

SB 290-FN - AS AMENDED BY THE HOUSE

03/14/2019 0834s
5Jun2019... 2331h

2019 SESSION

19-0893
01/03

SENATE BILL **290-FN**

AN ACT relative to the New Hampshire granite advantage health care program.

SPONSORS: Sen. Rosenwald, Dist 13; Sen. Feltes, Dist 15; Sen. Fuller Clark, Dist 21; Sen. Hennessey, Dist 5; Sen. Sherman, Dist 24; Sen. Cavanaugh, Dist 16; Sen. Kahn, Dist 10; Sen. Levesque, Dist 12; Sen. Soucy, Dist 18; Sen. Watters, Dist 4; Rep. Wallner, Merr. 10; Rep. Elliott, Rock. 8; Rep. Knirk, Carr. 3; Rep. Nordgren, Graf. 12; Rep. Guthrie, Rock. 13

COMMITTEE: Health and Human Services

AMENDED ANALYSIS

This bill makes various changes to the New Hampshire granite advantage health care program, some of which include:

- I. Allowing general funds to be used for the program.
- II. Clarifies which beneficiaries may be subject to the work and community engagement requirement.
- III. Adding exemptions for certain persons from the community engagement requirement.
- IV. Adding circumstances for the elimination of the community engagement requirement.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Nineteen

AN ACT relative to the New Hampshire granite advantage health care program.

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

- 1 Short Title. This act shall be known as the Protecting New Hampshire's Granite Advantage Program.
- 2 New Hampshire Granite Advantage Health Care Program. Amend RSA 126-AA:2, I(a) to read as follows:
I.(a) The commissioner shall apply for any necessary waivers and state plan amendments to implement a 5-year demonstration program beginning on January 1, 2019 to create the New Hampshire granite advantage health care program [~~which shall be funded exclusively from non-general fund sources, including federal funds~~]. The commissioner shall include in an application for the necessary waivers submitted to the Centers for Medicare and Medicaid Services (CMS) a waiver of the requirement to provide 90-day retroactive coverage and a state plan amendment allowing state and county correctional facilities to conduct presumptive eligibility determinations for incarcerated inmates to the extent provided under federal law. To receive coverage under the program, those

individuals in the new adult group who are eligible for benefits shall choose coverage offered by one of the managed care organizations (MCOs) awarded contracts as vendors under Medicaid managed care, pursuant to RSA 126-A:5, XIX(a). The program shall make coverage available in a cost-effective manner and shall provide cost transparency measures, and ensure that patients are utilizing the most appropriate level of care. Cost effectiveness shall be achieved by offering cash incentives and other forms of incentives to the insured by choosing preferred lower cost medical providers. Loss of incentives shall also be employed. MCOs shall employ reference-based pricing, cost transparency, and the use of incentives and loss of incentives to the Medicaid and newly eligible population. For the purposes of this subparagraph, "reference-based pricing" means setting a maximum amount payable for certain medical procedures.

3 New Hampshire Granite Advantage Health Care Program. Amend RSA 126-AA:2, III to read as follows:

III.(a) Newly eligible adults who are unemployed shall be eligible to receive benefits under this paragraph if the commissioner finds that the individual is engaging in at least 100 hours per month based on an average of 25 hours per week in one or more work or other community engagement activities, **including self-employment**, as follows:

- (1) Unsubsidized employment including by nonprofit organizations.
- (2) Subsidized private sector employment.
- (3) Subsidized public sector employment.
- (4) On-the-job training.
- (5) Job skills training related to employment, including credit hours earned from an accredited college or university in New Hampshire. Academic credit hours shall be credited against this requirement on an hourly basis **based on the following formula: number of credit hours multiplied by 3.**
- (6) Job search and job readiness assistance, including, but not limited to, persons receiving unemployment benefits and other job training related services, such as job training workshops and time spent with employment counselors, offered by the department of employment security. Job search and job readiness assistance under this section shall be credited against this requirement on an hourly basis.
- (7) Vocational educational training not to exceed 12 months with respect to any individual.
- (8) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency.
- (9) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate.
- (10) Community service or public service.
- (11) ~~Caregiver services for a nondependent relative or other person with a disabling medical or developmental condition.~~
- ~~(12)~~ **Participation in substance use disorder treatment or recovery activities and/or mental illness treatment.**
- (12) Travel to and from a health care treatment appointment and the appointment itself for the beneficiary or a dependent child or a relative for whom the beneficiary is a caretaker.**

(b) If an individual in a family receiving benefits under this paragraph fails to comply with the work or community engagement activities required in accordance with this paragraph, ~~[the assistance shall be terminated.]~~ **has been provided an opportunity to cure, and has subsequently refused assistance under 2018, 342:5 that was both available and offered by the commissioner in writing and verbally and that offer and refusal is documented, the assistance shall then be suspended. In this chapter, an "opportunity to cure" means the forgiveness of at least one month of noncompliance, other than the first month of application of the requirement, and there shall be at least 20 days advance notice, in writing and verbally, detailing the next month's work and community engagement obligations, with such notices documented. Individuals shall be allowed to carry forward additional hours worked in one month to the next month. Any hours in participation in assistance activities under 2018, 342:5 shall qualify for the work and community engagement requirement.** The commissioner shall adopt rules under RSA 541-A to determine good cause and other exceptions to termination. Following approval by the joint health care reform oversight committee, pursuant to RSA 161:11, to initiate rulemaking, any rules proposed under this subparagraph shall be submitted to the fiscal committee of the general court, which shall review the rules prior to submission to the joint legislative committee on administrative rules and make recommendations to the commissioner regarding the rules. An individual may apply for good cause exemptions which shall include, at a minimum, the following verified circumstances:

- (1) The beneficiary experiences the birth or death of a family member living with the beneficiary.
- (2) The beneficiary experiences severe inclement weather, including a natural disaster, and therefore was unable to meet the requirement.
- (3) The beneficiary has a family emergency or other life-changing event such as divorce.

(4) The beneficiary is a victim of domestic violence, dating violence, sexual assault, or stalking consistent with definitions and documentation required under the Violence Against Women Reauthorization Act of 2013 under 24 C.F.R. section 5.2005 and 24 C.F.R. section 5.2009, as determined by the commissioner pursuant to rulemaking under RSA 541-A.

~~[(5) The beneficiary is a custodial parent or caretaker of a child 6 to 12 years of age who, as determined by the commissioner on a monthly basis, is unable to secure child care in order to participate in qualifying work and other community engagement either due to a lack of child care scholarship or the inability to obtain a child care provider due to capacity, distance, or another related factor.]~~

(c) This paragraph shall only apply to those considered able-bodied adults as described in section 1902(a)(10)(A)(i)(VIII) of the Social Security Act of 1935, as amended, 42 U.S.C. section 1396a(a)(10)(A)(i).

(d) This paragraph shall not apply to:

(1) A person who is unable to participate in the requirements under subparagraph (a) due to illness, incapacity, or treatment, including inpatient treatment, as certified by a licensed physician, an advanced practice registered nurse (APRN), a licensed behavioral health professional, a licensed physician assistant, a licensed alcohol and drug counselor (LADC), or a board-certified psychologist. The physician, APRN, licensed behavioral health professional, licensed physician assistant, LADC, or psychologist shall certify, on a form provided by the department, the duration and limitations of the disability.

(2) A person participating in a ~~[state-]~~ **federal, state, or other** certified drug court program, as certified by the administrative office of the ~~[superior court]~~ **courts**.

(3) A parent or caretaker ~~[as identified in RSA 167:82, II(g)]~~ where the required care **of an individual who may or may not reside in the household** is considered necessary by a licensed physician, APRN, board-certified psychologist, physician assistant, or licensed behavioral health professional who shall certify the duration that such care is required.

(4) A custodial parent or caretaker of a dependent child ~~[under 6 years of age]~~ **under 13 years of age** or a child with developmental disabilities who is residing with the parent or caretaker; provided that the exemption shall only apply to one parent or caretaker in the case of a 2-parent household **where responsibility for the child the exemption is based on is shared by the 2 parents or caretakers**.

(5) Pregnant women.

(6) A beneficiary who has a disability as defined by the Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act, or section 1557 of the Patient Protection and Affordable Care Act ~~[and is unable to meet the requirement for reasons related to that disability]~~ **with or without an accommodation**; or who has an immediate family member in the home with a disability under federal disability rights laws and who is unable to meet the requirement for reasons related to the disability of that family member, or the beneficiary or an immediate family member who is living in the home or the beneficiary experiences a hospitalization or serious illness.

(7) Beneficiaries who are identified as medically frail, under 42 C.F.R. section 440.315(f), and as defined in the alternative benefit plan and in the state plan ~~[and who are certified by a licensed physician or other medical professional to be unable to comply with the work and community engagement requirement as a result of their condition as medically frail. The department shall require proof of such limitation annually, including the duration of such disability, on a form approved by the department].~~

(8) Any beneficiary who is in compliance with the requirement of the Supplemental Nutritional Assistance Program (SNAP) and/or Temporary Assistance to Needy Families (TANF) employment initiatives.

(9) Any beneficiary who is homeless as defined by the McKinney-Vento Homeless Assistance Act of 1987, 42 U.S.C. section 11301 et seq.

(10) Any beneficiary who is the caretaker of his or her grandchild.

(11) Any beneficiary deemed a full-time student by an accredited college or university.

(e) The commissioner shall adopt rules under RSA 541-A pertaining to the community engagement requirement. ~~[Following approval by the joint health care reform oversight committee, pursuant to RSA 161:11 to initiate rulemaking, any rules proposed under this subparagraph shall be submitted to the fiscal committee of the general court, which shall review the rules prior to submission to the joint legislative committee on administrative rules and make recommendations to the commissioner regarding the rules.]~~ The rules shall be consistent with the terms and conditions of any waiver issued by the Centers for Medicare and Medicaid Services for the program, **provided that any waiver issued by the Centers for Medicare and Medicaid Services is not inconsistent with any provision of this chapter**, and shall address, at a minimum, the following:

(1) Enrollment, suspension, and disenrollment procedures in the program.

(2) Verification of compliance with community engagement activities.

(3) Verification of exemptions from participation.

(4) Opportunity to cure and re-activation following noncompliance, including not being barred from re-enrollment.

(5) Good cause exemptions.

(6) Education and training of enrollees.

~~[(7) Annual certification of medical frailty pursuant to 42 C.F.R. section 440.315(f), including proof and duration of such condition on a form supplied by the department.]~~

4 New Hampshire Granite Advantage Health Care Program. Amend RSA 126-AA:2, VIII to read as follows:

VIII. Any person receiving benefits from the program shall be responsible for providing information regarding his or her change in status or eligibility, including current contact information. The commissioner shall adopt rules, under RSA 541-A, pertaining to the opportunity to cure and for re-activation following noncompliance. ~~[Following approval by the joint health care reform oversight committee, pursuant to RSA 161:11, to initiate rulemaking, any rules proposed under this subparagraph shall be submitted to the fiscal committee of the general court, which shall review the rules prior to submission to the joint legislative committee on administrative rules and make recommendations to the commissioner regarding the rules.]~~

IX. The commissioner shall not implement or shall cease implementation of the waiver regarding 90-day retroactive coverage the state received on November 30, 2018.

X. The work and community engagement requirement shall be immediately eliminated as a condition for eligibility for the program under any the following circumstances:

(a) Five hundred or more beneficiaries have their Medicaid eligibility suspended and/or are disenrolled from the program as a result of noncompliance with the work and community engagement requirement.

(b) Providers experience and report to the commission an increase in uncompensated care as a result of beneficiaries being suspended or disenrolled due to non-compliance with the work and community engagement requirement.

(c) If the commissioner reports to the commission, established under RSA 126-AA:4, by July 1, 2019 a projection that the number of beneficiaries suspended or disenrolled as a result of noncompliance with the requirement exceeds 500, then the commission shall, by majority vote, require the commissioner to notify CMS that the work and community engagement requirement shall be immediately eliminated.

XI. No later than August 1, 2019 the commissioner shall submit an amendment to waiver 11-W-00298\1 to CMS. If the final approved waiver amendment is inconsistent with any of the terms of the work and community engagement requirements of this chapter, the commissioner shall provide written notification to the governor, the speaker of the house of representatives, and the president of the senate, informing them of the differences between the terms of this chapter and the approved waiver amendment, and the work and community engagement requirement for eligibility shall be immediately terminated. If CMS has not approved the waiver amendment by April 1, 2020, the work and community engagement requirement shall be immediately terminated.

5 New Hampshire Granite Advantage Health Care Program; New Hampshire Granite Advantage Health Care Trust Fund. Amend the introductory paragraph of RSA 126-AA:3, I to read as follows:

I. There is hereby established the New Hampshire granite advantage health care trust fund which shall be accounted for distinctly and separately from all other funds and shall be non-interest bearing. The fund shall be administered by the commissioner and shall be used solely to provide coverage for the newly eligible Medicaid population as provided for under RSA 126-AA:2, to pay for the administrative costs for the program, and reimburse the federal government for any over payments of federal funds. All moneys in the fund shall be nonlapsing and shall be continually appropriated to the commissioner for the purposes of the fund. The fund shall be authorized to pay and/or reimburse the cost of medical services and cost-effective related services, including without limitation, capitation payments to MCOs. ~~[No state general funds shall be deposited into the fund.]~~ Deposits into the fund ~~[shall be limited exclusively to the following]~~ ***may be from the following sources:***

6 New Hampshire Granite Advantage Health Care Program; New Hampshire Granite Advantage Health Care Trust Fund. Amend RSA 126-AA:3, I(f) and (g) to read as follows:

(f) Funds recovered or returnable to the fund that were originally spent on the cost of coverage of the granite advantage health care program; ~~[and]~~

(g) Gifts, grants, and donations; ***and***

(h) General funds if both of the following conditions are met:

(1) General funds shall be the payment source of last resort; and

(2) The commissioner determines that the federal match rate of 90 percent is met.

7 New Hampshire Granite Advantage Health Care Program; Commission to Evaluate the Effectiveness and Future of the New Hampshire Granite Advantage Health Care Program. Amend RSA 126-AA:4, II to read as follows:

II.(a) The commission shall evaluate the effectiveness and future of the program. Specifically the commission shall:

(1) Review the program's financial metrics.

(2) Review the program's product offerings.

- (3) Review the program's impact on insurance premiums for individuals and small businesses.
- (4) Make recommendations for future program modifications, including, but not limited to whether the program is the most cost-effective model for the long term versus a return to private market managed care.
- (5) Evaluate non-general fund funding options for longer term continuation of the program, including options to accept funding from the federal government allowing a self-administered program.
- (6) Review up-to-date information regarding changes in the level of uncompensated care through shared information from the department, the department of revenue administration, the insurance department, and provider organizations and the program's impact on insurance premium tax revenues and Medicaid enhancement tax revenue.
- (7) Review the granite workforce pilot program.
- (8) Evaluate reimbursement rates to determine if they are sufficient to ensure access to and provider capacity for all behavioral health services.
- (9) Review the number of people who are found ineligible or who are dropped from the rolls of the program because of the work requirement **and determine whether the age of beneficiaries subject to the requirement should be changed. The commission shall issue any recommendation for change by December 1, 2019.**
- (10) **Review the reasons beneficiaries are found ineligible or are dropped from the rolls of the program and determine if the number of required hours should be changed. The commission shall issue any recommendation for change by December 1, 2019.**
- (11) Review the program's provider reimbursement rates and overall financing structure to ensure it is able to provide a stable provider network and sustainable funding mechanism that serves patients, communities, and the state of New Hampshire.
 - (b) Any funding solutions recommended by the commission shall not include the use of new general funds.
 - (c) The commission shall solicit information from any person or entity the commission deems relevant to its study.
 - (d) The commission shall make a recommendation on or by ~~February~~ **June** 1, 2019 to the commissioner concerning recommended monitoring and evaluation requirements for work and community engagement requirements, including a draft of proposed metrics for quarterly and annual reporting, including suggested costs and benefits evaluations.

8 New Hampshire Granite Advantage Health Care Program; Commission to Evaluate the Effectiveness and Future of the New Hampshire Granite Advantage Health Care Program. Amend RSA 126-AA:4, I(b) and (c) to read as follows:

~~(b) [Of the commission members listed in this paragraph, only the 6 legislative members shall be voting members. All other members shall serve in an advisory capacity only.~~

~~(e)]~~ Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

9 New Hampshire Granite Advantage Health Care Program; Commission to Evaluate the Effectiveness and Future of the New Hampshire Granite Advantage Health Care Program. Amend RSA 126-AA:4, III to read as follows:

III. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. ~~[Four of the 6 voting]~~ **Eight** members of the commission shall constitute a quorum.

10 Granite Workforce; Pilot Program Established. Amend 2018, 342:3, I and II to read as follows:

I. The commissioner of the department of health and human services shall use allowable funds from the Temporary Assistance to Needy Families (TANF) program to provide subsidies to employers in high need areas, as determined by the department of employment security based upon workforce shortages, and to create a network of assistance to remove barriers to work for low-income families. The funds shall be used to establish a pilot program, referred to as Granite Workforce, a TANF nonassistance program, which shall accept enrollments by applicants for an initial period of 6 months. The program shall be jointly administered by the department of health and human services and the department of employment security. No cash assistance shall be provided to eligible participants through Granite Workforce. The total cost of the pilot program shall not exceed \$3,000,000 in federal TANF funds for the biennium ending June 30, 2019. **General funds may also be used for the pilot program.**

II. To be eligible for Granite Workforce, applicants shall be[-

~~(a) In a household with an income up to 138 percent of the federal poverty level; and~~

~~(b) Parents aged 18 through 64 with a child under age 18 in the household; or~~

~~(c) Noncustodial parents aged 18 through 64 with a child under the age of 18; or~~

~~(d) Childless adults between 18 and less than 25 years of age]~~ **enrolled in the New Hampshire granite advantage health care program, established under RSA 126-AA, whether or not the applicant is subject to the work and community engagement requirement.**

11 New Paragraph; Granite Workforce; Pilot Program Established. Amend 2018, 342:4 by inserting after paragraph III the following new paragraph:

IV. In this section, "employer" means a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code.

12 Termination of Granite Workforce Program. Amend 2018, 342:9, I to read as follows:

I. The commissioner of the department of health and human services shall be responsible for determining, every 3 months commencing no later than December 31, 2018, whether available TANF reserve funds total at least [~~\$40,000,000~~] **\$5,000,000**. If at any time the commissioner determines that available TANF reserve funds have fallen below [~~\$40,000,000~~] **\$5,000,000**, the commissioners of the departments of health and human services and employment security shall, within 20 business days of such determination, terminate the Granite Workforce program. The commissioners shall notify the governor, the speaker of the house of representatives, the president of the senate, the chairperson of the fiscal committee of the general court, and Granite Workforce participants of the program's pending termination.

13 Repeal. The following are repealed:

I. RSA 126-AA:2, I(d), relative to waivers and state plans to be submitted to CMS.

II. RSA 126-AA:2, II(b), relative to resources of an individual and his or her family.

III. 2018, 342:21, relative to a certain contingency.

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

LBAO

19-0893

Revised 2/15/19

SB 290-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to the New Hampshire granite advantage health care program.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other - Federal Funds

METHODOLOGY:

This bill makes various changes to the New Hampshire Granite Advantage Health Care Program (NHGAHP) and the Granite Workforce Program (GWP), including: (1) allowing general funds to be used for both programs, (2) amending components of the work and community engagement requirement for participation in the NHGAHP, (3) removing existing restrictions on participation in the GWP, and (4) reducing from \$40 million to \$20 million the minimum balance that must be held in the Temporary Assistance to Needy Families (TANF) reserve fund in order for TANF funds to be used to support the GWP.

With respect to (1), the bill eliminates the prohibition (currently found in RSA 126-AA:3, I), on general funds to support the NHGAHP. Section 7 of the bill further provides that, in the event of a shortfall in funding sources for the nonfederal share of costs, general funds in the amount of the shortfall shall be transferred to the program. As of February 2019, cost projections provided by the Department of Health and Human Services have assumed existing revenue sources will be sufficient to cover the nonfederal share, however the same projections assume costs will decline significantly as a result of the switch (effective January 1, 2019) to managed care coverage for the population served by the program. Total costs in FY 2018, during which participants received coverage through insurance policies purchased on the federally-facilitated exchange, were \$492.2 million, of which the nonfederal share was \$28.8 million. In FY 2020, the first full year of managed care coverage, the Department expects total costs to be \$354.3 million, of which the nonfederal share is projected to be \$30.1 million. In January 2020 and beyond, the nonfederal

share will be 10 percent of total costs, as the federal reimbursement rate will decline to 90 percent at that time, and will remain there permanently under current federal law. Should program costs be significantly higher than those projected by the Department, existing revenue sources may be insufficient to cover the nonfederal share.

With respect to (2), the bill makes a number of changes to the work and community engagement requirement for participation in the NHGAHP, such as:

- Specifying an eligibility age range of 19-49;
- Reducing the monthly work/community engagement requirement from 100 to 80 hours;
- Allowing self-employment to count toward the requirement;
- Allowing additional hours worked in one month to be carried forward into the next month;
- Modifying certain qualifying community engagement activities;
- Modifying certain exemption categories and requirements, including increasing from 6 to 16 the age limit of the child under the parent caretaker exemption; and
- Eliminating the requirement as a condition for eligibility for the program if certain circumstances are met. These circumstances include:
 - 500 or more beneficiaries are suspended or disenrolled from the program as a result of noncompliance with the requirement;
 - Providers report an increase in uncompensated care as a result of participants being suspended or disenrolled due to noncompliance with the requirement; or
 - The commission established by RSA 126-AA:4 votes to eliminate the requirement following a projection by the Department's commissioner that the number of participants suspended or disenrolled as a result of noncompliance with the requirement exceeds 500.

The Department states that, given the absence of baseline figures for the fiscal impact of the work and community engagement requirement as it exists in current law, it is unable to estimate the impact of the changes contemplated by the bill. The Department assumes, however, that the bill may result in an increase in expenditures.

With respect to (3), Chapter 342:3, Laws of 2018, provides that TANF funds shall be used to support the GWP, and that participation in the program shall be limited to those who meet certain criteria established by that chapter law. The bill adds general funds as a source of possible financial support for the program and removes the existing criteria for participation, while adding a provision stating that those enrolled in the NHGAHP shall be eligible to participate in the GWP regardless of whether they are subject to the work and community engagement requirement for the NHGAHP. The Department of Health and Human Services, which responded to this fiscal note request jointly with the Department of Employment Security, states it is unable to determine the fiscal impact of these changes.

With respect to (4), Chapter 342:9, I, Laws of 2018 currently states that in the event the balance in the TANF reserve falls below \$40 million, the GWP shall be terminated within 20 days. The bill amends that threshold to \$20 million. The Department has provided information to the effect that for the quarter ending December 31, 2018, the balance in the TANF reserve was estimated at \$54.9 million.

AGENCIES CONTACTED:

Department of Health and Human Services and Department of Employment Security