



Mid-Atlantic Permanente Medical Group, P.C.
Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.

Submitted electronically to: mhbe.publiccomments@maryland.gov

May 20, 2018

Maryland Health Benefit Exchange
750 East Pratt Street
Baltimore, MD 21202

Re: *Draft Maryland 1332 Waiver Application*

Dear Sir or Madam:

Kaiser Permanente offers the following comments in response to the Draft Maryland 1332 Waiver Application published on April 20, 2018 by the Maryland Health Benefit Exchange (MHBE). Kaiser Permanente supports the Section 1332 waiver and a reinsurance program benefitting all Marylanders equally. We appreciate MHBE's commitment to stabilizing the individual market and offer recommendations in support of its waiver application.

Kaiser Permanente of the Mid-Atlantic States provides and coordinates complete health care services for over 780,000 members through 30 medical office buildings in the District of Columbia, Maryland and Virginia. Kaiser Permanente is a total health organization composed of Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., the Mid-Atlantic Permanente Medical Group, P.C., an independent medical group that is comprised of approximately 1,500 physicians who provide or arrange care for patients throughout the region, and Kaiser Foundation Hospitals which contracts with community hospitals for the provision of hospital services to our patients. Kaiser Permanente is committed to the individual market and the consumers who do not have access to group coverage.

Maryland's reinsurance program will significantly impact Kaiser Permanente and our members. As one of two carriers currently operating in the individual market in Maryland, Kaiser Permanente provides care and coverage to 46 percent of Maryland's on-exchange individual market as of April 2018. We experienced losses of \$117 million in the individual market, or an average of negative 28 percent annually, between 2014 and 2017.¹

A properly designed and fairly implemented reinsurance program may help stabilize individual market premiums. To ensure the greatest number of consumers realize the program's benefits, MHBE should include the following specific elements in its final Section 1332 waiver application:

1. A description and analysis of the varying impact of reinsurance on market participants.

¹ This represents Kaiser Permanente's loss on the Individual market from 2014-2016 plus an estimate for 2017.

2. Language describing MHBE’s intent to ensure that the federal risk adjustment program and the Maryland reinsurance program do not duplicate payments for the same high-risk membership.
3. Language describing MHBE’s intent to determine the extent of overlap between payments made under the federal risk adjustment program and the state reinsurance program.
4. Program incentives rewarding quality and cost-management.

We discuss these requests below.

MHBE Should Include a Description and Analysis of the Varying Impact of Reinsurance on Market Participants.

An equitably designed state-based reinsurance program mitigates the impact of high risk individuals on premiums caused by elimination of the Affordable Care Act (ACA)’s individual mandate penalty in 2019 and uncertainty at the federal level. It could also provide an incentive for more carriers to enter the individual market.

A poorly designed reinsurance program has the potential to reward carriers who are not effectively managing costs. MHBE should design its program to reward cost-management. The first step is an account and analysis of the varying impact of reinsurance on market participants. As the March 2018 Wakely Consulting Group report for the Maryland legislature noted “individual issuers may be affected differently by reinsurance. Issuers with relatively higher claims cost will receive relatively more reinsurance payments.”² Accordingly, the final waiver application should acknowledge that variation and break out the anticipated effect on premiums by plan.

MHBE Should Account for Risk Adjustment in Structuring Its Reinsurance Program.

MHBE’s final waiver application should clarify that the state intends to account for federal risk adjustment payment and to design a reinsurance program that pays only for uncompensated high risk. This will ensure that reinsurance funds have the broadest impact for all consumers, incentivize new market entrants and encourage current participants to remain. Kaiser Permanente is concerned that the reinsurance program proposed by the draft waiver application will effectively favor one health plan’s membership and provide rate relief disproportionately to those consumers.

The ACA compensates carriers for high-risk members through a federal risk adjustment program that transfers money among carriers based on their enrollment of individuals with high cost diagnoses. As the Centers for Medicare and Medicaid Services (CMS) noted in its 2019 Notice of Benefit and Payment Parameters regulation, the scale of such transfers plays a crucial role in issuer decisions to participate in the individual market. Kaiser Permanente will transfer

² Wakely Consulting Group. (March 15, 2018). *State of Maryland: Individual Market Stabilization – Reinsurance Analysis*, 7.

approximately \$80 million to CareFirst for the 2017 plan year to account for its higher risk membership in Maryland. We expect that amount to increase substantially in 2018 and beyond.

The goal of the Maryland reinsurance program should be to stabilize the entire individual market by benefitting all Maryland consumers equally. The draft application does not account for federal risk adjustment payments and thus fails to stabilize the entire market. Rather, the reinsurance funds will pay twice for the same members – first from the federal risk adjustment program and a second time for claims reimbursable under the Maryland reinsurance program. As previously discussed, this effect magnifies the existing distortion under risk adjustment and thereby picks competitive “winners and losers.”

In addition, providing rate relief to healthier consumers, who overwhelmingly enroll in HMOs, is of paramount importance if the reinsurance program is to achieve its stated goal of stabilizing the Maryland individual market. As presently designed, the program directs over *one third* of reinsurance funds to premium relief for fewer than seven percent of the state individual market enrollment that chooses a PPO, while the remaining funds will provide significantly less rate relief to over 200,000 Marylanders enrolled in HMOs offered by both of the state’s individual market carriers. This approach is sub-optimal for Maryland’s individual market and produces an inequitable result for the vast majority of Maryland consumers.

MHBE’s expert recognized this disparity in its own March 2018 analysis: “Some enrollees with Hierarchical Condition Categories (HCCs) will get compensated both for risk adjustment and reinsurance. The result could be very different profitability patterns within the market than currently exists, and the result could also vary depending on the chosen funding level and reinsurance parameters.”³

Actuarial experts endorse the reinsurance-level adjustments for risk adjustment as sound policy. Milliman notes that “the current federal risk adjustment methodology does not account for payments from a state-based reinsurance program and can result in double compensation for high-risk members, both from the reinsurance program and from risk adjustment. This finding may be important to many other states considering reinsurance-like proposals under Section 1332 to help stabilize their markets. Specifically, if appropriate changes to risk-adjustment are not made, a reinsurance program could lead to pricing inefficiencies and distortions that negatively impact the market and could work against the goals of the reinsurance program overall.”⁴ Similarly, the American Academy of Actuaries has recommended against compensating insurers twice for the same risk.⁵

We do not believe including these adjustments will delay or compromise federal approval of Maryland’s waiver. During a May 4, 2018 meeting with Kaiser Permanente, senior CMS career staff informed Kaiser Permanente that they did not foresee the inclusion of an element

³ Wakely Consulting Group. (March 15, 2018). *State of Maryland: Individual Market Stabilization – Reinsurance Analysis*, 7.

⁴ Milliman. (August 2017). *Pairing Risk Adjustment to Support State 1332 Waiver Activities*. Retrieved from <http://www.milliman.com/insight/2017/Pairing-risk-adjustment-to-support-state-1332-waiver-activities/#>.

⁵ American Academy of Actuaries. (May 2017). *How Changes to Health Insurance Market Rules Would Affect Risk Adjustment*. Retrieved from <http://www.actuary.org/content/how-changes-health-insurance-market-rules-would-affect-risk-adjustment>.

accounting for federal risk adjustment payments to prevent carriers from receiving double compensation slowing their review of the waiver.

Maryland's program should not have the unintended effect of creating market distortions among products offered by the remaining two carriers in the individual market. The program design should promote stabilization and create a market that is more attractive to new entrants. We recommend that the waiver application specify that individual market plans that receive risk adjustment transfers will have those transfers “netted out” from claims on reinsurance funds.

MHBE Should Direct Wakely to Quantify Risk Adjustment Overlap.

While Kaiser Permanente believes the degree of overlap between risk adjustment payments and claims reimbursable through reinsurance is substantial, an actual estimate of the amount is unavailable without access to all carriers’ claims data. Wakely Consulting Group, MHBE’s retained actuary for purposes of this waiver, possesses the data necessary to quantify the overlap. We appreciate that MHBE has directed Wakely to project the overlap and inform stakeholders on the projection.

We ask that the analysis compare scenarios that would more evenly distribute reinsurance funding and avoid distorting the competitive balance in Maryland’s individual insurance market. The analysis should also evaluate the impact of risk adjustment transfer reductions in 2020 on enrollment or affordability, should the state choose to exercise this authority.

We believe this analysis will be useful to regulators, MHBE and relevant stakeholders in the regulatory process for reinsurance program design.

MHBE Should Include Quality and Utilization Management Incentives.

As the United States moves towards value-based payment in health care, Maryland’s reinsurance program should not move its individual market in the opposite direction. MHBE should include incentives in the reinsurance program aligned with the state’s broader policy goals related to quality, cost-effectiveness and innovation. Incentives should reward quality in care delivery through strategies like payment multipliers for high clinical quality ratings in preventive care measures.

Integrated, managed care frequently outperforms PPO models in quality and cost-effectiveness. PPOs may be more expensive because of inefficiencies, such as ineffective care management, not just higher risk profiles. Maryland’s reinsurance program should reward high-performing models and avoid compensating plans for inefficiencies.

In its final waiver application, MHBE should specify incentives for quality and cost-management. The CMS Checklist for Section 1332 State Innovation Waiver Applications requires states to address “whether the reinsurance program includes incentives for providers, enrollees, and plan issuers to continue managing health care cost and utilization for individuals

eligible for the described reinsurance (if any).”⁶ A stated commitment in the application will strengthen the final application.

We recommend the state include multiplication factors in its design of reinsurance payments based on 1) third-party estimates of product and network cost-effectiveness and efficiency for each of Maryland’s individual market products; and 2) achieving the highest ratings in clinical quality from the Maryland Health Care Commission’s independent quality rating program. We believe this approach is consistent with the broader health policy goals of the MHBE.

With regard to the network efficiency factor, in the attached letter, Milliman estimates that a well-managed HMO in the Maryland marketplace has a 27 percent advantage over the state’s PPO. MHBE should allocate reinsurance program dollars to reward this efficiency.

Taken together, these recommendations would distribute the benefits of the Maryland Reinsurance program roughly equally to all Marylanders enrolled in HMOs. Those enrolled in the PPO would still benefit disproportionately, but to a lesser extent. Specifically, with these adjustments, HMO enrollees would see significantly reduced proposed 2019 rates close to the expected overall market reduction and PPO enrollees would see proposed 2019 rates cut roughly in half (rather than by a significant 95 percent if no adjustments for double payment, cost effectiveness and clinical quality are made).

* * *

Thank you for your time and consideration. Please do not hesitate to contact Laurie Kuiper, Senior Director of Government Relations, at 301-816-6480 or Laurie.Kuiper@KP.org, if you have any questions or require additional information.

Sincerely,



Kim K. Horn
President
Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.

⁶ See <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Checklist-for-Section-1332-State-Innovation-Waiver-Applications-5517-c.pdf>.