

2023 State Legislative Update

NEW HAMPSHIRE

FY 2024 and '25 Budget

- In a highly unusual turn of events, the Legislature passed a budget for the next two years with a bipartisan majority and without a committee of conference to hash out differences between either the House and Senate or Republicans and Democrats. The budget contained significant investments in health care (as well as childcare and housing), including:
 - \$134 million for targeted Medicaid rate increases for community providers, including:
 - Nursing homes
 - Choice for Independence providers (home care services)
 - Assisted living facilities
 - Home health aides
 - Meals on wheels providers
 - Case management services
 - Private duty nursing providers
 - Developmental services, early supports and services, and brain disorder services,
 - Substance use providers
 - Community mental health providers
 - Ambulance/EMT providers
 - 7-year extension of Medicaid Expansion – this is a federal/state funded program (90/10%, respectively) and the State’s share is to be funded by the Liquor Fund (no longer to be subsidized by hospitals)
 - Authorizes DHHS to expand Medicaid coverage for the postpartum population for 12 months and makes the necessary appropriation
 - Authorizes DHHS to expand eligibility for Medicaid for immigrant children and pregnant and postpartum women and makes the necessary appropriation
 - Healthcare Violence Prevention Commission established - to be administered by the Department of Safety
 - Investments in the System of Care for Healthy Aging – to continue enhancing infrastructure to assist in barriers to discharge from acute care
 - Investments in housing –
 - \$25 million for InvestNH for affordable housing development
 - Develop Housing Champion program for municipalities (to support workforce housing development)
 - Congregate, transitional, and homelessness investments
 - Investments in childcare –
 - Changes in childcare scholarship program (income based)
 - Increase in eligibility to 85% of the NH median income
 - Changes reimbursement from attendance based to enrollment based
 - Increase in reimbursement for providers to 75% of market
 - \$15 million for recruitment and retention for child care employers
 - No requirement that all licensed providers must have designated receiving facility beds
 - No changes to health care licensure, including changes related to licensed nursing assistants

Access to care

- The Legislature passed a bill (HB 500) that expands the capacity to prescribe Schedule II-IV controlled substances via telehealth – from substance use disorder only to all practice areas, a significant change in state law. *Additionally, the DEA extended the prescribing authority it enabled during the pandemic through November.
- ***System of Care for Healthy Aging***
Incorporated into the budget, SB 36 increases access to community-based services and establishes person-centered counseling programs through disability resource centers.
- ***Emergency behavioral health services and crisis programs***
SB 86 establishes a commission to study behavioral health crisis programs and limits pre-authorization requirements for behavioral health services, such as mobile crisis interventions.

Contracting and Finance

- ***Provider credentialing***
SB 72 directs carriers to act on a change in status request within a specified period of time or notify the provider for reason for the delay or inability to act, and directs the NH Insurance Commissioner to accept and record complaints regarding credentialing procedures.
- Two bills that Dartmouth Health supported, including a bill requiring prompt payment from managed care plans and a bill prohibiting carriers from using the provider manual to change material terms of a contract, were retained by the respective committees of jurisdiction for future consideration.

LGBTQIA+

- Several bills were introduced this session that would have impacted access to gender affirming care and the LGBTQIA+ community. These included bills that would have allowed public facilities to discriminate on the basis of biological sex (HB 396), changed the definition of child abuse by adding sexual reassignment (HB 417), and prohibited gender transition medical care for minors and teaching about gender identity in public schools while allowing for conversion therapy (HB 619). Each of these bills, along with HB 368, which would have provided affirmative protections for persons receiving gender affirming health care and mental health care - as well as for providers providing such care, was either defeated or retained by the respective committees of jurisdiction.

Medical Records, Operations & Research

- ***Parental access to medical records***
There were two bills debated relative to parental access to children's medical records (HB 406 and SB 253) that Dartmouth Health monitored to ensure alignment with our current practice and federal requirements, each of which were retained by the respective committees of jurisdiction.
- ***Rear facing child car seats for children under 2 years***
SB 118 requires children under the age of 2 to be in a rear facing car seat

- ***Genetic testing***
SB 240 permits disclosure of genetic testing or genetic analysis to clinical entities participating in the clinical care of a patient and clarifies that specific informed consent from the patient is required when such disclosure is made for clinical research purposes

Workforce

- ***Office of Professional Licensure & Certification (OPLC)***
HB 655 consolidates administrative authority of the OPLC
- ***Workplace safety***
SB 58 authorizes a law enforcement officer to arrest a person without a warrant for interfering with the provision of medically necessary health care services
- ***Nursing agencies***
SB 149 establishes a licensing and application process for nursing agencies in order to begin to provide transparency around contract labor activity

Women's Health

- ***Maternal health data***
In order to insure proper and, in many cases, life sustaining treatment is available, Dartmouth Health opposed a bill (SB 105) that, as introduced, would have allowed only de-identified information to be submitted on the live birth worksheet.
- ***Expanded maternal health supports***
Many of the provisions of the “Momnibus” bill (SB 175) were included in the budget, including expansion of Medicaid access for postpartum population, Medicaid coverage for doula services, as well as lactation and donor milk services.
- ***Reproductive health access***
HB 224 sought to remove criminal and civil penalties from the NH Fetal Life Protection Act, the 24-week abortion ban. HB 224 narrowly passed the House but did not advance in the Senate.

VERMONT

The Vermont Legislature concluded its work in May but had to return in late June to take up several Gubernatorial vetoes.

FY 2024 Budget

As did the New Hampshire Legislature, Vermont appropriated considerable dollars toward health care including:

- Sunsets the home health provider tax
- Increases dental rates
- Provides funds for mental health initiatives
- Increases rates for Choices for Care services such as personal care
- Annualizes skilled home health reimbursement rates (as passed in Budget Adjustment Act)
- Increases rates to primary care and specialty care
- Provides funding for nursing and dental hygienist forgivable loan programs
- Expands funding for the Blueprint for Health Hub and Spoke program
- Provides funding for one-time caseload pressures due to the suspension of Medicaid eligibility redeterminations
- Requires the Green Mountain Care Board to provide an update on the financial status of hospitals as reflected in the fiscal year 2022 actual operating results, any early indications for fiscal year 2023 hospital budget performance, and an overview of the fiscal year 2024 budget guidance provided to hospitals

Access to Care

- ***Shield laws***
The Legislature passed two comprehensive “shield laws” for health care providers who offer reproductive and gender-affirming care. S.37 focuses on professional regulation and licensing of professions and H.89 focuses on the legal protections for providers providing these services.
- ***License compacts***
The Legislature also advanced several bills to increase access to care, including licensure compacts for interstate counseling (H.62), physical therapy (H.77), audiologist and speech-language pathology (H.86), and psychology (H.282). These compacts follow the state adopting the interstate nurse licensure compact in 2021. State entrance into a compact requires passage from the state's legislature and the Governor signing model legislation containing compact language. The authorizing language in each state's compact legislation must be the same for the compact to be enforceable.
- ***Residency requirement for Vermont's Patient Choices Law***
H.190 eliminates the requirement that a patient who is terminally ill be a Vermont resident to be prescribed medication in accordance with Vermont's patient choice at end-of-life laws.

Behavioral Health

- ***Mechanisms to reduce suicide***
H.230 intends to prevent death by suicide by reducing access to lethal means of firearms. It requires secure firearm storage, transfer of firearms requirements including a 72-hour waiting period to allow for a household member to petition for an extreme risk protection order, and the requirement that a licensed gun dealer display a warning sign that access to a firearm significantly increases the risk of suicide.

- **Public health initiatives to address death by suicide**
H.481 establishes specific duties for the Director of Suicide Prevention, including creation of a strategic plan and suicide prevention education protocol for schools.
- **Transport of individual requiring psychiatric care**
S.47 makes changes to the laws governing temporary custody and transport of individuals in need of psychiatric care. The bill removes the ability for a mental health professional to take a person into temporary custody allowing only a law enforcement officer to take the individual into custody, however, a mental health professional may still transport the individual (if clinically appropriate) to a hospital, police barracks or another safe location.
- **Establishing a forensic facility**
S.89 establishes a 9-bed unit utilizing space at the current Vermont Psychiatric Care Hospital, the state psychiatric hospital. The facility would be a new level of care in a secure therapeutic community residence (STCR) where individuals can receive clinical care while also addressing public safety risk. The STCR will be a separate unit and will serve people who have been charged with a serious crime, but who either have been deemed incompetent to stand trial or found not guilty by reason of insanity. As passed the Senate the language includes persons with an intellectual disability.
- **Competency to stand trial and insanity as a defense**
S.91 separates competency and sanity evaluations which are currently combined, require a report on a competency restoration program in Vermont, and consider allowing other mental health professionals to perform evaluations in addition to psychiatrists and doctorate-level psychologists.

Operations

- **Authority of the State Auditor to examine the books and records of state contractors**
S.9, which did not progress out of the House, would have expanded the authority of the State Auditor to examine the books and records of any contractor providing services to the State.
- **Limitations on hospital liens**
S.79 prohibits a lien if the patient has health insurance, including coverage under Medicare, Medicaid, or a commercial health plan. It requires a hospital to be responsible for a pro rata share of legal and administrative expenses incurred in obtaining the judgement or settlement. It limits the lien to not exceed one-third of the net judgment.
- **Adult Protective Services**
H.171, amended during the veto session to extend the motel voucher program for homeless individuals, would modernize the Adult Protective Services law, including the definitions of “abuse” and “neglect” that would result in the potential reporting of negligent conduct, such as a medication error or mistake, for investigation by APS.
Status: Governor is expected to sign the bill.
- **Cybersecurity**
H.291 creates a cybersecurity council tasked with identifying and recommending standards for public and private critical infrastructure across the State, including health care entities.

Telehealth

- ***Telehealth temporary license***

H.411 continues temporary telehealth registration until permanent rulemaking is completed by the Office Professional Regulation and the Board of Medical Practice - with a 90-day transition period from temporary registration to a license. H.411 also continues remote witnessing of advance directives until permanent provisions are established.

Workforce

- Added to the budget, H.484 provides over \$40 million in funding for workforce development, including approximately \$9 million for various health care sector needs.
- ***Childcare***
H.217 provides strong investments in early childhood education, including reimbursing child care providers at a 35% higher rate than FY 23, ensuring access to families at or below 150% of FPL by providing a full subsidy from the state, and increasing the threshold for families eligible for the subsidy.
- ***Workplace safety***
Similar to the bill in New Hampshire, S.36 permits an arrest without a warrant for assault and threats against health care workers and disorderly conduct at health care facilities.