

Amendment to HB 400

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT requiring the department of health and human services to develop a 10-year plan for
4 mental health services, requiring the commissioner of the department of health and
5 human services to issue certain requests for applications and requests for proposals,
6 establishing the positions of associate commissioner and medical director in the
7 department of health and human services, establishing the office of the child advocate
8 and the oversight commission for children's services and juvenile justice, and
9 establishing a home and community-based behavioral health services program for
10 children.
11

12 Amend the bill by replacing section 1 with the following:

13

14 1 Purpose and Findings. The general court finds that it is vitally important that children in
15 the state of New Hampshire be protected from all forms of abuse and that reforms are necessary to
16 ensure the safety of each child. The general court also finds that the state of New Hampshire faces
17 a significant shortage in the state's capacity to provide our citizens with emergency mental health
18 assistance and long term treatment. Accordingly, the general court hereby directs the department
19 of health and human services to take the following steps in order to provide for the safety and
20 welfare of the citizens of this state.
21

22 Amend the bill by replacing all after section 2 with the following:

23

24 3 Designated Receiving Facilities; Residential Beds.

25 I. The commissioner of the department of health and human services shall issue a request
26 for applications (RFA) from qualified vendors to establish up to 20 designated receiving facility beds
27 for up to 2 years. The designated receiving facilities, as defined in RSA 135-C:26, shall service
28 individuals with severe mental illness who meet the criteria for involuntary emergency admission.
29 The RFA shall be issued no later than June 30, 2017.

30 II. The commissioner of the department of health and human services shall issue a request
31 for applications (RFA) from qualified vendors for up to 40 transitional and community residential
32 beds with wrap-around services and supports for individuals, prioritizing those who are
33 transitioning from New Hampshire hospital and designated receiving facilities. The RFA shall be
34 issued no later than June 30, 2017 and the housing shall be operational by October 1, 2017.

35 4 Peer Crisis Respite Beds. The commissioner of the department of health and human services

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1 shall issue a request for proposals (RFP) from peer support agencies for up to 8 peer crisis respite
2 beds. The RFP shall be issued no later than June 30, 2017.

3 5 Mobile Crisis Teams and Apartments. The commissioner of the department of health and
4 human services shall issue a request for proposals (RFP) for a mobile crisis team and apartments
5 from qualified vendors. The RFP for the mobile crisis team and apartments shall be issued no later
6 than June 30, 2017 and operational no later than October 1, 2017. Upon approval by the joint fiscal
7 committee of the general court by December 1, 2017, an RFP for a second mobile crisis team and
8 apartment may be issued. Any new mobile crisis teams shall be established in geographic locations
9 that have high rates of admissions to and discharges from New Hampshire hospital.

10 6 Integrated Data Management System. The commissioner of the department of health and
11 human services and the commissioner of the department of information technology shall issue a
12 request for proposals (RFP) from vendors to develop and implement an integrated data
13 management system that provides real-time information about the availability of involuntary and
14 voluntary inpatient psychiatric beds in the state of New Hampshire. The RFP shall be issued no
15 later than September 1, 2017. The system shall be operational no later than January 1, 2018.

16 7 Evaluation Required. The commissioner of the department of health and human services
17 shall issue a request for proposals (RFP) for an independent evaluation of the capacity of the
18 current health system in New Hampshire to respond to the inpatient, acute care psychiatric needs
19 of patients, including, but not limited to, those patients who require involuntary emergency
20 admissions, as defined in RSA 135-C. The commissioner shall seek non-state general funds to pay
21 for the evaluation. The RFP shall be issued no later than June 30, 2017 and the evaluation shall be
22 completed by November 1, 2017.

23 8 Independent Review of the Division for Children, Youth, and Families.

24 I. For the purpose of thoroughly examining the state's policies and practices related to child
25 protection, and as a follow-up to the December 19, 2016 report on the division for children, youth
26 and families by the Center for the Support of Families, the department of health and human
27 services shall hire an independent consultant to perform an independent review of the division for
28 children youth and families. The review and the resulting report shall be completed no later than
29 November 1, 2019.

30 II. The independent consultant shall submit a final report of the independent review to the
31 committee established in section 10 of this act and to the fiscal committee of the general court for
32 transmission to the governor, the speaker of the house of representatives, and the president of the
33 senate.

34 9 Appropriation. The sum of \$100,000 for the fiscal year ending June 30, 2018, is hereby
35 appropriated to the department of health and human services for the purpose of conducting the
36 independent review required under section 8 of this act. The governor is authorized to draw a
37 warrant for said sum out of any money in the treasury not otherwise appropriated.

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1 Notwithstanding RSA 14:30-a, VI, the department is authorized to accept and expend matching
2 funds for the purposes of section 8 of this act, without prior approval of the fiscal committee.

3 10 Joint Legislative Committee to Examine the Independent Review of the Division for
4 Children, Youth and Families. There is established a committee to examine the independent review
5 of the division for children, youth and families.

6 I. The members of the committee shall be as follows:

7 (a) Three members of the house of representatives, appointed by the speaker of the
8 house of representatives.

9 (b) Three members of the senate, appointed by the president of the senate.

10 II. Members of the committee shall receive mileage at the legislative rate when attending to
11 the duties of the committee.

12 III. The committee shall examine the independent review of the division for children, youth
13 and families and assess the state's progress in addressing issues raised by the Center for the
14 Support of Children in the center's report dated December 19, 2016. In consultation with the
15 commissioner of health and human services, the committee shall develop any draft legislation
16 necessary to implement recommendations from the report and review for inclusion in the 2020/2021
17 biennial budget.

18 IV. The members of the study committee shall elect a chairperson from among the
19 members. The first meeting of the committee shall be called by the first-named house member. The
20 first meeting of the committee shall be held within 45 days of the effective date of this section. Four
21 members of the committee shall constitute a quorum.

22 V. The committee shall report its findings and any recommendations for proposed
23 legislation to the speaker of the house of representatives, the president of the senate, the house
24 clerk, the senate clerk, the governor, and the state library on or before July 1, 2020.

25 11 Department of Health and Human Services; Associate Commissioner of Health and Human
26 Services; Position Established. RSA 126-A:9, I(a) is repealed and reenacted to read as follows:

27 (a) Subject to the approval of the governor and council, the commissioner of health and
28 human services shall appoint an associate commissioner, who shall serve for a term of 4 years. The
29 associate commissioner shall perform such duties as may be assigned by the commissioner, which
30 shall include oversight of the division for children, youth and families and assigned responsibilities
31 of the department under RSA 170-G. The annual salary of the associate commissioner shall be as
32 prescribed in RSA 94:1-a.

33 12 Department of Health and Human Services; Salaries; Reference to Associate Commissioner
34 Added; Reference to Senior Division Director Removed. Amend RSA 126-A:10 to read as follows:

35 126-A:10 Salaries. The annual salaries of the commissioner of health and human services,
36 deputy commissioner of health and human services, ~~[senior division director]~~ **associate**
37 **commissioner**, division directors, and unclassified employees of the department shall be as

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prescribed by RSA 94:1-a.

13 Salary of Associate Commissioner. Amend RSA 94:1-a, I(b) to read as follows:

Delete:

JJ Department of health and human services senior division director

Insert:

JJ Department of health and human services associate commissioner

14 New Subparagraph; Department of Health and Human Services; Positions Established.
Amend RSA 126-A:9, I by inserting after subparagraph (b) the following new subparagraph:

(c) The commissioner shall appoint an unclassified medical director who shall perform such duties as may be assigned by the commissioner. The medical director shall be a psychiatrist licensed or qualified to practice in New Hampshire. The salary of the medical director shall be determined after assessment and review of the appropriate temporary letter grade allocation in RSA 94:1-a, I(b) for the position which shall be conducted pursuant to RSA 94:1-d and RSA 14:14-c.

15 New Subdivision; Office of the Child Advocate. Amend RSA 170-G by inserting after section 16 the following new subdivision:

Office of the Child Advocate

170-G:17 Office of the Child Advocate.

I. The office of the child advocate shall be an independent agency, administratively attached to the department of administrative services pursuant to RSA 21-G:10.

II. The office shall be under the supervision of an unclassified director of the office of the child advocate. The director shall serve a term of 4 years and until a successor is appointed and qualified. Any vacancy in the office shall be filled in the same manner as the original appointment for the remainder of the unexpired term. The director shall be appointed by the governor and council, upon the recommendation of the oversight commission established in RSA 170-G:18. The director shall possess a professional graduate degree in law, social work, public health, or a related field and be qualified by reason of education, experience, and expertise to perform the duties of the office.

III. The office of the child advocate shall:

(a) Provide independent oversight of the state's child protection system to assure that the best interests of children are being protected.

(b) Regularly consult with the department of health and human services and the oversight commission established in RSA 170-G:18.

(c) Maintain client confidentiality and the confidentiality of all case records as specified in law.

(d) Have access to records within the scope of its mission, except for those records maintained by the department of justice which are part of a pending legal proceeding.

(e) Have the ability to subpoena witnesses and/or records.

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1 (f) Have the authority to review and investigate any aspect of the department's child
2 protection policies or practices.

3 (g) Provide information and referral services to the public regarding the department's
4 child protection services; provided that case specific complaints shall be handled by the department.

5 (h) Receive a copy of all critical incident reports from the department. The department
6 shall provide the office with a copy of the report not later than 48 hours after the occurrence;
7 provided that any child fatality shall be immediately communicated to the office by phone.

8 (i) Perform educational outreach and advocacy activities in furtherance of the mission
9 and responsibilities of the office.

10 (j) Investigate and report on issues related to child protection upon the request of the
11 governor, commissioner of health and human services, speaker of the house of representatives,
12 senate president, or oversight commission.

13 IV. Beginning November 1, 2017 and each November 1 thereafter, the director of the office
14 of the child advocate shall submit an annual report of its activity, findings, and recommendations to
15 the commissioner of the department of health and human services, the governor, the speaker of the
16 house of representatives, the senate president, and the state library.

17 170-G:18 Oversight Commission on Children's Services and Juvenile Justice Established.

18 I. There shall be an oversight commission on children's services and juvenile justice, which
19 shall consist of the following members:

20 (a) Two members of the senate, appointed by the senate president.

21 (b) Two members of the house of representatives, appointed by the speaker of the house
22 of representatives.

23 (c) Four members representing the executive branch, appointed by the governor.

24 (d) Two members representing the judicial branch, appointed by the chief justice of the
25 supreme court.

26 (e) Two representatives of the New Hampshire Association of Chiefs of Police, one of
27 whom serves as chief of police for a city and one of whom serves as chief of police for a town.

28 (f) Four members of child advocacy organizations, appointed by the governor.

29 II. Legislative members of the commission shall serve a term coterminous with their term
30 in office. Members appointed under subparagraphs (c)-(f) shall serve 3-year terms. Legislative
31 members of the commission shall receive mileage at the legislative rate when attending to the
32 duties of the commission.

33 III. The oversight commission shall:

34 (a) Recommend at least 3 qualified candidates to the governor for appointment as
35 director of the office of the child advocate; except that in the case of reappointment, a single
36 recommendation shall be sufficient.

37 (b) Provide oversight to the department of health and human services and the office of

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1 the child advocate to support an effective, comprehensive, and coordinated system of services and
2 programs for children, youth, and families.

3 (c) Analyze the efficacy of selected programs and services of the department, including
4 the characteristics of target populations, trends affecting program costs and participation, and
5 alternative approaches to programmatic and administrative concerns.

6 (d) Collaborate with the department of health and human services and the office of the
7 child advocate to identify and implement best practices on behalf of children and families.

8 IV. The oversight commission shall elect a chairperson from among the members. The first
9 meeting of the commission shall be called by the first-named senate member. The first meeting of
10 the commission shall be held within 45 days of the effective date of this section. Four members of
11 the commission shall constitute a quorum.

12 V. Beginning November 1, 2017, and each November 1 thereafter, the commission shall
13 submit a report of its activity, findings, and any recommendations for proposed legislation to the
14 commissioner of the department of health and human services, the director of the office of the child
15 advocate, the president of the senate, the speaker of the house of representatives, the senate clerk,
16 the house clerk, the governor, and the state library.

17 16 Department of Health and Human Services; Director of Legal Services. On the effective
18 date of this section, the director of legal services, position number 9U468, shall be transferred from
19 the department of health and human services to the department of justice. The director of legal
20 services shall be under the supervision of the attorney general and shall be responsible for the
21 supervision of all attorneys in the department of health and human services, division for children,
22 youth and families. Funding for the position shall be transferred in the same manner as a transfer
23 made pursuant to RSA 7:13.

24 17 Child Protection Act; Purpose. Amend RSA 169-C:2 to read as follows:

25 169-C:2 Purpose.

26 I. It is the **primary** purpose of this chapter, through the mandatory reporting of suspected
27 instances of child abuse or neglect, to provide protection to children whose life, health or welfare is
28 endangered. ~~[and]~~

29 **II. It is a further purpose of this chapter** to establish a judicial framework to protect the
30 rights of all parties involved in the adjudication of child abuse or neglect cases. Each child coming
31 within the provisions of this chapter shall receive, preferably in ~~[his]~~ **the child's** own home, the
32 care, emotional security, guidance, and control that will promote the child's best interest; and, if the
33 child should be removed from the control of his **or her** parents, guardian, or custodian, adequate
34 care shall be secured for the child. This chapter seeks to coordinate efforts by state and local
35 authorities, in cooperation with private agencies and organizations, citizens' groups, and concerned
36 individuals, to:

37 (a) Protect the safety of the child.

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(b) Preserve the unity of the family whenever possible.

(c) Provide assistance to parents to deal with and correct problems in order to avoid removal of children from the family.

(d) Take such action as may be necessary to prevent abuse or neglect of children.

(e) Provide protection, treatment, and rehabilitation, as needed, to children placed in alternative care.

[H:] **III.** This chapter shall be liberally construed to the end that its purpose may be carried out, to wit:

(a) To encourage the mental, emotional, and physical development of each child coming within the provisions of this chapter, by providing ~~[him]~~ **the child** with the protection, care, treatment, ~~[counseling]~~ **counseling**, supervision, and rehabilitative resources which ~~[he]~~ **the child** needs and has a right to receive.

(b) To achieve the foregoing purposes and policies, whenever possible, by keeping a child in contact with his **or her** home community and in a family environment by preserving the unity of the family and separating the child from his **or her** parents only when the safety of the child is in danger or when it is clearly necessary for ~~[his]~~ **the child's** welfare or the interests of the public safety and when it can be clearly shown that a change in custody and control will plainly better the child; and

(c) To provide effective judicial procedures through which the provisions of this chapter are executed and enforced and which recognize and enforce the constitutional and other rights of the parties and assures them a fair hearing.

18 Child Protection Act; Definitions. Amend RSA 169-C:3, XIII-a to read as follows:

XIII-a. "Founded report" means a report made pursuant to this chapter for which the department finds ~~[probable cause to believe]~~ **by a preponderance of the evidence** that the child who is the subject of such report is abused or neglected.

19 Child Protection Act; Definitions. Amend RSA 169-C:3, XIX(a)-(b) to read as follows:

(a) Who has been abandoned by his **or her** parents, guardian, or custodian; or

(b) Who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for ~~[his]~~ **the child's** physical, mental, or emotional health, when it is established that ~~[his]~~ **the child's** health has suffered or is ~~[very]~~ likely to suffer serious impairment; and the deprivation is not due primarily to the lack of financial means of the parents, guardian, or custodian; or

20 Child Protection Act; Definitions. Amend RSA 169-C:3, XXVII-a and XXVIII to read as follows:

XXVII-a. **"Serious impairment" means a substantial weakening or diminishment of a child's emotional, physical, or mental health or of a child's safety and general well-being. The following circumstances shall be considered in determining the likelihood that**

1 *a child may suffer serious impairment:*

2 *(a) The age and developmental level of the child.*

3 *(b) Any recognized mental, emotional, or physical disabilities.*

4 *(c) School attendance and performance.*

5 *(d) The child's illegal use of controlled substances, or the child's contact with*
6 *other persons involved in the illegal use or sale of controlled substances or the abuse of*
7 *alcohol.*

8 *(e) Exposure to incidents of domestic or sexual violence.*

9 *(f) Any documented failure to thrive.*

10 *(g) Any history of frequent illness or injury.*

11 *(h) Findings in other proceedings.*

12 *(i) The condition of the child's place of residence.*

13 *(j) Assessments or evaluations of the child conducted by qualified professionals.*

14 *(k) Such other factors that may be determined to be appropriate or relevant.*

15 **XXVII-b.** "Sexual abuse" means the employment, use, persuasion, inducement, enticement,
16 or coercion of any child to engage in, or having a child assist any other person to engage in, any
17 sexually explicit conduct or any simulation of such conduct for the purpose of producing any visual
18 depiction of such conduct; or the rape, molestation, prostitution, or other form of sexual exploitation
19 of children, or incest with children. With respect to the definition of sexual abuse, the term "child"
20 or "children" means any individual who is under the age of 18 years.

21 **XXVIII.** "Unfounded report" means a report made pursuant to this chapter for which the
22 department ~~[finds]~~ **determines** that there is ~~[no probable cause to believe]~~ **insufficient evidence**
23 **to substantiate a finding** that the child is abused or neglected.

24 21 Determination of Parental Rights and Responsibilities. Amend RSA 461-A:6, IV(b) to read
25 as follows:

26 (b) In this paragraph, "sexual abuse" shall mean sexual abuse as defined in RSA 169-
27 C:3, ~~[XXVII-a]~~ **XXVII-b**, and "sexual assault" shall mean sexual assault as provided in RSA 632-A:2,
28 RSA 632-A:3, and RSA 632-A:4.

29 22 Child Protection Act; Evidence. Amend RSA 169-C:12 to read as follows:

30 169-C:12 Evidence. In any hearing under this chapter, the court shall not be bound by the
31 technical rules of evidence and may admit evidence which it considers relevant and material.
32 **Evidence of prior founded or unfounded reports of abuse or neglect shall be admissible in**
33 **proceedings under this chapter in order to establish a relevant pattern or course of**
34 **conduct.**

35 23 New Section; Public Assistance; Home and Community Based Behavioral Health Services
36 Program. Amend RSA 167 by inserting after section 3-j the following new section:

37 167:3-k Home and Community-Based Behavioral Health Services for Children. The

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1 department shall establish a Medicaid home and community-based behavioral health services
2 program for children with severe emotional disturbances whose service needs cannot be met
3 through traditional behavioral health services. The department may establish such services
4 through a state plan amendment as provided in Section 1915(i) of the Social Security Act or a
5 waiver under other provisions of the Act. If the department proceeds with a waiver, it shall not
6 limit the geographic availability of services. Such services shall include the following services or
7 their functional equivalent:

8 I. Wraparound care coordination.

9 II. Wraparound participation.

10 III. In home respite care.

11 IV. Out of home respite care.

12 V. Customizable goods and services.

13 VI. Family peer support.

14 VII. Youth peer support.

15 24 Effective Date. This act shall take effect upon its passage.

2017-1495s

AMENDED ANALYSIS

This bill:

I. Requires the department of health and human services to develop a comprehensive 10-year plan for the mental health system. Under this bill, the plan shall be submitted to the speaker of the house of representatives, the president of the senate, and the governor on or before July 1, 2018.

II. Requires the commissioner of the department of health and human services to issue certain requests for applications and requests for proposals.

III. Replaces the position of senior division director with the position of associate commissioner, whose responsibilities shall include oversight of the division for children, youth, and families.

IV. Establishes the position of medical director in the department of health and human services.

V. Establishes an independent office of the child advocate and an oversight commission on children's services and juvenile justice.

VI. Amends the purpose of the child protection act.

VII. Amends the definition of a founded report of abuse or neglect by replacing "probable cause" with "preponderance of the evidence," and amends the definition of an unfounded report by replacing "no probable cause to believe" with "insufficient evidence to substantiate a finding."

VIII. Inserts a definition of "serious impairment."

IX. Amends the evidentiary standards for abuse and neglect cases by allowing into evidence prior founded or unfounded reports of abuse or neglect in order to establish pattern or course of conduct.

X. Directs the department of health and human services to establish a Medicaid home and community based behavioral health services program for children with severe emotional disturbances.