State of Maine
Section 1332 Waiver Amendment Application

February 10, 2022

Department of Professional and Financial Regulation

Bureau of Insurance

Superintendent Eric A. Cioppa

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Section I – Executive Summary

Request

The State of Maine, through its Department of Professional and Financial Regulation, Bureau of Insurance (the "Bureau of Insurance"), submits this application for a State Innovation Waiver under Section 1332 of the Patient Protection and Affordable Care Act ("section 1332 waiver") to the Department of the Treasury and the Centers for Medicare & Medicaid Services in the Department of Health and Human Services (collectively, "the Departments").

Maine currently has an approved section 1332 waiver that waived Section 1312(c)(1) of the Patient Protection and Affordable Care Act ("PPACA") for a period of five years beginning January 1, 2019 to permit reinstatement of the Maine Guaranteed Access Reinsurance Association ("MGARA") reinsurance program for the individual health insurance market.

In a letter to the Departments dated October 2, 2020, Maine expressed its intent to submit an application seeking approval of a section 1332 waiver amendment that would waive PPACA Section 1312(c)(1) for a new waiver period of five years beginning January 1, 2023 to permit extension of the MGARA reinsurance program to a pooled individual and small group market and transition to a retrospective claims cost-based reinsurance program. The Departments confirmed on December 28, 2020 that the application would be reviewed as a waiver amendment application.

On March 12, 2021, the State opened the public comment period and announced public hearings on the draft 1332 waiver amendment application as it was proposed in the State's letter of intent to the Departments. However, on March 25, 2021, the State made the decision to delay pooling the individual and small group markets and extending MGARA reinsurance to that pooled market until 2023, but to proceed with transitioning to a retrospective claims cost-based reinsurance program for 2022. As advised by the Departments, Maine has proceeded with a technical change to its existing section 1332 waiver to transition MGARA reinsurance to a retrospective model beginning January 1, 2022. The 1332 waiver amendment application as originally drafted was revised to reflect these developments.

Accordingly, this application seeks approval of a section 1332 waiver amendment that would waive PPACA Section 1312(c) for a new waiver period of five years beginning January 1, 2023 to permit extension of the MGARA reinsurance program to a pooled individual and small group market. The requested amendment would also permit quarterly rate adjustments for small group plans that do not renew on a calendar year basis.

This waiver would not affect any other provision of the PPACA. The waiver is expected to result in a lower market-wide index rate, thereby lowering gross (*i.e.*, prior to the application of federal premium tax credits) individual premiums from what they would have been without the reinsurance program, thereby reducing the federal cost of the premium tax credits (PTCs).

Background

In 2011, Maine passed the "Maine Guaranteed Access Reinsurance Association Act" as part of Public Law 2011, Chapter 90. This law established MGARA, a private nonprofit organization responsible for operating a reinsurance program for the higher-risk segment of Maine's individual health insurance market. In 2013, the MGARA reinsurance program limited what otherwise would have been a 22 percent rate increase to only a 2 percent increase. Despite its success, this reinsurance program was placed in suspension due to the PPACA, in order to avoid redundant costs to the Maine market because of parallel federal and state reinsurance programs.

In 2018, Maine applied for, and the Departments approved, the state's current section 1332 waiver, which allowed for reinstatement of the MGARA reinsurance program for the individual market beginning January 1, 2019. By reimbursing insurers for high-cost claims, the reinsurance program spread risk across the broader Maine health insurance market, thereby lowering gross premiums and increasing access to affordable private coverage. Since the waiver became effective, average premium rates for the individual market have moderated each year: a 1.1% increase in 2019, a 0.5% decrease in 2020, and a 12.5% decrease in 2021.

As explained below, the State has transitioned MGARA from a prospective to a retrospective reinsurance program for 2022.

Basis for Request and Goal of Reinsurance Program

In recent years, the small group market in Maine has experienced significant declines in membership, due in part to high medical cost trends and associated premium increases. From March 2017 to March 2020, there was an 18% reduction in small group membership from 61,200 to 50,200. The average annual premium rate increase for the small group market was 11% in 2019, 8.8% in 2020, and 5.5% in 2021. On its current trajectory, the small group market may continue to see membership decline, and only those that truly need health care services may stay enrolled in the market, which will lead to a continued escalation in premiums. Because of this trend, Maine has been considering ways to help stabilize and lower premiums for the small group market. One way is to extend the positive impacts the MGARA reinsurance program has had on individual health insurance to small group health insurance.

As explained more fully in Section II, Maine Public Law 2019, Chapter 653, "An Act To Enact the Made for Maine Health Coverage Act and Improve Health Choices in Maine," provides legislative authorization for Maine's Superintendent of Insurance to adopt rules to pool the individual and small group markets in Maine and to apply for a section 1332 waiver amendment that extends the MGARA reinsurance program to this pooled market. Pooling the markets is contingent upon the Superintendent adopting rules, as well as the Departments approving a section 1332 waiver amendment.

Maine is submitting this section 1332 waiver amendment application in accordance with Public Law 2019, Chapter 653. As proposed, this waiver would allow Maine to extend the MGARA reinsurance program to a pooled individual and small group market. Maine would continue to receive federal pass-through funding in the amount of the savings that would be generated from the resulting reduction in PTCs.

Extending the MGARA reinsurance program to a pooled individual and small group health insurance market would bring increased certainty and stability to small group health insurance in Maine through a positive effect on premium levels. By reinsuring high-cost claims for small group health insurance in addition to individual health insurance, the MGARA reinsurance program would spread risk across the broader Maine health insurance market, thereby lowering premiums. The MGARA reinsurance program would also spread the most volatile component of the risk within the pooled market, thereby providing stability, and it is also expected to encourage insurers to continue offering individual and small group health insurance in Maine.

Funding and Impact of the Reinsurance Program

Maine estimates that pooling the markets and applying a retrospective reinsurance program will lower the average individual market premium by 8.1% and will lower the average small group market premium by 6.0%, compared to the baseline of no section 1332 waiver and no reinsurance program for 2023. The reduction in individual market premium would generate $22.9 million in net federal savings in 2023. This net reduction in federal spending from lower PTCs will be used to fund the retrospective reinsurance program covering the pooled market.

For 2023, an additional $8.6 million in reinsurance program funding that was received by Maine in 2021 as a result of the American Rescue Plan Act (ARPA) will be used to further reduce premiums in the first year of the waiver.

In addition to federal funds generated from the reduction in PTCs, Maine would also continue to use the $4.00 per member per month (PMPM) assessment across Maine's fully-insured and self-insured commercial health insurance markets that the MGARA reinsurance program uses now under the state's current section 1332 waiver. With an assessment base of approximately 503,000 covered lives, the $4.00 PMPM assessment is expected to generate $26.7 million in revenue in 2023, the first year of the waiver. A portion of the funds (estimated to be $300,000 annually) will be used to administer the reinsurance program.

Based on these two funding sources, the total funding for the MGARA reinsurance program for 2023 is estimated to be approximately $58.2 million.

For purposes of this application, the State modeled the 2023 MGARA reinsurance program assuming reimbursement to insurers of 55% of claims costs between $90,000 and $275,000, with the portion of claims exceeding $275,000 being the full responsibility of the insurer. These parameters may be adjusted to ensure that MGARA maintains adequate surplus to assure its solvency on an actuarially sound basis and that its reinsurance program will operate in a manner designed both to provide reduction in premium rates and to enhance overall market stability. Pursuant to state law, the MGARA Board of Directors (MGARA Board) is responsible for making the final determination of attachment points, subject to approval by the Superintendent of Insurance.

Compliance with Section 1332 Waiver Guardrails

Granting the section 1332 waiver amendment will not impact the comprehensiveness, affordability, or scope of coverage in the Maine insurance markets and will not increase spending by the federal government.

Section II – Authorizing Legislation

On March 18, 2020, Public Law 2019, Chapter 653, "An Act To Enact the Made for Maine Health Coverage Act and Improve Health Choices in Maine" became effective in Maine. This legislation authorizes the submission to the Departments of an amendment to Maine's current section 1332 waiver. Under this authority, Maine is submitting a section 1332 waiver amendment application. The legislation includes the provisions outlined below.

Title 24-A M.R.S. § 2781 authorizes the State of Maine to enter into "state-federal health coverage partnerships," which includes state innovation waivers under Section 1332 of the PPACA, that support the availability of affordable health coverage in Maine.

Title 24-A M.R.S. § 2792 authorizes the Superintendent of Insurance to establish a pooled market for all individual and small group health plans offered in Maine beginning January 1, 2023, based on projections by the Superintendent that both average individual premium rates and average small group premium rates would be the same or lower than they would have been absent this section. The implementation of this section is also contingent upon the Superintendent's adoption of rules to implement the pooled market, as well as Federal approval of a state innovation waiver amendment that extends reinsurance under Title 24-A M.R.S. § 3953 to the pooled market. The state has recently adopted a rule to implement the pooled market, which establishes the necessary conditions and procedures for implementation of the pooled market and the extension of MGARA reinsurance to small group health insurance. On October 12, 2021, the state held a rulemaking hearing on proposed 02-031 CMR ch. 856, *Combination of the Individual and Small Business Health Insurance Risk Pools*. The comment period ended on October 25, 2021, and the rule has been adopted with an effective date of January 24, 2022. Rule 856 is available at this link:
https://www.maine.gov/pfr/insurance/legal/rules/index.html

Title 24-A M.R.S. § 3953(1) authorizes MGARA to operate a reinsurance program contingent on the approval of, or continued approval of, a 1332 waiver submitted by the Superintendent of Insurance.

Title 24-A M.R.S. § 3958(A-1) requires MGARA to operate a retrospective reinsurance program for the pooled market, if such pooled market is implemented in accordance with the requirements set forth in Title 24-A M.R.S. § 2792. This subsection also allows MGARA to operate a retrospective reinsurance program for individual health plans beginning in 2022 if the pooled market has not been implemented, subject to the Superintendent's approval.

On June 23, 2021, Public Law 2021, Chapter 361, "An Act To Clarify the Deferral of the Pooled Market and Link Small Employer Clear Choice to Pooling in the Made for Maine Health Coverage" was signed by the Governor. This legislation became effective on October 18, 2021 and includes the changes outlined below.

In 24-A M.R.S. § 2792, the legislation changes the effective date of the pooled market from January 1, 2022 to January 1, 2023. Also in that section, the legislation amends the preconditions required for the pooled market by clarifying that establishment of the pooled market is to be based on projections by the Superintendent that both average individual premium rates and average small group premium rates would be the same or lower than they would have been absent this section, and absent Chapter 54-A, which is the chapter of the Maine Insurance Code that establishes and governs MGARA.

A copy of Public Law 2019, Chapter 653 can be found online at the following link www.mainelegislature.org/legis/bills/bills_129th/chapters/PUBLIC653.asp.

A copy of Public Law 2021, Chapter 361 can be found online at the following link http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0570&item=4&snum=130.

Both are included in **Appendix A: Authorizing Legislation.**

Section III – Provision(s) of the Law that the State Seeks to Waive

In order to achieve its goals of reducing premiums and ensuring stability for the pooled individual and small group markets, Maine requests a waiver of section 1312(c) of the ACA as implemented at 45 C.F.R. § 156.80, and any other provisions necessary, to the extent that they would otherwise require excluding expected state reinsurance payments through MGARA when establishing the market-wide index rate and to the extent that they would otherwise prohibit quarterly adjustments of small group rates in a pooled market.

The Single Risk Pool provision of the ACA (PPACA § 1312(c)) and implementing regulations (45 CFR 156.80) require a health insurance issuer to consider "all enrollees in all health plans (other than grandfathered health plans) offered by such issuer in the individual market, including those enrollees who do not enroll in such plans through the Exchange, to be members of a single risk pool." 45 CFR 156.80(d)(2) provides that an "issuer may vary premium rates for a particular plan from its market-wide index rate for a relevant state market based only on the following actuarially justified plan-specific factors." These regulations enumerate specific factors, and limit an issuer's ability to set premiums to only those factors to make plan-level premium adjustments to the market-wide index rate for premiums. The permitted factors include actuarial value and cost-sharing design; provider network, delivery system characteristics, and utilization management practices; benefits provided in addition to EHBs; and administrative costs. The enumerated factors apply to all plans in the applicable single risk pool.

The permitted factors above do not include expected state reinsurance payments through MGARA. Excluding those payments from consideration would overstate issuers' net cost of providing coverage and result in inappropriately high premiums, defeating the purpose of the reinsurance program. Therefore, Maine is requesting a waiver of PPACA §§ 1312(c)(1) and (2) as implemented at 45 CFR 156.80, and any other provisions necessary to enable the consideration of total expected state reinsurance payments when determining the market-wide index rate in the newly pooled individual and small group markets into a single risk pool for rate setting and risk adjustment purposes.

In addition, 45 CFR 156.80(d)(4) provides that when the individual and small group risk pools have been merged pursuant to PPACA § 1312(c)(3), the provisions allowing quarterly small group rate adjustments do not apply. To permit the market to continue effectively serving employers with non-calendar-year business cycles, Maine is requesting a waiver of these provisions and any other provisions necessary to permit issuers to continue applying quarterly rate adjustments for small group coverage that is not issued on a calendar-year basis.

The state is seeking federal pass-through funding to support its MGARA reinsurance program. Both the reinsurance program and the pooling of the individual and small group markets are expected to reduce rates in the individual market, compared to the rates that would be charged without a section 1332 waiver in effect. The reduction in individual market rates will lower federal spending for PTC, which represents the difference between the second lowest cost Silver plan (SLCSP) premium and the maximum amount an individual or family is expected to pay based on their family income and size. The net reduction in federal spending on PTC from the reinsurance program and pooled market will result in pass-through funding which will be used to fund the state reinsurance program, including eligible reinsurance claims and administration of the program on an actuarially sound basis.

MGARA's enabling legislation, at 24-A M.R.S. § 3957, establishes funding mechanisms to spread the costs associated with the MGARA reinsurance program across the fully-insured and self-insured markets. Under the proposed waiver amendment, pass-through funds received by the state would continue to be contributed to MGARA as an additional revenue source to enhance its ability to make insurance more affordable for Maine residents and increase market stability for insurers. The funding mechanisms are described in Table 1 below.

Table 1. Funding Mechanisms

Funding Mechanism	**Description**
Base Market Assessment	Assessment to health insurers and third-party administrators based on the number of insured lives covered by each in the fully-insured individual, small group, and large group and self-insured markets (excluding State and Federal employees), at a rate of up to $4 PMPM or a total of $26.7M in 2023.
Deficit Assessment	Optional Assessments to cover any Net Losses — up to a maximum of $2 PMPM or an additional $13M if needed in 2023. assessed to health insurers based on the number of insured lives covered by each
Pass-Through Funding	Under the proposed waiver amendment, all pass-through funds will be contributed to MGARA to enhance its capabilities. Estimated at $22.8M for 2023.

Insurer premiums	Premiums may be charged to member insurers to reinsure persons eligible for coverage under a retrospective program if charged on an equitable basis to all member insurers and approved by the Superintendent of Insurance. MGARA does not currently plan to charge a premium in 2023.

The MGARA reinsurance program operates pursuant to a statutorily required plan of operation that the MGARA Board must adopt and the Superintendent of Insurance must approve.[1] The current approved MGARA Plan of Operation is included in **Appendix B: Maine Guaranteed Access Reinsurance Association Plan of Operation**.

The MGARA reinsurance program currently provides reinsurance for individual policies. Prior to 2022, carriers ceded policies covering high-risk individuals using a prospective model that relied on carriers identifying policies with ICD-10 codes associated with mandatory ceding conditions specified by the MGARA Board and also allowed for discretionary ceding. When a carrier ceded a policy to MGARA, it operated like a traditional reinsurance program with the ceding carrier paying MGARA a premium, and in return, MGARA paying a portion of the carrier's claims if the claims exceed the specified attachment point. Beginning in 2022, the MGARA program was converted to a retrospective program reimbursing carriers at a specified coinsurance rate for claims that meet or exceed a specified attachment point and are not in excess of a specified reinsurance limit. For 2022 carriers are reimbursed for 100% of claims costs in excess of $76,000 up to a limit of $250,000. Claims costs below $76,000 and in excess of $250,000 are the responsibility of the carriers. These reinsurance thresholds are determined annually by the MGARA Board, subject to approval by the Superintendent.

The amended waiver would extend the MGARA reinsurance program to a pooled individual and small group market. The legislation authorizing the pooled individual and small group market, as well as this section 1332 waiver amendment application to provide reinsurance to that pooled market, also requires transition to a retrospective claims cost-based reinsurance program. As previously noted, the State has already transitioned MGARA reinsurance to a retrospective model beginning January 1, 2022, as permitted by the authorizing legislation and authorized by the Departments. MGARA has adopted a revised plan of operation reflecting the retrospective reinsurance program and incorporating the updated payment parameters discussed above, which the Superintendent of Insurance approved for implementation as of January 1, 2022.

If this section 1332 waiver amendment application is approved, the plan of operation will need to be revised further to reflect the applicability of MGARA reinsurance to the pooled market prior to the January 1, 2023 effective date. The amended plan of operation will also need to incorporate further updated payment parameters for pooled market reinsurance, as adopted by the MGARA Board and approved by the Superintendent of Insurance.

[1] *See* Title 24-A M.R.S. § 3953.

The authorizing legislation establishes some of the parameters for operating the pooled market. This includes a requirement that a carrier offering a pooled market plan must offer the same plan to all individuals and small employers within any service area where the carrier has made the plan available. As such, carriers must offer both individual and small group coverage; however, it does not require carriers to market all pooled market plans in the same manner to all customers. The legislation also establishes a consolidated procedure under which premium rates for pooled market plans are filed and reviewed in accordance with the State's requirements for individual plans. Additionally, Maine intends to continue using its existing practice of using the federal age rating curve, and has codified that age curve by rule at 02-031 CMR ch. 942. Maine intends that the market will operate as a pooled market for purposes of risk adjustment. Rule 942 is available at this link: https://www.maine.gov/pfr/insurance/legal/rules/index.html

As mentioned above, the Bureau of Insurance has adopted rule 02-031 CMR ch. 856 to establish further operational requirements. These include a process for the actuarial review the Superintendent is required to conduct to determine whether the pooled market with subsidized reinsurance will lower premiums for both individuals and small employers, and to solicit public input on both the pooled market proposal and other alternatives to improve the stability and affordability of the small group market. The rule also authorizes the continued operation of MGARA for individual coverage, on either a prospective or retrospective basis, if implementation of the pooled market is deferred for any reason.

The Bureau of Insurance will communicate with issuers participating on the Marketplace that issuers should include state-operated reinsurance payments in rate setting. The implementation of this waiver will be straightforward, as claims for enrollees through the reinsurance program will still be collected. A single MLR will be calculated for the merged market, instead of two separate MLRs for the individual and small group markets.

Section IV – Compliance with Section 1332 Guardrails: Data, Analyses, and Certifications

Maine utilized Gorman Actuarial, Inc. (Gorman) to perform actuarial and economic analyses related to the changes that would occur after this section 1332 waiver amendment application is approved and implemented beginning in 2023. The actuarial and economic analyses and certifications that support the state's findings that all four of the section 1332 guardrails will be met are included in **Appendix C: Gorman Associates Actuarial and Economic Report**.

A. Comprehensiveness Requirement (Section 1332(b)(1)(A))

The first guardrail is comprehensiveness, which refers to the scope of benefits provided under the section 1332 waiver, as measured by the extent to which coverage meets essential health benefits (EHB) requirements as defined in PPACA § 1302(b) and 45 CFR 156.110. Information about Maine's EHB benchmark, which is the same with or without the section 1332 waiver, can be found at the following link:

www.maine.gov/pfr/insurance/regulated/insurance_companies/rate_form_checklists/life_health/plan_year_qhp-sadp.html

Maine has determined that the proposed section 1332 waiver amendment will not result in any changes to the EHB benchmark or actuarial value requirements, and therefore, will have no impact on the comprehensiveness of coverage available in the individual and small group markets.

B. Affordability Requirement (Section 1332(b)(1)(B))

The second guardrail is affordability, which refers to the ability of state residents to pay out-of-pocket for healthcare expenses relative to their income and specifies that the section 1332 waiver must provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable as would be provided without the waiver. Maine has determined that the proposed section 1332 waiver amendment will not decrease existing coverage or cost-sharing protections against excessive out-of-pocket spending. The waiver will not result in any decrease in affordability from a standpoint of cost-sharing for coverage. The waiver will increase affordability by reducing average premiums by 8.1% in the individual market and by 6.0% in the small group market. Although the pooled market by itself, without subsidized reinsurance, would result in lower individual premiums but higher small group premiums, the extension of MGARA to the entire pooled market allows significant premium reductions for both individuals and small employers.

C. Scope of Coverage Requirement (Section 1332(b)(1)(C))

The third guardrail is scope of coverage, which specifies that the section 1332 waiver must provide meaningful healthcare coverage to a comparable number of state residents as would be provided without the waiver. Maine projects that for each year the proposed section 1332 waiver amendment will be in effect, the number of individuals that will have healthcare coverage under the waiver is comparable to the number of individuals that would have had healthcare coverage absent the waiver. Maine has examined the short and long-term effects of the waiver, and while the state conservatively projects that the number of individuals covered will remain stable, lower premiums could increase the number of individuals covered.

Membership in the small group market is driven primarily by three market forces: (1) the cost of coverage; (2) the labor market and the ability of employers to attract and retain workers; and (3) the availability of alternative health coverage arrangements. As premiums increase, employers find it difficult to continue to offer employees affordable health benefits. Over the past several years, premiums in Maine's small group market have increased and the number of employees and dependents covered has declined. The expected premium reductions resulting from the waiver could slow or reverse this adverse trend.

The reduction of covered lives in the small group market is largely due to a decrease in the number of employers offering health coverage in the fully-insured (ACA-compliant) market but may also be affected by a drop in the number of employees that choose to enroll when offered coverage (known as the "take up" rate). Those residents that obtain coverage through other means, such as Medicaid, the Children's Health Insurance Program (CHIP), large group market insurance, or other types of coverage, will have the same access to coverage.

D. Deficit Neutrality Requirement (Section 1332(b)(1)(D))

The fourth guardrail is deficit neutrality, which specifies that the section 1332 waiver must not increase federal spending that would occur absent the waiver. Maine has determined that the proposed section 1332 waiver amendment will not increase federal spending.

The administrative costs to facilitate the section 1332 waiver amendment will be paid from the revenue generated by the $4.00 PMPM state assessment that applies across Maine's fully-insured and self-insured commercial health insurance markets.

Maine's estimates show the amount of federal spending will be less than or equal to what the federal government would have paid during each year of the required 10-year budget period. Maine estimates that federal savings will be: $22,906,147 for 2023; $18,373,604 for 2024; $19,230,946 for 2025; $20,137,717 for 2026; $21,086,381 for 2027; $22,067,667 for 2028; $23,093,758 for 2029; $24,166,684 for 2030; $25,288,566 for 2031 and $26,461,620 for 2032.

Section V – Health Equity Issues

Many health policy- and certificateholders have affordability concerns related to the cost of premiums and their premiums, deductibles, copayments, and coinsurance, as well as challenges related to health literacy and the ability for the insured to find and access in-network providers. Chronic conditions and social risk factors including poverty, minority race and/or ethnicity, social isolation, and limited community resources exacerbate these problems even for people who have health insurance.

- Maine's section 1332 waiver will promote health equity in the insured population through competitive private coverage. Extending the MGARA reinsurance program to a pooled individual and small group market would bring increased certainty and stability to small group health insurance in Maine through a positive impact on premium levels and spreading the most volatile component of the risk within the pooled market.

- Outside of the section 1332 waiver, Maine is also encouraging health plan simplicity and clarity through 24-A M.R.S. § 2793, which requires issuers in the individual market to offer standardized cost-sharing designs; this program will apply to both individual and small group coverage once the pooled market is implemented. On June 11, 2021, Maine issued Bulletin 458, Clear Choice Designs for the 2022 Individual Health Insurance Market, to guide insurers in preparing their plan filings for that year. Bulletin 458 is available at this link:
https://www.maine.gov/pfr/insurance/legal/bulletins/pdf/458.pdf

- Public Law 2019, Chapter 522, enacted 24-A M.R.S. § 4326, which established Maine's Consumer Health Assistance Program.

- Public Law 2021, Chapter 80, has amended 24-A M.R.S. § 2809-A to require individuals whose group coverage is terminated to be given notice of their coverage options, including special enrollment periods and the possibility that they might qualify for premium assistance or Medicaid, along with information on how to contact the Consumer Assistance Program.

- Public Law 2021, Chapter 291, updates various laws relating to telehealth services to facilitate access to care delivered through telehealth.

- Public Law 2021, Chapter 483, includes a provision allocating $39 million of Maine's ARP funding to establish a temporary premium support program for small group health insurance.

Section VI – Reporting Targets

MGARA will submit all required quarterly, annual, and cumulative targets for the guardrail requirements in accordance with 31 CFR 33.108(f)(4)(vi) and 45 CFR 155.1308(f)(4)(vi).

MGARA will assume responsibility for the reporting requirements, including the following:

- Quarterly reports (31 CFR 33.124(a) and 45 CFR 155.1324 (a)): To the extent required by the Departments, MGARA will submit quarterly reports, including reports of ongoing operational challenges, if any, and plans for, and results of, associated corrective actions.
- Annual reports (31 CFR 33.124(b) and 45 CFR 155.1324(b)): MGARA will submit annual reports documenting the following:
  (1) The current state and the progress of the section 1332 waiver to date.
  (2) Data on the state's compliance with the guardrails in PPACA section 1332(b)(1)(A)-(D), 31 CFR 33.108(f)(3)(iv)(A)-(D), and 45 CFR 155.1308(f)(3)(iv)(A)-(D).
  (3) Premiums for the second lowest-cost silver plan under the section 1332 waiver and an estimate of the premium as it would have been without the waiver for a representative consumer in each rating area.
  (4) A summary of the annual public forum required by 31 CFR 33.120(c) and 45 CFR 155.1320(c) and a summary of actions taken in response to public input.

Section VII – Implementation Plan and Timeline

The State of Maine will establish a waiver to be administered by MGARA, an existing entity.

Maine has reviewed the list of implementation questions posed by the Departments in the 2018 Discussion Paper. In order to comprehensively address implementation challenges, Maine provides responses to the applicable questions below.

1) What is the entity that will administer the program? Is it a new or existing entity? To what extent will the entity be subject to state insurance laws?

   MGARA, an existing entity that is already providing reinsurance to the individual market under Maine's existing section 1332 waiver, will continue to administer the program. MGARA was established by, and is subject to, Chapter 54-A of the Maine Insurance Code, which is enforced by the Bureau of Insurance. *See* Title 24-A M.R.S., Chapter 54-A, "Maine Guaranteed Access Reinsurance Association Act."

2) What will be the data collection timing and mechanism for collecting claims information and generally for pay-out?

   The MGARA Board will amend the MGARA Plan of Operation to adjust these operations as necessary to cover the pooled market. The Plan has already been amended to effectuate the transition from a prospective to a retrospective insurance program. The existing plan calls for quarterly claims reporting with final annual adjudication of all claims.

3) If pursuing a reinsurance waiver, will the state be using a conditions-based list and/or an attachment point model?

   An attachment point model, as described above.

4) Will the program include incentives for providers, enrollees, and plan issuers to continue managing health care cost and utilization for individuals eligible for the described reinsurance program (if any)?

   Yes. The authorizing legislation for this reinsurance program requires member insurers to report for each plan year the name of each high-priced item or service for which its payment exceeded the amount allowed for eligible claims and the name of the provider that received this payment, and requires MGARA to annually compile and publish a list of all reported names. *See* Title 24-A M.R.S. § 3958(1)(B).

5) Will the state specify a co-insurance amount, or a cap, based on available funds, similar to the federal reinsurance program?

   The MGARA program will specify a co-insurance amount applicable to claims costs within the reinsurance thresholds determined in advance of each year. These thresholds set an upper per-claim limit, but there is no overall "cap" on total reinsurance payments based on available funds. The MGARA Board is charged with maintaining adequate capital (determined in an actuarially sound basis) to cover projected reimbursement payments. MGARA maintains a surplus based on a targeted RBC ratio in order to provide adequate assurance of funding for reimbursement payments over time.

   a. When will the parameters be finalized?

      The parameters will be finalized when MGARA files with Maine's Superintendent of Insurance an amended Plan of Operation that sets forth final parameters, and the Superintendent approves the amended Plan of Operation.

6) Further, does the state have the ability to adjust the parameters to account for market changes? If so, what is the schedule and process for finalizing the parameters on a year by year basis?

   Yes. Subject to the approval of Maine's Superintendent of Insurance, MGARA has the statutory authority to annually adjust the level of claims and maximum limit to be retained by insurers to reflect changes in cost, utilization, available funding, and any other factors affecting the sustainable operation of the association. The

MGARA Board must annually review the attachment points and coinsurance percentages and make any necessary adjustments to ensure that the retrospective reinsurance program operates on an actuarially sound basis. *See* Title 24-A M.R.S. § 3958.

7) Will the state require issuers to include the impact of the reinsurance program and/or high-risk pool in initial and/or final rates?

   Yes, in both initial and final rates. Maine requires this now for its existing section 1332 waiver.

8) Are there any legislation and/or regulations related to the state reinsurance program?

   Yes. The governing legislation is Chapter 54-A of the Maine Insurance Code, as amended by Public Law 2019, Chapter 653, "An Act To Enact the Made for Maine Health Coverage Act and Improve Health Choices in Maine," effective March 18, 2020, and further amended by Public Law 2021, Chapter 361, "An Act To Clarify the Deferral of the Pooled Market and Link Small Employer Clear Choice to Pooling in the Made for Maine Health Coverage Act," effective October 18, 2021. The Bureau of Insurance's regulation 02-031 CMR ch. 856, Combination of the Individual and Small Business Health Insurance Risk Pools, effective January 24, 2022, also contains provisions relating to the reinsurance program and this Section 1332 waiver.

   a. Are any additional regulations needed? If so, what is the timing of those regulations?

      No.

Maine submits the proposed waiver implementation timeline, which is detailed in Table 2 below.

Table 2. Implementation Timeline

End Date	Milestone
Section 1332 Waiver Application Process	
March 12, 2021	Publish draft section 1332 waiver application on state website and notify the public.
March 12, 2021	Begin public comment period.
March 12, 2021	Initiate tribal consultation.
March 22, 2021	Conduct first public hearing virtually.
March 29, 2021	Conduct second public hearing virtually.
April 19, 2021	End public comment period.
January 27, 2022	Submit final section 1332 waiver application to the Departments.

End Date	Milestone
June 2022	Target to receive approval from the Departments for the section 1332 waiver.
July 2022	Initial Rate Filings for Merged Market
October 2022	Rates Finalized for Merged Market
Legal Authority and Governance	
September 10, 2021	File proposed rule to implement pooled market in 2023 with state authority.
January 24, 2022	File final adopted rule to implement pooled market in 2023 with state authority.
Design	
September 2022	MGARA submits amended Plan of Operation for pooled market implementation to the Bureau of Insurance.
December 2022	Bureau of Insurance approves amended Plan of Operation.
March 2023	MGARA sends out assessments to carriers
May 2023	Insurers pay first quarterly assessment
Implementation	
January 1, 2023	Pooled market with MGARA reinsurance program extended to the pooled market begins.

Section VIII – Public Notice, Comment Process, and Communication Plan

A. Public Notice

On March 12, 2021, Maine opened the public comment period for this section 1332 waiver amendment application and posted the notice of the opportunity to comment on the state website www.maine.gov/pfr/insurance/legal/notices/public_meetings_events.html. Also on March 12, 2021, Maine sent notice via GovDelivery to its list of interested parties and stakeholders. The notice scheduled public hearings for March 22, 2021 and March 29, 2021 and set a deadline for written comments of April 12, 2021. The notice is included in **Appendix D: Notice for Public Comment Period and Public Forum**.

B. Public Comment Process

Due to the COVID-19 public health emergency, Maine submitted a request to the Departments pursuant to 31 CFR 33.118 and 45 CFR 155.1318 to modify, in part, the state public notice requirements specified in 31 CFR 33.112 and 45 CFR 155.1312. Specifically, Maine sought to modify the requirement to hold more than one public hearing in more than one location, and proposed to hold two public hearings virtually, rather than in-person. The Departments granted this request, and Maine held two public hearings virtually.

On March 22, 2021, Maine held a public hearing virtually. Representatives of the following entities attended the hearing: MGARA, Maine Association of Health Plans, Anthem BCBS, Community Health Options, Consumers for Affordable Health Care, Maine People Before Politics, and Maine State Legislature. Two of the attendees testified: Maine Association of Health Plans and Anthem BCBS. The presentation from this hearing is included in **Appendix E: Presentations from the Public Hearings.**

After this hearing, the State made the decision to delay pooling the markets and extending MGARA reinsurance to the pooled market until 2023. The State informed interested insurers, consumer advocate groups, MGARA, as well the Departments.

On March 29, 2021, Maine held a second public hearing virtually. Representatives of the following entities attended the hearing: MGARA, Maine Association of Health Plans, Anthem BCBS, Community Health Options, Consumers for Affordable Health Care, and Maine Credit Union League Insurance Trust. Two of the attendees, Maine Association of Health Plans and Anthem BCBS, asked the State procedural questions about the application going forward. Two other attendees testified: Community Health Options and MGARA. The presentation from this hearing is included in **Appendix E: Presentations from the Public Hearings.**

In response to MGARA and insurer requests for additional time to submit written comments, the State extended the deadline for written comments to April 19, 2021. Notice of this extension was posted on the state website (previously provided) and sent via GovDelivery to its list of interested parties and stakeholders on March 31, 2021. The notice is included in **Appendix D: Notice for Public Comment Period and Public Forum**.

Five members of the public submitted written comments. These comments are included in **Appendix F: Written Public Comments**.

At the first hearing, insurer representatives from the Maine Association of Health Plans and Anthem BCBS raised concerns about pooling the markets. They questioned whether the preconditions of the state law authorizing the pooled market had been met. They asserted that the appropriate baseline for assessing the impact on premiums under that law is no pooled market and the current MGARA program reinsuring the individual market, rather than the State's interpretation that the baseline is no pooled market and no MGARA reinsurance program. Based on this interpretation, they stated that expanding MGARA reinsurance to the pooled market diminishes the positive premium impact on the individual market. Additionally, insurer representatives raised concerns about the implementation timeline, noting that insurers need to know the payment parameters now in order to effectively participate in the market. They also raised concerns about implementing all of the State's various initiatives at once (*i.e.*, pooling the markets and amending the 1332 waiver, establishing standardized plan requirements, and transitioning to a full State-Based Exchange). Due to these concerns, they encouraged the State to delay pooling the markets and the associated waiver amendment until 2023. Anthem BCBS reiterated these concerns in written comments.

In response to these comments, the State notes that in June 2021, the Maine Legislature passed legislation, P.L. 2021, Chapter 361 (discussed in Section II of this application), which clarified the preconditions required to establish the pooled market, making it clear that the baseline for assessing the impact on premiums is no pooled market and no subsidized reinsurance program. This legislation also delayed pooling the market until January 1, 2023. These legislative changes address the concerns raised.

At the second hearing, an insurer representative from Community Health Options ("CHO") provided comments on the application as originally drafted, which echoed the concerns raised by the other insurer representatives that testified at the first hearing. CHO did express appreciation for the State's decision to delay pooling the markets but also raised concerns about the decision to proceed with the transition to the retrospective program for 2022. CHO claimed that, although the retrospective model has a distinct advantage as to ease and simplicity, its claims recovery would be reduced under this model. CHO also noted that payment parameters in the draft application do not reflect the ultimate structure to be adopted by MGARA, and therefore, insurers do not know what numbers to use to establish pricing. For these reasons, CHO urged Maine to keep its existing model until further evaluation can be made. CHO reiterated these concerns in written comments.

MGARA's general counsel also testified and expressed concerns about proceeding with the transition to a retrospective program for 2022. He stated that the MGARA Board decided at its last board meeting that, should the pooled market not be implemented in 2022, the Board's preference would be to keep the program as it is for 2022 and to make the transition to a retrospective model if the pooled market is ultimately implemented. He noted that moving to a retrospective program for 2022 would still create uncertainty, and it would be helpful to have a stable environment while the other State initiatives (previously mentioned) are taking place. At the time those comments were submitted, the MGARA Board had not yet had the opportunity to discuss the decision to delay the pooled markets until 2023 and proceed with the retrospective program for 2022.

In response to these comments, the State concluded that transitioning MGARA to a retrospective program for 2022 would be beneficial because it will give MGARA a year of experience with a retrospective program before any additional change is made to extend the program to a pooled market for 2023. Making these changes incremental will lessen disruption to the program. Ultimately, MGARA has made the decision to proceed with a technical change to the existing section 1332 waiver to transition MGARA reinsurance to a retrospective model beginning January 1, 2022. Regarding the concern about the payment parameters provided in the draft application, those have been updated in light of the State's decision to delay pooling the market and the waiver amendment application to allow for further analysis.

In written comments, AARP Maine, the American Lung Association, and Consumers for Affordable Health Care ("CAHC") supported the amendment application as originally drafted, believing it would help the groups they represent obtain affordable, comprehensive coverage by lowering health care premiums and would help stabilize the health insurance markets. CAHC expressed concern about delaying the pooled market until 2023, believing it will result in a missed opportunity created by the expanded subsidies for 2022 under the American Rescue Plan Act. CAHC also questioned whether reinsurance is still an effective use of the money derived from the $4 PMPM state assessments given the expanded subsidies, or whether other initiatives would be a more effective use of the funds. AARP Maine stated that the public forum that is required within six months of the waiver's implementation should include an assessment on the waiver's impact on Maine's older residents.

In response to these comments, as the State noted in its Notice of Public Comment Period Extension, the State delayed implementation of the pooled market and the associated waiver amendment in order to better understand and address the impact of COVID-19 and the premium tax credit changes made by the American Rescue Plan Act of 2021. Regarding AARP's request that the annual public forum include an assessment of the waiver's impact on older residents, the State notes that the public forum is intended to received public comments on the progress of an approved waiver and does not require the State to undertake any new assessment of the program at that time.

In addition to the Section 1332 comment process, the Bureau of Insurance held a public hearing on October 12, 2021, on its proposed regulation to establish procedures for implementation of the pooled market, which has now been adopted as 02-031 CMR ch. 856. The most significant issue raised at that hearing was the unintended consequences of the State's original proposal to make an annual January 1 rate adjustment applicable to all plans in the pooled market, including in-force small group plans with non-calendar-year renewal dates. Comments from across the spectrum of stakeholders, including issuers, employer associations, brokers, and consumer advocates, all objected that it would be disruptive and unworkable to require rate adjustments to take effect in the middle of a plan year rather than at renewal. They noted that Massachusetts successfully operates a merged market with plan-year rating and quarterly small group rate adjustments. Based on these comments, language requiring calendar-year rating was not included in the adopted rule, and Maine is requesting a rating framework under which the market-wide rates approved through the annual review process would apply to individual plans and to those small group plans with effective dates of coverage in January, February, and March. For small group plans with effective dates of coverage on or after April 1, issuers would be able to adjust rates on a quarterly basis, subject to the approval of the Superintendent, in the same manner as they are currently permitted to do under 45 CFR 156.80(d)(4)(ii). This would provide rate stability for employers with non-calendar-year plans, and would not have an adverse impact on affordability. While these employers would pay more than individuals and calendar-year employers in the first months of their plan year, they would be paying less after January 1 in the typical scenario where rates increase with the passage of time. On average, the total expected monthly cost would be the same, maintaining rate parity across the entire merged risk pool.

On January 28, 2022, the Bureau of Insurance held a public forum at which Gorman Associates presented its Actuarial and Economic Report. Notice of the forum is included in **Appendix D: Notice for Public Comment Period and Public Forum**. Attending the forum were representatives from, among others, the Legislature, MGARA, Maine Association of Health Plans, Maine Chamber of Commerce, Anthem BCBS, Community Health Options, Consumers for Affordable Health Care, and Maine Credit Union League Insurance Trust. The Bureau of Insurance gave attendees until February 4, 2022 to submit written comments. The two submitted comments appear in **Appendix F: Written Public Comments**. On February 1, 2022, the Bureau of Insurance and Gorman Associates made a similar presentation to the Legislature's Joint Standing Committee on Health Coverage, Insurance and Financial Services (the "HCIFS Committee").

C. Tribal Consultation

Maine has four federally recognized tribes: the Aroostook Band of Micmacs; the Houlton Band of Maliseet Indians; the Passamaquoddy Tribe; and the Penobscot Nation. On March 12, 2021, Maine contacted representatives of each of these tribes in writing and provided information about the section 1332 waiver amendment application and solicited consultation with, or comments from, the tribes. No comments were received from any of the tribes. Communications with each tribe are included in **Appendix G: Tribal Consultation Communications**.

D. Communication Plan

To educate insurers eligible for reinsurance reimbursement, MGARA will provide information about the new retrospective program through meetings and updates to information provided on the MGARA website. As with Maine's current reinsurance program, there will be no impact on how consumers enroll in and receive coverage. However, if consumers have questions about the 1332 waiver amendment, they may contact the Bureau of Insurance.

Section IX – Additional Information

A. Administrative Burden

The section 1332 waiver amendment will cause no additional administrative burden to employers and individual consumers because the MGARA reinsurance program does not relate to the administrative functions or requirements typically undertaken by employers or individuals. Health insurers will experience additional administrative burden and associated expense as a result of the operation of the MGARA reinsurance program resulting from submission of reinsurance claims; however, the waiver itself will not result in any additional administrative burden or cost, and the monetary benefit from the MGARA reinsurance program will exceed any resulting administrative expense.

MGARA and the Bureau of Insurance, collectively, have the resources and staff necessary to absorb the following administrative tasks that the waiver will require the state to perform:

- Administer the reinsurance program.
- Collect and apply 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.
- Submit quarterly and annual reports 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 waiver.
- Calculate and facilitate the transfer of pass-through funds to the state.

Maine believes that the above administrative tasks are similar to other administrative functions currently performed by the federal government, so that their effect should be insignificant. The waiver does not necessitate any changes to Maine's State-Based Marketplace and will not affect how PTC or cost-sharing reduction payments are calculated or paid.

B. Effect on PPACA Provisions Not Being Waived

The section 1332 waiver amendment will not affect the implementation of PPACA provisions not being waived.

C. Impact on Residents Who Need to Obtain Healthcare Services Out-of-State

Most Maine residents receive healthcare services from Maine-based providers. Maine does share a border with New Hampshire, and is not far from Boston, which is a center for advanced health care facilities; however, insurer service areas and networks that cover border areas generally are serviced through Maine-based providers and insurers' networks make adequate provision for any service required in New Hampshire or Massachusetts. Approving the section 1332 waiver amendment will not affect insurer networks or service areas that provide coverage for services performed by out-of-state providers.

D. State Reporting Requirements and Targets

MGARA will submit the required quarterly, annual, and cumulative targets for the scope of coverage requirement, the affordability requirement, the comprehensive requirement, and the federal deficit requirement, in accordance with 45 CFR 155.1308(f)(4).

As required, MGARA and the Bureau of Insurance will hold a public forum six months after the section 1332 waiver amendment is granted and annually thereafter. The date, time, and location of each public forum will be posted on the MGARA website and the Bureau of Insurance website.

MGARA 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 Bureau of Insurance 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)): MBOI will submit annual reports documenting the following:
    1) The progress of the waiver.
    2) Data 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.

MGARA 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.

E. Ensuring Compliance; Preventing Waste, Fraud, and Abuse

MGARA is required under its enabling legislation to annually prepare comprehensive financial accounting statements audited by an independent certified public accountant and file the audited statements with the Superintendent of Insurance and the HCIFS Committee. The independent certified public accountant is required to make an annual review of MGARA's solvency and submit that review to the Superintendent. The Superintendent has authority to order MGARA to charge additional assessments up to a maximum of $2 PMPM to aid in maintaining solvency. MGARA is also required to report annually to the HCIFS Committee regarding its operations and financial condition. MGARA will administer the reinsurance program in accordance with its existing accounting, auditing, and reporting procedures. Auditing and reporting obligations of participating insurers are governed by MGARA's Plan of Operation and state rules and regulations.

The Bureau of Insurance is responsible for: regulating and ensuring regulatory compliance and monitoring the solvency of MGARA and all insurers; performing market conduct analysis, examinations, and investigations; and providing consumer outreach and protection. The Bureau of Insurance investigates all complaints that fall within its regulatory authority.

The federal government is responsible for calculating the savings resulting from this waiver and for ensuring that this waiver does not increase federal spending.

Section X – Administration

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Appendices

The appendices are separate pdfs from the Waiver Amendment Application:

Appendix A: Authorizing Legislation

Appendix B: MGARA Amended and Restated Plan of Operation

Appendix C: Gorman Associates Actuarial and Economic Report

Appendix D: Notice for Public Comment Period and Public Forum

Appendix E: Presentations from the Public Hearing

Appendix F: Written Public Comments

Appendix G: Tribal Consultation Communications