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# STATE OF NEW HAMPSHIRE

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Legislative

## SENATE CALENDAR ADDENDUM

REPORTS & AMENDMENT

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**THE SENATE WILL MEET IN SESSION  
ON THURSDAY, MARCH 24, 2005 AT 10:00 A.M.**

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## REPORTS

### **BANKS AND INSURANCE**

**SB 6-FN**, relative to small group insurers.  
Inexpedient to Legislate, Vote 4-2  
Senator Barnes for the committee.

**SB 64**, establishing a committee to study small group health insurance plans.  
Ought to Pass, Vote 4-2  
Senator Roberge for the committee.

**SB 67**, eliminating health status as a rating factor for small group health insurance.  
Inexpedient to Legislate, Vote 4-2  
Senator Foster for the committee.

**SB 118-FN**, repealing certain provisions of law regarding small group health insurance.  
Inexpedient to Legislate, Vote 6-0  
Senator Gottesman for the committee.

**SB 125-FN**, relative to small group health insurance and relative to reinsurance.  
Ought to pass with amendment, Vote 4-2  
Senator Gottesman for the committee.

## AMENDMENT

### **Banks and Insurance**

**March 22, 2005**

**2005-0840s**

**01/09**

### **Amendment to SB 125-FN**

Amend the title of the bill by replacing it with the following:

AN ACT    repealing health status and geographic location as small group rating factors, clarifying certain other issues relating to small group insurance, and establishing a reinsurance mechanism.

Amend the bill by replacing all after the enacting clause with the following:

1 Small Group Health Insurance; Definitions Added. RSA 420-G:2, I is repealed and reenacted to read as follows:

I. "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual acceptable to the commissioner that a small employer health carrier is in compliance with the provisions of and the rules adopted by the commissioner, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer health carrier in establishing premium rates for applicable health benefit plans.

I-a. "Base rate" means a single rate reflecting the carrier's average cost of actual or anticipated claims for all health coverages or health benefit plans which the carrier writes and maintains in the nongroup individual health insurance market.

I-b. "Case characteristics" means the following characteristics of a small employer: age, size of group, and industry classification, as determined by a small employer health carrier, that are considered by the small employer health carrier in the determination of premium rates for the small employer. Claim experience, health status, geographic location, and duration of coverage since issue shall not be case characteristics.

2 Definition Added. Amend RSA 420-G:2 by inserting after paragraph XVI the following new paragraph:

XVI-a. "Standard health care plan" means the plan of reinsurance that may be modified as necessary by the board, established in RSA 420-G:6, III, with the approval of the commissioner.

3 Definition; "Health Coverage Plan Rate." Amend RSA 420-G:2, IX-a to read as follows:

IX-a. "Health coverage plan rate" means a rate that is uniquely determined for each of the coverages or health benefit plans a health carrier writes and that is derived from the base rate through the application of factors that reflect actuarially demonstrated differences in expected utilization or cost attributable to differences in the coverage design and/or the provider contracts that support the coverage. ***Any health coverage plan rate change shall be based on a small employer health carrier's annual cost and utilization trends or changes in the equivalent value of benefits and such change shall not be more frequent than every 12 months.***

4 Small Group Health Insurance; Premium Rates. Amend RSA 420-G:4; I(b) to read as follows:

(b) Base rate shall be established by each health carrier for all of its health coverages offered to individuals and ~~separately,~~ for all of its health coverages offered to small employers.

5 Small Group Health Insurance; Premium Rates. Amend RSA 420-G:4, I(e) and (f) to read as follows:

(e) In establishing the premium charged, health carriers ~~providing~~ ***issuing*** coverage to small employers ***on or after July 1, 2005*** shall calculate a rate that is derived from the health coverage plan rate ~~through the application of rating factors that the carrier chooses to utilize for age, group size, industry classification, geographic location, and health status~~ ***by making adjustments to reflect one or more case characteristics. Claim experience, health status, geographic location, and duration of coverage since issue are not case characteristics.*** Such ~~factors~~ ***adjustments from the health coverage plan rate*** may be ~~utilized~~ ***made*** only in accordance with the following limitations:

(1) Carriers may use the attained age of covered persons as a ~~rating factor~~ ***case characteristic***. However, the maximum premium differential for age as determined by ratio shall be ~~[4]~~ ***3*** to 1 beginning with age 19.

(2) Carriers modifying such average premium for age may do so only by using the following age brackets:

0 - 18

19 - 24

25 - 29

30 - 34

35 - 39

40 - 44

45 - 49

50 - 54

55 - 59

60 - 64

65 +

(3) Carriers may use group size as a ~~rating factor~~ ***case characteristic***. However, the highest factor based on group size shall not exceed the lowest factor based on group size by ~~[more than 20 percent; provided that for groups of one, an additional 10 percent rating factor shall be allowed from the highest factor]~~ ***a ratio of greater than 1.25 to 1.0.***

(4) Carriers may use the small employer group's industry classification as a rating-factor. However, the highest factor based on industry classification shall not exceed the lowest factor based on industry classification by more than ~~[20]~~ ***15 percent; provided, that none of the factors associated with any industry shall be increased by more than 5 percent per year.***

~~[(5) Carriers may use the small employer group's geographic location as a rating factor. However, the highest factor based on geographic location shall not exceed the lowest factor based on geographic location by more than 15 percent.~~

~~(6) Carriers may use the health status of the small employer group as a rating factor. However, the application of a health status factor shall be subject to the following limitations:~~

~~(A) The health status factor may reflect health status of covered persons, the small employer's claim experience, or the duration of coverage since health statements were last provided.~~

~~(B) Variations from the arithmetic average of the highest rate charged to the lowest rate charged shall not exceed 25 percent.~~

~~(C) Upon the renewal of a small employer policy, any increase in the premium rate that is solely attributable to changes in the health status factor from the prior year shall be no more than 15 percent.~~

~~(7) Upon the renewal of a small employer policy, a carrier is prohibited from increasing the premium rate by more than 25 percent of the rate that was charged in the preceding year. Such rate increase limitation shall not include any premium rate increase that is based on a carrier's annual cost and utilization trends or changes in the rating factor for attained age of covered persons.]~~

***(5) Case characteristics shall be applied by addition rather than multiplication. The premium adjustment resulting from the application of each case characteristic may be added to the base premium rate to determine the premium rate charged.***

***(6) The small employer health carrier shall set premium rates to small employers after consideration of case characteristics of the small employer group. No small employer health carrier shall inquire regarding health status or claims experience of the small employer or its employees or dependents until after the premium rate has been agreed upon by the carriers and the employer.***

***(7) Any adjustment in premium rates for a small employer plan or arrangement to reflect changes in case characteristics that occurred prior to the end of a rating period shall not be charged until the commencement of the next rating period.***

***(8) Differences in health coverage plan rates charged for health benefit plans by a small employer health carrier shall be reasonable and reflect objective differences in plan design, not including differences due to the nature of the groups assumed to select particular health benefit plans.***

(f) Each rating factor that a carrier chooses to utilize ***in the individual market*** shall be reflective of claim cost variations that correlate with that factor independently of claim cost variations that correlate with any of the other allowable factors.

6 Medical Underwriting. Amend RSA 420-G:5, I to read as follows:

I. Health carriers providing health coverage for individuals ~~[or small employer groups]~~ may perform medical underwriting, including the use of health statements or screenings or the use of prior claims history, to the extent necessary to establish or modify ~~[premium]~~ ***base*** rates as provided in RSA 420-G:4. The commissioner may allow ***small*** group carriers to use standardized health statements ***after premium prices have been agreed upon by the carrier and the small employer and only to use them for their reinsurance ceding decisions for the New Hampshire small employer reinsurance pool, established in RSA 420-G:6, III(a).***

7 New Paragraph; Medical Underwriting. Amend RSA 420-G:5 by inserting after paragraph VII the following new paragraph:

VIII. On or before July 1, 2005, the board of directors of the New Hampshire small employer health reinsurance pool shall establish, subject to the approval of the commissioner, a standard reinsurance underwriting form for use by small employer carriers doing business with the New Hampshire small employer health reinsurance pool. Within 50 days after approval by the commissioner of the standard underwriting form the board shall require every carrier, as a condition of transacting small employer health insurance business in this state, to use such form after premium prices have been agreed upon by the carrier and the small employer and only to use it for their reinsurance ceding decisions for the New Hampshire small employer health reinsurance pool. The form may be amended from time to time as the board deems necessary, subject to the approval of the commissioner.

8 New Hampshire Small Employer Health Reinsurance Pool Established. 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. ***In order to facilitate active marketing in the small employer market:***

***(a) There is established a nonprofit entity to be known as the "New Hampshire small employer health reinsurance pool." All health carriers, writers of health insurance, and any other insurer issuing health insurance in this state, and insurance arrangements providing health plan benefits in this state on and after July 1, 2005, shall be members of the pool.***

***(b) On or before July 15, 2005, the commissioner shall give notice to all members of the pool of the time and place for the initial organizational meeting, which shall take place by September 1, 2005. The members shall select the initial board, subject to approval by the commissioner. The board shall consist of at least 5 and not more than 9 representatives of members. There shall be no more than 2 board members representing any one member company. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. The vote shall be weighed based upon net health insurance premium derived from this state in the previous calendar year. To the extent possible, at least 2/3 of the members of the board shall be small employer health carriers. At least 2 members of the board shall represent health care centers and at least one member shall be a small employer health carrier with less than \$100,000,000 in net small employer health insurance premium in this state. The commissioner shall be an ex-officio member of the board. In approving selection of the board, the commissioner shall assure that all members are fairly represented. The membership of all boards subsequent to the initial board shall, to the extent possible, reflect the same distribution of representation as is described in this subparagraph.***

***(c) If the initial board is not elected at the organizational meeting, the commissioner shall appoint the initial board within 15 days of the organizational meeting.***

***(d) Within 90 days after the appointment of such initial board, the board shall submit to the commissioner a plan of operation and thereafter any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the pool. The commissioner shall, after notice and hearing, approve the plan of operation provided he or she determines it to be suitable to assure the fair, reasonable, and equitable administration of the pool, and provides for the sharing of pool gains or losses on an equitable proportionate basis in accordance with the provisions of subparagraph (e) of this section. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on which the coverage under this section shall be made available. If the board fails to submit a suitable plan of operation within 180 days after its appointment, or at any time thereafter fails to submit suitable amendments to the plan of operation, the commissioner shall, after notice and hearing, adopt and promulgate a plan of operation or amendments, as appropriate. The commissioner shall amend any plan adopted by him or her, as necessary at the time a plan of operation is submitted by the board and approved by the commissioner. The board shall select a reinsurance pool administrator through a competitive bidding process to administer the pool. The board shall evaluate bids submitted based on criteria established by the board. Such administrator shall not be paid less than \$30,000 per year nor more than \$10 per insured life ceded to the reinsurance pool per month.***

***(e) The plan of operation shall establish procedures for:***

***(1) Handling and accounting of assets and moneys of the pool, and for annual fiscal reporting to the commissioner.***

***(2) Filling vacancies on the board, subject to the approval of the commissioner.***

***(3) Selecting an administrator and setting forth the powers and duties of the administrator.***

***(4) Reinsuring risks in accordance with the provisions of this paragraph.***

***(5) Collecting assessments from all members to provide for claims reinsured by the pool and for administrative expenses incurred or estimated to be incurred during the period for which the assessment is made.***

***(6) Any additional matters at the discretion of the board.***

***(f) The pool shall have the general powers and authority granted under the laws of New Hampshire to insurance companies licensed to transact health insurance and, in addition thereto, the specific authority to:***

***(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this paragraph, including the authority, with the approval of the commissioner, to enter into contracts with programs of other states for the joint performance of common functions, or with persons or other organizations for the performance of administrative functions.***

***(2) Sue or be sued, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against members.***

***(3) Take such legal action as necessary to avoid the payment of improper claims against the pool.***

***(4) Define the array of health coverage products for which reinsurance will be provided, and to issue reinsurance policies, in accordance with the requirements of this paragraph.***

***(5) Establish rules, conditions, and procedures pertaining to the reinsurance of members' risks by the pool.***

***(6) Establish appropriate rates, rate schedules, rate adjustments, rate classifications, and any other actuarial functions appropriate to the operation of the pool.***

***(7) Assess members in accordance with the provisions of this paragraph, and to make advance interim assessments as may be reasonable and necessary for organizational and interim operating expenses. Any such interim assessments shall be credited as offsets against any regular assessments due following the close of the fiscal year.***

***(8) Appoint from among the members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, policy, and other contract design, and any other function within the authority of the pool.***

***(9) Borrow money to effectuate the purposes of the pool. Any notes or other evidence of indebtedness of the pool not in default shall be legal investments for insurers and may be carried as admitted assets.***

***(g) Any member may reinsure with the pool coverage of an eligible employee of a small employer; or any dependent of such an employee. Any reinsurance placed with the pool from the date of the establishment of the pool regarding the coverage of an eligible employee of a small employer; or any dependent of such an employee shall be provided as follows:***

***(1) With respect to a standard health care plan, the pool shall reinsure the level of coverage provided;***

***(2) With respect to other plans, the pool shall reinsure the level of coverage provided up to, but not exceeding, the level of coverage provided in a standard health care plan or the actuarial equivalent thereof as defined and authorized by the board; and***

***(3) In either case, no reinsurance shall be provided in any calendar year for a reinsured employee or dependent until \$5,000 in benefit payments have been made for services provided during that calendar year for that reinsured employee or dependent, which payments would have been reimbursed through said reinsurance in the absence of the annual \$5,000 deductible. The amount of the deductible shall be periodically reviewed by the board and may be adjusted for appropriate factors as determined by the board.***

***(h) With respect to eligible employees, and their dependents, coverage may be reinsured:***

***(1) Within 60 days after the commencement of their coverage under the plan as may be authorized by the board; or***



**(2) Commencing January 1, 2006, on the first plan anniversary after the employer's coverage has been in effect with the small employer carrier for a period of 3 years, and every third plan anniversary thereafter; provided, that reinsurance pursuant to this subparagraph shall only be permitted with respect to eligible employees and their dependents of a small employer which has no more than 5 eligible employees as of the applicable anniversary.**

**(i) Reinsurance coverage may be terminated for each reinsured employee or dependent on any plan anniversary.**

**(j) Reinsurance of newborn dependents shall be allowed only if the mother of any such dependent is reinsured as of the date of birth of such child, and all newborn dependents of reinsured persons shall be automatically reinsured as of their date of birth.**

**(k) Notwithstanding the provisions of subparagraph (h)(1);**

**(1) Coverage for eligible employees and their dependents provided under a group policy covering 2 or more small employers shall not be eligible for reinsurance when such coverage is discontinued and replaced by a group policy of another carrier covering 2 or more small employers, unless coverage for such eligible employees or dependents was reinsured by the prior carrier; and**

**(2) At the time coverage is assumed for such group by a succeeding carrier, such carrier shall notify the pool of its intention to provide coverage for such group and shall identify the employees and dependents whose coverage will continue to be reinsured. The time limitations for providing such notice shall be established by the pool.**

**(l) Except as provided in this paragraph, premium rates charged for reinsurance by the pool as approved by the commissioner shall be established at the following percentages of the rate established by the pool for that classification or group with similar characteristics and coverage:**

**(1) 150 percent, with respect to all of the eligible employees, and their dependents, of a small employer, all of whose coverage is reinsured in accordance with this paragraph; and**

**(2) 500 percent, with respect to an eligible employee of a small employer or a dependent of such employee who is individually reinsured and is not reinsured with all eligible employees of an employer and their dependents.**

**(m) Following the close of each fiscal year, the administrator shall determine the net premiums, the pool expenses of administration and the incurred losses for the year, taking into account investment income and other appropriate gains and losses.**

**(1) The assessment for the reinsurance pool shall be based on the number of covered lives times a specified assessment rate. The board of directors shall specify the basis used to set the assessment rate. The board of directors shall establish a regular assessment rate which shall be:**

**(A) Calculated on a calendar year basis based on the net losses from the audited financial statements of the prior fiscal year;**

**(B) Established no later than November 1 in the current fiscal year; and**

**(C) Anticipated to be sufficient to meet the pool's funding needs.**

**(2) In addition to the regular assessment rate, the board may establish a special assessment rate for organizational expenses. Notwithstanding RSA 420-G:4, a writer of health insurance may increase the premiums charged by the amount of the special assessment. Any assessment may appear as a separate line item on a policyholder's bill.**

**(A) The board shall only establish an interim assessment if the board determines that its funds are or will become insufficient to pay the reinsurance pool's expense in a timely manner.**

**(B) The regular assessment rate, and any special assessment rate, shall be subject to the approval of the commissioner. The commissioner shall approve the rate if he or she finds that the amount is required to fulfill the purpose of the reinsurance pool. For the purpose of making this determination, the commissioner may, at the expense of the pool, seek independent actuarial certification of the need for the proposed rate.**

**(3) The board shall impose and collect assessments on members of the pool.**

***(4) If the assessment exceeds the amount actually needed, the excess shall be held and invested and, with the earnings and interest thereon, be used to offset future net losses. Each covered life shall be included in the assessment on an aggregate basis and procedures shall be maintained to ensure that no covered life is counted more than once.***

***(n) Each member's proportion of participation in the pool shall be determined annually by the board based on annual statements and other reports of covered lives deemed necessary by the board and filed by the member with it.***

***(o) Provision shall be made in the plan of operation for the imposition of an interest penalty for late payment of assessments.***

***(p) The board may defer, in whole or in part, the assessment of a health care center if, in the opinion of the board, payment of the assessment would endanger the ability of the health care center to fulfill its contractual obligation. In the event an assessment against a health care center is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in this subparagraph. The health care center receiving such deferral shall remain liable to the pool for the amount deferred. The board may attach appropriate conditions to any such deferral.***

***(q) Neither the participation in the pool as members, the establishment of rates, forms, or procedures, nor any other joint or collective action required by this paragraph shall be the basis of any legal action against the pool or any of its members.***

***(r) Any person or member made a party to any action, suit, or proceeding because the person or member served on the board or on a committee or was an officer or employee of the pool shall be held harmless and be indemnified by the program against all liability and costs, including the amounts of judgments, settlements, fines or penalties, and expenses and reasonable attorney's fees incurred in connection with the action, suit, or proceeding. The indemnification shall not be provided on any matter in which the person or member is finally adjudged in the action, suit or proceeding to have committed a breach of duty involving gross negligence, dishonesty, willful misfeasance, or reckless disregard of the responsibilities of office. Costs and expenses of the indemnification shall be prorated and paid for by all members. The commissioner may retain actuarial consultants necessary to carry out his or her responsibilities pursuant to this paragraph and such expenses shall be paid by the pool established in this paragraph.***

9 Effective Date. This act shall take effect 60 days after its passage.

**2005-0840s**

#### AMENDED ANALYSIS

This bill makes certain changes in the small employer health insurance law, including:

- I. Repealing health status as rating factor for small group health insurance.
- II. Repealing geographic location as a rating factor for small group health insurance.
- III. Adding a definition of case characteristic.
- IV. Clarifying the small group health insurance law regarding premium rates for small employer groups with similar case characteristics.
- V. Establishing the New Hampshire small employer health reinsurance pool to offer pool coverage to eligible employees of small employers.