CHAPTER 121
SB 155-FN - FINAL VERSION

03/18/2021 0774s
3Jun2021... 1646h
06/24/2021 1994CofC
06/24/2021 2049EBA

2021 SESSION

21-1080
05/10

SENATE BILL ***155-FN***

AN ACT codifying provisions included in select emergency orders issued by the governor in response to the COVID-19 pandemic.

SPONSORS: Sen. Bradley, Dist 3

COMMITTEE: Executive Departments and Administration

AMENDED ANALYSIS

This bill:

I. Establishes the position of temporary health partner.

II. Authorizes emergency licensing of medical providers.

III. Authorizes COVID-19 testing by pharmacists and pharmacy technicians.

IV. Permits out-of-state pharmacies providing investigational drugs to clinical trial participants in New Hampshire to be temporarily licensed as mail-order pharmacies.

V. Protects the pre-existing, non-conforming use status of summer camps that were unable to operate during the summer of 2020 or 2021 due to COVID-19.

VI. Allows expanded outdoor dining.

VII. Provides for the continued temporary licensure of healthcare workers through the office of professional licensure and certification.

VIII. Authorizes pharmacy technicians to administer COVID-19 vaccines.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT codifying provisions included in select emergency orders issued by the governor in response to the COVID-19 pandemic.

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

121:1 Temporary Health Partner Authorized in Skilled Nursing Facilities under Federal and State Waivers.

I. In this section, "temporary health partner" means an individual who has been hired pursuant to federal and state waivers of certain qualifications for long-term care facility staff.

II. To address staffing shortages at long-term care facilities and meet the needs of some of New Hampshire's most vulnerable populations, the position of temporary health partner (THP) is hereby authorized to work in a skilled nursing facility, notwithstanding any provision of RSA 326-B:14, provided that:

(a) The THP completes training of no less than 8 hours, provided by a national association such as the American Health Care Association or by a New Hampshire educational program.

(b) THPs shall work under the supervision of an RN, APRN, or LPN, as is required of LNAs under RSA 326-B:14.

(c) The scope of work authorized to be performed by THPs is limited to the work set forth in this section and shall be performed in accordance with the resident care plan.

(d) The THP has demonstrated competency, as determined by the employing long-term care facility, prior to performing any of the activities set forth in this section.

III. Scope of work for a temporary health partner (THP):

(a) The THP is a temporary position limited to assist LNAs and nurses in their daily tasks. Each of these tasks shall not be performed without proper training and demonstrating competency in such tasks. The THP shall work under the direction and supervision of licensed nurses to assist nurses and LNAs to provide services set forth in each resident care plan. Before performing any tasks described in subparagraph (b), the THP shall have been trained and demonstrated competency to perform such tasks, and shall review and adhere to the resident care plan. The facility shall provide direction and oversight to the THP.

(b) After the employing facility ensures skill competency, the THP may perform any of the following activities:

(1) Nutrition and elimination assistance. Assist with elimination, including toileting and peri-care, and assist with routine ostomy care.

(2) Comfort care and end-of-life care. Assist with promoting comfort and sleep, assist with end-of-life care, and assist with physical care of body after death.

(3) Activities of daily living. Assist with bathing, oral care, denture care, grooming, shaving, nail care, and dressing and undressing.

(4) Infection control practices. Assist with hand hygiene, standard and transmission-based precautions, cleaning and disinfection, utilization of personal protective equipment (PPE).

(5) Positioning, moving, and restorative care. Assist with ambulation or walking and occupied bedmaking.

III. The position of THP shall not be considered a substitute for licensure as an LNA under RSA 326-B:14 but is intended to assist the work of LNAs. The THP shall not perform services independently and shall be supervised by licensed nurses at all times.

121:2 New Section; Office of Professional Licensure and Certification; Emergency Licensing Process. Amend RSA 310-A by inserting after section 1-h the following new section:

310-A:1-i Emergency Licensing Process. Notwithstanding any other law to the contrary, the office of professional licensure and certification may issue emergency licenses to the following applicants:

I. Any medical provider previously licensed in New Hampshire in the last 3 years whose license is no longer active, subject to the following:

(a) The medical provider's license was in good standing prior to being placed in inactive or lapsed status.

(b) Notwithstanding any law or rule to the contrary, a medical provider shall not be required to complete continuing education as a condition precedent to reactivating their license pursuant to this section.

II. Any medical provider previously licensed to practice in another jurisdiction within the last 3 years whose license is no longer active, subject to the following:

(a) The medical provider's license was in good standing in another United States jurisdiction prior to being placed in inactive or lapsed status; and

(b) The medical provider presents evidence to the office of professional licensure and certification that the medical provider was licensed and in good standing immediately prior to the change in licensure status.

(c) Notwithstanding any law or rule to the contrary, a medical provider shall not be required to complete continuing education as a condition precedent to receive an emergency license pursuant to this section.

III. Any fellow enrolled in a New Hampshire program accredited by the Accreditation Council for Graduate Medical Education to practice within the fellow's core specialty, subject to the following:

(a) The fellow is American Board of Medical Specialties (ABMS) or American Osteopathic Association (AOA) board-eligible or certified in the core specialty.

(b) The fellow is appointed to the medical staff at a sponsoring institution and will engage in practice consistent with the policies and procedures of the sponsoring institution and its participating sites.

(c) The time spent in core specialty service is limited to 20 percent of the fellow's annual education time in any academic year.

(d) A fellow seeking to practice under this paragraph shall provide the office of professional licensure and certification with appropriate evidence that the required qualifications have been met.

IV. Senior nursing students, who are scheduled to graduate within 5 months from the date of application, from a board of nursing approved registered nursing or practical nursing program, subject to the following:

(a) The individual is employed by or providing health care services at the direction of, a licensed health care facility or a licensed health care provider.

(b) The individual is directly supervised while providing health care services.

(c) The health care services are being provided in response to the COVID-19 pandemic.

V. Any provider seeking an emergency license under this section shall submit his or her request on a form adopted by the office of professional licensure and certification for such purpose.

VI. In this section, an applicant in good standing shall include medical providers who are subject to nondisciplinary conditions, but shall not include medical providers whose licenses have been revoked, canceled, surrendered, suspended, denied, or subject to disciplinary restrictions.

VII. Licenses issued pursuant to this section shall be on a temporary basis and shall expire on or before January 31, 2022.

VIII. Emergency licenses issued during the COVID-19 pandemic pursuant to the governor's executive order 2020-04 shall not be deemed to have lapsed upon expiration of the state of emergency and shall be converted to a license under this section on the effective date of this section. This provision is intended to apply retroactively to extend the expiration date of all emergency licenses issued under executive order 2020-04 to January 31, 2022.

IX. All individuals licensed under this section shall be subject to the jurisdiction of the state licensing body for that profession.

X. The office of professional licensure and certification may issue guidance relative to the emergency licensing process established in this section, which may include guidance concerning the appropriate supervision of nursing students. Any guidance shall be posted on the board's website.

121:3 Pharmacists and Pharmacies; Definition of the Practice of Pharmacy. Amend RSA 318:1, XIV to read as follows:

XIV. "Practice of pharmacy" means the professional acts performed by a pharmacist and shall include the interpretation and evaluation of prescription orders; the administration, compounding, dispensing, labeling and distribution of drugs and devices; the participation in drug selection and drug-related device selection; drug evaluation; utilization or regimen review; the monitoring of drug therapy and use; medication therapy management in accordance with collaborative pharmacy practice agreements; the proper and safe storage and distribution of drugs and devices, and the proper maintenance of proper records; the responsibility of advising, when necessary or when regulated, of therapeutic values, hazards, and use of drugs and devices; ***the initiating, ordering, administering, and analyzing of FDA approved Emergency Use Authorization SARS-CoV-2 (COVID-19) point-of-care diagnostic kits (COVID-19 tests or test kits) to detect SARS-CoV-2 or its antibodies, so long as the pharmacist has received the adequate education and training to do so;*** and the offering or performing of these acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy.

121:4 New Section; Pharmacists and Pharmacies; COVID-19 Testing. Amend RSA 318 by inserting after section 14-a the following new section:

318:14-b COVID-19 Testing. Pharmacists may administer COVID-19 testing if the following conditions are met:

I. The pharmacist received adequate education and training to initiate, order, administer, and analyze COVID-19 test kits.

II. The COVID-19 tests are administered at a pharmacy that holds the appropriate clinical certificate under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) and a New Hampshire laboratory license issued by the department of health and human services (DHHS) or DHHS waiver.

III. The pharmacy creates and implements policies and procedures to address the collection, storage, transport, and analysis of samples collected as a result of administering and analyzing COVID-19 test kits. Such policies and procedures shall be in accordance with the manufacturer's instructions and supplemented as needed.

121:5 New Section; Pharmacists and Pharmacies; Out-of-state Pharmacies as Temporary Limited Licensed Mail-Order Facilities. Amend RSA 318 by inserting after section 37 the following new section:

318:37-a Out-of-state Pharmacies as Temporary Limited Licensed Mail-Order Facilities.

I. To protect public health and increase access to medical care in New Hampshire, and to promote and secure the safety and protection of the people of New Hampshire, any out-of-state pharmacy seeking to ship investigational drugs to clinical trial participants who reside in New

Hampshire and who are unable to retrieve the investigational drugs from the out-of-state pharmacy due to the novel coronavirus shall be allowed to operate as if the out-of-state pharmacy were licensed as a mail-order pharmacy within the state of New Hampshire if the following conditions are met:

(a) The out-of-state pharmacy is licensed and in good standing in another United States jurisdiction.

(b) The medical services provided within New Hampshire are in-person or through appropriate forms of telehealth.

(c) The out-of-state pharmacy presents to the office of professional licensure and certification evidence that they are licensed in good standing in another jurisdiction. Such out-of-state pharmacies shall be issued an emergency mail-order pharmacy license at no cost, which shall remain in effect until January 31, 2022.

(d) Such out-of-state pharmacies shall be subject to the jurisdiction of the board of pharmacy while acting under an emergency mail-order pharmacy license.

II. The office of professional licensure and certification, in consultation with the board of pharmacy, shall provide assistance and guidance, as necessary, to out-of-state pharmacies regarding the requirements of this section.

121:6 New Subdivision; Local Land Use Planning; Protection of Pre-existing, Non-conforming Use Status for Summer Camps. Amend RSA 674 by inserting after section 73 the following new subdivision:

Protection of Pre-existing, Non-conforming Use Status for Summer Camps

674:74 Protection of Pre-existing, Non-conforming Use Status for Summer Camps.

I. Notwithstanding any provision of law or municipal ordinance or regulation to the contrary, any summer camp that has been operating in the state of New Hampshire as a pre-existing, nonconforming use under its applicable zoning ordinance that either closed for the summer of 2020 and/or 2021 due to the COVID-19 pandemic, or was forced to operate for a shorter season or at a reduced capacity during the summer of 2020 and/or 2021 due to the COVID-19 pandemic, shall not lose its status as a pre-existing, non-conforming use due to either:

(a) Its failure to operate during the summer of 2020 and/or 2021; or

(b) Its operation for a shorter season or at a reduced capacity during the summer of 2020 and/or 2021.

II. The summer camp's status or ability to operate as a pre-existing, non-conforming use shall not be in any way affected by its failure to operate during the summer of 2020 and/or 2021, or its operation for a shorter season or at a reduced capacity during the summer of 2020 and/or 2021.

121:7 Liquor Licenses and Fees; Authorization for Other Areas; Expansion of Outdoor Dining. Amend RSA 178:24 to read as follows:

178:24 Authorization for Other Areas. A business holding a license authorizing the consumption of alcoholic beverages on its licensed premise may petition the commission for

permission to extend service for beverages and liquor to any clearly defined area under the control of the licensee. ***In addition, a licensee may expand into a shared space, such as a sidewalk or street, with the approval of local officials.*** Petitions shall include written plans and diagrams that shall provide detailed information on the proposed extension of alcohol service. Petitions shall also conform to local zoning requirements and include the written approval of local officials. ***Businesses served by a waste disposal system, as defined by RSA 485-A:2, XI, shall obtain approval from the department of environmental services for any expansion under this section, unless the total number of seats remains the same or is reduced. Businesses that are on municipal sewer may expand seating as permitted by the municipality.*** The commission may approve plans submitted by licensees and may add such terms and conditions as it deems appropriate to preserve public health and safety. The commission may deny, in its discretion, any petition under this section which constitutes a risk to public health, safety, or welfare of any community.

121:8 Emergency or Temporary Healthcare Licensees. Healthcare workers issued emergency or temporary licenses during the COVID-19 pandemic, including but not limited to those recruited for youth camps, organized recreation, and community-sponsored recreation, and who meet the requirements for such licensure, shall be allowed to continue in their professional capacity for so long as the emergency or temporary license remains valid. The office of professional licensure and certification shall continue to offer and issue emergency or temporary licenses for healthcare workers; provided that any emergency or temporary licenses issued during the COVID-19 pandemic or in response to conditions occurring immediately thereafter shall expire no later than January 31, 2022.

121:9 New Section; Pharmacists and Pharmacies; Pharmacy Technician Administration of COVID-19 Vaccines. Amend RSA 318 by inserting after section 16-e the following new section:

318:16-f Pharmacy Technician Administration of COVID-19 Vaccines. New Hampshire registered and certified pharmacy technicians may administer COVID-19 vaccines to persons 18 years of age or older while under the supervision of a New Hampshire licensed pharmacist, if the following conditions are met:

I. The vaccination is ordered by the supervising pharmacist.

II. The supervising pharmacist is readily and immediately available to the immunizing registered or certified pharmacy technician.

III. The COVID-19 vaccine is FDA-authorized or FDA-licensed.

IV. The COVID-19 vaccine is ordered and administered according to the Advisory Committee on Immunization Practices (ACIP) COVID-19 vaccine recommendations.

V. The registered or certified pharmacy technician has completed a practical training program approved by the Accreditation Council for Pharmacy Education (ACPE). This training

program shall include hands-on injection technique and the recognition and treatment of emergency reactions to vaccines.

VI. The registered or certified pharmacy technician has a current certificate in basic cardiopulmonary resuscitation.

VII. The registered or certified pharmacy technician shall complete a minimum of 2 hours of ACPE-approved, immunization-related continuing pharmacy education during the relevant state licensing period.

VIII. The supervising pharmacist shall comply with all recordkeeping and reporting requirements.

IX. The supervising pharmacist shall be responsible for complying with requirements related to reporting adverse events.

X. The supervising pharmacist shall review the vaccine registry or other vaccination records before ordering the registered or certified pharmacy technician to administer the vaccination.

XI. The supervising pharmacist shall comply with any applicable requirements or conditions of use as set forth in the CDC's COVID-19 vaccination provider agreement and any other federal requirements that apply to the administration of COVID-19 vaccine.

121:10 Prospective Repeals. The following are repealed:

I. RSA 310-A:1-i, relative to emergency licensing procedures.

II. RSA 318:37-a, relative to out-of-state pharmacies temporarily licensed as mail-order facilities.

121:11 Effective Date.

I. Section 10 of this act shall take effect January 31, 2022.

II. The remainder of this act shall take effect upon its passage.

Approved: July 09, 2021
Effective Date:
I. Section 10 shall take effect January 31, 2022.
II. Remainder shall take effect July 9, 2021.