

Floor Amendment to SB 228-FN

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

2
3 1 Statement of Purpose. It is the purpose of this act to help small businesses obtain more
4 affordable health care coverage and new coverage options through multiple employer group
5 purchasing mechanisms as authorized in this chapter while preserving protections for higher risk
6 individuals and groups and while protecting against adverse impacts on New Hampshire's existing
7 individual and small group health insurance markets.

8 2 Title. This act shall be known as the Small Business Health Care Reform Act of 2019.

9 3 Multiple-Employer Welfare Arrangements; Definitions. RSA 415-E:1 is repealed and
10 reenacted to read as follows:

11 415-E:1 Definitions. In this chapter:

12 I. "Bona fide association" means a bona fide pathway I association or a bona fide pathway II
13 association.

14 II. "Bona fide pathway I association" means a group or association that satisfies the criteria
15 established by the United States Department of Labor prior to the adoption in 2018 of 29 C.F.R.
16 section 2510.3-5, including the guidance provided in the United States Department of Labor
17 publication entitled "MEWAS, Multiple-Employer Welfare Arrangements under the Employee
18 Retirement Income Security Act (ERISA): A Guide to Federal and State Regulation, Revised August
19 2013" and including published United States Department of Labor ERISA Advisory Opinion Letters.

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

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

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

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

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

30 VIII. "Fund balance" means the total assets in excess of total liabilities, except that assets
31 pledged to secure debts not reflected on the books of the multiple-employer welfare arrangement
32 shall not be included in the fund balance. Fund balance shall include other contributed capital,

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1 retained earnings, and surplus notes.

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

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

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

18 4 Multiple-Employer Welfare Arrangements; Applicability; General Eligibility. Amend RSA
19 415-E:2 to read as follows:

20 415-E:2 Applicability.

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

31 II. This chapter shall not apply to a multiple-employer welfare arrangement which offers or
32 provides benefits which are fully insured by an authorized insurer or under the provisions of RSA 5-
33 B.

34 ~~[III. RSA 415-E:4, RSA 415-E:8, RSA 415-E:9, III and RSA 415-E:11 shall not apply to a~~
35 ~~multiple-employer welfare arrangement which:~~

36 ~~(a) Meets the general eligibility requirements of RSA 415-E:3, I;~~

37 ~~(b) Is administered primarily from a principal place of business located within the state~~

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1 of New Hampshire;

2 ~~(e) Has provided employee health benefits for a continuous period of 10 or more years;~~

3 ~~(d) Maintains a termination liability fund wherein the fund balance plus the total~~
4 ~~liabilities of the multiple employer welfare arrangement shall at no time, for a consecutive 90-day~~
5 ~~period, be less than 40 percent of the aggregate amount of premiums billed during the 6 prior~~
6 ~~months. For purposes of this subparagraph, that surety amount, if any, deposited with the~~
7 ~~commissioner pursuant to RSA 415-E:7, I, may be credited as a fund balance asset toward the~~
8 ~~termination liability fund amount required under this chapter; and~~

9 ~~(e) Files with the commissioner, not later than 4 months following the end of each fiscal~~
10 ~~year, a report on the financial status of the termination liability fund, which report is filed under~~
11 ~~oath by a member of its board of trustees, or by an administrative executive duly appointed by the~~
12 ~~board, and further certified to by an independent certified public accountant with a place of~~
13 ~~business located within the state of New Hampshire.~~

14 ~~IV. In the event a multiple employer welfare arrangement does not satisfy the~~
15 ~~requirements of paragraph III, the arrangement shall within 60 days file with the commissioner an~~
16 ~~application for approval under RSA 415-E:4, and shall be subject to all provisions of this chapter~~
17 ~~until such time as the requirements of paragraph III are satisfied.]~~

18 5 Multiple-Employer Welfare Arrangements. RSA 415-E:3 is repealed and reenacted to read as
19 follows:

20 415-E:3 General Eligibility: Pathway I and Pathway II. To meet the requirements for approval
21 and to maintain a multiple employer welfare arrangement, an association shall be approved either
22 as a bona fide pathway I or pathway II association as follows:

23 I. An association seeking approval as a bona fide pathway I association shall:

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

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

26 (c) Be nonprofit.

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

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

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1 arrangement.

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

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

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

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

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

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

13 (d) Have a commonality of interest with its employer members, such that one or both of
14 the following standards are met, in a manner that is not a subterfuge for discrimination as
15 prohibited under RSA 415-E:1-e;

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

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

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

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

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

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

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

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

30 6 New Sections; Multiple-Employer Welfare Arrangements. Amend RSA 415-E by inserting
31 after section 3 the following new sections:

32 415-E:3-a Bona Fide Pathway Association Coverage; General Authorization. Bona fide
33 pathway association coverage as set forth in the United States Department of Labor's June 21, 2018
34 amendment to 29 C.F.R. section 2510, 83 Fed. Reg. 28,961 (codified at 29 C.F.R., section 2510.3-5)
35 shall be permissible in New Hampshire provided it conforms with this chapter and all of the
36 provisions of Title XXXVII concerning this coverage.

37 415-E:3-b Bona Fide Pathway II Association Coverage: Option to Offer Fully-Insured

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1 Coverage.

2 I. A bona fide pathway II association may offer coverage on a fully insured basis if it is
3 licensed as a qualified purchasing alliance under RSA 420-M and meets all of the pathway II
4 requirements under this chapter. No insurer shall issue a fully-insured health benefit plan to an
5 association or MEWA with covered lives in New Hampshire unless the association or MEWA meets
6 the requirement of a bona fide pathway II association under this chapter has been licensed by the
7 department as a qualified purchasing alliance under RSA 420-M.

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

11 III. An insurer issuing a fully insured health benefit plan to an association or MEWA shall
12 ensure that the terms of the plan conform with all applicable requirements of this chapter with
13 respect to bona fide association coverage and that the coverage has received all required approvals
14 from the department.

15 415-E:3-c Bona Fide Pathway II Association Coverage; Benefit Requirements.

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

18 (a) Coverage for each of the 10 essential health benefits as defined in 42 U.S.C. section
19 18022(b)(1), either in conformance with the New Hampshire benchmark plan or, subject to approval
20 of the commissioner, based on a showing of actuarial value equivalence to the New Hampshire
21 benchmark, except that pediatric dental and vision coverage may be offered to the association in
22 either a stand-alone dental or vision plan or as a benefit embedded in the health benefit plan;

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

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

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

28 (e) All other benefits required to comply with applicable federal laws and regulations.

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

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

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

37 (c) Payment of premium tax as provided in RSA 400-A:31-35 and administrative

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1 assessment under RSA 400-A:39;

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

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

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

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

6 III. No health benefit plan or related policy, contract, certificate, or agreement offered or
7 issued in this state to a bona fide pathway II association shall reserve discretion to the insurer or
8 sponsoring association to interpret the terms of the contract or to provide standards of
9 interpretation or review that are inconsistent with the laws of this state. Any such policy, contract,
10 certificate, or agreement shall be void and unenforceable to the extent it conflicts with this section.

11 IV. A bona fide pathway II association shall not offer, and an insurer shall not deliver or
12 issue for delivery to a bona fide pathway II association, a health benefit plan covering lives located
13 in this state that contains an exclusion or limitation for pre-existing conditions or a waiting period
14 on the coverage of pre-existing conditions.

15 415-E:3-d Rating Requirements for Bona Fide Pathway II Association Coverage; Rating
16 Requirements.

17 I. Any bona fide pathway II association, or any insurer contracting with a bona fide
18 pathway II association to provide a health benefit plan, shall comply with all requirements of RSA
19 420-G, except that, for a bona fide pathway II association with 250 or more New Hampshire covered
20 lives, small group rating standards under RSA 420-G shall not apply, regardless of the size of the
21 member employer groups, and the association as a whole may be rated as a single risk pool.

22 II. Coverage for a bona fide pathway II association with 250 or more New Hampshire
23 covered lives may be rated as a single large group in accordance with all standards applicable to
24 large employer groups under RSA 420-G. The following additional requirements shall apply to such
25 coverage:

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

29 III. The association may vary rates among member small employers, including
30 participating self-employed New Hampshire members, as follows:

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

32 (b) Variation associated with tobacco use shall not exceed 1.5 to 1.

33 (c) No other variation shall be permitted.

34 IV. The same rating methodology shall apply to newly covered member employer groups
35 and employee members renewing at each annual renewal date or anniversary date. The rating
36 methodology shall not be construed to include health carrier incentives to individual subscribers or
37 members to participate in wellness and fitness programs provided such incentives are approved by

1 the insurance department.

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

4 415-E:3-e Bona Fide Pathway II Association Coverage; Nondiscrimination Requirements. In
5 accordance with 29 C.F.R. section 2590.702, bona fide pathway II association coverage shall comply
6 with the following:

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

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

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

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

19 415-E:3-f Bona Fide Pathway II Association Coverage: Movement from Bona Fide Pathway II
20 Association Coverage to Small Group Coverage. A small employer that leaves the small group
21 market for bona fide pathway II association coverage shall not be permitted to return to small group
22 coverage for a period of 24 months following the departure from the small group market, nor shall
23 an insurer be permitted to issue small group coverage to such a group, unless the employer can
24 demonstrate that association coverage is no longer available to that employer.

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

27 I. In order to mitigate potential adverse effects of pathway II association coverage on the
28 existing individual and small group markets, the following protective measures shall apply:

29 (a) Prior to January 1, 2020, the commissioner shall retain an independent actuarial
30 firm to model and quantify the impacts of pathway II coverage on the existing individual and small
31 group markets and to perform the actuarial review necessary to support a section 1332 waiver as
32 required in subparagraph (b) and the small group risk adjustment program required in RSA 420-K.

33 (b) Prior to January 1, 2020, the commissioner shall apply for a waiver under section
34 1332 of the Patient Protection and Affordable Care Act, 42 U.S.C. section 18001 (2010) and under
35 the commissioner's authority in RSA 420-N:6-a in order to create a risk subsidy mechanism for the
36 individual market under RSA 404-G which is eligible to draw down federal pass-through funding to
37 support such mechanism.

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1 (c) The commissioner shall publish and accept public comment on the 1332 waiver
2 application, the plan of operation for the individual market risk subsidy mechanism, and the plan of
3 operation for the small group risk adjustment program required under RSA 420-K prior to
4 approving such plans.

5 II. No pathway II association coverage shall be issued to a sole proprietor until the 1332
6 waiver has been granted, and the risk subsidy mechanism for the individual market has been put in
7 place; except that a pathway II association that has established membership criteria that limit
8 membership in the association to businesses that are members of or affiliated with an association,
9 trade group, or other entity that has been in existence for at least 10 years and was established and
10 maintained for purposes other than the provision of health coverage may provide coverage to sole
11 proprietor members.

12 III. The plan of operation for the small group risk adjustment program required under RSA
13 420-K shall be approved and in place by January 1, 2021.

14 7 Multiple-Employer Welfare Arrangements; Filing of Application. Amend the section heading
15 and the introductory paragraph of RSA 415-E:4 to read as follows:

16 415-E:4 ***Self-Funded Arrangements***; Filing of Application. ***For self-funded arrangements***,
17 the sponsoring association shall file with the commissioner an application for approval of the
18 arrangement upon a form to be furnished by the commissioner, which shall include or have
19 attached the following:

20 8 Multiple-Employer Welfare Arrangements; Termination Liability Fund. RSA 415-E:5 is
21 repealed and reenacted to read as follows:

22 415-E:5 Self-Funded Arrangements: Termination Liability Fund.

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

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

34 9 Multiple-Employer Arrangements, Financial Condition, Loss Reserves. Amend RSA 415-E:6
35 to read as follows:

36 415-E:6 ***Self-Funded Arrangements***; Financial Condition, Loss Reserves, Reinsurance, or
37 Working Capital; Determination of Inadequacy.

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

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

7 ~~[I.]~~ ***III.*** The commissioner may, upon reasonable notice, conduct an examination of the loss
8 reserves, financial condition, specific excess insurance, and working capital of a multiple-employer
9 welfare arrangement ***the costs of which shall be borne by the arrangement.*** If the
10 commissioner preliminarily finds that the reserves, specific excess insurance, or financial condition
11 may be inadequate, or that the arrangement does not have a combined working capital in an
12 amount establishing the financial strength and liquidity of the arrangement to pay claims promptly
13 and showing evidence of the financial ability of the arrangement to meet its obligations to covered
14 employees, the commissioner shall notify the arrangement of such inadequacy. Upon being so
15 notified, the arrangement shall within 30 days file with the commissioner all information which, in
16 the belief of the arrangement, proves the reasonableness and adequacy of the condition noted as
17 being inadequate.

18 ~~[II.]~~ ***IV.*** If the commissioner determines, after reviewing the information filed, that an
19 inadequate condition exists, the arrangement shall implement, within 30 days, a plan to correct the
20 inadequacy and shall file proof of reasonable improvement or adequate condition with the
21 commissioner within 6 months of the implementation of the plan. If the commissioner is satisfied
22 that the plan submitted to improve the inadequate condition of the arrangement is sufficient, he
23 shall so notify the arrangement. The arrangement shall report quarterly to the commissioner until
24 the causes of the inadequate condition have been corrected.

25 ~~[III.]~~ ***V.*** The commissioner may suspend or revoke the approval of an arrangement if he
26 finds that the arrangement has failed to correct or reasonably improve an inadequate condition
27 within the time authorized by paragraph ~~[II]~~ ***IV.***

28 10 Multiple-Employer Arrangements; Insolvency Protection. Amend RSA 415-E:7, I to read as
29 follows:

30 I. To assure the faithful performance of its obligations to its member employers and covered
31 employees ***who are New Hampshire residents*** and their dependents, every arrangement shall,
32 within 30 days after the close of the arrangement's fiscal year, deposit with the commissioner cash,
33 securities, or any combination of these or other measures acceptable to the commissioner, in an
34 amount equal to ~~[25 percent of the preceding 12 months' health care claims expenditures or 5~~
35 ~~percent of gross annual premiums for the succeeding year],~~ ***\$100,000 or 25 percent of the***
36 ***aggregate premiums billed during the 12 prior months attributable to New Hampshire***
37 ***residents,*** whichever is greater~~;~~ ~~however, in no case shall the amount of the deposit exceed~~

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1 ~~\$100,000~~. All income from deposits shall belong to the depositing arrangement and shall be paid to
2 it as it becomes available. An arrangement that has made a securities deposit may withdraw that
3 deposit, or any part of such deposit, after making a substitute deposit of cash, securities, or any
4 combination of these or other measures of equal amount and value, upon approval by the
5 commissioner. No judgment creditor or other claimant of a multiple-employer welfare association
6 shall have the right to levy upon any of the assets or securities held in this state as a deposit under
7 this section.

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

10 415-E:8 Policy Forms.

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

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

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

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

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

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

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

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

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

36 415-E:9 ***Self-Funded Arrangements***; Employer Participants' Liability. ***For self-funded***
37 ***arrangements:***

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

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

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

11 415-E:10 ***Self-Funded Arrangements;*** Termination of Arrangement. ***For self-funded***
12 ***arrangements,*** if an arrangement is terminated for any reason, it shall pay all outstanding claims,
13 debts, and obligations. The arrangement may retain sufficient funds to provide coverage for such
14 additional period as the trustees of the arrangement consider prudent. In addition, the trustees
15 may purchase such additional insurance as they consider necessary for protection against potential
16 future claims. Any funds remaining in the arrangement after satisfaction of all obligations upon
17 termination shall be paid to participating employers and/or covered employees as of the termination
18 date in some equitable manner meeting with the approval of the commissioner, including, without
19 ruling out other alternatives, equally on a per capita basis to each participating employer and/or
20 employee who is covered under the arrangement as of the effective date of termination.

21 415-E:11 ***Self-Funded Arrangements;*** Annual Reports and Triennial Actuarial Reports. ***For***
22 ***self-funded arrangements:***

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

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

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

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

10 (b) A plan to amortize any unfunded liabilities and a description of actions taken to
11 reduce unfunded liabilities.

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

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

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

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

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

22 415-E:12 ~~[Place of Business;]~~ Maintenance of Records. Each arrangement shall ~~[have and~~
23 ~~maintain its principal place of business in this state and shall]~~ make available to the commissioner
24 complete records of its assets, transactions, and affairs in accordance with such methods and
25 systems as are customary for, or suitable to, the kind or kinds of business transacted.

26 415-E:13 ***Qualification for Approval and*** Suspension^[5] ***or*** Revocation of Approval.

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

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

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

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

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

37 II. The commissioner may, in his discretion, deny, suspend, or revoke the approval of any

1 arrangement if it finds that the arrangement:

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

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

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

10 (a) *To be incompetent;*

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

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

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

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

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

24 12 Multiple Employer Arrangements; Rehabilitation; Rulemaking. Amend RSA 415-E:15 and
25 RSA 415-E:16 to read as follows:

26 415-E:15 Rehabilitation, Dissolution. Any rehabilitation, liquidation, conservation,
27 ***supervision***, or dissolution of a multiple-employer welfare arrangement shall be conducted under
28 the supervision of the commissioner, who shall have all power with respect thereto granted to it
29 under the laws governing the rehabilitation, liquidation, conservation, ***supervision***, or dissolution
30 of insurers.

31 415-E:16 Rulemaking. The commissioner may adopt such rules, pursuant to RSA 541-A, as [he
32 deems] ***are*** reasonable and necessary in order to carry out properly the functions and
33 responsibilities assigned the insurance department under [the laws of the state]***this chapter***. [This
34 rulemaking authority shall expire on January 1, 1993, at which time this section, unless replaced
35 by a later legislative enactment, shall be deemed repealed. Any rules adopted under this section
36 shall be drafted in as narrow a manner as possible, consistent with the authority granted the
37 department under the laws of this state.]

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1 13 Health Coverage; Definitions. Amend RSA 420-G:2, XVI(a) to read as follows:

2 XVI.(a) "Small employer" means a business or organization which employed on average, one
3 and up to 50 employees, including owners and self-employed persons, on business days during the
4 previous calendar year. A small employer is subject to this chapter whether or not it becomes part
5 of an association, multi-employer plan, trust, or any other entity cited in RSA 420-G:3 provided it
6 meets this definition; ***provided that coverage written to a bona fide pathway II association***
7 ***with at least 250 New Hampshire covered lives that meets all applicable standards under***
8 ***RSA 415-E and all large group standards under this chapter shall not be considered small***
9 ***employer coverage and may be offered to sole proprietors or self-employed persons.***

10 14 Health Coverage; Guaranteed Issue and Renewability. Amend RSA 420-G:6, III to read as
11 follows:

12 III. Health carriers shall actively market, issue, and renew all of the health coverages they
13 sell in the small employer market to all small employers ***except that a health carrier shall not***
14 ***be permitted to issue small employer coverage to a group that previously was covered as***
15 ***part of a bona fide pathway II association under chapter RSA 415-E for a period of 24***
16 ***months after the date that the group initiated pathway II coverage, unless the group can***
17 ***demonstrate that association coverage is no longer available to that group.***

18 15 Purchasing Alliances; Definitions. Amend RSA 420-M:2, X to read as follows:

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

23 16 Purchasing Alliances. RSA 420-M:13 is repealed and reenacted to read as follows:

24 420-M:13 Qualified Purchasing Alliance. A purchasing alliance that has a minimum of 250
25 enrollees may elect to obtain certification from the commissioner as a qualified purchasing alliance.
26 To obtain certification, a purchasing alliance shall demonstrate:

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

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

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

35 17 Health Coverage; Qualified Association Trust. Amend RSA 420-G:10 to read as follows:

36 420-G:10 Qualified Association Trust ~~[and Qualified Purchasing Alliance]~~.

37 I. A qualified association trust or other entity, as defined in RSA 420-G:2, XV~~[, and a~~

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1 ~~qualified purchasing alliance, as defined in RSA 420-M:2, X,~~ shall:

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

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

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

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

10 (e) Prohibit any employer that voluntarily discontinues participation in either a
11 qualified association trust or a qualified purchasing alliance from rejoining for a period of at least 24
12 months.

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

15 18 Small Employer Health Reinsurance Pool. Amend the chapter heading of RSA 420-K to
16 read as follows:

17 SMALL EMPLOYER HEALTH ~~[REINSURANCE POOL]~~ **RISK ADJUSTMENT PROGRAM**

18 19 Small Employer Health Reinsurance Pool; Definitions. RSA 420-K:1 is repealed and
19 reenacted to read as follows:

20 420-K:1 Definitions. In this chapter:

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

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

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

26 IV. "Commissioner" means the insurance commissioner.

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

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

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

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

35 IX. "Small employer health carrier" means any entity licensed pursuant to RSA 402, RSA
36 420-A, or RSA 420-B that delivers, issues for delivery or maintains in force policies of health
37 insurance in New Hampshire to any small employer. For purposes of this chapter, health carrier

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1 shall include any association, organization or arrangement offering or sponsoring bona fide pathway
2 II association coverage.

3 20 Establishment of the Risk Adjustment Program. Amend RSA 420-K:2 to read as follows:

4 420-K:2 Establishment of the ~~[Pool]~~ ***Risk Adjustment Program***.

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

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

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

27 IV. Within 60 days after the appointment of such initial board, the board shall submit to
28 the commissioner a plan of operation and thereafter any amendments to the plan necessary or
29 suitable to assure the fair, reasonable, and equitable administration of the ~~[pool]~~ ***program***. The
30 commissioner shall, after notice and hearing, approve the plan of operation provided he or she
31 determines it to be suitable to assure the fair, reasonable, and equitable administration of the ~~[pool,~~
32 ~~and provides for the sharing of pool gains or losses on an equitable proportionate basis in~~
33 ~~accordance with the provisions of paragraph VI of this section]~~ ***program***. The plan of operation
34 shall become effective upon approval in writing by the commissioner consistent with the date on
35 which the coverage under this section shall be made available. If the board fails to submit a
36 suitable plan of operation within 60 days after its appointment, or at any time thereafter fails to
37 submit suitable amendments to the plan of operation, the commissioner shall, after notice and

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1 hearing, adopt and promulgate a plan of operation or amendments ~~[no later than October 1, 2005]~~.
2 The commissioner shall amend any plan adopted by him or her, as necessary at the time a plan of
3 operation is submitted by the board and approved by the commissioner.

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

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

10 (a) Handling and accounting of assets and moneys of the pool, and for annual fiscal
11 reporting to the commissioner.

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

13 (c) Selecting an administrator and setting forth the powers and duties of the
14 administrator.

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

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

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

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

23 420-K:3 Powers of the Program. The program may:

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

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

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

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

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

37 VI. Establish appropriate rates, rate schedules, rate adjustments, rate classifications, and

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1 any other actuarial functions appropriate to the operation of the program.

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

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

9 IX. Borrow money to effectuate the purposes of the program. Any notes or other evidence
10 of indebtedness of the program not in default shall be legal investments for insurers and may be
11 carried as admitted assets.

12 420-K:4 Risk Adjustment Program.

13 I. The board shall:

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

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

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

24 (d) Subject to the limitation in paragraph II, establish risk adjustment payments
25 between carriers that are triggered whenever the average risk between bona fide pathway II
26 association coverage and all other small group coverage differs by more than 20 percent over any
27 calendar year, and that serve to create a net effect of reducing future expected risk score differences
28 after payments to approximately 12 percent.

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

31 II. The board shall not implement any adjustments until the number of lives covered by
32 bona fide pathway II association coverage exceeds 5,000 member months for 3 consecutive months.

33 22 Repeal. The following are repealed:

34 I. RSA 420-K:5, relative to eligibility, coverage, and rates.

35 II. RSA 420-K:6, relative to assessments.

36 23 Immunity and Indemnification. Amend RSA 420-K:7 to read as follows:

37 420-K:7 Immunity and Indemnification.

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1 I. Neither the participation in the [~~pool~~] **program** as members, the establishment of rates,
2 forms, or procedures, nor any other joint or collective action required by this chapter shall be the
3 basis of any legal action against the pool or any of its members.

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

17 24 Effective Date. This act shall take effect January 1, 2020.