

Amendment to SB 614-FN

1 Amend the title of the bill by replacing it with the following:

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3 AN ACT establishing multiple-caregiver self-insured risk coverage arrangements for nonprofit
4 and for-profit providers and servicers.

5

6 Amend the bill by replacing section 1 with the following:

7

8 1 New Chapter; Multiple-Caregiver Self-Insured Risk Coverage Arrangements. Amend RSA by
9 inserting after chapter 405-B, the following new chapter:

10

CHAPTER 405-C

11

MULTIPLE-CAREGIVER SELF-INSURED RISK COVERAGE ARRANGEMENTS

12

13 405-C:1 Purpose. This chapter provides authority for 2 or more nonprofit and for-profit
14 providers and servicers of child care, day care, foster care placement, and behavioral health services
15 to participate in a joint self-insurance risk coverage arrangement covering liability risks. The joint
16 self-insurance arrangements authorized under this chapter permit eligible entities to jointly self-
17 insure liability risks, jointly purchase insurance and reinsurance, and contract for risk management,
18 claims, and administrative and legal services.

18

405-C:2 Definitions.

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I. "Commissioner" means the commissioner of the New Hampshire insurance department.

20

21 II. "Covered entity" means a nonprofit or for-profit provider or servicer of child care, day
22 care, foster care placement, and behavioral health services.

22

III. "Department" means the New Hampshire insurance department.

23

24 IV. "Liability risks" mean risk of loss sustained by an entity and the risk of claims arising
25 from the tortious or negligent conduct or any error or omission of the entity, its officers, employees,
26 agents, or volunteers as a result of a claim that may be made against the entity.

26

27 V. "Multiple-caregiver self-insured risk coverage arrangement" means a formal arrangement
28 which is established or maintained by or on behalf of 2 or more eligible entities for the purpose of
29 jointly covering liability risk.

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30 VI. "Nonprofit organization" means any entity that is exempt from taxation under Section
31 501(c)(3), 501(c)(4), 501(c)(6) or 501(c)(12) of the Internal Revenue Code of 1986, or any subsequent
32 corresponding internal revenue code of the United States, as amended.

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1 VII. "Self-insurance" means a formal arrangement of advance funding and management of
2 entity financial exposure to risk of loss that is not entirely transferred through the purchase of an
3 insurance policy or contract.

4 405-C:3 Declaration of Status; Tax Exemption.

5 I. Any arrangement authorized and meeting the standards required under this chapter is
6 not an insurance company, reciprocal insurer, or insurer under the laws of this state, and
7 administration of any activities of the arrangement shall not constitute doing an insurance business
8 for purposes of regulation or taxation. Such self-insurance arrangements shall not be subject to the
9 premium tax under RSA 400-A:32 and shall not be subject to assessment with respect to the
10 administration fund under RSA 400-A:39.

11 II. Any such arrangement operating under this chapter, whether or not a body corporate,
12 trust, or charter, may sue or be sued, make contracts, hold and dispose of real property, borrow
13 money, contract debts, and pledge assets in its name.

14 III. Joint self-insurance arrangements shall be governed by this chapter and shall be exempt
15 from this title, except for the provisions of:

16 (a) RSA 400-A:16, relative to investigations;

17 (b) RSA 400-A:17 through RSA 400-A:24, relative to hearings and appeals;

18 (c) RSA 400-A:37, relative to examinations;

19 (d) RSA 402-B relative to insurance claims adjusters;

20 (e) RSA 402-H relative to third-party administrators;

21 (f) RSA 402-J, relative to producer licensing; and

22 (g) RSA 417:1 through 417:31 relative to unfair trade practices and fraud investigations.

23 IV. This section does not apply to or provide exemptions for insurance companies issuing
24 policies to cover the arrangement, third-party administrators, insurance producers, or other
25 licensees subject RSA title XXXVII servicing the joint self-insurance arrangement.

26 405-C:4 Exemptions. This chapter does not apply to a non-profit or for-profit entity that:

27 I. Individually self-insures for property and liability risks;

28 II. Participates in a risk pooling arrangement, including a risk retention group or a risk
29 purchasing group, regulated under RSA 405-A, or is a captive insurer authorized in its state of
30 domicile; or

31 III. Comprises only units of local government or is a group that comprises local governments
32 joined by an interlocal agreement authorized by RSA 5-B.

33 405-C:5 Agreement to Form; Authorized Activities.

34 I. A covered entity may join or form a self-insured risk coverage arrangement together with
35 one or more other covered entities and may jointly purchase insurance or reinsurance with one or
36 more other covered entities for liability risks as permitted under this chapter. Covered entities may

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1 contract for or hire personnel to provide risk management, claims, and administrative and legal
2 services in accordance with this chapter.

3 II. The agreement to form a self-insured risk coverage arrangement may include the
4 organization of a separate legal entity with powers delegated to the entity. Any such separate legal
5 entity shall be in compliance with all applicable New Hampshire laws.

6 III. If provided for in the organizational documents, a joint self-insured risk coverage
7 arrangement may, in conformance with this chapter:

8 (a) Contract or otherwise provide for risk management and loss control services;

9 (b) Contract or otherwise provide legal counsel for the defense of claims and other legal
10 services;

11 (c) Jointly purchase insurance and reinsurance coverage in a form and amount as
12 provided for in the organizational documents;

13 (d) Obligate the participants to pledge funds or revenues to secure the obligations or pay
14 the expenses of the arrangement, including the establishment of a reserve fund for coverage, and
15 any additional assessment if the reserve fund or the arrangement's revenue or assets are insufficient
16 to cover the liabilities; and

17 (e) Possess any other powers and perform all other functions reasonably necessary to
18 carry out the purposes of this chapter.

19 405-C:6 Formation. Before the establishment of a multiple-caregiver self-insured risk coverage
20 arrangement, the covered entities shall obtain the approval of the commissioner. The entity or
21 entities proposing the creation of the arrangement shall submit, as part of the application, a plan of
22 management and operation to the commissioner that provides at a minimum, the following
23 information:

24 I. The risk or risks to be covered, including any coverage definitions, terms, conditions, and
25 limitations;

26 II. The amount and method of funding the covered risks, including the initial capital and
27 proposed rates and projected premiums;

28 III. The proposed claim reserving practices;

29 IV. The proposed purchase and maintenance of insurance or reinsurance in excess of the
30 amounts retained by the joint self-insurance arrangement;

31 V. The legal form of the program including, but not limited to, any constitution, articles of
32 incorporation, bylaws, charter, trust, or other agreement among the participating entities;

33 VI. The agreements with participants in the arrangement defining the responsibilities and
34 benefits of each participant and management;

35 VII. The proposed accounting, depositing, and investment practices of the arrangement;

36 VIII. Evidence satisfactory to the commissioner showing that the arrangement will be
37 operated in accordance with sound actuarial principles. The commissioner shall not approve the

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1 arrangement unless the commissioner determines that the plan is designed to provide sufficient
2 revenues to pay current and future liabilities, as determined in accordance with sound actuarial
3 principles;

4 IX. A designation of the individual to whom service of process must be forwarded by the
5 commissioner on behalf of the arrangement, including that individual's name and address;

6 X. All contracts between the program and private persons providing risk management,
7 claims, or other administrative services;

8 XI. A professional analysis of the feasibility of the creation and maintenance of the program;

9 XII. A legal analysis or an Internal Revenue Service opinion on the federal income tax
10 exposure or liability of the program; and

11 XIII. Such additional information as the commissioner may reasonably require to determine
12 compliance with this chapter.

13 405-C:7 Minimum General Eligibility; Prohibitions.

14 I. Each multiple-caregiver self-insured risk coverage arrangement shall meet the following
15 minimum eligibility requirements, and any additional requirements as the commissioner may
16 require:

17 (a) The arrangement shall qualify as a non-profit or for-profit entity;

18 (b) The arrangement shall be established or maintained by or on behalf of two or more
19 properly licensed homogeneous entities providing at least one of the services of child care, day care,
20 foster care placement, or behavioral health services, which shall be governed by formal governance
21 documents, which may include any one or more of the following:

22 (1) A charter;

23 (2) A constitution,

24 (3) Bylaws; or

25 (4) A trust.

26 (c) The arrangement shall be operated by officers or a board of trustees which shall have
27 complete fiscal control over the arrangement and which shall be responsible for all operations of the
28 arrangement. The officers or trustees selected shall be owners, partners, officers, directors, or
29 employees of participating entities in the arrangement. An officer or trustee may not be an owner,
30 officer, or employee of the administrator or service company of the arrangement. The officers or
31 trustees shall have the authority to approve applications of entities for participation in the
32 arrangement, provided that any entity that terminates its participation shall be prohibited from
33 rejoining for a period a two years.

34 (d) Appropriate action by ordinance, resolution or other action pursuant to law of the
35 governing bodies of the participating entities shall be necessary before any such agreement may
36 enter into force.

37 (e) The arrangement shall not be offered nor advertised to the public generally.

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1 (f) The arrangement shall be operated in accordance with sound actuarial principles.

2 II. The following activities shall be prohibited:

3 (a) An employee or official of a participating nonprofit corporation in a joint self-
4 insurance arrangement shall not directly or indirectly receive anything of value for services rendered
5 in connection with the operation and management of the arrangement other than the salary and
6 benefits provided by his or her employer or the reimbursement of expenses reasonably incurred in
7 furtherance of the operation or management of the arrangement.

8 (b) An employee or official of a participating covered entity shall not accept or solicit
9 anything of value for personal benefit or for the benefit of others under circumstances in which it can
10 be reasonably inferred that the employee's or official's independence of judgment is impaired with
11 respect to the management and operation of the arrangement.

12 (c) No joint self-insurance arrangement approved under this chapter shall require that
13 any civil action or alternative dispute resolution procedure brought in connection to the self-
14 insurance arrangement be brought in a jurisdiction other than New Hampshire.

15 405-C:8 Filing of Application. The covered entities of a proposed multiple-caregiver self-
16 insurance risk coverage arrangement shall file with the commissioner an application for approval,
17 upon a form furnished by the commissioner, which shall include or have attached the following:

18 I. A copy of the constitution, bylaws, articles of incorporation, charter, or trust agreement.

19 II. The names and addresses of the officers or trustees of the arrangement, who are subject
20 to approval by the commissioner upon the presentation of sufficient evidence to:

21 (a) To be competent;

22 (b) Have not been found to be guilty of, or to have pled guilty or no contest to a felony, or
23 a crime involving moral turpitude;

24 (c) Have not had any type of professional license revoked in this or any other state; and

25 (d) Have not improperly manipulated assets, accounts, or specific excess insurance or to
26 have otherwise acted in bad faith.

27 III. A copy of a fidelity bond in an amount equal to not less than 10 percent of the funds
28 handled annually and issued in the name of the arrangement covering its officers, trustees,
29 employees, administrator, or other individuals managing or handling the funds or assets of the
30 arrangement. In no case may such bond be less than \$1,000 or more than \$500,000 except that the
31 commissioner may prescribe an amount more than \$500,000 after due notice and opportunity for a
32 hearing.

33 IV. A plan of management and operation providing the information required in RSA 405-
34 C:6.

35 V. Such additional information as the commissioner may reasonably require to determine
36 compliance with this chapter.

37 405-C:9 Approval or Disapproval.

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1 I. Within 120 days of receipt of an application, the commissioner shall either approve or
2 disapprove an application for a license for the formation of the arrangement. If the commissioner
3 denies a request for approval, the commissioner shall specify in detail the reasons for denial.

4 II. The arrangement shall not engage in an act or practice that in any respect significantly
5 differs from the management and operation plan that formed the basis for the commissioner's
6 approval of the program unless the program first notifies the commissioner in writing and obtains
7 the commissioner's approval. The commissioner shall approve or disapprove the proposed change
8 within 60 days of receipt of the notice. If the commissioner denies a requested change, the
9 commissioner shall specify in detail the reasons for the denial.

10 405-C:10 Reporting Requirements. Each joint self-insurance arrangement shall file a report
11 verified by the oath of an officer or trustee, annually within 4 months of the end of the fiscal year or
12 within such extension of time as the commissioner for good cause may grant, with the commissioner
13 providing:

14 I. Details of any changes in the articles of incorporation, bylaws, charter, trust agreement,
15 or other agreement among the participating entities;

16 II. List of all current officers or trustees;

17 III. A description of the program structure, including participants' retention, excess
18 insurance or reinsurance limits and attachment points;

19 IV. An actuarial analysis, performed by a member of the American Academy of Actuaries
20 qualified in the coverage area being evaluated, assessing the adequacy of plan funds and the
21 reserves necessary to be maintained to meet expenses of all incurred and incurred but not reported
22 claims and other projected needs of the arrangement;

23 V. A list of contractors and service providers;

24 VI. The financial and loss experience of the arrangement; and

25 VII. Such additional information as the commissioner may reasonably require to determine
26 compliance with this chapter.

27 405-C:11 Service of Process Through Insurance Commissioner. Every joint self-insurance
28 program governed by this chapter shall file with the commissioner a written stipulation, agreeing
29 that legal process affecting the arrangement, served on the commissioner shall have the same effect
30 as if served personally on the company within the state. Service of such process shall be made by
31 leaving a copy of the process in the hands of the commissioner or in their office.

32 405-C:12 Suspension, or Revocation of Program License; Appeal.

33 I. The commissioner may suspend or revoke the approval of any arrangement for any one or
34 more of the following causes:

35 (a) The license issued to the arrangement was obtained by fraud;

36 (b) There were one or more material misrepresentations in the application for the
37 license;

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1 (c) The holder of such license has shown itself untrustworthy or incompetent relative to
2 the management or operation of the arrangement;

3 (d) The arrangement has failed to meet the financial requirements of this chapter or has
4 violated any lawful order or rules;

5 (e) The arrangement has refused to be examined or to produce its accounts, records and
6 files for examination, or if any of its officers has refused to give information with respect to its affairs
7 or to perform any other legal obligation as to such examination, when so required by the
8 commissioner;

9 (f) The arrangement has failed to pay any final judgment rendered against it in this
10 state within 60 days after the judgment became final;

11 (g) The arrangement no longer meets the requirements for the authority originally
12 granted; or

13 (h) The arrangement has violated any lawful order or rule of the commissioner,
14 provision of this chapter, or other applicable law.

15 II. Before the commissioner shall suspend or revoke the license of any licensee subject to
16 this chapter, the aggrieved arrangement shall be entitled to a hearing in accordance with RSA 400-
17 A:17.

18 405-C:13 Termination of Arrangement. If an arrangement is terminated for any reason, it shall
19 pay all outstanding claims, debts, and obligations. The arrangement may retain sufficient funds to
20 provide coverage for such additional period as the officers or trustees of the arrangement consider
21 prudent. In addition, the officers or trustees may purchase such additional insurance as they
22 consider necessary for protection against potential future claims. Any funds remaining in the
23 arrangement after satisfaction of all obligations upon termination shall be paid to participating
24 entities as of the termination date in some equitable manner meeting with the approval of the
25 commissioner, including, without ruling out other alternatives, equally on a per capita basis to each
26 participating entity that is covered under the arrangement as of the effective date of termination.

27 405-C:14 Financial Condition, Loss Reserves, Reinsurance, or Working Capital; Determination
28 of Inadequacy.

29 I. The commissioner may, upon reasonable notice, conduct an examination of the loss
30 reserves, financial condition, specific excess insurance, and working capital of a multiple-caregiver
31 self-insured risk coverage arrangement. If the commissioner preliminarily finds that the reserves,
32 specific excess insurance, or financial condition may be inadequate, or that the arrangement does not
33 have a combined working capital in an amount establishing the financial strength and liquidity of
34 the arrangement to pay claims promptly and showing evidence of the financial ability of the
35 arrangement to meet its obligations, the commissioner shall notify the arrangement of such
36 inadequacy. Upon being so notified, the arrangement shall within 30 days file with the

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1 commissioner all information which, in the belief of the arrangement, proves the reasonableness and
2 adequacy of the condition noted as being inadequate.

3 II. If the commissioner determines, after reviewing the information filed, that an inadequate
4 condition exists, the arrangement shall implement, within 30 days, a plan to correct the inadequacy
5 and shall file proof of reasonable improvement or adequate condition with the commissioner within 6
6 months of the implementation of the plan. If the commissioner is satisfied that the plan submitted
7 to improve the inadequate condition of the arrangement is sufficient, they shall so notify the
8 arrangement. The arrangement shall report quarterly to the commissioner until the causes of the
9 inadequate condition have been corrected.

10 405-C:15 Rehabilitation, Dissolution. Any rehabilitation, liquidation, conservation, or
11 dissolution of an arrangement shall be conducted under the supervision of the commissioner, who
12 shall have all power with respect thereto granted to it under the laws governing the rehabilitation,
13 liquidation, conservation, or dissolution of insurers.

14 405-C:16 Penalties.

15 I. Subject to other provisions in this chapter, any arrangement that fails to obtain and
16 maintain a valid approval from the commissioner while operating or maintaining a multiple-
17 caregiver self-insured risk coverage arrangement shall be subject to a fine of not less than \$5,000 or
18 more than \$50,000 for each violation.

19 II. The commissioner may issue a cease and desist order if they find any person operating or
20 maintaining an arrangement without a currently effective certificate of approval.

21 405-C:17 Rulemaking Authority. The commissioner may adopt rules, pursuant to RSA 541-A,
22 as may be necessary to effect the purposes of this chapter.

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2026-1044s

AMENDED ANALYSIS

This bill:

I. Establishes a multiple-caregiver self-insured risk coverage arrangement for nonprofit and for-profit providers and servicers of child care, day care, foster care placement, and behavioral health services.

II. Establishes reporting requirements for such arrangements.

III. Authorizes the commissioner of the insurance department to verify such arrangements, including whether the arrangements are to be suspended or terminated.

IV. Authorizes the commissioner of the insurance department to issue penalties and adopt rules relative to such arrangements.