

Amendment to SB 228-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2  
3 1 Statement of Purpose. The purpose of this act is to provide legislative authorization for  
4 initiatives to improve the health coverage available through this state's individual and small  
5 employer markets, including authorizing new forms of multiple employer welfare arrangements  
6 contingent on the establishment of the legal validity of the United States Department of Labor's  
7 Association Health Plan Rule codified at 29 C.F.R. section 2510.3-5(b), authorizing the insurance  
8 commissioner to apply for a waiver on an expedited basis under section 1332 of the Affordable Care  
9 Act to create a market stabilization mechanism for the individual market, and creating a legislative  
10 commission on the status of health coverage markets for individuals and small employers. The  
11 general court hereby seeks to help individuals and small businesses obtain more affordable health  
12 care coverage and new coverage options while preserving protections for higher risk individuals and  
13 groups and while protecting against adverse impacts on New Hampshire's existing individual and  
14 small group health insurance markets.

15 2 Title. This act shall be known as the Individual and Small Business Health Care Reform Act  
16 of 2019.

17 3 Multiple-Employer Welfare Arrangements; Definitions. RSA 415-E:1 is repealed and  
18 reenacted to read as follows:

19 415-E:1 Definitions. In this chapter:

20 I. "Bona fide association" means a bona fide pathway I association or a bona fide pathway II  
21 association.

22 II. "Bona fide pathway I association" means a group or association that satisfies the criteria  
23 established by the United States Department of Labor prior to the adoption in 2018 of 29 C.F.R.  
24 section 2510.3-5, including the guidance provided in the United States Department of Labor  
25 publication entitled "MEWAS, Multiple-Employer Welfare Arrangements under the Employee  
26 Retirement Income Security Act (ERISA): A Guide to Federal and State Regulation, Revised August  
27 2013" and including published United States Department of Labor ERISA Advisory Opinion Letters.

28 III. "Bona fide pathway II association" means a group or association that meets the  
29 requirements of 29 C.F.R. section 2510.3-5(b).

30 IV. "Commissioner" means the insurance commissioner of the state of New Hampshire.

31 V. "Eligible employee" means a full-time or part-time employee who meets the requirements  
32 for eligibility for group coverage set forth in RSA 415:18, I(q).

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1 VI. "Employee welfare benefit plan" has the same meaning as in 29 U.S.C. section 1002(1).

2 VII. "Fully insured health benefit plan" means a policy, contract, certificate, or agreement  
3 to provide, deliver, arrange for, pay for, or reimburse any of the costs of health services, that is  
4 offered or issued to bona fide association by a health insurer licensed to do business in New  
5 Hampshire and that bears the risk under the plan.

6 VIII. "Fund balance" means the total assets in excess of total liabilities, except that assets  
7 pledged to secure debts not reflected on the books of the multiple-employer welfare arrangement  
8 shall not be included in the fund balance. Fund balance shall include other contributed capital,  
9 retained earnings, and surplus notes.

10 IX. "Insolvency termination" means the termination of an arrangement where the fund  
11 balance as of the termination date is inadequate.

12 X. "Insurer" means any insurer, nonprofit hospital or medical service corporation, health  
13 maintenance organization, or managed care organization, including but not limited to an insurer  
14 offering health coverage as defined in RSA 420-G:2, IX.

15 XI. "Multiple-employer welfare arrangement (MEWA)" or "association" means an employee  
16 welfare benefit plan or any other arrangement which is established or maintained for the purpose of  
17 offering or providing health benefits to the eligible employees of 2 or more employers, or to their  
18 beneficiaries, and shall include a MEWA as defined in the Employee Retirement Income Security  
19 Act of 1974, 29 U.S.C. section 1001 et seq. (ERISA). This shall include plans established by any  
20 political subdivision of the state or religious organization, but shall not include any plan or  
21 arrangement established or maintained under or pursuant to one or more agreements deemed  
22 collective bargaining agreements under section 3(40)(A)(i) of (ERISA). For the purposes of this  
23 chapter, 2 or more trades or businesses, whether or not incorporated, shall be deemed a single  
24 employer if such trades or businesses are under common ownership or within the same control  
25 group as defined under section 3(40)(B) of ERISA.

26 4 Multiple-Employer Welfare Arrangements; Applicability; General Eligibility. Amend RSA  
27 415-E:2, I and II to read as follows:

28 I. No person shall ~~[, after April 1, 1992,]~~ operate a multiple-employer welfare arrangement  
29 unless such arrangement is approved by the commissioner. ~~[No person shall, after April 1, 1992,~~  
30 ~~operate a multiple-employer welfare arrangement in existence prior to April 1, 1992, unless such~~  
31 ~~arrangement has submitted for approval in compliance with RSA 415-E:4, or otherwise meets the~~  
32 ~~special requirements of paragraph III of this section.]~~ ***A foreign or domestic MEWA or***  
33 ***association shall be subject to the jurisdiction of this state if it provides a health benefit***  
34 ***plan that covers the employees of at least one employer that maintains a work location in***  
35 ***New Hampshire, which is the primary workplace of at least one New Hampshire resident,***  
36 ***including any self-employed New Hampshire resident who is qualified to enroll in the***  
37 ***plan.***

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

4           5 Multiple-Employer Welfare Arrangements. RSA 415-E:3 is repealed and reenacted to read as  
5 follows:

6           415-E:3 General Eligibility; Pathway I and Pathway II. To meet the requirements for approval  
7 and to maintain a multiple employer welfare arrangement, an association not exempted under RSA  
8 415-E:2, II shall be approved either as a self-insured bona fide pathway I association or as a bona  
9 fide pathway II association as follows:

10           I. An association seeking approval as a self-insured bona fide pathway I association shall:

11                   (a) Meet the definition in RSA 415-E:1, II of a bona fide pathway I association.

12                   (b) Sponsor health coverage that is self-insured.

13                   (c) Be nonprofit.

14                   (d) Be established by a trade association, industry association, political subdivision of  
15 the state, religious organization, or professional association of employers or professionals which has  
16 a constitution or bylaws and which has been organized and maintained in good faith for a  
17 continuous period of one year for purposes other than that of obtaining or providing insurance.

18                   (e) Be operated pursuant to a trust agreement by a board of trustees which shall have  
19 complete fiscal control over the arrangement and which shall be responsible for all operations of the  
20 arrangement. The trustees selected shall be owners, partners, officers, directors, or employees of  
21 one or more employers in the arrangement. A trustee may not be an owner, officer, or employee of  
22 the administrator or service company of the arrangement. The trustees shall have the authority to  
23 approve applications of association members for participation in the arrangement and to contract  
24 with an authorized administrator or service company to administer the day-to-day affairs of the  
25 arrangement.

26                   (f) Be neither offered nor advertised to the public generally.

27                   (g) Be operated in accordance with sound actuarial principles.

28           II. An association seeking approval as a bona fide pathway II association shall:

29                   (a) Meet the definition in RSA 415-E:1, III of a bona fide pathway II association.

30                   (b) Have a formal organizational structure with a governing body, bylaws, and other  
31 similar indications of formality, and complies with RSA 415-E:3, I-a(e) and with all other  
32 organizational requirements under this chapter and, if the association offers fully insured coverage,  
33 under RSA 420-M.

34                   (c) Have its functions and activities controlled by its employer members, and the  
35 association's employer members that participate in the group health plan shall control the plan,  
36 both in form and in substance.

37                   (d) Have a commonality of interest with its employer members, such that one or both of

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the following standards are met, in a manner that is not a subterfuge for discrimination as prohibited under RSA 415-E:1-e:

(1) The employers are in the same trade, industry, line of business, or profession; or

(2) Each employer has a principal place of business in the same region.

(e) Have at least one substantial business purpose unrelated to offering and providing health coverage or other employee benefits to its employer members and their employees.

(f) Have each employer member of the association participating in the group health plan who is a person acting directly as an employer of at least one employee who is a participant covered under the plan.

(g) Not make health coverage through the association's group health plan available other than to:

(1) An employee of a current employer member of the association; and

(2) A beneficiary of an individual eligible under subparagraph (1).

(h) Not be a health insurance issuer, or owned or controlled by a health insurance issuer, or by a subsidiary or affiliate of a health insurance issuer, other than to the extent such entities participate in the association in their capacity as employer members of the association.

6 New Sections; Multiple-Employer Welfare Arrangements. Amend RSA 415-E by inserting after section 3 the following new sections:

415-E:3-a Bona Fide Pathway I and II Association Coverage; General Authorization. Bona fide pathway association coverage as set forth in the United States Department of Labor's June 21, 2018 amendment to 29 C.F.R. section 2510, 83 Fed. Reg. 28,961 (codified at 29 C.F.R. section 2510.3-5) shall be permissible in New Hampshire provided it conforms with this chapter and all of the provisions of Title XXXVII concerning this coverage.

415-E:3-b Bona Fide Pathway I and II Association Coverage: Option to Offer Fully-Insured Coverage.

I. A bona fide pathway I association may offer coverage on a fully insured basis if it is a qualified association trust as defined in RSA 420-G:2, XV.

II. A bona fide pathway II association may offer coverage on a fully insured basis if it is licensed as a qualified purchasing alliance under RSA 420-M and meets all of the pathway II requirements under this chapter.

III. No insurer shall issue a fully-insured health benefit plan to an association or MEWA with covered lives in New Hampshire unless the association or MEWA meets the requirements of either paragraphs I or II.

IV. A fully-insured association or MEWA that is a qualified association trust or that has been licensed by the department as a qualified purchasing alliance shall not be subject to the financial reporting and solvency requirements of this chapter that are applicable only to self-funded associations.

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1           V. An insurer issuing a fully insured health benefit plan to an association or MEWA shall  
2 ensure that the terms of the plan conform with all applicable requirements of this chapter with  
3 respect to bona fide association coverage and that the coverage has received all required approvals  
4 from the department.

5           415-E:3-c Bona Fide Pathway II Association Coverage; Benefit Requirements.

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

8               (a) Coverage for each of the 10 essential health benefits as defined in 42 U.S.C. section  
9 18022(b)(1), subject to approval of the commissioner based on the New Hampshire benchmark plan;

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

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

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

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

17           II. Every health benefit plan offered by any bona fide pathway II association, whether  
18 offering coverage on a self-funded basis or fully insured basis, and any insurer contracting with an  
19 offering association, shall comply with the following:

20               (a) Except as otherwise specifically provided herein, all requirements of RSA 420-G,  
21 including claims data and other reporting requirements;

22               (b) Requirements contained in RSA 420-J, and any rules adopted thereunder by the  
23 commissioner including, but not limited to, network adequacy, balance billing protections, and  
24 appeal and grievance processes;

25               (c) Payment of premium tax as provided in RSA 400-A:31-35 and administrative  
26 assessment under RSA 400-A:39;

27               (d) Requirements pertaining to examinations under RSA 400-A:37;

28               (e) Requirements pertaining to unfair insurance trade practices under RSA 417;

29               (f) Vaccine association assessment under RSA 126-Q; and

30               (g) Individual market assessment under RSA 404-G.

31           III. No health benefit plan or related policy, contract, certificate, or agreement offered or  
32 issued in this state to a bona fide pathway II association, whether offering coverage on a self-funded  
33 basis or fully insured basis, shall reserve discretion to the insurer or sponsoring association to  
34 interpret the terms of the contract or to provide standards of interpretation or review that are  
35 inconsistent with the laws of this state. Any such policy, contract, certificate, or agreement shall be  
36 void and unenforceable to the extent it conflicts with this section.

37           IV. A bona fide pathway II association, whether offering coverage on a self-funded basis or

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1 fully insured basis, shall not offer, and an insurer shall not deliver or issue for delivery to such  
2 association, a health benefit plan covering lives located in this state that contains an exclusion or  
3 limitation for pre-existing conditions or a waiting period on the coverage of pre-existing conditions.

4 V. For any bona fide pathway II association, whether offering coverage on a self-funded  
5 basis or fully insured basis, if coverage is issued to a sole proprietor, the association sponsoring the  
6 coverage shall be responsible for monitoring and ensuring that the sole proprietor meets the  
7 requirements to qualify as an employer under 29 C.F.R. section 2510.3-5(b) and meets the per  
8 month hourly work requirement contained in RSA 126-AA:2, III. Failure to ensure compliance with  
9 this provision shall be a violation of this chapter.

10 415-E:3-d Rating Requirements for Bona Fide Pathway I Fully Insured Coverage and all  
11 Pathway II Coverage; Rating Requirements.

12 I. Any fully insured bona fide pathway I association and any pathway II association,  
13 whether self-funded or fully insured, or any insurer contracting with such bona fide pathway I or II  
14 association to provide a health benefit plan, shall comply with all requirements of RSA 420-G,  
15 except that, for any such association with 250 or more New Hampshire covered lives, the  
16 association as a whole may be rated as a single risk pool separately from the small employer  
17 market.

18 II. Coverage for a fully insured bona fide pathway I association with 250 or more New  
19 Hampshire covered lives and any bona fide pathway II association with 250 or more New  
20 Hampshire covered lives may be rated as a single large group based on the association's group  
21 experience and in accordance with all standards applicable to large employer groups under RSA  
22 420-G. The following additional requirements shall apply to such coverage:

23 (a) All premium rates charged shall be guaranteed for a rating period of at least 12  
24 months, and shall not be changed for any reason, including, but not limited to, a change in the  
25 group's case characteristics.

26 (b) For fully insured bona fide pathway I associations, the association may vary rates  
27 among member small employers only in accordance with the provisions in RSA 420-G:10 applying to  
28 qualified association trusts.

29 (c) For any pathway II association, whether self funded or fully insured, the association  
30 may vary rates among member small employers, including participating self-employed New  
31 Hampshire members, as follows:

32 (1) Variation associated with age shall not exceed 5:1.

33 (2) Variation associated with tobacco use shall not exceed 1.5 to 1.

34 (3) No other variation shall be permitted.

35 (d) The same rating methodology shall apply to newly covered member employer groups  
36 and employee members renewing at each annual renewal date or anniversary date. The rating  
37 methodology shall not be construed to include health carrier incentives to individual subscribers or

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1 members to participate in wellness and fitness programs provided such incentives are approved by  
2 the insurance department.

3 (e) Nothing in this chapter shall be construed to allow a member small employer group  
4 within any association to be rated separately under large group rating standards.

5 415-E:3-e Bona Fide Pathway II Association Coverage; Nondiscrimination Requirements. In  
6 accordance with 29 C.F.R. section 2590.702, bona fide pathway II association coverage shall comply  
7 with the following:

8 I. The group or association shall not condition employer membership in the group or  
9 association on any health factor of any individual who is or may become eligible to participate in the  
10 group health plan sponsored by the group or association.

11 II. The group health plan sponsored by the group or association shall comply with 29 C.F.R.  
12 section 2590.702(b) with respect to nondiscrimination in rules for eligibility of benefits.

13 III. The group health plan sponsored by the group or association shall comply with 29  
14 C.F.R. section 2590.702(c) with respect to nondiscrimination in premiums or contributions required  
15 by any participant or beneficiary for coverage under the plan.

16 IV. In applying the nondiscrimination provisions of paragraphs II and III, the group or  
17 association shall not treat the employees of different employer members of the group or association  
18 as distinct groups of similarly-situated individuals based on a health factor of one or more  
19 individuals.

20 415-E:3-f Free Movement Between Bona Fide Association Coverage and Small Group Coverage.  
21 A small employer that leaves the small group market for bona fide pathway I or II association  
22 coverage or that leaves pathway I or II association coverage for the small group market shall not be  
23 subjected to a waiting period before being permitted to return to the original market, nor shall an  
24 insurer or administrator be permitted to impose such a waiting period.

25 415-E:3-g Bona Fide Pathway II Association Coverage; Mitigation of Small Group Market  
26 Impacts of Pathway II Association Coverage.

27 I. In order to mitigate potential adverse effects of pathway II association coverage on the  
28 existing small group markets, the commissioner shall retain an independent actuarial firm to model  
29 and quantify the impacts of pathway II coverage on the existing small group markets and to  
30 perform the actuarial review necessary to support the small group risk adjustment program  
31 required under RSA 420-K. The plan of operation for the small group risk adjustment program  
32 required under RSA 420-K shall be approved and in place before any pathway II association  
33 coverage may be issued.

34 II. Upon the recommendation of the commission on the status of health coverage markets  
35 for individuals and small employers established under RSA 404-J, or upon the commissioner's own  
36 initiative, the commissioner may limit pathway II associations to the writing of existing business  
37 only and may adjust the risk score differential amount in RSA 420-K:4, I(d) as necessary to prevent

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1 the pathway II association market from having an adverse impact on the availability and choice of  
2 coverage in the small group market and as necessary to prevent average premiums for small groups  
3 from increasing at a rate that is significantly higher than the trend in claims costs.

4 7 Multiple-Employer Welfare Arrangements; Filing of Application. Amend the section heading  
5 and the introductory paragraph of RSA 415-E:4 to read as follows:

6 415-E:4 ***Self-Funded Arrangements***; Filing of Application. ***For self-funded arrangements***,  
7 the sponsoring association shall file with the commissioner an application for approval of the  
8 arrangement upon a form to be furnished by the commissioner, which shall include or have  
9 attached the following:

10 8 Multiple-Employer Welfare Arrangements; Termination Liability Fund. RSA 415-E:5 is  
11 repealed and reenacted to read as follows:

12 415-E:5 Self-Funded Arrangements: Termination Liability Fund.

13 I. Each self-funded multiple-employer welfare arrangement shall maintain a termination  
14 liability fund wherein the fund balance of the multiple-employer welfare arrangement shall at no  
15 time, for a consecutive 90-day period, be less than \$750,000 or 33 percent of the aggregate  
16 premiums billed during the 12 prior months, whichever is greater. For purposes of this paragraph,  
17 that surety amount, if any, deposited with the commissioner pursuant to RSA 415-E:7, I, may be  
18 credited as a fund balance asset toward the termination liability fund amount.

19 II. Each self-funded multiple-employer welfare arrangement shall file with the  
20 commissioner, not later than 4 months following the end of each fiscal year, a report on the  
21 financial status of the termination liability fund, which report is filed under oath by a member of its  
22 board of trustees, or by an administrative executive duly appointed by the board, and further  
23 certified to by an independent certified public accountant.

24 9 Multiple-Employer Arrangements, Financial Condition, Loss Reserves. Amend RSA 415-E:6  
25 to read as follows:

26 415-E:6 ***Self-Funded Arrangements***; Financial Condition, Loss Reserves, Reinsurance, or  
27 Working Capital; Determination of Inadequacy.

28 ***I. Each self-funded arrangement shall maintain specific excess insurance with a***  
29 ***retention level determined in accordance with sound actuarial principles and approved***  
30 ***by the commissioner.***

31 ***II. Each self-funded arrangement shall establish and maintain appropriate loss***  
32 ***reserves determined in accordance with sound actuarial principles and approved by the***  
33 ***commissioner.***

34 ~~[I.]~~ ***III.*** The commissioner may, upon reasonable notice, conduct an examination of the loss  
35 reserves, financial condition, specific excess insurance, and working capital of a multiple-employer  
36 welfare arrangement ***the costs of which shall be borne by the arrangement.*** If the  
37 commissioner preliminarily finds that the reserves, specific excess insurance, or financial condition



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1 may be inadequate, or that the arrangement does not have a combined working capital in an  
2 amount establishing the financial strength and liquidity of the arrangement to pay claims promptly  
3 and showing evidence of the financial ability of the arrangement to meet its obligations to covered  
4 employees, the commissioner shall notify the arrangement of such inadequacy. Upon being so  
5 notified, the arrangement shall within 30 days file with the commissioner all information which, in  
6 the belief of the arrangement, proves the reasonableness and adequacy of the condition noted as  
7 being inadequate.

8 [H.] **IV.** If the commissioner determines, after reviewing the information filed, that an  
9 inadequate condition exists, the arrangement shall implement, within 30 days, a plan to correct the  
10 inadequacy and shall file proof of reasonable improvement or adequate condition with the  
11 commissioner within 6 months of the implementation of the plan. If the commissioner is satisfied  
12 that the plan submitted to improve the inadequate condition of the arrangement is sufficient, he  
13 shall so notify the arrangement. The arrangement shall report quarterly to the commissioner until  
14 the causes of the inadequate condition have been corrected.

15 [H.] **V.** The commissioner may suspend or revoke the approval of an arrangement if he  
16 finds that the arrangement has failed to correct or reasonably improve an inadequate condition  
17 within the time authorized by paragraph [H] **IV**.

18 10 Multiple-Employer Arrangements; Insolvency Protection. Amend RSA 415-E:7, I to read as  
19 follows:

20 I. To assure the faithful performance of its obligations to its member employers and covered  
21 employees *who are Hampshire residents* and their dependents, every arrangement shall, within  
22 30 days after the close of the arrangement's fiscal year, deposit with the commissioner cash,  
23 securities, or any combination of these or other measures acceptable to the commissioner, in an  
24 amount equal to ~~[25 percent of the preceding 12 months' health care claims expenditures or 5~~  
25 ~~percent of gross annual premiums for the succeeding year], \$100,000 or 25 percent of the~~  
26 **aggregate premiums billed during the 12 prior months attributable to New Hampshire**  
27 **residents**, whichever is greater~~;~~ ~~however, in no case shall the amount of the deposit exceed~~  
28 ~~\$100,000].~~ All income from deposits shall belong to the depositing arrangement and shall be paid to  
29 it as it becomes available. An arrangement that has made a securities deposit may withdraw that  
30 deposit, or any part of such deposit, after making a substitute deposit of cash, securities, or any  
31 combination of these or other measures of equal amount and value, upon approval by the  
32 commissioner. No judgment creditor or other claimant of a multiple-employer welfare association  
33 shall have the right to levy upon any of the assets or securities held in this state as a deposit under  
34 this section.

35 11 Multiple-Employer Arrangements. Amend RSA 415-E:8 through RSA 415-E:13 to read as  
36 follows:

37 415-E:8 Policy Forms.

I. *Whether an arrangement is self-funded or fully insured*, no policy or contract form, application form, certificate, rider, endorsement, summary plan description, or other evidence of coverage shall be **sponsored or** issued by an arrangement unless the form and all changes to it have been filed with the commissioner by or on behalf of the arrangement which proposed to use such form and have been approved by the commissioner.

II. The commissioner shall disapprove any form filed under this section, or withdraw any previous approval, only if the form:

(a) Is in any respect in violation of, or does not comply with, this chapter.

(b) Contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

(c) Has any title, heading, or other indication of its provisions which is misleading.

(d) Is printed or otherwise reproduced in such manner as to render any material provision of the form substantially illegible.

(e) Contains provisions which are unfair or inequitable, or contrary to the public policy of this state or which encourage misrepresentation.

**III. Each self-funded arrangement shall issue to each covered employee a policy contract, certificate, summary plan description, or other evidence of the benefits and coverages provided. The evidence of the benefits and coverages provided shall contain in boldfaced print in a conspicuous location, the following statement: "The benefits and coverages described herein are provided through a trust fund established and funded by a group of employers."**

**IV. Each self-funded arrangement shall provide to each covered employee, on request, a written statement of the dollar amount of allowable benefit for any procedure which is requested by the appropriate procedure code.**

**415-E:9 Self-Funded Arrangements; Employer Participants' Liability. For self-funded arrangements:**

I. The liability of each employer participant for the obligations of the multiple-employer welfare arrangement shall be individual, several, and proportionate, but not joint.

II. Each employer participant shall have a contingent assessment liability pursuant to 415-E:10 for payment of actual losses and expenses incurred while the policy was in force.

III. Each policy issued by the arrangement shall contain a statement of the contingent liability. Both the application for insurance and policy shall contain, in contrasting color and not less than 10-point type, the following statement: "This is a fully assessable policy. In the event the arrangement is unable to pay its obligations, policyholders (employers) shall be required to contribute on a pro rata earned premium basis the money necessary to meet any unfulfilled obligations."

1       415-E:10 ***Self-Funded Arrangements***; Termination of Arrangement. ***For self-funded***  
2 ***arrangements***, if an arrangement is terminated for any reason, it shall pay all outstanding claims,  
3 debts, and obligations. The arrangement may retain sufficient funds to provide coverage for such  
4 additional period as the trustees of the arrangement consider prudent. In addition, the trustees  
5 may purchase such additional insurance as they consider necessary for protection against potential  
6 future claims. Any funds remaining in the arrangement after satisfaction of all obligations upon  
7 termination shall be paid to participating employers and/or covered employees as of the termination  
8 date in some equitable manner meeting with the approval of the commissioner, including, without  
9 ruling out other alternatives, equally on a per capita basis to each participating employer and/or  
10 employee who is covered under the arrangement as of the effective date of termination.

11       415-E:11 ***Self-Funded Arrangements***; Annual Reports and Triennial Actuarial Reports. ***For***  
12 ***self-funded arrangements***:

13           I. Every ***such*** arrangement shall, annually within 4 months of the end of the fiscal year or  
14 within such extension of time as the commissioner for good cause may grant, file a report with the  
15 commissioner, verified by the oath of a member of the board of trustees or by an administrative  
16 executive appointed by the board, showing its condition on the last day of the preceding fiscal year.  
17 The report shall contain a financial statement of the arrangement, including its balance sheet and a  
18 statement of operations for the preceding year certified by an independent certified public  
19 accountant. The report shall also include an analysis of the adequacy of reserves and contributions  
20 or premiums charged, based on a review of past and projected claims and expenses.

21           II. In addition to information called for and furnished in connection with the annual report,  
22 if reasonable grounds exist, the commissioner may request information which summarizes paid and  
23 incurred expenses, and contributions or premiums received, and may request evidence satisfactory  
24 to the commissioner that the arrangement is actuarially sound. Such information and evidence  
25 shall be furnished to the commissioner by the arrangement as soon as reasonably possible after  
26 requested by the commissioner, but no later than 30 days after such request, unless the  
27 commissioner, for good cause, grants an extension.

28           III. At least once every 3 years, each ***such*** arrangement shall have a report prepared by an  
29 actuary who is a member of the Society of Actuaries of the American Academy of Actuaries as to the  
30 actuarial soundness of the arrangement. The report shall be made available to the commissioner  
31 upon request. The report shall consist of, but shall not be limited to, the following:

32           (a) Adequacy of contribution rate in meeting the level of benefits provided and changes,  
33 if any, needed in the contribution rates to achieve or preserve a level of funding deemed adequate to  
34 enable payment of the benefit amounts provided under the arrangement, which shall include a  
35 valuation of present assets, based on statement value, and prospective assets and liabilities of the  
36 plan and the extent of any unfunded accrued liabilities.

37           (b) A plan to amortize any unfunded liabilities and a description of actions taken to

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1 reduce unfunded liabilities.

2 (c) A description and explanation of actuarial assumptions.

3 (d) A schedule illustrating the amortization of any unfunded liabilities.

4 (e) A comparative review illustrating the level of funds available to the arrangement  
5 from rates, investment income, and other sources realized over the period covered by the report,  
6 indicating the assumptions used.

7 (f) A statement by the actuary that the report is complete and accurate and that in his  
8 opinion the techniques and assumptions used are reasonable and meet the requirements and intent  
9 of this chapter.

10 (g) Other factors or statements as may be reasonably required by the commissioner in  
11 order to determine the actuarial soundness of the plan.

12 415-E:12 [~~Place of Business;~~] Maintenance of Records. Each arrangement shall [~~have and~~  
13 ~~maintain its principal place of business in this state and shall~~] make available to the commissioner  
14 complete records of its assets, transactions, and affairs in accordance with such methods and  
15 systems as are customary for, or suitable to, the kind or kinds of business transacted.

16 415-E:13 ***Qualification for Approval and*** Suspension<sup>[5]</sup> ***or*** Revocation of Approval.

17 I. Subject to other provisions in this chapter, the commissioner shall deny, suspend, or  
18 revoke an arrangement's approval if it finds that the arrangement:

19 (a) Has failed to meet the financial requirements of this chapter, RSA 420-G, or has  
20 violated any lawful order or rules.

21 (b) Has refused to be examined or to produce its accounts, records and files for  
22 examination, or if any of its officers has refused to give information with respect to its affairs or to  
23 perform any other legal obligation as to such examination, when required by the commissioner.

24 (c) Has failed to pay any final judgment rendered against it in this state within 60 days  
25 after the judgment became final.

26 (d) No longer meets the requirements for the authority originally granted.

27 II. The commissioner may, in his discretion, deny, suspend, or revoke the approval of any  
28 arrangement if it finds that the arrangement:

29 (a) Has violated any lawful order or rule of the commissioner, provision of this chapter,  
30 RSA 420-J, or relevant provision of RSA 161-H.

31 (b) Has refused to be examined or to produce its accounts, records, and files for  
32 examination, or if any of its officers have refused to give information with respect to its affairs or to  
33 perform any other legal obligation as to such examination, when required by the commissioner.

34 ***III. The commissioner shall not grant or continue approval until such time as the***  
35 ***arrangement replaces any trustee found by the commissioner, upon the presentation of***  
36 ***sufficient evidence:***

37 (a) ***To be incompetent;***

1           ***(b) To be guilty of, or to have pled guilty or no contest to a felony, or a crime***  
2 ***involving moral turpitude;***

3           ***(c) To have had any type of insurance license revoked in this or any other state;***

4           ***(d) To have improperly manipulated assets, accounts, or specific excess***  
5 ***insurance or to have otherwise acted in bad faith.***

6           ***IV. To qualify for and retain approval to transact business, an arrangement shall***  
7 ***make all contracts with administrators or service companies available for inspection by***  
8 ***the department initially, and thereafter upon reasonable notice.***

9           ***V. Failure to maintain compliance with applicable eligibility or filing***  
10 ***requirements established by this section shall be grounds for suspension or revocation of***  
11 ***approval of an arrangement, provided, however, that such arrangement shall have 60***  
12 ***days after notification by the commissioner to take such action necessary to correct the***  
13 ***deficiency.***

14           12 Multiple Employer Arrangements; Rehabilitation; Rulemaking. Amend RSA 415-E:15 and  
15 RSA 415-E:16 to read as follows:

16           415-E:15 Rehabilitation, Dissolution. Any rehabilitation, liquidation, conservation,  
17 ***supervision***, or dissolution of a multiple-employer welfare arrangement shall be conducted under  
18 the supervision of the commissioner, who shall have all power with respect thereto granted to it  
19 under the laws governing the rehabilitation, liquidation, conservation, ***supervision***, or dissolution  
20 of insurers.

21           415-E:16 Rulemaking. The commissioner may adopt such rules, pursuant to RSA 541-A, as [he  
22 ~~deems~~] ***are*** reasonable and necessary in order to carry out properly the functions and  
23 responsibilities assigned the insurance department under [the laws of the state] ***this chapter***.  
24 ~~[This rulemaking authority shall expire on January 1, 1993, at which time this section, unless~~  
25 ~~replaced by a later legislative enactment, shall be deemed repealed. Any rules adopted under this~~  
26 ~~section shall be drafted in as narrow a manner as possible, consistent with the authority granted~~  
27 ~~the department under the laws of this state.]~~

28           13 Health Coverage; Definitions. Amend RSA 420-G:2, XVI(a) to read as follows:

29           XVI.(a) "Small employer" means a business or organization which employed on average, one  
30 and up to 50 employees, including owners and self-employed persons, on business days during the  
31 previous calendar year. A small employer is subject to this chapter whether or not it becomes part  
32 of an association, multi-employer plan, trust, or any other entity cited in RSA 420-G:3 provided it  
33 meets this definition. ***However, with respect to coverage written under RSA 415-E to a bona***  
34 ***fide pathway II association, whether self funded or fully insured, if such association has***  
35 ***at least 250 New Hampshire covered lives and meets all applicable standards under RSA***  
36 ***415-E and all large group standards under this chapter, coverage offered by such***  
37 ***association may be offered to sole proprietors or self-employed persons.***

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14 Purchasing Alliances; Definitions. Amend RSA 420-M:2, X to read as follows:

X. "Qualified purchasing alliance" means a purchasing alliance that has obtained certification from the commissioner under RSA 420-M:13 as a qualified purchasing alliance with authority to ~~[operate in the same manner as a qualified association trust pursuant to RSA 420-G:10]~~ ***sponsor fully-insured bona fide pathway II association coverage under RSA 415-E.***

15 Purchasing Alliances. RSA 420-M:13 is repealed and reenacted to read as follows:

420-M:13 Qualified Purchasing Alliance. A purchasing alliance that has a minimum of 500 enrollees may elect to obtain certification from the commissioner as a qualified purchasing alliance. To obtain certification, a purchasing alliance shall demonstrate:

I. That the purchasing alliance meets all requirements under RSA 415-E to operate as a bona fide pathway II association; and

II. That certification of the applicant as a qualified purchasing alliance will promote the purposes set out in RSA 420-M:1; and

III. That the purchasing alliance has the capacity to monitor and screen sole proprietor members purchasing pathway II association coverage to ensure that they meet all requirements to qualify as an "employee" under 29 C.F.R. section 2510.3-5(b) and meets the per month hourly work requirement contained in RSA 126-AA:2, III.

16 Definition of Qualified Association Trust. Amend the introductory paragraph of RSA 420-G:2, XV to read as follows:

XV. "Qualified association trust or other entity" means an association established trust or other entity in existence on January 1, 1995, and providing health coverage within the state of New Hampshire to at least ~~[1,000]~~ **250** employees and/or the dependents of association members, which association:

17 Health Coverage; Qualified Association Trust. Amend RSA 420-G:10 to read as follows:

420-G:10 Qualified Association Trust ~~[and Qualified Purchasing Alliance]~~.

I. A qualified association trust or other entity, as defined in RSA 420-G:2, XV~~[, and a qualified purchasing alliance, as defined in RSA 420-M:2, X,]~~ shall:

(a) Comply with the rating restrictions outlined in RSA 420-G:4 for all small employer members with 50 or fewer employees based upon the association's or alliance's group experience, except that ~~[for a qualified association trust,]~~ no rating factor shall be utilized without the express written consent of the association.

(b) Offer all eligible members, as defined under the applicable trust or other documents, coverage and rates on a guaranteed issue and renewable basis.

(c) Comply with the regulations concerning medical underwriting in RSA 420-G:5.

(d) Comply with the preexisting conditions provision of RSA 420-G:7.

~~[(e) Prohibit any employer that voluntarily discontinues participation in either a qualified association trust or a qualified purchasing alliance from rejoining for a period of at least 24~~

1 ~~months.]~~

2 II. Nothing in this chapter shall be interpreted to limit the size of employers who may  
3 participate in coverage with a qualified association trust ~~[or a qualified purchasing alliance]~~.

4 18 Small Employer Health Reinsurance Pool. Amend the chapter heading of RSA 420-K to  
5 read as follows:

6 SMALL EMPLOYER HEALTH ~~[REINSURANCE POOL]~~

7 ***RISK ADJUSTMENT PROGRAM***

8 19 Small Employer Health Reinsurance Pool; Definitions. RSA 420-K:1 is repealed and  
9 reenacted to read as follows:

10 420-K:1 Definitions. In this chapter:

11 I. "Assessment" means the liability of the member insurer to the reinsurance pool.

12 II. "Board" means the board of directors of the small employer health reinsurance pool.

13 III. "Bona fide pathway II association coverage" means coverage, whether self-funded or  
14 fully insured, that constitutes an employee welfare benefit plan sponsored by a bona fide pathway II  
15 association as defined in RSA 415-E:1.

16 IV. "Commissioner" means the insurance commissioner.

17 V. "Covered lives" shall include all persons who have health insurance via a health carrier  
18 and who are employees or dependents of employees of a small employer, including sole proprietors  
19 covered under bona fide pathway II association coverage.

20 VI. "Health insurance" means "health insurance" as defined in RSA 404-G:2, VII.

21 VII. "Plan of operation" means the plan of operation of the small employer health risk  
22 adjustment program, including articles, bylaws and operating rules, procedures and policies  
23 approved by the commissioner and adopted by the pool.

24 VIII. "Small employer" means "small employer" as defined in RSA 420-G:2, XVI.

25 IX. "Small employer health carrier" means any entity licensed pursuant to RSA 402, RSA  
26 420-A, or RSA 420-B that delivers, issues for delivery or maintains in force policies of health  
27 insurance in New Hampshire to any small employer. For purposes of this chapter, health carrier  
28 shall include any association, organization or arrangement offering or sponsoring bona fide pathway  
29 II association coverage.

30 20 Establishment of the Risk Adjustment Program. Amend RSA 420-K:2 to read as follows:

31 420-K:2 Establishment of the ~~[Pool]~~ ***Risk Adjustment Program***.

32 I. There is established a nonprofit entity to be known as the "New Hampshire small  
33 employer health ~~[reinsurance pool]~~ ***risk adjustment program***." All ***small employer*** health  
34 carriers~~[-writers of health insurance, and other insurers]~~ issuing or maintaining health insurance  
35 in this state shall be members of the ~~[pool]~~ ***program***.

36 II. ~~[On or before July 1, 2005,]~~ The commissioner shall give notice to all members of the  
37 ~~[pool]~~ ***program*** of the time and place for the initial organizational meeting~~[-which shall take place~~

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1 ~~by July 15, 2005~~. The members shall select the initial board at the organizational meeting and  
2 such initial board shall be subject to approval by the commissioner. The members shall elect each  
3 subsequent board at the annual meeting of members and each such subsequent board shall be  
4 subject to approval by the commissioner. The initial board and each subsequent board shall consist  
5 of at least 5 and not more than 9 representatives of members. There shall be no more than one  
6 board member on the initial board and each subsequent board representing any one member  
7 company. In determining voting rights at the organizational meeting and all subsequent meetings  
8 of members, each member shall be entitled to vote in person or by proxy. All such votes shall be  
9 proportional to the member's covered lives. To the extent possible, at least 2/3 of members of each  
10 board shall be small employer health carriers. ~~[At least one member of each board shall be a small~~  
11 ~~employer health carrier with less than \$100,000,000 in net small employer health insurance~~  
12 ~~premium in this state.]~~ The commissioner, or designee, shall be an ex-officio voting member of the  
13 board. In approving selection of each board, the commissioner shall assure that all members are  
14 fairly represented.

15 III. If the initial board is not elected at the organizational meeting, the commissioner shall  
16 appoint the initial board within 15 days of the organizational meeting.

17 IV. Within 60 days after the appointment of such initial board, the board shall submit to  
18 the commissioner a plan of operation and thereafter any amendments to the plan necessary or  
19 suitable to assure the fair, reasonable, and equitable administration of the ~~[pool]~~ **program**. The  
20 commissioner shall, after notice and hearing, approve the plan of operation provided he or she  
21 determines it to be suitable to assure the fair, reasonable, and equitable administration of the ~~[pool,~~  
22 ~~and provides for the sharing of pool gains or losses on an equitable proportionate basis in~~  
23 ~~accordance with the provisions of paragraph VI of this section]~~ **program**. The plan of operation  
24 shall become effective upon approval in writing by the commissioner consistent with the date on  
25 which the coverage under this section shall be made available. If the board fails to submit a  
26 suitable plan of operation within 60 days after its appointment, or at any time thereafter fails to  
27 submit suitable amendments to the plan of operation, the commissioner shall, after notice and  
28 hearing, adopt and promulgate a plan of operation or amendments ~~[no later than October 1, 2005]~~.  
29 The commissioner shall amend any plan adopted by him or her, as necessary at the time a plan of  
30 operation is submitted by the board and approved by the commissioner.

31 V. The board shall select ~~[reinsurance pool]~~ **risk adjustment program** administrators  
32 through a competitive bidding process to administer the ~~[pool]~~ **program**. The board shall evaluate  
33 bids submitted based on criteria established by the board. ~~[Each month, total payments to~~  
34 ~~administrators shall not exceed the larger of \$2,500 or an amount equal to \$10 per life for which the~~  
35 ~~reinsurance pool has any potential claims liability.]~~

36 VI. The plan of operation shall establish procedures for:

37 (a) Handling and accounting of assets and moneys of the pool, and for annual fiscal



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1 reporting to the commissioner.

2 (b) Filling vacancies on the board, subject to the approval of the commissioner.

3 (c) Selecting an administrator and setting forth the powers and duties of the  
4 administrator.

5 (d) ~~[Reinsuring risks in accordance with the provisions of this chapter]~~ **Establishing**  
6 **risk adjustment parameters.**

7 (e) Collecting assessments from all members to provide for ~~[claims reinsured]~~ **risk**  
8 **adjustment payments** by the ~~[pool]~~ **program** and for administrative expenses incurred or  
9 estimated to be incurred during the period for which the assessment is made.

10 (f) Any additional matters at the discretion of the board.

11 21 Powers of the Program. RSA 420-K:3 and RSA 420-K:4 are repealed and reenacted to read  
12 as follows:

13 420-K:3 Powers of the Program. The program may:

14 I. Enter into contracts as are necessary or proper to carry out the provisions and purposes  
15 of this chapter, including the authority, with the approval of the commissioner, to enter into  
16 contracts with programs of other states for the joint performance of common functions, or with  
17 persons or other organizations for the performance of administrative functions.

18 II. Sue or be sued, including taking any legal actions necessary or proper for recovery of  
19 any assessments for, on behalf of, or against members.

20 III. Take such legal action as necessary to avoid the payment of improper claims against  
21 the program.

22 IV. Define the array of health coverage products for which risk adjustment will be applied  
23 in accordance with the requirements of this chapter.

24 V. Establish rules, conditions, and procedures pertaining to the risk adjustment  
25 mechanism, including implementation and measurement time frames and the permitted risk  
26 corridor where no transfer of risk adjustment funds shall take place.

27 VI. Establish appropriate rates, rate schedules, rate adjustments, rate classifications, and  
28 any other actuarial functions appropriate to the operation of the program.

29 VII. Assess members in accordance with the provisions of this chapter, and to make  
30 advance interim assessments as may be reasonable and necessary for organizational and interim  
31 operating expenses and to pay claims by the program. Any such interim assessments shall be  
32 credited as offsets against any regular assessments due following the close of the fiscal year.

33 VIII. Appoint from among the members appropriate legal, actuarial, and other committees  
34 as necessary to provide technical assistance in the operation of the program, policy, and other  
35 contract design, and any other function within the authority of the program.

36 IX. Borrow money to effectuate the purposes of the program. Any notes or other evidence  
37 of indebtedness of the program not in default shall be legal investments for insurers and may be

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1 carried as admitted assets.

2 420-K:4 Risk Adjustment Program.

3 I. The board shall:

4 (a) Develop and monitor a measure of risk to be used in comparing populations covered  
5 by small employer health insurance coverage and bona fide pathway II association coverage. The  
6 population covered by qualified association trust coverage or by bona fide pathway I association  
7 coverage, whether self-funded or fully insured, shall not be a part of the risk adjustment program  
8 and, for the purposes of this chapter, shall not be considered to be small group coverage.

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

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

18 (d) Subject to the limitation in paragraph II, establish risk adjustment payments  
19 between carriers that are triggered whenever the average risk over any calendar year between bona  
20 fide pathway II association coverage and all other small group coverage differs by more than the  
21 maximum allowed amount, and that serve to create a net effect of reducing future expected risk  
22 score differences after payments to approximately the target amount. The commissioner shall  
23 establish the maximum allowed amount and the target amount by retaining actuarial experts. The  
24 standard that the actuarial experts shall use in recommending values for the maximum allowed  
25 amount and the target amount is that such amounts should be so determined as to prevent the  
26 pathway II association market from having an adverse impact on the availability and choice of  
27 coverage in the small group market and to prevent adverse selection against the small group  
28 market that is sufficient to cause the average premiums for small groups to increase at a rate that  
29 is significantly higher than the trend in claims costs.

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

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

34 22 Immunity and Indemnification. Amend RSA 420-K:7 to read as follows:

35 420-K:7 Immunity and Indemnification.

36 I. Neither the participation in the ~~[pool]~~ **program** as members, the establishment of rates,  
37 forms, or procedures, nor any other joint or collective action required by this chapter shall be the

1 basis of any legal action against the ~~[pool]~~ **program** or any of its members.

2 II. Any person or member made a party to any action, suit, or proceeding because the  
3 person or member served on the board or on a committee or was an officer or employee of the ~~[pool]~~  
4 **program** shall be held harmless and be indemnified by the ~~[pool]~~ **program** against all liability and  
5 costs, including the amounts of judgments, settlements, fines or penalties, and expenses and  
6 reasonable attorney's fees incurred in connection with the action, suit, or proceeding. The  
7 indemnification shall not be provided on any matter in which the person or member is finally  
8 adjudged in the action, suit, or proceeding to have committed a breach of duty involving gross  
9 negligence, dishonesty, willful misfeasance, or reckless disregard of the responsibilities of office.  
10 Costs and expenses of the indemnification shall be prorated and paid for by all members. The right  
11 of indemnification shall not be exclusive of other rights or defenses to which such person or the  
12 legal representative or successors of such person, may be entitled to as a matter of law. The  
13 commissioner may retain actuarial consultants necessary to carry out his or her responsibilities  
14 pursuant to this chapter and such expenses shall be paid by the ~~[pool]~~ **program** established in this  
15 chapter.

16 23 New Chapter; Commission on the Status of Health Coverage Markets for Individuals and  
17 Small Employers. Amend RSA by inserting after chapter 404-I the following new chapter:

18 CHAPTER 404-J

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

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

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

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

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

28 (3) The insurance commissioner, or designee.

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

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

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

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

37 (5) Two producers, appointed by the insurance commissioner, one of whom shall be

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1 a producer with a significant clientele in the individual market and the other a producer with a  
2 significant clientele in the small employer market.

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

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

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

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

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

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

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

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

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

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

25 II.(a) The commission shall evaluate the status of health coverage markets for individuals  
26 and small employers. This shall include the individual market, the small employer market, and  
27 alternative sources of coverage that may be available to individuals and small employers, including  
28 pathway II association coverage, transitional coverage, and short-term limited duration coverage.  
29 These markets shall be evaluated in terms of their performance in making available to individuals  
30 and small employers affordable coverage that provides access to medically necessary care on  
31 affordable terms. Consideration shall be given to market competitiveness, price, choice of plans,  
32 market size, market segmentation, the risk profile of the covered population in each market,  
33 adverse selection against specific markets, migration between markets, the rate of growth or  
34 diminution in the overall number of covered lives, and other similar factors that may affect the  
35 coverage available to individuals and small employers. Specifically, the commission shall evaluate  
36 markets and make recommendations on the following:

37 (1) The performance and effectiveness of the small group market in itself and in

1 conjunction with other markets that may be available to small employers and their employees,  
2 including, if applicable, pathway II association coverage. This shall include consideration of  
3 coverage for pre-existing conditions and essential health benefits, premium rates and product  
4 offerings, impact on premiums, the availability and choice of plans, the number of covered lives, and  
5 the overall impact on the availability and affordability of coverage for higher risk individuals and  
6 small employer groups. Based on this evaluation, the commission shall make recommendations in  
7 its annual report for future program or legislative modifications, including, if applicable,  
8 modifications to the risk adjustment program authorized under RSA 420-K, as well as a final  
9 recommendation as to whether the general court should allow the continuation or should phase out  
10 the market for pathway II association coverage.

11 (2) The performance and effectiveness of the individual market in itself and in  
12 conjunction with other markets that may be available to individuals and sole proprietors, including,  
13 if applicable, pathway II association coverage. This shall include consideration of the migration of  
14 sole proprietors to the pathway II market and the effectiveness of screening procedures in  
15 validating sole proprietorship status, the price and availability of coverage for individuals who do  
16 not qualify for an advanced premium tax credit or cost sharing reduction assistance through the  
17 marketplace exchange, and the design and effectiveness of the risk sharing mechanism and 1332  
18 waiver for the individual market authorized under RSA 420-N:6-a. Based on this evaluation, the  
19 commission shall make recommendations concerning the individual market risk sharing mechanism  
20 under the 1332 waiver, any changes that are needed to screening and monitoring procedures for  
21 compliance with the hourly work standard to qualify as a sole proprietor under pathway II  
22 association coverage, and any other legislative or regulatory measures that would promote market  
23 stability and growth in the individual market.

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

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

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

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

5           V. The commission shall submit an annual report on or before November 1 of each year  
6 with its findings and any recommendations for proposed legislation, and a final report on December  
7 1, 2024 to the president of the senate, the speaker of the house of representatives, the senate clerk,  
8 the house clerk, the governor, and the state library. If applicable, the commission's reports shall  
9 contain the commission's recommendation regarding whether the market for pathway II association  
10 coverage should continue or be phased out.

11           24 Individual Health Insurance; Market; Contingency. RSA 404-G:12, I and II are repealed  
12 and reenacted to read as follows:

13           I. Notwithstanding RSA 404-G:11, and if supported by the recommendations of actuarial  
14 experts retained by the department, the commissioner may request that the board of directors of the  
15 association develop a plan of operation to support the affordability and accessibility of health  
16 insurance in the state's individual health insurance market. The proposal may include resumption  
17 of a risk sharing program similar to that referenced in RSA 404-G:5, creation and operation of a  
18 reinsurance program, or such other program as the board finds will best support the availability  
19 and affordability of health insurance in the state and may also include the development of a waiver  
20 application under the Act. The commissioner shall approve the revised plan of operations if the  
21 commissioner finds that the plan will further the purpose of this chapter as stated in RSA 404-G:1,  
22 I, and is otherwise consistent with New Hampshire and federal law.

23           II. The board's proposal may include a recommendation that the state apply for a waiver  
24 under the Act, or any successor to the Act. If the approved plan includes an application for a  
25 waiver, the commissioner and the board shall proceed in accordance with RSA 420-N:6-a. If the  
26 waiver is approved by the federal government, the board shall prepare a revised plan of operations  
27 consistent with the terms of the waiver, and shall implement it upon approval by the commissioner.

28           25 Federal Health Care Reform 2010; Waiver. RSA 420-N:6-a is repealed and reenacted to read  
29 as follows:

30           420-N:6-a Waiver. If such action is supported by the recommendations of actuarial experts  
31 retained by the department as being consistent with the purposes of RSA 404-G:1, I, the  
32 commissioner shall, at the earliest practicable date, submit an application on behalf of the state to  
33 the United States Secretary of the Treasury, and if required, to the United States Secretary of  
34 Health and Human Services, to waive certain provisions of the Act, as provided in section 1332 of  
35 the Act, or any other applicable waiver provision in order to create a risk sharing or reinsurance  
36 mechanism for the individual market under RSA 404-G which is eligible to draw down federal pass-  
37 through funding to support such mechanism. The commissioner shall publish and accept public

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comment on the 1332 waiver application and the plan of operation for the individual market mechanism prior to approving such plans. Upon approval of the joint health care reform oversight committee, the commissioner shall implement any federally approved waiver, including but not limited to overseeing the implementation of a revised plan of operations under RSA 404-G:12.

26 Repeal. The following are repealed:

I. RSA 404-J, relative to the commission on the status of health insurance markets for individuals and small employers.

II. 2017, 221:8, relative to the 2020 repeal of RSA 404-G:12.

III. 2017, 221:11, relative to the 2020 repeal of RSA 420-N:6-a.

27 Applicability. Sections 3-23 of this act shall take effect 60 days after the insurance commissioner, with the advice of the department of justice, certifies to the secretary of state and the director of legislative services that the federal rule codified at 29 C.F.R. section 2510.3-5(b) is legally valid and the issues raised by the opinion issued on March 28, 2019 in *State of New York v. United States Department of Labor*, United States District Court of the District of Columbia, Civil Action No. 18-1747 have been resolved. However, in no event shall sections 3-23 of this act take effect at a date later than December 1, 2021.

28 Effective Date.

I. Sections 3-23 of this act shall take effect as provided in section 27 of this act.

II. Paragraph I of section 26 of this act shall take effect December 1, 2024.

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