

TITLE XXXVII INSURANCE

Chapter 404-G INDIVIDUAL HEALTH INSURANCE MARKET

Section 404-G:1

404-G:1 Purpose of Provisions. –

The purposes of this chapter are to:

I. Protect the citizens of this state who participate in the individual health insurance market by providing a mechanism to equitably distribute the excessive risk sometimes associated with this market and to promote market stability.

II. Authorize the creation of a nonprofit, voluntary organization which shall be known as the New Hampshire individual health plan benefit association, "the association" or "the New Hampshire health plan", to promote the purposes and carry out the requirements of this chapter under the oversight by the commissioner.

III. Support the affordability and accessibility of health insurance in the state's individual market.

IV. Establish one or more individual health insurance market mandatory risk sharing plans as a mechanism to distribute the risks associated within the nongroup, individual market.

V. Support the New Hampshire granite advantage health care program established in RSA 126-AA or any successor program.

VI. Establish an assessment mechanism to fund the association's programs as defined in RSA 404-G:2, IX and the association's support of the New Hampshire granite advantage health care program established in RSA 126-AA or any successor program.

Source. 1998, 340:6. 2001, 295:4. 2010, 243:2. 2016, 13:7, eff. Apr. 5, 2016. 2018, 342:15, eff. Dec. 31, 2018. 2023, 92:1, eff. Jan. 1, 2024.

Section 404-G:1-a

404-G:1-a Repealed by 2023, 92:8, I, eff. Jan. 1, 2024. –

Section 404-G:2

404-G:2 Definitions. –

In this chapter:

I. "Assessable entity" means any:

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

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

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

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

- (e) Health service corporation, as defined by RSA 420-A:1, III.
- (f) Any entity providing group excess loss insurance to an employer with a principal place of business in New Hampshire or to an employer that covers lives in New Hampshire.
- II. "Assessment" means the liability of the assessable entity to the association under RSA 404-G:5-a.
- III. "Association" means the New Hampshire individual health plan benefit association, also known as, the "New Hampshire health plan," a not-for-profit, voluntary corporation created as directed under this chapter in order to promote the purposes and carry out the requirements of this chapter under the oversight of the commissioner.
- IV. "Commissioner" means the insurance commissioner.
- V. "Covered lives" shall include all persons who are:
- (a) Covered under an individual health insurance policy issued or delivered in New Hampshire;
 - (b) Covered under a group health insurance policy that is issued or delivered in New Hampshire;
 - (c) Covered under a group health insurance policy evidenced by a certificate of insurance that is issued or delivered in New Hampshire;
 - (d) Protected, in part, by a group excess loss insurance policy where the policy or certificate of coverage has been issued or delivered in New Hampshire;
 - (e) Protected by health insurance as defined in RSA 404-G:2, VII where the person is a New Hampshire resident.
- V-a. "Group excess loss insurance" means coverage purchased by an employer against the risk that any one claim made against the employer's health plan will exceed a specified dollar amount or coverage purchased by an employer against the risk that the employer's total liability for the health plan will exceed a specified amount.
- VI. "Group health insurance" means health insurance coverage other than individual health insurance coverage.
- VII. "Health insurance" means health insurance coverage issued in accordance with RSA 415, 420-A, or 420-B. For the purposes of this chapter, health insurance shall not include accident only, credit, dental, vision, Medicare supplement, Medicare Risk, Medicare Advantage, Managed Medicaid, long-term care, disability income (or similar insurance products regulated by administrative rule Ins 8000), coverage issued as a supplement to a liability insurance, workers' compensation or similar insurance, automobile medical payment insurance, policies or certificates of specified disease, hospital confinement indemnity, limited benefit health insurance (or similar insurance products regulated by administrative rule Ins 6000), and coverage provided through the Federal Employees' Program. Health insurance does include group excess loss insurance.
- VIII. "Individual health insurance" means health insurance sold directly to an individual and not on a group remittance basis. Individual health insurance shall include franchise health insurance.
- IX. "Program" means any initiative undertaken by the association with the approval of the commissioner to fulfill any stated purpose of this chapter or any other statutory requirement, including but not limited to the reinsurance program authorized under RSA 420-N:6-a and supporting the New Hampshire granite advantage health care program under RSA 126-AA.

Source. 1998, 340:6. 2001, 295:5, 6. 2003, 276:1, 2. 2008, 375:3, 4. 2010, 243:3, 4. 2016, 13:8, 9, eff. Apr. 5, 2016. 2018, 342:16, 24, I, eff. Dec. 31, 2018. 2020, 37:8, eff. July 29, 2020. 2023, 92:2, eff. Jan. 1, 2024.

Section 404-G:3

404-G:3 Association's Powers and Duties. –

- I. The association shall be a not-for-profit, voluntary corporation formed under RSA 292 and shall possess all powers as derive from that status and such additional powers and duties as are approved by the commissioner or as specified in this chapter.
- II. The board of directors of the association shall have the following general powers:
- (a) Enter into contracts and retain such vendors or administrators, with or without a competitive bidding process in the discretion of the board of directors, as necessary or proper to administer the plan of operation.
 - (b) Sue or be sued, including taking any legal action necessary or proper for the recovery of any assessments for, on behalf of, or against members of the association, assessable entities, or other participating person.
 - (c) Retain appropriate legal, actuarial, and other persons as necessary to provide technical assistance in the operation of the plan, policy development, and other program design and in any other function within the authority of the plan of operation.
 - (d) Borrow money and/or establish reserve funds to carry out the plan of operation and protect against unexpected or unforeseeable expenses and losses.
 - (e) Adopt bylaws, which may be amended from time to time, to establish additional procedural and governance provisions of the association, which provisions shall not be inconsistent with the provisions of this chapter.
 - (f) Perform any other functions within the authority of the association as may be necessary or proper to carry out the plan of operation.
- III. The board of directors of the association shall have the following duties:
- (a) Fulfill the plan of operation as approved by the commissioner.
 - (b) Determine and collect assessments from assessable entities as provided in RSA 404-G:5-a and in the plan of operation.
 - (c) Disburse assessment payments, as provided in the plan of operation for the high risk pool.
- IV. Neither the association nor its employees or agents shall be liable for any obligations of the plan. No member or employee of the association shall be liable, and no cause of action of any nature may arise against them, for any act or omission related to the performance of their powers and duties under this chapter unless such act or omission constitutes willful or wanton misconduct. The association may provide in its bylaws or rules for indemnification of, and legal representation for, its members, employees, and agents.

Source. 1998, 340:6. 2001, 295:7. 2010, 243:5, eff. July 1, 2010. 2023, 92:2, eff. Jan. 1, 2024.

Section 404-G:4

404-G:4 Association Membership and Governance. –

- I. The association shall be comprised of all assessable entities as defined in RSA 404-G:2, I.
- II. The board of directors of the association shall consist of 9 individuals who are representative of categories of members of the association, health care providers, insurance brokers, small employers, and the commissioner who shall be an ex-officio member. The board shall include: 3 directors representative of and elected by qualified writers of group health insurance, 2 directors representative of and elected by qualified writers of individual health insurance, one director

representative of the health care provider community and appointed by the commissioner, one director representative of third party administrators and appointed by the commissioner, one director representative of insurance brokers and appointed by the commissioner, and one director representative of small employers and appointed by the commissioner.

III. There shall be no more than one director representing any one qualified writer or its affiliate. For purposes of this section, the insurance activities of any elected director's affiliate shall be deemed to be insurance activities of the elected director.

IV. Qualified writers of individual or group health insurance shall be those that provide coverage for at least 500 covered lives or 5 percent of the total covered lives in the relevant market. An assessable entity's votes for individual or group market representatives shall be proportional to the assessable entity's assessment in that market.

V. If one or more elected group representatives are also qualified individual health insurance writers, then the membership of the board shall be altered at each annual meeting of the association by applying the provisions in subparagraphs (a) through (d) to such elected group representatives.

(a) If the elected group representative writing in the individual market is also an elected individual representative, then that assessable entity shall take a seat on the board as an individual representative and relinquish the group seat. The group writer with the next highest number of group votes shall take the relinquished group seat.

(b) If the elected group representative writing in the individual market is not also an elected individual representative, then up to 2 directors will be added to the board as follows:

(1) If the total size of the board-elect is 9 or 10, the elected group representative shall remain on the board, but neither as a group or an individual representative, and the group writer with the next highest number of group votes shall join the board as a group representative; but

(2) If the total size of the board-elect is 11, the elected group representative shall not remain on the board and the group writer with the next highest number of group votes shall take the relinquished group seat.

(c) The provisions in subparagraphs (a) and (b) shall be applied to elected group representatives in the order of the number of votes received.

(d) The seats added to the board pursuant to subparagraph (b) shall not survive the term of the seat-holder.

VI. Members of the board of directors shall be elected to terms of one year.

VII. The board of directors shall take action by affirmative vote representing a simple majority of the entire board.

VIII. The board shall elect officers in accordance with the bylaws of the association. The bylaws of the association shall also govern the place and frequency of meetings of directors and their reimbursement for expenses incurred, as well as other customary governance provisions not inconsistent with the provisions of this chapter.

Source. 1998, 340:6. 2001, 295:8, July 1, 2001. 2023, 92:2, eff. Jan. 1, 2024.

Section 404-G:4-a

404-G:4-a Repealed by 2023, 92:1, II, eff. Jan. 1, 2024. –

Section 404-G:5

404-G:5 Plan of Operation. –

The board of directors of the association shall adopt a plan of operation which shall provide for the implementation of each program authorized or required under this chapter or under other statutory provisions referring to this chapter. The plan of operation shall be approved by the commissioner prior to implementation and may be amended from time to time with the approval of the commissioner. The plan of operation shall provide substantially the following:

- I. Description of each program's objectives including a description of how the association anticipates fulfilling those objectives.
- II. Description of how the program will be funded including a description regarding how assessments will be calculated, collected, and distributed, how any excess assessment revenue will be addressed, and the establishment of any reserve funds.
- III. Administrative matters. The plan of operation shall further provide for all of the following:
 - (a) Responsibility for the handling and accounting of funds and other assets of the association.
 - (b) The financial and other records required to be kept, including the annual report to be submitted to the commissioner.
 - (c) Compliance with this chapter and any other applicable laws and regulations, including without limitation the terms of any federal waiver or other grant that may fund, in whole or in part, any of the association's programs.
 - (d) Such other administrative provisions as are necessary or proper for the execution of the powers and duties of the association.

Source. 1998, 340:6. 2001, 295:9, eff. July 1, 2001. 2023, 92:3, eff. Jan. 1, 2024.

Section 404-G:5-a

404-G:5-a Assessments. –

The association shall establish and collect assessments for each program in accordance with the plan of operation approved by the commissioner.

I. Method of Determining Assessments.

(a) Assessments shall be calculated based on the number of lives covered by assessable entities. The number of covered lives shall be determined each month during the calendar year. Any assessment shall be calculated as the number of covered lives multiplied by a specified assessment rate. The assessment amount shall be subject to approval by the commissioner. The association shall provide a basis for recommending the specified assessment rate, including a projection of the calculated assessment amount and consideration of any prior year shortfalls or overages.

(b) Each covered life should be included in the assessment only once. The association shall adopt procedures by which affiliated assessable entities calculate their assessment on an aggregate basis and procedures to ensure that no covered life is counted more than once.

II. Unless otherwise determined by the association, the assessable entity responsible for the payment of the associated claims for the covered lives shall be the entity responsible for reporting assessable lives and payment of the corresponding assessment.

III. The association may establish a special assessment in addition to the regular assessment with the approval of the commissioner.

(a) The association shall only establish a special assessment if the association determines that its funds are or will become insufficient to fulfill the program's purpose.

(b) The association shall only assess, through the special assessment, at a rate necessary to fund the deficiency ascertained in subparagraph (a).

IV. The regular assessment rate established by the association shall be:

(a) Calculated on a calendar year basis and fixed throughout the calendar year;

(b) Established no later than the first day of November preceding the calendar year for which the rate is to be applied;

(c) Calculated to be sufficient to meet the funding needs for the implementation of the programs administered by the association, including the reinsurance mechanism provided for under RSA 420-N:6-a and the association's share of the costs of the New Hampshire granite advantage health care program established under RSA 126-AA in the amount described in subparagraph (d); and

(d) An amount not to exceed the lesser of the remainder amount, as defined in RSA 126-AA:1, V, or the amount specified in RSA 126-AA:1, V(a) plus taxes attributable to premiums written for medical and other medical-related services for the newly eligible Medicaid population. The association shall transfer all amounts collected pursuant to this subparagraph to the New Hampshire granite advantage health care trust fund established pursuant to RSA 126-AA:3.

V. The commissioner shall approve the regular assessment rate, and any special assessment rate, if he or she finds that the amount petitioned by the board is no greater than is necessary to fulfill the purposes of this chapter. For the purpose of making this determination, the commissioner may, at the expense of the association, seek independent actuarial certification of the need for the proposed assessment or special assessment amount.

Source. 2001, 295:10. 2016, 13:10, eff. Apr. 5, 2016. 2018, 342:11, eff. Dec. 31, 2018. 2023, 79:404, eff. Dec. 31, 2023; 92:3, eff. Jan. 1, 2024.

Section 404-G:5-b

404-G:5-b Repealed by 2023, 92:8, III, eff. Jan. 1, 2024. –

Section 404-G:5-c

404-G:5-c Repealed by 2023, 92:8, IV, eff. Jan. 1, 2024. –

Section 404-G:5-d

404-G:5-d Repealed by 2023, 92:8, V, eff. Jan. 1, 2024. –

Section 404-G:5-e

404-G:5-e Repealed by 2023, 92:8, VI, eff. Jan. 1, 2024. –

Section 404-G:5-f

404-G:5-f Repealed by 2023, 92:8, VII, eff. Jan. 1, 2024. –

Section 404-G:5-g

404-G:5-g Repealed by 2023, 92:8, VIII, eff. Jan. 1, 2024. –

Section 404-G:6

404-G:6 Commissioner's Powers and Duties. –

In addition to duties and powers enumerated elsewhere in this chapter:

I. The commissioner shall upon request of the board of directors of the association, serve a demand upon the assessable entity to pay an assessment within a reasonable time; the failure of the assessable entity to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this chapter.

II. The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance business in this state of any assessable entity which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a forfeiture on any assessable entity which fails to pay an assessment when due. Such forfeiture shall not exceed 5 percent of the unpaid assessment per month, but no forfeiture shall be less than \$100 per month. Any amounts so collected shall be credited to the assessment fund administered by the association.

III. Any action of the board of directors or the association may be appealed to the commissioner by any assessable entity if the appeal is taken within 30 days of the final action being appealed. If an assessable entity is appealing an assessment, the amount assessed shall be paid to the association and available to meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the assessable entity from available funds of the association. Any final action or order of the commissioner shall be subject to judicial review, pursuant to RSA 541.

IV. The commissioner may adopt rules as necessary to carry out the purposes of this chapter.

V. The powers of the commissioner enumerated in this chapter shall be in addition to those established under RSA 404-C.

Source. 1998, 340:6. 2008, 375:6, eff. July 1, 2008. 2023, 92:4, eff. Jan. 1, 2024.

Section 404-G:7

404-G:7 Examination and Annual Report. – The association shall be subject to examination by the commissioner. The cost of any such examination shall be borne by the association. The board of directors shall submit to the commissioner each year, not later than 180 days after the association's fiscal year, a financial report in a form approved by the commissioner and a report of its activities during the preceding fiscal year. The report shall list the association membership base, provide a count of covered lives by member, identify changes in association membership and covered lives, describe the collection of assessments and user fees, list payment delinquencies, detail progress made in the fulfillment of the plans of operation, and contain such other related information as the commissioner may require. The association's fiscal year shall be the calendar year.

Source. 1998, 340:6. 2001, 295:11, eff. July 1, 2001. 2023, 92:4, eff. Jan. 1, 2024.

Section 404-G:8

404-G:8 Tax Exemption. – The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

Source. 1998, 340:6, eff. Aug. 25, 1998.

Section 404-G:9

404-G:9 Immunity for Members and Employees. – There shall be no liability on the part of and no cause of action of any nature shall arise against any member or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or the commissioner's representatives, for any action or omission by them in the performance of their powers and duties under this chapter.

Source. 1998, 340:6, eff. Aug. 25, 1998. 2023, 92:5, eff. Jan. 1, 2024.

Section 404-G:10

404-G:10 Severability. – If any provisions of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

Source. 1998, 340:6, eff. Aug. 25, 1998.

Section 404-G:11

404-G:11 Termination of Activities and Dissolution. –

In the event one or more programs administered by the association are terminated, the association shall undertake the winding down and cessation of the program or programs, and the dissolution of the association if no programs remain, as follows:

I. The board of directors of the association shall prepare and submit to the commissioner for approval, a plan of termination which shall be an amendment to the plans of operation described in RSA 404-G:5. The plan of termination shall provide for such administrative measures as are necessary or desirable to terminate the program or programs, and such provisions shall not be inconsistent with this section.

II. Following the approval of the plan of termination by the commissioner, the association shall take such actions as are necessary and desirable to wind down its affairs under this chapter in accordance with the plan of termination. The association shall retain all of its powers and duties, including, but not limited to, its power to establish and collect regular and special assessments under RSA 404-G:5-a, and the immunity provided by RSA 404-G:9 and the bylaws of the association. Any excess funds remaining after the satisfaction of all of the association's liabilities shall be used for the program and for the association's reasonable costs for collecting its share of the remainder amount.

III. When the association has completed the winding down of its affairs under this chapter and satisfied in full all of its liabilities, then it shall submit to the commissioner for approval a plan of dissolution. Upon approval of the plan of dissolution, the association shall file a certificate of dissolution with the secretary of state, whereupon the association shall cease to exist.

Source. 2013, 200:1. 2016, 13:11, eff. Apr. 5, 2016. 2023, 92:6, eff. Jan. 1, 2024.

Section 404-G:12

404-G:12 Repealed by 2023, 92:8, IX, eff. Jan. 1, 2024. –