

# TITLE X

## PUBLIC HEALTH

### CHAPTER 126-Q

#### NEW HAMPSHIRE VACCINE ASSOCIATION

##### Section 126-Q:1

###### 126-Q:1 Definitions. –

In this chapter:

I. "Assessable coverage" means:

(a) Health coverage as defined in RSA 420-G:2, IX;

(b) Stop loss coverage that conforms with RSA 415-H:3, or other group excess loss insurance purchased against the risk that any particular claim, or total liability, will exceed a specified dollar amount; or

(c) Group health plan, as defined by 42 U.S.C. 300gg-91(a).

II. "Assessable entity" means any:

(a) Health maintenance organization, as defined by RSA 420-B:1, VI.

(b) Third party administrator, as defined by RSA 402-H:1, I.

(c) Entity providing administrator services and required to register with the insurance commissioner under RSA 402-H:11-a or RSA 402-H:11-b.

(d) Insurance company licensed pursuant to RSA 401:1, IV.

(e) Health service corporation, as defined by RSA 420-A:1, III.

III. "Assessable lives" means all children under 19 years of age residing in the state who have assessable coverage written or administered by an assessable entity, with the exception of children whose vaccines are paid for under the federal Vaccines for Children program, established under 42 U.S.C. section 1396s.

IV. "Assessment" means the assessable entity's liability with respect to childhood vaccines determined in accordance with this chapter. For purposes of rate setting and medical loss ratio calculations, all association assessments are considered pharmaceutical or medical benefit costs and not regulatory costs. In the event of any insolvency or similar proceeding affecting any payer, assessments shall be included in the highest priority of obligations to be paid by or on behalf of such payer.

V. "Association" means the New Hampshire vaccine association.

VI. "Board" means the board of directors of the New Hampshire vaccine association.

VII. "Commissioner" means the commissioner of the department of health and human services.

VIII. "Estimated vaccine cost" means the estimated cost to the state over the course of a state fiscal year of the purchase, distribution, and administration of vaccines purchased at the federal discount rate by the department of health and human services.

IX. "Provider" means a person licensed by this state to provide health care services to persons or a partnership or corporation made up of those persons.

X. "Total non-federal program cost" means the estimated vaccine cost less the amount of federal revenue available to the state for the purchase, distribution, and administration of vaccines.

XI. "Vaccine" means any preparations of killed microorganisms, living attenuated organisms, or living fully virulent organisms that are approved by the federal Food and Drug Administration and recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention and have been authorized by the commissioner of the department of health and human services for administration to children of the state of New Hampshire under the age of 19 years for the purposes of producing or artificially increasing immunity to particular life-threatening and disabling diseases.

**Source.** 2002, 279:2. 2008, 375:17. 2013, 260:1, eff. July 24, 2013. 2015, 276:154, eff. July 1, 2015.

##### Section 126-Q:2

**126-Q:2 Creation of Association.** – There is hereby created a nonprofit corporation to be known as the New Hampshire vaccine association. The association is formed to assess assessable entities for the cost of vaccines provided to certain children in New Hampshire.

**Source.** 2002, 279:2. 2013, 260:2, eff. July 24, 2013.

### Section 126-Q:3

**126-Q:3 Membership, Powers, and Duties of the New Hampshire Vaccine Association.** –

- I. The New Hampshire vaccine association shall be comprised of all assessable entities.
- II. The New Hampshire vaccine association shall be a not-for-profit, voluntary corporation under RSA 292 and shall possess all general powers of a not-for-profit corporation.
- III. The board of directors shall include:
  - (a) Three representatives selected from the assessable entities currently writing, maintaining, or administering assessable coverage through a voting process where votes are based on assessable lives. The plan of operation shall provide details for this selection process.
  - (b) Two health care provider representatives appointed by the commissioner.
  - (c) The commissioner of the department of health and human services, who shall serve as an ex-officio member.
  - (d) The commissioner of the department of insurance who shall serve as an ex-officio member.
  - (e) One member appointed by the governor and council who shall represent self-insured entities.
  - (f) One public member appointed by the speaker of the house of representatives.
  - (g) One public member appointed by the president of the senate.
- IV. The directors' terms and appointments shall be specified in the plan of operation adopted by the New Hampshire vaccine association.
- V. The board of directors of the association shall:
  - (a) Prepare and adopt articles of association and bylaws.
  - (b) Prepare and adopt a plan of operation.
  - (c) Submit the plan of operation to the commissioner of insurance for approval after the consultation with the commissioner.
  - (d) Conduct all activities in accordance with the approved plan of operation.
  - (e) On an annual basis, no later than November 1 of each year, establish the amount of the assessment for the succeeding year.
  - (f) Enter into contracts as necessary or proper to collect and disburse the assessment.
  - (g) Enter into contracts as necessary or proper to administer the plan of operation.
  - (h) Sue or be sued, including taking any legal action necessary or proper for the recovery of any assessment for, on behalf of, or against members of the association or other participating person.
  - (i) Appoint from among its directors, committees as necessary to provide technical assistance in the operation of the association, including the hiring of independent consultants as necessary.
  - (j) Determine an assessment amount and collect payments from assessed entities in accordance with RSA 126-Q:4.
  - (k) Submit an annual report to the commissioner of insurance, in a manner and form determined by the commissioner, listing the association membership base, providing a count of assessable lives by assessable entity, identifying changes in assessable lives by assessable entity, describing the collection of assessments, listing payment delinquencies, and containing such other related information as the commissioner may require.
  - (l) Allow each assessable entity up to 45 days after the closing of each calendar quarter to report its assessable lives and remit its corresponding assessment amount as calculated pursuant to RSA 126-Q:4.
  - (m) Collect assessments from assessable entities as calculated under RSA 126-Q:4 and deposit said assessments less the association's administrative costs annually and reserves with the state treasurer to the credit of the vaccine purchase fund established pursuant to RSA 141-C:17-a. At the written request of the association following a majority vote of the board of directors, any funds forwarded to the state treasurer for the vaccine purchase fund remaining unexpended for childhood vaccines, shall promptly be returned to the association.
  - (n) Be authorized to enter into one or more agreements with other applicable authorities in surrounding states to reduce the risk of duplicate assessments and to assure availability of vaccines for children who are residents of this state but who receive vaccination services in other states. Any costs relating to any such agreement shall be

- considered additional vaccine costs of the program for purposes of determining the association's assessments.
- (o) Adopt procedures by which affiliated assessable entities calculate their assessment on an aggregate basis and procedures to ensure that no assessable life is counted more than once. Unless otherwise determined by the board, the assessable entity responsible for the payment of the provider's administrative costs for childhood vaccines shall be the entity responsible for reporting assessable lives and payment of the corresponding assessment.
- (p) Submit an annual report regarding the association's activities, its financial reports, and any newly-approved vaccines adopted by the department of health and human services to the president of the senate, the speaker of the house of representatives, and the governor.
- (q) Perform any other functions as may be necessary or proper to carry out the plan of operation.

**Source.** 2002, 279:2. 2008, 375:1, 12-14. 2013, 260:3-5. 2014, 199:1, 2, eff. July 11, 2014.

## Section 126-Q:4

### 126-Q:4 Assessment Determination. –

- I. The board shall determine an assessment for each assessable entity in accordance with this section, except that no assessment shall be made based on children excluded from assessable lives whose vaccines are paid for under the federal Vaccines for Children program, established under 42 U.S.C. section 1396s. An assessment determination made pursuant to this section is a pharmaceutical cost and not a regulatory cost for purposes of calculating the carrier's medical loss ratio.
- II. In determining the assessment amount, the board shall:
- (a) Estimate the total non-federal program cost for the succeeding year;
- (b) Add its anticipated operating costs for the succeeding year and such additional working capital reserves as may be established by the board from time to time;
- (c) Add a reserve of up to 10 percent of the anticipated cost under subparagraph (a) for unanticipated costs associated with providing vaccines to children covered; and
- (d) Subtract the amount of any unexpended assessments collected in the preceding year along with any unexpended interest accrued to the fund during the preceding year.
- III. The board shall include in its plan of operations, details regarding the timing for assessment collections, and the form and format assessable entities shall use to calculate assessments.
- IV. The board shall include in its plan of operation details regarding payment due dates, grace periods, late payment fees, interest, and other details regarding the collection of assessments.
- V. The board may determine an interim assessment for new vaccines or unanticipated shortfalls in the association's ability to meet childhood vaccine funding needs. The board shall calculate the interim assessment in accordance with paragraph II, and the interim assessment is payable the calendar quarter that begins no less than 30 days following the establishment of the federal contract price. The board shall not impose more than one interim assessment per year, except in the case of a public health emergency declared in accordance with state or federal law.
- VI. In the event that the association discontinues operation for any reason, any unexpended assessments, including unexpended funds from prior assessments in the state vaccine purchase fund, shall be refunded to payees in proportion to the respective assessment payments by payees over the most recent 8 quarters prior to discontinuation of association operations.

**Source.** 2002, 279:2. 2005, 177:112. 2008, 375:15. 2013, 260:6, eff. July 24, 2013. 2015, 276:155, eff. July 1, 2015.

## Section 126-Q:5

### 126-Q:5 Powers and Duties. –

In addition to the duties and powers enumerated elsewhere in this chapter:

- I. The commissioner of insurance shall, after notice from the association, issue a show cause order to any assessable entity that fails to comply with the association's plan of operation. In addition to late fees and other penalties imposed by the association, assessable entities may, after a finding of just cause, be subject to a

minimum fine of \$5,000, a maximum fine of 25 percent of the total amount of delinquent assessments, and licensure suspension.

I-a. The insurance commissioner shall annually review the assessment report required under RSA 126-Q:3, V(k) to ensure that all assessable entities are participating in the association and that all assessable entities have accurately reported assessable lives. The association shall remedy any problem identified by the commissioner with respect to assessable entities and assessable lives.

II. The commissioner and the commissioner of insurance may adopt rules, pursuant to RSA 541-A, as necessary to carry out the purposes of this chapter.

**Source.** 2002, 279:2. 2008, 375:2, 16. 2013, 260:7, eff. July 24, 2013.

### **Section 126-Q:6**

**126-Q:6 Examinations and Annual Reports.** – The board of directors shall submit to the commissioner, no later than 120 days after the close of the association's fiscal year, a financial report in a form approved by the commissioner.

**Source.** 2002, 279:2, eff. June 17, 2002.

### **Section 126-Q:7**

**126-Q:7 Exemption From Taxes.** – The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

**Source.** 2002, 279:2, eff. June 17, 2002.

### **Section 126-Q:8**

**126-Q:8 Immunity From Liability.** – There shall be no liability on the part of and no cause of action of any nature shall arise against any association member or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or the commissioner's representatives, for any action or omission by them in the performance of their powers and duties under this chapter.

**Source.** 2002, 279:2, eff. June 17, 2002.

### **Section 126-Q:9**

**126-Q:9 Severability of Chapter.** – If any provisions of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

**Source.** 2002, 279:2, eff. June 17, 2002.