

# Senate Finance Committee

*Deb Martone 271-4980*

**HB 1491**, relative to pooled risk management programs and **Proposed Amendment #2026-1316s**;

**Hearing Date:** April 7, 2026

**Time Opened:** 1:30 p.m.

**Time Closed:** 2:58 p.m.

**Members of the Committee Present:** Senators Gray, Innis, Birdsell, Lang, Rosenwald and Watters

**Members of the Committee Absent:** Senators Carson and Pearl

**Bill Analysis:** This bill:

I. Provides for regulation of assessment pooled risk management programs by the secretary of state and advance premium pooled risk management programs by the insurance department.

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

III. Requires advance premium 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.

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

---

**Sponsors:**

Rep. Hunt

Rep. Porcelli

Sen. Innis

Sen. Perkins Kwoka

---

**Who supports the bill:** Representative Hunt; Mayor Declan McEachern; Scott DeRoche; Jeanne Herrick; Margaret Byrnes; Scott Gross; Amy Scholes; Scott Butcher; Janice Pack; Jennifer Gaudette; Heidi Carlson; Rick Sawyer;

**Who supports Proposed Amendment #2026-1316s:** No one;

**Who opposes the bill:** No one;

**Who opposes Proposed Amendment #2026-1316s:** Mayor Declan McEachern; Scott DeRoche; Jeanne Herrick; Margaret Byrnes; Scott Gross;

**Who is neutral on the bill:** Eric Forcier; Hua Li;

**Who is neutral on Proposed Amendment #2026-1316s:** Eric Forcier; Hua Li;

**Summary of testimony presented in support of HB 1491:**

Representative Hunt, Prime Sponsor:

- HB 1491 is the exact bill the House Commerce Committee and the House of Representatives passed one year ago. At that time the Senate chose not to enter into a Committee of Conference with the House on the bill.
- The original Chapter 5-B risk pool legislation was passed the year prior to the year Representative Hunt first got elected. At that time because these risk pools were serving a community it was decided there was no need for any regulation. The financial reporting by these risk pools would be under the responsibility of the Secretary of State's Office. That responsibility has remained in place for 24 years.
- Later on some union firefighters were concerned the reserves were too high and could actually be lowered via a lower premium.
- Representative Hunt remembers asking way back then why the risk pools weren't regulated by the Insurance Department. The response he received was there was no need for regulation because these entities are communities. They're assessing and regulating themselves. There would be no body to oversee the reserves or oversee the financial situation.
- In 2010 the statute was changed to give the Secretary of State some authority over regulation of the financial status of these entities. Again, the concern was, are the reserves too high. It ended up the Secretary of State could take a risk pool to court and demand they refund some of their reserves.
- Representative Hunt believes we don't need any legislative bills if we simply repealed the 2010 requirement and kept the Secretary of State's Office out of the risk pool business. Let them be on their own.
- HB 1491, as presented, was the Senate version of the risk pool bill last year and includes regulation by the Insurance Department.
- Representative Hunt gave the example of Delta Dental and what happened during COVID when their reserves got whoopingly high. For the next 3-4 years, Delta Dental kept their premium flat and didn't give back any refunds. Then everyone started returning to the dentist. This year will be the first year they will actually increase the premium.
- Representative Hunt believes insurance regulation is absolutely the way to go. He is also very supportive of anything that allows the current 5-B regulation to continue.
- The hope is to have two bills with two solutions and a risk pool can choose whichever regulator they want.
- Representative Hunt stressed there needs to be good, workable transition language for any risk pool to easily transition from one form of regulation to the other.

Scott DeRoche, Executive Director, and Jeanne Herrick, General Counsel, HealthTrust:

- HealthTrust strongly supports HB 1491 as passed by the House of Representatives.
- RSA 420-R, drafted by the Insurance Department, uses nationally recognized standards to ensure solvency. The expertise offered by the Department resulted in a system that will ensure risk pool solvency, and will eliminate the concerns that have been raised in recent years. It protects municipal and school groups from threats of insolvency, ensures claims are paid for the protection of covered individuals, protects taxpayers against significant unexpected budget expenses, and importantly, it allows for fixed cost coverages like HealthTrust offers to remain available to the public sector entities that rely upon it.
- HealthTrust is the only health risk pool in New Hampshire to never deplete reserves, never issue assessments, and never threaten that medical claims will not be paid. They've done that with the use of sound, actuarial standards and a consistent focus on long-term solvency, which allowed them to successfully manage even the difficult years post COVID.
- HB 1491 requires much more rigorous regulation and oversight than HealthTrust has today. However, they fully support those standards.
- There are prudent requirements such as required rate approval to ensure rate sufficiency and if any issues occur, it requires the Department to step in to protect policyholders and taxpayers long before concerns about financial impairment become a reality.
- Risk pools are a critical tool in New Hampshire. HealthTrust is a nonprofit corporation that provides robust coverage for over four decades to the public sector at lower rates than the commercial market can provide.
- The regulatory model contained in HB 1491 ensures advanced premium risk pools remain financially strong with rigorous oversight by the state's experts at the Insurance Department. This means New Hampshire cities, towns, and school districts will have continued access to health coverage without the need for disruptive assessments to maintain solvency.
- HealthTrust cited three concerns with Amendment #2026-1316s. The first is reinsurance. The amendment requires reinsurance to be purchased at a 105 percent attachment point. This is an extremely rich attachment point for a health insurer the size of HealthTrust. They believe it may not be available on the marketplace. They understand it is a common attachment point for other lines of coverage and potentially for smaller entities. For organizations of their size, either aggregate reinsurance is unavailable or the attachment points start at 120 or 125 percent. Today, HealthTrust has 110 percent attachment but with a very small limit of a \$5 million total payout on that aggregate coverage. That provision alone would require them to have reinsurance that they believe would not be available on the marketplace.
- Second, HealthTrust absolutely supports the risk-based capital methodology. Understanding the action points at all of the various levels is a key tool to prevent insolvency, and to make sure everything is done proactively to ensure these pools are financially stable. However, the deposit which is separate from

reserves is a concern for HealthTrust. As an example, it would require a deposit equivalent to either one or two times the authorized control level. That is equivalent to roughly 5-10 percent of annual contributions for HealthTrust.

- SB 661-FN as passed by the Senate limits reserves to 20 percent of annual contributions. If HealthTrust is unable to purchase that very rich aggregate stop loss at 105, what that would mean is if they build up under SB 661-FN to the maximum they're allowed to hold, 20 percent, in the effort of trying to move over, 10 percent or half of its reserves would have to be taken out of their reserves and moved to a deposit. That would leave HealthTrust with 10 percent reserves remaining, which is right on the company action level, right on the brink of financial impairment. That is a very serious concern for HealthTrust. If they were able to purchase aggregate reinsurance at that 105 percent stop loss, it would still require 5 percent to move over, which is a real concern. To put it in real numbers, the amount they'd be required to put in deposit would equate to about \$50 million, which is a very sizable deposit.
- The third concern is the 5-year look back required for rate building. HealthTrust has significant concerns on that from a medical standpoint. They understand other lines of coverage may use a 5-year look back, but that is inappropriate for a health line of coverage. The cost and exposure, the medical trend, and the utilization patterns change so much from year to year in the medical industry. They generally use the most recent 12 months of claims' experience to build rates. Looking back 5 years would result in low rates that are insufficient to cover the next year's costs just because the claims continue to go up year to year. As an example, for the rates that are starting July 1, 2026, if this provision were in place, it would require HealthTrust to use data from 2020 and 2021, the COVID years, which would be inappropriate and would result in rates that were too little and insufficient for the claims they are likely to incur. In fact, they don't believe an actuary based on the actuarial standards of practice would be able to use that data to build rates.
- HealthTrust absolutely supports the concept of greater regulation. They understand the Insurance Department's expertise with staff actuaries. They would love the opportunity to work together to understand what's available in the marketplace, and how they could potentially meet the proposed standards. They encourage the adoption of standards that are reasonable and based on sound, actuarial practice.
- There was a question about the \$5 million coverage and whether that would increase the cost of the surety coverage they have in place today. HealthTrust has a \$5 million limitation. They already meet the standard. It is the policy they have chosen. There would be no impact on cost.
- While they have not yet finalized March finances, HealthTrust is very close to the 12 percent referenced by Chairman Gray, the 12 percent of contributions in reserves.
- Because there has been some conversation about non-assessable risk pools, Mr. DeRoche confirmed there are non-assessable risk pools for health coverage and for property liability throughout the country. He has confirmed that with a number of his peers.

- Both GASB No. 10 and GASB No. 30 are government accounting standards that guide how HealthTrust has to handle and report their finances. GASB No. 10 is about a non-assessable risk pool that offers health coverage. It was superseded by GASB No. 30, which is also a health risk pool that does not have the ability to assess members for additional contributions. It does not have the ability to assess upon any sort of deficiency in a runout. These are clear standards for non-assessable risk pools that have been in place and continue to be in effect today,
- Senator Watters asked Director DeRoche to offer some thoughts about what would work for HealthTrust. Director DeRoche shared that last year they had some conversations with a gentleman who is no longer with the Insurance Department. It concerned the requirement to have a deposit or have aggregate reinsurance. This individual mentioned the idea of having aggregate coverage or deposit equivalent to \$5 million. And that is the same level HealthTrust landed at as well. They secured aggregate reinsurance coverage January 1st of last year. The aggregate policy has a total payout of \$5 million. It is at 110 percent attachment point. It was sort of an add-on to a specific insurance reinsurance policy at a \$1 million attachment point. The carrier was willing to throw in a little aggregate coverage because they purchased the much more expensive specific coverage. HealthTrust would like to understand what level would be appropriate for an organization of their size with a health line of coverage, or putting a deposit in place that's sufficient in lieu of that. They are supportive of the idea. It's about the level that is put into it. Five million was passed by the House. This would equate to \$50 million in this amendment. As a general concept, the larger you get, the less likely aggregate reinsurance is needed or available because your trends are more likely just law of averages to hold true as you kind of project forward. It is also a very large risk for these reinsurers to take on. When HealthTrust has about \$500 million in claims annually, when they attach at 105 percent, that is basically saying you can be a little bit off and they can have a huge exposure as a reinsurer. There is a question as to whether reinsurance on the whole is needed today. HealthTrust purchased it because they believe it was prudent to protect the rebuild and reserves they've been going through over the last couple of years. But based on the size of their organization, it is very unlikely to pay aggregate. Specific is a different standpoint. HealthTrust fully supports specific reinsurance. It makes a lot of sense, especially with things like gene therapy.
- Senator Watters suggested Amendment #2026-1316s needs to provide some flexibility. Director DeRoche suggested if there is a concern relating to solvency, reserves are first and foremost the most important thing. These risk pools need to hold adequate reserves and RBC is the way to measure that, and ensure the Insurance Department steps in to have adequate plans or take stronger action, well before reserves are depleted in any way, shape or form. There is this mandatory action level at 70 percent of the authorized control level where effectively the regulator is stepping in and taking over that organization, trying to rehabilitate or potentially offload that risk to another organization, or potentially even liquidate the organization.

- It's important to have the rate approval, which is there to ensure that the rates are sufficient so you're not dipping into reserves. Your rates coming in are paying claims generally. If reserves are lowering, that's where the close monitoring by the Insurance Department is very important. They need to step in far before there is any serious, financial impairment.
- Right behind that is the idea of an additional deposit or reinsurance as a backstop. Specific reinsurance is very valuable and something that risk pools should hold.
- If HealthTrust had reserves that were dropping lower, the Department would step in and have a corrective action plan or potentially take over or liquidate the organization far before HealthTrust believes a reinsurance plan or that deposit would come into place. So, if it's intended to ensure there are adequate funds for a runout, that's when the IBMP reserves come into play, which is a separate reserve account HealthTrust has.
- HealthTrust would like to understand what level is appropriate for reinsurance or a deposit, so that they are not purchasing an overly rich plan that may not even be available on the marketplace, or putting 10 percent of contributions aside if they're never going to be tapped into. Other solvency standards would correct the ship before you get anywhere into that range.
- In general, HealthTrust is very supportive of adequate reserves, close monitoring, rate approval, and all of those mechanisms that would make sure you never go down that road.
- Director DeRoche thinks the complexity and the what-ifs are driving the kind of anxieties around the 5-year look back or the 1-year look back.
- Medical trends increase at such an astronomical rate. What they are experiencing now is much higher than 2023. Their rates are where they should be to cover the claims.
- Senator Gray noted in their testimony HealthTrust talked about other non-assessable risk pools, "...there were no other non-assessable risk pools that weren't part of a guarantee fund..." He asked if the funds Director DeRoche spoke about were members of a guarantee fund, or are there other guarantees to assure their continued solvency. Director DeRoche explained the ones he spoke of are not members of a guarantee fund. They hold adequate reserves and ensure they have the funds to be able to pay all obligations. Director DeRoche also had conversations with a number of risk pools that are also assessable, that do have the right to assess if the year is short and to raise the surplus. There were very few of those in a runout-type situation if there were any unpaid funds. They're holding reserves at 45 percent of contributions. Another one was at 85 percent of contributions. Both are health pools. Even though they are technically assessable, when you're holding 85 percent of annual contributions in a reserve, it is extraordinarily unlikely that an assessment would be needed. Typically, holding adequate reserves for both assessable and non-assessable is the solution.
- There was a desire in New Hampshire to have risk pools hold less in reserves going back to 2010. That is a real concern. HealthTrust did not follow the cap of 15 percent on reserves favored by the Secretary of State.

- With a non-assessable plan as HealthTrust has been for 41 years, it is important that you hold adequate reserves. That is consistent with what Director DeRoche has been stating and what they have done in targeting a higher level of reserves that have proven sufficient over these last couple of volatile years.

Margaret Byrnes, New Hampshire Municipal Association:

- The New Hampshire Municipal Association is in support of this bill for two primary reasons. First, it creates or enhances clarity and choice for members when deciding whether or not to join a risk pool by clarifying there are two types of risk pools that are allowed to operate in the state of New Hampshire, assessable and non-assessable pools.
- Over the past year, NHMA and local officials have testified on what potential mid-year assessments would do to cities and towns, school districts, and counties, especially in cases where members were not aware assessments were possible. NHMA members were not prepared or knowledgeable about the possibility of assessments for those who were members of pools.
- HB 1491 creates the opportunity for a pool to operate under either model. A municipality, school district, or county will have the ability to make the choice if they want to join a risk pool. Should they choose to do so, they may lean on predictability and an emphasis on upfront funding through premiums. Or they may choose to join a pool that may have more fluctuations in potential refunds, as well as mid-year assessments. They will also be able to plan accordingly knowing that is a possibility.
- The second reason NHMA supports HB 1491 is that it represents a compromise. It takes into account the Senate's position on amending RSA 5-B. It includes the House's position to allow the Department of Insurance to regulate risk pools that are not assessable. In doing so, it beefs up the standards both in RSA 5-B as well as creates new sections of the Insurance statute.
- One interesting provision in HB 1491 is the new RSA 420-R:3, which allows for the creation of new risk pools. As it stands today, it is unclear to Ms. Byrnes how a new risk pool could be formed. The bill allows for the creation of a new risk pool, which can enhance competition as well as enhance member choice.
- NHMA does have some concerns with Amendment #2026-1316s. Their primary concern is to ensure the process to transition to the Insurance Department needs to be one that can truly be implemented, is reasonable, and does not have unnecessary barriers to the transition.
- Ms. Byrnes flagged the definition of the advisory board on Page 3 of the amendment. She understands the role of the advisory board, appreciates the intent of same, and can see the value of having consumer protection represented. Ms. Byrnes suggested it may be more prudent for an advisory board to include members of risk pools as opposed to the prior regulator, the Secretary of State, and the proposed regulator, the Insurance Commissioner, in a case where a risk pool is being regulated by the Insurance Department.
- Chairman Gray requested Ms. Byrnes forward their list of detailed concerns. Ms. Byrnes agreed to do so. Senator Watters requested Chairman Gray forward any concerns he receives to all Senate Finance Committee members.

Scott Gross, Former Goffstown SAU 19 Business Administrator:

- Mr. Gross was a select board member for 6 years, a school board member for 7 years, and he has worked in the insurance industry for 25 years. He appreciated how comprehensive the testimony provided by the Insurance Department was.
- The stability of rates is paramount. Having to pay an assessment is very volatile for the taxpayers.
- It is important to have an efficient regulatory framework.
- Mr. Gross believes these pools should be regulated by the Insurance Department. As he has worked in that industry for a long time he knows they have the staff and the expertise to deal with insurance matters.
- He appreciates the fact there appears to be a compromise where you could be regulated by either the Insurance Department or the Secretary of State's Office. Most people in New Hampshire like the ability to choose.
- There have been concerns expressed about reserves being too high and being required to return those reserves to the municipalities or the school districts. That creates its own challenges because those surplus premiums must be returned to not only your current employees, but also to retirees. You have to find them, and they could be all over the country. You're issuing checks and some of them get returned back to you. You also have to negotiate with unions. That is a large task for communities like Goffstown and New Boston.
- As someone who was a former business administrator, you want stability in terms of your premiums so that you're not having your budgets fluctuate.
- Mr. Gross expressed he is encouraged with the progress made with legislation from last year to this year. A lot of compromise that has been done, which is a credit to the Senate Finance Committee and its Chairman, Senator Gray, for looking to create compromise and attempt to involve all of the stakeholders. This is pretty close to getting across the finish line.

**Neutral Information Presented:**

DJ Bettencourt, Commissioner; Ned Cataldo, Financial Examiner; Christian Citarella, Chief Property and Casualty Actuary, New Hampshire Insurance Department:

- Senator Gray had asked the Insurance Department several weeks ago to take a look at his proposed Amendment #2026-1316s, which was in the conceptual phase of drafting. The Department added a good deal of detail to that amendment.
- Commissioner Bettencourt believes Amendment #2026-1316s reflects a clear effort to modernize risk management for political subdivisions and to respond to the real pressures in today's insurance markets. It establishes a dual framework for pooled risk management programs, formally recognizing both assessable and non-assessable models, including the creation of a new statutory framework specifically governing advanced premium otherwise known as non-assessable pools.

- With regard to the assessable structure, it reinforces responsibility for deficits by embedding mandatory assessment triggers and strengthening reserve and solvency requirements.
- Amendment #2026-1316s also imposes defined reserve thresholds, requires actuarial and audit oversight, and introduces mechanisms such as restricted surplus accounts and corrective action triggers to promote financial stability and transparency.
- In parallel, the amendment reflects a deliberate regulatory compromise by establishing a clear jurisdictional split. Assessable pools remain under the oversight of the Secretary of State, while non-assessable pools fall under the authority of the Insurance Department. This bifurcated approach aligns regulatory oversight with the underlying risk structure.
- Different risk pool models are paired with different regulatory frameworks, while preserving optionality between models in prioritizing solvency, accountability, and operational clarity.
- With respect to the non-assessable structure, at its core, the amendment seeks to create an opportunity to move toward a more predictable, transparent, and financially disciplined model. It is a model that does not rely on retrospective assessments, which has been a pain point for many municipalities and school districts. Rather, it places a greater emphasis on upfront pricing, capital management, and risk mitigation.
- If implemented effectively, such a model can improve budget stability for municipalities, strengthen incentives for loss prevention, and better align costs with actuarial experience over time. The Insurance Department supports that direction.
- At the same time, however, this transition represents a fundamental structural shift in solvency regulation. By moving to a non-assessable model, the proposal would remove the back-end risk sharing mechanism, which has served as the financial back stop for the pools in placing nearly complete reliance on front-end solvency disciplines, such as strong capital reserves, loss ratio sustainable pricing, strong governance and reinsurance mitigation strategies.
- That model can work, but it requires careful calibration in a recognition that because the front-end process is expected to carry the full weight of solvency, initial participants must be prepared for higher costs to start, and to build up the necessary reserves to stabilize the pool and ultimately, the premiums over time.
- There are several areas where the Department believes additional refinement and consideration will help ensure the framework is as strong in practice as it is in concept.
- First, solvency and capital standards. The bill appropriately incorporates risk-based capital concepts, but these entities are not traditional insurers. A more tailored approach potentially incorporating stress testing or surplus-based metrics may better reflect their risk profile.
- Second, scale and diversification. Pool models rely on credible exposure. Ensuring sufficient scale at formation will be important to support stability and effective pricing.

- Third, risk transfer and backstop. In the absence of assessments, the model depends heavily on reinsurance and excess coverage. It will be important to ensure those protections are available and sustainable at scale.
- Fourth, rate setting and governance. The inclusion of actuarial standards and rate review is a strong step forward. Ensuring those standards have durability and that the Department has clear authority to address inadequate rates will be critical.
- Next, transition from existing programs. The transition framework is thoughtful, but it is admittedly operationally complex. Additional clarity and standardization, particularly around valuation and actuarial review, could help reduce some of that friction.
- Enhanced due diligence is needed on anti-selection safeguards to prevent high-risk entrants from adversely affecting the risk profile receiving pools upon transition.
- Finally, regulatory oversight. This framework appropriately contemplates ongoing rate review, solvency monitoring, and examination that is essential to maintaining confidence in the system. The Department believes it is manageable with appropriate alignment of resources.
- As the Department works to operationalize this framework, there are several targeted areas where additional clarity or direction from the Legislature would be helpful. First, regulatory classification. The bill creates an entity that functions in many respects like an insurer while also stating it is not engaging in the business of insurance. Clarifying that intent, whether explicitly or by omission, would help ensure consistency in how the Department would apply core solvency and oversight statutes.
- Next, federal implications. While these are governmental plans certain ACA requirements may still apply. Clarifying whether the Department is expected to assume full enforcement responsibility or whether that authority remains shared or limited will be important to avoid regulatory gaps.
- Next, the advisory board role. The advisory structure is well intended but its practical function and value in the process could benefit from further definition, particularly in relation to technical, financial and actuarial review.
- Next, rulemaking and scope. The bill appropriately relies on rulemaking for key standards given the July 2027 effective date. Confirming expectations around timing and scope will be important, as this will be a substantial undertaking.
- Next, governance structure. The prescribed board composition raises some questions that require some clarity about operational flexibility and expertise. Additional direction on whether the structure is intended to be prescriptive or adaptable could help ensure effective governance.
- Lastly, market structure and legal fit. These programs do not fit neatly into existing insurance categories. Clarifying their intended legal and regulatory posture will help ensure they are integrated cleanly into the Department's broader system.
- This proposal is constructive and a forward-looking effort to create a real opportunity to strengthen risk management opportunities for political subdivisions. That being said, because the model relies so heavily on front-end

discipline, capital, pricing, governance, and oversight, it is important to continue to refine these elements to ensure long-term sustainability and ultimately success.

- Senator Rosenwald referenced Page 6 of Amendment #2026-1316s, Line 28. There is a description of the bond the program requires. It has to be between \$1-\$5 million. Senator Rosenwald inquired if that is high versus the industry standard, if there is one. If so, would that work to raise the contribution cost for communities? Mr. Cataldo explained the entities the Insurance Department primarily regulate are insurers as well as companies like Delta Dental. They do not impose limitations like that on them. The idea in this particular section is to create some type of coverage for the actors that are essentially governing this entity. That is the primary purpose. It is in line with what they've seen with fidelity bonds, etc. Normally, there is a market discipline that's enforces that. So the shareholders, etc. would be governing this. In this instance, the idea is to protect the cities and towns.
- Senator Rosenwald continued. As this is new from what they have to do now, would that increase the contributions from the member communities? Mr. Cataldo responded possibly. This is a fidelity bond so it is not always dollar for dollar. You can go to a third party that could provide a surety or a bond in that capacity and it's definitely not dollar for dollar. They assess the risk and there are parties that provide. It is similar to posting a bond in construction. It is not dollar for dollar. It is whatever the cost is of that surety or bond.
- Mr. Cataldo continued there are going to be initial setup costs for all of this. And again, we're changing the framework here. We're taking away the back end unknown in exchange for the front end. It is much more heavy-handed on the front end of this, the way this is constructed. But that's the way an arrangement like this would need to be created. It doesn't have massive established reserves, or the ability to go back and pull its members to the extent that their loss was greater than expected. The way you deal with that is to set aside more capital or premiums pulled aside at the front end to make the math work. If you get disparities that is how it will ultimately cover those peaks and valleys.
- Senator Rosenwald interjected it is malfeasance Mr. Cataldo agreed. There is some protection in place for the ultimate taxpayers that are getting the benefits. Mr. Cataldo thought Senator Rosenwald's broader question was will this increase be an increase in cost to the members? The answer is yes. as will many other things due to the construction of this non-assessable arrangement.
- Senator Watters referenced the same section Senator Rosenwald had questioned. Primex had asked instead of a bond could it be a surety or cash account. The Senator wondered if Mr. Cataldo had an opinion on that method. Mr. Cataldo agreed it was a great point. What we're ultimately trying to do is ensure we limit as many potential exposures and risks as possible. The Insurance Department is going to continue to provide flexibility, provided that it achieves the same result. In the example Senator Watters gave with Primex developing an alternate plan to provide protection, the Department would be open to such an arrangement. Senator Watters inquired if the statute would

have to be amended to give the Department that flexibility. Mr. Cataldo indicated some of that flexibility would probably be written into the rules.

- Senator Gray noted the reason Senate Finance is holding this hearing early is to allow the opportunity for these iterations to occur. Ideas can be passed directly to Senator Gray, the Secretary of State's Office or the Insurance Department. Going forward we'll try to work out all the issues listed by Commissioner Bettencourt. And we'll indicate whether they can be handled in the rulemaking process or handled in the legislation.
- Senator Rosenwald referenced Page 6, Line 4 of the amendment, which describes the process of a program transitioning from the assessable to the non-assessable arrangement. The way she reads "obtain approval from the governing body of each member" sounds like any one member of a non-assessable risk pool could have a veto over the plan transitioning because it says obtain approval from the governing body of each member. Senator Gray explained the plan was if a risk pool decides to do the transition, and the members of that risk pool say yes, the non-assessable risk pool would be under the 420 statutes. But if they did not, they would be able to take out any cash. In SB 661-FN we developed the Members Equity Stabilization Fund. They would be able to take that with them, but then would not be a member of that next pool. Commissioner Bettencourt stated the section was not intended to imply there would be a single member veto over any of the other political subdivisions that wanted to make a different choice.
- Senator Gray reiterated right now, we don't have the Member Equity Stabilization Fund. So, presently, there wouldn't be any money to take with them. One of the questions concerning SB 661-FN is if a group is going to transition, whether or not they need to establish that fund in the first year. Right now it is more important they get to the 12 percent in the SB 661-FN assessable plan, than it is to establish the other 4 percent.
- Senator Rosenwald referenced Page 8, Lines 12-15 of Amendment #2026-1316s. The Board of Directors for the two types of risk pools have very different compositions. The non-assessable risk pools have members, employees, and public representatives. The assessable risk pools have members but no employees. Why wouldn't we want employees to be represented in all of the risk pools? Senator Gray suggested perhaps we might have a risk pool that would be able to answer that question.
- Senator Rosenwald referenced Page 11, Lines 16 and 18 of the amendment, using the word "product." The Senator has never seen multiplying factor written as "product." Clarifying, the product of one is the basic number. If the product is two, it means twice that number. Commissioner Bettencourt agreed. Mr. Cataldo explained there is not a one size fits all amount of surplus or capital that should be held in these vehicles. It should be an assessment of the underlying risk of the pool, or the underlying risk of whatever type of activity is being insured, as well as any assets that are being held in reserve to support those potential future claims. The approach is to create what the Department does in their traditional insurance companies, as well as what they do for organizations like Delta Dental. They make an assessment based on a series of

risk factors on the underlying pool, and then the assets, and attempt to make an assessment of how much capital should be in place to support it. What this specifically speaks to is if there is stop-loss or excess of loss insurance in place. You can hold less capital against it because a third party will step in at some point. The Department is trying to incentivize obtaining stop-loss coverage that it thinks is appropriate. If you purchase excess of loss coverage the Department thinks is appropriate, you have to hold less reserves or less capital against it. A series of triggers are developed whereby the Commissioner has the authority to step in at different levels as time goes by and losses occur. There are statutory levels whereby the Department can step in and require a plan to remedy the situation. It is difficult to mandate X amount of capital across the board. It doesn't work, as all of these entities are so different. Hold 100 percent of the capital the Department thinks you need if you have excess of loss insurance, stop loss insurance. Or, hold twice that number if you don't. Mr. Citarella added it is the different factors that you might need to multiply against to find an appropriate level of capital. It is the risks associated with the type of exposures that you have, the type of insurance risk you have, the type of financial risks you might have, and how you are investing your assets.

- Commissioner Bettencourt stated the name of the game is solvency. That's the endgame all of us are focused on. All of the factors are warning lights. When one of these warning lights begins to flash, it is the responsibility of the Insurance Department as the regulator to step in at that point, and try to understand what's going on. We don't want multiple warning lights to all be flashing at the same time, signaling the entity is headed at a brisk pace towards insolvency. We put these warning lights in place to stop from ever getting to that point. The Department will intervene before it reaches the point at which it's a full-blown solvency crisis.
- Senator Rosenwald referenced Page 14, Lines 4-6 of the amendment, which gives the Commissioner, with court approval, the ability to transfer all or part of a presumably insolvent program to another program. What if there is no other
- program that is able to absorb that insolvent program? Mr. Cataldo explained statutorily today, for a traditional insurance company, there are a number of different avenues the Department can pursue such as rehabilitation, liquidation and receivership. The idea is to begin a framework that mimics what we do today. What we would need to do is find a third party administrator. We do work with them frequently. They specialize in running down programs like this. The Insurance Department does not have that expertise in house, but it does have relationships with third parties that could come in and oversee something like this. The reason for the framework is because these entities would not be subject to the guarantee fund protections that are currently in place.
- Commissioner Bettencourt stated typically what happens when you have an insurer that goes insolvent is the guarantee association would step in very quickly. Any carrier that is licensed to sell product in any given state must be a member of the guarantee association. A guarantee association is an entity created to step in when the insurer goes insolvent, to front some money to cover the claims of that insolvent insurer so that the consumer is not left high and

dry. We don't have that factor at play here because they're not going to be members of the guarantee association. The Department is thinking of other backstops and protections that should be put in place.

- Senator Gray referenced the apparent discrepancy in the amended analysis of Amendment #2026-1316s on Page 15, III, and the Member Equity Guaranty Funds Authorized section on Page 10, starting on Line 19. He pointed out this section was one of the ways that a guarantee could be established. Such a provision is similar to SB 661-FN. He indicated there may be some language tweaking needed. Commissioner Bettencourt agreed to work with the Office of Legislative Services (OLS) to ensure the accuracy of what the amendment actually sets forth. He agreed that starting with Line 19 on Page 10 a bit of cleanup needs to be done. Senator Gray added it is the fund requesting the ability. If they do request it and it gets established, we need to either continue it or get permission to discontinue it.
- Senator Watters referenced Page 5, VI, the necessary bifurcation of what products are offered. He asked Commissioner Bettencourt if it would be in the rulemaking process where they would determine how to implement that. Commissioner Bettencourt indicated to the extent the parties can't deal with any of the outstanding issues directly in the statute, then it would fall to the rulemaking process for that and any additional details required for this to run well.

Eric Forcier, Director, Bureau of Securities Regulation, New Hampshire Secretary of State's Office and Hua Li, Complete Actuarial Solutions Company:

- The Secretary of State's Office takes a neutral position on both HB 1491 and Amendment #2026-1316s. They consider this a policy decision by the Legislature. They have, however, lent their experience and expertise on some of the language.
- Mr. Li sought to explain why the amendment that is being proposed is so necessary to the bill. Lawmakers need to understand how large an undertaking it is to create a non-assessable health insurance pool.
- A non-assessable pool means they cannot be assessed and that means they cannot be assessed by management. Just as importantly, they cannot be assessed by a receiver during runoff. That means there is no backstop. If the reserves run out, health insurance claims are likely to be denied.
- Health insurance is more impacted by being non-assessable than property casualty. It's because health claims are paid much more quickly. It takes longer to raise additional funds than property casualty.
- According to Mr. Li's firm's research, there are no non-assessable health pools in the nation that are not fully reinsured. There exists some that have backups such as full reinsurance. Other ones can only assess during runoff, but that would still make them an assessable pool and not a non-assessable pool.
- Mr. Li has not found any examples of a legal provision such as HB 1491 creating a legally non-assessable pool where the receiver cannot assess during runoff. It will result in claims not being paid.
- Mr. Li would like to find some examples of legally non-assessable health pools who cannot even assess during runoff, other than those that are fully reinsured.

If you're fully reinsured, most of this is irrelevant. That's essentially an insurance program. But if there are actual examples out there of legally non-assessable health pools, that would be tremendously useful to lawmakers and to the Insurance Department in trying to narrow down this language.

- The question of whether the three New Hampshire health pools are historically non-assessable or not is very important. If they were historically non-assessable, this just continues their business model. And if they weren't, this is brand new.
- Mr. Li has heard some claims made throughout the legislative process that if a pool has never issued an assessment before, then they're non-assessable. That is not true because if a pool has never made an assessment, that doesn't mean they couldn't have. And if it were true, no pool would ever be able to make an assessment because at some point every pool has not made an assessment.
- Mr. Li has also heard it said that if management has a policy of not assessing members, then the pool is non-assessable. This is also not true. Essentially, if reserves fully run out, if management has a policy of not assessing, what that means is they would choose to let the pool go into runoff rather than making an assessment to continue and to save the pool. But that just means they're letting the receiver issue any needed assessments rather than management doing that. That was very clearly illustrated by NHIT here in New Hampshire. With NHIT, the receiver came in after the management put the pool into runoff, determined there were not enough assets to pay unpaid claims, and issued an assessment despite any sort of policies or promises that management had made previously about whether the pool was assessable or not. Management policies are not relevant.
- The first time HealthTrust actually claimed either publicly or in board meetings that they've always been non-assessable occurred after the legislation was proposed or introduced last year to specify when the assessments can be made. Just months before that in 2024, HealthTrust meeting minutes showed they actually considered making a mid-year assessment of members to rebuild their reserves. That clearly shows they knew they could make assessments regardless of whether management ultimately did or not.
- Essentially, the initial version of the bill, without the assessment, much of the regulation was for pools that have a backstop; namely, assessable pools or insurance companies. HealthTrust stated that original version of the bill used nationwide standards for solvency. That is very true for insurance companies that are backed by guaranteed funds. It is not a nationwide standard for pools that are not backed by any backstop at all.
- In terms of the specific amounts in the bill, requiring a deposit of \$50 million as essentially their backstop is too much. That is 10 percent of their annual contributions. At one time they lost approximately \$37 million in 3 months, perhaps in 2023. To say for a pool with no backstops whatsoever to require \$50 million is excessive, Mr. Li was not sure the actuarial analysis would suggest that.
- Additionally, HealthTrust may have misinterpreted the 5-year look back. This 5-year look back is not saying you have to use equal weight data for 5 years. It

means you have to look at least 5 years of data. If you determine the first 4 years are not relevant for some reason, then you can just use one year. You cannot look back for 2 years and ignore what happened before that. You simply have to look at the 5 years. There is no requirement to give equal weighting for the 5 years.

- HealthTrust mentioned GASB No. 10 and GASB No. 30 provide some sort of standards for non-assessable health pools. Those are accounting standards. That has nothing to do with regulation of a risk pool that has no backstops, where if you run out of money it will result in health claims being denied.
- Mr. Li repeated if anyone finds an example of a non-assessable health pool, it would be tremendously useful. His firm has not found any. Even among the property casualty side they have only found 4, all of which are located in Ohio and Florida. Other examples might have full reinsurance or some other backstop. It is very rare. If someone can find an example it would help both the Insurance Department and legislators.

dm

Date Hearing Report completed: April 15, 2026