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# Key New Hampshire and Federal Statutes Regulating Health Care Delivery and Payment

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Key New Hampshire and Federal Statutes  
Regulating Health Care Delivery and Payment:  
**Summary of New Hampshire and Federal Regulations by Subject Matter**  
**Chart of New Hampshire State Agency Responsibilities**  
**Federal Laws and Regulation: An Index**

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## Acknowledgements

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| Subject Matter                                                                | New Hampshire Laws                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Federal Laws                                                                                                                                                                                                                         |
|-------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Community Benefit Standards and Transactions for Healthcare Charitable Trusts | Charitable Trust Law (NH RSA 7:19-32); Community Benefit Obligations (7:32-c – 7:32-l)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Tax Code 501(c)(3) status (26 U.S.C § 501(c)(3)); Community Health Needs Assessments and Additional Requirements for Charitable Hospitals (26 U.S.C. § 501(r))                                                                       |
| Fraud and Abuse, overpayment/underpayment, Self-Referral Prohibition          | NH Anti-kickback (NH RSA 167:61-a(l)(i-j)); State Self-Referral Law (NH RSA 125:25-a, 125:25-b)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Anti-kickback (42 U.S.C. §§ 1320a-7b(b)); Stark Law (42 U.S.C. § 1395nn); Civil Monetary Statute & Gainsharing (42 U.S.C. §§ 1320a-7a(b))                                                                                            |
| Anti-Monopoly and Free Market Oversight                                       | NH Anti-Trust Law (NH RSA 356:1-356:9);<br>Licensing (see “licensing” below)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Anti-Trust Laws (The Sherman Antitrust Act- 15 U.S.C. §§ 1-7; The Clayton Antitrust Act- 15 U.S.C. §§ 12-27, 29 U.S.C. §§ 52-53; The Federal Trade Commission Act- 15 U.S.C. §§ 41-58)                                               |
| Health Care Delivery Innovation                                               | Telemedicine Act (NH RSA 415-J); Waiver Authority, authorizing and requiring New Hampshire Medicaid transformation waivers (RSA 126-A:67) resulting in Section 1115 Transformation (Premium Assistance Program) and Section 1115 Delivery System Reform Incentive Payment (DSRIP) Waivers approved by Joint Health Care Reform Oversight Committee (NH RSA 420-N:3), Oversight Committee on Health and Human Services (NH RSA 126-A:4-b; RSA 126-A:13), and joint fiscal committee; New Hampshire’s Medical Care Advisory Committee established pursuant to 42 CFR 431.12 to advise on Medicaid. | The Patient Protection and Affordable Care Act , as amended (“ACA”); Medicare payment reform innovations; CMS Innovation Center (established by Section 3021 of the ACA); Medicare Access & CHIP Reauthorization Act of 2015 (MACRA) |

| Subject Matter                                                                                                                                 | State                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Federal                                                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Health Insurance, Portability, Availability, Renewability, Capitalization, Premium Rates, Cost Drivers, All-Payer Claims Database, etc.</p> | <p>Portability, Availability, and Renewability of Health Care Coverage (NH RSA 420-G); Review of Premium Rats and Health Care Costs (NH RSA 420-G:14-a); Comprehensive Health Care Information System ("CHIS") (NH RSA 420-G:11, IV and V, NH RSA 420-G:11-a, NH Admin. Rules, Ins 4000); Managed Care Law (NH RSA 420-J Admin Rules 2700) Third Party Administrators (NH RSA 402-H); Discount Medical Plans (NH RSA 415-I); HMOs (NH RSA 420-B; NH Admin. Rules, Ins 2200); Stop-Loss Insurance (NH RSA 415-H; NH Admin. Rules, Ins 4400); Long-term Care Insurance (NH RSA 415-D); Medical Malpractice Liability Insurance (NH Admin. Rules, Ins 1700 &amp; 3800); Risk-Based Capital Requirements (NH RSA 404-F:1-F:14); Pooled Risk Management Programs for the Benefit of Political Subdivisions of the State (NH RSA 5-B).</p> <p>ACA: Section 1115 (of the Social Security Act) New Hampshire Health Protection Program Premium Assistance Waiver authority; authority to participate in a federally facilitated health insurance Marketplace.</p> | <p>Employee Retirement Income Security Act (ERISA), the regulation of employer sponsored health insurance (29 U.S.C. ch. 18), and ACA amendments; Premium Rate Disclosure and Review Process (42 USC §§ 300gg-94; 42 CFR 145)</p> |



| Summary of New Hampshire & Federal Regulations by Subject Matter | State                                                                                                                                                                                                                                                                                                                                                                                     | Federal                                                                                                                                                                                                                                                                                         |
|------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Professional and Facility Licensure                              | Facility Licensure (NH RSA 151); Special Health Care Licensing (NH RSA 151:2-e); Board of Medicine (NH RSA 329:2- 329:9; NH RSA 328-D; NH Admin. Rules, Med 100 - 612); Board of Mental Health Practice (NH RSA 330-A; NH Admin Rules Mhp 100); Board of Nursing (NH RSA 326-B; NH Admin. Rules, Nur 100-800); Board of Pharmacy (NH RSA 318; NH RSA 318-B; NH Admin. Rules, Ph 100-1608) | Certification and Compliance of Providers and Suppliers by Centers for Medicare and Medicaid Services for Health and Safety (Title 18 and 19 Social Security Act; 42 C.F.R.); other health care professional and facility certification and accreditation bodies, such as The Joint Commission. |
| Medicare/Medicaid Payment                                        | NH RSA 167 (Public Assistance); Medicare Supplement Insurance (NH RSA 415-F); Managed Care Law (NH RSA 420-J; NH Admin. Rules, Ins 2700); NH Medicaid Program (Medicaid Fraud Unit (NH RSA 21-M:8-a); Uncompensated Care (NH RSA 167:63); Medicaid Managed Care (NH Admin. Rules, He-W 506.06-506.09)                                                                                     | Medicare Program (Part of Title XVIII of the Social Security Administration Act; 42 U.S.C. §§ 1801-1899B; 42 CFR); Medicare Reform (ACOs, Medicare Shared Savings Plan, and Medicare Managed Care)                                                                                              |
| Health Information Privacy and Confidentiality                   | NH Privacy Laws and Breach Notification (NH RSA 126; NH RSA 141-A; 141-B; 141-C; 141-F; 141-H; 141-J; NH RSA 172; NH RSA 330-A; NH RSA 330-C; NH RSA 332-l; NH RSA 135:19-a)                                                                                                                                                                                                              | HIPAA (42 U.S.C. § 300gg and 29 U.S.C §§ 1181 et seq., and 42 USC §§ 1320d et seq.; 45 CFR 144, 146, 160, 162, and 164. Privacy Rule: 45 CFR Part 160; 45 CFR Part 164 Subparts A and E); Drug and Alcohol Abuse Treatment Privacy Laws (42 CFR Part 2)                                         |
| Provider Liability                                               | Medical Malpractice (NH RSA 507-E); False Claims Act (NH RSA 167:61)                                                                                                                                                                                                                                                                                                                      | False Claims Act (31 U.S.C. 3729-3733) and National Practitioner Data Bank (42 U.S.C. 1320a-7e; 42 U.S.C. 1396r-2; 42 U.S.C. 11101-11152; Section 6403 of the Patient Protection and Affordable Care Act; 45 C.F.R. Part 60)                                                                    |



|                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Public Data: All Payer Claims Data Base</p> <p>(and key issues impacting access to data)</p> | <p>Comprehensive Health Care Information Exchange (“CHIS”) (NH RSA 420-G:11, IV and V; NH RSA 420-G:11-a)</p> <p>New Hampshire collects various public health data regarding infectious diseases and vital statistics. See 1) NH Health Data collection <a href="https://www.nhhealthdata.org/">https://www.nhhealthdata.org/</a>; 2) NH Division of Public Health, WISDOM-Connecting NH to Health Data at <a href="https://wisdom.dhhs.nh.gov/wisdom/#main">https://wisdom.dhhs.nh.gov/wisdom/#main</a></p> | <p>Medicare Part D Claims Data 42 CRF Part 423; <i>Gobeille v. Liberty Mut. Ins. Co.</i> 577 U.S. ____ (2016); the Employment Retirement Income Security Act of 1974 (ERISA) (enforced by US Department of Labor), regulating certain employer sponsored health insurance plans and limiting regulation of claims data by states; Health Insurance Portability and Accountability Act, Privacy and Security Regulations; Substance Use Disorder privacy regulations, 42 CFR Part 2.</p> |
|-------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## Regulatory Authorities Impacting Healthcare Delivery & Payment

### Summary and Chart of New Hampshire State Agency Responsibilities

| NH Department of Health and Human Services                                                                                                                     | NH Insurance Department                                                                                                       | NH Attorney General:<br>Consumer Protection and Antitrust Bureau and the Charitable Trusts Unit | Secretary of State                                       | New Hampshire Judicial Branch – the Courts            | NH Dep. of Labor                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|----------------------------------------------------------|-------------------------------------------------------|---------------------------------------------|
| Administers the NH Medicaid and other public assistance programs (some authority limited by Fiscal Committee and Joint Health Care Reform Oversight Committee) | Regulates Health Insurance Risk (some authority limited by Fiscal Committee and Joint Health Care Reform Oversight Committee) | Reviews Executive Compensation arrangements and other forms of private inurement                | Regulates Municipal Pooled Risk Programs for Health Care | Maintains jurisdiction over Medical Harm/ Malpractice | Enforces Workers' Compensation requirements |
| Licenses Health Facilities                                                                                                                                     | Regulates the Portability, Availability, and Renewability of Fully-Insured Health Plans                                       | Regulates Transactions Involving Health Care Charitable Trusts to protect community needs       |                                                          |                                                       |                                             |
| Requires Special Health Care Licenses for certain facilities and administers the moratorium on new skilled nursing facility and rehabilitation hospital beds.  | Authorized to collect data about and required to annually report on premiums and other health care cost drivers               | Requires annual submission of Community Benefit Standards and Plans                             |                                                          |                                                       |                                             |

|                                                                                                                    |                                                                                                                                                                                       |                                                                               |  |  |  |
|--------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|--|--|--|
| Licenses and disciplines Health Professionals (through independent but administratively attached licensing boards) | Authorizes NH's All Payer Claims Database known as the Comprehensive Health Information System, in Memorandum of Understanding with NH DHHS; and oversees the NH Health Cost website. | Regulates Consumer Protection and Investigates possible Anti-Trust violations |  |  |  |
| Oversees Public Health and Safety                                                                                  | Investigates health insurance fraud and refers cases to NH Attorney General                                                                                                           |                                                                               |  |  |  |

### Brief Description of Agency Oversight Responsibilities by Agency:

#### Department of Health and Human Services

**Medicaid:** NH DHHS is the designated agency for New Hampshire's Medicaid program and operates the program in partnership with the federal Centers for Medicaid and Medicare Services (CMS). Program oversight includes applying for and implementing new and existing programs, overseeing waivers, and operating the managed care program. NH DHHS controls the certification of health care providers for participation, regulates what services will be paid for, how they will be paid, and the payment rates, and/or ensures the managed care organizations do so consistent with state law. NH DHHS operates the Medicaid program and a number of "waivers" which are authorized by either Social Security Act Section 1115 or Section 1915, and allow a state, in agreement with CMS and via state plan amendments, to test new or existing ways to delivery and pay for health care services in Medicaid or the Children's Health Insurance Program (CHIP) with special authorization to 'waive' certain Medicaid rules. NH must typically demonstrate its waiver programs are budget neutral. In New Hampshire, any waiver must also be approved by statute and/or various quasi-legislative bodies, such as the Joint Health Care Reform Oversight Committee or the Fiscal Committee.

Raising and expending the state general fund share (FMAP) of the program is controlled by the NH General Court. New Hampshire also relies upon certain health care provider taxes to raise money for the Medicaid program, including the Medicaid Enhancement Tax and the Nursing Facility Quality Assessment.


**Licensing of Health Facilities:** NH DHHS licenses health facilities in the state. The health facility licensure standards incorporate many of the same standards as the Medicaid/Medicare provider conditions of participation including standards for staffing, medical records, construction/design, and patients' rights. NH



DHHS does not license or require the registration of the offices of health professionals, accountable care organizations, or other affiliations amongst providers.

*Special Health Care Licensing and Bed Moratorium:* New Hampshire's "certificate of need" program requiring a state health planning process and the review of all new health services and operated by the Health Services Planning and Review Board was disbanded and discontinued on June 30, 2016. The "need" review process has not been replaced. NH DHHS is authorized to engage in an enhanced licensing review process before the licensure of certain new specialized services in New Hampshire including cardiac catheterization, laboratory services, open-heart surgery, megavoltage radiation therapy, and other "health care diagnostic treatment test or process that the commissioner... deems necessary to protect safety." RSA 151:2-e. There are additionally enhanced requirements for new licensed facilities within a 25 mile radius of a critical access hospital. Finally, RSA 151:2-a requires every licensed hospital to operate an emergency department offering emergency services to all individuals regardless of ability to pay 24 hours a day, 7 days a week. A bed moratorium remains in place for nursing homes, skilled nursing facilities, intermediate care facilities, and rehabilitation facilities, including rehabilitation hospitals, facilities offering comprehensive rehabilitation services, and nursing beds in continuing care communities and supported residential health care facilities. RSA 151:2 allows for such beds to be licensed, replaced, transferred, or relocated only to the same extent that such action would have been allowable under the laws and rules in effect on June 30, 2015.<sup>1</sup>

*Licensing of Health Professionals:* The newly created Office of Professional Licensure and Certification was effective with New Hampshire's FY 2017 budget. Most of the professional boards that operated independently or were administratively attached to DHHS were consolidated under the umbrella of the new OPLC agency, which provides administrative support to over 40 professional licensing boards, commissions and councils responsible for licensing and regulating professionals in the state, including health professionals. (Emergency Medical Services professionals are still regulated by the NH Department of Safety). These boards and commissions license and discipline New Hampshire health care professionals and regulate the professional standards of care. The standards of care incorporate health information privacy and confidentiality.

*Public Health:* NH DHHS has extensive authority to monitor population health status. The Division of Public Health Services is charged with the authority and accountability to enforce laws to protect the public's health in areas as varied as immunization, data collection around infections and communicable diseases, the inspection of food establishments, and the prevention of childhood lead poisoning. The Division operates the state's immunization program, collects information about New Hampshire's health care and disease status, and retains certain emergency powers during public health emergencies and disasters. NH DHHS also regulates New Hampshire's public health regions. The Division has published a State Health Improvement Plan that documents a plan for improving NH's health. **New Hampshire State Health Improvement Plan 2013-2020, Charting a Course to Improve the Health of New Hampshire** [The New Hampshire State Health Improvement Plan \(NH SHIP\)](#) 

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<sup>1</sup> Prior to 2016, all new health services including hospital and nursing beds were regulated by the Health Services Planning and Review Board pursuant to RSA 151-C (aka the Certificate of Need Board).  
October 2017

### **New Hampshire Insurance Department:**

Health insurance risk: NHID regulates many forms of insurance risk impacting the health care payment and delivery system such as health care, medical malpractice, stop-loss insurance, and worker's compensation (in collaboration with New Hampshire Department of Labor). NHID's regulation of health insurance is extensive, although due to the preemption authority of the federal Employee Retirement Income Security Act (ERISA), NHID can only regulate "fully-insured" health plans, and not employer sponsored health plans that are "self-funded" (except government funded plans).<sup>2</sup>

Portability, availability and renewability of fully-insured health plans: NHID regulates the portability, availability and renewability of fully-insured health plans offering coverage in New Hampshire, which includes, among other regulations, establishment of reserves and financial viability, premium rate setting, market conduct, network adequacy, coverage mandates, advertising, fraud, and other consumer protections including mental health parity and addiction equity. NHID's authority to review premium rates does not permit NHID to set premium rates, regulate provider contracts, or regulate provider reimbursements.<sup>3</sup>

Annual Health Care Cost Driver Report: NHID is required to collect information and data from health plans in order to conduct its annual health care cost driver report pursuant to RSA 420-G:14-a. By statute, the report must be designed to provide information that identifies and quantifies health care spending trends and the underlying factors that have contributed to increases in health insurance premiums. The report is also intended to include recommendations and strategies for increasing the efficiency of NH's health care financing and delivery system.

The Commissioner has extensive authority to collect information in order to develop the report and host public hearings on cost drivers, including:

- 1) Information and analysis of the amount and impact of uncompensated care;
- 2) Past and current medical loss ratios of insurance carriers in New Hampshire;
- 3) Comparison and analysis of the cost of medical care by payment type;
- 4) Information and analysis of total public reimbursements to hospitals and other health care providers by federal, state, and local governments;
- 5) Information and analysis of insurance premiums by provider network;
- 6) Information and analysis of plan and premium information on the Federal Employee Plan and National Account offered by Anthem Blue Cross Blue Shield;
- 7) Comparison and analysis to insurance claim data collected by other states.

The Commissioner is also charged with collecting testimony and information at the public hearing.

The annual report tends to include information on cost drivers including type of coverage, premium rates, insurance plan profits and losses, utilization and cost trends for medical and prescription drug services,

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<sup>2</sup> Approximately two thirds of the group plans covering New Hampshire employees are "self-funded" by employers and thus regulated by the US Department of Labor, not the NHID.

<sup>3</sup> RSA 420-J, New Hampshire's managed care laws, does include prompt-pay requirements, notice to consumers regarding provider affiliations, and other consumer or provider protection provisions.

uncompensated care, unit prices for services, and out of pocket expenses for consumers. The report typically looks at variations based on region, age, income and type of plan.

*Comprehensive Health Information System* (or “all payer claims database”): NHID also shares joint authority with NH DHHS over New Hampshire’s confidential Comprehensive Health Information System (CHIS), NH’s version of the all payer claims database (APCD). The claims data collected from health insurance plans forms the basis for NHID’s NH HealthCost site, <https://nhhealthcost.nh.gov/>. Researchers are also able to access a limited use data set for purposes of research and review. NH DHHS also relies on NH CHIS for analysis in many areas including the development of the state’s public health plan and health status reports.<sup>4</sup> The agencies have limited authority to share health data or information between agencies.

*Insurance Fraud*: NHID has the power to investigate insurance fraud. The fraud unit must “promptly notify the attorney general of any insurance application, claim, or activity which involves criminal conduct.” The unit and the AG can then work together in the “investigation and prosecution of criminal violations.” The AG has the power under NH RSA 358-A:4 of the consumer protection statute to bring an action against someone for unlawful trade or commerce actions to obtain civil penalties for the state.

*Joint Health Care Reform Oversight Committee*: NHID’s regulatory authority to engage in rulemaking, apply for federal waivers, or issue guidance regarding health insurance markets is limited by state law establishing the Joint Health Care Reform Oversight Committee. The committee was delegated the authority to review, authorize and/or prohibit NHID activities, waivers and rulemaking that relate to the Affordable Care Act.<sup>5</sup>

### **Office of the Attorney General, Division of Charitable Trusts**

*Executive Compensation*: The office of the Director of Charitable Trusts has the authority to regulate charitable trusts in general, and certain additional activities of health care charitable trusts operating in New Hampshire. Specifically, the Director can review certain compensation arrangements, such as executive compensation and other forms of private inurement, conflicts of interest, health care transactions and community benefits.

*Transactions Involving Health Care Charitable Trusts*: While the Director has extensive authority to review health care transactions, the standard of review is generally “due diligence” and “the needs of the community”. RSA 7:19-b prohibits the governing body of a health care charitable trust, such as a hospital or health clinic, from approving an acquisition or affiliation unless the governing body has acted “in good faith and in a manner consistent with its fiduciary duties to the health care charitable trust”. The governing board must consider the best interests of the community it serves. Specifically, the governing body must: 1) ensure the transaction is permitted by law; 2) engage in due diligence in selecting an acquirer, setting the terms and conditions of the transaction, and in “determining that the transaction is in the best interest of the health care charitable trust and the community which it serves,” ; 3) avoid conflicts of interest; 4) ensure the assets

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<sup>4</sup> The authority of NHID (as well as agencies in other states) to mandate the submission of claims data from all employer sponsored coverage plans has been questioned by the March 2016 decision by the United States Supreme Court in *Liberty Mutual v. Gobeille*, finding ERISA authorizes the US Department of Labor the authority to collect claims data from certain health insurance plans, not state agencies.

<sup>5</sup> RSA 420-N:4, III, establishes the Committee with a broad grant of legislative oversight over the executive functions of both NHID and DHHS.

of the charitable trust and any proceeds continue to “be devoted to the charitable purposes” of the trust and “the needs of the community which it serves”; 4) give control of the proceeds to an independent entity if the acquirer is not a NH charitable trust; 5) provide notice to the public and give the community the opportunity to provide input on the transaction.

A health care charitable trust engaging in a transaction must give notice to the Director of the transaction. The Director has authority to ask for detailed information about the transaction itself and conduct a review in a brief period of 120 days after notice of the transaction is provided. If the transaction involves assets of over \$5 million, the Director can retain an expert to assist in the review at the expense of the parties to the transaction.

*Community Benefit Standards and Plans:* Health care charitable trusts must file a community benefit plan each year with the Director in the method prescribed, including information regarding the charitable trusts community benefits in the form of charity care, support of public programs, contributions to community needs, donations to promote healthier communities and access to health care, and support for medical research. The plan must reflect the community needs assessment. NH RSA 7:32-e. Community needs assessments must be updated every 5 years. NH RSA 7:32-f.

*Consumer Protection and Anti-Trust:* The Attorney General has authority to enforce New Hampshire’s laws prohibiting unfair trade practices in restraint of trade, such as price fixing, monopolies, allocating or dividing markets, or setting price quotas. The Anti-Trust Unit investigates the state’s response to affiliations and mergers of health care entities in collaboration with the Federal Trade Commission/US DOJ or independently.

Investigating health insurance fraud remains under the authority of NHID unless referred to the Attorney General’s office.

### **Secretary of State:**

*Municipal Pooled Risk Programs for Health Care:* New Hampshire’s Secretary of State, pursuant to RSA 5-B, permits “pooled risk management programs” to manage the risks of municipalities and other political subdivisions of the state relating to hospital, medical, surgical, or dental benefits for employees and their dependents.

These pooled risk arrangements, such as Health Trust and School Care, must follow certain standards relating to governance, earnings, audits, actuarial events, and public hearings in the event of rate hikes. The SOS has jurisdiction to bring administrative actions or to investigate and impose penalties for pooled management programs that fail to meet the requirements of the statute.

The SOS Corporate Division also governs New Hampshire voluntary charitable organizations.

### **New Hampshire Judicial Branch – the Courts**

*Medical Harm/Malpractice:* The New Hampshire courts have jurisdiction over claims alleging medical negligence pursuant to NH 507-E. The statute governs medical malpractice and the award and allocation of damages in the event of a finding of fault by a health care professional or entity.

## **NH Department of Labor**

Workers' Compensation: New Hampshire law requires employers to carry workers' compensation insurance. The New Hampshire Department of Labor, Worker's Compensation Division enforces the requirement. The New Hampshire Insurance Department reviews rate filings for workers' compensation, specifically reviewing the submissions of the National Council on Compensation Insurance annual filings.

## Federal and State Laws and Regulations Regulating Health Delivery System in New Hampshire

### Federal Laws and Regulations<sup>6</sup>

#### Centers for Medicare and Medicaid Services

Medicare Program (Part of Title XVIII of the Social Security Administration Act; 42 U.S.C. § 1801-1899B; 42 CFR)

- Overview
- Accountable Care Organizations
- Medicare Shared Savings Plan
- Medicare Managed Care
- Medicaid
- Medicaid Waivers

#### Department of Health and Human Services

Fraud and Abuse

- Anti-kickback (42 U.S.C. § 1320a-7b(b))
- Physician Self-Referral (Stark Law) (42 U.S.C. § 1395nn)
- Civil Monetary Statute & Gainsharing (42 U.S.C. § 1320a-7a(b))
- False Claims Act (31 U.S.C. § 3729-3733)

Privacy Laws

- Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C. § 300gg, 29 U.S.C §§ 1181 et seq., and 42 USC §§ 1320d et seq.; 45 CFR 144, 146, 160, 162, and 164. Privacy Rule: 45 CFR Part 160; 45 CFR Part 164 Suparts A and E)
- Drug and Alcohol Abuse Treatment Privacy Laws (42 CFR Part 2)

Health Resources and Services Administration (HRSA)

- Section 330 Grants to Federally Qualified Health Centers (42 U.S.C. § 254(b))

National Practitioner Data Bank (42 U.S.C. §§ 1320a-7e; 42 U.S.C. §§ 1396r-2; 42 U.S.C. §§ 11101-11152; Section 6403 of the Patient Protection and Affordable Care Act; 45 C.F.R. Part 60)

#### Federal Trade Commission and Department of Justice

Anti-Trust Laws (The Sherman Antitrust Act- 15 U.S.C. §§ 1-7; The Clayton Antitrust Act- 15 U.S.C. §§ 12-27, 29 U.S.C. §§ 52-53; The Federal Trade Commission Act- 15 U.S.C. §§ 41-58)

#### Department of Labor

ERISA & Regulation of Employer Sponsored Insurance (29 U.S.C. ch. 18)

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<sup>6</sup> The Patient Protection and Affordable Care Act (ACA) (passed in March 2010) amends and adds to many of the laws referenced herein including, but not limited to, the Internal Revenue Code, the Public Health Services Act, ERISA, and laws governing Medicare and Medicaid. <https://www.congress.gov/bill/111th-congress/house-bill/3590>

## Internal Revenue Service

Tax-exempt Status (26 U.S.C § 501(c)(3))

Additional Requirements for Charitable Hospitals: Community Health Needs Assessments (IRC § 501(r))

## State Laws Regulating Health Care Delivery and Payment

### NH Insurance Department (NH RSA 400-A– 420-J; NH Admin. Rules, Ins 100-4900)

Premium Tax (NH RSA 400-A:31; 400-A:32)

Third Party Administrators (NH RSA 402-H)

Risk-Based Capital Assessment (NH RSA 404-F:1-F:14)

Accident and Health Insurance (NH RSA 415; 415-A; NH Admin. Rules, Ins 1900)

Long-term Care Insurance (NH RSA 415-D)

Stop-Loss Insurance (NH RSA 415-H; NH Admin. Rules, Ins 4400)

Discount Medical Plans (NH RSA 415-I)

Medicare Supplement Insurance (NH RSA 415-F)

New Hampshire Telemedicine Act (NH RSA 415-J)

Insurance Fraud (NH RSA 417:23-30)

Mental Health Parity Requirements (NH RSA 417-E:1; NH RSA 415:18-a)

Health Maintenance Organizations (HMOs) (NH RSA 420-B; NH Admin. Rules, Ins 2200)

Portability, Availability, and Renewability of Health Coverage (NH RSA 420-G)

Comprehensive Healthcare Information System (“CHIS”) (NH RSA 420-G:11, IV and V; 420-G:11-a)

Review of Premium Rates, Health Care Costs, and Cost Trends (NH RSA 420-G:14-a)

Managed Care Law (NH RSA 420-J; NH Admin. Rules, Ins 2700)

Medical Malpractice Liability Insurance (NH Admin. Rules, Ins 1700 & 3800)

Joint Health Care Reform Oversight Committee (NH RSA 420-N)

### NH Department of Health and Human Services

Authority of Department to Provide Comprehensive System of Health and Human Services (NH RSA Chapter 126-A)

Disproportionate Share Hospital Payment Program and the Nursing Home

Health Facility Licensure (NH RSA Chapter 151)

Special Health Care Licensing (NH RSA 151:2-e)

Public Assistance to Blind, Aged, or Disabled Persons, and to Dependent Children

- Overview (NH RSA 161 (selected sections); NH RSA 167 (selected sections); NH RSA 21-M:8-a; NH Admin. Rules He-W 500 Medical Assistance; 42 U.S.C. § 1396 (Grants to State for Medical Assistance Programs; CMS Applicable regulations)

- Uncompensated Care Fund (NH RSA 167:63; Medicaid Enhancement Tax NH RSA 84-A)

- Medicaid Managed Care Law (NH RSA 126-A:5, XIX; NH Admin. Rules, He-W 506.06-506.09)

Fraud and Abuse

- New Self-Referral Law (NH RSA 125:25-a, 125:25-b)

- NH Anti-kickback (NH RSA 167:61-a(l)(i-j))

- NH False Claims Act (NH RSA 167:61)

Privacy Laws (NH RSA 126; NH RSA 141-A; 141-B; 141-C; 141-F; 141-H; 141-J; 172; 330-A; 330-C; 332-I; 135:19-a)

Public Health (Title X; RSA 125, et seq.)

- New Hampshire Hospital (NH RSA 135)
- New Hampshire Mental Health Services System (NH RSA 135-C)

### **New Hampshire Health Information Organization**

Medical Records, Patient Information, and the Health Information Organization Corporation (NH RSA 332-I)

### **NH Department of Justice**

Health Care Charitable Trust Laws (NH RSA 7:19-32)

Community Benefit Obligations (NH RSA 7:32-c – 7:32-l)

NH Anti-Trust Laws (NH RSA 356:1- 356:9)

Medicaid Fraud Unit (NH RSA 21-M:8-a)

### **NH Secretary of State**

Pooled Risk Management Programs for the Benefit of Political Subdivisions of the State (NH RSA 5-B)

### **NH Secretary of State: Corporate Division**

New Hampshire Voluntary Corporations and Associations (NH RSA 292)

New Hampshire Business Corporations Act (NH RSA 294-A- Professional Corporations)

Professional Limited Liability Companies (NH RSA 304-D)

### **Licensure Boards**

Board of Medicine (NH RSA 329:2- 329:9; NH RSA 328-D; NH Admin. Rules, Med 100 - 612)

Board of Mental Health Practice (NH RSA 330-A; NH Admin. Rules Mhp 100)

Board of Nursing (NH RSA 326-B; NH Admin. Rules, Nur 100-800)

Board of Pharmacy (NH RSA 318; NH RSA 318-B; NH Admin. Rules, Ph 100-1608)

### **NH Judicial Branch**

Medical Malpractice and its jurisprudence (NH RSA 507-E)

### **NH Department of Labor**

Workers' Compensation (NH RSA 281-A)