

## **Joint Letter in Support of HB94 – The Children’s Body Autonomy Act**

April 8, 2025

New Hampshire Senate Committee on Health & Human Services

Senator David Rochefort, Chairman

Senator Kevin Avard, Vice Chairman

Senator Regina Birdsell

Senator Suzanne Prentiss

Senator Pat Long

Dear Senators:

We, a group of healthcare providers, legal scholars, and subject matter experts, write in joint support of New Hampshire HB94. This document outlines key considerations to assist in your evaluation. Given the focus on Medicaid coverage and children’s health, we urge a thorough review that transcends politics.

Most males worldwide retain their foreskin, free from medical concerns requiring removal and without personal decision to undergo circumcision. No national medical association in the world recommends the non-therapeutic circumcision of healthy minors (hereafter referred to as circumcision), including the United States.<sup>1</sup> Healthcare providers in most countries uphold the bodily integrity of males, recognizing the foreskin as a natural, healthy, and functional part of the body. Countries such as Canada, Australia, and the United Kingdom rescinded coverage for circumcision decades ago, with subsequent decline in its incidence.<sup>2</sup> In fact, virtually no other public health care program in the world covers circumcision.

In the United States, the cultural tide is shifting, with approximately 50% of newborn males now remaining uncircumcised. This steady decline is attributed to improved parental education, changes in healthcare provider practices, and notable legislative action, such as the 17 states that have ended Medicaid coverage of circumcision. The New Hampshire House Health and Human Services Committee, along with the House, have voted to become the 18<sup>th</sup> state to adopt this stance.

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<sup>1</sup> In 1971, the American Academy of Pediatrics stated, “There are no valid medical indications for circumcision in the neonatal period.” In 2012, AAP policy statement, which has expired and not been renewed, concluded the evidence was not great enough to recommend the circumcision of minors. <https://www.cirp.org/library/statements/aap/#a1971>

<sup>2</sup> Canadian Pediatric Society policy statement. <https://cps.ca/documents/position/circumcision>.

## **1. CIRCUMCISION IS RARELY MEDICALLY NECESSARY, AND MEDICAID IS ONLY SUPPOSED TO COVER MEDICALLY NECESSARY TREATMENTS**

The Medicaid Code of Federal Regulations 42 C.F.R. § 438.210(1)(5) requires that states define “medically necessary services.” New Hampshire’s Medicaid Administrative Rule He-W 530.01(e), defines “medically necessary” care as services where a physician uses prudent clinical judgment to diagnose and treat a medical condition (Exhibit 1). A service is deemed not medically necessary if it is performed for the convenience of the recipient’s family or the healthcare provider, if there are less costly alternatives, or if the treatment is experimental or cosmetic.

The Medicaid reimbursement form requires physicians to attest that the services are medically necessary (Exhibit 2). However, healthcare providers routinely acknowledge circumcision as elective, cosmetic, and non-therapeutic, thereby failing to meet the criteria for medical necessity. It is performed on healthy males without a diagnosed medical condition and without the application of prudent medical judgment. Healthcare providers defer to parents to make the decision whether to have their son circumcised.

Parents, in turn, base their decision on personal, esthetic, cultural, or religious preferences, factors unrelated to medical necessity.<sup>3</sup> Consequently, circumcision is performed to satisfy parental preferences, making it an elective, cosmetic surgery that does not meet the defined criteria for Medicaid coverage.

Federal Medicaid law requires states to establish oversight mechanisms, including institutional review systems and fraud control units, to prevent and detect fraudulent claims. New Hampshire Medicaid Manual Part 9.0 assigns the Program Integrity Unit the responsibility to detect and prevent fraud and waste. A thorough review would demonstrate that healthcare providers routinely make false Medicaid claims to optimize reimbursement, and that only a small percentage of circumcisions meet New Hampshire’s legal standard of medical necessity.

## **2. CIRCUMCISION IS NOT COST EFFECTIVE AS REQUIRED BY LAW**

The Medicaid Act 42 U.S. Code § 1396a(a)(30)(A) requires that state Medicaid plans must "safeguard against unnecessary utilization of ... services ... and assure that payments are consistent with efficiency, economy, and quality of care." Under New Hampshire’s Medicaid Administrative Rule He-W 530.01(e) as well, services are only “medically necessary” and hence only covered when there are "No more costly than other ... services which would produce equivalent diagnostic, therapeutic, or treatment results

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<sup>3</sup> *The Circumcision Debate: Beyond Benefits and Risks*  
<https://publications.aap.org/pediatrics/article-abstract/137/5/e20160594/52128/The-Circumcision-Debate-Beyond-Benefits-and-Risks>.

as related to the recipient's illness, injury, disease, or its symptoms." Circumcision fails to satisfy this requirement as it is not diagnostic, not therapeutic, not treatment, and not cost effective.

A 2016 study by the Danish medical scientist Dr. Morten Frisch (Professor, MD, PhD) concluded, "The cumulative risk of undergoing foreskin operation before 18 years of age was 1.7%."<sup>4</sup> In many countries, the incidence of therapeutic circumcision is below 1%. This is noted as each potential benefit of non-therapeutic circumcision has a much more effective and less invasive alternative measure available. For example, UTIs are much less common in males and readily treated with a short course of antibiotics. Thus, it is rarely medically necessary to surgically remove the foreskin of a healthy minor.

A cost benefit analysis from Dr. Robert Van Howe (a professor of pediatrics at Central Michigan University) in the Journal of Medical Decision Making determined that non-therapeutic<sup>5</sup> circumcision is not cost effective over the life of a patient.<sup>6</sup> Neonatal circumcision is not good health policy, and support for it as a medical procedure cannot be justified financially or medically. The funds saved may then be used to improve medically indicated services for patients or to reduce taxpayer burdens.

The costs of circumcision are significant and typically underreported. Hospitals may bill Medicaid for infant circumcision under several CPT billing codes including 54150, 54160, and 54161. However, billing codes for procedures and diagnoses may be commingled as administrative billing may enter codes at their discretion, leading to an understated accounting of costs. Tabulated below are the New Hampshire Health & Human Services, NH Medicaid summative billings for the aforementioned CPT codes in fiscal year 2023.

**NH Medicaid Circumcision Services, SFY2023**

Proc Cd		Proc Cd Desc		FY 2023				Total
				Procedure Without Diagnosis		Procedure With Diagnosis		
				Payments	Unique People	Payments	Unique People	
54150	Circumcision w/ Anesthesia	27,095	186	90,076	707			
54160	Circumcision neonate w/o	687	7	1,429	12			
54161	Circum 28 days or older	96,636	80	90	1			
<b>Grand Total</b>		<b>\$124,417.65</b>	<b>266</b>	<b>\$91,595.65</b>	<b>719</b>		<b>\$216,013.30</b>	

Total Circumcision Cost from Fiscal Note 2024

<sup>4</sup> Sneppen & Thorup, *Foreskin Morbidity in Uncircumcised Males*, 137 Pediatrics 5 (May 2016). <https://publications.aap.org/pediatrics/article-abstract/137/5/e20154340/51976/Foreskin-Morbidity-in-Uncircumcised-Males>.

<sup>5</sup> Sneppen & Thorup, *Foreskin Morbidity in Uncircumcised Males*, 137 Pediatrics 5 (May 2016). <https://pubmed.ncbi.nlm.nih.gov/27244821/>

<sup>6</sup>A cost-utility analysis of neonatal circumcision <https://pubmed.ncbi.nlm.nih.gov/15534340/>.

In addition, these numbers do not factor in the added cost of complications from circumcision, requiring costly specialist clinic visits and revision interventions.<sup>7</sup> According to New Hampshire Medicaid data, the state paid \$177,055 for FY 2023 for genital repairs and revisions.<sup>8</sup> This yields an approximate net cost in 2023 of \$216,013 + \$177,055 or \$393,068.

Lastly, individuals may state that if males are not circumcised at birth, they often need to be circumcised later in childhood, at a higher cost. This is not the case as multiple studies demonstrate, such as the one cited above, that only 1.7% of uncircumcised boys will need to be circumcised for a medically indicated reason. In these cases of medical necessity, HB94 Medicaid will appropriately cover the surgery.

### **3. REFORMING INSURANCE COVERAGE PRESERVES THE HEALTH OF BOYS AND MEN, WHILE ENCOURAGING CIRCUMCISION CAUSES HARM**

True to the tenets of medicine, public health policy and healthcare providers aim to support the natural health and well-being of others. All boys are born with a foreskin, which is a natural, healthy, and functional part of the body. Its functions include, for example, being the most sensitive part of the male genitalia, reducing friction by gliding, and protecting the glans from diaper contaminants and trauma. These factors demonstrate the great psychosexual importance of the foreskin to both boys and men.

Even if a surgery is performed flawlessly, if the surgery were unnecessary, the surgery in and of itself constitutes harm. The California Supreme Court stated that “any unnecessary surgery is inherently injurious in that the patient needlessly has gone under the knife and has been subjected to pain and suffering.”<sup>9</sup> Surgery should be used only as a practice of last resort when more conservative methods have failed. Circumcision surgically removes approximately half of the penile tissue in a manner that is moderately to severely painful despite the use of anesthesia. The procedure carries numerous short and long-term risks that are well described by the American Medical Association.<sup>10</sup> Increasingly, men are voicing their concern with the psychological and social ramifications of circumcision.<sup>11</sup>

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<sup>7</sup> Lau, K., Kim, G., & Schaeffer, A. *Identification of circumcision complications using a regional claims database*, The Societies for Pediatric Urology, 66th Annual Meeting, May 2018.

<sup>8</sup> NH Medicaid Payments for Phalloplasty, Scrotoplasty, Circumcision revision, Meatoplasty by Procedure and Principal Diagnosis Age Under 18, SFY2019-SFY2023.

<sup>9</sup> *Tortorella v. Castro*, 43 Cal. Rptr. 3d 853 (2006).  
<https://law.justia.com/cases/california/court-of-appeal/2006/b184043.html>.

<sup>10</sup> Affidavit of Robert Van Howe, M.D. in a circumcision case. In 1999, the American Medical Association stated, “The true incidence of complications after newborn circumcision is unknown.” It listed as complications: local purulence, unsatisfactory cosmetic outcome, excess skin, skin bridges, recurrent phimosis, inclusion cysts, wound separation, urinary retention, concealed penis, retained Plastibell device, meatitis, chordee, meatal stenosis, scalded skin syndrome, infection, bleeding, urethral fistula, sepsis, meningitis, necrotizing fasciitis, amputation of a portion of the glans penis, and penile necrosis.

<sup>11</sup> See, e.g., Ronald Goldman, Ph.D., “Circumcision: The Hidden Trauma.”

#### **4. REFORMING INSURANCE COVERAGE RESPECTS THE BODILY AUTONOMY AND PRIVACY OF BOYS AND MEN**

It was revealed in 2024—during discussion over HB1706 in the House Health, Human Services and Elderly Affairs Committee (Title: Relative to notice required prior to circumcision procedure - informed consent)—that hospitals unduly pressure parents into having their newborn circumcised during a vulnerable period of healing. This situation arises when multiple provider groups (ex. Obstetrics, Pediatrics, Nursing) each question the parents, as it is often required for the clearance to be discharged home. In addition, hospital circumcision consent forms often lack critical information for parents to make an informed decision and provide legal consent.

In 2012, a German court held that non-therapeutic circumcision violates the child's rights to bodily integrity and autonomy, overriding parental preference.<sup>12</sup> These are foundational rights in human rights law, U.S. law, and New Hampshire law. For example, the New Hampshire Supreme Court recognized the rights to bodily integrity, liberty, autonomy (including the right to refuse unwanted treatment), and privacy as fundamental rights.<sup>13</sup> New Hampshire's Constitution explicitly recognizes a right to privacy.<sup>14</sup> There is no more intimate or private matter than a surgery that irreversibly alters one's genitals.

Ending New Hampshire Medicaid coverage of circumcision ensures boys of the fundamental rights to intact genitalia, to decide for themselves whether to be circumcised, and to privacy in intimate personal matters.

#### **CONCLUSION**

We respectfully urge the passage of this bill. Its enactment will align New Hampshire with both Federal and State Medicaid law, reduce unnecessary Medicaid expenditures, safeguard minors from harmful surgery, and protect the fundamental rights of freedom, autonomy, and privacy.

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<sup>12</sup> Landgericht Köln, 151 Ns 169/11 (May 7, 2012) (“Cologne Decision”), at 2 (“... [t]here was no medical indication for the operation.”).

<https://www.arclaw.org/wp-content/uploads/German-Cologne-Court-Case-2012-English-Translation.pdf> (English translation).

<sup>13</sup> *State v. Hollenbeck*, 53 A.3d 591 (NH: Supreme Court 2012).  
[https://scholar.google.com/scholar\\_case?case=17622426312779894991](https://scholar.google.com/scholar_case?case=17622426312779894991).

<sup>14</sup> N.H. Constitution, Part I, Art. 2-b (adopted 2018).

Respectfully submitted:

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## EXHIBIT 1

New Hampshire Administrative Rule He-W 530.01 defines “medically necessary” as:

“(e) 'Medically necessary' means health care services that a licensed healthcare provider, exercising prudent clinical judgment, would provide, in accordance with generally accepted standards of medical practice, to a recipient for the purpose of evaluating, diagnosing, preventing, or treating an acute or chronic illness, injury, disease, or its symptoms, and that are: (1) Clinically appropriate in terms of type, frequency of use, extent, site, and duration, and consistent with the established diagnosis or treatment of the recipient's illness, injury, disease, or its symptoms; (2) Not primarily for the convenience of the recipient or the recipient's family, caregiver, or health care provider; (3) No more costly than other items or services which would produce equivalent diagnostic, therapeutic, or treatment results as related to the recipient's illness, injury, disease, or its symptoms; and (4) Not experimental, investigative, cosmetic, or duplicative in nature.”

## EXHIBIT 2

The CMS-1500 Form (Health Insurance Claim Form) is the form typically used by physicians to bill Medicaid for services like circumcision. See Line 21 on Page 1 which calls for "Diagnosis or Nature of Illness/Injury." An example for circumcision is Z41.2 "Encounter for routine circumcision," which is not a valid diagnosis. This denotes an elective, *non-medically necessary circumcision*. Box 24D on Page 1 of the form calls for the Procedure Code. CPT code 54150 is a typical circumcision code. When paired with a Z code, it indicates that the procedure is *not medically necessary*. When a therapeutic diagnosis code appears at birth (e.g., phimosis), *the claim must be false*, because the boy has just been declared healthy, and phimosis or a tight foreskin is normal at birth.

### MEDICAID PAYMENTS (PROVIDER CERTIFICATION)

I hereby agree to keep such records as are necessary to disclose fully the extent of services provided to individuals under the State's Title XIX plan and to furnish information regarding any payments claimed for providing such services as the State Agency or Dept. of Health and Human Services may request.

I further agree to accept, as payment in full, the amount paid by the Medicaid program for those claims submitted for payment under that program, with the exception of authorized deductible, coinsurance, co-payment or similar cost-sharing charge.

**SIGNATURE OF PHYSICIAN (OR SUPPLIER):** I certify that the services listed above were medically indicated and necessary to the health of this patient and were personally furnished by me or my employee under my personal direction.

NOTICE: This is to certify that the foregoing information is true, accurate and complete. I understand that payment and satisfaction of this claim will be from Federal and State funds, and that any false claims, statements, or documents, or concealment of a material fact, may be prosecuted under applicable Federal or State laws.

Moreover, the part of the form copied above states, "SIGNATURE OF PHYSICIAN (OR SUPPLIER):" "I certify that *the services listed above were medically indicated and necessary to the health of this patient* [emphasis added]. ... [T]his is to certify that the foregoing information is true, accurate and complete. I understand that payment and satisfaction of this claim will be from Federal and State funds, and that any false claims, statements, or documents, or concealment of a material fact, may be prosecuted under applicable Federal or State laws.”