March 22, 2021

Jeffrey Grant, Acting Director
Center for Consumer Information and Insurance Oversight
Centers for Medicare & Medicaid Services
Via E-mail: ***Jeffrey.grant1@cms.hhs.gov***

Mark J. Mazur
Deputy Assistant Secretary for Tax Policy
Office of Tax Policy
U.S. Department of Treasury
Via E-mail: ***mark.mazur2@treasury.gov***

Dear Acting Director Grant and Deputy Assistant Secretary Mazur:

In February, CMS and Treasury sent letters to states with estimates of 2021 federal pass-through funding for our state-based reinsurance programs which operate under section 1332 of the Affordable Care Act. Because the American Rescue Plan makes substantial changes to individual health insurance market premium tax credits in 2021, we, a bipartisan group of insurance regulators from states with approved waiver agreements with your agencies, request that you calculate our final pass-through funding taking into account these changes in law and the expected impact on federal spending.

Prior to the American Rescue Plan, our states had taken steps to lower premiums in the individual market for individuals and families of all incomes by investing state dollars into reinsurance programs. Under the American Rescue Plan, premium tax credits will be offered to more enrollees, and these new tax credit expenditures will be reduced in our states due to the existence of our reinsurance programs. This federal savings is not contemplated in the February estimates of the 2021 pass-through amounts.

We face practical challenges as the American Rescue Plan is implemented. Our reinsurance program parameters for 2021 have been set and do not take into account the enrollment changes we'll see as a result of the increased tax credits, not to mention the additional enrollment already anticipated as a result of the COVID-19 special enrollment period open in all of our states. These changes are likely to increase individual market enrollment and, as a result, increase the number of reinsurance-eligible claims beyond current estimates.

States with reinsurance programs request that CMS and Treasury recalculate state passthrough amounts to account for the additional federal savings that will accrue as a result of the premium tax credit expansion. We are confident this can be done such that it meets the deficit neutrality requirements of our 1332 waivers and fulfill the spirit of Section 1332 of the ACA, which intended for states to be empowered to pursue policies in the best interest of their residents within the parameters of the total anticipated federal expenditure in that state.

Re-calculating passthrough would also fairly recognize that states with reinsurance programs have already provided significant investment to move premium rates down and the new subsidies will modify the assumptions on which those programs were established. CMS and Treasury explicitly contemplate that changes to federal law could impact passthrough funding for states. CMS FAQs state that "pass-through funding amounts are updated to reflect the latest data and changes in federal and state law, as applicable". Recognizing this potential, the agreements allow federal officials to modify passthrough funding amounts as needed to reflect federal changes. These changes can be made without requiring states to submit a new waiver proposal. We believe a recalculation of passthrough funding is consistent with the terms of our waiver approvals and will ensure that states receive the full amount of passthrough funding that would have been received absent its waiver program under the American Rescue Plan.

If you require additional information to perform these calculations – for example updated estimates of likely enrollment in our states given the larger tax credits – please let us know.

With increased pass-through amounts states that have already invested in the stability and affordability of their individual health insurance markets can continue to lead on this front possibly with an even greater focus on equity. CMS and Treasury have been great partners to all of our states in the implementation of our reinsurance program and delivery of the important savings these programs achieve for our residents, and we look forward to continuing that partnership in working through the American Rescue Plan.

Thank you for your consideration. We are available for discussion on the topic.

Sincerely,

Grace Arnold, Commissioner (Temporary)
Minnesota Department of Commerce

Jessica K. Altman, Commissioner
Pennsylvania Department of Insurance

Michael Conway, Commissioner
Colorado Division of Insurance

Troy Downing, Commissioner of Securities and Insurance
Montana State Auditor

Lori Wing-Heier, Director
Alaska Division of Insurance

Trinidad Navarro, Commissioner
Delaware Department of Insurance

Eric A. Cioppa, Superintendent
Maine Bureau of Insurance

Kathleen A. Birrane, Commissioner
Maryland Insurance Administration

Christopher Nicolopoulos, Commissioner
New Hampshire Insurance Department

Marlene Caride, Commissioner
New Jersey Department of Banking and Insurance

Jon Godfread, Commissioner
North Dakota Insurance Department

Andrew R. Stolfi, Commissioner
Oregon Department of Consumer and Business Services

Mark Afable, Commissioner
Wisconsin Office of the Commissioner of Insurance

Patrick Tigue, Commissioner
Rhode Island Office of the Health Insurance Commissioner

CC: Lina Rashid, CMS
Michelle Koltov, CMS