

Readopt with amendment Ins 3400, effective 11-01-01 (Doc. #7583), to read as follows:

CHAPTER Ins 3400 PURCHASING ALLIANCES

Statutory Authority: RSA 400-A:15, I.; 420-G:10-a

PART Ins 3401 PURCHASING ALLIANCE STANDARDS

Ins 3401.01 Purpose. The purpose of this part is to:

(a) Increase the affordability, efficiency, and fairness of health insurance coverage for small employers by setting standards for the licensure and oversight of voluntary purchasing alliances through which small employers and their employees may purchase health coverage in the manner of large employer groups;

(b) Allow small employers and their employees to obtain better value in purchasing health insurance by consolidating purchasing responsibilities and resources, thereby increasing bargaining power and purchasing expertise and reducing the administrative cost of health plan contracting, enrollment, premium collection and payment for multiple employers;

(c) Provide small employers and their employees a choice of health carrier or carriers and health benefit plan or plans through an open and fair process in which qualified carriers compete to provide health coverage to alliance members; and

(d) Foster competition based on value.

Ins 3401.02 Definitions.

(a) "Commissioner" means the insurance commissioner.

(b) "Eligible dependent" means "eligible dependents" as defined in RSA 420-G:2, V.

(c) "Eligible employee" means "eligible employees" as defined in RSA 420-G:2, VI.

(d) "Employee enrollee" means an eligible employee, self-employed individual or an eligible dependent of an eligible employee who is enrolled in a health benefit plan offered through an alliance by a participating carrier.

(e) "Health benefit plan" means "health coverage" as defined in RSA 420-G:2, IX.

(f) "Health carrier" means "health carrier" as defined in RSA 420-G:2, VIII.

(g) "Member small employer" means a small employer who enrolls in an alliance.

(h) "Participating carrier" means a carrier having a contractual relationship with an alliance.

(i) "Purchasing alliance" means a corporation or other entity licensed pursuant to RSA 420-G:10-a that provides, on a voluntary basis, health insurance coverage through a participating carrier or carriers to member small employers and their employees within a defined service area authorized by the commissioner.

(j) "Small employer" means "small employer" as defined in RSA 420-G:2, XVI.

Ins 3401.03 Jurisdiction of the Commissioner; Penalties.

- (a) The commissioner shall regulate the establishment and conduct of purchasing alliances.
- (b) No person or entity may market, sell, offer, or arrange for a package of one or more health benefit plans underwritten by a participating carrier or carriers to 2 or more small employers or their eligible employees without first being licensed by the commissioner pursuant to this part.
- (c) A person or entity not licensed by the commissioner as a purchasing alliance and engaged in the purchase, sale, marketing or distribution of health insurance or health care benefit plans shall not hold itself out as an alliance, health insurance purchasing alliance, purchasing alliance, health insurance purchasing cooperative or purchasing cooperative or otherwise use a confusingly similar name.

Ins 3401.04 Purchasing Alliance Application, Licensing and Continuing Review Process.

(a) An application shall be completed and filed with the commissioner by an authorized representative of the corporation or other entity established as a precursor to being granted a purchasing alliance license. An application shall not be deemed filed until all information necessary to properly process the application has been received by the commissioner. Upon filing, the commissioner shall make a determination concerning the application and shall provide notice of the determination to the applicant. If approved, a copy of a license shall be provided to the purchasing alliance. The license shall serve as authorization to operate pursuant to this part.

(b) Each applicant shall prepare a business plan as follows:

(1) The business plan shall include, but not be limited to, the following information:

- a. A detailed, written plan of operations explaining how the applicant intends to fulfill the purposes and requirements of this part.
- b. A written commitment by the alliance;
- c. The specific steps planned to increase affordability, efficiency and fairness of health insurance coverage;
- d. The specific steps planned to allow small employers and their employees to obtain health insurance that is a better value to them than what is otherwise available;
- e. The specific steps planned to provide small employers and their employees meaningful choice of health carriers and health benefit plans, and foster competition based on value;
- f. The scope of service to be offered in the proposed service area and the resources and expertise to be used to implement and administer those services;
- g. A provision requiring that any coverage procured by the alliance shall include a provision requiring that the members of the alliance be notified directly by the insurer of cancellation due to nonpayment of premium;
- h. The personal biographical information and descriptions of the officers of the alliance;
- i. A written statement demonstrating that those involved in the operation of the alliance have the expertise and experience to effectively and professionally represent small employers and their eligible employees in a fiduciary capacity; and

j. A affirmative demonstration that financial controls are in place as a condition of licensure; and

(2) Proposed substantive changes in the policy or operations of the business plan shall not take effect without approval from the commissioner.

(c) Each applicant shall file with the commissioner the following information or documents:

(1) A business plan;

(2) A plan that affirmatively demonstrates that the alliance has the technical expertise and capacity to serve a significant group of small employers and their eligible employees over the service area;

(3) A plan that demonstrates that the alliance has the technical capacity to provide service quality throughout the entire service area;

(4) The applicant's articles of incorporation, bylaws or other formation and business operation documents;

(5) A list of officers and directors of the applicant and the contract administrator, if one is employed, and personal biographical information or firm descriptions for each;

(6) Evidence of security and prudence in the accounting, deposit, collection, handling, and transfer of moneys;

(7) A description of the service area in which the alliance will be marketing and offering services; and

(8) An annual report that shows:

a. The alliance is operating in a sound financial fashion;

b. The alliance is not a risk-bearing entity and obtains insurance to cover its member; and

c. The alliance is utilizing sound financial controls and money management.

(d) The commissioner shall approve all assessments made upon member small employers by the alliance for costs incurred or anticipated in connection with the operation of the alliance.

(e) The following acts shall constitute a basis for denial, non-renewal or suspension of an application or existing license, following notice and an opportunity for hearing: If the acts are intentional, they shall constitute a basis for revocation, after notice and hearing.

(1) Failure to comply with the provisions of RSA 420-G;

(2) Failure to comply with the business plan filed and approved by the commissioner;

(3) Failure to maintain adequate financial controls;

(4) Failure to extend alliance health benefit plan coverage to eligible employees;

(5) Failure to comply with a lawful order of the commissioner;

- (6) Engaging in an unfair or deceptive act or practice;
- (7) Filing any necessary form, including the application form, with the commissioner that contains false or materially incorrect information or omissions; or
- (8) Misappropriation, conversion, illegal withholding, or refusal to pay over upon proper demand any moneys that belong to a person or participating carrier and that have been entrusted to the alliance in its fiduciary capacity.

(f) The commissioner shall require the removal and replacement of managerial or marketing staff or third party contractors if necessary to remedy compliance or performance problems.

Ins 3401.05 Powers and Duties of and Restrictions on Purchasing Alliances.

- (a) A purchasing alliance shall:
 - (1) Offer health benefit plans that are available to all small employers in the alliance's service area;
 - (2) Establish administrative and accounting procedures for operating the alliance, for providing services to member small employers and enrollees and for preparing an annual budget;
 - (3) Establish conditions of participation for small employers that conform to the requirements of this part and RSA 420-G and include, but are not limited to, the following:
 - a. Assurances that the member small employer is a valid small employer group and is not formed for the purpose of securing health benefits coverage; and
 - b. Prepayment of premiums or other mechanisms to assure that payment will be made for coverage;
 - (4) Provide that each eligible employee is permitted to enroll in any health benefit plan offered by the participating carrier or carriers so long as the health benefit plan provides coverage where he or she works or lives;
 - (5) Establish conditions of participation for the participating carrier or carriers;
 - (6) Establish conditions of participation for producers;
 - (7) Place into its contracts between the alliance and member small employers the following:
 - a. A provision stating that, for administrative purposes, the alliance shall be the policyholder or contract holder of the health benefit plan on behalf of member small employers, their eligible employees and eligible dependents; and
 - b. A provision stating that the participating carrier shall issue a certificate of coverage, or equivalent document, specifying the essential features of the health benefit plan's coverage to each enrolled eligible employee.
 - (8) Transmit enrollment and eligibility information to the participating carrier or carriers on a timely basis;

(9) Maintain a trust account or accounts for deposit of all moneys received and collected for the operation of the alliance;

(10) The alliance, its board members, employees and agents shall have a fiduciary duty with respect to all moneys received or owed to it to assure payments of its obligations and a full accounting to its members and the commissioner; and

(11) Assure the offering of the same premiums and prices on negotiated health care coverage to all member classes equally, and treat all members within a class equally with regard to membership and administrative fees and benefits of membership;

(b) A purchasing alliance may:

(1) Receive, review, and act on grievances against participating carriers by member small employers or enrollees;

(2) Undertake any activity necessary to administer the alliance, including marketing and publicizing the alliance, and assuring that the participating carrier or carriers, contractors, participating small employers, and enrollees are in compliance with alliance requirements;

(3) Establish contracts with the participating carrier or carriers to provide health coverage to alliance members;

(4) Establish contracts with small employer members;

(5) Contract with qualified, independent third parties for services necessary to carry out the powers and duties of the alliance;

(6) Enter into all other contracts as are necessary to carry out the powers and duties of the alliance;

(7) Appoint a beneficiary advisory council to evaluate alliance functions and the performance of the participating carrier or carriers in order to assess the efficacy of the operations for member small employers and enrollees;

(8) Appoint advisory committees, as necessary, to provide technical assistance in the operation of the program and in carrying out the purposes of this part;

(9) Assess member small employers a fee for costs incurred or anticipated in connection with the operation of the alliance;

(10) Require as a condition of membership that all employers include all their eligible employees or a minimum percentage of employees in coverage purchased through the alliance;

(11) Require an employer that makes a membership application to the purchasing alliance that would entail enrolling fewer than 100 percent of the employer's eligible employees or dependents to demonstrate that the enrollment section is based on factors other than risk selection;

(12) Reject or allow a carrier to reject an employer from membership, or drop or allow a carrier to drop a member small employer, if the member fails to pay premiums or engages in fraud or material misrepresentation in connection with a health benefit plan purchased through the alliance;

(13) Contract with licensed insurance producers to market and service coverage made available through the alliance to its members. Compensation for producers shall not vary based on the actual or expected health status or medical utilization of the group to which coverage is sold;

(14) Define a set of standardized health benefit plans which the alliance shall contract to purchase from the participating carrier or carriers;

(15) Exclude a carrier or freeze enrollment in a carrier for failure to achieve established quality, access or information reporting standards of the alliance;

(16) Require that member employers and their eligible employees continue to pay administrative fees that are part of the contract with the alliance if a member employer or enrollee cancels prior to completion of a contract period;

(17) Negotiate with the participating carrier or carriers the premium rates charged for coverage offered through the alliance consistent with the rating restrictions contained in RSA 420-G;

(18) Request such information from the participating carrier or carriers as is necessary to carry out the powers and duties of this part;

(19) Sue or be sued, including taking action necessary for securing legal remedies on behalf of the alliance, member small employers, or enrollees;

(20) Apply for loans or loan guarantees from the New Hampshire business finance authority under RSA 162-A for the purpose of funding startup costs;

(21) Receive and accept loans, grants, funds, or anything of value from a public or private entity including:

- a. Employer premiums;
- b. Employer participation fees;
- c. Employer late fees;
- d. Employer reinstatement fees;
- e. Producer fees paid by the employer;
- f. Interest earned on accounts;
- g. Funds paid by the participating carrier or carriers for a pooled marketing effort;
- h. Public sector and private sector grants, gifts, loans or donations; or
- i. Other lawful sources;

(22) The alliance may also receive and accept contributions of property, labor, or any other thing of value;

(23) Expend funds to pay:

- a. The participating carrier or carriers under their contracts;
 - b. Third parties for services provided under contract;
 - c. Employer billing adjustments;
 - d. Producer fees;
 - e. The alliance's administrative expenses; and
 - f. All other expenditures duly authorized by the board;
- (24) Develop standard enrollment procedures for enrolling small employers and their eligible employees and dependents;
- (25) Establish procedures for annual or rolling open enrollment periods;
- (26) Establish procedures and mechanisms for billing and collection of premiums from member small employers, including any share of the premium paid by employee enrollees;
- (27) Develop model contracts which detail for potential contractors the requirements of the alliance and provide a copy of the contract to interested carriers;
- (28) Develop and make available a list of objective criteria that shall be met by the participating carrier or carriers in order to be eligible to participate in the alliance;
- (29) Provide to alliance members clear, standardized information on each participating carrier or carriers and the qualified health benefit plans offered by each participating carrier or carriers, including information on:
- a. Price;
 - b. Benefits;
 - c. Enrollee costs;
 - d. Quality;
 - e. Patient satisfaction;
 - f. Enrollment; and
 - g. Grievance procedures and rights and responsibilities.
- (30) Provide qualified health benefit plan comparison sheets to participating members and their employees with information regarding coverage that may be obtained through the participating carrier or carriers;
- (31) Require the participating carrier or carriers to maintain health care data;
- (32) Specify in contracts with the participating carrier or carriers how all premiums shall be transmitted and the frequency of that transmission and how penalties and grace periods on late payments of premiums shall be calculated;

(33) Review information and recommendations from consumers, employers, participating carriers or health care providers and other sources and, issue periodic reports or recommendations to the commissioner to improve the delivery of health services and the purchasing of health coverage; and

(34) Exercise all powers reasonably necessary to carry out the powers granted and duties imposed under this part.

(c) A purchasing alliance shall not:

(1) Purchase health care services, assume risk for the cost or provision of health care services, or otherwise contract with health care providers for the provision of health care services to enrollees;

(2) Exclude from membership in the alliance a small employer, eligible employee or eligible dependent of an eligible employee who is in the service area of the alliance and who agrees to pay fees for membership and the premium for health coverage through the alliance and who abides by the bylaws and rules of the alliance;

(3) Prohibit the participation of small employers, or differentiate classes of membership, based on industry type, experience, gender, family status, education, health status, income, or other means in conflict with the rating methodology specified in RSA 420-G:4;

(4) Charge a fee not directly related to the operation of the alliance or for non-health coverage related activities;

(5) As a condition of membership, require a small employer, eligible employee, or eligible dependent to subscribe to limited health coverage or non-health coverage related products or services;

(6) Engage in any competitive act or practice that results in the selection of member small employers and enrollees based on industry type, experience, gender, family status, education, health status, income, small employer size, or other factors in conflict with the rating methodology specified in RSA 420-G:4; or

(7) Require or take any action inconsistent or in conflict with state laws or rules.

(d) The contracts entered into by the alliance shall:

(1) Establish performance standards for specific contractual elements;

(2) Set liquidated damages for breach of the contract;

(3) Require the participating carrier or carriers to notify the member small employer of cancellation of the policy;

(4) Require the member small employer in the event of cancellation to arrange for continuation and conversion coverage for its employees to the extent provided under federal and state law; and

(5) Contain a provision stating that if after timely receipt of the premium payment from the employer, the alliance fails to make the premium payment to the insurer, with the result that coverage is terminated, that the alliance shall be liable for benefits to the same extent as the insurer or carrier would have been liable if coverage had not been terminated.

Ins 3401.06 Requirements for Participating Carriers.

- (a) To qualify as a participating carrier, a carrier shall demonstrate all the following operating characteristics:
- (1) That it is licensed and in good standing with the department of insurance;
 - (2) That it has the ability to administer health coverage, to provide adequate service, and to comply with all contractual requirements of the alliance;
 - (3) That it has the ability to provide enrollees with access to covered services;
 - (4) That it has the ability to provide coverage for enrollees in any service area in which the carrier plans to participate through the alliance;
 - (5) That it has the ability to arrange and pay for quality health care services;
 - (6) That it has the ability to provide standard data required by the alliance, in a manner prescribed by the alliance, including information on:
 - a. Plan performance;
 - b. Enrollee satisfaction;
 - c. Provider payment and incentive structures;
 - d. Such other standard surveys prescribed by the alliance; and
 - e. Meeting satisfaction measures established by the alliance;
 - (7) That it has the ability to meet quality of care standards established by government and industry authorities;
 - (8) That it is financially strong and has competent management;
 - (9) That it has a procedure in place to address enrollee grievances and appeals; and
 - (10) That it has the ability to achieve satisfactory enrollment levels within the service area in which the carrier is licensed.
- (b) In evaluating the requirements for a participating carrier, the alliance shall consider:
- (1) The minimum geographic service area and participation requirements, maximum thresholds for premium rates, and standards for determining whether a carrier operates efficiently;
 - (2) The ability of a carrier to provide high quality services within a service area;
 - (3) Pricing and the competitiveness of each bid from a carrier; and
 - (4) The effect of contracting with additional carriers on the administrative costs of the alliance and member small employers, the efficiency of the alliance, and the competitiveness of the premiums that will be paid to the participating carrier or carriers;
- (c) A participating carrier or carriers that contract with or employ health care providers shall have mechanisms to accomplish all of the following, in a manner satisfactory to the alliance:

- (1) Review the quality of care covered;
 - (2) Review the appropriateness of care covered; and
 - (3) Provide accessible health care services;
- (d) Each participating carrier shall:
- (1) Meet the standards established by the alliance pursuant to this part;
 - (2) Provide data and information as required by the alliance;
 - (3) Comply with all laws and rules regarding underwriting, rating, claims handling, sales, solicitation, licensing, fair marketing, unfair trade practices, the provisions of this part, and other applicable state statutes;
 - (4) Enroll and terminate individuals in the manner specified by the alliance; and
 - (5) Comply with other requirements established by the alliance pursuant to this part;
- (e) Nothing in this part shall prohibit the participating carrier or carriers from contracting with particular health care providers or types, classes, or categories of health care providers, or setting reimbursement methodology.

(f) A participating carrier or carriers contracting to provide one or more such benefit plans through the alliance shall be deemed to be in compliance with the guaranteed issue and renewal requirements in RSA 420-G:6, III with respect to such benefit plan or plans so long as it actively markets, issues, and renews such plan or plans to all eligible employees of all member small employers of the alliance.

(g) In the event that the participating carrier or carriers elect to terminate its or their contracts with the alliance, the participating carrier or carriers shall:

- (1) Provide advance notice of its or their decision to the alliance; and
- (2) Provide notice of the decision at least 180 days prior to the non-renewal of health coverage to the member small employers and employee enrollees.

Ins 3401.07 Marketing Health Benefit Plans.

(a) The alliance shall establish marketing standards for use by the participating carrier or carriers.

(b) Any marketing, advertisement, or educational material for health coverage sold through the alliance shall be approved by the alliance prior to its use. The alliance shall review all materials submitted to it and the materials shall be deemed approved if not disapproved within 30 days. The alliance may, through its contracts with the participating carrier or carriers, deem certain classes of materials to be approved.

(c) The alliance shall make approved marketing materials available to member small employers in an efficient and standardized manner. These materials shall include, but not be limited to, an accurate summary of benefit plans, rates, cost, and accreditation information relating to the offerings of the participating carrier or carriers.

(d) This section shall not be construed to prohibit or to compel the alliance or a participating carrier from using the services of a producer.

(e) The participating carrier or carriers, contract administrator or producer of the participating carrier or carriers, or independent insurance producer shall not engage, directly or indirectly, in an activity or marketing practice that would encourage member small employers or eligible employees to:

- (1) Refrain from enrolling in a health benefit plan offered through the alliance because of their health status or claims experience;
- (2) Seek coverage from other participating carriers because of their health status or claims experience; or
- (3) Enroll or fail to enroll in the alliance because of their health status or claims experience.

(f) Alliance members shall notify the commissioner of marketing practices or materials that are contrary to the provisions of this section. The commissioner shall monitor compliance with this section and investigate possible violations of the provisions of this section or other related unfair trade practices.

Ins 3401.08 Risk Adjustment Mechanism. In order to reduce the incentive for risk selection and to improve fairness and efficiency, and in the absence of a risk adjustment mechanism established by rule or order for the entire small group market, an alliance may establish a payment mechanism to adjust payments to the participating carrier or carriers prospectively or retrospectively based on the amount of risk covered by each participating carrier. To establish such a mechanism, the alliance may appoint an advisory committee composed of individuals that have risk adjustment and actuarial expertise to help establish the risk adjusters.

Ins 3401.09 Conflict of Interest. No officer or board member or director or contract administrator of a purchasing alliance or members of their households may be employed by, be a consultant for, be a member of the board of directors of, or be affiliated with, or otherwise be a representative of a carrier or other insurer. This provision shall not preclude an officer or board member or director or contract administrator of a purchasing alliance from purchasing health coverage through the alliance.

Ins 3401.10 Purchasing Alliance Distinguished From Multiple Employer Welfare Arrangement. Purchasing alliances shall not bear risk.

Ins 3401.11 Purchasing Alliance Evaluation.

(a) Purchasing alliances shall submit an annual evaluation to the commissioner which includes the following:

- (1) The progress achieved in making affordable health care coverage available to employees of member small employers;
- (2) The progress achieved in assuring choice of health carriers and health care coverage to employees of member small employers;.
- (3) The need, if any, for financial incentives or other mechanisms to increase participation in the alliance; and
- (4) Other changes in the law or procedure needed to accomplish the purposes set out in Ins 3401.01.

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