

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES (CMS)
AND
THE STATE OF VIRGINIA
VIRGINIA BUREAU OF INSURANCE**

I. PURPOSE

This Agreement sets forth the terms and conditions governing the arrangement between the U.S. Department of Health and Human Services, the Centers for Medicare & Medicaid Services (CMS), and the State of Virginia, under which CMS will calculate reinsurance payments to issuers participating in the State of Virginia’s Commonwealth Health Reinsurance Program (“reinsurance program”) under Virginia’s State Innovation Waiver under section 1332 of the Patient Protection and Affordable Care Act (ACA).

II. INTEGRATION

This Agreement, including any attachments, and the Specific Terms and Conditions (STCs) applicable to Virginia’s State Innovation Waiver under section 1332 of the ACA constitute the entire agreement between CMS and Virginia with respect to their subject matter. There have been no representations, warranties, or promises made outside of this Agreement or the STCs. This Agreement will take precedence over any other documents that may be in conflict with it solely with regard to CMS’s calculation of reinsurance payments under the State of Virginia’s Commonwealth Health Reinsurance Program and Virginia’s compensation to CMS for such services.

III. AUTHORITY

Transfer of Funds and Programmatic Authority:

The legal authority to enter into this Agreement is as follows: Title III of the Intergovernmental Cooperation Act of 1968, and its implementing guidance at the Office of Management and Budget (OMB) Circular No. A-97: Rules and regulations permitting Federal agencies to provide specialized or technical services to state and local units of government.¹

IV. BACKGROUND

Section 1332 of the ACA permits a state to apply for a State Innovation Waiver (referred to as a section 1332 waiver) to pursue innovative strategies for providing their residents with access to higher value, more affordable health coverage. States can request that the Secretaries of Health and Human Services (HHS) and the Department of the Treasury (collectively, the Secretaries) waive certain provisions of the ACA, provided that a state’s waiver application meets specific statutory requirements: (1) the proposal will provide coverage that is at least as comprehensive as coverage defined in ACA’s section 1302(b) and offered through Exchanges established under

¹ See Pub. L. 90-577 or <https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-097.pdf>

title I of the ACA; (2) the proposal will provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable for the state’s residents as would be provided under title I of ACA; (3) the proposal will provide coverage to at least a comparable number of the state’s residents as would be provided under title I of ACA; and (4) the proposal will not increase the federal deficit. On September 27, 2021 the Centers for Medicare and Medicaid Services (CMS) and the Department of the Treasury (collectively, the Departments) published the final rule “Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond” that provides information on how state waiver applications would be evaluated based on the four statutory guardrails.²

The final rule also states that CMS may provide services in support of the state’s section 1332 waiver plan under Title III of the Intergovernmental Cooperation Act of 1968 (ICA) OMB Circular No. A-97. The ICA is intended to: (1) encourage intergovernmental cooperation in the conduct of specialized or technical services and provisions of facilities essential to the administration of state or local governmental activities; (2) enable state and local governments to avoid unnecessary duplication of special service functions; and (3) authorize federal agencies that do not have such authority to provide reimbursable specialized and technical services to state and local governments. Accordingly, the ICA authorizes the head of any federal agency, within his discretion and upon written request from a state or political subdivision thereof, to provide specialized or technical services, upon payment to the federal agency by the unit of government making the request, of salaries and all other identifiable direct or indirect costs of performing such services.

Where a state intends to rely on CMS to perform administrative activities in connection with its section 1332 waiver program, the state must cover CMS’s costs. For this reason, the Departments will not consider costs for CMS services covered under this Agreement an increase in federal spending resulting from the state’s waiver plan for purposes of the deficit neutrality analysis under section 1332.

On December 30, 2021, the State of Virginia submitted a section 1332 waiver application to waive certain ACA requirements and implement a reinsurance program for the State’s individual market called the Commonwealth Health Reinsurance Program for plan years 2023 through 2027. Pursuant to the waiver application and state statute, the reinsurance program will be administered by the Virginia Bureau of Insurance. Virginia’s waiver application was approved on May 18, 2022 the Commonwealth Health Reinsurance Program, is effective for January 1, 2023 through December 31, 2027. The State requested that CMS calculate issuer reinsurance payments in support of the State’s waiver plan from January 1, 2023 to December 31, 2027.

V. STATEMENT OF WORK

The parties agree to the following Roles and Responsibilities:

A. *CMS’ Responsibilities:*

² See <https://www.federalregister.gov/public-inspection/2021-20509/patient-protection-and-affordable-care-act-updating-payment-parameters-section-1332-waiver>

1. CMS will identify paid claims eligible for reimbursement under the Commonwealth Health Reinsurance Program (eligible claims) for services provided each calendar year on or between January 1 of the calendar year to December 31 of that calendar year for the period January 1, 2023 to December 31, 2027. CMS will identify such claims from data submitted to “EDGE Servers” maintained by issuers offering coverage in the individual market in the State of Virginia. CMS will identify such claims based on the applicable calendar year parameters for the Commonwealth Health Reinsurance Program as described in the State’s section 1332 waiver application approved on May 18, 2022 , and as confirmed by the State as described under paragraph V.B.1 below.
2. CMS will calculate the total reinsurance payment due to an issuer on account of each eligible claim CMS identifies. CMS will provide the State with reinsurance payment reports as follows:
 - a. Periodic, usually monthly reports detailing the provisional claims submitted on a cumulative basis to date, which estimate reinsurance payments owed to specific issuers under the Commonwealth Health Reinsurance Program criteria, and,
 - b. Final reports detailing the reinsurance payments owed to specific issuers under the Commonwealth Health Reinsurance Program criteria after the final EDGE data submission deadline for the applicable benefit year.³
3. CMS will perform development, implementation, maintenance, operations, and customer support work for the state for the activities outlined in section V.A.
4. The parties acknowledge and agree that CMS is not performing services under this Agreement in its capacity as a HIPAA covered entity. The State further acknowledges that no data or information CMS evaluates under this Agreement will constitute protected health information as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or will otherwise constitute information protected by any Virginia state law that would require CMS to comply with privacy and information security requirements or standards that are more onerous or stringent than the standards with which CMS complies as described in section XIII of this Agreement.

B. State of Virginia Responsibilities:

1. On or before September 15 of each year during the term of this Agreement, the State will confirm the calendar year parameters (i.e., eligibility criteria) for payment of claims under the Virginia Reinsurance Program for the purposes of facilitating CMS’s work under this Agreement. The State is responsible for updating CMS during a calendar year if there are any changes to the reinsurance program from what is described in the State’s approved waiver application. Any changes to the

³ 45 CFR § 153.730. A risk adjustment covered plan or a reinsurance-eligible plan in a State in which HHS is operating the risk adjustment or reinsurance program, as applicable, must submit data to be considered for risk adjustment payments and charges and reinsurance payments for the applicable benefit year by April 30 of the year following the applicable benefit year or, if such date is not a business day, the next applicable business day.

parameters after September 15 could result in CMS incurring additional costs for which the State will be responsible.

2. The State will reimburse CMS in the amounts and at the times designated in this Agreement for CMS's actual costs related to development, implementation, operation, and customer support (including overhead) and maintenance costs of performing the tasks requested by the State as described in section V.A.
3. The State is responsible for operating the reinsurance program and making reinsurance payments to issuers as described in the State's waiver application.

VI. DURATION OF AGREEMENT

Effective Date: This agreement is effective when signed by both parties and will terminate on June 30, 2028. This parties' performance under this Agreement is contingent on the state meeting the obligations specified in the STCs to which the state agreed in connection with its section 1332 waiver.

VII. FUNDS

The State shall reimburse CMS for all services provided under this Agreement.

CMS cannot begin work until this Agreement is fully executed by all parties. The State will be invoiced for actual costs incurred by CMS. The State must submit payment to CMS via a CMS-approved method to be communicated by CMS to the state each plan year.

At this time, CMS estimates that the total cost for the support services CMS will provide for the 2022 plan year pursuant this Agreement will be \$10,000 – \$15,000 for support costs. CMS will inform the State of the actual costs for the tasks in section V.A. for Virginia by April 30 of each calendar year during the term of this Agreement from January 1, 2023 to June 30, 2028.

The State should send any documentation or required information to the CMS staff identified below:

Lina Choudhry Rashid
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
7501 Wisconsin Ave
Bethesda, MD 20814
e-mail: Lina.Rashid@cms.hhs.gov
Phone #: 202-260-6098

Milan Shah
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
7501 Wisconsin Ave
Bethesda, MD 20814
e-mail: Milan.Shah@cms.hhs.gov
Phone #: 301-492-4427

Robert Yates
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
7501 Wisconsin Ave
Bethesda, MD 20814
e-mail: Robert.Yates@cms.hhs.gov
Phone #: 301-492-5151

CMS will send any documentation or required information to the State of Virginia staff identified below:

Bradley Marsh
Health Insurance Policy Advisor
Virginia Bureau of Insurance
e-mail: Bradley.Marsh@scc.virginia.gov
Phone #: 804-371-9141

VIII. DE-OBLIGATION OF FUNDS

CMS receives annual appropriations; therefore, all of CMS's obligations under this Agreement must be incurred within the time-frame of the current Fiscal Year (FY) of the bona fide need. Any funds (including "No Year") that have not been obligated by the end of the FY by September 30th requires amending the agreement to de-obligate the funds. Funds cannot be held as advance funds or used for another FY other than the bona fide need that the funds were intended.

IX. DUPLICATION

Full implementation of this Agreement will not duplicate any existing agreements.

X. MODIFICATION AND TERMINATION

Any modification or amendment of this Agreement must be agreed to by both parties in writing. This Agreement may be modified to incorporate new sections or language as required to insure compliance with parties' legislative mandates and internal policies and processes. Either party may terminate this Agreement by giving the other party 30 days' notice in writing. If the state cancels its order for the services described under this Agreement, CMS is authorized to collect costs incurred prior to cancellation of the state's order, plus any termination costs charged to CMS.

XI. INFORMATION PRIVACY AND SECURITY

This Agreement has been reviewed for privacy and information security implications. Consistent with section V.A.4 of this Agreement, the parties acknowledge and agree that none of the data or information CMS will access to provide the services under this Agreement constitutes protected health information as defined by HIPAA or other relevant Virginia state law. Information from Virginia issuers will be provided to CMS as indicated in Section V.A.1 of this

Agreement. To the extent that CMS maintains in its systems any data used to provide services under this Agreement, CMS will maintain such information in information technology systems that are compliant with applicable requirements under the Federal Information Security Management Act of 2002, 44 U.S.C §§ 3541-3549, as amended by the Federal Information Security Modernization Act, 44 U.S.C. §§ 3551-3558 (FISMA).

Consistent with section V.B.2, the parties acknowledge and agree that none of the information the State of Virginia will provide to CMS constitutes protected health information as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The parties to this Agreement will ensure the terms are in compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. §794 (d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220), August 7, 1998, and to implement the Department of Health & Human Services' *HHS Policy for Section 508 Electronic and Information Technology (EIT)* issued January 2005.

XII. SIGNATURES

The parties below from CMS and the State of Virginia are agreeing to this Agreement on behalf of their organization.

Jeffrey Grant
Deputy Director for Operations
Center for Consumer Information and Insurance Oversight

Date: _____

Scott White
Insurance Commissioner
Virginia Bureau of Insurance
Commonwealth of Virginia

Date: _____