

**SPECIAL SESSION SB 1-FN-A – AS AMENDED BY THE SENATE**

11/21/13 2454s

2013 SESSION

13-1030  
01/10

SPECIAL SESSION SENATE BILL

***1-FN-A***

AN ACT relative to access to health insurance coverage.

SPONSORS: Sen. Morse, Dist. 22; Sen. Bradley, Dist. 3; Sen. Odell, Dist. 8

COMMITTEE: Committee on Special Session Legislation

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ANALYSIS

This bill establishes the New Hampshire health protection program. The bill also establishes the New Hampshire health protection trust and the New Hampshire health protection trust fund to accept federal moneys for the programs established in the bill. The commissioner of the department of health and human services is granted rulemaking authority for the purposes of the bill.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to access to health insurance coverage.

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

1           1 Statement of Purpose. The state of New Hampshire shall develop the New Hampshire health  
2 protection program to provide a coordinated strategy to access private insurance coverage for  
3 uninsured, low-income citizens with income up to 133 percent of the federal poverty level (FPL)  
4 using available, cost-effective health care coverage options for Medicaid newly eligible individuals at  
5 the earliest practicable date. The strategy shall promote the improvement of overall health through  
6 access to private insurance coverage options and draw appropriate levels of federal funding available  
7 through a Medicaid Section 1115 demonstration waiver. Increasing access to private health  
8 insurance will increase provider reimbursement rates and reduce the burden of uncompensated care  
9 in New Hampshire. The waiver shall be used to allow the state maximum flexibility to redesign  
10 Medicaid including establishing premium assistance programs that are customized to the state's  
11 reform goals. As part of the waiver application, the state shall request federal matching funds for  
12 non-Medicaid services to support designated state and local health programs and activities to create  
13 fiscal relief for the state.

14           2 New Paragraphs; Department of Health and Human Services; Changes to State Medicaid  
15 Program. Amend RSA 126-A:5 by inserting after paragraph XXII the following new paragraphs:

16           XXIII.(a) The commissioner shall provide access to the health insurance premium payment  
17 (HIPP) program established by the department pursuant to section 1906 of the Social Security Act of  
18 1935 to Medicaid eligible childless adults from 0 – 133 percent of the federal poverty level (FPL) and  
19 parents from 53 – 133 percent of FPL and their spouse and dependents if applicable until December  
20 31, 2016 to maximize the use of private insurance and available federal assistance. The New  
21 Hampshire health protection trust shall provide premium assistance to support the purchase of  
22 health insurance coverage using federal funds. In order to receive assistance, all Medicaid eligible  
23 childless adults from 0 – 133 percent of FPL and parents from 53 – 133 percent of FPL shall  
24 participate in employer-sponsored insurance, if available either directly as an employee or indirectly  
25 through another individual who is eligible for employer-sponsored insurance and if cost effective as  
26 determined by the federal Centers for Medicare and Medicaid Services. The department shall seek  
27 any necessary waivers or submit a state plan amendment to implement the provisions of this  
28 paragraph, including provisions to address individuals determined to be medically frail after  
29 completion of a health questionnaire screening process. The program shall not begin until such

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1 waivers or state plan amendments have been approved. Any costs to implement HIPP will be paid  
2 from federal funds awarded.

3 (b) Individuals who participate in the HIPP program shall provide all necessary  
4 information regarding financial eligibility, residency, citizenship or immigration status, and  
5 insurance coverage to the department of health and human services in accordance with rules  
6 adopted under RSA 541-A and shall at the time of enrollment acknowledge that the HIPP program is  
7 subject to cancellation upon notice. Eligibility for the HIPP program shall be a qualifying event  
8 under the Health Insurance Portability and Accountability Act.

9 (c) The commissioner may adopt rules or interim rules, pursuant to RSA 541-A, as  
10 necessary to implement any changes to the Medicaid program consistent with the 1115 waiver or  
11 state plan amendment. Any interim rules shall be effective for a period of one year, within which  
12 period the commissioner shall adopt rules pursuant to RSA 541-A.

13 (d) The New Hampshire mandatory HIPP program under this paragraph shall be  
14 implemented as soon as is practicable after the comprehensive statewide section 1115 demonstration  
15 waiver is approved; provided that no eligibility changes shall be taken until:

16 (1) The federal Centers for Medicare and Medicaid Services has granted the  
17 Medicaid waiver or state plan amendment required under subparagraph (a).

18 (2) The commissioner submits and the fiscal committee of the general court by  
19 majority vote accepts written confirmation from the federal Centers for Medicare and Medicaid  
20 Services that the state of New Hampshire may end its voluntary change of Medicaid eligibility  
21 established pursuant to this paragraph with no financial penalty to the state consistent with the  
22 Medicaid waiver.

23 XXIV.(a) There is hereby established the marketplace premium assistance program. This  
24 will be a premium assistance program for Medicaid eligible childless adults from 0-133 percent of the  
25 federal poverty level (FPL) and parents from 53 – 133 percent of FPL who are ineligible for the  
26 HIPP Program until December 31, 2016 and shall be administered by department of health and  
27 human services. The New Hampshire health protection trust shall provide premium assistance to  
28 support the purchase of health insurance coverage from qualified health plans (QHPs) offered in the  
29 federally-facilitated exchange using federal funds. In order to receive assistance, Medicaid eligible  
30 childless adults from 0 – 133 percent of the FPL and parents from 53 – 133 percent of FPL who are  
31 ineligible for the HIPP Program shall choose health care insurance coverage from insurance products  
32 offered on the federally-facilitated exchange. Plans available on the exchange shall reimburse at  
33 rates that are sufficient to ensure improved access to and quality of care. On or before May 1, 2014,  
34 the commissioner shall submit a comprehensive statewide section 1115 demonstration waiver to  
35 implement the provisions of this paragraph, including provisions to address individuals determined  
36 to be medically frail after completion of a health questionnaire screening process. The program shall  
37 not begin until such waivers have been approved. Any costs to implement the premium assistance

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1 program shall be paid from federal funds awarded. The comprehensive statewide section 1115 waiver  
2 demonstration shall also request state fiscal relief in the form of federal matching funds for designated  
3 state and local health programs as prepared by the commission established by RSA 126-A:5-b. The  
4 waiver shall be approved by the Centers for Medicare and Medicaid Services by October 1, 2014.

5 (b) Individuals who participate in the marketplace premium assistance program shall  
6 provide all necessary information regarding financial eligibility, residency, citizenship or  
7 immigration status, and insurance coverage to the department of health and human services in  
8 accordance with rules adopted under RSA 541-A and shall at the time of enrollment acknowledge  
9 that the marketplace premium assistance program is subject to cancellation upon notice. Eligibility  
10 for the marketplace premium assistance program shall be a qualifying event under the Health  
11 Insurance Portability and Accountability Act.

12 (c) The commissioner may adopt rules or interim rules, pursuant to RSA 541-A, as  
13 necessary to implement any changes to the Medicaid program consistent with the 1115 waivers. Any  
14 interim rules shall be effective for a period of one year, within which period the commissioner shall  
15 adopt rules pursuant to RSA 541-A.

16 (d) The New Hampshire marketplace premium assistance program under this  
17 paragraph shall be implemented as soon as is practicable; provided that no eligibility changes shall  
18 be taken until:

19 (1) The federal Centers for Medicare and Medicaid Services has granted the  
20 Medicaid waiver required under subparagraph (a).

21 (2) The commissioner submits and the fiscal committee of the general court by  
22 majority vote accepts written confirmation from the federal Centers for Medicare and Medicaid  
23 Services that the state of New Hampshire may end its voluntary change of Medicaid eligibility  
24 established pursuant to this paragraph with no financial penalty to the state consistent with the  
25 Medicaid waiver.

26 XXV. Any unemployed individual that qualifies for the marketplace premium assistance  
27 program established in paragraph XXIV shall be referred to the department of employment security  
28 for the purpose of helping the unemployed individual find suitable employment.

29 XXVI. The commissioner shall work with any willing managed care organization or  
30 accountable care organization to facilitate the creation of private insurance plans which will qualify  
31 for the New Hampshire marketplace premium assistance program under paragraph XXIV. Such  
32 plans shall maximize to the extent allowable wellness programs and cost-sharing mechanisms.

33 3 New Section; Health Care Reform Commission Established. Amend RSA 126-A by inserting  
34 after section 5-a the following new section:

35 126-A:5-b Health Care Reform Commission Established; Membership; Duties.

36 I. There is established a health care reform commission, the purpose of which shall be to  
37 prepare a comprehensive statewide section 1115 demonstration waiver to be submitted by the

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1 department of health and human services pursuant to RSA 126-A:5, XXIV by May 1, 2014 in order to  
2 obtain federal matching funds for designated state and local health programs to improve access and  
3 quality of care for Medicaid-dependent patients.

4 II. The members of the commission shall be as follows:

5 (a) The commissioner of the department of health and human services, or designee.

6 (b) Two representatives of non-critical access hospitals, appointed by the  
7 New Hampshire Hospital Association.

8 (c) A representative of critical access hospitals, appointed by the New Hampshire  
9 Hospital Association.

10 (d) A representative of the New Hampshire Medical Society, appointed by the society.

11 (e) One member of the public representing local government appointed by the  
12 New Hampshire Municipal Association.

13 (f) One member of the public representing county government appointed by the  
14 New Hampshire Association of Counties.

15 III. The first meeting of the commission shall be called by the commissioner and shall be  
16 held within 21 days of the effective date of this section. Members of the commission shall elect a  
17 chairman of the commission. Five members of the commission shall constitute a quorum.

18 IV. The commission shall:

19 (a) Prepare a Medicaid waiver application under section 1115 of the Social Security Act,  
20 42 U.S.C. 1315, to be submitted by the department of health and human services to obtain federal  
21 matching funds for designated state and local health programs to improve access and quality of care  
22 for Medicaid-dependent patients.

23 (b) Create any subcommittees it deems necessary, which may include members of the  
24 public appointed by the chairman, to assist with research, analysis, or other work necessary to  
25 support the waiver application.

26 (c) Review state-maintained data concerning the Medicaid program and interview state  
27 personnel with knowledge of the Medicaid program.

28 (d) Respond to questions or inquiries from the Centers for Medicare and Medicaid  
29 Services concerning the section 1115 waiver application. Members of the commission selected by the  
30 chairman shall attend all meetings with the Centers for Medicare and Medicaid Services during  
31 which the 1115 waiver application is to be discussed.

32 (e) Provide recommendations to the commissioner of the department of health and  
33 human services on the implementation of any section 1115 waiver approved.

34 (f) Prepare for submission through the department of health and human services any  
35 applications necessary to extend or modify the section 1115 waiver granted.

36 V. On or before January 31, 2014, the commission shall make an initial report on the status  
37 of its work to the fiscal committee of the general court. On or before September 1, 2014, the

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1 commission shall make a final report of its findings and activities, including the form and status of  
2 the application for a section 1115 waiver, to the governor, senate president, and the speaker of the  
3 house of representatives.

4 VI. The commission may solicit information that the commission deems relevant to its duties  
5 from any source, including:

- 6 (a) The New Hampshire Nurses' Association.
- 7 (b) The New Hampshire Community Behavioral Health Association.
- 8 (c) Planned Parenthood of Northern New England.
- 9 (d) The Bi-State Primary Care Association.
- 10 (e) AARP.
- 11 (f) Families First Health Center.
- 12 (g) Any other source selected by the commission.

13 4 New Chapter; New Hampshire Health Protection Trust. Amend RSA by inserting after  
14 chapter 420-N the following new chapter:

15 CHAPTER 420-O

16 NEW HAMPSHIRE HEALTH PROTECTION TRUST

17 420-O:1 New Hampshire Health Protection Trust Established.

18 I. There is hereby established the New Hampshire health protection trust, a body corporate  
19 and politic. The main purpose of the New Hampshire health protection trust shall be to receive and  
20 expend federal funds to provide access to private insurance coverage for uninsured low-income citizens.

21 II. The New Hampshire health protection trust shall be governed by a board of trustees  
22 composed as follows:

- 23 (a) The attorney general.
- 24 (b) The state treasurer.
- 25 (c) One member of the public, nominated by the Business and Industry Association of  
26 New Hampshire and appointed by the governor and council.
- 27 (d) One member of the public, nominated by the board of directors of the New  
28 Hampshire Hospital Association and appointed by the president of the senate.
- 29 (e) One member of the public, nominated by the board of directors of the New Hampshire  
30 Community Behavioral Health Association and appointed by the speaker of the house of representatives.

31 III. Each member appointed under paragraph II shall hold office until a successor is appointed.

32 IV. All board members shall be New Hampshire residents.

33 V. Except for the attorney general and state treasurer no person who holds elected public  
34 office shall serve on the board.

35 420-O:2 Operation of Board of Trustees.

36 I. The board shall elect its own chairperson.

37 II. The board shall choose a secretary, who shall keep a record of proceedings.

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1           III. Four voting members shall constitute a quorum for the transaction of business.

2           IV. The board shall meet at such times and places as it may determine, but shall hold  
3 regular meetings no less than once every 3 months. The chairperson shall call special meetings upon  
4 the written request of any 3 board members or upon the chairperson's own motion.

5           V. Members of the board shall not receive any compensation for their services.

6           420-O:3 Authority of the Board of Trustees. The trustees shall have the power to:

7           I. Enter into any contracts, leases, and any other instruments or arrangements that are  
8 necessary or proper to administer the program.

9           II. Sue or be sued, including taking any legal action necessary or proper.

10          III. Contract with appropriate legal, actuarial, and other persons as necessary to provide  
11 technical assistance in the operation of the programs established under RSA 126-A:5, XXIII-XXIV.

12          IV. Accept any moneys appropriated by or received from the United States government, any  
13 grant moneys from federal governmental agencies, public or private corporations, foundations or  
14 organizations for the benefit and support of the programs established under RSA 126-A:5, XXIII-XXIV.

15          V. Perform any other functions within the authority of the trust as may be necessary or  
16 proper to carry out the programs established under RSA 126-A:5, XXIII-XXIV.

17          VI. Solicit information that the board deems relevant to its duties from any source,  
18 including:

19           (a) The New Hampshire Nurses' Association.

20           (b) The New Hampshire Community Behavioral Health Association.

21           (c) Planned Parenthood of Northern New England.

22           (d) The Bi-State Primary Care Association.

23           (e) AARP.

24           (f) Families First Health Center.

25           (g) Any other source selected by the board.

26          420-O:4 Tax Exemption. The trust shall be exempt from payment of all fees and all taxes levied  
27 by this state or any of its subdivisions, except taxes levied on real property.

28          420-O:5 Immunity for Members. There shall be no liability on the part of and no cause of action  
29 of any nature shall arise against any member of the board of trustees or the board's agents for any  
30 action or omission by them in the performance of their powers and duties under this chapter.

31          420-O:6 The New Hampshire Health Protection Trust Fund. There is hereby established in the  
32 office of the treasurer the New Hampshire health protection trust fund which shall be kept distinct  
33 and separate from all other funds. The board of trustees of the New Hampshire health protection  
34 trust is authorized to accept and expend all federal funds authorized to implement the  
35 New Hampshire health protection program. All such federal funds shall be deposited in the fund.  
36 All moneys in the trust fund shall be nonlapsing and shall be continually appropriated to the board

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1 of trustees of the New Hampshire health protection trust for purposes of implementing the  
2 New Hampshire health protection program.

3 5 New Subparagraph; New Hampshire Health Protection Trust Fund. Amend RSA 6:12, I(b) by  
4 inserting after subparagraph (316) the following new subparagraph:

5 (317) Moneys deposited in the New Hampshire health protection trust fund,  
6 established under RSA 420-O:6.

7 6 Appropriation; Health Care Reform Commission. Amend 2013, 144:130 to read as follows:

8 144:130 Appropriation. The sum of \$200,000 is hereby appropriated to the department of health  
9 and human services for the fiscal year ending June 30, 2014, for the purpose of providing  
10 administrative support to the commission established in RSA 126-A:66 as inserted by section 129 of  
11 this act. Contracts for administrative support or consulting services shall not require governor and  
12 council approval. ***Any unspent balance of the appropriation made under this section shall be  
13 extended and shall not lapse until November 1, 2014, and shall be for the use of the  
14 commission established in RSA 126-A:5-b.*** The governor is authorized to draw a warrant for said  
15 sum out of any money in the treasury not otherwise appropriated.

16 7 Department of Health and Human Services; Medicaid Breast and Cervical Cancer Program.  
17 Enrollment in the Medicaid breast and cervical cancer program, under 42 U.S.C. section 1396a(aa),  
18 shall be suspended effective December 31, 2013 or upon the approval of any waivers or state plan  
19 amendments necessary to implement RSA 126-A:5, XXIII whichever is later. Any individual covered  
20 under the Medicaid breast and cervical cancer program prior to the date the program is suspended  
21 shall continue to be covered for the program unless his or her medical treatment has concluded, or  
22 until the next redetermination of his or her eligibility by the department, whichever event occurs  
23 later. After the date the program is suspended the individual's eligibility for assistance shall be  
24 determined by the department pursuant to RSA 126-A:5, XXIII-XXIV. Commencing on the date the  
25 program is suspended, administrative rule He-W 641.09 shall be limited in its application to only  
26 those individuals enrolled in the Medicaid breast and cervical cancer program receiving treatment  
27 prior to the date the program is suspended. If, at any time after December 31, 2013, the assistance  
28 authorized in RSA 126-A:5, XXIII-XXV is no longer offered or fails to gain the necessary federal  
29 approvals, then the commissioner of the department of health and human services shall reinstate  
30 Medicaid coverage and open enrollment for those individuals eligible under this program.

31 8 Applicability. If at any time the federal match rate received for any program under RSA 126-  
32 A:5, XXIII-XXIV between January 1, 2014 – December 31, 2016 is less than 100 percent, RSA 126-  
33 A:5, XXIII-XXIV shall immediately be repealed upon notification by the commissioner of the  
34 department of health and human services to the secretary of state and the director of legislative  
35 services.

36 9 Repeal. The following are repealed:

37 I. RSA 126-A:5, XXIII, relative to health insurance premium payment (HIPP) program.

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- 1           II. RSA 420-O, relative to New Hampshire health protection trust.
- 2           III. RSA 6:12, I(b)(317), relative to the New Hampshire health protection trust fund.
- 3           IV. RSA 126-A:5-b, relative to the health care reform commission.
- 4           V. 2013, 144:129 and 131, relative to the Medicaid expansion committee and the repeal of
- 5 the committee.
- 6           VI. 2013, 144:130, as amended by section 6 of this act, relative to an appropriation.
- 7           10 Effective Date.
- 8           I. Section 9, paragraphs I-III of this act shall take effect December 31, 2016.
- 9           II. Section 9, paragraph IV of this act shall take effect September 1, 2014.
- 10          III. Section 9, paragraph V of this act shall take effect upon its passage.
- 11          IV. Section 9, paragraph VI of this act shall take effect November 1, 2014.
- 12          V. The remainder of this act shall take effect upon its passage.

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13-1030  
Revised 11/19/13

### SPECIAL SESSION SB 1-FN-A - FISCAL NOTE

AN ACT                    relative to access to health insurance coverage

#### **FISCAL IMPACT:**

The Department of Health and Human Services and the Insurance Department state this bill, **as introduced**, will increase state expenditures by an indeterminable amount in FY 2014 and each year thereafter, and will have an indeterminable impact on state revenue in FY 2015 and each year thereafter. This bill may have an indeterminable fiscal impact on county and local revenue and expenditures in FY 2014 and each year thereafter.

#### **METHODOLOGY:**

The Department of Health and Human Services (DHHS) states the ability of DHHS to operationalize and implement the New Hampshire Health Protection program established in this bill is premised upon the following assumptions –

- The Centers for Medicare and Medicaid Services (CMS) will approve the program as contemplated in the bill assure 100% federal funds for the purchase of service and/or premium assistance prior to program implementation dates in the bill. Such approvals will be in the form of an approved Medicaid State Plan amendment or, in the case of the Marketplace Premium Assistance component, a 1115 Medicaid demonstration waiver;
- CMS approval of a premium assistance program for the newly eligible between 0% and 100% of the Federal Poverty Level (FPL). Following the approval of the Arkansas Premium Assistance Program, CMS issued a letter indicating that it would consider approval of two or three additional premium assistance demonstrations for the period up to December 31, 2016 but preferred to consider only such demonstrations for the 100% to 133% of FPL population;
- The Quality Health Plans (QHPs) in the federal marketplace as of January 1, 2015 will satisfy the CMS provider network adequacy requirements;

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- CMS would approve a comprehensive 1115 Medicaid demonstration waiver that includes provisions for Designated State Health Programs in addition to premium assistance, and that meets federal budget neutrality requirements;
- CMS would approve a premium assistance program that could be terminated without prior public notice or prior notice to beneficiaries;
- CMS will approve the NH Health Protection Trust Fund as the recipient of Federal Medical Assistance Percentage (FMAP) funds;
- CMS will approve a mandatory referral to the Department of Employment Security as a requirement for participation in the Health Protection Program; and
- DHHS is able to amend existing contracts with the contracted managed care organizations (MCOs) to provide insurance through the Bridge program in FY 2014;

DHHS states the cost for the newly eligible for calendar year 2014 under the Bridge Plan can be derived from the DHHS Summary Impacts of ACA on the NH Medicaid Program dated 09/16/13. No exact impact was provided. For calendar years 2014 through 2016, DHHS believes that there are no net costs to the State for coverage of the newly eligible population based on the Lewin Group estimates of costs and offsetting revenues reflected in said summary. DHHS states the proposed bill does not appropriate funds to cover DHHS start-up and implementation costs. The Department preliminarily estimates such costs will approach between \$15 Million and \$20 Million, of which between \$7 Million to \$8 Million would be state general funds.

The Insurance Department states this bill has several potential undefined fiscal implications. The Department states there may be an increase in premium tax collections for the newly eligible population on the extra premium tax generated by the proposed premium assistance program. Based on data presented by studies done by the Lewin Group, the projected increase in premium tax starting one year after the program is put in place is approximately \$6 Million. The bill does not provide for a fully paid program, but rather an assistance program supported by federal funds through FY 2016. Due to uncertainties on the full implementation date of the program, and the amount of premium assistance, the exact fiscal impact cannot be determined at this time. The Department states the bill also calls for the creation of the New Hampshire Health Protection Trust created to receive and expend federal funds to provide access to private insurance coverage for underinsured low-income citizens. The Trust is tax exempt under the bill. If the Trust is considered a pass through of federal funds to insurance providers, there may be an increase in premium tax for those funds that are paid directly to a licensed MCO.

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However, if the pass through funds are paid to another tax exempt entity that provides health care for this population, there will not be an increase.