



# 1332 Draft Waiver Application

May 15, 2019

*Montana Governor, Steve Bullock, Montana State Auditor, Commissioner of Securities and Insurance, Matthew Rosendale, and the Montana Reinsurance Association Board of Directors*

## Table of Contents

---

Table of Contents .....	1
Executive Overview .....	2
I. Montana 1332 Waiver Request .....	5
II. Compliance with Section 1332 Guardrails .....	6
A. Scope of Coverage Requirement (1332(b)(1)(C)): .....	6
B. Affordability Requirement (1332(b)(1)(B)): .....	6
C. Comprehensiveness Requirement (1332(b)(1)(A)): .....	6
D. Deficit Neutrality Requirement (1332(b)(1)(D)): .....	7
III. Description of Montana’s 1332 Waiver Proposal .....	7
A. Authorizing Legislation .....	7
B. Federal Pass-Through Funding .....	8
IV. Draft Waiver Implementation Timeline .....	8
V. Additional Information and Reporting .....	9
A. Administrative Burden .....	9
B. Impact on Residents Who Need to Obtain Health Care Services Out-of-State .....	10
C. Ensuring Compliance, Waste, Fraud and Abuse .....	10
D. State Reporting Requirements and Targets .....	11
VI. Supporting Information and Miscellaneous .....	11
A. 45 CFR 155.1308(f)(4)(i) – (iii) .....	12
VII. Public Comment and Tribal Consultation .....	12
A. Public Comment .....	12
B. Tribal Consultation .....	13
VIII. Alignment with Section 1332 Principles .....	13

## Executive Overview

---

### Request

The State of Montana, through its Governor, Commissioner of Securities and Insurance (Commissioner) and Reinsurance Association Board of Directors (Board), submits this 1332 State Innovation Waiver request to the Center for Medicare and Medicaid Services (CMS), a division of the United States Department of Health and Human Services (HHS), and the Department of the Treasury. This request seeks Waiver of Section 1312(c)(1) under Section 1332 of the Affordable Care Act (ACA) for a period of five years beginning in the 2020 plan year to develop a state reinsurance program. This Waiver will not affect any other provision of the ACA but will result in a lower market-wide index rate, thereby lowering premiums and reducing the federal cost of the premium tax credit (PTC) and advance payments of the PTC (APTC).

### Basis for Request and Goal of Reinsurance Program

During the last few years, Montana's individual health insurance market has seen substantial instability. Since 2014, individual health insurance premiums have increased significantly. The average cost of the second lowest cost silver plan for a 40-year-old non-smoker increased from \$253 in 2014 to \$561 in 2019. The U.S. average second-lowest cost silver rate for a 40-year-old in 2019 is \$477.<sup>1</sup> The rate increases started in 2016. In 2014 and 2015, Montana's premiums were below the average U.S. rate. Insurers experienced significant losses in 2014 and 2015, and as a result, had to raise premiums significantly in 2016. The largest increases occurred in 2017, because of continuing losses in 2016, but also because the federal transitional reinsurance program ended. When the federal reinsurance program ended, premiums increased by an estimated 7 % because of that factor alone.<sup>2</sup> In 2018 premiums increased significantly for silver plans because the federal government stopped reimbursing insurers for the cost-sharing reduction benefit. Individuals who do not qualify for significant tax credits are now struggling to pay those premiums.

Experts have identified some of the causes of these premium increases, in addition to those mentioned above, including 2014 premiums that were set too low; pent-up demand from the previously uninsured; more enrollees with high-cost conditions than originally predicted; and high health care costs, especially rising prescription drug prices.

The individual health insurance market covers a small percentage (approximately 7 %) of the population in comparison to other types of health care coverage, but it provides a critical safety net.<sup>3</sup> This population generally consists of early retirees, the self-employed, part-time employees

---

<sup>1</sup> <https://www.kff.org/health-reform/state-indicator/marketplace-average-benchmark-premiums/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

<sup>2</sup> <https://www.actuary.org/content/drivers-2017-health-insurance-premium-changes-0>

<sup>3</sup> <https://www.kff.org/other/state-indicator/total-population/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

or employees of small employers that do not offer a health plan and young adults aging-off of their parents' plan. Many people find themselves needing individual health insurance coverage at some point in their life, but sometimes only for a short period of time when they are transitioning from or to another type of coverage. This means that a certain percentage of the individual market will always be transitory and that constant churn also creates pricing uncertainty.

Approximately 33 % of Montanans are 55 or older.<sup>4</sup> Health insurance premiums spike at that age. An individual who is 55 pays a premium that is 2.23 times higher than a 21-year-old, and at 64, the rate increases to 3 times the 21-year-old rate.<sup>5</sup> Montana has an aging population and is among the top ten states with the oldest population. By age 55, most individuals do not have dependents and therefore often have higher FPLs and are less likely to qualify for PTCs. In the individual market in Montana, the 55 to 64 age category continues to have the largest number of enrollees.<sup>6</sup> Montanans age 50 to 64 are often the ones who feel the full impact of individual market premium increases. Because they do not usually have dependents, their income level is often higher, and therefore, they do not qualify for premium assistance.

Montana is fortunate to have three insurers offering coverage in the marketplace; the same three insurers that offered marketplace coverage in 2014. Montana has an administrative rule that requires exchange insurers to sell across the whole state. However, enrollment in the individual market dropped 22 percent between 2016 and 2018, and percent between 2016 and 2019. Even more significant, the "off" exchange enrollment where individuals do not receive PTC dropped 52.7 percent between 2016 and 2018 and 35.5 percent between 2016 and 2019.<sup>7</sup> If enrollment continues to drop, it will be difficult to maintain this level of competition in the individual health insurance market because the "pie" will be too small to carve up. Less competition generally leads to higher rates. Many Montanans are finding coverage unaffordable, and some are forced to drop coverage.

The creation of a state reinsurance program through a 1332 Waiver will bring more stability to Montana's individual health insurance market through state-based innovation. By reimbursing insurers for high-cost claims, the reinsurance program will spread risk across the broader Montana health insurance market, thereby lowering premiums and increasing access to affordable private coverage. Increased enrollment will assist with maintaining competition and stabilizing the risk pools, which will lower rates.

---

<sup>4</sup> <https://www.kff.org/other/state-indicator/distribution-by-age/?dataView=0&currentTimeframe=0&selectedRows=%7B%22states%22:%7B%22montana%22:%7B%7D%7D.%22wrapups%22:%7B%22united-states%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

<sup>5</sup> <https://www.valuepenguin.com/how-age-affects-health-insurance-costs#nogo>

<sup>6</sup> 2018 and 2019 Reports on Health Coverage and Montana's Uninsured; <http://reinsurance.mt.gov/>

<sup>7</sup> 2018 and 2019 Reports on Health Coverage and Montana's Uninsured; <http://reinsurance.mt.gov/>

### **Operation, Funding, and Impact of the Montana Reinsurance Program**

Senate bill 125 authorized the Waiver and was signed into law on April 30, 2019. It establishes a reinsurance program to be administered by the Montana Reinsurance Association Board of Directors (Board) and the Commissioner of Securities and Insurance (Commissioner). Total funding for the reinsurance program for 2020 is estimated to be approximately between \$20 million and \$40 million. The program will be funded through a 1.2 % assessment on major medical health insurance premiums, as authorized in Section 8 of SB 125. Section 18 of the bill makes the operation of the reinsurance program contingent on approval of this Waiver request. Through this Waiver request, Montana seeks federal pass-through funds to partially offset state expenditures.

The reinsurance program will reimburse qualifying individual health insurers for a percentage of an enrollee's claims between an attachment point and a cap. Section 9 of the bill provides that the attachment point cannot be less than \$40,000, the coinsurance must be between 50 % and 80 % and the cap cannot be more than \$1,000,000. In 2020, the program will likely reimburse *[reinsurance percentage to be inserted]* percent of claims between the attachment point and an estimated *[reinsurance cap to be inserted]* cap. The Board will set the program parameters in the plan of operation. Montana estimates that the reinsurance program, as part of the Waiver proposal, will result in a net premium decrease of *[estimated premium decrease to be inserted]* percent in 2020 and *[estimated premium decrease to be inserted]* percent in 2021.

### **Compliance with Section 1332**

Montana's Waiver, if approved, will reduce premiums and increase affordability of health insurance in Montana's non-group health insurance market. We estimate that, as a result, enrollment in the individual market will increase by approximately *[percent change to be inserted]* in 2020, *[percent change to be inserted]* in 2021, and *[percent change to be inserted]* in *[insert additional representative time period]*. The Waiver will not impact the comprehensiveness of coverage in Montana, except insofar as individuals with coverage have more comprehensive coverage than those without. The Waiver will have no material impact on premiums, comprehensiveness, or enrollment in group coverage or public programs. The reduction in individual health insurance premiums, including premiums for the second-lowest-cost silver plan, will reduce net federal spending by between \$10 and \$28 million in 2020 and in each of five years the Waiver is in place. The state requests federal pass-through funding equal for each year in the amount of the federal savings. Accordingly, the Waiver will not increase the federal deficit in any year of the Waiver. In addition, the Waiver will advance several of the principles described in the section 1332 guidance released in October 2018, including expanding access to private coverage and supporting and empowering those in need.

*[Table 1 to be inserted.]*

## I. Montana 1332 Waiver Request

Montana's individual health insurance market, like others across the country, has been through significant changes and challenges in the past few years. Montana's health insurance market continues to be relatively competitive, but premiums have risen substantially and enrollment is decreasing every year, despite the state's efforts to work collaboratively with Montana's health insurers to ensure a stable and adequately priced market with multiple plan options offered throughout the state.

Montana seeks Waiver of Section 1312(c)(1) under Section 1332 of the ACA for a five-year period beginning in the 2020 plan year to develop a state reinsurance program. The Waiver is intended to further stabilize the individual market, reduce rates, and to encourage insurance companies to offer plans in more parts of the state.

Section 1312(c)(1) requires "all enrollees in all health plans . . . offered by [an] issuer in the individual market . . . to be members of a single risk pool." This application calls for waiving the single risk pool requirement to the extent it would otherwise require excluding expected state reinsurance payments when establishing the market-wide index rate. A lower index rate will result in lower premiums for Montana's second lowest-cost silver plan, resulting in a reduction in the overall APTC that the federal government is obligated to pay for subsidy-eligible consumers in Montana. The Waiver does not require changes to any other ACA provision.

Without a reinsurance program, individual health insurance premiums will continue to rise at an unsustainable rate. Consequently, more Montana residents will choose or be forced to go without health insurance, further driving up rates due to adverse selection and provider cost shifting. By implementing a reinsurance program, Montana will reduce the potential for further market disruption, lower the cost of individual premiums, and decrease federal subsidy obligations.

By mitigating high-cost individual health insurance claims, the reinsurance program will help to stabilize Montana's individual market and make premiums more affordable. Table 1 above shows that, with the Waiver and reinsurance program in place, individual market premiums, including premiums for the second lowest cost silver plan, are expected to be 5 and 10 percent lower in 2020 than they would be absent the Waiver. This premium reduction will reduce federal APTC and PTC cost. Table 1 *[to be inserted]* shows that absent the Waiver, 2020 federal APTC and PTC spending in Montana will be an estimated *[amount to be inserted]*. After factoring in the Waiver, total 2020 federal APTC and PTC spending is estimated to be *[amount to be inserted]* – a savings of *[amount to be inserted]*. Similar savings are estimated for each year of the 10-year budget window.

To establish the state's reinsurance program, Montana seeks federal pass-through funds in the amount of the federal savings for APTC and PTC, subject to the cap imposed by the statutory

deficit neutrality requirement. Table 1[*to be inserted*] shows that, taking into account the Waiver's impact on federal revenues from the federal exchange user fee, Montana requests pass-through funding of between \$10 million and \$30 million in 2020.

## **II. Compliance with Section 1332 Guardrails**

---

### **A. Scope of Coverage Requirement (1332(b)(1)(C)):**

As previously noted, the Waiver will reduce the cost of coverage in the individual market. The lower cost of coverage will allow more Montana residents to purchase or maintain coverage in the individual market than without the Waiver. As indicated in Table 1, enrollment in the individual market is expected to increase by approximately [*figure to be inserted*] in 2020, with similar increases in later years. The Waiver will have no material impact on the availability of other types of coverage, such as Medicaid, CHIP, and employer-based insurance, so no impact is expected on the number of individuals with those types of coverage. The Waiver will have a positive impact on vulnerable populations who buy coverage in the individual market since premiums will be lower.

### **B. Affordability Requirement (1332(b)(1)(B)):**

As noted above, the reinsurance program will, in each year it is in effect, make the cost of individual coverage lower than it would be absent the Waiver. The Waiver will not affect the premiums or cost-sharing for coverage obtained through other means, such as Medicaid, CHIP, and employer-based coverage. Although employer group health insurers will be subject to a 1.2 percent assessment to fund the Waiver, employer contributions and employee wages are not expected to be affected by the Waiver. The Waiver will have a positive impact on vulnerable populations who buy coverage in the individual market since premiums will be lower, and the individual health insurance market will continue to be an affordable safety net for individuals who leave employer coverage.

### **C. Comprehensiveness Requirement (1332(b)(1)(A)):**

The Waiver will have no material effect on the comprehensiveness of coverage for Montana residents. Regardless of whether the Waiver is granted, all Montana ACA-compliant individual market and small employer group plans will be required to provide coverage of essential health benefits. Similarly, the scope of benefits provided by other types of coverage such as Medicaid, CHIP, and grandfathered plans will not be impacted. The Waiver is expected to increase the number of individuals with health coverage. Individuals gaining health coverage under the Waiver will have coverage for more comprehensive health benefits than they would absent the Waiver.

#### **D. Deficit Neutrality Requirement (1332(b)(1)(D)):**

As stated above, Montana anticipates that individual premiums, including premiums for the second-lowest-cost silver plan, will be lower under the Waiver by 4 to 10 percent in 2020 and lower by similar amounts each year over the ten-year window. Because federal APTC and PTC cost are tied to the second-lowest-cost silver plan, these lower premiums will result in lower federal spending net of revenues in each year of the Waiver. Lower premiums in the individual market will also result in a small reduction in revenues from the federal exchange user fee in each year of the Waiver. Combining these factors, the Waiver will produce net federal savings of about *[figure to be inserted]* in 2020 and similar amounts in later years. Montana requests pass-through funds in each year equal to the expected APTC/PTC savings, and not to exceed net expected savings under the Waiver. As will be shown in a forthcoming actuarial and economic analysis, we believe that the program would result in federal savings of \$10 to \$30 million in the first year of the program *[the specific actuarial and economic analysis will be inserted]* for each year. Granting pass-through funding in these amounts will not result in the Waiver increasing the federal deficit in any year, over the 5 years of the Waiver, or over a 10-year budget window.

### **III. Description of Montana's 1332 Waiver Proposal**

---

#### **A. Authorizing Legislation**

Montana Senate Bill 125,<sup>8</sup> which establishes the reinsurance program and gives the Montana Reinsurance Association Board and the Office of the Commissioner of Securities and Insurance the authority to implement a 1332 Waiver for a reinsurance program, was signed into law by Montana's governor on April 30, 2019. The goal of SB 125 is to stabilize premiums for health insurance in the non-group market and provide greater financial certainty to health insurers and health insurance consumers.

SB 125 requires the Reinsurance Association Board and CSI to establish reinsurance program requirements, including the reinsurance program attachment point, coinsurance rate, reinsurance cap, and payment processes, in the plan of operation for the Association and by administrative rule. The bill also gives the Board, the Commissioner, and the Governor the joint authority to apply for a federal Waiver to carry out the reinsurance program.

The reinsurance program will reimburse individual health insurers for a proportion (coinsurance amount) of high-cost enrollee claims between a lower bound (attachment point) and an upper bound (cap). For 2020, Montana will set the reinsurance cap at less than \$ 1 million, the coinsurance rate between 50% and 80%, and an attachment point of at least \$ 40,000. *[More specific numbers will be inserted]* The reinsurance parameters will be set so that total estimated reinsurance payments match the funding available. If 2020 experience is worse than expected and the funding is not sufficient, Montana will change the reinsurance parameters in a way that

---

<sup>8</sup> A copy of SB 125 can be found at <http://reinsurance.mt.gov/>.

will decrease reinsurance payments. If the 2020 experience is better than expected, Montana will retain the funds in reserve for future payouts.

SB 125 also creates a funding source consisting of a 1.2 % assessment on major medical health insurance premiums. This funding source is contingent on Waiver approval.

### **B. Federal Pass-Through Funding**

The Waiver is designed to improve Montana residents’ access to affordable and comprehensive coverage. The goals of the reinsurance program are to spread the risk of high-cost claimants across the broader health insurance market, thereby lowering premiums for the individual market. In doing so, the reinsurance program will incentivize individual enrollees to join or remain in the market, encourage insurer participation, and reduce overall instability.

Because the amount of APTC available for eligible consumers is tied to the second-lowest-cost silver plan available through the Montana Marketplace, the Waiver will reduce net federal expenditures due to APTC and PTC. Through this Waiver request, Montana seeks the amount of these federal savings, net of other costs that result from the Waiver. Montana will use these funds to help pay for the reinsurance program.

## **IV. Draft Waiver Implementation Timeline**

---

The Board and the Commissioner will be responsible for implementing the reinsurance program. The Board will promulgate the program’s operating processes, requirements, payment parameters, and procedures through the Association’s Plan of Operation and the Commissioner will approve the plan of operation and promulgate administrative rules, if necessary. The Commissioner will collect program funds from assessments on insurers

- 04/30/19: Legislation authorizing the Waiver application is signed into law, and the bill becomes effective.
- 04/30/19 The Board members are appointed.
- 05/08/19 The Board meets to review the draft Waiver application, establish initial reinsurance parameters for the plan of operation, and levies a small part of the assessment to pay for costs relating to the 1332 Waiver application.
- 05/15/19: The draft Waiver application is posted. The public hearing dates are announced and the public comment period begins. Invitations to the Tribal consultation are delivered to tribal leaders.
- 06/04/19 First public hearing is held
- 06/17/19: Second public hearing is held.
- 06/17/19: Separate tribal consultation occurs.
- 06/17/19: The public comment period ends.

06/19/19: The final 1332 Waiver application is submitted to the federal government. \*

07/01/19: The federal government determines that the Waiver application is complete. \*

08/15/19: The federal government initially approves the Waiver. \*

09/15/19: The Board hires an administrator for the reinsurance program. \*

01/01/20: The federal government grants the 1332 Waiver and funds the reinsurance program for 2020. \*

05/15/20: Insurers pay first assessment to fund the Waiver. \*

06/10/20: The Board, the Governor and CSI hold a six-month public forum required by 45 CFR 155.1320(c). \*

06/30/20: 2020 public announcement of expected reinsurance payments. \*

08/15/20: Insurers pay second assessment to fund the reinsurance program. \*

08/15/20: Initial reinsurance payments for 2020 benefit year. \*

12/15/20: Insurers pay third assessment to fund the reinsurance program. \*

12/30/20: Reinsurance payments for 2020 benefit year. \*

01/01/21: The federal government funds the reinsurance program for 2021.

02/01/21: Insurers submit fourth quarter 2020 claims to the reinsurance program. \*

03/15/21: Insurers pay fourth assessment to fund the reinsurance program. \*

04/01/21: The Board submits first annual report to the federal government. \*

04/30/21: The Board submits its first quarterly report to the federal government.

05/15/21: Insurers pay first assessment (2021) to fund the reinsurance program. \*

06/09/21: The Board, CSI and the Governor holds annual public forum required by 45 CFR 155.1320(c). \*

07/31/21: The Board submits its second quarterly report to the federal government.

08/15/21: Insurers pay second assessment (2020) to fund the reinsurance program. \*

10/01/21: Insurers submit 2020 claims to the reinsurance program. \*

10/31/21: The board submits its third quarterly report to the federal government.

12/15/21: Insurers pay third assessment (2020) to fund the reinsurance program. \*

12/31/21: The reinsurance program reimburses insurers for 2020 eligible claims. \*

- Dates marked with an \* are estimated dates.

## V. Additional Information and Reporting

---

### A. Administrative Burden

Waiver of Section 1312(c) will cause minimal administrative burden and expense for Montana and for the federal government. The Waiver will cause no additional administrative burden to employers and individual consumers because Section 1312(c) does not relate to the administrative functions or requirements typically undertaken by employers or individuals. Major medical health insurers will experience some administrative burden and associated

expense as a result of the reinsurance program; however, the benefit to the overall health insurance market from the program will far exceed any resulting administrative expense.

The Montana Reinsurance Association and the state of Montana have the resources and staff necessary to absorb the following administrative tasks that the Waiver will require the state to:

- Administer the reinsurance program
- Distribute federal pass-through funds
- Monitor compliance with federal law
- Collect and analyze data related to the Waiver
- Perform reviews of the implementation of the Waiver
- Hold annual public forums to solicit comments on the progress of the Waiver
- Submit annual reports (and quarterly reports if ultimately required) to the federal government

The Waiver will require the federal government to perform the following administrative tasks:

- Review documented complaints, if any, related to the Waiver
- Review state reports
- Periodically evaluate the state's 1332 Waiver program
- Calculate and facilitate the transfer of pass-through funds to the state

Montana believes that the above administrative tasks are similar to other administrative functions currently performed by the federal government, so that their impact is minimal. Waiver of Section 1312(c)(1) does not necessitate any changes to the Federally-Facilitated Marketplace or to IRS operations and will not impact how APTC and PTC payments are calculated or paid.

### **B. Impact on Residents Who Need to Obtain Health Care Services Out-of-State**

Because Montana shares borders with North Dakota, South Dakota, Wyoming and Idaho, insurer service areas and networks that cover border counties generally contain providers in those states, especially in areas where the closest large hospital system is located in the border state. Granting this Waiver request will not impact insurer networks or service areas that provide coverage for services performed by out-of-state providers.

### **C. Ensuring Compliance, Waste, Fraud and Abuse**

The Commissioner is responsible for regulating and ensuring regulatory compliance and monitoring the solvency of all issuers; performing market conduct analysis, examinations, and investigations; and providing consumer outreach and protection. CSI investigates all complaints that fall within the agency's regulatory authority.

The Board will prepare comprehensive financial accounting statements annually. Financial statements for the reinsurance program will be reviewed annually by the Commissioner and

audited as needed by the legislative auditor. The Board will administer the reinsurance program in accordance with its existing accounting, auditing, and reporting procedures. Auditing and reporting obligations of participating insurers will be established in the plan of operation.

The Montana Reinsurance Program will be examined annually by the Commissioner. The reinsurance program will also be subject to audit by the Legislative Auditor. The federal government is responsible for calculating the savings resulting from this Waiver and for ensuring that this Waiver does not increase federal spending.

#### **D. State Reporting Requirements and Targets**

The Board will assume responsibility for the reporting requirements of 45 CFR 155.1324, including the following:

- Quarterly reports (45 CFR 155.1324(a)): To the extent required, the Board will submit quarterly reports, including reports of ongoing operational challenges, if any, and plans for, and results of, associated corrective actions.
- Annual reports (45 CFR 155.1324(b)): The Board, with the assistance of the Commissioner, will submit annual reports documenting the following:
  - (1) The progress of the Waiver.
  - (2) Data, similar to that contained in Attachment 1, on compliance with Section 1332(b)(1)(B) through (D) of the ACA.
  - (3) Modifications, if any, to the essential health benefits for compliance with Section 1332(b)(1)(A) of the ACA.
  - (4) The premium for the second lowest-cost silver plan under the Waiver and an estimate of the premium as it would have been without the Waiver for a representative consumer in each rating area.
  - (5) A summary of the annual post-award public forum required by 45 CFR 155.1320(c) together with a summary of action taken in response to public input.
  - (6) Any additional information required by the terms of the Waiver.

To the extent that quarterly reporting is required under 45 CFR 155.1324(a), the Board recommends that such reporting commence no sooner than April 30, 2020, in order to provide some experience with the program about which to report. The Board will submit and publish annual reports by the deadlines established in 45 CFR 155.1324(c) or the deadlines established by the terms of the Waiver.

## **VI. Supporting Information and Miscellaneous**

---

#### **A. 45 CFR 155.1308(f)(4)(i) – (iii)**

The supporting information required by 45 CFR 155.1308 (4) (i) – (iii), including the actuarial analyses and certifications, the economic analyses, the detailed deficit neutral 10-year budget plan, and the data and assumptions demonstrating that the proposed Waiver is in compliance with 1332(b)(1)(A) – (B) are found in Attachment 1.

## **VII. Public Comment and Tribal Consultation**

---

### **A. Public Comment**

In the fall of 2017, the Montana Health Care Foundation (MHCF) agreed to fund research, including Montana specific data analysis to determine the extent to which a state-based reinsurance program, secured through a 1332 Waiver, would stabilize the individual health insurance market in Montana by lowering premiums, without eliminating benefits. MHCF contracted with a health policy consultant to provide information on 1332 Waivers and to study Waivers that had already been filed and approved in several other states. MHCF also contracted with an actuarial firm to collect the 2017 EDGE server data and then write a report that projected the state share of the cost of the program, the possible federal pass-through dollars that may be obtained and impact on current premiums. Stakeholders from across the state, including insurers, healthcare providers, consumer advocates, the insurance commissioner, legislators and other government officials were invited to attend a “data-driven” conversation about reinsurance on July 23, 2018. Documents and research presented at that meeting can be found on this website: <http://reinsurance.mt.gov/>

The state held a tribal consultation in October 2018 and presented data and information about the reinsurance proposal to tribal leaders. As a result of these meetings, the information and data presented there, and input from stakeholders around the state, a smaller work group was formed and met several times in the fall of 2018 to draft legislation that was introduced in the 2019 Montana legislative session.

On May 15, 2019 a notice of the opportunity to comment on Montana’s draft 1332 Waiver application was posted on the following state government website: <http://reinsurance.mt.gov/> On the same date, emails were sent to interested parties and stakeholders. In addition, public notices announcing the hearing were placed in the major newspapers across the state.

On June 4, 2019, from 11:00 AM MDT to 12:00 PM MDT, a public hearing was held at the Butte-Silver Bow County Building, 155 W. Granite Street, Rm. 103, Butte, MT 59701. On June 17, 2019, from 1:30 PM MDT to 3:00 PM MDT, a second public hearing was held in the state capitol, Rm. 152, 1301 E. 6<sup>th</sup> Avenue, Helena, MT 59601. At the public hearing, relevant

information was presented and \_\_\_\_ members of the public testified. This testimony was also submitted in writing. [comments will be summarized; see <http://reinsurance.mt.gov/> ]

## B. Tribal Consultation

A “Save the Date” notice was emailed to tribal leaders on May 3, 2019. On May 15, 2019, the state sent a notice of the opportunity for tribal consultation via email and U.S. postal service to representatives of all federally-recognized tribes in Montana. Montana’s draft application and tribal consultation letter were included as attachments to the email. [See: <http://reinsurance.mt.gov/>]

On June 17, 2019, from 10 AM MDT to 12:00 PM MDT, the state held a tribal consultation in the State Capitol, Rm. 152, 1301 E. 6<sup>th</sup> Avenue, Helena, MT 59601. \_\_\_\_ federally-recognized tribes participated in the tribal consultation.

## VIII. Alignment with Section 1332 Principles

---

Montana’s Waiver, if approved, will advance several of the principles described in the October 2018 1332 guidance:

- **Provide increased access to affordable private market coverage.** The reinsurance program will reduce premiums exclusively for those purchasing private health insurance. Specifically, it will reduce premiums for private health insurance in the individual market between approximately 5 and 10 percent for each of the five years the Waiver is in effect. The reinsurance program will also support competition in the health insurance market, helping to ensure access to private insurance coverage.
- **Encourage sustainable spending growth.** All three marketplace health insurers have developed initiatives (such as enhanced primary care) with the intent of encouraging cost-effective utilization of health care for Montanans. Additionally, Montana was selected by CMS to participate in the Comprehensive Primary Care Plus (CPC+) initiative, and two of the three exchange insurers participate in that program. Further, each of Montana’s exchange insurers are continuing to explore additional ways to lower health care costs. For example, insurers have proposed provider reimbursement arrangements that reduce or eliminate fee-for-service charges, and some insurers are execute provider contracts that utilize alternative payment models rather than discounts off of billed charges. Montana’s reinsurance program will further these efforts by promoting stability in Montana’s health insurance market by reducing economic uncertainty, thereby allowing its health insurers to focus more attention on programs designed to reduce healthcare costs. Reducing the number of uninsured individuals will also reduce uncompensated care, which will further reduce health care costs.

- Support and empower those in need.** By reducing premiums in the individual market, the Waiver will target its impact at those who are not currently eligible for financial assistance and therefore generally face the largest premiums for health insurance. Individuals with incomes under 400 percent of the federal poverty (and who are not eligible for other coverage) are generally eligible for the PTC, which limits their contribution towards individual market health insurance to a fixed percentage of their income. As a result, they are somewhat insulated from the impact of premium changes. Individuals with incomes over 400 percent of the poverty line are ineligible for the PTC and therefore face the full amount of their premium, which may be over ten thousand dollars annually for a single individual. Approximately 33 % of Montanans are 55 or older. Premiums spike at that age. An individual who is 55 pays 2.23 times higher premium than a 21. At 64, the rate increases to 3 times the 21-year-old rate. Montana has an aging population and is among the top ten states with the oldest populations. By age 55, most individuals do not have dependents and are generally less likely to qualify for PTCs. Many Montanans find coverage unaffordable, and some are forced to drop coverage. Uninsured individuals over 50 are more likely to incur substantial medical costs which increases the risk of uncompensated medical costs. Uncompensated care increases costs for the entire health care system. Lower premiums for everyone in the individual market will make insurance more affordable for those individuals who are not eligible for PTC and will stabilize and increase enrollment in the individual market. Montana's health insurers have a number of initiatives designed to incentivize providers and enrollees to contain and manage health care costs and utilization for high-claims-cost individuals. The reinsurance program's coinsurance rate ensures that the eligible health insurers will continue to manage health care costs and utilization.
- Foster state innovation.** The Waiver is a state-run approach to making coverage more affordable that is suited to the specific needs of Montana. States across the country have pursued innovative approaches to strengthening their health care systems. After considerable research and study,<sup>9</sup> a reinsurance Waiver has been identified by Montana as the approach that meets its needs while allowing it to take control of its own health care system.

#### **ADDITIONAL DOCUMENTS TO INCLUDE IN APPLICATION**

- *Actuarial and economic analysis (pg.)*
- *State legislation authorizing the application (pg.)*
- *Documentation of public notice and comment period and public hearings (pg.)*
- *Documentation of consultation with Indian tribes located in the state (pg.)*

---

<sup>9</sup> <http://reinsurance.mt.gov/>

- *Written comments received during the state notice and comment period (pg.)*

Montana has created a webpage at <http://reinsurance.mt.gov/> where all materials related to Waiver are posted.

DRAFT