

HB 726-FN - AS INTRODUCED

2019 SESSION

19-0113

01/04

HOUSE BILL            **726-FN**

AN ACT                relative to the secure psychiatric unit and making an appropriation therefor.

SPONSORS:            Rep. Cushing, Rock. 21; Rep. P. Schmidt, Straf. 19; Rep. Rice, Hills. 37; Rep. Knirk, Carr. 3; Rep. Danielson, Hills. 7; Rep. Tanner, Sull. 9; Rep. Graham, Hills. 7; Rep. McMahon, Rock. 7; Sen. Hennessey, Dist 5; Sen. Sherman, Dist 24; Sen. Levesque, Dist 12

COMMITTEE:          Criminal Justice and Public Safety

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ANALYSIS

This bill changes the name of the secure psychiatric unit to the New Hampshire secure psychiatric hospital and transfers it to the department of health and human services. This bill requires the commissioner of the department of health and human to oversee the development of plans and the construction of a new secure multi-purpose forensic psychiatric hospital.

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                             Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Nineteen*

AN ACT relative to the secure psychiatric unit and making an appropriation therefor.

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

1 1 New Paragraph; Transfer of Secure Psychiatric Unit; Duties of the Commissioner. Amend  
2 RSA 126-A:5 by inserting after paragraph XXXII the following new paragraph:

3 XXXIII. With the exception of the residential treatment unit, the commissioner shall be the  
4 principal administrator of the New Hampshire secure psychiatric hospital established pursuant to  
5 RSA 622:41. The commissioner shall establish the treatment standards for the hospital after  
6 consultation with the commissioner of the department of corrections. The commissioner shall:

7 (a) Administer the hospital;

8 (b) Consult with the commissioner of the department of corrections regarding transfers  
9 to the hospital;

10 (c) Transfer persons in his or her custody to the unit if treatment is needed for mental  
11 disturbance;

12 (d) Discharge persons pursuant to RSA 622:48;

13 (e) Review, at least annually, the mental health programs with the commissioner of the  
14 department of corrections to determine what policies, standards, or practices should be revised to  
15 improve treatment;

16 (f) Appoint qualified persons to positions established in RSA 622:43, I;

17 (g) Administer the hospital in such a manner as to meet accreditation standards and to  
18 seek accreditation; and

19 (h) Perform other tasks necessary to carry out the administration of RSA 622:40-48.

20 2 Secure Psychiatric Unit; Commissioner Change. Amend RSA 622:40, I to read as follows:

21 I. "Commissioner" means the commissioner of the department of [~~corrections under RSA 21-~~  
22 ~~H:2~~] **health and human services**.

23 3 Secure Psychiatric Unit; Name Change. RSA 622:40, IV is repealed and reenacted to read as  
24 follows:

25 IV. "Hospital" means the New Hampshire secure psychiatric hospital.

26 4 New Section; Memorandum of Understanding. Amend RSA 622 by inserting after section 42  
27 the following new section:

28 622:42-a Memorandum of Understanding. The commissioner and the commissioner of the  
29 department of corrections shall enter into a memorandum of understanding to cooperate in the  
30 operation of the hospital until a new secure psychiatric hospital is built. The commissioners shall  
31 cooperate in the effectuation of the transfer and in meeting the needs of the persons committed to

1 the hospital. The memorandum shall stipulate that the commissioner of the department of  
2 corrections shall be responsible for the operation of the residential treatment unit.

3 5 Secure Psychiatric Unit; Rulemaking. Amend RSA 622:44, I to read as follows:

4 I. The commissioner, *in consultation with the commissioner of the department of*  
5 *corrections*, shall adopt rules, pursuant to RSA 541-A, which provide for effective treatment for  
6 persons found to be dangerous to themselves or others and committed or transferred pursuant to  
7 RSA 622:45 to an environment which provides for safety and security for the public, the staff, and  
8 those committed.

9 6 Secure Psychiatric Unit; Commitment. Amend RSA 622:45, II and III to read as follows:

10 II. Except upon an order of court under subparagraph I(a) or in an emergency, no  
11 admission or transfer to the ~~[unit]~~ *hospital* shall occur without the prior approval of the  
12 commissioner and the commissioner of the department of ~~[health and human services]~~ *corrections*,  
13 or their designees. In such instances, if the person to be admitted or transferred objects to the  
14 transfer, the person may request a hearing or review of the decision by the commissioner of the  
15 department of ~~[health and human services]~~ *corrections* or designee in accordance with rules  
16 adopted pursuant to RSA 541-A. The review or hearing may occur following the admission or  
17 transfer where immediate admission or transfer has been determined necessary to protect the  
18 person or others. If the commissioner of the department of ~~[health and human services]~~  
19 *corrections* upholds the objection of a person to be transferred, the transfer shall not be made. If  
20 the commissioner of the department of ~~[health and human services]~~ *corrections* upholds the  
21 objection of a person already transferred, the person shall promptly be delivered to a receiving  
22 facility named by the commissioner ~~[of the department of health and human services]~~.

23 III. Except where ordered by a court of competent jurisdiction, if the commissioner objects  
24 to a proposed admission or transfer approved by the commissioner of the department of ~~[health and~~  
25 ~~human services]~~ *corrections*, the commissioners may agree to have the disagreement resolved by a  
26 mutually acceptable third party.

27 7 Secure Psychiatric Unit; Treatment Standards. Amend RSA 622:46, I to read as follows:

28 I. The commissioner shall establish clinical and treatment standards for the operation of  
29 the ~~[unit]~~ *hospital* in consultation with the commissioner of the department of ~~[health and human~~  
30 ~~services]~~ *corrections*. The commissioners shall review, at least biennially, any interagency  
31 agreements, *memoranda of understanding*, and the mental health program at the ~~[unit]~~  
32 *hospital* to determine which provisions, standards, or practices should be revised to improve  
33 treatment. The commissioner shall submit a report of its findings in each even-numbered year,  
34 commencing on or before November 1, 2020, to the speaker of the house of representatives, the  
35 senate president, the governor, and the chairpersons of the house committees having jurisdiction  
36 over criminal justice issues and health and human services issues, and the chairpersons of the  
37 senate committees having jurisdiction over judicial issues and health and human services issues.

38 8 Secure Psychiatric Unit; Discharge. Amend RSA 622:48, I(b) and (c) to read as follows:

1 (b) The commissioner or designee may transfer to the state mental health services  
2 system, or the state developmental services system only if the person was admitted or transferred to  
3 the ~~[unit]~~ **hospital** pursuant to RSA 171-B, any person admitted or transferred to the  
4 ~~[unit]~~**hospital**, pursuant to RSA 622:45, I, upon a determination that the person no longer presents  
5 a serious likelihood of danger to self or others if such person were to be confined within a receiving  
6 facility in the state mental health services system or the state developmental services delivery  
7 system. If the commissioner of ~~[health and human services]~~ **corrections** objects to a proposed  
8 transfer, the commissioners may agree to have the disagreement resolved by a mutually acceptable  
9 third party, or if none is acceptable, by the attorney general.

10 (c) The commissioner or designee may transfer to the state mental health services  
11 system any person committed to the ~~[unit]~~ **hospital** under RSA 651:9-a upon a determination by a  
12 physician that the person presents a potentially serious likelihood of danger to self or others as a  
13 result of mental illness, but the person no longer requires the degree of safety and security provided  
14 by the ~~[unit]~~**hospital**. No transfer may occur under this subparagraph without the prior approval  
15 of the commissioner of the department of ~~[health and human services]~~ **corrections** and  
16 administrative due process pursuant to rules adopted by the commissioner under RSA 541-A. If the  
17 commissioner of ~~[health and human services]~~ **corrections** objects to a proposed transfer, the  
18 commissioners may agree to have the disagreement resolved by a mutually acceptable third party.  
19 No transfer may occur under this subparagraph without the prior approval of the superior court.  
20 Any person transferred under this subparagraph shall, for purposes of treatment, be under the care  
21 and custody of the commissioner of health and human services but shall for all other purposes,  
22 including, but not limited to, discharge, granting of privileges, parole, and recommittal, remain  
23 under the jurisdiction of the commissioner of the department of corrections and the superior court.

24 9 References Amended; Secure Psychiatric Unit. Replace “Secure Psychiatric Unit” with “New  
25 Hampshire Secure Psychiatric Hospital” in the following RSA sections: RSA 98-A:6-b; 106-L:5, XXI;  
26 126-A:34, I(a); 135:17, I(a); 135:17-a, II; 135:17-c, II; 135-C:43, II; 135-C:45, I; 135-E:11, II; 171-A:8,  
27 V(a); 171-A:8-a, II; 171-B:12, III; 171-B:14; 171-B:15, I; 171-B:16; 188-F:26, XVI; 622:31-a, III(g);  
28 subdivision heading preceding RSA 622:40; 622:41; 632-A:2, I(n)(1); 632-A:3, IV(a)(1); 632-A:4,  
29 III(a)(1); 651:8-b, I and IV; 651:9-a; 651:10; 651:11; 651:11-a, I; 651-C:2, I; and 651:11-a, IV(c).

30 10 References Amended. Replace “unit” with “hospital” in the following RSA sections: RSA  
31 622:41; 622:43, I; 622:44, II; 622:45; 622:46, I; 622:47; 622:48; 622:49; 622:50; and 622:51.

32 11 Repeal. The following are repealed:

33 I. RSA 21-H:8, XI-a, relative to the commissioner of corrections as the principal  
34 administrator of the secure psychiatric unit.

35 II. RSA 21-H:13, II-a, relative to rulemaking for the administration of the secure  
36 psychiatric unit.

37 III. RSA 21-H:14-a, III(d), relative to the secure psychiatric unit.

38 12 New Forensic Psychiatric Hospital. The commissioner of the department of health and

1 human services shall, in consultation with the advisory council established in section 13 of this act,  
2 oversee the development of plans and the construction of a new secure multi-purpose forensic  
3 psychiatric hospital. The plan shall be completed by June 30, 2020.

4 13 New Section; Secure Psychiatric Unit; Advisory Council. Amend RSA 622 by inserting after  
5 section 52 the following new section:

6 622:52-a Forensic Psychiatric Hospital Advisory Council.

7 I. There is hereby established the forensic hospital advisory council to assist the  
8 commissioner of the department of health and human services with the development of a plan and  
9 construction of a new secure multi-purpose forensic psychiatric hospital. The members of the  
10 advisory council shall be:

11 (a) Three members of the house of representatives, appointed by the speaker of the  
12 house of representatives.

13 (b) One member of the senate, appointed by the senate president.

14 (c) The commissioner of the department of health and human services, or designee.

15 (d) The commissioner of the department of corrections, or designee.

16 (e) The attorney general, or designee.

17 (f) The chief operating officer of the New Hampshire hospital, or designee.

18 (g) One member representing New Hampshire Legal Assistance, appointed by that  
19 organization.

20 (h) One member of the American Civil Liberties Union of New Hampshire, appointed by  
21 that organization.

22 (i) A representative of the National Alliance on Mental Illness New Hampshire,  
23 appointed by such agency.

24 (j) A representative of the New Hampshire Psychiatric Society, appointed by the society.

25 (k) A representative of the Community Support Network, Inc., appointed by such  
26 organization.

27 (l) A representative of Advocates for Ethical Mental Health Treatment, appointed by  
28 such organization.

29 (m) A representative of the New Hampshire Community Behavioral Health association,  
30 appointed by such organization.

31 (n) Two members of the public, appointed by the governor.

32 II. The advisory council shall assist the commissioner of the department of health and  
33 human services in the development of plans for the construction of a new secure multi-purpose  
34 forensic psychiatric hospital.

35 III. Legislative members shall receive mileage at the legislative rate while attending to the  
36 duties of the advisory council.

37 IV. The members of the advisory council shall elect a chairperson from among the  
38 members. The first meeting of the commission shall be called by the first-named house member.

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1 The first meeting of the commission shall be held within 30 days of the effective date of this section.  
2 Nine members of the commission shall constitute a quorum.

3 V. The advisory council shall submit an annual report on November 1 of each year,  
4 commencing November 1, 2019, and a final report on November 1, 2022, detailing its activities and  
5 findings, together with any recommendations for proposed legislation, to the president of the  
6 senate, the speaker of the house of representatives, and the governor.

7 14 Appropriation. The sum of \$1 for the fiscal year ending June 30, 2020 is hereby  
8 appropriated to the commissioner of the department of health and human services for the purposes  
9 of section 12 of this act. The governor is authorized to draw a warrant for said sum out of any  
10 money in the treasury not otherwise appropriated.

11 15 Effective Date.

12 I. Sections 1-11 shall take effect July 1, 2019.

13 II. The remainder of this act shall take effect 60 days after its passage.

**HB 726-FN- FISCAL NOTE**  
 AS INTRODUCED

AN ACT relative to the secure psychiatric unit and making an appropriation therefor.

**FISCAL IMPACT:**     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
<b>Appropriation</b>	\$1	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**METHODOLOGY:**

This bill amends statute to transfer and rename the Secure Psychiatric Unit (SPU) from the Department of Corrections to the Department of Health and Human Services and provides an appropriation in FY 2020 to the Department of Health and Human Services to oversee plans and construct a new forensic psychiatric hospital. The bill also establishes a forensic hospital advisory council to assist the DHHS Commissioner with development and construction of a secure multipurpose psychiatric hospital as well as submit required reports.

The Department of Corrections states it cannot estimate the fiscal impact to expenditures as the bill does not address individuals the Department would still be required to house in the SPU under RSA 623:1, which pertains to individuals transferred from other places of detention for the purpose of providing medical examinations or other treatment. The Department notes it will still need financial resources to construct a treatment facility that safely provides for treatment of adjudicated men and women who are a danger to themselves or others due to psychiatric illness if it retains responsibility for these individuals.

The Department of Health Human Services states there will be an indeterminable increase to expenditures, but it is unable to estimate costs without issuing a request for proposals.

The bill contains a general fund appropriation of \$1 in FY 2020 for the purposes of the act.

**AGENCIES CONTACTED:**

Department of Corrections and Department of Health and Human Services