

[Section #] The Granite State Paid Family Leave Plan. Amend RSA 21-I by inserting after section 95 the following new sections:

21-I: 96 The Granite State Paid Family Leave Plan. There is hereby established the Granite State Paid Family Leave Plan, which shall be implemented as set out in this subdivision and as provided in RSA 282-B, RSA 77-A, and RSA 77-E.

21-I: 96-a Purpose and Policy. – The purpose of this subdivision is to leverage the purchasing power and economies of scale available to the state when it is acting as purchaser on behalf of state employees and to align this purchasing initiative with a business tax incentive in order to make available to all private and other public employers in the state, on a voluntary basis, advantageously priced Family and Medical Leave Insurance (FMLI) wage replacement benefits. By purchasing FMLI coverage for state employees through the medium of commercial insurance, by linking that contract with a contract to make the same coverage available statewide, by acting as premium aggregator for individuals whose employer does not sponsor such coverage, and by introducing a new business tax incentive, the state will position itself to create a market for advantageously priced FMLI benefits. By this means, it is the intent of this subdivision to significantly increase the number of employees in the state who receive FMLI wage replacement benefits. The social benefits of increasing the rate of FMLI coverage include attracting and retaining workers, including younger workers to the state, enabling parents to bond with biological, adopted, or foster children, helping to meet the needs of an aging population, promoting workplace stability, and enhancing worker retention and productivity. Many larger employers provide paid FMLI benefits through self-insurance, but this is not feasible for most mid-sized and smaller businesses. The general court therefore finds that it is in the public interest for the state to strategically use its purchasing power and tax expenditure authority to establish a marketplace in the state for advantageously priced FMLI wage replacement benefits.

21-I: 96-b Definitions. – In this subdivision:

- I. "Child" has the same meaning as "son or daughter" in 29 U.S.C. section 2611(12).
- II. "Commissioner" means the commissioner of the department of administrative services.
- III. "Department" means the department of administrative services.
- IV. "Family member" means a "child" as defined in RSA 21-I: 96-b I, a biological, adoptive or foster parent, stepparent, or legal guardian of the child or the child's spouse or domestic partner, a biological, adoptive, or foster grandparent or step grandparent, or a spouse or domestic partner under RSA 457.
- V. "Family and medical leave" means leave from work:

- (a) Because of the birth of a child of the employee, within the past 12 months; or within the past 12 months;
- (b) Because of the placement of a child with the employee for adoption or fostering within the past 12 months;
- (c) Because of a serious health condition of a family member; or
- (d) Because of any qualifying exigency arising from foreign deployment with the Armed Forces, or to care for a service member with a serious injury or illness as permitted under the federal family and medical leave act, 29 U.S.C. section 2612(a)(1)(E) and 29 C.F.R. section 825.126(a)(1) through (8), as they existed on October 19, 2017, for family members as defined in paragraph VIII.

X. "FMLI" means family and medical leave insurance providing wage replacement benefits under specified conditions.

XI. "Family and Medical Leave Act" means the federal Family and Medical Leave Act of 1993, Pub.L. 103-3 (29 U.S.C. § 2601 et seq.).

XII. "Serious health condition" means any illness of a family member covered by the Family and Medical Leave Act including treatment for addiction as prescribed by a treating clinician, consistent with American Society of Addiction Medicine criteria, as well as treatment for a mental health condition, consistent with American Psychiatric Association criteria.

XIII. "State rate" means the per employee premium amount that is charged by the successful bidder or bidders for the state contract for FMLI coverage for state government employees as provided in this subdivision. The state rate shall be expressed as a percentage of wages.

21-I: 96-c Contracting and Administrative Authority. –

I. The commissioner shall be authorized to solicit information about, proposals for, negotiate, enter into and administer group insurance contracts with duly authorized accident and life insurance carriers as necessary and appropriate to provide to qualifying state employees, at state expense and at no cost to such employees, an FMLI plan of wage replacement as described in this subdivision. The provision of this coverage shall be considered a matter of legislatively established public policy that is designed to benefit all employers and employees in the state and that is "confined exclusively to the public employer by statute" as provided in RSA 273-A:1 XI and shall not be subject to collective bargaining. Nor shall the meaning of this subdivision be so construed as to invalidate any portion of a collective bargaining agreement entered into by the state.

II. The state shall provide to all permanent state employees wage replacement coverage for qualified leave, which shall be available for the same types of leave as protected under the Family and Medical Leave Act except leave for a health condition of the employee. This shall include leave for:

- (a) the birth of a child and to care for the newborn child within one year of birth;
- (b) the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- (c) caring for the employee's spouse, child, or parent who has a serious health condition; or
- (d) any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty," or to care for a covered service-member with a serious injury or illness if the eligible employee is the service-member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

III. Subject to any changes as authorized under RSA 21-I: 96-g, the wage replacement benefits under this FMLI plan shall be structured as follows:

- (a) Eligible employees shall receive 60% of their average weekly wage;
- (b) The maximum duration of wage replacement shall be six weeks per year, with no minimum duration required;
- (c) Wages used to determine the 60% FMLI coverage shall be capped at the amount of the Social Security Taxable Wage Maximum as amended from time to time;

IV. Except as provided in RSA 21-I: 96-d III regarding individual pool coverage, the commissioner shall establish, through his discretionary authority in administering the request for information and the request for proposals process, the following additional elements of the benefit structure consistent with the purposes and policy of this subdivision:

- (a) The base period by which the average weekly wage shall be determined.
- (b) The tenure requirement, expressed in terms of months of work, before an employee is eligible to be covered—provided, however, that no tenure requirement shall apply to an employee who has already met the requirement and then changes jobs.
- (c) A waiting period or elimination period—provided, however, that a waiting or elimination period shall not be a required element of the benefit structure, and the commissioner shall have authority to implement a plan with no such requirement.

21-I: 96-d State Employee Coverage Linked to Coverage Offerings for Other Employers and for Individual Employees. – The commissioner shall include in the request for proposals for FMLI benefits for state employees a requirement that the winning bidder or

winning bidders shall, as a condition of the state contract, also offer the same FMLI coverage to private employers and other public employers and individual employees on the following terms:

I. Private and public non-state employers shall receive a rate that is derived from the state rate through the application of rating factors that are actuarially justified and specified in the bid response.

II. Employers who choose to sponsor coverage for their employees shall contract directly with the winning bidder or bidders.

III. Individuals who work for employers who choose not to offer FMLI coverage under this subdivision or who fail to meet minimum participation requirements and who do not offer an FMLI benefit that is at least equivalent to the Granite State Paid Family Leave Plan shall have the opportunity to contract indirectly with the winning bidder or bidders through the purchasing pool for family and medical leave insurance authorized under RSA 282-B and administered by the Department of Employment Security. The pool may be experience rated. Coverage through the pool shall include a seven month waiting period, a one week elimination period, and a 60 day annual open enrollment period as established by the commissioner in the procurement process. Premiums for individual pool coverage shall not exceed five dollars per subscriber per week.

IV. The commissioner shall establish, through his discretionary authority in administering the request for information and the request for proposals process, the following additional elements of the benefit structure and plan administration specifically for employees of sponsoring non-state employers consistent with the purposes and policy of this subdivision:

- (a) The minimum participation requirement.
- (b) The parameters for open enrollment periods.
- (c) Procedures for contributory plans, partially contributory plans, and non-contributory plans.
- (d) Procedures for payroll deduction and premium remittance.

21-I: 96-e Conditions of Non-State Employer Participation. – Participation in the plan by non-state employers shall be voluntary. In addition, non-state employers may choose to provide FMLI at no cost to their employees or on a contributory or partially contributory basis.

21-I: 96-f The Procurement Process. – The Commissioner shall be authorized to issue a request for information and/or a request for proposals to secure FMLI coverage for all eligible employees of the state of New Hampshire and to make advantageously priced coverage available to all other private and public employers in the state as provided in this subdivision. The Department and the Department of Employment Security shall jointly evaluate the proposals received in response to the request for proposals. The Department shall contract with an insurance carrier or carriers to provide FMLI coverage. The contract with the winning bidder or bidders shall be subject to governor and council approval. The selected insurance carrier(s) shall

be licensed by the States of New Hampshire and in good standing. The selected insurance carrier(s) shall be subject to all applicable insurance laws and regulations of the States of New Hampshire, and the rates and forms for the FMLI contracts shall be filed for approval with the insurance commissioner.

21-I: 96-g Commissioner Discretion to Adjust Initial FMLI Benefit Structure. – In exercising her or his authority under this subdivision to contract for FMLI coverage for state employees and also for the availability of advantageously priced FMLI coverage for employees of all non-state employers, the Commissioner shall have discretionary authority in the start-up of this program to make changes to the benefit structure of the FMLI plan as set out in RSA 96-c: III and may retain a consulting actuary or other benefit advisors in support of this discretionary determination. This discretionary authority shall be exercised in consideration of the stated purposes and policy goals of this subdivision and of the counsels of the FMLI Advisory Board established in RSA 21-I: 96-i. Any such changes made under this paragraph shall be subject to approval by the governor and council and the joint fiscal committee prior to implementation and shall be offered by the joint fiscal committee as a committee housekeeping amendment to this subdivision in the next regular session of the general court.

21-I: 96-h The Family and Medical Leave Insurance Advisory Board. – There is hereby created the Family and Medical Leave Insurance Advisory Board, which shall be administratively attached to the Department, and which shall hereinafter be called the FMLI Advisory Board. The FMLI Advisory Board shall consist of 9 members to be appointed, with the exception of the legislative members, by the governor. Three of the appointees of this Advisory Board shall be persons who, because of their vocations, employment or affiliations, shall be classed as representing the point of view of employers; 3 shall be persons who, because of their vocations, employment or affiliations, shall be classed as representing the point of view of employees; one shall be a senator appointed by the senate president; one shall be a representative appointed by the speaker of the house; the remaining appointee, who shall be designated as chairman, shall be a person whose training and experience qualify her or him to successfully resolve the problems of FMLI procurement, eligibility, benefit design, and program administration. Such Advisory Board shall meet no later than 45 days after each calendar quarter and aid the commissioner in formulating policies and discussing problems related to the implementation and administration of this subdivision and RSA 282-B and in assuring impartiality and freedom from political influence in the solution of such problems. Advisory Board meetings shall provide opportunity for public comment.

21-I: 96-i Report and Outreach. –

I. Working in coordination with the commissioner of administrative services as provided in RSA 282-B: 5 I., the Department shall jointly produce, on an annual basis, a summary report on the Granite State Paid Family Leave Plan. This report shall be made public and delivered to the governor, senate president, and speaker of the house of representatives. It shall include but not

be limited to, a description of progress in carrying out the processes contemplated under this subdivision, progress in improving the rate of FMLI coverage of employees in the state, and recommendations for more fully achieving the purposes and policy goals of this subdivision.

II. Working in coordination with the department of employment security as provided in RSA 282-B: 5 II., the department shall jointly develop and implement an outreach program to ensure that employers who might benefit from sponsoring FMLI coverage for their employees and individuals who may be eligible to receive FMLI coverage under this subdivision are made aware of this program. Outreach information shall explain in an easy to understand format, eligibility requirements, benefit structures, and the process for accessing coverage, enrolling individuals, and qualifying for the business tax credit provided for in RSA 77-E: 3-d.

21-I: 96-j Rulemaking. – The commissioner may adopt rules, pursuant to RSA 541-A, as deemed necessary for the implementation of this chapter.

21-I: 96-k Appropriation and Funding Transfer. – The state treasurer shall transfer funds from the general fund to the department of administrative services for payment of the administrative and implementation costs associated with this chapter.

21-I: 96-k Program Start-up. – The request for proposals for FMLI coverage as described in this subdivision shall be issued no later than September 30, 2020. The FMLI coverage as described in this subdivision shall be in place for state government employees and available for purchase by other public and private employers and individuals by July 1, 2021.

[Section #] Allocation of state premium tax. Amend RSA 400-A:32 III. to read as follows:

III. (a) Except as provided in subparagraph (b) *and* (c), the taxes imposed in paragraphs I and II of this section shall be promptly forwarded by the commissioner to the state treasurer for deposit to the general fund.

(b) Taxes imposed attributable to premiums written for medical and other medical related services for the newly eligible Medicaid population as provided for under RSA 126-AA shall be deposited into the New Hampshire granite advantage health care trust fund established in RSA 126-AA:3. The commissioner shall notify the state treasurer of sums for deposit into the New Hampshire granite advantage health care trust fund no later than 30 days after receipt of said taxes. The moneys in the trust fund may be used for the administration of the New Hampshire granite advantage health care program, established in RSA 126-AA.

(c) Taxes imposed on premiums written by duly authorized insurance companies for family and medical leave insurance written in connection with the administration of RSA 21-I: 96 or RSA 282-B shall be deposited into the Granite State Paid Family Leave Premium Stabilization

Trust Fund established in RSA 21-I: 96-l. The commissioner shall notify the state treasurer of sums for deposit into the Granite State Paid Family Leave Trust Fund no later than 30 days after receipt of said taxes.

[Section #] The Granite State Paid Family Leave Plan. Amend RSA by inserting after chapter 282-A the following new chapter:

CHAPTER 282-B
PURCHASING POOL FOR FAMILY AND MEDICAL LEAVE INSURANCE

282-B:1 Purpose. – The purpose of this chapter is to establish a group purchasing mechanism whereby individuals who work for employers who do not to offer either Family and Medical Leave Insurance (FMLI) coverage under the Granite State Paid Family Leave Plan as authorized under RSA 21-I: 96 or an FMLI benefit that is at least equivalent to such coverage will have the opportunity to purchase Granite State Paid Family Leave Plan coverage through a mechanism established by the state in conjunction with the state government employee FMLI plan.

282-B: 2 Definitions. – In this chapter:

- I. "Child" has the same meaning as "son or daughter" in 29 U.S.C. section 2611(12).
- II. "Commissioner" means the commissioner of the department of employment security.
- II. "Department" means the department of employment security.
- III. "Employer" has the same definition as relevant provisions of RSA 282-A:8, except as provided in RSA 282-A:9.
- IV. "Employment" means wages paid for services by an employer that is covered by this chapter.
- IV. "Family member" means a "child," as defined in RSA 282-B:2, III, a biological, adoptive or foster parent, stepparent, or legal guardian of the child or the child's spouse or domestic partner, a biological, adoptive, or foster grandparent or step grandparent, or a spouse or domestic partner under RSA 457.
- V. "Family and medical leave" means leave from work:
 - (a) Because of the birth of a child of the employee, within the past 12 months; or within the past 12 months;

(b) Because of the placement of a child with the employee for adoption or fostering within the past 12 months;

(c) Because of a serious health condition of a family member; or

(d) Because of any qualifying exigency arising from foreign deployment with the Armed Forces, or to care for a service member with a serious injury or illness as permitted under the federal family and medical leave act, 29 U.S.C. section 2612(a)(1)(E) and 29 C.F.R. section 825.126(a)(1) through (8), as they existed on October 19, 2017, for family members as defined in paragraph VIII.

X. "FMLI" means family and medical leave insurance providing wage replacement benefits under specified conditions.

XI. "Family and Medical Leave Act" means the federal Family and Medical Leave Act of 1993, Pub.L. 103-3 (29 U.S.C. § 2601 et seq.).

XII. "Individual Pool" means the pooled purchasing mechanism established in this chapter for the purpose of providing individual employees of employers who do not sponsor qualifying FMLI coverage the option to purchase such coverage on an individual basis.

XIII. "Serious health condition" means any illness covered by the federal family and medical leave act including treatment for addiction as prescribed by a treating clinician, consistent with American Society of Addiction Medicine criteria, as well as treatment for a mental health condition, consistent with American Psychiatric Association criteria.

282-B: 3 Employer and Employee Rights and Responsibilities. –

I. Individuals who are employed by private employers who do not to offer either FMLI coverage under the Granite State Paid Family Leave Plan as authorized under RSA 21-I: 96 or an FMLI benefit that is at least equivalent to such coverage will have the opportunity to purchase Granite State Paid Family Leave Plan coverage through the individual pool. The individual pool shall operate by payroll deduction whereby premiums are paid into an FMLI premium fund administered by the department as provided in this chapter and established in coordination with the commissioner of administrative services acting pursuant to RSA 21-I: 96.

II. Individuals opting into the individual pool shall be required to make their premium remittances by payroll deduction. All private employers who have employees who have individually opted into this pooled purchasing mechanism shall remit FMLI premium payments to the department in a manner as directed by the commissioner.

282-B: 4 FMLI Premium Fund Establishment and Administration. – The Department shall create in the office of the state treasurer and shall administer an FMLI premium

fund for deposits of insurance premium payments paid pursuant to RSA 282-B:3 and for remittance of such premiums to the FMLI carrier or carriers participating in the Twin State Voluntary Leave Plan. The department shall develop standard enrollment procedures in coordination with participating carrier(s) and shall transmit enrollment and eligibility information to such carrier(s) on a timely basis. The department shall establish procedures and mechanisms for the billing and collection of premiums from employers. The department shall specify in contracts with participating carrier(s) how all premiums shall be transmitted and the frequency of that transmission and how penalties and grace periods on late payments of premiums shall be calculated. The department is authorized to contract with qualified, independent vendors for the services necessary to carry out some or all of the duties under this paragraph.

282-B: 5 FMLI Premium Stabilization Trust Fund Establishment and Administration. – There is hereby established in the office of the state treasurer the FMLI Premium Stabilization Trust Fund which shall be held and accounted for separately from all other funds. Interest, dividends and other earnings of the fund shall be added to the fund. Deposits into the fund shall be limited exclusively to: (1) premium taxes imposed on premiums written by duly authorized insurance companies for family and medical leave insurance written in connection with the administration of RSA 21-I: 96 or RSA 282-B as provided in RSA 400-A: 32 III. (c), and (2) gifts, grants and donations. The moneys in the fund shall not be subject to any state taxes and shall not be subject to any federal taxes to the extent allowed by applicable federal law. The moneys in the fund shall constitute a premium stabilization reserve and shall be used exclusively for the purpose of assuring that the premiums charged to participants in the individual pool remain stable from year to year and do not exceed five dollars per subscriber per week. The fund shall be administered by the commissioner, who shall be authorized to make such periodic payments to participating FMLI carriers as are necessary to meet the purposes of this paragraph. The department is authorized to contract with qualified, independent vendors for the services necessary to carry out some or all of the duties under this paragraph.

282-B: 6 Report and Outreach. –

I. Working in coordination with the commissioner of administrative services as provided in RSA 21-I: 96-i I., the department shall produce, on an annual basis, a summary report on the Granite State Paid Family Leave Plan. This report shall be made public and delivered to the governor, senate president, and speaker of the house of representatives. It shall include but not be limited to, a description of progress in implementing the provisions of this chapter, payments into and out of the fund, the number of employees in the state participating in the purchasing mechanism, and recommendations for improvement of the program and for further increasing the rate at which New Hampshire employees have FMLI coverage.

II. Working in coordination with the department of administrative services as provided in RSA 21-I: 96-i II., the department shall develop and implement an outreach program to ensure that individuals who may be eligible to receive FMLI benefits under this chapter or under RSA 21-I: 96 are made aware of these benefits. Outreach information shall explain in an easy to understand format, eligibility requirements, benefit structures, and the process for accessing coverage and enrolling.

282-B: 7 Rulemaking. – The commissioner may adopt rules, pursuant to RSA 541-A, as deemed necessary for the implementation of this chapter.

282-B: 8 Appropriation and Funding Transfer. – The state treasurer shall transfer funds from the general fund to the department of employment security for payment of the administrative and implementation costs associated with this chapter.

282-B: 9 Program Start-up. – The individual pool shall be operational and available for use by individuals on a timetable that is sufficient to ensure that FMLI coverage shall be available for purchase by July 1, 2021.

[Section #] Discrimination in the Workplace. Amend RSA 275: 37 by inserting after RSA 275: 37-b the following new subsection:

275: 37-c Family and Medical Leave Insurance. – If an employer sponsors family and medical leave insurance pursuant to the provisions of RSA 21-I: 96 (the Granite State Paid Family Leave Plan), then any employee of that employer who takes family or medical leave and accesses wage replacement benefits under such family and medical leave insurance coverage shall be restored to the position she or he held prior to such leave or to an equivalent position by her or his employer consistent with the job restoration provisions of the federal Family and Medical Leave Act of 1993, Pub.L. 103-3 (29 U.S.C. § 2601 et seq.). Such employers shall continue to provide health insurance to employees during the leave. However, employees shall remain responsible for any employee-shared costs associated with the health insurance benefits. Such employers shall not discriminate or retaliate against any employee for accessing family or medical leave wage replacement benefits. However, employers of employees participating in the Granite State Paid Family Leave Plan authorized pursuant to the provisions of RSA 21-I: 96 may require that paid leave taken under this program be taken concurrently or otherwise coordinated with leave allowed under the terms of a collective bargaining agreement or other established employer policy or the Family and Medical Leave Act, as applicable.

[Section #] The Granite State Paid Family Leave Plan. New Subparagraph; State Treasurer; Application of Receipts. Amend RSA 6:12, I(b) by inserting after subparagraph (343) the

following new subparagraphs:

(344) Moneys deposited in the FMLI Premium Fund established in RSA 282-B: 4.

(345) Moneys deposited in the FMLI Premium Stabilization Trust Fund established in RSA 282-B: 5.

[Section #] New Section; The Granite State Paid Family Leave Plan Tax Credit. Amend RSA 77-E by inserting after section 3-e new section 3-d:

There shall be a tax credit allowed against the tax due under this chapter in an amount equal to 50% of the premium paid by a sponsoring employer for Family and Medical Leave Insurance coverage offered to employees pursuant to RSA 21-I:96-d for the taxable period in which the premium is paid.

[Section #] The Granite State Paid Family Leave Plan. Effective Date. Sections #__ through __ of this act shall take effect upon passage.