Overview of NH's AHP bill – 1/3/19

Goal and limitations of bill

- The goal of this bill is to allow NH to take advantage of the new flexibility allowed under the US Department of Labor's (USDOL) Association Health Plan (AHP) rule finalized in June 2018 to **create a new health insurance option for NH small employers**, including self-employed persons.
- The bill as drafted **does not fully address all potential risk-selection impacts on existing markets** that may occur from the introduction of this new option. The NHID is conducting modelling and analysis to determine whether there is a substantial likelihood of adverse market effects based on healthier groups and individuals being drawn to the new AHP coverage. In the event the analysis supports a need for more substantial mitigation measures such as a risk adjustment mechanism, the NHID will work with the bill sponsor and stakeholders to craft appropriate language.

Context/background

- There is a **need in NH for new health insurance options**, particularly for **small employers and self-employed individuals** who do not qualify for federal subsidies
    - Available options in current small group market are not attractive to all small employers
        - Some employers encourage employees to use exchange/subsidized coverage
        - Some continue to renew grandfathered or "transition" coverage
    - Self-employed are part of individual market – face high premiums if not subsidy eligible
    - Lack of options increases likelihood of NH individuals and businesses being attracted to fraudulent, unregulated coverage
- The **USDOL rule** finalized in June 2018 **creates an opportunity for states** to craft new approaches ("Pathway II") without being preempted by federal law
    - Prior NH-specific options for NH small employers (e.g. purchasing alliance law) could not take effect/were not commercially attractive because of federal preemption
    - Regulation of association coverage/multiple employer welfare arrangements (MEWAs) is an **area of state authority**, and the USDOL rule clearly establishes this as an area within which states can enact state-specific legislation
- **Pathway II coverage** allows a group of small employers to come together and be rated as a single large group/separate risk pool, without being subject to all small group ACA rating rules
    - Pathway II coverage is subject to large group ACA requirements:
        - No preexisting condition exclusions; guaranteed issue/renewability
        - Preventive services/no cost sharing
        - Prohibition on lifetime/annual dollar limits; maximum out-of-pocket limits
        - Mental health parity
        - Dependent coverage under age 26
        - Internal/external appeals
    - Required characteristics of Pathway II association (required under USDOL rule)
        - Formal organizational structure with governing body, by-laws, etc.
        - Association's functions/activities controlled by employer members

        - Commonality of interest among employer members
            - Same trade, industry, line of business or profession, or
            - Principal place of business in same region
        - At least one substantial business purpose other than offering health coverage
        - Coverage is only available to employer members' employees and dependents
        - Association not controlled by a health insurer or its subsidiary/affiliate
- The **NHID worked with stakeholders** to frame up a Pathway II approach that we believe will **attract carrier participation** and thus serve as a viable option for NH businesses and self-employed individuals. The NHID continues to work with the group on ways to **minimize adverse effects on existing markets**

Overview of what the bill does

- Amends NH's existing law (RSA 415-E) on multiple employer welfare arrangements (MEWAs) to update it and create a new "Pathway II" for association coverage consistent with the USDOL rule
- Creates a new type of coverage, without eliminating any existing coverage
    - Existing MEWAs (there are only a small number in NH), individual and small group coverage, including grandfathered/transition coverage, would continue to exist
    - Retains existing NH law as much as possible
- New AHP Pathway II coverage would allow **greater flexibility in rating parameters and benefit structure**, making it attractive to insurance carriers
- Pathway II coverage would include **consumer protections**, preventive services without cost-sharing, grievance and appeal procedures, network adequacy requirements, and **coverage of essential benefits** like maternity, hospitalization and mental health services
- Pathway II coverage, whether self-funded or fully-insured, would be **fully regulated** by the NH Insurance Department, overseeing financial solvency, claims payment, and treatment of consumers

Key issues for legislative debate

- **Does it make sense to allow new flexibility for AHPs under the USDOL rule**? **Or would it be better just to retain existing NH law, which precludes Pathway II AHPs?**
    - *Pro*: Creates a new option for small employers/self-employed
    - *Pro*: Clear standards in the new law would make it easier for NHID to detect and stop sale and marketing of fraudulent coverage, thereby protecting consumers and leveling the playing field
    - *Con*: Possible adverse effect on risk pool of existing markets - if significant flexibility allowed in rating and benefit design for AHPs, could cause exodus of heathier groups, escalating premiums
    - *Con*: Uncertainty created by changing market rules could lead to premium increases in existing markets even apart from risk selection concerns.
- **If new AHPs are allowed, how much rating variation should be permissible at member employer level?**
    - *Background:* Under federal law, AHPs are not subject to the rating rules that apply to the individual and small group markets. The USDOL rule gives states flexibility on rating factors for AHPs, so long as health status is not used as a factor at the member employer level, or in allowing employers to join the association. Carriers have expressed that they would need some

flexibility in rating among employer groups in order for the AHP market to be commercially attractive. For example, in the large group market, rates may vary by age at 7:1 or 8:1.

- Options considered during the working include:
  - Community rating (no rating variation) for all employer members of an association
  - Variation consistent with small group market rules (3:1 age, 1.5:1 tobacco)
  - Some middle ground on age rating (4:1? 5:1?), plus tobacco rating.

- **How many NH covered lives must an association have to be rated as a large employer/own risk pool?**
  - *Background:* Large employers may be rated based on claims experience. However, a group must be large enough to enable the spreading of risk. In addition, the appropriate minimum size for an association is likely larger than for an employer because of the potential for risk selection.
    - Original bill draft: 100
    - Carrier suggestion: 250
    - Current purchasing alliance law: 3,000
- **How much benefit variation should be permissible?**
  - *Background:* Under federal law, AHPs are subject to many significant market reforms and consumer protections, but are not required to cover the Essential Health Benefits (EHBs) that must be covered in the individual and small group markets.
    - The EHBs consist of ten categories of services: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services; prescription drugs; rehabilitative and habilitative services; laboratory services; preventive and wellness services and chronic disease management; and pediatric and wellness services, including oral and vision care.
    - New Hampshire has also adopted its own set of coverage mandates that go beyond the EHBs – including, for example, coverage for hearing aids and bariatric surgery.
    - USDOL rule lets states choose whether AHPs must cover EHBs and/or state mandates.
  - The working group expressed strong support for coverage of most EHBs, particularly for mental health and SUD treatment services. Carriers expressed that some flexibility in benefit design was needed to make AHPs a viable market from their perspective.
  - Options considered during the working group include:
    - Require coverage of EHBs in strict conformity with NH's EHB benchmark (includes state-specific mandates)
    - Require coverage of EHBs, but allow use of any state's benchmark (state-specific mandates not required for self-funded coverage)
    - Some flexibility on particular EHBs (e.g., pediatric dental and vision)
- **What might be done to quantify and mitigate the risk to existing small group market?**
  - As noted above, this is a central question, and further information and analysis is needed to fully determine the likely magnitude of the risk/adverse effects.
  - As one mitigating measure, the bill contains restrictions on movement back and forth between the AHP and small group markets. Additional measures may be needed, including a possible risk adjustment mechanism
  - Language for additional measures may be added to the bill later.

Overview of key points of bill – current draft

- **Rating rules**
  - Minimum size of association to be rated as separate risk pool: **250 NH covered lives**
  - Association level rating
    - **Association may be rated as large group, including claims experience**
    - **Association may not condition employer membership on any health factor**
  - Member employer level rating
    - **Member employer rates must be guaranteed for a 12 month rating period**
    - **Member employers may not be rated differently based on**
      - **Any health factor**
      - **Geographic location**
    - **Member employers may be rated differently based on:**
      - **Age, up to 5:1**
      - **Tobacco use, up to 1.5:1**
  - Individual employee level contribution
    - **Not regulated by NHID or addressed by bill – regulated by USDOL under ERISA**
- **Covered services /consumer protections**
  - **Coverage in all 10 EHB categories required**
    - **Includes mental health, maternity, hospitalization, etc.**
    - **Pediatric dental/vision can be in standalone plan**
    - **Conformity with NH benchmark NOT required, but must be actuarially equivalent**
  - **Level of coverage equivalent to 60% of full actuarial value of benefits provided under the plan**
  - **NH-specific consumer protections**
    - **Network adequacy**
    - **Balance billing protections**
    - **Unfair trade practices law**
    - **Market conduct examination authority by NHID**
- **Reducing impacts on other markets/level playing field**
  - **Employer that leave chooses to leave small group market for pathway II coverage, or vice versa, may not return to prior coverage for 12 months**
  - **Coverage is subject to premium tax, other NH-specific assessments**
  - **Coverage is subject to claims data reporting (NH-CHIS) and other NHID data reporting**
  - **[Risk adjustment mechanism may be added later, based on analysis of likely market impacts]**
- **Solvency/financial regulation**
  - **A surplus requirement equal to approximately three months of premium**
  - **A security deposit requirement**
  - **Financial examination authority**