

HB 1573-FN - AS INTRODUCED

2024 SESSION

24-2149

05/10

HOUSE BILL

1573-FN

AN ACT relative to oversight of and criteria for residential placement of children.

SPONSORS: Rep. M. Pearson, Rock. 34; Rep. J. Nelson, Rock. 13; Rep. Panek, Hills. 1; Rep. Seidel, Hills. 29; Rep. Petrigno, Hills. 43; Rep. Gregg, Hills. 7; Sen. Birdsell, Dist 19; Sen. Innis, Dist 7; Sen. Bradley, Dist 3

COMMITTEE: Children and Family Law

ANALYSIS

This bill revises criteria for the out-of-home placement of children and increases oversight and certification criteria for out-of-state residential treatment programs. The bill also expands the definition of abuse or neglect under RSA 169-C to include a child in certain residential placements.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT relative to oversight of and criteria for residential placement of children.

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

1 1 Statement of Purpose and Findings. The general court makes the following findings regarding
2 children in state care:

3 I. Children in the care of the state have fundamental rights, as recognized by RSA 170-G:21.

4 II. When a child is placed under the care and custody of the state, it is the responsibility of
5 the state to ensure that a child receives appropriate housing, nutrition, medical and mental health
6 care, education, and basic standards of care, to develop into happy and productive members of
7 society.

8 III. Children who are removed from their homes must be placed in the least restrictive
9 alternate setting. When removal and placement cannot be avoided, the disruption that the child
10 may experience is minimized, and emotional trauma may be reduced, by placing the child in the
11 most familiar, least restrictive setting. The first alternative considered is placement with a relative
12 or a close friend, “kin” or “fictive kin”, to offer the child some degree of familiarity and continuity.
13 When placement with a relative or a family friend is not possible, the least restrictive placement of
14 choice is placement in a licensed foster home.

15 IV. Residential facilities are appropriate only for children who cannot be maintained in their
16 own home or a community-based alternative, and who may have difficulties in school and in the
17 community. Residential facilities are congregate care placements, are considered the most
18 restrictive settings, and are not appropriate for children under 10 years of age. Therefore, placement
19 in a residential setting is used only as a last alternative for children age 10 and older. Special
20 consideration will be given to children under age 10, if deemed clinically appropriate due to a
21 medical necessity.

22 V. Placing children in residential treatment centers or group homes must be viewed as a
23 short-term, time-limited service only. The purpose is to stabilize the child and to prepare him or her
24 for a less restrictive setting. The goal is to facilitate family/caregiver integration or another plan
25 consistent with the agency's policy of permanency planning.

26 2 Residential Care and Child-Placing Agency Licensing. Amend RSA 170-E:31, IV to read as
27 follows:

28 IV. The department shall make monitoring visits [~~a minimum of once yearly each licensing~~
29 ~~period. At least one such visit during the licensing period shall not be announced in advance;~~
30 ~~however, such unannounced visit is optional for foster family homes]~~ ***of all in-state facilities at***
31 ***least annually, and all out-of-state facilities at least quarterly, as well as periodic***

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1 ***unannounced visits, no fewer than once per year.*** Clear and comprehensive records shall be
2 maintained by the department on each licensed ***and certified*** facility showing the dates and
3 findings of each such visit. Such records shall be made available to the facility. If the facility is
4 found not to be in compliance either with the statute or the rules adopted by the commissioner, a
5 corrective action plan shall be submitted to the department. Failure to submit an acceptable plan
6 shall result in license suspension or revocation.

7 3 Contract with Department of Health and Human Services Required. Amend RSA 170-E:31-a
8 to read as follows:

9 170-E:31-a Deemed Licensed. Any qualified residential treatment program accredited by
10 organizations as specified in Title 42 of the Social Security Act, 42 U.S.C. section 672(k)(4)(G), as
11 amended, shall submit a completed license application or renewal application. Such child care
12 institutions and child care agencies defined as group homes, specialized care, or homeless youth
13 programs, shall be deemed licensed under this subdivision ~~[and shall be exempt from inspections~~
14 ~~carried out under RSA 170-E:31, IV]~~. This section shall only apply to the activities or portions of the
15 facility or agency accredited under Title 42 of the Social Security Act, 42 U.S.C. section 672(k)(4)(G),
16 as amended. ***Any child care institution or child care agency deemed licensed under this***
17 ***section shall be subject to the monitoring and oversight requirements of this chapter, RSA***
18 ***169-F, and RSA 170-G:4, XVIII.***

19 4 New Section; Out-of-State Residential Treatment Programs. Amend RSA 170-E by inserting
20 after section 31-a the following new section:

21 170-E:31-b Out-of-State Residential Treatment Programs; Certification Required.

22 I. No child shall be placed in an out-of-state residential treatment program, including a
23 qualified residential treatment program or psychiatric residential treatment program, unless the
24 program has been licensed or certified by the department. Any out-of-state program not certified by
25 the department shall not be eligible to receive state funds or federal funds disbursed by the state of
26 New Hampshire.

27 II. The department shall assess and certify every out-of-state qualified residential treatment
28 program or psychiatric residential treatment program prior to entering into a contract for payment,
29 and prior to the placement of any child in that facility. To be certified by the department, the
30 program shall demonstrate compliance with staff training and program requirements and offer an
31 appropriate therapeutic milieu and culture centered in trauma-informed care, in accordance with
32 standards adopted by the department.

33 III. On or before January 1, 2025, the department shall establish a contract and certification
34 team, responsible for the assessment and certification of all out-of-state residential treatment
35 programs. Such assessments shall include an in-person visit of the facility and review of all
36 appropriate records and certification criteria. The team shall give priority to all residential
37 treatment programs where children are placed on the effective date of this section.

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1 IV. The team shall develop a standard operating procedure and form for assessment of the
2 out-of-state program to be completed during each in-person visit. Such visits shall be conducted
3 quarterly in accordance with RSA 170-E:31.

4 V. No placement outside of New England shall be made on or after the effective date of this
5 section. The department shall make every effort to ensure that any child placed outside New
6 England on the effective date of this section is transferred to an appropriate placement in this state
7 or in New England on or before January 1, 2025.

8 5 New Sections; Out-of-Home Placements; Oversight. Amend RSA 169-F by inserting after
9 section 4 the following new sections:

10 169-F:5 Oversight of Children in Care; Department Responsibilities.

11 I. Any child in a court-ordered placement or placement for an episode of treatment shall be
12 seen in-person on at least a monthly basis, by the case worker assigned to that child's case. The visit
13 to the child shall include a private meeting with the child, in a safe place, as well as an in-person
14 tour of the child's living quarters. The monthly contact shall also include contact with the child's
15 placement provider, therapeutic providers, and educational providers, preferably in real-time, but at
16 least by written correspondence. For any child placed in a residential placement, these visits shall
17 include a tour of the entire facility; discussions with leadership about program culture and
18 therapeutic programming; discussions with program direct care staff; discussions with the clinical
19 director and/or the child's therapeutic provider about the program culture, therapeutic
20 programming, and the child's individual progress, strengths and challenges in the program; as well
21 as the individual check-in with the children to inquire about care received.

22 II. The department shall develop, in conjunction with the office of child advocate, a standard
23 operating procedure and form for monthly visits conducted by the department, including a section
24 for the assessment of contracted residential placement facilities, to be completed during each
25 monthly in-person visit.

26 169-F:6 Court Oversight of Children in Residential Treatment Programs.

27 I. Prior to placing a child in qualified residential treatment programs or psychiatric
28 residential treatment programs, the court shall:

29 (a) Consider all behavioral assessments and plans for the child, including assessment of
30 whether a qualified residential treatment program is the most effective, appropriate, and least
31 restrictive placement for the child and any child-specific short- and long-term goals for the child and
32 the family;

33 (b) Determine whether the needs of the child can be met through placement with a
34 parent, legal guardian, legal custodian, kin caregiver, or in a foster care home, or whether placement
35 of the child in a qualified residential treatment program provides the most effective and appropriate
36 level of care for the child, or the least restrictive environment, and whether that placement is
37 consistent with the short- and long-term goals, including mental, behavioral, and physical health

goals, for the child as specified in the permanency plan for the child, or as outlined in the family services plan; and

(c) Approve or disapprove of the placement.

II. In determining whether a qualified residential treatment program is appropriate, the court shall consider any available evidence-based functional behavioral assessments and plans and shall give great weight to the recommendation in the assessment when making a qualified residential treatment program placement decision. If the court deviates from such recommendation, the court shall make specific findings of fact regarding the most effective, appropriate, and least restrictive placement for the child and whether the placement is consistent with child-specific short and long-term goals for the child and the family. When making such findings of fact, the court shall consider all relevant information, including:

(a) Whether the protocol for the qualified residential treatment program assessment was followed;

(b) The strengths and specific treatment or service needs of the child and the family;

(c) The expected length of stay; and

(d) The placement preference of the child and the family.

III. When a court places a child in qualified residential treatment program or psychiatric residential treatment program:

(a) The court shall review the placement of that child within 60 days after placement, and every 60 days thereafter; or

(b) If the child or the child's representative does not support the qualified residential treatment program level of care or the child, guardian ad litem, or any party objects to the placement, the court shall review the placement within 30 days, and every 30 days thereafter.

IV. As long as a child remains in a qualified residential treatment program, the department shall submit evidence to the court and all parties, at least 5 days prior to every regular review hearing:

(a) Demonstrating that:

(1) Ongoing assessment of the strengths and needs of the child continues to support the determination that the needs of the child cannot be met through placement with a parent, legal guardian, legal custodian, kin caregiver, or in a foster family home;

(2) That the placement in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment; and,

(3) That the placement is consistent with the short- and long-term goals for the child as specified in the permanency plan for the child, or as outlined in the family services plan.

(b) Documenting that:

(1) The specific treatment or service needs that will be met for the child in the placement; and

1 (2) The length of time the child is expected to need treatment or services; and

2 (3) The efforts made by the division to prepare the child to return home or to be
3 placed with a fit and willing kin caregiver, a legal guardian, legal custodian, or an adoptive parent,
4 or in a foster family.

5 6 Definition of Neglected Child. Amend RSA 169-C:3, XIX(c) to read as follows:

6 (c) Whose parents, guardian or custodian are unable to discharge their responsibilities
7 to and for the child because of incarceration, hospitalization or other physical or mental incapacity;
8 **or**

9 (d) *Who is in a residential placement or child care institution as defined in RSA*
10 *170-E:25, II, and:*

11 (1) *Has been so placed for a continued period of time with the knowledge*
12 *that the placement has resulted and may continue to result in harm to the child's mental*
13 *or physical well-being; or*

14 (2) *Has been willfully isolated from ordinary social contact under*
15 *circumstances which indicate emotional or social deprivation;*

16 7 Effective Date. This act shall take effect 60 days after its passage.

**HB 1573-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to oversight of and criteria for residential placement of children.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Revenue	\$0	\$0	\$0	\$0
<i>Revenue Fund(s)</i>	None			
Expenditures	\$0	\$6,862,000+	\$6,511,000+	\$6,713,000+
<i>Funding Source(s)</i>	General Fund			
Appropriations	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

- Does this bill provide sufficient funding to cover estimated expenditures? ☒ No
- Does this bill authorize new positions to implement this bill? ☒ No

The Office of the Child Advocate was contacted on 10/16/23 for a fiscal note worksheet. If information is received, a revised fiscal note will be forwarded to the House Clerk's Office.

METHODOLOGY:

This bill provides additional structure and obligations related to the Department of Health and Human Services' use and oversight of residential treatment for children and youth. In general, the bill increases the frequency, scope and purpose of departmental staff visits to all residential treatment providers, including those in New Hampshire, New England, and throughout the country. In addition, the bill requires the Department to have a contract with a provider before it may access treatment for a youth from that provider. The Department makes the following assumptions about certain provisions in the bill:

- The word "placed" on page 1, line 4, refers only to youth involved in cases pursuant to Child Protection (RSA 169-C), Juvenile Delinquency (RSA 169-B), and Children in Need of Services Cases (169-D) and does not include youth who are voluntarily participating in residential treatment and are not involved in court proceedings unless otherwise specified in the proposed legislation.

- Page 1, line 28, amending RSA 170-E:31, IV (the licensing statute), applies only to in-state facilities because the Department does not have jurisdiction over licensing of out-of-state facilities.
- The out-of-state visits referenced on page 1, line 30 through page 2, lines 6 refer to visits for the purpose of certification for payment pursuant to RSA 170-G:4, XXVIII for quality and standards of performance.
- The language on page 2, lines 16-18 exists for clarification purposes only and does not add any new responsibilities beyond what exists in current law.

The Department makes the following additional assumptions with respect to out-of state residential treatment programs and oversight of children in care:

Out-of-State Residential Treatment Programs

The Department assumes that to create a contract and certification unit by January 1, 2025, and to have the capacity to perform five visits per year to approximately 100 certified programs, it will need six additional program specialist positions. Additionally, to track, manage and share the additional information collected, the Department anticipates needing a file management system for certification records. The Department assumes it will cost approximately \$500,000 to establish a solution using that State's current platforms or an equivalent option.

The Department assumes its Division for Children, Youth, and Families (DCYF) will need 2 additional program specialists to support the enhanced workload.

The bill prohibits the placement of youth for treatment outside of New England after January 1, 2025. The Department assumes that this may eliminate access to the most appropriate and least restrictive setting for a small number of youth with complex behavioral health and co-occurring medical or developmental needs resulting in additional costs to meet their needs if prohibited from accessing the appropriate specialty. These expenses may impact Medicaid and general funds by some indeterminable amount.

Oversight of Children in Care

This portion of the bill enhances the scope of in-person visits between DCYF caseworkers and DCYF involved youth in residential treatment. It also increases the frequency and intensity of court oversight of placements of DCYF involved youth. Specifically, it requires that a youth's assigned caseworker individually visit every youth in-person monthly and perform certain enumerated tasks during every visit. The Department assumes that the level of interaction required of every caseworker, every month, for every youth will substantially increase the amount of time it takes to prepare for, coordinate and schedule visits and increase the amount of

time required to document visit and duplicative information from month to month. In order to accommodate this increase for DCYF involved youth, the Department states that DCYF will need an additional 18 caseworkers.

Additionally, for youth in voluntary episodes of treatment, funded through the Division of Behavioral Health, the Department assumes it will need to add approximately four child protective services worker (CPSW) equivalent positions to support the monthly visit requirements for approximately 75-100 youth in residential treatment at any point in time. The Department also assumes there will be substantial increases to travel costs to support approximately 350 in-person visits for youth in residential treatment each month to locations throughout the state and New England when shared visits and virtual visits are eliminated.

In total, the Department projects the following costs:

	FY25	FY26	FY27
Staffing for Certification Visits	\$928,000	\$936,000	\$976,000
Certification Travel (Mileage, Flights, Hotel)	\$1,034,500	\$1,075,880	\$1,118,915
Development of File Mgmt System	\$500,000	\$0	\$0
Youth Visit Staffing	\$2,178,000	\$2,200,000	\$2,288,000
Youth Visit Travel (Mileage, Flights, Hotel)	\$738,000	\$767,520	\$798,220
Total:	\$5,378,500	\$4,979,400	\$5,181,135

It should be noted that the travel costs shown above reflect the low-end of the Department's travel estimates. At the high end, costs would be approximately \$200,000 - \$300,000 higher per year.

The Judicial Branch states that currently, review hearings are held at 90-day intervals to determine the appropriateness of a residential treatment program. This bill would reduce the intervals of review hearings to every 30 days, resulting in a possible new average of 3600 hearings per year, an increase of 2400 hearings, or 200%. The Branch predicts this increase in caseload will result in the following additional salary and benefit costs:

	New Positions Needed	FY 25	FY 26	FY 27
Judges	2	\$650,618	\$653,720	\$653,720
Clerks' Offices	7	\$832,866	\$878,165	\$878,165
Total	9	\$1,483,483	\$1,531,885	\$1,531,885

AGENCIES CONTACTED:

Department of Health and Human Services, Judicial Branch, and Office of the Child Advocate