

SB 160-FN - AS AMENDED BY THE SENATE

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2021 SESSION

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05/06

SENATE BILL ***160-FN***

AN ACT relative to multiple employer welfare arrangements.

SPONSORS: Sen. Bradley, Dist 3

COMMITTEE: Commerce

ANALYSIS

This bill makes changes to the law governing multiple-employer welfare arrangements.

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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 One

AN ACT relative to multiple employer welfare arrangements.

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

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

6 2 Multiple-Employer Welfare Arrangements; Applicability; General Eligibility. Amend RSA
7 415-E:2 to read as follows:

8 415-E:2 Applicability.

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

18 II. This chapter shall not apply to a multiple-employer welfare arrangement which offers or
19 provides benefits ~~[which are fully insured by an authorized insurer or]~~ under the provisions of RSA
20 5-B.

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

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

24 ~~(b) Is administered primarily from a principal place of business located within the state~~
25 ~~of New Hampshire;~~

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

27 ~~(d) Maintains a termination liability fund wherein the fund balance plus the total~~
28 ~~liabilities of the multiple-employer welfare arrangement shall at no time, for a consecutive 90-day~~
29 ~~period, be less than 40 percent of the aggregate amount of premiums billed during the 6 prior~~
30 ~~months. For purposes of this subparagraph, that surety amount, if any, deposited with the~~

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~~commissioner pursuant to RSA 415-E:7, I, may be credited as a fund balance asset toward the termination liability fund amount required under this chapter; and~~

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

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

3 Multiple-Employer Welfare Arrangements. The introductory paragraph of RSA 415-E:3 and RSA 415-E:3, I are repealed and reenacted to read as follows:

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

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

(a) Meet the definition in RSA 415-E:1, II of a bona fide pathway I association.

(b) Be nonprofit.

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

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

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

(f) Be operated in accordance with sound actuarial principles.

4 Multiple-Employer Welfare Arrangements. RSA 415-E:3-a - 415-E:3-g are repealed and reenacted to read as follows:

415-E:3-a Bona Fide Pathway Association Coverage; General Authorization. Bona fide pathway association coverage as set forth in the United States Department of Labor's June 21, 2018

1 amendment to 29 C.F.R. section 2510, 83 Fed. Reg. 28,961 (codified at 29 C.F.R., section 2510.3-5)
2 shall be permissible in New Hampshire provided it conforms with this chapter and all of the
3 provisions of Title XXXVII concerning this coverage.

4 415-E:3-b Bona Fide Pathway II Association Coverage; Option to Offer Fully-Insured Coverage.

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

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

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

18 415-E:3-c Bona Fide Pathway II Association Coverage; Benefit Requirements.

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

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

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

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

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

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

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

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

37 (b) Requirements contained in RSA 420-J, and any rules adopted thereunder by the

1 commissioner including, but not limited to, network adequacy, balance billing protections, and
2 appeal and grievance processes;

3 (c) Payment of premium tax as provided in RSA 400-A:31-35 and administrative
4 assessment under RSA 400-A:39;

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

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

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

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

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

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

18 V. For any bona fide pathway II association coverage that is issued to a sole proprietor, the
19 association or purchasing alliance sponsoring the coverage shall be responsible for monitoring and
20 ensuring that the sole proprietor meets the requirements to qualify as an employer under 29 C.F.R.
21 section 2510.3-5(b) and meets the per month hourly work requirement contained in RSA 126-AA:2,
22 III. Failure to ensure compliance with this provision shall be a violation of this chapter.

23 415-E:3-d Rating Requirements for Bona Fide Pathway II Association Coverage; Rating
24 Requirements.

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

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

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

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

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

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

5 (c) No other variation shall be permitted.

6 IV. The same rating methodology shall apply to newly covered member employer groups and
7 employee members renewing at each annual renewal date or anniversary date. The rating
8 methodology shall not be construed to include health carrier incentives to individual subscribers or
9 members to participate in wellness and fitness programs provided such incentives are approved by
10 the insurance department.

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

13 415-E:3-e Bona Fide Pathway II Association Coverage; Nondiscrimination Requirements. In
14 accordance with 29 C.F.R. section 2590.702, bona fide pathway II association coverage shall comply
15 with the following:

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

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

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

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

28 415-E:3-f Bona Fide Pathway II Association Coverage; Movement from Bona Fide Pathway II
29 Association Coverage to Small Group Coverage. A small employer that leaves the small group
30 market for bona fide pathway II association coverage shall not be permitted to return to small group
31 coverage for a period of 24 months following the departure from the small group market, nor shall an
32 insurer be permitted to issue small group coverage to such a group, unless the employer can
33 demonstrate that association coverage is no longer available to that employer.

34 415-E:3-g Bona Fide Pathway II Association Coverage; Mitigation of Individual and Small
35 Group Market Impacts of Pathway II Association Coverage.

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

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

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

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

II. No pathway II association coverage shall be issued to a sole proprietor until the 1332 waiver has been granted, and the risk subsidy mechanism for the individual market has been put in place; except that a pathway II association that has established membership criteria that limit membership in the association to businesses that are members of or affiliated with an association, trade group, or other entity that has been in existence for at least 10 years and was established and maintained for purposes other than the provision of health coverage may provide coverage to sole proprietor members commencing January 1, 2020.

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

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

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

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

III. Health carriers shall actively market, issue, and renew all of the health coverages they sell in the small employer market to all small employers ***except that a health carrier shall not be permitted to issue small employer coverage to a group that previously was covered as part of a bona fide pathway II association under chapter RSA 415-E for a period of 24 months***

1 *after the date that the group initiated pathway II coverage, unless the group can*
2 *demonstrate that association coverage is no longer available to that group.*

3 7 Purchasing Alliances. Amend RSA 420-M:13 to read as follows:

4 420-M:13 Qualified Purchasing Alliance. A purchasing alliance that has a minimum of [500]
5 **250** enrollees may elect to obtain certification from the commissioner as a qualified purchasing
6 alliance. To obtain certification, a purchasing alliance shall demonstrate:

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

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

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

15 8 Risk Adjustment Program. Amend RSA 420-K:4 to read as follows:

16 420-K:4 Risk Adjustment Program.

17 I. The board shall:

18 (a) Develop and monitor a measure of risk to be used in comparing populations covered
19 by small employer health insurance coverage and bona fide pathway II association coverage. [The
20 ~~population covered by qualified association trust coverage or by bona fide pathway I association~~
21 ~~coverage, whether self-funded or fully insured, shall not be a part of the risk adjustment program~~
22 ~~and, for the purposes of this chapter, shall not be considered to be small group coverage.~~]

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

27 (c) Perform risk adjustment analysis which may include the use of data from the CHIS,
28 including calculating New Hampshire specific relative weights as necessary, to analyze the
29 difference in the medical care resources expected to be necessary to treat the 2 different populations,
30 one covered in the small group insurance risk pool and the other covered by bona fide pathway II
31 association coverage.

32 (d) Subject to the limitation in paragraph II, establish risk adjustment payments
33 between carriers that are triggered whenever the average risk [over any calendar year] between
34 bona fide pathway II association coverage and all other small group coverage differs by more than
35 [the maximum allowed amount] **20 percent over any calendar year**, and that serve to create a net
36 effect of reducing future expected risk score differences after payments to approximately [the target
37 amount. The commissioner shall establish the maximum allowed amount and the target amount by

1 ~~retaining actuarial experts. The standard that the actuarial experts shall use in recommending~~
2 ~~values for the maximum allowed amount and the target amount is that such amounts should be so~~
3 ~~determined as to prevent the pathway II association market from having an adverse impact on the~~
4 ~~availability and choice of coverage in the small group market and to prevent adverse selection~~
5 ~~against the small group market that is sufficient to cause the average premiums for small groups to~~
6 ~~increase at a rate that is significantly higher than the trend in claims costs]~~ **12 percent.**

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

9 II. The board shall not implement any adjustments until the number of lives covered by
10 bona fide pathway II association coverage exceeds [2,000] **5,000** member months for 3 consecutive
11 months.

12 9 Repeal. The following are repealed effective December 1, 2021:

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

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

15 10 Repeal. The following are repealed:

16 I. 2019, 346:412, relative to the prospective amendment of the definition of qualified
17 association trust in RSA 420-G:2, XV.

18 II. 2019, 346:418, relative to the prospective amendment of RSA 420-K:7.

19 III. RSA 404-J, relative to the commission on the status of health coverage markets for
20 individuals and small employers.

21 11 Effective Date. This act shall take effect upon its passage.

SB 160-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2021-2240s)

AN ACT relative to multiple employer welfare arrangements.

FISCAL IMPACT: ☐ State ☒ County ☒ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	Indeterminable	Indeterminable	Indeterminable	Indeterminable
Expenditures	\$0	\$0	\$0	\$0
Funding Source:	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Various Government Funds			

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill makes changes to the law governing multiple employer welfare arrangements.

The Insurance Department indicates this bill establishes parameters for association health plans pursuant to recent federal regulations. The Department assumes the intent of such efforts is to provide more insurance purchasing alternatives for employers and self-employed individuals. To the extent rules for associations differ from the rest of the marketplace, there could be antiselection, where lower risk customers leave current plans for lower cost insurance.

This may impact how other markets price their products. The Department assumes the new plans would be subject to the insurance premium tax. The Department indicates the bill would not impact its operating budget.

AGENCIES CONTACTED:

Insurance Department