SENATE BILL 406

AN ACT relative to establishing an early offer alternative in medical injury claims, relative to confidentiality of police personnel files, and establishing a committee to study the referral of patients for use of implantable medical devices.


COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill establishes a system of early offers for medical injury claims as an alternative to litigation or screening panels under RSA 519-B.

This bill clarifies the confidentiality provisions regarding use of police personnel files as evidence in criminal cases.

This bill also establishes a committee to study the issue of health care practitioners making referrals of patients for the use of implantable medical devices when the practitioner has an ownership or other financial interest in the supplier of the implantable medical device.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
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03/28/12 1418s
03/28/12 1472s
16May2012... 1980h
16May2012... 2280h
06/06/12 2462CofC
06/06/12 2497EBA

STATE OF NEW HAMPSHIRE
In the Year of Our Lord Two Thousand Twelve

AN ACT relative to establishing an early offer alternative in medical injury claims, relative
to confidentiality of police personnel files, and establishing a committee to study
the referral of patients for use of implantable medical devices.

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

288:1 Findings and Purpose.

I. The general court finds that the legal system for resolving claims for medical injury
requires reform to encourage the fast and efficient payment of meritorious claims. Under the
current system individuals with meritorious claims are either unable to litigate their claims or wait
for an uncertain recovery while medical providers are often deprived of a fair and reasonable
opportunity to address and resolve claims in a timely manner. In addition, the general public is
adversely affected because significant resources are spent on litigation costs and defensive medicine
or on coverage for those unable to litigate claims. The result is a system that has higher than
necessary health care costs, higher liability insurance premiums, and higher health insurance
premiums.

II. These overarching conclusions are based upon the following factual findings:

(a) Inconsistent results: Recent data presented to the general court by the
New Hampshire insurance department pursuant to RSA 519-B:14, II shows that the current medical
injury liability system produces inconsistent results with average indemnity payments on similar
claims varying substantially from year to year.

(b) Long waits for the parties: The testimony before the general court demonstrates that
medical injury cases are highly complex, requiring specialized medical evidence and testimony. This
complex medical evidence and testimony requires additional discovery and case preparation that
results in a particularly lengthy process for resolving cases.

(c) Costly litigation: Recent data presented to the general court by the New Hampshire
insurance department pursuant to RSA 519-B:14, II shows that the aggregate administrative and
litigation costs for all claims for medical injury nearly exceed the amount that claimants receive for
their injuries.

(d) Defensive medicine: Data from the American Medical Association, Gallup, Harvard
School of Public Health, Health Affairs Magazine, and other reliable sources estimate that defensive medicine, practiced in response to the current medical injury system, increases the annual health care expenditures in the United States by billions of dollars. These organizations consider defensive medicine to be diagnostic tests or treatments that have little or no expected benefit to the patient, ordered primarily as a means to guard against claims of liability.

III. The legislature further finds that the slow, inconsistent, and costly nature of the existing medical injury litigation system has a detrimental impact upon injured claimants, whose medical and economic needs require rapid resolution of their claims with less uncertainty, risk, and costs, as well as upon medical providers whose provision of patient care is disrupted by lengthy and costly litigation of medical injury claims.

IV. Therefore, the important governmental objective of this act is to supplement the existing medical injury compensation system with an alternative system that will provide fast and certain results for those who use it, while preserving access to the court system and medical injury screening panels for parties that choose to resolve claims under the current system. The general court further finds that the early offer process set forth in RSA 519-C as inserted by this act to resolve medical injury claims is substantially related to this important governmental objective.

V. The general court further finds that medical injury claimants will benefit from the early offer process set forth in RSA 519-C as inserted by this act as it provides the option of a simple, clear process defined in statute that provides prompt and sure recovery of all economic losses associated with meritorious claims settled pursuant to RSA 519-C. The early offer process, if elected, would be more efficient and cost effective in many cases than the high risk, high cost traditional litigation process.

VI. In exchange for the benefits of the early offer process established in this act, the claimant agrees to participate fully in the process, which may affect the damages the claimant can recover, the fees the claimant’s attorney may receive, and other important rights or claims that may exist under the existing system.

VII. The general court finds that the benefits to the public and to the parties to medical injury claims from the process established in this act far exceed the burdens imposed on the general public and medical injury claimants.

288:2 New Chapter; Early Offers for Medical Injury Claims. Amend RSA by inserting after chapter 519-B the following new chapter:

CHAPTER 519-C

EARLY OFFERS FOR MEDICAL INJURY CLAIMS

519-C:1 Definitions. In this chapter:

I. “Claim for medical injury” means any claim against a medical care provider, whether based in tort, contract, or otherwise, to recover damages on account of a medical injury.
II. “Claimant” means an individual who, in his or her own right, or on behalf of another as otherwise permitted by law, is seeking compensation for a medical injury, due to alleged sub-standard medical care or treatment.

III. “Early offer” means an offer to pay an injured person’s economic loss related to a medical injury, and reasonable attorney’s fees and costs incurred in representing the injured person under this chapter. No other damages of any kind shall be included in an early offer under this chapter.

IV. “Economic loss” means monetary expenses incurred by or on behalf of a claimant reasonably related to a medical injury and its consequences, including actual out-of-pocket medical expenses, replacement services, additional payment to the claimant pursuant to RSA 519-C:7, and 100 percent of the claimant’s salary, wages, or income from self-employment or contract work lost as a result of the medical injury. Economic loss does not include: pain and suffering, punitive damages, enhanced compensatory damages, exemplary damages, damages for loss of enjoyment of life (hedonic damages), inconvenience, physical impairment, mental anguish, emotional pain and suffering, and loss of the following: earning capacity, consortium, society, companionship, comfort, protection, marital care, parental care, attention, advice, counsel, training, guidance or education, and all other non-economic damages of any kind.

V. “Hearing officer” means a person of judicial and/or legal training, common sense, and a respect for the law, chosen by agreement of the parties from a list of neutral persons maintained by the judicial branch office of mediation and arbitration. If the parties cannot agree on the choice of a hearing officer, one will be selected at random from the list by the insurance department. Fees paid to the hearing officer for presiding at hearings under this chapter shall be paid by the medical care provider at a rate of $200 per hour and shall be reviewed for reasonableness by the insurance department. No hearing officer shall be employed by the insurance department or shall serve if such service would constitute a conflict under the New Hampshire Rules of Professional Conduct, or would require disqualification under the Code of Judicial Conduct.

VI. “Medical care provider” means a physician, physician’s assistant, registered or licensed practical nurse, hospital, clinic, or other health care provider or agency licensed by the state, or otherwise lawfully providing medical care or services, or an officer, employee, or agent thereof acting in the course of and scope of employment.

VII. “Medical injury” or “injury” means any adverse, untoward, or undesired consequences caused by professional services rendered by a medical care provider, whether resulting from negligence, error, or omission in the performance of such services; from rendition of such services without informed consent or in breach of warranty or in violation of contract; from failure to diagnose; from premature abandonment of a patient or of a course of treatment; from failure properly to maintain equipment or appliances necessary to the rendition of such services; or otherwise arising out of or sustained in the course of such services.
VIII. “Notice of injury” means written notice by certified mail provided to the medical care provider alleged to have caused a medical injury, and containing:

(a) The name, address, and telephone number of the claimant;

(b) The believed date and place of the alleged medical injury;

(c) The nature of the alleged injury;

(d) An explanation, if known, as to how the alleged injury was caused;

(e) A description of the severity of the alleged injury, including the claimant’s opinion of where the injury is located on the National Practitioner Data Bank severity scale;

(f) Medical records and medical bills associated with the alleged injury or a limited authorization allowing the medical care provider to obtain medical records and medical bills associated with the alleged injury;

(g) Evidence of lost wages or income from self-employment or contract work for the individual suffering from an alleged medical injury, which may be supplied through income tax returns or paycheck stubs for the year prior to the alleged injury and any subsequent records up to the date of the notice of alleged injury, or a limited authorization allowing the medical care provider to obtain such records;

(h) A demand for economic loss resulting from the alleged injury, that includes only medical expenses, replacement services, reasonable attorney fees, and lost wages, or income from self-employment or contract work;

(i) The name, address, and telephone number of claimant’s attorney; and

(j) A request that the medical care provider extend an early offer of settlement of the claim.

IX. “Personal representative” means an executor, administrator, successor personal representative, or special administrator of a decedent’s estate or a person legally authorized to perform substantially the same functions.

X. “Reasonable attorney fee” means 20 percent of the present value of the claimant’s economic loss and the reasonable costs incurred in representing the injured person under this chapter.

XI. “Replacement services” means expenses reasonably incurred in obtaining ordinary and necessary services from others, who are not members of the injured person’s household, in lieu of those the injured person would have performed for the benefit of the household, but could not because of the injury.

XII. “Wages” means monetary payment for services rendered, and the reasonable value of board, rent, housing, lodging, fuel, or a similar advantage received from the employer and gratuities received in the course of employment from others than the employer; but “wages” shall not include any sum paid by the employer to the employee to cover any special expenses incurred by the
employee because of the nature of the employment. For individuals receiving unemployment benefits pursuant to RSA 282-A:25 at the time of the injury, wages shall equal the wage rate used to determine the unemployed individual’s unemployment benefit pursuant to RSA 282-A:25. For a minor who is injured prior to reaching the age of 18 and who is unable to perform any gainful work as a result of the medical injury, upon reaching the age of 18 wages shall equal the mean New Hampshire per capita income as shown by the American Community Survey’s 1-year Estimate (inflation adjusted), produced by the United States Census Bureau.

519-C:2 Procedure.

I. After a medical injury, the claimant may:
   (a) Pursue resolution of a claim for medical injury pursuant to this chapter; or
   (b) Pursue an action for medical injury as provided in RSA 507-E and RSA 519-B.

II. For as long as the claimant and medical provider are proceeding under this chapter, this section shall govern the procedure for resolving the medical injury claim at issue between the 2 parties, notwithstanding any other provision of law.

III. If the claimant elects to pursue a remedy under this chapter, the claimant shall serve a notice of injury to the medical care provider alleged to be responsible for the injury and an executed notification and waiver of rights in the form set forth in RSA 519-C:13, by certified mail, return receipt requested.

IV. Upon the receipt by the medical care provider of a notice of injury and an executed notification and waiver of rights, the medical care provider may elect to:
   (a) Extend an early offer of settlement; or
   (b) Decline to extend an early offer of settlement.

V. A claimant’s failure to submit a notice of injury requesting an early offer, or a provider’s failure to extend an early offer, shall not be subject to review in any hearing, court, or other proceeding of any kind.

VI. The medical care provider shall respond to the claimant’s notice of injury in writing, within 90 days, setting forth the details of its early offer, or indicating that the medical care provider has decided not to extend an early offer of settlement. The medical care provider’s written response shall be sent by certified mail, return receipt requested, to the address provided in the claimant’s notice of injury.

VII. The medical care provider may request in writing that the individual alleging a medical injury submit to an independent medical examination by a qualified and board certified physician chosen by the medical care provider and agreed to by the claimant at a time and place reasonably convenient for the claimant. If the parties cannot agree on a physician to conduct the examination within 30 days of the request, the hearing officer shall select the physician. The physician conducting the examination shall not be affiliated directly or indirectly in any way, with the medical
care provider alleged to have caused the injury. The cost of the examination, including reasonable
travel expenses for the claimant, shall be paid by the medical care provider's professional liability
insurance company. Within 5 days of receipt, the medical provider or its insurer shall, at no cost to
the claimant, provide the claimant with all reports and documents originating from the examination.
The claimant shall also be entitled to obtain a transcript and/or audio-video recording of the
examination at the claimant’s expense. Any physician conducting medical examinations under this
section shall be certified by the appropriate specialty board as recognized by the American Board of
Medical Specialties and in good standing with the New Hampshire board of medicine.

VIII. If the medical care provider requests that the claimant submit to a physical
examination as set forth in paragraph VII, the time allowed for a medical care provider to respond to
the claimant’s notice of injury shall be extended by 30 days.

IX. If the medical care provider extends an early offer, the claimant shall accept or reject the
medical care provider’s written offer in writing within 60 days of receipt of the offer. If the claimant
requests a hearing pursuant to RSA 519-C:10, to resolve any dispute with respect to the content of
an early offer, the timeframe within which the claimant may accept or reject the early offer shall be
extended until 10 days after the decision on the disputed issue is issued by the hearing officer.

X. If the claimant accepts the medical care provider’s early offer, the claimant shall notify
the medical care provider in writing by certified mail, return receipt requested, and thereafter, the
claimant is barred from pursuing any claim for the same medical injury against any medical care
provider.

XI. If the claimant rejects the medical care provider’s early offer or does not accept the
medical care provider’s early offer within the time constraints provided by paragraph IX, the early
offer shall be considered rejected. A claimant who rejects an early offer may pursue an action for
medical injury against the medical care provider pursuant to RSA 507-E and RSA 519-B.

XII. A claimant who rejects an early offer and who does not prevail in an action for medical
injury against the medical care provider by being awarded at least 125 percent of the early offer
amount, shall be responsible for paying the medical care provider’s reasonable attorney’s fees and
costs incurred in the proceedings under this chapter. The claimant shall certify to the court that a
bond or other suitable security for payment of the medical care provider’s reasonable attorney’s fees
and costs has been posted before the court shall consider the case.

519-C:3 Unrepresented Claimant.

I. If the claimant is not represented by legal counsel, upon receiving a notice of injury, the
medical care provider shall provide a neutral advisor who is a member of the New Hampshire Bar or
a retired judge, at the medical care provider’s expense, to offer assistance to the claimant and
medical care provider under this chapter. Among other things, the neutral advisor shall encourage
the claimant to consider retaining an attorney, and shall ensure the claimant is aware of the
II. A claimant who was unrepresented at the time the claimant submitted the notice and waiver of rights shall have the right to withdraw the notice of injury and the notice and waiver of rights within 5 business days after the claimant’s first meeting with the neutral advisor, which shall occur no later than 10 business days from claimant’s notification of the identity of the neutral advisor. In the event the claimant withdraws the notice of injury, the early offer process shall be terminated and both parties shall proceed as if the notice of injury was never filed.

III. No medical care provider or insurer shall extend an early offer prior to the expiration of 15 business days after the claimant receives notification of the appointment of the neutral advisor.

519-C:4 Confidentiality.

I. Proceedings, records, and communications during negotiation of an early offer shall be treated as private and confidential by the claimant and the medical care provider. The outcome and any other writings, evidence, or statements made or offered by a party or a party’s representative during negotiation of an early offer and relevant only to the early offer process are not admissible in court or in a screening panel hearing under RSA 519-B, shall not be submitted or used for any purpose in a subsequent trial, and shall not be publicly disclosed.

II. A notice of injury provided pursuant to RSA 519-C:2, III, and subsequent actions taken pursuant to this chapter shall be exempt from the reporting requirements of RSA 329:17 and administrative rules adopted thereunder, unless the parties reach a settlement under this chapter.

Settlements reached pursuant to this chapter are not exempt from the reporting requirements of RSA 329:17 and said administrative rules.

519-C:5 Payment of Early Offer.

I. If an early offer is accepted, economic losses previously incurred by the claimant as a result of the medical injury and the reasonable attorney fee shall be paid by the medical care provider to the claimant within 15 days of the claimant accepting an early offer.

II. If an early offer is accepted, the medical care provider shall pay future economic losses incurred by the claimant to the claimant as such losses accrue. If any requested payment is denied, the medical provider shall notify the claimant in writing of the denial and the basis for denial, and inform the claimant that any request for a hearing under RSA 519-C:10 regarding the denial must be made within 30 days of the date of denial.

(a) Payments for medical bills arising after the early offer settlement is reached shall be made within 15 days after the medical care provider receives reasonable proof of the fact and the amount of loss sustained. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof shall be paid within 15 days after such proof is received. Any part or all of the remainder of the claim that is later supported by reasonable proof shall be paid within 15 days after such proof is received by the medical care provider. The medical care provider shall pay
any and all fees and charges incurred by the claimant resulting from failure to make timely payment
of medical bills.

(b) Payment of lost wages shall be made weekly. At a minimum, such payments shall be
adjusted annually on July 1 by a factor equal to the percentage change in the Consumer Price Index
for Urban Wage Earners and Clerical Workers (CPI-W) for Boston-Brockton-Nashua, MA-NH-ME-
CT for the prior 12 months established by the Federal Bureau of Labor Statistics.

(c) Payment of any other amounts due under an early offer shall be paid within 30 days
of the date that the provider receives notice and proof of the fact and amount that is due.

(d) When necessary for the medical care provider or its insurer to evaluate whether
medical expenses are reasonably related to the medical injury, the medical care provider may
request in writing that the claimant submit to an independent medical evaluation as provided by
RSA 519-C:2, VII.

III. Interest shall accrue at the rate of 1-1/2 percent per month on any amounts due under
an early offer that are not paid as prescribed by this section.

IV. In lieu of periodic payments, the claimant and medical care provider may agree upon a
lump sum payment for any and all potential future economic losses suffered by the claimant,
provided that the lump sum agreement is reviewed and approved by a hearing officer after a
hearing.

519-C:6 Compensation for Death. If death results from a medical injury, the amount of an early
offer pursuant to this chapter shall include:

I. Any economic loss incurred by the decedent prior to death;

II. The value at the time of death of what would have been the net earnings of the deceased,
less living expenses during the period of his or her life expectance, but for the medical injury;

III. The value of replacement services during the period of the decedent’s life expectance, but
for the medical injury;

IV. The additional payment determined pursuant to RSA 519-C:7; and

V. A reasonable attorney fee.

519-C:7 Additional Payment to the Claimant.

I. In addition to the lost wages, medical expenses, and replacement services, economic loss
included in any early offer under this chapter shall include an additional payment to the claimant.

II. The additional payment, as adjusted under paragraph V, that must be included in an
early offer shall be:

(a) For a temporary injury involving only emotional harm, without physical injury: $6,600.

(b) For a temporary injury involving insignificant harm: $2,100.

(c) For a temporary injury involving minor harm: $7,800.
(d) For a temporary injury involving major harm: $31,500.
(e) For a permanent injury involving minor harm: $35,500.
(f) For a permanent injury involving significant harm: $81,500.
(g) For a permanent injury involving major harm: $127,500.
(h) For a permanent injury involving grave harm, or an injury resulting in death: $140,000.

III. Classification of injuries under paragraph II shall be determined using the National Practitioner Data Bank severity scale.

IV. Either party may request a hearing pursuant to RSA 519-C:10 to resolve a dispute regarding classification of injury severity under this section.

V. The additional payment amounts in paragraph II shall be adjusted annually on July 1 beginning in 2013 by a factor equal to the percentage change in the CPI-U index for medical care for the Northeast Region for the prior 12 months established by the Federal Bureau of Labor Statistics.

519-C:8 Assignments; Certain Claims of Creditors.
I. Payments for economic loss under this chapter shall not be assignable.
II. Claims for child support, spousal support, or combination child and spousal support payments, pursuant to RSA 458-B, may be enforced against economic loss settlements.

519-C:9 Multiple Parties Alleged to Have Contributed to Causing Medical Injury.
I. Every early offer to settle a claim under this chapter shall include all of the economic loss, plus a reasonable attorney fee as set forth herein, and shall not be reduced or apportioned based on comparative fault of multiple providers. Any medical care provider, or combination of providers alleged to have contributed to causing an injury may extend an early offer as provided in this chapter, and acceptance of that offer by the claimant shall bar any further lawsuit or other claims for compensation by the claimant against all medical care providers arising as a result of the same medical injury. However, any medical care provider that extends an early offer to a claimant may seek contribution in a separate action against any medical care provider or other party that contributed to causing the medical injury. The injured individual shall not be a party to any action for contribution between medical care providers; however, the injured individual shall reasonably cooperate with the proceedings and provide such reasonable information and testimony as may be necessary to resolve the contribution claim. The parties to the action shall pay the injured individual all reasonable costs associated with such reasonable cooperation and testimony, including travel expenses and reasonable loss of earnings or a witness fee of $100 per day, whichever is greater.
II. Nothing in this section shall be regarded as exempting contribution claims from any applicable provisions of RSA 519-B.
III. Nothing in this section shall limit claims by the claimant against any party other than
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medical care providers who participated in providing medical care which gave rise to the medical
injury.

519-C:10 Dispute Resolution.

I. Upon the request of either party, a qualified hearing officer shall be chosen as provided in
RSA 519-C:1, V to resolve a dispute regarding an early offer made under this chapter.

II. Dispute resolution under this chapter shall be limited to the following issues:

(a) Whether an early offer includes all of the economic loss related to the injury that is
required by this chapter;

(b) Whether economic loss of any kind, past or future, asserted by the claimant, is
reasonably related to an injury that is the subject of an early offer;

(c) Which severity level, pursuant to RSA 519-C:7, most closely describes the injury that
is the subject of an early offer; or

(d) What the net present value of an early offer is, for the purposes of calculating the
appropriate payment for reasonable attorney fees.

III. No other disputes arising under this chapter may be the subject of, or resolved through,
a hearing under this section.

IV. Any request for a hearing pursuant to this section shall contain a reasonably complete
statement of the issue or issues to be resolved in the hearing and shall fully identify all parties to the
dispute. Any issue not listed in paragraph II shall not be considered. Hearings concerning economic
loss that arises after a settlement under this chapter shall be requested within 30 days of the date
payment for such economic loss is denied under RSA 519-C:5, II.

V. The medical care provider or, if applicable, the medical care provider's insurer shall pay
all reasonable costs associated with a hearing under this section.

VI. Hearings conducted under this chapter shall be governed exclusively by this section and
by rules adopted pursuant to RSA 519-C:15.

VII. Any hearing conducted under this chapter shall be conducted within 45 days of the
request and a decision shall be issued within 10 days of completion of the hearing. Hearings may be
conducted in person or telephonically.

VIII. On a motion from any party, or on his or her own motion, a hearing officer may
summarily determine any issue in dispute without a hearing if it appears from the record that there
are no material issues of fact in dispute. By agreement of the parties, any dispute may be
determined by the hearing officer on the written record without a hearing.

IX. Hearings conducted pursuant to this chapter shall be limited to a reasonable amount of
time as determined by the hearing officer, shall not require the presence or testimony of expert
witnesses, and shall be recorded by an accurate audio or stenographic recording of all testimony,
available to both parties at the non-prevailing parties' expense.
X. Parties to a hearing under this section shall exchange exhibits and witness lists at least 10 days prior to the hearing. No exhibit may be introduced or witness called in a hearing unless exchanged with the opposing party pursuant to this paragraph.

XI. The hearing officer shall issue a written decision resolving the issues in dispute. If the hearing officer finds against the medical provider on any issue, the decision shall modify the terms of the early offer. The early offer, as modified by the decision of the hearing officer, shall be binding on the parties.

XII. In a hearing conducted pursuant to subparagraph II(b) of this section, if the hearing officer determines the claimant’s position to be frivolous, the claimant shall reimburse the medical care provider for its costs related to presenting the dispute to the hearing officer, up to a maximum of $1,000.

XIII. In a hearing conducted pursuant to subparagraph II(b) of this section, if the hearing officer determines the medical care provider’s position to be frivolous, the medical care provider shall reimburse the claimant for its costs related to presenting the dispute to the hearing officer, up to a maximum of $1,000, or if the claimant is unrepresented, pay the claimant double the amount that was frivolously disputed or denied.

519-C:11 Limitations of Claims.

I. Except for claims on behalf of deceased individuals, claims for medical injury to a competent adult under this chapter shall be subject to the limitation set forth in RSA 508:4.

II. Except for claims on behalf of deceased individuals, claims for medical injury to a minor or incompetent under this chapter shall be subject to the limitation set forth in RSA 508:8.

III. Claims for medical injuries on behalf of deceased individuals shall be subject to the limitations set forth in RSA 556:7.

IV. Providing a notice of injury to a medical care provider as provided in this chapter shall operate to toll the applicable statute of limitation with respect to that injury from the time such notice is provided to a medical care provider until the expiration of time for a medical care provider to extend an early offer, or if an early offer is extended, until the acceptance or rejection of an early offer by the claimant, whichever occurs later.

519-C:12 Subrogation. Any insurer or third party who has paid or reimbursed economic losses to or for the benefit of the claimant, shall have the right of subrogation against the medical provider entering into an early offer of settlement under this chapter.

519-C:13 Notice and Waiver of Rights.

I. Claimants electing to pursue resolution of a medical injury under this chapter shall execute a notice and waiver of rights which contains the following wording:

WAIVER OF RIGHTS

By agreeing to submit a notice of injury to the medical care provider, I understand that my
rights to seek legal remedies and a jury trial for my injuries guaranteed by Part I, Articles 14 and 20
of the New Hampshire Constitution may be affected.

I understand that I have the right to consult and retain an attorney to represent me regarding
this matter, and that if an early offer settlement is reached, my attorney will be paid pursuant to
RSA 519-C:5, I by the health care provider, in addition to any amount that is paid for my economic
loss.

If I do not have an attorney when I sign this waiver form, the medical provider will appoint a
neutral advisor to assist me in the early offer process and to explain, among other things, the
differences between proceeding under this chapter or as provided in RSA 507-E and RSA 519-B. I
HAVE THE RIGHT TO WITHDRAW THIS WAIVER AND THE NOTICE OF INJURY ANY TIME
PRIOR TO MIDNIGHT OF THE FIFTH BUSINESS DAY AFTER MY FIRST MEETING WITH
THE ADVISOR, WHICH MUST OCCUR NO LATER THAN 10 BUSINESS DAYS FROM MY
NOTIFICATION OF THE IDENTITY OF THE NEUTRAL ADVISOR.

If after submitting a notice of injury, the medical care provider does NOT extend an early offer
(RSA 519-C:1, III), I am free to pursue my legal remedies as defined in New Hampshire law without
restriction.

If after submitting a notice of injury, the medical care provider does extend an early offer
(RSA 519-C:1, III), I may either:

(1) Accept the early offer;
(2) Request a hearing before a hearing officer to determine whether the early offer
includes all of the economic loss I am entitled to under the statute, and if necessary, the hearing
officer may order the medical care provider to increase the early offer to meet the requirements of
the early offer law; or
(3) Reject the early offer and seek legal remedies.

I understand that if I reject an early offer and am later awarded economic damages equal to or
less than 125 percent of the amount of the early offer, I will be responsible for paying the medical
care provider’s reasonable attorney’s fees and costs incurred in proceedings under this chapter.

I understand that if an early offer is made by the medical care provider and I accept that offer,
disputes regarding the early offer can be resolved only in accordance with RSA 519-C:10 by a hearing
officer listed with the judicial branch office of mediation and arbitration, at my request or the
request of the medical care provider. If either party believes that the decision of the hearing officer
is unlawful, that party may seek discretionary review in the New Hampshire court system; however,
there is no assurance that the courts will undertake such review.

Date __________________ Signature __________________________

II. A properly executed waiver form by a claimant who is competent at the time the waiver is
executed shall be conclusively presumed to be a sufficient, knowing, and voluntary waiver if the
waiver form complies with this section.

519-C:14 Other Action for Injury. Except as set forth in RSA 519-C:2, IX, a claimant may only pursue an action for medical injury as provided in RSA 507-E and RSA 519-B when:

I. The claimant elects not to submit a notice of injury pursuant to this chapter;

II. The medical care provider elects not to extend an early offer pursuant to this chapter in response to the notice of injury; or

III. The claimant withdraws the notice of injury and the notice and waiver of rights pursuant to RSA 519-C:3.

519-C:15 Rulemaking. The commissioner of the New Hampshire insurance department shall adopt rules necessary to administer the hearings process under this chapter.

519-C:16 Reports.

I. The insurance commissioner shall report to the general court annually, on or before November 1, on the effects of the early offer process established in this chapter. Such reports shall include, but not be limited to, statistics of each time the early offer process was initiated, including the number of claimants requesting early offers, the number of claimants receiving early offers, a record of the amount of each demand for economic loss, the corresponding early offer from the medical provider and the ultimate amount received by the claimant, if any, the severity of injuries, the time from initial notice to final resolution of claims, and the amount paid on claims.

II. The insurance commissioner may adopt rules under RSA 541-A to collect the data from insurers or any self-insured entity necessary to prepare the report required by this section. To the extent the commissioner collects information from insurers regarding individual claims, loss adjustment and other expenses, reserves, indemnity payments, or other financial information that is not otherwise reported to the commissioner and available to the public, such information shall be treated as examination materials, kept confidential, and not be subject to RSA 91-A.
criminal case shall be opened for the purposes of obtaining or reviewing non-exculpatory evidence in
that criminal case, unless the sitting judge makes a specific ruling that probable cause exists to
believe that the file contains evidence relevant to that criminal case. If the judge rules that probable
cause exists, the judge shall order the police department employing the officer to deliver the file to
the judge. The judge shall examine the file in camera and make a determination as to whether it
contains evidence relevant to the criminal case. Only those portions of the file which the judge
determines to be relevant in the case shall be released to be used as evidence in accordance with all
applicable rules regarding evidence in criminal cases. The remainder of the file shall be treated as
confidential and shall be returned to the police department employing the officer.

288:5 Study Committee Established; Self-Referrals for Implantable Medical Devices.

I. There is hereby established a committee to study the issue of health care practitioners
making referrals of patients for the use of implantable medical devices when the practitioner has an
ownership or other financial interest in the supplier of the implantable medical device.

II. The members of the committee shall be as follows:

(a) Five members of the house of representatives, appointed by the speaker of the house
of representatives.

(b) Two members of the senate, appointed by the president of the senate.

III. Members of the committee shall receive mileage at the legislative rate when attending to
the duties of the committee.

IV. The committee shall study the issue of health care practitioner self-referrals for
implantable medical devices and make recommendations as to any future legislation.

V. The members of the committee shall elect a chairperson from among the members. The
first-named house of representatives member shall call the first meeting. The first meeting shall be
held within 30 days of the effective date of this section. Four members of the committee shall
constitute a quorum.

VI. The committee shall submit a report of its findings and any recommendations for
proposed legislation to the speaker of the house of representatives, the president of the senate, the
house clerk, the senate clerk, the governor, and the state library on or before November 1, 2012.

288:6 Effective Date.

I. Section 2 of this act shall take effect January 1, 2013.

II. Section 3 of this act shall take effect November 1, 2020.

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

Approved: Enacted in accordance with Article 44, Part II, N.H. Constitution, without signature of
governor, June 27, 2012.

Effective Date: I. Section 2 shall take effect January 1, 2013.

II. Section 3 shall take effect November 1, 2020.

III. Remainder shall take effect June 27, 2012.