

BULLETIN 351

Effect of the People's Veto on the Maine Individual Reinsurance Association and the Market Provisions of the 2008 Health Reform Act

On November 4, 2008, in a referendum conducted under the People's Veto Clause of the Maine Constitution, the citizens of Maine repealed Parts D through F of P.L. 2007, ch. 629 (L.D. 2247), "An Act To Continue Maine's Leadership in Covering the Uninsured" (the "Act"). Although the people's veto petition did not address Parts A through C or Parts G through M of the Act, which therefore formally became law on July 18, 2008, many of those remaining provisions are inextricably dependent upon the provisions of the Act that have been repealed, creating an irreconcilable inconsistency in the law.

In particular, Part A of the Act, by its terms, makes substantial changes to the individual health insurance market.¹ To respond to the high cost of coverage, it establishes a reinsurance mechanism for individual health insurance that is intended to subsidize catastrophic claim payments made on or after July 1, 2009.² For eligible insurers and governmental programs, the reinsurance program is intended to reimburse 50% of the payments between \$75,000 and \$250,000 in a single fiscal year for every individual whose losses exceed the \$75,000 threshold. As enacted by the Legislature and signed by the Governor, 24-A M.R.S.A. § 6915 was amended to fund this reinsurance program by allocating 18.8% of the revenues from three specified sources. However, both the funding provision and its underlying revenue sources were repealed by the referendum. Without this funding source, the reinsurance program cannot function. Although 24-A M.R.S.A. § 3907(2) would allow the reinsurance program to accept funding from other sources, no such funds have been designated or identified.

Therefore, there can be no reinsurance program for the Maine Individual Reinsurance Association to administer. It would not be prudent to use scarce state and private resources on rulemaking, appointment of board members, and establishment of a plan of operation to implement a program that lacks the financial means to carry out its only purpose.

The reinsurance program, furthermore, was intended to enable insurers to offer rate reductions to preferred risk classes, based on age and geography, beginning on July 1, 2009.³ The permitted variation in rates would be increased from 1½–1 to 2½–1, but only if rates in the highest-priced risk classes are no higher than they would have been in the absence of the reinsurance program, under the rating standards currently in force. Because there can be no savings from the reinsurance program unless and until it is funded and implemented, there can be no rate reductions reflecting projected savings. Consequently, rulemaking cannot be conducted to establish new rating methodologies for reinsurance cost savings.

Finally, a transition provision was enacted to address concerns about the effects on existing business of the new rating structure resulting from the reinsurance program; this provision would have allowed carriers currently in the individual market to rate their existing books of business

separately as closed blocks for up to three years.⁴ However, with no change in the rating structure, there is no separate block of business.

In summary, the provisions of the Act that by their terms would establish a catastrophic reinsurance program and a new rating framework to reflect cost savings from that program are not severable from the provisions of the Act that have been repealed, and therefore cannot be implemented. On the other hand, a separate provision of the Act, enabling pilot projects for individual health insurance products available only to persons under age 30,⁵ stands on its own and is not dependent upon the reinsurance program or upon the revenue sources that have been repealed. Accordingly, I have initiated rulemaking proceedings to propose Bureau of Insurance Rule 745 to implement this pilot program.

¹ Other provisions of the Act that are inconsistent with the repeal of Parts D through F include the budget provisions in Parts J and K and the revisions to miscellaneous provisions relating to savings offset payments in Parts L and M.

² 24-A M.R.S.A. Chapter 54, *enacted by* P.L. 2007, ch. 629, § A-8.

³ 24-A M.R.S.A. § 2736-C(2)(D)(4) , *enacted by* P.L. 2007, ch. 629, § A-4.

⁴ 24-A M.R.S.A. § 2736-C(2)(H) , *enacted by* P.L. 2007, ch. 629, § A-6.

⁵ 24-A M.R.S.A. § 2736-C(10) , *enacted by* P.L. 2007, ch. 629, § I-1.

December 1, 2008

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