Appendix F: **Written Public Comments**

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April 19, 2021

Mr. Eric Cioppa, Superintendent
c/o Ms. Brittnee Greenleaf
Maine Bureau of Insurance
34 State House Station
Augusta, Maine 04333-0034

Re: State of Maine Section 1332 Waiver Amendment Application

Dear Superintendent Cioppa:

On behalf of Anthem Health Plans of Maine, Inc., d/b/a Anthem Blue Cross and Blue Shield, I would like to thank you for the opportunity to submit comments on the draft Section 1332 Waiver Amendment Application to be submitted by the State of Maine ("the Application").

As we understand it, key elements of the Application include the following:

- The application seeks to change the Maine Guaranteed Access Reinsurance Association ("MGARA") program from a prospective reinsurance model to a retrospective model effective January 1, 2022;
- The application proposes to merge the Individual and Small Group markets in Maine effective January 1, 2023 (representing a one-year delay from the original proposal);
- The MGARA program will be funded by Federal Pass through funding and $4.00 PMPM assessment across the fully insured and self-funded (through an assessment of third-party administrators) markets in Maine; and
- The waiver amendment, if approved, would be effective for a new period of five years, beginning January 1, 2022.

At the outset, Anthem would like to state that it shares the Superintendent's concerns regarding the deterioration of Maine's small group market. However, we do not believe that a merger of the markets, coupled with an expansion of the MGARA program to reinsure a merged market, is the best way to address the issue. Not only will the relief to the small group market be very modest, but we are extremely concerned that the individual market will be harmed in the process, which could lead to a deterioration of that market as well.

When L.D. 2007 was introduced last year, we expressed significant reservations about several provisions of the bill, particularly the proposal to merge the individual and small group markets. At that time, we indicated that based on our analysis, we did not believe it would have the desired impact but we felt that it was deserving of thorough analysis, in order to truly understand the impact it might have on both the individual and small group markets. Those studies have now shown that it is not the right solution.

1. <u>The Individual market will be negatively impacted by a merger of the Individual and Small Group markets</u>

Despite its size in comparison to the individual market, membership in the small group market continues to be healthier than the individual market. As a result, merging the markets without the application of any reinsurance, results in a subsidization of the individual market by the small group market, and serves to increase rates in the small group market. The proposed Application seeks to mitigate this impact by expanding the MGARA program to the merged market. While extension of reinsurance does offset that impact to a small degree, it does so at the expense of the individual market.

The August 2020 report prepared by Gorman Actuarial for the Bureau of Insurance in anticipation of the Application[1] estimated that if the individual and small group markets merge ***and*** the MGARA program provides reinsurance to the merged market, individual rates will be approximately 4% ***higher*** than they would be under the existing section 1332 waiver. While small group rates will decrease by approximately 4%, this is a one-time reduction that essentially resets the trendline in the small group market. The very small benefit to the small group market does not justify the corresponding increase in individual market rates that will result from the significant dilution of the value of the reinsurance program or the significant disruption in both markets.

This conclusion is further supported by the analysis conducted by Milliman for the Maine Guaranteed Access Reinsurance Association ("MGARA").[2] While the reports take different approaches and use different assumptions, both arrive at the same conclusion—that while there may be a small, one-time benefit to the small group market, it is at the expense of the individual market. The Milliman Report also noted that the proposed retrospective claims-based reinsurance program is worth significantly less than the current program to the individual market--30%-50% less value according to Milliman.

With expansion of the MGARA program to a merged market, and the conversion of MGARA from a prospective to a retrospective model, small group rates are lowered. However, individual rates will be higher than they would be if the markets existed separately and MGARA continued to reinsure only the individual market.

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[1] Policy Option for Maine Individual and Small Group Markets, Prepared for the Maine Bureau of Insurance, Gorman Actuarial, LLC, August 25, 2020, https://www.maine.gov/pfr/insurance/legal/notices/pdf/ga_indiv_and_sm_grp_policy_option_report.pdf.

[2] Individual market small group market merge analysis, Milliman, September 3, 2020, https://www.maine.gov/pfr/insurance/legal/notices/pdf/milliman_individual-smallgrp_merge_analysis.pdf.

The impact will be further exacerbated by the required movement to Clear Choice plan designs—our analysis indicates 89% of our individual members who do not receive a subsidy will see an increase of 4% on average—before any impact associated with a merger of the markets.

Like the Small Group market, the Individual Market in Maine has also experienced a steady decrease in enrollment and can ill afford to have additional increases in premium. While the recent expansion by the Biden Administration of Advanced Premium Tax Credits (APTCs) may help to mitigate the impact, it is important to note that the expansion of APTCs is temporary and only for two years.

2. The State has not used the proper baseline for the purposes of determining whether the statutory prerequisite for a merger of the markets has been met.

It has been suggested that the baseline for determining if the prerequisite articulated in 24-A M.R.S. § 2792(5) has been met is to compare individual rates without MGARA to what those rates would be if the markets merged and MGARA provided reinsurance to the merged market on a retrospective basis. While that may be the appropriate baseline for determining the federal pass-through funding and/or budget neutrality under a 1332 waiver amendment application, it is not the baseline for the purposes of section 2792(5).

Under the Made for Maine Health Coverage Act (L.D. 2007, enacted as P.L. 2019, c. 653), a merger of the markets can only move forward if the Superintendent projects that "***both*** average individual premium rates and average small group premium rates ***would be the same or lower than they would have been absent the provision of this section.***" 24-A M.R.S. § 2792(5). Absent a merger of the markets pursuant to section 2792, MGARA will continue to reinsure the individual market. Therefore, the baseline for determining whether the requirements of section 2792(5) have been met is to compare individual and small group rates with MGARA reinsuring the individual market to the individual and small group rates in a merged market that is reinsured by MGARA.

The premise underlying the provisions of 24-A M.R.S. § 2792(5) was essentially "do no harm"—neither market should be worse off than it is today if the markets are merged. When individuals are considering the impact of L.D. 2007 and a merger of the markets, they will not be comparing what they paid in 2018, when MGARA was not in operation, to what they pay in 2022, they will be comparing their 2021 premium to their 2022 premium.

As a result, we strongly believe that the threshold requirement established in section 2792 to proceed with a merger of the markets has not been met because individual market rates will be increased in a merged market scenario.

3. Stakeholders will not have an opportunity to review an updated draft of the Application or an updated analysis that reflects the delay of a market merger until 2023

During the public comment session on the Application held on March 29, 2021, the Superintendent indicated that the Bureau of Insurance would delay a merger of the Individual and Small group markets until January 1, 2023.

In making the announcement, the Superintendent cited two reasons for delaying a merger of the markets until 2023:

(1) The COVID-19 pandemic has created a public health emergency that has had a major economic impact and introduced significant disruption to the insurance market, the full scope of which is still unknown. The superintendent suggested that a delay would allow the State to better understand the economic impact of the COVID-19 pandemic and how to best procced with its plan to improve access and affordability of coverage and avoid adverse consequences.

(2) The recent changes to the structure of APTCs under the American Rescue Plan Act of 2021 make estimating the impact of merged markets and Federal pass-through funding amounts challenging, and that a delay of the merger will better allow the State to fully analyze the impact and determine the best way to maximize the opportunity.

As a result of the decision to delay a merger of the markets until 2023, the draft Application upon which these comments are based is no longer current. Not only will the MGARA attachment point change, but the factors identified by the Superintendent may impact the analysis of a market merger. Stakeholders do not have the additional analyses that the Bureau has indicated are necessary, nor will they have an opportunity to review and comment on a draft application that reflects such changes or any modeling, making it difficult to provide meaningful comment.

4. Other options should be studied before the State moves forward with a merger of the markets.

There are other initiatives that could be explored to stabilize the small group market. None are without negative consequences. Because these options have not been studied, we cannot say whether we would support or oppose them—we certainly have concerns about some of them. But all options must be studied and compared in order for the State to make a well-reasoned and informed decision. Alternative proposals that could be considered include expanding the definition of small group from 50 to 100 employees.

Finally, the State must also consider solutions that will address the cost of care and reduce costs not only in the small group market, but across all markets. As the Bureau knows well, health insurance premiums reflect health care costs and until costs are addressed, premiums will continue to rise. We would welcome the opportunity to work with the Bureau to identify policy changes that would address rising health care costs.

We would again like to express our appreciation for the collaborative process the Bureau has followed, particularly in the midst of such a trying time. Although we are not supportive of the Application, we are very appreciative of the opportunity to have engaged in meaningful discussions with the Superintendent and Bureau of Insurance staff around this issue.

Thank you for the opportunity to share these comments. Please do not hesitate to contact me if you have any questions.

Sincerely,

Kristine M. Ossenfort, Esq.
Senior Government Relations Director

COMMUNITY
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April 12, 2021

Superintendent Eric Cioppa
Maine Bureau of Insurance
#34 State House Station
Augusta, ME 04333-0034

RE: s. 1332 waiver amendment application

Dear Superintendent Cioppa:

We appreciate this opportunity to present testimony on the proposed section 1332 waiver amendment application. The application is predicated on the merging of the small group market with the individual market. As noted at the public hearing, we support the decision to defer a merging of the small group and individual markets on the basis of the enduring impact of the pandemic as well as the unknown impacts of the American Rescue Plan Act.

Fundamental to the consideration of merging the two markets is the yardstick by which we measure whether the impact of the market merger meets the statutory guardrails. The proposed application (s. 1332 waiver amendment application) is predicated on a comparison of the merged market results with the state of the market prior to the [original] s. 1332 waiver, i.e., before MGARA was reinstated on the basis of the generation of APTC pass-through funding. We believe the proper baseline for comparison is the current state of operations, in other words, *MGARA as it exists with the current s. 1332 waiver*. Use of a different baseline from a different time period simply obscures the true impact and establishes a faulty set of expectations.

At the center of the policy consideration is participating carriers' reliance upon the program. The confidence among carriers to "price in" the expected results is the flywheel that generates program stability and the steady reduction in premiums that are sustained over time. Reduced premiums lead to lowered APTC which in turn drives the pass through funding. Absent the basis for sufficient premium reductions, the program will simply erode over time.

Milliman has pointed to a very modest one-time improvement for the small group market, but an offsetting burden placed upon individual market rates as compared with existing market conditions. In addition to not meeting the statutory guardrails, this cost shifting casts doubt upon the proposal's ability to achieve the intended effects that have been wished upon the program, but are questioned by a highly reputable source.

Other questions that need to be addressed prior to any commitment to merger include:

(1) What will be the flight from the small group community-rated market for other forms of coverage such as self-insured variants in advance of the merger and even due to the merger? Those leaving for ERISA styled plans of coverage undoubtedly will have the healthiest profile, leaving a sicker pool behind. This would increase the premiums for the small group segment and undermine one of the precepts that is foundational in the more optimistic view of a market merger.

(2) How might the application of standardized plans (Clear Choice) to the small group market similarly precipitate market changes, possibly driving those who can afford to leap to alternative coverage solutions to leave the community-rated pool?

Reliance is also fundamental to the issue of changing the existing reinsurance program to a retrospective model from its current prospective one.

Currently, we have no substantial basis for a retrospective model to rely upon – no attachment points and no coinsurance – for which to establish pricing. While the application suggests some numbers, those have little bearing upon the ultimate structure to be adopted by the MGARA board. But that decision for 2022 has to be based upon expectations of risk that are still being informed by 2020 experience and the 2021 forecast.

The retrospective model has a distinct advantage in terms of the ease and simplicity of its administration. In fact, the program could be synchronized with the carriers' EDGE server submissions, avoiding duplicate entry to MGARA.

The major drawback of a retrospective model include the late fulfillment of claims runout and a final understanding of program performance so as to inform the next year's program specifics in time for provider rate-setting. In addition, our analysis of our plan performance under a

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retrospective model indicated reduced claims recovery versus the current prospective model. This analysis would change as the attachment points and coinsurance amounts change, but that is just the point: without surety well in advance of rate setting, the desired reliance upon the program will be handicapped to the point of jeopardizing the overall structure.

Given where we are in the lifecycle of rate setting for 2022 and the important aspect of confidence in shoring up carrier reliance, we urge the maintenance of the existing model until further study and evaluation can take place for recommendations to be made for 2023.

Thank you for your consideration of these concerns.

Sincerely,

Kevin Lewis
Chief Executive Officer

AARP Maine

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March 17, 2021

Superintendent Eric Cioppa
Maine Bureau of Insurance
34 State House Station
Augusta, ME 04333-0034

Testimony in Support of Proposed Section 1332 Waiver Amendment Application

AARP Maine, representing more than 200,000 members 50 and older statewide, supports the proposed Section 1332 Waiver Amendment Application that will expand the Maine Guaranteed Access Reinsurance Association (MGARA) program to include small group markets and extend the program for a period of five years.

MGARA has brought increased certainty and stability to Maine's individual health insurance market. In 2020 the Maine legislature enacted LD 2007 to allow the Insurance Superintendent to add Maine's small group market to MGARA, thus creating a single risk pool for these markets. This will help keep the combined risk pool stable, which is important given Maine's older and small population. The change will also keep health care premiums lower, which will help older Mainers.

An AARP Public Policy Institute report on "Health Insurance State Innovation Waivers and Older Adults: A Guide for States" notes that "Reinsurance programs can be helpful in stabilizing health insurance markets in states experiencing unaffordable premiums or where insurers drop out of the market...and improve access to coverage for enrollees, including older adults."[1]

While AARP Maine supports this waiver amendment application, the AARP Policy Institute report also notes that "although states are no longer required to evaluate the potential impact

[1] https://www.aarp.org/content/dam/aarp/ppi/2019/09/health-insurance-state-innovation-waivers-and-older-adults-state-guide.doi.10.26419-2Fppi.00081.003.pdf

of a waiver on older adults and other vulnerable groups, states that want to ensure protections for older adults should continue to examine a waiver's impact on such groups. States are required to conduct periodic review of implementation of the waiver, and within six months of implementation must advise and hold a public forum." We believe this public forum should be held within six months of the implementation of the amended waiver and include an assessment of the amended waiver's impact on Maine's older residents.

It is our understanding that funding for the amended waiver should also not be a problem since the Bureau's own "Policy Option for Maine Individual and Small Group Markets" report noted "This program is funded by an assessment across the Maine full-insured and self-insured commercial markets, premiums paid by participating insurers to MGARA, and federal fund through Section 1332 waivers. Thus, it is not a financial burden upon the state."[2]

For these reasons, AARP Maine supports the amended waiver application. Please don't hesitate to contact me at lparham@aarp.org or 207-400-1026 if you have any questions.

Lori Parham, Ph.D.
Sate Director, AARP Maine

[2] https://www.maine.gov/pfr/insurance/legal/ga_indiv_and_sm_grp_policy_option_report.pdf

American Lung Association.

April 12, 2021

Eric Cioppa
Superintendent
Maine Bureau of Insurance
34 State House Station
Augusta, ME 04333-0034

Re: Maine Section 1332 Waiver Amendment

Dear Superintendent Cioppa:

The American Lung Association appreciates the opportunity to submit comments on Maine's Section 1332 Waiver Amendment Application.

The American Lung Association is the oldest voluntary public health association in the United States, currently representing the more than 36 million Americans living with lung diseases including over 250,000 Maine residents. The Lung Association is the leading organization working to save lives by improving lung health and preventing lung disease through research, education and advocacy.

The American Lung Association believes everyone should have quality and affordable healthcare coverage. A strong, robust marketplace is essential for people living with asthma, lung cancer and other lung diseases to access the coverage that they need. The Lung Association supports Maine's efforts to strengthen its marketplace by submitting this Section 1332 Waiver Amendment to include Maine's small group market in its existing reinsurance program for the individual market.

Reinsurance is an important tool to help stabilize health insurance markets. Reinsurance programs help insurance companies cover the claims of very high cost enrollees, which in turn keeps premiums affordable for other individuals buying insurance on the individual market. Reinsurance programs have been used to stabilize premiums in a number of healthcare programs, such as Medicare Part D. A temporary reinsurance fund for the individual market was also established under the Affordable Care Act and reduced premiums by an estimated 10% to 14% in its first year.[1] A recent analysis by Avalere of the seven states that have already created their own reinsurance programs through Section 1332 waivers found that these states reduced individual market premiums by an average of 19.9% in their first year.[2]

Maine's proposal will extend its reinsurance program to the small group market starting for the 2022 plan year and continuing for five years. This program is projected to reduce the average individual market premium by 6.6% and reduce the average small group market premium by 4.2%. This would help patients with pre-existing conditions, including patients with lung disease, obtain affordable, comprehensive coverage.

The American Lung Association believes the Section 1332 Waiver Amendment will help stabilize Maine's marketplace and protect patients and consumers. Thank you for the opportunity to provide comments.

Sincerely,

Lance Boucher
Senior Division Director
American Lung Association

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[1] American Academy of Actuaries, Individual and Small Group Markets Committee. *An Evaluation of the Individual Health Insurance Market and Implications of Potential Changes.* January 2017. Retrieved from https://www.actuary.org/files/publications/Acad_eval_indiv_mkt_011817.pdf.

[2] Avalere. *State-Run Reinsurance Programs Reduce ACA Premiums by 19.9% on Average.* March 2019. Retrieved from https://avalere.com/press-releases/state-run-reinsurance-programs-reduce-aca-premiums-by-19-9-on-average.

Consumers for Affordable Health Care

Advocating the right to quality, affordable health care for every person in Maine.

Consumer Assistance HelpLine
1-800-965-7476

Brittnee Greenleaf
34 State House Station
Augusta, ME 04333-0034
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Re: Comments on Proposed Section 1332 Waiver Amendment Application

Dear Ms. Greenleaf,

The following are comments submitted on behalf of Consumers for Affordable Health Care ("CAHC") regarding the proposed Section 1332 waiver amendment application**.** CAHC is a nonprofit, nonpartisan organization with the mission to advocate for Maine people to be heard, respected, and well-served in a health system that provides coverage, access and quality, affordable care to all. CAHC serves as Maine's Health Insurance Consumer Assistance Program, which provides toll-free access to certified application counselors, who help Mainers understand their health coverage options and how to apply and enroll in private health insurance.

We thank you for the opportunity to provide these comments on the proposed Section 1332 waiver amendment application. CAHC strongly supports the proposed application for a waiver to allow Maine to extend the MGARA reinsurance program to a pooled individual and small group market and transition to a retrospective claims cost-based reinsurance program. If approved, we believe the changes permitted under this waiver, particularly the extension of the MGARA reinsurance program to a pooled individual and small group market, will increase stability and improve affordability of health insurance for Maine people and small businesses.

Insurance functions as a means of spreading risk and costs across a pool of individuals, to minimize the risk and costs assumed by any one person. This makes it more affordable for someone to access health care, if and when they need to. Markets are most stable, and insurance is most successful in ensuring access to affordable coverage, when risk pools are as large and inclusive as possible.

Gorman Actuarial, Inc conducted an analysis for the Maine Bureau of Insurance on the impact of pooling individual and small group markets with a retrospective reinsurance program. In a report summarizing their findings, Gorman Actuarial states, "Generally, as markets get smaller, the enrollees who remain in the market are less healthy and require more health care resources, which drives up premiums."[1] Smaller markets are also more susceptible to experiencing volatility from disruptions or changes to market conditions, compared to larger markets that can more easily balance fluctuations and absorb impacts from unexpected changes. Given the relatively small size of Maine's existing individual and small group markets, combining the two markets into a single merged market may prove particularly beneficial. Additionally, people frequently move between private individual health coverage, employer-sponsored insurance, and

[1] Policy Option for Maine Individual and Small Group Markets, Gorman Actuarial, Inc. (2020). Available at: https://www1.maine.gov/pfr/insurance/legal/ga_indiv_and_sm_grp_policy_option_report.pdf

public coverage options, like Medicaid and Medicare. These transitions in coverage have recently been exacerbated, due to the economic downturn related to COVID-19. Merging the individual and small group markets would help to minimize the impact of enrollment churn and simplify transitions in coverage for individuals transitioning between individual and small group plans.

Findings from the 2019 Employer Health Benefits Survey released by the Kaiser Family Foundation show the average premiums nationally for employer sponsored health care have continued on an upward trend, with an average price tag of more than $20,000 for family coverage in 2019. Nationally, this represents a 25% increase in premiums since 2014. Findings from the survey also indicate that, as the cost of employer sponsored coverage rises, the amounts paid by employees also increases. The national average employee contribution for family coverage in 2019 was over $6,000, 8% higher than the previous year. Premiums for employer sponsored coverage are rising faster than the costs of workers' compensation or inflation, making the cost of employer-based coverage increasingly less affordable for employees, in addition to small business employers.[2] Premium rates for Maine's small businesses have increased on average by 57% since 2014.[3] It is clear that the rapidly rising costs of small group health coverage is unsustainable, both for Maine's small businesses and their employees.

According to the proposed application, pooling the individual and small group markets and applying a retrospective reinsurance program is expected to lower individual market premium rates by an average of 6.6% and an average of 4.2% in the small group market. The Milliman analysis prepared on behalf of MGARA estimates only a 3% impact from the proposed changes on individual and small group market rates. However, an analysis conducted by Wakely Consulting Group comparing the Gorman and Milliman analyses, produced findings that more closely aligned with the Gorman report. The Wakely report states that the differences between the Gorman and Milliman findings are primarily attributed to an assumption of excessive conservatism in the methodology used by Milliman. However, while possible, Wakely explains that the minimized impact to individual plans estimated by Milliman would be a consequence of carriers actively deciding to incorporate excessive conservatism into rates, which can be avoided, rather than a result of a merged market:

> Issuers often times include some probability that expected reinsurance payments will not be fully realized. The inclusion of a factor for non-payments results in a higher premium to cover that risk, leading to a smaller premium impact from reinsurance than there would otherwise be. However, since reinsurance funding in Maine is partially a function of how much reinsurance payments decrease premiums, incorporating conservatism into issuer rates or the reinsurance parameters can lead to a self-fulfilling prophecy in which conservatism yields smaller funding which yields more conservatism, etc. Wakely would define this equilibrium of smaller funding due to issuer uncertainty as excessively

[2] 2019 Employer Health Benefits Survey, Kaiser Family Foundation. Available at: https://www.kff.org/reportsection/ehbs-2019-summary-of-findings/

[3] 2021 Rate presentation, Mane Bureau of Insurance. Available at: https://www.maine.gov/pfr/insurance/2021%20Rate%20Presentation.pdf.

> conservative. While ultimately it is a possible outcome, **Wakely would view this result as a policy choice rather than an explicit outcome.**[4] (*Emphasis added*)

We believe the benefit to the individual and small group markets demonstrated through the actuarial analyses meets the conditions for the implementation of a pooled market under Title 24-A M.R.S. §2792. It is also worth noting that any potential premium fluctuations for individual health plans due to changes in Maine's reinsurance program will largely be mitigated by premium subsidies on the Marketplace. The majority of Mainers with individual health plans purchase their plans through the Marketplace. Income-eligible Marketplace enrollees qualify for financial support in the form of an Advanced Premium Tax Credit ("APTC") to lower their monthly premium expense. The method used to calculate APTC amounts is based on the enrollee's income level and the cost of the second lowest silver plan premium, which means that if premiums decrease for individual plans, APTC subsidies amounts will correspondingly decrease, and if that premium rates increase, APTC subsidy amounts will increase to offset the difference. Last year, 86% of people with Marketplace coverage in Maine qualified for ATPC subsidies.[5] However, expanded eligibility under the American Rescue Plan Act of 2021 has since increased the share of enrollees who are eligible for APTC.

The amount of funding received by reinsurance programs affects the degree to which the program positively impacts premium rates. An analysis conducted by Milliman on behalf of MGARA on the impacts of merging the individual and small group markets in conjunction with the implementation of a retroactive reinsurance program, explains that, "The ability to stabilize market premiums decreases as the attachment points increase."

The American Rescue Plan Act of 2021 (ARPA) dramatically increased eligibility for APTC subsidies on a temporary basis for plan years 2021 and 2022. For these two years, Mainers will be eligible for substantially larger APTC subsidies and more people will qualify for APTC subsidies. The expanded subsidies under ARPA eliminate the so call "subsidy cliff" that prohibited people with income over 400% of the federal poverty level from qualifying for APTC subsidies. Under ARPA, there is no income limit for individuals to qualify for APTCs in 2021 and 2022. This temporary expansion of subsidies provides a unique opportunity for Maine to implement a pooled individual and small group market in 2022 with virtually no impact on Maine's individual market or its enrollees, since people at all income levels will be eligible for APTCs. The increased federal pass-through funding available in 2022 under ARPA could also further amplify the expected savings in Maine's small group market, compared to initial projections.

Again, we fully support this application. If the pooled market is delayed until 2023, however, we are concerned this will result in a missed opportunity, created by the American Rescue Plan Act, for Maine to increase market stability for individual and small group health plans and to improve affordability of coverage for Maine's small businesses and employees. The proposed application

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[4] Comparative Analysis of the Estimated Impacts of a Merged Market and MGARA, Wakely Consulting Group, LLC (2020). Available at: https://www1.maine.gov/pfr/insurance/legal/notices/pdf/pooled_market_option_maine-wakely_review_actuarial_pass%20_through_estimates.pdf

[5] https://www.kff.org/other/state-indicator/effectuated-marketplace-enrollment-and-financial-assistance/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D

continues a $4 per member per month assessment across all of Maine's fully-insured and self-insured commercial health insurance markets. The proposed application states that this assessment is expected to generate $24.1 million in revenue in 2022, $300,000 of which will be used to pay for the administration of the reinsurance program. If the merged market is delayed until 2023, it is unclear whether the MGARA reinsurance program will actually increase access to affordable private market coverage in 2022, given the expanded eligibility for APTCs under ARPA. If virtually all enrollees in the individual market can qualify for APTCs in 2022, and thus would not benefit from any reductions to base premium rates, it raises the question of whether reinsurance is still an effective use of the $24.1 million derived from assessments, or whether other initiatives, such as providing state financial assistance directly to individuals, would be a more effective use of these funds in improving access to affordable private insurance in 2022.

As was pointed out during the first public hearing held on March 22, 2021, there is precedent for the need to adapt, including by carriers, to new and quick moving developments occurring throughout the rate setting timeline. We encourage the Bureau to revert to the original timeline proposed in the application to maximize the benefit for Maine's people, small businesses, and employees.

We would like to thank the Bureau of Insurance for their extensive and thoughtful work on this important matter and appreciate the opportunity to provide these comments. If you have any questions, please contact Kate Ende at kende@mainecahc.org or 207-480-2136.

Sincerely,

Kate Ende
Policy Director, Consumers for Affordable Health Care

Kristine M. Ossenfort
Senior Government Relations Director

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February 4, 2022

Mr. Eric Cioppa, Superintendent
c/o Ms. Brittnee Greenleaf
Maine Bureau of Insurance
34 State House Station
Augusta, Maine 04333-0034

Re: Gorman 1332 Waiver Actuarial and Economic Report and State of Maine Section 1332 Waiver Amendment Application

Dear Superintendent Cioppa:

On behalf of Anthem Health Plans of Maine, Inc., d/b/a Anthem Blue Cross and Blue Shield, I would like to thank you for the opportunity to submit comments on the Gorman 1332 Waiver Actuarial and Economic Report dated December 9, 2021, and the proposed Section 1332 Waiver Amendment Application to be submitted by the State of Maine ("the Application").

As noted in the comments submitted last year, Anthem does share the concerns expressed about the deterioration of Maine's small group market. However, we do not believe that a merger of the markets, coupled with an expansion of the MGARA program to reinsure a merged market, is the way to address the issue. Not only will the relief to the small group market be a very modest, one-time reduction, but we are extremely concerned that the individual market will be harmed in the process, which could lead to further deterioration of that market as well.

When L.D. 2007 (P.L. 2019, c. 653) was introduced in 2020, we expressed significant reservations about the proposal to merge the individual and small group markets. At that time, we indicated that based on our analysis, we did not believe it would have the desired impact, but felt that it warranted further analysis, in order to truly understand the impact it might have on both the individual and small group markets. Those studies have now shown that it is not the right solution.

Five analyses of a proposed merger of the individual and small group markets have now been conducted:

- 1332 Waiver Actuarial and Economic Report Prepared for the Maine Bureau of Insurance, Gorman Actuarial, December 9, 2021 (the "December 2021 Gorman Report");
- 1332 Waiver Actuarial and Economic Report Prepared for the Maine Bureau of Insurance, Gorman Actuarial, February 2021 (the "February 2021 Gorman Report");
- Comparative Analysis of the Estimated Impacts of a Merged, Prepared for the Bureau of Insurance by Wakely, December 1, 2020;

- Individual market small group market merge analysis, Prepared for the Maine Guaranteed Access Reinsurance Association by Milliman, September 3, 2020 (the "Milliman Report"); and
- Policy Option [sic] for Maine Individual and Small Group Markets, Prepared for the Maine Bureau of Insurance by Gorman Actuarial, August 25, 2020 ("the 2020 Gorman Report").

While the specific results of these analyses may vary, all point to the same result: that those insured in the Small Group Market will see extremely modest, one-time relief while those in the Individual market will not benefit at all; in fact, individual market members who do not receive subsidies in the form of Advanced Premium Tax Credits (APTCs) will actually see their rates increase by 6-8% as a result of the proposed amendment to Maine's existing Section 1332 waiver and a merger of the individual and small group markets.

1. The Individual Market in Maine will suffer significant harm if the markets are merged.

The December 2021 Gorman analysis projects an 6% increase in individual market rates in 2023 when compared to the current policy (separate markets with the individual market reinsured by the MGARA program) and a staggering 8%in 2024 and beyond.[1] This increased cost will be borne particularly by the approximately 20,000 people, roughly one-third of the individual market, who do not receive premium assistance in the form of APTC subsidies.

The Gorman Report states that a merged market reinsured by the MGARA program "will be particularly beneficial to individuals not eligible for subsidized coverage."[2] However, that comparison ignores the realities of the individual marketplace as it exists today. The individual market today is reinsured by the MGARA program. Expanding the MGARA program to a merged market will dilute the program, necessitating higher attachment points, thereby reducing its impact on the individual market. This will result in increased premiums for individuals who do not receive subsidies in the form of Advanced Premium Tax Credits—this will be to the detriment, rather than the benefit, of those individuals. In fact, the membership projections in the Gorman analysis show the reduction in Individual enrollment occurring exclusively in off exchange members and those without APTCs.3

According to the December 2021 Gorman analysis, membership in the Individual market will decrease by approximately 3% (over 1,700 members) between 2022 and 2025 when comparing membership under the 1332 waiver to membership in an individual market without MGARA. It is important to note, however, that analysis understates the loss of membership that would be

[1] Maine Section 1332 Waiver Application: Pooling Individual & Small Group Markets and Overlaying a Reinsurance Program, Gorman Actuarial, January 28, 2022, https://www.maine.gov/pfr/insurance/mgara/pdf/public_form_gorman_presentation_012822.pdf, slide 18, accessed February 3, 2022.

[2] 1332 Waiver Actuarial and Economic Report Prepared for the Maine Bureau of Insurance, Gorman Actuarial, December 9, 2021, p. 4

[3] *Id.*, p. 31

experienced in the individual market. The Gorman analysis estimates that 2022 membership in an individual market without MGARA reinsurance would be 59,431. But actual membership in the individual market today with MGARA is 66,095.[4] When comparing the current environment to the proposed section 1332 waiver, the Individual market will experience a significant decline of approximately 8,400 individuals—a decline of over 12.7% in just three years.

2. The benefit to the Small Group market is extremely modest and does not outweigh the harm to the Individual market.

The Gorman analysis indicates that if the proposed section 1332 waiver is implemented, premiums in the small group market will be reduced by approximately 6% in 2023, but that reduction will be reduced to 4% by 2025. The Gorman analysis estimates small group membership to be 47,972 in 2022. That membership is projected to decrease to 44,946 by 2025 under the current scenario and to 46,532 under the proposed section 1332 waiver—a net difference of less than 1,600 members. Although may mitigate the decline in the small group market to a slight extent, it does not represent a meaningful gain and comes at the expense of the individual market, which will see higher premiums and a more pronounced drop in enrollment.

In addition, it is worth noting that in the draft NBPP released in November 2021, CMS has proposed to reduce the de minimis ranges for the actuarial values for individual and small group plans. If this is implemented, this change could result in additional premium increases for small groups and individual enrollees who do not receive subsidies.

Furthermore, the dilution of the net savings from the MGARA program as the result of a merged market will reduce the amount of funding received under the section 1332 Waiver. Since the funding amount is calculated based on the difference between the premium rate of the second lowest cost silver plan offered on exchange with reinsurance and without reinsurance. Essentially the state will receive less funding to cover the reinsurance program and that funding will be spread across both the individual and small group members whose claims are eligible for reinsurance recovery, thereby reducing MGARA's impact.

3. The merged market has the potential to reduce competition in the small group market.

The Gorman Report also states that a merger of the market could increase the number of health insurance carriers participating in a merged market because there are carriers in the small group market that do not currently offer coverage in the individual market. The converse may also be true. Those carriers have long declined to participate in the individual market. They may choose not to actively market plans to individuals, effectively limiting themselves to the small group

[4] Presentation to the Joint Standing Committee on Health Coverage, Insurance, and Financial Services, Meg Garratt-Reed Director, Office of the Health Insurance Marketplace, DHHS, January 18, 2022, https://legislature.maine.gov/doc/7985, slide 2, accessed February 3, 2022.

market or they may choose to exit the small group market entirely, resulting in a decrease in the number of carriers offering small group coverage in Maine and a reduction in choice.

4. Any determination of whether the market should be merged must compare the current scenario to that under the proposed section 1332 waiver.

While comparing individual rates without MGARA to the projected rates in a merged market reinsured by MGARA may be the appropriate baseline for determining the federal pass-through funding and/or budget neutrality under a 1332 waiver amendment application, it is not the appropriate baseline for determining whether a merger of the markets should be implemented.

Under the Made for Maine Health Coverage Act (L.D. 2007, enacted as P.L. 2019, c. 653), as originally enacted, a merger of the markets could only move forward if the Superintendent projected that "***both*** average individual premium rates and average small group premium rates ***would be the same or lower than they would have been absent the provision of this section.***"

The premise underlying the provisions of 24-A M.R.S. § 2792(5) as it was originally enacted was essentially "do no harm"— if the markets are merged, neither market should be worse off than it is today with separate markets. When it became apparent that this standard would not be met, L.D. 1725 was introduced (enacted as P.L. 2021, c. 361), including a provision to amend the law to change the baseline, essentially changing the rules after the fact.

Despite the statutory change, the Superintendent has the discretion to compare individual markets rates as they are today with MGARA reinsuring the individual market to individual rates in a merged market scenario. and we urge him to do so. Coverage in the individual market has been steadily declining. Maine cannot afford to take any actions that would have the effect of increasing individual market rates and decreasing individual market enrollment. As noted by Superintendent Cioppa in his testimony to the Health Coverage, Insurance and Financial Services Committee on L.D. 2007 "the overriding purpose of the bill is to make health insurance in Maine more affordable for ***individuals***, ***families***, ***and small business***, and better designed to meet their needs."

Absent a merger of the markets, MGARA would continue to reinsure the individual market. Therefore, the State must consider a comparison of individual and small group rates with MGARA reinsuring the individual market to the individual and small group rates in a merged market that is reinsured by MGARA.

When individuals are considering the impact of Made for Maine Health Coverage Act and a merger of the markets, they will be comparing their 2022 premium to their 2023 premium — not the premiums they would experience without MGARA, which are unknown to them.

It is easy for some to dismiss the impact on the individual market by stating that most individual market policyholders are "insulated" from rate increase because of the Advanced Premium Tax Credits under the Affordable Care Act. But membership in the Individual market has been steadily decreasing. It is extremely important to remember that approximately 20,000 Mainers, or about one-third of those covered through the individual market, receive no subsidy and will have to bear the brunt of any increase.

5. There is not enough time to properly implement a merged market in time for 2023.

Carriers are less than one month from having to finalize their 2023 plan offerings in order to have sufficient time to build those plans in our systems, price those plans, and develop any needed changes to contact language. It is very time consuming and extremely burdensome for carriers to develop two sets of products and rates for two different market segments, one for the current scenario and one for a merged market environment. Give the timing constraints, if the State is interested in pursuing a merger of the markets, it should be for 2024 and not 2023.

6. Other options should be studied before the State moves forward with a merger of the markets.

There are other initiatives that could be explored to stabilize the small group market. One example would be to explore expanding the definition of small group from 50 to 75 or 100. These options are not without consequences or trade-offs. We certainly have concerns about some of them but because these options have not been studied, we cannot say whether we would support or oppose them. But all options must be studied and compared in order for the State to make a well-reasoned and informed decision.

Finally, the subsidization of the market in any form provides only temporary relief—absent steps to address the underlying cost of health care, premiums will continue to rise, and enrollment will continue to decline. The State must also consider solutions that will address the cost of care and reduce costs not only in the small group market, but across all markets. We would welcome the opportunity to work with the Bureau and other stakeholders to identify policy changes that would address rising health care costs.

Thank you for the opportunity to share these comments. Please do not hesitate to contact me if you have any questions.

Sincerely,

Kristine M. Ossenfort, Esq.
Senior Government Relations Director

From: Boles Welsh, Erin
To: Hooper, Mary M; Yardley, Benjamin; Greenleaf, Brittnee L
Subject: Harvard Pilgrim Comments on Gorman 1332 Waiver Report
Date: Monday, February 7, 2022 6:10:15 PM

Marti,

Thank you for presenting the Bureau's 1332 waiver report produced by Gorman Actuarial. We are providing thoughts on the presented reports and comments related to plan designs, including Clear Choice questions, sales and operations impacted by a proposed merger of the individual and small group markets.

Over the past two years, as you know, Harvard Pilgrim Health Care has expressed concerns that merging the individual and small group markets will result in unintended consequences including further ceding of members to self-insured level funded products and concerns regarding premium impact on the individual market. We continue to be concerned that small group members will reach for products that allow flexibility in meeting their needs and averse to limitations imposed by standardized plans instead of remaining in the fully-insured market. The current analyses do not appear to evaluate small group member appetite for standardized plans or their potential interest in leaving the fully insured market for flexible self-insured level funded plans. As previously discussed, our experience with small group members is that they vary widely in needs, the small business market varies widely in scope as it is Maine expresses – a law firm with 49 members for instance has very different needs than an auto body shop of 5. It remains difficult to see standardized plans meeting needs this varied sector.

Report

The Gorman 1332 waiver report presentation included data showing the anticipated increase to individual premium rates. While it was noted verbally that a majority of the individual market in Maine receives income-based subsidies keeping them largely isolated from changes in premium, it is still important that those individuals who already bear the full cost of health insurance coverage be considered when making changes to the market and are sensitive to anticipated increases. Furthermore, we continue to be concerned that the baseline for decision making is premium impact absent a reinsurance program as this doesn't represent current consumer experience.

The Massachusetts market is contemplating unmerging their individual and small group markets after 15 years of operating combined. Each of these transitions causes disruptions in the marketplace and uncertainty to members. The current Gorman reports haven't discussed differences between these two markets and what leads to expected solutions here in Maine that haven't been realized long term in Massachusetts.

Plans

As we review plan designs for a merged market, we have additional questions. We hope for consideration of leeway in discontinuing plans during as a transitional period of a few years into a merged market while we learn from member experience in this market environment. Will there be consideration for a different filing date?

We would suggest consideration of additional plan designs to meet gaps in deductible levels including the following: 1. A deductible between the Clear Choice 3500 and (New) Clear Choice 5000 plan. 2. A deductible between the Clear Choice 2500 and 3500 plan. 3. A deductible between the Clear Choice 4500 (off-market place) and Clear Choice HSA 7000 plan (6300). We would also like to request two HSA deductibles (off-marketplace), a 4000 HSA & another plan between 4500-5900.

We hope carriers can offer new alternative plans off exchange as well as an increase in the number of alternative plans to accommodate for small group needs.

Will Clear Choice plans for 2023 available for both on/off the Marketplace? Will the Clear Choice 3500 HSA and Clear Choice 4500 HSA be off-marketplace only?

Sales and Operations

We would like to know more details about how will SHOP operate in a merged market since it would be referencing a risk pool that includes individual members? Will Clear Choice apply to SHOP plans?

Currently in the Individual market, we send out letters to members when we file rates for the next year's plans. Will that letter process would continue in a merged market for the individual market and will a similar process be expected for Small Groups?

Thank you for the opportunity to provide comments on the Gorman 1332 waiver report for the Bureau as well as to compile additional questions regarding related plan design and operations.

Thank You,
Erin

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