would your bill prevent a private entity from preventing an individual from participating on their property?
  - Rep. Lang said, that was provided for and there is a relevant United States Supreme Court case for that. This is about compelling individual rights. Customers have the right to shop and go where they want. I think there is a case to be made that individual business could make a requirement. I would not say that is a good idea.
- Sen. Sherman said, are we telling commercial businesses what to do with this bill?
  - Rep. Lang said, that is not what we are intending to do with this bill.
- Sen. Whitley said, this bill is a policy statement. This may interfere with federal law. Could we have the Attorney General weigh in?
  - Rep. Lang said, yes, I always welcome the Attorney General to weigh in. If there is a problem, let's fix it, but I do not believe this bill violates federal law.

*Representative Lang later testified again at the end of the hearing.*

- Rep. Lang said, this bill will not affect vaccination rates. This about protecting those that choose not to get vaccinated. Where there is a risk there needs to be a choice.
- Sen. Bradley asked, what if the Senate made this bill just about the COVID-19 vaccine and left all the other vaccines for another day?
  - Rep. Lang said, I believe in compromise. I will take what I can get, but we'll need to come back to it again and again.
- Sen. Whitley said, I remain perplexed on the need for this bill. We do not have a mandate, a passport, or etc. is this trying to solve a problem that doesn't exist?
  - Rep. Lang said, there is a national conversation going on about COVID-19 passports. This bill prevents those forward events. This also goes back to foster parents being required to get vaccines by the state. I see steps being taken that I do not like.

### **Dr. Peter McCullough**

- Dr. McCullough said he is an expert in COVID-19 and works at the College of Medicine at Texas A&M.
- Dr. McCullough said, COVID-19 is a treatable illness early. COVID recovered patients have no risk of getting it again and cannot receive or transmit virus. Frail seniors, pregnant women, children were excluded from trials.

- Dr. McCullough said, currently we are pressuring individuals with safety at risk. COVID recovered patients have 2-3 times increased safety risks after vaccinated. Any individual felt pressured to get a vaccine would have to contemplate complex safety data.
- Dr. McCullough said, there have been 2,342 deaths in the 60 million COVID vaccinations, as well as hospitalizations and reactions. The vaccine failure rate is higher than we thought. It is immoral, unethical, and illegal to pressure individuals into vaccination.
- Sen. Sherman asked about Dr. McCullough's expertise.
  - Dr. McCullough said, I am considered to be a field expert. I am an epidemiologist.
- Sen. Sherman said, are you saying asymptomatic individuals cannot transmit the virus?
  - Dr. McCullough said, asymptomatic transmission is less than 1% of transmissions.
- Sen. Sherman asked, if you wouldn't mind providing the committee with those references it would be helpful. Wouldn't you agree if they are already forming antibodies that they are well along and not contagious?
  - Dr. McCullough said, we concluded the case contact did not transmit it. These are my opinions. They may not align with other doctors' opinions.

### **Beth Daly, Bureau Chief of Infection Control, NH DHHS**

- Ms. Daly testified in opposition to this bill.
- Ms. Daly said, it is critical for certain immunization requirements remain in place to protect individuals.
- Ms. Daly said, we appreciate the amendments made in the house, but we still have some concerns. We are worried about inconsistent application throughout the state. We are primarily concerned about the bill for vaccinations for employees in health care facilities. If we eliminate the employee vaccination requirement, employee vaccinations will decrease, and this will put our most vulnerable patients in health facilities at risk.
- Sen. Whitley said, it sounds like federal law handles the delicate balance.
  - Ms. Daly said, we believe there already is a balance and there would be harmful impacts for this legislation.
- Sen. Avard said, if an employer forced me to get a vaccine, that gives the employer the right to jeopardize my health?
  - Ms. Daly said, we are talking about balancing perspectives here.
- Sen. Avard said, what are the potential risks for taking the vaccines? There are always health risks. These vaccine risks are not advertised on TV. Shouldn't I have the choice?
  - Ms. Daly said, the vaccines in use today are very safe.
- Sen. Avard said, over the long term will these vaccines cause any birth defects?
  - Ms. Daly said, the recommendation is for pregnant women to get vaccinated.
- Sen. Sherman said, we lead the country for vaccinations in senior facilities. What would be the impact if we were not to require or encourage vaccination for those who work in these facilities?
  - Ms. Daly said, once COVID-19 is introduced into one of these facilities it spreads rapidly.

- Sen. Sherman said, at the hospital I work at, during flu season, if you opt to not get vaccinated then you must wear a mask. Don't we already have protections for people that do not want to get vaccinated at their workplace?
  - Ms. Daly said, yes, usually wearing a mask.
- Sen. Bradley said, do you have a definition for a health care worker in statute we could use?
  - Ms. Daly said, we use a definition from the CDC. It is quite broad from health services to food services and environmental services.
- Sen. Bradley said, if you could get that to us that would be helpful.
- Sen. Whitley said, isn't there a definition in NH statute?

### **Deana Pollard-Sacks, esq.**

- Ms. Pollard-Sacks testified in support of this bill.
- Ms. Pollard-Sacks said her expertise is in liberty jurisprudence and constitutional law.
- Ms. Pollard-Sacks said, we already have signs for how medical liberty is viewed by the courts.
- Ms. Pollard-Sacks said, one issue I saw in the bill is when a state can order treatment of the child over the state. No person can be compelled to receive unwanted medical intervention. In the state's interest for a minor, there is a very clear rule for age 18+ that no medical treatment may ever be mandated. An individual has a right to die by their condition, but not by assisted suicide.
- Ms. Pollard-Sacks said, no liberty has ever been protected stronger than medical liberty. Additionally, private hospitals may end up having more protections than public hospitals.

### **Dr. Christine Arsnow, NH Pediatric Society & NH Medical Society**

- Dr. Arsnow testified in opposition of this bill.
- Dr. Arsnow said, autonomy is important to an individual's health, but should not be preserved at the expense of another person. The vagueness of the wording in this bill is dangerous. This is a danger to vulnerable people. Foster families should be vaccinated to protect children in the government's care. This bill is not necessary to ensure medical freedom.
- Sen. Whitley said, isn't it true that vaccines are held to incredibly high standards?
  - Dr. Arsnow said, this is true. These vaccines are very well studied.
- Sen. Bradley said, all these COVID vaccines have been allowed on emergency FDA approval and have not been studied for decades.
  - Dr. Arsnow said, I was talking about routine childhood vaccines.

### **Representative Erica Layon, Rockingham 6**

- Rep. Layon testified in support of this bill.
- Rep. Layon said her expertise on vaccines and medical supplies comes from her time on wall street.

- Rep. Layon said COVID-19 vaccines have not gone through the approval process and have not gone through rigorous study. The safety and efficacy of these vaccines does not have sufficient evidence. There is only an emergency use authorization. There are risks that a conscientious person can see. People can choose not to get this vaccine and that is a logical choice.
- Sen. Sherman said, I hope you mean instead of “logical choice,” you mean a “personal choice.” Where in statute right now is anyone compelled to get a COVID vaccine? Adults do have a right to refuse the vaccine.
  - Rep. Layon said, this is a clarifying issue that is emerging. We want to make sure people are not forced to choose between their livelihood and their health risks. I understand why a pregnant woman would think she is at risk, because pregnant women were not studied. This is especially a problem for women who have not yet disclosed to their employer that they are pregnant but may need an exemption from the vaccine because they are pregnant.
- Sen. Sherman asked, where currently is a woman, pregnant or not, required to be vaccinated?
  - Rep. Layon said, I am talking about where a woman could get that medical exemption.

### **Dr. Jay Bhattacharya, Professor of Medicine at Stanford University**

- Dr. Bhattacharya said he has experience in infectious disease, immunology, and vaccine safety research with the FDA.
- Dr. Bhattacharya said he will only speak on the COVID-19 vaccine, which is the greatest invention in science.
- Dr. Bhattacharya said, vaccine passports and mandates undermine public health. These ideas create fear and hesitancy in the media. Skeptics are triggered by those who say you cannot live a normal life after the vaccine. We cannot create a two-tier society.
- Dr. Bhattacharya said, the risk of vaccine is asymmetrical. Comprehensive analysis concluded for individuals over age of 70, there is a 5% mortality rate and for individuals under the age of 70 there is a 0.5% risk of death from COVID-19.
- Dr. Bhattacharya reiterated some of Dr. McCullough’s testimony on asymptomatic spread.
- Sen. Whitley said, your testimony was about vaccine mandates and vaccine passports. Do you understand this bill does not do that?
  - Dr. Bhattacharya said, I understand this bill prevents that, but I am testifying the medical aspect of this bill.
- Sen. Avard said, do you think any part of Dr. McCullough’s testimony was misleading?
  - Dr. Bhattacharya said, I did not hear it all, but no.

### **Thomas Renz, esq.**

- Mr. Renz said, in terms of individual liberties, since Roe v. Wade, there has been a very clear mandate that medical liberties trump everything else.

- Mr. Renz said, there has been over 379 deaths nationally for children. When the CDC issued the rule for death counting for COVID-19, it required COVID to be “the underlying cause more often than not.”
- Mr. Renz said, this bill prevents discrimination. Mr. Renz mentioned the story of Ryan White from the 1980’s. He said, aids had an almost 100% mortality rate. COVID does not.
- Mr. Renz said, why would we mandate a COVID vaccine? It is not even approved.
- Mr. Renz said, an employer that wants to discriminate against vaccination status is discriminatory on a religious basis.
- Mr. Renz said, I am against the COVID-19 vaccine. I am against no other vaccine.
- Mr. Renz said, we should not be mandating a vaccine where the mortality rate is so low. I urge you to expand this bill. Let’s not allow for people to be discriminated against the same way they were in the 1980’s for aids.

### **Lisa Dean**

- Ms. Dean testified in support of the bill.
- Ms. Dean said, parental rights and consent is very serious.

### **Ken Norton, NAMI NH**

- Mr. Norton said, this bill does is missing a section about nonemergency psychiatric health admissions. It should include this.
- Sen. Bradley said, please get back to us offline about that.

### **Randy Hebert**

- Mr. Hebert said, this bill needs some language included.
- Mr. Hebert said, you guys need to do better.
- Mr. Hebert said he is in opposition of the bill at this time.

### **Dr. Lawrence Palevsky**

- Dr. Palevsky said he is a pediatrician in New York.
- Dr. Palevsky said, unvaccinated children are blamed for outbreaks but cannot be vaccinated. Unvaccinated children are not necessarily responsible for outbreaks. There is an assumption that once you are vaccinated, then you do not spread the disease. This is not true. But we have ignored this.
- Dr. Palevsky said, 1 in 5 children have neurological disorders. 1 in 5 children have Autism. 1 in 20 children have seizure disorders. No study has ever evaluated neuro-inflammation from vaccines.
- Dr. Palevsky said, where there is risk, there needs to be choice. We are told to vaccinate with certainty, but there is a lot of uncertainty. We need the freedom to choose.

### **Dr. Gary Sobelson, NH Medical Society**

- Dr. Sobelson testified in opposition to this bill.
- Dr. Sobelson said he is a family physician in NH.
- Dr. Sobelson said he is displeased with the amount of time spent on hearing testimony from out of state physicians during this hearing.
- Dr. Sobelson said, out of state physicians and attorneys previously testified information that contradicted national experts.
- Dr. Sobelson said, your privileges end when you incline on mine. You cannot harm others by your choice.
- Dr. Sobelson referenced the story of “Typhoid Mary.” He said she was an early immigrant who infected others and was eventually detained.
- Dr. Sobelson said, our state has done one of the best jobs in the country on leading vaccinations. Bills that get in the way of that are not in public interest.
- Sen. Bradley said, did you testify in front of the House?
  - Dr. Sobelson said, I did not.

### **Representative Judy Aron, Sullivan 7**

- Rep. Aron testified in support of this bill.
- Rep. Aron said, we need to make sure people can make their own choice. People should not be bullied by society or government to do something they truly do not want to do.

### **Thomas McLeod, Mount Vernon, NH**

- Mr. McLeod said he is the Liberty Defense Fund chair.
- Mr. McLeod said, Jacobson v. Massachusetts has been undermined by recent developments.
- Mr. McLeod said, nobody should be discriminated against for not taking the vaccine.
- Mr. McLeod said he plans to submit written testimony with further detail.

### **Laura Condon, Bedford, NH**

- Ms. Condon testified in support of this bill.
- Ms. Condon said she is a National Vaccine Information Center volunteer.
- Ms. Condon said, there have been over 200 vaccine deaths reported. On January 4, 2021 there was a death in NH of a 44-year-old woman that got the COVID vaccine. On March 9, 2021 there was a death in NH caused from the Johnson and Johnson vaccine due to a blood disorder, such as a blood clot. This was 35 days before the Johnson and Johnson vaccine was paused.
- Ms. Condon said, the public is not getting accurate information from the public health department.
- Ms. Condon told an anecdotal story about a nurse who worked remotely from home and was fired for refusing the flu shot.

- Ms. Condon said, other treatment options should be promoted. COVID is not a death sentence. It is essential to protect medical choice.

### **John Schmitt**

- Mr. Schmitt testified in support of this bill.
- Mr. Schmitt said, we need an even stronger bill to protect against vaccine passports.
- Mr. Schmitt said, the German theory of disease is wrong. Disease comes from poor nutrition. Some examples are scurvy and polio.

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Date Hearing Report completed: April 15, 2021