

Floor Amendment to SB 155-FN

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

2  
3 AN ACT codifying provisions included in select emergency orders issued by the governor in  
4 response to the COVID-19 pandemic, prohibiting discrimination on the basis of  
5 vaccination or immunity status, relative to childhood immunization, and relative to  
6 the immunization registry.  
7

8 Amend the bill by replacing sections 1 and 2 with the following:

9  
10 1 Temporary Health Partner Authorized in Skilled Nursing Facilities under Federal and State  
11 Waivers.

12 I. In this section, "temporary health partner" means an individual who has been hired  
13 pursuant to federal and state waivers of certain qualifications for long-term care facility staff.

14 II. To address staffing shortages at long-term care facilities and meet the needs of some of  
15 New Hampshire's most vulnerable populations, the position of temporary health partner (THP) is  
16 hereby authorized to work in a skilled nursing facility, notwithstanding any provision of RSA 326-  
17 B:14, provided that:

18 (a) The THP completes training of no less than 8 hours, provided by a national  
19 association such as the American Health Care Association or by a New Hampshire educational  
20 program.

21 (b) THPs shall work under the supervision of an RN, APRN, or LPN, as is required of  
22 LNAs under RSA 326-B:14.

23 (c) The scope of work authorized to be performed by THPs is limited to the work set  
24 forth in this section and shall be performed in accordance with the resident care plan.

25 (d) The THP has demonstrated competency, as determined by the employing long-term  
26 care facility, prior to performing any of the activities set forth in this section.

27 III. Scope of work for a temporary health partner (THP):

28 (a) The THP is a temporary position limited to assist LNAs and nurses in their daily  
29 tasks. Each of these tasks shall not be performed without proper training and demonstrating  
30 competency in such tasks. The THP shall work under the direction and supervision of licensed  
31 nurses to assist nurses and LNAs to provide services set forth in each resident care plan. Before  
32 performing any tasks described in subparagraph (b), the THP shall have been trained and

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1 demonstrated competency to perform such tasks, and shall review and adhere to the resident care  
2 plan. The facility shall provide direction and oversight to the THP.

3 (b) After the employing facility ensures skill competency, the THP may perform any of  
4 the following activities:

5 (1) Nutrition and elimination assistance. Assist with elimination, including toileting  
6 and peri-care, and assist with routine ostomy care.

7 (2) Comfort care and end-of-life care. Assist with promoting comfort and sleep,  
8 assist with end-of-life care, and assist with physical care of body after death.

9 (3) Activities of daily living. Assist with bathing, oral care, denture care, grooming,  
10 shaving, nail care, and dressing and undressing.

11 (4) Infection control practices. Assist with hand hygiene, standard and  
12 transmission-based precautions, cleaning and disinfection, utilization of personal protective  
13 equipment (PPE).

14 (5) Positioning, moving, and restorative care. Assist with ambulation or walking  
15 and occupied bedmaking.

16 III. The position of THP shall not be considered a substitute for licensure as an LNA under  
17 RSA 326-B:14 but is intended to assist the work of LNAs. The THP shall not perform services  
18 independently and shall be supervised by licensed nurses at all times.

19 2 New Section; Office of Professional Licensure and Certification; Emergency Licensing Process.  
20 Amend RSA 310-A by inserting after section 1-g the following new section:

21 310-A:1-h Emergency Licensing Process. Notwithstanding any other law to the contrary, the  
22 office of professional licensure and certification may issue emergency licenses to the following  
23 applicants:

24 I. Any medical provider previously licensed in New Hampshire in the last 3 years whose  
25 license is no longer active, subject to the following:

26 (a) The medical provider's license was in good standing prior to being placed in inactive  
27 or lapsed status.

28 (b) Notwithstanding any law or rule to the contrary, a medical provider shall not be  
29 required to complete continuing education as a condition precedent to reactivating their license  
30 pursuant to this section.

31 II. Any medical provider previously licensed to practice in another jurisdiction within the  
32 last 3 years whose license is no longer active, subject to the following:

33 (a) The medical provider's license was in good standing in another United States  
34 jurisdiction prior to being placed in inactive or lapsed status; and

35 (b) The medical provider presents evidence to the office of professional licensure and  
36 certification that the medical provider was licensed and in good standing immediately prior to the  
37 change in licensure status.

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1 (c) Notwithstanding any law or rule to the contrary, a medical provider shall not be  
2 required to complete continuing education as a condition precedent to receive an emergency license  
3 pursuant to this section.

4 III. Any fellow enrolled in a New Hampshire program accredited by the Accreditation  
5 Council for Graduate Medical Education to practice within the fellow's core specialty, subject to the  
6 following:

7 (a) The fellow is American Board of Medical Specialties (ABMS) or American  
8 Osteopathic Association (AOA) board-eligible or certified in the core specialty.

9 (b) The fellow is appointed to the medical staff at a sponsoring institution and will  
10 engage in practice consistent with the policies and procedures of the sponsoring institution and its  
11 participating sites.

12 (c) The time spent in core specialty service is limited to 20 percent of the fellow's annual  
13 education time in any academic year.

14 (d) A fellow seeking to practice under this paragraph shall provide the office of  
15 professional licensure and certification with appropriate evidence that the required qualifications  
16 have been met.

17 IV. Senior nursing students, who are scheduled to graduate within 5 months from the date  
18 of application, from a board of nursing approved registered nursing or practical nursing program,  
19 subject to the following:

20 (a) The individual is employed by or providing health care services at the direction of, a  
21 licensed health care facility or a licensed health care provider.

22 (b) The individual is directly supervised while providing health care services.

23 (c) The health care services are being provided in response to the COVID-19 pandemic.

24 V. Any provider seeking an emergency license under this section shall submit his or her  
25 request on a form adopted by the office of professional licensure and certification for such purpose.

26 VI. In this section, an applicant in good standing shall include medical providers who are  
27 subject to nondisciplinary conditions, but shall not include medical providers whose licenses have  
28 been revoked, canceled, surrendered, suspended, denied, or subject to disciplinary restrictions.

29 VII. Licenses issued pursuant to this section shall be on a temporary basis and shall expire  
30 on or before January 31, 2022.

31 VIII. All individuals licensed under this section shall be subject to the jurisdiction of the  
32 state licensing body for that profession.

33 IX. The office of professional licensure and certification may issue guidance relative to the  
34 emergency licensing process established in this section, which may include guidance concerning the  
35 appropriate supervision of nursing students. Any guidance shall be posted on the board's website.

36  
37 Amend the bill by replacing all after section 4 with the following:

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1       5 New Section; Pharmacists and Pharmacies; Out-of-state Pharmacies as Temporary Limited  
2 Licensed Mail-Order Facilities. Amend RSA 318 by inserting after section 37 the following new  
3 section:

4       318:37-a Out-of-state Pharmacies as Temporary Limited Licensed Mail-Order Facilities.

5       I. To protect public health and increase access to medical care in New Hampshire, and to  
6 promote and secure the safety and protection of the people of New Hampshire, any out-of-state  
7 pharmacy seeking to ship investigational drugs to clinical trial participants who reside in New  
8 Hampshire and who are unable to retrieve the investigational drugs from the out-of-state pharmacy  
9 due to the novel coronavirus shall be allowed to operate as if the out-of-state pharmacy were licensed  
10 as a mail-order pharmacy within the state of New Hampshire if the following conditions are met:

11           (a) The out-of-state pharmacy is licensed and in good standing in another United States  
12 jurisdiction.

13           (b) The medical services provided within New Hampshire are in-person or through  
14 appropriate forms of telehealth.

15           (c) The out-of-state pharmacy presents to the office of professional licensure and  
16 certification evidence that they are licensed in good standing in another jurisdiction. Such out-of-  
17 state pharmacies shall be issued an emergency mail-order pharmacy license at no cost, which shall  
18 remain in effect until January 31, 2022.

19           (d) Such out-of-state pharmacies shall be subject to the jurisdiction of the board of  
20 pharmacy while acting under an emergency mail-order pharmacy license.

21       II. The office of professional licensure and certification, in consultation with the board of  
22 pharmacy, shall provide assistance and guidance, as necessary, to out-of-state pharmacies regarding  
23 the requirements of this section.

24       6 New Subdivision; Local Land Use Planning; Protection of Pre-existing, Non-conforming Use  
25 Status for Summer Camps. Amend RSA 674 by inserting after section 73 the following new  
26 subdivision:

27           Protection of Pre-existing, Non-conforming Use Status for Summer Camps

28       674:74 Protection of Pre-existing, Non-conforming Use Status for Summer Camps.

29       I. Notwithstanding any provision of law or municipal ordinance or regulation to the  
30 contrary, any summer camp that has been operating in the state of New Hampshire as a pre-  
31 existing, nonconforming use under its applicable zoning ordinance that either closed for the summer  
32 of 2020 and/or 2021 due to the COVID-19 pandemic, or was forced to operate for a shorter season or  
33 at a reduced capacity during the summer of 2020 and/or 2021 due to the COVID-19 pandemic, shall  
34 not lose its status as a pre-existing, non-conforming use due to either:

35           (a) Its failure to operate during the summer of 2020 and/or 2021; or

36           (b) Its operation for a shorter season or at a reduced capacity during the summer of 2020  
37 and/or 2021.

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1           II. The summer camp's status or ability to operate as a pre-existing, non-conforming use  
2 shall not be in any way affected by its failure to operate during the summer of 2020 and/or 2021, or  
3 its operation for a shorter season or at a reduced capacity during the summer of 2020 and/or 2021.

4           7 Liquor Licenses and Fees; Authorization for Other Areas; Expansion of Outdoor Dining.  
5 Amend RSA 178:24 to read as follows:

6           178:24 Authorization for Other Areas. A business holding a license authorizing the  
7 consumption of alcoholic beverages on its licensed premise may petition the commission for  
8 permission to extend service for beverages and liquor to any clearly defined area under the control of  
9 the licensee. ***In addition, a licensee may expand into a shared space, such as a sidewalk or***  
10 ***street, with the approval of local officials.*** Petitions shall include written plans and diagrams  
11 that shall provide detailed information on the proposed extension of alcohol service. Petitions shall  
12 also conform to local zoning requirements and include the written approval of local officials.  
13 ***Businesses served by a waste disposal system, as defined by RSA 485-A:2, XI, shall obtain***  
14 ***approval from the department of environmental services for any expansion under this***  
15 ***section. Businesses that are on municipal sewer may expand seating as permitted by the***  
16 ***municipality.*** The commission may approve plans submitted by licensees and may add such terms  
17 and conditions as it deems appropriate to preserve public health and safety. The commission may  
18 deny, in its discretion, any petition under this section which constitutes a risk to public health,  
19 safety, or welfare of any community.

20           8 Prospective Repeals. The following are repealed:

21           I. RSA 310-A:1-h, relative to emergency licensing procedures.

22           II. RSA 318:37-a, relative to out-of-state pharmacies temporarily licensed as mail-order  
23 facilities.

24           9 New Subdivision; State Commission for Human Rights; Prohibition on Discrimination Based  
25 on Vaccination or Immunity Status. Amend RSA 354-A by inserting after section 17 the following  
26 new subdivision:

27                           Discrimination Based on Vaccination or Immunity Status Prohibited

28           354-A:17-a Discrimination Based on Vaccination or Immunity Status. It shall be an unlawful  
29 discriminatory practice for any person or government entity to deny an individual access to goods,  
30 services, employment, housing, education, or places of public accommodation based on an  
31 individual's vaccination status or immunity status. For purposes of this subdivision, and except as  
32 authorized herein, it shall be unlawful:

33           I. For a person or government entity to ask about or make decisions based on vaccine status  
34 or immunity status in matters of housing.

35           II. For a person or government entity to ask about or in any way discriminate against an  
36 individual based on vaccine status or immunity status in matters of public accommodation, to  
37 include public and private transportation.

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1           III. For the state or any political subdivision to pass any law, rule, ordinance or order that  
2 would require a vaccine or proof of vaccine status or immunity status by any citizen of New  
3 Hampshire.

4           IV. For any public or private university, college or other secondary school to require  
5 students or parents or guardians of minor students to provide proof of vaccination or immunity  
6 documentation where:

7               (a) A physician licensed under RSA 329, or a physician exempted under RSA 329:21, III,  
8 certifies that vaccination against a particular disease may be detrimental to the student's health.

9               (b) A student or the parent or legal guardian of a minor student objects to vaccination  
10 because of religious beliefs, and the student or the parent or guardian of a minor student signs a  
11 notarized form stating that the student has not been vaccinated because of religious beliefs.

12              (c) A physician licensed under RSA 329, or a physician exempted under RSA 329:21, III,  
13 certifies that the student has sufficient antibody levels or previously contracted the illness for which  
14 vaccination is required, and is therefore immune.

15           V.(a) For an employer to ask about or make employment decisions based on an individual's  
16 vaccine status or immunity status except as provided in subparagraph (b).

17               (b) If the employer is a health care provider licensed under RSA 151, a public or private  
18 employer of emergency response/public safety workers as defined in RSA 281-A:2, V-c, a public  
19 school or a child day care provider licensed under RSA 170-E, the employer may inquire as to  
20 vaccination status, and require vaccination of employees, where a direct threat is determined to exist  
21 that cannot be eliminated or reduced by reasonable accommodation.

22               (1) In this subparagraph, "direct threat" means a significant risk of substantial  
23 harm to the health or safety of the individual or others that cannot be eliminated or reduced by  
24 reasonable accommodation. The determination that an individual poses a "direct threat" shall be  
25 based on an individualized assessment of the individual's present ability to safely perform the  
26 essential functions of the job. This assessment shall be based on a reasonable medical judgment that  
27 relies on the most current medical knowledge and/or on the best available objective evidence. In  
28 determining whether an individual would pose a direct threat, the factors to be considered include:

29                       (A) The duration of the risk;

30                       (B) The nature and severity of the potential harm;

31                       (C) The likelihood that the potential harm will occur; and

32                       (D) The imminence of the potential harm.

33               (2) Subparagraph (b) shall not apply where no direct threat exists or where:

34                       (A) A physician licensed under RSA 329, or a physician exempted under RSA  
35 329:21, III, certifies that vaccination against a particular disease may be detrimental to the  
36 employee's health.

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1 (B) An employee objects to vaccination because of religious beliefs, and the  
2 employee signs a notarized form stating that the employee has not be vaccinated because of religious  
3 beliefs.

4 (C) A physician licensed under RSA 329, or a physician exempted under RSA  
5 329:21, III, certifies that the employee has sufficient antibody levels or previously contracted the  
6 illness for which vaccination is required, and is therefore immune.

7 10 Communicable Disease; Immunization. Amend RSA 141-C:20-a, I to read as follows:

8 I. All parents or legal guardians shall have their children who are residing in this state  
9 immunized against certain diseases. These diseases shall include~~[- but not be limited to,]~~  
10 diphtheria, mumps, pertussis, poliomyelitis, rubella, rubeola, ~~[and]~~ tetanus, **and varicella**. ~~[The~~  
11 ~~commissioner shall adopt rules under RSA 541-A relative to other diseases which require~~  
12 ~~immunization.]~~ **Any new vaccine, or additional disease for which immunization is required,**  
13 **shall be approved by the legislature and governor through the legislative process and**  
14 **specified in statute.**

15 11 New Paragraph; Communicable Disease; Immunization Registry. Amend RSA 141-C:20-f by  
16 inserting after paragraph II the following new paragraph:

17 II-a. Each patient, or the patient's parent or guardian if the patient is a minor, shall be  
18 given the opportunity to opt-in to the immunization registry. No patient's immunization or  
19 vaccination information shall be entered into the registry without the explicit, written, opt-in  
20 consent of the patient, or the patient's parent or guardian.

21 12 Effective Date.

22 I. Section 8 of this act shall take effect January 31, 2022.

23 II. The remainder of this act shall take effect upon its passage.

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2021-1864h

AMENDED ANALYSIS

This bill:

- I. Establishes the position of temporary health partner.
- II. Authorizes emergency licensing of medical providers.
- III. Authorizes COVID-19 testing by pharmacists and pharmacy technicians.
- IV. Permits out-of-state pharmacies providing investigational drugs to clinical trial participants in New Hampshire to be temporarily licensed as mail-order pharmacies.
- V. Protects the pre-existing, non-conforming use status of summer camps that were unable to operate during the summer of 2020 or 2021 due to COVID-19.
- VI. Allows expanded outdoor dining.
- VII. Prohibits discrimination based on an individual's vaccination or immunity status.
- VIII. Adds varicella to the statutory list of diseases for which children are required to be immunized and removes the administrative rulemaking authority of the commissioner of the department of health and human services to expand this list.
- IX. Requires patients to affirmatively opt-in to the state immunization registry.