



AUG 22 2018

Administrator

Washington, DC 20201

Michele Eberle, MBA
Executive Director
Maryland Health Benefit Exchange
750 East Pratt Street, 6th Floor
Baltimore, MD 21202

Dear Director Eberle:

Thank you for your May 31, 2018, submission of and your August 4, 2018, addendum to Maryland's application for a State Innovation Waiver. I am pleased to send this letter from the Centers for Medicare & Medicaid Services (CMS) on behalf of the Department of Health & Human Services (HHS) and the Department of the Treasury (collectively, the Departments). This letter is to inform you that the Departments, having completed their review of the application, approve Maryland's State Innovation Waiver under section 1332 of the Patient Protection and Affordable Care Act (PPACA) as described below and conditioned upon the Maryland Health Benefit Exchange's (MHBE) written acceptance within 30 days of the specific terms and conditions (STCs) that are enclosed with this letter. This approval is effective for a waiver period of January 1, 2019 through December 31, 2023.

Maryland sought waiver of the PPACA requirement for the single risk pool in order to implement the Maryland State Reinsurance Program for plan years 2019 through 2023. The Departments are granting Maryland's application to waive the single risk pool requirement in the individual market under section 1312(c)(1) of the PPACA, to the extent it would otherwise require excluding total expected state reinsurance payments when establishing the market-wide index rate for the purposes described in the MHBE's application.

The Departments have determined that implementation of this reinsurance program will lower individual market premiums in the state and the premium tax credits (PTC) to which Maryland residents would have been entitled absent the waiver. These PTC savings will be passed through to the MHBE to be used for implementation of the waiver plan.

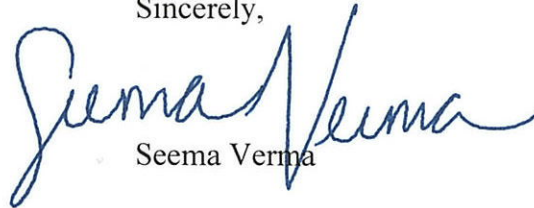
The enclosed STCs further define the MHBE's responsibilities with respect to implementation of the waiver and use of pass-through funding during the waiver period and the nature, character, and extent of anticipated federal oversight of the project. A breach of any of the STCs may lead to termination of Maryland's State Innovation Waiver. As noted in the STCs, the MHBE must, as part of the draft annual report to the Departments, include the funding level at which the program will be operating for the next plan year.

Please send your written acceptance and any communications and questions regarding program matters or official correspondence concerning the waiver to Lina Rashid at

Lina.Rashid@cms.hhs.gov, Rebecca Lund at Rebecca.Lund@cms.hhs.gov, or stateinnovationwaivers@cms.hhs.gov.

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

Sincerely,

A handwritten signature in blue ink that reads "Seema Verma". The signature is fluid and cursive, with the first name "Seema" and the last name "Verma" clearly distinguishable.

Seema Verma

Enclosure

cc: David Kautter, Assistant Secretary for Tax Policy, U.S. Department of the Treasury
Larry Hogan, Governor, State of Maryland
Alfred Redmer, Jr., Commissioner, Maryland Insurance Administration

DEPARTMENT OF HEALTH & HUMAN SERVICES (HHS)
U.S. DEPARTMENT OF THE TREASURY
PATIENT PROTECTION AND AFFORDABLE CARE ACT SECTION 1332 STATE
INNOVATION WAIVER
SPECIFIC TERMS AND CONDITIONS
TITLE: Maryland Health Benefit Exchange — Patient Protection and Affordable Care Act
Section 1332 Waiver Approval
AWARDEE: The Maryland Health Benefit Exchange

I. PREFACE

The following are the specific terms and conditions (STCs) for the Maryland Health Benefit Exchange’s (“MHBE”) Patient Protection and Affordable Care Act (PPACA) section 1332 State Innovation Waiver (“the waiver”), which has been approved by the U.S. Department of Health & Human Services (HHS) and the U.S. Department of the Treasury (collectively, the Departments). These STCs govern the operation of the waiver by the MHBE. The STCs set forth, in detail, the MHBE’s responsibilities to the Departments during the term of the waiver, which is January 1, 2019, through December 31, 2023. Accordingly, these STCs are effective beginning January 1, 2019, and will terminate on December 31, 2023, unless the waiver is extended as provided by these STCs; however, the Departments reserve the right to amend these STCs when the Departments make the annual determination of the pass-through amount for plan years 2020 through 2023. The MHBE’s application to waive certain provisions of the PPACA – dated May 31, 2018 is specifically incorporated by reference into these STCs, except with regard to any proposal or text in the application that is inconsistent with the Departments’ approval of the waiver or these STCs.

1. PPACA Provisions Waived under Section 1332 State Innovation Waiver. Section 1312(c)(1) of the Patient Protection and Affordable Care Act (P.L. 111–148) is waived to the extent it would otherwise require excluding total expected state reinsurance payments when establishing the market wide index rate for the purposes described in the MHBE’s application.

2. Changes in State Law and the Reinsurance Program. The Maryland State Reinsurance Program (“reinsurance program”) is a state-operated reinsurance program which aims to reduce premiums for all Maryland consumers in the individual market. The reinsurance program will reimburse qualifying individual health insurers for a percentage of an enrollee’s claims between an attachment point and a cap. The reinsurance program is administered by the MHBE. The MHBE must inform the Departments of any change in Maryland state law or regulations that would impact the waiver, including any changes to the requirements under the reinsurance program authorizing legislation. The MHBE must report any changes in state law occurring after the date of this approval letter within 30 days of any such changes.

In addition, the MHBE must report any changes to the reinsurance program, such as changes to the approved payment parameters for the reinsurance program reimbursement. Consistent with the waiver application, the MHBE is responsible for any reconciliation of reinsurance payments that the MHBE wishes to make to account for any duplicative reimbursement through the

reinsurance program for the same high cost claims reimbursed through the HHS-operated risk adjustment program.

3. Legislation Authorizing and Appropriating Funds to the reinsurance program. The MHBE must ensure sufficient funds, on an annual or other appropriate basis, for the reinsurance program to operate as described in the MHBE's waiver application.

4. Compliance with Federal Non-Discrimination Statutes. The MHBE must comply with all applicable federal statutes relating to non-discrimination. These include the Americans with Disabilities Act of 1990, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, title I and II of the Genetic Information Nondiscrimination Act of 2008 and section 1557 of the PPACA.

5. Compliance with Applicable Federal Laws. Per 31 CFR §33.120(a) and 45 CFR §155.1320(a), the MHBE must comply with all applicable federal laws and regulations, unless a law or regulation has been specifically waived. The Departments' state innovation waiver authority is limited to requirements described in section 1332(a)(2) of the PPACA. Further, section 1332(c) of the PPACA states that while the Secretaries have broad discretion to determine the scope of a waiver, no federal laws or requirements may be waived that are not within the Secretaries' authority. See 77 FR 11700, 11711 (February 27, 2012). Therefore, for example, section 1332 of the PPACA does not grant the Departments authority to waive any provision of the Employee Retirement Income Security Act. The MHBE must, within the applicable timeframes, come into compliance with any changes in federal laws or regulations affecting section 1332 waivers, unless the provision being changed has been expressly waived. The MHBE will comply with requirements of the Cash Management Improvement Act (CMIA).

6. Changes to Applicable Federal Laws. The Departments reserve the right to amend, suspend, or terminate the waiver, STCs, and pass-through funding amount as needed to reflect changes to applicable federal laws or changes of an operational nature without requiring the MHBE to submit a new waiver proposal. The Departments will notify the MHBE at least 30 days in advance of the expected implementation date of the amended STCs to allow the MHBE to discuss the changes necessary to ensure compliance with law, regulation, and policy, to allow the MHBE adequate time to comply with state and federal regulatory requirements, including rate review and consumer noticing requirements, and to provide comment. Changes will be considered in force upon the Departments' issuance of the amended STCs. The MHBE must accept the changes in writing within 30 days of the Departments' notification for the waiver to continue to be in effect.

7. Finding of Non-Compliance. The Departments will review and, when appropriate, investigate documented complaints that the MHBE is failing to materially comply with requirements specified in the waiver application and these STCs. In addition, the Departments will promptly share with the MHBE any complaint that they have received and notify the MHBE of any applicable monitoring and compliance issues.

8. The MHBE Request for Suspension, Withdrawal or Termination of a Waiver. The MHBE may only suspend or request withdrawal of all or portions of a waiver plan consistent with the following requirements:

- a) Request for suspension, withdrawal, or termination: If the MHBE wishes the Departments to suspend or terminate the waiver, or to withdraw a portion of the waiver, the MHBE must submit a request to the Departments in writing, specifying the reasons for the requested suspension, withdrawal, or termination; the effective date of the requested suspension, withdrawal, or termination; and the proposed phase-out plan (with the comment summary described below). The MHBE must submit its request and draft phase-out plan to the Departments no less than six (6) months before the proposed effective date of the waiver's suspension, withdrawal, or termination. Prior to submitting the request and draft phase-out plan to the Departments, the MHBE must publish on its website the draft phase-out plan for a 30-day public comment period and conduct Federal tribal consultation. The MHBE must include with its request and proposed phase-out plan a summary of each public comment received, the MHBE's response to the comment and whether or how the MHBE incorporated measures into a revised phase-out plan to address the comment.
- b) The MHBE must obtain the Departments' approval of the phase-out plan prior to the implementation of the phase-out activities. Implementation of phase-out activities must be no sooner than 14 days after the Departments' approval of the phase-out plan.
- c) Unused pass-through funding will be recovered. The MHBE will comply with all necessary steps to facilitate the recovery within a prompt timeframe.

9. Waiver Extension Request. The MHBE must inform the Departments as to whether the MHBE will apply for continuation of the waiver one year prior to the waiver's end date. The Departments and the MHBE will engage in further discussions to develop guidelines and define next steps for phase-out or continuation of the waiver. If the MHBE does not apply for an extension of the waiver, the Departments will provide guidance on the wind-down of the MHBE's waiver.

10. Reporting: The MHBE will submit quarterly and annual reports as specified in 31 CFR §33.124 and 45 CFR §155.1324. Each such annual report must include:

- The progress of the section 1332 waiver;
- Data sufficient to show compliance with section 1332(b)(1)(A) through (D) of the PPACA;
- A summary of the annual post-award public forum, held in accordance with 31 CFR §33.120(c) and 45 CFR §155.1320(c), including all public comments received at such forum regarding the progress of the section 1332 waiver and action taken in response to such concerns or comments; and
- Other information the Departments determine is necessary to calculate pass-through amounts or to evaluate the waiver.

The MHBE must submit a draft annual report to the Departments within 90 days after the end of the first waiver year and each subsequent year that the waiver is in effect. The MHBE will publish the draft annual report on the MHBE's public website within 30 days of submission to the Departments. Within 60 days of receipt of comments from the Departments on the report, the MHBE must submit to the Departments the final annual report for the waiver year, summary of the comments, and all comments received. The MHBE must publish the final annual report on the MHBE's public website within 30 days of approval by the Departments.

The annual reports must include the following:

- 1) Metrics to assist evaluation of the waiver's compliance with the statutory requirements in section 1332(b)(1):
 - a. Actual individual market enrollment in the state.
 - b. Actual average individual market premium rate (i.e., total individual market premiums divided by total member months of all enrollees).
 - c. The actual Second Lowest Cost Silver Plan (SLCSP) premium under the waiver and an estimate of the SLCSP premium as it would have been without the waiver, for a representative consumer (e.g., a 21-year old non-smoker) in each rating area.
 - d. The actual amount of APTC paid, by rating area for the plan year.
 - e. The actual number of APTC recipients for the plan year. The number should be the number summed over all 12 months and divided by 12 to provide an annualized measure.
- 2) Changes to the reinsurance program, including the funding level the program will be operating at for the next plan year, or other program changes as specified in STC 2.
- 3) Notification of changes to state law that may impact the waiver as specified in STC 2.
- 4) Reporting of:
 - a. Federal pass-through funding spent on reinsurance claim payments to issuers from the reinsurance program and/or operation of the reinsurance program.
 - b. The unspent balance of federal pass-through funding for the reporting year, if applicable.
- 5) The amount of state funding from issuer assessments available to the MHBE to fully fund the reinsurance program for the reporting year.
- 6) A description of any incentives for providers, enrollees, and plan issuers to continue managing health care cost and claims for individuals eligible for reinsurance.
- 7) A report on the reconciliation (if any) of reinsurance payments that are duplicative of reimbursement through the HHS-operated risk adjustment program high-cost risk pooling mechanism. The report should include the reinsurance payment (before reconciliation) for high-cost claims to issuers who also receive payment through the HHS risk adjustment program under the high-cost risk pooling mechanism, the risk adjustment amount paid by HHS for those claims, and the reinsurance true-up amount applied.

Payment Schedule: The MHBE will inform the Departments of the reinsurance program payment schedule by January 1, 2019.

Quarterly and Other Reports: Under 31 CFR §33.120(b), 45 CFR §155.1320(b), and 45 CFR §155.1324(a), the MHBE must conduct periodic reviews related to the implementation of the waiver. The MHBE will submit a report to the Departments on the operation of the reinsurance program, including the plan for processing claims, by February 28, 2019. Thereafter, the MHBE must report on the operation of the waiver quarterly, including, but not limited to reports of any ongoing operational challenges and plans for and results of associated corrective actions, no later than 60 days following the end of each calendar quarter. The MHBE can submit their annual report in lieu of their fourth quarter report.

11. Post Award Forum. Per 31 CFR §33.120(c) and 45 CFR §155.1320(c), within six months of the waiver's effective date and annually thereafter, the MHBE will afford the public an opportunity to provide meaningful comment on the progress of the waiver. The MHBE is required to publish the date, time and location of the public forum in a prominent location on the MHBE's public website at least 30 days prior to the date of the planned public forum. The MHBE must also include a summary of this forum as part of the quarterly report for the quarter in which the forum was held and the annual report as required under 31 CFR §33.124 and 45 CFR §155.1324 as specified in STC 10.

12. Monitoring Calls. The MHBE must participate in monitoring calls with the Departments that are deemed necessary by the Departments. The purpose of these calls is to discuss any significant actual or anticipated developments affecting the waiver. Areas to be addressed include the impact on the regulatory criteria discussed above and state legislative or policy changes. The Departments will update the MHBE on any federal policies and issues that may affect any aspect of the waiver. The MHBE and the Departments will jointly develop the agenda for the calls. It is anticipated that these calls will occur at least semi-annually.

13. Federal Evaluation. The Departments will evaluate the waiver using federal data, state reporting, and the application itself to ensure that the Secretaries of the Departments can exercise appropriate oversight of the approved waiver. Per 31 CFR §33.120(f) and 45 CFR §155.1320(f), if requested by the Departments, the MHBE must fully cooperate with the Departments or an independent evaluator selected by the Departments to undertake an independent evaluation of any component of the waiver. As part of this required cooperation, the MHBE must submit all requested data and information to the Departments or the independent evaluator. The Departments will consider the evaluation costs to the federal government in the deficit neutrality assessment and, if necessary, take them into account in the pass-through funding calculation.

14. Pass-through Funding. Under section 1332(a)(3) of the PPACA, the MHBE will be entitled to funding based on the amount of premium tax credits (PTC) that would have been provided to individuals under section 36B of the Internal Revenue Code in the State of Maryland absent the waiver, but that will not be provided under the waiver, reduced, if necessary, to ensure deficit neutrality as required by the section 1332(b)(1)(D). The Departments have evaluated the estimates in the application for a pass-through amount for the period of the waiver. The MHBE

will receive pass-through funding for the purpose of implementing the MHBE plan under the waiver. Pass-through amounts will be made available in advance of the reinsurance program payments to the insurer(s) and no later than April of the applicable calendar year.

Starting with the 2019 plan year and for each plan year thereafter, on or before September 15th of the year proceeding the plan year, the MHBE will provide to the Departments: (1) the final second lowest cost silver plan (SLCSP) rates for a representative individual (e.g. a 21 year old non-smoker) in each rating area and (2) the MHBE's estimate of what the final SLCSP rates for a representative individual in each rating area would have been absent approval of this waiver. By the same dates, the MHBE also will provide (3) the total amount of all premiums expected to be paid in the non-group market for the plan year and (4) what total premiums would have been for the plan year without the waiver. Lastly, the MHBE will provide (5) the amount of APTC paid by month and rating area for the current year to date and (6) the number of APTC recipients by month and rating area for the current year to date. The MHBE will include with this information the methods and assumptions the MHBE used to estimate the final SLCSP rates for each rating area absent approval of this waiver. In addition, the MHBE should provide the state specific age curve premium variation for the current and upcoming plan year.

The amount of pass-through funding for plan year 2019 will be communicated to the MHBE no later than October 31, 2018, conditional on receipt of items 1 through 6 in the paragraph above by the date specified above, and subject to a final administrative determination by the Department of Treasury prior to payment. The pass-through amount for plan years 2020 through 2023 will be calculated by the Departments annually (per PPACA section 1332(a)(3)) and reported to the MHBE not later than October 31 of the preceding year, conditional on receipt of the SLCSP premium and total premium information (items 1 through 6 above) by September 15.

The pass-through funds cannot be obligated by the MHBE prior to the waiver effective date. The MHBE agrees to use the full amount of pass-through funding for purposes of implementing the MHBE's plan as approved by the Departments, including implementing the reinsurance program for 2019 and future years. Moreover, to the extent pass-through funding exceeds the amount necessary for the reinsurance program to cover payments for individual claim payments to issuers under the reinsurance program and/or operation of the reinsurance program, the remaining funds must be carried forward and used for purposes of implementing the MHBE's plan under the waiver, such as making reinsurance payments in the next calendar year.

If the waiver is not extended, unused pass-through funds will be recovered promptly following the end of the approved waiver period, December 31, 2023. The MHBE will comply with all necessary steps to facilitate the recovery within a prompt timeframe.

15. The Departments' Right to Amend, Withdraw, Terminate or Suspend. Under 31 CFR §33.120(d) and 45 CFR §155.1320(d), the Departments reserve the right to amend, withdraw, terminate, or suspend the waiver (in whole or in part) at any time before the date of expiration, if the Departments determine that the MHBE has materially failed to comply with these STCs or if the MHBE fails to meet the specific statutory requirements or "guardrails" related to coverage, affordability, comprehensiveness, or deficit neutrality.

a) The Departments will promptly notify the MHBE in writing of the determination and the reasons for the suspension or termination, together with the effective date.

b) In the event that all or a portion of the waiver is terminated or suspended by the Departments or if all or a portion of the waiver is withdrawn, federal funding available after the effective date of the termination, suspension, or withdrawal will be limited to normal closeout costs associated with an orderly termination, suspension or withdrawal, including service costs during any approved transition period and administrative costs of transitioning participants, as described in 31 CFR §33.120(e) and 45 CFR §155.1320(e).

c) Unused pass-through funding will be recovered. The MHBE will comply with all necessary steps to facilitate the recovery within a prompt timeframe.

Michele Eberle
Executive Director
Maryland Health Benefit Exchange

Date: _____

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health & Human Services

Date: _____

David Kautter
Assistant Secretary for Tax Policy
U.S. Department of the Treasury

Date: _____