



**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

21 SOUTH FRUIT STREET SUITE 14
CONCORD, NEW HAMPSHIRE 03301

Roger A. Sevigny
Commissioner

Alexander K. Feldvebel
Deputy Commissioner

February 28, 2013

The Honorable Edward Butler, Chairman
House Commerce and Consumer Affairs Committee
Room 302LOB
Concord, New Hampshire 03301

Re: HB 668, Relative to Group and Individual Health Insurance Market Rules

Dear Chairman Butler:

The New Hampshire Insurance Department ("Department") strongly supports HB 668, Relative to Group and Individual Health Insurance Market Rules, with the proposed amendment. The bill, which was filed at the Department's request, has as its primary goal the preservation of New Hampshire's regulatory authority over health insurance. After the new market rules under the federal Affordable Care Act ("ACA") take effect on January 1, 2014, state insurance laws will be preempted if their enforcement would prevent the application of the federal law. However, the federal law preserves state regulatory authority where state law does not conflict with federal law.

As amended, HB 668 makes the minimal changes required to preserve state regulatory authority, while retaining longstanding New Hampshire-specific provisions that do not conflict with the ACA. Preserving the State's authority as the primary insurance regulator promotes clarity for the regulated market. A system of dual regulation in which both the State and the federal government assert jurisdiction would be difficult to navigate for consumers, regulators and the regulated community. Such inefficiencies could lead to time delays in enforcement actions and varying opinions and interpretations of rules.

The amendment offered today by the bill's sponsors reflects changes recommended by the Department in view of recent input from stakeholders. Since producing our first draft of the bill, the Department has been meeting with carriers, producers, consumer organizations and other interested parties about this bill and implementation of the ACA generally. The Department found strong support among stakeholders for those provisions of the bill that are necessary to align New Hampshire's market rules with the ACA, thereby preserving the state's regulatory authority. However, there was not always stakeholder consensus about the best public policy approach in those areas where the ACA gives states flexibility to adopt one of several possible approaches.

Hon. Edward Butler, Chairman
House Commerce and Consumer Affairs Committee
February 28, 2013
page 2.

In light of this stakeholder feedback, the Department's recommended approach to this complex regulatory area has evolved. The original draft of this bill included a number of provisions that departed from current market regulatory standards in a way designed to address anticipated changes in the individual and small group markets under the post-January 1, 2014 regulatory structure. The amendment changes these provisions to more closely adhere to current New Hampshire regulatory standards, deferring the policy debate on these regulatory questions until after we have seen the effect of the ACA-mandated changes.

The following is an overview of the key provisions of the amended bill:

The bill aligns New Hampshire's market rules for the individual and small group markets with those of the ACA by eliminating underwriting and preexisting condition waiting periods and adopting the ACA's allowable rating factors and employee counting rules. The rating rule change with the greatest potential for controversy is that of geographic rating. The ACA allows states to decide whether to allow state-specific geographic rating areas, and the original draft of the bill would have given the Department authority to adopt geographic rating areas by county. As amended, based on our discussions with stakeholders, the bill would retain the status quo which prohibits geographic rating. The amended bill would also require the Department to prepare a report highlighting alternative approaches to geographic rating and their likely impacts. This would facilitate legislative consideration of the issue in a future session.

The bill aligns employee counting rules by adopting the federal definition of employee. One result of this change is to eliminate "groups of one" or sole proprietors from the small group market. The bill retains the existing definition of a small employer as one having 50 or fewer employees until January 1, 2016, the latest date allowed under the ACA. As of 2016, the bill would align the definition of small employer with the federal standard of 100 or fewer employees.

The bill addresses anti-selection concerns in a manner that is consistent with federal law. It provides for a limited open enrollment period in the individual market for both Exchange and non-Exchange sales. The bill leaves in place the minimum participation requirements in current law for the small employer market; however, these provisions have been extended to apply to the SHOP exchange, and modified to address concerns we heard at our various stakeholder meetings.

One significant issue not addressed in this bill is what to do with the various market mechanisms (including the state and federal high risk pools and the state risk subsidy mechanism) that were previously set up to address excess risk in the individual market. The central question is whether New Hampshire should either retain the existing state mechanisms, or set up any other form of reinsurance or risk subsidy to supplement the federal reinsurance mechanism that will be in place as of January 1, 2014. As the Department has previously informed this committee, market transition issues

Hon. Edward Butler, Chairman
House Commerce and Consumer Affairs Committee
February 28, 2013
page 3.

after that date are likely to be significant, particularly in the individual market. This bill does not address these issues because they are addressed in HB 526, also pending before this committee.

Thank you for your consideration of HB 668, which would accomplish the critically important role of preserving the state's primary regulatory authority on health insurance matters as the ACA takes effect in 2014. The attached outline provides more detail about the changes made by the bill. In addition, my staff stands ready to answer any questions, or to provide any other assistance that would promote clarity on these issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Sevigny', written over a horizontal line.

Roger A. Sevigny
Commissioner

cc: House Commerce Committee Members