

**SECOND AMENDMENT**  
**To**  
**AMENDED AND RESTATED PLAN OF OPERATION AND TERMINATION**  
**Of**  
**NEW HAMPSHIRE HEALTH PLAN**

**(To Implement NH House Bill 4 - 2019 Session)**

This SECOND AMENDMENT TO AMENDED AND RESTATED PLAN OF OPERATION AND TERMINATION (the “*Second Amendment*”) is adopted by the Board of Directors (the “*Board*”) of the **New Hampshire Individual Health Plan Benefit Association, doing business as “New Hampshire Health Plan,”** (“NHHP”) and is being submitted to the New Hampshire Insurance Commissioner (the “*Insurance Commissioner*”) for approval.

*Factual Background:*

A. In October, 2016, the NHHP Board adopted an Amended and Restated Plan of Operation and Termination (the “*Restated Plan*”) to incorporate the provisions of House Bill 1696 of the 2016 Session of the New Hampshire General Court, which amended portions of New Hampshire RSA 404-G, NHHP’s enabling statute (the “*Statute*”). In October, 2018, the NHHP Board adopted a First Amendment to the Restated Plan to incorporate the provisions of Senate Bill 313 of the 2018 Session of the New Hampshire General Court, which replaced the 2016 amendments to the Statute. The Restated Plan, as amended by the First Amendment (the “*Current Restated Plan*”), describes NHHP’s collection of assessments in support of the New Hampshire Granite Advantage Health Care Program established under New Hampshire RSA 126-AA to provide coverage for the newly-eligible Medicaid population.

B. In its 2019 Session, the New Hampshire General Court passed House Bill 4 which was signed into law by the Governor and further amends the Statute effective July 1, 2019 (the “*2019 Statutory Amendments*”). The 2019 Statutory Amendments revised Section 12 of the Statute to permit the Insurance Commissioner, if supported by the recommendation of actuarial experts retained by the New Hampshire Department of Insurance (the “*Insurance Department*”), to request that the NHHP Board propose a plan of operation for a risk sharing program, reinsurance program or other program the NHHP Board finds will best support the availability and affordability in the state. The 2019 Statutory Amendments also provide that the NHHP proposal may include a recommendation that the Insurance Department, on behalf of the State of New

Hampshire (the “State”), apply for and obtain a State Innovation Waiver (n/k/a State Relief and Empowerment Waiver) under Section 1332 of the Affordable Care Act (the “Section 1332 Waiver”).

C. Pursuant to the 2019 Statutory Amendments, the Insurance Commissioner engaged actuarial experts whose analysis and report supports the development and operation in the State of a reinsurance program similar to the program operated by the federal government in the initial years following the enactment of the Affordable Care Act, but only with the support of federal funding in the form of shared savings under a Section 1332 Waiver. Therefore, the Insurance Commissioner has requested that the NHHP Board assess and develop a proposal for a reinsurance program if it determines that such a program would best serve the purposes of NHHP as set forth in Section 1(I) of the Statute.

D. The NHHP Board has engaged its management team, in consultation with experts and legal counsel, to review the actuarial analysis and determine the components of a proposed State market stabilization program and its anticipated costs and operational procedures (the “New Hampshire Market Stabilization Program” or “Stabilization Program”) and to develop a related Section 1332 Waiver application. The NHHP Board also has considered whether, and has determined that, the Stabilization Program is most likely to best serve the purposes for which NHHP was formed under the Statute.

E. Therefore, the NHHP Board has approved this Second Amendment to the Restated Plan to set forth the terms on which it proposes to establish and operate the Stabilization Program in support of the individual health insurance market as contemplated by the 2019 Statutory Amendments and requested by the Insurance Commissioner.

*Terms of Second Amendment:*

Subject to the satisfaction of the conditions set forth in Section 3 below, NHHP adopts the following Second Amendment to its Current Restated Plan:

1. Defined Terms. Any capitalized terms used but not defined in this Second Amendment will have the meaning ascribed to them by the Current Restated Plan or the Statute, as applicable. From and after the effective date of this Second Amendment, the term “Restated Plan” will mean the Current Restated Plan as amended by this Second Amendment.

2. Establishment of State Reinsurance Program. To establish the Stabilization Program, which NHHP will operate in addition to the collection and remittance of assessments to support the New Hampshire Granite Advantage Health Care Program, NHHP hereby amends the Current Restated Plan by adding immediately after Article II thereof the new Article II-A set forth in the attached Appendix A (the “*Stabilization Program Plan of Operations*”). The Current Restated Plan also is amended by adding the following new penultimate paragraph before the last paragraph of the Preamble:

*Pursuant to Section 12(I) of the Statute as amended by House Bill 4 of the 2019 Session of the New Hampshire General Court (the “2019 Statutory Amendments”), and supported by the recommendation of actuarial experts engaged by the Insurance Department, the Insurance Commissioner requested the Board to develop a proposal for a State market stabilization program (the “Stabilization Program”). The Board subsequently determined that the Stabilization Program will best support the availability and affordability of health insurance in the State’s individual health insurance market. Therefore, this Restated Plan also is intended to establish, and guide NHHP’s implementation and operation of, the Stabilization Program as described in Article II-A below.*

3. Conditions to Implementation of Stabilization Program. NHHP’s proposal to establish the Stabilization Program is accompanied by the recommendation that the State submit a Section 1332 Waiver application in the form provided by NHHP to the Insurance Commissioner (the “Section 1332 Waiver Application”). The implementation of the Stabilization Program and the commencement of the Stabilization Program Plan of Operations are conditioned expressly on: (i) approval of the Insurance Commissioner; (ii) the Insurance Commissioner’s observance of the public hearing and commentary procedures required by New Hampshire RSA 420-N:6-a and any applicable federal regulations; (iii) approval of this Second Amendment and the Section 1332 Waiver Application by the State’s Health Care Reform Oversight Committee following such hearings and commentary period; (iv) submission of the Section 1332 Waiver Application to the U.S. Department of Health and Human Services and the U.S. Department of the Treasury (collectively the “*Federal Agencies*”); and (v) the Federal Agencies’ approval of the Section 1332 Waiver Application and its projected “pass-through savings.”

4. Additional Technical Amendments. The following conforming amendments are made to Section II (entitled “New Hampshire Granite Advantage Health Plan”), Section III (entitled “Winding Down of NHHP Affairs”) and Section IV (entitled “Regulatory, Legal and Administrative Matters”) of the Restated Plan:

(a) Section II of the Restated Plan is amended by replacing the defined term “Program” with the term “Granite Advantage Program” as it appears in the introductory paragraph of Section II and throughout the remainder of the Restated Plan.

(b) Section II(A) of the Restated Plan is amended by replacing the phrase “NHHP acknowledges that under the 2018 Statutory Amendments its sole corporate purpose will be limited to...” at the beginning thereof with the following: “NHHP acknowledges that under the 2018 Statutory Amendments and 2019 Statutory Amendments one of its corporate purposes will be to...”

(c) Section III(A) of the Restated Plan is amended by adding the phrase “and termination of the Stabilization Program as provided in Section II-A:VI(B) above,” after the phrase “Following the Final Remittance Date...” as it appears in the first line thereof.

(d) The phrase “, which is currently projected to occur between June and September of 2019” in the penultimate sentence of Section IV(C)(1) of the Restated Plan is replaced with the phrase: “, which is currently projected to occur no earlier than June, 2025 unless the Program is terminated prematurely as provided in New Hampshire RSA 126-AA:3(VI) or otherwise.”

5. Reaffirmation of Remaining Terms of Current Restated Plan. The remaining terms of the Current Restated Plan which are not affected by this Second Amendment remain in full force and effect.

6. Effective Date. This Second Amendment will become effective as of the date on which all of the conditions set forth in Section 3 of this Second Amendment above have been satisfied (the “Effective Date”).

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**APPROVAL OF NEW HAMPSHIRE INSURANCE COMMISSIONER**

The foregoing Second Amendment to the Amended and Restated Plan of Operation and Termination adopted by the Board of Directors of the New Hampshire Individual Health Plan Benefit Association, including without limitation the appended New Hampshire Market Stabilization Program Plan of Operations, is hereby approved.

DATE: March \_\_, 2020

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Christopher R. Nicolopoulos, Commissioner

## APPENDIX A

### **II-A. NEW HAMPSHIRE MARKET STABILIZATION PROGRAM**

The following provisions set forth the operational details for NHHP's implementation of the risk-sharing mechanism established under Section 12(I) of the Statute, to be known as the New Hampshire Reinsurance Program, also known as the New Hampshire Market Stabilization Program (the "Stabilization Program Plan of Operations" or the "Stabilization Plan"):

**NEW HAMPSHIRE INDIVIDUAL HEALTH PLAN BENEFIT ASSOCIATION  
NH REINSURANCE PROGRAM aka MARKET STABILIZATION PROGRAM  
PLAN OF OPERATIONS**

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I. LEGAL AUTHORITY AND EFFECT; PRE-CONDITIONS

A. Market Stabilization Program Establishment.

1. The New Hampshire Reinsurance Program aka the New Hampshire Market Stabilization Program (the "Stabilization Program") is a program established within NHHP pursuant to Section 12 of the Statute. The Stabilization Program, which uses reinsurance parameters for a basis of stabilization payments, is effective January 1, 2021.

2. The purpose of the Stabilization Program is to add stability to the individual insurance market in New Hampshire and encourage participation by insurers in the individual insurance market in New Hampshire by providing market stabilization payments on the basis of reinsurance parameters to insurers issuing policies in the individual insurance market in New Hampshire.

3. The Stabilization Program will have segregated accounts within NHHP, which accounts will hold all Stabilization Program Funds and from which all disbursements related to the Stabilization Program will be made by NHHP, including, but not limited to, receipts of assessments of Members, receipts of federal funds obtained pursuant to the Waiver, disbursements for stabilization payments, and disbursements for expenses of operating the Stabilization Program.

4. All obligations of the Stabilization Program, including, but not limited to, payment of stabilization payments and expenses, will be contingent upon the availability of funds and will be limited to the Stabilization Program Funds. The Stabilization Program Funds may be used by NHHP only for the Stabilization Program and consistent with this Stabilization Plan, and no other funds available to NHHP for its other programs or NHHP reserves unrelated to the Stabilization Program may be used for Stabilization Program obligations.

B. Stabilization Program Plan of Operations.

1. NHHP will implement and operate the Stabilization Program in accordance with the Statute, this Stabilization Plan, as amended, and the specific terms and conditions of the approved Waiver (defined below).

2. This Stabilization Plan will become effective upon adoption by the Board and written approval by the Insurance Commissioner.

3. This Stabilization Plan may be amended or restated from time to time upon action of the Board and written approval of the Insurance Commissioner, as provided herein.

4. The purpose of this Stabilization Plan is to, at a minimum:

a. Establish procedures for the exercise of powers and performance of duties by NHHP with respect to the Stabilization Program.

b. Establish procedures for (i) Eligible Entities to submit requests for reinsurance based stabilization payments with respect to eligible Covered Claims (defined in Section IV(C) below), (ii) collection of assessments by the Stabilization Program, and (iii) such other financial transactions and information reporting and collection as may be necessary or proper for the functioning of the Stabilization Program.

c. Provide for the expansion of the duties of the NHHP Executive Director to include administration of the Stabilization Program.

d. Provide such additional rules, policies, and procedures as may be necessary or proper for the effective operation and administration of the Stabilization Program.

C. Effect on Existing NHHP Amended and Restated Plan of Operations and Termination. This Stabilization Plan is a component of, and not intended to replace or alter, the Restated Plan adopted in 2016 and amended in 2018. Nothing in this Stabilization Plan will preclude NHHP from operating or winding down its support of the New Hampshire Granite Advantage Health Care Program or any other program covered by the Restated Plan, but the termination or winding down of any such program under the Restated Plan will not affect the Stabilization Program, which will continue to operate (or be terminated or wound down) in accordance with the terms of this Stabilization Plan.

## II. DEFINITIONS

In addition to capitalized terms defined elsewhere in this Stabilization Plan, when used in this Stabilization Plan the following terms will have the following meanings, unless the context clearly indicates otherwise:

A. “Assessment” means the regular and any special charge imposed by NHHP on all Members at rates and at times established by the Board and approved by the Insurance Commissioner pursuant to Section III(G) of this Stabilization Plan in order to fund in part the costs of the Stabilization Program.

B. “Assessment Base” means the number of lives on which any regular Assessment would be predicated under Section III(G)(1) below.

C. “Administrative Services” means the administrative services provided by the Executive Director, or by qualified service providers engaged by NHHP and supervised by the Executive Director, in connection with the Stabilization Program.

D. “Benefit Year”, sometimes referred to as the “Plan Year”, means each calendar year, beginning on or after January 1, 2021, for which an eligible individual market health benefit plan provides health insurance coverage.

E. “Covered Claim” means a claim for services covered under a Stabilization Program-eligible health benefit plan that is incurred by a Stabilization Program-eligible health insurer- “the Eligible Entity”- that meets the Stabilization Program parameters for inclusion in the payment determination during the benefit year- and paid by the Eligible Entity by June 30 of the following year, and as further described in Section IV(C) below.

F. “Eligible Entity” means a Member that is eligible for stabilization payment by having enrolled in the program and meeting all the Conditions for Participation as described in Section IV(B).

G. “Executive Director” means an individual or organization employed or engaged by the Board to support the Board and coordinate with the Insurance Commissioner in order to ensure successful operation of the Stabilization Program.

H. “Individual Market” means the market for health care insurance in New Hampshire offered to individuals, other than through group or group-type insurance, and excluding insurance offered through “Transitional” or “Grandfathered” Plans.

I. “Members” means insurance carriers providing health coverage in New Hampshire, each of which is a Member in the New Hampshire Individual Health Plan Benefit Association, as defined under Section 4(I) of the Statute.

J. “New Hampshire Reinsurance Program” aka “New Hampshire Market Stabilization Program” or “the Stabilization Program” means the market stabilization program established pursuant to Section 12 of the Statute and implemented and administered in accordance with this Stabilization Plan.

K. “Stabilization Program Funds” means all funds received by the Board in connection with the Stabilization Program from any source, including, but not limited to, Assessments of Members under this Stabilization Plan and federal funds obtained pursuant to the Waiver.

L. “Waiver” means the State Relief and Empowerment Waiver under Section 1332 of the ACA submitted by the State of New Hampshire and approved by the U.S. Department of Health and Human Services and the U.S. Department of the Treasury, as in effect from time to time.

### III. ADMINISTRATION OF THE STABILIZATION PROGRAM

A. Governance. The Stabilization Program will be managed and controlled by the NHHP Board in accordance with its governance structure and policies, as amended

from time to time. Such governance structure and policies will include, but are not limited to, the size and composition of the Board; the election or appointment of Board members; meeting, quorum, and voting requirements; and payment or reimbursement of expenses.

B. Powers and Authority of the Board. In addition to all powers it has under the Statute and common law, the Board will have the following specific powers with respect to the New Hampshire Market Stabilization Program:

1. The general power to oversee and control the operations and functions of the Stabilization Program.

2. The power to approve and enter into necessary contracts for the operations or functions of the Stabilization Program, including without limitation documentation to establish bank or investment accounts.

3. The power to adopt administrative and accounting policies and procedures for the Stabilization Program, including without limitation the establishment of appropriate reserves the funding of which will be reflected in the annual budget.

4. The power to assess Members for the costs of the Stabilization Program as described in Paragraph G below, and to receive funds with respect to the Stabilization Program from any lawful source and to provide for the holding, investment, and disbursement of such Stabilization Program Funds.

5. The power to assign to the Executive Director the duty to provide, and/or oversee the provision of, the Administrative Services for the Stabilization Program without the need to obtain competitive bids or conduct a formal request for proposal ("RFP") process.

6. The power to select and retain such other consultants and contractors for the Stabilization Program as may be necessary for the operations or functions of the Stabilization Program, without the need to obtain competitive bids or conduct a formal RFP process.

7. The power to establish, on an annual basis and in consultation with the Insurance Commissioner, the terms of the Stabilization Program, including, without limitation, setting the Assessment amount to be collected from each Member for each Benefit Year.

8. The power to establish, on an annual basis and in consultation with and subject to the approval of the Insurance Commissioner, the parameters for the Stabilization Program, including, without limitation, claim attachment point(s), claim annual maximum(s), and payment percentage(s) under the Stabilization Program for each Benefit Year.

9. The power to establish a grievance and appeals procedure under which participating Eligible Entities and other interested parties may have disputes or grievances related to the Stabilization Program reviewed and adjudicated, including, but not limited to, the power to make factual determinations with respect to any issue coming before the Board and the power to render decisions with respect to any dispute, grievance, or appeal, such decisions to be final and binding. The initial Grievance and Appeals Procedure is described in Attachment 2.

10. The power to review the Stabilization Plan and adopt amendments to the Stabilization Plan, subject to approval by the Insurance Commissioner.

11. The power to conduct periodic audits of the Stabilization Program and prepare periodic reports related to the operations and functions of the Stabilization Program.

12. The power to sue and be sued.

13. The power to review, consider, and act upon any other matters the Board deems necessary or proper for the administration and operation of the Stabilization Program.

14. Such other powers as may be necessary or proper for the exercise of the powers granted to the Board and the performance of the duties assigned to the Board with respect to the Stabilization Program.

C. Duties of the Board. The Board will have the following duties with respect to the New Hampshire Market Stabilization Program:

1. To annually review the operation and status of the Stabilization Program, to include review of the annual financial statements prepared in connection with the Stabilization Program.

2. To periodically review each outstanding contract or agreement entered into with respect to the Stabilization Program, to include a review of any services provided in connection with any such contract or agreement.

3. To periodically review the Stabilization Plan and to adopt any amendments or modifications it deems necessary or appropriate, subject to approval by the Insurance Commissioner.

4. To take such other action as may be necessary or appropriate for the proper functioning and operation of the Stabilization Program.

5. To provide an annual report with respect to the Stabilization Program to the Insurance Commissioner.

6. To set the Assessment rate that will be collected from each Member annually.

7. To establish an annual operating budget for the Stabilization Program.

D. Powers of the Insurance Commissioner. The Insurance Commissioner will have the following powers with respect to the New Hampshire Market Stabilization Program:

1. To approve the Stabilization Plan and any amendments thereto that have been adopted by the Board.

2. To approve the Board's recommendation regarding this Plan of Operations for the Stabilization Program.

E. Executive Director. The Board will assign to its Executive Director the duty to provide, or oversee the provision of, the Administrative Services, for the Stabilization Program. The expansion of the responsibilities of the Executive Director will be documented by a written amendment to the contract between the Board and the Executive Director on such terms and conditions as may be approved by the Board and which will include the following responsibilities:

1. Consulting with the Board and the Insurance Commissioner with respect to development of the Stabilization Program and any periodic enhancements or modifications to the Stabilization Program.

2. Developing Member, and other stakeholder, communications and communication strategies regarding the Stabilization Program.

3. Managing participation by Members and Eligible Entities in the Stabilization Program, including management of the process by which Eligible Entities submit claims for reimbursement to the Stabilization Program.

4. Accounting for receipts and disbursements of the Stabilization Program.

5. Preparing quarterly and annual financial statements and reports.

6. Processing eligible claims at least annually and in a timely manner.

7. Collecting and reconciling assessments on a quarterly basis.

8. Collecting and reconciling data from Eligible Entities necessary to establish the allocation and distribution of the Stabilization Program Funds.

9. Implementing and managing an audit process for participating Eligible Entities.

10. Working with NHHP's designated actuary, conducting periodic statistical analysis with respect to the Stabilization Program or any function within the Stabilization Program to inform the Board of the Stabilization Program's claims experience and projected funding needs.

11. Performing such other duties with respect to the Stabilization Program as may be assigned from time to time by the Board and documented in its meeting minutes.

F. Administrative Expenses Chargeable to Stabilization Program; Reserves. The Board and its delegates are authorized to expend Stabilization Program Funds for the payment of administrative expenses related to the Stabilization Program, including but not limited to, the following types of expenses: fees for professional services, including marketing, legal, actuarial, accounting, auditing or any other services that are necessary to provide assistance in the operation of the Stabilization Program; the fees and expenses of the Executive Director and the Stabilization Program Administrative Services; travel expenses; costs associated with the delegation of certain program administration functions to the federal government, banking fees or service charges incurred relating to establishment and maintenance of accounts for funds holding and disbursements, establishment of funds for the purpose of covering estimated termination costs and runout expenses, and any other administrative expenses deemed necessary by the Board to effectively conduct operations of the Stabilization Program. The Board will develop policies for allowable administrative expenses and procedures for the payment of such expenses. In preparing any accounting or financial projection in connection with the Stabilization Program, the Board or the Executive Director may establish reasonable reserves for anticipated future expenses of the Stabilization Program.

G. Assessments. The Stabilization Program will be funded, in part, by assessments of Members in accordance with the following:

1. Regular Assessment Rate. The Board will establish a regular assessment rate for each Benefit Year in accordance with the methodology described in Attachment 1 (the "Regular Assessment Rate"). The assessment rate will be: (a) calculated on a calendar year basis; (b) established no later than November 1 in the year preceding the Benefit Year; and (c) anticipated to be sufficient, along with other reasonably anticipated Stabilization Program Funds, to meet the Stabilization Program's payment obligations and operating expenses

attributable to the Benefit Year. As the assessment rate is an amount per covered life, each covered life will be included in the assessment only once.

2. Special Assessment Rate. In addition to the regular assessment rate, the Board may establish a special assessment rate if it determines that the Stabilization Program Funds are or will become insufficient to pay the Stabilization Program's costs and expenses in a timely manner. The rate of any special assessment will not exceed the rate deemed necessary by the Board to fund the deficiency and will be subject to the approval of the Insurance Commissioner.

3. Payment of Assessments by Members. The Board will establish a process for imposing and collecting assessments from Members, which will include establishing a mechanism for calculating the assessment amount for each Member and notifying the Member of the assessment amount and establishing and communicating the process by which Members will make payment of the assessment.

4. Quarterly Schedule; Late Payments. Assessments will be collected on a quarterly basis in accordance with a schedule established by the Board. Quarterly assessments that are not paid by the 15th day of the month in which the due date occurs will be late and will accrue interest at the rate of 1.5% per month.

H. Accounting, Books, and Records. The Stabilization Program will maintain its books, records, accounts, and operations on a calendar year basis. On or before April 30 immediately following a Benefit Year, the Executive Director will prepare financial statements as of December 31 of that Benefit Year.

#### IV. OPERATION OF THE STABILIZATION PROGRAM

##### A. General Matters.

1. The official address of the Stabilization Program will be as determined by the Board from time to time.

2. NHHP will open one or more bank accounts for use in connection with the Stabilization Program. Reasonable delegation of deposit and withdrawal authority with respect to such accounts may be made as is consistent with prudent fiscal policy. The Executive Director (or its designee) will be provided with access to any such accounts in order to facilitate performance of the administrative services for the Stabilization Program.

3. Operation of the Stabilization Program will at all times be subject to, and will be in conformity with, applicable federal laws and regulations and the laws of the state of New Hampshire.

B. Conditions of Participation.

1. The Board may establish an Eligible Entity enrollment process for the Stabilization Program, if deemed necessary to the efficient operation and administration of the Stabilization Program. If an enrollment process has been established, to become an Eligible Entity, a Member must enroll at the time and in the manner specified by the Board in order to participate in the Stabilization Program.

2. To participate in the Stabilization Program, an Eligible Entity must comply with all rules, policies, procedures, duties, obligations, and other requirements adopted or established in connection with the Stabilization Program.

3. An Eligible Entity must continue to administer and manage the insurance policy for any risk reinsured through the Stabilization Program in accordance with (i) the terms of the insurance policy, including, but not limited to, all related schedules of benefits, certificates of coverage, and other documents describing the terms of coverage under the policy; (ii) the Eligible Entity's usual and customary claims adjudication and utilization management processes; and (iii) the insurance law of the state of New Hampshire.

4. As a condition of receiving payments from the Stabilization Program, an Eligible Entity must provide, for each benefit year, all data and information required by the Stabilization Program in the manner and format and within a timeline required by the Stabilization Program. This is expected to include:

a. The name and company code assigned to the Eligible Entity by the National Association of Insurance Commissioners;

b. The entire total amount of paid claims for the Eligible Entity's reinsurance eligible claimants for the benefit year;

c. The total amount of the paid claims portion of Eligible Entity's total reinsurance eligible claims that fall between the attachment point and reinsurance cap;

d. An attestation signed by an executive officer of the Eligible Entity stating that the information is accurate as of the date of submission;

e. A description of the insurer's Care Management Program, and any applicable updates to be provided in a timely basis and at least annually thereafter, that demonstrates the insurer's ability to identify and help manage the care of potential higher cost claimants to ensure the appropriateness of health care services delivered. NHHP will collect these

Care Management Program descriptions and will transmit them to the Insurance Commissioner without evaluation of effectiveness.

5. In accordance with state filing requirements, an Eligible Entity must submit two sets of rates to the New Hampshire Insurance Department for all plans eligible for participation in the Stabilization Program as part of the annual plan and rate filing process: “with waiver” rates that include the anticipated impact of any Stabilization Program payments on rates; and “without waiver” rates that show the anticipated rates without any Stabilization Program payments. The with and without rates must be reflective of the insurer’s estimated actuarial impact that the Stabilization Program will have on the insurer’s plan(s) for the upcoming benefit year.

C. Covered Health Insurance Claims. Health insurance claims under insurance policies issued in the Individual Market (excluding transitional and grandfathered plans) in New Hampshire will be eligible for inclusion in the payment determination under the Stabilization Program in accordance with the following:

1. Eligible Insureds. Covered Claims incurred by any individual receiving coverage under an eligible plan or policy issued in the Individual Market will be eligible for inclusion under the Stabilization Program, subject to satisfying all other participation criteria under this Stabilization Plan and the Stabilization Program.

2. Nature of Covered Claims. To be a “Covered Claim” for inclusion under the Stabilization Program, a claim must (i) be eligible for inclusion as an incurred claim in the Plan Year pursuant to 45 CFR 158.140 (ii) and paid on or before six months following the end of the Plan Year.

3. Attachment Point. No claim incurred by a covered individual will be eligible for inclusion in the payment determination under the Stabilization Program for a Benefit Year until all Covered Claims incurred and paid on behalf of the covered individual under the applicable health insurance policy by the Eligible Entity seeking payment have met the specific attachment point established for that Benefit Year. A Covered Claim may not be submitted to the Stabilization Program by an Eligible Entity until the specific attachment point has been met. The applicable attachment point is described in Attachment 1.

4. Annual Maximum. Generally, no Covered Claim amount incurred by a covered individual will be eligible for payment inclusion under the Stabilization Program once the total Covered Claims incurred and paid with respect to that covered individual under the applicable health insurance policy for the Benefit Year have reached the annual maximum per claim cap- the “Cap”-

established for that Benefit Year. In the unlikely event that available Stabilization Program Funds would result in a coinsurance payment percentage greater than 100% of the Covered Claims value then the annual maximum cap might be increased. The applicable annual maximum Cap is described in Attachment 1.

5. Claim Liability Summary. The liability for claims costs incurred within a benefit year, excluding member cost sharing, in which the Stabilization Program is in effect is summarized by claim range

<u>Claim Range</u>	<u>Liability</u>
\$0-Attachment Point	100% Eligible Entity
Attachment Point -Cap	Final Payment %- Stabilization Program (1-Final Payment %)- Eligible Entity
Amount Beyond Cap	100% Eligible Entity

The claim liability summary for Year 1 is described in Attachment 1.

D. Submission of Claims by Carriers under Stabilization Program.

1. Information to be Provided. Requests for Stabilization Program payments with respect to eligible Covered Claims under the Stabilization Program must be submitted in the form and manner required by the Stabilization Program, which may include a requirement to submit such requests in an electronic format and/or through an online portal. Such requests must include all information and supporting documentation required on the form provided by NHHP, including any accompanying instructions and any rules, policies, or procedures referenced in the form or accompanying instructions.

2. Timing. The Requests for Stabilization Program payments with respect to eligible Covered Claims must be submitted no later than seven (7) months after the end of the Benefit Year in which the Covered Claim was incurred. Generally, Eligible Entities should follow the regular claim submission timeline throughout the benefit year consistent with the annual schedule established by the Center for Consumer Information & Insurance Oversight (CCIIO) Centers for Medicare & Medicaid Services (CMS) for claim submittal to the EDGE servers. The Payment Request and Submission Process is described in Attachment 2.

3. Correction of Errors. Errors in any submission must be corrected, and the information resubmitted, by the earlier of (i) 30 days after the Eligible Entity receives notice of the error from the Stabilization Program, or (ii) the latest date for submitting a request for reinsurance payments with respect to the Covered Claims.

E. Stabilization Program Payments. Stabilization Program Payments to participating Eligible Entities based on eligible Covered Claims under the Stabilization Program will be made on a periodic basis, at least annually, as determined by the Board for each Benefit Year of the Stabilization Program.

1. General Claim Process and Payment Timing. Valid and complete Covered Claims received in accordance with the terms of the Stabilization Program will be processed and Stabilization Payments paid no later than ten (10) months after the end of the benefit year. If the date for payment is a date on which banks are closed in the United States (e.g., a weekend or federal banking holiday), payment will be made on the immediately following banking day. Payments delayed due to any event or condition beyond the control of the Stabilization Program (for example federal sequestration) will be made as soon as is administratively practicable and will not accrue interest.

2. Verification of Completeness of Claim. Payments with respect to a Covered Claim will in all cases be subject to verification by the Stabilization Program, including, but not limited to, ensuring completeness, eligibility, and submission in accordance with the terms of the Stabilization Program.

3. Estimated and Final Reinsurance Percentage. A target coinsurance percentage on covered claims for a Benefit Year will be the percentage established by the Insurance Commissioner based on a recommendation by the Board for that year. This estimated coinsurance percentage will be trued up to a final coinsurance percentage on the actual amount of total funds received for distribution in the Benefit Year compared to the total claims received for payment. This final percentage will be used to calculate the final Stabilization Payment amounts that will be remitted to the submitting Eligible Entities.

4. Determination of Payment Amounts. Subject to the attachment point and annual maximum cap per covered individual and all other conditions and limitations set forth in this Stabilization Plan, the payment amount with respect to an eligible Covered Claim submitted to the Stabilization Program will be predicated on the product of (i) the amount of the eligible Covered Claims, and (ii) the applicable final coinsurance percentage calculated for the Benefit Year.

5. Shortfall or Projected Shortfall in Stabilization Program Funds. If the total Stabilization Program Funds with respect to a Benefit Year are insufficient to pay all Stabilization Program expenses, payments, and other disbursements allocable to that Benefit Year, then the Board may reduce proportionately all Stabilization Program payments allocable to that Benefit Year to the extent necessary to prevent a deficit for that Benefit Year. It is the intent of the Stabilization Program that all funds received in a Benefit Year be used to pay for

eligible claims in that year after paying for all administrative expenses associated with the Stabilization Program as described in Section III (F).

a. Any reduction to Stabilization Program payments with respect to a Benefit Year will apply to all eligible claims allocable to that Benefit Year without regard to when eligible claims are submitted, and any such reduction will be applied to each eligible claim in the same proportion.

b. If, at any time, NHHP reasonably projects that it will be necessary to reduce payments with respect to a Benefit Year, and the payments are scheduled to be made more frequently than annually, then the Stabilization Program may consider eligible claims for payment determination by paying only a percentage of the amount, based on NHHP's reasonable projections regarding the necessary reductions for the Benefit Year. If it is later determined (in connection with the true-up process described in this Stabilization Plan) that a larger percentage of the payment amount was payable for the Benefit Year, then an additional payment will be made to all Eligible Entities proportionally.

c. If an Eligible Entity receives a payment during the benefit year and it is later determined (in connection with the final payment calculation and true-up process described in this Stabilization Plan) that a smaller percentage of the reinsurance payment was payable for the Benefit Year, the Eligible Entity must repay the excess to the Stabilization Program at the conclusion of the true-up process described in this Stabilization Plan, such repayment to be made no later than 10 days after written notice to the Eligible Entity by the NHHP.

6. Subject to Availability of Funds. Payment under the Stabilization Program will, at all times, be subject to, and contingent upon, the availability of sufficient Stabilization Program Funds.

7. Power to Suspend or Alter Timing of Payments. The Board will have the power, at all times, and exercisable in its discretion, to suspend or alter the timing of payments under the Program.

8. Estimated Program Annual Reporting and Activity Timeline. All reporting, payment and program operations shall be done in accordance with the Implementation Timeline included in the final approved Waiver and its associated Specific Terms and Conditions.

F. Use of Stabilization Program Funds and Ordering Rules.

1. All Stabilization Program Funds received by NHHP for the Stabilization Program will be deposited in the financial account(s) established by the Board and used as follows:

a. First to pay, or to establish reasonable reserves for payment of, administrative and operational expenses of the Stabilization Program as defined in Section III(F).

b. Second to set aside any Board Approved amounts, if not already accounted for in Section III(F), for the effective management of the Stabilization Program including possible termination and run-out;

c. Third to make Stabilization Payments based on included Covered Claims properly submitted to the Stabilization Program.

2. Payment requests properly submitted to the Stabilization Program will be paid from the following sources:

a. First from federal funds received pursuant to terms of the Waiver that remain available after payment of, or establishment of reasonable reserves for payment of administrative and operational expenses of the Stabilization Program.

b. Second from any properly designated Board Approved set aside funds if applicable.

c. Third from the Assessments of Members.

d. Fourth from any other available Stabilization Program Funds.

G. Annual Stabilization Program Final Payment Calculation and True-Up.

1. NHHP will establish a final payment calculation and, if any payments were made during a benefit year, a payment true-up process with respect to each Benefit Year to make any necessary adjustments in amounts paid to an Eligible Entity with respect to that Benefit Year. Adjustments made during the true-up process may include, but are not limited to:

a. Retroactive reductions or other adjustments in payments to Eligible Entities necessary to prevent a deficit for the Benefit Year.

b. Retroactive increases or other adjustments in payments to Eligible Entities necessary to ensure each claim for reimbursement is reimbursed proportionately.

c. Offsets or adjustments to account for any amounts owed by an Eligible Entity to the Stabilization Program.

2. The final payment calculation and true-up will occur between August 1 and September 30 following the Benefit Year to which it relates.

3. Any additional payment by an Eligible Entity required as a result of the true-up process must be made no later than 10 days after written notice to the Eligible Entity by the Stabilization Program.

4. Any additional payment to an Eligible Entity required as a result of the true-up process will be made no later than 10 days after the close of the true-up process.

H. Reporting by Eligible Entities. NHHP may request reports and information from participating Eligible Entities from time to time, as may be necessary for the sound and efficient operation of the Stabilization Program and to meet federal reporting requirements.

I. Recoveries from Third Parties. As a condition of participation in the Stabilization Program, the following terms and conditions will apply with respect to any Third-Party Recoveries received by an Eligible Entity during the benefit year reporting period with respect to Covered Claims for which payments were requested under the Stabilization Program:

1. A "Third-Party Recovery" means any recovery from any source of any amount paid with respect to a Covered Claim, including, without limitation, recovery pursuant to subrogation or reimbursement, recovery of any overpayment or impermissible payment to a health care provider, and recovery of any amount determined to have been paid as a result of fraud or abuse.

2. An Eligible Entity must make a report to the Stabilization Program within 10 days after receipt of any Third-Party Recovery with respect to a Covered Claim for which a payment (or payments) was (or were) made under the Stabilization Program.

3. If an interim payment has been made during the benefit year reporting period, NHHP will be entitled to recover on behalf of the Stabilization Program the full amount of the portion of its Stabilization Payment (or payments) related to such Third-Party Recovery, up to (but not in excess of) 100% of such Third-Party Recovery, without any offset or reduction for any expenses of

recovering such Third-Party Recovery and without regard to whether the Eligible Entity has been made whole. The Stabilization Program's right of recovery against such Third-Party Recovery amounts will apply without regard to the "make whole doctrine," the "common fund doctrine," or any other or similar equitable doctrine or principle that might otherwise reduce or limit the Stabilization Program's right of recovery against such Third Party Recovery amounts, it being the express intent and agreement of the parties that the Stabilization Program be entitled to recover the full amount of its Stabilization Payments from any such applicable Third Party Recovery amounts.

4. In view of the foregoing, NHHP will be entitled to first priority subrogation rights with respect to any Third-Party Recoveries received by a health care insurance with respect to a Covered Claim, and to seek enforcement and protection of such rights by appropriate legal proceedings.

5. An Eligible Entity that is required to pay some or all of a Third- Party Recovery to the Stabilization Program must pay within 10 days after written notice and demand for payment by the Stabilization Program. The Stabilization Program will have the right, either in addition to or as an alternative to demanding payment from an Eligible Entity, to offset the Third-Party Recovery for any reason.

6. Once the Final Payment has been made by NHHP for a Benefit Year, any subsequent recoveries that relate to claims for that Benefit Year Payment will NOT be subject to these Section I conditions.

J. Right of Offset. The Stabilization Program or the Executive Director on its behalf, will be entitled to offset against any amounts otherwise payable to the Eligible Entity under the Stabilization Program the amount of any Third-Party Recovery or other amounts owed by such insurer to NHHP under the Stabilization Program.

## V. AUDITS

An Eligible Entity may be subject to periodic audits to review any and all information, transactions, or other matters relevant to the insurer's participation in the Stabilization Program, including, but not limited to, Eligible Claims for which payments were made and information related to assessments of Members. Audits of Eligible Entities may include both a baseline audit conducted in connection with commencement of an insurer's participation in the Stabilization Program and periodic audits throughout the insurer's participation in the Stabilization Program.

An Eligible Entity may be required to submit an audit report, from a qualified independent auditor, verifying the appropriateness and accuracy of procedures used to identify and submit a claim for Stabilization Program payment. NHHP will rely on this

reporting without separate independent investigation. To meet this Audit requirement, each Stabilization Program Eligible Entity would:

- A. Hire a Certified Public Accountant (CPA) or other party approved by the Board to conduct agreed upon procedures of various items related to Stabilization Program payments. To be acceptable, the auditor must be independent, in accordance with standards established by the Audit Committee. The agreed upon procedures must be performed in accordance with generally accepted auditing standards as adopted by the membership of the American Institute of Certified Public Accountants.
- B. Ensure that the agreed upon procedures shall be conducted in accordance with a uniform agreed upon procedure program (herein after called "Audit Program") for Members, as developed by the Board. This Audit Program shall clearly specify all items to be examined. It shall include a certification statement form, to be completed by the auditor, to verify the completion of all prescribed agreed upon procedures as dictated by the Audit Program. Also, details regarding the number and types of records reviewed and any errors found shall be submitted in a written report which accompanies the certification statement. A copy of this report and the certification statement shall be submitted to the Board by the auditor.
- C. Conduct an Audit Program that shall include, but not be limited to, detail testing of representative samples of the following items:
  1. Stabilization claims submitted to the Stabilization Program, in particular:
    - a. Eligibility of individuals for which payments are requested;
    - b. Proper determination of Covered Claim amounts requested by the Eligible Entity including:
      - (1) Verification that the related claim was paid.
      - (2) Appropriate adjudication against the proper Essential Health Benefit Plan.
      - (3) Proper use of the approved methodology to convert any applicable capitated claims to fee for service basis.
      - (4) Properly applied Program claim attachment point and cap;
      - (5) Proper application of any recoveries made by the Eligible Entity.

2. Reimbursement requests to the Stabilization Program have been properly determined considering reimbursement by other parties for the same expenses due to subrogation, coordination of benefits, outside reinsurance or other reimbursement.
  3. The frequency of these agreed upon procedures shall be conducted annually. The cost of the performance of the agreed upon procedures of an Eligible Entity shall be borne by that Eligible Entity.
- D. Conduct random reviews of provider bills or other records as deemed necessary to verify the accuracy and appropriateness of reinsurance claim submissions.

The Board shall have the right to conduct such additional reviews, inspections, and or agreed upon procedures audits of Eligible Entities as it deems appropriate, and the Eligible Entity agrees to cooperate (and to cause its auditor to cooperate), with the Board's audit. The audit may include:

- (a) Audit and inspect Eligible Entity books and records relating to the identification of covered persons eligible for payments under the Stabilization Program,
- (b) Audit and inspect books and records relating to the identification and calculation of the claim amounts designated for payment under the Stabilization Program by the Eligible Entity.
- (c) Audit and inspect Eligible Entity books and records relating to the claim data submission on the EDGE server and the Comprehensive Health Care Information Set ("CHIS") data submitted to the NH Department of Insurance for any applicable benefit years.

## VI. GENERAL PROVISIONS

A. Amendments to the Stabilization Program Plan of Operations. This Stabilization Plan may be amended at any time by proper action of the Board, subject to approval of such amendment by the Insurance Commissioner and the Board.

B. Termination. The Stabilization Program will continue in existence unless and until it is terminated upon the occurrence of any of the following events:

1. The Insurance Commissioner, either independently or upon the request of NHHP, determines in writing that the Stabilization Program no longer is serving its intended purpose of stabilizing the individual health insurance market in New Hampshire and encouraging participation in such market by insurers;

2. The terms of the Waiver are altered by the U.S. Department of Health and Human Services and/or the U.S. Treasury in a material manner which impedes the purposes of the Stabilization Program as determined by the Insurance Commissioner, or the funding under the Waiver is terminated or is reduced to a level which eliminates the benefits of the Stabilization Program; or

3. There is a change in federal or state law or regulation which prohibits NHHP from continuing to operate the Stabilization Program.

Upon the occurrence of any of the following events, NHHP will issue a notice to its Members informing them of the Stabilization Program termination and establishing a revised Assessment schedule and any necessary modifications to the Covered Claims provisions of Sections IV(C) through (E) above to reflect such termination. Upon termination of the Stabilization Program, the Board will be responsible for the orderly winding up of the Stabilization Program in accordance with the terms of the final approved Waiver and Specific Terms and Conditions.

C. Interpretation; Waiver. The Board will have discretionary authority to interpret and construe the terms and provisions of this Stabilization Plan, as amended and in effect from time to time. No failure to enforce, or insist upon strict compliance with, any term or provision of this Stabilization Plan will be deemed a waiver of such term or provision.

D. Limitation of Liability. The state of New Hampshire will not be liable for any acts or omissions of the Board, the Insurance Commissioner, the Executive Director, or any of their members, employees, agents, or contractors, in connection with the Stabilization Program.

E. Immunities and Insurance. In conducting the affairs of the Stabilization Program, the Board and its committees, including the individual directors and committee members, and the NHHP administrators and their employees continue to enjoy the immunities of Sections 3(IV) and 9 of the Statute and the indemnification set forth in the NHHP Bylaws. To the extent not currently in effect, NHHP may acquire and maintain director and officer liability insurance to cover the activities of the Board and its committees under this Stabilization Plan.

F. Severability of Unenforceable Provisions. If any provision of this Stabilization Plan is deemed to be invalid, unlawful, or unenforceable, it will be deemed severed herefrom and will not affect the validity or enforceability of the remaining provisions of the Stabilization Plan.

**ATTACHMENT 1**  
**MARKET STABILIZATION PROGRAM PARAMETERS SPECIFICATIONS**

**Regular Assessment Rate:**

The Regular Assessment Rate initially will equate to 60 basis points (0.6%) of the prior plan year second lowest cost silver plan premiums (using the rate associated with a 40 year old non-smoker enrollee purchasing a plan on the New Hampshire Marketplace) before the impact of the Stabilization Program is calculated. For Year 1 of the Stabilization Program (Benefit/Plan Year 2021), this target will be based on the applicable premium rate for Plan Year 2020 which was public as of September 2019. This premium was \$404.60 resulting in a Regular Assessment Rate of \$2.43 per member month.

**Eligible Claims and Target Payment:**

- a. The specific attachment point for the 2021 Benefit Year is \$60,000 in Covered Claims per covered individual.
- b. The annual maximum per claim cap for the 2021 Benefit Year is \$400,000 in Covered Claims per covered individual, provided that, if funds exceed submitted claims, this cap may be increased at the discretion of the Insurance Commissioner and the Board.
- c. The target percentage for the 2021 Benefit Year is 74%.

Year 1 Summary:

<u>Claim Range</u>	<u>Target Liability</u>
\$0-\$60,000	100% Eligible Entity
\$60,001-\$400,000	74% Program; 26% Eligible Entity
\$400,001 and beyond	100% Eligible Entity

## ATTACHMENT 2

### MARKET STABILIZATION PROGRAM PAYMENT REQUEST PROCESS AND APPEALS PROCEDURES

- A. Each Eligible Entity will submit EDGE Server Data as required for the Risk Adjustment Program.
- B. Each Eligible Entity will submit a Covered Claims Summary in a manner and form proscribed using a reporting template provided by NHHP.
- C. NHHP will calculate payment allocations for each Eligible Entity using EDGE Server Data. On or before July 1, NHHP will make an Initial Payment to each Eligible Entity in the amount of 80% of the EDGE Server data determined payment allocation.
- D. NHHP will calculate the Stabilization Program payment allocation for each Eligible Entity based on the Covered Claims Summary submissions.
- E. NHHP will compare the calculated payment allocations from the Covered Claims Summary submissions and from the EDGE Server data;
  - 1. If the allocation payment for every Eligible Entity calculated from that Eligible Entity's Covered Claims Summary shows a difference no greater than 2.5% from the allocation payment calculated using the CMS EDGE reported data, NHHP will use the Eligible Entities' Covered Claims Summary to determine final allocations and final payments to the Eligible Entities.
  - 2. If the allocation payment for any Eligible Entity calculated from the Eligible Entity's Covered Claims Summary differs from the allocation payment calculated using the CMS EDGE reported data by more than 2.5%, then that Eligible Entity will be asked to submit additional claims detail to reconcile their EDGE Server Data to their Covered Claim submission.
- F. NHHP will review the additional claims detail for reconciliation submission and may utilize an outside reviewer to make a final determination of Covered Claims for payment allocation determination.
- G. Based on the information submitted and reviewed NHHP will make a final payment allocation and payment determination for each Eligible Entity.

- H. In accordance with Section IV G of the Plan of Operations, NHHP will make a payment to each Eligible Entity equal to the difference between the Initial Payment amount (Step C) and the final payment determination (Step G).
- I. An Eligible Entity can appeal this final determination to the NH Insurance Commissioner.