

CHAPTER 13
HB 1696-FN - FINAL VERSION

10Feb2016... 0345h
10Feb2016... 0493h
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9Mar2016... 0910h
9Mar2016... 0902h
23Mar2016... 1246EBA

2016 SESSION

16-2594
01/09

HOUSE BILL ***1696-FN***

AN ACT requesting a modification of the New Hampshire health protection program.

SPONSORS: Rep. Lachance, Hills. 8; Rep. Leishman, Hills. 24; Rep. Hagan, Rock. 4; Rep. Richardson, Coos 4; Rep. S. Schmidt, Carr. 6; Rep. Umberger, Carr. 2; Rep. Elliott, Rock. 8; Sen. Bradley, Dist 3; Sen. Boutin, Dist 16; Sen. Stiles, Dist 24

COMMITTEE: Health, Human Services and Elderly Affairs

AMENDED ANALYSIS

This bill requires the commissioner of the department of health and human services to submit waivers or state plan amendments to modify the New Hampshire health protection program. The bill includes funding for such program by using moneys from the insurance premium tax, federal funds, and other non-general fund revenues. This bill also allows veterans who are New Hampshire residents to receive services under the New Hampshire health protection program.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Sixteen

AN ACT requesting a modification of the New Hampshire health protection program.

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

1 13:1 New Paragraph; New Hampshire Health Protection Plan. Amend RSA 126-A:5 by
2 inserting after paragraph XXIX the following new paragraph:

3 XXX.(a)(1) Newly eligible adults who are unemployed shall be eligible to receive benefits
4 under RSA 126-A:5 XXIV-XXV, if the commissioner finds that the individual is engaging in at least
5 30 hours per week of one or a combination of the following activities:

6 (A) Unsubsidized employment.

7 (B) Subsidized private sector employment.

8 (C) Subsidized public sector employment.

9 (D) Work experience, including work associated with the refurbishing of
10 publicly assisted housing, if sufficient private sector employment is not available.

11 (E) On-the-job training.

12 (F) Job search and job readiness assistance.

13 (G) Community service programs.

14 (H) Vocational educational training not to exceed 12 months with respect to any
15 individual.

16 (I) Job skills training directly related to employment.

17 (J) Education directly related to employment, in the case of a recipient who has
18 not received a high school diploma or a certificate of high school equivalency.

19 (K) Satisfactory attendance at secondary school or in a course of study leading
20 to a certificate of general equivalence, in the case of a recipient who has not completed secondary
21 school or received such a certificate.

22 (L) The provision of child care services to an individual who is participating in a
23 community service program.

24 (2) The requirements under subparagraph (1) shall be consistent with the federal
25 Temporary Assistance for Needy Families Program, 42 U.S.C. section 607(d).

26 (3) Grounds for disqualification for benefits under this subparagraph shall be

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1 consistent with the federal Temporary Assistance for Needy Families Program, 42 U.S.C. section
2 607(e).

3 (4) This subparagraph shall only apply to those considered childless, abled-bodied
4 adults as defined in section 1902(a)(10)(A)(i)(VIII) of the Social Security Act of 1935, as amended, 42
5 U.S.C. section 1396a(a)(10)(A)(i). In this subparagraph, "childless" means an adult who does not
6 live with a dependent child which includes a child under 18 years of age or under 20 years of age if
7 the child is a full-time student in a secondary school or the equivalent.

8 (5) This subparagraph shall not apply to:

9 (A) A person who is temporarily unable to participate in the requirements under
10 subparagraph (a)(1) due to illness or incapacity as certified by a licensed physician, an advanced
11 practice registered nurse (APRN), a licensed behavioral health professional, a licensed physician
12 assistant, or a board-certified psychologist. The physician, APRN, licensed behavioral health
13 professional, licensed physician assistant, or psychologist shall certify, on a form provided by the
14 department, the duration and limitations of the disability.

15 (B) A person participating in a state-certified drug court program, as certified
16 by the administrative office of the superior court.

17 (C) A parent or caretaker as identified in RSA 167:82, II(g) where the required
18 care is considered necessary by a licensed physician, APRN, board-certified psychologist, physician
19 assistant, or licensed behavioral health professional who shall certify the duration that such care is
20 required.

21 (b) Newly eligible adults who visit the emergency room for non-emergency purposes
22 shall be required to make a co-payment of \$8 for the first visit and \$25 for each and every non-
23 emergency visit thereafter.

24 (c) All veterans who are current New Hampshire residents shall receive medical and
25 medical-related services from any hospital in this state providing services to the newly eligible
26 Medicaid population.

27 (d) A person shall not be eligible to enroll or participate in the New Hampshire health
28 protection program, established under RSA 126-A:5, XXIV-XXV, unless such person verifies his or
29 her United States citizenship by 2 forms of identification and proof of New Hampshire residency by
30 either a New Hampshire driver's license or a nondriver's picture identification card issued pursuant
31 to RSA 260:21.

32 (e) No person, organization, department, or agency shall submit the name of any person
33 to the National Instant Criminal Background Check System (NICS) on the basis that the person has
34 been adjudicated a "mental defective" or has been committed to a mental institution, except
35 pursuant to a court order issued following a hearing in which the person participated and was
36 represented by an attorney.

37 (f) The commissioner shall seek any new waiver or state plan amendments to

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1 implement the provisions of this paragraph. Any such waivers or amendments necessary shall be
2 in place by November 1, 2016. Prior to submitting the waiver or state plan amendments to the
3 CMS, the commissioner shall present the waiver or state plan amendments to the fiscal committee
4 of the general court for approval. The program shall not be reauthorized until such waivers or state
5 plan amendments have been approved by CMS. If the waiver or state plan is not approved, the
6 commissioner shall immediately, no later than November 1, 2016, notify all program participants
7 that the program has not been reauthorized beyond December 31, 2016.

8 (6) If any provision of subparagraph (a), (c), or (d), or the application thereof to any
9 person or circumstance, is held invalid, including, but not limited to, being contrary to federal law
10 or not approved by the Centers for Medicare and Medicaid Services(CMS) in necessary state plan
11 amendments or waivers, such determination shall not affect the provisions or applications of this
12 act which can be given effect without the invalid provision or application, and to that end the
13 provisions of these subparagraphs are severable.

14 13:2 Insurance Premium Tax; New Hampshire Health Protection Program. Amend RSA 400-
15 A:32, III to read as follows:

16 III.(a) *Except as provided in subparagraph (b)*, the taxes imposed in paragraphs I and
17 II of this section shall be promptly forwarded by the commissioner to the state treasurer for deposit
18 to the general fund.

19 (b) *Taxes imposed attributable to premiums written for medical and other*
20 *medical related services for the newly eligible Medicaid population as provided for under*
21 *RSA 126-A:5, XXIV-XXVI shall be deposited into the New Hampshire health protection*
22 *trust fund, established in RSA 126-A:5-b. The commissioner shall notify the state treasurer*
23 *of sums for deposit into the New Hampshire health protection trust fund no later than 30*
24 *days after receipt of said taxes.*

25 13:3 Department of Health and Human Services; Premium Assistance Program. Amend
26 RSA 126-A:5, XXV(a) to read as follows:

27 XXV.(a) Consistent with the time frames in this paragraph, there is hereby established the
28 marketplace premium assistance program. This will be a premium assistance program for newly
29 eligible adults and their eligible spouse and dependents, if applicable, until December 31, [2016]
30 **2018** and shall be administered by the department of health and human services. In order to
31 receive medical assistance from the program, newly eligible adults who are ineligible for the HIPP
32 program shall choose from any qualified health plans (QHPs) offered on the federally-facilitated
33 exchange if cost effective; provided, however, that any newly eligible adult who had coverage under
34 an alternative benefit plan (ABP) offered by a managed care organization (MCO) under paragraph
35 XIX during the voluntary bridge to marketplace premium assistance program established under
36 RSA 126-A:5, XXIV shall be automatically enrolled at the beginning of open enrollment in a
37 comparable QHP by that same MCO if one is available, unless such newly eligible adult

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1 subsequently chooses a different QHP during the enrollment period. If a comparable QHP is not
2 offered by the newly eligible adult's MCO then the newly eligible adult may choose from any QHPs,
3 if cost effective. Provider payments shall be in an amount which shall be no less than before the
4 effective date of this paragraph.

5 13:4 Department of Health and Human Services; Premium Assistance Program. Amend RSA
6 126-A:5, XXV(c) to read as follows:

7 (c) If the waiver to implement the marketplace premium assistance program is
8 approved on or before March 31, 2015 then, coverage under the voluntary bridge to marketplace
9 premium assistance program established in RSA 126-A:5, XXIV shall terminate on December 31,
10 2015. Enrollment in the marketplace premium assistance program shall begin on October 15, 2015
11 and coverage shall begin on January 1, 2016. Coverage shall end on December 31, [2016] **2018**.
12 The cost of the medical assistance provided under the marketplace premium assistance program
13 shall be paid solely from ***non-general fund sources, including*** federal funds as provided under
14 42 U.S.C. section 1396d(y).

15 13:5 New Hampshire Health Protection Trust Fund. Amend the introductory paragraph of
16 RSA 126-A:5-b, I to read as follows:

17 I. There is hereby established the New Hampshire health protection trust fund which shall
18 be accounted for distinctly and separately from all other funds and shall be non-interest bearing.
19 The trust fund shall be administered by the commissioner of the department of health and human
20 services and shall be used solely to provide [~~payment and reimbursement for medical and other~~
21 ~~medical-related services~~] ***coverage*** for the newly eligible Medicaid population as provided for under
22 RSA 126-A:5, [XXIII] ***XXIV-XXVI*** and RSA 126-A:67 ***in qualified health plans on the federal***
23 ***marketplace and pay for the administrative costs for the program. The commissioner may***
24 ***accept any gifts, grants, donations, or other funding from any source and shall deposit all***
25 ***such revenue received into the fund. No state general fund appropriations shall be***
26 ***deposited into the fund.*** All moneys in the trust fund shall be nonlapsing and shall be continually
27 appropriated to the commissioner of the department of health and human services for the purposes
28 of the trust fund. The trust fund shall be authorized to pay and/or reimburse:

29 13:6 New Sections; Funding the State Share of the New Hampshire Health Protection Program;
30 Voluntary Provider Contributions. Amend RSA 126-A by inserting after section 5-b the following
31 new sections:

32 126-A:5-c Funding the State Share of the New Hampshire Health Protection Program.

33 I. In this section:

34 (a) "Program" means the New Hampshire health protection program under RSA 126-
35 A:5, XXIV-XXV.

36 (b) "Remainder amount" means the cost of the program for coverage effective between
37 January 1, 2017 and June 30, 2017 plus administrative costs attributable to the program, less all

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1 federal reimbursement for the program and federal reimbursement for the related administrative
2 costs; and the cost of the program for coverage effective between July 1, 2017 and December 31,
3 2018, plus administrative costs attributable to the program, less all federal reimbursement for the
4 program and federal reimbursement for administrative costs attributable to the program, and taxes
5 attributable to premiums written for medical and other medical related services for the newly
6 eligible Medicaid population as provided for under RSA 126-A:5, XXIV-XXVI, consistent with
7 RSA 400-A:32, III(b).

8 II. Funding for the program from January 1, 2017 until December 31, 2018 shall not be
9 funded from general funds. The program shall be funded as follows:

- 10 (a) Federal funds as made available by 42 U.S.C. section 1396d(y)(1).
11 (b) Revenue generated under RSA 400-A:32, III(b).
12 (c) Other non-general fund revenues.

13 III. If the commissioner determines that at any time the sum total of the federal match rate
14 applied, as set forth in 42 U.S.C. section 1396d(y)(1), and insurance premium tax revenues
15 attributable to the program and revenue from non-general fund sources is insufficient to fully fund
16 the program for newly eligible adults under RSA 126-A:5, XXIV-XXV, then RSA 126-A:5, XXIV and
17 XXV shall be repealed 180 days after such determination upon notification by the commissioner of
18 the department of health and human services to the secretary of state and the director of legislative
19 services and consistent with the terms of the waiver for this program issued by the Centers for
20 Medicare and Medicaid Services. Upon such determination, the commissioner shall immediately
21 issue notice to program participants of the program's pending repeal.

22 IV. On or before August 15th of each year, the department of health and human services, in
23 consultation with the insurance department, shall calculate the remainder amount pursuant to this
24 section for the next calendar year. The remainder amount shall be calculated utilizing estimated
25 insurance premium taxes attributable to medical and other medical-related services for the newly
26 eligible Medicaid population as provided for under RSA 126-A:5, XXIV-XXVI for each calendar year.
27 The commissioner of health and human services shall report the remainder amounts to the
28 insurance department, any contributing charitable foundation, the New Hampshire Health Plan,
29 the governor, the speaker of the house of representatives, and the senate president.

30 V. After the close of each calendar year, on or before January 15th, the department of
31 health and human services, in consultation with the insurance department, shall recalculate the
32 remainder amount utilizing actual insurance premium tax revenues attributable to medical and
33 other medical-related services for the newly eligible Medicaid population provided for under
34 RSA 126-A:5, XXIV-XXVI for the completed calendar year. The commissioner of health and human
35 services shall compare the remainder amount calculations under this paragraph with the remainder
36 amount calculations under paragraph IV and report the results to the insurance department, any
37 contributing charitable foundation, the New Hampshire Health Plan, the governor, the speaker of

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1 the house of representatives, and the senate president. Any difference between amounts calculated
2 under paragraphs IV and V for a completed calendar year shall be added to the remainder amount
3 due and payable during the current calendar year. In the event that actual program costs are less
4 than funds received, the difference shall be credited against the remaining amount for the next
5 payable period.

6 VI. The commissioner of the department of health and human services shall be responsible
7 for determining, on a quarterly basis commencing no later than December 31, 2016, whether there
8 is sufficient funding in the New Hampshire health protection trust fund, established in RSA 126-
9 A:5-b, to cover projected program costs for the non-federal share for the next quarter. If at any time
10 the commissioner determines that a projected shortfall exists, he or she shall terminate the program
11 in accordance with paragraph III.

12 126-A:5-d Voluntary Provider Contributions. For the period of January 1, 2017 through
13 December 31, 2018, voluntary provider donations received from the Foundation for Healthy
14 Communities or any other charitable foundation may be deposited into the New Hampshire health
15 protection trust fund, established pursuant to RSA 126-A:5-b.

16 13:7 Individual Health Insurance Market; Purpose. Amend RSA 404-G:1, II to read as follows:

17 II. Create a nonprofit, voluntary organization to facilitate the availability of affordable
18 individual nongroup health insurance by establishing an assessment mechanism and an individual
19 health insurance market mandatory risk sharing plan as a mechanism to distribute the risks
20 associated within the individual nongroup market ***and to support the marketplace premium***
21 ***assistance program established in RSA 126-A:5, XXV.***

22 13:8 Individual Health Insurance Market; Definitions. Amend RSA 404-G:2, X-a to read as
23 follows:

24 X-a. "Plan of operation" means the plan of operation of the risk sharing mechanism, the
25 high risk pool, ***support for the program established in RSA 126-A:5, XXV***, and the federally
26 qualified high risk pool, including articles, bylaws and operating rules, procedures and policies
27 adopted by the association.

28 13:9 New Paragraph; Individual Health Insurance Market; Definitions. Amend RSA 404-G:2
29 by inserting after paragraph X-b the following new paragraph:

30 X-c. "Program" means the marketplace premium assistance program established pursuant
31 to RSA 126-A:5, XXV.

32 13:10 Plan of Operation for the High Risk Pool. Amend RSA 404-G:5-a, IV(b) and (c) to read as
33 follows:

34 (b) Established no later than November 1 in the year preceding the calendar year for
35 which the carrier's experience shall be used to calculate the assessment; ~~and~~

36 (c) Anticipated to be sufficient to meet the high risk pool's funding needs ***and the***
37 ***association's share of the costs of the program, as defined in subparagraph (d); and***

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1 (d) *For the period of January 1, 2017 through December 31, 2018, an amount*
2 *not to exceed 50 percent of the remainder amount, as defined in RSA 126-A:5-c, I(b), less*
3 *the amount made available to the program pursuant to RSA 404-G:11, VI. The association*
4 *shall transfer all amounts collected pursuant to this subparagraph and the amount made*
5 *available to the program pursuant to RSA 404-G:11, VI to the New Hampshire health*
6 *protection trust fund, established pursuant to RSA 126-A:5-b.*

7 13:11 High Risk Pool; Termination Activities and Dissolution. Amend RSA 404-G:11, VI to read
8 as follows:

9 VI. Following the cessation of coverage on December 31, 2013, the association shall take
10 such actions as are necessary and desirable to wind down its affairs under this chapter in
11 accordance with the plan of termination. The association shall retain all of its powers and duties,
12 including, but not limited to, its power to establish and collect regular and special assessments
13 under RSA 404-G:5 and RSA 404-G:5-a, and the immunity provided by RSA 404-G:9 and the bylaws
14 of the association. Any excess funds remaining after the satisfaction of all of the association's
15 liabilities shall be ~~[returned to the association's members in proportion to their respective liability~~
16 ~~for the last regular assessments imposed by the association]~~ ***used for the program and for the***
17 ***association's reasonable costs for collecting its share of the remainder amount.***

18 ***VI-a. No later than October 1, 2016, the board of directors shall prepare and***
19 ***submit to the commissioner and the commissioner of health and human services for***
20 ***approval an amendment to the plan of termination that provides for the continuation of***
21 ***the association for the limited purpose of compliance with the provisions of RSA 404-G:5-a,***
22 ***IV(d).***

23 13:12 New Section; Commission to Evaluate the Effectiveness and Future of the Premium
24 Assistance Program. Amend RSA 126-A by inserting after section 126-A:5-d the following new
25 section:

26 126-A:5-e Commission to Evaluate the Effectiveness and Future of the Premium Assistance
27 Program.

28 I. There is hereby established a commission to evaluate the effectiveness and future of the
29 premium assistance program.

30 (a) The members of the commission shall be as follows:

31 (1) Three members of the senate, appointed by the president of the senate, one of
32 whom shall be a member of the minority party.

33 (2) Three members of the house of representatives, appointed by the speaker of the
34 house of representatives, one of whom shall be a member of the minority party.

35 (3) The commissioner of the department of health and human services, or designee.

36 (4) The commissioner of the department of insurance, or designee.

37 (5) A representative of an insurance carrier that offers policies for sale in

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1 New Hampshire on the exchange, appointed by the senate president.

2 (6) A representative of a hospital that operates in New Hampshire, appointed by the
3 speaker of the house of representatives.

4 (7) A public member, who is a taxpayer, appointed by the senate president.

5 (8) A public member, who currently receives insurance coverage through the
6 program, appointed by the speaker of the house of representatives.

7 (9) A licensed physician, appointed by the governor.

8 (10) A licensed mental health professional, appointed by the governor.

9 (11) A masters level licensed alcohol and drug counselor, appointed by the governor.

10 (b) Legislative members of the commission shall receive mileage at the legislative rate
11 when attending to the duties of the commission.

12 II.(a) The commission shall evaluate the effectiveness and future of the premium assistance
13 program. Specifically the commission shall:

14 (1) Review the program's financial metrics.

15 (2) Review the program's product offerings.

16 (3) Review the program's impact on insurance premiums for individuals and small
17 businesses.

18 (4) Make recommendations for future program modifications, including, but not
19 limited to whether the premium assistance program is the most cost-effective model for the long
20 term versus a return to private market managed care.

21 (5) Evaluate non-general fund funding options for longer term continuation of the
22 program.

23 (b) Any funding solutions recommended by the commission shall not include the use of
24 new general funds.

25 (c) The commission shall solicit information from any person or entity the commission
26 deems relevant to its study.

27 III. The members of the commission shall elect a chairperson from among the members.
28 The first meeting of the commission shall be called by the first-named senate member. The first
29 meeting of the commission shall be held within 45 days of the effective date of this section. Eight
30 members of the commission shall constitute a quorum.

31 IV. The commission shall report its findings and any recommendations for proposed
32 legislation to the president of the senate, the speaker of the house of representatives, the senate
33 clerk, the house clerk, the governor, and the state library on or before December 1, 2017.

34 13:13 New Hampshire Health Protection Program. Amend 2014, 3:10, I to read as follows:

35 I. If at any time the federal match rate applied to medical assistance for newly eligible
36 adults under RSA 126-A:5, [~~XXIII~~] **XXIV-XXV** between July 1, 2014 – December 31, 2016 is less
37 than 100 percent, ***less than 95 percent in 2017 and less than 94 percent in 2018***, of the amount

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1 as set forth in 42 U.S.C. section 1396d(y)(1), then RSA 126-A:5, [~~XXIII,~~] XXIV[~~7~~] and XXV shall
2 [~~immediately~~] be repealed ***180 days after the event under this subparagraph occurs*** upon
3 notification by the commissioner of the department of health and human services to the secretary of
4 state and the director of legislative services. ***The commissioner shall immediately issue notice***
5 ***to program participants of the program's pending repeal.***

6 13:14 New Hampshire Health Protection Plan Extended. Amend 2014, 3:13, I-a as amended by
7 2015, 276:260 to read as follows:

8 I-a. Section 12, paragraphs II-VII of this act shall take effect December 31, [~~2016~~] **2018**.

9 13:15 Repeal. RSA 126-A:5-e, relative to the commission to evaluate the effectiveness and
10 future of the premium assistance program, is repealed.

11 13:16 Effective Date.

12 I. Section 2 of this act shall take effect July 1, 2017.

13 II. Section 15 of this act shall take effect December 1, 2017.

14 III. The remainder of this act shall take effect upon its passage.

15 Approved: April 5, 2016

16 Effective Date: I. Section 2 shall take effect July 1, 2017.

17 II. Section 15 shall take effect December 1, 2017.

18 III. Remainder shall take effect April 5, 2016.

