

NEW HAMPSHIRE STATUTES RELATED TO HEALTH INFORMATION PRIVACY

Current through the 2010 Legislative Session

Key New Hampshire Legal Principles Relative to Medical Information Privacy

- Medical information in a health care provider's medical records is the property of the patient. In turn, the patient is entitled to a copy of the record upon request. Access to the original record is not necessarily guaranteed.
- State agencies may not promulgate rules authorizing nonconsensual inspection of private property without an authorizing statute giving the agency specific inspection authority.
- Health care providers may not reveal confidential communications or information without the consent of the patient, unless otherwise allowed by law or by the need to protect the welfare of the individual or the public interest. Consent may or may not need to be in writing, as the requirement varies with the provider classification, diagnosis, or treatment.
- "Confidentiality" provisions in the law extend to physicians, nurses, mental health practitioners, alcohol and drug use professionals, allied health professionals, and more, unless otherwise provided by law. Exceptions are routed in the protection of the health, safety, and welfare of the individual or the public.
- Public health standards override confidentiality of medical information, including reporting requirements relative to:
 - The brain and spinal cord injury registry;
 - Critical health problems;
 - The cancer registry;
 - Communicable diseases; and
 - More.
- Written authorization is required for the use or disclosure of patient identifiable medical information for sales or marketing purposes. The New Hampshire definition of "marketing" is broader than the federal HIPAA definition; the State definition includes communications about health-related products or services.
- And more.

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New Hampshire Health Information Exchange Facts

- "Health information exchange" (HIE) means an entity established for the primary purpose of enabling and overseeing the exchange of protected health information (PHI) for clinical decision-making purposes. The entity may operate on a regional, statewide, or multi-state basis. The entity may be developed by multiple stakeholders, including, but not limited to, the department of health and human services, a non-profit entity, or a for-profit entity. "Health information exchange" does not include entities solely owned and operated by health care providers, integrated delivery systems, or pharmacy exchanges.
- Generally, a health care provider or business associate may disclose an individual's PHI and information about the location of an individual's medical records to a HIE. **However**, an individual must be given an opportunity to opt out of sharing his/her name, address, and PHI through a HIE.
- Only a health care provider, for purposes of treatment, may have access to PHI in a HIE.
- A HIE must adhere to the PHI requirements for health care providers in state and federal law.
- A HIE must maintain an audit log of health care providers who access PHI, including:
 - (a) The identity of the health care provider;
 - (b) The identity of the individual whose PHI was accessed;
 - (c) The date the PHI was accessed; and
 - (d) The area of the record accessed.
- When federal certification standards are established, a HIE must be certified to be in compliance with nationally accepted interoperability standards and practices.
- A health care provider may not be required to participate in a HIE as a condition of payment or participation.

NEW HAMPSHIRE STATUTORY CHAPTERS INCLUDED

RSA Ch. State & Government

- 5-C Vital Records Administration
- 21-P Department of Safety

Public Records

- 91-A Access to Public Records

Public Health

- 126 Vital Records and Health Statistics & Health Care Data Collection
- 126-A Medical and Scientific Research Information
- 132 Protection for Maternity and Infancy
- 135-C New Hampshire Mental Health Services System
- 137-J Durable Power of Attorney for Health Care
- 137-4 Brain and Spinal Cord Injuries
- 141-A Critical Health Problems Reporting Act
- 141-B Chronic Disease Prevention
- 141-C Communicable Disease
- 141-F Human Immunodeficiency Virus Education, Prevention, and Control
- 141-H Genetic Testing
- 141-J Birth Conditions Program

Health Facilities Licensing

- 151 Residential Care and Health Facility Licensing (including reporting of hospital infections)

Public Safety and Welfare

- 171-A Services for the Developmentally Disabled (including protection of human subjects)
- 172 Study, Treatment and Care of Inebriates

Motor Vehicles

- 265-A Alcohol or Drug Impairment

Occupations and Professions

- 316-A Chiropractic
 - 318 Pharmacists and Pharmacies Examinations and Licenses
- 318-B Controlled Drug Act
- 326-B Nurse Practice Act
- 328-A Physical Therapy Act
- 328-D Physician Assistants
- 328-F Allied Health Professionals
 - 329 Physicians and Surgeons
- 330-A Mental Health Practice
- 330-C Alcohol and Other Drug Use Professionals
- 332-I Medical Records and Patient Information

Insurance

- 420-G Portability, Availability, and Renewability of Health Coverage
- 420-J Managed Care Law

NEW HAMPSHIRE HEALTH INFORMATION STATUTES - CHAPTERS INCLUDED	
RSA Ch	Guardians & Conservators
464-A	Guardians & Conservators
	. Proceedings in Special Cases
541-A	Administrative Procedure Act
	Rights of Surviving Spouse
560	Medical Records of Deceased Spouse
	Proceedings in Criminal Cases
611-B	Office of the Chief Medical Examiner

NEW HAMPSHIRE HEALTH INFORMATION STATUTES BY CATEGORY			
CLINICAL			
RSA	Health Care Providers	RSA	Public Health & Safety
151	Health facilities, patient's bill of rights	126	Health Care Data
318	Prescription information	132	Newborn screening (maternal/child health)
318-B	Controlled drug prescription	135-C	Mental health services
332-I	Medical records	137-K	Brain and spinal cord injury registry
	Privileged Communication	141-A	Critical health problems reporting
316-A	Chiropractors	141-B	Cancer registry
326-B	Nurses	141-C	Communicable disease disclosure
328-A	Physical therapists	141-F	HIV reporting
328-D	Physician assistants	141-H	Genetic testing disclosure
328-F	Allied health professionals	141-J	Birth conditions Program
329	Physicians and surgeons	151	Reporting of Hospital Infections
330-A	Mental health practitioners	171-A	Developmental Services Quality Council
330-C	Alcohol and other drug use professionals	265-A	Motor vehicle & drug/alcohol impairment
		611-B	Autopsy and investigative reports
ADMINISTRATION			
RSA	Insurance	RSA	Probate
420-G	Comprehensive health care information system	560	Medical Records of Deceased Spouse
420-J	Managed care insurer records		State & Government
	Legal Representatives	91-A	Access to Public Records
137-J	Durable powers of attorney for health care	541-A	Rules on inspection of private property
464-A	Guardians		
PATIENT ACCESS			
RSA	Medical Records		
332-I	Medical Records		
RESEARCH			
RSA	Research		
5-C, 126, 126-A	Vital records & health statistics		
21-P	Emergency medical services		
172, 318-B	Alcohol and other drug use treatment		
171-A	Protection of human subjects		
611-B	Autopsy and investigative reports		
COMMERCIAL			
RSA	Pharmacists/Pharmacies Licensing		
318	Prescription information		
318-B	Controlled drug prescription		
332-I	Medical records		

Basic Rule #1 – Disclosure of Medical Information

The health care provider shall not reveal confidential communications or information without the consent of the patient, *unless provided for by law or by the need to protect the welfare of the individual or the public interest.* (RSA 332-I:2.)

Health Care Provider Defined

Any person, corporation, facility, or institution licensed by the state or otherwise lawfully providing health care services, including, but not limited to:

- Physicians
- Hospitals
- Offices
- Clinics
- Health centers or other health care facilities
- Dentists
- Nurses
- Optometrists
- Pharmacists
- Podiatrists
- Physical therapists
- Mental health professionals
- Any officer, employee, or agent of these acting in the course and scope of employment
- Any agency related to or supportive of health care services

(RSA 332-I:1)

But not including these providers licensed under RSA 151. (per RSA 332-I:2.)

Facilities Licensed Under RSA 151

- Hospitals
- Home health care providers
- Laboratories, including collection stations
- Outpatient rehabilitation clinics
- Ambulatory surgical centers
- Hospices
- Emergency medical care center
- Drop-in or walk-in care center
- Dialysis centers
- Birthing centers
- Other entities where health care associated with illness, injury, deformity, infirmity, or other physical disability is provided, whether operated for profit or for free or at a reduced cost, however named, and whether owned by a hospital or hospital holding corporation or operated as part of a hospital's services.
- Residential care facilities (including, nursing homes, sheltered care facilities, rest homes, residential care facilities, board and care homes, or any other location, however named, whether owned publicly or privately or operated for profit or not)
- Adult day care services

Consent may be required to be in writing for information relative to:

- Genetic testing (RSA 141-H)
- Mental health care (RSA 135-C)
- HIV treatment (RSA 141-F)
- Alcohol and other drug use treatment (RSA 172)

Basic Rule #2 – Disclosure of Medical Information

The patient's/client's written consent is required for the release of information to anyone *not otherwise authorized by law to receive it.* (RSA 151:21 & 151:21-b.)

PLEASE NOTE:

The full Chapter RSA 332-I, Medical Records and Patient Information, is provided first and in its entirety.

The remaining New Hampshire RSA listing is in numerical order by title and chapter. Within the chapter listing, the key information privacy statutes are listed first, only relevant parts of each statute are provided, and key parts of the text underlined. Some statutes are provided for background information only. **Shaded provisions pertain to penalties, legal remedies, disciplinary action, and the like.**

This draft is current through the 2010 Legislative Session.

Administrative rules, promulgated pursuant to these statutes, are not included here. Also not included are statutes relative to health information in criminal or civil proceedings.

MEDICAL RECORDS AND PATIENT INFORMATION

Title: Occupations and Professions

Chapter: Medical Records and Patient Information

RSA 332-I:1 Medical Records; Definitions.

- I. All medical information contained in the medical records in the possession of any health care provider shall be deemed to be the property of the patient. The patient shall be entitled to a copy of such records upon request. The charge for the copying of a patient's medical records shall not exceed \$15 for the first 30 pages or \$.50 per page, whichever is greater; provided, that copies of filmed records such as radiograms, x-rays, and sonograms shall be copied at a reasonable cost.
- II. In this chapter:
 - (a) The following terms have the same meaning as given in the regulations under sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA):
 - (1) Business associate;
 - (2) Use;
 - (3) Disclosure; and
 - (4) Protected health information.
 - (b) "Health care provider" means any person, corporation, facility, or institution either licensed by this state or otherwise lawfully providing health care services, including, but not limited to, a physician, hospital, office, clinic, health center or other health care facility, dentist, nurse, optometrist, pharmacist, podiatrist, physical therapist, or mental health professional, and any officer, employee, or agent of such provider acting in the course and scope of employment or agency related to or supportive of health care services.
 - (c) "Health information exchange" means an entity established for the primary purpose of enabling and overseeing the exchange of protected health information for clinical decision-making purposes. The entity may operate on a regional, statewide, or multi-state basis. The entity may be developed by multiple stakeholders, including, but not limited to, the department of health and human services, a non-profit entity, or a for-profit entity. For the purpose of this chapter, "health information exchange" does not include entities solely owned and operated by health care providers, integrated delivery systems, or pharmacy exchanges.
 - (d) "Marketing" means:
 - (1) To make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service, unless the communication is made by the individual's health care provider;
 - (A) For treatment of the individual;
 - (B) For case management or care coordination for the individual;
 - (C) To direct or recommend to the individual:
 - (i) Alternative treatments or therapies if recommended by the individual's health care provider;
 - (ii) Health care providers;
 - (iii) Settings of care; or

(D) For treatment-related reminders or health promotion activities by health care providers.

(2) An arrangement between a health care provider and any other person whereby the health care provider discloses protected health information to the other person, in exchange for direct or indirect remuneration, for the other person or an affiliate of the other person to make a communication about the person's own product or service that encourages recipients of the communication to purchase or use that product or service.

(e) "Audit trail" means a chronological record identifying specific persons who have accessed an electronic medical record, the date and time the record was accessed, and, if such information is available, the area of the record that was accessed. An audit trail shall not be considered a part of a person's medical care. [Effective January 1, 2011.]

(f) "Individual" means the subject of the protected health information, including a guardian or other legal representative. [Effective January 1, 2011.]

III. Release or use of patient identifiable medical information for the purpose of sales or marketing of services or products shall be prohibited without written authorization.

RSA 332-I:2 Patient Information. –

I. (a) The patient has the right to courtesy, respect, dignity, responsiveness, and timely attention to his or her needs.

(b) The patient has the right to receive information from the health care provider and to discuss the benefits, risks, and costs of appropriate treatment alternatives.

(c) The patient shall be fully informed by the health care provider of his or her medical condition, health care needs and diagnostic test results, including the manner by which such results will be provided and the expected time interval between testing and receiving results, unless medically inadvisable and so documented in the medical record.

(d) The patient has the right to make decisions regarding the health care that is recommended by the health care provider. Accordingly, patients may accept or refuse any recommended medical treatment and be involved in experimental research upon the patient's written consent only.

(e) The health care provider shall not reveal confidential communications or information without the consent of the patient, unless provided for by law or by the need to protect the welfare of the individual or the public interest.

(f) Subject to the terms and conditions of the patient's insurance plan, the patient shall have access to any provider in his or her insurance plan network and referral to a provider or facility within such network shall not be unreasonably withheld pursuant to RSA 420-J:8, XIV.

(g) When an individual's medical record is maintained in electronic form, the individual has the right to a report, based on whatever audit trail of that record is then maintained, of access to the record by a health care provider named by the individual within an identified period in the prior 3 years. The report shall indicate whether the named provider had access, or did not have access, or whether access could not be determined with the available data. If the named provider had access, the report shall summarize, as the available data permit, the extent of access to the record. This subparagraph shall not apply to individuals being held in correctional facilities within the state. [Effective January 1, 2011.]

II. Facilities subject to RSA 151:21 and RSA 151:21-b shall be exempt from paragraph I.

RSA 332-I:3 Use and Disclosure of Protected Health Information; Health Information Exchange.

I. Except as provided in paragraph VI, a health care provider or a business associate of a health care provider may disclose an individual's protected health information and information about the location of the individual's medical records to a health information exchange. Only a health care provider, for purposes of treatment, may have access to protected health information in a health information exchange.

II. A health information exchange shall adhere to the protected health information requirements for health care providers in state and federal law.

III. A health information exchange shall maintain an audit log of health care providers who access protected health information, including:

(a) The identity of the health care provider accessing the information;

- (b) The identity of the individual whose protected health information was accessed by the health care provider;
 - (c) The date the protected health information was accessed; and
 - (d) The area of the record that was accessed.
- IV. A health information exchange shall be certified, when federal certification standards are established, to be in compliance with nationally accepted interoperability standards and practices.
- V. No person shall require a health care provider to participate in a health information exchange as a condition of payment or participation.
- VI. An individual shall be given an opportunity to opt out of sharing his or her name and address and his or her protected health care information through a health information exchange.

RSA 332-I:4 Use and Disclosure of Protected Health Information; Marketing; Fundraising.

- I. A health care provider, or a business associate of the health care provider, shall obtain an authorization for any use or disclosure of protected health information for marketing. Such authorization shall meet the authorization implementation specifications for marketing under the regulations adopted pursuant to sections 262 and 264 of HIPAA, as amended.
- II. (a) For use or disclosure of protected health information for fundraising, a health care provider, or a business associate of the health care provider, shall, in a clear and conspicuous manner, provide an opportunity for any intended recipient of one or more fundraising communications to elect not to receive such communications. A clear and conspicuous opportunity shall include, but not be limited to, simple election language and type of a sufficient size as to be easily readable by the average adult reader. Such opportunity shall be provided:
- (1) Sixty days prior to any fundraising communication; or
 - (2) Upon presentation of the notice of privacy practices required by regulations adopted pursuant to sections 262 and 264 of HIPAA, as amended, if such notice is given to the intended recipient prior to any fundraising communication; or
 - (3) To an individual who does not elect to not receive fundraising communications in the opportunities in subparagraph (1) or (2), in any subsequent written fundraising communications.
- (b) When an individual elects not to receive any fundraising communication, such election shall be treated as a revocation of authorization under 45 C.F.R. section 164.508.
- III. Protected health information disclosed for marketing or fundraising shall not be disclosed by voice mail, an unattended facsimile, or through other methods of communication that are not secure.

RSA 332-I:5 Unauthorized Disclosure. –

In the event of a use or disclosure of protected health information by a health care provider or a business associate of a health care provider that is allowed under federal law but not permitted by RSA 332-I:4, the health care provider shall promptly notify in writing the individual or individuals whose protected health information was disclosed. A business associate shall be responsible for the cost of such notification if the use or disclosure was by the business associate.

RSA 332-I:6 Complaints; Right of Action. –

An aggrieved individual may bring a civil action under RSA 332-I:4 or RSA 332-I:5 and, if successful, shall be awarded special or general damages of not less than \$1,000 for each violation, and costs and reasonable legal fees.

STATE & GOVERNMENT

Title: The State and Its Government

Chapter: Vital Records Administration

RSA 5-C:3 Declaration of Policy, Purpose and Scope

- I. The New Hampshire constitution identifies the office of the secretary of state as the keeper of the records of the state.
- II. The division shall: . . .

- (g) Establish, in conjunction with the department of health and human services, the procedures, conditions, and criteria for release of information regarding vital records data and statistics for health-related research pursuant to RSA 126:24-d.

RSA 5-C:5 Statistical Forms

...

- III. The secretary of state shall not remove or add any data fields used for purposes of protecting the public health or to conduct health-related research without prior notice and agreement of the department of health and human services.

RSA 5-C:9 Disclosure of Information From Vital Records

In order to protect the integrity of vital records, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics, the registrar or the custodian of permanent local records shall not permit inspection of, or disclose information contained in vital statistics records, or copy or issue a copy of all or part of any such record unless he or she is satisfied that the applicant has a direct and tangible interest in such record.

...

- V. Disclosure of certain information and statistical data to federal, state, or local agencies and research for legitimate purposes other than requests for vital records information for the purposes of health-related research under RSA 126:24-c may be authorized by the registrar under RSA 5-C:102-111 [Confidentiality and Disclosure of Information].

....

RSA 5-C:108 Procedures for Requesting Vital Records Data for Health-Related Research

Vital records data or copies of vital records that directly or indirectly identify individuals shall be made available for health-related research purposes upon receipt of a written application and approval of the state's institutional review board pursuant to RSA 126:24-d.

Title: The State and Its Government

Chapter: Department of Safety

RSA 21-P:12-b Bureau of Emergency Medical Services

...

- II. The bureau chief, under the supervision of the director of the division of fire standards and training and emergency medical services, shall:
 - (g) Establish a data collection and analysis capability that provides for the evaluation of the emergency medical and trauma services system and for modifications to the system based on identified gaps and shortfalls in the delivery of emergency medical and trauma services. The data and resulting analysis shall be provided to the bodies established under this chapter, provided that such use does not violate the confidentiality of recipients of emergency medical care. The provisions of RSA 126 shall be followed with regard to other uses of this data for research and evaluation purposes, and for protecting the confidentiality of data in those uses. All analyses shall be public documents, provided that the identity of the recipients of emergency medical care are protected from disclosure either directly or indirectly.

RSA 21-P:53 Public Health Powers and Duties.

During the existence of a state of emergency under this chapter, the commissioner of health and human services shall have the following powers and duties, subject to the direction and control of the governor, which are in addition to those set forth in RSA 141-C; provided that such powers and duties shall be limited to the specific nature of the emergency, its geographic limits, and the conditions that brought it about, as specified in the declaration of the state of emergency:

...

- IV. The commissioner may investigate any incident or imminent threat of any disease or health condition that may be caused by a natural disaster, radiation or chemical exposure, or the release of any microorganism, infectious substance, or naturally occurring or manufactured biological product, that

poses a risk of a significant number of human fatalities or incidents of permanent or long-term disability. Such investigations may include requiring information from any health care provider or other person affected by, or having information related to, the incident or threat, inspections of buildings and conveyances and their contents, laboratory analysis of samples collected during the course of such inspections, and requiring a physical examination and the provision of specimens of body secretions, excretions, fluids, and discharges for laboratory examination of any person having a disease or health condition that necessitates an investigation under this paragraph.

....

VII. The department of health and human services shall acquire and retain only the minimum amount of information, specimens, and samples relating to individuals necessary to carry out its obligations under this section. Any genetic testing of specimens and samples shall be limited to the viruses, bacteria, fungi, or other microorganisms therein. Personally identifiable information shall not be acquired or retained unless necessary for the department to carry out its responsibilities under this section, RSA 141-C, or any other provision of law. Such information shall not be retained beyond the duration of the state of emergency without the approval of the governor and executive council, which information shall be subject to the confidentiality provisions of RSA 141-C:10.

....

PUBLIC RECORDS

Title: Public Officers and Employees

Chapter: Access to Public Records

RSA 91-A:5 Exemptions

The following records are exempted from the provisions of this chapter: . . .

IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a body or agency from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected.

RSA 91-A:7 Violation

Any person aggrieved by a violation of this chapter may petition the superior court for injunctive relief. The courts shall give proceedings under this chapter priority on the court calendar. Such a petitioner may appear with or without counsel. The petition shall be deemed sufficient if it states facts constituting a violation of this chapter, and may be filed by the petitioner or his counsel with the clerk of court or any justice thereof. Thereupon the clerk of court or any justice shall order service by copy of the petition on the person or persons charged. When any justice shall find that time probably is of the essence, he may order notice by any reasonable means, and he shall have authority to issue an order ex parte when he shall reasonably deem such an order necessary to insure compliance with the provisions of this chapter.

PUBLIC HEALTH

Title: Public Health

Chapter: Vital Records and Health Statistics

Subdivision: Bureau of Health Statistics and Data Management and Institutional Review Board

RSA 126:24-b Intent.

The bureau of health statistics and data management within the department is designated the health statistics center of New Hampshire in accordance with Public Law 95-623 section V(c)(1).¹ The bureau is authorized to coordinate and disseminate health-related information for the purposes of protecting public

¹ PL 95-623 is the Health Services Research, Health Statistics and Medical Technology Act.

health while adhering to privacy requirements. In carrying out its duties, the department shall use the minimum amount of information that is reasonably necessary to protect the health of the public.

RSA 126:24-d Disclosure of Information from Vital Records.

All protected health information possessed by the department shall be considered confidential, except that the commissioner shall be authorized to provide vital record information to institutions and individuals both within and outside of the department who demonstrate a need for such information for the purpose of conducting health-related research. Any such release shall be conditioned upon the understanding that once the health-related research is complete that all information provided will be returned to the department or destroyed. All releases of information shall be consistent with the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA) and regulations promulgated thereunder by the United States Department of Health and Human Services (45 C.F.R. Part 160 and Part 164). This shall include the requirement that all proposed releases of vital records information to institutions and individuals both within and outside the department for the purposes of health-related research be reviewed and approved by the institutional review board, under RSA 126:24-e, before the requested information is released.

RSA 126:24-e Institutional Review Board. –

I. There is hereby established an independent institutional review board administratively attached, pursuant to RSA 21-G:10 [Administratively Attached Agency], to the department to review requests for vital records information for the purposes of conducting health-related research. No vital records information requested for the purposes of conducting health-related research shall be released until the request has first been reviewed and approved by the board.

....

RSA 126:24-cc Memorandum of Understanding.

The commissioner and secretary of state shall enter into a memorandum of understanding to address the role of each agency in maintaining the state's vital records system. The memorandum shall facilitate a working relationship between the 2 agencies in meeting their respective responsibilities under this chapter and RSA 5-C. The memorandum shall be reviewed annually and may be modified at the request of either agency or at the request of the advisory committee on quality of vital records information under RSA 126:24-h [Advisory Committee on Quality of Vital Records Information].

RSA 126:24-f Rulemaking.

The commissioner may adopt rules, pursuant to RSA 541-A, relative to:

- I. With the exception of vital records, guidance and direction in the collection and accuracy of statistical and medical information by data collectors.
- II. Procedures, conditions, and criteria for release of information, under RSA 126:24-d.

RSA 126:24-i Penalty.

Any person shall be guilty of a class B felony if he or she willfully and knowingly furnishes or disseminates vital records information in a manner inconsistent with the purposes for which it was released.

Subdivision: Health Care Data
RSA 126:25 Data Collection.²

- I. Each nursing home, acute care hospital, residential care facility, specialty hospital, or other health care facility licensed under RSA 151 shall file health care data as required by the commissioner of health and human services, pursuant to RSA 126:27. This data shall include, but not be limited to:
- ...
- (d) For hospitals, the data now collected not less than annually through the uniform hospital discharge data set as amended by rule pursuant to RSA 541-A;
 - (e) For special hospitals with an average length of stay less than 30 days, data equivalent to the uniform hospital discharge data set and the annual hospital survey;
 - (f) For facilities with an average length of stay of more than 30 days, including specialty hospitals and nursing homes, a uniform long-term care data set based on annual patient census, annual aggregated use data on patient days, and the discharges and admissions of the facility;
 - (g) Disposition destination of each patient or resident admitted;
 - (h) Charge data as follows:
 - (1) Acute care hospitals and specialty hospitals with an average length of stay less than 30 days--charge by discharge; and
 - (2) Specialty hospitals and nursing homes--average patient day charge;
 - (i) Any demographic or diagnostic information necessary for the administration of this subdivision, including social security numbers if persons were given the option at the original point of collection to provide social security numbers voluntarily.
- II. In addition to the data listed in paragraph I, the commissioner of health and human services shall require all providers, including ambulatory care facilities, licensed or certified to practice in the state of New Hampshire to submit ambulatory health care data pursuant to a plan to collect such data developed by the health services planning and review board established by RSA 151-C:3. This plan shall be submitted to the commissioner of health and human services by December 1, 1990.
- ...
- IV. (a) Health care data shall be submitted in accordance with rules adopted pursuant to RSA 126-S for the following entities:
- (1) Licensed hospitals, as defined in RSA 151-C:2, XX, and pursuant to the memorandum of understanding entered into by the insurance department and the department of health and human services.
 - (2) Licensed health care providers, as defined by RSA 151-C:2, XXX, employed or legally controlled by a hospital with the exception of long-term care facilities.
 - (3) Hospital-owned physician practices which shall include all physician practices that are owned or controlled by a hospital or a financial intermediary of a hospital.
 - (4) Federally qualified community health centers as defined by section 330 of the Federal Public Health Service Act, 42 U.S.C. section 254b.
 - (5) Community health centers. For the purposes of this paragraph, "community health centers" are non-profit community based providers of comprehensive primary and preventive health care services to the state's uninsured and Medicaid populations regardless of the patient's ability to pay,

² SB 147 (2009), Section 307:1 Statement of Purpose. The purpose of this act is to create a system to capture information on the provision of health care services to uninsured persons to obtain a better understanding of the impact of uninsured persons on public health, health care providers, and the commercial insurance market. With the increase in uninsured persons in New Hampshire and the escalating problem of the affordability of health insurance, the existing safety net, which relies on community health centers and hospitals, both with limited capacity, may not be sustainable. New Hampshire's health care safety net is an integral and essential part of its health care financing and delivery system. It is vitally important to monitor each part of the system through the collection of data that identifies and quantifies how safety net services are accessed and used in New Hampshire. To the extent allowed by HIPAA, this data shall be available as a resource for insurers, employers, providers, purchasers of health care, and policymakers to review health care utilization and expenditures.

and are governed by boards of directors that are at least 51 percent composed of health center patients.

- (b) Hospitals shall submit the health care data required under this paragraph for the entities identified under subparagraphs (a)(1)-(3). Community health centers as identified under subparagraphs (a)(4) and (5) shall submit their health care data directly. The health care data shall include information for each service that includes dates of service, patient demographics, provider information, charge information, and clinical diagnosis, and procedure codes. Neither the state nor its agents shall collect or otherwise obtain direct personal identifiers in connection with any health care data relating to uninsured individuals. For the purposes of this section, "direct personal identifiers" includes information relating to an individual that contains primary or obvious identifiers such as the individual's name, street address, e-mail address, telephone number, and social security number. An individual's day of birth shall not be collected.

. . . .

RSA 126:28 Availability of Data.

Notwithstanding any other provision of law, all information required to be filed under this subdivision [annual filing by licensed facilities], with the exception of confidential commercial and financial information as defined in RSA 151-C:2 [relative to certificate of need], shall be made available:

- I. To the public upon request, provided that individual patients or health care practitioners shall not be directly or indirectly identifiable.
- II. Upon approval of the commissioner of the department of health and human services for the purposes of health-related research, to individuals and institutions demonstrating a need for such information. The release of such information shall be in accordance with rules adopted under RSA 126:27, V and VI [rulemaking authority].

Title: Public Health

Chapter: Department of Health and Human Services

RSA 126-A:11 Medical and Scientific Research Information

- I. Personal medical and/or other scientific data of any kind whatsoever obtained for the purpose of medical or scientific research by the commissioner or by any person, organization, or agency authorized by the commissioner to obtain such data shall be confidential and shall be used solely for medical or scientific purposes. Such data shall include, but not be limited to, all information, records of interviews, written reports, statements, notes, memoranda, or other data procured in connection with such scientific studies and research conducted by the department, or by other persons, agencies, or other organizations so authorized by the commissioner.
- II. No hospital, sanitarium, rest home, nursing home, other person, or agency shall be held liable in any action for damages or other relief arising from the furnishing of personal medical and/or other scientific data to the department of health and human services or to the representative of an authorized medical or scientific research project.
- III. Personal medical and/or other scientific data obtained by the department of health and human services or by an authorized research project shall not be admissible as evidence in any action of any kind in any court or before any tribunal, board, agency, or person.
- IV. Personal medical and/or other scientific data shall not be exhibited nor their contents disclosed in whole or in part by any officer or employee of the department, or by any other person, except as may be necessary to further the study or research project to which they relate.
- V. Any person who violates the provisions of this section by the unauthorized disclosure of any confidential medical or scientific data, in whole or in part, is guilty of a misdemeanor.

Title: Public Health

Chapter: Protection for Maternity and Infancy

RSA 132:4 Effect of Aid

No person receiving aid under this chapter shall be affected thereby in any civil or political rights, nor shall

their identity be disclosed except upon written order of the commissioner of the department of health and human services.³

RSA 132:10-a Newborn Screening Tests Required; Newborn Screening Advisory Committee.

...

III-a. The department shall ensure that the laboratory analyzing tests authorized under paragraph I destroy any samples no later than 6 months following the completion of testing. Any samples taken for newborn screening shall only be used for tests required under this section. No such samples may be used for other research or DNA testing purposes unless authorized by the parent or guardian. [As of June 14, 2010, awaiting signature of the Governor on HB 1164. If signed, this paragraph is effective July 1, 2010.]

RSA 132:10-c, Public Health, Protection for Maternity and Infancy, Exception

The provisions of RSA 132:10-a [relative to required newborn screening] and 10-b [Department rulemaking] shall not apply if the parents of such child object thereto.

Title: Public Health

Chapter: New Hampshire Mental Health Services System

RSA 135-C:19-a Disclosure of Certain Information

I. Notwithstanding RSA 329:26 [confidential communications] and RSA 330-A:32 [confidential communications], a community mental health center or state facility providing services to seriously or chronically mentally ill clients may disclose information regarding diagnosis, admission to or discharge from a treatment facility, functional assessment, the name of the medicine prescribed, the side effects of any medication prescribed, behavioral or physical manifestations which would result from failure of the client to take such prescribed medication, treatment plans and goals and behavioral management strategies to a family member or other person, if such family member or person lives with the client or provides direct care to the client. The mental health center or facility shall provide a written notice to the client which shall include the name of the person requesting the information, the specific information requested and the reason for the request. Prior to the disclosure, the mental health center or facility shall request in writing the consent of the client. If consent cannot be obtained, the client shall be informed of the reason for the intended disclosure, the specific information to be released and the person or persons to whom the disclosure is to be made.

II. Notwithstanding RSA 329:26 [confidential communications] and RSA 330-A:32 [confidential communications], when the medical director or designee determines that obtaining information is essential to the care or treatment of a person admitted pursuant to RSA 135-C:27-54 [involuntary admission], a designated receiving facility may request, and any health care provider which previously provided services to any person involuntarily admitted to the facility may provide, information about such person limited to medications prescribed, known medication allergies or other information essential to the medical or psychiatric care of the person admitted. Prior to requesting such information the facility shall in writing request the person's consent for such request for information. If the consent cannot be obtained, the facility shall inform the person in writing of the care providers who have been requested to provide information to the facility pursuant to this section. The facility may disclose such information as is necessary to identify the person and the facility which is requesting the information. No care provider who discloses otherwise confidential information to a designated receiving facility following a request made pursuant to this section shall be held civilly or criminally liable for disclosing such information. . . .

II-a. Notwithstanding RSA 329:26 [confidential communications] and RSA 330-A:32 [confidential communications], when the medical director, or designee, determines that obtaining information is essential to the care and treatment of a person admitted pursuant to RSA 135-C:27 - RSA 135-C:54 [involuntary admission] and the consent of the person admitted cannot be obtained, the designated receiving facility may request and any community mental health program which has previously provided services to such person shall immediately provide information about the person including medications prescribed, known medication allergies, services provided and other information essential to the medical

³ RSA 132:4. Aid includes: WIC program; program to prevent ophthalmia in newborn babies; newborn screening tests; services for children with special health care needs; and maternal and child health services.

and psychiatric care of the person admitted. The facility may disclose information necessary to identify the person and the facility which is requesting the information. No community mental health program which discloses otherwise confidential information to a designated receiving facility following a request made pursuant to this program shall be civilly or criminally liable for disclosing such information.

Title: Public Health

Chapter: Durable Power of Attorney for Health Care

RSA 137-J:9 Confidentiality and Access to Protected Health Information. –

- I. Health care providers, residential care providers, and persons acting for such providers or under their control, shall be authorized to:
 - (a) Communicate to an agent any medical information about the principal, if the principal lacks the capacity to make health care decisions, necessary for the purpose of assisting the agent in making health care decisions on the principal's behalf.
 - (b) Provide copies of the principal's advance directives as necessary to facilitate treatment of the principal.
- II. Subject to any limitations set forth in the advance directive by the principal, an agent whose authority is in effect shall be authorized, for the purpose of making health care decisions, to:
 - (a) Request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including, but not limited to, medical and hospital records.
 - (b) Execute any releases or other documents which may be required in order to obtain such medical information.
 - (c) Consent to the disclosure of such medical information.

RSA 137-J:5 Scope and Duration of Agent's Authority. –

- I. Subject to the provisions of this chapter and any express limitations set forth by the principal in an advance directive, the agent shall have the authority to make any and all health care decisions on the principal's behalf that the principal could make.
- II. An agent's authority under an advance directive shall be in effect only when the principal lacks capacity to make health care decisions, as certified in writing by the principal's attending physician or APRN, and filed with the name of the agent in the principal's medical record. When and if the principal regains capacity to make health care decisions, such event shall be certified in writing by the principal's attending physician or APRN, noted in the principal's medical record, the agent's authority shall terminate, and the authority to make health care decisions shall revert to the principal.

....

RSA 137-J:8 Restrictions on Who May Act as Agent.

A person may not exercise the authority of agent while serving in one of the following capacities:

- I. The principal's health care provider or residential care provider.
- II. A nonrelative of the principal who is an employee of the principal's health care provider or residential care provider.

RSA 137-J:17 Reciprocity.

Nothing in this chapter limits the enforceability of an advance directive or similar instrument executed in another state or jurisdiction in compliance with the law of that state or jurisdiction. However, any exercise of power under such a foreign advance directive or similar instrument shall be restricted by and in compliance with the requirements of this chapter and the laws of the state of New Hampshire.

Title: Public Health

Chapter: Brain and Spinal Cord Injuries

RSA 137-K:7 Disclosure; Confidentiality.

- I. A report provided to the brain and spinal cord injury registry disclosing the identity of an individual, who was reported as having a brain and spinal cord injury, shall only be released to persons demonstrating a need which is essential to health-related research, except that the release shall be conditioned upon the individual granting authority to release the information and personal identities remaining confidential.

II. Analyses and compilations of data prepared under RSA 137-K:4 [duties of the commissioner] which do not disclose the identity of an individual and which cannot be used to surmise an identity shall be available to the public under RSA 91-A.

III. The physician-patient privilege shall not apply to reports prepared pursuant to RSA 137-K:6.

RSA 137-K:6 Reporting. – All facilities shall provide a report to the brain and spinal cord injury registry containing information regarding a brain and spinal cord injury diagnosed or being treated.

Title: Public Health

Chapter: Critical Health Problems Reporting Act

RSA 141-A:4 Reports

An attending physician or other person representing or employed by a facility as determined by the commissioner shall report to the department the existence of a critical health problem⁴ as prescribed by this chapter when the physician or person determined by the commissioner diagnoses or confirms a critical health problem. The report shall be made not more than 10 days after the diagnosis or confirmation is made by the physician or other person.

RSA 141-A:5 Form

I. The report prescribed in RSA 141-A:4 shall be designated as a critical health problem report and shall contain social security numbers, if persons were given the option at the original point of collection to provide social security numbers voluntarily, and information which the commissioner considers necessary to identify, locate, and investigate the occurrence, frequency, incidence, cause, effect, and prognosis of the critical health problem, and other relevant data and findings with respect thereto.

II. The commissioner shall adopt rules regarding the form, content, and manner of filing the report prescribed in RSA 141-A:4, which shall be submitted to the department unless otherwise prescribed by the commissioner. He shall adopt such other rules as may be necessary to foster study, research, denomination, and control of critical health problems.

III. A report or other data relating to a critical health problem which discloses the identity of an individual who was reported as having a critical health problem shall be made available only to persons who demonstrate a need for the report or other data which is essential to health related research. A report or data which does not disclose the identity of the individual shall be made available to the public in compliance with RSA 91-A.

IV. The physician-patient privilege shall not apply to a critical health problem report prepared pursuant to paragraph I.

RSA 141-A:7 Penalty.

Whoever violates the provisions of this chapter shall be guilty of a misdemeanor.

Title: Public Health

Chapter: Chronic Disease Prevention

RSA 141-B:9 Confidentiality

I. A report provided to the cancer registry disclosing the identity of an individual, who was reported as having a cancer, shall only be released to persons demonstrating a need which is essential to health-related research, except that the release shall be conditioned upon the personal identities remaining confidential.

⁴ "Critical health problem" means any of the following:

- (a) Lead poisoning.
- (b) Reye's syndrome.
- (c) A disease, condition, or procedure relating to public health which is determined by the commissioner to be of particular concern or importance as a critical health problem in this state, being in need of greater research, study, and statistical analysis.

RSA 141-A:2, I.

II. Analyses and compilations of data prepared under RSA 141-B:4 which do not disclose the identity of an individual and which cannot be used to surmise an identity shall be available to the public under RSA 91-A.

III. The physician-patient privilege shall not apply to reports prepared pursuant to RSA 141-B:7.

RSA 141-B:5 Cancer Registry Established

There shall be established in the department a cancer registry for compilation and analysis of information relating to the incidence, diagnosis, and treatment of cancer.

RSA 141-B:7 Assessment and Control, Reporting

All facilities shall provide a report to the cancer registry, including social security numbers if persons were given the option at the original point of collection to provide social security numbers voluntarily, containing information regarding a cancer diagnosed or being treated. Each report of cancer shall include items listed in rules adopted under RSA 541-A in accordance with the elements listed in the North American Association of Central Cancer Registries, Standards for Cancer Registries as amended from time to time and available. The department shall review any such amendment and if it determines that an amendment is not appropriate for New Hampshire, the amendment shall not be incorporated into the rules or be implemented by the department.

Title: Public Health

Chapter: Communicable Disease

RSA 141-C:10 Disclosure; Confidentiality

I. Any protected health information provided to or acquired by the department under this chapter shall be released only with the informed, written consent of the individual or to those authorized persons having a legitimate need to acquire or use the information and then only so much of the information as is necessary for such persons to provide care and treatment to the individual who is the subject of the protected health information, investigate the causes of disease transmission in the particular case, or control the spread of the disease among the public. Any release of information under this section without the informed, written consent of the individual shall be conditioned upon the protected health information remaining confidential.

II. Analyses and compilations of data which do not disclose protected health information shall be available to the public under RSA 91-A.

III. The physician-patient privilege shall not apply to information required to be reported or provided to the commissioner under this chapter.

IV. The department shall acquire and retain only the minimum amount of information, specimens, and samples relating to individuals necessary to carry out its obligations under this chapter. The department shall adopt rules, pursuant to RSA 541-A, relative to the types of information, specimens, and samples to be acquired and the length of time such information, specimens, and samples shall be retained before being destroyed. Any genetic testing of specimens and samples shall be limited to the viruses, bacteria, fungi, or other micro-organisms therein.

RSA 141-C:7 Reporting of Communicable Disease

I. Upon becoming aware of any communicable disease or communicable disease syndrome listed under RSA 141-C:8, any health care provider, clinical laboratory director, the superintendent or other person in charge of any hospital, or other health care facility, or any other person having under his or her care or observation a person afflicted with a communicable disease or communicable disease syndrome, or who has reason to believe that a person was or might have been afflicted with a communicable disease at the time of death, shall report to the commissioner the communicable disease or communicable disease syndrome and shall provide social security numbers, if persons were given the option at the original point of collection to provide social security numbers voluntarily, and such additional information and periodic reports as required under RSA 141-C:9, I [relative to investigations by the commissioner].

....

IV. In addition to the foregoing requirements for health care providers, a pharmacist shall report, if required under rulemaking procedures by the commissioner, any unusual or increased types of prescriptions, or

unusual trends in pharmacy visits that may be caused by a communicable disease. Prescription-related events that require a report may include, but are not limited to:

- (a) An unusual increase in the number of prescriptions to treat fever, respiratory, or gastrointestinal complaints.
- (b) An unusual increase in the number of prescriptions for antibiotics.
- (c) An unusual increase in the number of requests for information on over-the-counter pharmaceuticals to treat fever, respiratory, or gastrointestinal complaints.

RSA 141-C:4 Duties of Commissioner

The commissioner shall:

III. Establish, maintain, and suspend isolation and quarantine to prevent the spread of communicable diseases under RSA 141-C:11 [relative to isolation and quarantine].

IV. Order persons who pose a threat to the life and health of the public to receive such treatment and care as necessary to eliminate the threat under RSA 141-C:15 [relative to treatment and care of the sick].

RSA 141-C:1 Policy

The outbreak and spread of communicable disease cause unnecessary risks to health and life, interfere with the orderly workings of business, industry, government, and the process of education, and disrupt the day-to-day affairs of communities and citizens. Because the control of communicable disease may be attained by personal actions, the timely intervention of medical practices, and cooperation among health care providers, federal, state, and municipal officials, and other groups and agencies, it is hereby declared to be the policy of this state that communicable diseases be prevented, and that such occurrences be identified, controlled, and, when possible, eradicated at the earliest possible time by application of appropriate public health measures and medical practices.

RSA 141-C:8 List of Diseases; Report Forms

The commissioner shall compile a list of reportable communicable diseases necessary to protect the citizenry. The commissioner shall develop and provide a form for the reporting of communicable diseases under this section. The form shall include, at a minimum, the name, age, address, occupation, and place of occupation of the person. Reportable information shall not include psychiatric, psychological, or other mental health records or information.

RSA 141-C:26 Ethics Committee. [Note: 141-C:26 from SB 102, 2008; see also 141-C:26 below]

- I. There is hereby established an ethics committee to offer advice to the commissioner relative to the ethical issues that may be identified in the course of planning for, and responding to, outbreaks of communicable disease that threaten to become epidemic or pandemic.
- II. The committee shall consider the ethical implications of any of the powers that may be exercised by the commissioner under the provisions of this chapter including, but not limited to, the confiscation, distribution, and rationing of anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents, and mechanical equipment; the issuance and enforcement of orders of isolation, quarantine, medical examination, and medical treatment; issues relative to information sharing and confidentiality; and the provisions for due process for orders issued pursuant to this chapter.

. . . .

141-C:26 Acute Care Centers. [Note: 141-C:26 from SB 512, 2008; see also 141-C:26 above]

The commissioner, with the written approval of the governor, may establish, operate, or authorize the operation of temporary acute care centers for the purpose of the delivery of acute medical services to persons who would normally require admission to an acute care hospital, when there is a public health incident as defined in RSA 508:17-a, II(c)⁵ and when the acute care hospitals in the area do not have the

⁵ "Public health or public safety incident" means a specific incident that the commissioner of the department of health and human services or the commissioner of the department of safety has declared in writing poses a threat to the health and safety of the public and demands a response that will require the assistance of agents from outside the state system, but which does not rise to the level that would necessitate the declaration of a state of emergency by the governor under RSA 4:45. RSA RSA 508:17-a, II(c).

physical and human resources necessary to meet the demand or anticipated demand for medical care. Any such facility so established or designated shall be exempt from the provisions of RSA 151 and RSA 151-C. The commissioner shall adopt rules, pursuant to RSA 541-A, regarding the facility and staffing requirements, screening and admission criteria, payment and reimbursements, clinical standards, recordkeeping, and discharge criteria for acute care centers. In adopting such rules, the commissioner shall take into consideration, to the extent feasible, the rights and responsibilities of patients set forth in RSA 151:21. For purposes of immunity, actions taken pursuant to this section shall be considered an emergency management function under RSA 21-P:41, I [relative to immunity and exemption].

RSA 141-C:21 Penalty.

Any person who shall violate, disobey, refuse, omit or neglect to comply with any of the provisions of RSA 141-C, or of the rules adopted pursuant to it, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Title: Public Health

Chapter: Human Immunodeficiency Virus Education, Prevention, and Control

RSA 141-F:7 Reporting of Test Results

- I. Except as provided in this section, test results of samples submitted for laboratory analysis under RSA 141-F:6 [laboratory testing requirements] shall not be disclosed to any person or agency except:
 - (a) The physician ordering the test or the person authorized by the physician; and
 - (b) The commissioner, in accordance with RSA 141-C:7.
- II. Test results shall be disclosed by the physician or the person authorized by the physician to the person who was tested. Such person shall be provided with appropriate counseling at the time of notification.
- III. If the person with a serologic positive test result is less than 18 years of age or is mentally incapable of understanding the ramifications of a positive test result, the physician or the person authorized by the physician may disclose the test results to a parent or legal guardian. In such cases, the parent or legal guardian shall be entitled to appropriate counseling.
- IV. If the person with a serologic positive test is confined to a facility pursuant to an order of a court, or committed to a mental health facility, the results of the tests shall be disclosed by the physician or the person authorized by the physician to the medical director or chief medical officer of such facility. The medical director or chief medical officer of the facility shall provide to the administrator in charge of the facility whatever medical data is necessary to properly assign, treat, or manage the affected individual. The administrator may disclose this information only to those individuals who require such information to properly assign, treat, or manage the affected individual.

RSA 141-F:8 Confidentiality; Release of Information

- I. The identity of a person tested for the human immunodeficiency virus shall not be disclosed except as provided in RSA 141-F:7 and RSA 141-F:8, III, IV and V.
- II. All records and any other information pertaining to a person's testing for the human immunodeficiency virus shall be maintained by the department, health care provider, health or social service agency, organization, business, school, or any other entity, public or private, as confidential and protected from inadvertent or unwarranted intrusion. Such information obtained by subpoena or any other method of discovery shall not be released or made public outside of the proceedings.
- III. Notwithstanding RSA 141-C:10 and paragraph I of this section, the identity of a person tested for the human immunodeficiency virus may be disclosed in response to a written request if such person has given written authorization for such disclosure. Such written request shall state the reasons for the request and shall contain only the identity of the infected person.
- IV. Notwithstanding RSA 141-C:10 and paragraph I of this section, a physician licensed to practice in this state or other health care provider may disclose information pertaining to the identity and test results of a person tested for a human immunodeficiency virus to other physicians and health care providers directly involved in the health care of the person when the disclosure of such information is necessary in order to protect the health of the person tested. Information thus disclosed shall be maintained as provided in paragraph II of this section.

V. Notwithstanding RSA 141-C:10 and paragraph I of this section, the identity of a person tested for the human immunodeficiency virus and found to be infected may be disclosed to a blood bank, blood center, plasma center, or other agency which receives blood donations, provided that the information remains confidential and protected from inadvertent or unwarranted intrusion or disclosure.

RSA 141-F:10 Civil Liability

Any person who purposely violates RSA 141-F:7, I or RSA 141-F:8, I and thereby discloses the identity of a person infected by a human immunodeficiency virus shall be liable to such person for actual damages, court costs and attorneys' fees, plus a civil penalty of up to \$5,000 for such disclosure.

Title: Public Health

Chapter: Genetic Testing

RSA 141-H:2 Conditions of Genetic Testing

III. Except as provided in paragraph II, or authorized by RSA 141-J [Birth Conditions Program], no person shall disclose to any other person that an individual has undergone genetic testing,⁶ and no person shall disclose the results of such testing to any other person, without the prior written and informed consent of the individual, the parent, guardian, or custodian if the individual is a minor under the age of 18, or the legal guardian or conservator if the individual is an incompetent person. Discussion and disclosure of genetic testing for a patient, requested of a physician by a patient, by appropriate professionals within a physician's medical practice or hospital shall not be a violation of this chapter.

RSA 141-H:3 Use of Genetic Testing in Employment Situations

...

II. Except as provided in paragraph IV of this section, no person shall sell or otherwise provide to an employer, labor organization, employment agency or licensing agency any genetic testing relating to an employee, labor organization member or licensee or to a prospective employee, labor organization member or licensee.

...

IV. This section shall not prohibit the genetic testing of an employee who requests to undergo genetic testing and who provides written and informed consent to genetic testing for any of the following purposes:

- (a) Investigating a worker's compensation claim under RSA 281-A.
- (b) Determining the employee's susceptibility or level of exposure to potentially toxic chemicals or potentially toxic substances in the workplace, if the employer does not terminate the employee, or take any other action that adversely affects any term, condition, or privilege of the employee's employment, as a result of genetic testing.

....

RSA 141-H:4 Use of Genetic Testing in Health Insurance

A health insurer in connection with providing health insurance shall not:

II. Require or request directly or indirectly any individual to reveal whether the individual or a member of the individual's family has undergone genetic testing or the results of the testing, if undergone by the individual or a member of the individual's family. . . .

RSA 141-H:5 Use of Genetic Testing in Life, Disability Income, and Long-term Care Insurance. –

I. Except as provided in paragraph II of this section, the provisions of this chapter shall not apply to the provision of life insurance, disability income insurance, or long-term care insurance.

II. A person in the business of providing life, disability income, or long-term care insurance who obtains information with respect to any genetic testing of an individual or a member of the individual's family

⁶ "Genetic testing" means a test, examination, or analysis which is generally accepted in the scientific and medical communities for the purpose of identifying the presence, absence, or alteration of any gene or chromosome, and any report, interpretation, or evaluation of such a test, examination, or analysis, but excludes any otherwise lawful test, examination, or analysis that is undertaken for the purpose of determining whether an individual meets reasonable functional standards for a specific job or task. RSA 141-H:1, IV.

shall not use that information in writing a type of insurance coverage other than life, disability income, or long-term care insurance.

RSA 141-H:6 Genetic Testing, Civil Action

An aggrieved individual may bring a civil action under this chapter and, if successful, shall be awarded special or general damages of not less than \$1,000 for each violation, and costs and reasonable legal fees.

Title: Public Health

Chapter: Birth Conditions Program

RSA 141-J:3 Program Access to Health Information.

- I. Health care providers, health care facilities, clinics, laboratories, medical records departments, and state offices, agencies, and departments shall allow the program to have access to individually identifiable health information relating to the occurrence of birth conditions in children, infants, or stillborn fetuses. The program may acquire the same information relating to New Hampshire residents from health care facilities, birth conditions surveillance programs, and other sources in other states. The program shall not provide individually identifiable health information relating to New Hampshire residents to any similar program operated by any other state or the federal government.
- II. Except as otherwise provided in this chapter, no health care provider, health care facility, clinic, laboratory, medical records department, or state office, agency, or department shall be held liable in any action for civil damages for providing the department or the program with access to individually identifiable health information authorized by paragraph I.

RSA 141-J:4 Program Ability to Share Data.

Program staff and authorized department employees, agents, and contractors may use or disclose individually identifiable health information solely for the purposes specified in RSA 141-J:1. Such uses or disclosures shall be limited to the minimum amount of individually identifiable health information necessary to further such purposes.

RSA 141-J:5 Election Not to Participate in the Program.

- I. An individual who is the subject of individually identifiable health information may elect not to participate in the program. If the individual is a minor or is legally incompetent, the individual's parent or legal guardian may so elect on the individual's behalf.
- II. The program shall notify each individual with a confirmed birth condition diagnosis whose individually identifiable health information it proposes to include in the program of the election prior to obtaining any individually identifiable health information relating to the individual, other than name and address and diagnosis. The program shall not obtain any individually identifiable health information for any individual who does not have a confirmed birth condition diagnosis and shall retain the name and address only of any such individual for a period not to exceed 2 years.
- III. The notices required by paragraph II shall be in writing, on a form developed and revised from time to time by the commissioner. At a minimum, the notice shall:
 - (a) Be written in clear, plain language.
 - (b) Contain the following:
 - (1) A statement explaining the nature and purpose of the program.
 - (2) A statement of the election in paragraph I or the absence of a statement of election in paragraph V, and a statement of the election in RSA 141-J:6, I.
 - (3) Contact information for the program.
 - (4) A place for the individual to sign and date.
- IV. If an individual elects not to participate in the program, the program shall acknowledge in writing that it has received and will honor the election.
- V. If the program has notified an individual pursuant to paragraph II or III, and within 60 days of providing such notice has not received the individual's election not to participate in the program, the program may obtain access to, or retain, as the case may be, individually identifiable health information relating to the individual.

VI. The program shall not acquire, retain, use, or disclose individually identifiable health information, including birth condition, with respect to those individuals who have elected not to participate in the program under paragraph I or RSA 141-J:6, I. The program shall retain a list of those individuals who have elected not to participate in the program and the dates of such elections but shall not disclose this information to any other entity.

RSA 141-J:6 Rights of Individuals.

An individual with respect to whom the program retains individually identifiable health information may:

- I. Elect at any time not to participate in the program. Upon such election, the program shall remove any individually identifiable health information relating to the individual.
- II. Review any individually identifiable health information in program records relating to the individual.
- III. Upon payment of any reasonable costs involved, obtain a copy of any individually identifiable health information in program records relating to the individual.
- IV. Request amendments or corrections to the individual's individually identifiable health information in program records.
- V. Prohibit the release of individually identifiable health information in program records relating to the individual.
- VI. Review and, upon payment of any reasonable costs involved, obtain a copy of the list of persons given access to individually identifiable health information relating to the individual.

RSA 141-J:7 Program Records Not Public Records.

Any individually identifiable health information acquired, used, disclosed, or retained by the program shall not constitute a public record. The names and addresses of individuals who have elected not to participate in the program shall not be a public record. No individually identifiable health information retained by the program shall be discoverable or compelled to be produced pursuant to subpoena or compelled testimony in any legal proceeding without the written authorization of the person about whom the information relates. Analyses and compilations of data that do not disclose individually identifiable health information shall be available to the public under RSA 91-A.

RSA 141-J:8 Privacy and Confidentiality Protections.

- I. Any person allowed access to individually identifiable health information in program records shall sign a confidentiality agreement, in a form specified by the department, requiring adherence to privacy and security protections equivalent to or greater than the protections provided in this chapter.
- II. The department shall maintain a list of any persons other than program staff given access to individually identifiable health information. The list shall include:
 - (a) The name of the person authorizing access.
 - (b) The name, title, and organizational affiliation of each person given access.
 - (c) The date of access.
 - (d) The specific purpose for which the information was used.
- III. Individually identifiable health information in the records of the program may be retained for 18 years or, if the information relates to a minor, until the individual reaches the age of 18. Thereafter, the program may use and retain the information only in a form where an individual's identity cannot be discerned.

RSA 141-J:10 Penalties.

- I. Any person who violates the provisions of this chapter is guilty of a class B misdemeanor.
- II. An individual harmed by a person violating this chapter may bring a civil action against the person and, if successful, shall be awarded the greater of actual damages or liquidated damages of \$2,500 for each violation, reasonable attorneys' fees and other litigation costs reasonably incurred, and such other equitable relief as the court determines to be appropriate.

HEALTH FACILITIES LICENSING

Title: Hospitals and Sanitaria

Chapter: Residential Care and Health Facility Licensing

RSA 151:21 Patient's Bill of Rights

X. The patient shall be ensured confidential treatment of all information contained in the patient's personal and clinical record, including that stored in an automatic data bank, and the patient's written consent shall be required for the release of information to anyone not otherwise authorized by law to receive it. . . .

RSA 151:21-b Home Care Client's Bill of Rights

II. (i) Be ensured of confidential treatment of all information contained in the client's personal and clinical record, including the requirement of the client's written consent to release such information to anyone not otherwise authorized by law to receive it. Medical information contained in the client's record shall be deemed to be the client's property and the client has the right to a copy of such records upon request and at a reasonable cost.

RSA 151:30 Equitable and Other Relief

- I. Any person aggrieved by a facility's failure to abide by the provisions of this subdivision may seek equitable relief from the superior court, which shall have original jurisdiction over all proceedings under this subdivision.
- II. Damages shall be assessed in a proceeding against a facility which violates this subdivision and the facility shall be liable for the sum of \$50 for each violation per day or part of a day or for all damages proximately caused by the violations, whichever is greater. If a facility is found to be in contempt of a court order issued under this section the facility shall be liable for the plaintiff's reasonable attorney fees and costs.
- III. Violations of this subdivision may be raised in any other proceedings for damages and by way of counterclaim, setoff, or recoupment.

Subdivision: Reporting of Hospital Infections

RSA 151:33 Hospitals Required to Report.

- I. Any hospital licensed pursuant to this chapter shall maintain a program capable of identifying and tracking infections for the purpose of reporting under this section. Such program shall have the capacity to identify the following elements:
 - (a) The specific infectious agents or toxins and site of each infection;
 - (b) The clinical department or unit within the facility where the patient first became infected or was first diagnosed; and
 - (c) The patient's diagnoses at time of admission and any relevant specific surgical, medical, or diagnostic procedure performed during the current admission.
- II. (a) Hospitals shall initially identify, track, and report infections to include:
 - (1) Central line related bloodstream infections;
 - (2) Ventilator associated pneumonia; and
 - (3) Surgical wound infections.(b) Hospitals shall also initially identify, track, and report process measures including:
 - (1) Adherence rates of central line insertion practices;
 - (2) Surgical antimicrobial prophylaxis; and
 - (3) Coverage rates of influenza vaccination for health care personnel and patients/residents.
- III. Subsequent to the initial requirements identified in paragraph II, the department shall, from time to time, require the tracking and reporting of other types of infections, including urinary tract infections when reporting protocols are identified by the department, that occur in hospitals in consultation with technical advisors who are regionally or nationally-recognized experts in the prevention, identification, and control of hospital infections and the reporting of performance data. . . .
- IV. The commissioner of the department shall adopt rules, pursuant to RSA 541-A, for hospital identification, tracking, and reporting of infections which shall be consistent with the recommendations of recognized centers of expertise in the identification and prevention of infections including, but not

limited to the National Health Care Safety Network and the Healthcare Infection Control Practices Advisory Committee of the Centers for Disease Control and Prevention or its successor, the Joint Commission on the Accreditation of Healthcare Organizations, the Centers for Medicare and Medicaid Services, the Hospital Quality Alliance, the National Quality Forum, and the New Hampshire health care quality assurance commission under RSA 151-G.

- V. Each hospital shall regularly report to the department hospital acquired infections and the infection data it has collected. Such reporting shall be done in the manner directed by the department in accordance with rules adopted pursuant to RSA 541-A. The commissioner shall establish data collection and analytical methodologies that meet accepted standards for validity and reliability. In no case shall the frequency of reporting be required to be more frequently than once every 3 months, and reports shall be submitted not more than 60 days after the close of the reporting period.

RSA 151:35 Limitation.

No hospitals shall provide, and the department shall not collect, any data that identifies an individual patient, including but not limited to name, street address, city or town, telephone number, and social security number.

PUBLIC SAFETY AND WELFARE

Title: Public Safety and Welfare

Chapter: Services for the Developmentally Disabled

RSA 171-A:19-a Committee for the Protection of Human Subjects. –

- I. There is hereby established within the department an institutional review board which shall be known as the committee for the protection of human subjects. The committee shall oversee research conducted in department-funded programs that serve people with mental illness, developmental disabilities, and substance abuse or dependence disorders. No research shall be conducted in these programs until it has been reviewed and approved by the committee.

....

RSA 171-A:19-b Rulemaking.

The commissioner may adopt rules, pursuant to RSA 541-A, relative to the operation of the committee for the protection of human subjects, established in RSA 171-A:19-a, the procedures, conditions, and criteria for the conduct and approval of research, and fees charged by the committee.

RSA 171-A:33 Developmental Services Quality Council Established; Membership; Duties.

....

- II. The groups represented under paragraph I are encouraged to provide, according to their ability, the in-kind and other resources necessary for the council to succeed. The council may request information and analysis on quality from the department of health and human services, area agencies, and providers. The council shall have access to all non-confidential information on quality for services funded all or in part by public funds.

....

Title: Public Safety and Welfare

Chapter: Study, Treatment and Care of Inebriates

RSA 172:8-a Confidentiality of Client Records

No reports or records or the information contained therein on any client of the program or a certified alcohol or drug abuse treatment facility or any client referred by the commissioner shall be discoverable by the state in any criminal prosecution. No such reports or records shall be used for other than rehabilitation, research, statistical or medical purpose, except upon the written consent of the person examined or treated. Confidentiality shall not be construed in such manner as to prevent recommendation by the commissioner to a referring court, nor shall it deny release of information through court order pursuant to appropriate federal regulations.

MOTOR VEHICLES

Title: Motor Vehicles

Chapter: Alcohol or Drug Impairment

RSA 265-A:4 Implied Consent of Driver or Operator to Submit to Testing to Determine Alcohol Concentration

Any person who drives, operates, or attempts to operate an OHRV, drives or attempts to drive a vehicle upon the ways of this state, or operates or attempts to operate a boat upon the public waters of the state shall be deemed to have given consent to physical tests and examinations for the purpose of determining whether such person is under the influence of intoxicating liquor or controlled drugs, and to a chemical, infrared molecular absorption, or gas chromatograph test or tests of any or all of any combination of the following: blood, urine, or breath, for the purpose of determining the controlled drug content of such person's blood or alcohol concentration if arrested for any offense arising out of acts alleged to have been committed while the person was driving, operating, attempting to operate, or in actual physical control of an OHRV, driving, attempting to drive, or in actual physical control of a vehicle, or operating, attempting to operate, or in actual physical control of a boat while under the influence of intoxicating liquor or controlled drugs or while having an alcohol concentration in excess of the statutory limits contained in RSA 265-A:2 or RSA 265-A:3. The test or tests shall be administered at the direction of a law enforcement officer, peace officer, or authorized agent having reasonable grounds to believe the person to have been driving, operating, attempting to operate, or in actual physical control of an OHRV, driving or in actual physical control of a vehicle, or operating or in actual physical control of a boat while under the influence of intoxicating liquor or controlled drugs or while having an alcohol concentration of 0.08 or more, or in the case of a person under the age of 21, 0.02 or more. A copy of the report of any such test shall be furnished by the law enforcement agency to the person tested within 48 hours of receipt of the report by the agency by certified mail directed to the address shown on such person's license or other identification furnished by the person. Results of a test of the breath shall be furnished immediately in writing to the person tested by the certified breath testing operator conducting the test. When the incident involves an accident resulting in death or serious bodily injury to any person as provided in RSA 265-A:16, the prerequisites of RSA 265-A:8 shall not apply. Properly trained personnel of the United States Coast Guard may arrest and conduct tests on persons who are believed to be under the influence of intoxicating liquor or controlled drugs, or a combination thereof, and who are in physical control of a boat operating upon the public coastal waters of this state.

RSA 265-A:13 Incapacity to Give Consent

Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusing shall be deemed not to have withdrawn the consent provided by RSA 265-A:4 and the test or tests may be administered. The provisions of RSA 265-A:8 shall not apply to persons incapable of giving consent as provided for in this section.

RSA 265-A:17 Blood Testing of Certain Motor Vehicle Fatalities

When a collision, boating accident, or OHRV accident results in death or serious bodily injury to any person, all drivers or operators involved, whether living or deceased, and all deceased vehicle, boat, or OHRV occupants and pedestrians involved shall be tested for evidence of alcohol or controlled drugs. A law enforcement officer, authorized agent, or peace officer shall request a licensed physician, registered nurse, certified physician's assistant, or qualified medical technician or medical technologist to withdraw blood from each driver or operator involved if living and from the body of each deceased driver or operator, deceased occupant, or deceased pedestrian, in accordance with RSA 611:6, II, for the purpose of testing for evidence of alcohol content or controlled drugs; provided that in the case of a living driver or operator the officer has probable cause to believe that the driver or operator caused the collision or accident. All tests made under this section shall be conducted by the forensic science laboratory established in RSA 106-B:2-a or in any other laboratory capable of conducting such tests which is licensed under the laws of this or any other state and which has also been licensed by the U.S. Department of Health and Human Services under the Clinical Laboratory Improvement Act of 1988, as amended. A copy of the report

of any such test shall be kept on file by the medical examiner. The filed report is not a public record under RSA 91-A. . . .

OCCUPATIONS & PROFESSIONS

Title: Occupations and Professions

Chapter: Chiropractic

RSA 316-A:27 Privileged Communications.

The confidential relations and communications between any person licensed under provisions of this chapter and such licensed person's patient are placed on the same basis as those provided by law between attorney and client, and, except as otherwise provided by law, no such doctor of chiropractic shall be required to disclose such privileged communications. Confidential relations and communications between a patient and any person working under the supervision of a doctor of chiropractic that are customary and necessary for diagnosis and treatment are privileged to the same extent as though those relations or communications were with such supervising doctor of chiropractic. This section shall not apply to disciplinary hearings or actions conducted under RSA 316-A:22, relative to the board of chiropractic examiners, RSA 326-B, relative to the board of nursing, RSA 151-A:11, relative to the board of examiners of nursing home administrators, or any other statutorily created medical occupational licensing board conducting disciplinary proceedings. This section shall not apply to hearings conducted pursuant to RSA 135-C:27-54.

Title: Occupations and Professions

Chapter: Pharmacists and Pharmacies Examinations and Licenses

RSA 318:47-c Prescriptions. –

I.

- (a) A prescription may be written, oral, or electronically transmitted. All oral prescriptions shall be immediately reduced to writing by the pharmacist or authorized technician receiving the oral prescription and shall indicate at least the name of the patient; the name, strength, and quantity of the drug prescribed; any directions specified by the prescriber; the name of the practitioner prescribing the medication; the date the prescription was ordered; a statement that the prescription was presented orally; and the name of the pharmacist who took the oral order. The pharmacist who dispensed an original prescription shall indicate on the face of the prescription at least the assigned prescription identification number; the date of dispensing; the quantity actually dispensed; and his or her name or initials. The prescription shall be filed numerically by the assigned identification number for a period not less than 4 years. Such prescription files shall be open to inspection by the pharmacy board and its agents.
- (b) A patient shall be entitled to receive a paper prescription instead of an oral or electronically transmitted prescription.

II.

- (a) A prescription that is electronically generated by a licensed prescriber, transmitted and received at the pharmacy by computer systems shall contain at least the name of the patient, the name, strength, and quantity of the drug prescribed, any directions specified by the prescriber, the name of the practitioner prescribing the medication, and shall be dated and signed by the prescribing practitioner on the day issued, and such signature shall be in an electronic format as defined in RSA 294-E:2, VIII.⁷
- (b) Electronic prescribing shall not interfere with a patient's freedom to choose a pharmacy.
- (c) Electronic prescribing software shall not use any means or permit any other person to use any means, including, but not limited to, advertising, instant messaging, and pop-up ads, to influence or attempt to influence, through economic incentives or otherwise, the prescribing decision of a prescribing practitioner at the point of care. Such means shall not be triggered by or in specific response to the

⁷ "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. RSA 294-E:2, VIII.

input, selection, or act of a prescribing practitioner or his or her agent in prescribing a certain pharmaceutical or directing a patient to a certain pharmacy.

- (d) Electronic prescribing software may show information regarding a payor's formulary, co-payment, or benefit plan as long as nothing is designed to preclude or make more difficult the act of a prescribing practitioner or patient selecting any particular pharmacy or pharmaceutical.
- (e) No person who has access to electronic prescription information solely by transmitting or facilitating the transmission of prescriptions between the licensed prescriber generating the prescription and the pharmacy receiving the prescription, or any intermediary, shall retain the prescription or any information it contains for longer than is mandated by federal or state law, after which time the prescription information shall be destroyed. No such person shall sell, use, or otherwise make available the prescription information for any purpose other than transmission of prescriptions, prescription refills, and clinical information displayed to the prescriber or pharmacist.

RSA 318:47-f Prescription Information to be Kept Confidential

Records relative to prescription information containing patient-identifiable and prescriber-identifiable data shall not be licensed, transferred, used, or sold by any pharmacy benefits manager, insurance company, electronic transmission intermediary, retail, mail order, or Internet pharmacy or other similar entity, for any commercial purpose, except for the limited purposes of pharmacy reimbursement; formulary compliance; care management; utilization review by a health care provider, the patient's insurance provider or the agent of either; health care research; or as otherwise provided by law. Commercial purpose includes, but is not limited to, advertising, marketing, promotion, or any activity that could be used to influence sales or market share of a pharmaceutical product, influence or evaluate the prescribing behavior of an individual health care professional, or evaluate the effectiveness of a professional pharmaceutical detailing sales force.

Nothing in this section shall prohibit the dispensing of prescription medications to a patient or to the patient's authorized representative; the transmission of prescription information between an authorized prescriber and a licensed pharmacy; THE TRANSFER OF PRESCRIPTION INFORMATION BETWEEN LICENSED PHARMACIES; the transfer of prescription records that may occur in the event a pharmacy ownership is changed or transferred; care management educational communications provided to a patient about the patient's health condition, adherence to a prescribed course of therapy or other information about the drug being dispensed, treatment options, or clinical trials. Nothing in this section shall prohibit the collection, use, transfer, or sale of patient and prescriber de-identified data by zip code, geographic region, or medical specialty for commercial purposes. In addition to other appropriate remedies under this chapter, a violation of this section is an unfair or deceptive act or practice within the meaning of RSA 358-A:2 [Regulation of Business Practices for Consumer Protection]. Any right or remedy set forth in RSA 358-A may be used to enforce the provisions of this section.

RSA 318:47-g Patient Assistance Program

- I. Following the close of each calendar year, any clearinghouse that provides information to New Hampshire residents about pharmaceutical manufacturers' patient assistance programs shall, to the extent that the clearinghouse collects such information, provide aggregate information to the commissioner of the department of health and human services relative to either:
 - (a) The number of people in New Hampshire who may qualify for any manufacturer or government program during the calendar year; or
 - (b) The number of patients served during the calendar year.
- II. An individual company may provide additional information about the individual company's patient assistance program; however, the commissioner shall combine all information from all sources, including individual companies and the clearinghouse, and shall report only aggregate information to the public.

RSA 318:29 Disciplinary Action

- I. The board may undertake disciplinary action against any licensee, permittee, registrant, or certificate holder:
 - (a) Upon its own initiative; or

(b) Upon written complaint of any person which alleges that a licensee, permittee, registrant, or certificate holder has committed misconduct under paragraph II or V of this section or any other applicable provision of this chapter or RSA 318-B, and which specifies the grounds therefor.

II. Misconduct sufficient to support disciplinary proceedings under this section shall include:

...

(g) Willful or repeated violation of any provision of this chapter, any substantive rule of the board, or any other federal, state, or local drug or pharmacy-related law, rule, or regulation.

III. [Repealed.]

IV. The board may take disciplinary action in any one or more of the following ways:

(a) By reprimand;

(b) By suspension, limitation or restriction of a license or probation for any period of time deemed reasonable by the board;

(c) By revocation of license;

(d) By assessing administrative fines in amounts established by the board;

(e) By requiring the person to participate in a program of continuing education in the area or areas in which he or she has been found deficient; or

(f) By requiring the licensee to submit to the care, observation or treatment of a physician, counseling service, health care facility, professional assistance program, or any comparable person or facility approved by the board.

V. The board may, after notice and hearing, suspend or revoke a pharmacy permit or registration for grounds which include, but are not limited to:

...

(c) Operation of the pharmacy in a manner that is in violation of federal, state, or local drug or pharmacy-related law, rule, or regulation.

(d) Conviction of the pharmacist-in-charge, an owner, a corporate officer, the corporation, or the pharmacy of a felony, a misdemeanor resulting from a violation of any federal, state, or local drug or pharmacy-related law, rule or regulation, or an act involving moral turpitude or gross immorality.

...

(j) The sale, rental, trade, transfer, or release of patient identifiable medical information for the purpose of sales or marketing of services or products without written authorization.

Title: Occupations and Professions

Chapter: Controlled Drug Act

RSA 318-B:12 Records to be Kept; Confidentiality

IV. Records relative to prescription information containing patient-identifiable and prescriber-identifiable data shall not be licensed, transferred, used, or sold by any pharmacy benefits manager, insurance company, electronic transmission intermediary, retail, mail order, or Internet pharmacy or other similar entity, for any commercial purpose, except for the limited purposes of pharmacy reimbursement; formulary compliance; care management; utilization review by a health care provider, the patient's insurance provider or the agent of either; health care research; or as otherwise required by law. Commercial purpose includes, but is not limited to, advertising, marketing, promotion, or any activity that could be used to influence sales or market share of a pharmaceutical product, influence or evaluate the prescribing behavior of an individual health care professional, or evaluate the effectiveness of a professional pharmaceutical detailing sales force. Nothing in this paragraph shall prohibit the dispensing of prescription medications to a patient or to the patient's authorized representative; the transmission of prescription information between an authorized prescriber and a licensed pharmacy; THE TRANSFER OF PRESCRIPTION INFORMATION BETWEEN LICENSED PHARMACIES; the transfer of prescription records that may occur in the event a pharmacy ownership is changed or transferred; care management educational communications provided to a patient about the patient's health condition, adherence to a prescribed course of therapy or other information about the drug being dispensed, treatment options, or clinical trials. Nothing in this section shall prohibit the collection, use, transfer, or sale of patient and prescriber de-identified data by zip code, geographic region, or medical specialty for commercial purposes. In addition to other appropriate remedies under this chapter, a violation of this

paragraph is an unfair or deceptive act or practice within the meaning of RSA 358-A:2. Any right or remedy set forth in RSA 358-A may be used to enforce the provisions of this paragraph.

RSA 318-B:12-a Treatment for Drug Abuse

Any minor 12 years of age or older may voluntarily submit himself to treatment for drug dependency as defined in RSA 318-B:1, IX,⁸ or any problem related to the use of drugs at any municipal health department, state institution or facility, public or private hospital or clinic, any licensed physician or advanced practice registered nurse practicing within such nurse practitioner's specialty, or other accredited state or local social welfare agency, without the consent of a parent, guardian, or any other person charged with the care or custody of said minor. Such parent or legal guardian shall not be liable for the payment for any treatment rendered pursuant to this section. The treating facility, agency or individual shall keep records on the treatment given to minors as provided under this section in the usual and customary manner, but no reports or records or information contained therein shall be discoverable by the state in any criminal prosecution. No such reports or records shall be used for other than rehabilitation, research, or statistical and medical purposes, except upon the written consent of the person examined or treated. Nothing contained herein shall be construed to mean that any minor of sound mind is legally incapable of consenting to medical treatment provided that such minor is of sufficient maturity to understand the nature of such treatment and the consequences thereof.

RSA 318-B:10 Professional Use of Narcotic Drugs

- VII. (a) The department of health and human services is hereby declared to be the state methadone authority.
- (b) The commissioner of the department of health and human services shall, on or before June 30, 2001, adopt and have in effect rules, pursuant to RSA 541-A, relative to detoxification and methadone maintenance programs as follows:
- ...
- (5) Mandatory records and reports to the department.
- ...
- (7) Confidentiality and disclosure of identifying information, records and reports.
-

Title: Occupations and Professions

Chapter: Nurse Practice Act

RSA 326-B:35 Privileged Communications Between Licensees and Their Clients

- I. Confidential communications between licensees and their clients are privileged in the same manner as those provided by law between physician and patient, and, except as otherwise provided by law, no licensee shall be required to disclose such privileged communications. Confidential communications between a client of a licensee and any person working under the supervision of such licensee to provide services that are customary and necessary for diagnosis and treatment are privileged to the same extent as would be the same communications between the supervising licensee and the client. . . .
- IV. This section shall also not apply to the release of blood samples and the results of laboratory tests for blood alcohol content taken from a person who is under investigation for driving a motor vehicle while such person was under the influence of intoxicating liquors or controlled drugs. The use and disclosure of such information shall be limited to the official criminal proceedings.

⁸ "Drug dependence" means a state of physical addiction or psychic dependence, or both, upon a drug following use of that drug upon a repeated periodic or continuous basis except:

- (a) Upon a morphine-type drug as an incident to current medical treatment of a demonstrable physical disorder, other than produced by the use of the drug itself, or
- (b) Upon amphetamine-type, ataractic, barbiturate-type, hallucinogenic or other stimulant and depressant drugs as an incident to current medical treatment of a demonstrable physical or psychological disorder, or both, other than produced by the drug itself.
- RSA 318-B:1, IX.

Title: Occupations and Professions
Chapter: Physical Therapy Practice Act
RSA 328-A:15 Rights of Consumers; Confidentiality

....

VI. Confidential communications between physical therapists and physical therapist assistants and their patients are placed on the same legal basis as those between physician and patient, and, except as otherwise provided by law, no licensee shall be required to disclose such privileged communications. Confidential communications between a patient of a licensee and any person working under the supervision of such licensee to provide services that are customary and necessary for diagnosis and treatment are privileged to the same extent as would be the same communications between the supervising licensee and the patient. The privilege for confidential communications shall not apply to investigations and disciplinary proceedings conducted by any agency regulating health occupations or professions in this state.

....

Title: Occupations and Professions
Chapter: Physician Assistants

RSA 328-D:6 Grounds for Discipline.

The board, after hearing, may take action against any person licensed under this chapter upon finding that the licensee: . . .

XI. Has failed to maintain adequate medical record documentation on diagnostic and therapeutic treatment provided or has unreasonably delayed medical record transfer, or violated RSA 332-I.

RSA 328-D:7 Disciplinary Action.

The board, upon making an affirmative finding under RSA 328-D:6, may take disciplinary action in any one or more of the following ways:

- I. Administer a public or private reprimand.
- II. Revoke, suspend, limit, or otherwise restrict a license.
- III. Require the physician assistant to submit to the care, counseling or treatment of a physician, counseling service, health care facility, professional assistance program, or any combination thereof which is acceptable to the board.
- IV. Place the physician assistant on probation.
- V. Require the physician assistant to participate in a program of continuing education in the area or areas in which he or she has been found deficient.
- VI. Assess administrative fines in amounts established by the board which shall not exceed \$3,000 per offense, or, in the case of continuing offenses, \$300 for each day that the violation continues, whichever is greater.

Title: Occupations and Professions
Chapter: Allied Health Professionals

RSA 328-F:28 Privileged Communications

The confidential communications between allied health licensees⁹ and their clients or patients are placed on the same legal basis as those between physician and patient, and, except as otherwise provided by law, no allied health licensee shall be required to disclose such privileged communications. Confidential communications between a patient or client and any person working under the supervision of such licensee that are customary and necessary for diagnosis and treatment are privileged to the same extent as though those communications were with the supervising licensee. This section shall not apply to investigations and hearings conducted by the governing boards or by any other agency regulating health professions in the state.

⁹ Note: "Allied Health Professionals" include: athletic trainers, occupational therapists, physical therapists, respiratory care practitioners, speech language pathologists, and recreational therapists.

Title: Occupations and Professions

Chapter: Physicians and Surgeons

RSA 329:26 Confidential Communications

The confidential relations and communications between a physician or surgeon licensed under provisions of this chapter and the patient of such physician or surgeon are placed on the same basis as those provided by law between attorney and client, and, except as otherwise provided by law, no such physician or surgeon shall be required to disclose such privileged communications. Confidential relations and communications between a patient and any person working under the supervision of a physician or surgeon that are customary and necessary for diagnosis and treatment are privileged to the same extent as though those relations or communications were with such supervising physician or surgeon. This section shall not apply to investigations and hearings conducted by the board of medicine under RSA 329, any other statutorily created health occupational licensing or certifying board conducting licensing, certifying, or disciplinary proceedings or hearings conducted pursuant to RSA 135-C:27-54 [mental health services, involuntary admission] or RSA 464-A [guardians and conservators]. This section shall also not apply to the release of blood or urine samples and the results of laboratory tests for drugs or blood alcohol content taken from a person for purposes of diagnosis and treatment in connection with the incident giving rise to the investigation for driving a motor vehicle while such person was under the influence of intoxicating liquors or controlled drugs. The use and disclosure of such information shall be limited to the official criminal proceedings.

329:17 Disciplinary Action; Remedial Proceedings.

....

VI. The board, after hearing, may take disciplinary action against any person licensed by it upon finding that the person:

...

(k) Has failed to maintain adequate medical record documentation on diagnostic and therapeutic treatment provided or has unreasonably delayed medical record transfer, or violated RSA 332-I.

....

VII. The board, upon making an affirmative finding under paragraph VI, may take disciplinary action in any one or more of the following ways:

- (a) By reprimand.
- (b) By suspension, limitation, or restriction of a license or probation for a period of time as determined reasonable by the board.
- (c) By revocation of license.
- (d) By requiring the person to submit to the care, treatment, or observation of a physician, counseling service, health care facility, professional assistance program, or any combination thereof which is acceptable to the board.
- (e) By requiring the person to participate in a program of continuing medical education in the area or areas in which the person has been found deficient.
- (f) By requiring the person to practice under the direction of a physician in a public institution, public or private health care program, or private practice for a period of time specified by the board.
- (g) By assessing administrative fines in amounts established by the board which shall not exceed \$3,000 per offense, or, in the case of continuing offenses, \$300 for each day that the violation continues, whichever is greater.

Title: Occupations and Professions

Chapter: Mental Health Practice

RSA 330-A:32 Privileged Communications

The confidential relations and communications between any person licensed under provisions of this chapter and such licensee's client are placed on the same basis as those provided by law between attorney and client, and nothing in this chapter shall be construed to require any such privileged communications to be disclosed, unless such disclosure is required by a court order. Confidential relations and communications between a client and any person working under the supervision of a person licensed under this chapter

which are necessary and customary for diagnosis and treatment are privileged to the same extent as though those relations or communications were with the supervising person licensed under this chapter, unless such disclosure is required by a court order. This section shall not apply to hearings conducted pursuant to RSA 135-C:27-54 [mental health services, involuntary admission] or RSA 464-A [guardians and conservators].

Title: Occupations and Professions

Chapter: Alcohol and Other Drug Use Professionals

RSA 330-C:26 Privileged Communications Between Licensees and Certificate Holders and Their Clients.

A person licensed or certified under this chapter or an employee of such person, shall not disclose any confidential information that the licensee, certificate holder, or employee may have acquired while performing substance use counseling services for a patient unless in accordance with the federal regulation regarding the Confidentiality of Alcohol and Drug Abuse Patient Records pursuant to 42 C.F.R. section 2.1 et seq.

INSURANCE

Title: Insurance

Chapter: Portability, Availability, and Renewability of Health Coverage

RSA 420-G:11-a Development of a Comprehensive Health Care Information System

- I. The department and the department of health and human services shall enter into a memorandum of understanding for collaboration in the development of a comprehensive health care information system. The memorandum of understanding shall include a description of the data sets that will be included in the comprehensive health care information system, the criteria and procedures for the development of limited use data sets, the criteria and procedures to ensure that Health Insurance Portability and Accountability Act of 1996 (HIPAA) compliant limited use data sets are accessible, and a proposed time frame for the creation of a comprehensive health care information system. To the extent allowed by HIPAA, the data shall be available as a resource for insurers, employers, providers, purchasers of health care, and state agencies to continuously review health care utilization, expenditures, and performance in New Hampshire and to enhance the ability of New Hampshire consumers and employers to make informed and cost-effective health care choices. In presenting data for public access, comparative considerations shall be made regarding geography, demographics, general economic factors, and institutional size. Notwithstanding HIPAA or any other provision of law, the comprehensive health care information system shall not include or disclose any data that contains direct personal identifiers. For the purposes of this section, "direct personal identifiers" include information relating to an individual that contains primary or obvious identifiers, such as the individual's name, street address, e-mail address, telephone number, and social security number.
- II. The commissioner of the department of health and human services, with the approval of the commissioner of the insurance department, shall adopt rules, under RSA 541-A, as may be necessary to provide for the release of claims data from the comprehensive health care information system (CHIS).

Title: Insurance

Chapter: Managed Care Law

RSA 420-J:10, Confidentiality of Insurer Records

- I. Data or information pertaining to the diagnosis, treatment, or health of a covered person obtained from the person or from a provider by a health carrier is confidential and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this chapter and as allowed by any applicable state or federal law; or upon the express consent of the covered person; or pursuant to statute or court order for the production of evidence or the discovery thereof; or in the event of a claim or litigation between the covered person and the health carrier where the data or information is pertinent, regardless of whether the information is in the form of paper, is preserved on microfilm, or is stored in a computer retrievable form. . . .

III. A health carrier shall be entitled to claim any statutory privileges against disclosure that the provider who furnished the information to the health carrier is entitled to claim.

RSA 420-J:14, Insurance, Managed Care Law, Penalties

Any health carrier or other organization violating any of the provisions of this chapter may be subject to an administrative fine not to exceed \$2,500 per violation. The commissioner may also suspend or revoke the certificate of authority or license of a health carrier or other organization for any violation of this chapter or the failure to comply with an order of the commissioner issued under this chapter.

GUARDIANS & CONSERVATORS

Title: Guardians and Conservators

Chapter: Guardians and Conservators

RSA 464-A:25, General Powers and Duties of Guardian of the Person

I. A guardian of an incapacitated person has the following powers and duties, except as modified by order of the court:

. . . .

(d) A guardian of the person may give any necessary consent or approval to enable the ward to receive medical or other professional care, counsel, treatment, or service or may withhold consent for a specific treatment, provided, that the court has previously authorized the guardian to have this authority, which authority shall be reviewed by the court as part of its review of the guardian's annual report. No guardian may give consent for psychosurgery, electro-convulsive therapy, sterilization, or experimental treatment of any kind unless the procedure is first approved by order of the probate court.

(e) If a ward has previously executed a valid living will, under RSA 137-J, a guardian shall be bound by the terms of such document, provided that the court may hold a hearing to interpret any ambiguity in such document. If a ward has previously executed a valid durable power of attorney for health care, RSA 137-J shall apply.

. . . .

Title: Proceedings in Special Cases

Chapter: Administrative Procedure Act

RSA 541-A:22 Validity of Rules. –

. . . .

III. An agency shall not by rule: . . . (d) Provide for non-consensual inspections of private property, unless the statute enforced or administered by the agency specifically grants inspection authority.

. . . .

Title: Probate Courts and Decedents' Estates

Chapter: Rights of Surviving Spouse

RSA 560:22 Medical Records of Deceased Spouse

Notwithstanding any provision of law to the contrary and upon proof of the requestor's identity as the spouse of the deceased, the surviving spouse shall have access to the information contained in the medical records of his or her deceased spouse where there is no estate administration, unless the medical records indicate that the deceased spouse has indicated that the surviving spouse not have access to those records. A health care provider, as defined in RSA 332-I:1, II(b), shall not be required to initiate a conversation with a patient on the subject of access to the information in a medical record by a surviving spouse. [As of June 14, 2010, awaiting signature of the Governor on HB 1398. If signed, this paragraph is effective January 1, 2011.]

Title: Proceedings in Criminal Cases

Chapter: Office of the Chief Medical Examiner

RSA 611-B:21 Autopsy and Investigative Reports. –

I. The medical examiner shall charge a reasonable fee for each autopsy report made available upon request. Such fee shall be credited to the medico-legal investigation fund established under RSA 611-B:28.

- II. Homicide autopsy reports shall be made available only to the department of justice unless a written release is provided by the department of justice.
- III. Except as provided otherwise by law and in rules adopted by the chief medical examiner pursuant to RSA 541-A, autopsy reports, investigative reports, and supporting documentation are confidential medical records and, as such, are exempt from the provisions of RSA 91-A. Copies of such documents may be made available to the next of kin, a law enforcement, prosecutorial, or other governmental agency involved in the investigation of the death, the decedent's treating physician, and a medical or scientific body or university or similar organization for educational or research purposes. Autopsy reports, investigative reports, and supporting documents shall not otherwise be released without the authorization of next of kin.
- IV. For any autopsy conducted pursuant to RSA 126-A:5, V, a report of any autopsy requested by the commissioner of health and human services shall be provided to the commissioner's quality assurance program and any autopsy findings, test results, reports, or any other information pertaining to the autopsy shall be treated by the department of health and human services in accordance with the quality assurance program under RSA 126-A:4, IV. The copy of the report provided to the department under this section shall be privileged and confidential as provided in RSA 126-A:4, IV(b), except that the medical examiner may forward a copy of the report to the department of justice if the medical examiner finds that the cause of death may be attributable to criminal conduct, or may otherwise disclose the report in accordance with this statute.