

CHAPTER 263
HB 508 – FINAL VERSION

11Mar2015... 0674h
06/04/2015 1991s
06/04/2015 2033s
06/04/2015 2046s
24June2015... 2291CofC
24June2015... 2362EBA

2015 SESSION

15-0265
01/10

HOUSE BILL **508**

AN ACT relative to the dissolution of the New Hampshire medical malpractice joint underwriting association and relative to cost-sharing parity for oral anti-cancer therapies.

SPONSORS: Rep. Hunt, Ches 11

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill establishes a procedure for the dissolution of the New Hampshire medical malpractice joint underwriting association.

This bill also prohibits insurers providing benefits that cover expenses for intravenously administered, injected, and oral anti-cancer therapies from requiring an insured to pay a higher copayment, deductible, or coinsurance than for anti-cancer medications injected or intravenously administered by a health care provider. This provision is repealed on January 1, 2022.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to the dissolution of the New Hampshire medical malpractice joint underwriting association and relative to cost-sharing parity for oral anti-cancer therapies.

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

1 263:1 Statement of Purpose. The purpose of sections 1-5 of this act is to provide a mechanism
2 for the prompt and orderly resolution of the obligations of the New Hampshire medical malpractice
3 joint underwriting association (NHMMJUA). The general court finds and determines that medical
4 malpractice coverage is readily available in the voluntary market and that it is no longer in the
5 public interest to provide a state plan to provide medical malpractice coverage.

6 263:2 New Sections; Dissolution of the New Hampshire Medical Malpractice Joint Underwriting
7 Association. Amend RSA 404-C by inserting after section 14 the following new sections:

8 404-C:15 Conclusion of the New Hampshire Medical Malpractice Joint Underwriting
9 Association's Business; Issuance of Policies.

10 I. Upon the effective date of this section, the insurance commissioner shall bring a petition
11 to the superior court for Merrimack county for the receivership of the New Hampshire medical
12 malpractice joint underwriting association (NHMMJUA) pursuant to RSA 402-C. The receivership
13 of the NHMMJUA shall include the stabilization reserve fund trust established in 1986 to pay
14 deficits of the association incurred as a result of policies issued prior to January 1, 1986. Subject to
15 such receivership, the NHMMJUA shall be a continuation of the same unincorporated association in
16 existence immediately before the effective date of this section. The NHMMJUA shall be an insurer
17 organized in this state for purposes of RSA 402-C.

18 II. To facilitate the orderly resolution of the obligations of the NHMMJUA and transition of
19 policyholders to coverage in the private market, the commissioner, as receiver shall:

20 (a) Not cancel a NHMMJUA policy in effect upon his or her appointment as receiver
21 unless the policyholder fails to comply with the terms of the policy, including the payment of
22 premium.

23 (b) Not accept new applications for insurance for new policyholders after the effective
24 date of this section.

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1 (c) Renew any association policy in effect as of the effective date of this section, but shall
2 not issue any NHMMJUA policy with an effective date after December 31, 2015, except that until
3 December 31, 2015, the receiver may issue extended reporting coverage on policies issued before
4 December 31, 2016.

5 (d) Issue notice of nonrenewal in compliance with RSA 417-C to policyholders with
6 renewal dates on or after January 1, 2016.

7 (e) Upon the nonrenewal of any claims-made policy issued by the NHMMJUA that is in
8 force as of the effective date of this section, calculate the amount of tail coverage premium collected,
9 using reasonable actuarial methodologies and standards of practice, and return the tail coverage
10 premium to the policyholder. For the purpose of this subparagraph, “tail coverage premium” shall
11 mean that portion of the premium collected by the NHMMJUA and separately identified in
12 NHMMJUA’s financial statements, and which would have been used to provide tail coverage if tail
13 coverage had been provided under the terms of the policy. Return of the tail coverage premium shall
14 only be provided to those claims-made policyholders who will not otherwise receive tail coverage
15 under their claims-made policies.

16 III. The NHMMJUA shall have no in-force insurance business after December 31, 2016,
17 other than extended reporting coverage elected under policies issued on or before December 31, 2015.

18 IV. This section shall constitute a plan of complete liquidation for the NHMMJUA pursuant
19 to section 331 of the Internal Revenue Code of 1986, as amended, for federal income tax purposes
20 effective on the effective date of this section.

21 404-C:16 Receivership of the Association.

22 I. The insurance commissioner, as receiver of the NHMMJUA, shall, consistent with this
23 section, RSA 404-C:14, RSA 404-C:15, RSA 404-C:17, and the provisions of RSA 402-C wind-down its
24 business, seeking to facilitate the payment of all policyholder coverage obligations in full and in the
25 normal course of business. The receiver shall make monthly reports to the court detailing progress
26 made in the wind-down of the NHMMJUA, including expenses incurred. Interested persons,
27 including policyholders, shall have standing in the receivership and the right to be heard in
28 reference to the monthly reports.

29 II. After the effective date of this section, the commissioner, as receiver, shall promptly seek
30 competitive bids to have all of the coverage-related obligations under policies issued by the
31 NHMMJUA assumed by an insurer or insurers. At the earliest practicable date, the receiver shall
32 then enter an agreement or agreements with an insurer or insurers to provide for the assumption
33 and novation of all of the coverage-related obligations under policies issued by the NHMMJUA. Any
34 such assumption and novation agreement shall be subject to the approval of the supervising court
35 after a hearing at which all interested persons, including policyholders, have standing and may be
36 heard. The assumption and novation agreement shall be on commercially reasonable terms and

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1 shall provide for continued protection for the NHMMJUA's policyholders against liability and
2 expense in accordance with the coverage terms of their policies, as well as providing for established
3 obligations to claimants under such policies.

4 III. Within 60 days of the initiation of the receivership, the receiver shall allocate a portion
5 of the NHMMJUA surplus to establish a hardship fund in the amount of \$2,000,000. This fund shall
6 be used for hardship claims by current NHMMJUA policyholders. The hardship fund shall be
7 available to provide grants payable directly to midwives certified under RSA 326-D and other health
8 care providers who are licensed or approved by the state, who have in-force policies with the
9 NHMMJUA as of the effective date of this section, and who can demonstrate by application to the
10 receiver that they will suffer significant adverse economic hardship as a result of an increase of at
11 least 25 percent in the cost of medical malpractice insurance coverage in the private market as
12 compared to their coverage from the NHMMJUA as of the effective date of this section. Any grant
13 provided shall not exceed the difference between the cost of insurance through the NHMMJUA plus
14 25 percent and the premium charged in the private market for the most comparable coverage
15 available. The receiver's determination of grant eligibility shall be subject to court approval. The
16 hardship fund shall be administered until exhausted or until the termination of the receivership,
17 whichever occurs first. If funds remain in the hardship fund at the termination of the receivership,
18 the receiver shall, with court approval, and before discharge of the receiver, transfer any remaining
19 funds to a charitable organization that promotes aid to health care providers servicing medically
20 underserved populations.

21 IV. Upon appointment of the commissioner as receiver of the association, no assessments of
22 any kind shall thereafter be made by the receiver or ordered by the court.

23 V. The board members and officers of the NHMMJUA shall continue to be officers, trustees,
24 officials, or employees of the state subject to RSA 99-D through the date of the rehabilitation order.

25 VI. Until liquidated, the NHMMJUA shall continue as a legally cognizable unincorporated
26 association solely for the purpose of winding down the NHMMJUA, consistent with this chapter.
27 The provisions of this section and RSA 402-C shall control the management of claims and obligations
28 of the association and shall supersede the provisions of administrative rules governing the operation
29 of the NHMMJUA.

30 404-C:17 Closure of the NHMMJUA.

31 I. Subject to the provisions of RSA 404-C:15 and RSA 404-C:16, the NHMMJUA's obligations
32 shall be wound up through rehabilitation under RSA 402-C.

33 II. The NHMMJUA shall be liquidated and the receiver discharged upon:

34 (a) The resolution or transfer of all of the NHMMJUA's administrative, operational, and
35 coverage-related obligations, including the NHMMJUA's tax obligations and all receivership
36 expenses; and

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1 (b) The approval of the supervising court.

2 III. Prior to the receiver's discharge in accordance with paragraph II, all assets remaining
3 after court approval of the receiver's transfer of all of the NHMMJUA coverage-related obligations,
4 payment of the NHMMJUA's administrative and operational expenses, transfer or resolution of tax
5 obligations, and payment of receivership expenses, shall be interpleaded by the receiver into the
6 Merrimack county superior court, docket no. 217-2010-CV-00414, for the purposes of adjudicating all
7 policyholder claims in those funds. The interpleader into docket no. 217-2010-CV-00414 shall not
8 prejudice the rights of any class of NHMMJUA policyholders with respect to those funds. If any
9 class of NHMMJUA policyholders cannot be represented or is barred from the old action, a new
10 interpleader action shall be commenced to allow such policyholders to assert their claims with
11 respect to the funds. Neither the state of New Hampshire nor any agency thereof shall have any
12 claim to these funds.

13 IV.(a) The provisions of RSA 404-C:15 – RSA 404-C:17 shall not alter, and shall not be
14 construed to alter, any vested contractual rights that any class of NHMMJUA policyholders may
15 have with respect to NHMMJUA assets. The existence and extent of any such rights shall be
16 determined by the interpleader court after termination of the receivership proceeding. Funds that
17 cannot be distributed to a policyholder in the interpleader proceeding referenced in this section due
18 to the inability to locate the policyholder after reasonable efforts shall not be subject to RSA 471-C
19 and shall be transferred to a fund within the treasury to be administered by the department of
20 health and human services which shall utilize such undistributed funds to provide grants in aid to
21 health care providers servicing medically underserved populations through the department's state
22 loan repayment program.

23 (b) There is established in the office of the state treasurer a nonlapsing fund to be known
24 as the grants in aid to health care providers servicing medically underserved populations fund to be
25 administered by the commissioner of the department of health and human services, which shall be
26 kept distinct and separate from all other funds. All moneys in the fund shall be continually
27 appropriated to the commissioner of the department of health and human services, for the purposes
28 of providing grants in aid to health care providers servicing medically underserved populations.

29 263:3 Applicability of Act. Sections 1 and 2 of this act shall be liberally construed to effect their
30 stated purpose which shall constitute an aid and guide to interpretation. Sections 1 and 2 of this act
31 are intended to provide authority for the performance of all duties authorized under such sections,
32 and all powers granted under sections 1 and 2 shall be broadly interpreted to effectuate such intent
33 and purposes and not as a limitation of powers.

34 263:4 Repeal. The following are repealed:

35 I. RSA 404-C:14, relative to the New Hampshire medical malpractice joint underwriting
36 association.

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1 II. RSA 404-C:15, RSA 404-C:16, and RSA 404-C:17, I and II, relative to the dissolution of
2 the New Hampshire medical malpractice joint underwriting association.

3 III. RSA 404-C:17, III and IV(a), relative to the interpleader action in Merrimack county
4 superior court, docket no. 217-2010-CV-00414.

5 263:5 Applicability; Effective Date of Repeal. Section 4, paragraph II of this act shall take effect
6 upon the date of dissolution and the end of the receivership of the New Hampshire medical
7 malpractice joint underwriting association as certified by the insurance commissioner to the director
8 of the office of legislative services and the secretary of state. Section 4, paragraph III of this act shall
9 take effect upon the date the interpleader action is concluded.

10 263:6 New Section; Oral Anti-Cancer Therapies; Individual. Amend RSA 415 by inserting after
11 section 6-s the following new section:

12 415:6-t Oral Anti-Cancer Therapies.

13 I. No insurer that issues or renews any individual policy, plan, or contract of accident or
14 health insurance providing benefits for anti-cancer medications that are injected or intravenously
15 administered by a health care provider and patient administered anti-cancer medications, including
16 but not limited to those orally administered or self-injected, shall require a higher copayment,
17 deductible, or coinsurance amount for patient administered anti-cancer medication than it requires
18 for injected or intravenously administered anti-cancer medications, regardless of the formulation or
19 benefit category determination by the policy or plan.

20 II. An insurer shall not comply with paragraph I by:

21 (a) Increasing the copayment, deductible, or coinsurance amount required for injected or
22 intravenously administered anti-cancer medication that are covered under the policy or plan.

23 (b) Reclassifying benefits with respect to anti-cancer medications.

24 III. In this section, “anti-cancer medication” means drugs and biologics that are used to kill,
25 slow, or prevent the growth of cancerous cells.

26 IV. If the cost-sharing requirements for orally administered anti-cancer medications do not
27 exceed \$200 per prescription fill, the health plan shall be deemed in compliance with this section.

28 V. For a health care contract that meets the definition of a “high deductible plan” set forth in
29 26 U.S.C. section 223(c) (2), a carrier shall be exempt from the provisions of paragraphs I-IV until an
30 enrollee’s deductible has been satisfied for the year.

31 VI. This section shall apply only to oral anti-cancer medications where an intravenously
32 administered or injected anti-cancer medication is not medically appropriate.

33 VII. This section shall not apply to policies which are solely to replace income or pay a
34 predetermined fixed amount based on the occurrence of a specified medical or health event.

35 263:7 New Section; Oral Anti-Cancer Therapies; Group. Amend RSA 415 by inserting after
36 section 18-x the following new section:

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1 415:18-y Oral Anti-Cancer Therapies.

2 I. No insurer that issues or renews any policy of group or blanket accident or health
3 insurance providing benefits for anti-cancer medications that are injected or intravenously
4 administered by a health care provider and patient administered anti-cancer medications, including
5 but not limited to those orally administered or self-injected, shall require a higher copayment,
6 deductible, or coinsurance amount for patient administered anti-cancer medication than it requires
7 for injected or intravenously administered anti-cancer medications, regardless of the formulation or
8 benefit category determination by the policy or plan.

9 II. An insurer shall not comply with paragraph I by:

10 (a) Increasing the copayment, deductible, or coinsurance amount required for injected or
11 intravenously administered anti-cancer medication that are covered under the policy or plan.

12 (b) Reclassifying benefits with respect to anti-cancer medications.

13 III. In this section, “anti-cancer medication” means drugs and biologics that are used to kill,
14 slow, or prevent the growth of cancerous cells.

15 IV. If the cost-sharing requirements for orally administered anti-cancer medications do not
16 exceed \$200 per prescription fill, the health plan shall be deemed in compliance with this section.

17 V. For a health care contract that meets the definition of a “high deductible plan” set forth in
18 26 U.S.C. section 223(c) (2), a carrier shall be exempt from the provisions of paragraphs I-IV until an
19 enrollee’s deductible has been satisfied for the year.

20 VI. This section shall apply only to oral anti-cancer medications where an intravenously
21 administered or injected anti-cancer medication is not medically appropriate.

22 VII. This section shall not apply to policies which are solely to replace income or pay a
23 predetermined fixed amount based on the occurrence of a specified medical or health event.

24 263:8 Health Service Corporations; Oral Anti-Cancer Therapies; Effective Until October 1, 2017.
25 Amend RSA 420-A:2 to read as follows:

26 420-A:2 Applicable Statutes. Every health service corporation shall be governed by this chapter
27 and the relevant provisions of RSA 161-H, and shall be exempt from this title except for the
28 provisions of RSA 400-A:39, RSA 401-B, RSA 402-C, RSA 404-F, RSA 415-A, RSA 415-F, RSA 415:6,
29 II(4), RSA 415:6-g, RSA 415:6-k, RSA 415:6-m, RSA 415:6-o, RSA 415:6-r, RSA 415:6-s, **RSA 415:6-t**,
30 RSA 415:18, V, [~~RSA 415:18, VII(g)~~] RSA 415:18, XVI and XVII, RSA 415:18, VII-a, RSA 415:18-a,
31 RSA 415:18-j, RSA 415:18-o, RSA 415:18-r, RSA 415:18-t, RSA 415:18-u, RSA 415:18-v, RSA 415:18-
32 w, RSA 415:18-x, **RSA 415:18-y**, RSA 415:22, RSA 417, RSA 417-E, RSA 420-J, and all applicable
33 provisions of title XXXVII wherein such corporations are specifically included. Every health service
34 corporation and its agents shall be subject to the fees prescribed for health service corporations
35 under RSA 400-A:29, VII.

36 263:9 Health Service Corporations; Oral Anti-Cancer Therapies; Effective October 1, 2017.

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1 RSA 420-A:2 is repealed and reenacted to read as follows:

2 420-A:2 Applicable Statutes. Every health service corporation shall be governed by this
3 chapter and the relevant provisions of RSA 161-H, and shall be exempt from this title except for
4 the provisions of RSA 400-A:39, RSA 401-B, RSA 402-C, RSA 404-F, RSA 415-A, RSA 415-F,
5 RSA 415:6, II(4), RSA 415:6-g, RSA 415:6-k, RSA 415:6-m, RSA 415:6-o, RSA 415:6-r, RSA 415:6-
6 t, RSA 415:18, V, RSA 415:18, XVI and XVII, RSA 415:18, VII-a, RSA 415:18-a, RSA 415:18-j,
7 RSA 415:18-o, RSA 415:18-r, RSA 415:18-t, RSA 415:18-u, RSA 415:18-v, RSA 415:18-w,
8 RSA 415:18-y, RSA 415:22, RSA 417, RSA 417-E, RSA 420-J, and all applicable provisions of
9 title XXXVII wherein such corporations are specifically included. Every health service
10 corporation and its agents shall be subject to the fees prescribed for health service corporations
11 under RSA 400-A:29, VII.

12 263:10 Health Maintenance Organizations; Oral Anti-Cancer Therapies; Effective Until October
13 1, 2017. Amend RSA 420-B:20, III to read as follows:

14 III. The requirements of RSA 400-A:39, RSA 401-B, RSA 402-C, RSA 404-F, RSA 415:6-g,
15 RSA 415:6-m, RSA 415:6-o, RSA 415:6-r, RSA 415:6-s, **RSA 415:6-t**, [~~RSA 415:18, VII(g),~~
16 RSA 415:18, VII-a, RSA 415:18, XVI and XVII, RSA 415:18-j, RSA 415:18-r, RSA 415:18-t,
17 RSA 415:18-u, RSA 415:18-v, RSA 415:18-w, RSA 415:18-x, **RSA 415:18-y**, RSA 415-A, RSA 415-F,
18 RSA 420-G, and RSA 420-J shall apply to health maintenance organizations.

19 263:11 Health Maintenance Organizations; Oral Anti-Cancer Therapies; Effective October 1,
20 2017. RSA 420-B:20, III is repealed and reenacted to read as follows:

21 III. The requirements of RSA 400-A:39, RSA 401-B, RSA 402-C, RSA 404-F, RSA 415:6-g,
22 RSA 415:6-m, RSA 415:6-o, RSA 415:6-r, RSA 415:6-t, RSA 415:18, VII-a, RSA 415:18, XVI and
23 XVII, RSA 415:18-j, RSA 415:18-r, RSA 415:18-t, RSA 415:18-u, RSA 415:18-v, RSA 415:18-w,
24 RSA 415:18-y, RSA 415-A, RSA 415-F, RSA 420-G, and RSA 420-J shall apply to health
25 maintenance organizations.

26 263:12 Health Service Corporations; Oral Anti-Cancer Therapies; Effective January 1, 2021.
27 RSA 420-A:2 is repealed and reenacted to read as follows:

28 420-A:2 Applicable Statutes. Every health service corporation shall be governed by this
29 chapter and the relevant provisions of RSA 161-H, and shall be exempt from this title except for
30 the provisions of RSA 400-A:39, RSA 401-B, RSA 402-C, RSA 404-F, RSA 415-A, RSA 415-F,
31 RSA 415:6, II(4), RSA 415:6-g, RSA 415:6-k, RSA 415:6-m, RSA 415:6-o, RSA 415:6-r,
32 RSA 415:18, V, RSA 415:18, XVI and XVII, RSA 415:18, VII-a, RSA 415:18-a, RSA 415:18-j,
33 RSA 415:18-o, RSA 415:18-r, RSA 415:18-t, RSA 415:18-u, RSA 415:18-v, RSA 415:18-w,
34 RSA 415:22, RSA 417, RSA 417-E, RSA 420-J, and all applicable provisions of title XXXVII
35 wherein such corporations are specifically included. Every health service corporation and its
36 agents shall be subject to the fees prescribed for health service corporations under RSA 400-

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1 A:29, VII.

2 263:13 Health Maintenance Organizations; Oral Anti-Cancer Therapies; Effective January 1,
3 2021. RSA 420-B:20, III is repealed and reenacted to read as follows:

4 III. The requirements of RSA 400-A:39, RSA 401-B, RSA 402-C, RSA 404-F, RSA 415:6-g,
5 RSA 415:6-m, RSA 415:6-o, RSA 415:6-r, RSA 415:18, VII-a, RSA 415:18, XVI and XVII,
6 RSA 415:18-j, RSA 415:18-r, RSA 415:18-t, RSA 415:18-u, RSA 415:18-v, RSA 415:18-w,
7 RSA 415-A, RSA 415-F, RSA 420-G, and RSA 420-J shall apply to health maintenance
8 organizations.

9 263:14 Repeal. The following are repealed:

10 I. RSA 415:6-t, relative to oral anti-cancer therapies; individual.

11 II. RSA 415:18-y, relative to oral anti-cancer therapies; group.

12 263:15 New Subparagraph; Application of Receipts; Grants in Aid to Health Care Providers
13 Servicing Medically Underserved Populations. Amend RSA 6:12, I(b) by inserting after
14 subparagraph (326) the following new subparagraph:

15 (327) Moneys deposited into the grants in aid to health care providers servicing
16 medically underserved populations fund established in RSA 404-C:17, IV(b).

17 263:16 Effective Date.

18 I. Paragraphs II and III of section 4 of this act shall take effect as provided in section 5 of
19 this act.

20 II. Sections 9 and 11 of this act shall take effect October 1, 2017 at 12:01 a.m.

21 III. Sections 6-8 and 10 of this act shall take effect January 1, 2017.

22 IV. Sections 12-14 of this act shall take effect January 1, 2021.

23 V. The remainder of this act shall take effect upon its passage.

24 Approved: July 20, 2015

25 Effective Date: I. Paragraphs II and III of section 4 shall take effect as provided in section 5

26 II. Sections 9 and 11 shall take effect October 1, 2017 at 12:01 a.m.

27 III. Sections 6-8 and 10 shall take effect January 1, 2017

28 IV. Sections 12-14 shall take effect January 1, 2021

29 V. Remainder shall take effect July 20, 2015