

HB 218-FN – AS INTRODUCED

2013 SESSION

13-0151
01/04

HOUSE BILL **218-FN**

AN ACT prohibiting interference with access to medical services and health insurance of
New Hampshire citizens.

SPONSORS: Rep. Itse, Rock 10; Rep. Comerford, Rock 33

COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill makes it a misdemeanor for an officer of the government to interfere with or withhold medical services from legal residents of New Hampshire.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT prohibiting interference with access to medical services and health insurance of New Hampshire citizens.

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

1 1 Findings.

2 I. The Constitution of the State of New Hampshire, Part 1, Article 7 declares that the people
3 of this State have the sole and exclusive right of governing themselves as a free, sovereign, and
4 independent State; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction,
5 and right, pertaining thereto, which is not, or may not hereafter be, by them expressly delegated to
6 the United States of America in Congress assembled.

7 II. The Constitution of the State of New Hampshire, Part 2, Article 1 declares that the
8 people inhabiting the territory formerly called the province of New Hampshire, do hereby solemnly
9 and mutually agree with each other, to form themselves into a free, sovereign and independent body-
10 politic, or State, by the name of the State of New Hampshire.

11 III. The State of New Hampshire when ratifying the Constitution for the United States of
12 America recommended as a change, “First That it be Explicitly declared that all Powers not
13 expressly & particularly Delegated by the aforesaid are reserved to the several States to be, by them
14 Exercised.”

15 IV. The other States that included recommendations: Massachusetts, New York, North
16 Carolina, Rhode Island and Virginia, included an identical or similar recommended change.

17 V. These recommended changes were incorporated as the Ninth Amendment, the
18 enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others
19 retained by the people, and the Tenth Amendment, the powers not delegated to the United States by
20 the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the
21 people, to the Constitution for the United States of America.

22 VI. The construction applied by the general government (as is evidenced by sundry of their
23 proceedings) to those parts of the Constitution of the United States which delegate to Congress a
24 power “to lay and collect taxes, duties, imports, and excises, to pay the debts, and provide for the
25 common defense and general welfare of the United States,” and “to make all laws which shall be
26 necessary and proper for carrying into execution the powers vested by the Constitution in the
27 government of the United States, or in any department or officer thereof,” goes to the destruction of
28 all limits prescribed to their power by the Constitution. Such words meant by the instrument to be
29 subsidiary only to the execution of limited powers, ought not to be so construed as themselves to give
30 unlimited powers, nor a part to be so taken as to destroy the whole residue of that instrument.

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1 VII. Whensoever the General Government assumes undelegated powers, its acts are
2 unauthoritative, void, and of no force.

3 VIII. The Constitution of the United States, having delegated to Congress a power to punish
4 treason, counterfeiting the securities and current coin of the United States, piracies, and felonies
5 committed on the high seas, offenses against the law of nations, and slavery, and no other crimes.

6 IX. All acts of Congress, the orders of the Executive or orders of the Judiciary which assume
7 to create, define, or punish crimes, other than those so enumerated in the Constitution are altogether
8 void, and of no force; and that the power to create, define, and punish such other crimes is reserved,
9 and, of right, appertains solely and exclusively to the respective States, each within its own territory.

10 X. The United States Supreme Court has ruled in *New York v. United States*, 112 S. Ct. 2408
11 (1992), that Congress may not simply commandeer the legislative and regulatory processes of the
12 states.

13 XI. All compulsory federal legislation that directs states to comply under threat of civil or
14 criminal penalties or sanctions or that requires states to pass legislation or lose federal funding are
15 prohibited.

16 XII. The Constitution for the United States, and the Laws of the United States which shall
17 be made in pursuance thereof; and all treaties made, or which shall be made under the authority of
18 the United States, shall be the supreme law of the land; and the judges in every state shall be bound
19 thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding. Article
20 1, section 8 of the United States Constitution gives Congress the power: “To regulate Commerce
21 with foreign Nations, and among the several States, and with the Indian Tribes.” The Constitution
22 for the United States of America Article 1, Section 8 delegates no power to Congress regarding health
23 care or medicine. Therefore, all laws, statutes, rules and regulations regulating the health care of
24 the citizens of the States, not employed by the United States are not pursuant to the Constitution of
25 the United States, and are not part of the supreme law of the land, and are not binding upon the
26 citizens of the state.

27 XIII. Any act, order, law, statute, regulation or rule restricting the ability of New Hampshire
28 citizens to contract with health care professionals or facilities for the provision of health care services
29 or to contract with corporations providing health insurance authorized by the State of New
30 Hampshire for health insurance is unconstitutional, void and of no force. Any attempt to enforce
31 such a law is an affront to the Sovereignty of the States and their Citizens.

32 2 New Chapter; Health Care Choices. Amend RSA by inserting after chapter 415-J the
33 following new chapter.

34 CHAPTER 415-K

35 HEALTH CARE CHOICES

36 415-K:1 Definitions. In this chapter:

37 I. “Health care professional” means any physician, chiropractor, dentist, nurse practitioner,

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1 physician’s assistant, nurse, dental assistant, midwife, or naturopath, or any other person recognized
2 to practice medicinal arts or sciences in New Hampshire.

3 II. “Health care facility” means any hospital, clinic, physician’s office, chiropractor’s office,
4 dentist’s office or any other facility licensed by the State of New Hampshire to provide medical
5 services or for health care professionals to practice medicinal arts or sciences.

6 III. “Health insurance provider” means any corporation authorized by the insurance
7 commissioner of the State of New Hampshire to contract with residents of New Hampshire, or sole
8 proprietorships, partnerships, or corporations located in New Hampshire.

9 415-K:2 Interference Prohibited.

10 I. Any officer, agent, or employee of the United States or employee of any corporation
11 providing services to the United States who prevents, attempts to prevent, interferes with, or
12 withholds medical services from a legal resident or inhabitant of New Hampshire or withholds
13 medicines or medical treatment from a legal resident or inhabitant of New Hampshire based upon a
14 law, statute, regulation, or rule of the United States without the consent of the General Court of
15 New Hampshire shall be guilty of a class A misdemeanor.

16 II. Any public servant of the State of New Hampshire as defined in RSA 640:2 who prevents,
17 attempts to prevent, interferes with, or withholds medical services from a legal resident or
18 inhabitant of New Hampshire or withholds medicines or medical treatment from a legal resident or
19 inhabitant of New Hampshire based upon a law, statute, regulation, or rule of the United States
20 without the consent of the General Court of New Hampshire shall be guilty of a class B
21 misdemeanor.

22 III. Any officer, agent, or employee of the United States or employee of any corporation
23 providing services to the United States who prevents, attempts to prevent, interferes with, voids or
24 administers penalties for a contract between a legal resident or inhabitant of New Hampshire and a
25 health insurance provider authorized to business in New Hampshire based upon a law, regulation, or
26 rule of the United States without the consent of the General Court of New Hampshire shall be guilty
27 of a class A misdemeanor.

28 IV. Any public servant of the of the State of New Hampshire as defined in RSA 640:2 who
29 prevents, attempts to prevent, interferes with, voids, or administers penalties for a contract between
30 a legal resident or inhabitant of New Hampshire and a health insurance provider authorized to
31 business in New Hampshire based upon a law, statute, regulation, or rule of the United States
32 without the consent of the General Court of New Hampshire shall be guilty of a class B
33 misdemeanor.

34 3 Copies Required. Three copies of this act shall be transmitted by the house clerk of the
35 New Hampshire house of representatives to the President of the United States, the presiding
36 members of each chamber of the Congress of the United States, and the chief executive and the
37 presiding members of the legislature of each State comprising the United States of America.

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1 4 Effective Date. This act shall take effect upon its passage.

HB 218-FN - FISCAL NOTE

AN ACT prohibiting interference with access to medical services and health insurance of New Hampshire citizens.

FISCAL IMPACT:

The Department of Justice, Judicial Branch, Judicial Council, and New Hampshire Association of Counties state this bill, **as introduced**, may increase state and county expenditures by an indeterminable amount in FY 2013 and each year thereafter. There will be no fiscal impact on local expenditures, or state, county, and local revenues.

METHODOLOGY:

The Department of Justice states this bill would create four new misdemeanor offenses for interfering with the provision of medical treatment to legal residents; two class A misdemeanors targeted at officers, agents, or employees of the United States, or employees of a corporation that provides services to the United States; and two class B misdemeanors targeted at public servants in New Hampshire. The Department states it is responsible for investigating and prosecuting allegations of criminal conduct committed by public officials in their official capacity, however, the Department is unable to estimate how many cases or complaints would be generated by the passage of this bill.

The Judicial Branch states the cost of a class A misdemeanor case in the district division of the circuit court will be \$62.71 in FY 2014 and \$64.40 in FY 2015, and the cost of a class B misdemeanor case in the district division of the circuit court will be \$44.32 in FY 2014 and \$45.84 in FY 2015. The Judicial Branch states the case cost estimates are based on data that is more than seven years old and does not reflect the changes to the courts over that same period of time, or the impact these changes may have on the processing of these types of cases. The Branch has no information to estimate how many charges would be brought as a result of the proposed bill to determine the fiscal impact on expenditures. However, according to the Judicial Branch, the potential for appeals makes the number of class A or class B misdemeanors needed for a fiscal impact to the Judicial Branch in excess of \$10,000 significantly fewer.

The Judicial Council assumes this bill would not generate delinquency petitions in the Family Courts. Also, the Council assumes anyone violating the provisions of this proposed bill would be ineligible for assistance of counsel at state expense because violators would: (1) do so within the

context of their employment as either a government official or in their capacity as an agent of a private corporation; or (2) be gainfully employed and probably not meet the eligibility requirements. Nevertheless, the Council states if an individual is found to be indigent, the state would be subject to a flat fee of \$275 for each misdemeanor case handled by a public defender or contract attorney. If an assigned counsel attorney is used the fee is \$60 per hour with a cap of \$1,400 for a misdemeanor charge. The Council also states additional costs could be incurred if an appeal is filed. The public defender, contract attorney, and assigned counsel rates for Supreme Court appeals is \$2,000 per case, with many assigned counsel attorneys seeking permission to exceed the fee cap. Requests to exceed the fee cap are seldom granted. Finally, expenditures would increase if services other than counsel are requested and approved by the court during the defense of a case or during an appeal.

The New Hampshire Association of Counties states, to the extent more individuals are charged, convicted, and sentenced to incarceration in a county correctional facility, the counties may have increased expenditures. The Association is unable to determine the number of individuals who might be charged, convicted, or incarcerated as a result of this bill to determine an exact fiscal impact. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000. There is no impact on county revenue.