

Floor Amendment to SB 228-FN

1 Amend RSA 415-E:2, II as inserted by section 4 of the bill by replacing it with the following:

2
3 II. This chapter shall not apply to a multiple-employer welfare arrangement **sponsored by**
4 **a bona fide pathway I association which is fully insured by an authorized insurer or** which
5 offers or provides benefits which are fully insured by an authorized insurer or under the provisions
6 of RSA 5-B.

7
8 Amend RSA 415-E:3-c, I as inserted by section 6 of the bill by replacing it with the following:

9
10 I. Each health benefit plan offered to or by a bona fide pathway II association, whether on a
11 fully insured or self-funded basis, shall, at a minimum, provide the following benefits:

12 (a) Coverage for each of the 10 essential health benefits as defined in 42 U.S.C. section
13 18022(b)(1), subject to approval of the commissioner based on the New Hampshire benchmark plan;

14 (b) Cost sharing requirements of 42 U.S.C. section 18022(c)(1)-(c)(3);

15 (c) Lifetime and annual limits as prescribed in 29 C.F.R. section 2590.715-2711;

16 (d) A level of coverage equal to or greater than that designed to provide benefits that
17 are actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the
18 plan; and

19 (e) All other benefits required to comply with applicable federal laws and regulations
20 and with any provision of title XXXVII that applies to large group health insurance coverage.

21
22 Amend RSA 415-E:3-g, I(a) and (b) as inserted by section 6 of the bill by replacing them with the
23 following:

24
25 (a) Prior to July 1, 2019, the commissioner shall retain an independent actuarial firm to
26 model and quantify the impacts of pathway II coverage on the existing individual and small group
27 markets and to perform the actuarial review necessary to support a section 1332 waiver as required
28 in subparagraph (b) and the small group risk adjustment program required in RSA 420-K.

29 (b) Prior to January 1, 2020, the commissioner shall apply for a waiver under section
30 1332 of the Patient Protection and Affordable Care Act, 42 U.S.C. section 18001 (2010) and under
31 the commissioner's authority in RSA 420-N:6-a in order to create a risk subsidy mechanism for the

Floor Amendment to SB 228-FN
- Page 2 -

individual market under RSA 404-G which is eligible to draw down federal pass-through funding to support such mechanism;

Amend RSA 420-K:4 as inserted by section 21 of the bill by replacing it with the following:

420-K:4 Risk Adjustment Program.

I. The board shall:

(a) Develop and monitor a measure of risk to be used in comparing populations covered by small employer health insurance coverage and bona fide pathway II association coverage.

(b) Access from the New Hampshire comprehensive health care information system (CHIS), as described under RSA 420-G:11-a, member level information, including length of coverage, gender, age, and diagnosis, sufficient to measure and monitor risk for carriers issuing or administering small employer health insurance.

(c) Perform risk adjustment analysis which may include the use of data from the CHIS, including calculating New Hampshire specific relative weights as necessary, to analyze the difference in the medical care resources expected to be necessary to treat the 2 different populations, one covered in the small group insurance risk pool and the other covered by bona fide pathway II association coverage.

(d) Subject to the limitation in paragraph II, establish risk adjustment payments between carriers that are triggered whenever the average risk between bona fide pathway II association coverage and all other small group coverage differs by more than 5 percent over any calendar year, and that serve to create a net effect of reducing future expected risk score differences after payments to approximately 3 percent.

(e) Provide a report to the insurance commissioner in a form and format acceptable to the commissioner.

II. The board shall not implement any adjustments until the number of lives covered by bona fide pathway II association coverage exceeds 2,000 member months for 3 consecutive months.

Amend the bill by replacing all after section 22 with the following:

23 New Paragraph; Jurisdiction of the Commissioner; Penalties. Amend RSA 420-M:3 by inserting after paragraph III the following new paragraph:

IV. This chapter shall not apply to a multiple-employer welfare arrangement sponsored by a bona fide pathway I association, as defined in RSA 415-E:1, which is fully insured by an authorized insurer.

24 New Chapter; Commission on the Status of Health Coverage Markets for Individuals and Small Employers. Amend RSA by inserting after chapter 404-I the following new chapter:

CHAPTER 404-J

COMMISSION ON THE STATUS OF HEALTH COVERAGE MARKETS
FOR INDIVIDUALS AND SMALL EMPLOYERS

I. There is hereby established a commission on the status of health coverage markets for individuals and small employers.

(a) The members of the commission shall be as follows:

(1) Three members of the senate, one of whom shall be a member of the minority party, appointed by the president of the senate.

(2) Three members of the house of representatives, one of whom shall be a member of the minority party, appointed by the speaker of the house of representatives.

(3) The insurance commissioner, or designee.

(4) Three persons representing health carriers, appointed by the insurance commissioner, as follows:

(A) One person representing a health carrier with a significant presence in the individual market;

(B) One person representing a health carrier with a significant presence in the small employer market; and

(C) One person representing a health carrier with an interest in providing or administering health coverage in the pathway II association market.

(5) Two producers, appointed by the insurance commissioner, one of whom shall be a producer with a significant clientele in the individual market and the other a producer with a significant clientele in the small employer market.

(6) A public member from an academic institution or charitable foundation who has health care and health insurance expertise, appointed by the senate president.

(7) A public member who shall represent the interests of persons who obtain their coverage through that market, appointed by the speaker of the house of representatives.

(8) A public member who shall represent the interests of persons who obtain their coverage through the individual market, appointed by the president of the senate.

(9) Two public members from organizations that represent the interests of the medically underserved, persons with pre-existing conditions, or persons with chronic health conditions, including mental health or substance use disorders, appointed by the governor.

(10) A public member who shall represent the interests of small employers sponsoring health coverage for their employees, appointed by the governor.

(11) A public member from the Business and Industry Association of New Hampshire or a New Hampshire chamber of commerce, appointed by the governor.

(12) A public member from a national organization with a New Hampshire chapter that is interested in qualifying as a bone fide pathway II association, as defined in RSA 415-E:1, III,

Floor Amendment to SB 228-FN
- Page 4 -

1 appointed by the governor.

2 (b) Of the commission members listed under subparagraph (a), only the 6 legislative
3 members shall be voting members. All other members shall serve in an advisory capacity only.

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

6 (d) The commission shall be a public body subject to RSA 91-A, and its meetings shall be
7 considered public proceedings.

8 II.(a) The commission shall evaluate the status of health coverage markets for individuals
9 and small employers. This shall include the individual market, the small employer market, and the
10 pathway II association market. These markets shall be evaluated in terms of their performance in
11 making available to individuals and small employers affordable coverage that provides access to
12 medically necessary care on affordable terms. Consideration shall be given to market
13 competitiveness, price, choice of plans, market size, market segmentation, the risk profile of the
14 covered population in each market, adverse selection against specific markets, migration between
15 markets, the rate of growth or diminution in the overall number of covered lives, and other similar
16 factors that may affect the coverage available to individuals and small employers. Specifically, the
17 commission shall evaluate markets and make recommendations on the following:

18 (1) The performance and effectiveness of the market for pathway II association
19 coverage in itself and in conjunction with the individual and small group markets. This shall
20 include consideration of coverage for pre-existing conditions and essential health benefits, premium
21 rates and product offerings, impact on premiums, the availability and choice of plans, and the
22 number of covered lives in the individual and small employer markets, and the overall impact on
23 the availability and affordability of coverage for higher risk individuals and small employer groups.
24 Based on this evaluation, the commission shall make recommendations for future program
25 modifications, including modifications to the risk adjustment program authorized under RSA 420-K,
26 as well as a final recommendation as to whether the general court should allow the continuation or
27 should phase out the market for pathway II association coverage.

28 (2) The performance and effectiveness of the individual market in itself and in
29 conjunction with the market for pathway II association coverage. This shall include consideration
30 of the migration of sole proprietors to the pathway II market and the effectiveness of screening
31 procedures in validating sole proprietorship status, the price and availability of coverage for
32 individuals who do not qualify for an advanced premium tax credit or cost sharing reduction
33 assistance through the marketplace exchange, and the design and effectiveness of the risk subsidy
34 mechanism and 1332 waiver for the individual market authorized under RSA 415-E:3-g. Based on
35 this evaluation, the commission shall make recommendations concerning the individual market risk
36 subsidy mechanism under the 1332 waiver, any changes that are needed to screening and
37 monitoring procedures for compliance with the hourly work standard to qualify as a sole proprietor,

Floor Amendment to SB 228-FN
- Page 5 -

1 and any other legislative or regulatory measures that would promote market stability and growth in
2 the individual market.

3 (b) The commission shall not make any recommendation that includes the use of new
4 general funds.

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

7 III. The insurance commissioner shall provide information and reports to the commission
8 on a biannual basis concerning the status of the individual, small employer and pathway II
9 association markets as necessary to allow the commission to carry out its duties. The commission
10 shall have the authority, at any time, upon a finding that pathway II association coverage is having
11 an adverse impact on the availability and choice of coverage in the individual or small employer
12 markets or is causing average premiums for individuals or small groups to increase at a rate that is
13 significantly higher than the trend in claims costs, to recommend that the commissioner limit
14 pathway II associations to the writing of existing business only or adjust the risk score differential
15 amount in RSA 420-K:4, I(d), and the commissioner shall have authority to implement this
16 recommendation by order pursuant to RSA 400-A:14 and this paragraph.

17 IV. The members of the commission shall elect a chairperson from among the members.
18 The first meeting of the commission shall be called by the first-named senate member. The first
19 meeting of the commission shall be held within 45 days of the effective date of this section. Four of
20 the 6 voting members of the commission shall constitute a quorum.

21 V. The commission shall make an interim report on or before March 1, 2021 and a final
22 report, together with its findings and any recommendations for proposed legislation, to the
23 president of the senate, the speaker of the house of representatives, the senate clerk, the house
24 clerk, the governor, and the state library on or before December 1, 2022. Both reports shall contain
25 the commission's recommendation regarding whether the market for pathway II association
26 coverage should continue or be phased out.

27 25 Repeal. RSA 404-J, relative to the commission on the status of health insurance markets for
28 individuals and small employers, is repealed.

29 26 Effective Date.

30 I. Sections 1-17 and section 23 of this act shall take effect 60 days after its passage.

31 II. Section 25 of this act shall take effect December 1, 2022.

32 III. The remainder of this act shall take effect 30 days after its passage.