

CONSENT CALENDAR

October 31, 2023

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Children and Family Law to which
was referred SB 253,**

**AN ACT relative to parental access to a minor child's
medical records. Having considered the same, report
the same with the following resolution: RESOLVED,
that it is INEXPEDIENT TO LEGISLATE.**

Rep. Peter Petrigno

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Children and Family Law
Bill Number:	SB 253
Title:	relative to parental access to a minor child's medical records.
Date:	October 31, 2023
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

The committee finds that this legislation is unnecessary and recommends Inexpedient to Legislate since parents already have the right to access their minor child's medical records under HIPPA. The issue of concern which precipitated this legislation is that such access is not available by way of the patient portal after the age of 12. This is not intentional, but rather the result of different portal software systems, which make it impossible to isolate certain information in accordance with federal and state laws. The matter can only be resolved if and when the technology advances accordingly.

Vote 16-0.

Rep. Peter Petrigno
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Children and Family Law

SB 253, relative to parental access to a minor child's medical records. **INEXPEDIENT TO LEGISLATE.**

Rep. Peter Petrigno for Children and Family Law. The committee finds that this legislation is unnecessary and recommends Inexpedient to Legislate since parents already have the right to access their minor child's medical records under HIPPA. The issue of concern which precipitated this legislation is that such access is not available by way of the patient portal after the age of 12. This is not intentional, but rather the result of different portal software systems, which make it impossible to isolate certain information in accordance with federal and state laws. The matter can only be resolved if and when the technology advances accordingly. **Vote 16-0.**

Original: House Clerk
Cc: Committee Bill File

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

EXECUTIVE SESSION on SB 253

BILL TITLE: relative to parental access to a minor child's medical records.

DATE: October 31, 2023

LOB ROOM: 206-208

MOTIONS: **INEXPEDIENT TO LEGISLATE**

Moved by Rep. Petrigno

Seconded by Rep. M. Pearson

Vote: 16-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Lorie Ball, Acting Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/10/2023 7:58:02 AM
Roll Call Committee Registers
Report

2023 SESSION

Children and Family Law

Bill #: SB 253 Motion: ITL AM #: — Exec Session Date: 10/31/23

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Pearson, Mark A. Chairman	1		
Long, Patrick T. Vice Chairman	2		
DeSimone, Debra L.	3		
Bickford, David A.	4		
Nelson, Jodi L	5		
McMahon, Charles E.	6		
Ball, Lorie	7		
Panek, Sandra L. <i>Charles Melvin</i>	8		
Seidel, Sheila C. <i>Stephen Pearson</i>	9		
Grossman, Gaby M.	10		
Levesque, Cassandra N.	11		
Petrigno, Peter Clerk	12		
Perez, Maria	13		
Gregg, Alicia C	14		
Moulton, Candace	15		
Raymond, Heather	16		
TOTAL VOTE:	16	0	

— Consent —

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

SUBCOMMITTEE WORK SESSION on SB 253

BILL TITLE: relative to parental access to a minor child's medical records.

DATE: September 26, 2023

Subcommittee Members: Reps. Petrigno, J. Nelson and Raymond

Comments and Recommendations:

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Rep. Raymond

Seconded by Rep. Rep. Petrigno

Vote: 2-1

Respectfully submitted,

Rep. Peter Petrigno
Subcommittee Chairman

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

EXECUTIVE SESSION on SB 253

BILL TITLE: relative to parental access to a minor child's medical records.

DATE: April 25, 2023

LOB ROOM: 206-208

MOTIONS: **RETAINED**

Moved by Rep. M. Pearson

Seconded by Rep. Long

Vote: 9-7

Respectfully submitted,

Rep Peter Petrigno, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

2023 SESSION

1/10/2023 7:58:02 AM
Roll Call Committee Registers
Report

Children and Family Law

Bill #: SB 253 Motion: Retain AM #: — Exec Session Date: 4/25/23

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Pearson, Mark A. Chairman	✓		
Long, Patrick T. Vice Chairman	✓		
DeSimone, Debra L.	✓		
Bickford, David A.		✓	
Nelson, Jodi L <u>Wayne MacDonald</u>	✓		
McMahon, Charles E.	✓		
Ball, Lorie	✓		
Panek, Sandra L	✓		
Seidel, Sheila C	✓		
Grossman, Gaby M.		✓	
Levesque, Cassandra N.		✓	
Petrigno, Peter Clerk	✓		
Perez, Maria		✓	
Gregg, Alicia C		✓	
Moulton, Candace		✓	
Raymond, Heather		✓	
TOTAL VOTE:	9	7	

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

PUBLIC HEARING ON SB 253

BILL TITLE: relative to parental access to a minor child's medical records.

DATE: April 25, 2023

LOB ROOM: 206-208

Time Public Hearing Called to Order: 9:02am

Time Adjourned:

Committee Members: Reps. M. Pearson, Long, Petrigno, DeSimone, Bickford, McMahon, Ball, Panek, Seidel, Grossman, Levesque, M. Perez, Gregg, Moulton and Raymond.

Bill Sponsors:

Sen. Innis

Sen. Avard

Sen. Murphy

Sen. Gray

Sen. Ward

Rep. Sellers

Rep. J. Harvey-Bolia

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Sen. Innis - Prime Sponsor

- Introduced his bill which would provide parents of minor children full access to their children's medical record. This bill is a reaffirmation of Constitutional rights which exist, but believes is not always enforced.

Jen Jones - Office of the Child Advocate

- In opposition
- Noted concerns which put a child at risk with provision regarding a preponderance of facts "clear and convincing evidence" regarding mental health issues.

Dr. Julie Kim - Dartmouth Health - Pediatrics and Oncology

- In opposition
- Needs to know many incidents to treat patients, requires patients trust.
- Cites a number of situations with patients which required trust to treat children.
- Wants to protect all aspects of confidentiality with patients.

Matthew Houde - Dartmouth Health

- Opposed to bill
- This bill violates state law regarding a reason to report abuse. "Clear and convincing" is a higher standard, which creates a conflict and potential for abuse. Also a violation of federal HIPAA laws.

***Paula Minneham - NH Hospital Association**

- In opposition
- To insure rights of minors are protected, 12+ years old. Suggested amendments "reasonably believes" and others addressed in written testimony. Referenced HB406 which is similar with some differences.
- Submitted written testimony

***Emma Seigny - New Futures**

- In Opposition
- Concerned with a safe environment for children with mental health care. Suggested retaining the bill.
- Submitted written testimony

***Holly Stevens - NH NAME**

- In opposition
- Many concerns with therapy notes in mental health.

Respectfully submitted,

Rep. Peter Petrigno, Clerk

To Register Opinion If Not Speaking

Committee: Children and Family Law[illegible]

House Remote Testify

Children and Family Law Committee Testify List for Bill SB253 on 2023-04-25

Support: 0 Oppose: 0 Neutral: 0 Total to Testify: 0

[Export to Excel](#)



HOUSE CHILDREN AND FAMILY LAW COMMITTEE

Tuesday, April 25, 2023

SB 253 –Relative to Parental Access to a Minor Child’s Medical Records

Testimony

Good morning, Mr. Chairman, and members of the committee. My name is Paula Minnehan, Senior Vice President with the New Hampshire Hospital Association (NHHA), representing all 26 of the state’s community hospitals as well as all specialty hospitals.

The NHHA is opposed to SB 253, relative to parental access to a minor child’s medical records, as amended by the Senate. There is a similar bill being considered in the House Health, Human Services and Elderly Affairs committee, HB 406-FN. NHHA testified on that bill in February. Due to several concerns raised during the hearing by stakeholders, and after further discussions with the sponsor, HB 406-FN was retained in committee.

While SB 253 was originally voted out of committee to be re-referred to the Senate Judiciary committee, the bill was amended on the floor of the Senate, which is what is before your committee now. NHHA has a number of concerns with the bill, but we first want to state that we completely agree with the general statement of purpose of the bill. The vast majority of parents absolutely are acting in their child’s best interest. The reason there are laws protecting the rights of minors is for the exceptions, when parents may not be acting in their child’s best interest.

In order to ensure that the rights of minors are protected and that we do not have conflicting DCYF reporting requirements and inconsistencies with the federal regulations of HIPAA, we are asking that, if the committee ultimately decides to move this bill forward, that you amend the bill to address the concerns we have (as do other health care stakeholders).

Specifically, we ask that on:

- Page 1, lines 9-10, (a) delete **“a specific statute under”**.
- Page 1, lines 16-20, (c) delete **“has determined by clear and convincing evidence based upon articulable facts”** and replace with **“reasonably believes, in his or her professional judgement, that the individual is subject to domestic violence, abuse or neglect by the parent or legal guardian or”**. In addition, delete **“is likely to result in abuse or neglect. A health care provider who makes this determination shall document in the medical record of the child all facts upon which he or she relied in making the determination.”** And replace with **“could endanger the child or another person; or”**

- Add a letter (d) after line 20 to include: **“When the parent or legal guardian agrees to a confidential communication between the minor and a health care provider, as described by HIPAA, 45 C.F.R. 164.502 (g) (3); or”**
- Add a letter (e) after (d) above to include: **“When the records are records of treatment of the minor that is directed by a court of competent jurisdiction, or a person appointed by a court of competent jurisdiction.”**

These requested changes to SB 253 are intended to ensure clarity for all parties and provide consistent application of the current state and federal laws and regulations that are in place to protect minor children. We are happy to work with the committee to draft an amendment that would include these suggested edits.

Thank you and I would be happy to answer any questions you may have.

Does the HIPAA Privacy Rule allow parents the right to see their children's medical records?

Answer:

Yes, the Privacy Rule generally allows a parent to have access to the medical records about his or her child, as his or her minor child's personal representative when such access is not inconsistent with State or other law.

There are three situations when the parent would not be the minor's personal representative under the Privacy Rule. These exceptions are:

1. When the minor is the one who consents to care and the consent of the parent is not required under State or other applicable law;
2. When the minor obtains care at the direction of a court or a person appointed by the court; and
3. When, and to the extent that, the parent agrees that the minor and the health care provider may have a confidential relationship.

However, even in these exceptional situations, the parent may have access to the medical records of the minor related to this treatment when State or other applicable law requires or permits such parental access. Parental access would be denied when State or other law prohibits such access. If State or other applicable law is silent on a parent's right of access in these cases, the licensed health care provider may exercise his or her professional judgment to the extent allowed by law to grant or deny parental access to the minor's medical information.

Finally, as is the case with respect to all personal representatives under the Privacy Rule, a provider may choose not to treat a parent as a personal representative when the provider reasonably believes, in his or her professional judgment, that the child has been or may be subjected to domestic violence, abuse or neglect, or that treating the parent as the child's personal representative could endanger the child.

<https://www.hhs.gov/hipaa/for-professionals/faq/227/can-i-access-medical-record-if-i-have-power-of-attorney/index.html>



National Alliance on Mental Illness

NAMI New Hampshire

April 25, 2023

Honorable Chairman Mark Pearson
House Children and Family Law
Legislate Office Building Room 206
North State St., Concord, NH 03301

RE: NAMI NH Opposition to SB 253

Dear Chairman Pearson and Committee Members:

Thank you for the opportunity to testify today. My name is Holly Stevens, and I am the Director of Public Policy at NAMI New Hampshire, the National Alliance on Mental Illness. NAMI NH is a non-profit, grassroots organization whose mission is to improve the lives of all people impacted by mental illness and suicide through support, education and advocacy. On behalf of NAMI NH, I am here today to speak in opposition to SB 253, relative to parental access to a minor child's medical records.

NAMI New Hampshire strongly believes in the system of care that has been set up to address children's mental health needs in our state. We also recognize the importance of the role of the family within that system. However, in looking at the adverse childhood experience statistics in our state, it is evident that there are many cases where children could greatly benefit from a private therapeutic relationship with a therapist. Those already vulnerable children would be even more vulnerable if this bill were to pass. Many adverse childhood experiences happen at the hands of a parent or guardian.

In NAMI NH's experience, counselors and therapists who are proficient in their practice will involve the family, including parents and guardians, in the treatment of an adolescent patient when it is in the best interest of the child. Knowing this, SB 253 does not do enough to protect children whose therapist believes that releasing the information would be harmful to or endanger the child.

House Bill 406, which was considered by House Health and Human Services and Elderly Affairs this session and retained in committee, is similar to SB 253 as amended by the Senate except that it does not include a "clear and convincing evidence" standard. The language in HB 406 with one minor change is preferable to the language of SB 253. For your reference I have attached NAMI NH's testimony regarding HB 406 since that bill was heard in a different committee. As laid out in that testimony, we encouraged an amendment that would change "and" on line 9 to an "or," and go on further to state if this change is made that NAMI NH would not oppose the bill. NAMI NH encourages this committee to consider amending SB 253 to include the more protective language of HB 406 with the suggested amendment above.

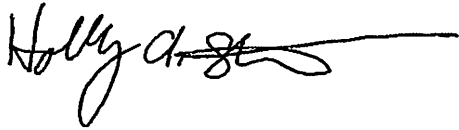
Reflecting on 40 Years: Continuing Our Journey to Hope, Help, and Health

NAMI New Hampshire • 85 North State Street • Concord, NH 03301

InfoLine: 800-242-6264 • Tel. 603-225-5359 • Fax 603-228-8848 • info@naminh.org / www.NAMINH.org

Currently, the youth in NH are experiencing a mental health crisis, and need access to all services available, including private therapy sessions. If youngsters know their parents will have full access to their therapy notes, it will impact the therapeutic relationship and have a chilling effect on children's willingness to be open and honest in therapy. Therefore, NAMI NH urges the committee to vote inexpedient to legislate on SB 253 or amend it to include appropriate protections for children. I am happy to answer any questions that you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Holly A. Stevens", followed by a long horizontal flourish.

Holly A. Stevens, Esq.



February 16th, 2023

Honorable Chair Wayne MacDonald
House Health, Human Services and Elderly Affairs Committee
Legislative Office Building 201-203
33 N State St., Concord, NH 03301

RE: NAMI NH Opposition for HB 406

Dear Chair and Committee Members:

Thank you for the opportunity to testify today. My name is Sam Hawkins, and I am the Public Policy Assistant at NAMI NH, the National Alliance on Mental Illness. NAMI NH is a non-profit, grassroots organization whose mission is to improve the lives of all people impacted by mental illness and suicide through support, education, and advocacy. On behalf of NAMI NH, I am here today to speak in opposition to HB 406, relative to parental access to children's medical records.

NAMI New Hampshire recognizes the importance of familial support throughout our system of care for children's mental health. In our experience, counselors and therapists who are proficient in their practice will involve the family, including parents and guardians, in the treatment of an adolescent patient when it is in the best interest of the child.

However, we also acknowledge that many adverse childhood experiences happen at the hands of a parent or guardian, and that there are some situations where a child may be endangered by the disclosure of mental health records. For these children, we believe that access to a private therapeutic relationship is essential.

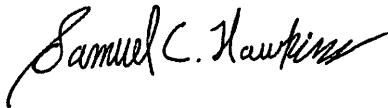
HB 406 sets prohibitively strict requirements for situations where a provider could withhold access to a child's records, creating situations where children may be harmed. According to this bill, a provider believing that the release of records may endanger a child is not enough to justify confidentiality. Instead, this belief must exist alongside knowledge of actual or potential domestic violence or abuse or neglect, which the provider may not have.

Find Help, Find Hope.

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If this bill's language were changed to allow confidentiality in situations of believed endangerment, NAMI NH's position would be neutral. This would require a change on line 9 of the bill so that it reads, "...the child has been or may be subjected to domestic violence, abuse or neglect, or that the release of the..." As introduced, however, NAMI NH urges the committee to recommend Inexpedient to Legislate for HB 406.

Sincerely,

A handwritten signature in black ink that reads "Samuel C. Hawkins". The signature is written in a cursive style with a large, stylized 'S' at the beginning.

Samuel C. Hawkins

April 25, 2023

The Honorable Mark Pearson, Chair
House Children and Family Law Committee
Legislative Office Building, Room 206
33 North State Street
Concord, NH 03301

Re: New Futures' opposition to SB 253, relative to parental access to children's medical records

Dear Chairman Pearson, and Honorable Members of the Committee:

New Futures appreciates the opportunity to provide testimony in opposition to SB 253, relative to parental access to children's medical records.

New Futures is a nonpartisan, nonprofit organization that advocates, educates and collaborates to improve the health and wellness of all Granite Staters. We are dedicated to supporting and strengthening a comprehensive and integrated System of Care for children and youth who experience behavioral health challenges in New Hampshire.

New Futures opposes SB 253 as written because it would undermine a minor's ability to seek confidential mental health treatment.

The US Surgeon General issued a statement that there is a youth mental health crisis, which is only being exacerbated by COVID-19.¹ In New Hampshire, there has been an increase in minors who felt hopeless or sad from the years 2019 to 2021. Even more concerning, the rates of students who seriously considered attempting suicide, made a plan about how they would attempt suicide, and those who actually attempted suicide have all increased from 2019-2021.² There is a severe need for our state to adopt policies that increase access to and effectiveness of mental health services.

Confidentiality protects health of minors by promoting healthy behaviors and creating a youth-guided environment for minors to receive care. Privacy concerns affect whether minors seek care, and if they do, when and where they seek care.³ Privacy is the cornerstone to creating an effective provider-client relationship and directly affects how openly young people

¹ <https://www.hhs.gov/about/news/2021/12/07/us-surgeon-general-issues-advisory-on-youth-mental-health-crisis-further-exposed-by-covid-19-pandemic.html>

² 2021 YRBS Trend Report, https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/2021nhh-trend-report_0.pdf.

³ English A. Adolescent & Young Adults Health Care in New Hampshire: A Guide to Understanding Consent & Confidentiality Laws. San Francisco, CA: Adolescent & Young Adult Health National Resource Center; and Chapel Hill, NC: Center for Adolescent Health & the Law, 2019. http://nahic.ucsf.edu/resource_center/confidentiality-guides/.

SB 253 - AS AMENDED BY THE SENATE

03/23/2023 1186s

2023 SESSION

23-1031

06/05

SENATE BILL **253**

AN ACT relative to parental access to a minor child's medical records.

SPONSORS: Sen. Innis, Dist 7; Sen. Avarad, Dist 12; Sen. Murphy, Dist 16; Sen. Gray, Dist 6;
Sen. Ward, Dist 8; Rep. Sellers, Graf. 18; Rep. J. Harvey-Bolia, Belk. 3

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill provides parents of minor children full access to their minor children's medical record except under certain circumstances.

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 Three

AN ACT relative to parental access to a minor child's medical records.

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

1 1 Statement of Purpose. The general court finds and recognizes that parents are responsible for
2 providing and coordinating medical care for their minor children and are presumed to act in their
3 child's best interest. In order to make informed decisions about a minor child's healthcare needs,
4 parents must be granted access to their children's medical records.

5 2 New Paragraph; Medical Records; Parental Access. Amend RSA 332-I:1 by inserting after
6 paragraph I the following new paragraph:

7 I-a. A parent or legal guardian of a minor child shall be entitled to have full access to the
8 medical records of their minor child or ward, except:

9 (a) When the records are records of treatment that a minor may consent to pursuant to a
10 specific statute under state or federal law without parental consent or the consent of a legal
11 guardian;

12 (b) When the parent or legal guardian is the subject of a protective order involving the
13 minor child or one of the minor child's siblings issued pursuant to RSA 173-B, RSA 461-A, or RSA
14 633:3-a, or when a court of competent jurisdiction has determined that the release of the records to a
15 parent or legal guardian is not in the child's best interest; or

16 (c) When a health care provider has determined by clear and convincing evidence based
17 upon articulable facts that disclosure of the records to a parent or legal guardian of a minor child is
18 likely to result in abuse or neglect. A health care provider who makes this determination shall
19 document in the medical record of the minor child all facts upon which he or she relied in making the
20 determination.

21 3 This act shall take effect 60 days after its passage.