

Outline of HB 668 (Market Rules Bill)

(including changes made by amendment to be offered 2/28/13)

Overall Purpose of HB 668

- Align the market rules for New Hampshire's individual and small group health insurance markets with the requirements that will take effect in 2014 under the Affordable Care Act ("ACA")
- Avoid federal preemption
- Avoid dual and conflicting regulatory requirements
- Insurance Department-requested bill

Key Changes Made By HB 668 to Align State and Federal Market Rules

- **Rating factors** – as of 2014, ACA allows 4 rating factors in individual and small group markets:
 - o tier/family v. self-only coverage;
 - o geographic rating area;
 - o age; and
 - o tobacco use.Bill moves to the ACA rating factors, which is a change from the status quo for both markets.
- **Limited open enrollment periods** in individual market
 - o under the ACA, the individual market both inside and outside the exchange must limit enrollment to certain specified periods
 - o goal: prevent people from waiting until they need health care to purchase insurance.
- **Definition of employee** for purposes of determining whether an employer belongs in the small or large group market
 - o currently the state and federal definitions used for this purpose are different
 - state only counts "eligible" employees – e.g., full-time
 - federal definition includes all employees
 - o state could retain its separate definition, but this would likely cause confusion
 - o Bill adopts the federal definition and counting methodology.
 - o Using federal definition results in **the elimination of "groups of one"** in the small group market, because self-employed individuals are not considered employees.
- **List billing v. composite billing** for small employer groups
 - o under ACA, carriers must use list billing to calculate bills in the small group market
 - o List billing requirement applies to small groups both inside and outside of the Exchange.
 - o As amended, the bill includes language requiring carriers to provide employers with a billing statement that shows premiums on both a list bill and a composite bill basis.

- **“Clean Up” changes:**
 - o **Essential Health Benefits** –all policies issued in the individual and small group markets must cover specific services listed in the ACA; NHID will enforce requirement.
 - o **Grandfathered health plans** –plans that were in effect on March 23, 2010 and that have not been substantially changed are considered “grandfathered” and will remain subject to the current rating rules even after 2014.
 - o **Medical underwriting** –the bill prohibits medical underwriting in the individual and small group markets (except for grandfathered individual plans). Large group products continue to have medical underwriting.
 - o **Guaranteed issue and renewal** - the bill requires guaranteed issue and renewal in the individual and small group markets (except for grandfathered individual plans).
 - o **Preexisting condition exclusion** –the bill prohibits preexisting condition exclusions in the individual and group markets (except for grandfathered individual plans).
 - o **Prohibition on Lifetime and Annual Limits** – as amended, the bill prohibits lifetime and annual limits in the individual, small group and large group markets (except for grandfathered individual plans).
 - o **Coverage of Preventive Health Services** - as amended, the bill requires coverage of preventative health services without any cost-sharing in the individual, small group and large group markets (except for grandfathered individual plans).
 - o **Repeal of NH Health First** - This benefit product is underutilized and is inconsistent with the ACA’s single risk pool requirement.

Specific Issues Where There May Be Questions (or Where Amendment Makes Changes)

- **Geographic rating zones**
 - o Federal regulations allow states to establish geographic rating zones, based on regional cost differences.
 - o Currently, New Hampshire law does not allow geographic rating.
 - o Allowing geographic rating could more accurately reflect actual regional cost differences, but could also potentially result in higher costs in areas where gaining access to health care is already challenging.
 - o As amended, bill would keep status quo of not allowing geographic rating; the state would be considered a single geographic zone.
 - o As amended, bill would require the Department to study and issue a report on the potential approaches to geographic rating and their likely impacts.
- **Uniform age rating levels**
 - o Federal regulations establish a specific methodology for age rating
 - o States may deviate from this methodology under certain circumstances as long as the ceiling and floor are maintained.
 - o Bill adopts the federal methodology, and makes it mandatory for all carriers.

- **Tobacco rating in small group market**
 - o Tobacco use is presently a permissible rating factor in the individual but not the small group market.
 - o Under the ACA, tobacco is a permissible rating factor in both markets. However, under a proposed federal regulation, the rating factor may be used in the small group market only in connection with a wellness program that allows any individual participating in a tobacco cessation program to fully offset the rate increase that is due to the tobacco rating factor.
 - o The bill would make tobacco a permissible rating factor in the small group market, and keep it as a permissible factor in the individual market.

- **Size of employers in small group market**
 - o The ACA defines the small group market as 1-100 employees, but allows states whose small group is defined as 1-50 employees to keep that definition until 2016.
 - o As of 2016, small group will be defined as 1-100 employees in all states.
 - o The bill would keep the 1-50 small group size until 2016, and then change to 1-100.

- **Participation requirements**
 - o The bill retains the state's existing 75 percent (37.5 percent for multiple plans) employee participation requirement
 - o As amended, the bill excludes from the calculation employees who leave the employer coverage because it is unaffordable, and who qualify for a tax credit on the exchange. It also excludes employees (or their dependents) covered by another health plan, including a government plan such as Medicaid.
 - o The bill would require the SHOP exchange to use the same 75 percent participation requirement, calculated with respect to participation in the SHOP as a whole.

- **Special open enrollment period for individuals where employer coverage is unaffordable –**
Because the employer's open enrollment period may not mirror the enrollment period in the individual market, the bill would allow the department to adopt rules creating a special open enrollment period in the individual market (including the exchange) for employees whose employer-offered coverage is unaffordable.

- **Health reform oversight committee consistency language**
 - o As amended, the bill readopts RSA 420-N:6, which enables the oversight committee to declare a conflict of law and authorize the Department to enforce a federal law provision on a temporary basis pending legislative action.
 - o Given that the federal standards are complex and still evolving, this provision is needed to avoid preemption of state law and to preserve the state's role as the primary regulator of insurance.

- **Prohibition of Off Anniversary Sales - REMOVED**

- The amendment to HB 668 would remove in its entirety the prohibition on off anniversary sales during the second half of 2013 (section 26 of the original bill).
- **Prohibition on lifetime or annual limits and coverage of preventative health services**
 - These “clean up” changes were inadvertently omitted from the original bill, and are added by the amendment.
- **Requirement that carriers provide small employers with composite as well as list billed premiums.**
 - The original bill gave employers the option to request composite as well as list billed premium rates.
 - Based on concern that employers would believe they were required to use the list bill rates, the amendment makes it mandatory for carriers to provide both types of rates.