

SB 290-FN - VERSION ADOPTED BY BOTH BODIES

03/14/2019 0834s

5Jun2019... 2331h

06/27/2019 2626CofC

06/27/2019 2667EBA

2019 SESSION

19-0893

01/03

SENATE BILL 290-FN

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

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

COMMITTEE: Health and Human Services

AMENDED ANALYSIS

This bill makes various changes to the New Hampshire granite advantage health care program, including:

- I. Clarifying which beneficiaries may be subject to the work and community engagement requirement.

- II. Adding exemptions for certain persons from the community engagement requirement.

- III. Adding circumstances for the elimination of the community engagement requirement.

Explanation: Matter added to current law appears in bold italics.

Matter removed from current law appears [in brackets and struckthrough.]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

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

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

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

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

- (1) Unsubsidized employment including by nonprofit organizations.
- (2) Subsidized private sector employment.
- (3) Subsidized public sector employment.
- (4) On-the-job training.
- (5) Job skills training related to employment, including credit hours earned from an accredited college or university in New Hampshire. Academic credit hours shall be credited against this requirement on an hourly basis.
- (6) Job search and job readiness assistance, including, but not limited to, persons receiving unemployment benefits and other job training related services, such as job training workshops and time spent with employment counselors, offered by the department of employment security. Job search and job readiness assistance under this section shall be credited against this requirement on an hourly basis.
- (7) Vocational educational training not to exceed 12 months with respect to any individual.
- (8) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency.

(9) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate.

(10) Community service or public service.

(11) [Caregiver services for a nondependent relative or other person with a disabling medical or developmental condition.]

(12) Participation in substance use disorder treatment or recovery activities and/or mental health treatment.

(b) If an individual in a family receiving benefits under this paragraph fails to comply with the work or community engagement activities required in accordance with this paragraph, the assistance shall be [terminated] suspended. The commissioner shall adopt rules under RSA 541-A to determine good cause and other exceptions to termination. Following approval by the joint health care reform oversight committee, pursuant to RSA 161:11, to initiate rulemaking, any rules proposed under this subparagraph shall be submitted to the fiscal committee of the general court, which shall review the rules prior to submission to the joint legislative committee on administrative rules and make recommendations to the commissioner regarding the rules. An individual may apply for good cause exemptions which shall include, at a minimum, the following verified circumstances:

(1) The beneficiary experiences the birth or death of a family member living with the beneficiary.

(2) The beneficiary experiences severe inclement weather, including a natural disaster, and therefore was unable to meet the requirement.

(3) The beneficiary has a family emergency or other life-changing event such as divorce.

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

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

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

(d) This paragraph shall not apply to:

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

(2) A person participating in a state certified drug court program, as certified by the administrative office of the superior court.

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

(4) A custodial parent or caretaker of a dependent child [under 6 years of age] through 12 years of age or a child with developmental disabilities who is residing with the parent or caretaker; provided that the exemption shall only apply to one parent or caretaker in the case of a 2-parent household where responsibility for the child the exemption is based on is shared by the 2 parents or caretakers.

(5) Pregnant women.

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

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

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

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

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

- (1) Enrollment, suspension, and disenrollment procedures in the program.
- (2) Verification of compliance with community engagement activities.
- (3) Verification of exemptions from participation.
- (4) Opportunity to cure and re-activation following noncompliance, including not being barred from re-enrollment.
- (5) Good cause exemptions.
- (6) Education and training of enrollees.
- (7) Annual certification of medical frailty pursuant to 42 C.F.R. section 440.315(f), including proof and duration of such condition on a form supplied by the department.

2 New Paragraphs; New Hampshire Granite Advantage Health Care Program. Amend RSA 126-AA:2 by inserting after paragraph VIII the following new paragraphs:

IX. The commissioner shall, as expeditiously as possible, submit to the Centers for Medicare and MEDICAID Services an amendment to the waiver for approval of a revised waiver of retroactive eligibility permitting coverage for the 45-day period immediately preceding the determination of eligibility for all persons insured in the program.

X. The commissioner shall waive the application of the work and community engagement requirement in subparagraph III(a) or the suspension from coverage for noncompliance for any period of time up to but not after July 1, 2021 upon a finding of one or more of the following circumstances that impact a substantial number of program members who are mandatory for the requirement:

- (a) The inability to communicate verbally and in writing and directly counsel all members who are mandatory for the requirement and not already exempted or are in compliance in accordance with the rules of the work and community engagement requirement adopted under 541-A.
- (b) The unavailability of qualifying activities in any region of the state that may result in a disproportionate impact upon program members located elsewhere.
- (c) The impact of seasonal employment opportunities on the ability of members to achieve the minimum hours for qualifying activities.
- (d) The inability to achieve the minimum hours of qualifying activities after taking into account all applicable exemptions despite good faith efforts to comply.
- (e) The unavailability of transportation and other supports for members who are not eligible for assistance through granite workforce.
- (f) Other unforeseen circumstances that impact the administration and verification of the program and that more likely than not would cause members to be suspended from the program.

XI. The commissioner shall notify the governor, the president of the senate, and the speaker of the house of representatives in writing, no later than 7 days after making a finding under paragraph X, with a detailed explanation as to the basis of the findings, the steps the department can and is taking to address the circumstances that gave rise to the findings, and any recommendations regarding how the suspension of the requirement may be lifted and the compliance provisions of the program resumed. The commissioner may submit an amendment to the program waiver (CMS # 11-W-00298/1) to incorporate the authority to waive the suspension of coverage consistent with this provision, to the extent required by the Centers for Medicare and MEDICAID Services.

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

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

- (1) Review the program's financial metrics.
- (2) Review the program's product offerings.
- (3) Review the program's impact on insurance premiums for individuals and small businesses.
- (4) Make recommendations for future program modifications, including, but not limited to whether the program is the most cost-effective model for the long term versus a return to private market managed care.

(5) Evaluate non-general fund funding options for longer term continuation of the program, including options to accept funding from the federal government allowing a self-administered program.

(6) Review up-to-date information regarding changes in the level of uncompensated care through shared information from the department, the department of revenue administration, the insurance department, and provider organizations and the program's impact on insurance premium tax revenues and MEDICAID enhancement tax revenue.

(7) Review the granite workforce pilot program.

(8) Evaluate reimbursement rates to determine if they are sufficient to ensure access to and provider capacity for all behavioral health services.

(9) Review the number of people who are found ineligible or who are dropped from the rolls of the program because of the work requirement and determine whether the age of beneficiaries subject to the requirement should be changed. The commission shall issue any recommendation for change by December 1, 2019.

(10) Review the reasons beneficiaries are found ineligible or are dropped from the program and determine if the number of required hours should be changed. The

commission shall issue any recommendation for change by December 1, 2019.

(11) Review the program's provider reimbursement rates and overall financing structure to ensure it is able to provide a stable provider network and sustainable funding mechanism that serves patients, communities, and the state of New Hampshire.

(b) Any funding solutions recommended by the commission shall not include the use of new general funds.

(c) The commission shall solicit information from any person or entity the commission deems relevant to its study.

(d) The commission shall make a recommendation on or by [February] October 1, 2019 to the commissioner concerning recommended monitoring and evaluation requirements for work and community engagement requirements, including a draft of proposed metrics for quarterly and annual reporting, including suggested costs and benefits evaluations.

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

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

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

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

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

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

LBAO

19-0893

Revised 2/15/19

SB 290-FN- FISCAL NOTE

AS INTRODUCED

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

FISCAL IMPACT: State County Local None

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

METHODOLOGY:

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

With respect to (1), the bill eliminates the prohibition (currently found in RSA 126-AA:3, I), on general funds to support the NHGAHP. Section 7 of the bill further provides that, in the event of a shortfall in funding sources for the nonfederal share of costs, general funds in the amount of the shortfall shall be transferred to the program. As of February 2019, cost projections provided by the Department of Health and Human Services have assumed existing revenue sources will be sufficient to cover the nonfederal share, however the same projections assume costs will decline significantly as a result of the switch (effective January 1, 2019) to managed care coverage for the population served by the program. Total costs in FY 2018, during which participants received coverage through insurance policies purchased on the federally-facilitated exchange, were \$492.2 million, of which the nonfederal share was \$28.8 million. In FY 2020, the first full year of managed care coverage, the Department expects total costs to be \$354.3 million, of which the nonfederal share is projected to be \$30.1 million. In January 2020 and beyond, the nonfederal share will be 10 percent of total costs, as the federal reimbursement rate will decline to 90 percent at that time, and will remain there permanently under current federal law. Should program costs be significantly higher than those projected by the Department, existing revenue sources may be insufficient to cover the nonfederal share.

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

- Specifying an eligibility age range of 19-49;
- Reducing the monthly work/community engagement requirement from 100 to 80 hours;
- Allowing self-employment to count toward the requirement;
- Allowing additional hours worked in one month to be carried forward into the next month;
- Modifying certain qualifying community engagement activities;
- Modifying certain exemption categories and requirements, including increasing from 6 to 16 the age limit of the child under the parent caretaker exemption; and
- Eliminating the requirement as a condition for eligibility for the program if certain circumstances are met. These circumstances include:
 - 500 or more beneficiaries are suspended or disenrolled from the program as a result of noncompliance with the requirement;

- Providers report an increase in uncompensated care as a result of participants being suspended or disenrolled due to noncompliance with the requirement; or
- The commission established by RSA 126-AA:4 votes to eliminate the requirement following a projection by the Department's commissioner that the number of participants suspended or disenrolled as a result of noncompliance with the requirement exceeds 500.

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

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

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

AGENCIES CONTACTED:

Department of Health and Human Services and Department of Employment Security