STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF INSURANCE
34 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0034

Janet T. Mills
GOVERNOR

Eric A. Cioppa
Superintendent

October 2, 2020

The Honorable Alex Azar
Secretary of Health and Human Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

The Honorable Steven Mnuchin
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Azar and Secretary Mnuchin:

The State of Maine, through its Department of Professional and Financial Regulation, Bureau of Insurance, intends to submit an application for a State Relief and Empowerment Waiver under Section 1332 of the Patient Protection and Affordable Care Act ("section 1332 waiver") to the Centers for Medicare and Medicaid Services (CMS) in the Department of Health and Human Services, and the Department of the Treasury (collectively, "the Departments").

Maine currently has an approved section 1332 waiver that waived Section 1312(c)(1) of the Patient Protection and Affordable Care Act ("PPACA") for a period of five years beginning January 1, 2019 to permit reinstatement of the Maine Guaranteed Access Reinsurance Association ("MGARA") reinsurance program for the individual health insurance market.

The new application would seek approval of an amendment to Maine's section 1332 waiver that would waive PPACA Section 1312(c)(1) for a new waiver period of five years beginning January 1, 2022 through December 31, 2026 to permit extension of the MGARA reinsurance program to a pooled individual and small group market. This waiver would not affect any other provision of the PPACA. This waiver would result in a lower market-wide index rate, thereby lowering gross (*i.e.*, prior to the application of federal premium tax credits) individual premiums from what they would have been without the reinsurance program, thereby reducing the federal cost of the premium tax credits ("PTCs").

The reestablishment of the MGARA reinsurance program through Maine's existing section 1332 waiver strengthened Maine's individual health insurance market. By reimbursing insurers for high-cost claims, the reinsurance program spread risk across the broader Maine health insurance market, thereby lowering gross premiums and increasing access to affordable private coverage. The MGARA reinsurance program is expected to provide a similar result for small group coverage when

Maine pools the individual and small group markets, while continuing to make individual coverage more affordable than it would have been in the absence of MGARA.

Since March 2017, the small group market in Maine has experienced significant declines in membership and high medical cost trends. The average annual rate increase for the small group market was 8.8% in 2019, 8.5% in 2020, and 5.3% in 2021. On its current trajectory, the small group market may continue to see membership decline, and only those that truly need health care services may stay enrolled in the market, which will lead to a continued escalation in premiums.

On March 18, 2020, Public Law 2019, Chapter 653, "An Act To Enact the Made for Maine Health Coverage Act and Improve Health Choices in Maine," became effective in Maine. This legislation seeks to mitigate rate increases in the small group market and help stabilize both markets by combining the individual and small group markets into one rating pool and overlaying a retrospective reinsurance program across the pooled market. Pooling the markets alone would reduce rates in the individual market and increase rates in the small group market. Extending the MGARA reinsurance program to the pooled market would ensure that premiums do not go up in either the small group or the individual market, compared to without a waiver. The reduction in rates in the individual market would reduce federal spending on PTCs, which would allow Maine to receive that additional amount from pooling the markets in federal pass-through funding through the section 1332 waiver. This additional federal funding, combined with the current $4.00 per member per month assessment for the MGARA reinsurance program, would fund a retrospective reinsurance program that would benefit the entire pooled market, generating additional federal pass-through funding.

Public Law 2019, Chapter 653 provides that the pooled market is contingent on rules adopted by the Maine Superintendent of Insurance based on certain rate projections, as well as the Departments' approval of a section 1332 waiver. Maine is still reviewing this legislation and the actuarial analyses performed to date assessing the impact of a pooled market. However, given the timeframe required by the legislation, we wish to express our intent to move forward with a section 1332 waiver application at this time. The desired timeframe for this application would be as follows:

11/30/2020:	The public comment period begins. Tribal consultation initiated.
12/15/2020:	Public comment hearing is held.
12/30/2020:	The public comment period ends. Tribal consultation period ends.
01/15/2021:	The 1332 waiver application is submitted to the Departments.
03/01/2021:	The Departments determine that the section 1332 waiver application is complete.
05/01/2021:	The Departments approve the section 1332 waiver.
08/05/2021:	Amended MGARA Plan of Operation approved by Superintendent of Insurance.
08/22/2021:	Deadline for final determination of 2022 rates.
01/01/2022:	MGARA reinsurance program switches to a retrospective operation and reinsurance applies to the pooled individual and small group market.

We appreciate your time and consideration, and we look forward to working with you.

Sincerely,

Eric A. Cioppa

Eric A. Cioppa
Superintendent of Insurance

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201

December 28, 2020

VIA ELECTRONIC MAIL: Eric.A.Cioppa@maine.gov

Eric A. Cioppa
Superintendent of Insurance
Department of Professional and Financial Regulation
Bureau of Insurance
#34 State House Station
Augusta, ME 04333

Dear Superintendent Cioppa:

Thank you for your October 2, 2020 letter of intent (LOI) to apply for a State Relief and Empowerment Waiver (section 1332 waiver) under Section 1332 of the Patient Protection and Affordable Care Act (PPACA). I am sending this letter from the Center for Consumer Information and Insurance Oversight (CCIIO) within the Centers for Medicare & Medicaid Services (CMS) within the Department of Health & Human Services (HHS) as well as on behalf of the Department of the Treasury (collectively, the Departments).

This letter is to inform you that the Departments, having completed their review of the LOI, confirm that Maine's anticipated section 1332 waiver application, as described below, may be submitted and will be reviewed as a waiver amendment request. The application requirements for the state's waiver amendment request are enclosed with this letter. If the amendment is approved, the Departments may determine the waiver is subject to additional or revised requirements, which will be provided in the specific terms and conditions (STCs).

Maine's currently approved waiver of the PPACA requirement for the single risk pool contained in PPACA Section 1312(c)(1) allows the state to operate the Maine Guaranteed Access Reinsurance Association (MGARA) reinsurance program for the individual health insurance market from January 1, 2019 through December 31, 2023. As described in the LOI, Maine seeks an amendment that would waive PPACA Section 1312(c)(1) for a new waiver period of five years beginning January 1, 2022 through December 31, 2026, which would allow for an extension of the MGARA reinsurance program to a pooled individual and small group market. Under a pooled market without a reinsurance component, Maine projects that rates in the individual market would decrease and rates in the small group market would increase. By extending the MGARA reinsurance program to the pooled market, the state aims to ensure that premiums do not increase in either the small group or individual markets, compared to absent a waiver. The state also contends that a reduction in rates in the individual market will reduce federal spending on premium tax credits (PTCs), which would allow the state to receive that additional amount from pooling the market in federal pass-through funding through the section 1332 waiver.

A waiver amendment is a change to the existing waiver plan that is not otherwise allowable under the state's STCs, or that could impact any of the section 1332 statutory guardrails or program design. Such changes include, but are not limited to, changes to eligibility, coverage, benefits, premiums, out-of-pocket spending, and cost sharing. Given Maine's proposal to extend the MGARA reinsurance program to the pooled market, the Departments determine this to be a substantive change in program design that is not otherwise allowable under the state's existing STCs. As such, the Departments confirm that Maine should proceed with submitting an application for a waiver amendment if it wishes to make this change. The state should generally plan to submit its waiver amendment application no later than the end of the first quarter of the year prior to the year the amendment would take effect in order to allow for sufficient time for the Departments to review the application.

The enclosed document further outlines the application requirements for the state's waiver amendment. The state is encouraged to engage with the Departments, as the required information and process may vary based on the complexity of the proposed change. Please note, the state is not authorized to implement any aspect of the proposed waiver amendment without prior approval by the Departments. This letter does not constitute any pre-determination or intent to approve the state's proposed amendment request.

Please send your acknowledgement of this letter and any communications and questions regarding program matters or official correspondence concerning the waiver to Lina Rashid at Lina.Rashid@cms.hhs.gov, Michelle Koltov at Michelle.Koltov@cms.hhs.gov, or stateinnovationwaivers@cms.hhs.gov.

We look forward to working with you and your staff. Please do not hesitate to contact us if you have any questions.

Sincerely,

Jeffrey Grant
Deputy Director for Operations
Center for Consumer Information & Insurance Oversight (CCIIO)
Center for Medicare & Medicaid Services (CMS)

Cc: David Kautter, Assistant Secretary for Tax Policy, U.S. Department of the Treasury
Janet Mills, Governor of Maine
Marti Hooper, Maine Bureau of Insurance
Holly Doherty, Maine Bureau of Insurance

Enclosure

Specific Requirements for Maine's Waiver Amendment Application

The Departments will review Maine's waiver amendment application and make a preliminary determination as to whether it is complete within 45 days after it is submitted to stateinnovationwaivers@cms.hhs.gov. After determining that the application is complete, the application will be made public through the Department of Health and Human Services website, and a 30-day federal public comment period will commence while the application is under review. A final decision regarding the waiver will be issued no later than 180 days after the preliminary determination of a complete application. Maine's waiver amendment application must include the following:

(1) A detailed description of the amendment request, including the desired time period for the amendment request, the scope of the waiver plan, the impact on the guardrails, and related changes to the waiver program elements as applicable that are not otherwise allowable under the state's STCs, and sufficient supporting documentation, and:
   a. The parameters for the reinsurance program for the merged market (e.g. the attachment point, coinsurance, cap, conditions, etc.);
   b. A detailed description of the rating factors for the merged market and any requirements for plan offerings, specifying any allowable differences between plans available in the individual and small group markets; and
   c. An updated implementation timeline.

(2) An explanation and evidence that the state has conducted the state public notice process[1] specified for new applications at 31 C.F.R. § 33.112 and 45 C.F.R. § 155.1312, which includes:
   a. For a state with one or more Federally-recognized Indian tribes within its borders, providing a separate process for meaningful consultation with such tribes, and providing written evidence of the state's compliance with this requirement;
   b. Publicly posting the submitted LOI on the state's website in order to ensure that the public is aware that the state is contemplating a waiver amendment request;
   c. Providing a public notice and comment period of no less than 30 days that includes a comprehensive description of the waiver amendment application; information about where the application is available for public review; and where the written comments may be submitted;
   d. Publishing the date, time, and location of the public hearings that will be convened by the state to seek public input on the waiver amendment application in a prominent location on the state's public website. The state may use its annual public forum for the dual purpose of seeking public input on a waiver amendment application;

[1] Recognizing that barriers may exist for states during the public health emergeny for COVID-19, please see additional flexibilities available: Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency; Interim Final Rule, 85 FR 71142 at 71176. Also see 31 C.F.R. § 33.118 and 45 C.F.R. § 155.1318.

e. Providing a description of issues raised and comments received during the entire public notice and comment period, and how the state considered comments when developing the waiver amendment application; and

f. Publicly posting the waiver amendment application on the state's website upon its submission of the waiver amendment application to the Departments.

(3) Evidence of sufficient authority under state law(s) in order to meet the PPACA section 1332(b)(2)(A) requirement for purposes of pursuing the requested amendment(s);

(4) An updated actuarial and/or economic analysis demonstrating how the proposed waiver amendment will meet section 1332 statutory guardrails. Such analysis must identify the "with waiver" impact of the requested amendment on the statutory guardrails. Such analysis must include a "with waiver" and "without waiver" status on both a summary and detailed level through the current approval period using data from recent experience, as well as a summary of and detailed projections of the change in the "with waiver" scenario;

a. For waivers that impact the individual or group market, the state should use a baseline in which there is no state waiver plan in effect, and should compare premiums, comprehensiveness, and coverage under the baseline for each year to those projected under the waiver. For waivers that impact the individual market, data used to produce these projections might include overall and Second Lowest Cost Silver Plan (SLCSP) premium. In addition, for waivers that impact the small group market, the actuarial and/or economic analysis must include the information below in subparagraphs (i) and (ii):

i. A projection of the following items separately under both a 'without waiver' scenario and a 'with waiver' scenario:

A. Number of non-group market enrollees by income as a share of the Federal Poverty Level (FPL) (0% to 99%, ≥100% to ≤150%, >150% to ≤200%, >200% to ≤250%, >250% to ≤300%, >300% to ≤400%, and greater than 400% of FPL), by PTC-eligibility, and by plan;

B. Number of small group market enrollees by income as a share of FPL (0% to 99%, ≥100% to ≤150%, >150% to ≤200%, >200% to ≤250%, >250% to ≤300%, >300% to ≤400%, and greater than 400% of FPL), by PTC-eligibility, and by plan;

C. Overall average non-group market premium rate;

D. Overall average small group market premium rate;

E. SLCSP rate, or if a state is pursuing a State-Specific Premium Assistance Waiver Concept the state applicable benchmark plan rate for the state subsidy program for a representative consumer (e.g., a 21-year old nonsmoker), by rating area and issuer-specific service area. The state needs to identify where issuers have service areas that are smaller than rating areas;

F. The premium of a benchmark plan in the small group market (i.e., the Silver plan designated as the standard for essential health benefits in the small group market);

G. The state's age rating curve (or a statement that the federal default is used);

H. Aggregate non-group market premiums, aggregate small group market premiums, and PTC; and

I. Exchange user fee for Federally-facilitated Exchanges (FFE) or State-based Exchanges using the Federal Platform (SBE-FP) states.

ii. Documentation of all assumptions and methodology used to develop the projections and growth of health care spending.

(5) An explanation of the expected impact, if any, of the proposed amendment on pass-through funding; and

(6) The Departments may request additional information and/or analysis in order to evaluate and reach a decision on the proposed amendment.