Adopt Ins 8000 to read as follows:

CHAPTER Ins 8000 MINIMUM STANDARDS FOR FAMILY AND MEDICAL LEAVE WAGE REPLACEMENT COVERAGE

Statutory Authority: RSA 400-A:15, I; RSA 415-A:2 and 3

Ins 8001.01 Applicability and Scope. Ins 8000 shall apply to all individual and group policies and certificates that provide coverage for family and medical leave wage replacement benefits ("FMLI") issued for delivery in this state on and after the initial effective date of this part. Any policy or certificate of annuity or life, health, or accident and sickness insurance that provides benefits for family and medical leave wage replacement, by way of amendment, rider or otherwise, shall comply with this part.

Ins 8001.02 Definitions.

(a) "Adverse benefit determination" means a denial, reduction, termination of, or a failure to provide or make payment, in whole or in part, for a benefit, including any such denial, reduction, termination of, or failure to provide or make payment that is based on a determination of a participant's or claimant's eligibility to participate in a plan and including a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for a benefit, including on appeal.

(b) "Average weekly wage" means the total wages earned by an insured over a specified period of time, divided by the number of weeks in that period.

(c) "Base period" means the period of time specified in a policy or certificate that will be used in the calculation of wage replacement benefits.

(d) "Benefit period" means the 12-month fixed period or 12-month rolling period starting with the employee's first day of family or medical leave, during which the insured receives benefits.

(e) "Benefits waiting period" is the time measured from the effective date of coverage during which no benefits are provided.

(f) "Beneficiary" means the person or persons designated as such in the application.

(g) "Care" means the participation in providing assistance or supervision to a family member for a serious health condition or bonding with a child.

(h) "Conditionally renewable" means that renewal of the policy is based on certain conditions.

(i) "Disability" means "disability" as defined in Ins 6205.02.

(j) "Disability income protection coverage" means a policy or certificate that provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from either sickness or injury.

(k) "Eligibility waiting period" means the period of time that an employee must be in the employ of an employer or an individual must be a member of a union or a permitted group association before becoming eligible for coverage under this part.

(l) "Elimination period" means the length of time beginning with the first day of leave for a qualifying event during which no benefits are paid to the insured.

(m) "Family leave" means leave from work for a qualifying serious health condition or event of the insured's family member.

(n) "Family member" means a biological, step, adopted, foster, or legal guardian of a son or daughter, a spouse, a biological, step, adoptive, or foster parent, a legal guardian, or other person as defined as a family member in the policy or certificate.

(o) "Intermittent leave" means periods of non-consecutive leave taken within a 12-month benefit period in intervals of not less than 4 hours in one day.

(p) "Medical leave" means leave from work because of the qualifying serious health condition of the insured.

(q) "Serious health condition" means any illness, injury, impairment, or physical or mental condition that involves inpatient care, treatment, or continuing treatment by a health care provider, including treatment for substance abuse consistent with American Society of Addiction Medicine criteria and treatment for a mental health condition consistent with American Psychiatric Association criteria.

(r) "Wages" means the amount of income received by the insured through employment.

Ins 8001.03 Minimum Standards for Benefits for All Policies and Certificates.

(a) All policies shall provide wage replacement benefits that pay a minimum of 60% of the insured's average weekly wage for absence from employment for at least the following reasons:

(1) To care for the insured's parent, spouse, or child who has a serious health condition;

(2) Bonding with the employee's child during the first twelve months after the child's birth, or the first 12 months after the placement of the child for adoption or foster care with the employee; and

(3) Because of any qualifying exigency arising from foreign deployment with the armed forces, or to care for a service member with a serious injury or illness as permitted under the federal Family and Medical Leave Act, 29 U.S.C. section 2612(a)(1)(e), if the insured is the service member's spouse, child, parent, or next of kin.

(b) All policies shall contain a provision on wages which identifies the various income sources or components that are considered wages and those that are not. The provision on wages shall exclude benefits such as formal sick pay plans, individual and group disability income insurance plans, and retirement plans.

(c) In the calculation of wage replacement benefits:

(1) Wages just before qualifying leave began may be considered on a periodic basis so long as the periodic basis is consistent with the treatment of other terms referring to an insured's wages used in the policy and used to arrive at certain wage replacement benefit payment amounts for a claim; and

(2) The base period used in determining wage replacement benefits may include wages of an insured which occurred in excess of one year but no more than 2 years just prior to the qualifying leave for which the claim is made. If the base period used is longer than the immediately preceding 12 months, the provision shall include policy language which allows for use of the highest level of wages during a calendar year or consecutive 12-month basis of an insured occurring during the period in excess of one year but no more than 2 years.

(d) All policies shall provide a minimum of 6 weeks of wage replacement benefits during a 12-month benefit period as a result of qualifying leave pursuant to (a) above. Policies may provide additional benefits for the insured's own serious health condition, treatment therefore, or recovery therefrom that makes the employee unable to perform the functions of the employee's job. Benefits shall be capped at a maximum of 12 total combined weeks of wage replacement during a 12-month benefit period.

(e) Benefits shall be available in increments of at least 4 hours on any one day on an intermittent and continuous basis.

(f) A policy may require an insured to utilize employer sponsored paid time off benefits before insurance benefits under the policy or certificate will be paid.

(g) A policy may require an elimination period, subject to the following:

(1) The elimination period shall not be longer than 7 calendar days;

(2) The insured's intermittent leave for a qualifying reason, consisting of at least 4 hours on any one day, shall count toward satisfying an elimination period;

(3) The policy or certificate shall not:

a. Require more than one elimination period per benefit period; or

b. Specify a separate elimination period for injury and a separate elimination period for sickness; and

(4) The policy shall not require a separate elimination period for medical leave and a separate elimination period for family leave.

(h) A policy may contain a benefit waiting period of up to 7 months before coverage provides benefits.

(i) A policy or certificate may reserve a subrogation right for payment of wage replacement benefits where the insured receives a payment for lost income from a third party because an act or omission of the third party caused the serious health condition for which leave was taken.

(j) "Noncancellable" or "noncancellable and guaranteed renewable" shall be used only in a policy that the insured has the right to continue in force by the timely payment of premiums set forth in the policy until the individual's eligibility for Social Security normal retirement age, during which period the insurer shall not unilaterally change any provision of the policy while the policy is in force.

(k) Termination of the policy or certificate shall be without prejudice to a loss that commenced while the policy or certificate was in force. The loss of the insured shall be a condition for the extension of

benefits beyond the period the policy was in force, limited to the earlier of either the duration of the benefit period, if any, or payment of the maximum benefits.

Ins 8001.04 Required Policy Provisions.

(a) Every policy or certificate shall contain a provision for the payment of any benefits due to an insured that are unpaid at the time of the insured's death to be payable to the beneficiary designated, or if none are designated, to the estate of the individual. The provision shall state that the insured has the right to change the beneficiary and the consent of the beneficiary shall not be required to terminate or assign the policy, change the beneficiary, or make any other changes in the policy.

(b) Every policy or certificate shall contain a severability provision and a clause instructing that the policy or certificate shall be interpreted or applied so as to avoid a conflict with federal and state law.

(c) The policy or certificate shall provide for payment of benefits to insureds weekly, biweekly, or at such intervals as the employee is customarily paid wages.

(d) The policy or certificate shall provide notice of the insured's right to commence legal action relating to coverage or other contractual disputes.

(e) Each policy of individual insurance or group insurance shall include a renewal, continuation, or nonrenewal provision. The language or specification of the provision shall be consistent with the type of contract to be issued. The provision shall be appropriately captioned, appear on the first page of the policy, and clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(f) Declination of renewal or termination of group insurance provisions shall be as follows:

(1) No insurer shall decline to renew a group policy unless the cause of its action is based on one or more of the reasons for declination of renewal stated in the policy;

(2) Any reason to decline renewal shall be stated in a group policy and shall be objective in nature;

(3) Declination of renewal shall be defined so as to include any termination of a group policy by the insurer for any reason except for nonpayment of premiums; and

(4) Notice of nonrenewal or termination of a group policy by the insurer shall provide for at least 45 days prior notice to the policyholder.

(g) "Group" policies shall only be issued, as specified below:

(1) A policy issued to an employer, or to the trustees of a fund established by an employer, for which the employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

a. The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment, regardless of the wages paid such employees;

b. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors, or partnerships if the business of the employer and of such affiliated corporations, proprietors, or partnerships is under common control through stock ownership, contract, or otherwise;

c. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership;

d. The premium for the policy shall be remitted by the policyholder or by some other designated person acting on behalf of the policyholder, either from the employer's funds, or from funds contributed by the insured employees, or from both; and

e. A policy on which no part of the premium is to be derived from funds contributed by the insured employees shall insure all eligible employees;

(2) A policy issued to a labor union or Taft-Hartley Trust, or to the trustees of a fund established by one or more unions, for the benefit of the members of the labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives, or agents, is subject to the following requirements:

a. The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both;

b. The premium for the policy shall be remitted by the policyholder by some other designated person acting on behalf of the policyholder, either wholly from the union's funds or from funds contributed by the insured members specifically for the insurance, or from both; and

c. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance shall insure all eligible members;

(3) A policy issued to a professional employer leasing company that is authorized under RSA 277-B:2(V) and RSA 277-B:9-11. The premium for the policy shall be remitted by the policyholder;

(4) A policy issued to a bona fide professional association which is legally obligated to regulate the professional requirements and licensure of a regulated profession and satisfies all of the following:

a. Has been in existence for more than 5 years;

b. Was formed for purposes other than providing insurance;

c. The policy is issued to the association and the insurer or properly licensed third party administrator administers the plan and issues the certificates to the insureds; and

d. The association does not receive any compensation, fees, royalties, or other consideration in connection with the provision of insurance; and

(5) A policy issued to a group that is expressly authorized in applicable statutes.

Ins 8001.05 Prohibited Policy Provisions.

(a) No policy shall contain a provision that the leave period shall be considered to commence with the date on which written notice is actually received by the insurer.

(b) A policy shall not limit, reduce, or exclude coverage by type of sickness, accident, treatment, or medical condition, except a serious health condition arising out of:

(1) Aviation, except as a fare-paying passenger;

(2) Professional sports;

(3) Incarceration;

(4) The insured's commission of a felony, riot, or driving under the influence of drugs, alcohol, or combination thereof; and

(5) Harm to a family member brought about by the willful intention of the insured.

(c) Arbitration shall be prohibited, except for policies issued pursuant to a collective bargaining agreement that requires arbitration.

(d) Coverage and benefits shall not be reduced or denied on the basis that the insured's employment was terminated as a result of taking leave for a qualifying event for which benefits were sought or where the insured's employer subsequently becomes insolvent, bankrupt, or ceases operations.

(e) No policy or certificate shall provide benefits for medical leave that arises from a work-related illness or injury and for which worker's compensation insurance benefits are paid.

(f) No policy or certificate shall provide benefits for medical leave that arises from the insured's disability and for which the insured receives disability income insurance benefits.

(g) Benefits shall not be integrated with or offset by unemployment benefits received by an insured pursuant to RSA 282-A:14.

(h) No policy or certificate shall include provisions for job or employment protections.

Ins 8001.06 Required Claim Provisions.

(a) Health carriers that offer FMLI shall establish and maintain reasonable procedures governing the filing of benefit claims, notification of benefit determinations, and appeal of adverse benefit determinations, hereinafter collectively referred to as claims procedures.

(b) Individual policies and group certificates shall include a description of the process for appealing and resolving adverse benefit determinations which comply with Ins 1001. If applicable to the employer plan sponsor, the process shall comply with procedures under the Employee Retirement Income Security Act of 1974.

(c) The carrier shall provide a claimant with written or, if requested by the claimant, electronic notification of any adverse benefit determination.

(d) The notification of any adverse benefit determination shall set forth, in a manner calculated to be understood by the claimant:

(1) The specific reason or reasons for the adverse determination;

(2) Reference to the specific policy provisions on which the determination is based;

(3) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and

(4) A description of the carrier's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action following an adverse benefit determination on review.

Ins 8001.07 Required Disclosure Provisions. The following disclosures shall be conspicuously placed on the front page of the policy and certificate:

(a) A statement of whether the policy is conditionally renewable, guaranteed renewable, or non-cancellable;

(b) For policies or certificates that do not provide medical leave benefits, a statement in bold indicating the limitation;

(c) A statement as to any benefit limits or reductions due to attainment of certain ages; and

(d) “An employer’s granting of leave under the Family and Medical Leave Act or other types of allowable leave does not guarantee benefits under this [policy/certificate]. Granting of benefits for qualifying leave under this [policy/certificate] does not guarantee any right to continued employment or job protection.”

Ins 8001.08 Outline of Coverage. An outline of coverage, in the format and sequence prescribed below, shall be issued in connection with policies meeting the standards of Ins 8000:

“[COMPANY NAME]

FAMILY [AND MEDICAL] LEAVE WAGE REPLACEMENT COVERAGE

OUTLINE OF COVERAGE

(1) Read Your Policy Carefully—This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

(2) Family and Medical Leave insurance coverage is designed to provide, to persons insured, wage replacement benefits resulting from a covered serious medical condition or qualifying event under the Family and Medical Leave Act, subject to any limitations set forth in the policy. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.

(3) [A brief specific description of the benefits contained in this policy.]

(4) [A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in paragraph (3) above.]

(5) [A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.]"

Ins 8001.09 Rates. Rates associated with FMLI coverage shall be reviewed and approved in accordance with Part Ins 4100 or as otherwise indicated under applicable New Hampshire law.

Ins 8001.10 Waiver of Rules.

(a) The commissioner, upon the commissioner's own initiative or upon request by an insurer, shall waive any requirement of this part if such waiver does not contradict the objective or intent of the rule and:

(1) Applying the rule provision would cause confusion or would be misleading to consumers;

(2) The rule provision is in whole or in part inapplicable to the given circumstances;

(3) There are specific circumstances unique to the situation such that strict compliance with the rule would be onerous without promoting the objective or intent of the rule provision; or

(4) Any other similar extenuating circumstances exist such that application of an alternative standard or procedure better promotes the objective or intent of the rule provision.

(b) No requirement prescribed by statute shall be waived unless expressly authorized by law.

(c) Any person or entity seeking a waiver shall make a request in writing to the commissioner.

(d) A request for a waiver shall specify the basis for the waiver and proposed alternative, if any.

(e) Waivers that are granted shall be in effect for the period of time requested and approved by the commissioner.

APPENDIX

Rule	**Specific State Statute the Rule Implements**
Ins 8001.01 – App & Scope	RSA 400-A:15, I; RSA 415-A:2 and 3
Ins 8001.02 – Definitions	RSA 400-A:15, I; RSA 415-A:2 and 3
Ins 8001.03 – Min. Standards	RSA 400-A:15, I; RSA 415-A:2 and 3
Ins 8001.04 – Req. Pol. Prov.	RSA 400-A:15, I; RSA 415-A:2 and 3
Ins 8001.05 – Prohibited Prov.	RSA 400-A:15, I; RSA 415-A:2 and 3
Ins 8001.06 – Req. Claim Prov.	RSA 400-A:15, I; RSA 415-A:4-a and 415-A:4-b; 29 CFR 2560
Ins 8001.07 – Req. Disclosures	RSA 400-A:15, I; RSA 415-A:4
Ins 8001.08 – Outline	RSA 400-A:15, I; RSA 415-A:4
Ins 8001.09 – Rates	RSA 400-A:15, I
Ins 8001.10 – Waiver	RSA 400-A:15, I; RSA 541-A:22, IV