

Floor Amendment to HB 2-FN-A-LOCAL

1 Amend the bill by inserting after section 463 the following and renumbering the original section 464
2 to read as 472:

3

4 464 State Commission for Human Rights; Law Against Discrimination; Purpose and Scope.
5 Amend RSA 354-A:1 to read as follows:

6 354-A:1 Title and Purposes of Chapter.

7 **I.** This chapter shall be known as the "Law Against Discrimination." It shall be deemed an
8 exercise of the police power of the state for the protection of the public welfare, health and peace of
9 the people of this state, and in fulfillment of the provisions of the constitution of this state
10 concerning civil rights. The general court hereby finds and declares that practices of discrimination
11 against any of its inhabitants because of age, sex, gender identity, race, creed, color, marital status,
12 familial status, physical or mental disability or national origin are a matter of state concern, that
13 such discrimination not only threatens the rights and proper privileges of its inhabitants, but
14 menaces the institutions and foundation of a free democratic state and threatens the peace, order,
15 health, safety and general welfare of the state and its inhabitants. A state agency is hereby created
16 with power to eliminate and prevent discrimination in employment, in places of public
17 accommodation and in housing accommodations because of age, sex, gender identity, race, creed,
18 color, marital status, familial status, physical or mental disability or national origin as herein
19 provided; and the commission established hereunder is hereby given general jurisdiction and power
20 for such purposes. In addition, the agencies and councils so created shall exercise their authority to
21 assure that no person be discriminated against on account of sexual orientation.

22 **II.** *The general court also finds that, notwithstanding New Hampshire's*
23 *fundamental commitment to treat all persons without discrimination and with equal*
24 *dignity and respect, which commitment the legislature fully accepts and strongly endorses,*
25 *there are certain limited circumstances in which classification of persons based on*
26 *biological sex is proper because such classification serves the compelling state interests of*
27 *protecting the privacy rights and physical safety of such persons and others. The*
28 *legislature finds that permitting classification of persons based upon biological sex serves*
29 *this compelling state interest in the 3 circumstances described in RSA 354-A:25-a.*

30 465 New Section; Law Against Discrimination; Classification of Persons Based Upon Biological
31 Sex. Amend RSA 354-A by adding after section 25 the following new section:

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1 354-A:25-a Classification of Persons Based Upon Biological Sex. Notwithstanding RSA 354-A:2,
2 XIV-e or any other provision of this chapter or any other law or regulation, it shall not constitute
3 unlawful discrimination based on sexual or gender identity for any person or organization, public or
4 private, to classify based on biological sex with respect to the following matters:

5 I. In the construction, maintenance, operation, and use of lavatory facilities or locker rooms
6 designed for usage by multiple persons at the same time, even if such facilities have individual
7 urinals, stalls, or similar apparatus.

8 II. In athletic or sporting events or competitions in a sport or similar activity in which
9 physical strength, speed, or endurance is generally recognized to give an advantage to biological
10 males.

11 III. In the operation, maintenance, and use of facilities designed for usage as prisons, houses
12 of correction, juvenile detention or commitment centers, mental health hospitals or treatment
13 centers and like facilities to which persons may be committed involuntarily.

14 466 Residential Care and Health Facility Licensing; License or Registration Required;
15 Moratorium; Exception for Membership-Based and Direct Payment Facilities. Amend RSA 151:2,
16 VI(a)(1) to read as follows:

17 (1) No new license shall be issued for, and there shall be no increase in licensed
18 capacity of, any nursing home, skilled nursing facility, intermediate care facility, or rehabilitation
19 facility, including rehabilitation hospitals and facilities offering comprehensive rehabilitation
20 services. This moratorium shall not apply to:

21 ***(A) Any facility that is not a nursing home or skilled nursing facility,***
22 ***that operates on a membership-based business model or exclusively provides services to***
23 ***persons who make direct payment for services;***

24 ***(B) Any rehabilitation facility whose sole purpose is to treat individuals for***
25 ***substance use disorder or mental health issues; or [tø]***

26 ***(C) Any continuing care facility for which a certificate of authority has been***
27 ***issued by the insurance commissioner pursuant to RSA 420-D:2.***

28 467 Patients' Bill of Rights; Definitions; Direct Payment and Membership-Based Facilities.
29 Amend RSA 151:19, II to read as follows:

30 II. "Facility" means any hospital, building, residence, or other place or part thereof, licensed
31 under the provisions of RSA 151:2. For the purposes of RSA 151:21, RSA 151:25, and RSA 151:26,
32 "facility" shall not include home health care providers, or private homes where home care services
33 are provided. ***For the purposes of RSA 151:21, "facility" shall not include direct payment and***
34 ***membership-based facilities.***

35 468 Patients' Bill of Rights; Definitions; Direct Payment and Membership-Based Facilities.
36 Amend RSA 151:19, VI to read as follows:

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1 VI. "Patients' rights" or "rights" means those rights established under RSA 151:21 ~~[or]~~ RSA
2 151:21-b, **or RSA 151:21-c**, as applicable.

3 469 Residential Care and Health Facility Licensing; Policies Required. Amend RSA 151:2-f to
4 read as follows:

5 151:2-f Policies Required for Health Facilities and Special Health Care Service Licenses.

6 **I.** Every facility licensed under RSA 151:2, I(a) or (d) and every person holding a special
7 health care service license under RSA 151:2-e shall:

8 ~~I.~~(a) Adopt and enforce a written policy to assure that the facility provides its services to
9 all persons who require the services the facility provides regardless of the source of payment for the
10 services provided to any person;

11 ~~II.~~(b) Adopt, publicize, and apply an assistance plan for persons who are uninsured or who
12 do not have the financial resources to pay for the facility's services due to financial hardship;

13 ~~III.~~(c) Provide data to the commissioner of the department of health and human services
14 regarding the volume, cost and outcomes of services provided in the facility; and

15 ~~IV.~~(d) Pay fees under RSA 151:2-e, III to the commissioner of the department to cover the
16 costs of administering the licensing of special health care services, the administration of the quality
17 and patient safety requirements of this section, and the collection and analysis of the data collected
18 under this section.

19 **II. Subparagraph I(a) shall not apply to intermediate care facilities or**
20 **rehabilitation facilities, including rehabilitation hospitals and facilities offering**
21 **comprehensive rehabilitation services facilities, that operate on a membership-based**
22 **business model or exclusively provide services to persons who make direct payment for**
23 **services. For the purposes of this paragraph, a direct payment is one that is paid directly**
24 **by the patient and is not reimbursed or otherwise paid by a third party.**

25 470 New Section; Residential Care and Health Facility Licensing; Patients' Bill of Rights for
26 Direct Payment and Membership-Based Facilities. Amend RSA 151 by inserting after section 21-b
27 the following new section:

28 151:21-c Patients' Bill of Rights for Direct Payment and Membership-Based Facilities. The
29 policy describing the rights and responsibilities of each patient admitted to a facility that operates on
30 a membership-based business model or exclusively provides services to persons who make direct
31 payment for services as defined in RSA 151:2-f, II, except those admitted by a home health care
32 provider, shall include, as a minimum, the following:

33 I. The patient shall be treated with consideration, respect, and full recognition of the
34 patient's dignity and individuality, including privacy in treatment and personal care and including
35 being informed of the name, licensure status, and staff position of all those with whom the patient
36 has contact, pursuant to RSA 151:3-b.

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1 II. The patient shall be fully informed of a patient's rights and responsibilities and of all
2 procedures governing patient conduct and responsibilities. This information shall be provided orally
3 and in writing before or at admission, except for emergency admissions. Receipt of the information
4 shall be acknowledged by the patient in writing. When a patient lacks the capacity to make
5 informed judgments the signing shall be by the person legally responsible for the patient.

6 III. The patient shall be fully informed in writing in language that the patient can
7 understand, before or at the time of admission and as necessary during the patient's stay, of the
8 facility's basic per diem rate and of those services included and not included in the basic per diem
9 rate.

10 IV. The patient shall be fully informed by a health care provider of his or her medical
11 condition, health care needs, and diagnostic test results, including the manner by which such results
12 will be provided and the expected time interval between testing and receiving results, unless
13 medically inadvisable and so documented in the medical record, and shall be given the opportunity
14 to participate in the planning of his or her total care and medical treatment, to refuse treatment, and
15 to be involved in experimental research upon the patient's written consent only. For the purposes of
16 this paragraph "health care provider" means any person, corporation, facility, or institution either
17 licensed by this state or otherwise lawfully providing health care services, including, but not limited
18 to, a physician, hospital or other health care facility, dentist, nurse, optometrist, podiatrist, physical
19 therapist, or psychologist, and any officer, employee, or agent of such provider acting in the course
20 and scope of employment or agency related to or supportive of health care services.

21 V. The patient shall be transferred or discharged after appropriate discharge planning only
22 for medical reasons, for the patient's welfare or that of other patients, if the facility ceases to
23 operate, or for nonpayment for the patient's stay.

24 VI. The patient shall be encouraged and assisted throughout the patient's stay to exercise
25 the patient's rights as a patient and citizen. The patient may voice grievances and recommend
26 changes in policies and services to facility staff or outside representatives free from restraint,
27 interference, coercion, discrimination, or reprisal.

28 VII. The patient shall be permitted to manage the patient's personal financial affairs. If the
29 patient authorizes the facility in writing to assist in this management and the facility so consents,
30 the assistance shall be carried out in accordance with the patient's rights under this subdivision and
31 in conformance with state law and rules.

32 VIII. The patient shall be free from emotional, psychological, sexual and physical abuse and
33 from exploitation, neglect, corporal punishment and involuntary seclusion.

34 IX. The patient shall be free from chemical and physical restraints except when they are
35 authorized in writing by a physician for a specific and limited time necessary to protect the patient
36 or others from injury. In an emergency, restraints may be authorized by the designated professional

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1 staff member in order to protect the patient or others from injury. The staff member shall promptly
2 report such action to the physician and document same in the medical records.

3 X. The patient shall be ensured confidential treatment of all information contained in the
4 patient's personal and clinical record, including that stored in an automatic data bank, and the
5 patient's written consent shall be required for the release of information to anyone not otherwise
6 authorized by law to receive it. Medical information contained in the medical records at any facility
7 licensed under this chapter shall be deemed to be the property of the patient. The patient shall be
8 entitled to a copy of such records upon request. The charge for the copying of a patient's medical
9 records shall not exceed \$15 for the first 30 pages or \$.50 per page, whichever is greater; provided,
10 that copies of filmed records such as radiograms, x-rays, and sonograms shall be copied at a
11 reasonable cost.

12 XI. The patient shall not be required to perform services for the facility. Where appropriate
13 for therapeutic or diversional purposes and agreed to by the patient, such services may be included
14 in a plan of care and treatment.

15 XII. The patient shall be free to communicate with, associate with, and meet privately with
16 anyone, including family and resident groups, unless to do so would infringe upon the rights of other
17 patients. The patient may send and receive unopened personal mail. The patient has the right to
18 have regular access to the unmonitored use of a telephone.

19 XIII. The patient shall be free to participate in activities of any social, religious, and
20 community groups, unless to do so would infringe upon the rights of other patients.

21 XIV. The patient shall be free to retain and use personal clothing and possessions as space
22 permits, provided it does not infringe on the rights of other patients.

23 XV. The patient shall be entitled to privacy for visits and, if married, to share a room with
24 his or her spouse if both are patients in the same facility and where both patients consent, unless it
25 is medically contraindicated and so documented by a physician. The patient has the right to reside
26 and receive services in the facility with reasonable accommodation of individual needs and
27 preferences, including choice of room and roommate, except when the health and safety of the
28 individual or other patients would be endangered.

29 XVI. The patient shall not be denied appropriate care on the basis of age, sex, gender
30 identity, sexual orientation, race, color, marital status, familial status, disability, religion, national
31 origin, source of income, or profession.

32 XVII. The patient shall be entitled to be treated by the patient's physician of choice, subject
33 to reasonable rules and regulations of the facility regarding the facility's credentialing process.

34 XVIII. The patient shall be entitled to have the patient's parents, if a minor, or spouse, or
35 next of kin, unmarried partner, or a personal representative chosen by the patient, if an adult, visit
36 the facility, without restriction, if the patient is considered terminally ill by the physician
37 responsible for the patient's care.

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1 XIX. The patient shall be entitled to receive representatives of approved organizations as
2 provided in RSA 151:28.

3 471 Department of Health and Human Services; Legislative Reporting Requirement. The
4 commissioner of the department of health and human services shall conduct a study to examine the
5 impact of direct pay models on the health care system of New Hampshire, with special attention
6 given to the impact of implementation of the direct primary care law, RSA 329:1-e and 2019, 330
7 (HB 508). The department shall provide the results of the study to the speaker of the house of
8 representatives, the senate president, the house clerk, and the senate clerk, on or before June 30,
9 2026.

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AMENDED ANALYSIS

Add:

1. Permits classification of individuals based on biological sex in lavatory facilities and locker rooms, sporting competitions, and detention facilities.

2. Exempts direct-pay health care facilities from certain licensing requirements and policies in RSA 151:2-f as well as the moratorium on licensing and bed capacity in RSA 151:2, VI(a) provided that the facility is not a nursing home or skilled nursing facility; and establishes a patient's bill of right for direct-pay facilities and directs the department of health and human services to study direct-pay models.