

Senate Health and Human Services Committee

Sophie Walsh 271-3469

HB 357, relative to the department of health and human services' rulemaking authority regarding immunization requirements.

Hearing Date: April 9, 2025

Time Opened: 11:38 a.m.

Time Closed: 12:33 p.m.

Members of the Committee Present: Senators Rochefort, Avard, Birdsell, Prentiss and Long

Members of the Committee Absent: None

Bill Analysis: This bill limits childhood immunization requirements to diseases identified in statute. The bill removes the authority of the commissioner of health and human services to adopt rules requiring immunization for additional childhood diseases.

Sponsors:

Rep. Kofalt

Rep. Comtois

Rep. Layon

Rep. Sirois

Rep. Wheeler

Rep. Wherry

Rep. Ammon

Rep. DeVito

Who supports the bill: 243 people signed in support of the bill. Full sign in sheets are available upon request by contacting the Legislative Aide, Sophie Walsh (Sophie.Walsh@gc.nh.gov).

Who opposes the bill: 621 people signed in opposition of the bill. Full sign in sheets are available upon request by contacting the Legislative Aide, Sophie Walsh (Sophie.Walsh@gc.nh.gov).

Who is neutral on the bill: 2 people signed in neutral to the bill. Full sign in sheets are available upon request by contacting the Legislative Aide, Sophie Walsh (Sophie.Walsh@gc.nh.gov).

Summary of testimony presented:

Representative Jim Kofalt, Hillsborough – District 32

- Representative Kofalt explained that this bill makes a simple but important change to RSA 141:C-20 A, which mandates certain vaccines for children in New Hampshire.

- That RSA also authorizes the commissioner of the Department of Health and Human Services to add more immunization mandates by administrative rule.
- The intent of HB 357 is to remove that authorization.
- Doing this also sunsets the existing mandates that are in rules, which expire in June of 2026: varicella, hepatitis B, and Haemophilus influenzae type b (Hib).
- Representative Kofalt believes that mandatory administration of a medical intervention is a very serious matter.
- This bill does not prohibit vaccine mandates, it simply states that if they are needed, they should be decided by the peoples' elected representatives.
- There were a number of attempts in the legislature to mandate the COVID vaccine. They heard repeatedly that it was safe and effective, and now there is ample evidence which calls that into question. Representative Kofalt believes that there is quite a bit of evidence that demonstrates that they are neither safe nor effective.
- Generally speaking, DHHS has been extremely restrained by not adding new mandates to the schedule.
- Representative Kofalt said there are some mandates in rules that do not make sense. Hepatitis B is an adult lifestyle disease and has essentially been eradicated.
- Removing these from the schedule does not mean that doctors cannot recommend them or that parents will not get them.
- Voluntary vaccination rates, depending on the vaccine and the population, tend to run between 70 and 90 percent.
- Representative Kofalt does not see this as dramatically reducing the incidence of vaccinations so much as he sees it as removing a mandate that should not be decided by rule.
- On Friday of last week, the Governor of Idaho signed a Bill that removes all state mandates for immunizations in Idaho.
- There is a growing awareness that parents need to have more of a voice in medical decisions.
- Senator Avard asked if passing this bill puts any federal funding in jeopardy.
- Representative Kofalt answered that he doesn't believe that something as broadly defined "certifying that the laws are designed to protect children's health" or indicating that "state policy shall incorporate recommendations" would put federal funds at risk. He does not believe that is the case here.
- Senator Prentiss asked if his opinion is that we should be shifting medical decision making around public health policy, specific to vaccinations, away from public health professionals and to elected officials.
- Representative Kofalt replied that he believes it is a decision that should be made by parents in consultation with their family physician first and foremost.

- Senator Prentiss commented that she agrees parents should make the decision about what vaccinations their children get, but questioned his comments about elected representatives being responsive to their constituents about who makes the decision about what vaccines are on the list.
- Representative Kofalt replied that if immunizations need to be mandated, that decision ought to be made by elected representatives. He does not believe that is something they should delegate to unelected people in the agencies.
- Senator Prentiss commented that he said DHHS has been largely restrained and cautious and asked why they should shift the decision making process to people who do not have medical expertise.
- Representative Kofalt replied that even in the medical community, there are different opinions about the merits and risks of many medical interventions including vaccines. He believes that getting input from multiple professionals would deliver a reasonable considered decision.
- Senator Birdsell asked how would this be addressed if the legislature is not in session.
- Representative Kofalt replied that they have the ability to call an emergency session. This bill does not stop someone who is concerned about their health or their families' health from getting an immunization.

Dr. Ben Chan and Colleen Smith, Department of Health and Human Services

- Dr. Chan introduced himself as the State Epidemiologist and Ms. Smith introduced herself as the Chief of the Bureau of Infectious Disease Control.
- Ms. Smith stated that they are testifying in opposition to HB 357.
- The current process allows the Department to be nimble in having to add a vaccination in response to a public health emergency.
- She believes that this is a critical tool in public health response. The last vaccine that was added was varicella in 2003.
- Ms. Smith emphasized that this is a very deliberative process that involves collaboration with multiple medical professionals and has worked for decades.
- If HB 357 were adopted, New Hampshire would join only one other state to not have an immunization requirement for childcare and school entry.
- The Department has no intention of adding influenza or COVID 19 vaccines as a requirement.
- They believe the current system is efficient and works.

Representative Jessica LaMontagne, Strafford – District 17

- Representative LaMontagne is opposed to HB 357 because it removes rulemaking from a nonpartisan, evidence-based process led by medical professionals and experts in disease and hands it over to the state legislature.
- She does not believe this will lead to sound public health policy.

- The sponsors of this bill say that the elected officials will listen to the experts, but recent reality is far more troubling than that.
- She believes that the legislature has ignored the experts in every vaccination policy brought before them in the past few years.
- If they let politics determine vaccine policy, they risk further erosion of trust in vaccines and lower vaccination rates.
- Rolling back vaccine policy can have severe consequences.

Representative Yury Polozov, Merrimack – District 10

- Representative Polozov supports this bill because he believes the legislature is better situated for rule making authority.
- The Department of Health and Human Services may experience a conflict of interest or have too narrow of a focus.
- The Departments focus is often on eliminating one disease but not on the potential side effects of mandated vaccines.
- Grants and federal money is often a focus as well.
- The legislators are deeply connected to their communities and the effects of mandated vaccines.

Hon. Betty Gay

- Ms. Gay listed doctors that were in the news for treating COVID with old protocol of medications that had been proven safe.
- One of the medications, Ivermectin, received the Nobel Prize in 2015.
- The decision needs to be up to the citizenry because medical professionals have too much conflict of interest.

Laura Condon

- Ms. Condon stated that Hib is not required for school entry.
- This legislation will allow vaccine requirements imposed on children to be decided through the most inclusive process possible, the New Hampshire Legislature.
- The new process will allow everyone to weigh in from citizens to medical professionals.
- She believes it will restore confidence in the immunization process and vaccine hesitancy.
- This bill will remove the conflict of interest that exists with DHHS.
- This bill will not remove vaccine requirements by statute or flexibility.
- HB 357 simply restores the authority of the legislature to determine vaccine requirements.

- Ms. Condon stated that school and childcare centers require 26 doses of vaccines starting on the day of birth, including Hepatitis B which targets an adult lifestyle disease.

Larisa Trexler

- She believes that this bill puts decisions for vaccine requirements back in the hands of people.
- Currently, these major policy decisions are made without public debate.
- HB 357 brings transparency to any new mandate and will restore public trust.

Cathy Stratton, New Hampshire Medical Society

- Ms. Stratton is speaking on behalf of their 2,000 physician members in opposition to HB 357.
- The NHMS values the historical role and efficacy of the rulemaking authority held by DHHS.
- They support the Department's role in addressing emerging public health challenges.
- The rulemaking process engages members of the public with state and national experts to establish and sunset public health measures in a timely and inclusive process.
- This is an evolving need as health care threats and scientific research is evolving.
- She believes the proposed changes in the decision-making process could result in periodic fluctuations in requirements.
- Senator Avar asked who would write the rules if the legislature is responsible for this.
- Ms. Stratton replied that would have to be determined by the legislature.

Gary Sobelson, MD, New Hampshire Medical Society

- The New Hampshire Medical Society's main opposition to this bill has to do with the effectiveness of the current process and respecting the rulemaking process through JLCAR.
- Over the course of his career, he has seen more effective public health policy done through this process and the Department.
- They have concerns that changing the current process could have significant ramifications on a great deal of progress in medical health in New Hampshire.
- There are three specific vaccines that would sunset if this were to pass and he has experience with all three of them.
- Varicella is one of the most communicable diseases and it seems like a very foolhardy plan to not require protection from it.

- Hepatitis B has been described as lifestyle illness that children do not need to be vaccinated for, but one of the most common ways hepatitis B is contracted is from mother to infant. Taking away that vaccine from the current routine approach, at birth, would have absolute ramifications for pediatric Hepatitis B cases.

Carlene Ferrier, New Hampshire Nurses Association

- Ms. Ferrier does not understand why this legislation has been proposed as it puts our most vulnerable population at risk.
- Vaccine requirements for New Hampshire children have been in place for over 40 years.
- The bottom line is that childhood immunization requirements are essential for protecting our communities, especially those who are vulnerable.

Julie Kim, MD, New Hampshire Chapter of the American Academy of Pediatrics

- The diseases they are discussing today are not thought of anymore because the vaccines have been so effective.
- She has never seen liver failure in an infant because the hepatitis B vaccine has been so effective.
- Recently, there was a child admitted to their hospital with Haemophilus influenza meningitis, which is what the Hib vaccine is for. The disease specialist at the hospital had never seen a case of this before because Hib was almost eradicated due to vaccinations.
- Dr. Kim stated that before the vaccinations were available, 20,000 children under the age of five years were stricken each year and nearly 1,000 died.
- Senator Avar asked what her feelings are about the rulemaking process.
- Dr. Kim replied that she believes they need experts to continue to monitor the situation and support the appropriate medical interventions.
- Senator Avar asked if she communicates with the DHHS commissioner or the legislature regarding her medical opinions.
- Dr. Kim replied that she communicates with both for different reasons. If there is a medical issue at hand, she communicates with DHHS.
- Senator Long asked if once the rules expire in 2026, are studies still done on those vaccines. Dr. Kim replied that she does not know.

Amanda Morrill, New Hampshire Pharmacists Association

- Dr. Morrill is opposed to the bill because she believes it will leave their most vulnerable patients susceptible to outbreaks of diseases.
- In order to protect the public health of New Hampshire and prevent chronic disease, the New Hampshire Pharmacists Association urges opposition to this bill.

Amy Watson, MD

- Dr. Watson stated that DHHS is in the business of public health, and New Hampshire's current system puts vaccine policy in their hands.
- They are experts in epidemiology, infectious disease, and immunization science.
- They are able to monitor disease trends, follow data and help the state to respond swiftly when there are emerging health threats.
- Removing their authority limits the state's ability to adapt, protect and plan ahead.
- The legislative process is slow and deliberative, so she believes the ability to respond to emerging health threats will be difficult.
- Putting major public health decisions into the hands of the legislature is unfair to both them and the community.
- The current process is swift and deliberative

Pam DiNapoli, New Hampshire School Nurses Association

- As a licensed registered nurse, she is licensed to protect the health of the public.
- She believes that her practice should be guided by the experts.
- This bill demonstrates that the current practice works and if left to the legislature, she would question some decisions that would be guiding her practice.

Kate Frey and Trina Ingelfinger, New Futures

- Ms. Frey used to write rules for the Division of Public Health Services.
- It is a very deliberate process with a clinical step and an administrative step.
- She believes that it is important to note that there is legislative oversight.
- The rules go through extensive public hearings and the JLCAR. They do hear public comment at those meetings.
- One of the factors of whether or not to adopt a rule is whether it is in the public interest or not.
- While she respects all legislators, she does have questions about how the process would work if all 424 legislators had to vote on the rules.
- They also have concerns about the Child Care Block Grant.
- Ms. Ingelfinger stated that the rulemaking aspect does implicate the Child Care Development Fund (CCDF) funding. The grant is about \$82 million for the biennium.
- The CCDF requires that immunization requirements in the state incorporate the latest recommendations from the state's public health agency.
- She appreciates that Representative Kofalt talked about different ways that the input from DHHS could be incorporated.
- She believes that the language of HB 357 does not incorporate that input and runs afoul of the CCDF rules.

Karen Hebert, Department of Health and Human Services

- Rulemaking enables the Division of Public Health to make its recommendations, which satisfies the federal requirements to receive the Child Care and Development funding.
- That funding is approximately 40.1 million a year and is being used for 5,000 children and their families who would not be able to access childcare without it.
- Senator Avarad commented that they have JLCAR which approves the rules, and asked why aren't they already doing this.
- Ms. Hebert replied that it is still the rulemaking authority that is necessary to solidify the recommendations that they rely on for the funding that they receive.
- Senator Avarad stated that they make the laws, the executive branch develops the rules, then it goes to JLCAR. He added that he does not understand how they got to this process and asked if they are intruding into the executive branch responsibilities.
- Ms. Hebert replied that it is her understanding it is the rulemaking authority of the Commissioner that enables them to establish the rules that are the basis for the recommendations on the vaccines.

Tory Shaheen, New Hampshire Families for Vaccines

- Ms. Shaheen noted that the state has religious exemptions for all vaccines.
- She asked that rulemaking remains with the experts that know how to interpret the studies and evaluate the medical data to recommendations.

Representative Kelley Potenza, Strafford – District 19

- Representative Potenza stated that the current six required vaccines in 141:C were put in by the legislature, not through rulemaking. The legislature did it well and they had been doing it for decades.
- She believes they need to put the responsibility back where it should be, with the legislature who sets policy.
- There are a lot of educated people in the legislature, and she does not think they have an expertise problem.

Carlene Ferrier on behalf of Kim Danis, New Hampshire Nurses Association

- Ms. Danis works at Dartmouth where they rely heavily on the ability of medical experts and public health officials to respond to public health threats.
- Removing this authority from DHHS shifts critical decisions away from medical expertise to the legislative process, which is not designed to adapt quickly to emerging health threats.

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Date Hearing Report completed: April 15, 2025