



STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL  
AND FINANCIAL REGULATION  
BUREAU OF INSURANCE  
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AUGUSTA, MAINE  
04333-0034

Paul R. LePage  
GOVERNOR

Eric A. Cioppa  
Acting Superintendent

September 22, 2011

Honorable Kathleen Sebelius  
Secretary  
US Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Sebelius:

On behalf of the State of Maine, Bureau of Insurance, I write to comment on proposed rule entitled, "Standards Related to Reinsurance, Risk Corridors and Risk Adjustment" [CMS-9975-P] which was published in the Federal Register on Friday, July 15, 2011.

Our comments relate specifically to the portions of the proposed rule relating to the transitional reinsurance program. We appreciate the provisions allowing states flexibility in several aspects of the program design. However, we believe Maine citizens would benefit from additional state flexibility in a few areas.

The Maine Legislature enacted the Maine Guaranteed Access Reinsurance Association Act, creating a reinsurance program for Maine's individual market, to become operational July 1, 2012.<sup>1</sup> This legislation was enacted and signed by the Governor before the publication of the proposed federal rule. The Maine Guaranteed Access Reinsurance Association (MGARA) will administer a program that is in many ways similar to the federal transitional reinsurance program. With sufficient flexibility in the federal rules, the MGARA program could serve both purposes. We believe such a combined reinsurance mechanism would be more beneficial to Maine citizens with less expense and administrative burden on Maine employers and insurers than would two separate programs.

Like the federal program, MGARA will provide reinsurance for large claims in the individual market and will be subsidized by an assessment on the entire health insurance market. However, as discussed in detail below, several of the details differ from those proposed in the draft federal rule.

<sup>1</sup> 2011 Public Laws, Chapter 330, further amended by 2011 Public Laws, Chapter 364.



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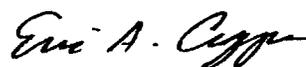
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- § 153.200 of the proposed rule provides that only claims related to essential health benefits are eligible for reinsurance. The Maine law does not restrict the types of claims that are eligible. We believe all claims should be eligible. Any policy goals that might be served by the restriction are far outweighed by the administrative difficulties such a restriction would cause. However, if the final rule retains this restriction, we suggest adding a provision permitting a state to use an alternative method.
- § 153.220 of the proposed rule provides that contributions will be a percent of premium. The Maine law provides for a per capita assessment. While we believe the method prescribed in the proposed rule is reasonable in general, we suggest adding a provision permitting a state to use an alternative method as long as the total amount raised in the state equals or exceeds the amount that would result from the percent of premium contribution.
- § 153.230 of the proposed rule provides that eligibility of individuals for reinsurance coverage is to be determined retrospectively based on claims. Reinsurance benefits are payable for any individual insured whose claims reach the attachment point. Under the Maine law, high-risk individuals must be identified prospectively based on a health questionnaire. Reinsurance benefits are payable only if claims for an identified individual reach the attachment point. While we believe the method prescribed in the proposed rule is reasonable in general, for the reasons laid out in the preamble, we do not believe it is the best method for Maine, due to the conflict with the method prescribed by state law. Therefore, we suggest adding a provision permitting a state to use an alternative method.
- § 153.230 of the proposed rule provides that the reinsurance will pay a percentage of claims between the attachment point and the reinsurance cap. The Maine law provides for payment of 90% of claims between \$7,500 and \$32,500 and 100% of claims over \$32,500. The proposed § 153.230 allows states flexibility in several aspects of the payment formula, including increasing or decreasing the attachment point and coinsurance rate and eliminating the reinsurance cap. However, it is not clear whether a state could elect differing coinsurance rates for different ranges or that the ability to increase the coinsurance rate includes increasing it to 100%. We suggest clarifying that both of these would be permitted.
- The Maine law requires issuers in the individual market that reinsure some of their members to pay reinsurance premiums to MGARA. Neither the ACA nor the proposed rule either requires or prohibits reinsurance premiums. We suggest an explicit provision indicating that states are not barred from requiring reinsurance premiums to supplement the funding raised through the assessment.

We appreciate the opportunity to comment.

Sincerely,



Eric A. Cioppa  
Acting Superintendent of Insurance