03/20/2025 0951s

2025 SESSION

25-1168
08/05

SENATE BILL ***297-FN***

AN ACT relative to pooled risk management programs.

SPONSORS: Sen. Carson, Dist 14

COMMITTEE: Finance

ANALYSIS

This bill:

I. Enables the secretary of state to require abatement of insufficient assets or to seek receivership, if necessary, of a pooled risk management program.

II. Requires assessment of each participating member of the pooled risk management program on a pro rata basis to satisfy the amount of the deficiency.

III. Requires the governing board of the pooled risk management program to use a standard of care, diligence, prudence, and skill in the management of the program.

IV. Provides for the assessment of a pooled risk management program's participating members, if required, after an actuarial calculation.

V. Provides for contingency reserve standards depending on the pooled risk management programs line of coverage and requiring a contingency reserve replenishment if a program's contingency reserves fall below the minimum level.

VI. Requires pooled risk management programs to make certain public disclosures to prospective and actual member political subdivisions.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Five

AN ACT relative to pooled risk management programs.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Paragraphs; Pooled Risk Management; Definitions. Amend RSA 5-B:2 by inserting the following new paragraphs after paragraph IV:

V. "Administration", as used in RSA 5-B:5, I(c), means reasonable expenses for risk management, including processing, evaluation and settlement services incurred in the payment of claims and other related losses and for auditor, actuarial, and accounting services for administration of the pooled risk program. The reasonability of an expense for administration under this chapter may be determined in an examination or administrative hearing commenced by the secretary of state pursuant to RSA 5-B:4-a.

VI. "Reserves" means claims reserves (case reserves and incurred but not reported (IBNR)reserves), contribution deficiency reserves, and contingency reserves. "Contingency reserves" means the amount of surplus to be retained by the pooled risk management program for the upcoming plan year as may be reasonably established and subsequently required to cover expected and unforeseen or extraordinary claim and administrative losses and liabilities.

VII. "Excess insurance" means reinsurance.

VIII. "Assessments" means a provision that, if the assets of the pooled risk management program are at any time actuarially determined to be insufficient to discharge its claim and administrative losses and liabilities and other legal obligations of the plan, the program shall, within 30 days of such a determination, collect additional contributions from its participating members for the amount needed to make up the deficiency.

2 New Section; Insolvency or Financial Impairment. Amend RSA 5-B by inserting after section 4-a the following new section:

5-B:4-b Insolvency or Financial Impairment.

I. If at the end of any fiscal month, the contingency reserve of a pooled risk management program for health coverage is at or below 8 percent of annual paid claims or of a pooled risk management program for workers compensation and other property and casualty lines is at or below 20 percent of annual contributions as determined by the prior year's audited fiscal year financial statements, the pooled risk management program shall notify its members in writing within 30 days that a potential assessment may be necessary pursuant to RSA 5-B:4-b, II if the pooled risk management program's contingency reserve continues to decrease and shall submit a written proposed course of action to the secretary of state with respect to alleviating the contingency reserve deficiency. Any such notification to a pooled risk management program's members under this section shall include an estimate of the amount of that potential assessment.

II. If, at the end of any fiscal month, the contingency reserve of a pooled risk management program for health coverage is at or below 4 percent of annual paid claims or if a pooled risk management program for workers compensation and other property casualty lines is at or below 10 percent of annual contributions, the pooled risk management program shall notify the secretary of state of the contingency reserve deficiency within 5 business days. The secretary of state shall notify the program's governing board of the deficiency and shall have the power to issue to the governing board an order requiring abatement of the deficiency.

III. If the governing board fails to comply with the order within 30 days after the date of the notice, the secretary of state may apply to and seek from the superior court an order requiring the pooled risk management program to abate the deficiency or receivership of the program, as the circumstances may require, and authorizing the secretary of state or any officer designated by the secretary of state to oversee the required abatement or receivership. The pooled risk management program shall reimburse the secretary of state for the cost incurred for such oversight.

IV. If a pooled risk management program is determined to be insolvent, financially impaired, or otherwise unable to discharge its claim and administrative losses and liabilities and other legal obligations of the plan, each participating member of the program shall be assessed on a pro rata basis calculated by the amount of its annual contribution to satisfy the amount of the deficiency.

3 Standards of Organization and Operation. Amend RSA 5-B:5 to read as follows:

5-B:5 Standards of Organization and Operation.

I. Each pooled risk management program shall meet the following standards of organization and operation. Each program shall:

(a) Exist as a legal entity organized under New Hampshire law.

(b) Be ***member-owned, but*** governed by a board the majority of which is composed of elected or appointed public officials, officers, or employees. Board members shall not receive compensation but may be reimbursed for mileage and other reasonable expenses. Board members shall comply with the provisions of RSA 15-A. ***Board members shall have a fiduciary responsibility to the member political subdivisions, which includes the duties of good faith and loyalty, avoiding conflicts of interest, and managing the pooled risk management program solely for the benefit of the political subdivisions. Board members shall use a standard of care, diligence, prudence, and skill in the management of the pooled risk management program.***

(c) Return all earnings and surplus in excess of any amounts required for administration, claims, reserves, and purchase of excess insurance to the participating political subdivisions.

(d) Provide for an annual audit of financial transactions by an independent certified public accountant. The audit shall be filed with the department and distributed to participants of each pooled risk management program.

(e) Be governed by written bylaws which shall detail the terms of eligibility for participation by political subdivisions, the governance of the program and other matters necessary to the program's operation. Bylaws and any subsequent amendments shall be filed with the department.

(f) Provide for an annual actuarial evaluation of the pooled risk management program. The evaluation shall [~~assess the adequacy of~~] ***calculate*** contributions ***and assessments*** required to fund any such program and ***shall calculate*** the reserves necessary to be maintained to meet expenses of all incurred and incurred but not reported claims and other projected needs of the plan. The annual actuarial evaluation shall be performed by a member of the American Academy of Actuaries qualified in the coverage area being evaluated, shall be filed with the department, and shall be distributed to participants of each pooled risk management program.

(g)***(1) To ensure funds are available should an assessment become necessary, political subdivision members of a pooled risk management program providing health line of coverage shall establish a risk management program health care stabilization fund of at least 4 percent of their annual contributions, to be held and managed by the member in a designated, distinct capital reserve fund under RSA 34 et seq. and RSA 35 et seq. as applicable to each political subdivision. The fund's purpose shall be for payment of any assessments of the member by the pooled risk management program and obligations of the member related to health care or health benefits. Any excess earnings and surplus returned by the program to the member may also be deposited into the fund.***

(2) If a pooled risk management program's contingency reserve is above 4 percent of annual payments as of the effective date of this chapter, each participating member shall build its fund at a rate of at least 1 percent of the member's annual contributions per year up to 4 percent, beginning no later than its next setting of fiscal year budgets.

(3) If a pooled risk management program's contingency reserve is below 4 percent of annual payments as of the effective date of this chapter, each participating member shall in the first year build its fund at a rate of at least 1 percent of the member's annual contributions plus the amount of a pro rata share of the contingency reserve's shortfall. The pro rata share provided to the pooled risk management program member shall be calculated by the risk pool and approved by the secretary of state, beginning no later than the member's next setting of fiscal year budgets. After the first year, each of those members shall build its fund at a rate of at least 1 percent of the member's annual contributions per year up to 4 percent.

(4) Once a member has built up its fund to hold at least 4 percent of the member's annual contributions, if the fund is below the 4 percent threshold at the end of a fiscal year, the member shall rebuild the fund at a rate of at least 1 percent of its annual contributions per year up to 4 percent, beginning no later than its next setting of fiscal year budgets.

(5) The risk management program health care stabilization funds may be invested, and any earnings on fund monies shall be added to the fund. A participating political subdivision member may close its fund if that member's participation in a pooled risk management program's health line of coverage ends, and the member does not begin participating in another pooled risk management program's health line of coverage.

(h) Provide notice to all participants of and conduct 2 public hearings for the purpose of advising of potential rate increases, the reasons for projected rate increases, and to solicit comments from members regarding the return of surplus, at least 10 days prior to rate setting for each calendar year.

(i)(1) For workers' compensation and other property and casualty lines of coverage, pooled risk management programs shall maintain a contingency reserve with a minimum of 30 percent of member contributions for the then current fiscal year and a maximum of 40 percent of member contributions for the then current fiscal year.

(2) For a health line of coverage, pooled risk management programs shall maintain a contingency reserve with a minimum of 12 percent of member contributions for the then current fiscal year and a maximum of 16 percent of member contributions for the then current fiscal year.

(3) At the end of each fiscal year, if a pooled risk management program's contingency reserves fall below the minimum level as set forth in this section, the program shall add to the next calculation of annual member contributions a "contingency reserve replenishment" equal to that shortfall. This contingency reserve replenishment shall only be collected from members who participated in the fiscal year for which the replenishment is calculated and such replenishment may be made after a member has discontinued membership in the program.

(4) By July 1, 2027, and for every 4 years thereafter, the secretary of state or their designee shall hold a hearing with all pooled risk management programs and any affected party to receive input and data regarding the contingency reserve rate ranges outlined in subparagraphs (i)(1) and (i)(2) above. A report of the findings of the hearing, which shall include all written testimony and reports submitted during the hearing, and include any recommendations made by the secretary of state or their designee, shall be delivered to the governor, senate president, speaker of the house, and the chair of any committee with jurisdiction over pooled risk management programs by October 1, 2027.

(5) The board of directors of a pooled risk management program may, after vote of the board of directors and written notification to the governing bodies of its members, submit a written request to the secretary of state for a one-year increase to the maximums stated in RSA 5-B:5, I(i)(1) of an additional 5 percent for workers' compensation and other property casualty coverage and RSA 5-B:5, I(i)(2) of an additional 2 percent for health coverage. Any written request pursuant to this section with respect to any increase of the maximum percentage shall include a resolution of the board of directors, copies of the written notifications made by the pooled risk management program to its members governing bodies, a report by a certified auditor of the current financial position of the program, a detailed analysis explaining the purpose of the temporary increase, and an actuarial analysis conducted by an actuary with qualifications as detailed in RSA 5-B:5, I(f) of the impact to the contribution and finances of the program. The secretary of state shall approve or deny the request within 30 days of receipt of any such request.

II. If a pooled risk management program fails to provide for an annual audit or an annual actuarial evaluation, the department shall perform or cause to be performed the required audit or evaluation and shall be reimbursed the cost by the program.

4 New Paragraph; Declaration of Status; Tax Exemption; Liability and Disclaimer Requirement. Amend RSA 5-B:6 by inserting after paragraph III the following new paragraph:

IV. Any such program operating under this chapter shall publicly and conspicuously disclose by including a written disclaimer in any and all member agreements, contracts, bylaws, and contribution quotes and renewals between the program and its prospective and actual member political subdivisions that, at a minimum, notifies the political subdivision of the following:

(a) The pooled risk management program does not function like an insurance company and is not an insurer.

(b) The pooled risk management program, to the extent it is self-insured, does not provide guaranteed cost or fixed cost coverages.

(c) The pooled risk management program may collect from participating members assessments or replenishments whenever required in the event the program's assets are insufficient to discharge its claim and administrative losses and liabilities and other legal obligations of the plan, in the event of insolvency, or in the event contingency reserves fall below the required minimum under this chapter.

5 Effective Date.

I. RSA 5-B:5, I(i) as amended by section 3 of this act shall take effect July 1, 2026.

II. The remainder of this act shall take effect upon its passage.

LBA
25-1168
4/8/25

SB 297-FN- FISCAL NOTE

AS AMENDED BY THE SENATE (AMENDMENT #2025-0951s)

AN ACT relative to pooled risk management programs.

FISCAL IMPACT: This bill does not provide funding, nor does it authorize new positions.

Estimated State Impact				
	FY 2025	**FY 2026**	**FY 2027**	**FY 2028**
Revenue	$0	$0	$0	$0
Revenue Fund(s)	None			
Expenditures*	$0	Decrease $250,000+	Decrease $250,000+	Decrease $250,000+
Funding Source(s)	General Fund			
Appropriations*	$0	$0	$0	$0
Funding Source(s)	None			

***Expenditure = Cost of bill** ***Appropriation = Authorized funding to cover cost of bill**

Estimated Political Subdivision Impact				
	FY 2025	**FY 2026**	**FY 2027**	**FY 2028**
County Revenue	$0	$0	$0	$0
County Expenditures	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Local Revenue	$0	$0	$0	$0
Local Expenditures	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill introduces measures to ensure the financial stability of pooled risk management programs. It allows the Secretary of State to address insufficient assets and even take control of a program if necessary. Members providing health coverage must create a stabilization fund, totaling at least 4% of annual contributions over four years, to cover program assessments and healthcare obligations. The bill outlines how a risk pool can seek a temporary increase in its reserve limit and requires greater transparency through public disclosures for program members.

The Department of State indicates that this bill will save $250,000+ in general funds each year and securities funds that go unspent will lapse back to the General Fund. The anticipated savings are from the reduced need to hire external legal and actuarial experts that help the state bring legal action against pooled risk management programs that are not acting as a fiduciary to their participating members.

The New Hampshire Municipal Association (NHMA) states that this bill would require municipalities participating in pooled health plans to set aside extra funds in reserve accounts to cover potential financial shortfalls. If the health pool's reserves drop too low or if it becomes insolvent, municipalities would face additional financial obligations through special assessments. They would also need to rebuild reserve accounts over time if used. Municipalities must agree in writing to take responsibility for these potential financial risks, including any losses from the prior year if they leave the pool. This could lead to increased costs and challenges for municipalities, especially since raising extra funds may require special town meetings.

The New Hampshire Association on Counties (NHAC) states that this bill could lead to an indeterminable increase in expenditures for counties involved in pooled risk management programs. The potential increase stems from the need to gather additional contributions from members if an annual audit, actuarial determination, or Secretary of State investigation reveals insufficient assets. Additionally, there could be administrative costs that would be taken on by pool members also increasing expenditures.

AGENCIES CONTACTED:

Department of State, New Hampshire Association of Counties, and New Hampshire Municipal Association