

HB 368-FN - AS INTRODUCED

2023 SESSION

23-0244
04/08HOUSE BILL **368-FN**

AN ACT relative to protections related to receiving gender-affirming health care or gender-affirming mental health care.

SPONSORS: Rep. Cannon, Straf. 12; Rep. MacKay, Merr. 18; Rep. Moulton, Hills. 20; Rep. Toll, Ches. 15; Rep. M. Smith, Straf. 10; Rep. Schultz, Merr. 29; Rep. Bouldin, Hills. 25; Rep. Rung, Hills. 12; Rep. Dutzy, Hills. 6; Rep. Wilhelm, Hills. 40; Sen. Watters, Dist 4; Sen. Perkins Kwoka, Dist 21

COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill provides protections for persons receiving gender-affirming health care and gender-affirming mental health care.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

23-0244
04/08

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to protections related to receiving gender-affirming health care or gender-affirming mental health care.

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

1 New Chapter; Protections Related to Gender-Affirming Health Care or Gender-Affirming Mental Health Care.
Amend RSA by inserting after chapter 354-B the following new chapter:

CHAPTER 354-C

PROTECTIONS RELATED TO GENDER-AFFIRMING HEALTH CARE OR GENDER-AFFIRMING MENTAL
HEALTH CARE

354-C:1 Release of Medical Information Prohibited.

I. A provider of health care, health care service plan, or contractor shall not release medical information related to a person or entity allowing a child to receive gender-affirming health care or gender-affirming mental health care in response to any civil action, including a foreign subpoena, based on another state's law that authorizes a person to bring a civil action against a person or entity that allows a child to receive gender-affirming health care or gender-affirming mental health care.

II. A provider of health care, health care service plan, or contractor shall not release medical information to persons or entities who have requested that information and who are authorized by law to receive that information by law if the information is related to a person or entity allowing a child to receive gender-affirming health care or gender-

affirming mental health care, and the information is being requested pursuant to another state's law that authorizes a person to bring a civil action against a person or entity who allows a child to receive gender-affirming health care or gender-affirming mental health care.

III. For the purposes of this section:

(a) "Gender-affirming health care" means medically necessary health care that respects the gender identity of the patient, as experienced and defined by the patient, and may include, but is not limited to, the following:

- (1) Interventions to suppress the development of endogenous secondary sex characteristics.
- (2) Interventions to align the patient's appearance or physical body with the patient's gender identity.
- (3) Interventions to alleviate symptoms of clinically significant distress resulting from gender dysphoria, as defined in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition.

(b) "Gender-affirming mental health care" means mental health care or behavioral health care that respects the gender identity of the patient, as experienced and defined by the patient, and may include, but is not limited to, developmentally appropriate exploration and integration of identity, reduction of distress, adaptive coping, and strategies to increase family acceptance.

(c) "Person" means an individual or governmental subdivision, agency, or instrumentality.

354-C:2 Foreign Subpoenas Prohibited. No subpoena shall be issued pursuant to this section if the foreign subpoena is based on a violation of another state's laws that interfere with a person's right to allow a child to receive gender-affirming health care or gender-affirming mental health care.

354-C:3 Parental Rights and Responsibilities. The presence of a child in this state for the purpose of obtaining gender-affirming health care or gender-affirming mental health care is sufficient to meet the jurisdictional requirements under RSA 461-A for the court to make and enforce orders related to parental rights and responsibilities.

354-C:4 Inconvenient Forum. In a case where the provision of gender-affirming health care or gender-affirming mental health care to the child is at issue, a court of this state shall not determine that it is an inconvenient forum where the law or policy of the other state that may take jurisdiction limits the ability of a parent to obtain gender-affirming health care or gender-affirming mental health care for their child.

354-C:5 Domestic Violence. In making a determination under this section, a court shall not consider as a factor weighing against the petitioner any taking of the child, or retention of the child after a visit or other temporary relinquishment of physical custody, from the person who has legal custody, if there is evidence that the taking or retention of the child was a result of domestic violence against the petitioner, as defined in RSA 173-B, or for the purposes of obtaining gender-affirming health care or gender-affirming mental health care, for the child and the law or policy of the other state limits the ability of a parent to obtain gender-affirming health care or gender-affirming mental health care for their child.

354-C:6 Removal of Child From Parent or Guardian. A law of another state that authorizes a state agency to remove a child from their parent or guardian based on the parent or guardian allowing their child to receive gender-affirming health care or gender-affirming mental health care shall be against the public policy of this state and shall not be enforced or applied in a case pending in a court in this state.

354-C:7 Arrest Warrants.

I. It is the public policy of the state that an out-of-state arrest warrant for an individual based on violating another state's law against providing, receiving, or allowing their child to receive gender-affirming health care or gender-affirming mental health care is the lowest law enforcement priority.

II. No state, county, or local law enforcement agency shall make or intentionally participate in the arrest of an individual pursuant to an out-of-state arrest warrant for violation of another state's law against providing, receiving, or allowing a child to receive gender-affirming health care and gender-affirming mental health care.

III. No state, county, or local law enforcement agency shall cooperate with or provide information to any individual or out-of-state agency or department regarding the provision of lawful gender-affirming health care or gender-affirming mental health care performed in this state.

IV. Nothing in this section shall prohibit the investigation of any criminal activity in this state which may involve the performance of gender-affirming health care or gender-affirming mental health care provided that no information

relating to any medical procedure performed on a specific individual may be shared with an out-of-state agency or any other individual.

354-C:8 Health Care Providers. A provider of health care, health care service plan, or contractor shall not release medical information related to a person or entity allowing a child to receive gender-affirming health care or gender-affirming mental health care in response to any foreign subpoena that is based on a violation of another state’s laws authorizing a criminal action against a person or entity that allows a child to receive gender-affirming health care or gender-affirming mental health care.

354-C:9 Subpoena of Records.

I. In a criminal action, no party, or attorney, or representative of a party, may issue a subpoena commanding the custodian of records or other qualified witness of a business to provide books, papers, documents, or records, or copies thereof, relating to a person or entity other than the subpoenaed person or entity in any manner other than that specified in the New Hampshire rules of evidence. When a defendant has issued a subpoena to a person or entity that is not a party for the production of books, papers, documents, or records, or copies thereof, the court may order an in-camera hearing to determine whether or not the defense is entitled to receive the documents.

II. This section shall not be construed to prohibit obtaining books, papers, documents, or records with the consent of the person to whom the books, papers, documents, or records relate.

354-C:10 Arrest and Extradition. No state, county, or local law enforcement agency shall make or intentionally participate in the arrest or recognize any demand for extradition of an individual pursuant to a criminal action related to the law of another state that criminalizes allowing a person to receive or provide gender-affirming health care or gender-affirming mental health care where that conduct would not be unlawful under the laws of this state to the fullest extent permitted by federal law.

354-C:11 Severability. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

2 Effective Date. This act shall take effect January 1, 2024.

LBA
23-0244
12/27/22

HB 368-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to protections related to receiving gender-affirming health care or gender-affirming mental health care.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	☒ General	☐ Education	☐ Highway	☐ Other

METHODOLOGY:

This bill provides protections for persons receiving gender-affirming health care and gender affirming mental health care. The Judicial Branch identified the following provisions of the bill that may have a fiscal impact on the Branch:

- The presence of a child in New Hampshire for the purpose of obtaining gender-affirming health care is sufficient to meet the jurisdictional requirements of RSA 461-A for the court to make and enforce orders related to parental rights and responsibilities.
- Prohibits the court from determining it is an inconvenient forum where the law of another state that may take jurisdiction limits the ability of a parent to obtain gender-affirming health care.
- In a domestic violence case, prohibit the court from considering as a factor weighing against the petitioner any taking of the child or retention of the child after a visit or other temporary relinquishment of physical custody from the person who has “legal custody” if there is evidence that the taking or retention was a result of domestic violence against the petitioner for the purposes of obtaining gender-affirming health care and the law or policy of the other state limits the ability of a parent to obtain gender-affirming health care.
- Prohibit the court from enforcing the law of another state that authorizes a state agency to remove a child on the basis of the parent or guardian allowing their child to receive gender-affirming health care.

The Judicial Branch assumes these provisions will have an impact on the Branch, but is unable to determine the extent of what those impacts may be.

AGENCIES CONTACTED:

Judicial Branch