

SB 128-FN - AS INTRODUCED

2025 SESSION

25-1012

05/09

09

SENATE BILL

128-FN

AN ACT relative to children's mental health services for persons 18 years of age and younger.

SPONSORS: Sen. Birdsell, Dist 19; Rep. Gregg, Hills. 7; Rep. Raymond, Hills. 5; Rep. Nelson, Rock. 13

COMMITTEE: Health and Human Services

ANALYSIS

This bill establishes the New Hampshire children's behavioral health association.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Five

AN ACT relative to children's mental health services for persons 18 years of age and younger.

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

1 1 New Subdivision; System of Care for Children's Mental Health; New Hampshire Children's
2 Behavioral Health Association. Amend RSA 135-F by inserting after section 9 the following new
3 subdivision:

4 New Hampshire Children's Mental Health Association

5 135-F:10 Definitions. In this chapter:

6 I. "Assessable coverage" means:

7 (a) Health coverage as defined in RSA 420-G:2, IX;

8 (b) Stop loss coverage that conforms with RSA 415-H:3, or other group excess loss
9 insurance purchased against the risk that any particular claim, or total liability, will exceed a
10 specified dollar amount; or

11 (c) Group health plan, as defined by 42 U.S.C. section 300gg-91(a).

12 II. "Assessable entity" means any:

13 (a) Health maintenance organization, as defined by RSA 420-B:1, VI.

14 (b) Third party administrator, as defined by RSA 402-H:1, I.

15 (c) Entity providing administrator services and required to register with the insurance
16 commissioner under RSA 402-H:11-a or RSA 402-H:11-b.

17 (d) Insurance company licensed pursuant to RSA 401:1, IV.

18 (e) Health service corporation, as defined by RSA 420-A:1, III.

19 III. "Assessable lives" means all children under 19 years of age residing in the state who
20 have assessable coverage written or administered by an assessable entity, with the exception of
21 children whose childhood behavioral health services are paid for under Medicaid.

22 IV. "Assessment" means the assessable entity's liability with respect to the childhood
23 behavioral health services determined in accordance with this chapter. For purposes of rate setting
24 and medical loss ratio calculations, all association assessments are considered pharmaceutical or
25 medical benefit costs and not regulatory costs. In the event of any insolvency or similar proceeding
26 affecting any payer, assessments shall be included in the highest priority of obligations to be paid by
27 or on behalf of such payer.

28 V. "Association" means the New Hampshire children's behavioral health
29 association.

30 VI. "Board" means the board of directors of the New Hampshire children's

1 behavioral health association.

2 VII. "Care management entity" means an organizational entity that serves as a centralized
3 entity to coordinate all care for youth with complex behavioral health challenges who are involved in
4 multiple systems and their families, as defined in RSA 135-F:4.

5 VIII. "Childhood behavioral health services" mean any of the following services:

6 (a) Behavioral health intensive in-home services, which are therapeutic interventions
7 delivered to children and families in their homes and other community settings to improve child and
8 family functioning and prevent out-of-home placement. The components of intensive in-home
9 services include, but are not limited to individual and family therapy, skills training and behavioral
10 interventions, functional supports, and family support and training.

11 (b) Behavioral health intensive structured outpatient programs, which include short-
12 term, clinically intensive, structured day or evening service for a child with a behavioral health
13 disorder, and provides multidisciplinary treatment to address the subacute needs of children and
14 youth, while allowing them to continue to work or attend school and be part of family life.

15 (c) Intensive care coordination, including but not limited to evidence based approaches
16 like a high-fidelity wraparound for children and youth with significant behavioral health conditions,
17 which includes assessment and service planning, accessing and arranging for services, coordinating
18 multiple services, including access to crisis services. Assisting the child and family to meet basic
19 needs, advocating for the child and family, and monitoring progress are also included. The
20 wraparound "facilitator" is the intensive care coordinator who organizes, convenes, and coordinates
21 this process.

22 (d) Parent and youth peer support services provided by trained peer support specialists.

23 IX. "Commissioner" means the commissioner of the department of health and human
24 services.

25 X. "Estimated cost" means the estimated cost to the state over the course of a state fiscal
26 year to reimburse the care management entities for provision of the childhood behavioral health
27 services they provide to assessable lives.

28 XI. "Provider" means a person licensed or certified by this state, or otherwise qualified to
29 provide health care services to persons or a partnership or corporation made up of those persons.

30 XII. "Total non-federal program cost" means the estimated childhood behavioral health
31 services cost less the amount of federal revenue available to the state for the administration and
32 provision of childhood behavioral health services.

33 135-F:11 New Hampshire Children's Behavioral Health Association Established. There is
34 hereby created a nonprofit corporation to be known as the New Hampshire children's behavioral
35 health association. The association is formed to assess assessable entities for the cost of childhood
36 behavioral health services provided to certain children in New Hampshire.

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1 135-F:12 Membership, Powers, and Duties of the New Hampshire Children's Behavioral Health
2 Association.

3 I. The New Hampshire children's behavioral health association shall be comprised of all
4 assessable entities.

5 II. The New Hampshire children's behavioral health association shall be a not-for-profit,
6 voluntary corporation under RSA 292 and shall possess all general powers of a not-for-profit
7 corporation.

8 III. The board of directors shall include:

9 (a) Three representatives selected from the assessable entities currently writing,
10 maintaining, or administering assessable coverage through a voting process where votes are based
11 on assessable lives. The plan of operation shall provide details for this selection process.

12 (b) Two health care provider representatives appointed by the commissioner.

13 (c) The commissioner of the department of health and human services, who shall serve
14 as an ex officio member.

15 (d) The commissioner of the department of insurance who shall serve as an ex-officio
16 member.

17 (e) One member appointed by the governor and council who shall represent self-insured
18 entities.

19 (f) One public member appointed by the speaker of the house of representatives.

20 (g) One public member appointed by the president of the senate.

21 IV. The directors' terms and appointments shall be specified in the plan of operation adopted
22 by the New Hampshire children's behavioral health association.

23 V. The board of directors of the association shall:

24 (a) Prepare and adopt articles of association and bylaws.

25 (b) Prepare and adopt a plan of operation.

26 (c) Submit the plan of operation to the commissioner of insurance for approval after the
27 consultation with the commissioner.

28 (d) Conduct all activities in accordance with the approved plan of operation.

29 (e) On an annual basis, no later than November 1 of each year, establish the amount of
30 the assessment for the succeeding year.

31 (f) Enter into contracts as necessary or proper to collect and disburse the assessment.

32 (g) Enter into contracts as necessary or proper to administer the plan of operation.

33 (h) Sue or be sued, including taking any legal action necessary or proper for the recovery
34 of any assessment for, on behalf of, or against members of the association or other participating
35 person.

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1 (i) Appoint from among its directors, committees as necessary to provide technical
2 assistance in the operation of the association, including the hiring of independent consultants as
3 necessary.

4 (j) Determine an assessment amount and collect payments from assessed entities in
5 accordance with RSA 135-F:13.

6 (k) Submit an annual report to the commissioner of insurance, in a manner and form
7 determined by the commissioner, listing the association membership base, providing a count of
8 assessable lives by assessable entity, identifying changes in assessable lives by assessable entity,
9 describing the collection of assessments, listing payment delinquencies, and containing such other
10 related information as the commissioner may require.

11 (l) Allow each assessable entity up to 45 days after the closing of each calendar quarter
12 to report its assessable lives and remit its corresponding assessment amount as calculated pursuant
13 to RSA 135-F:13.

14 (m) Collect assessments from assessable entities as calculated under RSA 135-F:13 and
15 deposit said assessments less the association's administrative costs annually and reserves with the
16 state treasurer to the credit of the childhood behavioral health services fund established pursuant to
17 RSA 135-F:19. At the written request of the association following a majority vote of the board of
18 directors, any funds forwarded to the state treasurer for the childhood behavioral health services
19 fund remaining unexpended for childhood behavioral health services, shall promptly be returned to
20 the association.

21 (n) Be authorized to enter into one or more agreements with other applicable authorities
22 in surrounding states to reduce the risk of duplicate assessments and to assure provision of
23 childhood behavioral health services for children who are residents of this state but who receive
24 childhood behavioral health services in other states. Any costs relating to any such agreement shall
25 be considered additional childhood behavioral health services costs of the program for purposes of
26 determining the association's assessments.

27 (o) Adopt procedures by which affiliated assessable entities calculate their assessment
28 on an aggregate basis and procedures to ensure that no assessable life is counted more than once.
29 Unless otherwise determined by the board, the assessable entity responsible for the payment of the
30 provider's administrative costs for childhood behavioral health services shall be the entity
31 responsible for reporting assessable lives and payment of the corresponding assessment.

32 (p) Submit an annual report regarding the association's activities and its financial
33 reports adopted by the department of health and human services to the president of the senate, the
34 speaker of the house of representatives, and the governor.

35 (q) Perform any other functions as may be necessary or proper to carry out the plan of
36 operation.

37 135-F:13 Assessment Determination.

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1 I. The board shall determine an assessment for each assessable entity in accordance with
2 this section. An assessment determination made pursuant to this section is a medical benefit cost
3 and not a regulatory cost for purposes of calculating the carrier's medical loss ratio.

4 II. In determining the assessment amount, the board shall:

5 (a) Estimate the total non-federal program cost for the succeeding year;

6 (b) Add its anticipated operating costs for the succeeding year and such additional
7 working capital reserves as may be established by the board from time to time;

8 (c) Add a reserve of up to 10 percent of the anticipated cost under subparagraph (a) for
9 unanticipated costs associated with providing childhood behavioral health services to children
10 covered; and

11 (d) Subtract the amount of any unexpended assessments collected in the preceding year
12 along with any unexpended interest accrued to the fund during the preceding year.

13 III. The board shall include in its plan of operations, details regarding the timing for
14 assessment collections, and the form and format assessable entities shall use to calculate
15 assessments.

16 IV. The board shall include in its plan of operation details regarding payment due dates,
17 grace periods, late payment fees, interest, and other details regarding the collection of assessments.

18 V. The board may determine an interim assessment for new childhood behavioral health
19 services or unanticipated shortfalls in the association's ability to meet childhood behavioral health
20 services funding needs. The board shall calculate the interim assessment in accordance with
21 paragraph II, and the interim assessment is payable the calendar quarter that begins no less than
22 30 days following the establishment of the interim assessment. The board shall not impose more
23 than one interim assessment per year.

24 VI. In the event that the association discontinues operation for any reason, any unexpended
25 assessments, including unexpended funds from prior assessments in the state vaccine purchase
26 fund, shall be refunded to payees in proportion to the respective assessment payments by payees
27 over the most recent 8 quarters prior to discontinuation of association operations.

28 135-F:14 Powers and Duties. In addition to the duties and powers enumerated elsewhere in this
29 chapter:

30 I. The commissioner of insurance shall, after notice from the association, issue a show cause
31 order to any assessable entity that fails to comply with the association's plan of operation. In
32 addition to late fees and other penalties imposed by the association, assessable entities may, after a
33 finding of just cause, be subject to a minimum fine of \$5,000, a maximum fine of 25 percent of the
34 total amount of delinquent assessments, and licensure suspension.

35 II. The insurance commissioner shall annually review the assessment report required under
36 RSA 135-F:12, V(k) to ensure that all assessable entities are participating in the association and

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1 that all assessable entities have accurately reported assessable lives. The association shall remedy
2 any problem identified by the commissioner with respect to assessable entities and assessable lives.

3 III. The commissioner of insurance may adopt rules, pursuant to RSA 541-A, as necessary to
4 carry out the purposes of this subdivision.

5 135-F:15 Examinations and Annual Reports. The board of directors shall submit to the
6 commissioner, no later than 120 days after the close of the association's fiscal year, a financial report
7 in a form approved by the commissioner.

8 135-F:16 Exemption From Taxes. The association shall be exempt from payment of all fees and
9 all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

10 135-F:17 Immunity from Liability. There shall be no liability on the part of and no cause of
11 action of any nature shall arise against any association member or its agents or employees, the
12 association or its agents or employees, members of the board of directors, or the commissioner or the
13 commissioner's representatives, for any action or omission by them in the performance of their
14 powers and duties under this chapter.

15 135-F:18 Severability of Chapter. If any provisions of this chapter or the application thereof to
16 any person or circumstance is held invalid, the invalidity does not affect other provisions or
17 applications of the chapter which can be given effect without the invalid provisions or applications,
18 and to this end the provisions of this chapter are severable.

19 135-F:19 Childhood Behavioral Health Services Fund. There is hereby established a childhood
20 behavioral health services fund for the payment to the care management entities for the provision of
21 childhood behavioral health services. Any funds provided to the department for this purpose and
22 deposited in the fund shall not be used for any other purpose. Moneys in the fund shall be
23 continually appropriated to the commissioner.

24 2 New Subparagraph; State Treasurer; Application of Receipts. Amended RSA 6:12, I(b) by
25 inserting after subparagraph (399) the following new subparagraph:

26 (400) Moneys deposited in the childhood behavioral health services fund established
27 in RSA 135-F:19.

28 3 Insurance; Coverage for Certain Biologically-Based Mental Illnesses. Amend RSA 417-E:1, V-
29 a to read as follows:

30 V-a. The commissioner shall periodically require health insurers, health service
31 corporations, and health maintenance organizations to submit the comparative analysis described in
32 42 U.S.C. section 300gg-26(a)(8)(A) for review to ensure compliance with this chapter and with the
33 Act. ***These comparative analyses shall also include specific comparative data for***
34 ***medical/surgical benefits and mental health and substance use disorder benefits available***
35 ***to consumers by age group including ages 0-5 years and 18 years and younger, and***
36 ***including services available, coverage guidelines, denial rates, complaints about lack of***
37 ***services, network capacity data, provider qualifications and restrictions for comparable***

- 1 *services, and other factors that indicate whether there are barriers to care that affect*
- 2 *parity.* To the extent allowable under state and federal law, such analysis shall be made public.
- 3 4 Effective Date. This act shall take effect 60 days after its passage.

SB 128-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to children's mental health services for persons 18 years of age and younger.

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

Estimated State Impact				
	FY 2025	FY 2026	FY 2027	FY 2028
Revenue	\$0	Indeterminable Increase > \$2.5 million	Indeterminable Increase > \$2.5 million	Indeterminable Increase > \$2.5 million
<i>Revenue Fund(s)</i>	General Fund Insurance Premium Tax, Health Insurance Assessment, Childhood Behavioral Health Services Fund			
Expenditures*	\$0	Indeterminable Increase > \$2.5 million	Indeterminable Increase > \$2.5 million	Indeterminable Increase > \$2.5 million
<i>Funding Source(s)</i>	General Fund Insurance Premium Tax, Health Insurance Assessment, Childhood Behavioral Health Services Fund			
Appropriations*	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

*Expenditure = Cost of bill

*Appropriation = Authorized funding to cover cost of bill

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

METHODOLOGY:

This bill creates an association for the purpose of collecting assessments to fund payments to care management entities for the provision of childhood behavioral health services. The Association is authorized to collect assessments from insurance carriers, stop loss carriers, and third-party administrators for fully insured and self-funded health plans. The assessment base would include covered lives in the state employee health plan, as well as pooled risk management programs under RSA 5-b. The funds provided for this purpose would be deposited in the Childhood Behavioral Health Services Fund created by the bill. The Insurance Department (NHID) estimates that the number of covered lives will be approximately 160,000.

The NHID states that the assessment amount is indeterminable, as it is based primarily on an estimate of the cost of reimbursing care management entities for the provision of childhood behavioral health services they provide to assessable lives. The NHID assumes this refers to costs currently covered by the Department of Health and Human Services (DHHS) for the Medicaid population. In addition to program costs, the assessment would also cover administrative costs, as well as maintain a 10 percent reserve. The NHID estimates the administrative costs would be approximately \$175,000 and would likely increase with inflation.

The NHID assumes the assessment in the bill would exert upward pressure on premiums and increase costs for self-funded plans, including the state employee health plan and municipal pooled risk management programs. Any increases to premium would increase the corresponding premium tax dollars collected. However, a significant rise in health insurance premiums could also cause consumers to purchase cheaper, less benefit rich plans or forgo the purchase of health insurance altogether, which could have a negative impact on the premium tax collected. County and local government expenditures for health insurance could be impacted. The NHID notes the assessment amount would also be subject to retaliatory taxes by other states which would cause NH domestic insurers' tax base in other states to rise as well.

The NHID assumes the total assessment, administrative cost and 10% reserve percentage would likely be greater the \$2.5 million per year and that it would likely be able to absorb any additional responsibilities within its current budget. The NHID notes that it is possible the legality of this proposed assessment could be challenged, which could result in additional litigation costs for the state.

The Department of Health and Human Services (DHHS) assumes the money in the dedicated Childhood Behavioral Health Services Fund would not lapse, though the language as written does not currently indicate that, so if enacted as proposed, the funds would lapse at the end of each fiscal year. The DHHS assumes the expenses to support the New Hampshire Children's Mental Health Association operation would also be funded from this revenue source and suggests this be clarified in proposed RSA 135-F:13. The DHHS anticipates the bill would result in an indeterminable increase in state revenues and expenditures. The estimated range of impact would likely be \$2,000,000 to \$3,000,000 per fiscal year. In the last three calendar years, the Care Management Entity billing for these services, paid for with State funds, ranged from \$1.1 million to \$2 million. The range estimated was determined utilizing this actual data as a base, with additional amounts added in consideration of the assessment determination outlined in Section 135-F:13, such as the reserve of up to 10 percent of the anticipated cost, additional working capital reserves as may be established by the board from time to time, and the board's operations.

The DHHS notes a possible error in Section 135-F:13 VI, as it references the “state vaccine purchase fund” and not the “Childhood Behavioral Health Services Fund.”

It is assumed that any fiscal impact would occur after FY 2025.

AGENCIES CONTACTED:

Departments of Insurance and Health and Human Services