

# NEW HAMPSHIRE VACCINE ASSOCIATION

## Plan of Operation

WHEREAS, the New Hampshire General Court has enacted New Hampshire Revised Statutes Annotated ("RSA") Chapter 126-Q (the "Act") establishing a mechanism to assess insurers for the costs of vaccines provided to certain children in New Hampshire;

WHEREAS, the Act authorizes the formation of a not-for-profit, voluntary corporation known as the New Hampshire Vaccine Association (the "Association");

WHEREAS, the Association is governed by a Board of Directors (the "Board");

WHEREAS, the Act requires the Board to develop a Plan of Operation (the "Plan");

WHEREAS, the legislature has amended the Act from time to time and the Board, following such amendments, has updated the Plan to implement changes in the Act; and

WHEREAS, the Board has developed the following Plan as required by the Act:

### ARTICLE I

#### Effective Date / Amendment

This Plan and any amendments to same may be recommended from time to time by the Board and shall become effective upon the approval of the Commissioner of the Department of Insurance (the "Insurance Commissioner") after consultation with the Commissioner of the Department of Health and Human Services (the "HHS Commissioner"). The Board may propose amendments at any time. Amendments may include a retroactive effective date if such date is proposed in the amendments and approved by the Insurance Commissioner. The completion of any blanks in the exhibits will not constitute an amendment to this Plan, but the change in the structure or substance of any exhibit will be considered an amendment requiring approval.

### ARTICLE II

#### Conformity to Act; Immunity from Liability; Certain Definitions

The Association shall perform its functions under this Plan and in accordance with the Act, which is hereby incorporated as part of this Plan. Nothing in the Articles, the Bylaws, this Plan, or the actual operation of the Association shall create any private right of action against (1) any member of the Board, (2) the Association, (3) any administrator or executive director of the Association, (4) the Insurance Commissioner, (5) the HHS Commissioner or (6) any employee, personal representative, or agent of any of the foregoing. All such persons shall at all times enjoy immunity from liability to the fullest extent afforded by provision of any law, including, without limitation, RSA 126-Q:8 and RSA 292:2. Terms used but not defined in this Plan which are defined in RSA 126-Q:1 shall have the meanings set forth in that statute.

**ARTICLE III**  
**Management of the Association and its Assets; Board**

The Association shall have no employees. Rather, the Board shall select one or more third parties to provide services needed to administer the Association and to implement the steps contemplated in the Plan. Included among such third parties, the Board may retain an administrator (the "Administrator") to serve as its executive director and manage the day-to-day affairs of the Association. The Board shall be constituted as set forth in the Bylaws. Provisions in the Bylaws covering Board selection are hereby incorporated by reference in this Plan.

**ARTICLE IV**  
**Public Awareness**

The Board may establish and maintain public awareness of the Association through (1) maintenance of a website containing information about its meetings, descriptive data and downloadable copies of the Association's Articles and Bylaws, together with this Plan and such other data as the Board or the Administrator may determine to be helpful or necessary from time to time and (2) publication, via e-mail or otherwise, of a summary annual report. If, in the judgment of the Board, additional efforts are helpful or necessary to establish and maintain public awareness of the Association, the Board shall be authorized to undertake such additional efforts. The Board shall include the estimated costs for its public awareness program in its annual budget.

**ARTICLE V**  
**Governance / Administrative Expenses / Accounting / Financial Reporting**

**A. Governance.** The Board shall conduct its operations in accordance with the Annual Event and Meeting Calendar set forth as **Exhibit A**. The Board may from time to time make such adjustments to the dates of events listed on **Exhibit A** as it may determine to be appropriate.

**B. Financial and Other Records.** Monthly, quarterly, and annual financial records shall be maintained and distributed by the Administrator in accordance with the schedule set forth in **Exhibit B**.

**C. Assessment Determination and Administrative Expenses.** The Board shall be authorized to expend monies for the payment of administrative expenses, including but not limited to, the following types of expenses: fees for professional services, including legal, actuarial, accounting, auditing or any other services that are helpful or necessary to provide assistance in the operation of the Association; travel expenses, and other administrative expenses deemed helpful or necessary by the Board to conduct operations effectively. The Association's financial records shall segregate administrative expenses for the benefit of the Board in managing such expenses.

**D. Auditing.** The Association shall retain an independent CPA firm to conduct an annual audit of the financial statements of the Association. The audit shall be conducted in accordance with generally accepted auditing standards, and an opinion shall be rendered by the CPA firm as to whether the Association's financial statements are fairly stated in accordance with generally accepted accounting principles. In conjunction with the annual audit, the CPA firm shall produce a management letter for the benefit of the Board. The results of the annual audit, together with the management letter, shall be presented to the Board's audit committee and forwarded to the entire board. The CPA firm selected by the Association must be authorized to do business in the State of New Hampshire.

**E. Budgeting.** The Board shall develop an annual expense budget in the format shown in **Exhibit C** prior to the commencement of each fiscal year. The Board shall be entitled to assume that adequate internal control policies and procedures with respect to the handling of Association assets and liabilities by the Administrator including but not limited to, cash, cash receipts, cash disbursements, assessments, premiums, claims payments, investments, accounts payable, and administrative expenses, are in place, but may, in its discretion, at any time, engage the CPA firm to review such policies and procedures.

**F. Bank Accounts.** Money and marketable securities shall be kept in bank accounts and investment accounts as approved by the Board. The Association shall deposit receipts and make disbursements from these accounts. All bank accounts / checking accounts shall be established in the name of the Association, and shall be approved by the Board. Authorized check signers shall be approved by the Board. Two signatures shall be required on all checks in excess of \$5,000.00.

**G. Examination and Annual Reports.** The Association shall be subject to examination by the HHS Commissioner or the Insurance Commissioner. The Board shall submit to each commissioner each year, not later than 120 days after the Association's fiscal year, a financial report and a report of its activities during the preceding fiscal year. The Association's fiscal year shall be the 12 months ending June 30. Not later than December 31 each year, the Association shall 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.

## **ARTICLE VI**

### **Assessment Collections / Remittance to State Treasurer / Assessment Revenue Recognition**

On behalf of the Board, the Administrator shall bill and collect assessments in accordance with the schedule in **Exhibit A**, and render periodic financial reports as scheduled in **Exhibit B**.

Upon request from time to time, the HHS Commissioner shall cause to be delivered to the Administrator the remittance request for the state fiscal year along with such other reasonably available DHHS data as may be helpful to the Board for its assessment rate setting work.

Not less frequently than annually, the Board shall review and establish a quarterly child covered lives assessment rate using a rate-setting spreadsheet tool developed and updated from time to time by the Administrator and approved by the Board. The spreadsheet shall incorporate all factors set forth in RSA 126- Q:4, II. The approved spreadsheet tool shall be published on the Association's website in .pdf form, showing the most recent calculations, and, as published from time to time, is hereby incorporated by reference.

The Association shall undertake reasonable efforts to provide Assessable Entities not less than ninety (90) days' notice of the effective date of any assessment rate change. Notice shall be deemed given when posted to the Association's website. The Administrator shall also undertake to send e-mail notices of any assessment rate change using one or more of the e-mail addresses filed by the Assessable Entity using the Association's self-reporting assessment system.

Assessable Lives shall be reported by Assessable Entities and assessments shall be due from Assessable Entities for each quarter ending in September, December, March, and June forty-five (45) days

after the end of each quarter, i.e., November 15, February 15, May 15, and August 15. For the Association's financial statement preparation and reporting purposes, assessment revenues shall be considered revenue in the period in which the assessment payments were due notwithstanding the fact that the measurement period for covered lives may be in a prior period. Therefore, each fiscal year ending June 30 shall include as revenue the assessments due for payment during the fiscal year July 1 through June 30 and not the assessment due the following August 15 (which is determined based upon covered lives of Assessable Entities in April, May, and June of the reporting year).

The Association shall endeavor to maintain assessment equity by proportionately matching, as near as is reasonable, the assessments to those payers who have child beneficiaries who access state supplied vaccines funded by the Association. It may from time to time enter into agreements with other states as contemplated by RSA 126-Q:3, V(n) and adopt policies or procedures as contemplated by RSA 126-Q:3, V(p) to support equitable allocation of assessments among Assessable Entities. No Assessable Entity shall be required to report as an Assessable Life or pay an assessment for such life where vaccines with respect to such life clearly are paid for, in fact, by another state or by the federal government in programs such as the federal Vaccine For Children ("VFC") program or on-base immunization of TRICARE military beneficiaries using Department of Defense purchased vaccine supply. Assessable Lives shall be reported on a self-reporting online assessment system developed by the Administrator and updated from time to time as directed by the Board.

A late fee equal to product of (i) the number of days late times (ii) .000493 times (iii) the amount past due will be added to amounts due for any assessment payment received by the Administrator after its due date. The Administrator shall follow up with respect to any late assessment receipts in accordance with the protocol set forth in **Exhibit D**. Late payment interest shall be collected in accordance with the Association's Late Payment Interest Policy, as revised from time to time.

The Association shall remit the amount initially requested for the respective fiscal year to the New Hampshire State Treasurer (or to such other state official as may be designated by the Department of Health and Human Services from time to time), to the credit of the vaccine purchase fund established pursuant to RSA 141-C:17-a, on or before June 30 each year. The timing of the actual expenditure of those funds by any state agency shall have no impact in determining any credit for any surpluses in the Association's assessment calculations. Rather amounts considered as surpluses or shortfalls for the subsequent year's assessment determination shall be only those amounts above or below the targeted Net Remittance established by the Board for the prior year.

## ARTICLE VII

### Penalties/Adjustments and Dispute Resolution

#### A. Penalties / Adjustments:

**1. Background.** Given numerous factual determinations and tasks to be performed by insurers relative to their calculations of Assessable Lives as reported to the Association, it is expected that all Assessable Entities will exercise the highest degree of good faith and due diligence in all aspects of their relationship with the Association. Errors may occur, however, and it is appropriate that the sanctions applicable to such errors be detailed.

**2. Errors Related to Assessments.** All Assessable Entity errors related to the assessment shall require the immediate payment of additional amounts due plus interest

calculated from the date such sum should have been paid, plus an administrative charge as established by the Board.

**3. Gross Negligence and Intentional Misconduct.** If the Board determines that the nature or extent of the errors of a particular Assessable Entity may reflect gross negligence or intentional misconduct, the Board shall refer its findings to the Insurance Commissioner for appropriate action.

**4. Interest and Administrative Charges.** All interest payments required under this Plan of Operation shall be calculated from the date the incorrect payment occurred or correct payment should have been made through the date of payment. The Administrative charges shall be established by the Board and may be waived by the Board.

**B. Time Considerations with respect to Assessment Payment Adjustments.** Once assessment rates are set by the Board in any year, any adjustment for Assessable Entity over reporting of Assessable Lives or overpayments shall be considered first by the Board in connection with the assessment determination for the following year and may, depending upon the cash flow needs of the Association, be spread over multiple years. No request for reconsideration of any assessment or refund of payment made shall be considered by the Association with respect to any request which is not filed with the Association, in writing, on or before that date which is six (6) months after the first due date for the immediately following assessment year after the overpayment error. It is expected that each fiscal year's first due date will be August 15 and that, consequently, any request for reconsideration or refund must be filed no later than the following February 15. Any underpayment due to late payments or underreporting of Assessable Lives shall be made by Assessable Entity at the earliest possible date and shall include interest and administrative charges as set forth above.

**C. Assessable Entity Appeal of Disputes to Board.** Assessable Entities may request permission to appear before the Board at any time in connection with any dispute with the Association. No request or appeal relating to assessments shall be heard until the protesting party has paid the assessment in full. Any assessment amount paid under protest shall be held in an interest-bearing account (which may be commingled with other accounts of the Association) with principal and interest to be paid to the prevailing party upon final resolution of the protest.

**D. Arbitration.** All disputes and differences that cannot be agreed upon by the parties will be decided by arbitration. The arbitrator(s) will have the authority to interpret this Plan of Operation and in doing so, shall consider the customs and practices of the insurance industry. The arbitration shall be conducted under the auspices of the American Arbitration Society in accordance with its commercial arbitration rules. Such arbitration shall be held in Concord, New Hampshire. This agreement to arbitrate shall be enforceable and judgment upon any award may be entered in any court having jurisdiction, which the parties hereby stipulate and agree, will include any court of appropriate subject matter jurisdiction located within the State of New Hampshire. Reasonable costs of arbitration shall be borne equally by the parties and each party shall pay the cost of its own personnel and counsel involved in such proceedings.

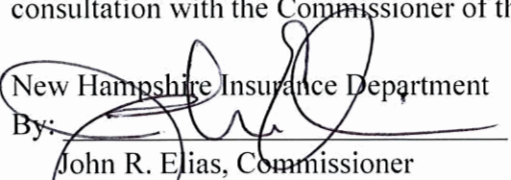
## **Article VIII Termination**

The Association shall continue in existence subject to termination in accordance with applicable requirements of the laws of the State of New Hampshire and the United States of America. In case of enactment of a law or laws which in the determination of the Board and the HHS Commissioner shall result

in the termination of the Association, the Association shall terminate and conclude its affairs in a manner to be determined by the Board with the approval of the HHS Commissioner. Prior to any liquidation and distribution pursuant to the Articles of Agreement, all statutory liabilities under RSA 126-Q will be satisfied in full.

In accordance with RSA 126-Q:3, V(c), the foregoing Plan of Operation has been approved following consultation with the Commissioner of the New Hampshire Department of Health and Human Services.

New Hampshire Insurance Department

By:   
John R. Elias, Commissioner

Date: 03/11/19, 2019

**Exhibit A**  
**NEW HAMPSHIRE VACCINE ASSOCIATION**  
**Annual Event & Meeting Calendar<sup>1</sup>**

<u>Date</u>	<u>Event</u>	<u>Statutory/Bylaws Reference</u>
1. By 3 <sup>rd</sup> Week of January	<b>Board of Directors Meeting</b>	
2. February 15	Calendar Quarter ending Dec. 30 prior year Covered Lives Assessment Due	RSA 126-Q:3, V.(l)
3. By 3 <sup>rd</sup> Week of March	<b>Board of Directors Meeting</b> a. Review collections results b. Assessable Entity board member proxy selection	Bylaws Section 3.A.
4. By 4 <sup>th</sup> Week of April	<b>Audit Committee Meeting</b> a. Review collections results b. Review and recommend next year's expense budget	
4. May 15	Calendar Quarter ending March 30 Covered Lives Assessment Due	RSA 126-Q:3, V.(l)
5. 3 <sup>rd</sup> Week of June	<b>Board of Directors Annual Meeting</b> a. Adopt next fiscal year's expense budget b. Select Directors for terms beginning August 1 c. Review Report of Administrator for year's operation d. Review Discharge of Director Duties e. Confirm and Ratify Assessment due June 30 to State Treasurer f. Executive session (Administrator's personnel excluded)	RSA 126Q:3, V.
6. By June 30	Remit Assessment to State Treasurer	RSA 126-Q:3, v.(n)
7. June 30	NHVA Fiscal Year End for Prior Year	
8. August 15	Calendar Quarter ending June 30 Covered Lives Assessment Due	RSA 126-Q:3, V.(l)
9. 4 <sup>th</sup> Week of September	<b>Audit Committee (in person)</b> a. Meet with outside auditors b. Review audit report c. Executive session (Administrator's personnel excluded) <b>Board of Directors Meeting</b> a. Accept the Audit Committee's audited financials b. HHS vaccine budget and forecast c. Finalize Assessment Rate for next year effective January 1	RSA 126-Q4, 1
10. 3 <sup>rd</sup> Week of October	<b>Board Meeting (if needed)</b> a. Accept audit report and release prior year's financials b. Set current year's assessment if not done earlier	RSA 126-Q:6 RSA 126-Q:3, V.(e)
11. November 1	Assessment determination due; Notify Payers	RSA 126-Q:3, V.(e)
12. November 15	Calendar Quarter ending September 30 Covered Lives Assessment Due	RSA 126-Q:3, V.(l)
13. By 4 <sup>th</sup> week of November	<b>Board Meeting</b> Review and Approve Annual Report	
14. By December 31	Submit Annual Report	RSA 126-Q:3, V.(k)

<sup>1</sup> All meeting dates are approximate. Actual meeting dates may be established by the Board Chair or Executive Director in consultation with Board members.

## **Exhibit B**

### **NEW HAMPSHIRE VACCINE ASSOCIATION Schedule of Financial Statements**

Financial statements will be released on the following schedule:

- a. Monthly Bank Reconciliation: To Audit Committee members and any Board member requesting copies 15 business days after the close of each month.
- b. Quarterly Statements: To the full Board 20 business days after the close of each quarter.
- c. Annual Statements: Management's statements will be ready for internal review 60 business days after the close of the year; full statements will be released to the public as soon as the audit is completed and the audit report accepted by the Board.



**Exhibit C**

**NEW HAMPSHIRE VACCINE ASSOCIATION  
Estimated Expense Budget Format**

1	Administrative Fees	\$
2	Subcontractors	\$
3	Subtotal	<hr/> \$
4	Bank Fees	\$
5	Board Meeting Expense	\$
6	Dues and Subscriptions	\$
7	Insurance Expense (D&O)	\$
8	Licenses and Fees	\$
9	Postage & Shipping	\$
10	Professional Fees - Audit	\$
11	Professional Fees - Legal	\$
11	Public Information Expense	\$
12	Website	\$
13	Subtotal	<hr/> \$
14	Total Budget	<hr/> <hr/> \$

## Exhibit D

### NEW HAMPSHIRE VACCINE ASSOCIATION

#### Follow-up for Past Due Assessments

**Protocol A:** for all carriers falling within the top 90% of assessments due

- Make a phone call one business day after due date
- Send an email reminder five business days after due date
- Send a letter reminder three business days after the email reminder with a copy to the board of directors

**Protocol B:** for all carriers falling within the 90% to 98% of assessments due

- Make a phone call three business days after due date
- Send an email reminder seven business days after due date
- Send a letter reminder five business days after the email reminder with a copy to the board of directors

**Protocol C:** for all carriers falling within the 98% to 100% of assessments due

- Make a phone call five business days after due date
- Send an email reminder eight business days after due date
- Send a letter reminder ten business days after the email reminder and put on delinquency report to the board of directors

In addition to the above, report to the Commissioner of Insurance as required by RSA 126-Q:3, V(k). At the Annual Meeting of the Board, recommend collection / follow up activity for any remaining delinquencies and follow up in accordance with Board instruction. In light of RSA 126-Q:5, I, however, it is contemplated that any collection follow up after six months of notification would be handled by the Department of Insurance pursuant to that statute.