

From: [Rashid, Lina C. \(CMS/CCIIO\)](#)
To: [Doherty, Holly; CMS StateInnovationWaivers; CMS 1332-WaiverSupport](#)
Cc: [Zhu, Sonya \(CMS/CCIIO\); Koltov, Michelle K. \(CMS/CCIIO\); Cioppa, Eric A; Hooper, Mary M; Garratt-Reed, Megan](#)
Subject: RE: Maine 1332 Waiver Request to Modify Public Notice Requirements
Date: Wednesday, February 24, 2021 3:31:06 PM

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Dear Maine team,

Thank you for submitting a request on February 11, 2021 to the Departments to modify, in part, some of the state public notice requirements specified in [31 C.F.R. § 33.112](#) and [45 C.F.R. § 155.1312](#) regarding Maine's application for an amendment of the section 1332 waiver^[1] during the COVID-19 public health emergency (PHE) as permitted under 31 C.F.R. § 33.118 and 45 C.F.R. § 155.1318.^[2] As detailed in your request, Maine is seeking a modification of the state public notice requirements to hold two virtual public hearings instead of holding more than one in-person public hearing in multiple locations. In addition, as part of Maine's separate process for meaningful consultation with the four Federally-recognized tribes within its borders, Maine is seeking the ability to virtually engage in consultation with such Federally-recognized tribes.

The Departments have determined that the state's request meets all of the criteria set forth in 31 C.F.R. § 33.118(b) (1)-(3) and 45 C.F.R. § 155.1318(b)(1)-(3).^[3] First, by requesting a modification via e-mail, the Departments have determined that the state has requested the modification in the form and manner specified by the Secretaries. Second, the Departments have determined that the state has acted in good faith, and in a diligent, timely, and prudent manner in preparation of the request by considering the Departments' recommendation that it should submit its waiver amendment application no later than the end of the first quarter of the year prior to the amended waiver's first effective year; as such, Maine is intending to initiate the state public comment period in March 2021, if not sooner. Third, the Departments have determined that the state has, as applicable, detailed in its request the justification for the request as it relates to the COVID-19 PHE and the alternative public notice procedures it proposes to implement at the state level, including public hearings, that are designed to provide the greatest opportunity and level of meaningful public input from impacted stakeholders that is practicable given the emergency circumstances underlying the state's request for a modification. As described in the request, on March 15, 2020, Maine's Governor proclaimed a State of Civil Emergency in light of the COVID-19 pandemic, and on November 4, 2020, also issued an Executive Order (EO) restricting indoor gatherings to a maximum of 50 persons^[4]. Since this EO was issued, Maine has continued to experience a significant rise in COVID-19 cases, hospitalizations, and positivity rates. As the state has demonstrated that in-person hearings are not be feasible in early 2021, its justification to hold two virtual public hearings as an alternative will allow the waiver amendment application to move forward in time to meet the state's targeted January 1, 2022 implementation date if approved.

Finally, the Departments have determined that the state intends to conduct a separate process for meaningful consultation with the four Federally-recognized tribes within Maine's borders. As explained in Maine's request, the state will initiate the tribal consultation process by contacting representatives of the tribes in writing to solicit consultation with or comments from the tribes. If a tribe seeks to participate and requests consultation through a meeting, the state will conduct such consultation virtually.

For the reasons stated above, the Departments are approving Maine's request to conduct the state public comment hearings virtually, as long as all of the other applicable requirements, including the relevant portions of 31 C.F.R. § 33.112 and 45 C.F.R. § 155.1312 that have not been modified, are met. As a reminder to the state, any public participation processes must continue to comply with applicable federal civil rights laws, including taking reasonable

steps to provide meaningful access for individuals with limited English proficiency and taking appropriate steps to ensure effective communication with individuals with disabilities, including accessibility of information and communication technology.^[5] The state should also conduct a separate process for meaningful consultation with federally recognized tribes in the state, which may be conducted virtually as well.

The state should also document in its waiver amendment application why the state public hearings were conducted virtually (e.g., due to state restrictions to mitigate potential risk associated with COVID-19) and describe the alternative public notice procedures that were implemented. See 31 C.F.R. § 33.108(f)(2) and 45 C.F.R. § 155.1308(f)(2).

The Departments will publish on the CMS website any modification determinations within 15 calendar days of the Departments making this determination, as well as the approved revised timeline for public comment at the state and/or federal level, as applicable. See 31 C.F.R. § 33.118(d) and 45 C.F.R. § 115.1318(d). In addition, Maine is required to publish on its website any modification requests and determinations within 15 calendar days of receipt of the determination, as well as the approved revised timeline for public comment at the state and/or federal level, as applicable. See 31 C.F.R. § 33.118(e) and 45 C.F.R. § 115.1318(e).

Please let us know if you have additional questions. Thank you.

Lina Rashid

[1] The approval package for the current Maine section 1332 waiver is available at: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/1332-STC-ME-Signed.pdf>.

² This flexibility was finalized in the Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency Interim Final Rule with comment period, 85 Fed. Reg. 71142, (Nov. 6, 2020), available at: <https://www.govinfo.gov/content/pkg/FR-2020-11-06/pdf/2020-24332.pdf>.

³ 31 C.F.R. § 33.118(b)(4) and 45 C.F.R. § 115.1318(b)(4) do not apply here as the state has only requested a modification of State-level public notice procedures, not a modification of any Federal-level notice procedures.

⁴ Executive Order 16, available at www.maine.gov/governor/mills/official_documents.

⁵ See the 2012 Application, Review, and Reporting Process for Waivers for State Innovation Final Rule at 77 Fed. Reg. 11700, 11706; see also the Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency Interim Final Rule with comment period at 85 Fed. Reg. 71142, 71179-80.

From: Doherty, Holly <Holly.Doherty@maine.gov>

Sent: Thursday, February 11, 2021 3:46 PM

To: CMS StateInnovationWaivers <StateInnovationWaivers@cms.hhs.gov>; CMS 1332-WaiverSupport <1332-WaiverSupport@cms.hhs.gov>

Cc: Rashid, Lina C. (CMS/CCIIO) <Lina.Rashid@cms.hhs.gov>; Zhu, Sonya (CMS/CCIIO) <Sonya.Zhu@cms.hhs.gov>; Koltov, Michelle K. (CMS/CCIIO) <Michelle.Koltov@cms.hhs.gov>; Cioppa, Eric A <Eric.A.Cioppa@maine.gov>; Hooper, Mary M <Mary.M.Hooper@maine.gov>; Garratt-Reed, Megan <Megan.Garratt-Reed@maine.gov>

Subject: Maine 1332 Waiver Request to Modify Public Notice Requirements

Dear Section 1332 Waiver Team:

The State of Maine, through its Department of Professional and Financial Regulation, Bureau of Insurance, intends to submit an application by the end of the first quarter of 2021 for a State Relief and Empowerment Waiver under Section 1332 of the Patient Protection and Affordable

Care Act to the Centers for Medicare and Medicaid Services in the Department of Health and Human Services, and the Department of the Treasury (collectively, “the Departments”). Maine expressed its intent to submit this application in a letter to the Departments dated October 2, 2020, and the Departments confirmed on December 28, 2020 that this would be reviewed as a waiver amendment application.

In order to proceed with the waiver amendment application in a timely manner, Maine is submitting this 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 seeks to modify the requirement to hold more than one public hearing in more than one location, and proposes to hold two public hearings virtually, rather than in-person. In addition, Maine will have a separate process for meaningful consultation with the state’s four Federally recognized tribes. As with the state’s original waiver application in 2018, Maine intends to initiate that process by contacting representatives of the tribes in writing to solicit consultation with or comments from the tribes. If a tribe wishes to participate and requests consultation through a meeting, Maine also seeks the ability to engage in such consultation virtually.

The state legislation authorizing changes to Maine’s reinsurance program and this application to amend Maine’s existing waiver sets a January 1, 2022 implementation date if the Departments approve the waiver amendment application. The Departments advised that the application should be submitted no later than the end of the first quarter of the year prior to the year the waiver would take effect. In order to ensure sufficient time to meet this deadline, Maine intends to initiate the public comment period and hold public hearings in March of 2021, if not sooner.

Maine’s Governor first proclaimed a State of Civil Emergency due to the health and safety risks of COVID-19 on March 15, 2020, which remains in effect. *See* Proclamations, available online at www.maine.gov/governor/mills/official_documents/proclamations. On November 4, 2020, the Governor issued an executive order due to “a significant increase in COVID-19 cases, hospitalizations, and positivity rates” with “evidence of widespread community transmission.” *See* Executive Order 16, available online at www.maine.gov/governor/mills/official_documents. This executive order included reducing the indoor gathering limit to 50 persons and repealing the physical distancing exception for the face covering requirement in public settings. These restrictions remain in effect. Since the issuance of this executive order, Maine experienced increases in cases, hospitalizations, and positivity rates, with additional executive orders issued in response. *See, e.g.*, Executive Order 19-A.

Due to the public health emergency and related restrictions, Maine anticipates that conducting public hearings and any consultations requested by the tribes in-person will not be feasible for the remainder of the first quarter of 2021. As such, Maine believes that holding virtual public hearings and tribal consultations is necessary in order to avoid a delay that would undermine the ability of the waiver amendment application to move forward in time to meet the January 1, 2022 implementation date if approved, which would be contrary to the interests of the consumers that the waiver is intended to benefit. Maine further believes that holding the two public hearings and any tribal consultations virtually, rather than in-person, will provide the greatest opportunity for meaningful public input that is practicable under the public health emergency circumstances.

We appreciate your consideration of this request. If you have any questions, please feel free to contact us.

Sincerely,

State of Maine Team
