

CHAPTER 288  
SB 406 – FINAL VERSION

03/28/12 1418s  
03/28/12 1472s  
16May2012... 1980h  
16May2012... 2280h  
06/06/12 2462CofC  
06/06/12 2497EBA

2012 SESSION

12-3067  
10/09

SENATE BILL **406**

AN ACT relative to establishing an early offer alternative in medical injury claims, relative to confidentiality of police personnel files, and establishing a committee to study the referral of patients for use of implantable medical devices.

SPONSORS: Sen. Bradley, Dist 3; Sen. Luther, Dist 12; Sen. Forsythe, Dist 4; Sen. Bragdon, Dist 11; Sen. Gallus, Dist 1; Sen. Barnes, Jr., Dist 17; Sen. De Blois, Dist 18; Sen. Lambert, Dist 13; Sen. Sanborn, Dist 7; Rep. Bettencourt, Rock 4; Rep. Silva, Hills 26; Rep. Kurk, Hills 7; Rep. Reagan, Rock 1; Rep. Tamburello, Rock 3; Rep. O'Brien, Hills 4

COMMITTEE: Judiciary

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AMENDED ANALYSIS

This bill establishes a system of early offers for medical injury claims as an alternative to litigation or screening panels under RSA 519-B.

This bill clarifies the confidentiality provisions regarding use of police personnel files as evidence in criminal cases.

This bill also establishes a committee to study the issue of health care practitioners making referrals of patients for the use of implantable medical devices when the practitioner has an ownership or other financial interest in the supplier of the implantable medical device.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twelve*

AN ACT                    relative to establishing an early offer alternative in medical injury claims, relative to confidentiality of police personnel files, and establishing a committee to study the referral of patients for use of implantable medical devices.

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

1            288:1 Findings and Purpose.

2            I. The general court finds that the legal system for resolving claims for medical injury  
3 requires reform to encourage the fast and efficient payment of meritorious claims. Under the  
4 current system individuals with meritorious claims are either unable to litigate their claims or wait  
5 for an uncertain recovery while medical providers are often deprived of a fair and reasonable  
6 opportunity to address and resolve claims in a timely manner. In addition, the general public is  
7 adversely affected because significant resources are spent on litigation costs and defensive medicine  
8 or on coverage for those unable to litigate claims. The result is a system that has higher than  
9 necessary health care costs, higher liability insurance premiums, and higher health insurance  
10 premiums.

11            II. These overarching conclusions are based upon the following factual findings:

12            (a) Inconsistent results: Recent data presented to the general court by the  
13 New Hampshire insurance department pursuant to RSA 519-B:14, II shows that the current medical  
14 injury liability system produces inconsistent results with average indemnity payments on similar  
15 claims varying substantially from year to year.

16            (b) Long waits for the parties: The testimony before the general court demonstrates that  
17 medical injury cases are highly complex, requiring specialized medical evidence and testimony. This  
18 complex medical evidence and testimony requires additional discovery and case preparation that  
19 results in a particularly lengthy process for resolving cases.

20            (c) Costly litigation: Recent data presented to the general court by the New Hampshire  
21 insurance department pursuant to RSA 519-B:14, II shows that the aggregate administrative and  
22 litigation costs for all claims for medical injury nearly exceed the amount that claimants receive for  
23 their injuries.

24            (d) Defensive medicine: Data from the American Medical Association, Gallup, Harvard

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1 School of Public Health, Health Affairs Magazine, and other reliable sources estimate that defensive  
2 medicine, practiced in response to the current medical injury system, increases the annual health  
3 care expenditures in the United States by billions of dollars. These organizations consider defensive  
4 medicine to be diagnostic tests or treatments that have little or no expected benefit to the patient,  
5 ordered primarily as a means to guard against claims of liability.

6 III. The legislature further finds that the slow, inconsistent, and costly nature of the existing  
7 medical injury litigation system has a detrimental impact upon injured claimants, whose medical  
8 and economic needs require rapid resolution of their claims with less uncertainty, risk, and costs, as  
9 well as upon medical providers whose provision of patient care is disrupted by lengthy and costly  
10 litigation of medical injury claims.

11 IV. Therefore, the important governmental objective of this act is to supplement the existing  
12 medical injury compensation system with an alternative system that will provide fast and certain  
13 results for those who use it, while preserving access to the court system and medical injury screening  
14 panels for parties that choose to resolve claims under the current system. The general court further  
15 finds that the early offer process set forth in RSA 519-C as inserted by this act to resolve medical  
16 injury claims is substantially related to this important governmental objective.

17 V. The general court further finds that medical injury claimants will benefit from the early  
18 offer process set forth in RSA 519-C as inserted by this act as it provides the option of a simple, clear  
19 process defined in statute that provides prompt and sure recovery of all economic losses associated  
20 with meritorious claims settled pursuant to RSA 519-C. The early offer process, if elected, would be  
21 more efficient and cost effective in many cases than the high risk, high cost traditional litigation  
22 process.

23 VI. In exchange for the benefits of the early offer process established in this act, the  
24 claimant agrees to participate fully in the process, which may affect the damages the claimant can  
25 recover, the fees the claimant's attorney may receive, and other important rights or claims that may  
26 exist under the existing system.

27 VII. The general court finds that the benefits to the public and to the parties to medical  
28 injury claims from the process established in this act far exceed the burdens imposed on the general  
29 public and medical injury claimants.

30 288:2 New Chapter; Early Offers for Medical Injury Claims. Amend RSA by inserting after  
31 chapter 519-B the following new chapter:

32 **CHAPTER 519-C**

33 **EARLY OFFERS FOR MEDICAL INJURY CLAIMS**

34 519-C:1 Definitions. In this chapter:

35 I. "Claim for medical injury" means any claim against a medical care provider, whether  
36 based in tort, contract, or otherwise, to recover damages on account of a medical injury.

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1           II. “Claimant” means an individual who, in his or her own right, or on behalf of another as  
2 otherwise permitted by law, is seeking compensation for a medical injury, due to alleged sub-  
3 standard medical care or treatment.

4           III. “Early offer” means an offer to pay an injured person’s economic loss related to a medical  
5 injury, and reasonable attorney’s fees and costs incurred in representing the injured person under  
6 this chapter. No other damages of any kind shall be included in an early offer under this chapter.

7           IV. “Economic loss” means monetary expenses incurred by or on behalf of a claimant  
8 reasonably related to a medical injury and its consequences, including actual out-of-pocket medical  
9 expenses, replacement services, additional payment to the claimant pursuant to RSA 519-C:7, and  
10 100 percent of the claimant’s salary, wages, or income from self-employment or contract work lost as  
11 a result of the medical injury. Economic loss does not include: pain and suffering, punitive damages,  
12 enhanced compensatory damages, exemplary damages, damages for loss of enjoyment of life (hedonic  
13 damages), inconvenience, physical impairment, mental anguish, emotional pain and suffering, and  
14 loss of the following: earning capacity, consortium, society, companionship, comfort, protection,  
15 marital care, parental care, attention, advice, counsel, training, guidance or education, and all other  
16 non-economic damages of any kind.

17           V. “Hearing officer” means a person of judicial and/or legal training, common sense, and a  
18 respect for the law, chosen by agreement of the parties from a list of neutral persons maintained by  
19 the judicial branch office of mediation and arbitration. If the parties cannot agree on the choice of a  
20 hearing officer, one will be selected at random from the list by the insurance department. Fees paid  
21 to the hearing officer for presiding at hearings under this chapter shall be paid by the medical care  
22 provider at a rate of \$200 per hour and shall be reviewed for reasonableness by the insurance  
23 department. No hearing officer shall be employed by the insurance department or shall serve if such  
24 service would constitute a conflict under the New Hampshire Rules of Professional Conduct, or  
25 would require disqualification under the Code of Judicial Conduct.

26           VI. “Medical care provider” means a physician, physician’s assistant, registered or licensed  
27 practical nurse, hospital, clinic, or other health care provider or agency licensed by the state, or  
28 otherwise lawfully providing medical care or services, or an officer, employee, or agent thereof acting  
29 in the course of and scope of employment.

30           VII. “Medical injury” or “injury” means any adverse, untoward, or undesired consequences  
31 caused by professional services rendered by a medical care provider, whether resulting from  
32 negligence, error, or omission in the performance of such services; from rendition of such services  
33 without informed consent or in breach of warranty or in violation of contract; from failure to  
34 diagnose; from premature abandonment of a patient or of a course of treatment; from failure  
35 properly to maintain equipment or appliances necessary to the rendition of such services; or  
36 otherwise arising out of or sustained in the course of such services.

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1 VIII. “Notice of injury” means written notice by certified mail provided to the medical care  
2 provider alleged to have caused a medical injury, and containing:

3 (a) The name, address, and telephone number of the claimant;

4 (b) The believed date and place of the alleged medical injury;

5 (c) The nature of the alleged injury;

6 (d) An explanation, if known, as to how the alleged injury was caused;

7 (e) A description of the severity of the alleged injury, including the claimant’s opinion of  
8 where the injury is located on the National Practitioner Data Bank severity scale;

9 (f) Medical records and medical bills associated with the alleged injury or a limited  
10 authorization allowing the medical care provider to obtain medical records and medical bills  
11 associated with the alleged injury;

12 (g) Evidence of lost wages or income from self-employment or contract work for the  
13 individual suffering from an alleged medical injury, which may be supplied through income tax  
14 returns or paycheck stubs for the year prior to the alleged injury and any subsequent records up to  
15 the date of the notice of alleged injury, or a limited authorization allowing the medical care provider  
16 to obtain such records;

17 (h) A demand for economic loss resulting from the alleged injury, that includes only  
18 medical expenses, replacement services, reasonable attorney fees, and lost wages, or income from  
19 self-employment or contract work;

20 (i) The name, address, and telephone number of claimant’s attorney; and

21 (j) A request that the medical care provider extend an early offer of settlement of the  
22 claim.

23 IX. “Personal representative” means an executor, administrator, successor personal  
24 representative, or special administrator of a decedent’s estate or a person legally authorized to  
25 perform substantially the same functions.

26 X. “Reasonable attorney fee” means 20 percent of the present value of the claimant’s  
27 economic loss and the reasonable costs incurred in representing the injured person under this  
28 chapter.

29 XI. “Replacement services” means expenses reasonably incurred in obtaining ordinary and  
30 necessary services from others, who are not members of the injured person’s household, in lieu of  
31 those the injured person would have performed for the benefit of the household, but could not  
32 because of the injury.

33 XII. “Wages” means monetary payment for services rendered, and the reasonable value of  
34 board, rent, housing, lodging, fuel, or a similar advantage received from the employer and gratuities  
35 received in the course of employment from others than the employer; but “wages” shall not include  
36 any sum paid by the employer to the employee to cover any special expenses incurred by the

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1 employee because of the nature of the employment. For individuals receiving unemployment  
2 benefits pursuant to RSA 282-A:25 at the time of the injury, wages shall equal the wage rate used to  
3 determine the unemployed individual's unemployment benefit pursuant to RSA 282-A:25. For a  
4 minor who is injured prior to reaching the age of 18 and who is unable to perform any gainful work  
5 as a result of the medical injury, upon reaching the age of 18 wages shall equal the mean New  
6 Hampshire per capita income as shown by the American Community Survey's 1-year Estimate  
7 (inflation adjusted), produced by the United States Census Bureau.

8 519-C:2 Procedure.

9 I. After a medical injury, the claimant may:

10 (a) Pursue resolution of a claim for medical injury pursuant to this chapter; or

11 (b) Pursue an action for medical injury as provided in RSA 507-E and RSA 519-B.

12 II. For as long as the claimant and medical provider are proceeding under this chapter, this  
13 section shall govern the procedure for resolving the medical injury claim at issue between the 2  
14 parties, notwithstanding any other provision of law.

15 III. If the claimant elects to pursue a remedy under this chapter, the claimant shall serve a  
16 notice of injury to the medical care provider alleged to be responsible for the injury and an executed  
17 notification and waiver of rights in the form set forth in RSA 519-C:13, by certified mail, return  
18 receipt requested.

19 IV. Upon the receipt by the medical care provider of a notice of injury and an executed  
20 notification and waiver of rights, the medical care provider may elect to:

21 (a) Extend an early offer of settlement; or

22 (b) Decline to extend an early offer of settlement.

23 V. A claimant's failure to submit a notice of injury requesting an early offer, or a provider's  
24 failure to extend an early offer, shall not be subject to review in any hearing, court, or other  
25 proceeding of any kind.

26 VI. The medical care provider shall respond to the claimant's notice of injury in writing,  
27 within 90 days, setting forth the details of its early offer, or indicating that the medical care provider  
28 has decided not to extend an early offer of settlement. The medical care provider's written response  
29 shall be sent by certified mail, return receipt requested, to the address provided in the claimant's  
30 notice of injury.

31 VII. The medical care provider may request in writing that the individual alleging a medical  
32 injury submit to an independent medical examination by a qualified and board certified physician  
33 chosen by the medical care provider and agreed to by the claimant at a time and place reasonably  
34 convenient for the claimant. If the parties cannot agree on a physician to conduct the examination  
35 within 30 days of the request, the hearing officer shall select the physician. The physician  
36 conducting the examination shall not be affiliated directly or indirectly in any way, with the medical

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1 care provider alleged to have caused the injury. The cost of the examination, including reasonable  
2 travel expenses for the claimant, shall be paid by the medical care provider's professional liability  
3 insurance company. Within 5 days of receipt, the medical provider or its insurer shall, at no cost to  
4 the claimant, provide the claimant with all reports and documents originating from the examination.  
5 The claimant shall also be entitled to obtain a transcript and/or audio-video recording of the  
6 examination at the claimant's expense. Any physician conducting medical examinations under this  
7 section shall be certified by the appropriate specialty board as recognized by the American Board of  
8 Medical Specialties and in good standing with the New Hampshire board of medicine.

9 VIII. If the medical care provider requests that the claimant submit to a physical  
10 examination as set forth in paragraph VII, the time allowed for a medical care provider to respond to  
11 the claimant's notice of injury shall be extended by 30 days.

12 IX. If the medical care provider extends an early offer, the claimant shall accept or reject the  
13 medical care provider's written offer in writing within 60 days of receipt of the offer. If the claimant  
14 requests a hearing pursuant to RSA 519-C:10, to resolve any dispute with respect to the content of  
15 an early offer, the timeframe within which the claimant may accept or reject the early offer shall be  
16 extended until 10 days after the decision on the disputed issue is issued by the hearing officer.

17 X. If the claimant accepts the medical care provider's early offer, the claimant shall notify  
18 the medical care provider in writing by certified mail, return receipt requested, and thereafter, the  
19 claimant is barred from pursuing any claim for the same medical injury against any medical care  
20 provider.

21 XI. If the claimant rejects the medical care provider's early offer or does not accept the  
22 medical care provider's early offer within the time constraints provided by paragraph IX, the early  
23 offer shall be considered rejected. A claimant who rejects an early offer may pursue an action for  
24 medical injury against the medical care provider pursuant to RSA 507-E and RSA 519-B.

25 XII. A claimant who rejects an early offer and who does not prevail in an action for medical  
26 injury against the medical care provider by being awarded at least 125 percent of the early offer  
27 amount, shall be responsible for paying the medical care provider's reasonable attorney's fees and  
28 costs incurred in the proceedings under this chapter. The claimant shall certify to the court that a  
29 bond or other suitable security for payment of the medical care provider's reasonable attorney's fees  
30 and costs has been posted before the court shall consider the case.

31 519-C:3 Unrepresented Claimant.

32 I. If the claimant is not represented by legal counsel, upon receiving a notice of injury, the  
33 medical care provider shall provide a neutral advisor who is a member of the New Hampshire Bar or  
34 a retired judge, at the medical care provider's expense, to offer assistance to the claimant and  
35 medical care provider under this chapter. Among other things, the neutral advisor shall encourage  
36 the claimant to consider retaining an attorney, and shall ensure the claimant is aware of the

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1 differences between proceeding under this chapter or as provided in RSA 507-E and RSA 519-B.

2           II. A claimant who was unrepresented at the time the claimant submitted the notice and  
3 waiver of rights shall have the right to withdraw the notice of injury and the notice and waiver of  
4 rights within 5 business days after the claimant's first meeting with the neutral advisor, which shall  
5 occur no later than 10 business days from claimant's notification of the identity of the neutral  
6 advisor. In the event the claimant withdraws the notice of injury, the early offer process shall be  
7 terminated and both parties shall proceed as if the notice of injury was never filed.

8           III. No medical care provider or insurer shall extend an early offer prior to the expiration of  
9 15 business days after the claimant receives notification of the appointment of the neutral advisor.

10           519-C:4 Confidentiality.

11           I. Proceedings, records, and communications during negotiation of an early offer shall be  
12 treated as private and confidential by the claimant and the medical care provider. The outcome and  
13 any other writings, evidence, or statements made or offered by a party or a party's representative  
14 during negotiation of an early offer and relevant only to the early offer process are not admissible in  
15 court or in a screening panel hearing under RSA 519-B, shall not be submitted or used for any  
16 purpose in a subsequent trial, and shall not be publicly disclosed.

17           II. A notice of injury provided pursuant to RSA 519-C:2, III, and subsequent actions taken  
18 pursuant to this chapter shall be exempt from the reporting requirements of RSA 329:17 and  
19 administrative rules adopted thereunder, unless the parties reach a settlement under this chapter.  
20 Settlements reached pursuant to this chapter are not exempt from the reporting requirements of  
21 RSA 329:17 and said administrative rules.

22           519-C:5 Payment of Early Offer.

23           I. If an early offer is accepted, economic losses previously incurred by the claimant as a  
24 result of the medical injury and the reasonable attorney fee shall be paid by the medical care  
25 provider to the claimant within 15 days of the claimant accepting an early offer.

26           II. If an early offer is accepted, the medical care provider shall pay future economic losses  
27 incurred by the claimant to the claimant as such losses accrue. If any requested payment is denied,  
28 the medical provider shall notify the claimant in writing of the denial and the basis for denial, and  
29 inform the claimant that any request for a hearing under RSA 519-C:10 regarding the denial must  
30 be made within 30 days of the date of denial.

31           (a) Payments for medical bills arising after the early offer settlement is reached shall be  
32 made within 15 days after the medical care provider receives reasonable proof of the fact and the  
33 amount of loss sustained. If reasonable proof is not supplied as to the entire claim, the amount  
34 supported by reasonable proof shall be paid within 15 days after such proof is received. Any part or  
35 all of the remainder of the claim that is later supported by reasonable proof shall be paid within 15  
36 days after such proof is received by the medical care provider. The medical care provider shall pay



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1 any and all fees and charges incurred by the claimant resulting from failure to make timely payment  
2 of medical bills.

3 (b) Payment of lost wages shall be made weekly. At a minimum, such payments shall be  
4 adjusted annually on July 1 by a factor equal to the percentage change in the Consumer Price Index  
5 for Urban Wage Earners and Clerical Workers (CPI-W) for Boston-Brockton-Nashua, MA-NH-ME-  
6 CT for the prior 12 months established by the Federal Bureau of Labor Statistics.

7 (c) Payment of any other amounts due under an early offer shall be paid within 30 days  
8 of the date that the provider receives notice and proof of the fact and amount that is due.

9 (d) When necessary for the medical care provider or its insurer to evaluate whether  
10 medical expenses are reasonably related to the medical injury, the medical care provider may  
11 request in writing that the claimant submit to an independent medical evaluation as provided by  
12 RSA 519-C:2, VII.

13 III. Interest shall accrue at the rate of 1-1/2 percent per month on any amounts due under  
14 an early offer that are not paid as prescribed by this section.

15 IV. In lieu of periodic payments, the claimant and medical care provider may agree upon a  
16 lump sum payment for any and all potential future economic losses suffered by the claimant,  
17 provided that the lump sum agreement is reviewed and approved by a hearing officer after a  
18 hearing.

19 519-C:6 Compensation for Death. If death results from a medical injury, the amount of an early  
20 offer pursuant to this chapter shall include:

- 21 I. Any economic loss incurred by the decedent prior to death;
- 22 II. The value at the time of death of what would have been the net earnings of the deceased,  
23 less living expenses during the period of his or her life expectance, but for the medical injury;
- 24 III. The value of replacement services during the period of the decedent's life expectance, but  
25 for the medical injury;
- 26 IV. The additional payment determined pursuant to RSA 519-C:7; and
- 27 V. A reasonable attorney fee.

28 519-C:7 Additional Payment to the Claimant.

29 I. In addition to the lost wages, medical expenses, and replacement services, economic loss  
30 included in any early offer under this chapter shall include an additional payment to the claimant.

31 II. The additional payment, as adjusted under paragraph V, that must be included in an  
32 early offer shall be:

- 33 (a) For a temporary injury involving only emotional harm, without physical injury:  
34 \$6,600.
- 35 (b) For a temporary injury involving insignificant harm: \$2,100.
- 36 (c) For a temporary injury involving minor harm: \$7,800.

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- 1 (d) For a temporary injury involving major harm: \$31,500.  
2 (e) For a permanent injury involving minor harm: \$35,500.  
3 (f) For a permanent injury involving significant harm: \$81,500.  
4 (g) For a permanent injury involving major harm: \$127,500.  
5 (h) For a permanent injury involving grave harm, or an injury resulting in death:  
6 \$140,000.

7 III. Classification of injuries under paragraph II shall be determined using the National  
8 Practitioner Data Bank severity scale.

9 IV. Either party may request a hearing pursuant to RSA 519-C:10 to resolve a dispute  
10 regarding classification of injury severity under this section.

11 V. The additional payment amounts in paragraph II shall be adjusted annually on July 1  
12 beginning in 2013 by a factor equal to the percentage change in the CPI-U index for medical care for  
13 the Northeast Region for the prior 12 months established by the Federal Bureau of Labor Statistics.

14 519-C:8 Assignments; Certain Claims of Creditors.

15 I. Payments for economic loss under this chapter shall not be assignable.

16 II. Claims for child support, spousal support, or combination child and spousal support  
17 payments, pursuant to RSA 458-B, may be enforced against economic loss settlements.

18 519-C:9 Multiple Parties Alleged to Have Contributed to Causing Medical Injury.

19 I. Every early offer to settle a claim under this chapter shall include all of the economic loss,  
20 plus a reasonable attorney fee as set forth herein, and shall not be reduced or apportioned based on  
21 comparative fault of multiple providers. Any medical care provider, or combination of providers  
22 alleged to have contributed to causing an injury may extend an early offer as provided in this  
23 chapter, and acceptance of that offer by the claimant shall bar any further lawsuit or other claims for  
24 compensation by the claimant against all medical care providers arising as a result of the same  
25 medical injury. However, any medical care provider that extends an early offer to a claimant may  
26 seek contribution in a separate action against any medical care provider or other party that  
27 contributed to causing the medical injury. The injured individual shall not be a party to any action  
28 for contribution between medical care providers; however, the injured individual shall reasonably  
29 cooperate with the proceedings and provide such reasonable information and testimony as may be  
30 necessary to resolve the contribution claim. The parties to the action shall pay the injured  
31 individual all reasonable costs associated with such reasonable cooperation and testimony, including  
32 travel expenses and reasonable loss of earnings or a witness fee of \$100 per day, whichever is  
33 greater.

34 II. Nothing in this section shall be regarded as exempting contribution claims from any  
35 applicable provisions of RSA 519-B.

36 III. Nothing in this section shall limit claims by the claimant against any party other than

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1 medical care providers who participated in providing medical care which gave rise to the medical  
2 injury.

3 519-C:10 Dispute Resolution.

4 I. Upon the request of either party, a qualified hearing officer shall be chosen as provided in  
5 RSA 519-C:1, V to resolve a dispute regarding an early offer made under this chapter.

6 II. Dispute resolution under this chapter shall be limited to the following issues:

7 (a) Whether an early offer includes all of the economic loss related to the injury that is  
8 required by this chapter;

9 (b) Whether economic loss of any kind, past or future, asserted by the claimant, is  
10 reasonably related to an injury that is the subject of an early offer;

11 (c) Which severity level, pursuant to RSA 519-C:7, most closely describes the injury that  
12 is the subject of an early offer; or

13 (d) What the net present value of an early offer is, for the purposes of calculating the  
14 appropriate payment for reasonable attorney fees.

15 III. No other disputes arising under this chapter may be the subject of, or resolved through,  
16 a hearing under this section.

17 IV. Any request for a hearing pursuant to this section shall contain a reasonably complete  
18 statement of the issue or issues to be resolved in the hearing and shall fully identify all parties to the  
19 dispute. Any issue not listed in paragraph II shall not be considered. Hearings concerning economic  
20 loss that arises after a settlement under this chapter shall be requested within 30 days of the date  
21 payment for such economic loss is denied under RSA 519-C:5, II.

22 V. The medical care provider or, if applicable, the medical care provider's insurer shall pay  
23 all reasonable costs associated with a hearing under this section.

24 VI. Hearings conducted under this chapter shall be governed exclusively by this section and  
25 by rules adopted pursuant to RSA 519-C:15.

26 VII. Any hearing conducted under this chapter shall be conducted within 45 days of the  
27 request and a decision shall be issued within 10 days of completion of the hearing. Hearings may be  
28 conducted in person or telephonically.

29 VIII. On a motion from any party, or on his or her own motion, a hearing officer may  
30 summarily determine any issue in dispute without a hearing if it appears from the record that there  
31 are no material issues of fact in dispute. By agreement of the parties, any dispute may be  
32 determined by the hearing officer on the written record without a hearing.

33 IX. Hearings conducted pursuant to this chapter shall be limited to a reasonable amount of  
34 time as determined by the hearing officer, shall not require the presence or testimony of expert  
35 witnesses, and shall be recorded by an accurate audio or stenographic recording of all testimony,  
36 available to both parties at the non-prevailing parties' expense.

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1 X. Parties to a hearing under this section shall exchange exhibits and witness lists at least  
2 10 days prior to the hearing. No exhibit may be introduced or witness called in a hearing unless  
3 exchanged with the opposing party pursuant to this paragraph.

4 XI. The hearing officer shall issue a written decision resolving the issues in dispute. If the  
5 hearing officer finds against the medical provider on any issue, the decision shall modify the terms of  
6 the early offer. The early offer, as modified by the decision of the hearing officer, shall be binding on  
7 the parties.

8 XII. In a hearing conducted pursuant to subparagraph II(b) of this section, if the hearing  
9 officer determines the claimant's position to be frivolous, the claimant shall reimburse the medical  
10 care provider for its costs related to presenting the dispute to the hearing officer, up to a maximum  
11 of \$1,000.

12 XIII. In a hearing conducted pursuant to subparagraph II(b) of this section, if the hearing  
13 officer determines the medical care provider's position to be frivolous, the medical care provider shall  
14 reimburse the claimant for its costs related to presenting the dispute to the hearing officer, up to a  
15 maximum of \$1,000, or if the claimant is unrepresented, pay the claimant double the amount that  
16 was frivolously disputed or denied.

17 519-C:11 Limitations of Claims.

18 I. Except for claims on behalf of deceased individuals, claims for medical injury to a  
19 competent adult under this chapter shall be subject to the limitation set forth in RSA 508:4.

20 II. Except for claims on behalf of deceased individuals, claims for medical injury to a minor  
21 or incompetent under this chapter shall be subject to the limitation set forth in RSA 508:8.

22 III. Claims for medical injuries on behalf of deceased individuals shall be subject to the  
23 limitations set forth in RSA 556:7.

24 IV. Providing a notice of injury to a medical care provider as provided in this chapter shall  
25 operate to toll the applicable statute of limitation with respect to that injury from the time such  
26 notice is provided to a medical care provider until the expiration of time for a medical care provider  
27 to extend an early offer, or if an early offer is extended, until the acceptance or rejection of an early  
28 offer by the claimant, whichever occurs later.

29 519-C:12 Subrogation. Any insurer or third party who has paid or reimbursed economic losses  
30 to or for the benefit of the claimant, shall have the right of subrogation against the medical provider  
31 entering into an early offer of settlement under this chapter.

32 519-C:13 Notice and Waiver of Rights.

33 I. Claimants electing to pursue resolution of a medical injury under this chapter shall  
34 execute a notice and waiver of rights which contains the following wording:

**WAIVER OF RIGHTS**

35  
36 By agreeing to submit a notice of injury to the medical care provider, I understand that my

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1 rights to seek legal remedies and a jury trial for my injuries guaranteed by Part I, Articles 14 and 20  
2 of the New Hampshire Constitution may be affected.

3 I understand that I have the right to consult and retain an attorney to represent me regarding  
4 this matter, and that if an early offer settlement is reached, my attorney will be paid pursuant to  
5 RSA 519-C:5, I by the health care provider, in addition to any amount that is paid for my economic  
6 loss.

7 If I do not have an attorney when I sign this waiver form, the medical provider will appoint a  
8 neutral advisor to assist me in the early offer process and to explain, among other things, the  
9 differences between proceeding under this chapter or as provided in RSA 507-E and RSA 519-B. I  
10 HAVE THE RIGHT TO WITHDRAW THIS WAIVER AND THE NOTICE OF INJURY ANY TIME  
11 PRIOR TO MIDNIGHT OF THE FIFTH BUSINESS DAY AFTER MY FIRST MEETING WITH  
12 THE ADVISOR, WHICH MUST OCCUR NO LATER THAN 10 BUSINESS DAYS FROM MY  
13 NOTIFICATION OF THE IDENTITY OF THE NEUTRAL ADVISOR.

14 If after submitting a notice of injury, the medical care provider does NOT extend an early offer  
15 (RSA 519-C:1, III), I am free to pursue my legal remedies as defined in New Hampshire law without  
16 restriction.

17 If after submitting a notice of injury, the medical care provider does extend an early offer  
18 (RSA 519-C:1, III), I may either:

19 (1) Accept the early offer;

20 (2) Request a hearing before a hearing officer to determine whether the early offer  
21 includes all of the economic loss I am entitled to under the statute, and if necessary, the hearing  
22 officer may order the medical care provider to increase the early offer to meet the requirements of  
23 the early offer law; or

24 (3) Reject the early offer and seek legal remedies.

25 I understand that if I reject an early offer and am later awarded economic damages equal to or  
26 less than 125 percent of the amount of the early offer, I will be responsible for paying the medical  
27 care provider's reasonable attorney's fees and costs incurred in proceedings under this chapter.

28 I understand that if an early offer is made by the medical care provider and I accept that offer,  
29 disputes regarding the early offer can be resolved only in accordance with RSA 519-C:10 by a hearing  
30 officer listed with the judicial branch office of mediation and arbitration, at my request or the  
31 request of the medical care provider. If either party believes that the decision of the hearing officer  
32 is unlawful, that party may seek discretionary review in the New Hampshire court system; however,  
33 there is no assurance that the courts will undertake such review.

34 Date \_\_\_\_\_

Signature \_\_\_\_\_

35 II. A properly executed waiver form by a claimant who is competent at the time the waiver is  
36 executed shall be conclusively presumed to be a sufficient, knowing, and voluntary waiver if the

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1 waiver form complies with this section.

2 519-C:14 Other Action for Injury. Except as set forth in RSA 519-C:2, IX, a claimant may only  
3 pursue an action for medical injury as provided in RSA 507-E and RSA 519-B when:

4 I. The claimant elects not to submit a notice of injury pursuant to this chapter;

5 II. The medical care provider elects not to extend an early offer pursuant to this chapter in  
6 response to the notice of injury; or

7 III. The claimant withdraws the notice of injury and the notice and waiver of rights  
8 pursuant to RSA 519-C:3.

9 519-C:15 Rulemaking. The commissioner of the New Hampshire insurance department shall  
10 adopt rules necessary to administer the hearings process under this chapter.

11 519-C:16 Reports.

12 I. The insurance commissioner shall report to the general court annually, on or before  
13 November 1, on the effects of the early offer process established in this chapter. Such reports shall  
14 include, but not be limited to, statistics of each time the early offer process was initiated, including  
15 the number of claimants requesting early offers, the number of claimants receiving early offers, a  
16 record of the amount of each demand for economic loss, the corresponding early offer from the  
17 medical provider and the ultimate amount received by the claimant, if any, the severity of injuries,  
18 the time from initial notice to final resolution of claims, and the amount paid on claims.

19 II. The insurance commissioner may adopt rules under RSA 541-A to collect the data from  
20 insurers or any self-insured entity necessary to prepare the report required by this section. To the  
21 extent the commissioner collects information from insurers regarding individual claims, loss  
22 adjustment and other expenses, reserves, indemnity payments, or other financial information that is  
23 not otherwise reported to the commissioner and available to the public, such information shall be  
24 treated as examination materials, kept confidential, and not be subject to RSA 91-A.

25 288:3 Prospective Repeal. RSA 519-C, relative to early offers for medical injury claims, is  
26 repealed.

27 288:4 Confidentiality of Police Personnel Files. RSA 105:13-b is repealed and reenacted to read  
28 as follows:

29 105:13-b Confidentiality of Personnel Files.

30 I. Exculpatory evidence in a police personnel file of a police officer who is serving as a  
31 witness in any criminal case shall be disclosed to the defendant. The duty to disclose exculpatory  
32 evidence that should have been disclosed prior to trial under this paragraph is an ongoing duty that  
33 extends beyond a finding of guilt.

34 II. If a determination cannot be made as to whether evidence is exculpatory, an in camera  
35 review by the court shall be required.

36 III. No personnel file of a police officer who is serving as a witness or prosecutor in a

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1 criminal case shall be opened for the purposes of obtaining or reviewing non-exculpatory evidence in  
2 that criminal case, unless the sitting judge makes a specific ruling that probable cause exists to  
3 believe that the file contains evidence relevant to that criminal case. If the judge rules that probable  
4 cause exists, the judge shall order the police department employing the officer to deliver the file to  
5 the judge. The judge shall examine the file in camera and make a determination as to whether it  
6 contains evidence relevant to the criminal case. Only those portions of the file which the judge  
7 determines to be relevant in the case shall be released to be used as evidence in accordance with all  
8 applicable rules regarding evidence in criminal cases. The remainder of the file shall be treated as  
9 confidential and shall be returned to the police department employing the officer.

10 288:5 Study Committee Established; Self-Referrals for Implantable Medical Devices.

11 I. There is hereby established a committee to study the issue of health care practitioners  
12 making referrals of patients for the use of implantable medical devices when the practitioner has an  
13 ownership or other financial interest in the supplier of the implantable medical device.

14 II. The members of the committee shall be as follows:

15 (a) Five members of the house of representatives, appointed by the speaker of the house  
16 of representatives.

17 (b) Two members of the senate, appointed by the president of the senate.

18 III. Members of the committee shall receive mileage at the legislative rate when attending to  
19 the duties of the committee.

20 IV. The committee shall study the issue of health care practitioner self-referrals for  
21 implantable medical devices and make recommendations as to any future legislation.

22 V. The members of the committee shall elect a chairperson from among the members. The  
23 first-named house of representatives member shall call the first meeting. The first meeting shall be  
24 held within 30 days of the effective date of this section. Four members of the committee shall  
25 constitute a quorum.

26 VI. The committee shall submit a report of its findings and any recommendations for  
27 proposed legislation to the speaker of the house of representatives, the president of the senate, the  
28 house clerk, the senate clerk, the governor, and the state library on or before November 1, 2012.

29 288:6 Effective Date.

30 I. Section 2 of this act shall take effect January 1, 2013.

31 II. Section 3 of this act shall take effect November 1, 2020.

32 III. The remainder of this act shall take effect upon its passage.

33 Approved: Enacted in accordance with Article 44, Part II, N.H. Constitution, without signature of  
34 governor, June 27, 2012.

35 Effective Date: I. Section 2 shall take effect January 1, 2013.

36 II. Section 3 shall take effect November 1, 2020.

37 III. Remainder shall take effect June 27, 2012.