

SB 297-FN - AS AMENDED BY THE HOUSE

03/20/2025 0951s
5Jun2025... 2473h

2025 SESSION

25-1168
08/05

SENATE BILL **297-FN**

AN ACT relative to pooled risk management programs.

SPONSORS: Sen. Carson, Dist 14

COMMITTEE: Finance

AMENDED ANALYSIS

This bill:

I. Transfers authority over pooled risk management programs from the secretary of state to the insurance department.

II. Requires pooled risk management programs to be licensed by the insurance department.

III. Allows pooled risk management programs to establish a guaranty fund to protect from financial impairment.

IV. Requires pooled risk management programs to seek to maintain certain amounts in excess or stop loss coverage, unless the insurance commissioner determines that a lesser amount is appropriate.

V. Allows pooled risk management programs to issue assessable policies.

VI. Allows the insurance commissioner to examine the financials of pooled risk management programs under certain conditions.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Five

AN ACT relative to pooled risk management programs.

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

1 1 New Paragraphs; Pooled Risk Management; Definitions. Amend RSA 5-B:2 by inserting the
2 following new paragraphs after paragraph IV:

3 V. "Administration", as used in RSA 5-B:5, I(c), means reasonable expenses for risk
4 management, including processing, evaluation, and settlement services incurred in the payment of
5 claims and other related losses, wellness programs, and for auditor, actuarial, and accounting
6 services for administration of the pooled risk program. The reasonability of an expense for
7 administration under this chapter may be determined in an examination or administrative hearing
8 commenced by the secretary of state pursuant to RSA 5-B:4-a.

9 VI. "Reserves" means claims reserves (case reserves and incurred but not reported (IBNR
10 reserves), contribution deficiency reserves, and contingency reserves. "Contingency reserves" means
11 the amount of surplus to be retained by the pooled risk management program for the upcoming plan
12 year as may be reasonably established and subsequently required to cover expected and unforeseen
13 or extraordinary claim and administrative losses and liabilities.

14 VII. "Excess insurance" means reinsurance.

15 VIII. "Assessments" means a provision that, if the assets of the pooled risk management
16 program are at any time actuarially determined to be insufficient to discharge its claim and
17 administrative losses and liabilities and other legal obligations of the plan, the program shall, within
18 30 days of such a determination, draw from the restricted fund balance accounts under RSA 5-B:5,
19 I(g) or, as necessary under RSA 5-B:4-b, II, collect additional contributions from its participating
20 members for the amount needed to make up the deficiency.

21 IX. "Restricted fund balance" means an amount, as specified in RSA 5-B:5, I(g), that may be
22 held by a pooled risk management program for health coverage, permitted that the amount is held in
23 a restricted account and that the amount shall be used only for the specific purpose of funding
24 assessments under RSA 5-B:4-b, II.

25 2 New Section; Insolvency or Financial Impairment. Amend RSA 5-B by inserting after section
26 4-a the following new section:

27 5-B:4-b Insolvency or Financial Impairment.

28 I. If at the end of any fiscal month, the contingency reserve of a pooled risk management
29 program for health coverage is at or below 8 percent of annual paid claims or of a pooled risk
30 management program for workers compensation and other property and casualty lines is at or below

20 percent of annual contributions as determined by the prior year's audited fiscal year financial statements, the pooled risk management program shall notify its members in writing within 30 days that a potential assessment may be necessary pursuant to RSA 5-B:4-b, II if the pooled risk management program's contingency reserve continues to decrease and shall submit a written proposed course of action to the secretary of state with respect to alleviating the contingency reserve deficiency. Any such notification to a pooled risk management program's members under this section shall include an estimate of the amount of that potential assessment.

II. If, at the end of any fiscal month, the contingency reserve of a pooled risk management program for health coverage is at or below 4 percent of annual paid claims or if a pooled risk management program for workers compensation and other property casualty lines is at or below 10 percent of annual contributions, the pooled risk management program shall notify the secretary of state of the contingency reserve deficiency within 5 business days. The secretary of state shall notify the program's governing board of the deficiency and shall have the power to issue to the governing board an order requiring abatement of the deficiency.

III. If the governing board fails to comply with the order within 30 days after the date of the notice, the secretary of state may apply to and seek from the superior court an order requiring the pooled risk management program to abate the deficiency or receivership of the program, as the circumstances may require, and authorizing the secretary of state or any officer designated by the secretary of state to oversee the required abatement or receivership. The pooled risk management program shall reimburse the secretary of state for the cost incurred for such oversight.

IV. If a pooled risk management program is determined to be insolvent, financially impaired, or otherwise unable to discharge its claim and administrative losses and liabilities and other legal obligations of the plan, each participating member of the program shall be assessed on a pro rata basis calculated by the amount of its annual contribution to satisfy the amount of the deficiency.

3 Standards of Organization and Operation. Amend RSA 5-B:5 to read as follows:

5-B:5 Standards of Organization and Operation.

I. Each pooled risk management program shall meet the following standards of organization and operation. Each program shall:

(a) Exist as a legal entity organized under New Hampshire law.

(b) Be ***member-owned, but*** governed by a board the majority of which is composed of elected or appointed public officials, officers, or employees. Board members shall not receive compensation but may be reimbursed for mileage and other reasonable expenses. Board members shall comply with the provisions of RSA 15-A. ***Board members shall have a fiduciary responsibility to the member political subdivisions, which includes the duties of good faith and loyalty, avoiding conflicts of interest, and managing the pooled risk management program solely for the benefit of the political subdivisions. Board members shall use a***

standard of care, diligence, prudence, and skill in the management of the pooled risk management program.

(c) Return all earnings and surplus in excess of any amounts required for administration, claims, reserves, and purchase of excess insurance to the participating political subdivisions.

(d) Provide for an annual audit of financial transactions by an independent certified public accountant. The audit shall be filed with the department and distributed to participants of each pooled risk management program.

(e) Be governed by written bylaws which shall detail the terms of eligibility for participation by political subdivisions, the governance of the program and other matters necessary to the program's operation. Bylaws and any subsequent amendments shall be filed with the department.

(f) Provide for an annual actuarial evaluation of the pooled risk management program. The evaluation shall ~~[assess the adequacy of]~~ **calculate** contributions **and assessments** required to fund any such program and **shall calculate** the reserves necessary to be maintained to meet expenses of all incurred and incurred but not reported claims and other projected needs of the plan. The annual actuarial evaluation shall be performed by a member of the American Academy of Actuaries qualified in the coverage area being evaluated, shall be filed with the department, and shall be distributed to participants of each pooled risk management program.

(g) A pooled risk management program for health coverage may designate a maximum of 4 percent of the previous fiscal year's contributions that, if designated, shall be sourced from that pooled risk management program's annual earnings and surplus as defined in RSA 5-B:5, I(c) and shall be kept in a restricted fund balance for the specific purpose of funding assessments under RSA 5-B:4-b, II. This restricted fund balance shall not exceed 4 percent of a pooled risk management program's previous fiscal year's contributions, shall not be considered in the calculation of a contingency reserve, and shall be used prior to any member assessments under RSA 5-B:4-b, II.

(h) Provide notice to all participants of and conduct 2 public hearings for the purpose of advising of potential rate increases, the reasons for projected rate increases, and to solicit comments from members regarding the return of surplus, at least 10 days prior to rate setting for each calendar year.

(i)(1) For workers' compensation and other property and casualty lines of coverage, pooled risk management programs shall maintain a contingency reserve with a minimum of 30 percent of member contributions for the then current fiscal year and a maximum of 40 percent of member contributions for the then current fiscal year.

(2) For a health line of coverage, pooled risk management programs shall maintain a contingency reserve with a minimum of 12 percent of member contributions for

the then current fiscal year and a maximum of 16 percent of member contributions for the then current fiscal year.

(3) At the end of each fiscal year, if a pooled risk management program's contingency reserves fall below the minimum level as set forth in this section, the program shall add to the next calculation of annual member contributions a "contingency reserve replenishment" equal to that shortfall. This contingency reserve replenishment shall only be collected from members who participated in the fiscal year for which the replenishment is calculated and such replenishment may be made after a member has discontinued membership in the program.

(4) By July 1, 2027, and for every 4 years thereafter, the secretary of state or their designee shall hold a hearing with all pooled risk management programs and any affected party to receive input and data regarding the contingency reserve rate ranges outlined in subparagraphs (i)(1) and (i)(2) above. A report of the findings of the hearing, which shall include all written testimony and reports submitted during the hearing, and include any recommendations made by the secretary of state or their designee, shall be delivered to the governor, senate president, speaker of the house, and the chair of any committee with jurisdiction over pooled risk management programs by October 1, 2027.

(5) The board of directors of a pooled risk management program may, after vote of the board of directors and written notification to the governing bodies of its members, submit a written request to the secretary of state for a one-year increase to the maximums stated in RSA 5-B:5, I(i)(1) of an additional 5 percent for workers' compensation and other property casualty coverage and RSA 5-B:5, I(i)(2) of an additional 2 percent for health coverage. Any written request pursuant to this section with respect to any increase of the maximum percentage shall include a resolution of the board of directors, copies of the written notifications made by the pooled risk management program to its members governing bodies, a report by a certified auditor of the current financial position of the program, a detailed analysis explaining the purpose of the temporary increase, and an actuarial analysis conducted by an actuary with qualifications as detailed in RSA 5-B:5, I(f) of the impact to the contribution and finances of the program. The secretary of state shall approve or deny the request within 30 days of receipt of any such request.

II. If a pooled risk management program fails to provide for an annual audit or an annual actuarial evaluation, the department shall perform or cause to be performed the required audit or evaluation and shall be reimbursed the cost by the program.

4 New Paragraph; Declaration of Status; Tax Exemption; Liability and Disclaimer Requirement.
Amend RSA 5-B:6 by inserting after paragraph III the following new paragraph:

IV. Any such program operating under this chapter shall publicly and conspicuously disclose by including a written disclaimer in any and all member agreements, contracts, bylaws, and

1 contribution quotes and renewals between the program and its prospective and actual member
2 political subdivisions that, at a minimum, notifies the political subdivision of the following:

3 (a) The pooled risk management program does not function like an insurance company
4 and is not an insurer.

5 (b) The pooled risk management program, to the extent it is self-insured, does not
6 provide guaranteed cost or fixed cost coverages.

7 (c) The pooled risk management program may collect from participating members
8 assessments or replenishments whenever required in the event the program's assets are insufficient
9 to discharge its claim and administrative losses and liabilities and other legal obligations of the plan,
10 in the event of insolvency, or in the event contingency reserves fall below the required minimum
11 under this chapter.

12 5 Pooled Risk; Title Change. The chapter heading of RSA 5-B is repealed and reenacted to read
13 as follows:

14 ASSESSMENT POOLED RISK MANAGEMENT PROGRAMS

15 6 New Subparagraph; Insurance; Third Party Administrators; Definitions. Amend RSA 402-
16 H:1, I by inserting after subparagraph (m) the following new subparagraph:

17 (n) A pooled risk management program licensed pursuant to RSA 420-R:4.

18 7 Insurance; Licensure of Medical Utilization Review Entities; Licensure or Registration
19 Required. Amend RSA 420-E:2, I to read as follows:

20 I. Any person, partnership or corporation, other than an insurer, nonprofit service
21 organization, health maintenance organization, **pooled risk management program**, or an
22 employee of those exempt organizations, that performs medical utilization review services on behalf
23 of commercial insurers, nonprofit service organizations, health maintenance organizations, **pooled**
24 **risk management programs**, third-party administrators or employers, shall apply for a license to
25 be issued by the department and shall pay an application fee and an annual license fee. No person,
26 partnership or corporation, other than an insurer, nonprofit service organization, health
27 maintenance organization, or the employees of exempt organizations shall perform utilization review
28 services or medical utilization review services unless the person, partnership, or corporation has
29 received a license in accordance with this chapter.

30 8 Insurance; Portability, Availability, and Renewability of Health Coverage; Disclosure. Amend
31 RSA 420-G:11, IV to read as follows:

32 IV. The data submission requirements of paragraphs II and II-a shall apply with respect to
33 claims data for all lives covered by a fully-insured health plan in any market in the state, by any
34 self-funded plan for state or municipal employees, including any plan maintained under RSA 5-B **or**
35 **RSA 420-R**, to any self-funded plan maintained by the university system of the state with respect to
36 its employees or its students, and to any self-funded student health benefit plan maintained by an

1 institution of higher education which provides 4-year bachelor's degree programs and graduate or
2 professional degree programs.

3 9 New Chapter; Advanced Premium Pooled Risk Management Program. Amend RSA by
4 inserting after chapter 420-Q the following new chapter:

5 CHAPTER 420-R

6 ADVANCE PREMIUM POOLED RISK MANAGEMENT PROGRAMS

7 420-R:1 Purpose. The purpose of this chapter is to provide for the establishment of pooled risk
8 management programs and to affirm the status of such programs established for the benefit of
9 political subdivisions of the state. The legislature finds and determines that insurance and risk
10 management is essential to the proper functioning of political subdivisions; that risk management
11 can be achieved through the purchase of traditional insurance or by participation in pooled risk
12 management programs established for the benefit of political subdivisions; that pooled risk
13 management is an essential governmental function by providing focused public sector loss
14 prevention programs, accrual of interest and dividend earnings which may be returned to the public
15 benefit and establishment of costs predicated solely on the actual experience of political subdivisions
16 within the state; that the resources of political subdivisions are presently burdened by the securing
17 of insurance protection through standard carriers; and that pooled risk management programs
18 which meet the standards established by this chapter should not be subject to taxation by the state
19 and, except as specifically set forth in this chapter, should not be subject to insurance regulation.

20 420-R:2 Definitions; Scope of Chapter.

21 I. In this chapter:

22 (a) "Commissioner" means the insurance commissioner.

23 (b) "Department" means the insurance department.

24 (c) "Employee representative" means an employee of a member, who shall not be in a
25 position to make participation decisions for a member.

26 (d) "Excess insurance" means stop loss insurance.

27 (e) "Member" means any political subdivision that participates or may participate in a
28 pooled risk management program under this chapter.

29 (f) "Member representative" means a representative of a member who is in a position to
30 make participation decisions for a member and serving in either an elected or appointed position.

31 (g) "Political subdivision" means any city, town, county, school district, chartered public
32 school, village district, school administrative unit, or any district or entity created for a special
33 purpose administered or funded by any of the above-named governmental units.

34 (h) "Pooled risk management program" or "program" means an association formed under
35 the laws of this state that operates a program in which two or more political subdivisions of the state
36 enter into agreements to:

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1 (1) Obtain or implement insurance by self-insurance, or to obtain insurance from
2 any insurer authorized to transact business in this state as an admitted or surplus lines carrier, or
3 to obtain insurance secured in accordance with any method provided by law, or to obtain insurance
4 by any combination of these methods;

5 (2) Provide for pooling of self-insurance reserves, risks, claims and losses, and of
6 administrative services and expenses associated with them among political subdivisions; or

7 (3) Develop and administer a risk management program having as its purposes
8 reducing the risk of its members; safety engineering; distributing, sharing, and pooling risks;
9 acquiring insurance, excess loss insurance, or reinsurance; and processing, paying and defending
10 claims against the members of such entity or association.

11 (i) "Program covered person" means a person who is covered under pooled risk
12 management program coverage.

13 (j) "Public representative" means a representative of the general public who shall not be:

14 (1) An employee of a member;

15 (2) In a position to make participation decisions for a member; or

16 (3) Connected with the management or be the holder of a material number of shares
17 of any insurer, insurance holding company, insurance agency or broker. Family members of
18 employees, persons in a position to make membership decisions and family members of persons
19 connected with management or holders of a material number of shares of any insurer, insurance
20 holding company, insurance agency or broker may not serve as public members.

21 (k) "Risk management" means the defense of claims and indemnification for losses
22 arising out of the ownership, maintenance, and operation of real or personal property and the acts or
23 omissions of officials, employees, and agents; the provision of loss prevention services including, but
24 not limited to, inspections of property and the training of personnel; and the investigation,
25 evaluation, and settlement of claims by and against political subdivisions.

26 420-R:3 Pooled Risk Management Programs Authorized; Permissible Coverages.

27 I. To accomplish the purposes of this chapter, any two or more political subdivisions of this
28 state may, by resolution of its governing body, form an association under the laws of this state and
29 establish and enter into agreements constituting a pooled risk management program.

30 II. RSA 53-A shall not apply to an association formed or affirmed under this chapter, nor to
31 the participation in such an association by a political subdivision.

32 III. Pooled risk management programs established for the benefit of political subdivisions
33 may provide any or all of the following coverages:

34 (a) Casualty, including general and professional liability; errors and omissions; workers'
35 compensation and employer's liability; medical payments; or unemployment compensation as
36 authorized under federal law.

(b) Property, including marine and inland navigation; transportation; boiler and machinery; fire; theft; or natural hazards.

(c) Vehicle, including any liability or loss arising from the ownership or operation of vehicles.

(d) Surety and fidelity.

(e) Environmental impairment.

(f) Hospital, medical, surgical or dental benefits for employees and retirees, and their dependents.

(g) Life, income maintenance, accidental death and dismemberment, vision loss or impairment, or legal benefits for employees and their dependents.

(h) Unanticipated special education cost recovery.

420-R:4 Licensure Required.

I. Any person or legal entity that functions as a pooled risk management program shall apply to the department for a license and shall pay an application fee and annual license fee of \$150. No person, entity or association shall, after July 1, 2025, operate a pooled risk management program unless such program has been reviewed for licensure by the department and been determined to be in compliance with the provisions of this chapter, including organizational, operational, financial, and reporting requirements. License renewal applications shall be filed annually on or before September 1.

II. Pooled risk management programs that have been established and affirmed prior to July 1, 2025, in accordance with RSA 5-B, shall survive and be in full force and effect, except as modified by this chapter. The programs existing prior to July 1, 2025, shall file a license application containing the information as set forth in RSA 420-R:4, III, on or before September 1, 2025.

III. Prior to providing coverage, a license application shall be filed with the commissioner for approval of the pooled risk management program in a form and manner as established by the commissioner. The application materials shall include at least the following:

(a) A copy of the constitution or bylaws of association, trust instrument, or articles of incorporation.

(b) The names and addresses of the trustees, directors, or incorporators.

(c) A copy of the bylaws or trust agreement which governs the operation of the pooled risk management program.

(d) A copy of the policy, contract, certificate, summary plan description, or other evidence of the benefits and coverages provided.

(e) A copy of the fidelity bond in an amount equal to not less than 10 percent of the funds handled annually and issued in the name of the pooled risk management program covering its trustees, directors, employees, administrator, or other individuals managing or handling the funds or assets of the pooled risk management program. In no case may such bond be less than \$1,000 or

1 more than \$500,000, except that the commissioner, after due notice to all interested parties and
2 opportunity for hearing, and after consideration of the record, may prescribe an amount in excess of
3 \$500,000 subject to the 10 percent limitation.

4 (f) A copy of the pooled risk management program's excess insurance agreement, if any.

5 (g) A business plan setting out the lines of coverage the program intends to write, the
6 projected membership amount, a plan of capitalization, and such other plan information as the
7 commissioner may require.

8 (h) Evidence satisfactory to the commissioner showing that the arrangement will be
9 operated in accordance with sound actuarial principles. The commissioner shall not approve the
10 arrangement unless the commissioner determines that the plan is designed to provide sufficient
11 revenues, reserves, and surplus to pay current and future liabilities, as determined in accordance
12 with sound actuarial principles and risk based capital standards as set out in RSA 404-F.

13 (i) Such additional information as the commissioner may require.

14 IV. A license renewal applications with such form and content as shall be established by the
15 commissioner and the license renewal fee shall be filed with the commissioner by September 1 of
16 each year.

17 V. A person, other than a pooled risk management program, shall not sell, solicit, or
18 negotiate pooled risk management program coverage in this state for any line of coverage permitted
19 under this chapter unless the person is licensed for that line of coverage in accordance with this RSA
20 402-J.

21 420-R:5 Applicable Regulatory Standards.

22 I. Any pooled risk management program meeting the standards required under this chapter
23 is not an insurance company, reciprocal insurer, or insurer under the laws of this state, and
24 administration of any activities of the plan shall not constitute doing an insurance business for
25 purposes of regulation or taxation. Pooled risk management programs shall not be subject to the
26 premium tax under RSA 400-A:32 and shall not be subject to assessment with respect to the
27 administration fund under RSA 400-A:39.

28 II. Pooled risk management programs shall be governed by this chapter and shall be exempt
29 from this title, except for the provisions of: RSA 400-A:16, relative to investigations; RSA 400-A:17
30 through 24, relative to hearings and appeals; RSA 400-A:37, relative to examinations; RSA 401-B,
31 relative to insurance holding companies; RSA 402:28, relative to the regulation of investments of
32 insurance companies other than life insurance companies; RSA 402-C, relative to receivership; RSA
33 402-J, relative to producer licensing, RSA 402-M, relative to administrative supervision; RSA 404-F,
34 relative to RBC; RSA 420-G:11, II, II-a, and IV, relative to the submission of claims data to the
35 department; RSA 401-B:3, 4, and 5 relative to insurance holding companies; and RSA 411-A, relative
36 to the regulation of investments of life insurance companies.

37 420-R:6 Governance.

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1 I. To meet requirements for licensure and to maintain a pooled risk management program, a
2 program shall be:

- 3 (a) A nonprofit;
- 4 (b) Established as a legal entity organized under New Hampshire law; and
- 5 (c) Governed by written bylaws which shall detail the terms of eligibility for
6 participation by political subdivisions, the governance of the program and other matters necessary to
7 the program's operation.

8 II. The board of directors who shall manage the business and affairs of the program, shall be
9 comprised of:

- 10 (a) For programs offering employee health and welfare benefits under RSA 420-R:4, III
11 (f) and (g), 6 member representatives, 6 employee representatives and 3 public representatives; and
- 12 (b) For all other programs, 12 member representative and 3 public representatives.

13 III. Any bylaw developed by the board of directors shall require approval of 2/3 of the
14 directors.

15 IV. Directors shall not receive compensation but may be reimbursed for mileage and other
16 reasonable expenses. Directors shall comply with the provisions of RSA 15-A. Directors shall have a
17 fiduciary responsibility to act in the best interest of the pooled risk management program.

18 420-R:7 Approval of Rates. Each pooled risk management program shall file with the insurance
19 commissioner a full schedule of the rates to be paid by participating members and shall obtain the
20 commissioner's approval prior to implementing any rate changes. The commissioner may refuse
21 such approval if he or she finds the rates are excessive, inadequate, or unfairly discriminatory.

22 420-R:8 Financial Reporting.

23 I. Each pooled risk management program shall file with the commissioner on March 1 a
24 report verified by an appropriate official of the program which shall include:

- 25 (a) The program's financial statements, including its balance sheet and statement of
26 income and expenditures for the preceding year, certified by an independent certified public
27 accountant;
- 28 (b) Such other financial information relating to the program's performance as the
29 commissioner may require.

30 II. The commissioner may prescribe a uniform reporting format for the preparation of the
31 audited financial statements and may also prescribe a uniform accounting system to be used by
32 pooled risk management programs.

33 III. Each pooled risk management program shall, in accordance with RSA 404-F, file with
34 the commissioner on March 1st, a report verified by an appropriate official of the program, showing
35 its RBC levels as of the end of the calendar year just ended, in a form and containing such
36 information as is required by the RBC instructions. The commissioner shall provide written
37 guidance on how to apply the RBC instructions to pooled risk management programs.

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1 420-R:9 Minimum Capital.

2 I. Each pooled risk management program shall seek to maintain capital above the RBC
3 levels required for insurers under RSA 404-F.

4 II. To protect the interest of participating members, creditors and the public in the event
5 that a pooled risk management program is financially impaired, the commissioner shall apply the
6 corrective measures and take such other actions as deemed appropriate under RSA 402-C, RSA 402-
7 M, and RSA 404-F in the same manner as may be taken against insurers under those provisions.

8 420-R:10 Guaranty Funds Authorized. With prior approval from the commissioner, a program
9 may voluntarily implement the following guaranty measures to protect from financial impairment.
10 In addition, the commissioner may require any of the following guaranty measures if a program's
11 RBC is above company action level but less than the product of its authorized control level RBC and
12 3.0 with a negative trend.

13 I. Any pooled risk management program may establish a guaranty fund out of surplus in
14 any amount not to exceed 1/2 its net surplus by appropriation from its net assets. Such guaranty
15 fund shall be considered as paid up capital and be available to meet the obligations of the program,
16 but not to pay dividends or to be otherwise distributed except to meet the obligations of the program
17 when all other assets of the program shall become exhausted.

18 II. Any pooled risk management program may create not more than one guaranty fund by
19 borrowing a sum of money not exceeding \$1,000,000 by the issue of certificates of indebtedness upon
20 such terms as the members shall determine, provided that such certificates shall not be divided into
21 classes in any way and that the holders of such certificates shall not be entitled to vote in the
22 direction of the affairs of the program and shall not receive a greater return on their investment
23 than 10 percent per annum. The commissioner, upon notice to the program and after hearing its
24 objections, if any, may require any guaranty fund established under this section to be retired when
25 he or she shall find it is no longer needed for protection of covered persons, creditors, or the general
26 public.

27 III. Any pooled risk management program that has created a guaranty fund under either of
28 the 2 preceding sections may, with the approval of the insurance commissioner, reduce or retire such
29 fund in whole or in part, but it may not be otherwise distributed except to pay the obligations of the
30 program.

31 420-R:11 Excess Insurance. Each pooled risk management program shall seek to maintain
32 aggregate excess insurance or a deposit with the commissioner of unimpaired surplus which excess
33 insurance or deposit shall be used in the event that the program's resources are exhausted in a given
34 fiscal period. The excess insurance or deposit, or combination of excess insurance and deposit shall
35 be, at a minimum, in the amount of \$5,000,000 unless the commissioner determines a lesser amount
36 would be adequate.

37 420-R:12 Return of Capital.

1 I. If, on the last day of the calendar year, a program's RBC, as measured under the
2 provisions of RSA 404-F, is more than the product of its authorized control level and 6.0, then the
3 board of directors shall vote, by April 1 of the succeeding year, on the question whether to make a
4 return of excess surplus to members through the declaration of a dividend, return of capital, or
5 return of premium.

6 II. Regardless of its RBC level, any dividend, return of capital, or return of premium
7 proposed by the board of a program shall be reviewed and approved prior to distribution by the
8 commissioner under such terms of RSA 401-B:5, II, as are applicable to pooled risk management
9 programs as determined by the commissioner.

10 420-R:13 Examination.

11 I. The commissioner shall make an examination of each pooled risk management program
12 under the terms of RSA 400-A:37 as often as he or she deems necessary, but not less frequently than
13 once in every 5 years. All examinations shall be conducted at the expense of the program.

14 II. Each program shall submit its books and records relating to its operations to such
15 examinations and in every way facilitate them. For the purpose of examinations, the commissioner
16 may issue subpoenas, administer oaths to, and examine the officers and agents of the program.

17 420-R:14 Investments. The assets of any pooled risk management program shall be invested in
18 those securities and investments permitted for insurers in this state under RSA 402:28 and RSA
19 411-A as applicable.

20 420-R:15 Acquisition of Control or Merger.

21 I. A pooled risk management program may acquire control of or merge with any other pooled
22 risk management program licensed in this state by complying with the provisions of this section and
23 with such terms of RSA 401-B:3 as are applicable to pooled risk management programs as
24 determined by the commissioner. It shall file with the commissioner:

25 (a) A certified copy of the written contract containing in full the terms and conditions of
26 the consolidation or merger;

27 (b) A sworn statement by the president and secretary or corresponding officers of each
28 program showing the financial condition thereof on a date fixed by the commissioner but not earlier
29 than December 31, next preceding the date of the contract;

30 (c) A certificate of such officers, duly verified by their respective oaths, that the
31 consolidation or merger has been approved by a 2/3 vote of the board of each program, such vote
32 being conducted at a regular or special meeting of each board, or, if the program's laws so permit, by
33 mail;

34 (d) Evidence that at least 60 days prior to the action of the board of each program, the
35 text of the contract has been furnished to all members of each program either by mail or by
36 publication in full in an official publication of each program; and

1 (e) Any information that a domestic insurer is required to file with the commissioner
2 under RSA 401-B:3, I through V, that the commissioner deems to be applicable to pooled risk
3 management programs.

4 II. If the commissioner finds that the contract is in conformity with the provisions of this
5 section, that the financial statements are correct, that the standards set out in RSA 401-B:3, VI(a)
6 are met, and that the acquisition or merger is just and equitable to the members of each program,
7 the commissioner shall approve the contract and issue a certificate to such effect. Upon such
8 approval, the contract shall be in full force and effect. In case such contract is not approved it shall
9 be inoperative, and the fact of submission and its contents shall not be disclosed by the
10 commissioner.

11 III. Upon a merger becoming effective as provided under this section, all the rights,
12 franchises and interests of the merged programs in and to every species of property, real, personal or
13 mixed, and things in action thereunto belonging shall be vested in the program resulting from or
14 remaining after the merger without any other instrument, except that conveyances of real property
15 may be evidenced by proper deeds, and the title to any real estate or interest therein, vested under
16 the laws of this state in any of the programs merged, shall not revert or be in any way impaired by
17 reason of the merger, but shall vest absolutely in the program resulting from or remaining after such
18 merger.

19 420-R:16 Standards and Management of a Program Within a Holding Company System.

20 I. A pooled risk management program may be part of a holding company system only if all
21 affiliates in the system are pooled risk management programs licensed under this chapter.

22 II. Any pooled risk management program that is a part of a pooled risk management
23 program holding company system shall register with the commissioner under such terms of RSA
24 401-B:4 as are applicable to pooled risk management programs as determined by the commissioner.

25 III. All transactions within a pooled risk management program holding company system
26 shall be approved by the commissioner under such terms of RSA 401-B:5, I, as are applicable to
27 pooled risk management programs as determined by the commissioner.

28 420-R:17 Commissioner's Additional Enforcement Authority.

29 I. In addition to the solvency enforcement measures authorized in 420-R:9, II, when the
30 commissioner, upon investigation, finds that: a pooled risk management program has failed to
31 comply with any provision of this chapter; or is not fulfilling its contracts in good faith; or is
32 conducting business fraudulently or in a manner hazardous to its covered persons, members,
33 creditors, the public, or the business; or is acting outside its authority; or is operating as a pooled
34 risk management program without a license, then the commissioner shall notify the program of such
35 deficiency or deficiencies and state in writing the reasons for his or her dissatisfaction and requiring
36 that the deficiency or deficiencies which exist be corrected.

1 II. After such notice, the program shall have a 30-day period in which to comply with the
2 commissioner's request for correction or the submission of a corrective action plan. If the program
3 fails to comply, the commissioner shall notify the program of such findings of noncompliance and
4 require the program to show cause, on a date named, why: its license should not be suspended,
5 revoked, or limited to servicing existing business only; or it should not be subject to a cease and
6 desist order; or it should not be fined in an amount up to \$2,500 per violation; or it should not be
7 ordered to make restitution or refund to an aggrieved person.

8 III. Upon hearing, the commissioner shall issue such prohibitory and mandatory orders
9 as are reasonably necessary to secure compliance with the terms of this chapter and are within his
10 or her enforcement powers as specified in RSA 420-R:17, II.

11 420-R:18 Appeals. All orders and decisions of the commissioner concerning matters within his
12 or her jurisdiction under this chapter shall be subject to hearing and appeal as provided in RSA 400-
13 A:17 through 24 and RSA 541. RSA 541:18 shall apply to orders and decisions of the commissioner
14 affecting the rates of the program.

15 420-R:19 Rulemaking Authority. The commissioner may adopt rules in accordance with RSA
16 541-A, which are reasonable and necessary to administer and enforce the provisions of this chapter.

17 420-R:20 Powers; Liability.

18 I. Any program operating under this chapter, whether or not body corporate, may sue or be
19 sued; make contracts; hold and dispose of real property; and borrow money, contract debts, and
20 pledge assets in its name.

21 II. Participation by a political subdivision in a pooled risk management program formed and
22 affirmed under this chapter shall not subject any such political subdivision to any liability to any
23 third party for the acts or omissions of the pooled risk management program or any other political
24 subdivision participating in the program.

25 420-R:21 Confidentiality.

26 I. Notwithstanding any provision of the law to the contrary, any information of any pooled
27 risk management program formed or affirmed under this chapter pertaining to claims analysis or
28 claims management shall be privileged and confidential and not subject to disclosure to any third
29 party.

30 II. All reports and schedule of rates, to the extent the information therein is not otherwise
31 required to be publicly available, which are filed with the commissioner constitute information that
32 might be damaging to the risk pool management program if made available to competitors, and
33 therefore shall be kept confidential by the commissioner. This information shall not be made public
34 or be subject to subpoena, other than by the commissioner and then only for the purpose of
35 enforcement actions taken by the commissioner pursuant to this chapter or the applicable provisions
36 of Title XXXVII as provided in RSA 420-R:5, II.

SB 297-FN - AS AMENDED BY THE HOUSE

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1 420-R:22 Severability. If any provision of this chapter, or the application thereof to any person
2 or circumstance, is held invalid, such determination shall not affect the provisions or applications of
3 this chapter which can be given effect without the invalid provision or application, and to that end
4 the provisions of this chapter are severable.

5 10 Repeal. RSA 402-H:11-b, relative to certain exemptions for third party administrators of
6 pooled risk management programs, is repealed.

7 11 Effective Date.

8 I. RSA 5-B:5, I(i) as amended by section 3 of this act shall take effect July 1, 2026.

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

SB 297-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2025-0951s)

AN ACT relative to pooled risk management programs.

FISCAL IMPACT: This bill does not provide funding, nor does it authorize new positions.

Estimated State Impact				
	FY 2025	FY 2026	FY 2027	FY 2028
Revenue	\$0	\$0	\$0	\$0
<i>Revenue Fund(s)</i>	None			
Expenditures*	\$0	Decrease \$250,000+	Decrease \$250,000+	Decrease \$250,000+
<i>Funding Source(s)</i>	General Fund			
Appropriations*	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

*Expenditure = Cost of bill

*Appropriation = Authorized funding to cover cost of bill

Estimated Political Subdivision Impact				
	FY 2025	FY 2026	FY 2027	FY 2028
County Revenue	\$0	\$0	\$0	\$0
County Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Local Revenue	\$0	\$0	\$0	\$0
Local Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill introduces measures to ensure the financial stability of pooled risk management programs. It allows the Secretary of State to address insufficient assets and even take control of a program if necessary. Members providing health coverage must create a stabilization fund, totaling at least 4% of annual contributions over four years, to cover program assessments and healthcare obligations. The bill outlines how a risk pool can seek a temporary increase in its reserve limit and requires greater transparency through public disclosures for program members.

The Department of State indicates that this bill will save \$250,000+ in general funds each year and securities funds that go unspent will lapse back to the General Fund. The anticipated savings are from the reduced need to hire external legal and actuarial experts that help the state

bring legal action against pooled risk management programs that are not acting as a fiduciary to their participating members.

The New Hampshire Municipal Association (NHMA) states that this bill would require municipalities participating in pooled health plans to set aside extra funds in reserve accounts to cover potential financial shortfalls. If the health pool's reserves drop too low or if it becomes insolvent, municipalities would face additional financial obligations through special assessments. They would also need to rebuild reserve accounts over time if used. Municipalities must agree in writing to take responsibility for these potential financial risks, including any losses from the prior year if they leave the pool. This could lead to increased costs and challenges for municipalities, especially since raising extra funds may require special town meetings.

The New Hampshire Association on Counties (NHAC) states that this bill could lead to an indeterminable increase in expenditures for counties involved in pooled risk management programs. The potential increase stems from the need to gather additional contributions from members if an annual audit, actuarial determination, or Secretary of State investigation reveals insufficient assets. Additionally, there could be administrative costs that would be taken on by pool members also increasing expenditures.

AGENCIES CONTACTED:

Department of State, New Hampshire Association of Counties, and New Hampshire Municipal Association