

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.

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1       4 Plan Required for Removal of Certain Persons From New Hampshire Hospital. The  
2 commissioner of the department of health and human services shall develop a plan to safely remove  
3 the remaining 24 youths from the New Hampshire hospital and to ensure that they continue to  
4 receive the care they need by November 1, 2017. The commissioner shall make a report relative to  
5 the plan which shall be submitted to the speaker of the house of representatives, the president of  
6 the senate, the chairs of the house and senate committees having jurisdiction over health and  
7 human services, and the governor on or before November 2, 2017.

8       5 Peer Crisis Respite Beds. The commissioner of the department of health and human services  
9 shall issue a request for proposals (RFP) from peer support agencies for up to 8 peer crisis respite  
10 beds. The RFP shall be issued no later than June 30, 2017.

11       6 Mobile Crisis Teams and Apartments. The commissioner of the department of health and  
12 human services shall issue a request for proposals (RFP) for a mobile crisis team and apartments  
13 from qualified vendors. The RFP for the mobile crisis team and apartments shall be issued no later  
14 than June 30, 2017 and operational no later than October 1, 2017. Upon approval by the joint fiscal  
15 committee of the general court by December 1, 2017, an RFP for a second mobile crisis team and  
16 apartment may be issued. Any new mobile crisis teams shall be established in geographic locations  
17 that have high rates of admissions to and discharges from New Hampshire hospital.

18       7 Integrated Data Management System. The commissioner of the department of health and  
19 human services and the commissioner of the department of information technology shall issue a  
20 request for proposals (RFP) from vendors to develop and implement an integrated data  
21 management system that provides real-time information about the availability of involuntary and  
22 voluntary inpatient psychiatric beds in the state of New Hampshire. The RFP shall be issued no  
23 later than September 1, 2017. The system shall be operational no later than January 1, 2018.

24       8 Evaluation Required. The commissioner of the department of health and human services  
25 shall issue a request for proposals (RFP) for an independent evaluation of the capacity of the  
26 current health system in New Hampshire to respond to the inpatient, acute care psychiatric needs  
27 of patients, including, but not limited to, those patients who require involuntary emergency  
28 admissions, as defined in RSA 135-C. The commissioner shall seek non-state general funds to pay  
29 for the evaluation. The RFP shall be issued no later than June 30, 2017 and the evaluation shall be  
30 completed by November 1, 2017.

31       9 Independent Review of the Division for Children, Youth, and Families.

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

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1           II. The independent consultant shall submit a final report of the independent review to the  
2 committee established in section 11 of this act and to the fiscal committee of the general court for  
3 transmission to the governor, the speaker of the house of representatives, and the president of the  
4 senate.

5           10 Appropriation. The sum of \$100,000 for the fiscal year ending June 30, 2018, is hereby  
6 appropriated to the department of health and human services for the purpose of conducting the  
7 independent review required under section 9 of this act. The governor is authorized to draw a  
8 warrant for said sum out of any money in the treasury not otherwise appropriated.  
9 Notwithstanding RSA 14:30-a, VI, the department is authorized to accept and expend matching  
10 funds for the purposes of section 9 of this act, without prior approval of the fiscal committee.

11           11 Joint Legislative Committee to Examine the Independent Review of the Division for  
12 Children, Youth and Families. There is established a committee to examine the independent review  
13 of the division for children, youth and families.

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

15               (a) Three members of the house of representatives, appointed by the speaker of the  
16 house of representatives.

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

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

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

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

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

33           12 Department of Health and Human Services; Associate Commissioner of Health and Human  
34 Services; Position Established. RSA 126-A:9, I(a) is repealed and reenacted to read as follows:

35               (a) Subject to the approval of the governor and council, the commissioner of health and  
36 human services shall appoint an associate commissioner, who shall serve for a term of 4 years. The  
37 associate commissioner shall perform such duties as may be assigned by the commissioner, which

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shall include oversight of the division for children, youth and families and assigned responsibilities of the department under RSA 170-G. The annual salary of the associate commissioner shall be as prescribed in RSA 94:1-a.

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

126-A:10 Salaries. The annual salaries of the commissioner of health and human services, deputy commissioner of health and human services, ~~[senior division director]~~ **associate commissioner**, division directors, and unclassified employees of the department shall be as prescribed by RSA 94:1-a.

14 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

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

(c) The commissioner shall appoint an unclassified mental health medical supervisor who shall perform such duties as may be assigned by the commissioner. These duties shall include, but not be limited to, collecting and reporting information regarding patients in need of high acuity mental health treatment and information regarding treatment options. The mental health medical supervisor shall be clinically qualified to assist in the triage for appropriate inpatient, partial hospitalization, and/or community based services. The mental health medical supervisor shall be a psychiatrist or psychiatric nurse practitioner licensed or qualified to practice in New Hampshire. The salary of the mental health medical supervisor 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.

16 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

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1 director shall possess a professional graduate degree in law, social work, public health, or a related  
2 field and be qualified by reason of education, experience, and expertise to perform the duties of the  
3 office.

4 III. The office of the child advocate shall:

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

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

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

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

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

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

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

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

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

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

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

30 170-G:18 Oversight Commission on Children's Services and Juvenile Justice Established.

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

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

34 (b) Two members of the house of representatives, appointed by the speaker of the house  
35 of representatives.

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

37 (d) Two members representing the judicial branch, appointed by the chief justice of the

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1 supreme court.

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

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

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

9 III. The oversight commission shall:

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

13 (b) Provide oversight to the department of health and human services and the office of  
14 the child advocate to support an effective, comprehensive, and coordinated system of services and  
15 programs for children, youth, and families.

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

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

21 (e) Monitor and review implementation of the memorandum of understanding entered  
22 into by the department of health and human services and the department of justice regarding the  
23 collaboration between the 2 departments in the department of health and human services'  
24 investigation and prosecution of abuse and neglect cases.

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

29 V. Not later than November 1, 2017 and May 1, 2018, and not later than each November 1  
30 thereafter, the commission shall submit a report of its activity, findings, and any recommendations  
31 for proposed legislation to the commissioner of the department of health and human services, the  
32 director of the office of the child advocate, the president of the senate, the speaker of the house of  
33 representatives, the senate clerk, the house clerk, the governor, and the state library.

34 17 Department of Health and Human Services; Director of Legal Services; Memorandum of  
35 Understanding between the Department of Health and Human Services and the Department of  
36 Justice.

37 I. On the effective date of this section, the director of legal services, position number 9U468,

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1 shall be transferred from the department of health and human services to the department of justice.  
2 The director of legal services shall be under the supervision of the attorney general and shall be  
3 responsible for the supervision of all attorneys in the department of health and human services,  
4 division for children, youth and families. Funding for the position shall be transferred in the same  
5 manner as a transfer made pursuant to RSA 7:13.

6 II.(a) On or before August 1, 2017, the commissioner of the department of health and  
7 human services and the attorney general of the department of justice shall enter into a  
8 memorandum of understanding that provides for the ongoing communication and collaboration by  
9 and between the 2 departments in connection with the department of health and human services'  
10 investigation and prosecution of abuse and neglect cases. The memorandum of understanding  
11 shall:

12 (1) Provide for joint case consultation, oversight, and review of the department of  
13 health and human services, division for children, youth and families cases in appropriate instances;

14 (2) Outline the roles and responsibilities of each agency in the prosecution of these  
15 cases; and

16 (3) Establish a process to address any identified training needs for the division for  
17 children, youth and families attorneys, including, but not limited to, monthly meetings with the  
18 department of justice and supervisory attorneys representing the division for children, youth and  
19 families and quarterly meetings with the department of justice and all attorneys representing the  
20 division for children, youth and families.

21 (b) The department of health and human services, in collaboration with the department  
22 of justice, shall provide an interim report on or before December 31, 2017 and an annual report  
23 beginning on or before June 30, 2018, to the oversight commission on children's services and  
24 juvenile justice established in RSA 170-G:18 regarding implementation and progress under the  
25 memorandum of understanding. The report shall address whether additional attorney positions in  
26 the division for children, youth and families should be transferred to the department of justice.

27 18 Child Protection Act; Purpose. Amend RSA 169-C:2 to read as follows:

28 169-C:2 Purpose.

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

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

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1 authorities, in cooperation with private agencies and organizations, citizens' groups, and concerned  
2 individuals, to:

- 3 (a) Protect the safety of the child.  
4 (b) ~~[Preserve the unity of the family whenever possible.~~  
5 ~~(c) Provide assistance to parents to deal with and correct problems in order to avoid~~  
6 ~~removal of children from the family.~~  
7 ~~(d) Take such action as may be necessary to prevent abuse or neglect of children.~~  
8 ~~(e) Provide protection, treatment, and rehabilitation, as needed, to children placed in~~  
9 ~~alternative care.]~~ ***Take such action as may be necessary to prevent the abuse or neglect of***  
10 ***children.***

- 11 (c) ***Preserve the unity of the family.***  
12 (d) ***Provide protection, treatment, and rehabilitation, as needed, to children***  
13 ***placed in alternative care.***

- 14 (e) ***Provide assistance to parents to deal with and correct problems in order to***  
15 ***avoid removal of children from the family.***

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

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

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

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

31 19 Child Protection Act; Definitions. Amend RSA 169-C:3, XIX(a)-(b) to read as follows:

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

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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 a child may suffer serious impairment:*

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

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

(c) *School attendance and performance.*

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

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

(f) *Any documented failure to thrive.*

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

(h) *Findings in other proceedings.*

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

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

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

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

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

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

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

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

169-C:12 Evidence. In any hearing under this chapter, the court shall not be bound by the technical rules of evidence and may admit evidence which it considers relevant and material. **Evidence of prior founded or unfounded reports of abuse or neglect shall be admissible in**

*proceedings under this chapter in order to establish a relevant pattern or course of conduct.*

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

167:3-k Home and Community-Based Behavioral Health Services for Children. The department shall establish a Medicaid home and community-based behavioral health services program for children with severe emotional disturbances whose service needs cannot be met through traditional behavioral health services. The department may establish such services through a state plan amendment as provided in Section 1915(i) of the Social Security Act or a waiver under other provisions of the Act. If the department proceeds with a waiver, it shall not limit the geographic availability of services. Such services shall include the following services or their functional equivalent:

I. Wraparound care coordination.

II. Wraparound participation.

III. In home respite care.

IV. Out of home respite care.

V. Customizable goods and services.

VI. Family peer support.

VII. Youth peer support.

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

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2017-1626s

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 mental health medical supervisor in the department of health and human services, transfers the position of director of legal services from the department of health and human services to the department of justice, and requires the 2 departments to enter into a memorandum of understanding regarding abuse and neglect cases.

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 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.