

Joint Health Care Reform  
Oversight Committee  
**Partnership v. Federal**  
**Plan Management:**  
**Impacts to New Hampshire**  
**Health Insurance Markets**

July 25, 2012

## Opportunity for Plan Management Partnership

The Affordable Care Act (ACA) allows states to enter into **partnership agreements** in which they undertake certain specific functions within a Federally Facilitated Exchange (FFE or Exchange) that the federal government would otherwise carry out.

A plan management partnership is **consistent with the language of HB 1297**, which directs the New Hampshire Insurance Department (NHID or Department) to **maintain the regulatory functions** that it traditionally performs.

# A Plan Management Partnership Would Not Involve the NHID in Many Exchange Functions

A Plan Management partnership **would not involve establishment of a State Based Exchange (SBE)**, prohibited under HB 1297. The US DHHS has made clear that states not establishing a SBE will play no role in certain areas of ACA implementation, including setting up and operating the Exchange, assessing taxes or penalties, and implementing the premium subsidy tax credit program.

Specifically, **the FFE** set up by the federal government, **not the state, will perform the following Exchange functions**, regardless of whether the NHID enters into a Plan Management Partnership:

- Maintain a **website** to provide plan information and options in a standardized format.
- Operate a toll-free **hotline**.
- Provide each employer the names of the employees eligible for the **tax credit** and transfer to the Treasury a list of employees eligible for the tax credit.
- Make available a **calculator** to determine actual cost of coverage after subsidies.
- Issue certifications of exemption from the **individual responsibility requirement** and transfer to the Treasury a list of exempt individuals.
- Establish a **Navigator** program that provides grants to entities that assist consumers.

## New Hampshire Can Retain Medicaid Authority in a Plan Management Partnership

Whether or not the NHID enters into a Plan Management Partnership with the FFE, **the state may choose** whether or not to retain authority for making **Medicaid eligibility determinations**.

This decision is **independent** of the decision of whether to enter into a Plan Management partnership, but must be made by the same deadline (November 16, 2012).

## Plan Management Under Existing Law: What the Insurance Department Does Now

Under current New Hampshire law, the NHID, as the **sole regulator of insurance** written in New Hampshire, conducts most of the regulatory functions that are described in the ACA as plan management functions.

This is an area that has traditionally not been regulated by any federal agency.

# **NHID Functions within a Plan Management Partnership**

If the state entered into a Plan Management Partnership, **the NHID would perform functions in the following areas** with respect to health insurance carriers, Qualified Health Plans (QHPs) sold on the FFE, and health insurance sold outside the Exchange:

- **Licensure and Solvency**
- **Form Review**
- **Rate Review**
- **Marketing**
- **Benefit Design Standards**
- **Consumer Protection/Unfair Trade Practices**
- **Network Adequacy**
- **Accreditation**
- **Quality Ratings, Quality Improvement and Enrollee Satisfaction Surveys**

The following chart compares current NHID roles in these nine areas with the activities the Department would perform in a Plan Management Partnership, and with the market impacts if plan management is conducted by the FFE rather than by the NHID under a partnership.

# Comparison: Current, Partnership or Federal Plan Management

Current State Law on Plan Management	Plan Management Partnership	Federal Plan Management
<p style="text-align: center;"><b>Licensure and Solvency</b></p> <p>All insurance carriers offering health insurance plans in New Hampshire must be <b>licensed to operate</b> in the state by the NHID. The NHID also regulates and monitors the <b>solvency</b> of all insurance carriers. This includes requirements about financial filings, minimum capitalization, and periodic financial examinations. The Department can examine carriers' financial records at any time.</p> <p style="text-align: center;"><b>Form Review</b></p> <p>Before any health insurance policy is offered for sale in the market, <b>Department staff review the language of the policy</b> and any associated forms or notices. The purpose of this review is to protect consumers by ensuring that all terms of the policy are <b>consistent with New Hampshire law</b>. No carrier may use a policy form that has not been approved by the Department.</p>	<p style="text-align: center;"><b>Licensure and Solvency</b></p> <p>The NHID would <b>continue to license and regulate the solvency</b> of all health insurance carriers under New Hampshire law. The federal government would not enter into this area of regulation.</p> <p style="text-align: center;"><b>Form Review</b></p> <p>As they do today, Department staff would <b>review the language of all policies</b> sold in the state for consistency with New Hampshire law. No carrier would be allowed to use a policy form not approved by the Department, whether inside or outside of the Exchange.</p> <p>In addition, under the partnership agreement, <b>the NHID would certify and decertify QHPs for sale on the Exchange</b>, using criteria established under the ACA, including the requirement that Essential Health Benefits (EHB) be covered and that uniform standards for policy language be met.</p> <p>By entering into a Plan Management Partnership, the NHID would be in a position to <b>maintain consistency in form review within and outside the FFE</b>.</p>	<p style="text-align: center;"><b>Licensure and Solvency</b></p> <p>The NHID would <b>continue to license and regulate the solvency</b> of health insurance carriers. The federal government would confirm that carriers offering coverage through the Exchange were licensed and in good standing with the state.</p> <p style="text-align: center;"><b>Form Review</b></p> <p>Department staff would <b>review the language of all policies</b> sold in the state, including Qualified Health Plans (QHPs) sold on the FFE, for consistency with New Hampshire law. No carrier would be allowed to use a policy form not approved by the Department, whether inside or outside of the Exchange. However, <b>carriers would also have their forms approved by the Exchange</b> as being consistent with ACA standards and requirements. <b>Some ACA requirements would preempt state laws</b>, if the legal standards were in conflict with each other and it was impossible to comply with both. If state laws were not amended to clarify the relation between state and federal law, consumers and carriers could be <b>confused about applicable legal standards</b>.</p>

# Comparison: Current, Partnership or Federal Plan Management

## Current State Law on Plan Management

### Rate Review

The **rates** charged for health insurance coverage **are subject to prior approval** by the Department. For all new policies and rate changes to existing policies, the carrier must file extensive actuarial information demonstrating that the rate is reasonable in terms of the benefits received under the policy, sufficient to ensure that the carrier remains solvent, and not unfairly discriminatory. This information includes a detailed description of the benefits provided under the policy and all rating assumptions and methods.

### Marketing

Any **advertisements** for health insurance coverage must be submitted to the Department for review and approval before they are used. Also, the Department's market conduct unit monitors and examines health carrier conduct for **compliance with unfair insurance trade practices standards**.

## Plan Management Partnership

### Rate Review

The ACA requires the Exchange itself to review rates on plans offered through the Exchange. However, the **rates** charged for health insurance coverage would also **remain subject to prior approval by the Department**.

The US DHHS has approved New Hampshire's rate review program, so this review would continue largely unchanged under a partnership agreement without subjecting carriers to a double review.

The Department is currently in the process of studying how to improve the efficiency of its rate review so as to improve transparency and to ensure that its program continues to be viewed as effective rather than being preempted by the federal government.

By entering into a Plan Management Partnership, the **NHID would be in a position to maintain consistency** in rate regulation within and outside the FFE.

### Marketing

Advertisements or marketing for health insurance coverage would be submitted to the Department for review and approval before they were used. It is possible that the FFE would adopt additional requirements to protect consumers; under a partnership agreement the NHID would include these in its review **without subjecting carriers to a double review**.

## Federal Plan Management

### Rate Review

The **FFE would conduct rate review for QHPs** offered on the Exchange. The rates charged for health insurance coverage, including QHPs, would remain subject to prior approval by the Department.

However, if the NHID did not gain authority to conduct rate review on behalf of the Exchange, health carriers would be subject to a system of **dual rate review** and all of the potential for **incompatible standards** that such a system implies.

### Marketing

New Hampshire requirements for prior Department approval of advertisements and marketing materials would remain in place. However, carriers would also be required to comply with any applicable federal standards with respect to QHPs offered on the FFE. Of course, **these standards could be inconsistent with the Department's standards**.

# Comparison: Current, Partnership or Federal Plan Management

Current State Law on Plan Management	Plan Management Partnership	Federal Plan Management
<p style="text-align: center;"><b>Benefit Design Standards</b></p> <p>The NHID currently reviews benefit design in connection with its rate and form review. Depending on the <b>market</b> in which a health insurance plan is sold (individual, small group or large group) and the <b>type of policy</b> being offered (e.g. major medical), the plan must include certain <b>mandated services</b> or types of providers, must not contain certain <b>limitations on coverage</b>, and must meet <b>rating, issuance and renewal requirements</b> specific to that market.</p>	<p style="text-align: center;"><b>Benefit Design Standards</b></p> <p>Under the ACA, all non-grandfathered health insurance plans sold in the individual and small group markets, both inside and outside the Exchange, must provide the <b>Essential Health Benefits</b> package, which consists of three elements:</p> <ul style="list-style-type: none"> <li>• Coverage of all services included in the EHB benchmark designated by the state of New Hampshire pursuant to US DHHS’s December 2011 guidance document;</li> <li>• Limitations on cost-sharing; and</li> <li>• Actuarial value requirements (“precious metal” levels)</li> </ul> <p>Because they <b>apply both inside and outside the Exchange</b>, the benefit design requirements of the ACA will have a significant effect on New Hampshire’s insurance markets. By entering into a Plan Management Partnership, the NHID will be able to <b>incorporate the EHB requirements into its rate and form review along with New Hampshire legal requirements</b>, thereby reducing market disruption and eliminating the possibility of inconsistent regulatory requirements.</p>	<p style="text-align: center;"><b>Benefit Design Standards</b></p> <p>The NHID would <b>continue to review benefit design in connection with its rate and form review</b>. Assuming there was no change to New Hampshire law, depending on the market in which a health insurance plan is sold (individual, small group or large group), the plan would still be required to include certain mandated services or types of providers, and to meet rating and coverage requirements specific to that market.</p> <p>At the same time, under the ACA all non-grandfathered health insurance plans sold in the individual and small group markets, both inside and outside the Exchange, would be required to provide the Essential Health Benefits package. Because they apply both inside and outside the Exchange, the benefit design requirements of the ACA will have a significant effect on New Hampshire’s insurance markets. The <b>federal government would interpret and apply EHB standards for coverage sold through the Exchange</b>, and the <b>Department</b> would interpret and apply them <b>for coverage sold outside the Exchange</b>.</p>

# Comparison: Current, Partnership or Federal Plan Management

Current State Law on Plan Management	Plan Management Partnership	Federal Plan Management
<p style="text-align: center;"><b>Consumer Protection/Unfair Trade Practices</b></p> <p>NHID can take <b>enforcement action</b> for violating state insurance law, including practices that are unfair to consumers.</p> <p style="text-align: center;"><b>Network Adequacy</b></p> <p>New Hampshire law requires insurance carriers offering any type of managed care plan to meet network adequacy standards to ensure that plan members in all geographic areas served by the plan have <b>access to sufficient numbers and types of health care providers</b>. The NHID has responsibility for enforcing these network adequacy standards.</p>	<p style="text-align: center;"><b>Consumer Protection/Unfair Trade Practices</b></p> <p>Under a Plan Management partnership, the NHID would <b>retain its ability to take enforcement action</b> for violations of state insurance laws. In addition, the state would be in a position to implement legislation aligning New Hampshire law with ACA plan management requirements.</p> <p>The NHID could enforce federal as well as state requirements, thereby maintaining <b>exclusive regulatory authority</b>. This is similar to the approach the Department took with respect to external review during the 2012 legislative session.</p> <p><b>Without such amendments</b>, the NHID cannot enforce federal requirements, and any inconsistent state law requirement would be <b>preempted</b>. Consumers would have to go to Washington for help.</p> <p style="text-align: center;"><b>Network Adequacy</b></p> <p>The NHID would continue to review the adequacy of each plan’s network under state network adequacy standards; there would likely be <b>additional federal requirements</b> added to this review, particularly with respect to the requirement that Essential Community Providers be included in networks as outlined in the ACA.</p>	<p style="text-align: center;"><b>Consumer Protection/Unfair Trade Practices</b></p> <p>The NHID would retain its authority to take enforcement action for violations of state insurance law, including practices that are unfair to consumers. However, without amendments to N.H. statutes, the <b>NHID would be unable to enforce federal requirements</b>. Consumers would have to go to the <b>NHID to resolve some issues</b>, and to <b>federal regulators to resolve others</b>. This could cause confusion and frustration.</p> <p style="text-align: center;"><b>Network Adequacy</b></p> <p>The NHID would continue to review the adequacy of each plan’s network under state network adequacy standards; there would likely be additional federal requirements, particularly with respect to Essential Community Providers as outlined in the ACA. The <b>federal standards could preempt state requirements</b>. For coverage sold through the Exchange, the federal government would establish and apply its own network adequacy standards which could be <b>inconsistent</b> with the state’s standards.</p>

# Comparison: Current, Partnership or Federal Plan Management

Current State Law on Plan Management	Plan Management Partnership	Federal Plan Management
<p style="text-align: center;"><b>Accreditation</b></p> <p>New Hampshire insurance law currently contains standards regarding <b>managed care provider credentialing</b> and <b>utilization review</b>. Compliance with these standards is often achieved in part through accreditation by a private organization such as URAC.</p> <p style="text-align: center;"><b>Quality Ratings, Quality Improvement Strategies and Enrollee Satisfaction Surveys</b></p> <p>New Hampshire insurance law currently requires health carriers to establish standards regarding <b>managed care quality assessment</b>, quality improvement, and reporting. Compliance with these requirement is often achieved in part through accreditation by a private organization such as the National Committee for Quality Assurance.</p>	<p style="text-align: center;"><b>Accreditation</b></p> <p>The ACA requires that insurance carriers offering QHPs in the FFE be accredited by a recognized accreditation entity. In a Plan Management Partnership, the NHID would be responsible for <b>confirming carriers' accreditation status</b>.</p> <p style="text-align: center;"><b>Quality Ratings, Quality Improvement Strategies and Enrollee Satisfaction Surveys</b></p> <p>In a Plan Management Partnership, the NHID would assume responsibility for overseeing the manner in which carriers are subject to quality ratings and enrollee satisfaction surveys. To date, there has been little guidance with respect to this function.</p>	<p style="text-align: center;"><b>Accreditation</b></p> <p>The NHID would not regulate in this area for Exchange purposes.</p> <p style="text-align: center;"><b>Quality Ratings, Quality Improvement Strategies and Enrollee Satisfaction Surveys</b></p> <p>The NHID would not regulate in this area for Exchange purposes.</p>

# Consequences for Markets if Federal Regulators Conduct Plan Management

If the Department does not undertake a Plan Management partnership, **the FFE established for New Hampshire will perform the plan management functions** required under the ACA.

Federal plan management will result in a system of **dual and overlapping regulatory authority** in many areas that were previously regulated solely by the NHID.

There would be a **high potential for confusion** among consumers and the regulated community about what legal standards are applicable, as well as **inconsistent regulatory standards**.

Because many ACA requirements extend beyond the Exchanges into the entire insurance market, it would become **much more difficult**, if not impossible, **for the Department to perform its traditional regulatory functions** even with respect to health insurance sold outside the Exchange.