

SB 149-FN - AS AMENDED BY THE SENATE

03/18/2021 0788s

2021 SESSION

21-1074

10/04

SENATE BILL ***149-FN***

AN ACT adopting omnibus legislation on health and human services.

SPONSORS: Sen. Sherman, Dist 24

COMMITTEE: Health and Human Services

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AMENDED ANALYSIS

This bill adopts legislation relative to:

I. Clarifying Medicaid spend-down requirements and requiring a report to the oversight committee on health and human services.

II. Establishing a harm reduction and overdose prevention program in the department of health and human services.

III. Automated pharmacy systems.

IV. Health facilities providing care in the declared emergency.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT adopting omnibus legislation on health and human services.

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

1 Sponsorship. This act consists of the following proposed legislation:

2 Part I. LSR 21-0427, clarifying Medicaid spend-down requirements and requiring a report to  
3 the oversight committee on health and human services, sponsored by Sen. Rosenwald, Prime/Dist 13;  
4 Sen. Hennessey, Dist 1; Sen. Whitley, Dist 15; Sen. Sherman, Dist 24; Sen. Bradley, Dist 3; Rep.  
5 Guthrie, Rock. 13; Rep. McMahon, Rock. 7; Rep. Marsh, Carr. 8; Rep. Knirk, Carr. 3; Rep. Mullen,  
6 Hills. 7.

7 Part II. LSR 21-0837, establishing a harm reduction and overdose prevention program in  
8 the department of health and human services, sponsored by Sen. Watters, Prime/Dist 4; Sen.  
9 Sherman, Dist 24; Sen. Whitley, Dist 15; Sen. D'Allesandro, Dist 20; Rep. Amanda Bouldin, Hills 12;  
10 Rep. Woods, Merr. 23; Rep. Conley, Straf. 13.

11 Part III. LSR 21-0936, relative to automated pharmacy systems, sponsored by Sen. Carson,  
12 Prime/Dist 14.

13 Part IV. LSR 21-1006, relative to health facilities providing care in the declared emergency,  
14 sponsored by Sen. Gray, Prime/Dist 6.

15 2 Legislation Enacted. The general court hereby enacts the following legislation:

16 PART I

17 Clarifying Medicaid spend-down requirements

18 and requiring a report to the oversight committee on health and human services.

19 1 New Section; Spend-Down Requirements for Medical Expenses. Amend RSA 167 by inserting  
20 after section 4-d the following new section:

21 167:4-e Spend-down Requirements for Medical Expenses. For the purposes of off-setting the  
22 Medicaid spend-down requirements, mental health expenses shall be included as medical expenses.

23 2 Report to Oversight Committee on Health and Human Services.

24 I. The department of health and human services shall submit an interim report on or before  
25 October 1, 2021, to the oversight committee on health and human services, established pursuant to  
26 RSA 126-A:13, relative to actions taken to ensure the uniform application of spend-down  
27 requirements. The report shall include a description of how spend-down requirements were  
28 addressed in remedial staff training programs, updates to the policy manual, and updates to the  
29 brochure and any other department publications.

1 II. The department shall submit a final report by October 1, 2022, on the application of  
2 spend-down requirements. The report shall include data indicating how spend-down requirements  
3 have been applied since the interim report was filed.

4 3 Effective date. Part I of this act shall take effect upon its passage.

5 PART II

6 Establishing a harm reduction and overdose prevention program  
7 in the department of health and human services.

8 1 Findings. The legislature finds and declares all of the following:

9 I. Overdose deaths in New Hampshire are an urgent public health crisis. For many years,  
10 overdose has been the leading cause of accidental death in the United States and in New Hampshire.

11 II. Harm reduction and overdose prevention programs (OPPs) are an evidence-based harm  
12 reduction strategy that allow individuals to consume drugs in a hygienic environment under the  
13 supervision of trained staff, who are able to intervene if the patient overdoses. OPPs also provide  
14 sterile consumption equipment and offer general medical advice and referrals to drug treatment and  
15 other community social services.

16 III. There are approximately 165 overdose prevention programs operating in 10 countries  
17 around the world, and numerous peer-reviewed studies have confirmed that those programs are  
18 effective in reducing overdose deaths and HIV transmission, and in increasing access to counseling,  
19 treatment, and other risk reduction services. Research has also demonstrated that those programs  
20 decrease use of emergency medical services, reduce public drug use, reduce syringe debris, and do  
21 not increase crime or drug use.

22 IV. An analysis published in the Journal of Drug Issues in 2016, OPPs in New Hampshire  
23 would save the state and municipalities substantial funds by reducing other costs due to opioid use  
24 and overdose.

25 V. An increase in overdose deaths was observed nationwide in 2020 according to the Office  
26 of National Drug Control Policy, rising 16.6 percent, based on a comparison of January to April,  
27 inclusive, of 2019 with the same time frame of 2020.

28 VI. As demands for reform of the criminal legal system reverberate around the country,  
29 OPPs offer an alternative framework for addressing both drug use as well as the enforcement of drug  
30 laws. OPPs bring people inside to a safe and therapeutic space, instead of leaving them vulnerable  
31 to police intervention, arrest, and incarceration.

32 VII. It is the intent of the legislature to promote the health and safety of communities by  
33 evaluating the health impacts of OPPs. It is the intent of the legislature to prevent fatal and  
34 nonfatal drug overdoses, reduce drug use by providing a pathway to drug treatment, as well as  
35 medical and social services for high-risk drug users, many of whom are homeless or uninsured or  
36 very low income, prevent the transmission of HIV and hepatitis C, reduce nuisance and public safety  
37 problems related to public use of controlled substances, reduce emergency room use and hospital

utilization related to drug use, reserving precious space, including intensive care beds, for treatment of COVID-19, and other life-threatening conditions.

VIII. Further, it is the intent of the legislature that OPPs should be evaluated in New Hampshire municipalities that authorize them, as OPPs show great promise to save lives, enhance public safety, improve access to drug treatment, medical care, and related services, reduce emergency department and hospital utilization related to drug overdose, and reduce the human, social, and financial costs of epidemics of drug misuse, homelessness, and COVID-19.

2 New Subdivision; Harm Reduction and Overdose Prevention Programs. Amend RSA 318-B by inserting after section 45 the following new subdivision:

Harm Reduction and Overdose Prevention Programs

318-B:45-a Harm Reduction and Overdose Prevention Programs

I.(a) Notwithstanding any other law, a New Hampshire municipality may approve entities within its jurisdiction to establish and operate overdose prevention programs for persons 18 years of age or older that satisfy the requirements set forth in paragraph IV.

II. Prior to approving an entity within its jurisdiction pursuant to paragraph I, a municipality shall provide local law enforcement officials, local public health officials, and the public with an opportunity to comment in a public meeting. The notice of the meeting to the public shall be sufficient to ensure adequate participation in the meeting by the public. The meeting shall be noticed in accordance with all state laws and local ordinances, and as local officials deem appropriate.

III.(a) The following entities, if self-funded, may operate an OPP upon approval of the municipality's governing body in New Hampshire to prevent the transmission of disease and reduce morbidity and mortality among individuals who inject drugs:

- (1) Federally qualified health centers.
- (2) Community health centers.
- (3) Public health networks.
- (4) AIDS service organizations.
- (5) Substance misuse support or treatment organizations.
- (6) Community based organizations.

(b) The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, further defining the entities which may operate an overdose prevention program.

IV. Any entity operating an OPP in New Hampshire shall:

(a) Provide a hygienic space supervised by health care professionals where people who use drugs can consume pre-obtained drugs. For purposes of this paragraph, "health care professional" includes, but is not limited to, a physician, physician assistant, nurse practitioner, licensed vocational nurse, registered nurse, psychiatrist, psychologist, licensed clinical social worker,

1 licensed professional clinical counselor, mental health provider, social service provider, or substance  
2 use disorder provider, trained in overdose recognition and reversal.

3 (b) Provide sterile consumption supplies, collect used hypodermic needles and syringes,  
4 and provide secure hypodermic needle and syringe disposal services.

5 (c) Administer first aid, if needed, monitor participants for potential overdose, and  
6 provide treatment as necessary to prevent fatal overdose.

7 (d) Provide referral and linkage to HIV, viral hepatitis, and substance use disorder  
8 prevention, care, and treatment services, as appropriate.

9 (e) Coordinate and collaborate with other local agencies, organizations, and providers  
10 involved in comprehensive prevention programs for people who inject drugs to minimize duplication  
11 of effort.

12 (f) Attempt to be a part of a comprehensive service program that may include, as  
13 appropriate:

14 (1) Providing sterile needles, syringes, and other drug preparation equipment and  
15 disposal services.

16 (2) Educating and counseling to reduce sexual, injection, and overdose risks.

17 (3) Providing condoms to reduce risk of sexual transmission of viral hepatitis, HIV,  
18 or other STDs.

19 (4) Screening for HIV, viral hepatitis, STDs, and tuberculosis.

20 (5) Providing naloxone to reverse opioid overdoses.

21 (6) Providing referral and linkage to HIV, viral hepatitis, STD and tuberculosis  
22 prevention, treatment, and care services, including antiretroviral therapy for hepatitis C virus  
23 (HCV) and HIV, pre-exposure prophylaxis (PrEP), post-exposure prophylaxis (PEP), prevention of  
24 mother-to-child transmission, and partner services.

25 (7) Providing referral and linkage to hepatitis A virus (HAV) and hepatitis B virus  
26 (HBV) vaccination.

27 (8) Providing referral and linkage to and provision of substance use disorder  
28 treatment including medication assisted treatment for opioid use disorder which combines drug  
29 therapy such as methadone, buprenorphine, or naltrexone with counseling and behavioral therapy.

30 (9) Providing referral to medical care, mental health services, and other support  
31 services.

32 (g) Post its address, phone number, program contact information, if appropriate, hours  
33 of operation, and services offered on its Internet website.

34 (h) Provide reasonable security of the program site.

35 (i) Establish operating procedures for the program, made available to the public either  
36 through an Internet website or upon request, that are publicly noticed, including, but not limited to,  
37 standard hours of operation, a minimum number of personnel required to be on site during those

1 hours of operation, the licensing and training standards for staff present, an established maximum  
2 number of individuals who can be served at one time, and an established relationship with the  
3 nearest emergency department of a general acute care hospital, as well as eligibility criteria for  
4 program participants.

5 (j) Train staff members to deliver services offered by the program.

6 (k) Establish a good neighbor policy that facilitates communication from and to local  
7 businesses and residences, to the extent they exist, to address any neighborhood concerns and  
8 complaints.

9 (l) Establish a policy for informing local government officials and neighbors about the  
10 approved entity's complaint procedures, and the contact number of the director, manager, or  
11 operator of the approved entity.

12 (m) Register with the department of health and human services and confirm registration  
13 annually on or before November 1 of each subsequent year; provided however, the registration  
14 process shall be limited to notification to the department for data collection purposes only.

15 (n) Report quarterly to the department, which report shall include the following  
16 information regarding the program's activities:

17 (1) The number of program participants.

18 (2) Aggregate information regarding the characteristics of program participants.

19 (3) The number of hypodermic needles and syringes distributed for use on site.

20 (4) The number of overdoses experienced and the number of overdoses reversed on  
21 site.

22 (5) The number of persons referred to substance misuse treatment/services.

23 (6) The number of individuals directly and formally referred to other services and  
24 the type of service.

25 V. Notwithstanding any other law, a person or entity, including, but not limited to, property  
26 owners, managers, employees, volunteers, clients or participants, and employees of the New  
27 Hampshire municipalities, state agencies, hospitals, or overdose prevention programs, acting in the  
28 course and scope of employment, shall not be arrested, charged, or prosecuted under RSA 318-B:2 for  
29 possession of controlled substances, possession of drug paraphernalia, or allowing drug use on  
30 premises, including for attempt, aiding and abetting, or conspiracy to commit a violation of any of  
31 those offenses, or otherwise be penalized solely for actions, conduct, or omissions on the site of a  
32 harm reduction and overdose prevention program approved under this section, or for conduct  
33 relating to the approval of an entity to operate an OPP, or the inspection, licensing, or other  
34 regulation of an OPP approved under this section.

35 VI. Nothing in this section shall be construed to prohibit the department of health and  
36 human services from administering and/or disbursing federal or other funds to harm reduction and

overdose prevention programs authorized under this section. The use of state general funds shall be prohibited unless otherwise appropriated by the general court.

VII. No overdose prevention program shall be located within a drug-free school zone as defined in RSA 193-B:1, II. Exceptions to this prohibition may be granted by the applicable district school board when a request is initiated by a overdose prevention program administrator.

3 Syringe Service Programs; Reference Added. Amend RSA 318-B:44 to read as follows:

318-B:44 Syringe Service Programs; Affirmative Defense. It is an affirmative defense, as provided in RSA 626:7, to prosecution for possession of a hypodermic syringe or needle that the item was obtained through participation in a syringe service program ***or an overdose prevention program under RSA 318-B:45-a***. Nothing in this section shall be construed as an affirmative defense for any offense other than as set forth under RSA 318-B:26, ~~II(f)~~ ***II(e)***.

4 Effective Date. Part II of this act shall take effect 60 days after its passage.

### PART III

Relative to automated pharmacy systems.

1 New Section; Pharmacies; Automated Pharmacy Systems. Amend RSA 318 by inserting after section 42 the following new section:

318:42-a Automated Pharmacy Systems; Long-term Care Facilities, Hospices, or State Correctional Institutions.

I. A pharmacy may provide pharmacy services to a long-term care facility or hospice licensed under RSA 151 or to a state correctional institution through the use of an automated pharmacy system that need not be located at the same location as the pharmacy.

II. Medicinal drugs stored in bulk or unit of use in an automated pharmacy system servicing a long-term care facility, hospice, or correctional institution are part of the inventory of the pharmacy providing pharmacy services to that facility, hospice, or institution, and drugs delivered by the automated pharmacy system are considered to have been dispensed by that pharmacy.

III. The operation of an automated pharmacy system shall be under the supervision of a New Hampshire-licensed pharmacist. To qualify as a supervisor for an automated pharmacy system, the pharmacist need not be physically present at the site of the automated pharmacy system and may supervise the system data electronically. The New Hampshire-licensed pharmacist shall be required to develop and implement policies and procedures designed to verify that the medicinal drugs delivered by the automated dispensing system are accurate and valid and that the machine is properly restocked.

IV. This section is not intended to limit the current practice of pharmacy in this state. This section is intended to allow automated pharmacy systems to enhance the ability of a pharmacist to provide pharmacy services in locations that do not employ a full-time pharmacist. This section does not limit or replace the use of a consultant pharmacist.

1 V. The board shall adopt rules governing the use of an automated pharmacy system under  
2 this section, not later than January 1, 2022, which shall specify:

3 (a) Recordkeeping requirements;

4 (b) Security requirements; and

5 (c) Labeling requirements.

6 2 Effective Date. Part III of this act shall take effect 60 days after its passage.

7 PART IV

8 Relative to health facilities providing care in the declared emergency.

9 1 New Section; Department of Safety; Homeland Security and Emergency Management; Novel  
10 Coronavirus Disease (COVID-19); Health Facilities. Amend RSA 21-P by inserting after section 42  
11 the following new section:

12 21-P:42-a Novel Coronavirus Disease (COVID-19; Health Facilities. Acute care hospitals,  
13 assisted living facilities, long-term care facilities, nursing facilities, residential care facilities,  
14 ambulatory care clinics (as defined in RSA 151, RSA 151-A, RSA 151-D, RSA 151-E and RSA 151-H),  
15 and any other similar facilities providing care to elderly or infirm patients (“health facilities”), and  
16 the employees, agents and volunteers of such health facilities, are deemed to have been engaged in  
17 preparing for and/or carrying out “emergency management” functions for the purposes of RSA 21-  
18 P:35 when complying, or reasonably attempting to comply, with any executive order, agency order or  
19 rule (including but not limited to waivers from the Centers for Medicare and Medicaid Services  
20 (CMS) both issued as blanket waivers by CMS and as requested by New Hampshire department of  
21 health and human services pertaining to the state of emergency declared under state and/or federal  
22 law in response to the Novel Coronavirus (COVID-19). All such orders and rules are deemed to  
23 constitute orders and/or rules adopted and/or regulations promulgated pursuant to RSA 21-P.  
24 Accordingly, no such organization or person shall be liable for the death of or injury to persons, or for  
25 damage to property, as a result of such compliance or reasonable attempts to comply with such an  
26 emergency order or rule under this section. This section shall not apply to actions of health care  
27 facilities, employees, agents, or volunteers of such facilities that are not related to compliance or  
28 reasonable attempts at compliance with an emergency order or rule. This section shall not apply to  
29 actions performed after such an emergency order or rule is no longer in effect.

30 2 Effective Date. Part IV of this act shall take effect upon its passage.



**SB 149-FN- FISCAL NOTE**  
AS AMENDED BY THE SENATE (AMENDMENT #2021-0788s)

AN ACT                    adopting omnibus legislation on health and human services.

**Part I Clarifying Medicaid spend-down requirements**

This part has no fiscal impact.

**Part II Establishing a harm reduction and overdose prevention program in the Department of Health and Human Services.**

**FISCAL IMPACT:**    ☒ State                    ☐ County                    ☐ Local                    ☐ None

STATE:	Estimated Increase / Decrease			
	FY 2021	FY 2022	FY 2023	FY 2024
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	Indeterminable	Indeterminable	Indeterminable	Indeterminable
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	Indeterminable	Indeterminable	Indeterminable	Indeterminable

**LOCAL:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	Indeterminable	Indeterminable	Indeterminable	Indeterminable

Part II of the proposed legislation would:

- amend RSA 318-B by inserting a section allowing for municipalities to approve entities to operate an overdose prevention program for adults,
- require DHHS to adopt rules defining the entities which may operate an overdose prevention program, and
- require entities to register with and report aggregate client data to DHHS.

DHHS estimates staff time would be required to register and collect data on Overdose Prevention Programs. The expansion of the activities necessitates additional staffing needs in order to manage the registry and data collection and reporting. The position would be a part-time Program Planner I at a labor grade 1 with a fiscal impact of \$23,000 in SFY 2021, \$24,000 in SFY 2022, and \$25,000 in SFY 2023.

**AGENCIES CONTACTED:**

Department of Health and Human Services and Office of Professional Licensure and Certification

**Part III Relative to automated pharmacy systems.**

This part has no fiscal impact.

**Part IV Relative to health facilities providing care in the declared emergency.**

**FISCAL IMPACT:**    ☒ State                    ☐ County                    ☐ Local                    ☐ None

STATE:	Estimated Increase / Decrease			
	FY 2021	FY 2022	FY 2023	FY 2024
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	Indeterminable	Indeterminable	Indeterminable	Indeterminable
<b><i>Funding Source:</i></b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other

The Office of Professional Licensure and Certification indicates this part may have an indeterminable fiscal impact on state expenditures. It is not known how many automated pharmacy systems will be established to know if there will be a need for additional inspectors.